ICANN
Transcription
Thick Whois PDP Working Group meeting
Tuesday 27 August 2013 at 14:00 UTC

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http://audio.icann.org/gnso/gnso-thick-whois-20130827-en.mp3
On page: http://gnso.icann.org/en/calendar/#aug

Attendees:
Volker Greimann - RrSG
Carolyn Hoover – RySG
Steve Metalitz - IPC
Mikey O'Connor – ISPCP
Marc Anderson – RySG
Frederic Guillemaut – RrSG
Avri Doria – NCSG
Tim Ruiz – RrSG
Amr Elsadr - NCSG
Marie-Laure Lemineur – NPOC
Christopher George – IPC
Don Blumenthal - RySG

Apologies:
 Alan Greenberg – ALAC

ICANN staff:
Glen de St Gery
Berry Cobb
Nathalie Peregrine

Coordinator: Everyone this is the operator, I just need to inform you that today's

                 conference call is being recorded, if you have any objections you may

                 disconnect at this time and you may begin.

Nathalie Peregrine: Thank you very much (Lori), good morning, good afternoon, good evening everyone this the Thick Whois working group call on Tuesday 27 of August 2013. On the call today we have Mikey O'Connor, Mark Anderson, Don Blumenthal, Amr Elsadr, Carolyn Hoover, Tim Ruiz, Christopher George, (Manal Ismail) and Steve Metallitz

We have an apology from Alan Greenberg and also Frederic Guillemaut has called, he'll be joining for the last half hour only, he can't make it can't make it to the first one. So on staff we have Glen DeSaintgery, Berry Cobb and myself Nathalie Peregrine. I'd like to remind all participants to state their names before speaking for transcription purposes, thank you very much and over to you Mikey.

Mikey O'Connor: Thanks Nathalie and (Lori) for that and welcome everybody. As usual we'll take a brief moment to take a look at the agenda and give people a chance to update their statements of interest. I've got a minor update to mine, I'm now the GNSO Counselor elect for the ISP so I'll be joining the Council in (FP) Argentina meeting and so there's my update. Anybody got anything they want to add or change the agenda before we get started?

Okay I've forgotten where we ended and Berry I don't think you were on the last call, you may not recall either; I'm sort of...

Berry Cobb: No I was - hi this is Berry, yes we left off on Number 15 which was the last ICANN's staff comment under the section of Stability and I think we need to pick up under the Privacy and Data Protection section on Row 24 that's highlighted in yellow on the screen. Or if you want to take...

Mikey O'Connor: Oh okay, well yes and since authoritativeness is before that let me hijack that with a conversation that many of you overheard the tail-end of that Mark and I were having before we started the recording because that pertains to that section.

And although there isn't a public comment on it just to sort of set the stage, when I was at the Durban meeting I had a conversation with Pat Cain who's the I don't know, head honcho, I've forgotten what his title is, but anyway a pretty senior person at VeriSign and Pat was concerned about the - not so much concerned I guess but wanted to make it very clear the fact that VeriSign because they don't have a direct relationship with the registrant can't really effectively be put in a position of ensuring that the registrant data is accurate.

And I think that aligns with the language that we have in our section but to sort of tee this up a little bit more what Mark and I were sort of talking about is whether we need to clarify that language. First I think checking with the rest of you to make sure that that's consistent with your understanding of where we're at but then also maybe thinking about clarifying that language in that section just a little bit and maybe giving Mark permission to go off and come up with a draft and then also some other ideas that Mark's got.

So with that I'd like to sort of throw the ball to Mark to sort of recap what we were talking about just before the call started as a way to get us into this. And then we'll have a conversation around this whole topic and see where we're at and then move on to the privacy and data protection, Mark over to you.

Mark Anderson: Right, thank you Mikey and just a, you know, just like you said, you know, I did have a follow-up conversation with Pat about this and, you know, his concern was, you know, around the issue of, you know, authoritative versus accuracy.

You know, and I think, you know, as a - as the registry operator, you know, we can be authoritative for the day but we can't necessarily ensure the accuracy of the data. And a lot of that hinges on the fact that we don't have a direct relationship with the registrant, we're completely dependent on registrars for that relationship.

And so whatever data that we receive from the registrar we assume is accurate and, you know, I used the example to, you know, essentially - I used the example like garbage in, garbage out system, whatever the re- you know, if the registrar feeds us, you know, garbage that's what we get. But we, you know, we're required to act on all, you know, all commands received from registrars.

So, you know, we can't necessarily be sure or, you know, or have a way of validating that the data we received from a registrant is in fact actual validated registrant data. And so this is, you know, so I'll say this isn't a new, you know, a new conversation, you know, when we tackled this section we certainly talked about that. And, you know, I think as Mikey said, you know, we attempted to address that fact in the report.

Unfortunately I don't have it pulled up in front of me but, you know, if, you know, if Pat had a concern about this maybe we can take a look see if we can make that point more clear or make sure that's clearly stated. I did look at it previously and one of the things I wanted to throw out there for everybody, you know, to consider, you know, something that we could consider.

And I don't know if this necessarily makes sense or not but I think it's something we could at least consider is that for new gTLDs ICANN intends to, you know, provide a - provide accuracy checks for the new gTLD big data. And so ICANN has said they have a way of validating that the data is accurate and that they will be doing that for all new gTLDs.

It's a fairly, you know, new development and so I don't think there's a lot of data available on, you know, how they will be doing this, what would happen if that data turns out to not be accurate what remedy steps will be necessary or what actions will occur. But I think it's, you know, it's something we should consider as potentially, you know, potentially recommending be done here as well.

So if ICANN has a way of providing that it might be worth us at least considering recommending that for other regulated TLDs as well, not just new gTLDs, so I'll sort of throw that out there and, you know, start with that.

Mikey O'Connor: Thanks Mark and sorry for sort of putting you on the spot on that but I meant to ask you about that last week because, you know, this came up a couple of weeks ago and I knew that you'd been given the action to chase Pat down and talk about it. But I think I'll run through the queue...

Mark Anderson: (Unintelligible).

Mikey O'Connor: ...and just sort of get, okay - I think I'll run through the queue real quick and sort of see where we're at and then carry on from there, so Tim go ahead.

Tim Ruiz: Yes a couple things, first I was wondering if what Mark was suggesting or if he'd even thought about suggesting either way whether - who - I mean ICANN has that, you know, is going to have that database or whatever but who does the check then, is it registrars or was he suggesting the registry would check their data against it?

I don't have an opinion either way I was just wondering if we need to clari- we would need to clarify that. The other thing I just wanted to add was that - and probably not that we need to note it anywhere but the just to know that in the new RAA registrars are going to be required to do some basic checks of the data for accuracy. So and then that's going to apply whether - I believe whether it's thick or thin or whatever I think we're required to do that for all of the Whois data.

And then again it - however we - however this is checked, you know, we want to make sure that we all understand that when we're done we might have more accurate data. But that doesn't necessarily mean that that data actually is tied to that registrant other than perhaps through an email address or

whatever because we're not doing identity checks, we're just doing accuracy of the data checks. So I guess that's one question who will do the checks in Mark's scenario and then two, just noting that will it matter if registrars are (be) required in the RAA to do some of these checks themselves anyway, thanks.

Mikey O'Connor: Thanks Tim, (Steve) go ahead.

(Steve McCullough): Yes this is (Steve), I really had two points, one I mentioned in the chat. This issue has come up a couple times before in our discussion so - and it's referenced in the report but if there's something that needs to be improved in the report it would be helpful to have a specific suggestion for a change.

I think what Tim says is, you know, is right also I mean, you know, the regis-whether the registrar does a good job or a not very good job of verifying the data or validating the data it's still the case that the registry in the thin situation does not have any relationship or is totally dependent on the registrar for that data and even in the thick situation it doesn't have a business relationship necessarily with the registrant.

So I guess my question - my concern would be is this a point that is in scope for our report, you know, this question of improved validation efforts at the registrar level, and I'm not sure whether that the transition from thick to thin, excuse me, from thin to thick necessarily changes that. The other point I wanted to make is that the checks that Mark is talking about are going to take place in the Legacy - (and I'll call them that), gTLDs as well. That was the board resolution in response to the Whois review team report and this tool that's being developed is not really in existence yet.

But the tool that is being developed will be used to validate a sample of Legacy gTLD registrations as well as eventually new gTLD registrations, so I just wanted to clarify that - thanks.

Mikey O'Connor: Thanks (Steve), I'm assuming both your hands are old - oh Mark go ahead and chime in and then I'll see if I can wrap this one up.

Mark Anderson: Sure I think Tim and (Steve) made two good points I'd like to jump on, the first, you know, Tim made about the fact that in the new RAA registrars are required to form some level of validation on the data.

I think that's an excellent point and I think we drafted that particular section before the new RAA came out and so I think it might be, you know, since we do have a section on authoritative inaccuracy I think it would be worth just noting the fact that the new RAA, you know, includes, you know, a clause for registrars to, you know, to validate the accuracy of the data. You know, just, you know, just noting that I think would be interesting - or sorry would be relevant and useful I should say.

And (Steve) mentioned that the validation would be done against existing registries, I didn't realize that but I think that's also, you know, an excellent point and I think we should just note that, you know, just, you know, on the issue of authoritative inaccuracy, you know, I think that's a relevant, you know, note to add, you know, and I think it would provide additional value and clarity to the report. So I think, you know, both of those would be good notes to include in our final version.

Mikey O'Connor: Thanks Mark and thanks all for this conversation, I just want to do a last call on the queue and then I'll I think wrap this one up - Berry I hope you saw all those action items flying at you like I saw them flying at you. Clearly we need to get the references to the ICANN toolset that's being eluded to here and we also need to get references for the new RAA.

I think the actions sort of fall in two potholes and I think we're all pretty much in agreement that we should acknowledge those newer developments in this section of the report and at least refer to them, maybe even pull a little bit of the language in just so people are aware of it.

I think the other action and Mark if I could saddle you with this, would be (Steve)'s point that if you could give that section of the report a pretty hard read and see if there are sections that need to be touched up, if you could sort of take the lead on the first draft on that I think that would be very helpful as well, are you okay with that?

Mark Anderson: Yes absolutely I mean like (Steve) said we've talked about it a couple of times but I'll - already so, you know, (I think) not a new issue. But I'll give it a thorough once over and if, you know, I have any, you know, any specific recommendations for ways to improve it I'll post it to the list.

Mikey O'Connor: Sounds great, sounds like we're pretty much in agreement there, Berry are you okay with that blizzard of action items I laid on you?

Berry Cobb: Got it.

Mikey O'Connor: Okay cool, all right so then onto our real agenda, for those who joined the call I've sort of hijacked the agenda - the review of the comments with this conversation that we just wrapped up with Mark and I apologize for that. But this was an action item that we laid on Mark a few weeks ago and I didn't, you know, want to miss the opportunity.

So now we're on to Row 24, I'll synch us to that and then release it again so that you can scroll around on your own, but the first comment that was highlighted that we need to take a look at was one here and I'm sort of reading it as I speak, I think I'll just take a minute and read it - give you all a chance to. Oh okay, let me summarize the end of the transcript, this is talking about - who's IHG, anybody remember?

(Steve McCullough): It's InterContinental Hotels.

Mikey O'Connor: Oh thank you (Steve), this is InterContinental Hotels saying ICANN must initiate processes to oversee and regulate privacy and proxy service providers. This oversight must be standardized and requirements for registrars to meet accreditation standards must be contractual.

Such oversight will result in clear, consistent and enforceable requirements to the operation of privacy and proxy services that are consistent with national laws and that strike an appropriate balance between stakeholders with competing but legitimate interest. And I see a comment from (Steve) (and validate) - the chat is lighting up with comments from (Steve) - agree with the IHG comment but not sure it's in scope for us and (I am) agreeing. Mark do you want to jump in and I...

Mark Anderson: Yes I also agree, you know, I don't think it has direct bearing on a transition from thin to thick. I also, you know, I also think that this, you know, if somebody with more knowledge of the RAA might want to jump in here but I believe the RAA, you know, includes a provision that, you know, ICANN and registrars agree to, you know, to meet in the future to work on just this issue.

You know, so again I think beyond this - this is outside of, you know, of our scope and I think it's, you know, intended to be addressed in other places. You know, so I, you know, I think it's probably just out of scope completely but, you know, we could consider referencing that section of the RAA assuming my memory's correct there.

Mikey O'Connor: Yes and one way we could do that is we could say pretty much what you just said, excuse me, and then reference the appropriate section of the RAA in this document, not so much in report per se but this document will be included in the report as an appendix and so IHG would be able to see that and get the reference to the RAA.

Tim is commenting in the chat that it's in the RAA and Berry is commenting that it will be a PDP as a result of a negotiation. So there's clearly some

documentation that we can point to, but I think we're all pretty much in agreement that this is one of those ones that says thanks very much for your comment, this is outside the scope of our deliberations and here are some relevant developments in other places.

Okay unless there's anything else on that one let's go on to 25 which is from (Patrick Van der All) and again I want to just read it for a second. Okay so this is again from (Patrick Van der All) and I'll just summarize it into the transcript. This one says with regard to applicable privacy laws the working group notes that "again these questions must be explored in more depth by ICANN staff starting with the General Council's office and by the community with registries and registrars taking the lead."

Then (Patrick) goes on to say, I would of expected that the domain name registrants would be the ones to take the lead, it's their data we're talking about after all, not that of registries and registrars. I would rather suggest that NCUC BC and ALAC should take the lead in collaboration with the GAC would be for those aspects regarding transport or data exchange and compliance to local law. This should be a customer and government led effort not an industry led.

And then our preliminary response from Alan Greenberg was that was the suggestion on the part of the working group, the world may well unfold differently. I think that maybe what Patrick is trying to do is just change the who takes the lead portion of our recommendation and I think that warrants a discussion that, you know, we're pretty deep into this now. Let's talk about this for a minute and see where we come out and it's a pretty substantial queue so I'll get right to it - Tim go ahead. You may be muted, it's pretty silent.

Tim Ruiz: Opps sorry about that.

Mikey O'Connor: There you go.

Tim Ruiz: Yes I guess that, you know, it's, you know, what Patrick says is true but I will note that, you know, registries and registrars have a huge stake here because, you know, we're the ones that are going to be bound to abide by privacy laws so if we screw it up we're the ones that are going pay the price.

And - but it's very true that it is the registrants data in that, you know, they're the ones that are going to be most affected by any breach of privacy laws or whatever. So maybe one suggest may be that, you know, we could add registrants as part of taking the lead but maybe instead to expand the list in our comment we just simply say, you know, starting with the General Council's office and by the community and end it there. You know, the community being more inclusive than might be one suggestion, thanks.

Mikey O'Connor: Thanks, Jim Palmer you're next.

Jim Palmer: Yes hi I was just about to put my hand down, I pretty much - this is Palmer, sorry for the transcript - I just - I was going to pretty much say what Tim just said in that I do agree that registrants whether commercial or non-commercial are relevant stakeholders in this but that does not diminish the importance of registries and registrars and how they might be affected by this. And they all should be included in the process and perhaps we might want to change the language in the report to reflect this, thanks.

Mikey O'Connor: Thanks (Amor), Don you're next.

Don Blumenthal: Hi, stakeholders a slippery term, it's - I'm not sure who the real stakeholders are. Basically you agree with Tim, people who face the legal liability which is what I was thinking about when we were talking about this is are the registries and the registrars.

So in that sense, you know, I would point to them as (good to) stakeholders, so but basically I think that the language is good, we - if we drop registries

and registrars taking the lead. The point was that they need to be active perhaps in contrast to what's happened before but I don't know that we need to say that - point them as being the leaders in the community.

Mikey O'Connor: Thanks Don, (Steve).

(Steve McCullough):   Yes I agree with Tim's suggestion and also let's remember this is not one of our recommendations, this is in a section that says we know this is outside our scope but here's some thoughts that we have on this so let's not get too wound up about it. But I think Tim's suggestion is probably the best way to handle it, thanks.

Mikey O'Connor: Thanks Steve and then I've written - commented in the chat right after Tim made that suggestion and said so it really needs to be multi-stakeholder led. And then during the conversation about the registries and registrars having the legal liability Avri commented but the registrant have the privacy liability. So Avri is it safe to say that you're okay with our emerging notion of just chopping that sentence off at the last comma, would that work or do you have anything that you want to add to that - to the mix there?

Avri Doria: No I was fine, I was just being supportive of changing it either to the community, to the stakeholders or just (swapping) it to, you know, but just not being specific about who's (link) of the stakeholders is the lead is what I was agreeing with and I was intent in writing but since you asked, thank you.

Mikey O'Connor: Yes you bet, and then Don is that an old hand or a new hand? Oh it's an old hand, okay Tim is typing so I'll just wait to see but it sounds like we've got a plan.

Just to summarize it for the record I think what we'll do is end that sentence at the word community and then, you know, as always Berry the actions I think are at a pick out the key arguments there. I thank Patrick for his comment, note that we agree and highlight the sort of key arguments along

the way. And Tim in the chat is agreeing with Avri that registrants have the privacy liability point. So just add it into the transcript as well.

All right. So then we move on to (Patrick)'s next point which is Row 26 in this table. And again I just want to take a second to read it.

Okay. I'll do my usual dramatic reading. And then we can carry on from there.

(Patrick) says: although the report mentions that the transition to the Thick Whois from the Thin model would require the transfer of private data from the registrar to the registry. It does not currently examine the legal issues that may arise from this transfer to a third country both for registrars and for registries.

For example none of the major gTLD operators located in the United States seem to be listed in the U.S., E.U. Safe Harbor list for their gTLD-related activities which may be problematic for registrars that need to seek prior authorization from the national data protection authority. See and then he's got a link in there.

As noted in the report the fact there were no legal actions taken in the past does not mean that there were - are no legal issues and certainly no guarantee there will not be any in the future.

And so with - then Alan Greenburg had a preliminary response from the working group that reads: to date none of the parties involved in these discussions have identified explicit problems with the proposed transfer on (EZS) but no specifics.

And so with that we'll go to a queue led by (Don). Go ahead, (Don).

Don Blumenthal: Everything that (Patrick) says here - writes here is correct. But I'm not sure of the relevance.

I mean Safe Harbor is part of the overall privacy scheme. And - but it's not going to come into play until there's some determination that there's really an issue concerning the privacy of Whois data entrance for across borders. You know?

There - so yeah. And just - I rambled a bit there. I see what he's saying. I just - I really don't see where it's relevant, Number 1, and Number 2, the report doesn't examine the legal issues. We didn't examine any legal issues. We presented them for further discussion by (GBC) and whoever else should be involved.

I'm not sure I was real clear on that. I knew what I meant.

Mikey O'Connor: No. I think I picked it up. I'll take a crack at summarizing this in a minute.

(Tim) said in the chat -- and by all means, (Tim), if you want to chime in by voice but I'll just read your chat note -- doesn't our comment that we just modified in 25 apply to this as well. These issues need to be explored in more depth.

And (Amor) is typing. (Don) is typing. Yes to (Tim) from (Don).

So I'll kind of wait for (Amor) unless you want to just jump in, (Amor), and say your words on - say your own words instead of having me read them.

(Amor): Yeah. Thanks, Mikey. This is (Amor).

We did spend a lot of time discussing the legal implications of trans-jurisdiction transfer of Whois data. I personally don't mind spending the next ten years discussing this issue.

But I'm sure this would just prolong the process of this working group. And I think we agree that this - discussing this and the detail required is beyond the capacity of the working group at this point. And I think that was made pretty clear in the report which is one of the key reasons why I was personally happy with this section on data privacy and protection.

So unless anyone else is interested in continuing discussion on this we could just agree that there are implications and the (unintelligible) do need to be studied further but probably not by this working group. Thanks.

Mikey O'Connor: Thanks, (Amor). And I think that - oh and then (Steve)'s got a question in the chat saying: what is (Patrick) asking us to include in the report?

And I think that this is another one where we, you know, I like the track that (Tim) has put us on which says: look, we agree that these are issues. You know, (Don) made some good points about how they need to be raised and the structure of that.

We're agreeing that that's the case. We are also agreeing that we are not the right group to do that. But really the point that we made in the last section pertains here as well which is that we feel pretty strongly that a group that's qualified and capable of assessing these issues needs to be formed and needs to go off and assess them.

So the chat is - gotten a little frisky. (Tim) is saying: besides, hasn't ICANN indemnified everyone involved? Oh never mind. He's got a little wink there for us.

And so anyway I think that, (Amor), you summed it up well. I think that we agree with (Patrick) that this is part of the list of issues that needs to be discussed by this group that needs to be formed but that we're not that group. We simply encourage that group to carry on and figure it out.

(Mark), go ahead.

Mark Anderson: Thanks, Mikey. It's (Mark). I kind of feel like, you know, that we've already addressed this. I mean it's a topic we talked about in a lot of length, certainly on the subgroup, around privacy.

And, you know, I think the two things that you are, you know, things to note here is, you know, I think the - one, I think we all agree that it's, you know, it's simply beyond, you know, beyond the scope of this working group and beyond, you know, our capabilities as a working group to, you know, to authoritatively answer potential legal issues. You know? So I think that's, you know, just simply not something we're capable of doing.

The other thing, you know, I feel like, you know, you made this point too in the previous - (Patrick)'s previous point. I mean, you know, we, you know, I think we specifically addressed this by saying, you know, these questions must be explored in more depth by ICANN staff starting with the general counsel's office, you know, or, you know, I think that, you know, I think that specifically addresses Number 26. And I think that's - that sort of is as much as we can do as a working group.

And just sort of as a side note to that, VeriSign is actually on that list. So just sort of note that.

Mikey O'Connor: Okay. Volker? Oh, Volker took his hand down.

I think that we're - it's sounding to me like we're all fairly much in agreement here. I actually like (Amor)'s and (Mark)'s summaries better than mine so I'm not going to try and repeat them. I always screw this up when I try and summarize it so I'm not going to do it this time.

But the one point I would add is that I think we may want to back off from Alan's comment. I think that conversation we've had here is more relevant and enlightening than the comment that Alan made.

Avri, go ahead.

Avri Doria: Yeah, just a quick document - comment. Please ignore my mistyping.

I agree with you. It's good to drop this. I don't think we want to say again that - and nobody's had a legal problem yet; therefore don't worry about it.

And the other thing I'm just wondering and I'm not remembering from when I read, is this issue explicitly in the litany of things that need the further investigation or is it worth adding just a note or a word that that would capture this whole Safe Harbor issue as a specific one that they do need to look at when they look at it, agreeing completely to say it ain't us but that this should be on the litany edition. I don't remember seeing it there. But I may have just forgotten. Thanks.

Mikey O'Connor: Thanks, Avri. And somebody's going to - oh there we go. It's probably Avri that was giving me a little echo. Thanks for muting.

I would take that as a friendly amendment. It seems to me that if it's not on the list we should put it on the list if we have a list. I can't even remember if we have a specific list. But I think it's worth noting so that it doesn't get lost for sure.

(Steve)?

(Steve McCullough): Yeah. I - my recollection is that we had it on the list and we took it out be - or - I mean I know I raised a question of what the relevance of the Safe Harbor, which is a particular arrangement between two jurisdictions, really has to do with this.

I mean, you know, you could list everything in the world. But again this is - all we're saying is that this is not really our job and we have not identified any issue relating to the transition from Thin to Thick that - where this needs to be addressed. So I would...

Mikey O'Connor: Well one way, (Steve), to approach that -- and I'm sort of making this up on the fly and don't feel real strongly about it but -- would be simply to say here's a list of issues that we encountered during our discussion that you might want to take a look at but you all with more capacity and etcetera, etcetera, are in a much better position. I could go either way on that.

Any thoughts on something like that? (Steve)'s in the queue. And I'm sort of - (Steve), I'm sort of circling back to you and then I'll go to (Amor) and (Tim) if you want to...

(Steve McCullough): Well I think that was from my earlier - I'm not quite sure what you're suggesting. But my point is that again - I mean I think it's a point (Patrick) raises. It - there are Thick registries now in which this type of data transfer from Europe to the U.S. takes place all the time. He's asserting -- and I think he's correct -- that these - none of these Thick registries is in the Safe Harbor program. I'm just not sure what that tells us about the transition to, you know, too Thick for the remaining Thin registries, they - that they...

Mikey O'Connor: Yeah.

(Steve McCullough): Have to be in, that they should be in, that they better be in or that it's irrelevant or that there are problems with the Safe Harbor. I mean these are all legitimate questions. But I'm just not sure - I don't see them coming within our scope.

Mikey O'Connor: Yeah. And I guess this - the nub of this question is should we be posing a punch-list of issues for that group to consider. It's almost like a pre-chartering exercise...

(Steve McCullough):   (Unintelligible)...

Mikey O'Connor: Or should we let that...

(Steve McCullough):   Consider whether it likes or whether people take - whether companies are taking advantage of this arrangement between the U.S. and the E.U. I just don't see the - why would that be on...

Mikey O'Connor: Yeah.

(Steve McCullough):   An ICANN group's punch-list.

Mikey O'Connor: Yeah. Okay.

(Steve McCullough):   I don't understand.

Mikey O'Connor: Yeah, point heard, point noted. (Amor), go ahead.

(Amor):   Yeah. Hi. This is (Amor). Just for the record I personally believe that the charter of this working group clearly states that we should be addressing the cross-jurisdictional issues on transfer of Whois data.

                    But as - I think what the section on data privacy really says is that this - although this might be within the scope of the working group that we have as a working group agreed that it is beyond our capacity. And those are two different issues which is why we think of - we recommend in the report that this should be taken up further. Thanks.

Mikey O'Connor: Thanks, (Amor). (Tim), you're next.

(Tim): Yeah. I guess I pretty much agree with (Amor). I think that - while I think, you know, (Patrick) certainly brings up this issue about Safe Harbor which I think is just way beyond anything we should consider now or in the future as far as I'm concerned, I think it's all a part of his concern about what sounds to me, you know, the privacy laws, applicable privacy laws. And in fact 27 even touches on it once again.

And I just feel like, you know, they're all really the same thing. And we've already said that these questions must be explored in more depth by ICANN staff, starting with the general counsel's office and by the community.

I don't know that we need to say much more than that. And I just think all three of these comments, 25, 6 and 7, are all just pretty much touching on the same thing.

Mikey O'Connor: Thanks, (Tim). (Don)? Oh you're maybe muted, (Don).

Don Blumenthal: Yeah. No I just pulled it out.

Mikey O'Connor: There you go.

Don Blumenthal: Now - yeah. I - (Tim) a little bit anticipated what I was going to say.

Safe Harbor, the E.U. Safe Harbor, any other cross-jurisdictional laws are all part of any evaluation that has to happen. For what it's worth though, you can think article - the Safe Harbor is beyond ICANN. ICANN's - the value - discussions are, as far as I'm concerned, where the issues rise - arise.

Now if the decision is that cross-border transfer may be a problem, that's where it stops. Safe Harbor requirements are up to the nations involved. And I don't even think there's a place for ICANN in how to -- I'm still in vacation

mode; I'm sorry -- I don't even think there's a place for ICANN in how they play out in the more extended sentence.

Mikey O'Connor: Thanks, (Don), and thanks for joining us when you're on vacation.

Volker, go ahead. You may be muted as well. Oh, can't hear you, Volker. Oh. There you - he's gone.

Volker Greimann: Can you hear me now?

Mikey O'Connor: Now you got it.

Volker Greimann: Perfect. I was unmuting my microphone all the time in the notes that I didn't turn on the microphone on the Adobe yet so I apologize.

I think that the Safe Harbor issue is a bit of a red herring because I don't think that any registry that is going to publish the data anyway in the public Whois is going to qualify for Safe Harbor status.

Also the revised privacy framework that we're looking at cannot be taken into account at this point because the - they're simply not there and they could undergo many revisions. And frankly any new privacy framework that any country comes up might put the entire concept of the public Whois into question at some point. So this is not something that we can deal with at this point.

The question that we have to raise is what would be the ideal world, one where the registrars store the Whois or one where the registries store the Whois. What is the better model?

And I think we've come out in favor of one model. And the rest of the questions, privacy questions, implementation quest - are quite - very much implementation questions that I can ask for you about and the community has

to worry about it at a later stage. Our job is to define what would be the ideal solution from a policy standpoint.

Mikey O'Connor: Thanks, Volker. (Mark)?

Mark Anderson: Yeah. I keep reading through this. And, you know, I really, you know, I really go back to my previous comment. I, you know, I think we've already - I think really we've already addressed, you know, what's in here. You know?

It's, you know, there's sort of three parts to his comment here. You know? The first is, you know, the transition of Thin to Thick will require the transfer of privacy data from the registrar to the registry. It goes on from there. You know?

And I think really any Thin, you know, any action item there we've already covered, you know, when we recommend that, you know, ICANN's general counsel office look at that. You know?

I think as, you know, going on, you know, the next thing is, you know, he sort of brings up the Safe Harbor thing. And, you know, I don't know what his point is there. You know?

He's just making a comment that, you know, I, you know, I don't know what action he's think, you know, he's expecting here. He's just sort of making a comment that the major gTLD operators in the United States, you know, and he's saying none of them seem to be on the list. You know?

Again I'm not sure what his, you know, what action he expects there. Like I said, I point out that VeriSign is on that list. You know? You can find it going on the link he provided.

And then the final - his final note is that, you know, there's, you know, he just says the fact that, you know, there hasn't been any issues in the past doesn't - is not a guarantee there won't be any issues in the future. You know?

Again I think, you know, we agree on that. And that's why we put in the note about recommending the ICANN general counsel look at this.

So, you know, I, you know, I think, you know, I think we've already considered his points and addressed them. I'm not really sure what our, you know, what our action item is for this. Thanks, Mikey.

Mikey O'Connor: Thanks, (Mark).

I think that sense that I've got -- and I want to give Avri a chance to come in after I finish this -- is that we seem to be pretty agreed that -- and I haven't had a chance to read 27 at all; we'll sort of take that one as well -- that (Patrick)'s comments, we're pretty agreed that these are covered by our recommendation that a group outside of this working group take a look at these kinds of issues.

I think the question that I raised where I didn't feel a lot of traction was the idea of providing that group with a list of possible issues to explore. I didn't feel like we got a lot of traction on that idea.

And circling back to Avri, are you okay if we were essentially - agree with (Patrick) that yes we, you know, this is an example of the kind of thing that we expect that group to explore and leave it at that? Would that suffice?

Avri Doria: This is Avri. Thanks for asking me directly.

I need to - I mean I've been a background person following (Amor) and (Roy)'s work. I need to talk to them more about it.

I hear, you know, definitely that there's sort of a minority view that, you know, perhaps this group did not go as far as it could have. So while agreeing with the body of the group's work that - there remains this point of this agreement that might just need to be, you know, defined further and attach the report or something. I don't know.

But I really - since I've been a background participant I really need to talk to (Amor) and (Roy) more about how to deal with making sure that (Patrick)'s points are not only implicitly contained in the report but somehow explicitly attached to the report. Thanks.

Mikey O'Connor: Thanks, Avri. And I think that this conversation and the transcript -- and I'm going to read some of the comments in the chat into the transcript as well -- is a good record. And it certainly doesn't seem to me impossible to point the - whatever this group is, at this record and say, you know, I don't know that we even need to say it in our report but certainly if I were chartering that group, if I knew that there was a pretty substantive discussion around (Patrick)'s points, you know, get me a copy of that.

Volker is saying: I think the comments are valid concerns; however, they should not impact our conclusions and recommendations. And I - and then (Mark) goes on to say: I - yes I agree they are valid but I feel as though we've already addressed them in our report. And then (Don) reinforces: a list is pointless because the landscape is changing and much broader than just the European requirements.

So by all means, Avri, I think that this is one that I want to take the special care and pay a special attention to cause I know that it's so pivotal for many. But as sort of a starting point to wrap up today's conversation -- and I think then we'll end the call; we're almost at the top of the hour -- that basically what we should probably do is come up with the same response for all three of (Patrick)'s points that sort of summarizes what we've been saying here and then leave that open for Avri and (Amor) and others to have a chat to sort of

figure out how they want to proceed and leave the door open for another conversation.

And this - I don't think it's an undue burden on the working group. We have plenty of time to get this worked out. And I'd rather get it really well worked out than try and push this (unintelligible).

So with that I think we'll call it a day. Thanks, folks, for your thoughts and participation.

I'm seeing a little typing in the chat. So if you want to just chime in on here instead of having me read your stuff that's fine. Otherwise we'll call it quits and reconvene next week.

And there's still typing. Better type fast, (Tim). Oh it was a long one.

Just for the record -- this is (Tim) -- just for the record while my comment about ICANN indemnification seemed flippant it is a concern in regards to the data privacy issue and the fact that registrants, registries and registrars all fully indemnify ICANN in various agreements. It should be a concern discussed in any subsequent work on the privacy issue.

So I'm glad I waited for that. It's another good comment.

Again, you know, at minimum I think it's perfectly okay for the people chartering that next group to be made aware of this and other substantive conversations that this working group has had just as a record that might be useful input to them.

All right then. We'll see you in a week. Thanks, all. That's it for me.

Woman: Thank you very much.

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