
Emily Taylor: I think we'll get started; Bill will, no doubt, join us in a few minutes. Well done to everyone who's managed to find the room this morning, and welcome to Sharon, who is participating remotely. I'm expecting James and I think Lynn as well will be participating remotely, at some point today, particularly when they wake up. We had a very constructive session yesterday amongst the few of us who were in town, and we have set up an agenda for today, which I can't immediately find, to start.

[background conversation]

Emily Taylor: For Alice, I've got some housekeeping matters. First of all, we can invoke the Chatham House rule, which we did yesterday, so we had a practice at that. For recording purposes, please remember to identify yourself when you start speaking. This session will be recorded as always streamed and we have a bridge open for remotely attending members. This meeting is open to participants. Welcome to our observers; observer at the moment.

So can we start with a roll call?

Kathy Kleiman: Keith Drazak of Verisign is joining us as an observer, representing the whole class of observers.

[background conversation]

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

Kathy Kleiman: Kathy Kleiman, representing Registry Stakeholders.

Alice Jansen: Alice Jansen, ICANN staff.

Olof Nordling: Olof Nordling, ICANN staff. We also do have a (inaudible) as a remote observer.

Emily Taylor: Excellent.

Seth Reiss: Seth Reiss, ALAC.

Lutz Donnerhacke: Lutz, ALAC.

Sarmad Hussain: Sarmad Hussain, SSAC.

Susan Kawaguchi: Susan Kawaguchi, CSG.

Wilfried Woeber: Wilfried Woeber, Address Council.

Emily Taylor: Emily Taylor, Chair, and I'm here on behalf of the ccNSO as well. And Sharon, if you'd like to put in a word?

Sharon Lemon: Yes, Sharon Lemon.

Kathy Kleiman: Hi Sharon, we miss you. It's Kathy. It's nice here, it's quite nice.

[background conversation]

Olof Nordling: As a back-bencher, I do notice Louie Lee who is from the ASO Address Council.

Emily Taylor: Okay, we've got an agenda posted up there which we can all see; hopefully you can see it as well, Sharon. Does anybody want to propose any amendments to that agenda? Or can we adopt it?

Kathy Kleiman: Do we want to just go down to the bottom and show what's in the afternoon session?

Emily Taylor:

The afternoon will be bringing on our discussions of recommendations and thinking about how to take the draft on, so we can get it completed by the end of November. We've got some housekeeping to do this morning; actually thinking about the discussion about these insight report, I'd like to wait until Lynn is on the line on that, so we may well continue with our slightly shapeless discussions about the report structure and see if we can just continue our iterative work on the recommendations, while we're waiting. That would be my suggestion; please let me know if that's going to be a problem. So let's adopt the agenda.

I would say though, I think for everybody, we're very far advanced now in our work. We all know each other well; I think we have a very good group (inaudible). We all shared yesterday that our objectives for this meeting in Dakar, which is stretching over yesterday, today, and tomorrow, is to leave the meeting with an agreed set of recommendations, which are concise and which capture the consensus of the group.

That might mean that some of us have to let go of deeply held views or compromise our views in some way, but an objective I think, if we can think in terms of advancing this subject, and breaking some of the deadlock and paralysis that has afflicted this subject over the last 10 to 12 years, then I think that we're doing a good job. I would hark back to something James said quite early on in our discussions, as he's not here to say it himself, is that the only way we can really fail in our task is by not having a set of consensus recommendations. So with that, I think we made some

very good progress over the last couple of meetings, and again yesterday.

So while we have this agenda – this is a very long way of saying while we have this agenda, I think that let's still advance this overriding objective to get the recommendations nailed, and also to share our views on the draft report as it currently stands, even if they're quite high-level at this stage. So can we have – we'll do the housekeeping stuff; adoption, approval, and the new reports. So we've got one from the 12th of October, which was a very, very short call, if you remember, when we were literally just whipping through fairly... (inaudible) Will you just put it back on the screen please, Alice? Sharon, can you hear okay?

Sharon Lemon: Yes, absolutely fine, thank you.

Emily Taylor: Good, okay. So you should have an Adobe room copy of the preliminary report.

[background conversation]

Emily Taylor: So we've got it here in the room. Does anybody have any comments on this report? Are we comfortable with it as a faithful representation of our discussions last week? Any amendments or

corrections of fact? Shall we just adopt this? It looks (inaudible), Alice. So adopted. Okay, now next on the agenda there is an update from – summary of the session held on Saturday. Okay, I'll start, and then others can correct me.

Sharon and Sarmad, you should have a copy of this document, entitled "Brainstorming Session". It was circulated to the list by Alice yesterday evening. Does everybody have a copy? If any of our observers that would like to have a copy, then they're welcome to. It will be just a couple of minutes to...

[background conversation]

Emily Taylor:

What we were attempting to do yesterday was to try and set us up for success today. We felt that, on balance, having something like 75 recommendations, which is what's in the current draft, might be a little bit too much, and also might risk loss of focus and actually carries a significant risk that the majority would not be implemented, and what we want is for our recommendations to be implemented. So we tried to think of five headings, but in fact I think we've actually got six, under which to make high-level but smart recommendations that would be achievable, measurable, realistic, and time-bound.

And these come under the category of policy; this should be quite familiar to all of us, if you've been paying attention over the last

year, there isn't one. Also, this is a cross-community development; this is not a subject which is owned by any particular constituency, it is a subject where many constituencies and many stakeholders have a legitimate interest and should be participating in policy development.

On the implementation, we need to think about – I think this is where... Well, thick and thin, and also I think something that occurred to me overnight is that wrapped up in thick and thin, there is also an element of – when we've spoken about the hallmarks of a successful policy; it is clear, it is consistent, and it is communicative. When we look ahead over the next two years, we're going to have a regime in which within the gTLD space, there are three concurrent and inconsistent WHOIS policies in operation; and they are the thin WHOIS, the thick WHOIS, and the New gTLD WHOIS.

So let's sort of just – I think that that's probably something to consider under that heading, thick/thin, and of course the IDNs which we've discussed together as a group, the fact that there is no current way, consistent way of recording IDN data for WHOIS, or indeed a consistent way of representing the IDN domain name itself, within WHOIS.

Accuracy, big one; we've got validation process here, but I would say that I don't think we are at consensus about validation itself. We attempted to nut out, in Peter's term, an accuracy recommendation that we could live with, which was at the appropriate level, and that's on the second page. It's for ICANN to

take appropriate measures on easy targets; I think that's sort of the most achievable, what you'd call the low hanging fruit I think.

To reduce the number of unreachable registrations, and bear in mind, we will adopt whatever term was used to describe those unreachable registrations in the data accuracy study for consistency. To reduce that number by 50% within the next 12 months, and to cut in half, over the following 12 months, the number of unreachables again; so it's basically aiming for 75% reduction over two years of unreachables.

And we want a status report to be completed by the time the next [RT] starts, with tangible, reliable figures. And we'd like them to be able to produce an accuracy report on an annual basis. Sarmad, please.

[background conversation]

Emily Taylor:

Sarmad, if you could find a page reference for us; there's also, in the Applicant Guidebook, some – the application form itself sets out extensive provisions on (inaudible) as well. It would be worthwhile in this sort of (inaudible) that we have, looking at it together.

Sarmad Hussain: So then what you are suggesting then is to take that as a baseline and (inaudible) or take a baseline of what is currently the rule?

Emily Taylor: I think if I can just clarify and suggest that we need to look at that wording, and the moment there's about 20% of WHOIS records which are entirely unreachable. It's impossible to make a contact or to determine what the data is telling us. We want that 20% unreachable to be 10% next year, and 5% the year after. No, Wilfried's better at maths than I.

Kathy Kleiman: Just realistically, for talking within the next 12 months, we're talking existing TLDs. We're not talking new TLDs at all because they won't be real.

Emily Taylor: Wilfried and then Olof.

Wilfried Woeber: If there's an explicit mention of 55% or 51%, in the former papers, then I think we should actually take that as one of our recommendations to amended. Because my feeling is if we agree that half of the registration data is bogus, then we should just stop using WHOIS in the first place. I mean, if you query stuff and every other answer is bogus, then why would you start querying the whole system at the beginning?

Emily Taylor: It does sound quite surprising, yes. Olof?

Olof Nordling: Just on logistics, please speak very close to the mic, and use [defragment] support if possible.

Kathy Kleiman: We're not saying that 50% of the registrations are unreachable; we're saying that whatever percentage is unreachable, let's reduce it by 50%.

Sarmad Hussain: So I'm not clear how to exactly interpret it. You have access to the Guidebook. It's, let's see, page (inaudible). Well, do you want me to read that out?

Emily Taylor: Perhaps if Alice – if you send her a URL and then we can have a look at it on the screen. But so while we're getting that sorted out, I'll just whip through the rest of the recommendations. If you can just scroll up, please. So we have covered accuracy; and then the third one is about the – our recommendation that WHOIS be a strategic priority for ICANN, for the community, for the organization, and that means that staff needs to be adequately resourced, but that this is a Board level staff responsibility, or at least a very senior – I'm not quite sure if there are any staff

members on the Board. It's a CEO type level of responsibility; it should be a component of the strategic plan, with the allocation of budget, and clear, transparent planning through the cycle.

The fourth element is communication, so there should be cross-community outreach including the community outside, with specific interest in this issue, and I think that probably what was in our minds at that point, Sharon, was particularly the law enforcement community. And then we need something clear, concise, and communicated on privacy and proxy, which we can't immediately agree; but we are – I think you can see the sort of level that we're hovering around. We're trying to go – oh, sorry – it's a different page. We need to define what these terms mean, and in fact there is a study which has done, I think, a pretty good job on defining those terms, privacy and proxy.

But also that the components, I think in a way we need to define the expectations going down to this. I expect it would be helpful for our findings to make a clear statement that there is a legitimate use of privacy and proxy services; whether that be for individuals who are wishing to keep their personal data off the public record, or indeed, corporations. So that is a very clear message we have had from across the community. However, there need to be standards of review and rely, so that it is possible for those with a legitimate interest in uncovering that info, whether they be law enforcement or other users of WHOIS, so that they can get – they know what to expect, and if they don't get what they expect, there are consequences of unmet expectations.

That's basically the components of where we're going on privacy/proxy; so the service itself is fine, but it needs to be standardized and the standards communicated to stakeholders, and there need to be consequences of failure to meet those expectations.

So that's about the level of recommendations. So first of all, can I ask what are we missing? We've had the opportunity overnight to think about it. What are we missing? Have we got the right level? Do we need to go through the recommendations in our draft and see how they fit? What's next, please? Thank you, Susan.

Susan Kawaguchi:

This is Susan Kawaguchi. I don't see availability – I still think availability is a problem. Some registrars comply completely and others you have to hunt, and then it limits availability.

Emily Taylor:

Okay, thank you for that. That is obviously a very key element that we've not highlighted. It's implicit in the discussions of privacy/proxy, but where – how would you propose us to include it? As a separate heading in its own right, or as something – implementation?

Susan Kawaguchi:

Right.

Emily Taylor: And just to pause and get that into the list, under the second heading, availability will be part of implementation. So we've got those two – these two phrases, I think, will run through the report, of the concept of accuracy and availability are starting to be quite a strong key line of the report. So thank you very much.

Susan Kawaguchi: I have a second one, and this came out of the discussion before; and I think we've discussed this, but I don't see it, and that is who owns the data? And therefore, who's responsible for providing it? Does the registry own it? The registrar? In the dotcom right now, I think the registry owns that, the registrar's name... really the registrar data; and should be responsible for providing accurate data, but if they don't there's no viable consequence. There is a consequence, but it's not too viable.

Emily Taylor: okay.

Susan Kawaguchi: I would put that under policy. We really outlined that for ICANN (inaudible).

Emily Taylor: Thank you. Can I have any reactions to that? This is something that we discussed way back in January, but we've kind of dropped

the ball on it a little bit. Who owns the data? Why is this an important question? Thank you, Wilfried?

Wilfried Woeber:

Wilfried here; just to define the terminology of implementation, what do we mean by who owns? I think there is consensus that they own the source of the correct information, which is the registrant. The question of ownership is more like a question of copyright on the collection of data, and I think the responsibility is with the registrant, but the ownership of the whole collection is more like with the registrar, or depending on thin or thick, with the registry. I think we should look into those two aspects.

Emily Taylor:

I think that's a very good point; we need to be a bit clearer on – I've got a list here. Seth, Lutz, Sarmad.

Seth Reiss:

Following up from Wilfried, I have some thoughts; I think we may go down the wrong path by talking about ownership. I think it is an issue of copyright that may vary from country to country; define it differently and the idea of the ownership of a database doesn't really address the problems that we're trying to address, which is who has responsibility. So I think the idea of ownership might be important to address so that somebody else doesn't go down the wrong path, but I think we need to focus on the responsibility.

Lutz Donnerhacke: Like (inaudible) argument we should not, this concept of ownership of data or the maintenance or something like this, because it's work related and very in place, only we can talk about ownership of data and correctness of the data, or copies of data.

Emily Taylor: Sarmad?

Sarmad Hussain: Thanks. So one of the things we've been discussing in the Internationalization of the Registration Data Working Group, and that has direct implications on (inaudible), our responsibility however we want to define it. And that's true that the translation of that data in let's say English (inaudible) provided in Arabic or Chinese. So there are real implications of it.

If the data ownership is under dispute or is (inaudible) then we can go again to ICANN translations in a more global language. But the data ownership is the business part then (inaudible). But it's important also in the context that we adhere (inaudible).

Emily Taylor: So we're really discussing what we mean by ownership. Kathy and then Susan.

Kathy Kleiman: I'm going to go with Seth and say that this may not be an area that we want to give the absolute answer on; and in some ways we're

very gloriously principled and I just wanted to share -- under the scope of work now, which we're really calling the "terms of reference." I think in some ways this may have been what James was trying to get to when he created all those -- in elegant terms, data producers, data controllers, data processors. So the data producer is the registrant, the individual, the organization, the corporation; the data controllers.

Just to repeat things we already know but that others may not, data controllers are the organization, and this one big organization, ICANN, responsible for promulgating the rule. And the data processor is where the registry is involved in the collection. We've got a split responsibility here; so maybe that's -- maybe that may be a way to say it, rather than to determine who owns the data, that there is a split responsibility and begin to carry those terms through our explanation. They have to explain that because who owns databases and data internationally is enormously bold.

Emily Taylor:

Thank you very much; I've got to get Susan and then Sarmad.

Susan Kawaguchi:

So I may have used the wrong term, but I didn't want to start that debate. But what my point is, is we need to -- someone, ICANN probably, looks like it will be ICANN, needs to make it very clear who is responsible for providing that data. In my mind, it would be the registrant, and being responsible at the end of the day for the accuracy of that information. But the registrar taking in that

information has a responsibility also. So if we pull out the term “own”, because I did not want to get into a database/ownership discussion, but who is responsible for providing the data, but who also is responsible for ensuring that the data is accurate; I think it’s a two-pronged, but at the beginning of the whole process, it’s got to be the registrant.

Right now, there’s really no viable option of sort of holding their feet to the fire to ensure that they are providing accurate data. In fact, there’s no mechanism to even make sure they provide data of any – we’ve seen that a. So that was really my point there; but I do think, and this will come into the discussion in the thick and thin, that the registrars feel like that’s their customer data. I’ve heard that many a time, so somewhere down the line, it should be defined on who really controls the data. Maybe not owns it, but controls it. But I don’t want to get into a copyright discussion.

Emily Taylor:

Sure, but I think we’re all kind of trying to kind of – we’re trying to articulate this concept of responsibility for accuracy that is shared, but also that – I think this is the point that you’re making. It has particular ramifications in the IDN space. Responsibility for availability as well, and that availability meaning not only having the things switched on, but having it readable in a consistent form. Sorry, I have you in my list, Sarmad. Did you want to come in with a comment here?

Sarmad Hussain: So if we are going to have a likely perhaps multiple stakeholders for making this data available, I think we should also then think about how that distributes the accuracy and availability kind of responsibilities, because then you can't make one person responsible for it.

Emily Taylor: Yes, and if you don't make one person responsible for it, does it mean that you are not making anybody responsible, in reality? Sarmad and then Kathy.

Sarmad Hussain: Yes, so that's what I'm saying. So we really need to go to accuracy and availability studies and sort of divide it up into smaller bits, that what are different aspects of accuracy and what are different aspects of availability, and then who is clearly responsible for each aspect? If we go down that part, and say that they are actually combined ownership, otherwise it's not very easy to say there's combined ownership, and then somehow these people will keep things equitable.

Emily Taylor: I think let's think about this concept in terms of the contractual provisions that already exist, because I think that they quite clearly state, and my recollection is that they quite clearly state that the buck stops with the registrant. Because only the registrant knows what the real picture is. The registrar does have responsibilities to

amend, maintain, update; but ultimately, if it's wrong, then the registration itself becomes subject to cancellation. Sorry, Kathy.

Kathy Kleiman:

So I was just wondering, if maybe we put it – questions across policy and implementation, so would anybody object to taking out the word “owned”? And saying “Who is responsible for the data?” And I think we're leaning toward registrant, but there may be answers. And then under implementation, who is responsible for the availability and accuracy of the data? And I think Susan was right; this is a gap, but clearly a lot of our work over time has been aimed at addressing both of these questions, so it covers a whole bunch of recommendations that didn't have a home already, under our brainstorming yesterday.

Emily Taylor:

Now, one thing we have not really nussed out at all, this is my new word of the day; Peter taught it to me yesterday, it's Australian. Nutting out; I think it means just staying in the nut, nutting it out. Just to stay and argue until you agree. We haven't, we've talked, we've referred to [6N], it's an area where I know there is a range of views amongst this group, and I don't think we'd be doing it justice if we just pop it straight into the recommendations without really giving it some air time here. This is our chance here, so would anybody like to speak to this? Introduce it, and say what our recommendation on 6N should be? If anything?

[background conversation]

Kathy Kleiman: Without expressing – I just hope that we can repeat this discussion again the afternoon when we have James with us.

Emily Taylor: Absolutely.

Kathy Kleiman: I just wanted to make that –

Susan Kawaguchi: And maybe we should delay it until James is here, but my recommendation is that we make the recommendation to ICANN to move to a whole thick WHOIS model.

Emily Taylor: Can you help us by highlighting – thinking back to the inputs that we got when we were asking the community, can you help us by what's the basis for that? Is this your personal view? Or the IPC view, or the business constituency view? Or is this something that you have seen coming through from more than one stakeholder group across our research?

Susan Kawaguchi: So I didn't mention my name before, this is Susan speaking. I'm so bad at that. It is definitely a CSG view; so IPC and BC, which I represent. But also it's just from a practical view, having used the WHOIS as much as I have used it, to have a minimum of 900 sources; really I'm not sure where that number lies. I've heard there's over 900 registrars, to have 900 sources makes just imposing an accuracy or availability demand on 900 different sources an issue. It used to be a thick WHOIS, back in the '90s; and then for very good business reasons, it was switched, but I think we've gone past the need for that, and we've seen the .org registry, where – you – they win. You must have handled that, Kathy, you went from –

Kathy Kleiman: Before my time there, but 2003, yes.

Susan Kawaguchi: So we've seen a large registry move to the thick WHOIS model, so it can be done. And I just think for moving forward with .com is the biggest registry in the world, and I would assume it will continue to be, that it seems like we should have one source for WHOIS; and the practical part of it is, and I outlined this in the consumer trust, if you were looking for a domain name WHOIS record, then you may have to go through many hurdles to find it. I use that one example where I checked four different registrars and none of them had it; finally went to the thin WHOIS, looked up their – found their URL for the WHOIS.

I don't even think it worked, but poked around their site, found their WHOIS pool, and then was able to look up the records. So if we expect people to look at a WHOIS record, and find that it is – see who they are doing business with, we should make it fairly easy.

Emily Taylor:

Thank you very much for that, Susan. Now, my list is Seth, Lutz. Kathy, did I see your hand up? Wilfried. Okay, thank you.

Seth Reiss:

I think the – I haven't read the survey results; I think that will bolster Susan's points. But when Lynn and I were working on what domain name to use as an example for the study, I came across one where the registrar – the thin WHOIS was referencing a thick WHOIS that had a broken link. So that's just one of many examples. It seems to me the people that are – one reason people may be advocating for the thin model is because they don't want to make it too easy to find the data. I think the more honest approach is we either figure out a way to protect the privacy rights, when there are privacy rights, otherwise we adopt a model that makes sense.

That's just logical; it's not logical to make people hunt all around. We're all pretty skilled people, and we have trouble, so it seems to me – and the alternative that I've heard described in this group before is for ICANN to have a portal that makes the thick available. In other words, if there was a reason not to have a thick

with the registry, to have ICANN be responsible for a portal that will always take you to a thick. I don't know if that makes sense from a cost of business point of view, but that would be another alternative.

Emily Taylor: Thank you very much, Seth. Lutz?

Lutz Donnerhacke: I'd just like to point out that IANA's running a thin WHOIS model for all internet entities, like domain names, addresses, IP addresses or autonom system numbers, and a thin WHOIS model. You always can start it, WHOIS, but IANA.org and they are pointing you to the next WHOIS that is responsible for -- all the provider contact for the contact or partner, which is one of the registry leaders. So just keep in mind that we already have such a thin WHOIS model; we have a defined starting point, and we just have to acknowledge it. It's iana.org; whois.iana.org, it's accessible using the WHOIS protocol or http.

Emily Taylor: Just a clarification, Lutz; you're saying that there already is a thin WHOIS at IANA, so are you saying that with one lookup, you can get all of the information on any domain name in the world? At IANA?

Lutz Donnerhacke: No, the thin WHOIS is just pointing to the next party, to the next registry. IANA sent, responded with an entry saying their registry for .org is Afilias and the WHOIS server running by Afilias is located, has the name following.

Emily Taylor: So basically, what it does is it – if you don't know who runs a particular top level, it will take you to the top level provider. So it in fact, adds, in a practical term, thinking from the consumer looking for thick WHOIS data, then it adds one to two more steps in there, in their search.

Lutz Donnerhacke: It can completely – it's only a technical issue, we have the central starting point for every question about WHOIS.

Emily Taylor: I'm going to go to Wilfried, Kathy, Bill.

Wilfried Woeber: Just to follow up on Lutz; technically, you are probably almost right. From a user interface point of view, it's useless, because I'm just querying hp.com because this was – not because I'm a fan of HP, but just because I took one of those that came to my mind, and the only thing that I get is a text line from the IANA, which makes me to copy and paste the URL for Verisign, vrs.com; which is nice, but then I have to key in hp.com once again. So I agree,

technically you are right; from a user interface point of view, I think this is just useless for the general public. But you want to reply to that one immediately?

Lutz Donnerhacke:

You are speaking like first implementers after DNS system. It can't be true that I have to ask a different server and they do not have the right answer for my question, why should I give up my host table on my local computer? So it's the same question here. You usually do not query the database directly; you do not – you have client for it, who is client or back client? So you can expect that this client is implementing following such preferences. For instance, most of the [or WHOIS] clients preferred by the user insight survey just do this. They provide a user interface and following the chain, like a resolve on the ISP for DNS names. Nobody is expecting to query every instance by itself.

Wilfried Woeber:

Yeah, but that was just immediate reaction to your contribution. What I wanted to get at, actually, is a slightly different aspect, and that's just the aspect of availability. I cannot imagine that this particular industry actually gets its heads around reasonably high availability, if you have a vastly distributed thing. If they would use a mature technology like DNS to implement the service, I would immediately agree with you. Given that this is a pretty different environment, I cannot imagine any approach which actually makes the data available to the man or the woman in the

streets, at the reasonable high percentage of getting the answer. And that's the only reason why I would, personally, not represent any organization who would argue in favor of a thick WHOIS model.

Emily Taylor: okay. That's very helpful, thank you. I've got Kathy, Bill. Does anybody else want to speak to this subject?

Kathy Kleiman: I've got lots to say on this subject, but I just wanted to share again that I think James should be with us during it. James, are you on? Excellent, perfect; that's really good. Okay. What time is it his time? Oh my gosh. Okay. It's the middle of the night; good, good, good, good, because it's an important discussion for all of us to be together. Yesterday I heard words that I thought were very interesting and useful; harmonization, findability, just kind of want to – I'm thinking about what we've done in other areas, which is not to present the answer, because in some ways that's making the policy. But presenting a goal, and letting the ICANN community set the direction and the details of the implementation; just wanted to throw it out there. That's what we've done in other areas. It may work here as well.

Emily Taylor: Thank you, Kathy. Can I ask you to think about how you would – not now, sorry, put you on the spot. But can you think about how

you would articulate that goal? Thinking about what we learned from the consumer study; and I'm sure we'll discuss this in more detail, but we have seen from the consumer study two things. First, from the qualitative, it was quite comical watching people trying to do a WHOIS search. It gave us quite a laugh, didn't it, watching their suffering?

And secondly, from the quantitative; there is, I think, quite a clear line coming through from this consumer research saying that people trust – their trust in the internet is enhanced when they can, when they're satisfied that they can identify the people responsible for a website in which they're transacting. So I'd like you, not now, but to think about how you would articulate the goal in terms of their responsible and their usability.

[background conversation]

Emily Taylor: okay Bill, thank you for waiting patiently.

Bill Smith: Bill Smith; Kathy used a word, harmonization, and I'm wondering if we can somehow harmonize, thick/thin, and what is going to be coming in the new gTLDs. I believe that – I have not read all of the draft Applicant Guidebook, but I believe there is terminology around WHOIS and that's the direction that the organization is moving in. It is – it's gone through a PDP process, it's been

accepted by the community, and I, from a consumer perspective, having what I believe now will be at least three versions of WHOIS, is a non-starter, for a consumer.

To Lutz's point; I, like Wilfried, went whois.iana.org. I chose PayPal, that's the company I work for; and I received the same information, that I should go to Verisign – vrs.com, which I did, and received no response. It then says "did you mean www.verisign?" So the suggestion that the technology is there, currently, to do this recursively and end up with a result, based on fact – it sounds like we have three, it does not work. So the system, while it could do it, does not do it.

Emily Taylor: Thank you very much. James, are you on the line? Lutz, you wanted to come in? And then you, Susan.

Lutz Donnerhacke: Not really, I do not want to comment in the serious space. Thanks.

Susan Kawaguchi: So – this is Susan Kawaguchi – the IRT, well there's an IRTP resolution, and I get all these groups mixed up.

Emily Taylor: It's all alphabet soup to me.

Susan Kawaguchi: Right. So there's a resolution right now that was made last June in calling for a study of moving to a thick WHOIS, so we're not the only group in ICANN land that's thinking about this. But they're definitely, they've asked for an issue report to consider any other positive and negative effects that are likely to occur that would need to be taken into account when deciding whether a requirement of thick WHOIS for all incumbent gTLDs would be desirable or not.

So I think we can play on that and maybe we don't make the recommendation "yes, move to a thick WHOIS" but to seriously consider moving to a thick WHOIS. That somebody should be, ICANN should be looking at this. They should be identifying all the problems with the current WHOIS situation and then making an improvement. And I can send this around if you like.

Emily Taylor: Sharon, are you still on the line, can you still hear us?

UF: James is on the bridge but he has no voice so I'm projecting whatever he's saying from the screen.

Emily Taylor: okay. Thanks James. Sorry to hear you have no voice.

Kathy Kleiman: Does anybody have a phone that he can call and they can put him on speaker?

Emily Taylor: He's sick. Oh, sorry not laughing because we've just realized, not because we're laughing at your suffering. Well, we are. So James, can I just check your point is that some registrars would feel uncomfortable having Verisign hold their customer data?

Kathy Kleiman: Okay, so we need to talk closer to the mic. May I? James, you've heard the problems, what might be an approach that would make sense from a registrar perspective that would address some of the concerns of find-ability that we're seeing. And I'll just add for everyone that the new gTLDs in many areas have rules that are different than the incumbent, then the existing gTLDs; many, many areas, because of the nature of the new entrance coming in.

So this isn't the only area their different, but I'd love to know from both Sharon and James how this problem that we've heard now from so many groups can be addressed consistent with the reason for why the de-centralization of the .com data took place.

Emily Taylor: I think we may have a problem with the bridge because I've got two participants saying they're finding it very hard to hear anything. So I don't know, James, I don't know whether you got Kathy's question. Good. So James you're saying that there's no

reason that a thin model shouldn't work but it's probably poorly implemented. Can you, while you're typing your answer to my question I'd like to hear from the room a response to that.

Kathy Kleiman: Can we all type? Would that be, and I'm not even on, but if Sharon can't hear anything...

Emily Taylor: I think that we're going to struggle with that. I think we had a call where we all tried to type and then we all just got so annoyed that we stopped. Oh good, glad you're back. So James, I'd like to know how that could be implemented, but first of all I'd like to hear from the room any responses to that. Bill?

Bill Smith: So, first as a technical person, if we were to do a thin WHOIS and take it to the extreme, as has been suggested from time to time, I wonder, actually I don't wonder, I know that rate limiting becomes an issue, because anyone in the chain who rate limits will cause this entire system to break and to fail. So from my perspective that's a technical reason to not do this unless we...yes, I said from MY perspective, unless rate limiting is no longer allowed.

So if registrars are willing to say "can't do any rate limiting", then a thin WHOIS is a possibility, but only a possibility. That's a necessary requirement. It is not sufficient. Rate limiting? Oh,

from a single IP address I can only get three an hour or three a day and registrars do this all the time.

Emily Taylor:

So just to clarify Bill's point, I think there's actually a contractual obligation preventing automated bulk queries, which does, I must say, I do wonder how some of the services that are out there on the market manage to exist and provide up to date information without doing this. But Bill is quite right that some of the registrars implement rate limiting in order to prevent automated bulk queries, is my understanding.

Kathy Kleiman:

I just wanted to read James's question, which is up there, that says "I don't understand the relationship between WHOIS quotas and the thick/thin question."

Bill Smith:

Okay, so my point is that if we're using a thin model, and using Lutz's argument where we start at WHOIS.IANA.ORG and traverse a tree, if anyone in that tree, in the hierarchy, imposes a rate limiting factor, at some point it will be impossible to get down to anything below that point in the tree. That's just a fact of the way it would work. So that's a problem.

Emily Taylor:

I've got Lutz and Wilfried and then I think I want to just keep us focused here. Let's hear these two comments and then let's try and refocus on what recommendation, if anything, we are going to make or propose on thick/thin WHOIS. I've heard the word "harmonization", we've been thinking about the user experience, but let's just refocus please.

Lutz Donnerhacke:

Currently almost all services are rate limiting access in order to prevent automatic bulk WHOIS. We have already in DNS system, or anything else, we have rate limiting in order to prevent malicious clients to stop the whole system, to prevent denial of service attacks. So rate limiting, in my opinion, is currently almost all implemented and can't be a show stopper for a different approach if using the same technology as we are currently using.

Coming back to your question of what we should propose, that's very difficult because all the proposals have a valid reason to be proposed or not. Thin WHOIS, the reason behind my push up of this approach is a way to fulfill local law by the thin WHOIS provider, the final end or intermediate step. But on the other hand, it has a lot of drawbacks of course. Bill pointed out some of them.

I do not think that we can make a proposal which of the implementation models can be correct. Even thick WHOIS has a lot of advantages and a lot of disadvantages; somebody has to decide, we can't decide which is the correct solution for all these proposals.

Coming back to my very first original proposal to remove WHOIS services altogether because it is not needed anymore at any place. This has advantages and disadvantages. It might be a possible solution. We do not know. We can't decide. We can't make a proposal to the Board saying please use the following approach. It's far outside of our scope. But what we can do is to make clear that there are several approaches that exist and somebody has to decide which should be the solution of the future.

Emily Taylor:

Thank you very much for that Lutz. I've got Wilfried.

Wilfried Woeber:

Yeah, trying to be brief because this is going very deeply into technology and into implementation, so just as an observation and to round out and to summarize my point of view. Bill, your worries are well founded given a particular approach to implementation. There are potentially other implementations which could work around this limitation but would introduce other shortcomings. So I really don't want to go into any implementation details.

What I want to state here is that whatever you do in the direction of distributed database stuff and lookup in a distributed global infrastructure tremendously increases the complexity. This usually has the effect of tremendously decreasing the availability. And that's my only reason why I think it sort of a better approach to do some sort of centralized implementation.

On the other hand I do agree with Lutz here that we might as well, like in other situations and other recommendations, we might just state sort of what we want to achieve as a recommendation and then maybe as a DNS speak additional section, we might include suggestion how to achieve that, but anybody's free to propose a different approach.

Emily Taylor:

I think this is a much more constructive line of thinking from both of you. I think it chimes in with what you were suggesting earlier Kathy; you're in the queue too so please go ahead.

Kathy Kleiman:

The word I keep coming back to is find-ability. And what we seem to be hearing is that a lot of the links are broken, a lot of the paths that have been created to find the data within the database aren't working the way they are supposed to. And if they did how much would that reduce what's going on. Unfortunately – I just wanted to share from a record point of view – this is not an issue we circulated widely. We did hear widely from certain groups on it.

But Keith has shared with me, and let me just read because my email is down – continuing on about some of the difficulties, the technical difficulties of what might happen. And I'll just read this...

Emily Taylor: Kathy, just to clarify, are you taking instructions from one of our silent observers?

Kathy Kleiman: I'm not. I am taking emails and he knows I haven't agreed with everything he wrote, but this I wanted to share; unless there's an objection, which would be valid. Because I think I mentioned at one point that Verisign is impacted by this. So, "A key concern about any transition from the thin to thick is the operational impact of the transition on registrars. Registrars do not all operate WHOIS in the same way or in the same format" – which I didn't know and that's one of the reasons I'm sharing it with you – "So any requirement to transition to a single database would require a significant amount of work. A doable, but significant amount of work, and this needs to be understood."

So I just wanted to share that, that I didn't realize that there were so many different formats out there. So it's an interesting issue. It goes to what's already been talked about. But again, let me share a word find-ability. There are reasons this database was created the way it was. And .com remains a database that's very different from what we're talking about with the new gTLDs. So is the issue do we want to give, if we're looking for an end result what would that be, and let me throw out there find-ability.

Emily Taylor: Yeah. And that's to help our thinking, maybe to free up our thinking. Let's think about what we would like the situation to be

for the next WHOIS Review Team when they start their work.
What would be the ideal world for them to be starting in? Bill?

Bill Smith: So a point of clarification – what’s the difference between WHOIS and the new gTLDs and WHOIS and the rest of the world?

Emily Taylor: I think the easiest thing for us to do is to ask Alice to find, there is a section in the Applicant Guidebook where the application form questions our set out on the criteria for what meets the standard required. There is a whole section on WHOIS.

Bill Smith: No, what I took Kathy’s comment to mean is that there is a different purpose for WHOIS in new gTLDs versus WHOIS in .com, .net, .org and if that’s the case I would like to understand it. I’m assuming, perhaps incorrectly, that it’s the same purpose; to find out who owns a domain.

Emily Taylor: okay. Who’s in my list – I’ve got Sarmad, Kathy...

Sarmad Hussain: I think further on what Bill is saying, I am also not clear if there are any additional requirements on WHOIS in the draft Applicant Guidebook in addition...

Emily Taylor: I think what would be helpful is if we can have a look at them on the screen; just to inform ourselves. This is just to see what else is out there. We've got a thin WHOIS model. We've got a thick WHOIS model. And then we've got what the Applicant Guidebook says.

Bill Smith: So then, and I think some of us have known this certainly, and that is in essence the way WHOIS in the ICANN world is set up you have as many data formats as you do registrars. And from a usability perspective and from a technical perspective both, those are not good design decisions.

Emily Taylor: Can I just respond to that Bill? I think that reminds me that in Marina del Rey we actually had a recommendation that the dataset be...Wilfried help me...We standardized – this is not a short term quick fix overnight, but there needs to be some standardization work to review the protocol, to review the dataset that's captured with a view to making it standardized. Sarmad, Wilfried and...

Sarmad Hussain: Okay, so there are two views of this data, one is that certain data which is actually collected by the registrar and then there is a subset of data which is actually made available on the query. So when we are saying that we want to “standardize” this data are we

talking about the data which is made available against a query or...Because what is collected by the registrar may actually be a little difficult to standardize.

Emily Taylor:

Can we go, we'll go through the queue, but I've got Wilfried, Seth and then I'll put you in the queue Bill.

Wilfried Woerber:

Well it might be useful to revisit this thing after we have gone through the user interface study, or what it is called, user experience study. Because my feeling here is that we are still too technology oriented. I think we should tackle this whole thing with the mindset and the point of view of the consumer community, the end user community. Because this is actually the target audience for this set of data, to some degree, there are others. I do agree Bill. You are nodding the head and I'm in this camp as well.

But I would assume that this other camp is knowledgeable enough to find their way through the maze and through the technological shortcomings. Yes or no maybe, but that's my expectation. But the regular end user is probably not in a position to do the heuristics, to have the helpful information and to get help from some other parties. And sort of this is the reason why I would venture to suggest that it's a mandate for this group to have a little bit of a broader statement and to come up with some sort of maybe sub-recommendation under the headline of implementation to

make both the ICANN infrastructure as well as the community start thinking about whether it's really necessary and helpful to have all these different variants, these different approaches to implementation.

And just as I'm controlling the microphone for a couple of seconds – technology's a routine. Anything or any infrastructure that is going to be proposed to do distributed stuff on top of the html web technology, URL technology is bound to fail because the web has a serious birth defect. And this birth defect actually is that there is only a forward link between a referencing page and the “linked to” page. There is no linkage back. There is no mechanism to let the linking page know that the linked to page is no longer there. So it's just a technological shortcoming which makes all of those approaches eventually fail miserably.

Emily Taylor: Thank you Wilfried. I've got Seth, Bill...

Kathy Kleiman: Point of information – where is the screen and our online participants?

Seth Reiss: And Lutz has a direct reply.

Kathy Kleiman: okay. I do not want to get down and dirty into the technical stuff because we'll be here all day. So please do reply but keep it brief please.

Lutz Donnerhacke: Very brief. We have back links, but we do not know them directly because they are not too common. But they are defined, even back links that we niched them, pages are well defined and can be obtained from W3C, there is no problem.

Emily Taylor: I've got Seth and then Bill. And then I'm going to try and pull together where we are. Oh sorry...

Kathy Kleiman: We know where James and Sharon are.

Seth Reiss: They're back home and they're not communicating.

Emily Taylor: They can hear us.

Seth Reiss: Oh good. I guess something that was touched upon in some of the draft or the chapters, is why we're collecting the information we're collecting. It seems like some of its Legacy and it's confusing the

consumer. So I think this is along the same lines as we've been talking, more standardizing so that the consumer can find what they need and the presentation is consistent across different registries or registrars.

But shouldn't we also be, at the same time, revisiting what we're collecting and why? And again, the consumer study should offer possible solutions to that. So in other words, most consumers, when they're registering don't understand the distinction between the various contacts. And so they list what they think they should be, but they don't really understand. So shouldn't we be revisiting that information we're collecting at the same time we're revisiting format and everything else?

Emily Taylor:

Yeah, I think that that's one of the recommendations that we made in Marina del Rey is to revisit the data that's collected and why it's collected and for what purpose. I've got Bill and then let's draw this discussion to a conclusion at the moment if we can. I think that probably the best thing for us to do next is to look at the consumer study. And given the difficulties we're having with online participation I suggest that we get the slides up on the screen. If I can have a volunteer to take us through it, anyone whose read it or feels confident or close to the subject. You can think about that while Bill's talking.

The approach that we're just generally taking here is not to make policy and not to be too specific about solutioneering. We're here to review the policy, its implementation and how it meets the legitimate needs of law enforcement and promotes consumer trust.

The areas that I think we are agreed on are – consumers don't have a very good time finding this stuff. And that is supported by the consumer studies, both qualitative and quantitative. If they could find this stuff they might use it more. That is a, I guess I'm taking that on from the quantitative survey that we've had. That might not be supported in evidence yet, but I think there might be support for that view.

I don't think we're going to get consensus on proposing a thick model. However, what I think we have all agreed is that whatever the policy is it should be clear, it should be consistent and it should be communicated. What we have highlighted is that there is a lack of consistency and in the next 12 to 18 months there will be less consistency than we have at present. And that this is not an ideal situation when we are looking – and I really like the way that you phrased it Wilfried – we've got to kind of break out of our technology orientation here and be orientated towards the users of this service who may not be as skilled and as familiar with the ecosystem as somebody like Susan or somebody like Bill who are doing these searches professionally every day, or some of Sharon's team.

So those are the areas where I think that we can agree. Do I have any...you're looking unhappy.

Susan Kawaguchi:

Well I don't agree. But what I won't say – this is Susan – I don't agree with not recommending a look at a thick WHOIS, but I don't, I can live with recommending, having a broader recommendation that we look at another, that they should look at other ways of managing the WHOIS information and making it available. Whether that be – well I wouldn't agree to OPOC, but restful – I mean there's a lot of different suggestions out there; people have given this a lot of thought.

And I think that if we do not put something pretty hard line in the recommendation that they should, that this is a problem, the thick versus thin WHOIS is a problem because of all the issues it brings to a consumer looking for information on who runs a website, then I don't think we've done our jobs. So how we wordsmith that, I think I'm pretty flexible. What I'm not flexible and would not, and if we have to do this without consensus then I'm fine with that.

I know James has made the statement that we always have to be in consensus, but I don't believe that. I think that we need to definitely advise ICANN and make the recommendation A-this does not work as it currently stands, and B-they need to look at...and how many other recommendations of different types of mechanisms to handle the WHOIS. I'm fine with that.

Emily Taylor: Okay, thank you for that clear statement. I've got a queue of Sarmad, Kathy did you want to come in, were you stretching or waving over there? No? Okay, so Sarmad and then Kathy please.

Sarmad Hussain: So going back to the sheet which was passed around. In the implementation section we said that after accuracy we will also availability. But neither accuracy nor availability actually address what we've been talking about, which is accessibility of this. So that's also something that we should look at.

And then thin was this kind of argument which we've been talking about is I think what we're probably talking about is consistency of this information. So maybe that's something we can say rather than say thick/thin. So the point we are actually trying to make is they should be available in a consistent format, perhaps.

Emily Taylor: And accessible. So these terms, "consistency", "accessibility"...

Sarmad Hussain: In addition to availability and...

Emily Taylor: Yes exactly. They're not instead of them. The clear steer we're getting from Susan is that she wants a statement about if we couched in terms of accessibility, consistency and the user experience – that would capture the problem statement.

Kathy Kleiman: I just have to say from a record point of view I wish we had gone out and talked to the registries and registrars about this. If we're talking about things that are of an advantage for the transfer of data, for transferring domain names I think we're out of our league; that's not what we're looking at. Somebody mentioned transfer between, transfer of domain names between registrars; that's not our, and the consistency of that data, that's not our problem. That's another area of ICANN. I don't...

[background conversation]

Kathy Kleiman: But again, the problem that really got to me frankly was not the general user experience, it was that law enforcement is having problems finding data in certain types of databases or finding data. Law enforcement is a user that we're focusing on. So again, I like the directions of not coming up with solutions, pointing to the problem. And then, as with other things, giving the benefit of some of the findings that we've found to share that with the people who then go on to find the solutions. But I really wish in this area that we had spent more time figuring out if this is where we were going why the data is the way it is. And then – we should have gone out and really questioned on thick/thin if this is...

Susan Kawaguchi: This is Susan. Maybe we did not ask that specific question, but it is, the community has brought that to us and I don't think we can ignore it.

Bill Smith: Yeah, James talked about it in several of our meetings. The inter-registrar transfer I believe, that this was complex. We have heard it.

Emily Taylor: And let's clarify. We are a review team. We are here to review the policy and its implementation, the extent which it is effective and meets the needs of law enforcement and promotes consumer trust. If we identify a problem, and I think I'm hearing from around the table that however we describe it, whether we go thick/thin and even talk about DNS protocols if we want to, or whether we want to throw it back and talk about the user experience, we're identifying a problem here. So I don't think that it's okay to back track and go "we need more time, we need to ask more questions on this". Because it sounds like we're trying to avoid the issue, which of course we wouldn't be.

Bill Smith: And if we were to ask the question "why is the data in so many formats", the answer, I believe is obvious. If we go back and read the historical record, WHOIS, the protocol, was selected because there was nothing else, number one. Two, there is no schema for

WHOIS. There never has been one. So it was left up to the implementer of each service to decide what they put in. So it just grew organically like everything else on the internet and so as a consequence we have a mess. It wasn't designed. And I think it's fair for us to point that out. We don't have to be harsh about it, but it is a fact. There are all these different data formats. It adds complexity to the system. That's not a good thing. We don't have to say "You need to change it overnight", but it's not a good thing and we suggest finding a way to make it better, simplify it, get it consistent. Help users, help the registrars do the things that they need to do, and others.

Emily Taylor:

Sure. Lutz.

Lutz Donnerhacke:

Just to make my understanding clear. You're missing, for the main transfers you are missing information about a reseller trade? All the people that are involved in registering a domain name and freeing it for transfer, we have problems with, usually I have the problem finding out who is involved between the final registrant and registry, because there are a lot of people in it and they are usually not listed anywhere. You have to ask the right people. And if the domain was registered to a customer for a long time nobody on the customer even knows who had the contract to deal with this domain name because people have left the company. So we do not have the information usually on the domain transfers,

who is responsible for it, who to ask for, what's the reseller which sells the domain to the customer in the first place. Do I understand correctly that you will have problems with such kind of information finding it in WHOIS because it's not there?

Second question to Bill. Yes of course we have a problem with implementation because it's not regulated in any kind what have to put in and what not have to put in and how to put it in. [Sarmad] can tell us a lot of stories on Non-English WHOIS responses. On the other hand, if I read the input from the ccNSO correctly, in most cases they do not, they are not allowed to put any information in besides this domain is registered or not. So they can't from local law put any information we are interested in into the WHOIS records.

Emily Taylor:

Sorry Lutz, on a point of fact that's no correct. Okay. Sharon has just put up, just to let everybody know, Gary Kibbee from her team will be joining us this afternoon and maybe can help out with some of the examples of the things that you were referring to Kathy. So thank you Sharon. Okay, I think that we've probably gone as far as we can for now. We will come back to this, this afternoon, tomorrow until we're comfortable with where we are on it. But I think it's been very helpful probably to air these vies. I think we're getting an idea that we've got some consensus. We certainly have a consensus that the current situation is not ideal.

And I think the thing about the standardizing the dataset, all of this, there is a recommendation in that which may well be the most useful part of our work actually. It's certainly not going to be overnight. But the things that capture the IDN formatting, a standardized dataset could be something that we could strive for. Let's leave that there. Can we just break whenever we want? Is there coffee? I think we should, we've all earned a coffee break.

So why don't we take 15 minutes now and then come back and we'll cobble together what we can on the consumer study. I think that this will, where I'd like to go on the consumer study is first of all to take in what it says; think about what it means for our report, how we would like to present the findings of this and the previous research that we've heard in Marina del Rey. And also what implications it gives for our own understanding of the consumers of WHOIS.

Who are the users of WHOIS? Who are we really talking about? Whose needs really need to be addressed in this? I think we've got all the information; it's probably just putting it out. So let's have our coffee and then we can think. For remote participants, we'll be back just at five past the hour.

[break]

Emily Taylor:

We've had a 15 minute break half an hour ago, so we're going to restart.

Okay, I'd like to get started if we may, we're just waiting for a few people to reappear from the coffee break, but let's crack on. What I want to do is Bill has very kindly been volunteered to take us through the consumer research slides, then I'd like to have a discussion amongst the group before lunchtime about what this tells us, what impact it has on our report, and do we need to think more carefully, I would suggest, about who the consumers of WHOIS really are as a result.

Bill Smith:

I need one of those things that Susan has. So let's see, we contracted with User Insight, they went out in ten different countries, Asia-Pacific, Americas, Europe, Africa, basically from the first – of the 15th of October and they held some interviews in Atlanta, Georgia in preparation for that, next slide.

So they're in as stated in about 10 countries, roughly 100 users from each, except for the United States, it looks like we had 300 users surveyed, but otherwise, pretty uniform numbers and uniform distribution, next slide.

So roughly 1,200 users evenly split male/female, slightly higher in the younger age category 470 users and 18 to 29 years old and then decreasing pretty linearly it looks like in age groups, yes it is linear. There is a mix of employment across industries and then I

think as we had asked a significant proportion over 900 out of the 1,200 are not domain name owners, next.

This talks about website cross, the majority of users is enhanced when they find safe secure images such as Verisign and Trustee, whenever going to ecommerce sites, it's about 60, about two-thirds. A similar number have trust insights for companies that they know. Users in France took the https lock as a sign of trust, about half of them. I don't know what that looks like in other jurisdictions, but I'm guessing that that may be more in higher, that's the reason they might have culled it out in the Executive Summary.

When they're looking for a fraudulent site, the majority users are going to find the contact information on the site itself, two-thirds of them, and then roughly a similar amount, most likely less would go and do some reputation-based analysis from user reviews. When they were asked to locate the domain for a large brand holder, Coca-Cola Company, most felt that it was easy, almost three-quarters, and that they correctly identified the owner, two-thirds of them. Most of the users had high confidence in the information and the trustworthiness of that information, again three-quarters and then close to 90%, next.

Overall awareness of WHOIS is low, right at about a quarter, when asked to find a website domain owner. Most users did not think to utilize WHOIS; I'm assuming that means that the seven of the three-quarters there means three-quarters didn't think to use since that matches to the roughly one-quarter.

Most of the users did not own a website 80%; of those that did the majority used it for personal use 60%, although I would say that's a slight majority only. Only half of those who registered were aware of WHOIS look-up – that WHOIS existed prior to the survey.

I'm not sure what the next one, I'll just read it, the majority of international users, I'm assuming that's non-US, collect personal information or have financial transaction services through their website 54%, however most national users with a website domain do not. I think that's talking about the domain name owners.

Seth Reiss: Yes, I'm not sure what that means.

Bill Smith: I don't know what means either with respect to WHOIS other than some are collecting PII and others are not, next.

Now, website trustability what's most important, 60% of international users and three-quarters of national users rank safe and secure images as most important, I'm guessing that was trustee, and the other things –

Emily Taylor: You've got the question at the bottom, it says please rate the importance of the following elements when determining if a

website is trustworthy, so the top one is what most people rated first, I'm guessing.

Bill Smith:

I'm guessing, for me the top four look about the same, right, there is slight variation, one thing I don't see in here is anything like standard deviation or anything like that to help us interpret these numbers.

Again, it seems that people trust companies they already know, 55% internationally and 70% of national ranking that element of one or two, next.

So the question; if you were concerned that a website was fraudulent or questionable, which of the following would you do first? Find website contact info, so the first one that they would do is search for a directory of website owners. It's the claim, but again all of these seem to be about the same, except for other. They're all, from my perspective it's a relatively uniform distribution.

Emily Taylor:

I'm not sure actually whether it means something that we could – we'll discuss afterwards what questions we have for user insight on clarification, because I've got a few.

Bill Smith: Next, most agree to the ease of finding the website owner. I was able to easily find the information on the website of the Coca-Cola Company.com. Most of the people agreed, 75% agreed somewhat or no, actually, strongly agreed 25%, 38%, so again it's split about half; a little bit more in terms of agreeing that it was easy to find. If I could throw in a comment on my own. The Coca-Cola Company was an interesting choice I think, it had obviously correct information and it's a large brand, well-recognized, so I don't recall and didn't think that they did any other sites.

Emily Taylor: We were asked to direct them on the sites. I'm not sure whether we actually managed to agree anything.

Bill Smith: Okay, so next slide.

Kathy Kleiman: Can I just ask a question and I'm sorry, I was late and lost. Internationally –

Bill Smith: No, my guess is actually I don't know.

Kathy Kleiman: Okay, I wasn't sure what that meant.

Emily Taylor: I think it does mean US and I think that all of the other countries are lumped together as international, which –

Bill Smith: So National means US or not?

[background conversation]

Bill Smith: We would have to.

[background conversation]

Bill Smith: So this is in response. So I trust the information I found on the Coca-Cola Company and the vast majority of people trusted it, either somewhat or strongly, next.

Next again, there we go. Based on the task you understood – who did register the web, Okay, so then they're asking CSC Corporate Domains or Coca-Cola Company, most people are saying Coca-Cola Company registered the domain, so 70% roughly – correctly identified the Coca-Cola Company, could not find the information, a percent could not find – a small percent, I think.

Emily Taylor: Alice.

Alice Jansen: We have James in the Adobe room who is raising his hand, James are you to speak or is it too painful? Okay, he's writing his question. Are we using website owner and registrant interchangeably?

Bill Smith: I probably am, I don't know about in the study.

Emily Taylor: James, we're compiling a list of question to put to user insight, so that might well be one of them, thank you.

Bill Smith: Next, this one is asking did you use WHOIS, 75% of the international users said yes, 79% of the national indicated not using. That one's interesting.

[background conversation]

Emily Taylor: From the website.

Sarmad Hussain: On who the owner of the domain is.

Bill Smith: It was probably on the website, like contact us.

Kathy Kleiman: The question... But it looks like the question was not who is the owner of the domain, but who is the owner of the website.

[background conversation]

Alice Jansen: Just to say that we have an additional comment from James who's saying because domain registrant and website owner are not necessarily the same, example Blogger.com.

Emily Taylor: I think that that's a point well made about being precisely, precisely precise on our terminology, however, this is a consumer study, and so there is a balance to be achieved between using the exactly correct technical terms which are, let's remind ourselves, nearly identical to each other, to describe the key players in the supply chain, or using terms which consumers are judged to understand. And I think that we were guided by the user-insight people on that.

Bill Smith: Yes, I would, in the case of the Coca-Cola Company; my guess is that they are one and the same. I think that's everything that was – that was the basis for all the results here it appears. Next.

Most of the users in both camps were unaware of WHOIS; we saw that in the Executive Summary, only around 20% have any idea what WHOIS is. Next.

So this is talking, I believe the recommendation here is that WHOIS.com is the most visible web presence being the first Google result so that's where people might go if they're aware of WHOIS, I think that's what that is saying. Consider endorsement like Verisign, trustee of websites that conform to ICANN policy, can't help but throwing a comment in here, that's a very weak thing to do. Consider conducting future research to better understand why some users don't trust the information, the impact of incomplete records on Trust, the impact of single versus double byte characters for some international users. That really should, it's not enough to be single versus double byte, but that's too technical. Next.

Kathy Kleiman: Yes, what does that mean, single versus double byte?

Bill Smith: Can we go back, so single byte would be – actually most everything on the internet is in fact in seven bit ASCII, that's

contained within a single byte, you can also have eight byte ASCII

–

Kathy Kleiman: For IDN.

Bill Smith: No, that would – those might be used in the URLs for IDNs, but actually there are many in codings for characters that range from one, two on up to four and beyond bytes. So Unicode actually has all of the above I believe, one, two, three and four.

Emily Taylor: Sorry, do we understand that last bullet point as meaning ASCII versus IDN?

Bill Smith: My guess is I would take this to mean basically that we should better understand the impact of English, let's put it that way, versus Native language, that's how I would describe it. If information is not provided to the user of this service in a language they can understand, in a script that they can read, they aren't going to understand it, they may not trust it.

Emily Taylor: Okay, let's whip through the slides and then – or on that point.

Bill Smith: Okay, next. This is the appendix. I have not looked at these.

Emily Taylor: Okay, I had a quick look, there's actually some quite interesting demographics about the source of most people consider themselves, they use the internet, quite a few of them are – there's a nice spread of demographics, and it's kind of – it's going to support this idea that this is a fairly representative sample I think, but we can just take a look at them, if that's Okay, or just take a look at them.

Bill Smith: Sure, go ahead, let's do the next one. Here they're using the internet 20 hours a week. They're experienced using the internet, so we have a vast majority use it are somewhat experienced or extremely experienced, next; which I think actually is a pretty good thing for much of what we did.

This one is an eye chart, they check email, they surf the web, not too many of them maintain personal blogs, very similar number use location-based services.

Kathy Kleiman: They watch video.

Bill Smith: They watch videos.

Emily Taylor: There's a fairly good spread of activity.

Bill Smith: Right, I think it's about what we would or at least I would expect, yes. Next.

Most own and/or maintain a personally registered domain or website. Next.

Then we get into whether they collect personally-identifiable information or not, and again to me, this looks evenly split that yes they do or no they don't. Next.

Kathy Kleiman: But it's also financial transactions. So on my website, we do have financial transactions but I certainly don't collect any personal data.

Bill Smith: Can we go back? Financial transactions, okay. All right, next. Lots of numbers now on demographics by country. Next.

Even more numbers, okay next. I've analyzed all of these yes.

Kathy Kleiman: Interesting under line of work, none of the above is the vast majority, so that kind – those breakdowns didn't work for this particular group. I wonder what they're doing.

Bill Smith: Okay, next. Maybe that's the end, thank you.

Emily Taylor: Thank you very much Bill, thanks for being a sport on that. Okay, thoughts, immediate reactions. How confident are we in this study? How confident are we to use it or to draw any conclusions from it? Face pulling is not an option; you have to translate into words, Wilfried, Sarmad.

Wilfried Woeber: Well, just to get the discussion going, there is one big surprise for me in this result and that's the homogeneity of the readings as compared between North America and the other countries where the people were coming from that had to go through this exercise. I think this is an interesting piece of information which makes me quite comfortable actually to looking at the problem from a – sort of from a uniform global perspective rather than from a perspective of what's usually called the digital divide, or whatever those terms are. That's one of the things.

And the other thing is that I appreciate the suggestions by User Insight regarding do we follow up stuff, but I think we should just take the data that we got on the table, use that as fact, and stop

there. I don't see a good reason – yes, I don't see a motivation to dive into any one of their suggestions like go on with more detailed stuff. I don't think it's going to help us in any way with our mandate.

Emily Taylor: Thank you very much, Sarmad?

Sarmad Hussain: So I think if I have to pick one piece of information from all this, the most important one for me would be that there is a very small number of people who are actually familiar with WHOIS and use WHOIS information. I think it was 24% or 22%. And that sort of directly feeds into the cross-community outreach and communication kind of work stuff which we're going to build into our report, that the information about WHOIS is just not there. And maybe more use can also promote more accuracy or availability, because one of the reasons it may not be accurate or available is because nobody is really using it.

Emily Taylor: Any other comments, Lutz, I believe you've got your hand up. And I can see James has said something I can't actually read what James has said.

Lutz Donnerhacke: Following Sarmad's notice that almost nobody is aware of WHOIS services, and using the recommendation here that it might be possible to provide a promotion for the centralized WHOIS that slide there, all the information can be accessed. Do I understand it correctly that the recommendation is to set up such a website for all WHOIS service where somebody can enter a question and get a final result, like how the information are collected?

Emily Taylor: Sorry, just to clarify Lutz. Do you mean our recommendation or User Insights?

Lutz Donnerhacke: No, if I take this report here as seen, most of the people are not aware that the WHOIS data is available, and even if they are aware that there are something, they have problems getting the information. So one of the recommendations is to promote the WHOIS service, a service to access WHOIS data for normal people. Do I understand correctly that that's the recommendation of this report to provide such a service?

Emily Taylor: I didn't read it like that actually, Lutz. I read it – I'm not sure, I could be wrong, I read it as saying consider the top search results for WHOIS.com which I think is a commercial provider, or something like that, is that what you were saying, and that there ought to be more communications.

Lutz Donnerhacke: If I take the recommendation saying it would be better to promote such a service, it doesn't necessarily mean that the recommendation is to promote the service which is currently on top one at Google. It could be a website icon saying if you want some information, please go to this website, promote this website. If you needed some information about WHOIS domain owner, we have an ICANN website which is trustworthy because we are the good guys, so we provide such a service and there are all these providers currently providing WHOIS extra services are gone. Okay, fine, we have the common access to WHOIS regardless of the technical details behind, we have a common access which can be promoted, which can be put on the website of every registrar to say if you need some information, please go here, we have a common interface which is multi-language to provide the correct information, guides you to the correct information, this is would a recommendation, I understand from this report to promote access to WHOIS data for everybody.

Emily Taylor: So that would be your, how we would make this situation better?

Lutz Donnerhacke: Yes.

Emily Taylor: Thank you very much for that, Bill?

Bill Smith:

Okay, so generally I think echoing what other people have said, low awareness, to me and this isn't surprising, that consumer trust actually is, I think is, and again for me this isn't surprising but is enhanced by the quality of a website, so the design of the website, the images, you know does it look professional, branding, I'm more surprised with somewhat, so you know the e-trust, the other thing BBB, you know 27,000 doctors recommend using whatever that these relatively sophisticated users found that that was useful.

The other thing is at least in the one site that we had them use WHOIS, it appears that a significant percentage, three-quarters of them found that when the information I would say looks valid, they have trust in it. I actually would be interested to know what the results would have been, had we given a site that had AAA, or 123 Main Street, Dakar, Senegal, or you know something, Mickey Mouse as the registrant. So we don't have facts on that, I would speculate that we would come back probably even higher where people say they don't trust that information if they see it.

To Wilfried's point the similar distribution worldwide on most everything, I think within some reasonable standard deviation, it doesn't look like we need specific or you know very different approaches in any different country or any area.

The other thing which I actually a little surprised about is that given the responses worldwide and that they matched up things out of North America, primarily English-speaking, it didn't look like

IDNs or Internationalization was a significant issue yet. But I think part of that, if that's the case, part of it is because these people already use the internet quite a bit and still most of the content is primarily in English, so if they use it a lot, they have to be able to interpret what is being read, but from the report, and I think we all know as we grow from 2 billion on up, it's going to become a bigger and bigger issue. So I was somewhat surprised that we didn't see more disparities sort of in some of the results. I was surprised at that.

Emily Taylor:

Should we go to James' comments which are up on the screen. James, your first question or your first comment is I think something that's very, very relevant, and something we need to do next. This really shows there are two groups, WHOIS consumers and we need to identify those consumers and domain name registrants, they're not actually one in the same thing, encouraging the awareness of the lock is about double that of WHOIS, you know I think that is an important thing to note that the consumer trust is something that's probably a mile wide, and various elements built up. You know we're talking about the website design, the professionalism, blah, blah, blah, WHOIS might be one element of that, but other things are too.

Yes, there are questions that were absent, I'm sure we're all experiencing the common feelings when looking at the results of surveys that you wish you had asked different questions, but we've got what we've got, I think.

Kathy, you were next in line, did you want to come –

Bill Smith:

I forgot one thing, and for me one of the things that was – and now I've forgotten it again. Oh, from my perspective, given that and I'm not surprised by this, but that knowledge of WHOIS at roughly 20% and a significant portion of that probably from those who own domains.

WHOIS isn't, I don't think will directly increase, no matter how hard we work at it, we will not enhance consumer trust through a campaign on WHOIS, right, trying to educate the average consumer about WHOIS will be a significant effort, unless there's like a button on every website that says, with the contact us, that pulls information from WHOIS, it's the only way. Otherwise, they have no reason to use it.

Emily Taylor:

Okay, I've got a list emerging here, James, you've just clarified I think maybe your point on the SSL lock is that consumers are taught to look for the lock on their browser rather than conduct WHOIS lookups on the fly.

Perhaps one – your point is noted Bill it's in contrast to what Lutz is saying here, when we look at the success of the campaign to educate consumers about the significance of the padlock, we might ask ourselves whether – how well WHOIS similar campaign might do, but you know it needs to be sustained, but we have that button,

yes, we have that button. So my list is Kathy, Sarmad, Susan, Wilfried, anyone else want to plow in, Seth and Lutz, yes – I'll put you at the end, see how you feel.

Kathy Kleiman:

I had originally raised my hand to read the comments of James, so I'm so glad you did. James, keep typing, it's important.

But you know looking at his questions closely and in the character set, the big font that we've been given by Alice which I appreciate you know I had the same questions that I thought we were going to ask a few more questions of registrants, but the fact that so many people that they surveyed were able to find the data that they were looking for, that most of them didn't know about the WHOIS and didn't use the WHOIS, I thought was interesting.

It makes me think that for the consumers of WHOIS that now we're catering towards a different group, law enforcement, brand protection, it's a more expert group that uses WHOIS and maybe that's the group we should be gearing our recommendations to at this time. So just a thought on that.

Emily Taylor:

Thank you, Sarmad?

Sarmad Hussain:

It would be actually nice to see the data segregated by country at some point.

Emily Taylor: Let's think of a list of questions that we would like clarification on from User Insight that was one of mine as well. Because I think there might be a developing country split, maybe that's just lost in the mush.

Sarmad Hussain: Right and also maybe split it on ASCII versus non-ASCII script.

Emily Taylor: Thank you, Susan.

Susan Kawaguchi: This is Susan Kawaguchi. So on the slide website trustability most important elements, companies already know that they already know comes in as second. The lock, the https l-lock comes in fifth. So and this may not be fair to Sharon and James, but I'd like to show you just a few quick home pages of sites that people rely on because of the Facebook name, and this is not a Facebook trademark issue, this is a user issue, because they're using the Facebook trademarks, people look at these sites, think that they're very, very reliable and then put information, private information in. So you know this is –

Emily Taylor: Okay, Susan what about if you send the URLs to Alice and then she get them on the screen and then the others can see them as

well, but thank you for that. So we're looking at these on a consumer trust issue, given the results of what the survey is telling us that people rely very much on delivery of the website.

Susan Kawaguchi:

Right, so a famous brand has two different, I mean we have an infringement problem which is our problem and we deal with that. What we can't do without the help of accurate information is A take those sites down and protect our users. Let me see Alice if I can get this to you. So maybe you should go on and I'll send you a bunch of –

Emily Taylor:

Okay, thank you, Wilfried I have next, then Seth and Lutz.

Wilfried Woerber:

Yes, I don't know whether this is helpful, but just an observation. I like the results of this study in particular with regards to the sort of importance of padlocks and that sort of things. At the same time, I think it's almost irrelevant within our mandate because we are not supposed to give any recommendation about security aspects of website or that sort of things, that's – I think it's interesting, but it's sort of irrelevant in that particular context, and just to round it out another 20 seconds with the padlock and the security. There is creative people who actually put the padlock as the icon into the URL, so no they wouldn't do that – we do agree, thank you.

Emily Taylor:

Thank you, Seth before we go to you, can I just relay what James is saying that the theme of your thoughts James are the survey comingles two groups that are importantly different, the people using WHOIS to find information and the people putting their personal information in WHOIS and trusting that it is handled responsibly.

My comment on the second part of your statement James is I don't think that we've really got under the skin of the second bit, I don't think that we were really asking in that survey, how confident people are in the way that their own WHOIS data is handled. But I might well have missed that in the questions. So thank you for that comment, and keep them coming please. Sharon if you're still in the room, then if you could give us any thoughts you have that would be very helpful. Seth?

Seth Reiss:

I'm somewhat confused about the study. In a way I think we learned a lot in constructing the study, because it made us think about things that we hadn't thought about. I'm a little distressful regarding the results, I'm not sure why, but it's just – surveys can have a lot of inaccuracies, and I think we have to be careful about how we use the data.

But there's a point that and I might be way off base, so I apologize, when Lynn was selecting the domain name, I had a discourse with her, and she selected this domain name, and I told her that the thick

WHOIS is broken, and she didn't seem to get it. And I'm getting the same result today, and to me that's important, because if you follow the way that we're to find the thick WHOIS which is the authentic WHOIS, you go to some site that – thin site that tells you the authentic thick WHOIS and what I'm getting that site, it's WHOIS.corporatedomains.com and I can't get it to resolve either on an Apple or a PC. And I seem to be the only one who went through that process. And either I'm doing something wrong or none of us did it. And why didn't we do it?

Male: I did a WHOIS –

Kathy Kleiman: Yes.

Seth Reiss: If the thick domain name is WHOIS.corporatedomains.com.

Kathy Kleiman: It's The Coca-Cola Company.com.

Seth Reiss: The Coca-Cola Company.com.

[background conversation]

Seth Reiss: Well, I told Lynn this when she was designing it, I told her it's a broken link, it's not working. The link that is provided doesn't work. You find the thick WHOIS information other places and she didn't seem to understand what I was saying and so I'm having that problem again today.

Emily Taylor: Well, let's look into the –

[background conversation]

Seth Reiss: You are.

Kathy Kleiman: Yes.

Seth Reiss: You can get WHOIS.corporatedomains.com to –

Kathy Kleiman: I just did that with [InterNIC].

Seth Reiss: [InterNIC] and Go Daddy. I think it's a false web – it's a false domain name the WHOIS, but it's published in several thin.

Kathy Kleiman: What do you mean it's false?

Seth Reiss: It doesn't resolve.

Emily Taylor: Okay, why we take this offline, because it might be – it might be a more interesting aspect of the survey than we know, if you can't actually get the results through WHOIS, and they all think they got it.

Seth Reiss: But now through the authentic WHOIS.

Emily Taylor: Yes, James is agreeing with you that the survey, I think that the process of going through the survey, and certainly I found the qualitative feedback extremely interesting, and something that we should definitely be knitting in some way into our report. Okay, who else is on my list?

[background conversation]

Lutz Donnerhacke: I'm just thinking about the results for us from the survey, we get information that most people which we are addressing in the area of consumer trust are not aware of WHOIS services at all. So we have two possibilities to deal with the result. First, we can integrate a promotion program or we can consider WHOIS as irrelevant for consumer trust, but we have to decide as a group what's the result we want to take from the survey.

Emily Taylor: That probably takes us nicely into what I want to explore next. We've got the slides from Susan to just – Susan did you want to talk us through those web pages and the significance.

Susan Kawaguchi: Yes.

Emily Taylor: And highlight why it's relevant, why it ties into the survey.

Susan Kawaguchi: So it's just because the trustability, you know company is already know, and this isn't any news to people, but this actually starts as Facebooksurvey.info and then redirects to this Paying Social Surveys. Most people would look at this and go yes, that's Facebook. And then they'd go through and go oh, Facebook is giving something away. We have a big problem with this, we're

not the only company that has, and so it's just to show you that people are relying on what's on there. So now if I turn around in this case, Paying Social Surveys is a proxy registration, so and we're suing this company, so we will somebody get this taken down, not now.

But if you go to the next one, just really quick, I don't want to be that Facebook focused, but those – you know this is the issues that people are seeing and see what else comes up, so all Facebook stats, this is actually semi-legitimate, but it looks like us, and it's not authorized by us, we're in discussions with them right now, but why would anybody have any thought that this is not Facebook.

And then just maybe the third one, I won't go through all of them, and what is this one, Facebook page template. So each of these sites are either taking information or providing a service and they're doing it under a brand's name, people – they're professional looking. They look, you know, and so here we have a study that shows that the second element that people are going to look for is the companies they already know and for trustability and I can't – I have to battle to get the information behind these websites and to contact people. So I mean it's just a real quick, but we can't ignore the trustability portion of this.

Emily Taylor:

Thank you very much Susan, and I think we all take those slides as not Facebook orientated but just demonstrating the consumer protection angle of brand protection and look-alike sites. So I've

got Bill and then Wilfried. Guys can we just keep the side conversations to a minimum.

Don't understand how this is relevant, websites are spoofed, phished, we know this.

[background conversation]

Bill Smith: I believe it does as well, especially given what we did learn from the survey, which is at least in France, right, and –

Kathy Kleiman: At least in France what?

Bill Smith: At least in France 50% of the people believe in the green lock, okay. So as James had suggested there is a button, it's the green lock, if we could convince the browser vendors to implement WHOIS look-ups, if you click the lock and it would present information about who actually owned this thing, that might in fact be a useful thing, because – well, there currently – there are other issues around SSL Certificate authorities and WHOIS may in fact provide a partial, not a solution, but it might provide another mechanism for consumers to figure out what's actually going on.

Emily Taylor: Okay, my list is now Wilfried, Lutz, Kathy.

Wilfried Woeber: Yes, I wanted to follow up on Susan's aspect of the whole thing, and also on Lutz's question like should we sort of try to advise the community to do something in favor of WHOIS or joint point out that it's useless, and before Susan's contribution, I would have rolled the dice if I would have had to make a decision.

Listening to this one, I could see some merit in actually including a paragraph or some stuff which is not really a hard recommendation towards the Board of ICANN, but more like a message to the community; we have found as a sideline result of this exercise that WHOIS is much less prominent in finding out the legitimacy of something that is displayed on the web.

Is this something the community wants to take up and to either promote WHOIS in favor of fake padlocks or if your backyard designed trustfulness graphics. I mean I don't know it's just for discussion.

Emily Taylor: Thank you Lutz and then Kathy.

Lutz Donnerhacke: I'm shocked. I just understand where the problem with the WHOIS service is. What's the problem with WHOIS services? What's the problem Bill has? What's the problem that Seth has? I

just understand where the problem is, what the people conducted the survey had with WHOIS servers. They just put in the WHOIS server into the browser address line, that's a completely different protocol.

A lot of people think if they a name dot name dot name think it's something to put in the browser line. But WHOIS servers are accessed using the WHOIS protocol, not using the http protocol, and of course if you are using the wrong protocol you do not get an answer. You do not even get a response from because the servers do not respond as a map server. They are not map servers; they are WHOIS servers. I'm shocked.

Emily Taylor:

Well, I'm shocked that you're shocked to be honest.

Lutz Donnerhacke:

To make it, just to overcome this, I'm shocked. We can make a recommendation, we can make a recommendation if somebody provides WHOIS server providing to WHOIS protocol, we as the WHOIS Review Team recommend them to provide in that server answering the same question using browser protocol http, so we have a more acceptable way to answer these questions. I'm really shocked that almost people using only the browser to access an internet resource, I was not aware of the three.

Emily Taylor:

So we've all learned something I think. Kathy, Sarmad, Bill and then let's decide what we're going to do next. First of all, can I just draw attention to Sharon's comments which is a sort of yes, sharing the online UK crime prevention campaign, most normal people, glad that you know some Sharon, have absolutely no idea at all about WHOIS, and James is agreeing with that the padlock is much better understood. Let's continue with the list, Kathy, Sarmad, Bill.

Let's focus our comments on what we draw out of this consumer study, a comment that I heard earlier from Kathy and from others is maybe the consumers of WHOIS are different to the people we thought, uh-huh. So we need to identify those, in order to make proper recommendations, so Kathy, Sarmad, Bill, please.

Kathy Kleiman:

Thanks, I just wanted to reiterate a point that James made earlier that the – in that we tried to kind of get into the survey, but it seemed to be too detailed to be picked up by you know our survey experts, which I appreciate, but the website or web page owner may not be the domain name owner, particular in situations like blogs, or in the non-commercial community where content may be created by an array of people, and web pages may be created and organizations may have sub-organizations that are working on it. So just content is not domain names and web page owners are not always the same thing.

But back to this point of – and looking at Sharon’s comments as well, one of the things the survey showed me is that normal people are not using the WHOIS, and that seems to be both International and whatever National means, US if that’s what it means. And so I’m really keen on focusing on the groups that have come to us as the consumers of the WHOIS, and let me just share kind of who I’ve heard over time, certainly law enforcement, certainly brand owners and large companies, something – another one frankly is people who buy and sell domain names, who are looking for availability and when does the domain name drop, when is it available next.

And although they’re not consumers, because it’s a business use, of course registries and registrars who use the data, but the first three are really the group that I was thinking of, the expert, and I’d love to be working on making it available, more accessible and more accurate for the uses that we know about that are so frustrating for the people who are trying so hard to use the WHOIS now.

Emily Taylor:

Thank you very much for that Kathy, I think that’s a very positive direction for us to move in as we’re thinking about our recommendations. Perhaps we cannot also lose sight of the fact that consumers do like to know who they’re dealing with. You know so but they don’t seem to be using WHOIS to answer that question. Sarmad, Bill, Susan.

Sarmad Hussain: So just to respond to this comment about accessing data through web, there seems to be in the – I just opened the RAA agreement, and Section 3.3.1 actually says that registrars shall provide an in-directive web page and the port 43 WHOIS service providing free public quality based access to up to date information and so on. So I either don't – I probably don't understand why you're concerned about – are you saying that it's not supposed to be provided, or it's only provided in port 43, or because the agreement actually says that it's supposed to be also provided through web based services. And so I am sure I understand what you are trying to say.

Lutz Donnerhacke: The problems that was running into was the delegation to a WHOIS server from the .com registry to the registrar WHOIS. And the registrar WHOIS is only available on the port 43, not available on port 80 or 443, so he has problems with copying the reference into the browser line. Just misunderstanding of the technical protocol how WHOIS servers are working.

Emily Taylor: Sarmad did you have any other comments while you have the mike? No, thank you for that, I've got Bill next and Susan, Wilfried did I see you raise your hand?

Bill Smith: If in fact they are not providing one on port 80, they are in violation of the RAA, because the RAA as Sarmad just points out, they must provide both a web access, which is by default port 80 and port 43, so they are in violation of the RAA, Seth should have been able to get there, I should have been able to get there. There is no reason in my mind that we should ever expect the average user to know how to use [Telnet].

Lutz Donnerhacke: I did not check if the registrar is an accredited registrar or another one, I didn't check it sorry.

Emily Taylor: Susan?

Susan Kawaguchi: I don't think we should limit our audience and/or who are the users of the WHOIS; because I think we want to come out with the same result. We want an available, accurate WHOIS record, so if we limit our audience just to the domainers and brands and I can't remember the third one, law enforcement, registrants, then I think – I don't understand what would be different in the results that we would expect, because what we want is the available accurate and reliable WHOIS record, so if we divide that as a wide base for internet users, which would be my intent, or narrow it to only players in the game right now, then I think we'd still come out with the same thing, but I don't want to leave out those internet users.

Emily Taylor: Thank you, Susan, I'd like to join the cue, and then I've got Bill, Olof as well, Olof, do you want to go first?

Olof Nordling: Well, actually just channeling James who are commenting that they, meaning port 43 and port 80 access are required to provide both but not necessarily on the same server URL. So the interactive web page is probably located on the registrar home page.

Emily Taylor: Bill, do you want to go and then I'll come in.

Bill Smith: Sure, responding to that quickly, expecting the average user to know the difference between port 43, port 80, web browsers, [Telnet], is insanity, sorry.

To Susan's point –

Kathy Kleiman: I'm like spending a year of your life dealing with WHOIS.

Bill Smith: Yes, exactly, that's perfectly rational, or a decade you know.

Kathy Kleiman: Susan just talked, spent a decade, spending way too much time on WHOIS.

Lutz Donnerhacke: So do I understand you correctly that you are saying that we are – for the usual customer we do not need to provide WHOIS service at all.

Bill Smith: No, that's not what I'm saying. I'm saying that we need to be consistent, so that if you do a web base search query and you are directed to a site that – where you have to a port 43 access using [Telnet], as we have demonstrated today, right relatively knowledgeable people won't be able to do it. I'm channeling the average user.

Lutz Donnerhacke: But it's not a problem of the protocol. It's not a problem of the protocol.

Bill Smith: I am not saying it's a problem of the protocol.

Emily Taylor: Time out guys, time out. Take it to the lunch break. So James agrees with you Bill.

Bill Smith:

So with Susan, I also don't want us to focus purely on law enforcement, domainers or who – us, people who have to use this stuff. That is an important audience. And I think back to James' point, that is an audience and putting these two together in the survey pointed out some issues, but I think we've learned something as well, that's an important audience for us to address.

I think now to Wilfried's point, we've learned some things as a result of this consumer study, it may not be earth shattering stuff, but as an example consumer trust the SSL lock, perhaps there is something we could suggest, right tying WHOIS data to that in such a way – so if you clicked on it, you actually would get WHOIS information that would tell you who is behind this. And if it was presented in a way that it made sense to the average user, it would enhance consumer trust, which is one of the things we are asked to evaluate and provide recommendations on.

Emily Taylor:

Okay, I'm not in the cue. Sorry, I've got to go. Susan, to your point, I think that the benefit of identifying who the users of WHOIS are is because if we take this consumer survey as face value, we could say well just get rid of WHOIS and no one will notice, and I don't think you would support that, would you? So I think we note that consumers are not perhaps the consumers, but they are consumer of WHOIS, if I can – who aren't consumers. They are people like you, and people like Sharon, and people who are in the industry. These are the people who are using WHOIS on a regular basis and trying to rely on it. Okay, that you are users of

WHOIS. So I think that even if we don't limit our recommendations, we need to acknowledge that there are expert user groups who are relying or trying to rely on this, would you agree with that? Yes.

I think to your point Bill the consumer study tells me something which is that if WHOIS was more widely known, this is also your point Lutz, and if it was more reliable in terms of accuracy, it might be a useful thing for enhancing consumer trust in the consumers, these guys in the survey. You can see that they like the padlock, they know it and they like it and they rely on it. If there are other clues in the ecosystem to help them trust then this is something that might be worthy of explorations, so those are the two messages that I would take away.

I do think that we need to, I agree with you Kathy and there's no surprise, because we were discussing this yesterday, so I think that we need a bit of a focus on who the users are, who is relying on it.

Kathy Kleiman: Was I in the cue?

Emily Taylor: No, I've got Lutz and then you and then lunch is ready actually and we'll update you on where we –

Lutz Donnerhacke: So now I come to the conclusion that put the positive effect to have an ICANN sponsored website, where all WHOIS data is retrievable because the technical details to find the right information overcome Captchas and some rate-limiting information on various websites must be removed for the usual customer who is not able to fulfill all the different needs, all the different outcomes, all the different outputs of the various different websites, it's too complicated.

So if we want the customer to build trust on WHOIS information, we had to provide a common easy to access web page, there trust based on some padlock, it might be an ICANN sign, so if I understand it correctly, it would be better to have an ICANN-sponsored website to make all the WHOIS queries on one place, hiding all the technical details for the customer.

Emily Taylor: Thank you very much, Kathy you're in the cue now.

Kathy Kleiman: I like Emily's suggestion of kind of the immediate focus on the current uses of WHOIS and their frustrations and the longer term focus on a more general audience. And I just wanted to point out there's another category of expert user, and he's in the room. So I just wanted to introduce him. This is Rod Rasmussen, who is the co-founder of the anti-phishing working group.

So if over the break, you know over lunch break you want to talk with him as well, you know we can see kind of who is coming into the room to listen to what we're talking about and we can use these experts and talk with them.

Emily Taylor: With that, let's have a break for lunch now it's ready and given that we have some guests in the room, you're very welcome to share the lunch with us.

Let's reconvene at half past one, prompt.

Kathy Kleiman: If we're not lost.

Emily Taylor: If we're not lost, we're going to fit Kathy with a GPS device.

[break]

Emily Taylor: Okay, welcome back in, everybody. Let's get started again. We have Peter with us for a couple of hours, so I want to make the most of our time with Peter by getting straight on with the recommendations, which is reviving our conversations as of this morning and of yesterday. I think that we'll probably just keep doing this until we're more and more comfortable with the

recommendations as we are. I think that we're making good progress.

At 4:00 today, I'm hoping that the Compliance Team will be able to join us and just give us an update to let us know if their compliance activities have changed in any material way, since we were really lost in conversation with them. I think that's about it.

[background conversation]

Emily Taylor:

Correct, thank you, Kathy. The other thing that we need to turn our minds to is the "what happens next", how we're going to bring this on so that we can get it published in draft form by our deadline by the 30th of November, and for that, I'd like to just have some overall comments from you, having read the draft report from start to finish, just your impressions of it would be really helpful to pool our ideas on that and then think about our next steps and how to make the most of the resources that we have, the time we have.

Okay, Alice, please, would you project up again the recommendations list that we got yesterday? I can't remember, Peter, were you with us yesterday afternoon? No? No, you were in the GAC. Okay, well, we'll start just by a little bit of background.

We looked at the...sorry, the brainstorming session one. We reviewed the recommendations in the draft report and the ones from Marina Del Rey and concluded that there were just loads of

them and that if we were going to have any chance of getting traction on the recommendations, they need to be fairly concise, so we started to rebuild the building blocks under five headings and this is the results of our brainstorming session so far. There's a printout, actually. There's a printout there, and also, we've done a bit of work, a bit of amendment of it this morning, as well.

So, as an overview, we're grouping our recommendations under policy, implementation, strategic priority, communication, proxy and privacy. We have at the end, under the thing that says placeholder IDN, we have some wording for how a recommendation on accuracy might look. But, also, this is sort of the roadmap for how our recommendations might, in general, be drafted. In other words, that they're not policy-making, they are smart, so they are specific measurable, achievable, the other stuff, realistic and time-bound, but they're not too specific about how things will be achieved. That's thrown back onto the people who are tasked with the targets. So, I think that's just a bit of a background for you.

Kathy Kleiman:

Does this replace our existing recommendations?

Emily Taylor:

Well, let's discuss that. Where would we find it useful to start? We had a good kind of whip-through this morning. We had a good discussion on thick and thin and IDNs. Let's start with your question, Kathy. Do these replace our recommendations in the

report? What do we do with all those 75 recommendations that are there in draft? Let me have your ideas, please.

Kathy Kleiman:

Let me share what was talked about yesterday at the brainstorming session – this is Kathy, for whoever is listening online – that this doesn't necessarily replace. We're trying to create broad buckets. This is also from the approach of people reading our report and in the spirit of the new executive summary, and also the materials Sharon wrote on explaining the DNS, making what we're saying very approachable and accessible.

We picked five or six different points that seemed to be the broad buckets, the broad categories, of where the many detailed recommendations seem to be leading us to. So, these are the broad approach. We want to make sure we've got them right. Policy, implementation, making WHOIS a strategic priority, communication, and then we divided up privacy and proxy, even though it does fall into many of the above, it's its own category of concern so we divided it out.

So, the question is, going back to the details, do we want to keep them? Some of the details that come to mind for me are certainly compliance, that Emily and the compliance team, Bill, Susan, have found many, many things that are confusing, that are difficult, that study, but don't give results.

I think we keep those things, but not necessarily in our upper-level recommendations. I like where we're going but don't want to lose some of what's coming, some of the wealth of the details, also.

Emily Taylor: Sarmad?

Sarmad Hussain: I don't have the context of the discussion to which this document was made, so I just want a clarification. We have all these chapters and, basically, now I'm a bit confused. Are we restructuring the chapters like this or are we just grouping the recommendations like this and keeping the chapters as they are?

Emily Taylor: My assumption was that we would keep the structure pretty much as it is. In my view, personally, I think the whole report could be half the length and tightened considerably, but we structure our recommendations like this and this will help us as we go back and edit the body of the report because these will be where we're leading.

I think it's a pretty faithful reflection of this group's views having gone through the process, so I think it would just be that, and the executive summary, would be good stars to guide us as we're then editing the body of the report.

So, the logic of trying to focus on this here while we're all together is that it should set us in the right direction as we continue. Thank you.

Sarmad Hussain:

Just a follow-up – so, then, the structure of the document, should that also follow in the same tune? Or, will we be crisscrossing recommendations, two different sections?

I'm just thinking if somebody reads the recommendation and then wants to follow up and see where in the document, that is the reasoning through which this recommendation is being formulated, will probably have a difficult time tracking back to the information leading to it, and how that could be managed.

Emily Taylor:

Thank you, Sarmad. I've got Bill. Kathy, did you want to respond? And Peter.

Bill Smith:

My thinking was that this section would potentially replace the section that has 75 recommendations in it, and, hopefully, it would be significantly shorter. We might take those 75 recommendations and put them somewhere, on the Web or something.

Just literally brainstorming here, but to say here's a bunch of stuff we thought about in all kinds of detail and here's how we're

choosing to report this back. So, if somebody wants to go read a specific detailed recommendation, one of the 75 that leads from here, go at it.

I kind of hate to lose some of the thinking that went into those. I'm not sure we want to mess the official report, though. I'm open to that, but I'm looking at this a replacement for the current recommendation section to say here are our recommendations. We grouped them this way and here are some specific things in those.

Emily Taylor:

Thank you, and just to read out James's input into this, following up on your comment earlier, Susan, we need consensus, in fact, unanimity on the recommendations, otherwise we're not solving anything. There will be no action by ICANN on any of the split recommendations, so we need to word them until we can achieve unanimity or take them out.

Peter Nettlefold:

I'm just catching up from having missed yesterday's brainstorm, so apologies for that. I really like this breakup of the topics in particular. I think with the 75, there was a chance of getting lost in the detail a little bit and just looking at the categories, I really like the way it draws out the issues.

I guess the question will be making sure that the ones that are dear to various of their hearts are reflected in these recommendations,

but assuming we can do that, I'm really very happy with it. James's point is well-taken.

The reason I missed yesterday is because I was involved in some discussions about how GAC forms consensus, and coming from the GAC point of view, we're only too aware that a split recommendation will not carry very much weight with the board. So, I echo James's point.

Kathy Kleiman:

Just a note for whoever is looking at this piece of paper for the first time, there's some material on the back, especially where the proxy and privacy is continued a little bit.

I think we committed at the beginning to fact-based recommendations and research-based recommendations, so maybe what comes of the very detailed recommendations, both the 70-plus and some of these others, is that they go back into the chapters in some kind of abbreviated or bulleted form or something as findings. These are findings.

It also gives whoever is trying to implement our recommendations...we've kind of moved in a direction not telling people how to find the solution, but it gives them a detailed sense of, when we're talking about communication and clarity, what's not clear now. Or under compliance, what we feel is not being reported.

So, without the hammer of saying you must fix it this way. It's saying this is the findings. They led directly to these recommendations, but let's share with you some of the underlying information.

I agree, we can probably cross out about half the chapters, but I would rearrange them. I like the chapters and as they're evolving and I think there are lots of ways to shorten them and bullet-point them and things. There's a lot of good information that we've found along the way that I think the ICANN community will benefit from as they're trying to follow what we've asked them to do.

Emily Taylor: Do I have anybody else on the list? I don't think I do. Bill.

Bill Smith: We talked earlier today about accuracy, availability, consistency, and there was one other that I can't remember. Should that go into implementation, into that bucket?

Kathy Kleiman: Accuracy, availability, consistency.

Bill Smith: So, then, consistency of the -

Emily Taylor: Accessibility.

Bill Smith: Accessibility, yeah.

[background conversation]

Bill Smith: That was the consistency piece. Okay, just that they're the abilities, right, the ... And then what does it mean, to be consistent?

Emily Taylor: Thank you. Sarmad?

Sarmad Hussain: They're not in any particular order, are they? Is there any merit to try to point out the more significant ones than the others? And how would we manage that in this structure?

Emily Taylor: That would be very helpful and if you have any immediate ideas or input, then please share it.

Sarmad Hussain: No, I don't, but I just thought that it would be, probably, useful to have flags. Flag the more important ones first.

Emily Taylor: okay. If I can join the queue, my favorite for number one would actually be number three, the strategic priority. That's a nice, kind of overarching recommendation here.

Maybe, actually, we can start to craft some wording behind any of these. Let's take it in this order. First of all, take a look at these, have a think about them. Are there any areas where people are uncomfortable with what we're saying? Please, let's have a good consideration now and let me have your discomforts.

Before we do that, while you're thinking, Compliance can only come at 2:00 today. I'm conscious that we only have Peter for a couple of hours today and I would prioritize trying to get the recommendations done. Perhaps we could ask Compliance if they have any time either this evening or tomorrow. I think we extended an invitation for them to join us for dinner and they'd be very welcome. Maybe we can just catch up informally and follow up in that way. Thank you. So, can we tape that?

Let's have a look at these recommendations. First of all, policy. We're saying get one. I think the text under that is trying to say

where the basis for this recommendation comes from. It would be from the policy chapter.

But, I think that an element of this policy is that it would be cross-community, that this is not owned by one section of the ICANN community. I'm seeing some slight nods around the table on that. Is there anything else we need to say on this? Peter?

Peter Nettlefold:

I'd be interested in the views of the GNSO representatives on the idea of the cross-community policy development, because I guess it falls into the structural kind of framework that we have to be aware of in dealing with policy development in the ICANN framework.

Do Kathy or James have a comment on this, the idea that there would be a cross-community policy development?

Emily Taylor:

GNSO as well – Susan, Bill.

Peter Nettlefold:

So, alright, there's far more of you here than I ...

Emily Taylor:

Good point. Would we anticipate push-back? Would we anticipate structural, procedural, weirdo difficulties on this?

Bill Smith: This is Bill and I think it's critically important to go, really, beyond what's currently in the GNSO. I'd look at the GAC and Law Enforcement in particular. If the only way they can provide input is at the end of the process, that's a problem. Similarly, if security is an issue, that needs to come in early. If we're looking at, also from ALAC, right?

Emily Taylor: Consumer views.

Bill Smith: Consumer views are important. Having that information and that input and dealing with those issues up front will, I believe, enhance consensus. It will allow people to get to consensus as opposed to conflict. So, I would like to see it as a recommendation that this process involved all participants.

Emily Taylor: Any responses? Kathy, you're in the queue. Kathy and then Peter.

Kathy Kleiman: I think we may be taking this a step farther than, certainly, the policy chapter drafters may have intended. I wanted to read where we're coming from. Remember in that long list of recommendations, the ones that went on for 70?

Here were some of the details; I'll just read three that led to the "get a policy". One was we need to create a single WHOIS policy, not that we don't have one, but it's in many places.

Emily Taylor: What number are you on?

Kathy Kleiman: 55, 56, 57, and I don't know. There are many recommendation documents now.

Emily Taylor: So, this is in the big...

Kathy Kleiman: This is in the big one. Not the colored one, the big one. Let me know when you've found it.

Emily Taylor: Well, I've got 56, 57, 58.

Kathy Kleiman: I'm looking at, I don't know which version. The one Alice sent me October 7th, so 55 under D, please. We're just waiting as we pull it up on the screen, for anybody who's listening.

Okay, there it is – 55. So, create a single WHOIS policy. 56 – ICANN’s WHOIS policy is unknown, poorly defined, decentralized, unevenly implemented. We should certainly clarify. ICANN should certainly clarify and centralize its WHOIS policy and recommendation and that ICANN needs a clear policy document. I won’t read that whole thing.

In terms of who it’s owned by, guys, it’s a gTLD policy. It comes out of the GNSO. Of course we want to reach out, and that’s where, under communication, we’ve talked about cross-community outreach.

I’m just reading now four of the main recommendations but we can keep this up. Cross-community outreach including the community outside of ICANN has specific interest in this issue. I think all WHOIS should be informed by the needs that we’ve found and the users that we’ve found, but it’s a gTLD policy, so it comes out of the GNSO.

Emily Taylor:

Lutz and then Bill, please.

Lutz Donnerhacke:

Asking for a centralized policy, does that include even the WHOIS policy from the ASO? So, we should make this clear.

Emily Taylor: I think that's a point well taken because the ASO aren't the only people who will jump up and down if we look like we're making recommendations that range out of gTLD domain names and space.

Lutz Donnerhacke: To make clear, we have other stakeholders who have the right to jump up and down, too.

Bill Smith: I agree with Kathy that in the current ICANN structure, the GNSO is where this occurs and that is where the work will happen. However, if they fail to take input from all of the community, everyone who is impacted by this, I have very serious concerns that we will end up with a policy that meets the needs of everyone.

The second thing here, major thing, is that where we say "create a single WHOIS policy," number 55, I believe that that is a place, or somewhere in this, to say that we...to harmonize all of the, not necessarily ASO policy, but all of ICANN's WHOIS policies to a single one.

The policy needs to be consistent across the domains to the extent that ICANN can make it happen. It does no one any good to have...I'm sorry, it doesn't do any, to my knowledge, any user of WHOIS. There is no benefit to a user of WHOIS to have to wade

through different formats, different ways to get at the information, and having differing information in there. So, if you take a user perspective of this, it should be a single policy.

Emily Taylor: Olof, Peter, Wilfried.

Olof Nordling: James has raised his hand a couple of times. Reading out from James, can we start by gathering, centralizing all the policy ‘bread crumbs,’ between inverted commas, that exist throughout all the ICANN contracts?

That’s one, and next is what is meant by cross-community?

And, also, directed to Bill, that’s not how GNSO PDPs work, but that was some time ago before your last intervention.

Kathy Kleiman: And now who wants to speak?

Emily Taylor: Could you hold on a second, James, because we can’t hear you?

Kathy Kleiman: James, can you hear us?

James Bladel: I can hear you.

Emily Taylor: James, great. Please go ahead.

James Bladel: Can you hear me?

Emily Taylor: Yes, clearly.

James Bladel: Okay, good. A misconception or a misunderstanding about how the GNSO PDP process works is that there are no restrictions or exclusions on who can participate, so I think that a policy of cross-community participation is redundant because I believe that someone misunderstood that only GNSO members can participate in a GNSO PDP, when in fact that's not the case. It is open to anyone and everyone. All you have to do is show your interest.

I just wanted to get that on the record as quickly as possible because I think that there's a lot of calls within the community...I think about, for example, the JAS working group, that should be this kind of über policy development process that involves more than just the GNSO and I think that that's founded on a basic misunderstanding of how we came up with the policy and how the policy works.

Emily Taylor: Perhaps the misconception arises about...well, anyway, I'm not going to go into that. Bill.

Bill Smith: So, James, I agree with you that that is the way the policy is supposed to work, however, I have, certainly, been found incidents where it is not that way, where drafting teams, working groups, cross-community working groups, whatever, are formed and participation is limited.

I also am aware of instances where the GAC has come in and offered some constructive advice early on in the process and has been told, "We don't know why you're providing your advice now." So, it's theoretical or a sense, that is how the GNSO is supposed to work.

But practically, certainly, my experience has been there have been cases recently where teams, groups, cross-community, whatever – I really don't understand how these things get set up – but participation is restricted and is limited and it's not possible to participate.

I think that is a problem, so for me, I think it is important to put it in to say everyone does need to participate and be able to participate here.

James Bladel: I just want to say that is absolutely not true. If there's anything, where will analyze PDP process, one of them that keeps coming up – lack of participation from other areas of the GNSO; active efforts within the GNSO to include other constituencies.

I just don't know where you're getting this, Bill. It must be an ebb/flow because they're actively trying to think of programs to get more people involved from different cross sections of the community, so the feeling that certain groups or individuals are prohibited from participating, that's not the case.

Emily Taylor: Okay, I've got Peter.

Peter Nettlefold: I might change the topic slightly, but I'm happy if people go back to it because I find this, personally, very interesting.

The one I was going to pick up on was the point that James mentioned before, which may change the direction of this debate anyway, I'm not really sure.

The question is, when you talk about in “get a policy,” are we talking about something new or are we, just as James put it, drawing together all the various bread crumbs and doing

something along the lines what the ccNSO has been doing on delegation and re-delegation? Along the lines of a framework of interpretation or something like that, which simply acts as a reinforcement or an interpretation or a document that points to all the places where the policy already is and puts into the one place?

So, we're not necessarily developing anything new. I'm not sure, but if we're not, then it might be an easier question. We might be pulling out references to accuracy, availability and so on, and pulling them over to the one place.

Maybe that's the first step and there needs to be another step, but I guess I just want to clarify what is meant by "get a policy" to pick up on that point of James's.

Emily Taylor:

Thank you, Peter. James, we've got Alice and Olof watching the screen in case you raise your hand again and we really appreciate your participation here. I've got Peter just adding something and then going to Wilfried.

While I've got the mic, can I just say on a clarification point, there are members of the ICANN community, like the ASO or like the ccNSO, who are not bound by the general policies, and for that reason, tend to avoid to getting sucked into any policy development process because there might be a feeling that they don't want to get into that water.

Yet, I think that both communities – both the ASO and the ccNSO have good practice to share and interesting policy experiences to share, so for that reason, James, to your point and to Bill’s point, I don’t really want to get involved in the fray.

There’s obviously disagreement between the two of you on this, but two areas of the ICANN community, if you like, which might ordinarily avoid a GNSO PDP, could do with being specifically encouraged. Without it, while it being – I’m sorry, I’m not being very clear – so that they wouldn’t fear that it would somehow cover them. That’s one area where I think we could consider.

Sorry, Peter, I interrupted.

Peter Nettlefold:

To clarify my previous comment, perhaps I should have added a little bit more context. It depends on what we count as the policy at the moment. From my point of view, everything which I would like to see in a policy is somewhere, whether it be the AoC, an RAA contract, or various bits and pieces.

I guess it depends what we’re talking about when we say “get a policy” and the status that we accord to those various documents, which are already in play. It’s clear that the AoC and the RAA are not consensus policies in the ICANN sense, as we’ve discovered, so we need to be careful about what we’re talking about here.

If we could gather all the...stick to the RAA, but there needs to be accurate, fully publicly allowable, blah, blah, blah, and decide that that was the policy, I'd be extremely happy. I assume that there are some people here who would not agree with that, but that just had some flavor around what I'm trying to get at.

Emily Taylor: Thank you. Wilfried?

Wilfried Woeber: I'd like to share with you my feelings regarding the phrase "get a policy". I do subscribe to this as a working title and as a sort of funny acronym, but I would suggest that in the final report, we put it into slightly more socially acceptable wording, just as an observation. The message itself could still be the same, but I think we should avoid artificially creating push-back by using blunt words, just as an observation.

Emily Taylor: Yes.

Wilfried Woeber: The second thing is related to the formal environment this review team is working in and the relationships to other bodies in the framework of ICANN. While there is a slightly different mechanism in place with regard to the ASO environment, you can

be pretty sure that we are closely following. As much as ICANN, or I, myself, can, or the group can, we are going to contribute, and not only contribute, but also to then take this as another set of input into our environment because, just a small example, next week we are going to start in this Internet resource registry environment for the Austrian...Austrian, oh, yeah, the good monarchy – my apologies. For RIPE NCC for this region that was a nice one.

We are going to start the fact finding and problems-based definition, and things like identification of the resource registry because, actually, it's the same problem over there, because the service region, for example, covers at least six different scripts.

We eventually found out that this is no longer easily supported on the basis of a traditional [seven Petroskey] infrastructure. So, you can be pretty sure that we are coming to have a close look on what the result of this exercise is and we will certainly take whatever is appropriate and try to channel that into our mechanisms. Thanks.

Emily Taylor:

Thank you very much. I think Kathy is next and then, perhaps, taking the lead from Wilfried, perhaps we could actually start to try and craft what we mean by this and get some wording down there. Thank you. Kathy.

Kathy Kleiman:

Actually, can I jump in and try that?

Emily Taylor: You're on!

Kathy Kleiman: okay. Going back to 55 and 56, let me just throw it out there because the "get a policy" was somewhat joking, but, and let me reverse 55 and 56. ICANN's WHOIS policy is poorly defined and decentralized. Let's forget about implementation because that's in a different place. The recommendation is to create a single WHOIS policy document, because our sense is we're working with the existing policy as I understand it.

I wanted to add one more thing, so that's just a starting point. In terms of policy development, I wanted to point out, that may be covered under a different recommendation where we talk about making it a strategic priority for ICANN to work on WHOIS issues. By definition, that is once we bring in the board, that's an across the community kind of thing, so we may be addressing these in two different places.

As I understood the recommendation, this is really about finding the ICANN, whatever policy exists, making it easy for people to find, so the bread crumbs concept that James wrote.

Emily Taylor: That's really helpful. Thank you, Kathy. Peter?

Peter Nettlefold: Thanks, Kathy, for starting this. It's great to start getting some words down. Alice, could we have the words back up? So, I guess there's two questions that I have from that. I like the formula, the general formulation.

The first thing is what does the first policy mean? So, ICANN's WHOIS policy is poorly defined. Are we just talking about the three or four consensus policies that we have, policies?

And then the second one, the recommendation is to create a single WHOIS policy document, so do we need some language there? Because the thing that it seems to me is the policy is loaded with a particular meaning in the ICANN sphere in terms of there's consensus policy.

Kathy Kleiman: May I answer that? I think, actually, the vast majority of what we're talking about is the contract language in the registry and registrar contracts.

Peter Nettlefold: We need a way to reflect that, then.

Emily Taylor: Just picking up on the theme that I heard from James from you, from Peter, is we're reasonably comfortable with the WHOIS policy as it seems to exist, so we're not advocating a new policy. Right, Sarmad, or are we?

Sarmad Hussain: I would say that we are actually advocating a newer policy, not just putting pieces together because if you're talking about putting pieces together, there is no efforts to Law Enforcement, vis-à-vis WHOIS, at least I don't see it in documents.

So, there is a need to define what WHOIS is serving. What are the objectives of WHOIS, before really defining what the policy is. Those objectives are also not defined anywhere. So, I think there's more to be done than just collecting things and putting them together.

Emily Taylor: Thank you. Thank you very much. That brings up again themes that we have discussed, and we seem to be in quite a lot of agreement on, about that at some point we do need to consider what the WHOIS is there for, who is it serving, and the objectives of the service for this.

Thank you. Wilfried and then Olof, please.

Wilfried Woeber:

I like Sarmad's proposal here, actually, to eventually manufacture a new or an extended or completed policy, but from my point of view, this would only be step two.

Step one, because this step two probably involves the deployment of the full policy development processes, while the step one is more like a clerical exercise because most of these pieces are there. I think our current understanding is that it is of utmost importance to quickly pull that together into something which is better than we have now.

As we said before, this should not include through the back door, sort of slipping in new policy requirements, but it should more be what we call cosmetic surgery. We call it [*inalavoltoc*]. So, this is just clarifying documents, fleshing out things which are distributed or combing things which are distributed across different places, just making it easier to [*groc*] for everyone involved, like the man in the streets, the woman in the registry.

I like Sarmad's suggestion to actually fill in the blanks, but I think we should not wait with step one until we have done step two, which is probably going to take a little bit longer.

Emily Taylor:

Thank you. That's very helpful. Olof, Sarmad, did you want to come in?

Olof Nordling: It's from James, who thinks his voice has done it for the day.

Emily Taylor: Sorry to hear that, James.

Olof Nordling: Then his comment that was not referring to Wilfried, but to Sarmad, that's when it came. That, by definition, would be creating policy, so end of message. Over and out.

Emily Taylor: Sarmad?

Sarmad Hussain: I totally agree with Wilfried that there will be a step one and a step two. My question, and I don't understand the policy development process that well, would be that if in the first part, we just pull pieces and put them together, who will do that and would that be not the same policy development process or would it be a different way of doing it?

If it's going to be the same policy development process and just pulling them together as a single document, then is there still value in segregating part one and part two?

Emily Taylor: If I could just say, one possible formation might to be to document the current WHOIS policy as set out in the RAA, the Registry's

Agreements, and then you get into the, “And, what about the AoC? What about the GAC principles on this? What about the SSAC, the latest report that we’ve got?” Where do you begin and end that?

So, let’s focus on this step one and see whether we’ve got an achievable recommendation there. What do we say? Let’s imagine that we’re saying, “Let’s document the current WHOIS policy.” Where is it, please? And, where do we start and where do we finish? And who does it?

Yes, thank you. I don’t know the answer to that.

Peter Nettlefold:

Sarmad’s got it potentially better than me. This is what I’ve been trying to get to with all these little questions is what are we hoping to achieve by this? If we’re going to do a step one, who does it and what is its status at the end?

If it is just pulling together policy and reiterating that there are several consensus policies, what does that achieve? If we bring in things like the AoC, what does that achieve? It’s still not clear to me what the status of those recommendations is.

It appears that ICANN as the board, or ICANN as whoever signed the AoC, has signed up to those, but it’s not entirely clear how they have been reflected in policies or in the contracts. I would love to

ask ICANN why it is not working vigilantly to ensure that what it has signed up to is reflected in the contracts.

But, just putting it into one place alone with those policies, I wonder what it will achieve. It's almost like a part of our analysis that we already know largely what they all are and we started to pick the gaps between the various bits and pieces.

I'm not sure what value we add by asking someone else to do it, but I may be completely wrong. So, that's just out there.

Emily Taylor:

Kathy, and is there anybody else? There's Susan.

Kathy Kleiman:

okay. I'm just thinking back to where we began to think about recommendations and that one meeting where we all just sent in the three recommendations. This was the one that seemed to come in almost universally, was that pieces of the policy were in different places. So, that's why I just think there are so many, many more steps, as Sarmad is talking about, as Peter's talking about, but this is just a starting point.

Frankly, one that may be very accessible to people is that pieces of the policy are in different places. So, some language, and I don't think it excludes anything. Remember, as I understand the Affirmation of Commitments, it says ICANN commits to

enforcing existing WHOIS policy. So, the question is what's the existing WHOIS policy?

Peter Nettlefold:

I would add to that that it also says "existing policy that does X, Y and Zed." It's not just existing policy. It says "existing policy that does X, Y and Zed," and if X, Y and Zed aren't there, that's where there's a problem. So, just to be clear from my point of view.

Kathy Kleiman:

But, you could evaluate that if you look at existing policy. So, let me just throw out some language. See if it makes sense. Following up on some of the wording that Emily started with, that the recommendation be that we document the existing or the current gTLD WHOIS policy as set out in the gTLD registry and registrar contracts and GNSO consensus policies and procedures in WHOIS.

Emily Taylor:

Thank you. Can you take, Alice, through that? Let's just get that up on the screen and take a look at it. I've got Susan who's been waiting for a while. I can see that Bill wants to come in and then Sarmad.

Susan Kawaguchi:

I'll defer.

Emily Taylor: You'll defer? Okay, then perhaps we could just pop down that wording. While that happens, I can't remember who I said first. Was it Bill? Bill and then Sarmad.

Bill Smith: I was concerned that we were going to continue the work to help to try and define the policy. I think we might also want to add to whatever language we put in there, in essence, wherever else you might find bits and pieces of this policy.

I really want us to send them a strong message that says that ICANN does not have a policy. What we have been trying to review meets none of the criteria for a policy. It's not clear, it isn't concise, it isn't communicated. You can't find it.

Kathy Kleiman: But we've got an entire policy chapter showing what elements of those policies are. So, it's not as if there's a complete vacuum here. There are lots and lots of pieces.

Bill Smith: Actually, I respectfully disagree. I don't believe there is a policy, other than that in the Affirmation of Commitments. The board claims there is one, but show me. I'm from Missouri, show me the document.

Kathy Kleiman: We've talked about every registrar and registry does innumerable things all the time to implement WHOIS policy as it's come down through the contracts.

Emily Taylor: Let's go to Sarmad. We know where we stand on that issue, I think. Sarmad?

Sarmad Hussain: I'm going to pick up on Peter's earlier comment and say that if we are just going to cut and paste this from RAA, what useful purpose this exercise will serve towards promoting consumer trust and making this more effective for law enforcement views, so there has to be some constructive process.

If it's just gTLD space we're talking about, I think it's probably too limited. I think we really need to look at where more input has been given into the WHOIS from other constituencies, for example, ALAC and GAC as well.

Emily Taylor: I think there might be a slight cross wires about what the...I think that the sensitivity that you'll very quickly find, unless you make it clear that it's only a policy that binds people, who does it bind? It would bind the gTLD domain space and I think we've talked around the table about including others from the community, information sharing, good practice sharing. They're welcome to

give their inputs but they're not going to be co-shed with the outputs.

Olof, thank you.

Olof Nordling:

Thank you. Two comments – one from Michael who is saying, “I fully agree with you, Kathy.” The second from James, saying, “For starters, consumers will know what to expect about the utility of the exercise.” Right now the scattered WHOIS policy is a barrier to that understanding. End of message.

Emily Taylor:

Thank you very much, James, for that and I think if I can just channel in for a second, I'm sure Lynn would say you can have a policy without it being written down. So, there is a policy at the moment because there clearly is one, but what we're hearing from James, in answer to your question, is the utility of just going through the librarian work of writing it down somewhere essentially is that it's more accessible to the non-insider. Peter.

Peter Nettlefold:

I think I'm clear where several people are coming from on this one. If you want to do that, great, I'm perfectly happy. It will serve certain purposes and potentially, the question now is what else?

If this is just making an itinerary of what's there, that's fine. It makes good sense. We need to be careful about the way we word it and we can probably get on and do that when we craft some words elsewhere, as long as we're clear of the intent.

If the intent is to lay out what is there, wherever it is, in one place, I'm sure we can find some words to do that. We're all able to do that. Let's, maybe, move on to the standard stuff of figuring out what we're going to do to take it past there.

Emily Taylor:

My question is, Sarmad was talking about an A and a B step or step one and step two. This is clearly step one – document the status quo. Do we have any consensus about...are we advocating, are we recommending, a new PDP to create a new forward-looking policy, or is that not what we're saying at the moment?

Wilfried, Peter, Kathy, Olof.

Wilfried Woeber:

I would immediately agree that we could suggest such a policy development process, but it would have a much lower priority or much less determination behind it, just as a suggestion. Just think about it. We think it is a good idea to do that, but it's not a formal recommendation like the step one thing.

Emily Taylor: Thank you. Kathy?

Kathy Kleiman: I was wondering if we could come back to that question at the end, after all of the recommendations, then what? So, what? And, what are we recommending implementation-wise? This one, to me, again, is an exercise of cutting and pasting, for whatever purpose that serves.

Emily Taylor: Peter.

Peter Nettlefold: I think Kathy's pretty much said what I was going to say in a different way. I was going to say it's likely that, given the way that we've written them down, even just as we've written down, at the moment, we probably would be recommending something which goes along to policy development, I think.

For example, I believe, if I read it right – I missed the conversation yesterday – it looked like we were going to say there isn't a privacy and proxy policy and you need to get one. So, yes on some issues, maybe more than one issue.

We are going to be recommending developing policy, so perhaps we can, as we go through the specifics, look at what...each

recommendation comes along with a mechanism to take it forward, so perhaps we can do it as we go, or at the end as Kathy suggests.

Emily Taylor: Okay, Lutz.

Lutz Donnerhacke: A centralized WHOIS policy document doesn't mean that it's a new policy. It might be a collection of existing facts so that we have a centralized source where everybody can look up what the problems are, whether they are not fans of this or whether they are not liking, with which they could hold us proud of this document or the part of the document which they are very uncomfortable.

Then they may start a policy development process as part of our scope to recommend to make everything clear for everybody. But, what we want to achieve here is that we have a centralized one which points out where the problems are, what are the current state, and put it on the page or in another source where everybody has easy access to it.

Emily Taylor: Thank you. Peter.

Peter Nettlefold: I don't want to hop on this topic, but I guess the other reason is I question exactly how valuable this will be. An exercise by itself

is...we don't have a single, centralized policy. If we're looking at the RAA as the source of a good amount of that, we don't have a single RAA. As of next year, I believe we're going to have three versions, at least, or more.

So, there isn't a centralized single policy, it would seem. If we're looking at the status quo, there isn't a single one.

Kathy Kleiman:

Although, happily, it turns out, because I was actually going through and matching section by section. I can't say I did it all, but going through the 2001, 2009 RAA and on our stuff, at least, I think I was going through all the availability sections – identical wording. In most places, identical numbering, although the definition was off in terms of numbering.

But, the definition was the same and then the, again, just on the availability was exactly the wording, 2001, 2009 on RAA. There may be others on accuracy.

Sarmad Hussain:

So, the availability of WHOIS data in internationalized domain names is going to be a difference, at least for the new version which is coming up.

Emily Taylor:

We're going to make a recommendation that the policy is documented. I'm getting the sense that no matter how irritated we might be, that there isn't a single repository of a single statement of the WHOIS policy that we feel that there are more important recommendations that we have to make than this.

So, if in three years' time, if this hadn't been done, we'd kind of shrug and go, "*Ugh*, how annoying," but we wouldn't go, "This is a disgrace," would we? Would we? I don't think so, so I think it gives us a sense of the priorities in the way that we present these recommendations.

If this is the first one, I think that standard practice might be to present your most important one first. So, this one might not be first.

Kathy Kleiman:

I'm going to argue to keep it first, just because it's a starting point. It's everybody's starting point. I'm not sure you can go farther. It's a really good starting point. We started to look at the policy, couldn't find it in one place.

For everybody who follows us, let's make this accessible by putting it in one place. So, it does seem like a good -

Emily Taylor:

I'm certainly not going to die in a ditch about it, I'm just -

Kathy Kleiman: But there's definitely...I share the sense in the room that let's jump into the deeper ones that are out there.

Emily Taylor: Are we comfortable where we are with this? Can we live with the wording? So, we've got ICANN's WHOIS policy is poorly defined and decentralized. The recommendation is to create a single WHOIS policy document. Document the current gTLD WHOIS policy as set out in the gTLD registry and registrar contracts and GNSO consensus policies and compliance procedure. Sarmad?

Sarmad Hussain: It is poorly defined or poorly accessible?

Kathy Kleiman: Consensus procedure.

Sarmad Hussain: What I was trying to say is it's pretty clear on what it says, so it's not poorly defined, is it?

Bill Smith: I object. Seriously, I still maintain that it is not defined by most generally accepted definitions of policy. It is not written down anywhere in a single place. There's lot of threads, bread crumbs,

whatever, that we tracked down, but there are things that conflict in the pieces we've found.

Emily Taylor: We've got Lutz.

Lutz Donnerhacke: We have a lot of appendixes and various documents defining or trying to define what WHOIS service might be, but they are not centralized. We have different understandings in which data to put in, in which form they have to present. They are just copied from document to document. They are not really defined.

Emily Taylor: Can I make a suggestion? I really don't feel passionately about this, but I think we ought to just consider the status of the AoC statement and the GAC principles, which are the other statements of WHOIS policy that we're aware of.

What do we say about this? Do we say that this exercise, this documentation exercise, should consider the status of these, or that it should highlight if they are inconsistent with the AoC or GAC principles? What do we say?

Given that our mandate is a sort of confident statement of policy in the AOC, what do we say? Sarmad?

Sarmad Hussain: What you're saying is part two, then, right? Which is equally necessary, but then the moment you start going in that direction, you start moving on from part one.

Emily Taylor: Peter?

Peter Nettlefold: Yeah, I agree that's part two and I think what Emily said, from my point of view, would be a very useful first step or part of a step in part two.

Kathy Kleiman: Part two of this?

Emily Taylor: Part two of this, I think, because do you remember Sarmad was saying part one – document existing, part two – move it forward in some way. Can I hear opposition to this? Olof?

Olof Nordling: Well, opposition or not, the comment from Michael, "If the policy is not synchronized and hard to be identified, it is poorly defined, unfortunately." End of comment.

Wilfried Woeber: Yeah, Wilfried. Sorry to be nit-picking again, but I'm not happy with the term decentralized. Unfortunately, I can't come up with a better wording immediately because I think a decentralized policy is a different thing than what we want to say. What we want to say is that different parts of the stuff is written down in various different places.

Kathy Kleiman: I guess I'm not sure now. I understand the clerical exercise of documentation, in part because I've been doing it for the last six months in pulling these pieces together, as has James, and you've been putting up with us doing it.

AoC, GAC principle, now the same questions. What are we recommending? Where is it coming from? Question – does it belong right here? Does it go farther down? All the same questions that have been asked all along now come to the fore.

Emily Taylor: I think I'm learning that where you think you're in agreement on WHOIS, ask more questions and you'll soon discover that you're not. So, we're happy to recommend that we do the clerical exercise. We're unsure about where we stand on these other documents, on Sarmad's proposed stage two, I think.

Lutz, did you want to come in on this? Sorry, I thought I saw you waving. Peter.

Peter Nettlefold:

While we were just talking about the various wording for this decentralize, it occurred to me that I think we actually had some pretty useful wording, which we all agreed upon in our discussion paper, which talked about the documents being scattered and so on. I'm not sure whether that's going to be relatively easily modified to fit this purpose, but it may be a place to look to start.

Second point, as to what we would recommend, both of the documents, they're very different – the AoC and the GAC principles – they obviously are for different purposes and so on. I understand that they're not policy and I'm not advocating anything one way or another.

The issue which we identified as a review team months back was the fact that they were part of this framework and it wasn't clear exactly where they fit in. It may be useful to ask ICANN to clarify where it fits in. I think this fits in with the ICANN structure perfectly well. They signed up to the AoC and the GAC gave them the principles and they should respond under the bylaws.

So, asking them to clarify their response, their position on the AoC and the GAC principles and where they fit into this framework, seems to me, perfectly reasonable. We don't tell them to consider them in a particular way; we ask how they consider them.

Kathy Kleiman: Peter, would it make sense to move it to, say, after privacy proxy, just for argument, because after that we've gone through access, accuracy, availability, a lot of the needs...when I think about how we're laying out our chapters, so kind of echoing back a little bit to Sarmad, needs of law enforcement, consumer trust, we're kind of looking at the policy and then comparing it against other needs that the AoC asks us to.

When we circle back to the end, is it, now, given all this data, go ahead and evaluate everything, the policy and its implementation, its compliance, against what the AoC tells you to do.

Emily Taylor: Kathy, can I just suggest that we focus on the questions and then deal at the end with the order and the logic, because I think otherwise we'll lose our thread, maybe.

Can I suggest that we take about a five minute comfort break, since we're all feeling a little bit hot? That's an American term that I'm not allowed to use, isn't it? I'm hot.

[background conversation]

Emily Taylor: Okay, let's get started now. We've got the air conditioning a little bit better, so hopefully that should improve at least my energy level in the next session. I think we've probably aired this issue.

I'm keen to just keep doing this iterative approach so that we don't all just sink down into the weeds, really, on this.

I'd like to just do next this idea of the strategic priority, which is our number three in our brainstorming. It's a fairly new area so I think that we could probably deal with it. It could do with some discussion amongst us.

The people who were there yesterday, we all got quite fired up about this, so I'm interested to know whether that sort of euphoria has lost it overnight or whether we now have woken up a sense of remorse and shame.

Why don't we just scroll down now to issue number three, which is called strategic priority? Would anybody like to introduce this topic, or to propose a straw man for some wording?

Peter, you weren't here yesterday when we did this...oh, we're back. Kathy, would you like to take that one? Anybody like to explain it? You can't remember.

Bill Smith:

Well, for me, I actually scribbled some stuff down in the executive summary when I wrote it. Neither ICANN the corporation or ICANN the community have seen the need to charge an individual or group as responsible for WHOIS. Basically, WHOIS just kind of lives off someplace in the organizational structure of the dot org

or the corporation, yet it's one of the four things called out as most important in the Affirmation of Commitments.

Personally, I think that's a strong disconnect and that if you look at what has gone on, there is no place to go when you have a question about it. The Compliance Team is the closest thing to it and they take a very narrow slice through, appropriately, I believe. They only should be looking at the contracts and things in that area unless they are told specifically to go beyond that, so nobody is looking at this from a forward-looking perspective.

Emily Taylor:

Peter.

Peter Nettlefold:

Questions, I guess, because I wasn't here and I quite like the idea, but I guess looking at it, I'm wondering if we might run into a similar debate to the one that we just had when we try to get some words down.

As I read it, we're looking at getting someone on the board and staff responsible for WHOIS, making it part of the strategic plan, allocating a budget. The question is for what?

From what I just understand from Bill, it's not just Compliance, it's something else, so the next thing, it seems to me, that we could charge someone with is maybe ensuring that our recommendations

progressed or monitoring the progress or something along those lines.

The question, then, becomes the two ways that it's likely that those may progress is through contract negotiations or policy development processes and what are we charging the staff or the board to do in that space? Are we saying that there should be a staff whip making sure that the contracts get renegotiated or the policy development process goes on?

I missed the discussion yesterday. I love the sentiment. I wonder when we look at the data, what are we asking for?

Emily Taylor:

Thank you. Does anybody want to comment? Susan.

Susan Kawaguchi:

I agree with you completely. It's definitely vague at this point. I think we could flush it out, though, and come to some key points, but at the end of the day, ICANN's going to be the one that is going to have to figure that out, and maybe just by making it a point of recommending it, that we will get closer to what we really want from them.

The other thing is, and I saw it yesterday and now I can't find it, somewhere in the recommendation, and it was not me, but in our original 70, we had put in some language surrounding having an

action plan for ICANN and giving them a three-month period to review our final report and come back to us with an action plan. I think we should probably put that under the strategic priority, also.

Emily Taylor:

We've got a comment up on the screen here from James to say, "Do we believe that to be true?" I'm not quite sure what that refers to, but the second part is clearer. "I think that represents a fundamental misconception about ICANN. The staff/organization exists to do what we, the community, tell it to do. We should not expect staff to take the lead on this. The lack of focus reflects an impasse within the community, not indifference on the part of staff."

Responses, comments? Oh, goodness. We'll go Wilfried, Peter, Bill.

Wilfried Woeber:

Just, maybe, a funny answer to that. The AoC is not signed between the US government and the community; it's signed between the government and ICANN.

Emily Taylor:

Thank you. Peter, were you in the queue?

Peter Nettlefold:

I agree with Bill. I guess that's why I raised this point.

Emily Taylor: It wasn't Bill, it was James.

Peter Nettlefold: James, sorry, James. I agree with James. Yeah, I agree with James. We need to be clear what we're going to ask staff to do, or whoever is charged with this, to do. So, if we charge them to take our recommendations forward and make sure they don't slip off the agenda, that's quite clear, but just asking them to be the lead on something and take a leadership role, I think we need to be clear about what we are asking them to do.

The reason, again, I asked this question about what would their role be in terms of taking our recommendations forward, it is because potentially we run into this structural question. There is an impasse within the community, and from my point of view, part of this runs into the way that these issues are dealt with within the community.

As Bill has alluded to and several others are all aware, there are a couple of ways of doing this thing, these things, and we've got to be very clear about what we're recommending and what we hope to achieve. We, as the community, will recommend something which will go off to a different part of the community.

There are couple of ways of doing these things and we've got to be very clear about what we're recommending and what we hope to achieve. We, as the community, will recommend something which will go off to a different part of the community. I know that the conversation we had before about everyone can participate in a GNSO policy development process, it's not clear to me what that means in practice, what participation means, that seems that there would be different roles according to different people and so on, so I think we've got to be really clear about we think we can achieve and the wording we use around it.

So I think I'm agreement with James and just again putting it out there. I don't want to keep getting bogged down in this stuff, but I think we will face resistance if we're not very careful about the way we phrase what we're putting forward.

Emily Taylor:

Thank you, so what we've got so far is that we all have a sense this is important and shouldn't get lost. We understand that the role of staff within ICANN is not to take a leadership position in terms of policy development, but there may well be coordination, make sure the ball isn't dropped, make sure that these recommendations are followed through on, yes. I've got Bill and Sarmad.

Bill Smith:

So I largely agree with James, I think the reason the things haven't moved forward is that it's an impasse in the community, and we have an opportunity to potentially break that log jam.

I partly agree that staff in a sense serves at the pleasure of the community and does what the community asks it to do. At the same time, staff and in particular the Board, so it's really the Board, the Board has a fiduciary responsibility to the corporation, okay. They are responsible for the operation of the entity, dispensing funds appropriately, making sure that they adhere to the by-laws and any other charter documents, Okay, it's a pretty important responsibility and ICANN is a public benefit corp.

So the Board yes, has to pay attention to what the community says, and the community has a responsibility and obligations to do things, but the Board actually has the authority, and in fact the duty to do things independent of the organization, if it is appropriate in their fiduciary responsibility.

So they do things like appoint a CFO. The community doesn't tell them to appoint a CFO; the Board knows to do that. And I would suggest that there are many things like this that the Board or the Executive Team, Management Team of ICANN is doing without specific direction from the community.

And I submit that not having someone paying attention to WHOIS as a staff position, or not suggesting that the community do something with it is – it's a problem, okay. Yes, and maybe we need to tell them what to do, but we don't have to wait for the community to say that you need to do this. The Board could do it, and they should act, I think.

Emily Taylor: It's the differentiation that the community does policy, the staff does operations, and the Board does strategy. So where are we saying this fits? No, you're shaking your heads. I've got on my list Sarmad, Susan, Peter and Kathy.

Sarmad Hussain: So as far as compliance and number of people are concerned looking at compliance as from ICANN perspective, my question would be that would increasing people in compliance and focus in compliance really improve WHOIS, or is this really the current policy at this time is not at the level we are even compliance can't get us there.

So is that really a compliance issue, or a limitation in current policy issue. And will really that much focus on compliance and more staff members on it do the job or not. So in case of compliance, then could we articulate what we want to say very clearly that this is what the staff really needs to do, which it's not doing as far as existing policy is concerned, which will improve WHOIS significantly. And if the improvement is marginal, then is this really something we need to go and do?

Emily Taylor: Thank you, Susan, then Peter and Kathy.

Susan Kawaguchi: So I agree with you on the compliance, right now they don't have the ammunition, they do what they do. I mean they can improve

several things that we identified when we were down there, but in general they do not have anything in the RAA or the registrants are not bound to enough to be able to really allow them to do much, though they did see an importance of putting one person on WHOIS, and Khalil is now that point person.

So in that aspect, it sort of shows that they've recognized within their group that having a center point of contact for a WHOIS issue is important and I think for that same reasoning, it's important at either the Board or staff level. And I can't tell you where that belongs. I don't think it's the Board, I think maybe it's the staff, but so that when all of these sort of issues that don't seem completely connected, but are related to WHOIS could be sort of thought about at a strategic level, then on the staff, I'm assuming, I think we would get farther in resolving issues with WHOIS, if we had a staff member that was focused on it.

Emily Taylor: Thank you, Peter, then Kathy.

Peter Nettlefold: Thanks, I'll channel Kathy from the previous discussion and suggest that we throw out a straw man. So I've just been drafting, I know it will contentious potentially, every single word of it will be contentious, as I was just have a scribble, I already don't like any of it myself, but we've got to start somewhere. So ICANN should make WHOIS a strategic priority, this should involving allocating sufficient resources –

Emily Taylor: Can we capture this?

Peter Nettlefold: Yes, so ICANN should make WHOIS a strategic priority. This should involve allocating priority – sorry, Alice I’ll slow down. This should involve allocating sufficient resources through the budget process to ensure that ICANN compliance staff are fully resourced to take an a proactive regulatory role and encourage a culture of compliance – I’m sorry, encourage a culture of compliance and we also – I’m not sure, do we also want to say ICANN should nominate a person responsible for overseeing WHOIS compliance and blah, blah, blah, put a contact for the community, I’m not sure what – I’m just looking here, we’ve got the Board/Staff responsibility. Someone may want to do the last sentence there, but that’s a start.

Emily Taylor: Thanks for that Peter, and thanks for introducing it by saying that you don’t like any of it, now, but I think it just helps us to respond to it. What do we mean by this? What do we want this person to do? What role do we imagine they have? Let’s bear in mind the strong comment that James made remotely about this. What is the role – what are we asking for here? And I’ve got Kathy, Bill.

Kathy Kleiman:

First, thank you to Peter, because I was trying to draft something and I didn't quite have the words, so this is something to work with which is great. And actually I really like the first two sentences, ICANN should make WHOIS a strategic priority and that means really that which involves, you know allocating sufficient resources, I like that.

Regarding the last sentence, ICANN should nominate a person responsible for overseeing WHOIS compliance, it sounds like they have, which is great. But is it a little more? Let me share that, there is a person out there, certainly within the GNSO and we've heard her talk to us many time, Liz Gasster is the point person on WHOIS. So when we're thinking that there's a need, it's something more than Liz who is phenomenal, who's intelligent, who is extremely well-versed and who's deeply involved in the details. There's something else that's missing.

So I just wanted to throw that there at least as a starting point for beginning, what is it either that Liz isn't doing without picking on her personally, what function is it that still needs to be served, and I may throw out that it may be a cross-community function, something outside the GNSO, but I'm not really sure what the answer is.

Emily Taylor:

So your answer to your own question is maybe there's a coordination role and an outreach role or something like this that doesn't undermine the policy development function of the

community, but simply ensure that there's just – you know we found this ourselves, I think in our journey, that it's so difficult to keep track of all of the activity relating to WHOIS at any one time, so that this is sort of the subject matter person, but we already have this. So I'm just asking you to answer your own question really I think.

Kathy Kleiman: Yes, there may be something out – you said a plus one for what you said.

Emily Taylor: I've got Bill, Olof, Susan, thank you.

Bill Smith: So for on the language, I agree with Peter, I don't like it. I'm feeling very Dutch right now. Actually, I like most of the – well, the first sentence definitely and also the sufficient resources through the budget process, I would put a period there or to ensure that ICANN, I don't think it's just compliance staff, okay. And that statement says well WHOIS is all about compliance.

The thing for me that leaps out as an example and this wouldn't be everything but an example of what a staff person charged with WHOIS would be doing is to recognize that – so through the policy development process IDNs were allowed, right, I think that was back in 2009. So we're now two years later and we still don't

have a WHOIS solution for IDNs, right, and it's probably two to five years away.

And that should have been done as part of the policy development process in my opinion, or someone in staff should look at that stuff and say wait a minute, we're going to put this policy in place, and we have no way to support fundamental pieces of the domain name system.

So I think it's a much broader – if it is a strategic priority, right it's cross-cutting, maybe it's matrixed, I don't think we need – I think compliance may have enough people to deal with their compliance issues if all the other stuff in WHOIS is cleaned up. But also some of the stuff that we encountered Susan and I and James when we were in Marina del Rey around, you know basically asking questions of the compliance team and for me it was frustrating at the time, and we said well why don't you do X, and like well it's in the contract. And they looked between those lines and in retrospect as I look back on it, that's what they should be doing as a compliance team.

But there are other things that could be done that ICANN could do in the spirit of improving accuracy or whatever, but it needs to be done by a different group, and that's the type of thing that I would see here is that somebody, not compliance, which is pretty much retrospect of looking for error and other things, but prospective, how can we improve, how do we on an ongoing basis as Peter pointed out as an example following up on our recommendations, who inside ICANN is going to do that.

And I think it could either be staff or the dot org, it could go either way, but someone needs to, I think, pay attention to that.

Emily Taylor: Olof, and then sorry, Susan, I lost track, were you in the cue.

Susan Kawaguchi: Except that Olof is going to lead into this comment, I think that's –

Emily Taylor: Okay, you're not in the cue. Okay, so then I've got Olof and then Sarmad wanted to come in, haven't I.

Olof Nordling: All right, this is coming from James or actually (inaudible), saying that the problem is that Liz, despite her genius and best intentions doesn't have the authority to propose or advance WHOIS initiatives. She, like the rest of ICANN are reactive on whatever the community asks her to do.

And then he send the question mark somewhere in the middle of Bill's comment, and then he sent a link, a URL to yesterday's announcement on the ICANN website which was concerning IDN CC PDP working group posting for public comment and then he says that just one example, but there are lots of IDN work going on now. And I may add has been going on for quite some time.

Emily Taylor: Thank you, let's go to Sarmad and then let's regroup and see where we are please.

Sarmad Hussain: So I just wanted to fill you all in on where the work on IDN stands. And so this is coming from the two-page section I am developing for the report. So in the draft Applicant Guidebook in Section 5.2.3, it actually says and I'm going to read out, this is quoting the DAG, "Requirements related to IDN for WHOIS are being developed. After these requirements are developed, prospective registries will be expected to comply with published IDN-related WHOIS requirements as part of the pre-delegation testing," which is probably going to happen before the end of next year, right, yes. So in about a year's time or plus minus, a few months. So DAG's expecting the WHOIS IDN-related policy to be in place probably three, four, six months before. That's not going to happen.

So this is obviously one of the things I'm also going to raise in the report which I am going to present is that how is that going to be possible, and what impact does that have for IDN gTLD applicants for example. But in any case the IRD working group, which is the working group which is doing some of the work at this time –

Emily Taylor: Just to stop you stop you there, it stands for Internationalized Registrant Data Working Group, so it's the working group just looking at the data produced by WHOIS, yes in IDNs.

Sarmad Hussain:

Right, and that's GNSO for exactly looking at – yes, so how the data for WHOIS should be internationalized, and it's a GNSO SSAC working group formulated by resolution of the Board. So at this point they have just identified the recently released report for public comments, and they just identified all the issues, they're not even moving towards what the solution could possibly be. So that's really where the status is, and so it's not happening any time soon. It's a very slow process just to fill in some information.

Emily Taylor:

Thank you. I think we've been around a couple of times, we've got Sharon, I'm not sure it's our job to consider who is going to work on our recommendations and proposals at ICANN. We've been asked to a job, and then they will have to consider how to implement our proposals.

And James is saying we need to be sure that we're being factually accurate in what we're saying in these groups. I'm not sure maybe James if you're listening, you could just clarify what you mean in these groups.

But I think we're agreed that WHOIS is important and maybe we should just think about and try to express why we think it's so important that it needs to be this sort of high-level strategic priority.

What is it that's different from other aspects of the ICANN landscape that makes it so important, because if we're going to make a recommendation like this, we need to justify it, but secondly what is it that we feel is not happening at the moment. Let's forget about who, let's forget about how, what do we feel is not happening at the moment that should be happening. Okay, we've got some ideas, so Susan, Sarmad, Kathy.

Susan Kawaguchi:

So one of the recommendations that came out, and I didn't make this one, but I agree with it, it's number 24 in the old document. ICANN should ensure that as a clear unambiguous and enforceful chain of contractual agreements with registries, registrars and registrants to require the provision and maintenance of accurate WHOIS data, I can't read either. So it goes on.

But I think we need to be more explicit about what we want ICANN to do here, because you know you could look at, and the language isn't there right now, but you could look at the language that Peter proposed and said, you know somebody in ICANN can look at it, and say oh, no, we already do that, Okay, check, we're done.

So we need to be more definite about what we're asking them to do, and I think as we've looked at the WHOIS policy and we've looked at the registry and registrar agreements, I don't think that there is an enforceful chain that they can rely on. I mean we've seen that in our visit to the compliance group. It's yes, they would

like to change things but they can't because they have nothing to sort of put their hook into.

Emily Taylor: Thank you. Sarmad, Kathy and then Olof. Is it a response to the question that I had, could we just visit that first.

Olof Nordling: Yes, James responding to the request about clarification, and James says factually accurate: we should say we are not aware of any PDPs in this area like IDN, rather than ICANN is not doing any work in this area. So that was his explanation. Thanks.

Emily Taylor: Thanks for that. Sarmad and then Kathy please.

Sarmad Hussain: So the next section on communication that would require resources and budget, so I think that [drifted off] with the strategic planning section, that's what I've heard some of the people say as well. There is more than just compliance.

Emily Taylor: Kathy.

Kathy Kleiman: Are we looking for someone, and maybe it is under communications or the overlap of communications and strategic priority; are we looking for somebody that everyone knows who buttonhole for information. So if you want to know to talk to in the ccNSO about best practices and WHOIS, if there is such a thing, is there someone to go to in ICANN who knows that.

Is there someone, GAC member can buttonhole and say what's the latest in the GNSO? Certainly Liz Gasster is the expert on the GNSO, probably across the board as well. But is it about having someone very prominently identifiable like the compliance person which is great, should nominate a person responsible for overseeing who is compliant, and the fact that they've done it, let's say shall continue to fund it, or whatever it needs, you want to keep that person.

But are we also looking, and I know it's just one of many needs, but are we looking for someone that the whole community knows this is where I go to, to find out what's going on.

Emily Taylor: Thanks, I've got Peter and then Bill.

Peter Nettlefold: I'm just announcing I'm going to have to go unfortunately, sorry, my apologies, I don't have any conflicts tomorrow, so it doesn't make my apology any less weighty this time, I'm really sorry to be leaving, but I don't have anything else on tomorrow essentially, so

all day. So I'll see you as soon as we start and if we don't finish too far over time that's okay by me, probably not by anyone else. But good luck this afternoon everyone.

Kathy Kleiman: Wait a minute before we go. Any answers kind of on what we're talking about, like any –

Peter Nettlefold: Yes, I really like what you said and the thing which I was going to add that you know I didn't want to drop my idea and then walk out the door kind of thing is that I was just thinking about the difficulty we've had with starting with these two now, and it's probably a discussion we needed to have, is that there wasn't really any wording already, it may be the case when you guys come to the next couple; and I think Susan prompted my thought in that there are 75 recommendations there, a good number of which we probably all agree with.

And as we discovered in Marina del Rey, the one in which Susan just referred to, the accuracy, I think we almost all agree with most of those. There were certainly some questions around proxy and privacy. It might be useful to marry the two up as a – rather than inventing new words, because we know that's tricky.

Emily Taylor: I think that's a nice suggestion, thank you Peter. Sorry to lose you from the discussion today, we're going to start at one o'clock

tomorrow I think, or is it earlier. It's one, yes. We start with compliance one o'clock tomorrow.

[background conversation]

Emily Taylor: I have no idea, yes, so see you tonight. Thank you for your contribution. I've got Bill.

Bill Smith: So if this were a single individual, in companies I've worked in we would call them either a program manager, a project manager, a product manager, they would be responsible for making sure that all of the pieces for whatever it is, in this case WHOIS as a let's call it a product or service, but that all of the pieces were available on time, right.

And so yes, they would be the person you would go to. They may not be the only person; there may be lots of other people that would be working. They may not have direct management oversight over all of the people that would be doing things, but someone needs to pay attention, in my opinion, to all of the aspects of this, right. When you do internationalized domain names, well you better have an internationalized WHOIS service, right.

No company I have worked for would introduce a service and say it's complete and lots of fanfare and not be able to support it.

From my perspective, that's kind of what was done with IDNs and the fact that WHOIS is lacking there.

I think it's looking at things like compliance, and seeing are there enough resources and if not to pay attention to that. Is the Board paying attention to this that would be that person's responsibility I think? Is the community paying attention to it, it's mostly nudging the community, not telling the community what to do. But making sure that the community pays attention to these things in a timely fashion. Because we're all volunteers here, this is not our job, we will forget from meeting to meeting that something needs to be done, or doesn't need to be done, if it were a staff person, they would have project schedules, you name it, it would be their responsibility to keep all of this straight and keep us on track.

Emily Taylor:

Yes, I guess another point is that we don't have really – what accountability do we have for our decisions and our actions and it seems to me that there's nobody – there are a couple of things that people say about WHOIS a lot, and I don't know how to unlock them.

They say this got stuck in the wheels for ten or more years, and there is no consensus building on this. So how do we encapsulate this, how do we try to get the process moved on, is it – I just don't know what to – I'm not familiar enough with the guts of ICANN and how stuff gets done here to understand what you do. You know is it – because if it's nobody role, then nobody does it, do

they? It's not the community, because they're not accountable for their actions. They contribute, the Board is accountable to whom we don't know. And the staff apparently are you know – must do only what they're instructed to do by this amorphous community. I don't understand, could somebody help me please.

Dennis Jennings:

Okay, I probably don't have an answer for you, but I have to come to my – could you turn that down a little bit in the volume please – but I have to come back to my rather funny comment a short while ago. And I think there is a well-defined and clearly set out responsibility, and it's between the US government and ICANN as a company and whoever takes the lead.

Emily Taylor:

I'm not really sure, to be honest Dennis, and I don't want to put you on the spot. I think that we had started on this track, we're trying to get ahold of this concept that you know WHOIS is really important, is a part of the Affirmation of Commitment and there are certain things that we can see need to be done at quite a high level. For example, that sort of forward-looking gap, you know this is happening here, so what should be happening you know in the pipeline. This is a policy that's being developed and it automatically leads onto the following. Who has this sort of role?

I mean we've been told quite firmly by James to butt out, not give that role to anybody on the staff. Who should it be then?

Denise Michel: So depending on what area you're referring to specifically as I think you guys have a good understanding of how truncated some of the WHOIS activities are, strategic responsibilities fall with the Board, and with the CEO and the Executive Staff.

[background conversation]

Denise Michel: So ICANN strategic plan lays the range of strategic priorities for five year periods for ICANN.

Kathy Kleiman: Such as?

Denise Michel: They address a whole of range of issues from security stability and resiliency to international relations to new gTLDs. The strategic plan is highlighted on the website and pretty easy to find, so annually ICANN goes through a strategic planning process where it takes input from the community, amends the strategic plan and from that develops a proposed operating plan and a proposed budget.

But aside from that which is fairly high level, I think you guys are also talking about not only strategic activities but also keeping

track of and having oversight of the ongoing, who has activities in the various areas too, is that right?

Emily Taylor:

I think that we've identified WHOIS as a cross-community, cross-cutting issue that is not – it just doesn't sit anywhere in particular. So where is the appropriate place within this structure for it to reside. So I've got a list of people who put their hands while you were speaking, Denise, they're Wilfried, Bill and then Kathy, Olof. Thank you.

Wilfried Woeber:

I'll try again, and thank you for fixing it. I'm drawing from the environment and from the blueprint in the numbering camp and there is no formal distinction between the – for example in that area, the working group chairpersons or the employees of the ripe NCC. We are, all of us, we are just part of the community using the network.

So if anyone has the feeling that policy development has to start, or should start, then we just go ahead and propose that. We find the appropriate group, or maybe the appropriate, as we call it, the appropriate working group, and then we start doing that. And if the community sort of pulls along, then there may be success. If it turns out that nobody has any interest, this is a very interesting answer, and you take it from there, honestly.

The only thing that might happen later on is maybe in the names business more than in the numbers business, if it turns out during this policy development process or during the activities of a task force or whatever you called it, team, that there might be a conflict of interest between the person who started the whole process and eventually has to rubber stamp it or to agree about the outcome, then there are procedures in place to sort of – to not be involved in the final decisions.

So I don't see neither in our community nor in the ICANN community, I don't see this sort of this artificial boundary that someone who happens to sit on the board is prevented from sort of becoming active. I mean they probably have lots of other stuff to do, so they will probably not sit on a pile of spare time. I do appreciate that, but it could just as well be someone gets assigned, or you informally talk to I don't know the representatives from the At-Large committee or from the X-NSOs or whatever and ask them to start the regular process.

Emily Taylor:

Thank you, I've got Bill, Kathy, Olof.

Bill Smith:

So Denise, if I understand right the Board and the CEO and Senior Executive Staff are responsible for strategy that makes sense.

Denise Michel: You know with input from the community, they lay out a strategic plan.

Bill Smith: Right, this is strategic plan, part of those plans have been IDNs and new gTLDs. Both of these require internationalized WHOIS, Okay, Sarmad pointed out earlier that in the – I think it's in the guidebook, there's a statement around before registries are approved or operation is approved, that they have to comply with IDN processing, WHOIS IDN.

Nobody is going to get approved for many years unless an already existing technical standard is used. And so who would I go to, to point that out, and say I'm assuming, I either go to the Board or to Rod, and say who in the you know in this corporation and this community is responsible for that, making that happen, and why didn't it happen in time. Because an awful lot of money and awful lot of activity went around this stuff and it's going to be literally years late. I don't see how it can you know unless we say oh, we're going to go use IRIS.

Emily Taylor: Okay, I've got Kathy, Olof, Sarmad.

Kathy Kleiman: Just briefly on the IDNs, I would never had delayed IDN ccTLD roll out because an issue of WHOIS – I agree with the decision to go forward to create something even though there were still some

open questions, the community was demanding it, the world was demanding it, we're still answering questions. So you know that was a judgment that was made along the way.

Going back to Wilfried's comment, maybe I misunderstand, but kind of echoing what James is saying and what others are saying, you can make somebody on staff responsible, that doesn't mean you get policy or consensus. We are a grass roots kind of bottom up policy making group, and if we don't agree, it's extremely difficult to move forward.

I think what we're doing, and by putting someone at the top, I don't know, you know on staff, you can't force the policy groups to move, you can try to initiate things. You can try to communicate things. I think there's many, many things that we can offer and share, but you can't force consensus, it doesn't – you can try lots of different ways and we have. And we'll keep trying.

But I'm still wondering how we can bring more resources to the WHOIS issue, brings some new perspective, how we can encourage the community to bring more resources, reach out to more perspectives, and somewhere between strategic priority and communications, I think we're onto something, but it doesn't mean we get to the answer, it means that we kind of encourage new ways to think about it, and new communities to think about it with.

Emily Taylor:

Olof.

Olof Nordling: There's a thread to hear from James, starting with his comment that this is the meat of the controversy, or controversy management issue we discussed very early on in Cartagena I think, and then a little later, another comment regarding the plans, but those are developed in conjunction with the community.

And Kathy asked in the chat to James to explain what he meant with the meat of the controversy, and James responded with the following. Has ICANN properly managed the WHOIS impasse or does it give inertia to the status quo? Has it made efforts or had success in bridging the gaps, or is it waiting on the sidelines to be called into action? Is it pursuing success of systems or discouraging their development, full stop.

Emily Taylor: Sarmad, then Kathy.

Sarmad Hussain: So I just wanted to read another section of the draft Applicant Guidebook to further complicate the matters. So it actually says that when the applicant is actually applying for an IDN label, they and I'm going to read, "state whether proposed registry will support the registration of IDN labels in the TLD, and if so, how. For example, explain what characters will be supported and provide the associated IDN tables and variant characters identified

along with the corresponding registration policy. This includes public interface to databases such as WHOIS.”

So without having any guidelines or standards or policy on IDN WHOIS, they’re expecting the applicants actually to provide a detailed response to how WHOIS is actually going to be implemented in the IDN context at the time of the application. So that’s another inconsistency.

Emily Taylor:

Okay, and taking that inconsistency, so it just try to knit together the various threads of this conversation, taking that inconsistency, what do we say as a WHOIS team should have happened to prevent this sort of thing? I think the questions that James has proposed they are quite nice things to get the ball rolling, I’m wondering how far we can get in this conversation. Bill.

Bill Smith:

So I believe ICANN, the corporation, is responsible here. Yes, the organization should – the dot org is responsible for developing the policies and things. But the corporation who has had these strategic imperatives for years hasn’t “forced” or done anything to – I shouldn’t say anything, has not caused the ball to be moved significantly forward here.

And we now, Kathy, I agree getting the internationalized domain names out was a good thing to do, but in parallel with that, there needed to be work done on WHOIS. And there are solutions, they

are not perfect, but the current solution doesn't support them at all. So as consequence we're sitting now with some IDNs, and we're about to get new gTLDs with we don't know how many people applying, new TLDs, sorry. And how many domains actually come out through that and potentially a very large number of them with IDNs. This is kind of a recipe for disaster, and this too was known. And I submit that we're well behind in making this move forward.

Emily Taylor:

Okay, let's try and raise up above the level of the detail here. What are we trying to recommend to ICANN, the corporation; I want to remind people of what Wilfried has said now twice. The Board signed a commitment to the US government which included WHOIS as part of it, so who is responsible – no pun intended, who has responsibility for making sure that this works.

Bill Smith:

It's a covenant, it is a promise, it's signed by two parties, it could be signed by N parties. The promise is to the world, it's not just a promise to the government of the United States from ICANN, and it's not just a promise from the government of the United States to ICANN. You know an affirmation is a covenant, is a promise.

Yes, those two parties signed it, and there are things specifically in there from them, but it is not a contract between them.

Emily Taylor: I think that where we – if we're not careful where we end up is, everyone's responsible, so nobody is. So we either leave this and just go well, that's the way it is, move on, what's our next challenge, or we have to try to articulate what we want to happen as a result of this. Susan.

Susan Kawaguchi: Just a note that we're going to lose Denise in just a few minutes. So as long as we're talking, I don't want to cut you off, but I'd urge her to listen to what we're talking about, because I know there are a lot of things going on, but also any questions we can direct to her, as to – is what we're saying making sense, because I know she's worked with a lot of strategic priorities. We may be able to close the gap quickly. I don't want to – we may be able to move to something, if there is something.

Denise Michel: You're not losing me forever. I just have another meeting, I have to go pop into, I'll be back. So you can ask them today or tomorrow or send me emails. I'm happy to respond to that too.

Susan Kawaguchi: So one of the reasons we came up with the brainstorming session was to go back to a higher level, but in this instance I don't think we can do that. Because if we say we want somebody to be responsible for WHOIS, well maybe we already have that, you know. Liz works on a certain portion of it, ultimately the CEO

may be responsible or the Chairman of the Board, I'm not sure. So I think we need to be very specific in this case and say we want a high level staff member, Executive Staff Member with authority, and what are those authorities. And list out what we want done. Now, if we don't get them all, we don't get them all.

But if we don't go back to some detail, then we have this sort of wishy-washy yes we want this person, they appoint somebody, and then we have nothing. So I think we're going to have to put a lot of detail, and I think we could all come up with, you know we want a consistent policy that really follows that chain, and to put in some, you know and maybe then it has to go back to the GNSO for a policy development, but I do not think that we can walk away and finish this report without suggesting or mandating, whichever, recommending, however you want to put it that new policy has to be created.

Because if we do not have new policy, we are not going to fix anything, and yes, we are a review team, but in reviewing the existing WHOIS policy, and the implementation, we've discovered a lot of loopholes, a lot of issues that needs to be solved, and new policy has to be made.

Emily Taylor:

Bill, Sarmad.

Bill Smith:

To answer your question who is responsible, I believe it's the corporation, and therefore the Board in the end, right, because they are the dot org, right the organization, we show up, we do some stuff, we produce policies et cetera, but it's ICANN that actually has or used to have a contractual obligation, now they have right they make promises to the world.

They have, depending on what the Board members do, a fiduciary responsibility to make sure that they do the right thing here. The community can do whatever it wants, it can. And if the community wants to take the DNS and destroy it, the Board has an obligation to step in and say no. So that's, in my opinion, that's where the buck stops, it stops with them.

Emily Taylor:

Sarmad and then I think we're ready for a break. What time are we going on till today? Half past five? Six o'clock. If we took a proper break, like half an hour break and just take a walk, refresh ourselves, I want to have more progress than we're getting at the moment, we seemed to have got stuck. It might be we need to discuss something else.

It might be we need to go back to our 75 recommendations and go Okay, let's – you know we just do a sort of change the subject, let's go back to where we got to, we need some sort of change of pace, because we've got to come of here tomorrow evening with agreed recommendations, and we're not going to get there at this rate.

Sarmad Hussain: So to me it seems that we are going to be convincing we really do need to put the details in and be very concrete about what's motivating us to suggest something and exactly what are we intending to be done in response of that recommendation. And one possibility is to go back to those 75 recommendations and group them together in these, and then have a higher level summary of each of that section following the detailed recommendation, or after the detailed recommendations, so that's one possibility.

But just have a separate section with very high level stuff which is probably what most people will read would not be convincing.

Emily Taylor: Okay, Kathy.

Kathy Kleiman: Just before Denise goes, I wanted to ask whether... I mean we have Liz Gasster as the expert kind of at the GNSO level, but we've heard from many people outside the GNSO that they don't know who to go to for WHOIS, that there doesn't seem to be anybody driving the ship to the extent you can drive anything in ICANN.

Has the Board, and tell me if you think I'm wasting everyone's – has the Board ever thought about WHOIS to your experience and you've been with it for a long time, kind of a bigger picture of WHOIS, staff members that might be responsible more generally

to the community, kind of – has the Board been thinking about this idea that WHOIS, the interest in it is much broader than just the GNSO, and kind of how to manage that? Has that come up in your experience.

Denise Michel:

So going back to the year 2000, the Board has – various Boards have had discussions and have focused on WHOIS and various aspects of WHOIS, so there hasn't been, I think at one point there was a privacy committee created, it didn't actually do anything and was subsequently closed, but certainly from time to time the Board has discussed and been briefed on WHOIS in various aspects of it.

Kathy Kleiman:

If a staff member or if there was direction to the CEO to do something regarding WHOIS at a strategic level, would that mean anything?

Denise Michel:

Oh certainly if the Board directed the CEO to do something on WHOIS and it was within staff's ability to do it, of course the CEO would do it, if that's your question. And in terms of – so as you know different aspects of WHOIS are carried by different players and different departments within ICANN, so I know – so there isn't one person.

So as you know Liz, of course supports the GNSO and is not responsible for compliance and et cetera. But I think if the team is

suggesting that one page, there be a comprehensive public webpage within ICANN that carries all of the WHOIS information and is up to date. So what you're looking for is one place, and a person isn't – I don't know, if you're talking about information, then you're really talking about web-based information, because a community is not. If you're just talking about information sharing – are you talking about more than information sharing?

Emily Taylor: We're trying to get to somebody who is tasked with that proactive rather than –

Denise Michel: So you're talking more about accountability than information sharing.

Emily Taylor: It's more about driving the agenda forward, if there's not consensus, finding out why, working out whether there's bridge-building that can be done, what can be done to resolve this. It seems like this is a great bit reactive space where it's like well if somebody decides to do something, we can't really intervene and you know is there any mechanism within the existing ICANN framework, where somebody can be proactive who is actually paid to do this for a living?

Denise Michel: Yes, so I guess on the theoretical level the answer is yes, the Board creates Board committees to focus on specific issues that it wants to track or be involved in. The CEO ultimately is responsible of course for staff activity. Below the CEO, there is no one person that has the authority over all of the activities that staff engages in on WHOIS. Does that answer your question?

Emily Taylor: That's very helpful, thank you. I think on that notes, let's take a proper break, get some fresh air and come back, I want to sort of change the subject when we come back, and see if we can just end our session today doing something a little bit more high energy, maybe returning to some of the materials that we were doing, that we were reasonably happy with, whether it's revisiting what we did in Marina del Rey or our great big long list of recommendations, strip out ones that are duplicative, strip out ones that are useless, and see where we end up. I think that that might help to just free up our minds a bit, and help us to focus.

Kathy Kleiman: So which document are we starting with when we come back?

Emily Taylor: Think about it in the break, we could do one or the other. I'd like to think let's just work out what's going to be the most constructive use of our time for the remainder of the day. I quite like to finish today feeling like yeah, you know we got something

done here, and I think it will help improve our levels of motivation for tomorrow, and improve our sense of hope that we can leave Dakar with an agreed set of recommendation, which was our goal. Thank you.

[break]

Emily Taylor:

Let's get started, please. Okay, let's get started again and see whether we can make some progress. I think that probably the shortest place, the place to start which we might make the most progress on is this one, the multicolored document.

Just a reminder of where this comes from: this is based on our recommendations on accuracy and privacy proxies that we went to in Marina del Rey, so this was really the last one that we were working on. Let's start on page 2 where we've got a table. Has everybody got the document? Well done, Lutz.

[background conversation]

Emily Taylor:

You did? Okay. Now yesterday we did a sort of condensed version of WHOIS accuracy where we just said improve it, reduce the number of unreachables by 50% in the first year and then 50% again in the next year. What we had in Marina del Rey, if you can

scroll down to the heading called “WHOIS Accuracy” is I think a bunch of recommendations that we agreed. So first of all, let’s just pause there – did we agree these? “1. ICANN should ensure that the requirement for accurate WHOIS data is widely and proactively communicated,” so this is a communication one.

“As part of this, ICANN should ensure that its Registrants Rights & Responsibilities document is proactively and prominently circulated to all new and renewing registrants.” Okay. So thank you. Wilfried?

Wilfried Woeber:

The #2 here is fine. The thing that I’m... I think it’s just an issue of wording. The thing that I’m missing here are the sanctions as set out in this text only apply to a registrant but I think, if I remember correctly, we also discussed sanctions against registrars which on a repeated matter, repeated schedule fail to sort of live up to their obligations. I’m not sure whether we did it...

Emily Taylor:

I think it’s in the second sentence, isn’t it, in #2?

Kathy Kleiman:

It just doesn’t mention a sanction.

Emily Taylor:

It says “As part of this ICANN should ensure that clear enforceable and graduated sanctions should apply to registries,

registrars and registrants that do not comply with its WHOIS policies.”

Wilfried Woeber: Agreed, but then there is the specific sentence that these sanctions should include deregistration in cases of serious or serial noncompliance, but it’s just deregistration and not de-accreditation.

Emily Taylor: So just backtracking a little bit, are we comfortable with the first recommendation here? Just thumbs up, thumbs down, some sort of response. You two, yes? The first recommendation, I’m going to put a tick on my document here so that is rightly in green, and I think we can get an “Okay, this is agreed.”

My question is do we need to make it smart in any way? Do we need to make some timeliness? Do we need to put some sort of targets or are we comfortable that this says, is this our last word on communication?

Wilfried Woeber: Assuming that we are going to sort that into these five or six major bins, I think this falls under the, as a suggestion, as a requirement under the implementation theme to decrease the unreachables by 50%.

Emily Taylor:

It's also under a communications theme as well I think. Do we want to, where do we want to park this if we're going to work through? So just to recap, and I think if we can just focus on these, this is where we got to in Marina del Rey. Let's try to just whip through the ones colored green which hopefully we shouldn't be disagreeing too much on. We've already said that we agree to these. Let's just remind ourselves what they are, confirm that they are agreed and then categorize them according to our headings.

Wilfried has proposed that #1 is categorized into implementation. I've suggested maybe communication; I don't think either of us are going to punch that out particularly. So thoughts?

Wilfried Woeber:

I think it could fit into both of them. With regard to definitions of timelines, yes, it sounds attractive but at the other end of the stick it might get us into the pit of micromanagement because then we would sort of have to review all of those targets on the timeline, whether they are reasonable or not. So I'd rather lean towards letting ICANN do the right thing.

Emily Taylor:

So we could have a recommendation that "ICANN develop an implementation plan and budgetary impact analysis on all of these recommendations which would be presented in X time," or something like that, rather than going "And this needs to be done..." Fine, okay, so we will deal with the timeliness in a separate and global way if we can just record that.

So #2, so let's put communications/implementation on that. Anyone feel strongly it should be one or the other? Kathy?

Kathy Kleiman: Aren't we talking about registrars here? Because registries are not privacy or proxy providers, ever. ccTLDs may be but not the gTLDs. We don't touch the data; we don't gather it. We don't touch it; we don't have a relationship. Number one? Oh, I'm sorry, I may be in the wrong place. I was looking at a different number one, I'm sorry.

Emily Taylor: We're comfortable with #2. We just want to add the word "or de-accreditation" or "and/or de-accreditation" somewhere please.

Sarmad Hussain: So just to probably have a placeholder for any other stakeholders in this process, so it just currently lists registries, registrars and registrants. Eventually we may have privacy/proxy services and those kinds of other players in this chain, and so I'd just make it a bit more generic just to capture any other stakeholders in the process.

Kathy Kleiman: You can already hear James' objection that if there's not a contract we can't capture them yet. The revision that we now reach out

beyond the contracts; it's Dr. Sarmad's revision that we now reach beyond the contracts for de-accreditation.

Sarmad Hussain: No, no, I'm not saying for de-accreditation. I'm just saying in the first sentence where it says "enforceable chain for contractual agreements with registries, registrars..." So I'm just saying make it generic – listing these three but there may be more steps in that chain.

Emily Taylor: So your proposal is that we replace the words "registries, registrars and registrants" with something like "all members of the WHOIS supply chain" or "all participants in the WHOIS service" or something like that.

Sarmad Hussain: Something like that, and then...

Emily Taylor: You're shaking your head, Kathy.

Kathy Kleiman: Just you know, again James'... If we have agreement on this I wouldn't...

Emily Taylor: Is James still on the line?

Kathy Kleiman: He's not on the line. Yeah, but we're proposing extending the obligation to create enforceable chains of contracts into private parties where he expressly opposed it and introduced an objection. So I would just stay with what we've got here.

Wilfried Woerber: But we've already had this extension in this work because we are extending to the registrants. They do not have usually a contract with ICANN, so if we are talking about contracts within ICANN or directly with ICANN we only had to stop at the registry or some ICANN-accredited registrars. But what we want to achieve is responsibility for the whole chain up to the registrant. So we have to make, what we're saying here is those who have direct contracts should make contracts for their partners which include the following items. Otherwise the registration process is broken.

Emily Taylor: Bill?

Bill Smith: So if I understand what Kathy is saying it sounds like extending to privacy and proxy services would be problematic. So we can leave it the way it is if the registrars refuse to admit that these things exist, and then say as a consequence that if a proxy service or a

privacy service fails to – because they are the registrant in this case. If they fail to do their job then the action is yank the name. That's it. There's, you know... They are the registrant and that's the way it's going to have to be.

Kathy Kleiman: Of course just a note – it's not the privacy guys, it's the proxy guys because the privacy guys make clear that it's the registrant, who the registrant is.

Bill Smith: They may, but privacy service and proxy services are not defined terms in the RAA. We do not know what they do.

Emily Taylor: If I can try and... We're asking for a clear and unambiguous enforceable chain, which is actually what we're asking for here. Now, if there are elements in that chain which are not currently included in any contractual regime then that recommendation is not actually fulfilled, yeah. So I think it probably captures everything that we wanted or that various people have suggested. I really hear you, Kathy. I think that we need to, where we have got some hard won consensus let's not push this beyond the level where we're all comfortable.

Sorry, let me rephrase that: let's not push it beyond, so that we should all feel a level of discomfort but it should be equal and evenly distributed. (laughter) So we've got something here which

I think probably does what those who want to include proxy and privacy want to kind of look forward to, but we have to remember that there isn't currently a policy covering them. There isn't currently a clarity about the contractual chain, and we might actually risk defusing our own, or sort of making useless our own recommendation in this regard if we try to overreach. Yes?

Sarmad Hussain:

I think it would be easy to resolve this by a little bit of wordsmithing. In the first line, instead of "ICANN should ensure that it has..." if we replace that with "ICANN should ensure that there is a clear, unambiguous and enforceable chain of contractual agreement with registries, registrars, and down to registrants," it covers the whole tree and I think it takes out the contentious thinking that ICANN would be required to have a contractual relationship with the registrant.

Emily Taylor:

Yep, that makes a lot of sense. Lutz?

Lutz Donnerhacke:

Yep, I'd like to acknowledge that this is a good suggestion but I had a problem with deregistration. We have a long chain. If somebody behaves not correctly we get a lot of trouble if the recommendation is to remove the domain name registration. A lot of people and a lot of companies get very angry on deregistration simply because of technical or organizational failures. For

instance, [AFNIC] responsible for the France domain disconnects a domain name if one of the authoritative name servers does not respond with the IANA name service if asked for the name server for the root. So they have to check if the name servers are working correctly, and if they're supposed to use another root then the IANA root did disconnect the French domain names.

It's a method but it's not very well accepted by the domain registrants. And we should not put such further deregistration barriers in such a process. It's a very, very hard matter to bring somebody to full contract. I do not think it's appropriate here.

Emily Taylor:

I think that, Lutz, if I can just remind us all that what we're asking for is graduated sanctions. I think what you're saying is quite right in the current situation where it's sort of all or nothing, if you'd like. You know, you make a small mistake, a technical error like you've described and suddenly bam! – the registrants have lost their name. I think what we're going for here is the graduated sanctions which had a lot of traction with members of the group, with the Compliance Team, with pretty much everybody; and I think that would probably address your concern.

Wilfried Woerber:

Yeah, I agree with Lutz here that if the registrar actually fails to comply and the registrar gets de-accredited, this should not sort of result in deregistration of the domain itself. It should invoke a different procedure, like transfer to another registrar or something

like that. So I do see the technical and the organizational problem with the wording but I don't have any proposal right now.

Emily Taylor:

I have a suggestion which you like, which is that it should include "deregistration or de-accreditation as appropriate" so that it brings into play what the circumstances are and who's actually at fault there. It's sort of the old...

Wilfried Woeber:

Just to make clear we had problems with a registrar, like an accredited registrar which fails to comply during the last year. And ICANN put a very interesting procedure on this registrar. It requires the registrar to have a written notice on every domain change from the end customer, from the final registrant. So pulling out a whole reasoning chain, we're one of the resellers of this registrar, causes a lot of problems, a lot of headaches. But it's a very good response because the registrar is urged to make sure who owns which domain name; which reasoning chain is involved, and they have to clear up all the documents. It's a very, very, very hard job but it works and it's a good response without taking... The other possibility was to wipe out all the domain names; there's no possibility to do so.

Emily Taylor:

Thank you. So I think we're reasonably comfortable to where we've got to with that. If I can just remind you the changes are

that instead of “it has a” on the first line we have “there is a,” which I think actually makes sense rather than not making sense, and therefore an improvement. (laughs) And the final sentence saying “These sanctions should include deregistration and/or de-accreditation as appropriate.”

Wilfried Woeber: In the first sentence there was the proposal “down to the registrants,” and I like this phrase.

Emily Taylor: Kathy, you’re shaking your head on that?

Kathy Kleiman: I think again the objection from James is you’re bringing in private parties, including the proxy providers.

Emily Taylor: But the registrants are foreseen as part of the contractual chain in the current RAA, Kathy.

Kathy Kleiman: Then the proxy provider is the registry down to... I don’t know; I like it the way it is.

Lutz Donnerhacke: The proxy and privacy services can't deal with the domain name if there is no contractual relationship. If you have no contractual relationship no parties are involved.

Emily Taylor: Guys, we just seem to have lost our spirit of cooperation and collaboration in the last couple of hours and I want to ask why. What is going on that people are feeling so afraid about? Could you please share it with the group?

Susan Kawaguchi: I think we're getting down to the brass tacks here and there's no time to sort of let things go by. And that we need to argue this stuff out. So I'm not seeing it as a negative. I think we need to hash it out.

Emily Taylor: Right, okay. So we should expect to be in disagreement on some of the detail and we should be expecting to raise these concerns in an appropriate professional way, and there's no hard feelings amongst us. This is an important part of the process, okay. Bill?

Bill Smith: So I'm okay leaving this language the way it is provided that at some point in time we deal with proxy and privacy services.

Emily Taylor: And I think to be fair, Bill, we've got a whole range of proposals that try to do that, and we know in advance that this is an area of discomfort. It's difficult.

Bill Smith: Yeah, I agree it's difficult and it's uncomfortable but it is also the thing that law enforcement, which as Seth pointed out at the break is one of the things we absolutely must respond to in our charge in the AOC, right? That law enforcement says both of these things are a significant problem for them. So ignoring it because one or more parties at the table think it's hard or they don't want to go there, that's interesting but we signed up to do that when we agreed to come on here: we will take a look at this and make recommendations.

Emily Taylor: Thank you. I've got Sarmad who's been waiting for a while, Seth and then Wilfried.

Sarmad Hussain: So I'd like to look at it a little differently and that is basically adding that wording versus leaving it out has, we are saying, some implications. But what are the implications of both options on the accuracy of data which we are trying to address? And if leaving that out has significant implications on data accuracy or inaccuracy then we really need to think about it. If it doesn't really make a difference then obviously the wording either way is fine.

Emily Taylor: Yeah, so please can speakers address what difference does “down to” make?

Seth Reiss: Sorry, this is Seth. I was just going to explain what my point was during the break, it would be helpful. It seems that we were given a task and the task was specific, and it focuses on law enforcement, consumer trust. And regardless of our feelings we still have that task in hand. And so if we’re confused about how ICANN may allocate resources or anything, I think by focusing on that task we can discharge our duty and perhaps avoid some of the issues that we’ve been having this afternoon. So I think it’s just, I guess it’s just when things get difficult, just focusing on the big picture might be of assistance.

Emily Taylor: Thank you. Wilfried?

Wilfried Woeber: Yeah, I’m sensing from Kathy the idea coming back that we need anonymity on the network, anonymity. But I might be wrong, but sort of my point here is that using the language “down to the registrant” can be read in both directions. And whether you read it in one way or the other, the net result of that is that you have an endpoint in the chain of responsibility. And I really don’t care whether a proxy or privacy or any service actually does not have a

contract with the user or the owner of the domain – I really don't care. But if I follow this tree of responsibility this is the endpoint, and the endpoint is actually the responsible party. And I think we had agreement for that one.

Okay? So the registrant, with that mindset, could just as well be the privacy or proxy service. And that's sort of my thinking, why I think there is no big disagreement and it's probably how we interpret...

Kathy Kleiman:

But that's just it. It seems – and normally, as you know, I agree with Lutz on many, many, many things – we've had broad agreement over time. But to introduce language that could be interpreted differently is not what I think we want to be doing here. I don't think we, by changing two words, want to secretly bring in proxy/privacy services. Let's deal, as Emily said let's deal with proxy/privacy services upfront, dead center, targeted – not put in language that later someone will say “Well, the WHOIS Review Team meant this and they meant to include non-contracted ICANN parties,” or something.

This was language that was clear. Unfortunately I feel somewhat of a need to speak for James because he's no longer with us. I assume he really got sick but I reached out to him privately too and said “If there's any energy come on back in.” Just no ambiguous language. When we get there, let's put privacy and proxy squarely in the target. I thought that there was agreement here with moving

forward with some kind of work on privacy; also treating proxy differently, making sure the community understands the differences; defining them in a way that's consistent.

All of that there's agreement on. I just wouldn't put in language that even at this table we're all interpreting differently, and that's when as a lawyer, sorry, I start tearing my hair out because I'm the one that's been working through all this language for ten years. And no more ambiguous language. No, let's just be very clear.
(laughing)

Emily Taylor: So I think the terms "registries, registrars and registrants" are clear.

Lutz Donnerhacke: So we have to include the proxy and privacy services, we have to include the reseller chains and we have to include some hosters.

Emily Taylor: Sarmad, Seth?

Lutz Donnerhacke: Unless we have another model for selling domain names, and we have to include more.

Sarmad Hussain: So I'm fine with explicitly including them as long as we have the goal in mind that we do not exclude anything which has impact on

accuracy. That's what we're dealing with, right. So if we leave something out which has a significant impact on accuracy then we are really not addressing the problem.

Emily Taylor: Seth, you were in line and then Bill.

Seth Reiss: No, I come down where Kathy's coming down. We deal with it, I think I've always said that, and we define it. Now the problem is that we may have a little bit of a difficulty of developing a consensus on how to define it, and I think if we define it and just accept that we're defining it for purposes of analysis and not because there's a right and wrong way of defining it we may make progress.

Emily Taylor: What about going back to some of our hard fought and now ignored defined terms, because we were talking earlier with lots of enthusiastic nodding about data producers and data controllers. How do they fit in if we substitute these terms or don't we want to use them? Bill?

Bill Smith: Yeah, I would suggest not going there. Again, I'm happy with the three terms as they are. I agree with Lutz – we've got problems with resellers and other things. I frankly am more concerned with

proxy and privacy and I think however we're going to deal with proxy and privacy we may need to have a reference back to this recommendation.

I don't want them left out because they have been a significant issue raised I believe by every member of law enforcement that has provided input to us. So ignoring it, given that that's our charge...

Emily Taylor: We're on accuracy at the moment, don't forget. We've got a whole raft of recommendations in draft on proxy and privacy.

Bill Smith: But privacy and proxy, what law enforcement has told us is that privacy and proxy services have a significant negative impact on accuracy. So if we are saying...

[background conversation]

Bill Smith: Okay, I'm going to take a few minutes because I don't like being spoken over and told that my comments are inaccurate.

Kathy Kleiman: No, no, I agree. They were talking about access to the data – not necessarily accuracy of the data.

Emily Taylor: Okay, Bill's going to take a few minutes. Susan, do you want to carry on?

Susan Kawaguchi: I think anything that's important to us is worth fighting for so that's the way I'm going to take that. I don't think I was in the meeting in Marina del Rey because I had to leave early when the group actually did this, so initially with the wording on the #2: "ICAN should ensure that it has a clear and unambiguous enforceable chain." So I was not completely comfortable with that.

I like it better with "there is a clear..." because when I interpret that, I see that ICANN should be responsible for that chain being clear but it doesn't necessarily have... We're not asking them to change the whole universe and create a relationship between ICANN and the registrants in the way we currently have the wording.

And I also believe that the registrants, the registrars who have created all of these other types of services – be it proxy or privacy or reseller – that all feeds back to the registrar. So if Go Daddy, and poor James, I'm not picking on him directly, but if they have the domains by proxy business, which is separate from their Go Daddy registrar business they still use Go Daddy as a registrar. So I think that, to me, all those other ancillary services all feed back to

the registrar and I think we can deal with the proxy registration and the privacy issues and reseller issues at the registrar level.

So I'm comfortable with this but I don't like the de-accreditation either, but we'll go on to that.

Emily Taylor: You don't?

Susan Kawaguchi: No, I think there should be graduated sanctions, I like that. But de-accreditation is quite... You're blowing up the business.

Emily Taylor: But I think that as a last resort, if somebody's being like just consistently in breach, consistently flouting, you're saying just keep them on?

Susan Kawaguchi: No, I don't think so. I'm just hoping that, and I'd have to go back and look at it, but having been in the situation to force a registrar to make a choice they weren't comfortable with or face de-accreditation, at that point I said "Is there another way of..." We need to sanction these guys but I don't want to blow up their business. So you know, and if you have a registrar that is really just a poor actor overall then you have a lot of different sanctions to pull from, because if they're not doing what they should be doing they're probably violating all kinds of parts of the RAA.

Emily Taylor: Okay. Wilfried, you wanted to come in on that and then I want to encourage us to try to close this down if we can.

Wilfried Woerber: I would like to support Susan's point of view here. We should not create the suggestion that even a minor problem results in automatic de-accreditation fully on your side. On the other hand, I think we have to be explicit about the ultimate stick, and I think the ultimate stick really has to be de-accreditation. Because if you really get a fraudulent registrar or a registrar who on purpose does bad things just to earn money, the only real reaction to that is actually to pull the plug.

So I'm with you that it should not be the... And I mean whoever pulls the plug, whether it's ICANN to pull the plug formally or whether it's sort of the business environment pulling the plug on [DIG authority] within a couple of weeks. If something really bad happens then you just have to face the consequences. My worry is that unless we are very clear that the final reaction would be de-accreditation we don't have any stick at all, because every organization that does it on purpose would simply shrug their shoulders and say "Well yeah, there is no sanction anyway." And then we are back to where we are now.

Emily Taylor: And don't forget, these sanctions do already exist. They're already provided for so we keep the "and/or de-accreditation as appropriate" and then I think we're in agreement. I'm conscious now that we're down to half our membership and we're agreeing recommendations, and thus this is not ideal.

[background conversation]

Wilfried Woeber: How about double checking during the next phone conference?

Emily Taylor: I think the risk is that we do our kind of working through it and then we end up sort of rehashing the entire conversation. I just want to put that marker down so that if any point we feel like "Well..." I mean I'm very conscious that we don't have James here in the room which is a huge, huge disadvantage to our work because ultimately it's... And we shouldn't forget and we should respect that both Kathy and James are from the two Registry and Registrar Stakeholder Groups who are going to have to bring back and pay for and implement the impact of a lot of these.

Now, we discussed this in Marina del Rey; nothing should prevent us from doing the right thing. But we need to make sure that we are carrying everybody along with us. Okay?

[background conversation]

Emily Taylor: If you disagree with me, if I'm not... Air what you're thinking. So can we move on? Can we say that this is agreed even if it's a provisional agreement because we're now down to half of our membership here, as amended? That this fits under an implementation? Sarmad?

Sarmad Hussain: So are we then going to deal with proxy/privacy services explicitly separately or is that what's being suggested? Or are we not going to talk about them in the context of accuracy, or what's...

Emily Taylor: Let's see where we are when we get through to the end of our list on accuracy. Wilfried?

Wilfried Woeber: Worsmithing proposal – insert “any other intermediary,” “registrars and potentially other intermediaries” or whatever the English word for that is because this would cover whatever... Yeah.

Emily Taylor: Let's have a look at that and get reactions please: “registries, registrars and then...” “...and registrants.”

Kathy Kleiman: It's the same issue in lots of different words, guys.

Wilfried Woeber: There's only one registrant for domains. There's no intermediary registrant.

[background conversation]

Kathy Kleiman: Same objection – we're just putting in more words to say the same thing when there is a disagreement on the table about intermediaries and how they can be bound by ICANN and contracts. And again you've got... I'm put in the difficult position of having to channel James, which is you can see it in my face – it's very frustrating because speaking for registrars is not my world. But neither do I want James to come in at the end and say "What did you just do?"

We had a long, long, long discussion in Marina del Rey if I remember correctly about all the reasons why it's almost impossible for registrars to know who the intermediary is. So sure, they know who domains by proxy is but there are attorneys out there registering hundreds of domains for corporate clients. They haven't the foggiest ideas that they're really proxies, which is why we agreed on a recommendation that the proxy takes on the

responsibility of the registrant because the registrar – and then similarly, the registry – has no idea.

And if there's an attorney acting as a proxy, we've never even looked at – except Susan showed us some lists of proxy and privacy services, but most of those names I wasn't even familiar with. Except to the extent they identify them as a proxy or privacy service there's a long line of these private organizations, some of which are protecting trade secrets... How do you know? And this is creating a responsibility outside of the traditional contractual agreements outside of the ICANN chain?

Emily Taylor:

Wilfried?

Wilfried Woeber:

Technical question and I'm coming from a completely different background, but at that point in time when, for example, an attorney registers a domain for a company, is it at that point in time this attorney actually the registrant of the domain name?

Kathy Kleiman:

Yep.

[background conversation]

Wilfried Woeber: So if the answer is “yes” then I don’t get where the problem is.

Seth Reiss: Right, and I’d like to go back to something that Emily said very simply at one point because it registered strongly with me. When an attorney does that they are accepting responsibility for anything that happens. And they’ve done that before the internet was ever invented, and they have a contractual relationship with their client and they have the skills and the ability to get fully indemnified or they shouldn’t be acting as the straw man for that client.

So in my mind the only way that a proxy service should function is that way – that the buck stops with the registrant. And ICANN should not get involved in saying that the buck doesn’t stop if the registrant passes on. The privacy service is different. If there is a need for a privacy service, and there seems to be a lot of expression that there is a need because of data protection, because privacy is something that civil society treasures, then that is a different scenario. Then there’s a different mechanism that doesn’t apply to all.

And particularly because if you look at the company that needs the trade secret because they’re launching the big movie, that’s proxy – that’s not privacy. And so to me it’s a very simple analysis and it’s a very straightforward analysis, and I don’t... That’s why these two concepts have to be kept separate in my mind and I don’t see the problem if we handle it that way. And again, that’s my view. That doesn’t address the cost to the registrar in the

difficulty, although if we define “proxy” the way that we’re suggesting and I thought how Emily was suggesting, it’s not the registrar’s problem unless they decide to become a proxy service and then it is their problem because they have to accept full responsibility and contractually protect themselves; which is frankly something they’re doing.

Every time somebody signs a domain name agreement, whether it’s proxy, privacy or not, you’re indemnifying the service because there’s language in there that says that. I think if we move into this proxy scenario that I’m suggesting the service is going to have to be more careful about who they sign. But if it’s a big movie company then they can provide a service.

Emily Taylor:

Okay. We’re talking here about an unbroken chain of responsibility through the contracts. Seth has pointed out that where you have a proxy, they stand in the shoes of the registrant and there is an unbroken chain of responsibility there, so we don’t need to mention them in that. The intermediary that we’re discretely naming here is the privacy provider. That’s causing difficulties for some members of our team.

A way forward, please? So Michael’s comment is that he’s just listening; a little surprised on how the issue of intermediaries has turned out to be so important. He’s not so well experienced in the gTLD world so he’s rather try to listen to the arguments of those who participate in this discussion. So can we try to articulate to

Michael why we're getting stuck and why this is so important? And he's also saying that without clear definitions on who such intermediaries are, privacy, proxy, etc., it will be difficult to reach consensus. Sarmad?

Sarmad Hussain:

So I think I have a question for Kathy, and that's that I'd really like to understand more why James and you are suggesting not to bring privacy services, for example, into this accuracy debate; and what's the reasoning behind not bringing them versus the reasoning for bringing them is to make sure that the whole chain is actually included for accuracy? So I'm just trying to understand, and for my understanding actually...

Kathy Kleiman:

Can we go back to the language? First, I should share that I was part of drafting three of the four WHOIS studies for the GNSO; spent a lot of time in the Spring because I didn't understand the difference between privacy and proxy. The community doesn't understand the difference. The only privacy group I know, and I know Susan and Bill must know a million more, is Network Solutions. And there you have the registrant is named, and [Staton] spent a lot of time talking with us. He was a former General Counsel for Network Solutions; Network Solutions has since been purchased.

I spent a lot of time talking about the privacy service where the registrant is named but the data for contact is the registrar. And the

contact data was accurate, the registrant was accurate, so then it comes down to what are the reveal and relay provisions. And so whenever we're adding... So again, for me the chain of contractual agreements makes sense as registries – I know what registries are. I know what registrars are; I know what registrants are. I don't know what "any intermediary" means and I don't know what that binds.

ICANN's not creating these contracts so what are we asking a registry or registrar to do? What additional contracts are we asking them for and is that beyond an agreement that we've already gotten to? And haven't we dealt with this by talking about there's certain things we've agreed to, that we think privacy providers should go to – those that name the registrant and then provide other details; and those we've agreed to certain things that proxy should go to? And I would stay with that. I wouldn't keep adding new words in here that make me wonder what I'm going to tell my next registry/registrar client they need to do.

And if I can't explain it we're in trouble. If we can't explain it as a group and know who's being bound and how they're being bound then once you say "contractual agreement" that's contracts. That's bread and butter – there's nothing ambiguous about it except who they have to now contract with.

Emily Taylor:

Okay. I've got, I think I saw your hand up first, Sarmad, then Lutz and then Seth.

[background conversation]

Lutz Donnerhacke:

If I understand correctly we have to deal with three types of intermediates. One is the reseller – it's a company which has a contractual relationship with the registrar and a contractual relationship with the registrant, and acts on behalf of the registrant with the registrar. On the other hand, what I just said is not quite correct. There are some top-level domains which are defined by [Versa], so from the customer's or from the registrant's point of view I'm buying a domain from the reseller. So the reseller is part of the contractual relationship of the registrar.

From the registrar's point of view, it's somebody who acts as a party of the registrant. There we have an ambiguity, it's no problem. The next point that we heard here is privacy service. Privacy service is something which is to make an incorrect entry in the WHOIS database and claim it to be correct. The entry does not point to the registrant but to another party; the contact details point to another party. So in a formal sense the WHOIS entry is incorrect, it's inaccurate. But if we are going to allow privacy services we claim that these incorrect data is correct because we have a procedure to get over this step.

On proxy services, up to half an hour ago I understood it as part of the reseller chain. Now I understand a proxy service is something from the domain registration process, it's the final registrant. And

something behind the proxy is irrelevant to anybody who deals with domain names; or especially from the ICANN point of view, under a proxy service there's a full stop. Do I understand it correctly, the three parties that are intermediates?

Emily Taylor: I've got Seth, Sarmad and then Bill?

Seth Reiss: Yeah. I think Lutz is correct and again, I think Emily said this before. In the privacy service world right now that's inaccurate data. We need to make that right. We need to have a policy that says if we're going to have this service and it's important, it's not incorrect data – it becomes correct data. If we don't have a clear policy on these things then the intermediaries can function... They function in a wishy-washy world. They may have potential liability because their role and their responsibilities are not defined, but what's happening, or what I've heard is happening, is they get away with things they shouldn't be getting away with and it hampers the law enforcement and the consumer trust.

So the solution is to define what is acceptable so that they have to function within a structure that makes clear what their liabilities are, what their responsibilities are. And we don't have that now.

Emily Taylor: In a way I'd just like to pause, because in a way I think what you've just come out with might be a very nice formulation for

where we're going on proxies and privacy, which is that proxy and privacy services exist. If on the contractual analysis, the proxy is the registrant, the privacy data as it relates to the registrant is inaccurate; that without clear guidelines or policy about what types of behavior are acceptable or unacceptable, this situation is not meeting the needs of law enforcement and is eroding consumer trust.

It's therefore an area that needs to be, that work needs to be done on. It needs to be rectified so that the reliability, the rights and the responsibilities and the roles and responsibilities of the parties are clear. I think what's what you said?

[background conversation]

Sarmad Hussain:

So I'm just trying to see if we can... This is a recommendation and recommendations are not necessarily bound by what the current situation is – otherwise, we should not be recommending what are privacy and proxy services. So taking that argument forward, if this is a recommendation then we can perhaps suggest things which are not already there, right? And then looking at it from the other point of view, if we are going to constrain ourselves to exactly the arrangements which are in place at this time, then perhaps registrants should not be there because they're not bound by any agreements from ICANN; there are no contractual agreements.

So this is sort of a mix and match, and I'm... If you're looking at it from one perspective or the other perspective, either way the statement then should change. So I'm sorry, just sharing my thought process with you.

Emily Taylor:

I think that yes, you're right – we don't have to simply create or reflect the status quo in our recommendations; otherwise we are... I think we're all agreed that we need to recommend some sort of change. We also need to make sure that our recommendations are capable of being implemented, and so if we're going in one direction and actually adding elements that can't be achieved at the current time because they're not actually provided for in the current setup, then that might undermine our ability to have implementable recommendations, is my thinking. I can see everyone going "Hmm."

But can I go to you next, Bill, and then to Lutz?

Bill Smith:

So building on, I think what Lutz and Seth said, and I think you said this yesterday, Emily, actually I don't think there needs to be a definition of a proxy service. If you want the services provided by what we are using as a proxy service, you go to an attorney. Or you go to anybody, you draw up a contract; liability is where it is and whoever is the proxy is in fact the registrant. So if we leave... No, they are the registrant, okay?

Emily Taylor: And that's something that James was saying in similar words.

Bill Smith: Right. They in fact, they are, they must provide their information – their name, their contact information. They are the registrant and behind that is some contractual obligation that they have to do something with the domain name at some point in time perhaps.

For privacy services, the individual or whoever has registered, they are the registrant. The thing we need if it isn't in the WHOIS record is a bit that says "This information, while it is inaccurate in terms of the address and contact information does not match the registrant, it is accurate and it is allowed to stay here." And then whoever is providing that service, and I think this is where we probably need to recommend that there should be real policy stuff here, they have the obligation to respond as the registrant; or whether they pass it on or whatever.

But I think getting into this reveal, relay, all this other stuff is very simple. There is a registrant, and in the proxy case they respond because that's what they're doing – they're protecting whoever is behind, really, from knowing whoever is in fact the registrant. And in the privacy service the name is there but all the other details are hidden, but that information is inaccurate. And if we were to... If ICANN enforced its agreements all of those things would get yanked. Even though they talk about privacy and proxy services they aren't defined, but that's inaccurate data.

And I think that's the thing we need to potentially say, is "That data is inaccurate by the definition as we understand it. So if you're going to have privacy services you must have policy in this space to define what happens." Otherwise you revert to the "yank the domain," right?

Emily Taylor:

Lutz?

Lutz Donnerhacke:

I'd like to have a straw poll here for everybody. Please tell me what you understand by a "proxy service" from the consumer trust standpoint. If you are looking up a domain name for a company for instance, and you see the address and the name of an attorney, what's your feeling?

[background conversation]

Lutz Donnerhacke:

If you look up the WHOIS record for a domain name that you assume to be a company, and you look it up and you see it's owned by an attorney. Is it making trust or not? On the other hand, we just talked about gTLDs because ICANN is primarily making policy for gTLDs, but ICANN is also making policy for ccTLDs in the case they have a contract or a major agreement. We have a new, for instance, .eu. We have such contracts saying what

ICANN expects from the WHOIS service of such ccTLDs. What about these? The consumer does not distinguish between a ccTLD and a general TLD, so what's the difference?

If you for instance you go to France and apply for a domain name, you need to have a subsidiary in France and if you don't you are using a proxy service. If you are looking up such a French domain name you see a company but it's not the right company – what's the feeling about trust? Tell me how do you feel that proxy services make the consumer trust?

Emily Taylor:

Before we have a go at that one, it's half past 5:00 – our scheduled finish time. We have, I think we've agreed, one subparagraph of recommendation in our two days of working together, so congratulations. We have done something. We are quite far from our objective and I think...

[background conversation]

Emily Taylor:

Oh yeah, we have worked hard and we're struggling because we're actually no longer skirting around the issues – we're trying to confront them. So thank you for staying with it.

I think we could benefit from a bit more time today but I want to take you guys with me – I don't want to force you into some sort

of boot camp. It might be that we could continue for another hour, break for dinner and then come back; work through from about 7:00 or 8:00, or 8:30, something like that for a couple of hours? Or work through till 7:30? What would you prefer to do?

There's going to be a law of diminishing returns at some stage. It might be that we need to do something different like go away and individually draft some language. We've got language here that we thought we had agreed. One option is to go "Well sorry, it's green – tough, we've agreed it." Bill?

Bill Smith:

I'm happy to continue working for certainly a little bit. Coming back after dinner to me, I don't think that's going to work so well. Yeah. I guess I would hesitate to call what we are calling proxy services "services" – they're just a proxy. There is a proxy for the registrant. If they choose to operate as a service, great, but they in fact are the registrant. And privacy services – who runs those things now? Is it the registrar? Is it the registry?

Emily Taylor:

We've got a comment, I think it's from Michael saying, Bill, "Let it not be a pure legal definition but at least an unambiguous description," and I think there's probably a practical point here that these are terms of art or have become terms of art.

Bill Smith: They have, but why are they... Okay. I struggle with, now, why proxy service is in the RAA.

Kathy Kleiman: Exactly.

[background conversation]

Bill Smith: Right. The RAA is confused. I believe it's confused an issue. Privacy service makes sense, because the... Okay, so by definition a proxy, Emily is... I go to Emily and say "As an attorney I want you to register..." No, I won't do that!

[background conversation]

Bill Smith: How much, blah, blah, blah, and there's a contract and the name gets registered. Okay, great. Why does ICANN get in the middle of that at all? It completely has nothing to do with ICANN. And the information she supplies is accurate for her because I've executed a contract completely outside the lines and it is legal.

On privacy services I'm going in and saying, ticking a box when I create the domain name that says "I don't want to supply information. I want you or someone else to have other information

there,” and this information is therefore going to be inaccurate by the definitions in the RAA – “You can’t contact me through that information.” That’s inaccurate. And so there needs to be a policy piece that says “That’s allowable and here’s what you have to do; here’s the policy on it.”

And right now there is no policy on this. There’s just in the RAA there’s something that says “proxy and privacy services,” and somehow people are supposed to figure out what that means. That’s a big hole.

Emily Taylor: Kathy, were you asking for the mic? And then we’ve got Wilfried.

Kathy Kleiman: I find myself in complete agreement with Bill! Complete agreement with Bill – I think we should just end this right here, right now.

[laughter]

Kathy Kleiman: And I’m so tired I’m trying to remember exactly what I’m in complete agreement with but they were...

[background conversation]

Kathy Kleiman: But let me see... which is that the proxy is the registrant and that we can't know. Who is under that? Whether it's an attorney and maybe the attorney doesn't put "Esquire." Maybe I don't put "Katherine A Kleiman, Esq." after the registration – maybe I just put "Kathy Kleiman." You don't know.

[background conversation]

Kathy Kleiman: So what concerns be again, going back to the words it's not the concept – we've already agreed to the concept, guys, and we've also already agreed to the difference between privacy and proxy. It's the words. Any intermediary technically does bind those people – again, think of how people interpret words – does bind the person who's acting as a proxy because to them, the registrant in interest via an ongoing contractual relationship, or whether I registered the domain name for my mother, is somebody else.

So we're asking registries and registrars to figure out who that is and bind them, and that's where I'm concerned. Let's just stick with registries, registrars, registrants and deal with proxy/privacy someplace else. It's a legal concern, purely a legal concern of what those words mean.

Emily Taylor: Yeah, Susan, I completely apologize unreservedly. I forgot you were in the queue.

Kathy Kleiman: I think there was something else I agreed with on Bill, so just put +1 on both of his points.

Susan Kawaguchi: This is Susan. I completely agree if we change or if ICANN changes the RAA and removes any free outs for the registrar that's acting as a proxy, which 3.7.7.3 gives them an explicit out: "And a registered name holder licensing use of a registered name, according to this provision, shall accept liability for harm caused by the unlawful use of the registered name" – I love that, that's great – "unless it promptly discloses the current contact information provided by the licensee. And the identity of the licensee to a party providing the registered name holder, reasonable action of evidential harm."

Why ICANN feels it can get involved and say "Oh registrant, you're not really liable in these cases..." So ICANN confused this by adding this to the RAA and I can see how the registrars campaigned for that, but if we just end this, if ICANN makes the modification to the RAA and removes that I am absolutely fine with our recommendation. But I can't completely agree to our recommendation without the recommendation to remove part of this.

Emily Taylor: Thank you. Seth?

Seth Reiss: Am I next? I know I was waving a lot.

Emily Taylor: I'm sorry.

Seth Reiss: No, I agree with Susan and that was the RAA is confusing the issue and if we leave it in there it's going to continue to be confused. But more than that, and I'm kind of new to all this – I haven't been at all that many meetings. But my sense of it is we don't have to feel that badly for registrars because this is a part of the way they're doing business. They're using proxy or at least some of them use proxy and privacy to make themselves more attractive and to get business, and I believe that's the way the resellers came up. And I believe the same situation happened with the resellers – it was a creation of the industry.

And I believe the new RAA was introduced in large part to address the problem that happened because of the resellers and the fact that there could be irresponsible conduct without that clarification to the RAA to me is a parallel situation. And you know, I know it will cost some money and cause some grief in the registrar community but it arose in part because of some of their actions.

And I know there's different registrars who take different attitudes but it is there.

Emily Taylor: Thank you. Who was looking for the mic? It was you.

Sarmad Hussain: Yeah, the last contributions were very concise descriptions of what I was about to propose, and the proposal would have been let the community know that you cannot chicken out for the responsibility by pointing to someone else who is not part of the responsibilities system. So I fully agree with your assessment that this part of the provisions have to go or if this is not going to be ripped out then sort of we are back to square one and we have to deal with this thingie like with intermediaries and with all those sorts of things.

I really love the... I think this is one of the really fundamental agreements that we reached today or the clarifications that whoever puts his or her contact data next to the registration data of a domain is actually the registrant. I think this is exactly the implementation of what I was arguing in favor, like there has to be an unbroken chain of responsibility. And where the end of this chain is, the responsibility and the registrant is, whether it's for my aunt, for my dog, for your cat – it doesn't make any difference.

Emily Taylor: So just to take this on, oh, sorry Luz – please go ahead.

Lutz Donnerhacke: I'm not familiar with copyright or trademarks. If a trademark owner is using a proxy service is he liable for not protecting is trademark?

Susan Kawaguchi: From a practical point of view here, is that I've never been associated with a company that would use a domain name, make a site go live with content with a proxy registration. We always put our name on it. That said, that is in the gTLD world. In a ccTLD world I don't always have that because of a local presence requirement, so I will have to sometimes have a local presence. But I have, there is, I pay a lot of money to that local presence to indemnify and promise to indemnify them, so there is another agreement in that ccTLD world that Kathy alluded to earlier.

But at the end of the day they are liable; they go into court. They are pulled into court in many jurisdictions around the world and we then go in and explain "No, it's really us," and pay their legal defense.

Lutz Donnerhacke: So thanks for the clarification. That's exactly what I understand but sometimes there are misinterpretations of somebody else saying there is a misuse of trademark because there is a proxy in the registration data.

Emily Taylor: Kathy?

Kathy Kleiman: But take that one step further, Susan. You've got the attorney who's serving as a proxy in France. Then there's an action in court to take away that domain name. The attorney isn't hauled into court and says "You can't possibly say that anyone else is around or anyone else is liable." They're going to say "Hey, I have a contract with Facebook and I need a little bit of time for Facebook to come in and respond as to why this isn't a trademark infringement."

So you want them to turn to you. You don't put them on the stand and have them testify immediately to whatever your interests are. You would want, your legal staff would want the ability to step into their shoes and argue the case themselves.

[background conversation]

Seth Reiss: But the buck still stops, and under France law the buck would stop with the proxy. If you get a bad judgment, if Facebook gets a bad judgment the proxy is stuck with the adjustment and the insurance companies will take over from there.

Kathy Kleiman: But there's nothing saying "Full stop – the person of record can't possibly look behind him and say "There's really someone else that wants to talk to you."

Seth Reiss: The reason you're looking behind in that case is because you're serving the interest of your client, because your client Facebook says "We can win this. We haven't done anything wrong," and so the proxy will say "Fine. You can come in and defend, but if you lose you reimburse me." And the problem with the system as it exists with that RAA provision is that proxies can go in there and for \$5 offer a service, and the indemnity is ridiculous. They're not worried about getting indemnified; they're going to make that contract with anybody who comes along.

I think in the ccTLD world that may also be happening although I think as Susan pointed out at higher price so there's some real teeth there, but again, that's not what we're tasked. We're not tasked with saying "If it's functioning in the ccTLD world we don't have to deal with it in our review." We still have to deal with it in our review.

Emily Taylor: I think that one of you made a parallel with the way resellers are dealt with. In the RAA it just says "Whether or not you've got a reseller, effectively we don't care. You as the registrar of record are responsible for what happens in your space. If you have resellers and they are acting like lunatics it's your problem." And

what we're effectively saying here is that the same goes for proxies. Those are the registrants; they bear the responsibility, they bear the liability and that's part of the deal. Lutz?

Lutz Donnerhacke: I want to object here. The reseller from the customer point of view, from the registrant point of view is part of the registration system. We can't reverse this.

[background conversation]

Lutz Donnerhacke: Let me take a concrete example for the .de top-level domain. DENIC has taken a contract system saying that the registrant has a direct contact with the registry. There are no registrar contracts in this scheme. The registrar and the resellers are just people or organizations acting on behalf of the registrant. They are not part of the domain signing system. So they made the contract in the name of the registrant direct to the registry.

On the other hand, the German law and the German judges usually assume that if somebody is buying something from somebody else they have a direct contract, and the person who sells for instance a domain name is responsible for it. So we have a difference in law and understanding what happens here, and it's important to make clear how to classify a reseller in this chain. It's part of the registrant or it's part of the registrar side.

Emily Taylor: Where are we on this?

Kathy Kleiman: With a request to table until James can join us, particularly if now we're talking about taking out language from the contractual provision in the RAA 3.7.7.3 I'd like to recommend we table this; and also take out "any intermediary" and put them down at the bottom as disputed language at this point. And let's do it with James in the room, guys. This is... He should hear the discussion and he should be part of it because ultimately he's probably the closest to implementation of all of us.

[background conversation]

Kathy Kleiman: Tomorrow hopefully.

[background conversation]

Bill Smith: I guess for me the message, and James may not agree to this and certainly it's his prerogative to do so. But from my perspective the proxy/privacy mess needs to be cleaned up. That's the high level thing that we are saying and we're offering, because of language

and stuff we've come down and said "Well, we can do this here; we can do that there." But if we can't agree that as an example, that that would "Okay, we leave this language this way, we do these other things" and the registrars won't go for that, then okay, then we go back and say to ICANN "You have to clean this up."

[background conversation]

Bill Smith: "We couldn't reach consensus on it but this must be fixed."

Lutz Donnerhacke: Yeah, I fully agree because if this mess does not get cleaned up it actually pulls the carpet out underneath the feet of our proposal to increase the accuracy, because it cannot be done technically if you still have these loopholes in place.

Bill Smith: Right, and the... Well, what's sitting behind all of this in my opinion is that if this doesn't get cleaned up there will be regulation somewhere. Yeah, a lot of stuff is going to happen maybe not this year, maybe not next year but something is going to happen because governments around the world aren't, law enforcement isn't going to put up with it. Stuff will happen and that's going to be problematic for this industry.

[background conversation]

Seth Reiss: I think if ICANN solves it first it will strengthen the organization.

Lutz Donnerhacke: I'm not so optimistic. I see that regulations are coming regardless of what ICANN will do or what anybody will do. If some of the politicians see that there's a loop or there's something they can do to win the next election they will regulate the system.

Emily Taylor: We recognize that proxy and privacy is there; that there is some utility to having these services – let's not forget that; that the proxy assumes liability and therefore there is less of a problem in a way with the proxy because they stand in the shoes of the registrant – they are the registrant. We need to make that clear in our findings because it will provide a context for why we're suddenly talking about privacy services and not about proxy services. We do need to make that clear, that this is a finding.

And then the issue with privacy, so there are various ideas that have come around the table. On one level this is inaccurate data; on another level, I think this is your point, Bill – if you've got a system whereby you reveal and relay it's not a problem. It should be permissible but we do need these guidelines set out in a clear and unambiguous manner. So this is I think where we can go on

these things, which I think that we would all kind of hold to that could in fact be quite useful.

Bill Smith:

I was responding. Basically the one bit that says “This is a privacy registration therefore this information is known to be inaccurate or obfuscated,” but then there are ways to get it or not. But otherwise, and that takes us back up to the accuracy. The data needs to be accurate. The goal should be 100%. We know we’re never going to get there, right? But if we allow privacy registrations and there is a demonstrated need for it for a number of reasons, then you have to address it, ICANN. You can’t just ignore it and say “Well, there are these services that do something.” Because then law enforcement and others are saying “Well, but wait a minute, it’s either not available, it’s inaccurate, we don’t know what to do with that information.”

[background conversation]

Lutz Donnerhacke:

If law enforcement doesn’t know what to do there’s no reason to act on a different system for them.

Sarmad Hussain:

So if there is a requirement to add a privacy tag to the WHOIS data it may be actually a good point to raise explicitly because most

likely WHOIS structure, data structure is going to go through a review soon to include IDN kind of information. And if this information is available to the committee as a requirement that can be sort of looped into the same process.

Wilfried Woeber: Yeah, a question to Bill and to the whole group with regard to the privacy thing. Are we still sort of operating under the assumption that this particular capability will be restricted to individuals and it will not be allowed for people doing business, for companies and those sorts of things? Is this still the case? Just to make sure that we are not drifting off the base that we have been building already.

Emily Taylor: Thank you for that. I think that's important to clarify at this stage.

Bill Smith: I would certainly support that. We have the EC providing several occasions to ICANN letters indicating that this would be acceptable. So I think we ought to look at that.

Seth Reiss: Yeah, that was my understanding as well, that the privacy service was to accommodate specifically the, what is it – applicable laws provision; and to recognize the concerns of those countries that have a stronger privacy policy, and I think one day we may get some in our country as well. But then you have a few hard cases –

I mean it's not all over. You have non-profits, Kathy? I mean I'm personally not sure that they should come in that bucket but I'm sure Kathy feels they should. Anonymous speakers I'm sure shouldn't but I don't know if there's anybody in our group...

[background conversation]

Seth Reiss: Well, but I mean... I guess just because there's a few hard questions doesn't mean we shouldn't be able to address most of it at this point.

Emily Taylor: Okay, Sarmad, Kathy, Wilfried. You're good? So Sarmad and then Kathy.

Sarmad Hussain: So just very quickly I wanted to contribute, and sort of individuals, natural persons was what we were talking about or...

Emily Taylor: Yeah, just to do a reminder that we're not making the policy. Where we had got to and everybody was like "Hmm" was there's no policy at the moment covering privacy stuff. Do we want to go further from that? So this was your question. Kathy?

Kathy Kleiman: What I'm hearing is there's just been agreement that we're not going to provide any privacy to companies or organizations. And when I read Bill's executive summary I thought okay, yeah – there is a very strong recommendation from the Article 29 Working Party that says "Let's provide protections for natural persons." It doesn't say anything about not providing protection to democracy organizations. We certainly heard in terms of our record, we've heard strongly from the non-commercial users constituency on this.

We've also heard from the IPC that they use proxy and privacy services. So if we're about to go down a path that says "We're barring anybody other than natural persons from using privacy and proxy services," do let me know so that I can get shot by the registries on Tuesday.

[laughter]

Emily Taylor: That is of course our aim. But I have to agree with you, Kathy. I think that while there is obviously protection for natural persons which they could avail themselves of privacy services or indeed proxy services. And that's very much the mentality I came into this group with. Having worked in ccTLD Land in a data protection environment I thought "Well non-trading individuals – easy peezy." But what I've heard from across the board here is a

comfort with the idea of proxy and privacy for a wider range, and I think that Wilfried, you were asking, weren't you?

Wilfried Woerber:

Well the reason I was asking was to make sure that in the final document we sort of provide the framework again sort of in the interest of not offering opportunities to misunderstand the text or the recommendation; that we should clearly point out that it should not be available to each and every one and her dog but there should be policy restrictions governing the use of that capability. I don't think that we should actually come up with the definition of what the boundary conditions and the rules should be. That's probably a job for the community. But we should sort of I think include the strong statement that we do not intend to have this capability used to again break the chain of responsibility.

Emily Taylor:

Bill and then Sarmad.

Bill Smith:

So I still maintain that for privacy services it should be individuals doing non-commercial. And Kathy's point that you stated several time – “put together proxy and privacy,” that we're not allowing these entities to do proxy and privacy services: we're saying, if we were to do this, “No, you may not use a privacy service but you may use proxy services.” And then it becomes an issue of cost and we could encourage ICANN to come up with low-cost proxy

services for entities that are not natural persons, not engaged in commercial activity.

Emily Taylor: Sarmad and then Seth.

Sarmad Hussain: So maybe somebody here can explain to me what implications privacy services have. So if I take a privacy service, does that mean my data does not get revealed at all under any circumstances?

[background conversation]

Sarmad Hussain: Right, but if somebody wants to pursue it, will they be able to do it? So then...

[background conversation]

Lutz Donnerhacke: My point here is that eventually the interested party will get to this piece of information. Whether it is done by legal methods or by others is a different question. But there is no such thing as real anonymity on the network just as there is no real anonymity in the

real world. There are Secret Services, there is Homeland Security, there is lots of different things, and if you use the right words you are going to get access to each and every piece of information. So it's just raising the bar and making it more difficult or making it at the verge of legality to get to this piece of information. But otherwise, as you said, how much?

Emily Taylor: So I think Sarmad wants to continue, then I've got Seth, then you, Susan, then Kathy.

Sarmad Hussain: Where I was actually getting at was that if you're raising the bar to the extent that sometimes it may actually get difficult to get that information, then will privacy services infringe on law enforcement trying to get to that data as well? So ICANN for example registers through a privacy service being offered in some country which can perhaps block law enforcement in my country to get to me.

So that's an aspect to think of. So we are talking about protection of individuals or nonprofit organizations but there's a flip side to that argument as well. And we really do need to think about balancing both sides; we can't just think about one side and not really think of the other side.

Seth Reiss:

Yeah, well just to try to sort this out a little more. I think it's helpful to say that if it's private non-trading individuals it's a non-contentious situation. And I don't know what the intellectual property constituency actually said, but I think if they thought that their need is fulfilled by a privacy service as opposed to proxy, then they didn't think it through carefully. I suspect more that they were lumping them together and that if they had the opportunity to think it through, I think they'd come down on the side that their valuable trade secrets that they use to trade and use for business should be on the proxy side and not on the privacy side because they would be kind of stabbing themselves in the back to take the other perspective.

But I think what Sarmad said is very interesting because it seems to me that if you have a dissident group which Kathy is speaking to and I understand where she's coming from, and that's a great American tradition. That dissident group would be doing something illegal in the country that their dissenting about, and that would be an illegal act under the laws of that country. And doesn't that mean that at least in the view of that country that data should be revealed because they're offending the laws of the country?

So I think when you get into that area, and it's an interesting area and I don't mean to demean it in any way or its importance, you all of a sudden have a very confused situation. You don't have the simplicity of complying with EU data protection law for persons who honestly are not trading, okay? And so I think it's helpful to

look at the simple case and then recognize there's also hard cases that we're not going to solve and that somebody else has to solve.

Emily Taylor:

Yes, I think that's right, Seth, and it's useful to explore the issue in this depth. Ultimately we're not here to make the policy; we're highlighting that the policy doesn't exist. We might be able to give some pointers or something but ultimately if we stray into where we naturally want to go because we naturally want to be helpful here... But if we stray too far into that area we are going to be exceeding our scope. So we've got to keep pulling back and saying "Well, what can we say within the scope here that brings this issue a little bit further down the track and is progressing this."

So sorry, I intervened, Seth. Susan, Kathy, Wilfried.

Susan Kawaguchi:

So it is a really sticky mess in a lot of ways, but I don't think I can agree with not allowing nonprofit entities to have a private registration. I think there's a need there – a nonprofit, non-trading entity. I'm really concerned with a nonprofit having a private registration and then asking for donations because that triggers a lot of US requirements anyway. They shouldn't be able to do that; they'd have to put it on their website at least. But I don't think that we should limit privacy registrations just to individuals and I can't believe I'm saying that as a businessperson, but I completely agree with you because there's always groups.

It's not an individual that's really doing tremendous work in the nonprofit world. It's a group of individuals. So I don't know how we word that recommendation but I think... And also I just think we are going to get slammed from the community if we were to say that. And I don't think, as long as they're not trading, if they're not taking money on that site... Now, how they get donations is a whole different, I don't even want to go there because I can't figure it out, I can't solve that issue. But I think we need to expand it to entities.

Wilfried Woeber: Yeah, well if we want to do that we could go back to Sarmad's question about the...

Emily Taylor: Sorry, Wilfried, I'm sorry. I had Kathy next, sorry.

[laughter]

Kathy Kleiman: As I'm listening to this sorry, I'm thinking over twelve years of talking about WHOIS. And I'd hate to take you back with me but why the proxy and privacy services were created, let's just go back to that. Of course there are bad guys out there; forgive me, I'm going to speak to the good guys. And why we did it was because there was this rule "all data, all available all the time," and a lot of

people didn't like that – natural persons, nonprofit is an attack status in the United States. Globally the term is non-commercial; I only know that because I've been brought into so much of this over the years. And companies, small business, entrepreneurs, mom-owned businesses that weren't trading per se – we've gone through some of this. Let's just talk about why some of them didn't.

And when you have it in this database where it's all available all the time, we know about some of the problems. Again, we've heard it here but there's also a long historical record, stalking, masquerading, identity theft and a lot of, lot of spam. What's the first thing you're told by the Federal Trade Commission of the United States? "Don't give out your address. Don't give out your phone number. Don't give out your email in public places," and here that's the first thing you're asked in the WHOIS. So just conflicting to a consumer, the consumer's domain names' conflicting data coming in.

From a public policy point of view, let's be very careful before we force people out of privacy and into proxy because I think for lots of reasons privacy might be something we all like. It scares me a little bit to hear that the data is available to whoever, because for those who want privacy – the good guys, not the bad guys – you want people to know who you are. You want to know who the registrant is but there's something about that address or that phone number that's of concern.

Let me give you one example; synagogues. I'm Jewish; I visit synagogues all over the world where we go for ICANN. Many of

those synagogues are not on the maps, the addresses are not on the maps of the cities especially in countries where Jews are minorities and there's a lot of anti-Semitism. They've taken the street address off and it becomes very difficult to find these places.

Nonetheless, they might want a website to put up the times of their services. They might be commercial entities, they might be non-commercial, they might be nonprofit – I don't know. But they don't want that; the physical address is actually a secret. They might be known in their neighborhood, maybe a lot of people know it, but the synagogue in Istanbul that's now been bombed and was shot at is off the map – it was very difficult to find it. So the idea that...

So a privacy service to me makes sense. Identify who it is but make it a little more difficult to get that data, both for those harvesting the data for spam and also... You know, law enforcement will get it, somebody may hack it but is it kind of consistently available in the globally available all the time database? No. And that's what really people are looking for. Some are going to proxies but I think if we actually made privacy more available, more understood you might actually see people go there and then you'll know who the registrant is.

And if we follow best practices in the privacy area we may be really creating something very positive here. So let's for public policy reasons let's not always drive people into proxy.

Emily Taylor:

I think this is kind of turning into a very interesting debate really because we're... It also echoes something that's happening elsewhere. The boundaries between individuals and businesses are becoming a bit more blurry. People are working from home even where I live. The company's register, which was always very you had to put your trading address – if that was your home, that was your home. Now you don't have to. You can put a registered office which is different and you can do that for the directors themselves.

So there might be a thing happening here that we're just naturally kind of responding to and it started with your question, Wilfried: do we mean non-trading individuals? And even those of us who are most advocating availability of data are uncomfortable with that and I would suggest that it's not just us that are feeling uncomfortable with that; that might be something that's happening in society more generally. And it is very valuable to remind ourselves of we think, we spend a lot of the time with our big white sheet looking at the tiny little black dot in the middle – does anybody see a white sheet there? There is actually a lot of good behavior and people who require protection who are not well-served with an always on, always public.

I'm going to ask you, Kathy, and probably you, Bill, to come up with some language on privacy/proxy overnight. We're meeting at lunchtime tomorrow so I think that if you two can come up with something that tries to capture the way that the direction is going. If that's not going to work how, or if you don't feel confident

that's going to work then we can ask for other volunteers to do that but I think that might help us to have some language on the table.

We started this conversation looking at these recommendations on accuracy. We're going towards privacy and proxy naturally because it is the big kind of elephant in the room. Let's be comfortable with that. I do want to continue on this line but I'd like to just ask whether you'd be comfortable trying to produce not pages and pages but like two or three recommendations on what would we say on privacy/proxy? I reckon if we can get you two to agree on some language that you're reasonably comfortable with then we've got a good chance of a good start.

[background conversation]

Emily Taylor: "Why me?"

Bill Smith: No, I need to understand why a proxy service isn't appropriate for entities – non-natural persons.

[background conversation]

Bill Smith: Because.... My reasoning is this is such a mess, and it is very easy to define and say “privacy services can be used by...” Right? And we have stuff out of the EU, the EC saying “You need to deal with these folks.” And I agree with Kathy’s position that the information related to I’ll just say .orgs for whatever reason needs to be maintained or not be disclosed. How do we word that in such a way to include it in a privacy service which we can say “Okay, you can tick the box here if you meet these criteria” in a policy; whereas proxy services we are saying “We don’t get into that. ICANN stays out of proxy. We don’t define it. They are the registrant and the contractual stuff that goes on between the parties, that’s for them to figure out?”

And I believe that the proxy service would in fact provide better anonymity for all of the groups that you’re talking about than a privacy service. That’s my opinion.

Emily Taylor: Sarmad, then Seth, please.

Sarmad Hussain: So there are three different kinds of information there. There’s an ownership information, administrative contact and main contact so there are different kinds of information. So I guess the first question would be that if you’re talking about proxy or privacy, are we hiding everything? And if you’re hiding everything there is need for, so the WHOIS service started because there was need to

contact in case of technical issues. Then who do we contact as far as technical issues are concerned?

Another thing which... And so if there is somebody in between, is that timely relayed to the person who's eventually responsible for it and is there some mechanism that is built around that? So that's a sub-issue – it's not just a privacy issue, it's a technical issue. And that again is the motivation where WHOIS is coming from, by the way.

The second thing is that if we allow privacy across the board to everybody in the world for \$5 extra it just means that domain name costs are going to go from \$10 to \$15 and there's going to be no WHOIS. So are we happy with that situation?

Emily Taylor:

Well actually can I ask a question on top of that? If that happened but you could guarantee that you got accurate data at the end of it would you care? You would. Seth?

Seth Reiss:

Sorry. Emily's going to hit me if I don't turn this thing on.

[laughter]

Seth Reiss:

I did want to hear from Kathy on that question because to me it's very interesting. And now I'm here as an ALAC representative so I'm sure I'm going beyond my scope, but I think we're now in the arena that has to do with foreign relations and sovereignty of nations. And the interesting thing to me is if you take the political dissident and put them in a proxy they have more protection than they would in a privacy service; on the other hand, it may not give them the respect that you want to project.

And so I'd be really curious because I know you're very close to your role in your heart, and I respect your feelings, so I would like to hear from you more on this point about why privacy, why not proxy; are they better protected by proxy. And then there's another side to it which is are we offending countries by doing it one way versus another, which I think is of concern to this organization because it's an international organization.

[background conversation]

Seth Reiss:

Because when you tell a country that "We're going to enact a policy that will allow people to criticize their country and even technically violate laws..." I mean it's not laws that maybe Americans would respect but it would be seditious laws under that country – if we create a policy that will protect them then we're offending the sovereignty of that nation, at least under some concepts of international law.

Kathy Kleiman:

Okay, well first we have that policy – it exists under privacy and proxy services, so they exist. Let me just give you a real world example on this. Ex-patriots of an Asian country not to be named were in the United States. They put up a website with a lot of information about the corruption of that country. The website went up just before the elections so that at least the people in the country would have some sense of what was happening. But it's American so it's protected under free speech. It was a .com or a .org that's protected under free speech.

It turns out in this country at the time there were a lot of internet cafés – this became a very popular website for clean information, and I think about some of the things that we've heard even from some of the members of this group on what it means to have clean information coming into a country via the internet. It was number one on the top ten list of seditious websites and yet it was coming out of the United States – it's protected speech out of the US, it was not protected speech... So it was actually a criminal act to be looking at it in that country.

Seth Reiss:

That's exactly my point.

Kathy Kleiman:

Well but it's completely protected for the people who set it up. It's under free speech. When I think about all the websites, the pro-

democracy websites that are blocked in China there's no problem with hosting them, there's no problem with putting the data under privacy. But it's coming out of a different country – the problem is where you're viewing it.

What am I missing? But ICANN still has other things to talk about.

Seth Reiss: But ICANN is not an American institution.

Emily Taylor: I want to pull us back to the recommendations.

Kathy Kleiman: Okay. I would like some direction from this group before I sit down with Bill and because there's a complete impasse on this. I believe privacy services should be available to everybody. I think they are now. I would not be able to draft anything that restricted that at this point in time because I don't think that we have consensus from the community on that.

What we do have is some direction specifically for protection of natural persons, which is right, but I don't think we have any direction to limit the access to privacy for others. I would really, really like to see best practices, reveal, relay, all of this, but not... I don't think we have a mandate yet to say non-commercial organizations, small businesses, Sony when it's releasing a movie

can't do it under a privacy registration versus a proxy. I don't see the difference per se.

[background conversation]

Emily Taylor: Sarmad?

Sarmad Hussain: So I would actually agree with Kathy on that, that I don't think we really have a mandate to say who can or cannot have proxy or privacy services irrespective of what I personally think about it. But we do have a mandate to suggest and comment on what impact whether that privacy service is being used by an individual or a company or whoever; what impact that use of privacy service will have on in this particular case the accuracy of data and people getting access to data in a timely manner.

So I think that's probably what we want to focus on rather than really going into a debate on it, because even if it's individual and 50% of websites are owned by individuals, then if the service provides an issue for accuracy of data we still have the issue on the table even though natural persons are allowed and others are not allowed. So that's not the argument; the argument is, is privacy service somehow affecting the accuracy of data; and if it is affecting the accuracy of data, what really should be done about it?

Emily Taylor: Thank you. I think that that might help to give some guidance. Bill?

Bill Smith: So I just come back to there are no policies with respect to proxy services and privacy services. It's not defined in the RAA. Yeah, they exist. This is in my opinion far more ad hoc than the WHOIS policy which I maintain there isn't a policy. I'm happy in our report to go along with the vast majority and say "Yeah, it's just ill-defined" or some other language, but the fact that there isn't a document for me says there is just a huge problem here.

So with privacy and proxy, with there being no policy currently, every registration done by privacy where there is a name and contact information that does not relate to the name is by definition inaccurate. It's a fact. And so we should get rid of all of them according to the RAA. So well I just look and say "Yes, there is a need here but if we are going to..." We can't just gloss over it and say "Yeah, well these privacy and proxy things..." if we're going to also say in our charge, which is, is the information accurate? In my opinion, every registration that has been done through a privacy service, then based on our discussion today is inaccurate.

Emily Taylor: I think we shouldn't forget where we've got to on this, because actually if you look at the policy articulated by the AOC, that's

24/7 always on, everything up there. But what we're all agreeing on is that there's a legitimate need for proxies and privacy services in certain circumstances. We all agree that there's policy gaps and policy gaps – this is this big and the other one is maybe not so big. So more work required here by the community.

I think where, if I were to say what I'd like to see is some findings, I think put the majority of the wording in the findings and then your recommendations – the stuff that we've all been talking about around the table, that proxy takes liability, that there is a utility for both of these, that the privacy thing is on the face of it inaccurate, this cannot be, this isn't a sustainable way forward. You can't just cancel these registrations. Lutz?

Lutz Donnerhacke:

Are you claiming that we have to ignore the AOC and the fact that from the AOC, the requirement is to find a way to make the WHOIS service open to everybody without any right access, without any limits, containing all the data, open for public access for everyone and all of the data is accurate. We find out the final persons. If we are discussing privacy or proxy services, proxy services are okay because we are redefining the registrant and privacy services, we are just arguing against our mandate from the AOC. Is this correct?

Emily Taylor:

Bill's hand has been highest up so he's going first and then Kathy.

Bill Smith: I think given the phrase “subject to applicable laws” is where the privacy stuff comes in. And there has been at least four communications from the EU or the EC on this and saying “If you do this, basically you need to state uses,” but also “and if you exclude natural persons not involved in commercial activity then we’re okay.”

Emily Taylor: Kathy, Sarmad, Wilfried. Lutz, you want to come back in.

Kathy Kleiman: I’m missing the... I can’t believe I can’t find the Affirmation of Commitments like immediately on my stack of papers but again, ICANN commits to enforcing its existing policy. So by some interpretations and readings of the AOC the AOC isn’t asking ICANN to do something completely different than what it’s doing; it’s asking, it’s recognizing that the main purpose of ICANN’s WHOIS policy is to make this data available, accurate and whatever the wording is.

And then we’re asked to review is that being done and is it serving the interests of law enforcement and consumer trust? There’s some disagreement: does the AOC override ICANN’s existing policy? Does it override the existing contracts? Does it change it on its face? We’re certainly hearing from registries and registrars

to be very careful of that, that is ICANN signing on to something completely different?

I'm not sure I've heard that... How do I say this? We have a consensus policy from the GNSO that says that registrars must actually prevent the abuse of the WHOIS data, kind of the data mining. It's actually a consensus policy that's now been adopted into the contract of the registrars; I can read it to you. But are we saying that suddenly that's invalid because of the AOC? And if so, I missed something.

Such existing policy requires that ICANN implement measures to maintain timely, unrestricted and public access to accurate and complete WHOIS information – existing policy. And that existing policy has privacy and proxy in it, and if this is our first time discussing if there's a what and how... Well, we have privacy and proxy; I mean it's in the agreement with registrars.

Bill Smith: With no definition.

Kathy Kleiman: With on definition. So I'm not sure we're setting aside, I'm not sure ICANN's being asked to set aside privacy and proxy services but if so then we should check because again, the words "existing policy" implies to me that they're embracing, that when this was signed in 2009 they were embracing what existed and kind of carrying it forward and asking us to review it. So different

interpretations of this. I'm getting tired, folks. But yeah, I'm not sure we're being asked to set aside all of this at all.

Emily Taylor: Sarmad, Wilfried, Lutz.

[background conversation]

Louie Lee: Louie Lee. I was on the ATRT. So just for your first point I want to make a note that by ICANN's incorporation laws and where it was incorporated, the Board has ultimate responsibility; meaning that as much as they want to strive to implement any recommendations out of the AOC process, none of the recommendations can lawfully override what the Board decides. And the Board has responsibility on what it decides in that it cannot violate its own contracts. So people can't say, well they can say it, that the recommendations will override what the Board does, but there's no legal basis for that.

Kathy Kleiman: No legal basis for what, sorry?

Louie Lee: There's no legal basis for any of the recommendations to override existing contracts.

Emily Taylor: Thank you. Thank you for that. Wilfried, Lutz.

Wilfried Woeber: Yeah, I'm getting more and more worried with this discussion because I think we are digging ourselves deeper and deeper into the sand here. For example, I think there is a very blatant contradiction between sort of Bill's assertion of within the framework of the applicable law, and Kathy's advocating anonymity in the interest of doing something which is obviously against the law in some place. And I'm also ultimately worried about Sarmad's question, like would privacy services really protect the privacy? I could go into that and I would love to do that but only under Chatham House rules, and I think it's too late to do that today or even at all.

I'm happy to explain to you maybe in a more private setting why I'm so worried. Part of that worry is based on the fact that we tend to use, and Kathy, you used that phrase like the good guys and the bad guys, or the white guys and the black guys – there is no such distinction. It's just a matter of what you want to achieve, and I have been in lots and lots and lots of examples over the past few months or past couple years: to which ends interested parties go to get hold of communication or to get hold of identities of individuals.

So I'm worried that by featuring this privacy thing too prominently we are actually running the risk of giving the false feeling of

security, anonymity and protection, and I would rather tend to be very low key on that one and leave any recommendations or policy suggestions to the community because this is really a minefield.

Emily Taylor: I'm got Lutz next, Bill.

Lutz Donnerhacke: Thanks, Kathy, for the mentioning applicable law. In Germany we have two contradictory laws. The first one is each ISP has to provide the opportunity to take part in policies pertinent to the internet, and anonymously or ipso anonymously. Second law: if you are being visible on the internet you have to provide full imprint. It doesn't mean just on the website – in every electronic communication you have to provide full imprint even if you are sending an SMS.

Of course this law is brain dead but we have two contradictory laws. So applicable law is a very deep field and I think if we are starting digging into the sand here it's more than one shovel to bring down on our head. So we have an interest from the community to act anonymously, ipso anonymously. We have an interest of law enforcement to reveal the identities. Nobody can, as Wilfried states, nobody can distinguish between those parties. Everybody has the understanding of the American way to take a law or to deal with criminals is every private person must be able to identify a suspicious person on the internet. There must be a

possibility to do so simply because they have the same right in normal life, real life.

In Europe we have a different understanding of this – if we do not find the information we have to put it to the authorities. Okay, there are differences. On the other hand, if we are talking about what will happen if we insist on some decisions, it came to my mind that ICANN was in discussion on the ITU. We already had a proposal from the Brazilian and Russian governments in the ITU to remove everything ICANN has done and make it part of the ITU in order to get a correct regulation in the governmental sense.

Keep this in mind. Everything on what we are doing here is wrong. Every proposal we are coming up with is wrong for somebody.

Emily Taylor:

Bill?

Bill Smith:

Sure. I wanted to say a big plus 1 to Wilfried's intervention on security or perceived security. The perception that is created around privacy services, if we do something that basically gives more credence to privacy services as if they actually do something, I think we are doing a huge disservice to the community. I also think and Seth had pointed out, I believe or my read on this is that if we are encouraging privacy services, that people use privacy services for civil disobedience or anonymous speech targeted at

countries, certain nation states that would be in the US seditious – that actually is sending a message. If ICANN develops such a policy that sends a message to these nation states that ICANN is encouraging illegal activity and that is extremely problematic in my opinion.

And to Lutz’s point about the ITU and activities that are happening there, there is strong.... There are many efforts; they are coordinated. I won’t mention the countries – they were mentioned in Nairobi at the IGF – to move virtually everything that is being done here, potentially the RIRs, the IETF, you name it: anything to do with the internet – to move it to the ITU. And so actually to Seth’s point, if we are creating a perception that ICANN is going to tell nation states “It’s okay for your citizens to do illegal things and here, we’re going to show them how to do it,” that just adds fuel to the fire for them. So from my perspective there’s a lot of stuff coming together here.

[background conversation]

Emily Taylor: (laughing) So Michael, we’ve just read your message. I think it’s...

[laughter]

Emily Taylor: It's a very welcome light relief in this area. Kathy, did you want to make a...

Kathy Kleiman: Yeah, I'm getting more and more lost, guys, I guess. So I'm going to tell the American Civil Liberties Union that we're taking them off the net because China doesn't like what they say – that's not where we're going, guys, that can't be where we're going; that what is considered free speech in one country and sedition in the other, take them down.

And we're not trying to create... We've got policies now. So it seems to me, and poor Wilfried keeps trying to put anonymity on me and it seems... I've worked in anonymity, believe me I have – it's got nothing to do with what we're doing here. No, anonymity is needed in certain very extreme cases where people's lives are on the line, and we're talking the fringes of political speech, guys – [Fallon Gunn] kind of stuff.

But that's not here and that's one of the reasons I like privacy services, is that you're actually identifying who the speaker is. It's the opposite of anonymity. What they're doing is keeping their address off the web even if it's just to prevent spam. By the way, .org is under a privacy or proxy and when I went to them and said "Why guys? You'd think we'd be out there," they said "Kathy, our email box fills up like mad so whenever we list it, it fills up all the time.

So of course whoever is the privacy or proxy provider, and please forgive me, I forget which ones we were, forwards on any legal action, any complaints, any anything. But the email address to contact us is readily available on the website in a non-harvestable form. So even .org did it because of spam reasons, so privacy services to me are the opposite of anonymity. It's telling you who is responsible but it's not making their address easily available.

The issues of how you disclose the data are exactly the ones that I don't think we should answer but that we should ask the community to answer because even now there is a discussion... I've been in many now international law enforcement meetings, where even international law enforcement can't give us a list as a registry. We were picking up the phone; people were telling us to take things down, but a list of all the law enforcement agencies around the world that we should be talking to. There's no list and they don't want to provide one, either.

So there's a whole question of law enforcement. We're bringing a lot of issues together but I don't think we are dismissing any government. Think we're saying we're dealing with an international means of communication and ultimately I think that we should be asking... I like privacy. I think we should be asking the community to come up with standards for reveal, and I think by using privacy you're putting yourself on record and saying that you're not anonymous. And if the ICANN community together can create rules for privacy they will be public, they will be known, they will be consistent and then everyone will know how

to access the data, particularly law enforcement including law enforcement I may not like.

Emily Taylor: Yeah. So do you feel like you have some sense of direction? Do you feel like you'll be able to do the task that I've asked you to do? No?

[background conversation]

Emily Taylor: Would you like to come up with separate lists?

Kathy Kleiman: Does somebody else see a way through this? Can I ask, Emily, does somebody?

[background conversation]

Seth Reiss: Yes, Alice. I will, yeah, for Michael. So I understood you correctly that you think proxy isn't appropriate for the dissident group that needs-

Kathy Kleiman: No, no, I said nothing about proxy. Proxy wasn't part of... I said I like privacy but I didn't say anything about proxy, sorry. Proxy is great, you know.

Seth Reiss: Because you know, part of me feels like there is a role for the internet in advancing civilization, advancing human rights. On the other hand... Wait, it's not your turn. On the other hand I think it's very important to be sensitive to the differences in countries' laws. And I think Bill, you misspoke because I wasn't saying there would be... I was suggesting that something that would be legal under US law would be illegal under a foreign law, but it would be, the counterpart is if Americans were domiciled in another country and advocating a violent revolution in America then the shoe is on the other foot.

So but that would be where America might be offended. But so I think this is a very interesting debate but it doesn't have to spoil us being able to come to a consensus on everything else.

Emily Taylor: Or even, sorry to interrupt you. Go ahead.

Seth Reiss: No, it's my pleasure. Please interrupt.

Emily Taylor: Or even we can get this some way down the road. We are already in agreement on many things on this issue. We agree we can't make the policy. We have ideas about what the policy is. I think we agree. Let me just check this. I think we agree that ICANN with its contractual private law regime cannot trump national sovereignty, right? It doesn't override the laws of any country and this is consistent with the language of the AOC which says "subject to applicable laws," right?

We agree that there is a role for these services. We agree that they are ill-defined and that more policy work is needed. So I think that we don't need to get right into the details. We can't go very much further than this.

Sarmad Hussain: I just want to add that we probably also agree that there are sorts of inaccuracy in data.

Emily Taylor: Bill?

Bill Smith: So Seth, if I misspoke about what you were indicating, what I was trying to indicate is what I see in my travels. There are a number of nation states that have issues with ICANN because it is an American-based corporation. If ICANN is perceived by those nation states as advocating policies or publishing policies that allow their citizens to within their country perform or take action

that is seditious, treasonous, etc., and claim that that is an ICANN claims this is a good thing – those nation states use that as evidence that ICANN is an inappropriate place for doing what it does and therefore it needs to move someplace else. That was my point.

Seth Reiss: Actually I thought you did get me correctly but the way you expressed it was a little...

Bill Smith: Okay, that's what I was trying to say is that this actually is a big issue in some very large countries and a large number of small countries.

Kathy Kleiman: What is a big issue in some very large-

Bill Smith: Some very large countries and some small countries – ICANN.

Kathy Kleiman: ICANN. But privacy/proxy, has that ever been raised by the GAC or by governments?

Emily Taylor: I think though that it is-

Bill Smith:

Okay. What has been raised is that ICANN is, because it is a US-based corporation, number one – that’s problematic; two, that it enacts policies that these large countries and many small countries do not like. So all I’m saying is this one would be another one that would be held up and said “Here’s yet another reason why ICANN needs to be shut down and we need to move all this over to the ITU.” I think playing into that is a mistake.

The other thing that I would ask for Kathy is if we were to work together, I have proposed language for when you can use a privacy service and I’ll I’m hearing is that’s not acceptable. I would ask what would you provide as the definition for when someone can use a privacy service?

Emily Taylor:

So I’ve got a list here which is Wilfried, Lutz, Kathy.

Wilfried Woeber:

I think it’s a little bit late – I wanted to react to your quote of “applicable law.” The very weak basis for that phrase is there is no indication of which one.

[background conversation]

Wilfried Woeber: Not possible, not possible. You cannot do that because you've got already contradictory law within one country and you've got contradictory law within other countries. And sort of being or following up on Bill's contribution, you know, the overall governing thing is still the US DOC. That's where the Affirmation of Commitments is placed and that's where lots of other stuff is placed which is very fundamental and very to the core of the internet, and it's still under the control of this environment.

Emily Taylor: Thank you. Lutz and then Kathy.

Lutz Donnerhacke: I'd just like to support Bill's argument that whatever we are doing here we might get some government upset. It doesn't mean that we have to follow them in one sense. We can follow in the other direction and get other governments upset. Susan has a lot of things to tell what German data protection officers are currently doing with Facebook.

[laughter]

Lutz Donnerhacke: Just have a look at her face and you get an impression of what's currently on there. Please consider that these people might have a

look at ICANN. I fear that I have to do something else and maybe I have to visit (inaudible) in about five years or so.

Emily Taylor: I'm sure he'd love that. Kathy?

Kathy Kleiman: I'm going to appeal to see if somebody has a middle ground because I agreed with everything Emily listed off kind of as our points of agreement. I just thought I'd add something funny. Privacy/proxy services by the way, governments use it because I talked to someone who was doing certain kinds of investigative work and some government agencies not to be named... And I'm like "By the way, whose information did you put in your domain names?" and he's like "Not mine." So it was being used for investigative purposes.

Also forgive me, Bill, I have heard... I've been following the ITU debate very closely. It's been on since the beginning of ICANN, it of course raises to peaks at certain points. I'm not sure privacy/proxy has been brought into that yet. The fact is we have a de facto system of privacy and proxy agreements and no one, I haven't... Just maybe by doing something it will bring it to the fore. But there is widely... If I go back to the registries or registrars with something like this they'll roll their eyes, because every time somebody doesn't agree with something they say "Well, because the ITU is going to take over ICANN and blow it up." That's been the refrain for twelve years.

I'm not sure this touches that particular hot button again, in fact because there are these systems that have been developed that are working. I think what people really want and what I would do if we sat down to find a privacy system is not define who goes in but how the information comes out. That's what I'm really concerned about, is how to get Sharon Lemon access to the information, how the information comes out.

And also I wouldn't mind seeing that it be more accurate going in; and also I think apparently there was a study done at Nominet, but correct me if I'm wrong, that by having this ability to opt out of having your address the accuracy of the data actually went up. It kind of encouraged people because they knew not that it was protected against all things – they know it's going to go to [SOCA] on appropriate occasions but that it doesn't go to the whole world.

So if we were to sit down at a table it would be again not for the data going in but procedures for the data coming out in a reliable way. And if we can't do that then I'll urge someone else to kind of step into our shoes and draft this for us.

Emily Taylor:

Bill and then I think-

Bill Smith:

So what I'm hearing then is that everyone is allowed to use a privacy service. I object to that. That's not how we operate today as best I can tell. We don't have a policy on it – there is no policy

on privacy and proxy. There is existing practice but it's not written down anywhere and in my opinion, this stuff grew organically the way a lot of the stuff on the internet did, and that's a hell of a way to run – excuse my language, but that's a hell of a way to run something as important as the domain name system.

Emily Taylor:

Lutz?

Lutz Donnerhacke:

I'd like to support Bill here. He is completely right. All privacy services are not specified at the moment, that's why we are producing documents here and pointing out that there is something to do. It doesn't mean that we are proposing that a privacy service has to exist for everybody in every case or at all; but we feel that currently the privacy service addresses which are in the WHOIS system are currently incorrect but should be considered correct if somebody decides that privacy services should exist. But it's not up our topic.

We just have to mention that they are existing, there are real world privacy services out there so we have to write it down and to point out that somebody else has to decide if it's correct or not.

Emily Taylor:

Okay, I think that's a very nice encapsulation actually. I'm volunteering you.

Look, I don't... I don't think Lutz will be able to say that again. I think we'll be able to find it but can we...

[background conversation]

Emily Taylor:

Guys, look, can you help Kathy and Bill on their overnight task, and obviously anybody else who feels that they can contribute? Take these messages. We're making some findings which I think we are all in agreement about. We might differ on some of the real fine detail but just blast out what we have got agreement on, and do I need to repeat that because I've seen you both read... You know this stuff.

And we also know that we're not going to be able to get to the perfect formulation – it's not even our task to make this policy. We say "It shall be done" and we also say "It's complex." It brings into account national sovereignty; it brings into play all sorts of issues on data protection, informed consent, all of this sort of thing, the free flow of information, blah, blah, blah. We can go on with our list of the complexity.

Sometimes it's just better to acknowledge that it is complex and leave it at that, and hand it to the community. This is something Wilfried said probably two or three hours ago but this is valuable. We have to go through this pain because this is something that the community itself has not been able to manage to grapple with for

the last however many years. So we're not going to be able to solve it; we're certainly not going to solve it at 6:50 at night when we've all got jetlag. But this is something that we can progress by identifying the problem and proposing that more work be done, right?

So I think that's probably a point to leave it for the day. We've all contributed. Everybody around the table has spoken on many occasions. You followed the arguments; you've all contributed your views. Yes, we disagree passionately in some cases but that is absolutely to be expected. And if we're not articulating our disagreement we are not doing our job properly.

So well done today. I know it might feel like we've still got a hill to climb here but this is all stuff that we have to go through. Let's, if I can ask you to leave that work overnight – don't write *War and Peace* even if you feel you could. Aim for something that just sticks to what we can all sign up to, and I know that you two can do this.

So come back tomorrow. We'll hear from Compliance at 1:00 as a sort of complete change and then we're going to continue down this path and we're just going to keep doing it until we've managed to get agreement. We're closer than it feels at the moment and I think this is a standard feeling of many committees at the point when they're close to getting agreement, is that they're staring over the precipice going "Are we really going to leave this meeting in this state?"

We're not, we're going to make progress. So thank you all very much and thank you, Michael, for staying with it. I hope that we have our remote participants tomorrow. I note that it's difficult for them but just keep going. We're getting there. Thank you very much.

[End of Transcript]