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CR - GAC / WHOIS Review Team

Tuesday, March 13, 2012 – 11:00 to 12:00

ICANN - San Jose, Costa Rica.

HEATHER DRYDEN: Good morning again, everyone. If we could get settled, we will start our session with the WHOIS Review Team.

Good morning, everyone.

So this is a GAC session with the WHOIS Review Team.

To my right, we have Emily Taylor, who is the chair of the review team, and to my left the vice chair. And we also have Peter Nettlefold from Australia who was representing the GAC chair on the review team. And we're going to hear today about the final report and some other recommendations in that report.

So I will turn over to Emily to take us through that, and then we can have a discussion.

So, please, Emily.

EMILY TAYLOR: Thank you very much, Heather. And on behalf of the review team, can I thank the GAC for its support and engagement throughout our process, throughout the review team's process.

I think this might be third time that we've sat here together and discussed, and we have really found these interactions of great benefit, and also, of course, I would just like to highlight and recognize the enormous contribution that Peter Nettlefold from Australia brought to the team, both in terms of his drafting work, but also in terms of bringing -- helping to bring together the cohesion of the team.

So thank you, Peter.

Perhaps we can go -- Before we go on to the slide deck, I'd just like to set out what we're going to do.

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*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.*

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As you mentioned, Heather, I thought, we thought in preparing for this session that it would be useful just to highlight the findings and the recommendations in our draft report.

I'm aware that many of you will have read it, and apologies for the repetition, but on the assumption that all of you are busy, we felt that it would be good to just set that briefly as a background.

But I'm also looking forward to interaction, your questions. And members of the review team are here in the room, and we will all be happy to answer your questions.

So perhaps I can just go on to the next slide, please.

The draft report was published in December last year, and given the -- quite the large gap between the ICANN meetings, we felt that it was appropriate to leave the comment period open until this meeting has finished so that part of the community interaction and sessions such as these can inform us as we then prepare our final report, which we hope to publish on the 30th of April.

Next slide.

Our mandate I think will be familiar to the GAC from our many sessions together. And this is, of course, set out in the Affirmation of Commitments between the government of the United States and ICANN. And our role was to look at the extent to which ICANN's current WHOIS policy and its implementation are effective, meet the needs of law enforcement, and promote consumer trust.

And so with our cross-community composition, including from the GAC we had a representative of law enforcement, but also experts in privacy, people from business, and those from the domain name industry itself.

So the thing, I think, to emphasize here is in the light of the fact that the WHOIS debate has gone on within ICANN, sometimes fairly unhappily for the last decade, we are pleased and proud to say that all of the recommendations in our draft report are unanimous and have full consensus.

Next, please.

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So what we're going to do today is just take you through the findings and show how those findings lead into the recommendations.

Next, please.

And the next.

So our mandate being to evaluate the extent to which the WHOIS policy was effective, obviously our first task was to try to identify that policy. And although we see it referenced quite boldly in the Affirmation of Commitments, and there are detailed provisions which are explored and set out at length in the body of the report, which Kathy Kleiman did a lot of work on, it can be found in the registry contracts, in the registrar contracts. There are also consensus policies that have been developed over the last decade, and procedures.

There's also the underlying background of the RFCs and the history, the history of the WHOIS debate itself.

However, there is no clear statement of that policy in one place. And so our first recommendation, on the next slide, is that that policy, which is expressed in these -- It isn't that the policy doesn't exist or that it needs to be changed. It's just simply not documented. And for the newcomer or for the person outside of the ICANN inner circle, it is a rather confusing landscape. And also, actually, thinking of these WHOIS Review Teams as something that will continue through time, we hope we can save the next review team a few months of work if this is actually implemented, because they won't have to do what we did and find it and uncover it in all of the contracts.

Next, please.

Looking from the policy to its implementation of course took us into a great deal of dialogue with the compliance department within ICANN, and we benefited from a great deal of interaction with them, and they told us about their work. Members of our team visited their offices.

And one of their flagship interventions with regard to WHOIS is to make sure that the annual WHOIS data reminder messages are sent out by every registrar to every registrant every year.

So if I could just give you a bit of background on this policy, it is -- we believe its intention is to enhance and improve data quality by reaching out to every registrant of every single domain name.

So say you have a hundred domain names. You'll get a hundred messages every year reminding you of your obligation to keep your WHOIS data up-to-date and accurate.

So there are two ways that you can track whether or not this is effective. First of all, as is currently done, you can say how many registrars are complying with the obligation to send out these messages, and the answer to that is very simple. Pretty much all of them do it.

So that's great.

However, when you look beyond that and say, well, given the objective of this policy we think is to promote data quality and improvements in data quality, unfortunately we could not find any metrics, targets, or any measurement of the impact of those notices.

So in short, a great deal of effort is expended on behalf of many stakeholders in sending out these things, and then no one knows what happens. So there is an obvious gap there. It might lead to a great improvement in quality of data, but we just don't know.

So next slide.

Our recommendation is that there should be -- we should close the quality gap here and try to track what happens to data quality as a result of these notices. And if we can't do it or if there is no impact, then that should probably force us back to consider whether or not this policy is truly fulfilling its objectives. If not, through the appropriate processes, a new policy or implementation could be developed.

Next slide, please.

And we were talking about this yesterday after the public forum. Really, in our -- we're yet to deliver our final report, but in the view of the review team, this is the single most important priority, or the single most important of our recommendations.

Throughout our work over the last year and a half, we spoke to many stakeholders, both within and outside ICANN. And in the main, although they could think of improvements to the policy, they could live with the current policy as long as they felt that there was any effective implementation of that policy. And the impression that we got from stakeholders in business, in law enforcement, was that they felt that nobody was doing anything to enforce the contracts. And of course that's not entirely true because there is a Compliance Team within ICANN, and the message we got from them was that they were understaffed, poorly resourced, and that there was a lack of a strategic purpose.

Our view was that they were very much, as you would expect with any poorly resourced department, they were in reactive mode. They were dealing with whatever -- They were fighting whatever fire came their way, but in were unable to step beyond that and go into a strategic, you know, directive way of using their limited resources in the most effective manner.

We felt that there are many positive aspects of the compliance staff, both as individuals and their operating principles, chief of which is this idea of creating a culture of compliance, which is entirely appropriate where you have a distributed database and distributed responsibility. However, our analysis at this time is that that is still an objective but it has not been fulfilled.

So our recommendation on the next slide is that ICANN should place WHOIS very much central as a strategic priority. And you can see the wording of the recommendation there, but if I could just comment that possibly from -- while we're here with the GAC, I think that the WHOIS is very much a talisman of the effectiveness of this whole setup. Because WHOIS has to be provided, by contract, to the registries and the registrars, but, in fact, they don't get paid by their customers, they probably don't get any customers as a result of providing this service.

We found in our research that am though there is some consumer awareness of WHOIS, in the main, consumers are not the principal users of this service. The principal users, in our estimation, are law enforcement and those enforcing private law rights.

So here you have the classic array of a self-regulatory environment, how well is it working. And I know I get told off by the ICANN legal team for

saying self-regulatory, but I don't have a better term to describe this environment so bear with me.

If WHOIS is working, then I think we have a good environment here that is effective. If it is not working, if there is not a will to enforce the contractual provisions and the obligations, if there are not appropriate incentives for industry to do so, then that is a good litmus test for us, all as observers of this process, to see how well it's working. And that is the reason why we wish to make it clear that WHOIS should be a strategic priority for this organization and for this community.

Next slide, please.

I think in every environment, particularly not-for-profit, particularly this sort of environment, it's always good to have more outreach. And in particular -- and I think this may chime with some of our GAC colleagues in the room -- that the role of law enforcement within this community and setup is still in -- still emerging where law enforcement sits. But they're, at the moment, if you were going across the ICANN community, you would more or less have to reach outside it in order to speak with law enforcement or data protection specialists in a structured way, or go through the GAC.

But as we will see later on, our research on consumers found that there was very low level of consumer awareness of WHOIS. That might be what one wants. That might be the -- you know, it might not be a consumer product. But if you are thinking about, as we had to, the role of WHOIS in promoting consumer trust, one, I think, relevant comment to make is that consumers tend not to be aware of WHOIS at the moment, and if they're taken to WHOIS searches, they find the results very difficult to interpret.

So at the moment, the baseline now is that the tools are not helping consumers perhaps as much as they could.

So that leads on the next slide on the next recommendation, which is cross-community outreach and extending that outreach beyond the bounds of our ICANN community. Next slide, please.

So there are a lot of findings in data accuracy. So I am going to go into this in a little detail. Speaking with law enforcement and those whose job it is to protect private law rights, they told us that while, of course,

they would like WHOIS data to be entirely 100% A++ gold star accurate, in fact, they can work with a lesser level of accuracy as long as they can contact the underlying registrant, because that is normally why they are looking at these WHOIS records.

Now, the only study that we could find in recent years on accuracy was performed by NORC, N-O-R-C, in 2009 reporting in 2010, which found that over 20% of WHOIS data or WHOIS records, it was impossible to contact the registrant through any means. We call these "unreachables." And we view these as the low hanging fruit where our strategic intervention ought to be directed. Because, with limited resources, it's going to take a lot of resources to get stuff from 80% accurate to 100% accurate. Why not start with the real problematic stuff where there's no possibility at the moment of contacting the registrant?

So we have set -- we fully acknowledge we made up the figures. Maybe I shouldn't say that, but there's no point in hiding it. These are deliberately stretched targets to say just deal with these and cut a big swathe in them over 12 months and then the following 12 months and report on how you're doing. Set metrics.

And it may be that this is not a possible target to achieve, in which case, show what is. But show that you are directing your resources there. Next slide, please.

And this leads to our recommendation here to reduce that number.

The next slide is about reporting. The next slide is about status reports in order to inform the next WHOIS team. Because our vision is that the next WHOIS review team will have all of this wonderful data showing how things have progressed through time. We're never going to get to perfection. But, if we're stumbling in the right direction, then we're doing the right thing. So the next slide, please.

Another aspect of this is the very complex ecosystem, which is all tied together with contracts and, which, in an ideal world, would have a clear, unambiguous, enforceable chain of responsibilities and rights flowing in each direction. But, of course, in all too many instances, this falls down, leading to people to be able to absolve themselves of responsibility, whether, you know, for the best possible reasons or otherwise. So this is an area where we need to do some more work as a

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community to make sure that there is both a solid chain going right through to the registrant but also clear, enforceable, and graduated sanctions for those who are unable to make the grade. Because, at the current time, the compliance effort has very limited tools within its toolkit ranging from nothing to completely cutting off the accreditation of the registrar. That is, obviously, an extremely high price to pay for the equivalent of a parking ticket or a parking fine.

So the sanctions ought to build up so that you are, actually, you know, encouraging this culture of compliance. Next slide, please.

Communication is, of course, key, especially as you're trying to reach the 100 million+ registrants. And there is a very good description produced by ICANN called the registrant rights and responsibilities document. And we believe this would be a very effective communication tool in order to try to help that effort. Next slide, please.

If we're looking at WHOIS, we're looking at accuracy of data and availability. Those are the two issues which are set out very clearly in the Affirmation of Commitments. And the Affirmation of Commitments, indeed, really highlights a wish or -- I don't know if it's a statement of what is now -- that WHOIS data ought to be available to all people at all times. However, when you look at the landscape, we see that, over the last decade, an entire industry and market has emerged offering proxy and privacy services.

They are slightly different. Proxies stand in the place of the registrant and, thereby, assume all rights and responsibilities and liabilities associated with the domain name. Privacy services are much more -- they would show the name of the registrant in the registrant field but provide a different address or suppress the address in some way. Now, these are done on a range of levels from ad hoc, friends stepping in, to fully-blown large corporations affiliated in some cases with accredited registrars.

So next slide, please.

Now, I think that one of the things that might be new that we did in this environment was we made a clear statement that there is a legitimate need for proxy and privacy services. Or, in any event, there is a need for



companies, organizations, and individuals in certain circumstances not to publish their address as part of the domain name.

So the next slide is, however, if they do that, you know, to balance the competing legitimate interests, there also ought to be a predictable and fairly brisk route through for those who need the data, such as law enforcement or those enforcing private law rights, to get the data in a predictable way. And the responsiveness of proxy and privacy services. At the moment they are in what we call a policy lacuna, because there are no good practices documented. There is no published expectations or enforceable expectations of these services. And they range from extremely good and professional to totally unresponsive.

So the next slide.

We believe that this needs to be addressed as a priority. Now, in our draft recommendations, we handled privacy and proxy services separately. I'm not going to go through each of these individually. So, if we can just run through the next slide. On privacy services, the key things are it would be good to label that this is a privacy service. Because it's not always obvious. And the privacy providers' details should be there so that they can be contactable. Standardized, reveal, and relay processes and dedicated points of contact. Next slide, please.

Graduated enforceable penalties for privacy service providers who violate those requirements. The reason why we're stating this is because many of these providers will be out with the current contract environment. And so, in our view, they need to be brought inside that fold in some way. Next slide, please.

As we said, proxy services, you know -- now that we've all admitted that they exist, which is good because they affect over 20% of registrations, let's actually try to understand this environment, document the existing practices, find out who the players are, and start the process of getting a proper policy environment here happening. Next slide, please.

Some proxy providers are affiliated with registrars. And, where that is the case, that ought to be disclosed, in our view. Next slide. Next slide, please. Thank you. And we're going in -- because the proxy services -- developing a policy will take some time. So why not, as a first step, go for the best practice route and try to identify what the best practices are. And I'm very pleased to observe that, as a result of the

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relationships made in the review team, we have now Facebook and Go Daddy within the review team actually taking that forward and starting to develop ideas for what those best practices might look like. Next slide, please.

Very similar to what we're saying on privacy. Next slide, please.

And here, I think that -- particularly, given that we have the benefit of this multistakeholder environment, we should also think not just about bashing up registrars if they don't get it right, but also about incentivizing the good behaviors that you want to see, you know, a classic policy type of intervention, especially where you have limited resources for enforcement. Next slide. Okay. Whew, that's proxies and privacies.

The next thing was the element of our mandate, which looked at consumer trust. And, in order to inform us -- because we had a lot of debate about what that meant and who was a consumer in this context -- we decided to do a study to help inform us. The findings were that the awareness amongst consumers of WHOIS at all is very low. And there's a fascinating short video in our appendices, which I would recommend if you're short of time. And you can actually see the way that consumers respond to the task of trying to identify who is behind a Web site that they're given. And they're incredibly resourceful, and they work brilliantly together. But what they don't do is think about a WHOIS search. And, when they're actually brought to a WHOIS search and introduced to it, they find the output confusing in the main. This is a high-level summary, and I do encourage you to read both the report and see the video.

And, of course, the most confusing for the non-insider is the dot com and net, which, let's not forget, is by far the largest registries here. They are the most difficult, because you have to hop from the registrar site -- the registry to the registrar and then try to find the WHOIS in some cases and then try and interpret the output.

So our next slide is to improve the access for people who just want to look up this stuff. And one of the things that we've identified here is that our language is not very clear. And we've had to -- we've had to calm some nerves about this. We're not actually suggesting any radical change or any new policy here or any change in ownership of the data or any movement in the databases. It is just simply a realtime lookup,

which would give users the -- all the information without having to hop around and know what a registrar is. So that's it. And it could either be confined to dot com and net or, while you're at it, perhaps extend it. Next slide, please. Internationalized domain names have been available for over a decade. However, the capture and presentation of the registration data associated not just with internationalized domain names but with any domain names, if that data is given in the local language and the local script, there is not yet a standardized way of capturing and presenting that data.

Now, this is, obviously, something that would be good to have in any event. But, when we think back to the studies on data accuracy, a large proportion of the apparently inaccurate data actually arose from inconsistencies of transliteration of the IDN or local language, local script registration data. So this has, obviously, got to be a priority to work on to make sure that there is a consistent approach and, if we go to the next slide, that ad hoc solutions and arbitrary mappings are not the way we go with this.

So there are three draft recommendations on internationalized domain names here and on the next slide and on the next slide. And, really, the high-level message from those is we need to sort the way we are capturing and presenting that data and get it into the contracts. And also sort out whether we do local language only or ASCII as well and have some metrics to measure our progress.

So the next slide.

That brings us to the end of our 20 draft recommendations and our findings. So, as well as listening to your input and your views on what we've found and what we're recommending, we would also like to know from you what you view as the priorities, what you think are good time frames, who should be tasked, and also how we monitor progress. Because, once we publish our final report, my understanding is that this review team will cease to exist. And so who and how do we -- who manages it and how do we monitor progress in between now and the next review team starting in a couple of years to see whether or not the board adopts and whether or not these are implemented effectively.

So, with that, I think there's just a next slide showing a few links and reminding you that the public comment closes in a couple of days' time. I thank you for your attention on our whistle stop tour and look forward to your questions and comments.

[Applause]

HEATHER DRYDEN:

Well-versed. Congratulations to the review team for accomplishing a great deal of work on an issue that has preoccupied this organization for such a long time that I think colleagues will be really keen to comment and to assist in ensuring that that follow-up and that implementation occurs.

So, really, a job well done.

So, with that, I see Italy asking to speak. Please.

ITALY:

Okay. My compliments to the review team. Because it's difficult to add more. And -- but I have two questions just clarification.

Of course, it is very important also the data that you gave to us. Over 20% of the data in WHOIS is not so bad expressed that the registrants cannot be retrieved. And, of course, this is something that worries, especially, the law enforcement agencies, let's say.

And, but -- so -- and many of the other data are not accurate in any case. But what is important is the possibility to reach the final.

My question is: To your perception, having spoken with all the actors in the field, how many of this inaccurate data are intentional? I mean, just for not being recognized, or how many connected to some failure of the registrar that reported that this data? And, if there is some connection in those that are intentional.

So this is the question I would like to know. Because you say that a slide, if I read clearly, that in the first year, if there will be provisions, this data should be reduced by 50% in the second year, another 50%. So I don't believe that it will be possible in two years to arrive to a zero errors, really, if I may say. So this is the question.

EMILY TAYLOR:

Clearly.

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Well, clearly, there's a difference between zero errors and something being minimally contactable. And, at the moment, where we're trying to focus resources, it is in addressing the real, if I could say, rubbish data. Some of the colleagues on the review team do look at WHOIS records day in/day out as part of their work. And, as you quite rightly say, the anecdotal evidence is that, where they're tracking down -- whether they're from law enforcement or enforcing other rights, that there is a high correlation in their anecdotal experience of inaccurate data and bad behavior. However, if you look at the NORC study, there is a great range of reasons why data might be inaccurate. People move. And they forget to update their records. They're not aware of the importance of keeping their records up to date. That has the whole issue of Internationalized Domain Names as well. But, to be clear, we feel that this target is actually achievable. Because, when you look at some of the records -- and one of our colleagues from Facebook, Susan Kawaguchi, showed us a record where every single field has just the letter A. That's it. And that is sitting out there -- is there. It's probably still there, and nothing is being done about it. This is the issue that we're trying to address here. Peter?

PETER NETTLEFOLD:

I should also point out, for those new GAC colleagues, the GAC has some principles on WHOIS. And one of the recommendations that the GAC makes at the end of the principles is to take all reasonable efforts or some similar wording -- I don't have it right in front of me -- to reduce the number of patently false WHOIS data. Just to my mind and guiding my involvement in the review team has been the GAC principles. And this, to my mind, is entirely consistent with what the GAC has asked for in the past.

HEATHER DRYDEN:

Thank you for that Peter. So I have U.S., EU Commission, and U.K.

UNITED STATES OF AMERICA:

Thank you, Madam Chair. And thank you, Emily and all the members of the review team. For meeting with us yet again. You have not yet seen our comments, but I can confirm that my GAC colleagues have. So I've been able to circulate the U.S. government's comments on the WHOIS review team and simply waiting for the cover letter to be signed by my assistant secretary which will be formally transmitted to all of you. But I'm more than happy to circulate it now, if you would like.

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First of all, we certainly commend the members of the review team for the enormous amount of work that you have conducted and completed so very, very effectively. And we have addressed each and every one of the recommendations, which I will not go through. So rest assured.

But I did want to flag a few of them, because I think they resonate so clearly and show a shared perspective and a shared concern.

So, first of all, we endorse all of them. And we've just added a little bit of heat or strength, if you will, to one or two of them such that -- I believe it is recommendation 16 where you're proposing guidelines, best practices. We would like those to be requirements. We think you've come up with some very, very effective proposals there that shouldn't be an either/or. Maybe I'll do this; maybe I won't. We think that should absolutely be a requirement.

And, going back to the -- how do you know if it's deliberate or not, maybe I spend more time with law enforcement than you do, Stefano. But, if you get to register 150,000 using Mickey Mouse, you are clearly not Mickey Mouse. And the registrar in question should be able to know right away that that is bogus.

So I wanted to just highlight a couple of other ones. The -- we actually do think that the numbers you proposed for reducing the unreachable WHOIS registrations could, actually, come down at a higher rate instead of the rate you proposed.

So we'd rather set the bar as high as possible. I'm sure that some of you wanted to as well. So we'll just sort of chime in and encourage that to happen.

I think on recommendation 8 I did want to draw attention there to the fact that it has surprised some of us, I think, that in the current RAA, the provision -- the registrar accreditation agreement, my apologies -- the provisions about WHOIS accuracy and the requirements seem to be quite lax, which is a little bit surprising since that's such a key priority and has always been recognized since day 1 of ICANN's existence. So, from our perspective, that is clearly a loophole that has to be corrected in the current -- we think, RAA negotiations that are presently under way.

In addition, we think your points about having clear definitions that are fully described, the differences and the scope of privacy registration services versus proxy are very well-intentioned. We, too, would like to see a clear definition. And, just for the record, of course, in dot US we do not permit either privacy or proxy services, because we think the database should be completely publicly accessible.

But we do -- I think, again, where you propose guidelines for proxy services, we believe those absolutely have to be mandatory. There have to be clear, consistent rules and procedures that the registrars and whomever they use as the proxy provider must be compelled to follow. And, in fact, the registrar must be liable for whatever entity they subcontract with. This is how we view their connections or their relations with either a proxy service provider or a reseller who is somehow non-affiliated. From our perspective, if you're going to conduct your business in that manner, we would think of them as a subcontractor. Therefore, if you, the registrar, are the contractor, you are responsible and you should be held responsible.

So I did also want to respond to a couple of points that you made that you had a -- I gather -- may I put it this way -- a not so positive reaction from ICANN staff as to the concept of industry self-regulation? We are hearing this ourselves through other channels. And we think that is a cause of concern. And I'm just speaking for myself. So my apologies. If colleagues disagree, from the United States' perspective, we absolutely do see ICANN as having to fill that function because they enter into the contracts between registries and registrars.

So, if we cannot turn to ICANN and the contracted parties and their -- the contracts, to improve problems that we all jointly identify, well then how else do we -- what other avenue do we have to make any corrections? So it's something that we've been just made aware of. We, GAC. And I think we going to try to flag that as an issue in our exchange with the board perhaps this afternoon. Because it was in that spirit, actually, that we brought our concerns about the GAC LEA recommendations not getting anywhere. It was from that perspective that the GAC brought those concerns to the board. You are the responsible party. We've tried to explore our avenues. So I'm very glad that you mentioned that.

In terms of where do you see -- you know, LEAs are kind of new to the system. I believe it is a shared view in the GAC. But I can certainly say,

from our perspective, our law enforcement agencies are part of our governments. So we very definitely see them as being members of the GAC, partners to us as we work together to identify problems and advance solutions.

And maybe we need to -- I think there's quite a good team that is traveling -- has traveled all the way to Costa Rica here. And, if we need to, perhaps, plan further ahead so that law enforcement agencies don't have -- their budgets don't normally accommodate travel to an ICANN meeting. So it's been a challenge. And I will give those who are here credit for always somehow finding a way. I think we might want to look ahead down the road to identifying a very concrete future ICANN/GAC meeting where we can better prepare in advance for the agendas and the contributions that we feel very strongly our respective law enforcement agencies can make. But we need advance planning. We need perhaps even some ICANN travel funding assistance to permit our LEAs to be able to participate. Because, from our perspective, they really do help inform and shape the understanding of the partners we must work with, which, in this case, would be ICANN and the registrars and registries. So that's very high on our agenda.

I would like to close my comments with two things: One is that, as I'm sure you've all seen it, you've made that connection. We in the United States -- and I believe many of my colleagues around the table -- we see a connection between what we have been advancing now with the GAC LEA recommendations to improve the RAA; your excellent recommendations coming out of the WHOIS review team; and, frankly, contract compliance. We couldn't agree with you more. The only thing that we would emphasize that I haven't heard you say is, you know, a compliance function clearly needs to be a higher strategic priority. But it still won't have much meaning if the contracts that are being enforced have so many loopholes that they are not helpful. So the contract itself -- contracts, plural, excuse me -- have to be better, clearly, than what we have today. I think that's a shared perception. Because then the compliance is almost meaningless if the contract isn't any good. So I just wanted to reinforce that we certainly share that point. And we intend to raise those points again with the board. So we do keep kind of harping on them, even though I know these three issues tend to be seen as discrete. We don't believe that's a very effective or efficient -- I see you shaking your head as well. So thank you for that. That's reassuring.



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And, if I may provide an opportunity for a colleague of mine from the United States Federal Trade Commission, Commissioner Brill is seated behind me. If she could come up and say a few words, I would appreciate that. Thank you.

HEATHER DRYDEN: Thanks.

JULIE BRILL: Hello, everybody. I'm Julie Brill. I'm a Commissioner of the Federal Trade Commission in the United States. And, as many of you may know but some of you may not, the Federal Trade Commission is an independent commission. We are not part of the administration in the United States. We are bipartisan. We are the United States's premiere consumer protection agency. We also are involved in competition issues. And we also are our nation's premiere privacy enforcement agency. So we have expertise both in consumer protection and in privacy. Indeed, we are the organization that has been admitted -- from the United States that has been admitted to the International Conference of Privacy and Data Protection.

So we have worked with many of your colleagues in your nations on issues relating to consumer protection, international cooperation on consumer protection enforcement, and international cooperation on privacy enforcement.

So it is with that perspective that I offer a few very brief comments in support, in very strong support of the work of this terrific review process for -- that the review team has come up with, the report on WHOIS. Also very much in support of the remarks that my colleague, Suzanne, has just made, which are supportive, very supportive of the report of the review team. We very much appreciate the hard work, the time commitment, the deep understanding that was gained by the review team members led by Emily. Really, a terrific job.

We think that the overall recommendations to enhance ICANN's accountability and to improve the accuracy of WHOIS data is keenly important for law enforcement absolutely. But also for consumers. The concept of transparency is very important with respect to consumers.

The key issues that we see in this report, which we're extremely supportive of, are the strong recommendations to provide to ICANN and

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to ensure that there are sufficient resources so that this WHOIS database will have accurate information and that there will be a link in terms of the compliance between all of the actors who are providing the information to this database.

So the recommendations around providing sufficient resources, both monetary and staffing, is key.

And the other very important recommendation that we strongly support is the creation of clear and enforceable and contractual provisions that require a chain of accountability. That chain of accountability is also key. So, with that, again, very supportive of the report, very appreciative of the hard work that went into it. Thank you very much.

HEATHER DRYDEN:

Thank you very much, United States.

I have the EU Commission next, please.

EUROPEAN COMMISSION:

Thank you, Madam Chair.

Let me first of all echo what my colleagues from the U.S. have said just now, to thank the review team for what we believe is a quite impressive piece of work. And if I may be -- I don't want to be critical, but compared to the standards of what we see coming from this organization, that it's even more impressive. So congratulations.

Let me also -- not to underestimate the all the work done by the review team, but I would like to extend a particular thanks to our colleagues from Australia, who was a member of the review team, for keeping the GAC very well informed. Sometimes it's not always easy for the GAC to follow all the policy discussions, so the participation of GAC colleagues in a manner as Australia has done is key.

Now, specifically on the substance, I do not have major comments to offer right now. The European Commission is analyzing the report, will most probably provide its comments, hopefully, by the deadline.

This is done -- This has been a process a bit more complicated as my governmental colleagues surely will understand because we chose to

extend the request for comments to all the Director Generals of the European Commission, including those that deal specifically with privacy and data protection, with law enforcement, with trade, et cetera, in order to hopefully manage to provide an overarching response.

Some preliminary comments that I would like to raise here and now.

I am particularly, and not positively I have to say, struck by your description of the situation of the dialogue that you had with the compliance staff at ICANN. Now, I understand that some of what you say comes directly from the compliance staff, some is your interpretation, but I am not attributing anything at this point. But it seems that the compliance function is understaffed, and especially that it works in reactive mode. Which I have to say, is something I see more and more of this organization as a whole acting in reactive mode is a particular case of worry for us. Not only because of the opening of the new gTLD but there are many challenges up ahead. And as our Chair has said, this is something we will discuss shortly in the GAC.

Our position at the moment is that compliance, as a part of the raw reflection of what structure and how structurally ICANN has to improve its functioning, is something to be very careful about. So thank you for highlighting that specifically on WHOIS.

We support, most definitely, the recommendation to have moral twitch. I think I can speak surely for the European Commission. Your assessment that there are a lot of people out there who have no idea what WHOIS is is absolutely correct, including some organizations which you may imagine should know, but they don't, including -- I'm not going to name names, but some that data protection authorities in Europe that we discovered had seriously no idea what WHOIS was. And this is worrying.

And, frankly, knowing the professionalism of the colleagues that work in those agencies, I tend to think that a little bit more effort on the side of ICANN would be helpful here.

And last but not least, one question I think I understood, I hope I understood correctly, that you pointed out that it is not enough to -- let's say the stick is not enough, but you also have to provide the carrot. There have to be positive incentives.

I would be interested, perhaps not now because I understand we are running out of time, but later if possible, to better understand what you have in mind in terms of positive incentives. Could we think about some form of global trust mark? This is a good registrar, a good registry because it has a percentage of good WHOIS records, above a certain percentage, et cetera? Is this something we could think about? Because at the end of the day and for the reasons that have been very, very aptly described by my U.S. colleague, enforcement and contractual -- contractual enforcement, the possibility to enforce the contract is of course a key. I'm not sure we will have it tomorrow or the day after tomorrow. And in the meantime something has to be done.

So we would be very interested to explore all the venues in terms of positive incentives that we can use, or that ICANN can put in place or that registries or registrars can also put in place. It is also their responsibility.

Thank you.

EMILY TAYLOR:

If I may, I'd just like to respond to your last question. And thank you all for your comments. I'm trying to not just to comment unnecessarily.

But on the question of incentives, clearly there is a lot of work to be done. We were mindful of our mandate and not to overstep our scope. And one of our constant reminders to each other was not to -- our job is not to create the policy, but merely to review it. But questions like trust marks, pricing -- you know, differential pricing according to behaviors or guarantees are clearly within the ring of appropriate incentives. It's much more difficult to think about incentives than to think about punishment. And I would encourage this community, if this recommendation is endorsed, to work very closely with the registries and registrars and to engage in dialogue with them about what would appropriate incentives look like from their point of view. I'm sure they have ideas.

HEATHER DRYDEN:

Thank you very much for that, EU Commission, and for clarifying, Emily.

So I have at least two more requests for the floor, so we will run over time today.

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I believe the review team is able to spend a few extra moments with us, and I think from a GAC perspective that this is important and we would like to continue this a bit longer.

So next I have the U.K., then I have Estonia.

UNITED KINGDOM:

Thank you very much, Chair. And thank you very much, Emily, for presenting here today and reminding us of the criticality of this report. And thanks, also, to Peter, of course, for contributing so much to the drafting of this report. It's very timely, and it was quite right that the Affirmation of Commitments identified this as an issue to address after such a long period of policy drift and seemingly resistance of the community to do something about this problem.

You haven't seen our U.K. response yet. It's close to finalization. I've got to do it in the spare time here to finalize it. It seems such time is at such a premium, it's quite a challenge, but I'm very mindful of the deadline.

In terms of emphases -- Sorry, I should say, first of all, we do support all the recommendations. They have been very well identified, and courses of action set out and well presented in the report. Excellent report.

In terms of emphases, certainly establish this as a strategic priority is crucial, and we would look to the Board to do that at the next ICANN meeting in Prague. And likewise for the Board to appoint somebody it take charge of this and oversee effective implementation as soon as possible. So hopefully that appointment can be made.

I have a question as to whether you considered whether this appointment, a WHOIS czar or somebody charged with this task of implementation and oversight and enforcement, whether that person should be external rather than somebody within ICANN, a high-level staff member of ICANN. So a question there as to whether you had considered that as an option.

And the reason why I wondered if you had was, mindful of what I said about this having drifted for so long, whether, in fact, it suggests some sort of institutional blockage to do anything. And that unlocking of this

could best be achieved by somebody authoritative being brought in from the outside to enforce action now.

Secondly, the targets. Yes, I -- Okay. Put your finger in the air and come up with these targets, but I think these are very appropriate targets and they should be established as soon as possible as well.

And I think the registrars would probably appreciate that, actually, if the task is set out as early as possible in terms of targets.

I talked about the range of factors as to why so much WHOIS data is inaccurate and hopelessly unusable, if it's there at all. I heard at the session yesterday that -- on the Registrar Accreditation Agreement and WHOIS, from a registrar who said there is a significant problem that they encounter. That while consumers -- that is the second kind of consumer, the consumers that are buying domains -- while they are happy to provide personal information at the point of sale, if you like -- name, credit card information, and so on -- when it comes to providing information that goes onto a database which is then publicly available, they instinctively say, "Oh, I don't want that! I don't want May personal details to be available in that way," especially if it's going to go into addresses and contact details and so on.

So there's a kind of general cultural resistance in all our societies that prevents data being put on such a -- on such a database. And that's a problem that they encounter. And it's difficult to persuade people to release that data for that use. There's a sort of general fear that it could be abused and misused and handed on, and without their knowing what the hell was going on.

So I was wondering if -- what your reaction to that description of the situation that one of the registrars presented yesterday, as my second point for today.

Thank you.

EMILY TAYLOR:

Thank you very much.

If I may respond to your two questions. First of all, about whether the function of heading up compliance is better done externally or internally to ICANN.

That's a very interesting question and one which we have been begun to explore, really subsequently to publishing the draft report. One can see the benefits of both. I think without making any personal imputation to any member of the ICANN team, there is a structural problem, perhaps, in having the very industry members who are paying the paychecks in taking effective compliance action. However, we see many environments where that has worked effectively and can work effectively.

On the other hand, you know, just looking at Frank there from New Zealand, I'm aware of other structural solutions. Say in the New Zealand TLD where the domain name commissioner sits within the same environment but is actually set for it in her funding and also the setup.

So there are a range of possible solutions there, and I think that a proper consideration of effective implementation of that recommendation would include how to evolve this. And it may well be something that we come back to as we come back. So thank you very much for raising that.

You also talked about -- you posed a question about whether the very publication of WHOIS data is itself a disincentive for people to provide accurate data. I'm aware that the NORC study itself speculated this may be the case. I am not aware of any specific data or research on this. I believe that there is ongoing studies on misuse of WHOIS data, and hopefully that might well an aspect of it.

I do believe that Nominet may have done a study on comparing the accuracy of opted out -- in other words, not published -- WHOIS data compared to regular. And I believe, but I'm not sure, that they found that the stuff that was hidden was actually more accurate and it was measurably so.

So this is something to consider as we move forward in time.

Kathy, I don't know whether my colleague Kathy Kleiman, vice chair, would like to say something.

KATHY KLEIMAN:

I wanted to comment briefly, if I might, on the atmosphere of the issue in ICANN over the last decade. I have been a participant in the WHOIS

debates over the last decade. Fortunately many of my colleagues on the WHOIS Review Team were spared spending ten years on this issue.

But I wanted to say that the concerns and disputes within the ICANN community over the last decade I believe have been genuine and well-intended and in good faith.

In the real world and in the governments that you participate in, there's a balance of law enforcement and data protection and privacy issues that is balanced by laws and by practice and by custom. This has been very hard to approach within the ICANN community. We had to build up a lot of knowledge. We had to build up experience. And I think if you like the WHOIS Review Team, it comes out of a great cross-section of the ICANN community, which hopefully has now matured to the point where we can really wrestle with these issues and show you what we've learned over ten years and the willingness to go forward.

HEATHER DRYDEN:

Thank you for that, Kathy. That's very encouraging.

Next I have Estonia, please.

ESTONIA:

Thank you. And as we have run out of time, so I try to be brief.

First of all, I want to say that I very much appreciate the work done by the review team because this accuracy of WHOIS is -- solves very many of the programs concerning the cybersecurity that the Internet is facing in the future.

But my question is that did you involve banking community in this process, drafting the report? Because in the last, I can say, two decades, banking community has -- and banks has faced similar programs. And they are quite much solved by -- they have managed to solved by now with these kinds of -- not regulations, but these recommendation packages. For example, these 40 recommendations for -- 40 plus 9 recommendations for anti-money laundering and terrorist financing which is a framework provided by G8 countries union. But one of the basic questions there is also the data accuracy and account holders accuracy and remitters account accuracy.



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So I think there are similar programs already solved in this community, and the question is did you also manage to consultate with the banking community during this process?

Thank you.

EMILY TAYLOR:

Thank you. To respond to your question, and thank you very much very much for that economy, I would like to hand over to my colleague Bill Smith from the review team.

BILL SMITH:

I'll be quick.

I was on the review team as an independent expert. I happen to be an employee of PayPal. I will be quick to note that PayPal is not a bank but we are a money transfer agent, and we are subject to many of the regulations that you broadly addressed.

And so I would say yes, at least some of the concerns or viewpoints from the financial services industry were represented. We did consider -- certainly I did and would have brought those things forward if and when appropriate. So these were not completely ignored, but it was not a subject that we spoke about at length.

But I, as a PayPal employee, money transfer agent, I am very comfortable supporting each and every one of the recommendations that we made and believe it will go a very long way to help with cyber security issues in financial industry.

HEATHER DRYDEN:

Thank you very much, Bill.

Next I have China, please.

CHINA:

I'm from China. We very appreciate the WHOIS Review Team's effort, improving the current WHOIS policies and acknowledge that the consensus-based WHOIS policy is necessary and helpful for maintaining global consumer trust.

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So by reviewing the final report of WHOIS Review Team, China supports the review team's findings and their recommendations.

Here I would like to introduce some practice from China. We had an organization that is CNNIC. It's in charge of the operation of dot CN.

Before 2009, the accurate information about the dot CN registrants is only about 40%.

From 2009, CNNIC started adopting an proactive approach of improving the WHOIS accuracy by the means of preregistration authentication procedure. Now the rate of accuracy is more than 99%.

This helps to significantly reduce the spam and phishing Web site under dot CN. This also helps CNNIC to achieve a lot in building consumer trust and reducing domain name abuse.

Of course it has the cost. That's the registration volume under dot CN declined from 30 million to 3.3 million.

But I think it gives a health space to improve.

Now we are -- the current problems that we are facing that there are some TLDs that didn't comply with the WHOIS accuracy policy, especially there is no defined criteria to evaluate the enforcement of accuracy globally. So it is very crucial for the communities to collaborate in this area and make consolidate matters to carry on the WHOIS policy effectively.

So I think the draft report from the WHOIS Review Team is very good. It gave us paths to achieve the goals.

Thank you.

EMILY TAYLOR :

Thank you very much.

HEATHER DRYDEN:

Thank you. Okay.

So I don't see additional requests to take the floor.

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Clearly, there's a lot of interest in looking at next steps and implementation of these recommendations. So I would encourage those in the GAC to be thinking about what, as a committee, we may want to comment on regarding both the recommendations and that follow-up aspect of this.

One question I do have for the review team is are you going to be commenting regarding the nature of the review team as one of the four review teams and how to capture the -- and learn from the experience of the review team in terms of the process?

EMILY TAYLOR:

Thank you for that suggestion, Heather. Again, we haven't explored that yet, but we have another six weeks of our work ahead of us. And one of the things that we have talked about and the reason we posed this question is to try to do what we can to make this process of Affirmation of Commitment reviews as successful in the long term as possible. And it may well be that together with the chairs of the other review teams that have delivered reports we could put our heads together and perhaps come up with a few suggestions for how that might be done. That's just literally I'm speaking on my own behalf from the top of my head on that, but I do think that would be a useful service to the community if we could do that.

HEATHER DRYDEN:

Thank you very much.

So again, congratulations on all your work. Your effort has produced a really solid result, and you heard today from a number of colleagues that it is truly appreciated.

I would remind those in the room, because you are unlikely to do this yourselves, but you did this all on a volunteer basis. So countless hours spent on working on this and coming to a strong consensus on a result on what is really a complex matter. Really, I'm impressed. And thank you on behalf of the GAC for those efforts.

EMILY TAYLOR:

Thank you.

[ Applause ]

HEATHER DRYDEN:

For the GAC, we are going to have a light lunch brought to us in the room. So what I suggest is that we take about 20 minutes and not go too far. But I understand some discussions are happening on the corridor, so that can continue. And we will try to get lunch here to the room as quickly as possible.

New Zealand.

NEW ZEALAND:

Thank you, Heather. I just want to draw to everybody's attention the fact that Thomas has circulated a proposal. I would ask, if possible, for GAC members to check their e-mail and have a read of that proposal prior those discussions.

Thank you.

