ICANN

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GNSO NCSG ICANN & Human Rights – Past, Present and Possible Futures

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Niels ten Oever: Hello everyone. Welcome to the Cross-Community Working Party on
ICANN's Corporate and Social Responsibility to Respect Human Rights. It's
great you're all here.

Feel free to move to the table so we can have a conversation or feel free to
hide a bit or feel free to move if you feel more comfortable to we can have a
bit of the temperature of the room during the session.

Because I think it's very important access is also a human right, we try to minimize the jargon in this session. And also feel free to call each other out on unnecessary abbreviations or simply if you don't understand what's being said.

We got a very full agenda for the session today. Next slide please, Maryam. Maryam is one of the invisible helpers that always make us - make things happen and make logistics happen really well. So thanks a lot ICANN staff and Maryam especially in helping us with this.

There's a full agenda. But first I would like to go through the administrative. So have I missed anything on the slides? Would like - someone would like to add something to the agenda. No?

Then welcome all to the eighth session already for this Cross-Community Working Party. There has been a lot of new work. But before introducing the new work, it's always good to have a look back on the short history of where we've been working on.

In ICANN London the Council of Europe came up with their - with one of the first reports on ICANN and human rights. Later there was an Article 19 report after the Cross-Community Working Party was established. And since then we've been holding sessions every meeting and have been coming out with reports every other meeting.

And this session we have another draft report to discuss. We have a follow-up to a report to discuss. Also the Council of Europe came out with a new report, this time especially on community top level domains.

So there is a lot of work next to the human rights work that is going on in Workstream 2 as part of the implementation of the accountability improvements that were agreed before the transition so a lot of things to follow.

And what we aim to do here is try to keep that whole conversation of all the different parts in ICANN where human rights relevant discussion is going on bound in one place so we can coordinate and inform each other and make sure there is no duplication and we make use of maximum synergies.

So that's what we're planning to do. So without further ado let's go into a quick overview and update on the human rights in Workstream 2. Next slide please, Maryam.

I'll switch hats from my chair role here to rapporteur role of Human Rights Subgroup in Workstream 2. As said, we had the IANA transition with which Workstream 1 ended. That ended in a human rights bylaw. Next slide please.

But that human rights bylaw is -- next slide please -- still dormant until we develop a framework of interpretation. And that framework of interpretation is exactly what we're developing now during Workstream 2. Next slide please.

So the subgroup has been quite active and has already held eleven meetings. Next slide please.

And it has been scoping its work. It has been documenting the historical context of all the discussions during Workstream 1 because we wanted to ensure that new people could join during Workstream 2 and that we would not say but that's already been discussed, etcetera. So we can completely document that.

We have also been analyzing the U.N. Guiding Principles in Business and Human Rights and see how it could be applicable to ICANN, now not.

We've been developing a draft structure for the framework of interpretation and formed a drafting team that's now providing weekly iterative versions of the draft report. And we're moving towards a consensus. Next slide please.

Next slide please. So we are on target with - we aim to deliver our structure by - our consensus documents to the CCWG by February. And after that we hope to - that in a month we can agree on it in the Cross-Community Working Group on Accountability. And then it can then go for public comment.

So there are now on the Cross-Community Working Group on Accountability Wiki these indicators so that you can always follow where the working group is. You are all of course very much invited to join the work every Tuesday at 1900 UTC.

Are there here other members of the subgroup -- such as Matthew for instance -- who would like to elaborate a bit on the process there? Let's see if I missed anything.

Matthew Shears: Thanks Niels. Matthew Shears, Center for Democracy and Technology, member of the Workstream 2 work on human rights. I think the work is progressing nicely. We are in the drafting stage. We've had -- as is true of other Workstream 2 activities that I'm involved in - we've had a number of divergences of opinion when it comes to understanding what the scope of this particular piece of work is.

Niels said we've spent a considerable amount of time looking at the Ruggie Principles and their suitability and their applicability to ICANN.

We've got to a point now where we're close I think -- maybe I'm being a little bit optimistic but hopefully not -- close I think in terms of being able to put a text that - from that is a text fully - framework of interpretation at least for the bylaw part to the rest of the group. And hopefully that is something that we'll be reviewing imminently.

Like some of the other discussions that are happening, the discussion really is wide ranging given the wide range of interests that people have in human

rights and the degree to which they believe that ICANN should be subject to human rights or should respect human rights.

And I think we're at the moment where we're kind of striking a reasonable balance between a - the perspective of those who say that we need to take a minimalist view to - in terms of what we have to deliver as a part of this Workstream 2 work and those who would like to see a more maximalist approach -- vis-à-vis the human day application of human rights -- to ICANN.

Niels ten Oever: Thank you very much for that, Matthew. And indeed - the scoping indeed took some time but now we understand that there is a difference between a framework of interpretation and a framework of implementation. And we'll stick to our mandates as we've gotten from the CCWG. And in that we're making good progress.

Talking about progress, I suggest we progress to the next point in the agenda and that is the update on the Transparency Subgroup. And we are so lucky to have one of the co-chairs here as well. (Michael), please go ahead.

(Michael):   Co-rapporteur, not co-chair. I've been - I was reminded yesterday of the difference myself actually and that it's very important to manage it appropriately.

So the - I'm one of the two rapporteurs of the Transparency Subgroup. And we're analyzing three major areas in terms of ICANN. One is how to improve ICANN's documentary information disclosure policy which is the primary means by which people access and request access to documents from ICANN.

The second is proactive disclosure. So we're looking at ways that ICANN can be more progressive in the information that it puts out there, specifically with regards to information about the board and information about interactions with governments.

And the third major thing to - that we've been examining has been whistleblower protection rules and how to improve those.

So we now have a report, a first draft of a report that's been circulated to a few stakeholders. And we're just in the process of revising it now for a broader distribution to the plenary. I do want to mention sort of the - so that's sort of an update on where we are. I'm very happy to talk more about the specifics if anybody has any questions.

But I want to mention specifically with regards to the Human Rights Subgroup -- which I sort of have not been participating in very closely because I've been very focused on transparency -- but I do think there is a strong nexus because of course right to information is itself a human right.

And in part of our discussions around this, we have adopted - we looked at it in part through a rights-based approach, through a recognition of the fact that not only does ICANN - should ICANN adopt transparency for the benefits of transparency -- such as combatting corruption and promoting better decision-making -- but beyond that that ICANN actually has responsibilities in line with its role to respect transparency.

And the reason why I think that does connect with the human rights group and the reason why I think it really connects to the discussions that I heard earlier this morning when you were with - in front of the GAC, I'm -- acronyms are very new to me but I'm starting to figure them out -- is that what is a core principle… It's difficult to apply human rights to an organization like ICANN. But what is a core and widely recognized principle of international human rights law is that states cannot contract out their human rights responsibilities.

So just like if a government employs military contractors and those military contractors start torturing people, the human rights violations carried out by those contractors, the state bears responsibility for that because the fact that

they are outsourcing state responsibilities to this private actor does not absolve them from human rights responsibilities that would attach.

And I could argue that a similar principle applies to ICANN where you have an essentially public function, a function that if it was not carried out by ICANN would be carried out either by governments or by intragovernmental organizations and use that to… For me, what that says is that the same human rights principles -- a governmental standard that you would apply to governments doing that -- can also be applied to ICANN.

And, you know, you mentioned balancing different perspectives in the group which I obviously haven't been involved in so I respect that there's going to be different opinions. But I will say that I do think that conceptually at least, an argument can be made for a strong understanding of ICANN's responsibilities in terms of human rights.

Niels ten Oever: Thank you very much for that overview, (Michael). I would like to take discussions on the Workstream 2 topics after the - after we discuss them all. Fiona is I think not here, right, Fiona Asonga?

No? So we go to the next slide please then I'll quickly go through the work of the subgroup on diversity. Next slide please. They haven't been progressing as far. We can easily say that (Michael) with the transparency group is leading when it comes to work done.

The diversity group has started its work only three to four weeks ago because staff had taken some work time to develop their starting document. And right now they have a strawman document that's being discussed in the group.

So if you have ideas about diversity and participation, they're still very much struggling with concepts of diversity, with indicators for diversity, so your input in that group is still very much appreciated and you can still very much help to shape the discussion.

So this is just an overview of three human rights related concepts in Workstream 2. Arguably there are also human rights related topics in others but these seemed very real and very cognizant and very visible. So that's why I thought it makes sense to lay them out here.

Do people have any questions or suggestions about the work going on in Workstream 2? Great. That means we have more time for the presentations. Next slide please.

Because that means that we have arrived at the presentation of the draft Whois report for review and which will be presented by (Artie) and her colleague who will introduce themselves. And after that there will be at least two - one or two discussions of the work. And you can all find the work at ICANNHumanRights.net.

(Artie Bobnell): Thank you Niels. Hi everyone. I'm (Artie Bobnell) with the Centre for Communication Governance. My colleague (Critica) and I have been working on a draft paper which analyzes the human rights implications of the Whois policy. Next slide please.

Next slide please. Okay so very, very briefly, the Whois database exits as a means to be able to contact registrants. So basically if you want to register a domain name, you need to provide a certain amount of personal information like your name, your mailing address, your postal address, your e-mail ID among other information. Now all this information is available on a public and open database which is the Whois database.

This primarily started out with the idea of being able to contact the registrant in case there are any issues with the domain, whether it's a technical issue, whether there are IP concerns, intellectual property concerns or whether it could be something like a law enforcement concern. Next slide please.

Now this started out with the Affirmation of Commitments which was a document between ICANN and the U.S. government. And in that document there was a requirement for ICANN to implement measures to maintain timely unrestricted and public access to accurate and complete Whois information. So accordingly, registrars and registries started maintaining this database that was open and public to all.

Now while the IANA transition, the AOC may have gone but certain aspects of the AOC were implemented into ICANN's bylaws, one of which is the EOC's view which has been implemented - which has been incorporated into the ICANN bylaws as a specific review.

So this includes a registration directory service, or an RDS review, which is supposed to happen every five years. Now one good thing is that by not mentioning - by not calling it a Whois review but just referring to it as an RDS review, it leaves open the opportunity for a change should the Whois model ever be replaced with another RDS model.

Like I mentioned, the registries and registrars are involved in this. Another aspect of the current policy is that there are multiple contractual obligations between ICANN and registries and registrars, according to which - which govern the current Whois policy. The next slide please.

Now two other quick things about the policy is that this open and public access to data is supposed to be provided for the term of the agreement plus another two years.

And there is a thing called privacy and proxy services. Now privacy services - both of these services are basically in place for people who do not want to make all the information public via Whois.

So a privacy service allows the domain to be registered and the name of the registrar like you should but instead of providing the registrant's contact

information, it lists alternative reliable contact information, for example a mail forwarding service address.

And the proxy service would be one where the domain is registered in the name of the proxy service provider but - and it is licensed to the registrant - to the customer who uses it then. So the contact information that is available would be of the service provider, not the customer.

So this clearly shows that the current Whois policy doesn't necessarily reflect accurate registrant data because there are policies in place - or there are provisions in place that allow for alternative data to be provided. Next slide please.

So basically - now going on to the main chunk of the paper, that is the human right concerns that arise out of this. Now being an open database that can be accessed by absolutely everybody, there is a very clear implication on the right to privacy which is an internationally recognized human right recognized in the UDHR, in the ICCPR.

The U.N. has held the rights that are guaranteed offline must continue to be protected online which means that if you have a right to privacy on - in your day-to-day life offline that continues to extend online as well.

Now it's - there are certain things that you cannot - well when it comes to privacy, one cannot simply say that because the data is publicly available, because it is on a public database, that it's no longer private because this continues to remain private information.

Now the Whois policy does not allow a registrant to exercise this right to privacy because it is forcing them to allow the data to be publicly accessible. Privacy and anonymity are two very, very crucial aspects to international human rights because from them stem many, many other rights. So once privacy and anonymity are threatened online, that also leads to a very direct

threat on rights like the right to security, the freedom of expression as well as the freedom of association.

Now the freedom of security of person. Next slide please. One very interesting aspect - and chilling aspect rather of the right to security of person would be how the database enables the practice of doxing. Doxing is basically a malicious practice that allows - that consists of obtaining someone's personal information then disseminating it, making it widely available so others can continue to - well it's sort of to include crowdsource harassment or intimidation.

There are - this can range from small things like, you know, making expensive food delivery orders under the victim's name and right down to actual rape threats.

Vulnerable segments of the society include women entrepreneurs, small business owners who are working from home as well as activists in totalitarian regimes who find themselves targeted by these means.

Now one of the biggest examples and one of the most well-known examples of doxing because of Whois is that of the anti-harassment activist Randi Harper. In her case the doxing led to swatting which is the practice of calling law enforcement to a particular address under the guise of a false report so basically telling them like that there's illegal activities going on in a certain place.

So she basically had law enforcement agencies banging at her door because her address was found in the Whois database and then virally spread and the law enforcement authorities were alerted about this.

Current Whois policy does have certain safeguards in place, one of which is that it is necessary for the registrant's consent for the data to be obtained. But

we have to question the - how free this consent is given that you cannot register a domain name unless you provide this information in the first place.

The - another impact of the Whois policy would be its impact or its potential impact on political dissidents. So for law enforcement agencies in oppressive countries, especially with regard to human rights violations, it's very possible to use the legitimate channels of Whois to identify dissidents or owners of blogs which could lead to very real threats on the security of person.

Another aspect - another right that is affected would be the freedom of expression. The right to privacy is very essential for the right of - right to freedom of expression to be realized because without anonymity on the Internet, freedom of expression is both directly and indirectly limited. So there's a very clear chilling effect on your freedom of speech and expression.

And similarly, you also see that effect on the freedom of assembly and association because if you lose the right to anonymity, if you lose your anonymity online and your right to privacy, that does put - that have an impact then on whether you're - how free you are to both express yourself as well as to gather online to express your thoughts.

So the primary aim - or one of the aims of Whois is to provide accurate and up-to-date information but given that - how possible it is to provide inaccurate information, given that it is logistically very difficult to even validate this - the information in a lot of cases -- especially if you think about a country like India -- it's very, very difficult to authenticate all the data that is provided by a registrant.

And also since it's so easy to provide inaccurate data, it's highly likely that someone who is using that site for illegal purposes or basically ill intentions, it's very easy to provide fake information.

So ultimately the people who find themselves in a vulnerable position are those who provide accurate information. And this can be used in a way that violates internationally recognized human rights, like I mentioned before.

So as it stands right now, this database is inadequate to meet its stated aims. Now we do recognize that there may be certain legitimate aims and we do realize that right now the Whois PDP for example is considering how to revamp the current Whois policy.

So the next part of our paper will be looking at the bare minimum privacy standards that need to be used to review the rules of an RDS model. So my colleague (Critica) will be taking on from there. Thanks.

(Critica):   Thanks (Artie). Okay so over the years ICANN has come to recognize that there's a conflict -- so if we go to the next slide please -- that there are conflicts between registrars' local data protection obligations as well as the Whois obligations. As a result, a procedure was developed which allows registrars to be exempt from their Whois obligations.

But this procedure is inherently reactive because it kicks in only once enforcement proceedings have been initiated against those registrars. It's also ad hoc because it does not protect individuals in those jurisdictions where there is no data protection law in place. As well as that, what we suggest is that privacy itself should be incorporated as a legitimate aim that - in need of placement that the Whois policy must consider.

We've looked at the OECD guidelines on the protection of privacy. Next slide please, sorry. So we've looked at the OECD guidelines on the protection of privacy as the basic framework to suggest how Whois may be able to incorporate the core principles of data protection.

These guidelines were framed in 1980. They're extremely concise and technology-neutral guidelines which has resulted in their widespread

application over the course of the last more than 30 years. These guidelines have formed as the backbone of many national data protection laws as well as many regional instruments such as the APIC privacy framework.

There are minimum standards. The basic aim is to incorporate not just privacy but also ensure that the aim of information flows is maintained.

Coming down to the principles themselves -- next slide please -- the first principle of the OECD privacy guidelines is the collection limitation principle. This principle suggests that there should be limits to the collection of personal information and that collection itself should be fair and lawful. It also requires that notice and consent be given to anyone whose personal information is collected.

Now the 2013 RA requires various categories of personal information to be collected. In order to incorporate this principle into Whois or any replacement for the Whois policy, there must be a distinctly good basis or a lawful justification for the collection of this information. The requirement to give notice about how information will be used cannot be fulfilled until Whois defines a proper or a well-defined purpose for what the database will serve to - for the function of the database.

Further, most importantly, I think it's important to distinguish between the collection of information and its publication. Collection itself might fulfill a legitimate aim without the need to publish the information.

The second principle is that of data quality. This principle requires that information should be relevant, up to date and accurate. Accuracy is a major concern for Whois but any proposal to improve accuracy must also address the problem of public access.

Public access to this information automatically undermines accuracy because it serves as an incentive to provide inaccurate information. Secondly, data

protection - data retention period must be justified for different categories of information.

The third important principle is that of purpose specification which is that at the time of collection of personal information…

Man: It is November 3 in…

(Critica): Whoever is providing that information should be aware of what purpose that information will be put - will be used for. The current Whois purpose is exceptionally broad. It states that the information may be used for any lawful purpose and then give two exceptions.

This must of course be narrowly defined. It must have a fixed and definite purpose. Mail beneficially use of information cannot be a legitimate basis for collection of information. So just to suggest that the information can be used for law enforcement purposes cannot justify its collection or its publication. Again here a distinction needs to be created between the collection of information and its publication. While selection is itself might fulfill a legitimate purpose it's not necessary that it - that this information should be published as well.

Coming to the fourth principle which is of use limitation this principle suggests that in case there is a change in the use of how this information will be used the person who has provided the information must be given adequate notice and an opportunity to object. But unrestricted access to the Whois database automatically defeats this principle because then this information can be used for any purpose.

The fifth principle is that of security safeguards. This requires that personal data must be protected both against deliberate as well as accidental misuse of personal information. The harms arising out of a public - out of public access to the Whois database has been adequately - amply documented in

this paper as well as elsewhere. As a result organizational safeguards could include a protocol which would allow for authenticated (unintelligible) access. The next principle the sixth principle is that of openness which is why it's open and transparent policies. Again the fact that the purpose of Whois is weighed and not well defined defeats this principle because the data subject or the person who's providing this personal information does not know what all purposes this information can be used for.

Just to quickly run through the last two principles so can you go to the next slide please? Thank you. The next slide is that of - the next principle is that of individual participation. It requires that data subjects or the people who've provided their personal information must be allowed to access it, review this information, correct it. Of course the 2013 RAA explicitly provides these rights and it isn't I think ICANN's interest to have these rights because it means that personal information will be relevant and adequate and updated.

The last principle is that of accountability which suggests that they should be enforceable rights in the event there is any negligence or willful disregard for the information that is collected. This right of course should exist irrespective of any actual harm that has - whether or not it has arisen. To incorporate these principles or what have commonly now come to be known as fair information practices -- next slide please -- we suggest or we recommend the privacy by design approach. What the privacy by design approach says is that mayor legislative or regulatory methods are not sufficient to safeguard privacy so organizations themselves need to come up with safeguards in order to secure privacy.

If the - why we recommend PBD or Privacy By Design is because it seeks to reconcile completing issues. It's not a zero-sum approach. It's a positive sum approach which suggests that - which takes into account that there might be other legitimate interest and competing interest and of law enforcement or IP claims. But what it suggests is that these should be balanced with privacy. I'll just hand over to (Artie) to sum up.

(Artie Bobnell):   Thanks (Critica). So these OECD guidelines that (Critica) just went through become extremely important when we consider the specific reviews that have been incorporated into the ICANN bylaws. The RDS review requires that the team who was doing this review must consider OECD privacy guidelines when exploring structural changes to registration directory. The call for volunteers for the RDS review went out a couple of days ago. So it will be interesting to see the conclusion that this group comes out with based on these same principles.

Finally there is like I mentioned there is a - there is an ongoing PDP which has an open working group that's considering a lot of these issues. They're considering questions of users of purpose of this information, of accessing this information, the question of gated access. So we would like to - I mean this will be a long process but it would be interesting to see the kind of segmentations that will come out of this working group. One of the replacements that could be considered as that of the Registration Data Access Protocol, RDAP which offers the possibility of differentiated access. And according to - and basically it would have the possibility of authenticated access.

And depending on who is accessing the database it would be differentiated responses. So there is I mean right now we're talking about a time where there is great potential for reform so we're hoping that this paper could help with these ongoing processes. Thank you.

Niels ten Oever: So thank you so much for the draft report. Great work you have been doing, yes a round of applause. So this is a draft report so it - you just pointed out all comments and improvement and suggestions are more than welcome. So we can take it to the next level and see how we can really integrate it and make sure that all of your ideas will fall in line with existing processes and operations. And for that we have two discussants that can help jumpstart the discussions.

Woman: So we have Stephanie Perrin who would love to hear your thoughts on the
                    paper.

Stephanie Perrin: Thanks very much, Stephanie Perrin for the record. And I have been working
                    on some of the PDP is related to Whois over the last three years. I think it's
                    an interesting paper. There are a couple of things that I just wanted to point
                    out and it may be when it gets translated into slides it gets reduced.

                    But the articles of - the Article of Commitment was certainly not where Whois
                    started. I mean Whois has been with us since the inception of ICANN. It was
                    part of the original conditions from the Department of Commerce. It probably
                    sprang from the WIPO consultation prior to the creation of ICANN. It was very
                    clear that intellectual property interests and law enforcement interests wanted
                    access to relevant data. And that's not to say that we don't need access to
                    relevant data about domain name registrants for the security and stability of
                    the system. Nevertheless we - the basic Whois protocol was ensconced more
                    or less as a policy but not per se as a policy in the original RAA back in '99.
                    So it's evolved a bit from that and Michele can probably correct me down the
                    road there if I make any mistakes but it's basically just grown in scope.

                    I'm not comfortable even talking about the Whois policy because there really
                    isn't a proper Whois policy in terms of you can't have a policy if you don't
                    have a purpose and we don't have an agreed purpose. We just in the RDS
                    exercise spent I don't know how many weeks discussing a possible purpose.
                    It's been going on since at least Finland.

                    So we may with any luck at all come up with a policy in about five years' time
                    in the RDS PDP but it's been difficult. And of course from the data protection
                    standpoint the purpose is important in all of the correspondence with the data
                    protection commissioners over the years has been what's the purpose, state
                    the purpose.

This has been echoed by the Security and Stability Advisory Committee the SSAC particularly in SAC 55 where they said, you know, somebody has to come up with a purpose and then we can figure things out from there. So the question that the RDS is working with is just exactly what are those specific purposes and how do they tie into the broader goals and accountability of ICANN which as you correctly point out was affirmed in that Article of Commitments and now we're dealing with it in the bylaws.

Now if anyone's interested in Whois there is a series of slides on all things Whois. And if that doesn't cause you to clutch your head I mean there's pages and pages of material on what's going on with Whois. And one of the problems that one faces in dealing with coming up with decent human rights policies in the Whois as how many of these things do you have to pull together to get a proper policy?

Now you have I think underscored very nicely the fact that data protection and privacy principles as exemplified in the OECD guidelines generally are the enablers for the other human rights. And one of the big issues at ICANN is this fundamental tension. We always, we cannot focus too much on data protection without also focusing on the protection of freedom of expression, freedom of assembly.

And that brings us to this whole problem of jurisdiction and constitutional protection because if you wanted to protect human rights for instance I'll pick Europe because it's so nicely organized you really have to look at the charter of rights and the data protection law and they have to be read in context. And whenever the European data commissioners are examining another data protection law say from Canada they will look at the constitutional protections as read into the relevant data protection legislation which in our case is provincial, is federal and is federal for the private sector. And so it's quite a complex brew and that pertains all the way around the world.

I'm concerned with the concept of trying to apply privacy by design principles here. I think that a privacy impact assessment which is different would be really useful in evaluating ICANN policy as the policy comes forward in all the different PDPs. So if we had an agreed privacy impact assessment like many countries have then you could just apply that as the, you know, all these manifold groups in the whole Whois ecosystem come up with new policies we could apply the privacy impact assessment and see what's happening. That would imply an ICANN privacy policy right?

And so while I'm not saying privacy by design isn't a good thing. You kind of have to have a policy first before you start looking at whether your technical implementations have it embedded in it in my view. So I would say ICANN needs a privacy policy and I'll give you one example. There's quite a bit of confusion about the - what the impact of the Thick Whois is.

And for those unfamiliar with the Thick Whois don't expect a complete explanation from me because I wasn't on the group and I still can't figure out how they assess the privacy implications. But the fact of the matter is registrants collect the data at the behest of ICANN. It is ICANN that with or without an explicit policy they set the policy through the contract.

And even though the contracts are not really subject to a PDP they are between the contracted parties and the - I'm sorry, I'm good for hours in this like as you can tell. I'll try to wrap this up. Even though the contract actually ensconces policy there in the 2013 RAA requirements there's very little opportunity to comment on that and get this thing reversed. That's a contract between two parties.

So ICANN I think we should be trying to get ICANN to come up with a privacy policy that we can apply. And we have to remember that that privacy policy also has to encompass the need for confidentiality that protects freedom of assembly and freedom of speech because it's extremely important the groups have that right and they don't always have it under data protection law. In fact

they usually don't. So I'm getting the eye from Niels but I'd be happy to talk about this more because it's a very interesting paper that opens up a whole lot of questions. Thanks.

Niels ten Oever: I'm sure I'm speaking on behalf of the presenters. Thank you very much for that input. We also have another paper to present and discuss. But I see there are several questions in the chat and I also have a queue. I would like to take comments from the queue and from the questions so we can take them in. And then we can use them to rework the paper to get it to the next level I - so let's do that.

So in my – here I have (Arshot) from the chat who said I'm sure I'll be speaking on behalf of nearly everyone here when I say that we really appreciate the work that you guys have done. I want to ask if this new mechanism like RDAP. It involves IDNs, interesting question. And Sam Lanfranco asks its area for further academic research is to compare privacy here with the levels of privacy around registration for vehicles, properties businesses and voting. Those are older bundles of individual data that have longer histories of how they are handled with regards to privacy. There should be lessons learned and shared from there. That's very good.

I have here Michele and the (Milton) to - and Kathy to end the queue. I'll be asking you all to keep it under two minutes. I know you can do it. (Milton) - sorry Michele go ahead.

Michele Neylon: I'm thought if (Milton) goes first it's quite okay.

(Milton): I'll take it. So just on the privacy by design question maybe to put it a little more pointedly than Stephanie did this privacy by design becomes a tautology basically. You say oh, we're going to design this database so that it protects privacy but how you define privacy? What is the actual policy behind the design? We have to understand that the people who are not necessarily

on the same side as the Whois issue as us are also saying Oh, if we have this elaborate tiered Whois directory system we can design privacy into it.

But as Kathy has pointed out it could also mean that you get a certain credential and then you have all-you-can-eat throughout the database or various other ways of manipulating the criteria for accessing a database and the information in it. So Stephanie is really I can't drive this point home strongly enough you have to know what your policy, privacy policy is before you design a database.

And bear in mind that when we design the database it won't be the privacy advocates designing it alone. We'll be negotiating with all of the other stakeholders and we will get what we get out of that whatever we can reach agreement on. So it really doesn't solve anything to invoke privacy by design. It's not like the design gods hand you privacy and it goes into the database and the problem is solved.

Niels ten Oever: Thank you very much (Milton). Michele or Stephanie with a very short remark?

Michele Neylon: Stephanie doesn't do short.

Niels ten Oever: Now she does.

Stephanie Perrin: She does, neither does Michele so I'll let Michele go first.

Michele Neylon: Thank Stephanie, a couple of things. Well I think okay all of these kinds of studies and papers are always interesting but I think there's a few fundamental flaws here that are highly problematic. To start with in relation to the history of Whois it's got nothing to do with the AOC. It predates all of that. It predates ICANN. It predates pretty much everything. Whois started off as being a way for two network operators to communicate with each other to fix a problem.

It went from that, it became something else. A lot of the policies and the contractual obligations all came much, much, much later. And for those of you who've been around for more than a couple of years you may remember being able to do – use all sorts of things like finger, the finger command when you could finger a server and no, that is not impolite.

If there were other - if there were a bunch of other protocols that existed that some of you may have heard about in the history books that some of us were using years ago and, you know, and certain bits of information were made available using these different protocols that's where a lot of that stuff stemmed from. Now also as well the purposes of Whois I'm sorry but no, that's never actually been clearly defined. And to state that Whois exists purely for law enforcement and intellectual property and to contact registrants is fundamentally flawed.

Now if you want to make broad statements and you have done several times you need to back them up with facts which you haven't done which is a problem. So for example you're - you're ignoring the fact that both .tel and .cast have had contractual changes made to allow for privacy in the Whois output. That's something fundamentally you should have included.

There was things around authentication. I don't know where that came from. You're conflating the Whois conflicts with local law with the data retention specifications in the 2013 contract. And if you'd actually looked a bit deeper into that you'd also discover that no single registrar anywhere on the face of the planet has actually managed to use the process which is a fundamental point and a fundamental issue with the entire thing. It's also still being discussed at the GNSO Council and isn't a done deal yet when it comes to the latest iteration of it.

RDAP is not an optional thing. RDAP is a done deal. That is going ahead. That's being discussed. It's designed but it's not reopening for it.

Now around this entire thing around privacy policies for ICANN I'll keep going back to the one that Stephanie and I actually agreed on which is one of those rare things why the hell doesn't ICANN actually have a privacy officer? In Ireland and other parts of the world if you're a company with more than a couple of employees you're meant to have somebody who is either the privacy officer at least deals with those kinds of queries.

My own company is registered with the data protection authorities in Ireland because we have to be. Okay so I'm - I know you're giving me things but you did ask me to speak. I didn't put my hand up dear. But I think, you know, the - I think there's some interesting ideas here but I also agree with Milton which again is a rare thing, privacy by design be careful what you ask for and also the liability thing around registrars I have a huge issue which obviously as I am a dirty filthy registrar. Thanks.

Niels ten Oever: Thank you very much Michele. And I think that also resonates strongly with the question (Robert Guerro) of the SSAC has asked in the chat, "Has any thought been given to recommended ICANN create a privacy policy that would apply to Whois, RDS and any other data related issues?" So that could relate to the person responsible to answering these questions. Then as the final comments all go over to Kathy before going over to discussing the human rights implications of new gTLDs.

Kathy Kleiman: Stephanie you had promised her…

Niels ten Oever: I did not really promise that but go ahead, one minute.

Stephanie Perrin: I just wanted to mention -- Stephanie Perrin for the record -- the cost element. All of these complex systems, the tiered access somebody has to pay for that. Authentication of law enforcement officers which we want because how the heck is a registrar from one country supposed to recognize a law

enforcement officer from another? All that costs money and there isn't any money in the system for it. So that's a huge issue.

Kathy Kleiman: Thank you. Thank you for distributing the paper which I saw when I was in another session and so I came here to hear the rest of the presentation. So Kathy Kleiman and my first question is what's the window for commenting? And it probably hasn't been - no - no, the window for commenting generally because I think you're going to want the comments because there is a lot of - first I'm excited that you're here, new blood, new interest. This is great.

On the other hand there is a lot of work that's been done in the Whois by the noncommercial community over the last 15 years or more. Some of it even documented by Milton I think in his paper. You wrote a paper about the Whois and the history of the Whois -- very good paper.

I hate to tell you but if your paper comes out the way it is it will be viewed as narrowing what we're requesting in privacy, not expanding it. And the reason why is, I think Stephanie alluded to it, we have fought for organizational privacy. If two or three people come together to share a political view that's unpopular, religious view that's a minority then we think they should be protected too because we are the noncommercial community and we represent noncommercial organization and because people are being stalked and harassed and hurt because of their views both as individuals and as small organizations and especially as small organizations actually where they come together and they put a label on themselves and that speech which may be illegal - may be legal today but become illegal tomorrow and then you've got that name and address in the public Whois.

The other thing is you're feeding into processes that already exist. And so there are spins, nuances, strategy that we can help you layer into your paper to help address some of the questions that are being asked right now. For example the RDS -- and I won't go into detail -- is separating the purpose for which the data is collected which is for the lifecycle of the - to manage the

lifecycle but domain name versus the directory that then makes it available. So they've separated that out and are looking at both. And so it would be great if your paper could kind of address both.

And the third thing is yes just oh, when you get to differentiated access Milton already got to my all you can eat comment which is in ICANN everybody's equal and you're not going to be able to differentiate the access of law enforcement in the UK from the law enforcement in Saudi and you're going to make all this data available to everybody regardless of the purpose for which it was added in. And that's going to be a problem so it's better not to collect it in the first place. Was that a lot in two minutes (unintelligible)?

Niels ten Oever: I think we can thank a lot of people for a lot of great input to a lot of great work done. I think we got some homework for the next round. Is there something you would like to add?

Woman: No I'd just like to thank you all for your comments and we'll try to incorporate all of this in the next draft and we'll reach out to you if you have any more questions. Thank you.

Niels ten Oever: Very good. And I'm sure everyone is very eager to also support you all in this. It is work - it's bringing things together which is also very useful to create entrants, I think yes it's great -- really good work. And on that level I'd like to - on that note I'd like to continue to do some more great work done by CIS India last – next slide please. During the Helsinki meeting we already presented some reports and work on this and now we're trying to also see how this fits into PDPs to really not only come out with papers and reports but really see how to make it practical. And for that I'll hand over to Vidushi who later will also introduce the discussions. Go ahead.

Vidushi Marda: Thanks. So this is actually a follow-up report of as Niels mentioned of a paper that we presented in Helsinki. When we presented this paper in Helsinki two things became obvious to us. The first is that it's a very useful paper because

it's in parallel with a PDP that is looking into the subsequent procedures of new gTLDs. And this particular PDP has working groups which are soliciting public comments and are looking for input and so this work is meaningful particularly at this time.

The second thing that became obvious to us is that if we are to effectively use this research as the NCSG in order to take part in these calls for public comments then we - it would mean obviously we would need consensus of some sort but also we would need for the papers to be channeled in a way that the PDP was seeking them to be.

And so keeping these two things in mind we've reworked the way in which we go about the research and also in the way in which we present and discuss it. So this is our second draft and we're looking to get your comments, your thoughts and also your ideas on how we can better engage with the PDP process.

So the first human rights concern under the new gTLD subsequent procedures is that of diversity, accessibility and participation. Article 1 of the UDHR says that we're all equal and free. Article 7 says that we all have equal protection against discrimination. And article 27 gives us all the right to a social and international order in which rights and freedoms can be fully realized.

According to an ICANN study the gTLDs and the process to which by which you can apply for gTLDs are not inclusive and not diverse enough at this time. And just to give you a sense of how - just to give you a sense of the numbers at this point - one - just give me one second, sorry. Yes at this point 1586 out of the 19 out of the 1930 applicants and new gTLDs are from Europe and the USA.

There is of course 185,000 USD in order to just apply for these gTLDs, so this, obviously, a deterrent in terms of financial capability. But also, more

importantly, the application support directory -- which is in helping maybe applicants with technical and financial assistance -- is 700 pages.

Now this, I'm sure, is laborious to go through. It's painful to navigate. But it's definitely impossible for a large number of potentially applicants in terms of having the legal expertise to go about it, but also to successfully navigate the (unintelligible) that lead to that particular application.

Just - yes, okay.

So before this meeting, it wasn't clear to us how the applications for directory had been used. We weren't sure of the number of applicants that were actually granted support, and we also weren't sure of the criteria - yes.

Niels ten Oever: So the one or zero?

Woman: Yes, it's one. And (Ceaz) filed a (DIBP) request to find out exactly what that application was for; it was by (unintelligible). We also wanted to find out what the directory meant when it said that people can finance these applicants in terms of money or in kind, and we're still waiting for an answer on that.

The next spot that I think really affects the diversity and accessibility of the subsequent procedures is the concept of first-come-first-served.

Now there is, obviously, additions -- in terms of the information available to potential applicants -- there is additions and resources available. And first-come-first-served seems to be skewed in favor of those who already within the system -- who understand the system and who have the support to do so. And this is obviously something that has an effect on the diversity that we're looking to achieve.

The next one is internationalized domain names. And this is interesting because the ideas were created to promote multi-lingual participation on the

Internet for the inclusion of native languages and scripts as a part of domain names.

However, this suffers from a (unintelligible) problem because it is a demand that eventually leads to the supply. And if we are looking at including communities that are already within the system, you're not actually getting much meaningful change in.

And so this is actually a more remote problem, but we thought it was useful to signal because it hasn't been signaled yet. Could we go to the next slide please?

The next is the Freedom of Expression. And over here, it's very interesting because what we see is ICANN is slowly and surely moving into a domain that it doesn't necessarily have the mandate to do so, and that is content-delegation.

This was brought up by the GAC Communiqué in 2011 that said that ICANN is moving towards this part of policymaking and decision-making that it probably shouldn't.

And so let's look at something like .gay. And I'm hoping we can make it as a discussion. (Susan), she's in another session, but she said (unintelligible) to come here. She can give us a better idea of exactly what went on.

But the reason that .gay was rejected was that the committee that looked into it felt that it wasn't representative of the community, and I stress on the word community because I'll come back to that.

And also, it said that because the LGBT community also included transgender people, that was not indicative of the community.

Now this includes a value judgment that isn't really within ICANN's scope, and it isn't within the criteria in which the panel should be working on -- but somehow it has been sort of now.

Another issue is that you look at prioritization. So usually, if there's a community and an individual that apply for the same string, a question of prioritization comes up.

But if you can't determine the word community, and if the Gay community feels like it's well represented but ICANN somehow doesn't, then that brings into question definitions. That brings into question, also, who gets to determine these things; who gets to make this judgment or this value call.

That leads me to the next one that says Community and Public Interest Objections. The applicant directive - the applications for directive -- sorry -- has a list of things that are morally objectionable; it has a list of things that are against public interest. But again, this leads to a judgment on content -- which, as I stated earlier -- is not exactly within ICANN's (unintelligible).

The next issue with respect to freedom of expression is censorship. Now, China has said time and again to block all domain names that aren't registered under its country domain name. But not many countries do so.

The U.S.'s Immigration and Customs Enforcement Department has repeatedly called to shut off domain names because of IP infringement or trademark infringements -- which seems, again, to have implications of freedom of expression -- definitely -- but also have implications for is this really a level-playing field. Should we all be subjected to one country's IP law? And I'm not sure whether we have any objections to the answer to that.

Next slide please.

The next one is procedural (unintelligible). This was discussed to a large extent at the Helsinki meeting. And at the end of it, there was no one who objected to having this as part of our report.

It was pointed out that you cannot really map this onto a particularly right, but it was also pointed out that it is an important part of natural justice and so we have kept this on for now. But we welcome comments with respect to this.

The Base Registry Contract has some rules with respect to (unintelligible) regulations and (unintelligible) -- which a lot of people think (unintelligible) are very goals that they want the Internet to achieve.

For example, ICANN can have premium names and auction them off for a very high price without any meaningful transparency with respect to why that name was premium, what is the cap in which they can auction off a name, et cetera.

The Trademark Clearinghouse is skewed in favor of those who are incumbent Trademark holders, where even if they haven't disturbed their trademark, they still get preference over a fresh applicant.

And so these are problems of procedural benefit we have already spoken about. And we would continue to keep this as part of the report unless we have objections or unless you can point us to reasons that we should be looking into.

Another important point that isn't in the slide is that of Conflict of Interest. With many community applications like .music, .sport -- which you all rejected -- it was also pointed out that the panelists that made that call were conflicted because they had a certain conflict of interest whether they were the lawyers for an opposing party, whether they had been involved with people who wanted to compete with these applications, and so on.

And so that is also an important thing to look into -- which we will before publishing the next draft and before engaging with the subsequent procedures PDP. Next slide please.

Yes, so when I started this presentation, I said that we were looking to engage more meaningfully with the PDP process. And here are the four work checks and the comments that they are soliciting. And if you notice, our report has been tailored to feed directly into each of these work checks. And as in when they're open for public comment, we will be engaging with them.

Yes, and now I pass the mic onto Vidushi who is our first discussant for this (unintelligible).

Vidushi Marda: Thank you, thank you (Halushie). I will keep my comments quite brief, and thank you for that.

I think, you know, what I'd like to do is just quickly highlight, you know, a couple of concerns that, you know, that generally come to mind and which I have definitely seen highlighted in other SOs and ACs and ICANN -- which, I think, are definitely, you know, listed issues which could be considered in the process of your work.

For example - and I do this without particularly, you know, trying to slide each of these under a particular, you know, human right or under a particular instrument because, you know, that's not necessarily (unintelligible) at this stage.

But recently, you've already mentioned .sucks, for example. And that, to my mind, at least highlights one particular issue -- which is something that could arise in the future as well. It is not particular to this specific gTLD, but it's something that can arise in the future as well.

One of the, you know, concerns that is brought up by the fact that the name space is in fact expanding is, you know, the fact that people's concerns with new gTLDs can go beyond merely free market concerns, but also, you know, going to a broader (unintelligible). And, you know, we would need to examine how, you know, the systems we have in place can deal with that.

So very simply put, when it comes to trademark-related concerns, we have -- as a community -- over time evolved certain procedures to, you know, actually deal with conflicts -- to deal with cyber courting and so on -- which have worked to a large extent.

But when it comes to broader public interest concerns, on fair trade practice concerns and so on, we are largely venturing into new territory. And I think .sucks highlights this very clearly.

What happened? Some of you are probably aware -- some of you perhaps are not -- but sometime last year, I think it was somewhere around the middle of last year, the .sucks issue reached a point where ICANN actually wrote to the Federal Trade Commission of the United States highlighting the fact that - basically bringing to light certain concerns relating to how the gTLD was, you know, being marketed and the ways in which, you know, the domains were actually being reserved and sold and marketed.

Now, this to my mind, it was a logical step -- personally speaking. But it begs the question, what could perhaps happen if, for example, ICANN had not raised the issue. What are the remedies available to companies -- to individuals, you know, who might have similar or the same kind of concerns with others as well -- whether it's with respect to competition concerns or unfair trade practices or anything else that falls within the scope of what we traditionally regard as, you know, a regulatory issue? How is this going to be handled in the future with respect to future domain names?

In this particular case, while I'm not familiar with the exact status, you know, with what's happened with the letter that was sent to the FDC and so on, it would be interesting to exam what other kind of remedies -- what other kind of options are available -- to people including people based outside of the United States whether they are companies or individuals. If they have similar concerns with respect to new gTLD -- which may not have anything to do with trademarks in particular.

Now, apart from this, I would also like to definitely quote some of the issues mentioned with respect to the cost of new gTLDs. That is, I mean quite obviously, a valued entry for some people.

And this is, again, I think something that has been raised in multiple venues. I know that the GAC has definitely expressed issues with respect to this in the past.

And while (unintelligible), I definitely think that, you know, creative mechanisms could definitely be, you know, could definitely be considered when it comes to solving this issue including perhaps looking at user auction proceeds and so on. But, you know, that perhaps is a discussion for another day.

A part from this, another concern that has definitely come to light (unintelligible) in some areas is with respect to the BICS -- and also with respect to the possible safeguards, you know, that might be implemented with respect to some gTLDs, for example, .farmer, and, you know, similar areas (unintelligible) -- it is possible that, you know, BICS and other checks and balances that are implemented in order to ensure that a gTLD remains, you know, substantially, you know, true to its name and, you know, a safe space, can also be used potentially to keep out people who do not, for example, conform to certain specific regulatory requirements.

A specific issue that comes to mind is the concept of what constitutes a counterfeit drug -- for example -- is not something that, you know, everyone in the world agrees on. It is something that is definitely a loaded question. It is, you know, something that different people interpret differently.

And if, for example, it is determined that, for example, counterfeit - it's easy for us to say, for example, that counterfeit drugs cannot be sold using a (unintelligible) on aid or trauma domain. That seems like a very reasonable and very fair thing to say.

But when it comes to deciding what constitutes a counterfeit drug, it becomes a little more complicated. And we ventured into a territory that definitely has the ability to -- in some cases -- restrict the rights of some people to access affordable drugs -- for example.

So I think those are some issues that definitely come to mind based on what I've already seen here.

A part from that, you know, one thought that did occur in the course of the presentation is, if I'm not mistaken, with respect to new gTLD with subsequent rounds of the new gTLD program, one thing that is being debated is the issue of, you know, whether to, you know, open up new gTLDs on a rolling basis or to continue with rounds.

And I think that again, while at this particular point of time off the top of my head, I can't think of a very specific concern. I do think that that's something worth examining also from a rights' perspective to see if one versus the other is better for, you know, better for the community at large.

Niels ten Oever: Thanks so much (Rena) and Vidushi, for bringing up so many issues. I feel like drowning in issues and we only have so little time left.

But I heard on my right side -- like I could hardly keep Kathy quiet -- "I need to say something" -- I heard it. So I want to give the roll for a short queue. I still got a finger from Michele, Kathy.

Michele, are there other people I could put in the queue for this? I think Vidushi also remarked a point on how can we input this in the PDPs, and how can we ensure that the research that we're doing here that it also fits back into the relevant channels. That is definitely something that could be interesting and that maybe you two could also touch upon to help us.

Kathy Kleiman: Absolutely. So first -- Kathy Kleiman again -- so first, congratulations. I love the way you open, Vidushi, with here's what we're working on, here's the PDP and we're working on applying what we're doing to policy -- which is great.

I'm tearing my hair out because I just came from the Subsequent Procedures Working Group where I was up since one-thirty to try to figure out the hot issues. And there was a mic open and you could have been commenting. So I hate the conflicts here because on the very issues that you're talking about -- including first-come-first serve -- they're opening up a mic and you're hearing from a lot of people who would benefit from first-come-first-serve because they're the incumbents.

And I went to the microphone and I said something that totally echoed what you said here. And so the group there -- which is a big group and a big session -- and Avri's chairing. So I'm not sure you're going to see her leave early because they're talking. And they really could have benefited from hearing your thinking on this and maybe, you know, the human rights groups -- if there's a common position -- on these issues.

So you said, you know, that you want to input when they're open for public comment, they're opening, you know, these issues are now opening and rolling.

I don't understand your position, Sir, on .sucks. So are you saying it was bad, it was good?

So one of the things is - now there are reasons why .sucks occurred the way it was. They had enormous prices for the sunrise period. Sorry, that was it. And so they did send it to the Canadian competition authority and the U.S. competition authority -- who did respond and say, "We're not getting into it." So rather than having ICANN get into content, they're kind of -- or pricing -- they're outsourcing these.

So I'm not sure what your position is whether that's bad or good.

And also, ICE. When ICE does a takedown, that's not an ICANN issue. So I'm trying to figure out what belongs in the ICANN policy process and what you're commenting outside. Sorry, ICE is Immigration and Customs Authority in the U.S. operating under its authority that .com "exists in the United States because VeriSign is there."

So I'm seeing different categories and trying to figure out, A, where do things plug in, so Vidushi was very clear about that -- which is great. But, you know, where do they plug in? And as the policy people, what can we do to help and what are you trying to do that's also outside of ICANN because it sounds like you've got issues outside of ICANN as well. Thanks.

Michele Neylon: Thanks; Michele for the record. I think overall, it's very good. But as Kathy said, it's a little bit confusing because you seem to have, like, four or five/six possible different kind of strings of things, and you've got them all in together. So it's a little bit hard to kind of unpack and go, "Okay, this is a specific issue," -- which in and of itself is a big issue.

This one is completely outside of the scope of ICANN although it might be worth looking at for whatever reason. I mean it's just because - if you put this

many things into one, you're not going to get anything done -- to be perfectly honest with you.

I mean it's great if you want to kind of say, "Hey, I wrote a paper and read it." But if you actually want to try to move the bar on these things, you need to be quite focused and keep that as narrow as possible and as specific as possible.

So for example, like, you know, you mentioned in your presentation around premium names, but it wasn't clear whether you meant strings or actual TLDs. There's a huge difference between the two.

The other thing as well is when you start getting into issues around pricing, generally speaking, you're going to hit a brick wall because I mean I as a registrar have the right to set the price for whatever I sell. So if I wanted to sell you a .com, if I want to set the price for .com domain names to be $0.01 or $100,000, that's my right and it's your right not to buy them from me.

I also am not sure I really understand what you're saying around fake pharma and some of the other strings. I mean nobody is forcing you to register domains in a particular string. And ultimately, as a registry operator or as a registrar, I reserve the right to do business with you or not to do business with you and have certain rules around that. I'm kind of confused as to what your angle is there.

Now around the underserved regions and access to the overall new TLD project, if you go back to what some of us were discussing -- oh God, it must be four years ago. Kathy, help me out. ICANN did a very, very bad job, I think, of actually letting people know about the new TLD thing -- project.

But I mean there was this last ditch effort -- at the very end -- to bring together this community support thing -- which as was mentioned, I mean we think only one applicant even managed to take advantage of it -- but really

bolted on the very end. So there is a subsequent procedures process and work with now -- which would be a good place to raise that.

But bear in mind, you have to be very, very careful how you frame this because if you make it a question of we think it needs to be cheaper, then I can assure you a lot of us -- in areas of the world where we're not overly poor -- we're just going to go off and set up companies in places that are if that's the only barrier. You have to be very careful how you frame it.

And also, if you're interest in the underserved thing, there's a high-interest topic being led by the GAC's working group on underserved regions -- which is on later this week. And so please do turn up to that.

But I mean overall, I think, you know, I think you've got some wonderful bits in there, but you need to maybe kind of break them out a little bit more and be a little bit more specific because otherwise, it becomes unclear as to who should be addressing what and when.

Niels ten Oever: Thank you very much Michele. I'm going to give you the floor. I'm just - I'm also caught to be under five minutes.

And a part of the way forward might be, I think, what we now have heard several times is that an overview is good, but the more concrete we make it -- when it comes to privacy by design guidelines and when addressing specific issues -- the more useful it becomes to fit into specific processes.

And I think in our translating, we still haven't found the perfect angle to combine rights with specific themes or with specific topics. I think that is something that we could work on going to the Copenhagen meeting where we already had the visualization. The visualization had too much detail, but we might need to do some information architecture on how we can make things very concrete and follow up on not having huge parts of texts that people will not read.

To facilitate that, we also have a Web site now. It will go online in about two weeks. You're income on that is very much welcome. If you'll go to the next slide twice, you'll see that -- Maryam, if you could be so kind. So we've been working on that but I'll be working with you on filling the content on the list.

I'd like to get two more comments that were in there. Please, (unintelligible).

(Jay Chow):   (Jay Chow) from (unintelligible). We are Chinese idea and registry operator. Just one quick response to (Ms. Madden) because you mentioned that China seems to have censored some new gTLD, but never heard of that.

Could you give any specific example to say China has censored any new gTLD?

Woman: Actually, I should have been more clear. I said China has been threatening to do so for a long time, and this is a potential problem, and (unintelligible) says the same. I didn't say they actually shut it down, but a paper has various citations and it says it has been threatening to do so.

That's just a clarification. I think you misunderstood what I meant.

Niels ten Oever: (Unintelligible).

(Jay Chow):   Not sure the logic. Why - what China has the potential to shut down any TLD?

Woman: Sorry. Could you say that again? I'm sorry, I didn't understand. Do you not understand the logic? Oh. How?

Man: (Unintelligible).

Michele Neylon: It's all a matter of - sorry, it's Michele. I think there's a bit of confusion here.

The paper said - they're saying in the paper that China - and it's not just China; it's several other governments have threatened to block certain TLDs in their countries. They're not saying that China or anybody else is going to shut down a TLD because that would involve probably invading another country.

But blocking a TLD -- technically speaking -- that's not particularly hard to do and it's pretty damn easy.

We run a network. We block entire networks from accessing our network because all we see is bad traffic from them. And depending on what you're using, you can block a TLD from resolving; you can do that easily.

You send a mandate to every single ISP and say, "Do not allow domains in .sucks or .feedback or .KathyKleiman to resolve." And they will stop resolving. It's not hard to do.

Niels ten Oever: Vidushi.

Vidushi Marda: Thank you so much. I'm also happy to engage offline because I don't want to take up too much of other people's time, plus I have a flight at 9:10 to catch so it's in my interest to keep my comments short.

But the broader issue that I was trying to highlight is mainly the issue of enforcement of laws and the fact that - let me try to put this as carefully as possible. But the issue that it may be in some cases, easier for some people to enforce their laws versus others.

In particular, you know, for example, with respect to .sucks, if I'm not mistaken, the reason why the FDC was the entity who was written to in this context is because the registry is in fact a U.S. registry. And…

Woman: (Unintelligible).

Michele Neylon: No, they're Canadian registry. The reason FDC was brought in is because ICANN is based in the United States and the people logging complaints with ICANN were based in the United States.

Woman: (Unintelligible).

Vidushi Marda: Which to my mind, I think again, raises pretty much the same issue which is that for those who are not based in the United States -- for those who are based and who may not be familiar with U.S. judicial process for example -- it is definitely much harder to perhaps find a course to justice in a situation of this sort.

                  If you find, for example, that there is a registry which is has registered a domain -- a gTLD which is in some way infringing certain rights -- that you believe you have -- perhaps under your own country's laws or somewhere else -- if the enforcement lies elsewhere and the standard of enforcement and the legal standard which is used to judge whether or not there has been infringement of a right.

Kathy Kleiman: But that's UDRP, right. That's Uniform Dispute Resolution Policy action.

Vidushi Marda: No, in this case - so that's only with respect to trademarks which is exactly what I was highlighting.

                  With respect to trademarks, we have something which everyone agrees is in neutral standard and in neutral forum…

Kathy Kleiman: We don't.

Vidushi Marda: …okay, some people, or at least a certain number of people agree. And in fact, I completely understand where you're coming from. But at least, there is

a certain mass -- I won't say a critical mass -- but there is a certain number of people who agree that there is a set of rules and a forum divorced from any particular jurisdiction -- which can be resorted to resolve this kind of issue -- which is a trademark-related issue when it comes to something related to unfair trade practices, for example.

And here, this is just one example. It's possible for there to be myriad other concerns whether that's competition or anything else.

The fact is that we - and again, I'm not saying I have a solution here. And this is something that, for example, I would be happy to work with everyone here to try to find possible solutions to this kind of issue. But the fact is that this is a concern and it is something that we should be considering.

There is definitely a difference in terms of how easy it is for people in one part of the world to access a particular remedy -- a particular legal remedy -- when it comes to a new gTLD as opposed to people in another part of the world. That is the broader point I was trying to make.

And again, with respect…

Kathy Kleiman: But a quick response is be careful what you wish for. I mean (unintelligible) a new UDRP…

Vidushi Marda: Absolutely. And I'm not saying that there is a better solution; I'm not saying that there necessarily is. But it is a concern and it is a concern that I personally believe needs to be discussed and we need to see if there is a solution to this or if the status quo is in fact the best possible outcome that we can hope for. But it's definitely something that we should be discussing.

And I think the reason we have a need to discuss any of this is because the name space has expanded to include words and phrases and, you know, concepts which include broader public interest concerns.

Niels ten Oever: On that note, I suggest you continue the discussion after the session because we're overtime; people have to leave.

I'd like to thank you all very much for participating here. The work will continue on the list and on the regular calls. I propose we continue with calls every three weeks and have the main calls not divergent to subgroups because work seems to be converging.

We might be working on a publication together towards Copenhagen and see where it goes. I think we had some great leads both on content and on formups -- how we can make it more accessible. It will then be also multi-media publishing because we can also work on the Web site at the same time -- which should keep us busy and also improve our outreach to other parts -- which it will also help then influence the processes that we are studying at the same time.

That leaves us no time for any other business, but I think we discussed efficiently. Thank you all very much and looking forward to seeing you on the list in the coming time. Bye.

END