

**WHOIS Working Group
Teleconference
TRANSCRIPTION
Wednesday 14 June 2007
13:30 UTC**

Note: The following is the output of transcribing from an audio recording of the WHOIS Working Group teleconference on June 14 2007, at 13:30 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:
<http://audio.icann.org/gnso/whois-wg-20070614.mp3>

<http://gnso.icann.org/calendar/#jun>

Attendance:

Philip Sheppard - WHOIS wg chair

Vittorio Bertola - observer

Patrick Cain - observer

Bertrand de la Chapelle

Steve Delbianco - CBUC

Avri Doria - Nom Com appointee to Council

Bertrand de la Chapelle

Wout de Natris - observer

David Fares - CBUC

Christopher Gibson - observer

Doug Isenberg - IPC

Susan Kawaguchi - CBUC

Dan Krimm - NCUC

David Maher - registry

Hope Melhman - observer

Milton Mueller NCUC chair - wg chair

Margie Milam - Registrar/IPC

Kari Moeller - observer

Richard Padilla - observer

Ross Rader - registrar

Kristina Rosette - IPC

Melissa Rotunno - observer

Adam Scoville - observer

Suzanne Sene - observer

Ken Stubbs - registry constituency

Michael Warnecke - observer

absent apologies:

Jon Bing - Nom Com appointee to Council, chair sub group C

Steve Metalitz - IPC

Jon Nevett - registrar

ICANN Staff:

Maria Farrell - GNSO Policy Officer

Glen de Saint Géry - GNSO Secretariat

Coordinator: The recording has now started, sir.

Philip Sheppard: Thank you very much.

Okay, we've got about 25 participants on the call and your names will be included in the report listing.

And so, what I'm trying to do today really I think was - there's two things.

One to - just to go through in sections the first draft report that we've seen. We'll take a few clarifying questions on that and see whether some changes we need to make this thing - instruct to help us going forward, and then we'll try to identify I think from that what are going to

be the most useful work items for our next meeting which will be the physical meeting in Puerto Rico.

And so, starting to form, you know, a list of what those may be which will then help inform the agenda that I set for that meeting.

So, if I may, we will kick off in that regard, and just as I say most - first of all go through the report itself where I thought there was a couple of good suggestions made in terms of the tightening of sections there which I think we'll probably adapt for the next version where the current report was divided into most currently titled good faith and sufficient systems which is really supposed to be describing the (set) of the process and structure as it should look.

And then further section is certainly what happens to the problem and if you want to do something about it. And that leads to other questions of what subsequently may even go wrong with that process.

But perhaps making those - that tightening more explicit something like process and structure and enforcement in terms of if it's a problem, what is the role of the OPoC et cetera. Should - maybe the way to go or something we may make that.

That changed.

Well, having said, if we look at the Section Entitled 1A Registration in the first chunk of that where there is board agreement published in the report about the possibility and implication of distinction in legal and actual persons, my sense is, that there was no further discussion on that and that is indeed an agreed chunk.

Please speak up now if you think any differently.

Okay.

Now...

Man: Just a minor point.

Philip Sheppard: Yes.

Man: In the report under retained disclosure there is a footnote and the footnote is empty. Was there supposed to be some kind of qualifying language in there or is that just (unintelligible)?

Maria Farrell: And, yes, Philip, sorry, it's Maria here.

Originally, that said that subgroup C had foreseen that there's going to be some kind of less data displayed and that makes sense in subgroup C's report. So I'll just check and see if it makes sense to reproduce that or if it's implicit.

Philip Sheppard: All right. Yes, it's a copy and paste from that report and the footnote didn't come over.

But I think that note I think clearly help - terms defined as we move on.

Now, one query that came out after that which is quite an important question was retained disclosure implies ability over a (unintelligible) to nominate and OPoC which makes sense.

Although my assumption has been - and perhaps I need this testing, in it's - in whatever new system we had there would be an OPoC for everybody.

And does anybody disagree with that?

So, regardless of your legal person, natural person status you would be asked anyway to have an OPoC. That strike me as being simply a clarifying simplification rather than anything else.

But it's a downside to that.

Dan Krimm: Philip, this is Dan.

I would think that the only other circumstances would be when the registered name holder decides to act as their own OPoC.

Philip Sheppard: Yes indeed, yeah.

That's - okay, that's special case over OPoC but that's fine. Yeah.

I mean, that's taken care of later in the report

Anything else?

((Crosstalk))

Philip Sheppard: Go ahead.

Dan Krimm: You know, I think that the - we talked a lot on workgroup A about the enforceability and what happens if it goes wrong and how we have the obligation upon the OPoC to do what it must do whatever that may be.

One possibility that was raised was accreditation of the way to get a contract between one of - between ICANN or one of the parties that it regulates, probably the registrar and the OPoC, that is a lot simpler if we're in the kind of universe where the OPoC is only the kinds of services - kind of like we see for the big proxy services now where the - where they're mainly offered by registrars or their related entities.

And it's a relatively finite number of OPoCs, I would imagine that for instance corporate corporations would have their own IT departments managing their domains and the ability to get that kind of contractual hook which maybe necessary for enforceability may depend on not having to regulate all those kinds of registrants who are probably outside of the realm of the kinds of folks to whom that the privacy aspect of the OPoC would apply because they're - because their a corporation.

So, if we can keep those folks who are to some degree outside of the range of who we're trying to protect from having to name an OPoC, then ICANN doesn't have to regulate it and that could make things a lot simpler there.

Philip Sheppard: Okay. That's interesting observation.

If I - it also leads on something I'll kind of raise later because it comes up in report indeed about - precisely what you mentioned, the idea of

whether or not you'd have OPoC accredited in any way in the scalability aspects of that.

And that struck me that maybe also it may actually be a subject for looking out further in (San Juan) to decide one way or the other what looks practical.

And my instinct was, that seem to be a step beyond where I think the (unintelligible) this is where my idea have come from but it's something that can be aired in terms of pros and cons.

Does that seem like a reasonable thing to have in one of our list of possible topics for our next discussion?

Okay. I take your silence as consent.

So, moving on from that, we then have the section to do with commercial and noncommercial.

And I think, perhaps the wording needs to be read very carefully of the current reporting terms on what was agreed and what comes after the statement agreed. Because I think what was agreed is things like, this distinction is more problematic in terms of the early distinction and some condition - and some statements within conditional upon solving some of those problems.

And my feeling was the - certainly the subgroup that discussed this was happier with the distinction of legal and natural persons and it going down this route leads to some issues. And I saw there was some discussion on the list about that as well.

I mean, my feeling is, either we should have move that to a - to the back of the report saying it was discussed and deemed impractical or we need to isolate it as an area for more work to determine how those distinctions could be made and enforced. And I think we'll probably be looking at the people who want to do that to go away, think about it and come back with those ideas.

So, any feeling as to what's the best way to move forward on on that section, we've got the option of just noting it and moving on or doing some more work if possible to try to see how that distinction can be made, something that can be implemented.

Christopher Gibson: Yeah. Hi. This is Chris.

I think it's important to leave it in the report and not to lose the benefit of the thinking that's gone on. I understand that there's some activity on the ListServ, I've been involved in one or two submissions since then above care drives and levels of support, but I do think it's important, that it'd be in there because we did spend a fair amount of time on it and there's some good thinking in there that should be expressed in the report.

Milton Mueller: This is Milton. I'd like to get in the queue.

Philip Sheppard: Okay. Milton.

Chris, just before you go away, it wouldn't be lost in the report,

What I'm suggesting really is that - I mean, to me, I will find the report much more readable if we have what we'd like you to all agree upon upfront in other things that weren't agreed or work and options that went no further appeared later. But that's just my own desire for consistency and readability.

I mean, if it stays there - I mean, are - are you, Chris, saying, you'll be - you'd like to do more work in terms of the implementation now or are you happy that it stays in this current form.

((Crosstalk))

Christopher Gibson: Yeah. I think that it - because as report report this and how it's put together there of course mixtures of - that it's organized according to subject matter I think and I think it make sense. And then there's, you know, a debate about whether different particular provisions should reflect the agreed support or could be determined on alternative position.

But, you know, it logically makes sense that it varies in the same place where the other subgroups see things where it's considered and, you know, unless you're going to take all of the agreed things in the various parts and leave them (unintelligible) then that's a much - that's a...

((Crosstalk))

Philip Sheppard: That was - sorry, yes. That was my thinking in terms of doing that if we end up, you know, or having a vision as to how the thing would now look.

Yeah.

Christopher Gibson: Yeah. I think for now I just have to wait until I see how you pull all that forth into the (reads), but right now if it was more or less organized according to contents and substantive matters I'd say this is viable.

And of course I'm certainly happy to further on this particular issue.

Philip Sheppard: Okay. Thanks.

Christopher Gibson: Yup.

David Fares: Philip?

Philip Sheppard: Yes?

David Fares: This is David Fares. I was late in joining, I got stuck in a meeting, but I want to let you know I've joined.

Philip Sheppard: Okay, David, thank you very much.

Milton, you're next to speak.

Milton Mueller: Yeah, Philip, I really like the way you framed the alternative just before the prior exchange between you and Chris which is that, really the legal natural person seems to be something that we can agree on.

And my very strong feeling is that we don't want to encourage the group to work (specifically) on the commercial, noncommercial distinction.

I think you all know my position on that but that's not too much the point here. The point is one of diminishing returns in terms of we, you know, it's a - it can be very complicated and demanding and what has - operationalizing it would become extremely bureaucratic and complicated in the benefit.

And that benefit of that relative to the legal versus natural persons distinction I see as being minor. In fact I see it as a step backwards because of the uncertainty it creates and the opportunities - for harassment that it creates.

So, I really want to get that out of the report. Unless we can determine now or in the next couple of calls that there's really enough strong support from making that distinction among the wide band of constituencies, I think we just have to push it to the back and say, you know, the group could not agree to go down that road.

Philip Sheppard: Okay. Other comments on this.

Ross Rader: This is Ross Rader.

Philip Sheppard: Yeah, (Ross).

Ross Rader: Okay, thanks.

I've got three short remarks and maybe (unintelligible) could correct me if I'm wrong, but I think that from as EU privacy point the naming of the natural person even in a public domain name registration is forbidden by EU privacy law.

And the second is that as an enforcer we enforce - spend in spy
ware...

((Crosstalk))

Philip Sheppard: Just on your first point, what do you...

Ross Rader: That if...

Philip Sheppard: What's the implication of what you're saying?

((Crosstalk))

Philip Sheppard: ...that you're interpretation of EU law, is it even having a natural
persons...

Ross Rader: The natural person name in - say, Whois the helpdesk is, who should
you call when you put in a name there.

Philip Sheppard: Yeah.

Ross Rader: That is forbidden. So, you should have a helpdesk or something like
that.

So it's not a major distinction but I think it's important. If I'm wrong I
hope that that's wrong and correct me because I'm not a privacy expert
as you know.

Philip Sheppard: But isn't that - I mean, if you - if- when providing that data you consent to how it will be used. Does that - do that make it okay?

Ross Rader: That is what I don't know. This is something I heard which I would like to just share with you because I think that might already be a problem. But the distinction between private and public is something which is fine by me.

Philip Sheppard: Yeah. Okay. Fine.

Ross Rader: Okay.

Philip Sheppard: You're second point, (Ross).

Ross Rader: Okay. So, second point is that, (unintelligible) Netherlands and probably all over Europe we also enforce ideological and (unintelligible) so that means that the distinction between non-commercial and commercial activities is something which we also look at.

So, as an enforcement side we should also need full disclosure of non-commercial activity.

And the third one is what we are basically talking about, the guise who (also upskate) everything. So, the legal parties with commercial interest - among commercial interest will probably all give their correct data.

So my question is more or less, if somebody started and at the same time registered 10,000 names at the same time which look more or

less the same, that would be more suspicious if he would say, "I'm a natural person and I want 10,000 Web sites or domain names." That should ring a bell also when somebody is registering that.

I think that would be more important to look at than the distinction to be a commercial and noncommercial because I don't think...

Philip Sheppard: Right.

Ross Rader: ... - that's - for us it isn't an issue.

Philip Sheppard: Uh-huh. Okay.

Ross Rader: So that's what I would like to add to this thing.

Philip Sheppard: Yes. Thank you.

Anyway, those are comments on this issue, the commercial and noncommercial and whether or not we need further work.

Adam Scoville: Adam Scoville.

Christopher Gibson: Chris Gibson.

Philip Sheppard: Adam and Chris. Anybody else?

Okay.

Adam first.

Adam Scoville: Just a comment on - in terms of what the report will look like if we sort of only include those things that everyone agrees on, I think we'll probably end up with a report that lacks what basically everyone will regard as different/necessary elements and therefore will be a report that on the whole no one can support. I mean, I'm not sure that we...

((Crosstalk))

Adam Scoville: ..., you know, I mean, I think that there are different aspects that maybe sort of necessary for this compromise and it will be a crippled system. So I guess I would just caution against that and just briefly to comment on the substance of the commercial/non commercial distinction.

I didn't get some (feel) to different purpose than the legal versus natural person because once a (unintelligible) to say, "Oh well, gosh, I've got this big business. But, oh, yes, all the domain names happen to be owned by me personally." And you can structure that as you wish, that's also a distinction that makes sense that you can - that can be easily incorporated at the time of registration.

But after the fact - after the domain name has come into use, that's when the commercial/noncommercial comes into play because even if someone says, "Okay," well, you know Amazon.com has really registered all of their domain names to just be those personally. You can look and say, well these are being used for - quite essentially for a business and it allows you to get behind that sham later on.

So, I think they both have a place...

Philip Sheppard: Right. But - I mean, the question that is asked there is, are there any merit in having a more complex self declaration with this sort of, you know, legal and natural commercial and noncommercial grid given the bad guys may lie anyway so they didn't provide you (unintelligible) and the good guys just tell you what you now really.

Adam Scoville: Well, that, you know, you then look and if there's, you know, in Amazon.com or a site that's filled with paid advertising on it, then you have the ability afterwards to uncover that distinction, that lie, in a way that you don't have with the legal natural persons because one can simply say, "Well, no, it is in fact the case that just be - just owns all of them at the Amazon.com domain name."

You can never disprove that falls assertions in a lot of ways on the legal versus natural person side where you have the potential for doing so.

You know, even if there is a process involved you have the potential for doing so on the commercial/noncommercial side.

((Crosstalk))

Man: Okay.

Ross Rader: Do I have a - can I ask a quick question, Adam?

Adam Scoville: Anytime, (Ross).

Ross Rader: Okay.

So, suppose you're going to challenge somebody who claim to be a legal person or a natural person, I'm sorry, and that you discovered that they're running an Amazon-like obviously highly commercial site, what do you need in terms of him checking that off when he registers the domain name? What do you need that for?

It's obvious you have the documented evidence that he's commercial and that becomes an argument that it used in commerce and of course that has legal implications in the US as far as I understand it.

So, what are you gaining by making people check that off when they register the name?

Adam Scoville: You're gaining the ability to enforce it afterwards.

Ross Rader: So, are you going to enforce it just by looking at the Web site and proving that they are engaged in commerce?

Adam Scoville: Okay. So, if I (join a stand) that you would have - that you wouldn't necessarily have to self-declare the commercial/noncommercial at the time of registration, but that the fact that it's being used for commercial activities would kick you out of the OPoC later on. Is that what you're saying?

((Crosstalk))

Philip Sheppard: It does play into the latter part or later part of the report where it's talking about, you know, what are the grounds by which you may be looking for the data to be revealed or whatever.

So, I understand they're implications on that but I think - anyway...

((Crosstalk))

David Fares: Yeah, this is David, can I just ask a question on that quickly. I'm sorry.

Adam Scoville: And I'm sorry that I can't respond anymore on that. I have a screaming baby in the background...

((Crosstalk))

Philip Sheppard: Okay, Adam...

((Crosstalk))

Adam Scoville: ...I apologize.

Philip Sheppard: ...(unintelligible) go there.

In that case, I'll put you at the bottom of the queue after (Chris) if I may.

Man: Sure that's fine.

Christopher Gibson: Yeah, just three quick points.

One, you know, as to the last point that Milton made, you know, what you're - I don't know if that's what you're gaining but one of the significance would be, if this is someone did on Day 1, tick a box that says they're involving commercial activities that would have

consequences from Day 1 on what level of, you know, information and data is exposed or more exposed and - as opposed to retained disclosures.

So, it would have some possibility from Day 1 of changing what is available in an OPoC type system.

Two, real quickly, on the question about EU privacy, well, one that thing that I thought makes it a little bit less clear about what the position would be there is that, you know, we submitted in the subgroup C information about the policy for (Dinek), for Germany, in which they consider for example all domain name registrations as "media services" and therefore all of the contact details are exposed for every registration there and not (unintelligible) their system but I found it very interesting to see that it's capable of more than one type of interpretation.

And of course we submitted information about the position of the APEC framework in the Asia Pacific and from other parts of the world for the EU is it the only point of touchtone that we need to consider.

And then, finally, in the question of what to include in the report, I just think, if the purpose of the report is to layout, you know, a number of the different alternatives that were considered in some of the good work that was done then I think you don't want to lose that and say that's why I suggested earlier that if you are trying to rule out alternatives, you know, there's a fair amount of development and detailing in this respect that is there for, you know, future work to be considered.

Man: Uh-huh.

Man: Okay.

Man: Yup.

Philip Sheppard: David.

Ross Rader: Actually Philip, this is (Ross), if you could throw me in the queue that would be great.

Philip Sheppard: Okie-doke.

Ross Rader: Thanks.

Dan Krimm: Philip, this is Dan. Could I get in the queue also?

Philip Sheppard: And Dan. Yup.

((Crosstalk))

Man: It's more of a question to you what - related to the exchange that you had in response you had regarding Milton's questions and Adam's response on enforcement, and that is, if someone identifies or self declares that they are a noncommercial or individual and it later turns out false, that the site is actually being used for commercial purposes, it was somewhat unclear in the report about what the impact would be and what the enforcement capabilities are.

And I know, you said it's later in the report, but it's very material to the discussion we have here...

Man: Uh-huh.

Man: ...in the relevance that this has - and the importance it has. So, it would be helpful if you could just clarify that now.

Philip Sheppard: I think for me it will simply mean that the - it makes the ground for your contact in the OPoC in saying, "I think something is wrong here." Perhaps a bit simpler and clearer rather than having to look at the site or whatever and say (unintelligible) looking at specifically the commercial side, he's ticked that box and maybe that does makes your evidential activity that was easier.

David Fares: But there is no way to then - if there is this disconnect between the self-declaration or actual use of the site there's no way to bring in some kind of enforcement action that would then make the person - make that site unqualified for OPoC and their full contact data being publicly available because it is indeed a commercial site?

Man: They're domain names (David), we're talking about domain names not sites.

David Fares: But it's about how the domain name is being used, isn't it (Ross)?

Ross Rader: You're talking about how the Web site is being used, I don't see what's connecting.

David Fares: But the domain name is - is being used to operate a commercial site.

Philip Sheppard: Well, you know, in the implication that came up from - if that distinction was made commercial/noncommercial as far as the - what came out of C, was that, tick the box on commercial and this whole data is displayed.

Man: Uh-huh.

Philip Sheppard: So that would - that's as far as that went on the subgroup.

Ross Rader: This is (Ross), can I get in the queue, please?

Philip Sheppard: Yeah, (Ross). It's okay, I don't want to spend mass of time on this. It was only a suggestion of moving something in the report. And that was David, it's (Ross) next.

Man: Yeah, I'll actually pass.

Philip Sheppard: Okay. Dan.

Dan Krimm: Yeah. I - the first time I heard about this distinction I've not participated in that particular subgroup. It seemed to me that it was conceptually problematic and I don't see how it could be really worked out namely because commercial and noncommercial is a distinction that applies to activities that can't be cleanly applied to people.

You know, a person may be engaged in commercial or noncommercial activities on a changing basis overtime but the fact there are cases where, people are definitely involved in commercial activities, freelancers, and sole proprietorship consultancies, but I think they

should still have protection of their natural person data and they should choose when to reveal themselves on a commercial basis through their Web site and not necessarily through the domain registration.

So, I think this whole thing is a can of worms and I agree with Milton, I just don't think that we can be very productive in coming up with something that's clearly workable.

Philip Sheppard: Okay. Sure.

I think the - I mean the subgroup indeed made that distinction (unintelligible) right and the legal natural person is a historic fact about the registrant. Commercial or noncommercial is a future activity that may change about the Web site. And so...

((Crosstalk))

Man: Uh-huh. Right.

Philip Sheppard: So they're very different there.

(Of that)...

((Crosstalk))

Man: (Philip)?

Philip Sheppard: ...(for this particular fund).

Yeah?

Bertrand: Philip?

Philip Sheppard: Uh-huh.

Bertrand: This is Bertrand. Sorry I was on the line for a while but I don't know why I couldn't get through. I heard you but I couldn't speak and you probably couldn't hear me.

Could I get in the queue briefly in there?

Philip Sheppard: Yes indeed. I'll put you in the queue

Okay. (Ross), you're first.

Ross Rader: Yes, thank you.

Just to complicate matters we have come to distinction of course in our law between natural person and - are they called the legal person?

Man: Legal, yeah.

Ross Rader: Everything being - Dan said something about this, if you are a one-man business you're a natural person (unintelligible), they're not a legal person. So, that means that if you have a Web site you will register as a natural person.

Man: Uh-huh.

Ross Rader: That goes for - their distinction - I can't explain in English but even some sort of companies with people working for them are still natural persons because of the way they're set up so that would make it very complicated.

Then, a second degree-like commercial/noncommercial is something which you (unintelligible) would make it apparent whether you use it - the Web site for commercial way or not.

What - the next step is what Dan said and I think that's very important. If you're a one-man business then you would have to put your name in as a private person and your private address and everything and that's probably the thing we...

Man: Uh-huh.

Man: ...are trying to avoid at then moment in these discussions.

So, that would make it different and probably maybe even different at every country in the world.

Philip Sheppard: Yup. Okay. Thanks.

Bertrand.

Bertrand: Yeah. Thanks.

I've been listening very carefully to the discussion. I would like to introduce an angle here that may help move forward the distinction

between legal and natural is obviously something that everybody agrees is used as an (unintelligible) distinction when you register...

Man: Yeah.

Bertrand: ...you tick the box as a natural person.

I'm beginning to wonder after the discussion whether the distinction between commercial and noncommercial in any case is not only something that applies (unintelligible) and as a trigger to the access mode for our shielded data rather than as a change in the natural display.

What I mean is that, if a person or a natural person is conducting a commercialized activity there might be a rule at the international level that require that this identity is revealed but it can be done by other means.

What is important is that - if there's a commercial activity, either this commercial activity is perfectly illegal or it is illegal or contestable in one way or the other.

What comes next is only the way you can access the data that is shielded in an (unintelligible) manner.

So, it is not something that you tick maybe at first, it's something that can be taken into account in the criteria for accessing the data that is protected for individual persons in the case of the OPoC regime revealed for instance.

Does that make - does that make sense and would that (unintelligible) things?

Philip Sheppard: Yeah, I think that's helpful.

Okay. Let's move on if we may to Section 1B where we'll start to talk about the nature of the OPoCs relationship.

And I think probably what struck me and maybe also (unintelligible) topic came out on Number 3 on that page is page - heading 1.B OPoC relationships with relation to OPoC C services if any. Those being - there was a discussion of those scripts, OPoC administration should be eliminated altogether or whether to continue in its present form.

I think maybe the possible work to do there to flush out and send (1). Everybody happy with that?

Milton Mueller: This is Milton. I think that's a good suggestion, Philip.

Philip Sheppard: Okay.

And proxies.

I mean, that also slips up a bit of - (unintelligible) mentioned earlier was is OPoC an accreditation? Is the question that's raised on Item 4 on that Page which is already tabled as another further work to look at because I think that has a whole bunch of implications if it's accreditation or not.

Man: Philip, (unintelligible) and...

Philip Sheppard: Yeah.

Man: This - the way this 1B is constructed, that - the first three relationship types if you will -- in order words, one, two, and three are all bundled together. Meanwhile there are probably -- quick glance at these slides - - different concepts bundled up in that.

I don't believe that there is agreement across all five bullet points. Perhaps some of those bullets should be broken up for the discussion or in (San Juan).

Philip Sheppard: Okay. So, you're talking particular about what's in 1 and 2 at the moment under those five bullets, are you?

Man: Yeah.

Man: Oh yes. (Now)....

((Crosstalk))

Man: (Unintelligible).

Philip Sheppard: Hello, operator, could you please track down who's speaking loudly and...

((Crosstalk))

Philip Sheppard: ...yeah.

Okay. So that's - which in particular are you concerned on? I mean, some of the early ones seem okay. I would have thought...

((Crosstalk))

Man: The second bullet in one.

Philip Sheppard: Oh, okay.

Man: And the second bullet in two.

Philip Sheppard: All right.

So because the implication of one - so - of Second Bullet One is - what you're saying is why would you need agreement, isn't it just a name that's there and these guys end up with some responsibilities.

Man: I just...

Philip Sheppard: Do they need to acknowledge it, is that your question?

Man: Let's put it this way.

If this were the policy recommendation I wouldn't know what to do with it in order to understand it - in order to implement it we need to understand it.

I don't understand at this point what "agree" means, what OPoC status means, what OPoC status means, what responsibilities mean.

I think responsibility is becoming more clear as we head for the discussion but I'm not sure that we can claim that there's agreement on this since we don't actually understand what...

Philip Sheppard: Okay.

And what other ones...

Man: The second bullet in two.

Philip Sheppard: (Unintelligible) instructions (unintelligible) responsibility. Well that's...

Man: I probably think the registers responsibility, OPoC responsibility.

((Crosstalk))

Philip Sheppard: I think OPoC is going to definitely agree that's not very clear. Yeah.

Man: How much of the, you know, what type of instructions are they looking for?

Philip Sheppard: Okay.

Man: Is that consistent with other policy in this area?

Philip Sheppard: Uh-huh.

Man: You know, for instance, transfers policy.

Philip Sheppard: Yup.

I think that's - so all right.

Now the bottom of the page that's OPoC (unintelligible) ICANN that's the thing we're going to discuss, the question of scalability.

David Fares: Philip, can I ask - Philip, this is David. Can I ask a question about (4.4)?

Philip Sheppard: Yes.

David Fares: On this page it's about the creating some sort or relationships between ICANN and OPoC -- excuse me -- for enforcement of complaints purposes.

In the section on support you say that the (RAA) could be used.

As I understand there's no (privity) between ICANN and the OPoC. So, in the parenthesis it seems to suggest that there registrars can resume liabilities of failure with the OPoC to comply with the responsibility, is that right?

Philip Sheppard: I think that implication of what's there, yes. I mean, it's not flushed out so that's why I'm stressing it as a license to further work.

David Fares: Okay.

Philip Sheppard: Because we need to decide in which way we want to go...

((Crosstalk))

Philip Sheppard: ...lie. I think that's actually the issue.

David Fares: Okay. Great.

Because if it is that it's just as a (RAA), there is no (privity) with the OPoC team, there is no therefore legal relationship between ICANN and the OPoC.

So, I just wanted to put that out there.

Philip Sheppard: Yup.

David Fares: Okay.

Man: I have another question on that one as well Philip. In that, is this intended to apply to all activities by the operation point of contact or only those activities related to the use of the domain name by natural person?

In other words there's the - if there is no holdback on the data, does any of this apply?

Philip Sheppard: Do you mean the relationship with ICANN or the relationship with the registrar?

Man: Both.

Philip Sheppard: Well, the answer is I don't know, which is why I'm suggesting...

Man: Yeah.

Philip Sheppard: ...further work...

Man: Yeah. Yeah. Yeah. Sure.

Philip Sheppard: You're all asking good questions, I think is all I can...

((Crosstalk))

Man: No. No. I wasn't asking you specifically but this one...

((Crosstalk))

Man: ...(is) going to be captured but (unintelligible) but I won't...

Philip Sheppard: Okay.

Yup. That will be captured indeed.

1C. (Unintelligible) anyway, any comments on 1C? I think that was clear-ish though to my mind we've got a working definition I think in the second paragraph there. Or anything else?

((Crosstalk))

Man: ...it's (Steve) in the queue.

Philip Sheppard: (Steve), yeah, anybody else wants to talk on that?

Come in, (Steve).

(Steve): Thank you.

On the 1C the OPoC requirements, Number 2 there is the (reveal) requirements. And the very first sentence under there reads that they have to be capable of revealing the unpublished contact information (unintelligible) to be defined.

And I would ask that we insure in there a follow up on (Bertran's) comments that if we fail to make a commercial/noncommercial distinction when they register a name, one of the instances in which reveal - could be triggered quickly is if a natural person and entity use an OPoC and then begin to do a commercial activity.

Man: Uh-huh.

(Steve): That the presence of commercial activity could be easily demonstrated by the requestor and that that would trigger an immediate reveal and make that distinction because it's not necessarily a legal request, it is an information request of contact information that is not protected under the European Privacy Law because at this point that their natural entity is engaging in commercial use. At least at the insistence of the requestor.

Philip Sheppard: All right. I suggest you feed that in to the question, perhaps in text of the - appropriately where that's best raised.

Man: And Bertrand, would that be something you would prefer to do since you brought the point up?

Bertrand: If I may comment just briefly.

Philip Sheppard: Yeah. Sure. Sure. But I'm not trying to debate issues here. I'm just trying to create a list of where we need to do further work and what we'll be doing in (10 o'clock).

Man: And I have one of those for you Philip.

Philip Sheppard: Okay. Bertrand, carry on then.

((Crosstalk))

Bertrand: Yeah, okay.

Now, I just wanted to remind or recall the difference or the distinction I was making in my previous comment between normal completely legal activity and the - potentially infringing or illegal activity.

I think if we go on that route, there must be a distinction of that sort kept in mind because we will have to discuss points and see if the suggestion - that work just made is something we agree upon. That for instance, as soon as the activity is deemed commercial, information should be revealed in any case or whether it is only revealed under certain circumstances or that's all I think.

But I think, if we go in the route of having the commercial activity as a trigger for access, we need to have the distinction between commercial legal activity and cases of infringement in mind in any case.

Philip Sheppard: Yeah. I think you arrogantly summed up the complexity of that route,
Bertrand, Thank you.

Dan Krimm: I'd also like to get in the queue. This is Dan.

Philip Sheppard: Yes.

We've got about ten minutes of this call to go so I hope if you decide to
be in the queue is to make suggestions to further work items rather
than debate issues.

Man: Yeah.

Philip Sheppard: But do carry on.

Man: Okay. I just want to return to a point I made on the list which is...

Philip Sheppard: (Unintelligible) queue before you.

((Crosstalk))

Man: Thanks, Phil.

The question I have here is to whether or not the second paragraph of
1C that starts with illegal request is defined as dot dot dot, whether
that's meant to include all demand letters and whether or not wrongful
activity is defined by wrongful activity in general or wrongful activity
related to these (unintelligible).

Man: Uh-huh.

Philip Sheppard: Yup. I think that's a good question and identify further work indeed.

Yup, Dan.

Dan Krimm: I just want to reiterate the point I made on the list which is, that this could duplicate some of the access considerations...

Philip Sheppard: Yes.

Man: ...that we were considering in subgroup B and that I don't know that we need to duplicate them in more than one way.

Philip Sheppard: Yup. Okay.

It may well be something we can try to iron out. Of course that one was a few changes in this report as to perhaps shove areas that look to be very similar together in the report so we can - and take them as one.

Moving on if we may to the next page - I had a question under remedy, but it seems to be an either-or to the report.

The OPoC has a sufficient level of access - permission level to remove content or disable processes or authorization from the name holder to direct the (greatest) or take steps to resolve the problem. That strikes me as also something that we need to think about in that regardless of what remedy may be sought at who is going to be the actor taking that remedy and I think that's something that has only been hypothesized so far.

Does that probably sound about right?

Man: Yes. Yes.

Philip Sheppard: Okay. So...

((Crosstalk))

Philip Sheppard: ...in terms of - let's just say, OPoC as actor or communicator.

Man: And Philip, I have one more on this...

Philip Sheppard: Yeah, go ahead.

Man: ...one here.

It's really specific to the box that comes next on that page but...

Philip Sheppard: Yup.

Man: ...generally a lot of this document suffers, so I'll bring it up now in - it's
- a lot of these are implementation requirements as opposed to policy
statements that would be...

Philip Sheppard: Yeah.

Man: ...extremely useful if we were able to rearrange this document
somewhat such that we have a clear statement of what the policy
recommendations might be and then move all of the implementation
and notation off to an appendix...

Philip Sheppard: Yup.

Man: ...that can be considered at a future date.

Philip Sheppard: Okay. Thanks. Excellent suggestion.

Man: And certainly the - that that box under 3 is the best example of what is pure implementation.

Philip Sheppard: Yeah. So maybe that's why it's in a box but (unintelligible).

Now, moving on past those charts we come on to the access section there and I think there were perhaps (unintelligible) one of which I think is this question redundancy is this idea of (Type 1) access about a particular request of certain domains? Is that basically the same thing as an OPoC request as already foreseeing and I think those could be usefully convoluted when we first - next discuss them.

And my second question is - and probably looking to the registrars or technicians in this, is that in the proposals that we received in the subgroup on that, they were sort of whole series of fairly complete proposals where the - and who might have access and then how might access be granted which will be in a implementation method. Maybe it's quite useful to know if there are particular methods of implementation such as, you know, separate databases versus encrypted fields, which encryption keys are given that would be preferred by you guys in a way that this may do it because that might help sort of reverse engineer questions in terms of, then what are the

mechanics of access being granted and then simply leaves aside because you assume the mechanism works for everybody.

Simply leaves that open, that one of the remaining questions in terms of who we're actually granting access to and under what circumstances.

So (who's a something) that you think that you may be able to come forward with proposals on and so given that bulk access to buy certain parties might be granted in an OPoC world, the discussion in terms of either, you know, one option is this would be the best way to do it or options as to how that might work that seem to have reached agreement within your community.

He says addressing registrars on the call.

Man: Okay. I can speak on behalf of (unintelligible).

Philip Sheppard: Okay.

Man: I would not be interested in participating in it.

Philip Sheppard: Why?

Man: Because the question presumes an outcome that is completely inconsistent with my position.

Man: Okay.

((Crosstalk))

Man: Philip I can address a couple of issues here.

Philip Sheppard: Yup.

Man: (Unintelligible) that Type 1 access really is something that's completely compatible with the reveal function of the OPoC as discussed by subgroup A.

Philip Sheppard: Yup.

Man: So, I think what we need to do is simply take the level of agreements carried over from subgroup B in terms of who should have that kind of access and apply it and merge the discussion there with the subgroup A reveal functions and perhaps that might be - since that's possibly somewhat complicated , it might be left to (San Juan).

And with respect to the other question you raised, we did have this discussion of the blob proposal. I don't know if you remember that.

Philip Sheppard: Yes.

Man: But that is the idea that the data would be published universally but the hidden part would be descriptive and legitimate parties would get a description key and the only people we could agree on that would get that possibly would be law enforcement agencies. And we had - and then that discussion kind of floundered on implementation issues in terms of how feasible was it to contain the distribution of those keys and would every registrar have a different key.

So, we got really sidetracked into some very detailed and technical implementation issues when we started going down that line.

Philip Sheppard: Okay.

((Crosstalk))

Philip Sheppard: All right. You know, that's interesting too. Not anymore but we need to find other registrars who were willing to do that.

What do we have? List of that section that talks about the (unintelligible) from the subgroup B report.

And then towards the end of that just before Section 2 is a whole series of bullets to be discussed or determined which I think also probably lead us to some (San Juan) discussions as well about the signing which is what need - who might have access I think and we probably need to look at this issue in terms of private actors and access and what mechanism there maybe and they would want to propose comes there.

So, there are different questions already in this report...

(Susan): Philip, excuse me, this is (Susan), could I join in on this?

Philip Sheppard: Of course. Yes.

(Susan): Thank you.

Just to make a comment here, I certainly appreciate the way that last statement under agreed. I think it is Page 14?

Man: Uh-huh.

(Susan): Global certification mechanisms should be explored in greater detail but a basic institutional framework may already exist.

I think this is certainly an improvement over the previous section that sounded a little more certain because from our perspective it is not our understanding at all that (Interpol) is structured and prepared to take this task on. It's a very considerable task.

Nor do we find it feasible in the United States that there would be a national system easily set up.

So, I did want to flag that and to commend the drafters for softening that a little bit because I think that is quite problematic.

And then, if I could ask a question. On the next page at the top there is a note indicating that ICANN staff has engaged expertise to explore the issue of global certification mechanisms for law enforcement agencies.

And if I could get some insight as to what that refers to that would be very helpful.

Thank you.

Philip Sheppard: I guess Maria can help on that.

Maria Farrell: Sure. Happy too.

We basically engage a consultant to start looking at what are the mechanisms currently that are used if indeed any exist to look at recognition - mutual of law enforcement agencies across the boarder.

The work is very, very early and in fact I just had a short check in call with the person who just literally started it last week.

We don't have anything to report yet but I hope we will later on in the group.

(Susan): Thank you.

Philip Sheppard: Okay. So, we're just on - I got down as Page 16 which is the end of that Section 1 - as - (unintelligible) for further discussion.

So, going on Section 2 which I said would probably be retitlings and what falls out of there -- naturally, further discussion.

The questions that are raised in terms of ICANN is enforced as last resort. That's a little bit wrapped up in concept with OPoC and accreditation and then I think it also becomes - also part of the discussion in terms of the remedy function - I think the whole issue is then of what happens when the OPoC fails to perform is probably another useful issue (unintelligible) subsets of what we're currently doing.

And I think that brings us to the end of the report as currently is.

The rest bits, I think subgroup reports which may still be set into the next situation of this past discussions here and I think for the next time around we might have it line numbered or some other indexing to make it easier to discuss.

But I think, probably, I've got - at least about six or seven things here as topics for (San Juan). So I will try and structure those into some meaningful agenda and get it out to the (assistants) as soon as possible.

We're just coming up to over an hour so I think it's probably a good time to close the call and see what other suggestions in terms of where you think there are gaps in the discussion on when you see what is (unintelligible) anything, "Hey, this is more important, can we have that instead."

And by all means wrap to that on the list and we'll see if we can accommodate that given the morning and half of the afternoon, I think we have discussed these things as a group in (San Juan).

And we will get a new iteration of this report out for then for us to be looking out of that part of that work to make it more easy to follow and structure it.

And on that note, I will thank you all very much for your help and contributions today and look forward to seeing some of you at least in - well, and certainly for me in better climate.

Man: Philip, when is our next call after (San Juan)?

Philip Sheppard: It will be probably whatever the sensible Wednesday is following (San Juan) or maybe ten days or so after. Probably not the Wednesday immediately following because I guess we may have work and a new report version coming out that maybe will be easy to look at so...

((Crosstalk))

Man: ...because I think this is (unintelligible) shift here threw some of us for a loop.

Philip Sheppard: Yeah, there are - today's shift was something (on site) that was given by myself. We would - Wednesday would be our default days so we're moving back to Wednesdays of where we can.

Okie doke. Thank you very much everybody.

Woman: Thanks folks.

Man: Good bye.

((Crosstalk))

Man: Bye-bye.

END