KOBE – GAC: WHOIS Policy (2 of 2)
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LAUREEN KAPIN: Good morning, thanks to the early birds who have come to join us, we appreciate you being here. We're going to talk a little bit about work of the public safety working group, I will give a brief introduction for the newcomers and then we have launch onto a preview of our current work streams. And by way of introduction, my name is Laureen Kapin, and I am one of the co-chairs of the public safety working group, along with my colleague Cathrin Bauer-Bulst. And everyone else who will be speaking from the public safety working group, I will ask you to introduce yourselves before you speak so everyone knows who you are, and we will move on to the first slide.

Do I have clicker? No, [laughing], if someone was to give me one, I will happily -- okay. You are the clicker, good, that's service for you. This is kind of a roadmap of our agenda, brief introduction, we'll be talking a little bit about the registration data issues, also known as the WHOIS issues which involve not only Phase II of the expedited working group but also the technical study group to come up with technical implementation of whatever policy comes out surrounding the successor to the data registration

requirements and then privacy proxy services implementation which is another important issue.

Then we will switch topics, hats, will talk about DNS abuse mitigation, long one of the priorities of the public safety safety working group and we will talk about our current work and a brief of the board consideration of the competition, consumer trust, consumer choice review recommendations by the way longer session about that later today, so it will just a preview.

Since we only have a short time, I may go quickly but you can always catch myself or anyone on the stage if you have questions about the work of the public safety working group, we are delighted to chat with you about it. Here's your open invitation. If you have any questions, please reach out in person or via email.

So as our name suggests, we focus on aspects of ICANN's policies that impact the public and worked informally for quite some time, into existence formally in 2016 when we identified a need for a formal channel for public safety, law enforcement consumer protection agencies, that work in the public interest to really have a dedicated group that focused on ICANN policies that implicate these issued.

So we have a work plan and, by the way, this is all on our portion of the GAC website under Working Groups, public safety working group, where you can find our charter, strategic plan,

membership, et cetera, but we have a work plan and that is focused on the points you see before you that we really want to diminish DNS abuse, fight cyber crime. Regarding the WHOIS, it's a real priority to make sure your public safety officials can access that information in an effective and timely way. We want to make sure that we as an organization are effective and resilient, and finally -- and here is my pitch: We would love to have even more participation than we have. We have folks that we're very grateful for who are our sort of core members who continue to support our work inter-sessionally and then come to the meetings, then we have people who sort of dip in and out depending on where the meeting is based but we're always looking for folks who really want to participate in a sustained way because complicated issues and the more perspectives we have, especially from people all around the world, better, open invitation, we invite you if you are a member of the public authority, a public law enforcement, cyber security agency in your government or consumer protection, to be involved with our work.

I kind of already went over the second bullet in my invitation pitch, but basically our members are parts of the national and state governments, consumer protection, both civil and criminal law enforcement, GAC representatives and observers and somewhat of a formal process where if you would like to join our group, you do that through your GAC repetitive, you get in touch

with them and they have a process for continuing your submission.

Is that our current membership, Fabien, 130 -- well, we have a lot of participants representing 46 GAC members and 6 observers, but don't want to lull you into a sense of false security and have you think oh, 137, they have a bunch of people -- and we do on paper--but the people active are much smaller and that's sort of my focused invitation to invite you to become a more active participant.

Next slide. So I'm going to then turn this over to Iranga Kahangama from the FBI, and I may have mispronounced your name, but he will introduce himself.

IRANGA KAHANGAMA: So yes, Iranga Kahangama with the FBI in the US, been a member of the public safety working group, in the community of the WHOIS and the registration data discussions have dominated but I think one strategic goal for the working group is to maintain a presence and interest in DNS abuse mitigation within the ICANN community, so I think it's in our interest to continue to mention this issue and keep it happen as a priority even amidst all of the noise and work around the WHOIS stuff and ultimately they do tend to be linked as well.

So quickly to go over our objectives as listed, will quickly go through them [reading] [refer to slide] so ultimately we want to encourage policy making in the ICANN space related to DNS abuse mitigation and there is momentum and recommendations emanating from some of the recent reporting we can use as mechanisms to develop policy and introduce statistical information into this policy-making approach.

So quickly, as I mentioned, the statistics, one very interesting thing ICANN has done, I think we briefed the GAC previously on this is the domain abuse activity reporting tool, DAAR, started by the CTO's office here. For the last few months they have started to public month publish monthly are not on DNS on the TLD space, I encourage you to download the report each month and help to conceptualize what ICANN is doing, and DAAR is a data aggregation of many different reputational feeds that exist publicly and commercially, gathering data and doing analysis to show what is happening in the TLD space, they have monthly reports and as I pull up the last one from February, even within the executive summary, there are some interesting quotes, some that quickly just came to mine. In the case of new gTLD, 87 percent of the day points identified as security threats, looking at over 194,000, or million, different domains as spread out across the TLD space, so you can see the access to data they have and inform a lot of our conversations.

And then just to emphasize, there will be a session on the DAAR tool by John Crane tomorrow and I believe it's 8:45 in the emerald room so I wanted to highlight that if anyone interested in hearing more and learning about the latest and greatest.

So as a introduction to Drew, we also have the consumer safeguard discussion and the fact we need to build into these DNS related issues into the next round of the -- for those who weren't here a while ago for the first round, my predecessors and members of the [indiscernible] were critical of developing safeguards and putting those into place for the first round but that's a learning process where we need to continue to build and put those safeguards in. So the PSWG will continue to track those issues and I will let drew get into the some of the specifics so it will be a nice transition, but this is an issue that we will continue to track, and we're happy to brief to you more about it and if there are specifics, I will let Drew speak since his presentation is related to this.

LAUREEN KAPIN: And briefly, regrettably we are losing Iranga at least temporarily, and I wanted to publicly recognize the great contributions he has made to the public safety working group over the past years, been instrumental in much of our DNS abuse work and also been a

great colleague, so we wish him well and please congratulate him and we will miss him very much.

[applause]

DREW BAGLY: He had big shoes to fill and more than filled them. My name is Drew Bagly with crowdstrike and the secure domain foundation, former leader of the [indiscernible] team, and I wanted to remind this group about the DNS recommendations we put forth in our final report and give a status update on where we are today with regard to the board's resolution on the CCT -- so several months ago we released our final report, filled with 35 recommendations on a wide variety of topics all within our mandate to look at with regard competition, consumer trust and consumer choice and several of those recommendations focused on DNS abuse specifically because part of our mandate was to look at the issues identified by the community prior to the n gTLD round and to look at the safeguards put in place as an attempt to mitigate those issues to determine whether or not those safeguards were effective and which issues still remained so that the community could be advised going forward on what would be appropriate and effective with regard to malicious abuse issues as worded in our mandate.

And with our DNS abuse recommendations as well as all of our recommendations were full consensus recommendations from the composition of our team which was comprised of members of every constituency and the DNS abuse recommendations focused on categories. Action [indiscernible] other recommendations which would in your opinion include behavior in the adoption of anti abuse practices by registries and registrars and the other category of recommendations fit into the concept of empowering ICANN compliance as well as the community to better enforcement against systemic DNS abuse and in particular we made recommendations that would empower both ICANN compliance ICANN, as well as -- where there were no actions taken so that we could move beyond a situation in which DNS abuse viewed as as a one-off complaint versus the systemic problem it can be with some operators, certainly not the case universally.

So these recommendations carefully crafted, were very definite referring to the policy development work of the community but articulated what the ultimate goes should be and just days ago the ICANN board passed a resolution on which they started whether or not they accepted each of our 35 recommendations including the DNS abuse recommendations and our team is still digesting this final resolution so we simply do not have a cohesive message on all of the resolutions passed by the board with regard

to our recommendations. However, something I think is very important to clarify with regard to the DNS abuse is that the board's actions were to put the acceptance of our recommendations in a pending status, pending the community coming up with a universal definition of DNS abuse and we have discussed this amongst our CCT leadership team and it's very important to clarify we believe this is not necessary at all to move forward with these recommendations because we used a very discreet operational definition for what we termed -- DNS security abuse and with that definition we pinpointed specific areas that our recommendations were meant to address including phishing, malware hosting, bot net, control, farming and spam, developed and informed based upon what the community identified as the issues prior to the launch of the new gTLD program and subsequent work by the community to articulate how the safeguards address these issues and so we think that's very important to clarify for this group as you are thinking about DNS security abuse and how the CCT recommendations should be implemented going forward because the report is very well cited in terms of how these definitions -- what the definitions come from, why they are important and moreover, we actually commissioned a study which operated specifically with these desks to look at the high rates of abuse amongst both new gTLD as well as legacy and that's what informed our data driven recommendations.

LAUREEN KAPIN: So I just want to highlight this point because it's such an important one. The big picture here is the board basically said well DNS abuse, that is a big concept, we really should push it to the community to define that before moving forward with your recommendation and what we want to clarify is that the community already weighed in on definitions of DNS abuse before the CCT review team even began its work. These were set forth in materials that the CCT review team had at its beckon call and relied upon moving forward so this work has already been done by the community. So for the board to put this in a pending status saying it needs more community input doesn't quite make sense to us as that input has already happened. I just wanted to underscore that point because it's really important.

DREW BAGLY: Thank you, Laureen, absolute, that's the critical issue. We worked for nearly three years using the definition the community had already come up with and looking through that lens and then identified through data the systemic problems with regard to DNS abuse and then formulated potential solutions that we recommended on a consensus basis to the board, so I think that's really important to think about with regard to DNS abuse that we have identified very specific problems for which we know what

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the problems are and have proposed solutions that could mitigate abuse in those areas so to the extent the community needs to look at other areas of abuse outside the CCT [indiscernible] operational definition, that's a distinct issue from from our recommendations and wanted to clarify and encourage everybody to go back again and look at these DNS abuse recommendations we developed chink are very important going forward and especially before there is another round of TLDs thank you.

And I think another point just to close the point when I mention the DAAR tool, the definition they use for DNS generally tracks with the CCT so we have done a job of being consistent, it's important to keep that going.

CATHRIN BAUER-BULST: Thank you very much for this presentation. My name is Cathrin Bauer-Bulst and just to quickly put this into perspective to the GAC, as 2013 in the April Beijing communique the GAC called in its advice on ICANN to ensure a number of safeguards were implemented before delegating new gTLD and that advice specifically contained a safeguard in mitigating abuse activity with the exact same terms used in the study and in the recommendations of the CCT team so all the more surprising six years after the fact we should still be looking at defining abuse

and for the GAC's benefits we came back to this safeguard's advice in the Beijing communique and the Helsinki communique where we advised before any further rounds of subsequent gTLD would be considered, ICANN should await the outcome and implement the necessary conclusions and recommendations that came from those reviews and of course if much of the work that is suggested by the review team recommendations is just deferred for further consideration, the question for the GAC that begs to be asked is when we made this recommendation, gave this advice, did we just want the review to be completed as a formal exercise or want the organization and community to take up the advice and recommendations that came from the reviews and consider how to appropriately implement before moving on to subsequent rounds and I think the answer is sort of obvious.

Of course there has to be material take up of the recommendations especially when there is evidence that the safeguards implemented for the first round may not suffice to mitigate abuse properly and again, important to say that many of the contractual parties, in fact the vast majority, are doing a very good job of preventing and mitigating abuse and committed to keeping a clean space and there are a couple of bad apples that we currently don't have the proper tools to deal with and in order to develop those we need the necessary evidence to be able to make that happen and able to have actual contractual clauses

that enable the registries and registrars to be [indiscernible] in the proper fashion and the work of the CCT review team has shown instances where this does not function properly yet so very important for the GAC in terms of the follow up to GAC advice.

Now with that being said, I think we have six minutes for another topic, the access to gTLD data. That is actually not dramatic in terms of time because we're going to to have the subsequent session immediately following this one that will focus on the WHOIS issue particularly. And in leading into the session we thought we would highlight a couple of points on the current WHOIS work that are relevant or particularly relevant from the standpoint of public safety agency issues.

You have all been probably listening to your fair share of talks and interaction on the WHOIS and where we stand with the EPDP right now. Just want to take the opportunity to highlight that particularly for law enforcement the change and the unavailability of WHOIS data has been quite dramatic, I'm a vice chair of the [indiscernible] team but -- we ran a survey of law enforcement agencies around the world to assess the impact of the availability of WHOIS information and specifically asked them whether WHOIS met investigative needs before May 2018 and a staggering 97, 98 percent partially, when we asked -- 67 percent said it did not, data no longer available and when you look at the impact this has on investigations, we saw that for 52 percent of

investigations there is a delay because the information is not available and a full 26 percent of investigations are dropped. And especially when you look at the fleeting nature of data in the Internet space a delay in investigations can often lead to having the close the case later on because there's a chain of evidence and if the first link is missing the chain usually breaks quickly, so serious impacts we're currently seeing.

I want to highlight issues emerging as we assess the work of the first round of the EPDP and technical study group which will also give a briefing I believe tomorrow afternoon to this group. So a particular issue I want to highlight is the need for confidentiality of law enforcement requests that will be need to be taken into account in the second phase as well as the need to make sure that the logging that has to be performed for data protection reasons is done in a way compatible with that confidentiality request and that's a particular need of government agencies who often don't want to be tying their work to the world for reasons for security and confidentiality of the investigations which may affect citizens who later turn out to be innocent, so private of the individual user.

The third major issue is the challenge of ensuring that reverse look up possible so there is a possibility once you have identified a bad actor, so a domain distributing malware and you have identified the WHOIS information to be able to see what other

vectors is this criminal using so we're not playing the whack a mole game but have a systematic approach.

Phase II of the EPDP where we will talk about what rules will governor access to the WHOIS data the second and important process is the work of the technical study group looking at ways that the policy can be implemented using the rdap protocol, and that is very important because in identifying options for the implementation we can also inform the policy development process because those options may actually be more advantageous from a privacy perspective than might be evident when just designing the policy so the technical limitations from a data for example perspective quite important.

The last is the implementation of the private proxy services accreditation as you know, those not specifically governed by contracts and sort of existed in a void, if you will, and there was work onboard setting a policy for the privacy proxy space, an implementation come to a bit of a halt pending work on the future of the WHOIS but at the same time these services continue to exist and there is now the question of whether we need to move ahead regardless of whether there is an actual conclusion of the work of the EPDP and this and many questions we will have to consider during the day.

We are right on the clock so I'm afraid we won't have time for questions this time around but will continue to discuss this issue now in the session of the GAC on WHOIS so thank you all for your presence here for being here and your interest and please stop any of us on the podium if you have any questions on what we have shared during this half hour. Thank you, have a nice day.

MANAL ISMAIL, GAC CHAIR: If I may call on members of the small GAC EPDP working group, if they can join the panel, please.

So thank you for your patience. Good morning again everyone and welcome to our first plenary session for today on WHOIS and data protection. I hope the first session on Sunday helped in bringing everyone up to speed, and we now need to continue this discussion here to prepare ourselves for language for the communique, to prepare for our meeting with the board, discussion with the board later today, potential GAC ALAC statement because they showed interest to align our thought and maybe come up with a joint statement and we're meeting the ALAC tomorrow. Yes, tomorrow.

Also our response to ICANN board letter which was sent on 8th of March, formally not [indiscernible] but the generic name [indiscernible] has approved all the policy recommendations developed during the EPDP and the adopted recommendations

have been posted for public comments prior to board action after which the board will be considering the EPDP recommendations for approval.

And reiterating that in the event that the GAC believes there are public policy issues raised by these recommendations and provides advice accordingly on those issues, that ICANN board will take the GAC's advice into account on this matter as set forth in the bylaws. So this was basically the subject matter of the board's letter to the GAC.

And finally, of course to agree on GAC participation in Phase I implementation review team and also how are we going to continue our participation in Phase II as we have been discussing. So with this, maybe I can hand it over to -- I understand we have slides, right? Cathrin, shall I hand it over to you? Thank you.

CATHRIN BAUER-BULST: Yes, thank you very much, and good morning everyone, my name is Cathrin Bauer-Bulst, not on the EPDP but part of a small team of the GAC and we want to share with you -- let me run through the agenda, the takeaways from yesterday's cross community session which I think many attended, which we thought might be worth highlighting some of the shared views on the podium that might be relevant, especially as we move into Phase II and want to spend time on Phase II of the EPDP and possible priorities of

the GAC for this phase and conclude by going through the brief follow-up of previous developments such as ICANN's request to the GAC for example to provide specific information on the impacts and public safety agency and is other government agencies that might need to be accredited for access to the nonpublic data so with this we can move into the first takeaways and we've put together a first list, I'll just start on this and perhaps Ashley who shared in the session will want to pitch in.

So one point that a -- in the cross community session of course for those not able to attend we discussed the second phase of the EPDP and members from all parts of the communities provided their perspective on what the priorities should be, what concerns they have moving into Phase II and what should be done in order to enable smooth progress and one point that -- in fact several participants on the panel highlighted was there was a need for precise timeline for the work of Phase II with milestones but those on the EPDP and shouldering the immense workload in Phase I cautioned that in their view no possibility for the same pace since the EPDP is no one's full-time professional employment.

There was a need for clearly defined and narrow scope highlighted by a number of the people on the panel in order to manage the work. One specific issue that was highlighted as outstanding and unclear was the question of accreditation so once the rules are set for access to non-disclosed WHOIS data,

how exactly is accreditation governed and on the panel there were questions around how this work would be divided up between those entities that would seek accreditation and engage in the development of codes of conduct for respective communities and the work of the EPDP Phase II so that what extent the Phase II would get into defining criteria for accreditation, going back to the question of scope. Where do we draw the line between the work of the Phase II and the work that needs to happen elsewhere in the or outside the community.

The participants mentioned the possibility ability to develop codes of conducted a specific tool under the general data protection regulation of the European Union that allows entities such as trade association or professional governance bodies to develop rooms around processing of data and those can then basically certify their membership for those codes of conduct which from a data protection authority perspective provides a number of safeguards as to how the data is processed and that is a tool that participants were interested in exploring further in Phase II.

The next point raised was particularly on the side of cyber security and law enforcement. The need to cross reference data so that is what I was describing in the previous session so when you have identified an actor or found data behind one website that is sharing for example abusive materials or engaging in other

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illegal conduct to then be able to find which other domain names the same information has been used for so you can have a systematic approach to taking down the network.

Then there was a reference to the recognition -- the need to recognize end user rights to know who they are dealing with online. So the question of how do we also include the normal user who is on the Internet accessing a domain and would like to know who they are dealing with, that is not going to be captured under the specific accreditation and certification mechanisms because of course as an average user you are not going to have a professional activity related to WHOIS data and you are not going to want to go through a process of accreditation just to find out who is behind one domain name and how can we do justice to to those individual users who would like to know who they are dealing with online, a legitimate concern also from a consumer protection perspective.

A number of participants on the panel suggested that possibilities and options for the implementation, so the practical ways in which policy could be implemented should be considered alongside Phase II to inform the policy development and also make sure there isn't too much lag between the close of the policy development and the actual implementation.

And amongst others, I will highlighted the need to have sound legal advice provided from the very beginning of Phase II and throughout to make sure the policy choices are really supported buy legal advice that allows them to be phrased in such a way as to meet the standards of data protection privacy laws around the world and that then should be followed up by guidance from data protection authorities once there's a work product to provide begins of guidance on.

And a number of participants highlighted the need to manage liability risks for contracted parties bearing the brunch of the legal risk inherent in the implementation of the data protection privacy laws as they are the ones responsible for the safe and legitimate processing of the data. And I will pause here and see whether Ashley wants to add further takeaways from the session or Kavouss.

KAVOUSS ARASTEH: Good morning to everybody. Yes, two or three words about the small team. On the [indiscernible] of July, 2018 a small team was established by six or seven member, three members and three alternates plus a few other people supporting the EPDP activities. To give you a little bit of summary, the EPDP actions by a small group requires something about six hours per day work. We have had two meetings per week, two hours, sometimes three hours then we have a small group one hour two times per week sometimes, maybe less and then we have

hundreds of emails to react. We were reading one email and about to react we receive another email overriding that email and don't know where we go on how we acted. This is a very difficult job, very, very difficult job. So coming to that now we are prepared for Phase II, which is much more complex than Phase I, for the time being we are lacking the chairman, looking to have the chairman up to the end of perhaps April so our meeting of EPDP will not start before the end of April possibly and then we have now to see what we can do.

Yesterday there was a discussions that we talk about legal actions and legal advice. I was about to say that we should not wait for that, there are many other issues if you look into the list provided by the group and Cathrin and others, there's a lot of activities that does not require any waiting for the legal aspects or legal advice. We can start with many of them without that with respect to legal we have to first identify which area we need legal advice and then we have to go step by step but not asking legal advice [indiscernible] because we had this experience in the transition of [indiscernible] we have been advised with legal cases and the middle of the time we found some of the advice needed to be reviewed so the situation is that we need to identify the areas that we don't need advice, then we can start the work immediately and the area we need advice and then the group, we should decide what are the scope of those advice and so on,

should not make it open for the legal firm to provide whatever they want but ask them what we need that they provide, these are the very important issues to be very effective.

With respect to meeting, the pace of the Phase II will not be as Phase I, perhaps a number of [indiscernible] reviews, the time will be longer, maybe a year or more at the beginning Cathrin deferred to the exact or precise timeline, perhaps I may complement that is correct we need a target timeline but not exact, precise, because it may be difficult, yesterday or last night during the reception I had the opportunity talk with some people and said if we establish a timeline and don't reach that -- so we have to be careful and talk about the targeted, I would say indicative timelines and then during the progress of the work gradually try to adjust that. So the work before us is quite complex and the issue is not very well known. We don't know whether the entire work is one single unit or multiple small units or module it's, if we could establish some or wait for the entire module to be operative or just start with some of the module and have some reactions, whether we should have trial and test or wait up to the end of the issue and then start -- so see, these are things we have to discuss. So the big job before the small group during the coming one and a half or two years, I don't know exactly but one thing is important, we need to be quite careful of the [indiscernible] of the tools available for GAC in order to

implement what we want. For us for GAC this is the most part of the project, this access and access model and if it's careful and test it step by step. Thank you.

GEORGIOS TSELENTIS: Yes, good morning, Georgios Tselentis, also a member of the EPDP group. Would like briefly to make the points and also agree to several of what was said by Cathrin and Kavouss, let me put on my engineering hat. When we have a complex project here but we definitely need to assign a target that we all see like a beacon where we are heading and what was said by Kavouss with we need to achieve. And this is a request also because at the same time as in the previous session was clearly shown that we have many issues that are not well served by this situation we have now so we need to put this -- because they are pertaining to this situation with the dark parts of the WHOIS pertaining to public interest topics not well served with the situation of redacted data currently.

So definitely we need to put a clear timeline, a target day indicative, if we need to change the indicative date we can do so but need to justify, one to put an open ended procedure as many EPDP in ICANN I have seen are taking place.

Regarding some other things like the legal advice, it's very useful, there are lessons learned so far that we had from Phase I. How

we put the questions is very important so even the formulation of the questions is very important. We have some experience in that. I believe we can do so better in Phase II and accelerate the pace. Very important issue was the issue the accreditation. There I expect a lot of job to be done about who are the accreditors, how do they get this power of accreditation, by whom? So these are very important questions that have to be answered within a time frame.

But I believe that we have as said, we worked with a very high rhythm, with a fast pace, lessons learned that will help us accelerate Phase II. Thanks.

ASHLEY HEINEMAN: I will keep it short. I think going back back to the issue of having a narrow scope and very clearly defined scope will be absolutely critical, as noted already, there is there continued preoccupation of legal liability, which is understandable but it seems to bog everything down and make things more complicated than they need to be and one example is accreditation. Not to get into too many technical details, but the process by which third parties will have to figure out how to accredit themselves and whether or not that needs to be a detailed conversation in the EPDP is at least not clear to me. And that could take a very long time, I can see

that as being a parallel effort that can be happening and relieve the EPDP of one other thing to do.

That's not to say it's not of any importance to the EPDP but they can focus on more high level principles, so one example but it's going to be hard because there is this assumption that the contracted parties have legal liabilities throughout at least the schematic put forward to us as possible model and we need to find ways constructive to alleviate some concerns and we will get to that later with respect to what GAC can be moving forward.

LAUREEN KAPIN: Just wanted to add one observation about legal liability. I haven't always worked in the private sector, I have worked -- in the public sector, I have worked in the private sector in my career and I know that companies always worried about risk and liability. But I also know working in the real world, everyone knows there is no such thing as a risk free situation. What you want to do is weigh the risks and assess the risks, and I think everyone needs to be moving forward through this process in a clear eyed way knowing we're never going to achieve a risk free scenario but certainly can inform ourselves on what our reasonable risks and what are not undue risks.

KAVOUSS ARASTEH: Apart from this unified access, other activities deferred from pays 1 to 2 and we have to reply to that, legal person versus [indiscernible] person, not quite clear yet, geographical [indiscernible] redacting of some of the data like CT, so on, so forth, yet to be discussed and some of the language not very clear. In some part of the report mentioned that the registry or registry and registrar should do something but they are not owe obliged, so I think we could immediately start to work on that, however, like legal versus natural, we need to have legal advice but some others we could still continue to have for this time for the email and look for which of which could be quite suitable for that and there were big discussions and we have to finalize that so there's this point, what I suggest that the work of the Phase II should start as soon as possible and when we have the meeting we should emphasize there are areas we could immediately start the work without waiting for legal advice and these are things very important. By the way, we have the very difficult task as Phase II because this is my personal understanding and my personal impression, there is not much tendency in the group with respect to urgency and importance of unified access. I who or right, I leave it to the others but GAC associations very big importance for this issue but apparently not others have the same view as us. So that is something that we have a hard job, knowing that the compensation of GAC we have only three members, there are some constituencies that have six versus three, it's not equal

footing. So when sitting there are six people on one side from one constituency and three from GAC so you can imagine how difficult the situation would be. We don't want to change the charter but that's the difficulty we're facing so perhaps by the intervention of our distinguished chair that the GAC alternate, be given the possibility to act also as active as the active members in order to compensate this issues of inequality of footing. That is something we can develop if we agree on that we could further work on and this situation, but we have a difficult situation that not everything is idealistic for us, we have some area that we need to really argue a lot and have -- but one thing I forgot at the very beginning, we sincerely appreciate the work of Fabien, sincerely, I helped us a lot, prepared many, many elements, input and facilitate or work and we apologize to him sometimes if we're hard to him because of the work pressure but he was so patient and kind and prepared all of the information and there was a unified, I would say, reaction from the small groups that we have, try to collate our reply to be united and not have different views and act as one single reply or reaction from the GAC and that is quite good. Thank you.

MANAL ISMAIL, GAC CHAIR: So thank you all very much for the significant amount of effort put by the working group members and Fabien, as you mentioned in this challenging process and thank you also for the slide we have

on the screen because this answers the question I was going to ask which is what are the key messages that the GAC needs to pass whether through the range of the communique -- language or to the board and our response. So can someone take us through the key messages on the screen and maybe then open the floor to GAC members who can maybe weigh in their views on the key messages? Laureen.

LAUREEN KAPIN: First of all, as a preface, that is preliminary list. Part of the reason for this session is to get your input as well, so this is an evolving list. That said, to start and we've already discussed this, there is a need for a clearly defined time frame to deliver this product expeditiously and as Kavouss and others have pointed out including Georgios with his engineering hat, I used to do construction litigation -- so we need milestones, a critical path with milestones so that actually the work is planned out, defined time which could change if need be, but at least a plan in place with interim milestones to get this work done. That's first.

In order to actually have something quickly with planned milestones, there needs to be a plan upfront, this is the second point, to have a defined and narrow scope, dough fine goals and then be ruthless about what do you really need to get that done, not what would be ideal, what would be nice if we had an

unlimited amount of time but what do we absolutely need and only by defining the work with a narrow scope can we actually adhere to this first goal of getting things done expeditiously.

Third point, there were many complicated issues from Phase I pushed to Phase II that is just sort of a background reality but one is particularly important and this is that issue that the GAC has issued advice on in many past communiques and is that is the distinction between natural and legal persons and quickly by way of review, the GDPR is very clear about its -- these protections do not apply to legal persons. So the GAC has issued advice stating that the public should have a right to see the data of legal entities. The public should have the right to see the registration data of legal entities that owned domain names. This is a very important issue for the public interest at large so that would be another area where we could reiterate our advice.

That said, I think now would be the time to open up the floor to hear what other points regarding the expedited policy development process you would want to highlight in GAC advice for this meeting. So it's your turn now, I'm going to shut off my mic.

MANAL ISMAIL, GAC CHAIR: Yes, please, go ahead, please introduce.

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[INDISTINCT] We run a proxy privacy service called [indiscernible].com and wanted if the panel can [indiscernible] where the domain is owned but not the natural but the legal entity, the proxy of the domain registrant and specifically the degree to which registrars will be required to maintain accurate records of the actual other than of the domain name and that information could be discovered buy piercing through data requests by law enforcement. Has there been any clarity because I think in small group there has been occasion that the functioning of a privacy proxy will shift as a result of the implementation of these policy changes.

MANAL ISMAIL, GAC CHAIR: So thank you for the question. But actually we're trying to seek a GAC member's views on what will go into the communique language of the GAC. So this question I believe is more to the -- do you want to respond?

GEORGIOS TSELENTIS: I can't respond, but want to highlight that. This is one of the things deferred to Phase II, part of recommendation 14, if not mistaken but part of the discussion we are going to have in Phase II.

UNIDENTIFIED SPEAKER: Just to clarify, realistically between now and August of this year, there wouldn't be expectation that registrars are making the actual verified contact information available through the WHOIS proxy?

LAUREEN KAPIN: You are asking us a question that has not been decided so it would be difficult to clarify something that hasn't been decided, but it would be great for our GAC colleagues so give us some input on issues for communique advice relating to the EPDP. I know the public has questions and there will be many other places to ask those but this time is devoted to the GAC's input for communique advice on the EPDP.

MANAL ISMAIL, GAC CHAIR: And I already have European Commission.

EUROPEAN COMMISSION: I would like to [indiscernible] the work of the EPDP and done by the GAC to develop the policy for registration data, shows the collection, retention and publication of accurate information about individual domain named and registrants in complaints with data protection rules. We continue to support the work of

the EPDP if agreed by GAC leadership and Georgios Tselentis will be happy to continue to be part of the small group. We commend the work done by the EPDP but think we need to operationalize it in two dimensions. First, important to quickly incorporate the recommendation in the temporary specification, for example recommendation 18 about lawful disclosure of nonpublic registration data and also important to do that with the recommendation stemming from the issues that are deferred from Phase I to Phase II. Secondly, it is important to complete the work on a unified unified access model and this I would like to insist on the work unified because we are speaking a lot about unified access model and the word unified has somehow disappeared in the discussion. It's very important that the same model is applied to all registries and registrars and provides a stable predictable and workable method for accessing nonpublic registration data.

Then I will need repeat the points made already but important to indeed have a clear planning for Phase II, important role of the legal counsel, already on the current recommendations, part of the GAC comments, important to have a legal review of the current recommendations and assess if in line with previous EPDP's guidance and as said by colleagues, it's important to involve the legal counsel early in Phase II and ask the right questions and for that we're happy to contribute.

Another point is that the access model, the unified access model model developed by the study group, see it as a positive development, informs -- we think it's important continue the dialogue between the policy level and technical level even after the conclusion of the tsg.

We support the comments of the GAC on the EPDP recommendation but as the European Commission probably provide additional guidance during the public consultation phase. So on the number of points that I will quickly go through, one is the need not to conflate the purposes of ICANN with the purses of the third party that are accessing the data which was mentioned already by the data protection authorities.

Secondly, what are the requirements to apply article 61 GDPR, so 61r of -- mentioned by Cathrin yesterday, the question of international transfers, if we have an unified access model which involves international transfers, needs to be framed as per the GDPR. And then to clarify the roles of ICANN and the contracted parties which are as was acknowledged by the data protection board, joint controllers and in line also with the recommendation number 19 of the EPDP report.

Finally, last point I would like to make, I think it's a very good idea to have a joint statement with ALAC and we should seek probably to align mentions whenever possible with other communities, so

ALAC of course one of them, maybe something to consider also listening to go what the representative of s sack was saying yesterday, reach out to the SSAC community. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, very much, European Commission, and yeah, I can confirm also that during the very first meeting here between the SO/AC chairs, I shared the GAC views on Phase II and they were fully supported by the SSAC representatives. So maybe after we finalize our GAC, ALAC statement we can reach out to them and see if they wish to join. So Kavouss?

KAVOUSS ARASTEH: With respect to to the question raised by the gentleman about privacy proxy, I think this is an issue on the table. As mentioned -- it's 186 pages of the final report, I advise you kindly to read that and to comment during the 42 days public comments, eight days on which has already been expired, you have another 33 or 34 days. You can comment individually, you can comment to your government or any other way you want. But please kindly react. It is very important that the -- that will be taken into account during the investigations or verification for public comments, but something we shall know, this is still under the public comments. Once the public comments received and incorporated and finalized, it will be submitted to the ICANN board and after

approval it will become consensus policy. Yet it is not consensus policy, so it's not yet major status, it's waiting for your public comments, please kindly comment on this, this is very important, number one.

Number 2, for us, the small group, many times we have faced with questions and try to prepare our answers, share with the GAC leadership and GAC leadership sharing with you, you leadership sharing with you, you need to reply. Sometimes absence of reply is considered as agreement. But please kindly, if you don't reply we take it as you agree. So we want to properly represent you. We are not representing any particular government, that is in the small group is understood no one of us represent any particular government, should represent the entire group and without having reaction for you or reply from you, it is very difficult. Can we rely on the GAC leadership or -- please continue to reply and help us during the phase 2, we will face many questions that need your reply and need to have your reply to this situation. Without that we cannot proceed properly. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss. So any other comments or key messages that we need to take note of? Yes. Belgium, please.

BELGIUM: I would like to begin by thanking the interpreters for the work they do and also thank GAC for allowing us to have simultaneous interpretation services here and would like to encourage all GAC members to speak in their own mother tongue. I don't know whether this is applicable here but I would like to know whether the legal person's data will be addressed during Phase II and whether a differentiation will be made with natural persons in GDPR in terms of protecting the private life GDPR there are reference to natural persons but what about legal persons? I don't know whether this is something that should be addressed again. And there were several recommendations by the GAC in its varies piece of advice but I think we need to insist there should an differentiation.

Yesterday I asked this question to registrars so I don't know why this can be difficult. I know it will entail a long process, of course as it will require asking questions to companies and clients but I don't see it as extremely difficult. It's important to consumers and citizens to be able to identify the geographical location of a company, for instance, the company with which they want to do business. The second part is actually a repetition of what the European Commission representative said, liability is an important aspect, liability and the processes implement is important. We are thinking about an accreditation process but that doesn't mean we're going to be free from any legal liabilities

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so there should be a contractual process between ICANN and accreditation agency but also between the register registries and accredited parties because the ultimate liability will he rely on the controller. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Belgium. I have Kavouss, Ashley, Cathrin and then I have Germany.

KAVOUSS ARASTEH: Many of the questions you have raised is already referred to in the booklet in the recommendations. On page 148 up to 151 there a summary of the recommendations and the topics. You should kindly look at that to see which why are you I want to comment, for instance recommendation 16 talking about geographical places. And then 17, natural versus legal and then so on, so forth, all are there so please kindly look at this reference list, pick up the subject interested and make the comments during public comments or anything to communicate to us as the small group, don't hesitate and we try to take it on board and we thank Fabien to prepare this for us. You can look at many of the issues are there, nothing left behind but there is no full answer to all of them. There are some answers and also you will see that the consensus we have reached, in some areas have not reached consensus and already -- read the general statement of the GAC,

although we have not objected to the approval but mentioned concerns about each recommendation, you could see the list is available. What is the news of the GAC with respect to each recommendation to the extent that we're able to collect that. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss. Ashley.

ASHLEY HEINEMAN: Thank you, you raise a lot of good questions, and they were all discussed quite at length, and it was one of those issues that was really hard, obvious recognition that legal entities not protected under GDPR, so that was fairly straightforward but what we learned is apparently when registrants, those looking to get domain names, they haven't been consistent in filling out the field and registrars were really concerned that they cannot start as of May 25th and be able to make that information publicly available because from their perspective it's a very muddy field and lots of personal identifier information there should not be as as a green we agreed moving forward with new registrations a lot more education around that point for registrants in terms of when filling out this kneeled you are indicating you are an organization -- field but also to make that information publicly available.

In terms of registrations to date, that will be a harder matter and from what I understand that will take a longer time but there is commitment to look at that and make it happen but just in a phased in period but we totally agree with your points and that's something that I think will be approved over time.

MANAL ISMAIL, GAC CHAIR: Thank you, Ashley. Cathrin and then -- okay. So Cathrin.

CATHRIN BAUER-BULST: Yes, just on the legal persons, in fact we have advice from the Dutch -- which has looked at the specific question and at the model by the Amsterdam registry where you have a tick box or field to indicate you are a company and the dpa has suggested this is sufficient to be able to publish the data so on this point we already have specific guidance so it's just a matter of time really.

MANAL ISMAIL, GAC CHAIR: Thank you, Cathrin.

GEORGIOS TSELENTIS: Yes, on the same issue, there was a question asked also to the legal counsel but the question was more from the point of view from the contracted parties, it was asked whether the contracted parties are liable, if disclosure of personal at a time from wrongly

self identified non natural person it's, is there any liability in this case? And again, goes back to what Ashley said, there is a need to make evident that there are risks about non-correct information when you tick the box and say I'm a non natural person, and this has to be very well thought when the registrant ticks this box and this goes back to other issued I mentioned yesterday regarding accuracy of data and how this affects non-accurate data affects the purposes we have, so nonaccurate data and we are a bit unhappy that this important point of accuracy was not taken into account very well. Thanks.

MANAL ISMAIL, GAC CHAIR: Thank you. Germany, sorry to keep you waiting.

GERMANY: Thank you. No problem. Would like to make two comments regarding liability and legal advice. For us it's very important that we find a solution. And therefore we need to overcome all problems but liability to risks cannot be seen as an excuse to do nothing. So that's very clear. And risks can always be managed. There's no risk free environment in life, I would like to echo what Laureen has said, and this brings me to my second point regarding legal advice.

Legal advice is always available and and I would not agree we don't have sufficient advice. I listened to the cross community session yesterday, and I had the impression that we were criticized that we would not be will to involve our data protection authorities and I think that's not correct. We are all available for discussion for dialogue and especially for my ministry, I can confirm that we will be available any time to provide advice if needed. In our case it's quite clear because in Germany the ministry of interior is not only the relevant for law enforcement issues but also data protection, not very well known but this clarifies and shows clearly that we have to see both sides of the matter and we have to weigh the pros and cons and that we have to find creative solutions, therefore I can only confirm that we are willing to contribute, and I hope -- and I'm sure that others will do so as well. So I'm confident that we can manage these risks. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Germany. Any other comments or reactions from the floor? Kavouss.

KAVOUSS ARASTEH: Just a small piece of information. The data accuracy presented by Georgios Tselentis, it was several times in the group and ALAC in fact gives some percentage accordingly information available

that there is this inaccuracy, doesn't mean not discussed but not ban decision on how to deal with the inaccuracy.

MANAL ISMAIL, GAC CHAIR: Yes, please, Cathrin.

CATHRIN BAUER-BULST: Thank you, ma in all and Germany for that comment and just to echo that, we are dealing with a situation where legal risk cannot be eliminated but you are looking at contracted parties who have been granted what we considering to be a public resource, namely the Internet, so basically grant licenses for their own commercial benefits and if you are administering a public resource such as the Internet that comes with certain responsibilities and I think it bears reiterating that that already requires so assume those responsibilities and those responsibilities may include is certain degree of risks but that is part of the business model so I think that's something that will have to be accepted, it's not going to go away regardless of the way in which this policy is developed.

MANAL ISMAIL, GAC CHAIR: Thank you, Cathrin. Any other comments? Okay. If not, then, again, we rely on you to get some language for the communique

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and to colleagues, I think we've been taking notes but I hope you can also make sure your points are being reflected.

Again, I want to remind you that there is a Google doc, the URL is in your in boxes where you can language for the communique on topics of your interest. We will be starting the discussion on the communique later this evening. So if there is anything that you want to share, you can simply put in the Google docs, and please reach out to other colleagues if you have interest on the same topic.

So with this, if there are no more requests for the floor, maybe we can move on to the following slide, Kavouss.

KAVOUSS ARASTEH: One comment, when I appreciated the good efforts of Fabien, I forgot to mention Gulten Tepe, all the work she has done for supporting the small team for communications and preparation, and many other ICANN staff assisted us. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Kavouss, yeah, we have excellent support. I mean on the panel and behind the cameras as well. So our fantastic five.

So can we move on to the following slide, please. Shall I hand it over to you, Ashley.

ASHLEY HEINEMAN: Yes, thank you. So in terms of how the GAC can also proceed in a contract active way, wanted to remind everyone here, there have been a number of account acts of the GAC that have not been responded to that could be a constructive contribution to this effort, as well as the EPDP as well as the Phase I implementation review team.

Wanted to refresh your memories, back in August, 2018 ICANN released a draft framework a possible unified access model and there was a lot of interesting information and among that recognition of code of conduct and how that would be necessary at any kind of access model and in that vein the GAC specifically asked to assist, kind of at a high level, recognition of different groups of third parties would need own codes of conduct but the GAC can play a motivating role here to start that process. So what you see in this slide in the first main bullet and sub bullet, an ask that was made to the GAC to identify broad categories of eligible user groups.

So law enforcement an obvious one. Cyber security experts as well as intellectual property holders and identifying relevant bodies with the expertise, well to authenticate but accredit better word, and I always feel bad for WIPO, could be a potential authenticating or accrediting body for say intellectual property rights holders. The GAC could value standard abide terms and safeguards, it's not that the contact being asked to develop codes

of conduct for third parties, it could be as little as regurgitating what is in the GDPR -- and then list authorities that would need to be accredited. But I think that the short and skinny it have, there's a role we can play here to accept facilitate the conversations and also give them credibility, because going back to the primary issue we're facing , the, contracted parties concerned about legal liability and anything the GAC can do as governments that makes them more comfortable as the exercise proceeds would be useful and constructive on our part. So something for us to consider as perhaps something we can initiate inter-sessionally and at a minimum continue talking about in Kobe.

And the ICANN CEO of September 2018 September GAC a the letter requesting guidance from [indiscernible] legal risk for data controllers and in less legal terms the contracted parties, essentially looking for input from European governments. I would love to participate in that but not sure how credible information on European regulations going to be, so I hope we can maybe recirculate the letter and in particular taking up Germany, your willingness to engage your government and respond to these questions again, I think would be really constructive assistance this process moving forward, it may not solve everything but I think any kind of certainty -- certainty not the right word -- clarity we can provide and additional

information to make the contributed parties in particular feel more confident in this process I think it's going to be really going to be helpful so perhaps we can initiate inter-sessional work and further conversation. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you, Ashley. Any comments? So yeah, we can certainly recirculate the letter to GAC colleagues. Thank you, Fabien. Any other comments on this? Kavouss.

KAVOUSS ARASTEH: Yes, I have not talked with my colleagues in the small group but want to raise it now for food for thought. If may be necessary that during the Phase II between the two GAC physical meetings we would need the full advice of the -- not GAC advice but full reaction from the GAC, so I am considering to ask whether there would be sometimes a necessity to have a full GAC conference call that asking the full GAC to participate. GAC members, but not only [indiscernible] not a few members that we need facilitate if the subject is quite complex and we need that information. I think today ICANN has shown all technical possibilities exist. We have many conference call and they were successful in ours so as requested, if I could kindly spare about an hour or an hour and a half if such a necessity by the small group communicating for the GAC leadership and approved that and you would be ready to

participate in that full GAC conference call. This is the raw materials for consideration. Thank you.

MANAL ISMAIL, GAC CHAIR: Thank you very much, Kavouss, I think it's a sensible suggestion and definitely not only on GDPR but any substantial discussion that we need to hold a GAC wide call, we can definitely do this and as Kavouss mentioned, I hope we can encourage as much attendance as possible.

EUROPEAN COMMISSION: Just wondering since the asks of the ICANN were quite specific so the points listed up the first bullet point, how practically work on that, I don't think the GAC small group has the bandwidth to work on that on their own [laughing] so probably there is a need in addition to having discussion at the level of the whole GAC, a need for maybe support team that could work on these questions. I mean, Monday when the registries were here, not only were they participating in the EPDP but they have the whole support team behind them so just a question of whether we should not have this type of set up to work on these I think is very important. We show that we provide input too.

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MANAL ISMAIL, GAC CHAIR: Yeah, thank you very much, European Commission, and definitely we can look into this, and I'm sure it's very important topic to ICANN and they will be willing to put necessary support. I have Cathrin and then Kavouss.

CATHRIN BAUER-BULST: Yes, as my preps here shows, there is room on the small team from the GAC, also for members who are not members or alternates of the EPDP. I don't manage to regularly participate in the all the work with the EPDP, but I would encourage any interested in this process, and you have expertise to bring to the table or just willing to support this, to join and within the small group, those of us not members of the EPDP could work on surrounding issues and make headway on that, so in my own selfish interests, please join me so it won't all fall on me [laughing]

MANAL ISMAIL, GAC CHAIR: Thank you, Cathrin, and we have this topic on our agenda with the board. So if we need to bring up issues from the floor, please feel free to weigh in.

KAVOUSS ARASTEH: Yes, what you said, distinguished European Commission delegate, we most welcome that but we need some sort of commitment from the people. They nominate themselves as supporting and

they will be available when requested to assist, so we don't want to limit it to the three GAC members and three alternates and plus Cathrin and a few others, two or three, I don't know sometimes, but most welcome, we need some sort of, I would say, commitment and readiness to support us and we would be more than happy to have that one. Thank you. We need to bring more richness to the ideas. No one claims they know everything. So we need you, so please, kindly nominate yourselves and so on, so forth and from the GAC chair, there are five or six from various entities, regions, and so on, so forth, they would be more than happy, and we would ask for additional support.

MANAL ISMAIL, GAC CHAIR: So all current small working group members are willing to continue to the Phase II, I don't think we replied to the GNSO yet, I have received a few confirmations, but just making it clear unless I hear otherwise, I would be assuming that searching to continue participation and I have to say we're missing two other colleagues here, Chris who was on the panel this morning, and Raoul, who couldn't make it to the meeting just to give credit to everyone.

So trying to see what is on the last slide. Okay. Excellent. So this is a compilation of relevance sessions, so sessions that has already passed and the current session and sessions that are to

come. I think this is very helpful to those who are interested in the topic to make sure they attend and participate actively on those sessions.

So there was the WHOIS in data protection policy, the session we had on Sunday, and the GAC meeting with the GNSO, we discussed Phase II as well, preparations for meeting with the board, the cross community session yet, the session we are having right now, and there is also a briefing to the GAC from the technical study group on access to gTLD registration data, this will takes place later today at 2:30 and finally, the GAC meeting with ICANN board, again, later today at 3:15. And of course our discussions on the communique.

So, Kavouss on the additional support you mentioned would be most welcome.

KAVOUSS ARASTEH: Everyone's welcome, currently two Asia Pacific, two North American -- missing from Latin American and African continent. Welcome also to prepare readiness to be a support background team if they can have something, would be very helpful, because the situation may not be similar in all regions, we need to have that one so I encourage Latin American and African colleagues to think it over and discuss among themselves the possibilities to

nominate themselves to the GAC chair as background supporting team, thank you.

MANAL ISMAIL, GAC CHAIR: Excellent point, Kavouss, thank you for trying to reach out and trying to be inclusive and the small group to be representative. Any other comments? Okay. If not, I would like to remind you again of the communique language and communique Google doc that's available for anyone to put communique language in.

We now have a coffee break, and we will reconvene at 10:30, please. Thank you.

[END OF TRANSCRIPTION]