

WHOIS Study Group

Teleconference

TRANSCRIPTION

Tuesday 15 April 2008 15:00 UTC

Note: The following is the output of transcribing from an audio recording of the WHOIS Study Group teleconference on April 15, 2008, at 15:00 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/gnso-whois-study-20080415.mp3>

on page:

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

Present:

Lee Eulgen (IPC), Steve Metalitz (IPC), Steve DelBianco (CBUC), Jordi Iparraguirre (RyC), David Maher (RyC), James Bladel (RRC), Tim Ruiz (RRC), Stéphane van Gelder(RRC), Krista Papac (RRC), Wendy Seltzer ALAC Liaison to ICANN Board, Danny Younger, Beau Brendler,

Staff: Liz Gasster, Patrick Jones, Glen de Saint G ry GNSO Secretariat,

Absent, apologies:

Ken Stubbs (RyC)

Liz Gasster's Notes from call can be found at the end of the transcript

Coordinator: Excuse me, (David Maher) has joined.

Glen de Saint Gery: Welcome, (David).

(David Maher): Hi, Glen.

Glen de Saint Gery: We've got...

Man: Hi, (David).

Glen de Saint Gery: Jordion the line here.

Coordinator: Excuse me, (Steven Delbianco) is now joining.

Glen de Saint Gery: Hi, (Steve), welcome.

(Steve Delbianco): Hi, that was you, Glen?

Glen de Saint Gery: Yes. And we've got (David) and Jordi on the line.

Man: Hi.

Man: Thank you.

Coordinator: Excuse me, Stéphane van Gelder now joined.

Coordinator: Excuse me, (Liz Gaster) has now joined.

Glen de Saint Gery: Hi, (Liz).

(Liz): Hi, Glen.

Glen de Saint Gery: (Liz), we have already (Jordi), (David Maher), (Steve Delbianco),
(James Bladel) and Stéphane van Gelder

(Liz): Wonderful, good. Okay, so we've still got about 11 we're expecting so we'll give it a few minutes.

Coordinator: Excuse me, Krista Papac now joins.

Glen de Saint Gery: Welcome, Krista.

Krista Papac Hi, thank you.

Glen de Saint Gery: We still haven't anybody from ISP or IPC. And nobody from the non-commercial is on yet. We've got (Lee) who just joined – welcome, (Lee).

(Lee): Hello.

Glen de Saint Gery: And yes, we're still waiting for an ISP if you want to have a sort of...

(Liz): Glen, I show we're still – I mean, from just the members that aren't on yet – ten. (Steve Metalitz), (Tony Harris), (Tim), (PaulStahura), (Eric), (Danny), (Beau) and (Wendy). But it's still a pretty good – big group that's not on yet so we'll give it another couple minutes and then we'll get started.

Coordinator: Excuse me, (Wendy Selzer) now joined.

Glen de Saint Gery: Hi, (Wendy).

(Wendy Selzer): Hello.

(Liz): Just giving it another minute, (Wendy), for another couple of folks to join and then we'll get started.

(Wendy Seltzer): Thanks. And I apologize in advance, I'm going to have to leave early.

(Liz): I think a couple folks are in that situation. Just give it one more minute.

Coordinator: Excuse me, (Beau Brendler) now joins.

Glen de Saint Gery: (Beau Brendler).

(Beau Brendler): Hello.

(Liz): Hello, we're just waiting for a few more to gather and we'll get started.

Coordinator: Excuse me, (Patrick Jones) is now joined.

(Liz): Hi, (Patrick).

(Patrick Jones): Hello.

(Liz): Just getting started. I think in fact, I show five after the hour so why don't we get started. Anyone else just joined? Okay.

Glen de Saint Gery: I'll let you know if somebody joins in.

(Liz): Glen, would you just run through who's on the call again please?

Glen de Saint Gery: And I just asked them to start the recording please?

(Liz): Yes, that'd be great.

Coordinator: Excuse me, this is the operator. At this time I would just like to inform you that today's call is being recorded. If you do have any objections, you may disconnect at this time. Thank you, you may begin.

(Liz): Okay, so this is (Liz Gaster). Let's get started and we have a pretty good size group on the phone so I'm going to ask you to just mention your name when you speak.

Glen de Saint Gery: (unintelligible) (Liz).

(Liz Gaster): Yes, please.

Glen de Saint Gery: (Jordi Iparraguirre

Coordinator: Excuse me, (Danny Younger) now joins.

Glen de Saint Gery: (David Maher), (Steve Delbianco), (James Bladel Stéphane van Gelder), (Krista Papac), (Lee Eulgen), (Wendy Seltzer), (Beau Brendler), (Patrick Jones), (Danny Younger) and (Liz Gaster).

(Liz Gaster): Did we miss anyone? Okay great. So let's go ahead and get started. Once again, I'm just going to ask anyone if they want to volunteer to chair this on the de facto chair but I'm happy to give the reins to another person or couple chairs or whatever that's available at anytime. So you can send me a note or you can raise your hand.

(Tim): This is (Tim) joining.

(Liz Gaster): Okay, (Ken), good. If you'd like to, it's just kind of a de facto arrangement here. Everyone should have read through the summary

of (who is) studies, report on public suggestions of further studies of (who is) that (Laurie Craner) and I prepared.

And I had suggested that people identify their favorites, if you will, in emails to me by Friday. I got emails from three people, one of whom – (Jordy), you posted yours to the group. Steve Metalitz has forwarded it to me so I'm going to try to send this out to the full group.

And also, (Lee), is it okay if I send your note out to the full group?

(Lee): Of course, yeah.

(Liz): Okay, actually let's find the – Glen, what's the name of the list so I send it out to the right group? The just – (who is)? Actually, Glen, I'm going to send it to you if you don't mind and let you send it out.

Glen de Saint Gery: Okay, (Liz), that's fine.

(Liz): Yeah, thanks. So the (Steve Metalitz)'s thoughts will be percolated shortly after we leave. But I didn't get thoughts from everyone so I didn't try to compile anything for the call today. And what I think might make sense is to just ask the three of you to summarize your thoughts for the group at the appropriate time.

We have a lot to cover and a lot of folks on the line. So I want to figure out a way to perceive to make some sense. What I was thinking of doing was not getting into the level of detail that would be called for to discuss each study that was proposed for this call.

But rather do two things; one is to start off by having some time to discuss as a group essentially (Wendy) and (Ken)'s proposal which is not to proceed with any studies at all. There are at least a couple of folks on the call – maybe more, we don't know yet – who have grave reservations about proceeding with any studies of (who is).

And so I want to start off in some kind of a threshold question in whether we proceed to recommend studies or not with some discussion on that topic with this larger group. And you know, maybe spend about five minutes or so on that or longer if that's appropriate. If that's a real – you know, option then we really need to discuss it and see, you know, how many people in the group have that view.

And then I thought if it looks like there are still studies that people think are valuable to do, in other words just a consensus is to proceed is not to do any studies – double negative. But to proceed with studies or considering studies and what I'd like to do is spend the remainder of the time divided equally among sort of the seven categories of studies that have been proposed and talk about the categories and the merits or concerns that you all may have with each of those seven categories as a way of proceeding on this call. So that by the end of the call, the outcome of the call will be a clear understanding of how people overall feel about whether we should proceed with studies of (who is) at all as kind of the special question.

And then assuming that there is a consensus of the group to proceed with looking at specific studies to try to at least get a barometer on of the seven categories of studies that have been proposed where there is support, where there isn't support, what that looks like. And have some kind of gauge by the end of the call about how people feel.

Is that an acceptable way to proceed for today's call? Does anyone have a different suggestion, better suggestion? Okay, so I'm assuming that's okay. Why don't we start then with some discussion on, you know, whether it's necessary to or advisable to proceed with (who is) studies. And I know this is a little repetitious for those who are on the first call but we really didn't have a full crew on that call. And also everyone's had a chance over the last week or so to mull things over.

So if I could ask (Wendy) and (Ken) to just briefly kind of state where you're coming from for the benefit of the whole group. And then maybe we could have some discussion on this question as, you know, does it make sense to proceed with more studies of who is.

Glen de Saint Gery: This is Glen, sorry. (Ken) is not on the line.

(Tim): (Liz)?

(Liz): Sorry?

(Tim): This is (Tim) actually. I think when I announced myself you thought I was (Ken).

(Liz): Oh, okay.

(Tim): I think (Ken) – and I could be mistaken – but I thought (Ken) said he couldn't make it today.

(Liz): Got it – okay.

Glen de Saint Gery: That's what I tried to tell (Liz).

(Liz): Sorry about that. So (Wendy)...

(Wendy): All right, well I will try to briefly restate my concern and some serious concern is that this is really more of a political matter than one of lacking the facts to proceed. And over seven years plus of who is discussions. We haven't seen much that has moved people from the positions that they're constituents is – or that has moved constituents from the positions that they came in with even when we've had individuals who are willing to discuss when it comes back to constituency level discussions.

It's come back to the same stalemate. And I don't see a way that new data is going to change that. And so I would ask the threshold question, can we show about any of the studies that we are proposing that they would if the facts came out one way or the other that they would move the political debate forward.

And if not, ICANN is many things but it's not a research institution. I don't see a point to ICANN spending registrar-derived funds on a bunch of studies that – if they won't contribute meaningfully to the policy-making process.

(Liz): Thanks, (Wendy).

(David Maher): This is (David Maher). Could I get in the queue?

(Liz): Sure and someone just joined I think, too. Who is that?

Steve Metalitz: This is Steve Metalitz.

(Liz): Great.

(Danny): (Liz), put me in the queue as well. This is (Danny).

(Liz): Okay.

(Tim): This is (Tim). Please put me in the queue.

Beau Brendler: Yeah, Beau Brendler. Can you put me in the queue, too?

(Liz): Okay. So who was first? Sorry, I missed the first person.

(David Maher): (David).

(Liz): (David).

(David Maher): (David Maher).

(Liz): Yeah, thanks. I got to get better at this part. (David), please.

(David Maher): Well, just very briefly, I totally agree with what (Wendy) said. I endorse that position.

(Liz): Great. (Danny)?

(Danny): All right, I took a look at the output from the SSAC. And it seems to me that they are calling for a transition from (who) is specifically to the (IRIS) protocol. I know for one that I'm not intimately familiar with everything that (IRIS) has to offer.

I think it would benefit us all to know more about the protocol and what the protocol could imply for policy considerations. I confess that I don't have enough working knowledge about what (IRIS) has to offer.

(Liz): Was that in the – you said it was in the SSAC?

(Danny): Yeah, the SSAC.

(Liz): Okay. So maybe one thing I could do for the next call is ask someone from the SSAC – maybe (Dave Piscatello) – if he could join in to give an overview of that, if that would be useful to the group.

(Steve Delbianco): (Liz), this is (Steve Delbianco). I would say that they should be prepared to speak to what policy measures would be required to adopt the (IRIS) protocol as well. You know, (Danny)'s right. It's good to know what's interesting about the idea but then it would help if staff could weigh in on what it would take to implement something like that.

(Liz): Who implements that? Who would be required to adapt that protocol?

Man: There's already a standard. So now it's just a question of adaption on the part of the different parties.

(Liz): I mean, who are the logical parties? Is that a registrar thing? Is that a...

Man: Both the registry and registrar.

(Liz): Okay. Okay, well why don't I follow up on that.

Man: I think there's two aspects to that though, right? (Danny) – and maybe that's what (guy) was trying to point out was there's a technical aspect to them implementing something like that and then there's the policy implications that might go along with it.

Man: I don't disagree. You're absolutely right.

Man: (Liz), this is (Stephan Vangelda). Can you put me in the queue as well, please?

(Liz): Sure – okay, (Tim), you're next.

(Tim): I just wanted to agree wholeheartedly with (Wendy) and that I have a readout that from what I can see any of these studies that it would produce anything that would change any position of the (take holds) involved to date. And as such, I don't see what we could possibly gain from the further studies except a lot more expense and time on the parts of those involved.

And so again, I agree with (Wendy) 100%.

(Liz): Okay, thank you. Beau ?

Beau : Yes, I actually do not agree with (Wendy) 100%. But I should also tell you that my own organization is putting a questionnaire in the fields probably this week. It will be statistically representative of New York State only because the funding for it is coming from the New York State Attorney General's office.

In there we have five questions on (who is) because our belief at Consumer's Union and Consumer Reports is that we don't necessarily think that there's enough consumer awareness at what (who is) actually is. I've not been involved as long as you have with this debate.

I've only been in ICANN for a year. So though I have read the studies that was sent around, I don't necessarily share everyone's frustration on this. And I do believe that we need to get a better understanding of what actual human beings who are not grouped in categories like registrants and registrars – actually think about the issues.

(Liz): So Beau , this is a survey that will go out to consumers within the state of New York?

Beau : Consumers within the state of New York, yeah. It will be statistically representative of New York State. In other words, like 50% of the survey respondents will be from New York City and then the rest will be spread out across the state so that it, you know, gives us a real sort of statistical representation of New York State's population.

(Liz): And how would you summarize, if you could, the kinds of questions that you're asking about (who is)?

Beau : Yeah, what we're trying to find out is first of all, how many just general consumers in New York State have ever registered a domain name. Then we're trying to find out if they've ever actually heard of (who is) and know what it is. If they've ever tried to use it to help them in some sort of fraud issue because the overall survey – it's about 32 questions – it's not all on (who is). It's mostly about fraud so it'll be within that context.

(Liz): Right. And when would that study roughly be complete? When do you think you'd have results in that study?

Beau : In about – I should say – we want to try to publish is by June. So I would hope to have data back in by the end of May.

(Liz): Okay, thanks.

(Tim): This is (Tim). Can I ask him just a follow up question on that?

(Liz): Sure.

(Tim): To what – you know, in regards to this group then, what studies – are there studies that you feel need to be pursued better than suggested? Or just what – sounds like the one you're doing is going forward, regardless of what this group decides.

Beau : Right – yeah. We've already – yeah, we're doing it.

(Tim): Well I think my question is, is in regards to this group, you know, is there – and the things that we're actually contemplating now, you know, does it make sense to move forward with (unintelligible). I think that's the question that we're asking.

Beau : Are you asking me specifically or the group?

(Liz): Yeah, that's the question that's out there, right so...

Man: Yeah, I think...

(Liz): If you have a response, feel free. Okay, let's move on then to Stéphane.

(Stephan Vangelda): Yeah, thanks (Liz). Just a question really – I understand from (Wendy)'s comments that she feels that this is a good way of delaying the process even further and generally not doing anything with this whole issue. I'm relatively new to this process as well so like the other person that spoke of not yet being frustrated by it, I'm not frustrated by it yet.

And when I hear (Wendy)'s comments the question that comes to mind is, how do – if we don't do this study for reasons which do seem to be good in terms of delaying the process further, then what does (Wendy) advise we should do to get results on the (who is) issue?

(Liz): (Wendy), do you want to respond?

(Wendy): Sure. My suggestion is that we need to do something to make the issue more salient to everyone and as I've suggested, some setting policies for which there is no longer a demonstration of consensus – nobody can currently agree that the current (who is) is good anymore than they can agree to change it.

And so if we were to censor the policy requiring registries and registrars to make (who is) information publicly available, that would give pressure a time line and pressure on everyone to come to consensus on something – be it the current (who is) or something different or lose it altogether.

And I think that that would advance the policy development process faster than studies which do indeed seem to made to be a tactic of delaying while maintaining the status quo.

(Steve Delbianco): This is (Steve Delbianco), I'd like to get in the queue.

(Liz): Sure (Steve), go ahead. There's no one else so go ahead.

(Steve Delbianco): Great. So I would be – I'm with Net Choice and I'm on the business constituency and I was the author of four of the studies suggestions that were submitted during the public commentary and also a member of the working group on (who is) for (OPAC) versus status quo. And my apologies for not joining the first call but I didn't know I was part of the group until after the call.

(Liz): Yeah, that was our fault, (Steve) – sorry.

(Steve Delbianco): Well I read the transcript carefully and I've listened to the comments and sort of wanted to respond in general. The studies I proposed that I still believe should be continued are studies number 1, number 2 and number 3. And I'll try to explain why.

I've heard what (Wendy) and (Ken) have said about this thing being done for optic purposes – optics or politics. But in my belief, data and findings in fact are far better optics than just say blind assertions or unfounded assumptions that are what is responsible for what the constituency positions.

So it's not just about optics. I really think it's about facts. (Wendy) and others have said that nothing in here is likely to move constituency's

positions because they're sort of frozen. I'd like you to move things forward.

But to that I would ask you all to realize that registrars don't really care much for what constituencies are doing. Registrars have gone ahead and moved. They've moved in great numbers to proxy registration and I think that makes the issue in studies number 2 and 3 very salient – particularly (Wendy) as to whom I'm speaking to is that I think that makes it salient today. How many registrars have moved to proxy?

I realize that this may not move things forward immediately but the first time there is an effort to change policy on (who is) – unless suppose it's the SSAC with regard to an (IRIS). When things begin to shake loose and move, I still think we'd be well served to have fact based findings to see where we go next.

And the studies that I'm speaking of – number 1, number 2 and number 3 – are pretty finely targeted. Number 1 is to try to really access whether there are documented abuses of people's privacy – it results and the data came from (who is) – that was study number 1.

Study number 2 speaks right to this proxy and so does number 3. Study number 2 says it really wants to understand types and availability of proxy services that are available – and I think this is relatively inexpensive study to do. That's to access the availability and the third is to access the demand for proxy registrations – to really figure out how many folks are using it.

And then finally I said with regard to people that do use proxies – are the services doing proxy really complying with the requirement they

have to reveal the registrar's identity when somebody provides them with evidence of actionable sort of tie a bow around the notion how big is proxy, how many people are moving there and are the proxy services respecting their registrar accreditation agreement with regard to revealing the identity when harm is presented to them.

Beau : This is Beau , can I get in the queue?

(Liz): Yes, anyone else in the queue?

(Stephan Vangelda): Yeah, can I get in the queue? Again, (Stephan Vangelda).

(Lee): Yeah, (Lee), I'd like to be in the queue as well.

(Liz): Sorry, two people talking just then, I didn't hear the first – (Tim) and who else?

(Stephan Vangelda): Stéphane.

(Liz): Of course – I mean after Stéphane?

(Lee): (Lee Elgin).

(Liz): And who else?

(Jordy Mitchell): (Jordy Mitchell), I don't know when or where.

(Liz): I've got Beau , Stéphane, (Lee) and (Tim).

(Jordy): And Jordyplease.

(Liz): And Jordi– okay.

(Jordy): Thank you.

(Liz): Beau ?

Beau : I just wanted to say that I support – I’m sorry, I didn’t get the name of the last gentleman – but getting data in the methods that he just described, we would be supportive of and we’d be interested in seeing field data from those studies. So we support those ideas.

(Liz): Thank you – Stéphane?

Stéphane: Yeah, I’d like to say that I support those as well, just I think it was (Steve Delbianco) saying the – giving us those ideas just a moment ago. I do feel that it’s quite important to get some real data from one of the things I posted to the list by email was the fact that from Europe – from a European registrar’s standpoint, we’re often in a situation where we’re forced by law to work private registration, (who is), for example in France when the (unintelligible) was open to individuals.

We had a legal obligation to provide (unintelligible) (who) is for individuals, not for companies but for individuals. And this leads us to find ourselves more and more in a situation where there’s one set of rules that works for GTLEs and another for CTLEs.

One set of rules that works if you’re an American corporation and another if you’re a European corporation. And to be honest, myself as a registrar, I don’t have that much data to base my understanding of

what I should be doing on. I just don't know if I'm breaking the law in France by providing who is privacy on GTLEs or if I'm not. I don't have much data.

(Liz): Okay, thank you. (Lee)?

(Lee): Yeah, for those of you who were on the call last time, I'll try not to bore you with reiterating the same points I made last time. I too agree with (Steve)'s position and I – as you'll see, when you have an opportunity to digest my sort of ranking studies that I forward to (Liz) and I understand that (Liz) and (Glen) have now forward to all of you. I mean, I definitely think highly of (Steve)'s study suggestions.

Again, like some others have expressed, I'm relatively new to participation and ICANN policy making so I'm not sort of frustrated by the process – at least not yet. I appreciate that perspective, I've, you know, that based on (Wendy) and (Ken)'s comments last time that this process has probably seemed never-ending – it's gone on for, you know, over half a decade to try and shape the future of who is.

I however, in looking back at the history of the quote-unquote debate, do agree that, you know, the debate has largely been molded by subjective criteria and I feel like at no time more than the present has there been an opportunity to actually obtain a lot of objective data on a wide variety of areas that will shape the future of (who is).

And I know that in the recent, you know, the last year or two, the debate has largely focused again on the viability of the (OPAC) proposal. But my thought is, is that a lot of these studies that are suggested could lead us in a whole new direction. And could lead us in

a new direction that, you know, would take us away from (OPAC) which, you know, has not been adapted to date and maybe take us in a different direction than some of the proposals that have been floated by (VIPIC) constituents in the past and others.

For instance, one study that I'm particularly enamored of and I have to admit that it's something that came from the impotence where it was a group in which I'm involved. But study suggestion number 15 which has to do with analyzing the use of Port 43 (who is) queries. I mean, that is one I'm interested in, particularly because again – I've heard this expressed throughout the debate. But I don't think there's ever been any comparable data to show that this true.

But one thing that I'm convinced of is that most – there are many unsavory activities that are facilitated by (who is) data, are facilitated using – by virtue of accessing (who is) data via Port 43 rather than – quote – Internet-based access. So you know, what my thought is, is that if that can be proven be true, you know, that might shift the debate. That might help mold policy in the future.

And so far as, you know, as a component of a future sort of global proposal on how to deal with (who is) issues, you know, maybe people end up looking more closely at how Port 43 is used and perhaps, you know, realizing that there might be some loopholes there that could be closed.

Woman: (unintelligible) may I rejoin the queue?

(Liz): Sure – and I've got (Tim) next.

Steve Metalitz: (Liz), this is Steve Metalitz. Could you put me in the queue please?

(Liz): Sure – anybody else?

(Danny): (Danny).

(Liz): Okay. Anyone else? (Tim)?

(Tim): What I don't hear getting addressed and here is a lot of ideas, maybe some of them even sound like good ideas. I think when this can be drilled down we'll find that some of these – some of the data that we're looking for may not be as easily to get as we think.

In other cases, we've done it before. But regardless, what I'm not hearing is how will the collection of this data be likely to change the impact that we've run into over and over again over the last five to six years. And that's what I think needs to be addressed is, you know, a clear picture or clear explanation as to how the question of this data could impact that. And that's what I don't see in any of these suggested reports or studies.

(Liz): Okay, thanks (Tim). (Jordy)?

(Jordy): Yes, just pretty sure because I can't (unintelligible) right now. The (unintelligible) the following; all those studies can be very interesting and then they help us to understand - okay, (unintelligible). (Unintelligible) maybe not right now, applying to the bigregistries.com, dot net and so on.

(Unintelligible) have already said, starting to put some pressure on the country code CLDs – I don't show GTLDs based on safety to European countries. Okay, these are not now (unintelligible) similar but as soon as (unintelligible) doing right now to start offering these kind of data protection, who is data protection services, customers are going to ask for the same on the other domains.

So from my viewpoint, the main object here is not invade on (unintelligible) studies that we done such but keeping in mind that we have an issue which is registries are starting to implement a policy on who and how can access public who is data. This is going to set a de facto standard and this is going to impact what we're going to try to decide here.

So I would propose to please to understand, to work on what that it mean and what do we want to show by the dating of the (who is). And to understand is providing (who is) data to who needs to know and making the life of the registries and (certain magistrates) here and allowing the registrars to sell some data if possible.

And understanding what these kind of local (laws might imply) in order to find the solution. I mean, studies are important and interesting and they help us decide on the domain that not right now we handle this kind of local (unintelligible). But as soon as European companies start to play that, customers are going to start to ask exactly the same on the GTLEs – on the GTLEs.

And we just before (unintelligible) what has been implemented. So that's all. I would (fully support) on a study how to propose a solution on the (as I said, the middle center).

(Liz): Okay. Thanks, (Jordy). (Wendy)?

(Wendy): Thanks. I think many of these sound like very interesting studies and in the abstract, I too would be quite interested in knowing the answers to some of them. But I'm still – and I welcome new participants to the discussion – but I still don't see where the constituencies for whom the policy making ultimately comes are going to change their positions.

Now maybe if, before we did commissioned any studies, we were to hypothesize about possible results on either direction and get some commitments from constituencies. If the study shows X, then you agree, you'll go along with Y. If the study shows Y, you and others agree they'll go along with X.

That might move us some place. But without that, I anticipate that we will spend lots of money and lots of time doing studies and at the end, constituencies will say well, that's very nice but we have these other concerns. And so we don't want to do anything about who is for another seven years.

(Liz): Okay, thank you. (Steve)?

(Wendy): And I apologize, I'm going to have to drop off in a moment.

(Liz): Okay, thank you (Wendy). Steve Metalitz?

Steve Metalitz: Yes, well, you know, if we're in an area where there are no guarantees, I don't think anybody can say that doing these studies will lead to change in policy. And particularly what (Wendy) just suggested, it

would be ironic if we – constituencies bound themselves in advance considering that we're right now having a discussion about these studies and representatives of the constituencies who voted to have these studies are saying the studies are worthless and we shouldn't proceed with it.

So this is now a way to bind the constituencies in advance or even apparently retroactively on funding any of these questions. But I do support what several people, (Steve Delbianco) and (Lee) and others have said. And to point out that one reason why we might have some optimism that some of these studies might lead to – might provide the basis for concrete action is that they're asking different questions than were asked in the previous go-arounds.

This whole issue of the market solution of proxy services or private registration was an issue that was kind of ruled off limits in the last (who is) task force. It was deemed to be out of scope. We couldn't get agreement to study it or to look at it.

And so at least some of these studies – such as the one that (Steve Delbianco) talked about – are really directed at that and at, I think, because we'd be asking a new question we would be getting a new answer and I think that it certainly would provide a factual basis for whatever was decided moving forward.

I can't guarantee that it would lead to any particular change in (who is) policy but I think it could provide factual information that would make for better decision making in this area because it's asking a different question than was asked in the previous years – thank you.

(Liz): Thanks, (Steve). I've got (Danny) next?

(Danny): Last week I had an occasion to speak with my (JEC) representative and was informed that the (JEC) were most certainly come up with a good dozen or so different recommended studies. With that said, if we've got one major group within ICANN that is going to be calling for a study, then it certainly makes sense to accommodate that particular request.

The biggest concern that I have got, of course, is that I don't see the value in establishing a consensus policy on who is. I look at the (CPTLD0 world in which we are not bound by GTLE consensus policies and they seem to be doing just fine. I think perhaps in time we should come to the recognition that if we don't have consensus as a community in the GTLE field that we should consider releasing the registries and registrars from their contractual obligations with respect to (who is) and give them all independently the opportunity to put through whatever they deem to be appropriate.

(Steve Delbianco): I'd like to get in the queue, (Liz). This is (Steve Delbianco).

(Liz): Okay, and then I want to try to key this out to end – figure out what to do next. So, (Steve), go ahead.

(Steve Delbianco): Thank you. Both (Wendy) and (Tim) raised the question that I think is already been answered. They asked about the policy implications of a study. And those of you who filled out the studies you know it was a pretty tortured affair, right? We had to actually state a hypothesis and anti-hypothesis and we actually had to ask – answer the question, how

could the study results lead to an improvement in the (who is) system which could be adopted through consensus policy?

So you may not like the answers that are in there, (Tim) and (Wendy), but at least we tried to answer those. And I'll just show one example. On my study number 3 – this is (Steve Delbianco) with Net Choice – study number 3 was an analysis of compliance by registrars who operated proxy services as to whether the obligation to reveal registrant data when they were presented with reasonable evidence of actual harm.

And how could the study results lead to an improvement? Here's what I said. I said if the hypothesis was verified, that is if some are not adhering to the RAA, then ICANN should improve its structural compliance efforts for registrars offering proxy services. And that ICANN's response should be proportional to the quantity of registrars in the effected registrant where the compliance was found to be deficient. Because if non-compliance were confined to very small number of registrars, perhaps not yours at all, (Tim), then increased contract enforcement efforts could be limited and targeted to the proxy services or registrars who aren't following the RAA.

On the other hand, I said if there were a widespread lack of compliance, then I would say that a policy development process should undergo to amend the RAA to increase penalties for that kind of non-compliance. So we did have to answer the question of what would be the policy implication and we did our best to do that.

It would be better if we stood on the shoulders of the work that's done rather than assume that those questions have ever even been thought about. Thank you.

(Liz): Okay, thanks (Steve).

(Tim): (Liz), this is (Tim). Can I just ask a question then...

(Liz): Sure.

(Tim): On that. I appreciate (Steve)'s explanation there because that was important. And I guess my question is, you know, what we're – what the GNSO is tasked to do, you know, because this is – and I think the compliance question issue is very valid. And I had no problem with that at all. But I guess I'm – maybe I'm a little bit confused and misled as to what the ultimate goal is with these studies and if they're broader than, you know, how do we get back to some of the policy questions that were being considered previously or is this, you know, something more general even taking into account compliance – potential compliance issues.

(Liz): Well if you recall, that (Wendy)...

(Tim): Because when those diverge is important because I think there could be support for one perhaps that there isn't for the other.

(Liz): Right, right. And I don't think there's a clear path there. I mean, the GNSO council voted when it voted to reject the (OPAC) proposal, it also voted to examine studies that, you know, what (who is) studies that have (unintelligible) and studies that would inform the debate,

recognizing that information was needed and going to be useful presumably to further policy activity.

And there were some examples, I believe, in the motion itself – or ideas in the motion itself. And clearly the (GAC) had weighed in, you know, on its ideas previously and the (GAC) communicated that, you know, was sent to the board prior to the GNSO passed the council acting on this.

So I think, you know, there was clearly the contemplation that studies would be useful, that more information about who is would be useful. And it should be tied to helping define what the next steps in policy ought to be and not be disconnected from the policy at all.

(Steve Delbianco): (Liz), this is (Steve). Can I give a quick response to (Tim) as well?

(Liz): Sure.

(Steve Delbianco): (Steve Delbianco). (Tim), you raised a good question. You wanted to say how would these studies be informative to the quote-unquote big question which I assume is should we change who is at all. And that was a big question because it was considered for (OPAC). And as (Danny) indicated earlier on the call, that question's still in front of us because it might be that the SSAC's (unintelligible) (IRIS) proposal is another alternative.

So I think the big question is do we need to change? And if so, to what? And studies that I proposed – 1, 2 and 3 – actually answer that question in turn. One was to say, what's the driver for change? That is,

are there abuses – documented abuses – that should drive us to want to change?

And study number 2 was, to what extent has the market moved much faster than ICANN at delivering privacy protected services like proxy registration? And I know, (Tim), your company's a leader in that.

And therefore, number 3 was, well to the extent that loss of proxies are happening, we got to figure out if the guys who are offering it are truly revealing the registrant information when they're presented with evidence of actionable harm.

So I see it as all sort of fitting together pretty well. Thank you.

(Liz): Okay, I'm going to try to summarize a little and you all help me. But it strikes me that there is perhaps not a majority but quite a number of people who have grave concerns about proceeding forward and which studies. And the fundamental concerns being that people's views are somewhat entrenched to say the least and new data may or may not change the impact that is, you know, perceived to exist.

At the same time, there are I think a number of very strong arguments that say there are some real studies that would inform the debate and there seems to be consensus in my mind among those who are proposing studies are encouraging proceeding with studies that the studies should be tied to a policy question or objective. That it's – that there seems to be the understanding that, you know, we're not just doing studies for studies' sake or, you know, information gathering sakes.

But rather there are specific policy questions that would be helped by the specific information that many of you are proposing be obtained and analyzed and gathered. That a fair statement?

Man: Yes.

(Liz): Okay, so I think, you know, what – if we had to report to the council today, you know, I would certainly say that there is a substantial number that are concerned that future studies are not going to generate any kind of meaningful change in the debate. And then there is at least a substantial group of folks who think that the studies are really warranted and that there are new questions on the table and that really may enlighten participants in the debate and create potential paths for moving forward.

So I want to leave some time to talk about the specific studies. And I mean, ultimately it'll be up to the council to decide whether to push these or not. I want to make sure that we acknowledge as we move on to what the specific studies are that people think are important, I want to make sure that those who feel strongly that we shouldn't proceed with studies understand that we've got, you know, a clear message from you as part of this discussion that, you know, has to get conveyed to the council.

And you know, we need to talk about how we wrap up our work and how we would convey our conclusions as a group to the council. But the place holder I have right now is that there's at least a substantial portion of the participants here who have real concerns about proceeding with any study.

So I want to move on to the specific studies but without conveying that that is basically saying that that's duly noted and that we need to, you know, probably come back to that at some point. I would like to spend the rest of the today – which is only not much time – talking about the categories of studies that folks think we should pursue.

And maybe because we don't have a lot of time, also talk about we should do between now and next Tuesday to move the discussion further in trying to tee up where everybody's coming from. Right now, the deadline for coming back to the GNSO council is the 24th of April – that would give us one more conversation if we continue to meet weekly.

On the 22nd – I'm an optimist – but I don't really think that's going to be enough time to think through fully as a group what we want to do. We could allow more time on the 22nd if folks are able to spend, say two hours on a call and make it a two hour call on the 22nd.

But I still think we're probably not going to meet that deadline which is just my way of saying that, you know, one of you that's on the council I think should move to extend the deadline, perhaps on Thursday's call that we have a realistic time frame in which to work and we don't feel unduly pressured by the time frame that has been set by the council.

So I'll ask – I'll throw that out there for one of you. Hopefully you're – several of you to act on. Is that a okay way to proceed? Any concerns?

(Steve Delbianco): (Liz), this is (Steve Delbianco). I would just – had you guys done some balloting of some kind that gives you the impression that a substantial proportion opposes any further study?

(Liz): No, that's my word because I don't want to say majority, minority – we haven't done any balloting. I'm just listening to the voices on the call, listening to the voices on the last call. We've got (Wendy), we've got (Tim), we've got (Ken) on the previous call, we've got (David) on this call – four people, maybe more because we haven't heard from everyone – saying that they have concerns about proceeding. So it's not meant to be scientific, it's meant to be just acknowledging of those. I don't think it's the majority but it's not just one person.

Stéphane: (Liz), can I just – it's Stéphane. Can I just get in there for just a second?

(Liz): Sure, you bet.

Stéphane: I think the important message does seem to be that whatever's done, it needs to bring results this time. Obviously there's a – you can feel a huge amount of frustration with some people that there's been a lot of work and no results at all. And whatever methods we put across, I think it's important to put that message across and say that if we do recommend moving on with studies at least on some of the groups, maybe one of the suggestions earlier on would that there would be some obligations to act upon the results from the constituencies or something.

I think it's important to put that message across that just one more study without any clear undertaking of obtaining results would essentially be considered a waste of time by everybody.

(Liz): So I'm going to give a personal opinion to that. Just my person opinion (unintelligible) – I think it's going to be very, very hard kind of picking up on (Steve Metallic)'s comment earlier to ask folks in any way to be bound by results of studies that haven't occurred yet and to speak on behalf of these constituencies to do that.

I think my own gut reaction in terms of a middle path, I mean, I totally want to hear from others – it's just my own opinion – but what does sound very compelling to me is that any recommendation that we make for further study that these policy implications, the impact to policy making, the possibility of changing the impasse ought to be stated as part of the rationale for recommending the study.

And (Steve Delbianco)'s right. That's something we tried to build into the methodology or the request to each of you when you submitted studies was really to try to articulate what the rationale for this study was and – or is. And so at minimum, I think we have to make sure that maybe some of our recommended (unintelligible) include that component, you know. What is the policy – potential policy impact of benefit to proceeding with that study?

And not just, you know, its good data to have. Other comments on that?

Krista: (Liz), this is Krista. I have a question. Do we know what type of information would enable people to make a decision or to move forward? You know, what type of data – if we were able to collect data that would be meaningful to them, do we know what that data would be for the different constituencies to, you know, move from the position that they've been in for so long?

(Liz): If I understand your question, I think you're kind of saying can we build this from the reverse, right? For each constituency to somehow articulate – well, I would change my position if?

Krista: Right, if we knew the answer to, you know, X – exactly, I guess it would be somewhat of a reverse engineering. You know, if we understood better about this or how it would impact that, you know, is this – are people – are they really being jeopardized or not being jeopardized and to what extent? You know, I mean, I think everybody has a different position – well they do – for different reasons.

And maybe if we're able to – through the studies or through some other mechanism – answer those questions because it is, I mean, I'm new to this process. But I've been in this space and, you know, worked with lots of people in the IP space and it's just this heated argument that's just gone on forever and nobody's moving.

And so it seems like we need to find something – they're missing information that enables them to move or reinforces where they're at, you know?

(Liz): Comments from others?

(David Maher): This is (David Maher). One approach to an answer to your question is that to the registry constituents that this is a matter of principle and it's not initial fact or law. It's a principle or protection of personal privacy. I suppose it's conceivable that you could take a survey – scientific survey – of a lot of people who use the Internet. All of them would say, we really want our personal telephone number and address to be

available to the general public at all times which is the situation today and loss of use of privacy.

I find that so totally unlikely but I don't think it's worth spending money on. So the answer to your question is that from the standpoint of the registry constituency nothing has been said today could have any possible influence on the basic principal. The personal privacy is worth protecting.

Beau Brendler: This is Beau Brendler. Could I make a comment?

(Liz): Sure.

Beau Brendler: I'm speaking also as part of the at large and specifically in the North American region there has been a fair amount of discussion about whether the privacy – whether privacy concerns are being overstated. And we've also done some sort of informal canvassing of privacy groups in the United States to try to see if, you know, there is doctrinary about some of the privacy concerns as some seem to have said in past debates.

And the North American (railroad) does not at all come down on the side of, you know, privacy as the number one concern here. So any sort of characterization of the at large as being totally focusing on protecting personal privacy would not be accurate.

But if we get, you know, new information or better information to work with or something beyond, you know, just sort of the statements and opinions that have characterized the who is debate within ICANN over the last bunch of years maybe there would be solutions we would be

comfortable with such as, you know, I think a gentleman earlier talked about how in France, you know, who is data requirements or data provision requirements are divided into businesses and ordinary human beings.

Well maybe there's a division like that could happen in the US that would appealing in that certain circumstance. So I just want to caution against generalizations especially when it involves the public.

(Liz): Okay, thank you. We obviously don't have much time left. Let me just make a suggestion for next week and see if this works. Is everyone available – is anyone not available to have a two hour call instead of a one call on the 22nd?

Man: Would that be the same starting time?

(Liz): Same time – only extended an hour later.

Man: (Liz), that depends on what is the agenda because if there's not a likelihood that we would accomplish much in two hours, then it's two hours.

(Liz): Yeah, yeah. Well, you know, let's talk about the agenda. It's my feeling – we dedicated this time today to talking about should we or shouldn't we which I'm not surprised about frankly. And I think the extent and needed to really be discussed.

I think we also need to spend real quality time on the (unintelligible) recommendations themselves and trying to get to ideally some kind of recommendation or at least understanding of where everyone is on this

specific study recommendation put forward. So what I would propose for the next meeting is to go through the seven categories, to come prepared with – and I know several of you did for today and I apologize that we really didn't give – use the opportunity to go through and share the work we've done which is unfortunate.

But just this hour gets eaten up really quickly. But the idea being that we would discuss – at least discuss seven categories of studies and try to get to some understand of where there is support and where there is not support to proceed with those studies among those who think those studies should be pursued. And try to winnow down the list to a list that there is in consensus in this group should be put forward to the council as a recommendation for which studies should be priced out and further considered.

(Steve Delbianco): I need – this is (Steve Delbianco) and I have a further request for staff.

(Liz): Sure.

(Steve Delbianco): I would say that when you do set up the next meeting, if we were to tee up the ball on the agenda, when we do describe the study, I think in your summary you do a good job of summarizing the topic of the study but what we didn't do is bring the policy impact part of each proposed study into the summary. (Tim) and (Wendy) brought that up today where they didn't know that that was part of the answer we had to provide.

So could you pull that from the underlying studies and bring it up into the next iteration of the summary list that we would work from?

(Liz): Yeah, I should be able to do that.

(Steve Delbianco): Great. And I don't think I can make next Wednesday but I'll wait.

(Liz): Tuesday. Tuesday, not Wednesday.

(Steve Delbianco): Let me check – I'm sorry.

(Liz): Yeah.

(Patrick): (Liz), this is (Patrick) – just a favor. It seems to me that two hours is a bit too long. I'm not sure we've got anymore results in two hours than we would in one.

(Liz): That's fine. I mean, I'm happy to keep it to one on the 22nd. I'm just mindful of how long this is taking. And it's natural that it would. Let's say we keep it to one but I think we're comfortable providing their viewpoints on at least the categories as was done by several of the participants for this call. So that we can be prepared to go through those – each of the seven categories and say spend five to ten minutes on each category within the hour in the next call. Does that make sense?

Man: Yep.

Man: Yep, that sounds like a good idea, (Liz).

(Liz): All right. So could everyone put their – put in priority order the seven categories between now and say, Friday or Monday morning?

Man: Yep.

Man: Yep.

(Liz): Okay, great. So we will have a call next Tuesday for one hour. Everyone will in terms of homework assignments will take each of the seven categories and put them in their optimal priority order including any they feel should not be done. And I understand that we are fudging a little on the specific details of each of the studies within these categories and that there are opinions within those categories about what should or shouldn't be done in terms of specific recommendations.

I'm assuming we can get to that in our further iterations. And make sure that within the categories the specifics of these that are recommended are in fact supported by all of, you know, all of you. And then I will commit by – hopefully by Monday morning to pull out the policy's benefits that were defined by each of the study's submitters and add that to the summary which I think was my to-do action item.

I had an action item from last week based on a question that (Danny) asked about the economic studies that had been directed to be done by the board. And to my understanding, is (Dan), it hasn't been done and I don't have anymore information than that other than it hasn't been done.

So the concern was if ICANN didn't proceed with that study would they proceed with these studies. I can't speak to that study but it's my understanding that if there's support from the council to proceed with

some study or studies in the who is contact, they would proceed to do those. And that's kind of all I can say about that at this point.

So we're at the end of the hour, let's – unless anyone has any closing comments or suggestions on the next step then I'll do a summary and look forward to receiving each of your rank order categories by next Monday (OOB).

Any other comments before we close? Okay, well thank you all very much for participating. And if you have any further thoughts, feel free to email them to me.

Liz Gasster's notes of the call:

Thanks so much to those who were able to participate on Tuesday's call, and especially to those who contributed initial views on suggested priority levels for various study options. Following is a short overview of the call and next steps agreed to by the group:

1. Call overview:

- * The group discussed getting more information on what would be required to implement the IRIS protocol from both a technical and policy perspective, Liz will follow up on this for the next call**
- * The group discussed whether any studies on WHOIS should be conducted. 4 participants think that more studies of WHOIS will not break the current impasse. Roughly nine participants think certain studies of WHOIS would be very useful and could provide new insights and information. This group thinks several of the studies are finely targeted and carefully crafted to ask new questions and elicit new insights.**
- * Beau Brendler briefed the group on an upcoming survey of WHOIS questions that his group is soliciting as part of a broader survey of New Yorkers on Internet consumer issues. They intend to publish their results by June.**
- * Wendy and Danny recommend sunseting current WHOIS requirements currently applicable in RAA and registry contracts in the absence of consensus -- to make the issue compelling and generate increased motivation to find consensus**
- * We did not talk in detail about the specific studies in a systematic way on this call, though several study proponents described how their proposals would**

provide useful additional insights in their judgment. Steve Del Bianco emphasized the importance of the first three study proposals in this context.

2. Next steps:

* Liz will update the summary to pull the policy goals identified for each proposed survey into the text so they can be easily identified - though I might try another format for this, to be determined.

* Each participant will send **TO THE WHOLE LIST PLEASE** your rank order preferences for further studies of WHOIS - please rank each of the 7 categories of studies, not the individual studies, by top preference to lowest. We will consider the individual studies in a future round. Please send to the list by Monday AM to give us all a chance to review by the next call.

* We need to provide an update to the Council on our progress following the next call. It is my educated guess that we will not finish on Tuesday, so we need to provide an estimate of when we think we will be done. Let's plan to agree on recommending a new date on the next call. I'll suggest May 22 (4 more weeks) to throw out a date for discussion, but I'm glad to try to do faster.

* Liz - IRIS follow up