TORONTO – WHOIS Working Group
Monday, October 15, 2012 – 11:00 to 12:30
ICANN - Toronto, Canada

GISELLA GRUBER: Welcome to the WHOIS Working Group Session on Monday the 15th of
                    October, 11:00 AM local Toronto time. Thank you.

CARLTON SAMUELS: Thank you Gisella. Welcome everybody. My name is Carlton Samuels. I
                    am the Chair of WHOIS Working Group, At-Large WHOIS Working
                    Group. I'm glad to see all of you here. This is an open session. Most of
                    you would know that At-Large has some standing working groups;
                    WHOIS is just one of them. And we are particularly focused on the
                    WHOIS matter.

                    Right on the left of the screen there, on the board, you see what our
                    goal line is, the current ICANN WHOIS policy prescription. It says we
                    must implement measures to maintain timely unrestricted and public
                    access to accurate and complete WHOIS information, including
                    registrant, technical, billing and administrative contact information.
                    That's what the current policy says, and that is our goal line.

                    We are very much concerned that the WHOIS implementation has
                    always been a matter of controversy because of the tensions that it
                    develops between privacy and access. So we recognize this tension and
                    we, ALAC and At-Large, to the extent that we maintain unrestricted
                    public access to accurate WHOIS data we are always open to

suggestions as to how there might be a balance between that sentiment and privacy.

We have two major items on the agenda to discuss this morning and then the floor is open. The first item we have on the agenda is Uniformity of Contracts, and the second one is the WHOIS Registration Data Model. Those were the two. Members, any of you can make suggestions as to all the things that might be important to you but those are the two that we have on tap for dealing with this morning.

So if it would help maybe we should just go around the table and introduce some of our participants, starting down at my far right.

PETER KNIGHT: I'm Peter Knight. I have stock in Washington DC and in Brazil. I'm very interested in ICT for Development and my first ICANN meeting to understand a little bit more of the ICANN culture. Thank you.

MAUREEN HILYARD: Hi, I'm Maureen Hilyard. I'm from the Cook Islands. I'm representing the Pacific Chapter of the Internet Society and I have an interest in the whole WHOIS issue. I'm here to listen.

HOLLY RAICHE: Holly Raiche, the Internet Society and soon to be a member of ALAC. Right now, Vice-Chair of APRALO and this is an issue that I have been following for some time.

GARTH BRUEN: Garth Bruen, Chair of NARALO. Holly, you didn't sound happy about being Vice-Chair.

HOLLY RAICHE: I'm ecstatic about being Vice-Chair.

GARTH BRUEN: It's a privilege. In addition to being the Chair I also run an organization called KnujOn, which is focused on Internet abuse and we have taken a very, very long and deep look at the WHOIS issue and related problems. Thank you.

GORDON CHILLCOT: Gordon Chillcot, representing Greater Toronto Area Linux User Group. As a group we have a rather strong technical interest in it which has now morphed in to looking at the policies because that's going to drive the technology, hopefully not the other way around.

EVAN LEIBOVITCH: Hi there, according to this card my name is Chris LeHatte, but the rest of the time my name is Evan Leibovitch, Vice-Chair of ALAC.

JOHN BERARD: My name is John Berard; I'm a GNSO Councilor from the Business Constituency. We have a couple of motions before us on Wednesday that I thought I might gain some additional insight to by participating, at least listening, this morning.

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CARLTON SAMUELS:	Thank you John, we will probably bring it up in the discussion in the Uniformity of Contracts. There is a motion in the GNSO about the Uniformity of Contracts, there's also a motion in the GNSO about the thick WHOIS matter and we could talk about those two. There are several other motions but those two, in particular, would be of interest to the WHOIS Working Group. Thanks.
	So let's move in to the first item that we had on the agenda, and that is the Uniformity of Contracts. John did mention that there is a GNSO motion in front of the GNSO Council for action, and perhaps I could start out with John to see what his interest is and how we might see if we can come to some happy medium on this.
JOHN BERARD:	Well I don't think I'd like to tip my hand, but my colleague on the Business Constituency, GNSO Councilor, I think is the author of that motion.

[background conversation]

JOHN BERARD:	No, Zahid. And over the weekend the GNSO discussion surfaced some anxieties about the motion from other councilors who feel that it is not focused enough in once instance, or moves in to areas that are best left to contract negotiation on the other. So I don't know how it's going to come out, but I thought I would just come and give a listen.

CARLTON SAMUELS: We are putting the motion up momentarily so that you get a look at it, for the others who might have not seen it. I've looked at it myself because our liaison to the GNSO, Alan, has actually brought it up to the ALAC so I have looked at it. Our item was on this agenda long before we knew there was going to be a motion by GNSO.

But let me tell you what the issue was for us in the WHOIS Working Group. The RAA says that you must have, and this is specifically now to the WHOIS question, the RAA says that it commits the registrar to have an accurate name and postal address. That's what the RAA says. If you look at the registry agreements, the registry agreements...they're all over the place.

And the idea was, especially with respect to WHOIS, that you should have uniformity requirements, uniform requirements, in registry and registrar instruments. That is our major interest, that with respect to the WHOIS requirements there should be uniform requirements in the instruments for registry as well as registrar. We are not so much bothered with the whole set of data items. We are mostly concerned that at the minimum the WHOIS requirement should be the same. They should be harmonized. That has been our issue.

[background conversation]

CARLTON SAMUELS: No, it's Uniformity of Contracts. Let me get it from Alan.

EN

[background conversation]

CARLTON SAMUELS: No, no, no. It is in the agenda. It's in the agenda, so that's fine. We had it in the agenda. The problem is I can't get on the Internet. It says it can't find my webpage, it's unavailable.

[background conversation]

CARLTON SAMUELS: You got it? Okay, well I can't get anywhere because this thing doesn't work.

[background conversation]

CARLTON SAMUELS: No, I can't get it. It's timing out on me. We have insufficient bandwidth apparently.

[background conversation]

CARLTON SAMUELS: Yep, that's the one. Can we just scroll down?

EN

JOHN BERARD: The explanation, with these motions, is generally embedded in the links in the whereas clauses. I'll yield to you to fill in the background.

CARLTON SAMUELS: Let me tell you what I understand to be the issue, because we've brought it up in the ALAC about two years ago while we were looking at the WHOIS contract. And we were trying to figure out whether or not there was a uniform policy prescription for WHOIS. We looked at the registry agreements and we looked at the registrar. The RAA was then in the middle of being renegotiated and so we looked at what they were asking for in terms of WHOIS.

And it was very clear that there were differences between the requirements in the registry as well as the registrar contracts. And so the idea is if the registry is the baseline and the registrar working to collect information in context of the thick and the thin WHOIS...because in the thick WHOIS situation, the registry also maintains and keeps WHOIS data.

The question was: why would you then have a situation where the WHOIS requirements were not similar across the board in both agreements? And if we were going to move to the thick WHOIS construct, then it was absolutely required that the WHOIS data would be the same for registry and registrar. That is the background.

And in our view at the time we thought, because we were supporting the thick WHOIS construct, we thought one of the requirements to make that work was to ensure that the WHOIS requirement was the

same across the board for registry as well as registrar. That was the issue for us.

Most of you would know that there are two types of WHOIS frameworks out there. There's the thick WHOIS and the thin WHOIS. Believe it or not it's more about how the data is handled and stored than anything else. But before you can store data you have to collect it and if you do not have the same requirements for collection then you would have disconnects. That's the first one.

If you look at the second, there was another...the SSAC folks came up with this registry data model which we feel is going to be important for adoption because this is where you could have a single data model that covers collection of data and the storage of that data. That is what that model would allow us.

So if that model is adopted, if you look at the elements in the data set that it is asking for, then we feel that once that is adopted and it is incumbent on registry and registrars alike then all interests would have been covered. So this is how these two things are connected in our view. Holly?

HOLLY RAICHE: Just a question. That motion seems to go a little bit broader than what you've been saying. It talks about the requirements for registration abuse. And I'm assuming what you mean by registration abuse is, and maybe you'd better clarify; I think what we're talking about is activities which harm in some way.

Do you want to talk about, in your context, what you mean by registration abuse? Because it does overlap with a lot of the stuff we've been doing on requiring thick WHOIS but also we've been talking to Compliance, certainly in the context of the RAA, but probably broader than that in this working group which is the problem is registry agreements are not uniform in what they require in terms of dealing with registration abuse. That motion seems to go further than just WHOIS.

JOHN BERARD: That is correct. That motion covers eleven different points of behavior, which is one of its criticisms; that it is overly broad. And with regard to WHOIS specifically, it draws criticism because the verification of WHOIS data is currently a discussion point at the RAA and is also being promoted by the law enforcement officials who are participating in this process. So the opposition to this motion looks at it as overly broad, trying to deal retroactively with issues that have already been dealt with or are being dealt with in other ways.

[background conversation]

JOHN BERARD: That's what makes a horse race. So I don't know how it will come out, but I do know that it going to be a significant subject of conversation for us on Wednesday.

HOLLY RAICHE:	Are you saying that basically for us, which is about WHOIS data, I know that certainly there are RAE negotiations going on. Yesterday's meeting here with ALAC, there was a great deal of discussion about compliance or the lack thereof and the fact that we're not participating, not even parties to the RAA negotiations.
	So having some kind of...are the contracts drawn up in such a way that compliance with the requirements for WHOIS data can actually be enforced. Now that is probably in summation where the ALAC position is, and we don't have a lot of confidence, actually, in the outcome at this stage so...am I treading on your ground?
JOHN BERARD:	Well I won't take that personally, but in fact I don't know how it will come out. I do know that it is a serious topic of conversation. I'm totally on board from a Business Constituency perspective as to the need for verification and accuracy and access, so we'll see how it happens.
	Now in terms of compliance, I don't mean to turn this in to a BC meeting but the Business Constituency has long been, and loudly, in support of increased diligence with regard to compliance. Historically, if one can look at two or three years as history, concern that it has been underfunded, under applied, underappreciated.
	The change in the organization at ICANN, where Compliance now reports directly to the CEO, we looked at that as a positive step in terms of creating a proper mentality throughout the organization so I think all of the issues are on the table.

I think that each of the players has had their say and I guess we'll see how this comes out, which is the reason why I came here. Not to participate as much as to be informed by the conversation.

HOLLY RAICHE: I think we're on the same page.

CARLTON SAMUELS: Thank you, we have a remote question and I'll ask Matt to read the question. Thanks.

MATT ASHTIANI: Hi this is Matt Ashtiani, for the transcript record. Our question comes from Rudi Vansnick. Rudi asks, "I have a question related to the accuracy of the WHOIS information. Who is checking the data delivered by the registrant? Samples of this aspect: proxy registrants such Foundation Private WHOIS."

CARLTON SAMUELS: Maybe I can jump in here because this is one of the issues that...the At-Large is concerned. The ALAC is concerned. The ALAC's major concern is that we are required to have; at least ICANN is required to implement WHOIS with accurate data. To the extent that no one is checking and verifying the data, I doubt if they could seriously say that the data is accurate. At least there has to be a point where they can say definitively the data is accurate.

That is why we believe that verification of WHOIS data is absolutely required. There are some different opinions as to how verification might be implemented, but certainly with respect to the requirement for accurate data there has to be at least some point in the cycle where the WHOIS data is checked for accuracy. At the minute, we do not have any authoritative information to say that that data is checked and we certainly, from our anecdotal experience, do not believe that the data is verified. Yes Holly?

HOLLY RAICHE: Where we got to last year, last meeting, wherever that was. There was a whole seminar on WHOIS data and a discussion in the context of the Registrar Accreditation Agreement, which is what we keep talking about. About the RAA, but for those that don't live in this world it does stand for Registrar Accreditation Agreement.

There's a particular clause that requires that the data be, or that the registrars make reasonable attempts...and there are a couple of words "reasonable" in Clause 3.7.8, which we've all memorized, which give perhaps more leeway than we would like in terms of what the requirement is and how enforceable it is.

So what we've been asking for has been an understanding of what is meant by "accuracy". Now at the last ICANN meeting there was a presentation on WHOIS data accuracy and it was a nice little matrix of the sorts of things you'd look for.

What we've asked of the Compliance Department at the last meeting was what do you mean in terms of how much do you actually have to

check that the data is reasonable? We still haven't got a final answer on that, but we did have some presentation that should be followed up from the registrars' side. They don't want to have to spend a lot of time and money checking each bit of data.

On the other hand, there are certain processes they could go through which would not amount to a lot of money, not amount to a lot of time, but could nevertheless check. So that's one of the areas of flexibility that we have identified and not solved necessarily. But it all comes down to what the registrar does to check against a standard of accuracy that we would like to understand better from Compliance in terms of what they do. But I'm sitting here looking at Garth, who's nodding and saying nothing and probably should say a lot more.

CARLTON SAMUELS: I'll remind you all to say your names before you speak for the record. Thank you so much. Garth, you have probably more information on this than anybody else in this room.

GARTH BRUEN: Thank you. This is Garth Bruen, for the record. Holly brought up 3.7.8, and the problems with the definition of "reasonableness".   And Compliance did offer a slightly more detailed assessment of that part of the contract; however, there is a deeper issue in that same clause which is that there is nothing in the contract which compels a registrar to delete or suspend a domain which has proven false WHOIS.

They do this at their own discretion, and actually I believe Compliance used that word yesterday. They did use the word "discretion". This is

extremely problematic for several reasons. The first is that the actual policy, as it is, is completely made up at the whim of the individual registrar.

So as a registrant...I'm not even talking about parties on the Internet who might be abused through fraudulent registrations.   I'm talking about the domain owner does not know where the line is and if they look to ICANN's documents, if they look to ICANN's policies, they cannot see where the line is that they're not supposed to cross. That line is determined, apparently, at the whim of the registrar and only after a complaint has been submitted.

At that time, once a complaint is processed, does the registrar have the ability to delete or suspend the domain? So as far as this goes, ICANN does not have a policy on the deletion of domains that are violating the registrant agreement.   So in effect that portion of the RAA is not enforceable, and this is not part of the negotiations that are going on right now to revise the contract and this is one of the biggest flaws in the contract.

CARLTON SAMUELS: Thank you Garth.

BOB BRUEN: Hi, Bob Bruen, also from KnujOn. I just want to add one little bit. There are alternatives in the RAA for the registrar to say you may check this when somebody registers a domain or you can send them an annual email saying, "Fix your record if it's broken."

I don't know anyone that actually checks it when they register, but they get emails all the time and if you don't complain that your record is broken they will not touch it. Therefore if you've got one that's broken and you like it that way you won't tell them. So they just have a way out and they say "We're doing what we're supposed to do."

CARLTON SAMUELS: Thank you Bob. Holly? Say your name.

HOLLY RAICHE: Holly Raiche, for the record. And worse, what we were discussing yesterday as well, in terms of what do you do about registries that are not enforcing the agreement? Because if you go up a level and say, from a registrar's point of view, what do you have to do?

But then what do you do if you've got a particular registrar that just quite regularly does not care at all. There are X number of domain names that should have been deleted, weren't, didn't care, didn't check. At what point, and this is....Carlton just got up and said...what was your line? "Where is the enforcement?" Where is the, "By the way, you've got to stop and get out now."

We're looking for that line because it's not in the RAA and, as Carlton has pointed out, it's not in the registry agreement. So what is the penalty at the registrar level and at the registry level for registrars who are not checking, either in the first instance or annually, the accuracy of the WHOIS data?

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CARLTON SAMUELS: Thank you Holly. Are there any other comments? Steve?

STEVE METALITZ: Thank you. Steve Metalitz from the Intellectual Property Constituency.
First of all I just want to...I'm sorry I came in late, I just wanted to thank
this group and the At-Large in general for all the work that you have
been doing on these WHOIS issues and the RAA. I think it's been
exceptionally important and, as Holly knows, I have to continually
remind the GNSO that the drafting team that came up with the high and
medium priority items for revision of the RAA was a GNSO/ALAC
drafting team, not a GNSO team.

That said, I think this is an excellent example of something where the
focus within the, as far as we know it, within the RAA negotiations on
the demands of law enforcement groups has given short shrift to the
high and medium priority topics that were identified in that drafting
team report. Because this is one of them, I'm sure it was a high priority
topic and I don't remember the exact wording but it was really that the
new contract should specify the circumstances under which the
registration must be canceled for false WHOIS data, or for other
violations.

So I asked at the GNSO Council meeting on Saturday, I was participating
remotely, and I asked whether there has been any update of...because
the staff has distributed a document that lines up where things are with
the law enforcement demands. But I asked whether that has been done
with the drafting team demands and the answer is no.

So I don't know definitively what's being discussed there and how much of this has come in to it but since the charter of those negotiations was not just to address law enforcement but also to address the high and medium priority topics identified by the drafting team. If they haven't, if it's not in there, then they're not following the instructions that the board gave them. But I think this is something that we need to continue to press on and, perhaps, I think there is a session this afternoon on the RAA negotiations and that would be a good time for ALAC members and At-Large participants to raise that concern. Thank you.

HOLLY RAICHE: We will be talking about it this afternoon, and probably the first slide I've got is, "By the way, this was a GNSO/ALAC team." and some of us spent some pretty odd hours in the morning talking for a very long time. And yes I share the disappointment because what's been taken as the things that should be negotiated are essentially law enforcement and everything else we said has kind of disappeared. But one of the things we did say was about accuracy and in terms of what to do about accuracy and the thick WHOIS, which is also what Carlton will be bringing up, those such things we don't know what is being negotiated about.

And we remember, I think Steve and I remember the painful negotiation. Why aren't we at least sitting at the table, even if we don't have a voice? Well we can't because it's contractual negotiations, so we weren't there. So the sorts of things that we raised just...we don't know where we are and the frustration from yesterday's meeting with Compliance is this is seen as simply a contractual negotiation between

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two parties, not realizing in fact the rest of us are affected. That's our frustration.

CARLTON SAMUELS: Evan?

EVAN LEIBOVITCH: Yeah I just want to take that issue...sorry; this is Evan Leibovitch, for the record. I just want to take what Holly said and take that to a further step.   I forget which politician referred to things as "unknown unknowns" and part of the problem is that we are fighting in the dark.

We don't even know what to protest against. We don't even know what's going on for us to say, "Yeah that's a good idea." or, "That's a bad idea." One of the few things I think we do know is that 3.7.8 and related things aren't even being discussed for renegotiation. So we're in a situation where either we don't know what's going on and the one thing we do know what's going on is something that works against us. So it's generally a feeling of total lack of transparency, total lack of participation, and in a major part of what we consider to be a matter of end-user confidence in the DNS and in ICANN itself is just being locked away behind this wall.

Furthermore, you have a perception that's been mentioned to me that you essentially have registrars on one side of the table and ICANN that has registrars as a big part of their Multi-Stakeholder Model on the other side of table in effect, to a certain extent, negotiating with themselves. Whether or not this is a good perception or bad perception or a wrong perception, there is still a component of that that exists.

And I think this is a significant contribution to a lack of public confidence in ICANN, that there's a perception that ICANN, when it sits down to do the RAA, isn't totally trying to assert the public good. And if it were, perhaps at least there'd be a possibility of having outside observers seeing what's going on and being able to ensure that it meets the public good.

CARLTON SAMUELS: Thank you, let me go to John. Please remember to state your name.

JOHN BERARD: John Berard, GNSO Councilor from the Business Constituency. Has the ALAC addressed the extent of the items that ought to be included in the WHOIS record, and has it spoken to what constitutes an error or a misrepresentation? I mean if an administrator changes jobs and then the name of the old administrator is still on the record is that...I don't understand...if I could get some insight as to how deep and your definition of what an error in the record.

And then, of course, who is it that is, and no pun intended, that is supposed to monitor this? Is there a suggestion as to how frequently, and this notion of taking down a website...I don't know, I guess I've seen the U.S. government do that now but what are the crimes for which that penalty seems to be appropriate?

CARLTON SAMUELS: I'll let Evan go.

EVAN LEIBOVITCH: As far as I understand it right now...sorry, this is Evan. The only criteria I understand right now that leads to takedown is non-payment. So right now, the only criteria that would allow something to be taken down is a financial issue, not an informational issue. Unless I'm mistaken, but you certainly can have something taken down if you don't renew your contract or you don't renew your payments.

JOHN BERARD: I understand that, but I'm just trying to get a sense from you when you say taking...on what basis should a website, in your view, be taken down? What is the extent of the data file that you are hoping to impose on WHOIS? And what is the nature of something that you would deem as incorrect enough to impose the penalty of taking down the website?

CARLTON SAMUELS: The ALAC has defined in its statements the WHOIS record that we're concerned about, and we have the elements laid out that we are concerned about. The objective is that we should have enough data to be able to positively identify a registrant. We have also been on record for requesting that that data, that data set, that is collected is accurate. And there are measures in place to ensure the accuracy of that data.

What we have never done is to suggest at which point the data should be accurate. We have just said that the data should be accurate period. We have never really broken it down and said, "You need to do it right after the registration." or, "You need to do it six months from after." and so on. We have never gone in to that thicket.

It is one of the reasons why we keep a close hand in looking at the data registration models that are being proposed, because what we have to ensure is all the data items that are of our interest are always kept in that model. Now there is a concern, especially with the new registration data model that would internationalize domain names, that it might not be adequate.

There is that concern and that is why we are looking more closely at that proposed model to ensure that it is adequate to task. All that said, we believe that the RAA, since it is so central to what ICANN does, ought to be subject to consensus policy making. We believe that. We also believe that with these negotiations, like my colleague Evan says, the absence of all of the stakeholders from the room is actually a bad thing.

And we have been agitating about having at least even observer status in those negotiations and there has been no response to date. So we still have those issues we're working on, and we're still trying to push the envelope with respect to who gets in to the negotiations, what kinds of things are firewalled in the negotiations, what clauses need further clarification? We have a very strong position on Clause 3.7.8, for example, that has not been embraced. But we are still pushing the envelope where those are concerned. Yes, Bob?

BOB BRUEN: Hi, Bob Bruen. I think that, given the presentation by our CEO this morning, we should write another letter saying, "You said this will be open and equal and it's not." unlike the previous agitation, because he's publically stated that everyone's going to have a seat at the table, it's all going to be open and accountable, everything else. And this is not

doing that, it's not in line with what he said today. We should hold him accountable to that.

CARLTON SAMUELS: Holly?

HOLLY RAICHE: I took notes. I think the other thing that he said was everything should be in the public interest. So, right up front, the public interest for all of the equal stakeholders has to be X. And I think Garth has probably done the most work in terms of if you're trying to understand at least the minimum data set, I think...and I'll let Garth talk about this, but at the very least that the domain name resolve.

At the very least law enforcement agencies can get at it. At the very least, from an Intellectual Property point of view, there's some kind of date attached to it that has some kind of meaning. But you're the one that worries about that.

GARTH BRUEN: There are definitely...

[background conversation]

GARTH BRUEN: Oh sorry, Garth Bruen. There are definitely parts of the record which are required and better defined than some other parts. I think that

what is accurate and what is not accurate; there is some leeway in that. I think that if you have a postal address, if you have a street address, you should be able to accept mail. If you have a telephone number it shouldn't be rejected with a busy signal and sooner or later somebody should answer the phone.

And I think what Holly was referring to in terms of the domain being responsive; you're talking about the domain extension in an email address. Yeah. Because what we see, in many records, are contact email addresses that don't have a legitimate TLD at the end of them or don't even have a domain name that's a real registered domain name. Happens all the time.

I've actually have some Compliance staff writing back to me about such a situation, saying, "Oh I don't see anything wrong with this record." which is really sort of crazy. And there have been lots of debates about how to validate the data and what is accurate and what is not accurate. And what I've found is that when we've absolutely been able to determine that a person, an email address, an address, a telephone number, they're just completely fictitious and we have documents showing that it's fictitious, even at that point ICANN has absolutely no recourse.

There's nothing that they can use to ensure that the registrar deletes that domain. There's nothing. And I think this keeps going around and around, that we're not at the table discussing this portion of the contract which seems very flawed. And one thing I've said previously about this, this is one of the only places where a member of the community can directly access and interface with ICANN, meaning that

an Internet user can file a complaint, a WHOIS inaccuracy complaint, about a domain and then something is supposed to happen.

Other than that there aren't too many entry points in the RAA for an Internet end-user. And what we find at the end of the day is that it is ultimately ineffective. So I think we need to ask the question: how can we get in the room to make sure that this is on the agenda? And I guess I ask that to the group.

CARLTON SAMUELS: Anybody else want to say something? John, can I ask you a question? This is Carlton Samuels.   Your resolution to the GNSO Council speaks to the abuse situation and that came out of the draft Issues Report that talks about Uniformity of Contracts in terms of making sure that there is some place in the contract where the contractor is required to report abuses. You're anticipating pushback.

Is there anything that you think that the At-Large, the ALAC, can do to support the objective?   We understand the objective.   What we are asking is what is it you think we can do now to support that objective?

JOHN BERARD: It would be wrong for me to say that I am expecting pushback. Over the weekend, there was pushback. So I'm not guessing at something here, I'm just reporting that there was a lively discussion about this motion at our weekend session.

I also would say that I would rely upon the good office of Alan, your ALAC observer, who has extraordinary influence at the council level. He

is viewed as a serious, sober, and insightful member of the council and I think you can be confident that he will bring your concerns to the table.

This motion was offered by my Business Constituency colleague, you can infer that it has the support of the Business Constituency. As I said, it has not yet been seconded so that's an issue. But beyond that it's difficult for me to say anything more than I wish Derek Jeter a speedy recovery. So thank you.

CARLTON SAMUELS: Okay we have another question; Evan has a question just before you go.

EVAN LEIBOVITCH: Actually, I'm asking it as a takeaway. Sorry, this is Evan. I'm asking this as a possible takeaway as you leave. At-Large is going to be trying to consider, at a higher level, how to try and deal with compliance. Not only by supporting the new moves but by also by trying to see what we can do at a level to try and strengthen their hand at effecting the kind of things that we need to be changed.

Some of this can be within the realms...I mean you have your constraints from what you can do in the GNSO. ALAC has a bylaw mandated ability to comment about anything at any time, and so we're actually going to try and put together something that we can give as input to the board and elsewhere that doesn't have to be constrained with what a PDP does.

And if we can give a high-level piece of advice that essentially says that something needs to be looked at from a higher-level. So perhaps in

terms of if there's something we can do with you, or if there's some ideas you have about what needs to go in to the RAA that may not be looked at right now, please let us know because we may be able to at least try and shed some light on the darkness in certain corners of this.

JOHN BERARD: I will...this is John Berard. I will commit to participating in that. I would offer, as a model, the efforts of the BC wherein at each meeting we try to meet with the Compliance Team to make sure that they understand the BC's concerns and try to encourage them to act to the extent of their mandate.

We have participated in making sure that the response to the Strategic Plan, that Compliance gets its due. We have commented on the budget to make sure that the team is funded properly. And we have rattled whatever saber, or dagger I guess if you think about the size of things, we have in order to continue to draw public attention and ICANN's attention to the need for compliance because, as you know, the credibility of the organization is rooted, at least in part, in its ability to manage its compliance programs.

EVAN LEIBOVITCH: Sorry, and the only last thing I would say to that, this is Evan speaking again, is the key term in what you said is "to the edge of their mandate" and we've had similar conversations yesterday, with Compliance, that ended up very quickly going in to what it is they are able to enforce. So while they're grabbing more resources and have a greater ability to do

enforcement, then do we get to the limits of what they're able to enforce and that may end up becoming just as big an issue.

JOHN BERARD: Right, this is John Berard. I am not prepared to count the number of angels on that particular pin.

CARLTON SAMUELS: Thank you, John, for that. We will note that the Business Constituency might have some concerns and we might note that we have at least a tentative agreement to cooperate, collaborate, on looking at some high-level issues that we might be able to formulate for the board. So I think we've pretty much exhausted that topic for the time being.

So we want to move now to the other item that's on the agenda, and that was the Domain Name Registration Data Model. The ALAC is keen to ensure that with the coming of the Internationalized Domain Names that the requirement for accurate and complete WHOIS data record remains.

If you think of the Domain Registration Data Model as a bucket in to which you're going to pour all of these data elements, and we want to ensure that all of the data elements that would be critical to identifying a registrant is captured in that model. That's one level. The other level is about access and display of that data to ordinary internet users. And if you notice, back in June there was a…the staff has put out a registration model that they say should be in place so that the data that is displayed, whether by Port 43 access or on the web service, is consistent.

TORONTO

So there are those two bits. If you look at the data model, just to ensure that all of the elements, WHOIS elements, are captured there are still some concerns, at least that have been expressed to me, that the way the data elements are captured in that model we may not have enough for the internationalized domains. And our interest is ensuring that the data model is fit to purpose. It must be able to capture all of the WHOIS elements regardless of the origin of the WHOIS data, whether it's from an internationalized registration or a standard registration. I'll throw the floor open.

HOLLY RAICHE: I'm actually going to ask Garth to repeat what he said earlier, which is what are the elements that are critical for us to have in the data set that's gathered? And...go ahead.

GARTH BRUEN: Well one of the original purposes of any kind of WHOIS record was to be able to get a hold of somebody if there was a problem with a particular note on the Internet, not just a website. I mean this goes back to before there were even domains. You have to be able to get a hold of somebody if there's a problem. And it's not just a problem of illicit product sales or junk marketing or copyright and brand violations.

Maybe there's something technically wrong with the actual website. It's sending out a bunch of spam, it's spreading viruses, there's something very wrong with it so you need to be able to get a hold of somebody because they might not even be aware of it. And this is a point that's often lost.

TORONTO

We're also talking about domain owners as victims; as victims of cybercrime. So if you own a domain name, it's in your own interest to have a way that people can contact you because you may not be aware that something is wrong with it. This is a problem that I encounter on a regular basis, where people's domain names have been hijacked, they've been infiltrated, there are extra pages and directories on there that they didn't put on there.

And if they didn't have accurate information I, just as an ordinary, friendly Internet user, wouldn't be able to tell them about it. So first, obviously the way that we communicate most frequently is through an email. So there has to be a valid email, and it should be valid especially if you're running a commercial operation. Somebody should actually be reading it. You receive a lot of automatic responses back to an email that say, "No one reads this email." Well thanks, then why do you even have it up? What's the point?

And obviously if the email fails you want to be able to get a hold of somebody on the phone. And then if the phone number fails, well yes then you have to write a letter. So I think in terms of order of importance, in terms of being able to get a hold of the person quickly, it needs to be email, phone number, and then street address.

HOLLY RAICHE: I'm going to ask Steve from the Business Constituency; since we're listening to you or rather you're listening to us, what from the business community is critical for your constituency?

STEVE METALITZ:	This is Steve Metalitz from the Intellectual Property Constituency. On the data model, I would certainly agree that it has to be fit for purpose to accommodate Internationalized Domain Names. But we have some other concerns about the data model as it now stands. It seems to be kind of a status quo model with basically the same data elements as we have now.

And we thought the whole idea, or one reason for developing a successor to the WHOIS protocol and having a better domain name data registration system was to...we want to better WHOIS. And so there are data elements that actually have been identified by ICANN staff and that are right now the subject of a survey that ICANN is running on the requirements for the successor to the WHOIS protocol, but we don't see in the data model.

I'll just give two examples; there is discussion about whether there should be historical information in the WHOIS record. It should be required to have historical information in the WHOIS record. That's not listed in the straw-man data model; it's not even on the table. And it's been discussed about whether the WHOIS data record should include a field that shows when the data was last verified and perhaps how it was last verified, you would have codes for that show whether it was verified by or validated by checking email address, checking phone, both, whatever.

There could be a variety of options there, but that way someone getting the WHOIS record would know: is this just a record that contains unverified data, something that's been submitted but nobody's ever

looked at? Or is it something that's been verified in some fashion at some date? Again, I don't think that's in the data model.

So I raised this question in Prague and I was told, "This is extensible. Someone could provide that other information in their WHOIS records." But I think the whole idea here is to set a minimum standard so that we would have confidence that any WHOIS record, in the future we're talking about, would have additional data that we think would be important.

And those are just two examples, I'm sure there are others and there might be concerns about them but at least as far as putting up a straw-man model I would think it's important to make sure that the model includes the information that is not now routinely collected through the WHOIS process but that we think should be. Thank you.

CARLTON SAMUELS: Holly?

HOLLY RAICHE: Certainly I think we want to comment on that. I think in our grab bag of things we want to comment on, it's some of the things that Garth said: some additional elements and some verification. And I think what Evan was alluding to is the overall kind of...at what stage is this enforceable and at what stage does a plug get pulled, if ever, if none of this happens?

CARLTON SAMUELS: Okay let me just throw something...this is Carlton, for the record.   One of the issues about the access to WHOIS is that WHOIS data was being used for different purposes. And because it was being used for different purposes then you shouldn't collect it. Essentially that's what most of the privacy hawks were saying.

So we thought if WHOIS data is being collected for different purposes, one of the things that we can do is to track collections and the easiest way to track collections is to look at IP addresses that access the data. So the thought that some of us had was that maybe the data model should include some information about the IP address, the last IP address at least, or a set of historical IP addresses that access WHOIS data. That has come up. What do you feel?

GARTH BRUEN: Certainly there are people out there abusing the system, absolutely. There's no question about that. And one of the things that's interesting and Steve was mentioning this kind of certification of the data; there are now many kind of third-party WHOIS data providers out there.

And there are these companies out there that are selling the WHOIS data, and I believe that there is an ongoing lawsuit over DomainTools selling this data.   I think it may be interesting to track who asked for it and in what volume they're asking for it, and I think that there should be opportunities for people who actually have legitimate needs to access the data in bulk be able to do it.

CARLTON SAMUELS: Thank you Garth. That's why I asked the question, because you do know that there has been some concerns about bulk access, access to bulk WHOIS data. And I personally, from an academic background, believe that's a legitimate opening for researchers to have access to bulk data. I just wanted to make sure that there is still some view that access to bulk WHOIS data is still useful. Bob, you wanted to say something.

BOB BRUEN: Bob Bruen. I'm just listening. If you want to track every IP address that accessed WHOIS data, asked for it, you're looking at a very large scale of records for some of the sites that they access.

CARLTON SAMUELS: As I understood the idea Bob, it wasn't all of the WHOIS data, all of the access, just the last three or four that has accessed the data for a period of time.

BOB BRUEN: Oh the limit is set, okay. Because the scale...I mean, how many people access Facebook, you know? Today? It's a large number.

CARLTON SAMUELS: That is true. Absolutely.

EVAN LEIBOVITCH: I guess I don't...

[background conversation]

EVAN LEIBOVITCH: Sorry. You just said "Evan". This is Evan. In terms of the bulk access, I guess I'm not as vociferously in wanting to have this compared to having accurate data. If for reasons of not wanting their data to be harvested, some registry said, "Okay, we're going to make accurate WHOIS data but we're going to put it behind a CAPTCHA." or something like that, that said if you want it you can have it but has to be a human being getting it. Right? I don't think I have a problem with that.

If a registry really believes they don't want the data to be harvested, but at the same time they're prepared to commit to its accuracy. So that, perhaps, may be up to the registry in saying we will allow or not allow but I don't consider that as compelling a public interest issue as having the data accurate in the first place in case of redress. That's my gut, because they're totally different purposes.

One is more of a research reason and the other one, and which to me is the more fundamental one, is the accountability issue. And if the accountability is there but buried behind something that requires a human to go in and get it I don't have quite as much of a problem with it.

CARLTON SAMUELS: Okay, Bob? And then come to Holly, yes?

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BOB BRUEN: Bob Bruen. Just wanted...an additional thing about this. WHOIS records that are put up are accessed by scammers and everybody else within a week or two. I know this, I'm not guessing. So the fact is CAPTCHA does not help. They think it does but they could hire people for a buck a day to go out there and do it all day long.

And I know this because we had that happen where I work. We didn't have up records for a long time; we put up a colo site, within a week they were getting hammered. This is not a guess, so it's not enough to do this. I don't think it helps to try to slow down the process. And we use it for verifying data, the bulk access.

CARLTON SAMUELS: So if the CAPTCHA operation...to ensure that you have human interface and not machine harvestable data, what would you suggest as an alternative then?   The idea is that we want to find some way of embracing the idea of bulk WHOIS data accessibility. We want to find some way of preserving that. Now given CAPTCHA doesn't work, what would you think?

BOB BRUEN: I wasn't offering a solution. I was just pointing out that the CAPTCHA is not enough. We have a problem where the data gets out there and I know that the criminals get a hold of it very quickly from a WHOIS record. And I'm not sure what to do about that. In some cases I'm not sure we should even worry about it.

CARLTON SAMUELS: Thank you. Holly are you going to pass to...?

HOLLY RAICHE: I almost feel like asking Jim over there, from a law enforcement agency or security, what kind of data needs to be how accurate from a law enforcement agency? He's eating right now, but maybe he'll ask.

JIM GALVIN: So, thank you. Jim Galvin, Vice-Chair of the SSAC. I'll just speak from a security perspective. What I have heard from law enforcement is you can set aside verification/validation issues only to the extent that any data that they can get is also valuable. There's a lot that can be derived from whatever is there.

                     That's not at all to say they're not extremely interested in verified and validated data, but it's fair to say that that's a separate topic and independent from that. I wouldn't want to assert what data they would like versus what they wouldn't like. Most people tend to come from the position that they want everything.   I do think it's, just speaking personally a little bit, it's useful to separate the kinds of access that you want and to treat them separately.

                     So you can deal with interactive access and treat that as sort of a separate kind of thing that people might do. Bulk access can be treated separately as a separate thing, because I would assert from a technology point of view there's no reason why bulk access needs to be done through Port 43.

There are certainly many other technologies which would be much better suited to bulk access that would provide you with better authentication of the parties involved and things like that. And you should consider that opportunity if you want to approach it from that direction. I think that's all I want to say unless you had another specific question you wanted to ask me.

CARLTON SAMUELS: And that helps Jim. Thank you so much. That really does help. Matt has just put up on the screen there the data set that is returned on a WHOIS request. That is through a Port 43 access. If you look at the data items, those are the data items that are now returned. And those are the ones when we talk about the Registration Data Directory Service, the RDDS, which is what they want to call the WHOIS specification now, that's what's returned up there.

Take in to consideration what Jim just said, Port 43 WHOIS bulk access. I really do understand when he says that we need to separate bulk access from the standard access for verification and so on. If you look at the data set that is returned through Port 43 and you look at another method by which you could have bulk data access, the expense is really very small. If you look at it, it's a very small expense.

What I've never understood and I've been looking at it for the last four years or so, is why there has been such a pushback on bulk access. I am still trying to understand that. This is the data set that is returned when you do a WHOIS service request. That's the data set. All of that stuff up there. Perhaps somebody can help me. Garth? Evan and then Garth.

EVAN LEIBOVITCH: Sorry. This is Evan. The only thing that comes to my mind is spam. To me it's more of an annoyance than a danger, that the harvesting of bulk data is used by spam and the most clear example that I see myself...I think it's called Dominion Registry, Dominion or something like that, that every year on the dot, whether or not my domain is up for renewal, I get a piece of snail mail from this group saying we'd like to renew it for you.

[background conversation]

EVAN LEIBOVITCH: Snail mail. And they couldn't possibly have my snail mail unless they got access to this saying, "You have this domain, clearly, would you like to do it?" So a lot of what we've been talking about in the need for good accurate WHOIS data has to do with alleviating harm. I guess in the case of bulk WHOIS it ends up being an annoyance to me of receiving spam and an annoyance probably more than a danger is I think what I would say. Which is why I'm not quite as...I can't get quite as worked up about the bulk issue as I can about wanting it accurate in the first place. Thanks.

GARTH BRUEN: Thank you. This is Garth. It's definitely within the realm of what Evan's talking about. Originally it was very much about mass poaching of one registrar's customers by another registrar, going out and trying to get

people to transfer their domains at a discount. And that is really kind of an unfair market tactic I guess, and actually there are portions of the RAA which are written to specifically address that. And if you look at the prohibitions for uses of the WHOIS record, it specifically refers to that kind of marketing in terms of poaching domain customers.

CARLTON SAMUELS: Bob?

BOB BRUEN: Okay. I did a little study a couple of years ago on bulk WHOIS. I wrote to every single registrar and simply said, "Can I have your procedures for asking for bulk WHOIS?" because you're supposed to have them by the RAA. Almost all of them had no idea of what I was talking about. No idea whatsoever. A few did, like the GoDaddys and the eNoms of the world and except for one place, ARIN, everybody refused to give it to me. I got death threats and I got slammed by all kinds of things.

They hold this data to be critical to their lives, except they don't even know what it is. And people can download every week all the new zone files, which is how they got yours. They check all the zone files; they know when they're put up there. They just look up the WHOIS data and it's not hard to do at all. It's all automated processes. ".com" is a couple of gigabytes of zipped file stuff.

So this is a trivial thing to do, for them to give it out if they want to give it out. And then once somebody asks ICANN, "What is this and what do we do about it?" All of a sudden everybody tells me, "Oh, $10,000. Give me $10,000 and we'll let you have it." And all I asked for were

procedures and they said, "What is this? Who are you? What is going on?" So it's not just about protection things, they just don't know.

CARLTON SAMUELS: Okay, thank you Bob. I hear that. It's not just about protection. There are some other issues that we should explore. I have to tell you that we have to have a hard stop at the half hour point and it's almost that time. Are there any other comments that...Steve?   You want to say something? State your name and...

RANDY GLASS: Thank you, hi; I'm Randy Glass from America At-Large. Good to see you all. I just wanted to make one quick statement from a domain owner point of view. I don't think the majority of domain owners really appreciate having all their required information public for the harvesting that we've been talking about. One issue is spam.

Other issues involve other companies that are now growing that are using this data for malicious purposes. So to address one issue of I'm a domain owner and I get all this basically malicious email, well now I'm going to move that email address from something that is valid and I do check every day, and phone numbers that are valid, to phone numbers that I don't use anymore or email addresses that I don't use anymore.

Now I'm not saying that I would do this but I'm saying that the mentality of a domain owner would be this way. So I would propose a solution of having some type of request process in order to access this WHOIS data. Thank you.

CARLTON SAMUELS: Thank you Randy. Holly, you probably have the last word on this.

HOLLY RAICHE: No, this isn't going to be the last word. From a domain owner point of view, from your view, how much do you get asked about the validity of the data that you hold? What do you do to actually check some of this data, because that's what we'll be talking about.

RANDY GLASS: Let me clarify your question, as far as how often I get asked about the validity of my data? It's a good question. Actually the registrars, I deal with several different registrars depending on my needs, and each registrar has a different type of process. Normally I get an email that says, "We just wanted to remind you to make sure that your WHOIS data is valid." And that's fairly much the extent of it.

I've never really had anybody from a registrar actually call to verify data or email to verify data or anything and I actually like that. I think it would be more of an annoyance to me if I actually had that occur. But I have had just average Joe off the street try to contact me about one thing or another regarding maybe something relevant, maybe something completely irrelevant. And again, I find that more of an annoyance and a hindrance to the entire process that we're discussing.

CARLTON SAMUELS: Okay. Thank you Randy. We appreciate that input. Colleagues, we are going to bring this session to a close. It was good to see all of you here.

We acknowledge that we still have some work to do. We are always open to suggestions as to what we can collectively do together.

We, in the At-Large Working Group, we are keen to have collaboration on looking at high-level ways we can enable the compliance effort. And I'm saying that very distinctly. We are looking for allies to formulate some approach that we can use to enable compliance.

In our view, the compliance effort is hamstrung by the instrument that informs their work. We really do believe, so we've been saying that for the last four or five years, to my certain knowledge. And the time has come for us to have a wider set of interests together to see what we can propose to improve that.

So we are looking for allies in this effort. We are always open to everybody's views and we certainly would welcome them. Thank you all for showing up at this meeting. Bye-bye.

[End of Transcript]