

GNSO Council Working Session

Saturday 21 June 08

Agenda: [https://st.icann.org/gnsocouncil/index.cgi?agenda\\_21\\_june\\_2008](https://st.icann.org/gnsocouncil/index.cgi?agenda_21_june_2008)

**3. Whois study proposals WHOIS Study Group Report to the GNSO Council Recommendation on further studies of WHOIS (10:00 - 12:15)  
Overview of Report (10:00 - 10:30)**

[Update on possible studies of WHOIS](#)

GNSO WHOIS Study Group Report to the GNSO Council

Recommendation on further studies of WHOIS

<http://gnsocouncil.org/issues/whois/gnsocouncil-report-to-council-22may08.pdf>

WHOIS Policy Work

<http://gnsocouncil.org/issues/whois/>

**Break (10:30 - 11:00)**

**Deliberations**

References:

WHOIS Policy work

<http://gnsocouncil.org/issues/whois/>

GNSO WHOIS Study Group Report to the GNSO Council

Recommendation on further studies of WHOIS

<http://gnsocouncil.org/issues/whois/gnsocouncil-report-to-council-22may08.pdf>

And we can at least get started.

The way I'd had the schedule set was that we would first get an overview of the WHOIS study proposals from the working group, and that would take a half hour or so, or what it takes. Then we would take a coffee break, and then we would come back and start talking about those proposals and see how far we get to by 12:15.

The notion was that we should be ready to take a vote on their proposals in the Wednesday meeting. And I know there's an alternate there. So we may have discussions. Whether we'll be ready for a vote on Wednesday is something I'm still curious about.

So, Liz, when you're ready. I see you've replugged.

And....

>>LIZ GASSTER: (inaudible) there.

Hi, I'm Liz Gasster. And I chaired the little group on looking at possible studies of WHOIS.

And why isn't this staying?

Having technical difficulties. That's my slide, but I can't get it to stay.

I don't have anything on my screen, either. Let's see if this works. Yes, now I can see it, but you can't. It still jumps back.

Is Alex here, anywhere?

>>GLEN DE SAINT GERARDY: I'll get him.

>>LIZ GASSTER: I got the blue screen of death. Sorry.

Why don't I talk through this while I try to -- which will be really interesting -- while I try to get this up and running.

Presentation:

<http://www.gnsocouncil.org/correspondence/whois-studies-update-21jun08.pdf>

Basically, we -- in October of 2007, we were -- the council decided at the time that it decided not to proceed with studies -- with OPoC, that it would instead look at studies of WHOIS. And subsequent to that, we solicited comments from the public on what study ought to be conducted, and got about 25 --

I'm doing this all from memory -- got about 25 recommendations, which we then -- hang on. Let me just find that.

Do we have (inaudible). Somewhere in here, I have the slides that I can look through them.

We did a summary of the different studies that were submitted, study suggestions that were submitted. And you should have that in your -- up on the table.

We, basically, took the studies that were submitted and divided them into seven categories, and took a look at those seven categories of. On the 27th of March, the group -- sorry, I'll try to get this presentation up.

I'm going to try to get the document, which we had, but totally crashed.

I'm going to be a lot better try to not do this from complete matter.

I'm going to let you do this, and I'm going to talk.

So the council, on the 27th of March, -- trying to just pull up -- we don't have the slide there.

Let's make sure that it actually gets up on the -- thank you.

I'm going to keep talking while -- I'm sorry.

Okay. So on the 27th of March, the council (inaudible).

There were 16 individuals that participated. And we discussed, first of all, whether studies of WHOIS should be done at all. And there was a significant number of the participants in the group who were concerned about whether it was prudent at this point in time to actually endeavor to engage in studies of WHOIS. And then there were a significant number of the participants that did think studies ought to be done and were looking at the specific categories of studies that they thought would make the most sense to be done.

In the midst of evaluating what future studies should be done, we did receive, on the 16th of April, a communique from the GAC that detailed, from their perspective -- thank you very much. I know, we don't know what's going on.

-- and the GAC, if you've seen the GAC letter on the WHOIS studies, there's quite an extensive list of recommendations that ought to be -- from their perspective, ought to be conducted.

So just to quickly summarize the report, which is on the table there, again, there were sort of two groups of people participating in the working group, roughly half of which concluded that no future studies should be done, essentially, saying that -- not that future studies couldn't potentially inform the policy debate, but that since there wasn't any consensus on the majority of issues, that there would be no benefit to engaging in future studies of WHOIS, that there wasn't really consensus in the community that privacy ought to be protected as a primary philosophic approach or principle, and that even well-engineered studies with strong conclusions would not break the existing logjam that exists today.

So this was the view of roughly half of the participants, or a significant number, as I say, because, again, this was a study group that was comprised of volunteers. We weren't looking for statistical representation from, you know, each community or each constituency.

So I caution just not to put too much emphasis on the numbers of people who felt one way or another, just to instead just be aware that there were substantial groups of people kind of on both sides of the issue.

This group that thought that no further studies of WHOIS should be done because there wouldn't really -- it wouldn't really advance the policy debate on WHOIS, did say that if future studies are worthwhile, if the council were to conclude that further studies are worthwhile, that those studies ought to be kept very narrow and completed within reasonable time frames and scoped for overall feasibility. And they had a number of details about what was meant by feasibility, cost, and other -- availability of data, which is a very significant issue, in advance of embarking on any studies.

The other group of participants did -- feel free. Here, let me do this.

-- did think that studies of WHOIS should be done. And they looked at, essentially, three categories of studies from the summary document as top priorities for engaging in future study. One was the availability of privacy services. One was the demand and motivation for use of privacy services. And the third was one particular study related to misuse of WHOIS and port-43.

And this group of participants also emphasized that the GAC, too, pointed to looking at proxy and privacy services in particular, and that knowing more facts about the availability takeup and operation of proxy and privacy services could aid future policy development.

So if you were to look at -- One thing that's important to note is that because we grouped the studies by category, at no time during the time the study group was working together did we get down into the nuances of trying to craft a particular study. There just wasn't the time for it. And there certainly wasn't unanimity or consensus around proceeding with studies at all. So that's not really where we went.

What we -- the group that recommended that further studies be done, essentially, just recommended studies in these three categories, some particular studies within those categories that they thought would be most prudent. But in terms of turning this discussion over to the council for next steps, I believe there's sort of a two-step process. One would be considering kind of the threshold debate of a significant number of people feeling studies should be done, a significant number of people saying, gee, studies really shouldn't be done at this time. So having some discussion about that and working towards some resolution of that fundamental question.

Then, secondly, if the council were to decide, notwithstanding the concerns of the camp that says no further studies should be done that some studies ought to be done, there will be a need for further refinement of exactly which studies within the categories.

And that was just by nature of the kinds of submissions that we got and the natural evolution of trying to take from that studies that would be prudent and useful.

>>AVRI DORIA: Let me just repeat what you said to see if I understand. We do not have a recommendation of a study to vote on on Wednesday.

What we have is, do we want to ask the group to ignore the fact that some people do not want to do studies and propose one. In other words, are we going to -- and that's a council decision to basically say, we understand there's a split.

The council then decides, keep going. Do recommend one. We understand that there are some people that don't think it's a reasonable thing to do. Or the council just sort of says, "There's no agreement on doing studies," and that's that.

>>LIZ GASSTER: So I think there's probably two possibilities in the category of "Let's do studies." One might be, send our little study group back with a charter that says, "You've got to come up with studies, refine the study recommendations you're recommending."

Another option would be for the council to say, based on the recommendations that were already submitted, let's cost out and develop some recommendation among those specific limited number.

My suggestion would probably be the former, because it would give all of the study participants a chance to weigh in on which studies, since some of them never even got to that point. But, again, it's the council's decision.

>>AVRI DORIA: Okay. One question before I call the break for coffee break, unless anyone else has a clarifying question, is that the studies that are listed as possibilities haven't really been subjected to some of the rigor that those that said, "Don't do studies, but if you do do studies, you must do the following in the studies," and that those recommendations haven't really been subjected to that analysis yet.

>>LIZ GASSTER: And the same would be true of those who are recommending the studies, they only took it that far. So you're right.

>>AVRI DORIA: Okay. Does anyone else have a clarification?

>>MARILYN CADE: My name is Marilyn Cade.

>>AVRI DORIA: And as I said we're not in the discussion point yet, just clarifications.

>>MARILYN CADE: I'm here as an observer, but I have a clarifying question.

There was reference made at the beginning of the presentation about -- and I just am seeking clarification -- to what degree, if at all, has the advice from the GAC been taken into account in -- against the questions -- you said they had a quite detailed list of questions. To what extent were the requests from the GAC taken into account in comparison to the requests from others for studies?

>>LIZ GASSTER: That's a good question. What we did was we took all the recommendations from the GAC and actually integrated them into the recommendations that were made by the public.

So if you look at the most recent summary dated May 10th on the table, it attempts to take each of the study suggestions from the public and parse each of the study suggestions from the GAC and categorize each of the GAC recommendations in the categories with all the others.

So what I would say is, basically, that the GAC recommendation got the same weight and same consideration as everything else.

The only thing that's a little different about the GAC recommendations is that they did not submit sort of the rationale and hypothesis methodology that we asked of the public.

So the part that would spell out what the rationale is on that summary suggestion document is blank for the GAC studies, because they didn't do that.

>>AVRI DORIA: Thank you.

Yes, Kristina.

>>KRISTINA ROSETTE: Liz, I apologize if I missed this.

The participants in the study working group, were they participating in individual capacities or as constituency representatives?

>>LIZ GASSTER: They participated as individuals. But those who were members of constituencies communicated with their constituencies in the process and incorporated views from their constituencies, where possible. And that's stated in the report as well. They all were very clear that they were all participating in their individual capacities, but considering -- those who were parts of constituencies, considering their constituency views to the extent possible.

>>KRISTINA ROSETTE: All right. Thank you.

>>AVRI DORIA: Right, because I think viewpoint 1 quite clearly contains a joint statement of three constituencies.

>>LIZ GASSTER: As does viewpoint 2.

>>AVRI DORIA: Okay, yeah. So they -- so they participated individually, but the report speaks of them within their constituency breakdown.

Any other clarification questions at this point before we go to coffee and come back? And then we will start promptly, I guess, we said a half hour or so.

(Break.)

>>AVRI DORIA: We're going to start, so if everybody could find their seats.

Hello.

Hello. Okay.

>>CHUCK GOMES: I suppose the vice chair should sit down.

>>AVRI DORIA: It's a good example to set.

[ Laughter ]

>>AVRI DORIA: Okay. Welcome. Everybody is back from coffee. It's now 11:00.

I was asked to make an announcement about people speaking, which is we need to speak much closer to our microphones because some people have mentioned that they cannot hear, but if the volume is raised then there's all kinds of feedback and other problems. So please speak into the microphone.

And I would also like to remind people that when they speak, give their names, even though we recognize you.

Also, I would like to check, has anybody joined us online?

I see lots of people have joined in the room. I'm wondering, has anybody joined online?

>> No, we still don't have anybody online.

>>AVRI DORIA: Okay. Thank you.

>> Thank you.

>>AVRI DORIA: Okay.

So we're basically now open for discussion on what to do next about WHOIS studies.

We have got this slated now for the next hour and -- hour 15, so we definitely have a chance to get into some of the issues, get into the discussion, and try and get to a point where we're ready to actually take some kind of decision on Wednesday.

So I guess I would like to start taking a -- and I will be really surprised if I have as long a list of people interested in talking as I did on the previous issues.

[ Laughter ]

>>AVRI DORIA: So who would like to start off this morning with discussion of WHOIS? Do we just can studies or do we move forward? And if so, how?

Anybody want to go first? Did I see Mike with a hand? Sort of the beginning of a hand?

>>MIKE RODENBAUGH: Okay.

>>AVRI DORIA: Okay, Mike.

>>MIKE RODENBAUGH: Doing nothing is not an option. I just can't even believe it's been seriously put forward as an option by several of the constituencies.

I mean, this issue, we have been talking about it for seven years, and I thought there was a very clear -- I thought it was fairly unanimous view of the council that we needed to stop work on the policy development, on the PDP stuff, last time because we needed to do more studies.

And now you are coming back and saying, well, we have gotten 25 proposals for studies, and we don't think any of them are valuable.

And it seems to me that your bullet points in support of that argument are really all just defeatist thinking.

The fact that we don't have consensus, we all know that. The idea is that we will do some studies that will help us get to consensus.

And then, you know, saying that we will get studies and that's not going to help is, I don't think, frankly, a very helpful argument.

So I would just urge us to try to focus our discussions on which studies we should propose and how many, perhaps, rather than -- how many would be reasonable at any given time, given costs and

resource allocation, rather than debating whether or not we should have studies because I think we have been there, done that, last fall.

Thanks.

>>AVRI DORIA: Okay, Chuck.

>>CHUCK GOMES: Chuck Gomes. And I'm speaking personally, not necessarily representing the registry constituency.

There's a perception by some in the GAC that the GNSO really doesn't care what the GAC thinks. And I think that's a perception, whether it's valid or not, that we -- that there's value in, you know, trying to eliminate that perception.

So I think what I'm saying is that while this shouldn't be the primary reason for doing some studies, I think we should consider the fact that the GAC has, for a long time, requested some studies in this area, and that it's worthwhile just giving that some consideration in our relationship with the GAC.

>>AVRI DORIA: Thanks.

One thing, I guess, before going on further, I don't know that there's a GAC position or even a prevalent view in the GAC that we don't care about them.

I certainly -- I know when I talk to people in the GAC, they value us coming in and talking to them. They have appreciated how we have paid attention to them in the past.

So while there may be individuals in the GAC that might feel that way, I wouldn't want to say that the GAC feels that we don't care about them.

The other thing is, in terms of the studies, while I do appreciate that they did the courtesy of sending us their -- the studies that they were interested in, that was really just a copy of a request they were making to the board and not necessarily to us.

So I'm not saying that we should ignore it. I think we have paid attention to it. We have included it in -- as, with all the materials that we have received, even though the GAC didn't actually submit the information in the form that we needed and we were looking for to make it match our process. But nonetheless, it has been included in, as with any other information that we received.

So I think that we're definitely not ignoring the GAC, but...

One other thing I wanted to make before, and then I have Kristina, one of the things in this I think comes with something similar to what Mike was saying. It was interesting to me, and I would like to understand more from the people who said it, that, well, it's not really worth doing studies because everybody's mind is made up, and no matter what the studies say, our minds are all made up. And I'm wondering, did I misunderstand that, is my way of putting that, very far off what was said. So I have Kristina and then Tim.

>>KRISTINA ROSETTE: I have to agree with Chuck. I mean, you know, let's go back in time here.

There was absolutely really no substantive discussion of their March communiqu<sup>◆</sup>, and the studies called for that, until probably, I don't know, September, right when we were getting ready to put together some motions.

And I think we also have to keep in mind, when we're considering the letter that they sent to the board, they are the governments. They are not necessarily going to comply with the format that we have put out for public comment.

And I personally don't think it's reasonable to expect them to.

If they feel like it, that's great. But I don't think we should disregard or discount their communications to the board to which they are an advisory community, because they are not presented to us in a format that we would want.

The question that I do have, and something that I would like to get some clarification from them tomorrow when we meet, is the April letter -- I mean, obviously the communiqu<sup>◆</sup> was in the context of the ongoing policy development, but what's not clear to me here is, does the GAC want studies full stop, or does the GAC want full studies if there will be further policy development? Because those are two different positions. And I think it would be helpful to us, going forward, if we had a better idea as to where they were on that.

>>AVRI DORIA: Okay. Tim.

>>TIM RUIZ: Regarding the GAC's communiqu<sup>◆</sup>, I don't think it, at least from the group's perspective, it was discounted. It was given the same weight as any other comments or communications received about the subject of more studies.

But just to -- at least to give you my explanation as to why this unbelievable decision that no studies should be made was made in my mind, is because it's hard for me to believe that we are even contemplating more studies.

We spent, I don't know, three, four, five years -- what was it? -- on different WHOIS policy development processes. It was clear that there is no consensus in many of the issues that were left before that PDP ended finally.

And the very fact that we have this split in this group that says these studies aren't going to change anybody's mind I think is indicative of the fact that these studies, when done, are not going to change anybody's mind.

And whether that's, you know, unfortunate or not that minds are made up that certain positions are taken and they are entrenched in those, it is the reality. And so to spend the time on these studies without any clear indication of how they are going to actually change things, how are they actually going to influence different thinking, and that's not clear in any of these. I don't believe it's explained very well.

And then the other thing that I think needs to be done, if anything is pursued again, just to make a few comments on that, is that some of the studies, again, they are not well defined. They have a number of different phrases and terminology that's used that isn't clearly defined. Even just the concept of WHOIS abuse. You know, what is WHOIS abuse? I think you are going to get -- that could be a debate that could take a while to even resolve.

So I think there are so many issues with even get to go a well-defined report that could be pursued that is it the best use of the time of the GNSO council with the ultimate result being, very likely, that there still be no consensus in the end.

>>AVRI DORIA: J. Scott.

>>J. SCOTT EVANS: This is J. Scott Evans.

A couple of things. One, I have been involved in ICANN since 1998. This has been an issue since day one.

I think that we owe it to the community to look into this issue and do the studies. I think they are looking to us for that.

Secondly, I think that at least the IPC has always been of the view historically that our position is until we have something to inform.

The positions, we disagreed with the positions. We didn't have any proof that some of the allegations that were being hoisted as the rationale for positions taken were necessarily going to be reflective of any sort of data that informed that, other than hyperbole or just emotionalistic responses to privacy issues.

So I do believe that the studies would be valuable, and I do believe they would inform positions, and I do believe that there are rational people who, when informed, would look for solutions that work around the data that informs those points.

I think, also, it would allow us to drill down the issues into smaller subgroups that we could deal with rather than big huge umbrella issues, and allow us to work on those.

So I think the studies do have value, and I do think we owe it to the community at this point. There are a lot of people looking to us to do something, not just governments, but a lot of people that are watching what ICANN does for this issue to be moved forward in some fashion.

Now, it may be that at the end of the studies that there's no policy change, but at least it will have been thoroughly explored. And I think there's a whole great weight of people waiting for something to be done.

>>AVRI DORIA: Thank you. I have got Philip and then Tony.

>>PHILIP SHEPPARD: I want to make a comment about legitimacy of process. We are all on the brink of a major change in our process which I believe has been broadly supported by all of us in terms of moving to a working group process.

As the chair of the last WHOIS working group process, there were a whole bunch of things on which there was disagreement, but there was one resounding conclusion from that legitimately wide process which is a better factual understanding of allegations of harm was exactly what the community wanted. And we had that from one of the broadest and best working groups that we have ever had within this organization.

And we, as council, gave direction to a small group to say we want studies, go ahead, prioritize them for us, help us choose which first. And I find it absolutely outrageous to have any discussion where we're talking about let's not have them or even to say we have been presented with studies and the facts that we are all so blind or so stupid that we are not going to change our mind when presented with some decent information. I find it quite disgraceful. I am quite emotional about this point as you can tell. Just this whole throwing out a process, throwing out a working group. The only conclusion that we all really agreed upon is just appalling for this organization to even be considering.

>>TIM RUIZ: This is Tim, I would like to respond to if I could. Or at least get in the queue.

>>AVRI DORIA: I will put you in the queue, yes. Tony.

>>TONY HOLMES: Okay, Tony Holmes.

The first thing, just to comment on the format and the way the GAC responded. I think if there are issues around that, we should have that conversation with the GAC, and make sure that we address that for the future, moving forward.

So there is something we should be raising with them there.

In terms of the studies, certainly I support many of the comments that have been made here, that I think we just have to move forward in that way. And we need to understand the ramifications of just saying, oh, this is too hard. We're not going to do anything. It sends a message about ICANN, it sends a message to the whole community, it sends a very strong message back to governments.

And we should think very carefully before we go down that path.

And I also have to pick up on the point that Philip has already made. To actually say at this stage "It's useless, we are not going to change anybody's minds," well, if that's the case we should pack up and go home on a whole raft of issues that ICANN are dealing with. It's not a responsible way for this organization to carry on. And as a minimum, we have to look at the process. And I think the fact that there's even lack of clarity over some of the proposals that have been put forward underpins the fact that we have to look at this in some detail and go down that route.

>>AVRI DORIA: Thank you.

I have got Chuck, Tim, then myself, and then, okay, Jon and then Alan.

Okay, Chuck.

>>CHUCK GOMES: Thank you, Avri. Chuck Gomes.

First of all, I think we need to keep in focus what decision we would be making on Wednesday. Really what we are going to decide is which studies, if any, we would like some cost estimates on. That's all we're deciding. And we could -- once those -- assuming we do ask for some cost estimates, we could decide after we do a cost/benefit analysis that maybe some of the studies are really too expensive for the possible benefit.

So that's my first comment. We really need to keep that in mind. We're not deciding whether or not to do the studies on Wednesday; okay? And that was consistent with what was recommended by the working group that Philip referred to.

Secondly, I agree with J. Scott. You know, we have obviously got at least two different sides on this issue, and people have very strong positions. But I don't think we have any really reliable, independent data to back up our positions.

I know people strongly believe them, and that's okay. But in my opinion, to be objective about this whole issue, it would be really nice -- and I'm speaking personally, and we'll talk about this more in the registry constituency on Tuesday, and hopefully be able to represent them on Wednesday in whatever we do. But without real data that's done in a reliable manner, you know, I think we have got a hole there that needs -- that would be good to be filled in case something can happen.

And third and last, what I want to say is that, you know, granted it looks near impossible for us to come to some sort of a consensus on a policy change. But until we get some data that is reliable, I don't think we know for sure.

The data could disprove some people's opinions, it could confirm positions. And the results of that then could possibly open the door for some policy work that would be constructive.

So I really don't believe, until we have the reliable data, rather than just people's opinions based on anecdotal evidence, whether or not we have some hope of some policy changes in the future or not.

>>AVRI DORIA: Thank you.

Tim.

>>TIM RUIZ: The very fact that this is such an emotional issue I think underscores why we need to proceed cautiously. We shouldn't be making an emotional decision here.

You know, we spent, again, years on this topic, came to new conclusion. This is not a, you know, "We've got to come up with a policy do or die just because we initiated a PDP council." It's a bottom-up, consensus-based approach. We tried that, we tried it for years. We did it in broad umbrella thing. We did it in -- we split it up into little pieces. It went through so many different permutations to try to get somewhere that I can't even count them all.

The end result was there's no consensus. So when are we going to get to point that we just accept the fact that we can't come to consensus on this issue and we move on? And we can say, well, now we're going to do studies and after the studies come through and no one's mind is changed then we are going to do -- what? Is this going to be a continuing process until we finally, you know, browbeat people into actually coming to some kind of consensus whether they like it or not?

I don't think that's the approach the council should be taking.

It's clear to me there's no consensus on this topic. We should let it rest and move on with more productive policy endeavors.

>>AVRI DORIA: Okay. I have got me now. Thank you.

I wanted to make one comment about, I guess, a follow-up comment I made on the GAC and the fact that their information hadn't come in the form.

It wasn't sort of a criticism. It was just a note as to its usefulness. In other words, it's been included, but to be further used within the notion of prompting a study, it would need further work.

Someone would have to go in and sort of fill in the information that was missing, and that's more, in terms of my note was to say it's not that we ignore them. We don't ignore them. It's just the information didn't come in as usable a package as it could have, and so I wanted to clarify that.

On the studies, one of the things you said, Chuck, was that the decision we have to make on Wednesday is which. Now, I actually see us as having two decisions. One is the first one, whether we are going with viewpoint 1 or viewpoint 2. We have two viewpoints. As a council, we have to decide which one of those two we support.

Assuming that viewpoint 1 doesn't prevail and that it is viewpoint 2, the question I ask, are we at a point when we can go back and say these are the studies we would like you to do further work on and come up with a proposal? And that's really a question for you, Liz, representing the group, is are we at a point where we could say, okay, viewpoint -- and I'm not making an assumption that viewpoint 1. It's purely a hypothetical.

If viewpoint 1 is not accepted and we are at viewpoint 2 that says, yes, let's take the next step, let's ask the staff to scope out and price, are we at a place where we can do that? Does the staff have what it needs from us if we pick A, D, and E that they can go off and price A, D and E? Thank you.

>>LIZ GASSTER: Good question.

I think certainly more work would need to be done to craft a specific study to cost, because these are categories that have several studies listed in them.

So the question -- and the reason I am hesitating is either staff would have to do that or the working group, the little (inaudible) group or some other group would need to do that.

I guess my inclination is to say better to have the group one more time go through and with direction from the council and say within this framework, flesh out the specifics of the recommendation.

>>AVRI DORIA: Okay. Thank you. I have got Jon, Alan and then Tony.

So John.

>>JON BING: Thank you. Jon Bing.

I have sort of been struggling with one aspect that has been mentioned around the table, and which is of a rather general nature.

We have here an issue which we have difficulties in finding a conclusion for or a decision for.

Outside ICANN, people are looking at this issue with considerable interest. And they are observing that we have difficulties finding -- grappling with it and making a decision.

And outside of ICANN, one is considering whether ICANN is the appropriate instrument for governing Internet or whether there should be other instruments.

And in this context, being not able to make a decision is, in one sense, the acid test of an international organization facing a difficult question.

So I think that we, for other reasons, or for also beyond the WHOIS issue as such, need to find a way to make a decision and to stand up to the expectations of not only those -- the registries and registrars and so on, but the wider international community.

Thank you.

>>AVRI DORIA: Thank you.

Alan.

>>ALAN GREENBERG: Jon has said part of what I was going to say, but I will put it in a different way.

When a new policy or law is enacted, one of the acid tests of success is if everyone is somewhat dissatisfied with it.

Everyone is somewhat dissatisfied with WHOIS, but that's not a reason to say we're in a good position.

I would think the only way -- the only reason for accepting the first option, that is do no studies, is if we thought in the interim since our last task force/working group we had a magic answer that everyone would accept or be reasonable. You know, maybe the Telnic proposal is something akin to that.

But in the absence of that belief and that strong belief that we have a way of fixing the problem now, which we couldn't before, for the reasons Jon outlined, the people outside of ICANN are unhappy with what we have now and believe something has to be done to address them on both sides of the issue.

And I don't think we can side step it, and just because we are having difficulties.



So if the only option we have is to start doing some work which will enable us to come to closure, then we should pick a few studies that will be really important in helping us to come to closure and get on with it.

From our own position it would be nice to say we can't do it, about let's get on to other work, but from the rest of the world's position, I think we have to address this.

We are the group that recommends policy for gTLDs, and I don't think we can side step it and say it's going to be really difficult or maybe impossible, so let's not try.

>>AVRI DORIA: Thank you.

Tony.

>>TONY HOLMES: Thank you, Avri. I very much appreciate the last two comments that have been made, but I wonder, if you go down that path, whether the process that we're adopting is being handled in the right order. Because I think it's -- it would be totally wrong to try and make any decision on viewpoint -- whether viewpoint 1 or viewpoint 2 is providing the way forward at this stage. A much better way is to try and look up what it would actually mean for both of those options, and to try and get some idea perhaps with support of ICANN staff to look a bit further into the details of what studies can actually be done. And then when we come back, you can review whether we would support, as council viewpoints 1 or 2, on the basis of some factual information. And to try and make a decision without going down that path just seems to be a step too far in one leap.

>>AVRI DORIA: If I understand correctly, though, you are sort of saying we can't make a decision between viewpoint 1 and 2, now we should go with viewpoint 2 until we have more info and then make the decision between 1 and 2?

>>TONY HOLMES: I wouldn't couch it that way. I am saying the decision has to be made at some stage. It has to be called, that's for sure, but let's do it on the basis of some more information that we have now without deciding whether we take the full step in implementing studies.

Some of the data and some of the costings of those things I feel would help us actually make a decision as to whether it's acceptable or not.

>>AVRI DORIA: But at the point where we are at now, the next step was to, indeed, do what you were asking, which is to ask the staff to go ahead, price some studies, you know, talk to some people who actually do scientific studies to make sure that we were doing a study that was a proper study that would have significant output as opposed to hand waved output.

Now, we are at a juncture now where the group came back to us and said we can't recommend a set of studies to you to go further. So we're sort of forced with a decision of going back to the group and saying, "Recommend a study," which is essentially viewpoint 2, or we are at a point where we say, "Oh, okay, we understand that there's no consensus on this now, so you don't have to recommend the study."

Now, the other point we could take is sort of say thank you very much. Staff, please go look into the following studies, and just bypass the group.

Yet again, that's making a decision on -- between the two viewpoints, however we term it. Because one of the viewpoints says enough of this already, you know, let's just stop the process, whereas one of the viewpoints says, in one way or another, let's continue the process.

I think what you are saying is let's continue the process and then later see if we want to stop the process.

But....

>>TONY HOLMES: If you will allow me to come back on that, I think it is a staggered approach. But what I am saying is we are at this point now where, as Tim said, there's pretty hard and fast views on this. But I still feel that getting more information to actually make a more valid assessment of what that actually means, because there's still, I think in some people's mind, a lack of clarity of what certain studies mean.

And we can actually make a much firmer study if we had a better idea of where we were going.

And it would be better for me to make the call between viewpoint 1 and viewpoint 2 with more information on the table than we have now.

>>AVRI DORIA: And the information you want, I am trying to understand, because this almost sounds like it could turn into a motion.

But what more information would help in making the decision between those two? Would it be specifics about what studies would be done? I'm not sure what information would help us make that decision.

>>TONY HOLMES: Well, I believe that's the discussion we should actually be having while we're here that would give some indication to staff how they could actually support that and take it forward in the immediate future.

So, yeah, we need to have that debate. And there's probably mixed views there, but I would be very disappointed if we couldn't get some consensus on that, Avri.

>>AVRI DORIA: Would anyone like to answer -- yeah.

>>JORDI IPARRAGUIRRE: Hi, this is Jordi.

As we speak, registries are changing the policy regarding the WHOIS. More and more registries are selecting the type of information that is being displayed and the ones not being displayed as we speak. That's because governments are asking them to do so or move to another country, which that is not required. So the question may be, are there any studies that may help us to decide if the proposal we are going to bring up is going to help on deciding which kind of information should we recommend be there or if we can influence somehow the governments on deciding which information is public, which information is private.

So I would say that maybe the solution can deal on that way.

I mean, we may decide to do many different studies. We may decide to do no studies at all, but the reality outside ICANN is changing, and registries are going to adapt to whatever local law is going to say.

So maybe -- I don't know. Try to find studies that may help to discuss with governments which information must be public, which information can be private.

>>AVRI DORIA: Thank you.

Yes, Philip.

>>PHILIP SHEPPARD: I still haven't heard a satisfactory answer to my question about legitimacy of process.

A working group of -- what, Liz? 80 plus? Decided that the community wanted some studies. We then asked for a group to help us assess which studies, and we have, by my count, six individuals, most of whom participated in that same group as well, making a decision that they had a particular view, and we seem to be regarding this now as the only thing we need to talk about, and completely forgetting the history of the working group of 80 people who said studies, please.

That is surely the key question for us.

>>AVRI DORIA: Okay. Well, I think we have two things we can actually be talking about, and one of them is the first one of, you know, we were presented with two viewpoints. How do we want to react to it? And if -- and it is a legitimate process thing for the council to react and say, yes, we decided to have studies at one point, but now we decide that, you know, it isn't working.

It is also a legitimate process thing for the council to look at it and say, no, let's talk about the studies themselves, and if people want to comment on viewpoint 2 about talking about certain studies and which they are recommending and points for them, there's no reason not to be talking about that, also.

But I do think that we have to make a process decision, because we asked a working group to go away and come back with a recommendation. They came back -- you know, the first working group came back with a recommendation. It was accepted. And we put together a group that spent a year talking about it.

At the end of that year, and maybe it's not quite been a year, I might be exaggerating a little, they came back with a split decision.

As a council, very often we have had groups come back to the council and say, "We're stuck here." "we're stuck there. We need guidance from the council. We need to know how to proceed." And as a process point, when one of the working groups comes back to us and says, "We need guidance on how to proceed," we sort of have to give that guidance.

And if that guidance is, proceed, then we have to say so.

Yes, Kristina.

>>KRISTINA ROSETTE: I questions I share Philip's concern because I am still having trouble just trying to get my mind around the fact that not only did we have this working group, but we had a council resolution that was supported by some of the -- by folks from constituencies that are represented in viewpoint 1.

And I, frankly, am not understanding how to reconcile those two. And I do have some concerns here. I mean, if we are in fact moving heavily to a working group process, what are we setting ourselves up for in the future if we give that working group guidance and they come back and say, "Well, we don't really care what you told us. We don't really care what you guys decided on after extensive and very painfully long negotiations. But we want to do it this way."

Are we willing to do that?

>>AVRI DORIA: It's sort of a bottom-up process sort of thing. And, yeah, if a working group is empowered to make a decision and pass it up for recommendation.

>>KRISTINA ROSETTE: Why did we bother have a council resolution on October 31st?

>>AVRI DORIA: To initiate the work.

>>TIM RUIZ: And if you recall correctly, I made a specific amendment to that motion to say "if any." And that was agreed to, and it was included. And so that was the understanding which that group went to work, recommend reports, if any.

>>AVRI DORIA: And so what the council did was give it a charter. They've worked through the charter. They've reached a stall point. And I think it then becomes the council's prerogative to sort of say, "Go back and do some work and try and reach consensus on studies that should be done, or accepted that we're at a deadlocked position." And that would be a reasonable reflection of a bottom-up process where, you know, a working group was charged with doing some work -- it's quite valid for us to say, "Sorry, you need to do more work. You need to come to consensus." But --  
Alan.

>>ALAN GREENBERG: If one were sufficiently cynical, one could say that by putting a huge number of studies on the table is a way of deferring indefinitely actually coming to any closure making a decision, just because doing studies takes lots of time, and it puts it off to a different era.

I think we need to make a decision which we believe may lead to closure within our lifetime.

[ Laughter ]

>>ALAN GREENBERG: And I think that has to be the end target. And, to be honest, process and bylaws notwithstanding, this is something which the world needs -- we need to have some closure on this, and we need to take a path which will lead to that within modest amounts of time.

>>J. SCOTT EVANS: This is J. Scott again.

I'm starting at the point where I'm with Philip on this. I mean, I've been involved with this thing since 1998, and we would sit in this room and somebody tell me that we don't need to have any information to inform positions and that is the position that we are going to accept is ridiculous. It's absolutely ludicrous.

I mean, we -- that -- maybe that this group in this little room here may have political positions informed by monetary interests or whatever. But I'm telling you, there is a clamor from governments and consumer groups and privacy advocates all over the world for this to come to some resolution.

And I thought when we sat in L.A. that the determination was, we need to get to some resolution. We can't without having data to inform what those resolutions will be. So what we're going to do is, rather than come up with an uninformed resolution, we're going to go to a group and say, "Come up with areas that we can study so that we can inform so that we can then have a solution."

And if this working group can (sic) work consensus, then you need another working group that can come to consensus, because this has to be resolved.

>>AVRI DORIA: Right. And I've got Chuck. But I think if we resolve that we can't do it, somebody else will decide to do it and it just won't be within our processes. If there's that much of a clamor, it will probably happen anyway. It just won't be us doing it.

But Chuck.

>>CHUCK GOMES: Thank you, Avri. Chuck Gomes.

First of all, let me talk about the registry constituency position. So this time, I'm talking more than just personally.

Obviously, I think most people know that there are different people within our constituency that have differing views on this particular issue. But the position statement we put forward on the studies was that the registry constituency would support more studies if there was an acknowledgment of the fact that there is a real need to protect privacy.

I had a conversation with Suzanne Sene sometime within the last two weeks about this very issue. And as you know, she is the GAC rep- -- GAC liaison to this group. She assured me that the GAC is -- that the GAC definitely acknowledges the need to protect privacy. And I'll bring this up, share this with the -- my own constituency on Tuesday. But based on that, I believe the registry constituency will want to support the next step of costing out some studies.

Now, my last point is a personal one. And that is, assuming that we get to the point where we recommend studies and we want to work on which ones we should do, I really firmly believe that the studies should be balanced, covering both sides of the issue. And by -- I don't think I need to define what "both sides" means.

It's not enough just for one side to push their studies. If we're really going to get good data, we need data on all sides of the issue. And I think that's very important. And I would happen that those that -- assuming we do go forward with the next step for studies, that those who really are totally opposed to that would still contribute to helping us come up with a balanced approach to the studies so that it's not just one extreme that we get data on.

>>AVRI DORIA: I've got Tim, and then I'm going to want to ask a question related to that.

Tim.

>>TIM RUIZ: And if you look at the final report that this working group did, in the viewpoint number 1, after the mention of the constituencies involved or whose views this is, the third paragraph, it says, "So long as there is no universal acceptance of the fundamental principle that personal privacy is a value to be protected by ICANN policy, it is futile to commission further studies."

So that isn't so far off from what Chuck had just said in regards to the registries' position. And this -- Liz can correct me if I'm wrong. But one other thing I want to note that is missing here is that this is also the view of at least one individual who is representing or a representative from the ALAC. So this isn't just, you know, commercial interests, monetary interests. The noncommercial users' constituency was involved in this view, as well as the At-Large Advisory Committee. And Liz can correct me if I'm wrong on that.

>>LIZ GASSTER: That's right.

>>MARILYN CADE: I'm sorry. Could you just -- That's being presented -- I didn't understand what you just said, Tim. That's being presented as something authored by the staff or a clip from someone's submission?

>>TIM RUIZ: That's from the view 1, the group that felt no study should be done.

>>MARILYN CADE: Okay. So that's not authored by staff. That's a subgroup of the group?

>>TIM RUIZ: Right.

>>MARILYN CADE: Which I think is an important clarification.

>>AVRI DORIA: Like the overall report was authored by staff, but it was representing a part of the groups' point of view.

>>TIM RUIZ: Liz was chairing our group, so I just wanted to make sure that what I was saying was correct.

>>MARILYN CADE: I understand. But this say, "We object to spending any of ICANN's registrant-derived fee." So this would be a subgroup -- just for the record, this would be a subgroup of the overall group.

My second question of clarification --

>>AVRI DORIA: It was viewpoint 1. It was specifically under --

>>TIM RUIZ: Both views were views of subgroups.

>>MARILYN CADE: My second question of clarification, in looking at the membership of the working group, I'll just make a point as someone who has been working in working groups at ICANN before ICANN was started and in any version of working group since, the -- it's really going to be important to understand the balance of participants in the working groups.

And so as you put this forward to the GAC, one thing I think will be important if you're putting this forward is to make sure that the relationship or who's signing on to a particular position is clear, because just --

>>AVRI DORIA: That was -- that was -- it was quite clear.

>>MARILYN CADE: It is if you're an insider to this. But if you're not, it's not.

>>AVRI DORIA: It was -- it was stated explicitly.

One of the questions that -- and I don't have anyone else on the list.

But one of the questions that I think was an open question, and I think when Chuck brought it up was the collection of data and the data that would be used on that.

What I understand from conversations, there was certain lack of clarity on how the data could be collected and whether there would be issues with collecting the data.

And I wanted to just bring that up and see if there was anything that needed to be added on that subject.

Is there a question with the studies even of the difficulty of collecting the necessary data?

I have Tim and, Liz, I don't know if you wanted -- no. Okay. Tim.

>>TIM RUIZ: I think there could be. And so that's why I think -- and I think that's one of the reasons, if -- there might others -- why there was no -- why the group that even wanted to report probably couldn't get to, you know, a detailed suggestion of a report, some of those things needed to be discussed.

One concern I have, for example, on demand and motivation for privacy services, you know, just how do we get to that, because it's going to involve trying to get accurate data from users of privacy services.

I mean -- just the very nature of that, you know, they -- they're using a privacy service to remain private. So now how are we going to get reliable data from these individuals who are trying to stay private, and then how do we identify that data and say, yes, it's accurate, it's -- you know, who submitted it? How do we tie this back to actual users? How many are involved?

So I think there are several issues like that that are going to be difficult to try to gather data on and need to be defined very clearly before we start.

>>AVRI DORIA: Anyone else with a comment on that particular topic on the data?  
Okay.

We sort of talked about the first viewpoint. And I'm wondering if we can move to having a little bit of discussion on the second viewpoint that talked about various kinds of studies and just sort of get some viewpoints from people on, you know, within those possible categories, what views there are, what concerns there are, what support there is.

Is there anybody that's prepared -- and this is sort of following along, Philip, with some of the things you said, that, you know, I believe we have to make a decision on how to proceed, but one of the things is, if we proceed, then we're talking about we had several categories, the top three priorities, we had category 4, demand and motivation of privacy studies; category 3, availability of privacy services; category 1, misuse of WHOIS data.

And then two more that were top priorities with a couple of others, impact of WHOIS policy on crime and abuse; and proxy registrar compliance.

Now, one of the things I also wanted to ask is, there were multiple studies in these. And in going for -- and this is sort of a question to you, Liz, as a staff question. If we were to make it past the first hurdle and say, yes, we're going forward with asking for study information, then we come to this point. Is there really a necessity to pick a study? Or is it just as useful to sort of say, there's a category 4 that had certain questions. Go to someone that is a professional, scientific at studying questions, who basically takes all four of the -- if there's, you know, several studies within that category, takes all of those and proposes a study that responds to those in some sort of reasonable way.

In other words, one of the things I have a curiosity on is, having categorized, having done a priority of categories, is this working group really the best one to sort of say, you know, the best objective, scientific study we could do would be on 4, 2, as opposed to a scientist looking at these things, looking at them with the perspective of what data could I collect, how could I collect it, what kind of information could I get, and how could I prove validity of my study, that perhaps we don't need to dig down deeper than that.

>>LIZ GASSTER: Actually, I think that that's reasonable. And that's why I hesitated a bit when you asked the question before lunch, or before the break, about, you know, do we need to bounce this back to the group or can staff deal with this as is.

I think it is --

>>AVRI DORIA: And when I say --

>>LIZ GASSTER: -- a reasonable approach to have an expert look at category 3, -- 4, category 3, and category 1, and say, okay, what study or studies could we craft from this based on their expertise, their research expertise.

So it could be either way. It could be that a working group does it, because there may be more refinement to what they want to actually recommend be emphasized when there are several studies within a category. Or it could be that staff just goes and says, "Based on this, this is what we think," and throws it back to the council for your consideration.

So I think that would be a reasonable approach.

>>AVRI DORIA: Okay. I've got Bruce. Yep.

>>BRUCE TONKIN: Hi, Avri.

It's Bruce Tonkin speaking.

I guess like some others in the room, I've kind of looked at this probably the last eight years, I think. And partly what it really comes down to, if we're just -- we just take a slightly higher level, one of the complaints about GNSO policy development in general has been that there's not enough analysis of hard data as a starting point when we start doing policy development. In other words, policy development tends to be based on the opinions of those that participate in the GNSO, essentially, the people in this room. But -- And each of those groups will have particular views. So if your pro-privacy, you will say everyone in the world wants privacy. And if you're from a brand protection point of view, you say, all the brand owners want more accuracy. So they're all assertions.

So then the other approach that's been talked about generally is, so ICANN should be doing some more data analysis up-front, which then informs the GNSO.

And if we look at that problem, then there's different ways you can do that data analysis. One method is a survey. And that was actually done by the WHOIS working group probably back in around about 2001, which I think Marilyn Cade chaired, and Tony Harris. And that approach was very much a case of people -- you had the different interest groups could say, "Go and fill out this survey," or "Go and fill in these results." You can certainly influence the results of some of those surveys by saying, well, because my group is particularly well organized, I can get 10,000 people, let's say, view "Y," and then another group that's not particularly well organized might only have five people with view "X," whereas a more scientific approach is to say, "We use an independent organization that randomly samples the

registrants and asks the same set of questions, and says, 'Out of this sample, this was the results.'" In other words, that's done a lot more scientifically than what you're saying.

So one method is, I guess, a more scientific market sampling method, which there's obviously companies that do that. And that would be independent. And we look at the results. Whereas in the earlier survey, it was very much a voluntary organization, so it was entirely done voluntarily. There was no professional process.

The second thing you can look at is looking at the data itself. So, again, you can do a scientific survey of the data and say, we've actually retrieved a large amount of the data. We've now done a series of tests against accuracy. And we have found that the accuracy of this data is, say, "X" percent. And then that group could then say, how does this compare with other similar databases. And I'm sure there's statistics available saying a typical database of users will always have a certain error percentage. And it could be that ICANN says, we've done a survey and the error rate in WHOIS is 5%, which compares with other similar databases. Because that would be useful. So I think there's two types of things that could be done: That sort of market survey, asking a set sample of people a set set of questions, and getting some information. Or there's a data survey, which is, you go and pull WHOIS data and you do some analysis. So I think those are two very different categories.

And if you're going to go the survey approach, then, really, it's just a question of what are the survey questions. If you're going to do a data analysis approach, the question is, what data do you have that you could then do the analysis on. So obvious data you have is WHOIS data. That's how to think about the problem.

>>AVRI DORIA: I think -- I think that in going to the staff and asking them to get together with scientific, you know, people who could put together describe scientific studies, that that was the kind of recommendation or with elements like that that we expected to come back that we weren't actually going to predetermine whether it was market analysis and then -- but it was basically the notion that you go to a professional at doing these studies, and they give you a proposal on how best to do something. So I think that that would include that kind of consideration.

Thomas.

>>THOMAS ROESSLER: So, Thomas Roessler speaking on behalf of himself and as somebody who has spent rather significant amount of time on that report way back then.

I think one of the things we suffered from at the time was that there was no set hypothesis that we would have tested. It was a survey which was against a self-selected sample which asked a number of questions asked for broad input, didn't lead the policy development that far, if we are honest.

We've had a lot of data-gathering, if we look back, which was done in this more or less open fashion. Think of the Montreal meeting in summer 2003, where we spent two whole days hearing experts on WHOIS policy and gathering input and gathering expertise.

So the -- being here as somebody who hasn't been to the last few ICANN meetings but who has been into the WHOIS discussion in the past, it strikes me that I can't really tell what difference that data has made. And I can't really tell what difference this group is looking for in getting new open data and asking an open question to some sort of expert out there, what is going to change, what is the difference that you're looking for. And I think it will be important in structuring any kind of study, if one was done, to have a good idea what the hypothesis is that the council wants support for or not.

>>AVRI DORIA: Philip.

>>PHILIP SHEPPARD: Thank you.

I fully support the last two comments we have heard in terms of character and way forward.

I'd just like to comment broadly on the ranking order that's come out on V point 2. I find it no surprise at all that privacy has risen to the top of the list there. I mean, all our discussions for many a day have been precisely about this tension between access and privacy, between, on the one hand, the ability to try to prevent user fraud and using an open system to try to do that.

Brands were mentioned earlier. And I think it's particularly interesting, one of the reasons I was late today was because of discussions we are having to do with privacy with RFID technology with the European Commission at the moment as a brands industry. And it's precisely the same issue. It's the tension between, as brand owners, wanting to maintain the trust of your consumers and users by due care of their data at the same time as also wanting to give, in this case, your user experience a fraud-free one when they go on the Internet.

So I, for one, would be very interested in the results that come out of the self-studies, because it will, indeed, inform us of potential ways forward to see through this. Because I am not certain in terms of one way or the other any particular route we want to see through that. We start with WHOIS because it was presented to us as an imperfect system in an imperfect world designed to do a difficult job. And we're still struggling with that.

The whole point about studies going forward is to see where we can get improvement and change in the system.

And as I say, I find this no surprise at all that those two came out as top of the list.

>>AVRI DORIA: Thank you. Mike.

>>MIKE RODENBAUGH: Just a brief comment in response to Thomas, the gentleman making comments about the old studies or the studies that were done, you know, several years ago.

The fact is that, you know, circumstances have changed. In 2003, proxy services did not exist, phishing was not a problem, you know, anywhere near like it is today. So, you know, simply, we need, on -- from the business interests' point of view, those who don't profit from proxy services, anyway, we need to look at what's gone on with that practice over the last four years. And, therefore, we need new data and not to look back at the old data and the problems with it.

>>AVRI DORIA: Okay. Thank you.

J. Scott.

>>J. SCOTT EVANS: Just for the record, I just want to make it clear. I keep hearing people saying that this is an issue between brand owners and privacy -- people take the position that privacy is of tantamount importance. Just to let you know, as the owner of one of the top brands, I have been involved in this for a long time. And I believe law enforcement has a great interest in this. I believe that corporate and banking entities have a lot of, you know, information that they're involved in this, because when they do mergers and acquisitions, ownership issues with regards to domain name portfolios, essentially stuff that's going public, from a VC position, is very important information that's used. And this is -- you know, so what -- my whole point is, it's not brand owners versus the privacy advocates. It's access -- open access advocates versus people who believe there needs to be a heightened level of privacy and a system designed for that.

So it's not a brand owner versus the world issue. There are other interests. And just for the record, I want to make sure -- and they have presented -- the FBI has been here. We've had the European Commission. We've had people from Interpol present. So, I mean, I'm not just saying this. If you look back over the historical record, banking and credit card companies have company. So it's not just brand owners.

>>AVRI DORIA: Thank you.

Thomas.

>>THOMAS KELLER: Tom Keller. One of the observations I made once I listened to all these (inaudible), especially what Philip just said, he said --

>>AVRI DORIA: Closer to the mike. You're not quite hitting the mike.

>>THOMAS KELLER: I'm not. Okay.

The observation I made to -- listening to all the people talking here today, especially to Philip, who just claimed that it's more like an international problem we have, so the feeling I'm getting is that it's maybe not really only in the scope of the GNSO to solve this privacy versus data access issue. And we are kind of grappling with that for the last eight, nine years. And I've kind of come to a point where I have to say not even the local governments actually know how to solve those problems. What you see all over the world going on, that governments under the stress of terrorism or whatever, trying to reach out to data of private people and people trying to actually protect the data. So that's pretty much exactly the same stuff that we do. And not even the governments are coming up with good solutions.

So what I would rather do, I'd rather go to the GAC and ask them what exactly they think should be the solution. Because I don't think that we should fool ourselves that we can come up with a real generic, global solution. That's something the world is not made up for right now.

>>AVRI DORIA: Thank you.

Tim.

>>TIM RUIZ: Yeah. I just wanted to comment on what Mike was saying, because I think it's a good point, that, you know, things change over time. So the data that we collected, you know, by the time we had it and we tried to use it, so many things had changed. That's just something to keep in mind however we proceed here. And I think that was made clear in view 1 of the report, that it has to be done timely, because if we take another three years, you know, to do these studies and to gather this data, you know, what's going to be the, you know, service of the day or whatever registrars are doing at the time, it's going to change completely again, and it'll become irrelevant, we'll find ourselves in the same boat. So it has to be -- these studies have to be constructed in a way that they can be done efficiently and quickly so that it's relevant after we've gathered the data.

>>AVRI DORIA: Okay. Thank you.

I have John. Did I have anyone else?

John.

>>JON BING: Thank you. Jon Bing.

Occasionally, it occurs to me that it may not be possible to find sufficient basis in data knowledge to make a decision.

Being a lawyer, you are often confronted at the court with a decision. And often, the matter -- the factual matter of that court case may be very unfamiliar to the one who makes the decision, the judge. The judge does not have the possibility to say, "Well, this is all very interesting. I think, actually, that I need to think about this and have a couple of years of education in order to understand it, so you come again another day." You don't do that. You have a decision process which is designed to make decisions even though the knowledge is imperfect or is failing. And I think that we have to reflect upon how to make a decision even though we have to face the fact that our knowledge of the field will not be sufficient at any one time.

>>AVRI DORIA: Thank you.

Chuck.

>>CHUCK GOMES: Tom has something.

>>THOMAS KELLER: Yeah, can I have a follow-up on that, Jon. So it would be a decision which would be appropriate to say we can't settle on a decision, we can't find solution, and so we end the process?

>>JON BING: You ask me for my solution? Well, I do not think that we have at the moment a decision process, a system which allows us to make a decision if we do not have a broad consensus. And that is what's stalling us. But perhaps we should decide. Perhaps five people, point to them and say, "Go into this closet and don't come out until you have a solution or an agreement or something that you have agreed upon, and we'll adopt that as a council." That's a solution.

>>AVRI DORIA: But then we would probably lose five of our participants for the rest of their lives.

[ Laughter ]

>>JON BING: (inaudible)

>>AVRI DORIA: Sorry. Chuck.

>>CHUCK GOMES: We could have fun with that, Philip.

I think it would be helpful, we are getting close to our time limit on this particular topic, and maybe we could spend the next few minutes talking about how we are going to handle it on Wednesday in our open meeting, where some sort of a decision needs to be made.

Now, a couple people, I think both Tony and Liz, suggested that there may need to be a little more work on this issue before we can really see the full problem. And then make a final decision on this, at least whether to ask for some cost estimates of studies.

And if we assume that that's true, that we -- a little more information would be needed, I think we need to, by Wednesday, then, ask -- give fairly clear directions to the working group in terms of what we would like them to come back with.

And I have heard some good suggestions. I thought that Thomas's suggestion with regard to hypotheses was very good. I think it would be very helpful if we, very succinctly -- if the working group was to come back with here are the hypotheses that various parties have on all sides of the issue, however many sides there are, that would be helpful if we could substantiate those or refute them.

So that when we -- if, in fact, we do do some studies, then we are getting information that, either, like Alan has said, would bring closure, would help us in some way. And there may be some that you can't refute or substantiate, and that is okay when you are gathering data.

And it has also been suggested, and I think Liz hit on this, that a little more work would need to be done in terms of what studies -- and we may want to defer that, if we go that direction, what studies should be done.

So what I'm suggesting then is one possible motion we could have on Wednesday would be to task the working group with some very specific tasks, like identifying what hypotheses we would like to -- forget what studies have been proposed, but just what hypotheses do we want to test through studies, and then possibly even do a little more work on possible studies.

>>AVRI DORIA: I would like to ask a question on that, and I think of Liz. Isn't -- Don't we pretty much already have those hypotheses already laid out in the studies? So that's where I was thinking, that we already have hypotheses laid out. We have already listed categories of studies.

If we went to someone scientific, I keep using that as sort of the blessed term of someone that could do something real as opposed to anecdotal and opinionated, that took the material that they have already done and not weighed the group anymore to do more hypotheses, don't we already have that?

>>LIZ GASSTER: Yeah, and let me just give an example. I think it might make it easier. If you were to look at the big document, the summary document of the seven categories and each of the studies in it, and you looked at the category that's rated as the top priority by the group that is supporting having studies done, the demand and motivation for the use of privacy services, which is section 4. I don't know what page it's on but it's the fourth item there. You would see, leaving aside for the moment, the



GAC recommendations which do not have hypotheses associated with them, and just looking at the public suggestions, which do have hypotheses associated with them, you would see three studies being proposed in that section, study submission 17, 18 and 19.

The first one is a survey, and that is being proposed -- so going back to Bruce Tonkin's point, of these three studies, the first one, study number 17, is a survey of registrants. And the second two, 18 and 19, are samples of data that a statistician or research expert would then analyze.

So I think, Bruce, your separation of types of studies into those two categories makes sense, or into those two types of approaches.

One would be samples or -- one would be questionnaires and such, and the other would be samples of data.

>>BRUCE TONKIN: I will just ask one quick question, Liz. Have you costed any of this yet?

>>AVRI DORIA: That's the next step.

That's the step we are trying to get to now --

>>BRUCE TONKIN: Yeah.

>>AVRI DORIA: -- is to ask for the costing if we believe we are ready to ask that.

>>BRUCE TONKIN: But I think it would be a different company that does those two different scenarios that Liz is talking about. Market survey companies are different to statistician -- statistics type data analysis.

>>AVRI DORIA: I had Alan and then I had Chuck.

>>ALAN GREENBERG: We keep talking about costing. I think along with costing, we need an estimate of how long it will take to do it and get results.

>>AVRI DORIA: Yeah. I think --

>>ALAN GREENBERG: Studies are cheap, but if it takes four years, it's not worth a lot.

>>AVRI DORIA: I think it's a complete study design that includes how they do it, when it's done, and costing. I think "costing" is just the term we are using to refer to a proposal on doing a study. Is that a correct assumption? That we didn't just say this study will cost you 3 million and it was one line of thing. It was a proposal.

>>LIZ GASSTER: That was my understanding, too, with timeline.

And one other point I wanted to make about highlighting these three examples, and I will give back the floor, you note that the study submission 17, which was a survey, when we did our initial analysis as staff of all three of those, we noted that because it's an online questionnaire to be submitted to registrants that's being proposed, there is potentially, you know, that the likelihood that the data may not -- because it's self-reported, may not be as accurate as the two surveys or studies below that which are founded on sample data.

So that's the kind of thing that the research expert would take into consideration in coming back with a suggestion, for example, on those three. We would consider the fact that online survey data may not be as accurate, and that would be one of the factors that we would note in coming up with a proposal and response.

>>AVRI DORIA: So I guess in looking at it, and we are coming close to a point where a couple people go away and put together some motions, that we have a couple possible motions. One of the motions that is on that is a viewpoint 1 motion and those folks need to decide if they want to put together a motion, is that we stop this process at this point. And that is a motion that could come forward.

Another motion, then -- and then I think there's a choice between two, which is, one, do we send it back to the working group and ask them to come up with some more specificity? Or a motion that I think is actually almost adequate at the moment is go away, take the top three categories, and come back with proposals, estimates, and pricing.

And, you know, we had a ranking of top three, and see where that is. So that's another way to possibly go with it.

There may be other ways.

We do need to get some motion on the table that, you know -- and perhaps various groups of people can work together.

I know that I am personally sort of, if we're going to proceed, the notion of going back into the working group at this point, I don't know how much further that gets us.

I think there's a lot of information here that someone that knows what they are doing could put together a proposal on. And we can go from the proposal. But that's just one possibility.

Chuck.

>>CHUCK GOMES: With regard to any motions, I would just like to suggest that those motions be distributed on the council list before Tuesday so that we can discuss them in our constituency meetings on Tuesday.

Secondly, at least for me, and thank you for reminding me that the hypotheses are already in there, but when you kind of look at this big document with all that information, you sometimes forget the details here and there.

It would be really nice if we had just a simple one-pager that listed different hypotheses, and maybe we can guess some for the GAC issues, if that's possible, that we could just look at those. And not by -- I am less concerned about the priority than I am about making sure that we have a balance covering all different sides of the issue.

So that would be great on all of the hypo- -- to see all of the hypotheses that could be studies.

And last comment is with regard to how to do the studies, and I know a lot of people put forth specific suggestions with regard to how to do the studies, whether it be a survey or whatever, and that's fine, but I think we also ought to rely on the experts that we go out and get information on as the best way to gather that data.

>>AVRI DORIA: Thank you.

In closing this one now, would I actually like to recommend that people talk today, this evening, and hopefully come up, if even tomorrow, just a brief reading of possible motions so people know where we're at on it, as opposed to waiting until Monday.

So to -- I mean, the less time. Not that we will have any agenda time on it, but certainly I can give five, ten minutes to just sort of presenting what motions we have so we can move on from there.

Possibly we can get to one motion that sort of says -- goes back to the working group suggesting what you are saying, is sort of come up with a balanced set of hypotheses that one takes further. And perhaps that's an approach. I don't know.

So I would like to suggest -- you know, and people work with you, perhaps, to -- I mean, you had a suggestion on putting together motions, so perhaps you can try and gather a couple people to put that as part of your motion-writing processes over the next 24 hours.

Okay?

Any last comments on this? Yes, Liz.

>>LIZ GASSTER: So I am willing to just do a document that has --

>>AVRI DORIA: Hypotheses?

>>LIZ GASSTER: -- the study and the hypotheses. I am not going to try to do a hypothesis for the GAC stuff.

>>AVRI DORIA: Right.

>>LIZ GASSTER: Just not smart and it would take a lot of time. But it won't be one page because there's too much text. But I will take out all the other text that's on that long document now and just have the hypotheses, and we'll see how long it is. But I would be happy to circulate that later today to the council list.

>>AVRI DORIA: Thank you.

Okay. I guess I'll close the WHOIS discussion for now. I'm sure we will be re-opening it.

To those who have just come back after not being here for a year, we didn't spend all year talking about WHOIS.

[ Laughter ]

>>AVRI DORIA: Although the working group did. I know it may seem a little bit like deja vu.

>>CHUCK GOMES: Just one final comment, and I will bring this up during our -- what's it called? The new issues that we are going to talk about at the end of the agenda today. Because I think that there's a totally different WHOIS issue that we can talk about at the time, and that's the protocol.

>>AVRI DORIA: Okay.

Thank you.

Okay so I'll end the WHOIS proposals.