

**ICANN
Transcription
Next-Gen RDS PDP Working Group
Tuesday, 3 October 2017 16:00 UTC**

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Coordinator: Excuse me, recording has started, thank you.

Julie Bisland: Thank you. Well good morning, good afternoon and good evening everyone. Welcome to the Next Generation RDS PDP Working Group call on the 3rd of October, 2017.

In the interest of time, there will be no roll call. Attendance will be taken at the Adobe Connect room. If you're only on the audio bridge could you please let yourself be known now?

Hearing no names, I would like to remind all to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid background noise. With this, I'll turn it back over to our Chair, Chuck Gomes.

Chuck Gomes: Thanks Julie and welcome everyone. Let me start off by asking if anybody has an update to your statement of interest.

Okay, not seeing anyone. We'll go right into agenda Item 2. If staff could please put up the poll results. We're not going to spend very much time on

the poll so it's just going to - they're just going to be up there for a couple minutes at most so that the - if you want to scroll through the results, you can.

And it was a short poll this week and you can see that 22 people participated in the poll. Please give everybody scrolling rights there so that if they want to, they can move through it. You'll see that the poll question was basically whether there should be a requirement for the original registration date as proposed in the EWG final report in the RDS.

And the results of the poll were 77% didn't think so. Five still, which is 22%, still think so, so we'll note. We're going to record this as a tentative rough consensus conclusion. We can revisit it later. There was some good discussion on the list ongoing on this and I thank those who participated in that. It's not being ignored. We could come back and visit this one later if we so decide but over 3/4 of the people in the poll, and there were no objections on it in the call last week so we're going to record that in our working document as a tentative agreement and move on to other things today. So that said, let's bring up the WSGR memo and go to agenda Item 3.

This is a pretty long document and we're not going to scroll through it but it's up there in case any of you want to go to any particular part of it. Everyone was asked to review this before this meeting so hopefully you did it. This is the final memo from WSGR and we have asked a few clarifying questions but early indications is, we're not sure we're going to get anything more back from them or not. Certainly if we do, we will share that with you.

So our purpose on this agenda item -- since this is the first meeting we've had when everybody's had a chance to review the memo -- is to see if there's any general discussion, comments, questions about it. This is not a time to debate whether you agree with the conclusions of our - of the legal firm or not. Let me reemphasize what I've said in email and I think in last week's meeting is that, in the opinion of the leadership team, we believe that the

independent legal firm that we selected, confirmed essentially what we heard from the data protection commissioners earlier in the year.

And so what -- and while I'm allowing for anybody to raise their hands if they'd like to talk, while we're waiting for that -- the leadership team has been working on a set of principles from not only this memo but also from the answers that the data protection experts gave us earlier in the year. And they're principles that we believe are pertinent to our work and will help us answer some of the questions in our Charter. And we're going to start using those even today. Now, you will all - you have all received those.

What we're working on right now is a mapping of the principles to the questions in the first part of our Charter so we hope by the end of the week they get that out to everybody. And that's designed to help us use the principles that came from the, not only this memo but the data protection experts' answers and we will - hopefully that will be a useful tool in that regard. And you'll see that mapping - well, you'll see part of it today, the part that's related to our agenda today. So I'll probably share some of their comments and response to questions and so forth and welcome the leadership team to jump in as well, but let's start with Ayden. Go ahead Ayden.

Ayden Ferdeline: Hi everyone, thank you for that Chuck. This is Ayden Ferdeline, for the record. Apologies for the background noise. I hope you can hear me. I'm not in the quietest location and had plans to lurk in the background, so again, apologies for the noise. But just out of curiosity, could you please remind how this law firm was chosen? Thank you.

Chuck Gomer: I'm sorry, I didn't - I had trouble understanding you Ayden, could you repeat that please?

Yes, if you can type it in, that's great or you can try again. I apologize but the background noise and stuff made it a little more difficult. Oh how - was the question, how was the law firm selected?

If that's the question, there was several law firms that staff identified that had expertise in this area. We formed a small group of people in the working group from - to, you know, evaluate the firms. That group has been helping us, and by the way that was with people from different stakeholder groups in our working group and different points of view, and there was pretty good support. There was really no objections to this particular firm. Others could have done it as well, but using that input we selected this firm and they weren't the cheapest nor the most expensive but they seem to have good experience and seem to be able to provide independent answers.

I don't know if anybody on the leadership team wants to add anything to that. By the way, Marika makes a good point in the chat that it wasn't only staff suggested law firms, some of the people on that legal advisory team that we formed with working group members also suggested some firms. Thanks Marika.

You'll recall, we try - once we made the decision to seek out independent answers, we tried to move fairly quickly for the purposes of trying to get you some funds from fiscal year 2017, the one that ended on June 30. Now they didn't actually start their work then but I think, and Marika, correct me if I'm wrong, I think we were successful in using a little bit of the funds from the last fiscal year's budget because there were some funds available and any balance will come out of the current fiscal year.

And Steve Metalitz is correct, the selection was made by the leadership team. We just sought advice from the advisory group.

Jonathan Matkowsky: Hey Chuck, this is Jonathan Matkowsky. I can't raise my hand in the chat because I'm at a conference and wasn't able to connect to your Adobe. It

took me about ten minutes to join the meeting so I apologize for that if we don't sync.

I realize I've already missed the applying last week's poll to the working document. I just wanted to note that I'm here and since I was the one who was championing in, like you have, of including the original registration date as defined during the discussions by email, I just wanted to note that I'm here in case I missed something in that regard.

Chuck Gomer: Thanks. And it looks like, unfortunately, as Marika pointed out in the chat, apparently we were not able to use any fiscal year '17 funds. The process took a lot longer than we had hoped. But anyway, we got it done and we have the final results now.

Any other comments or questions about the report itself? Again, not debating the contents of it but - because I'm sure some people like some of the answers some people don't. That's pretty standard for our group. In agenda Item 4, we'll talk a little bit about how we're going to use these. I share a few things about that already but we'll talk about that. But let me just go ahead. Greg Shatan, you're next, go ahead.

Gregory S. Shatan: Hi Chuck, it's Greg Shatan for the record. And if this question is premature and should be visited later in the agenda, we can park it for now. The question is whether we would intend to go back to the law firm and ask for more typical legal advice that is, tell the law firm what we would like to accomplish and have them advise us on how to accomplish it. So far we've only used them to double check the DPAs, which I suppose is useful for the skeptics but it doesn't really accomplish much in the way of legal advice. Thank you.

Chuck Gomer: Good question Greg, this is Chuck. We could go back to them. Now, like I already indicated, we did go back to them with three clarifying questions. I don't think I said three but there were three. Initial indications, it's not clear

whether we're going to get any more detail on the questions we ask or not, we'll let you know in that regard.

We could contract with them again if we so desired, down the road. As most of you know, there are other things going on within the ICANN world and with regard to the GDPR right now, and some of those things may provide us insight too so it's certainly a possibility. Other than any clarifying questions that they will respond to under this agreement, we would incur additional costs from them if we ask new questions.

Jonathan Matkowsky: Chuck, can I get into the queue please. This is Jonathan.

Chuck Gomer: Sure.

Jonathan Matkowsky: I can't see the results of that and I don't want to jump the queue, so just let me know when I can...

Chuck Gomer: No, yes there's nobody in the queue so you're up.

Jonathan Matkowsky: Okay, I was just curious and I apologize again for missing the first ten minutes if I missed this, but from the time that Wilson Sonsini was commissioned for this project, were there any phone calls or conversations held with them and leadership to clarify the written questions that were asked?

Chuck Gomer: Yes, we...

Jonathan Matkowsky: And is there a transcript of that?

Chuck Gomer: I don't recall whether we recorded that or not. Marika, can you help me out there? Did we record the telephone call we had with them to discuss their clarifying questions and ours?

No, apparently we did not, so that's not available.

Jonathan Matkowsky: So I'd just like to say, in my experience when your permission will affirm to give advice, those kinds of phone calls are critical for understanding the context of the deliverable. So I feel like that's - a very important missing piece of data in order to understand this memorandum. And I wonder what we can do now to mitigate the harm of that. This should've been put - you know, taped or there could be a transcript available to the working group so we can understand the context. If it's not available, I wonder what we can do to mitigate that.

Chuck Gomer: Well there's nothing we can do to mitigate it now because those phone calls already occurred. I think that...

Jonathan Matkowsky: But people were on those calls so we can - I don't know, maybe I missed an email. Was there a discussion of what they had asked - the clarifying questions they asked and what was said? I mean, the leadership was on the call, they could help put that together.

Chuck Gomer: We can certainly - we certainly have a record of the emails that were exchanged. We would have to check with them to see what they are comfortable with us sharing publicly. When they gave us their first draft answers, they asked that to be confidential. We requested permission to share that with our small advisory team and they granted that request. So the small advisory team certainly was able to see the draft. With regard to other things that have been exchanged between them and us, we certainly would need their permission to share those but we could ask that.

Let me agree with the one point you made that those kind of conversations are very important, we think so too. We went back with a bunch of clarifying questions to them after their draft and that kind of information is available. Not sure how valuable it is for everybody in the working group to see that but it's

not anything secret that the leadership team has any concern about. We just tried to make sure that the questions were answered.

And let me comment on the principles that we pulled out of both the memo from WSGR and the answers from the data protection experts that we got earlier in the year. What we tried to do is just take excerpts of what they said without any opinion on our part. And we tried to identify things that we felt were principles, not suggestions or recommendations. We have captured the suggestions and recommendations in a separate document so that we don't lose those and so that we can consider them as applicable, but those are captured.

So in other words, we - other than making an opinion whether we thought it was a principle that might be useful to us, we didn't put any of our commentary in there either.

Jonathan Matkowsky: Okay, thank you.

Chuck Gomer: I'm sorry, (Andrew) let me see what you're asking there. The lawyers wanted the responses to be confidential. Oh (Andrew), what I said was, when they - they gave us a first draft of their tentative responses. They asked that that be confidential and not the - they didn't ask that the final report be confidential so their final answers are all - you have them, okay. Whether that's bizarre or not, I'll let everybody think what they like. The - but we honored their request with the one exception that I mention with regard to the small advisory team so that - they did grant us that permission. Any other questions?

Jonathan Matkowsky: Can I just tap into the queue?

Chuck Gomer: Go ahead. There's nobody in the queue so you're up.

Jonathan Matkowsky: Could you - okay, sorry I can't see what's on screen - could you share the questions that the advisory team or leadership -- it wasn't clear to me whether

it was an advisory team or Leadership or if those are the same -- asked on the first document with the working group. And can you ask Wilson Sonsini if the - since the working group is the one I understand, who commissioned this report, if they are comfortable sharing with the working group only, a copy of that first draft so we can get better context?

Chuck Gomer: So - okay, I'm not -- this is Chuck -- so I'm not totally clear what your request is. You requested that we share the questions...

Jonathan Matkowsky: Well two things.

Chuck Gomer: Go ahead.

Jonathan Matkowsky: First would be, you mentioned before that, you can certainly share the questions that were asked of Wilson Sonsini by leadership and/or the advisory team when the first draft came in with the working group. So I was asking if you can please share that with the list.

And secondly, you mentioned that you can certainly go back to them and ask if their comfortable sharing the communications that led up to this document with the working group itself, subject to the understanding that it would be - remain within the working group. So I was asking if you can please do that so we can have better context there to understanding this document which, by the way, I think is an excellent piece of work. I do have questions on it but now is not the time for that. But, like, I still do feel that there's a lot missing here because we don't have the full context.

A lot of the times these kinds of memos are prepared, you know - I'm not saying that's what was done in this case but a lot of the times, you know, memos like this could be, you know, the final product doesn't really shed light on the ambiguities that led up to it and you can easily craft or shape the final product through those kinds of communications with the law firm. So it's really

important for us to understand the extent to which that occurred so that we can have better insights into the significance of this.

Chuck Gomer: Okay. I'm not sure you're going to gain a lot but Marika and (Lisa), do either of you see any problems with us sharing the documents that are being - the exchanges - it was really - a lot of it was done via email or making publicly. And then I think we should check with our legal advisory team because some of the stuff came from them, make sure they're okay with that. I'd be surprised if they were but we should ask them.

The - if people in the working group want to spend time going through that kind of material, I personally have no problem with that. So Marika, go ahead.

Marika Konings: Yes, this is Marika. I just want to note that indeed that the law firm did explicitly ask us not to share that draft because they prefer to only share their final work product. They didn't want to create any kind of situation where various drafts would be circulating around. And in that first draft as well, you know, one of the reasons that they shared it with the leadership team and there were some questions where they were aiming to confirm what was being asked. So, and I think that is again, something that the leadership team together with the advisory group responded to.

So, you know, what may be helpful is -- and again, we can check with the legal advisory group if they have any concerns -- if we just share the clarifying questions then that will at least give an idea of where clarification was sought and hopefully as well, allay any kind of concerns and that the leadership team or the legal advisory group in any way try to steer or direct the memo in a certain way. And I really hope that that is not the reason behind this request. So that may be a way if that is shared.

And again, and just want to echo what Chuck said before, those questions really focused on clarifying and follow up questions on things that weren't clear. They didn't deal at all with, you know, questioning any kind of views or

opinions that were being expressed. So maybe sharing those will, you know, allay any kind of concerns. They were as well a relatively limited set of numbers so again, maybe that can be a starting point and people that still have concerns and it can be discussed further but at some point in the chat. It's not very clear indeed where - what the objective of that exercise would be. And it may be more helpful to actually focus what, you know, what is considered the final memo.

Chuck Gomer: Yes, we'll take it under consideration. But I want to address something in the chat from (Fabricio) there. The small advisory team didn't help develop the questions. Let me refresh people's memory and inform people that weren't on the working group then.

We formed a team of quite a few people to develop the questions. (Susan) in fact, led that discussion and that team came back with a final - a list of questions that was then presented to the full working group for approval. And then those questions were given to the data protection experts before we met in our spring ICANN meeting and that is what they responded to.

What we gave Wilson Sonsini was the same questions with some editorial corrections, not content corrections. You know, there was some things that weren't worded right or spelling errors or things like that. So we intentionally gave the legal firm the same questions we gave the data protection experts because some people in the working group questioned the fact whether the data protection experts were biased and therefore we needed an independent look at those questions.

We didn't invent new questions, we used the same ones that the working group approved. And the small legal team didn't have anything to do -- unless they were involved in that process for the full working group and the group that formed the questions -- have anything to do with the development of the questions that were asked.

Okay, any other comments before we move on? It's important that you understand - I'm - we're not trying to hide anything, okay, but we are trying to get this thing moving and you're going to see me get a little more forceful in terms of leadership, in the coming weeks and months so that we can make some progress here. We've been going terrifyingly slow and there are reasons for that and I get all those. I've been around long enough. But it's time we start making some progress and I'm going to do everything in my ability as long as you let me, to get things moving a little bit with the support of the leadership team.

So we asked for an independent review of the questions that we had asked the data protection experts. We have it. They essentially confirmed what we already received, added more detail in some cases which probably will be helpful to us. Now it's time to take what we got from two sources and use it and decide what we need to do in our Charter. If there are no more questions or comments, let's move on to agenda Item 4.

So the plan now is to take the principles document that has been sent to you and correlate it to the questions in our Charter for four of the first five questions in our Charter. Okay, you'll see that in a minute and in fact, let's go ahead and bring up the handout for agenda Item 5 because it'll make it easier to talk about.

Now the - this just shows one of the first five Charter questions, okay. You'll recall the - let me quickly go through the first five Charter questions. And those are - the first one had to do with users and purposes. Most of you will recall that because we've spent quite a bit of time on that already. Second one had to do with gated access. The third one had to do with data accuracy and data accuracy is one that we're kind of pushing out until we cover the other four. We will cover it. The fourth Charter question had to do with data elements and recently in the last few months, we've spent quite a bit of time on data elements. And the fifth one had to do with privacy. And we did spend

some time on privacy already and of course that led to the questions asked of the data protection experts and ultimately of WSGR.

So what we have decided today, because of the timeliness of it for one reason, in other words, Charter Question 5 and its sub-questions that are shown on the screen right now if you're on the first page of the handout, has to do with privacy and data protection which relates directly to what we just received in this final memo from Wilson Sonsini and also to what the data protection experts gave us.

And so also, the questions and sub-questions in this area of our Charter may be - we think may be easier to come up with agree on answers on now that we have the information that we have.

So what we're going to start out doing today is to look at the Charter question on privacy. And what you can see on the screen, hopefully you can see it on the screen, there is a - several questions and sub-questions. So if you look at the way this document on the screen is organized, you see first of all, the basic Charter question in gold there; what steps are needed to protect data and privacy? And then you see the sub-questions. Now the last one in orange will come up and Phases 2 and 3 but the other four sub-questions are questions that we're going to try to start tackling today. And we'll try to apply the principles that came out of the Wilson Sonsini memo and the data protection expert answers.

So what you'll see, that there are some principles asked and if - you may find it helpful in the next few weeks to have the principles document available to you. The way that document was - is organized, as I think most of you are aware if you reviewed it, is there are three columns. There's a column with the - first of all, it's organized by the 19 questions that were asked. Under each of those questions there are three columns and a table. The responses that we got from the data protection experts and then the responses in the final memo from WSGR. And then the third column has principles that we've

taken out of the first two columns, in most cases verbatim experts. If it's not, we'll put something in brackets to show that just for the clarity we added some words. And so now we're ready to apply the principles to the questions.

And the first question we're going to try to answer today is showing as Question 5.1 on the first slide in Adobe. Do existing gTLD Registration Directory Services policy sufficiently address compliance with applicable data protection, privacy and free speech laws within each jurisdiction? Now before we go to the principles, let me point out that we have one tentative working group agreement that relates to this question already. And we - and that's working group Agreement 14.

If you scroll down to the last slide in this deck, you'll see that we have had one working group agreement on privacy and that is -- and this has to do only with the minimum public data set -- and that agreement is that existing gTLD RDS policies do not sufficiently address compliance with applicable data protection privacy and free speech laws about purpose. So we've already reached that tentative agreement in the working group, okay. So keep that in mind as we look at the principles. And I'm going to quickly go through the principles and then we'll open up for discussion on Question 5.1.

And the way the principles are numbered are the way I describe before. So for Question 3, we have a principle that's labeled E and it's basically; the GDPR applies to all personal data. The next principle we identified related to this question is 3F so another one related to Question 3; the data of legal persons, their name and form as well as their contact details, are not covered by the GDPR but as noted above, all data listed as contact information for a legal person is covered by the GDPR. Now you'll notice some things in it - again, because we excerpted these things, you're going to see things like that parenthetical as noted above, that's obviously in the GDPR memo. It's not shown here, so.

And then for Question 9, Principle C that we identified; anonymous public access to registration data may have some potential beneficial use with regard to consumer protection but it cannot by itself, override the fundamental right to data protection. And then there's a reference to Principle 8B that's similar to this.

In Question 12, the first principle that we identified was; neither the Article 29 Working Party nor the European Data Protection Board take into account foreign laws when ruling on a case. This reflects the emphasis in the GDPR on the fact that evaluation of data protection rights must be subject solely to EU or a member state law. Now I'm going to interject a little comment here. Notice that all of this is focusing on Europe and the GDPR. That's what we asked the legal firm and that was the expertise that the data protection experts had.

We're not restricted to just the European focus but it does provide information that relates to this question for one jurisdiction. In every - that Question 5.1, notice that it says, within each jurisdiction, our task as a working group is to develop requirements for all jurisdictions. So - but the way this question is worded, if we find one jurisdiction for which the Directory's - Registration Directory Services policies does not sufficiently address compliance, then we can answer the question.

Now, continuing and going to Question 13A - Principle 13A, excuse me; the GDPR applies to data controllers or data processors not established in the EU when their data processing activities are related to; A, the offering of goods and services irrespective of whether a payment of the data subject is required to such data subjects in the Union; or B, the monitoring of their behavior as far as their behavior takes place within the Union.

Principle 13B; the CIEU -- and forgive me, I don't remember what that stands for, somebody can probably help me out or put it in chat, has - you can see it in the full document -- the CIEU has granted overriding status to both EU law

and the fundamental right to data protection when they conflict with other legal systems.

Principle 13C; bringing the data processing practices of ICANN and the registrars in line with EU data protection law as much as possible and giving primacy to EU data protection requirements when they clash with those of other jurisdictions would reduce conflicts with local law.

14A; both the national DPAs, that's Data Protection Authorities and the EDPB, that's the Board for the GDPR, will have jurisdiction over all types of entities including registries, registrants, registrars et cetera, that are within the GDPR's material and territorial scope.

14B; the GDPR has extraterritorial scope. So national DPAs and the EDPB can take enforcement action with regard to activities performed outside the EU, however the DPAs and the EDPB may not directly enforce EU data protection law outside the territory of the EU.

And then the last principle that we identified for Question 5.1 is; since the GDPR will come into force in less than a year, it is imperative that ICANN orient its policies and practices around that rather than national laws.

Okay, sorry to take so much time going through that but assuming that there probably are people on the call that haven't looked through the principles document or maybe even the final memo, we thought we should raise those before opening discussion on Question 5.1.

So Question 5.1 asks; do existing gTLD Registration Directory Services policy sufficiently address compliance with applicable data protection privacy and free speech laws within each jurisdiction? So, maybe the quickest way to start that off is to do a little meeting poll.

If you think the answer to this is yes, put a green check mark in the Adobe room. If you think no, put a red X. Based on the principle, based on the...

Jonathan Matkowsky: I have the slide of the handout...

Chuck Gomer: Just a minute. Based on the principles that we just covered. Now what was your question?

Jonathan Matkowsky: Chuck, I have this...

Chuck Gomer: Go ahead.

Jonathan Matkowsky: Chuck, this is Jonathan. I have the handout open but I'm not in Adobe Connect...

Chuck Gomer: Yes.

Jonathan Matkowsky: ...discern what these...

Chuck Gomer: So what's your answer Jonathan?

Jonathan Matkowsky: My question is, can you - which - on the handout, can you specific - what are we polling exactly? I couldn't follow because I'm not in Adobe Connect. Five point one, is it?

Chuck Gomer: Five point one, yes.

Jonathan Matkowsky: Oh, okay. Got it.

Chuck Gomer: Five point one is the question that we're responding to.

Jonathan Matkowsky: Okay.

Chuck Gomer: And I - okay. Now feel free to look through those principles if you - a lot of people aren't answering. It's my assessment as Chair of this working group, that we have enough information now to answer this question. And if somebody thinks we don't, I would be really curious to know why.

Jonathan Matkowsky: I'm trying to follow what's going on here. Within each jurisdiction in the EU, what - I'm sure I follow the question. Within each jurisdiction...

Chuck Gomer: I'll go over it again.

Jonathan Matkowsky: Well which jurisdiction are we talking about?

Chuck Gomer: It says within each, in other words, within all jurisdictions...

Jonathan Matkowsky: Each of which? Within all jurisdictions in the world?

Chuck Gomer: Yes.

Jonathan Matkowsky: So we certainly don't have that information. I mean...

Chuck Gomer: Excuse me?

Jonathan Matkowsky: ...what we're looking at is - we certainly, unless I'm missing something, we certainly don't have that...

Chuck Gomer: You're complicating the question Jonathan. Let me reword it. Do existing gTL...

Jonathan Matkowsky: If we're rewording the question...

Chuck Gomer: Let me finish. Do existing gTLD Registration Directory Services policies sufficiently address compliance with applicable data protection, privacy and

free speech laws within all jurisdictions of the world? Can you answer that question?

Jonathan Matkowsky: Of course not.

Chuck Gomer: Okay, that's all we're asking right now. Please extend that to say that we then have to treat all jurisdictions the same. We're not asking that. All we're asking right now is whether data protection, privacy and free speech laws around the world everywhere are addressed appropriately with existing policies.

Jonathan Matkowsky: But Chuck, I'm sorry. I'm not trying to make things difficult but, like, with the interest of moving quickly doesn't mean we should move irresponsibly. And I don't understand how - unless I misunderstood you, I thought you were saying we certainly have all the information that we need to answer this question. So all we've got is...

Chuck Gomer: I strongly believe that.

Jonathan Matkowsky: Well all we got is a memo regarding European data protection laws under the GDPR. There's all sorts of privacy laws around the world. Like, Singapore just came out with one, et cetera.

Chuck Gomer: Okay, so let me take you through some logical steps, okay.

Jonathan Matkowsky: Okay.

Chuck Gomer: (Andrew), you can keep me honest because I know you like logic. Okay, if there's - if we - to answer this question, yes, we would have to say that existing policies adequately address data protection, privacy and free speech laws in every jurisdiction in the world. We have identified one, at least, and many have pointed out it applies to others but Europe, where it does not. And I think we have plenty of evidence from the independent analysis and the

data protection experts, that it does not work for - if there is just one, then we can't answer the question, yes. Did that logically make sense?

Jonathan Matkowsky: I - now that I understand the background of where this is going, I completely agree with that.

Chuck Gomer: Okay, that's all I'm getting at. And please don't think that I'm trying to say that we're then going to have to apply European restrictions to every jurisdiction in the world and to every user in the world. I am not saying that, nor is the Charter asking that. All we're identifying in Question 5.1 is, is there, you know, do existing policies work everywhere? No, they don't. That's the answer. Steve Metalitz, go ahead.

Steve Metalitz: Steve. I think I'm confused here. I didn't know whether we were polling on the answer to Question 5.1...

Chuck Gomer: Yes.

Steve Metalitz: ...or on agreement with Principle 3E? So it's the answer to Question 5...

Chuck Gomer: We're not polling on whether we agree with the principles or not. We're polling on Question 5.1.

Steve Metalitz: Okay, which we've already answered as far as thin data.

Chuck Gomer: Correct.

Steve Metalitz: Answered that in Number 14, right? Okay.

Chuck Gomer: Yes, correct. That's correct Steve.

Steve Metalitz: Thanks.

Chuck Gomer: Okay. Now, a very good question because I want to make sure everybody's on the same page. Greg Shatan.

Gregory S. Shatan: Thanks. Couple of things. First, I think the introduction of free speech laws in here is kind of a red herring of some sorts since we're not dealing with - the GDPR doesn't deal with free speech, at least not directly. So that seems to have kind of wandered in from left field.

Second, if we consider the policy of WHOIS, and in national laws which is something that's been - is an existing policy, existing gTLD policy, maybe the answer to this question is, yes. We haven't really explored how that policy works since we've been off trying to design the next mousetrap but now we're asking about existing policy which oddly enough, isn't actually in our remit. Although I obviously - we have to understand it.

So I think the answer to this is probably yes as long as the WHOIS and the local law policy works and I'm sure there's plenty of debate about that. But that is at least an attempt to address compliance with applicable data protection per privacy - and privacy laws. Again, I'm not sure how speech got invited to this particular party. I guess they heard the word free and decided to show up, I don't know. Thanks.

Chuck Gomer: So Greg, I'm going to follow up with you here. This is Chuck. So we're not going to go back and change Charter language unless it's really critical. You know the hassles with that. You know it can be done so if the free speech laws in there bothers you, just focus on the data protection and privacy laws.

So you can honestly say that - think that gTLD Registration Directory Services policies that exist today -- in other words, the WHOIS thing that we have today -- address compliance with European data protection law.

Greg S. Shatan: I would say that, unless WHOIS compliance with local law policy doesn't work, which we haven't really looked at, then it's at least an open question as

to whether it does work in there for the answer to this question could be yes.
So if what we're trying to do is exclude yes, I don't think we can exclude yes.

Chuck Gomer: Having a terrible time following your logic, but let's go to Steve Metalitz.

Steve Metalitz: Yes, thank you, this is Steve. I think the data point we have on that question is that WHOIS - the current existing gTLD Registration Directory Services policy has been enforced for close to 20 years and it is never, to my knowledge, been the subject of a complaint from a data protection authority, a formal complaint from a data protection authority in any EU member state.

Now, that data point is of limited value because we know that the law is changing in Europe, perhaps not dramatically but significantly. And in fact, we even have a proposed principle down here that says, don't worry about existing laws in the EU so much as what the law will be once the GDPR comes into force.

So I think Greg has a point that one would've expected that if the answer to this question was no in the case of Europe, that the European data protection authorities or European citizens acting under those laws would've taken some action but in fact, that has not been the case. Thanks.

Chuck Gomer: Thanks Steve. (Andrew), you're next.

(Andrew): Thanks. So it seems to me that we are - what we're struggling here with a conclusion that doesn't seem very hard to draw. So I guess I'm fully understanding why we're having this conversation. The - it's quite plain from the legal advice that we have here and comments from the data protection commissioners that we've already spoken to and from various complaints that people have been making, that the current policies and the implementation of those policies have a tendency to reveal data that makes a lot of people uncomfortable. And that just seems to me to be uncontroversial so I guess I'm surprised that we need to plow this field anymore.

And so if there is somebody who thinks that, you know, that the answer to this question that's asked is, you know, is that we've already - we're already in conformance with all of the necessary jurisdictional issues. I would like that person to speak up and if nobody has anything to say about that, then I think we can take this as red and we can move on because it's just - I'm getting to the point where it seems to be, we're spending a lot of time discussing something that everybody seems to agree about anyway. Thanks.

Chuck Gomer: Thank you (Andrew). I appreciate that.

Jonathan Matkowsky: This is...

Chuck Gomer: That's where I'm at as well. (Fabricio)?

Jonathan Matkowsky: This is Jonathan. I don't know - again, I don't want to interrupt, just something that's...

Chuck Gomer: You'll be after (Fabricio) Jonathan.

Jonathan Matkowsky: Thanks.

(Fabricio): Hey Chuck, thanks. This goes a little bit to what (Andrew) just brought up and kind of, I guess, follows up on some folks who have confusion with the question. So, I struggle with this question because -- and this isn't to be nitpicky but I think this is serious is -- we're asking if the existing registration policy sufficiently address compliance. And I think we're conflating two issues. At least I feel like I need to when I'm answering this question which is, one is the policy, the other is the implementation.

If you ask me if the current implementation of the current policies complies with the different data and privacy laws, I'd say, no because it's very clear to me that if you read the current RRA, it matches up fairly well with the

principles that we've now seen come out of the GDPR. The implementation of those policies though, have not been done correctly.

So for example, all the discussions we've had about purpose, I think people have taken it that there is no principle or policy in the RA that says that you have to have a purpose. But the RA actually states that specifically, right. In 37741; the purpose for which any personal data collected from an applicant are intended. You actually have to state that. Not entirely sure registrars are doing that but that is a requirement under the RRA and it is something that's required under the GDPR.

Same with consent. The consent needs to be actually explicit, it needs to be polled and the RA goes even further to state that if a registrant who registers a domain name, then uses the data of a third-party, that third-party then needs to give - speak of an exact same consent to the registrant provided the registrar.

So I think we're having an issue here where if you ask me this specific question as highlighted here in 5.1, I'd say the answer is yes or probably. If you ask me if the implementation of these policies complies, I'd say the answer is no. And that's where I think the rub is. And I think that's probably the issue that we've had going all along is that if you actually applied what's in the RA correctly, we wouldn't be having such a divergent opinion on where we are this situation. So, you know, I don't know if that's a question or statement but just to let you know why I think some folks are struggling with this because I certainly am.

Chuck Gomer: Thanks (Fabricio). Maxim, you're up.

Jonathan Matkowsky: I think I'm up.

Chuck Gomer: Oh, I'm sorry, Jonathan, you're right. I wrote myself a note but I didn't look over at my note. Jonathan, you're next, yes.

Jonathan Matkowsky: It's okay. Thank you. I agree with what was just said. And I do actually find this confusing regarding the question on policies versus the implementation. Are we talking about a protocol? Are we talking about policies, like, including the ICANN procedure for handling WHOIS conflicts with privacy law? Like, because that to me seems like part of the policies from - so therefore, it's not clear to me at all upon further thought and hearing what others have said that there is actual - that it doesn't address it.

And, like, whether it addresses it is this total separate question of whether it satisfies it. But because I look at the revised ICANN procedure for handling WHOIS conflicts with privacy laws potentially within this scope of the policies and that may adequately address concerns. Like, and I think we also need to look at what, you know, who the data controller is and processor because it seems like the policies involved with, you know, with RDS or WHOIS, you know, allows for the controller, which I look at as the registrars, maybe ICANN in some ways, a co-controller but we didn't really get into that kind of analysis.

We just had a chance to read this memo. So it's not clear to me and I think that we should look at, you know, the WHOIS conflicts, the privacy law, how those are handled and whether it satisfies the concerns because to a large extent, even if you make an argument that, you know, ICANN is a co-controller on some level, like, the controller is the registrars collecting this data, and whether or not each of those comply with their local laws interpreted by GDPR when it comes into effect, is really something that isn't relevant to the protocol itself necessarily.

They might have to make exceptions to who - you know, if there is a WHOIS conflict but the policy itself which allows for that, seems to, at first glance, work. So I'm not sure that, you know, that we should assume, like, and like Greg was saying, that the answer is clearly, yes. That there - it doesn't comply - like, clearly no, that it doesn't comply. Thanks.

Chuck Gomer: Maxim, you're next.

Maxim Alzoba: Maxim Alzoba for the record. Actually I have two items. The first is about the current policies for conflicts with WHOIS and national laws. Unfortunately, the policy doesn't work in situations where you cannot reach the point where you violated the law because on the GDPR defines a huge, like, 20 million euros. And effectively we will have situation where all the writers of the systems - of our system potentially yes, might be out of business. And without registers and registrars, the data system doesn't work actually.

And the second thing is, I have a question about the escrow. Do we see escrow, data escrow as a part of the data system? Like, the storage of the data or do we see it as separate perhaps. I'm asking this question because of the information from RDS will be stored in that system. And the necessity of removal of information when the person withdraws it, yes, his or her consent, is something we need not to forget. Thanks.

Chuck Gomer: Thanks Maxim. So this group has a real knack for trying to get what we want and we want different things. The - I think the evidence is very clear that existing policies do not satisfy data protection and privacy laws in all jurisdictions. The data protection commissioners told us that. This independent legal firm told us that. But if we don't like the answer, we will try everything we can not to accept it. We ask for an independent analysis, we got it. We need to accept the fact that there are laws in some jurisdictions for which the existing system does not work and we need to move on from there and see how we deal with that.

The expert working group has given us message. They're not easy, they're complicated, they involve a lot of things but they have given us ways that we can satisfy laws even with very strict jurisdictions and still meet the needs of intellectual property interests, of abuse managers around the world and so forth. And until we can accept the fact that there's a gap here, and we need -

we won't be able to move on to fill the gap. What we should be focusing on in my opinion, is how we fill that gap. How do we make it work and meet these needs?

There seems to be strong agreement by many in the working group, if not all, that there are lots of legitimate needs like intellectual property enforcement, like minimizing abuse and eliminating abuse. Nobody's disagreeing with those but until we accept the fact that the existing system doesn't work for all jurisdictions, then we can't move on and we will make no progress. (Fabricio).

Jonathan Matkowsky: Chuck, this is Jonathan.

Chuck Gomer: Okay you're next after (Fabricio).

(Fabricio): Hey Chuck, thanks. And Jonathan, sorry for jumping in here, twice now. Chuck, I get - I sense your frustration and I get it. I think we're all pretty frustrated but I think we really do need to deal with the fact that, to my point, there's a big difference between what the policy requests and what the implementation has actually been. I also think there's a big difference between the legality of a policy and the response, as you're citing, to what that DPA's said, response to these questions and legal authorities.

And so let me give you an example. Question 10 was; with regard to general data protection regulation compliance by entities within the EU, would it be enough legally if ICANN consensus policies define a new registration directory service which allows for controlled access to registration data without requesting the data subjects formal consent for each use, especially uses that do not benefit him or her but are lawful, for example, the suppression of criminal offenses.

Now one glaring assumption there which doesn't comply with - without the user's consent for purposes. Why would we make that assumption or ask that question and put it that way if we already have a policy in the RA that actually

states that you have to actually delineate what the purposes for collecting that person's data, among other things. I've put those in the chat.

So I guess what you keep getting here and what's causing a lot of frustration is, if you take these answers on their face, sure. Chuck, I 100% agree with you and everyone else who's sitting here saying, gee, why would anyone question any of this. The reason we question it is because we think a lot of the questions that were asked either don't actually mirror up with existing policies and/or make assumptions that go counter to the policy.

So if you follow what the RA actually says, this question doesn't exist because the implementation to the RA is that you have to give someone consent. So asking a DPA a question that assumes something that runs afoul of a policy is going to have a crap answer, which is what we got the DPAs, which is what we're getting from Wilson Sonsini. Coming from a firm who has to give advice every single day for questions like this, I can tell you that the questions make all the difference, which is why Greg and everyone else is asking where the questions came from. Which is why people are confused and why it is that some people here feel that we're asking semantics. It's not semantics, it's important facts. Garbage in, garbage out. And that's what we're getting here.

So to stand here and say now, hey we have the facts, we have legal opinions. No, we have legal responses to questions. And those questions made a lot of assumptions. And I'm pointing out just one instance out of many where the assumption runs completely afoul of the policy. And we're now asking the question, does the policy suffice to deal with legal principles in different jurisdictions? Probably. Does the implementation? No, so I hate to keep coming back to it but it's not semantics. This really matters.

Chuck Gomer: So (Fabricio), I want to ask you a question and this is Chuck speaking. Do you believe that existing WHOIS policy adequately meets the requirements of

defining purposes for the data that is displayed in WHOIS according to the GDPR and other data protection law that's already been in place?

(Fabricio): I think as written, the policy to the RRA, are broad enough to encompass the differences in jurisdictions while covering off all the importances that are the principle...

Chuck Gomer: Do they define the purposes as required by the GDPR?

(Fabricio): I don't think the GDPR or the legal opinions actually went as far as to define the purpose. As a matter of fact, I'm pretty clear that the legal opinions actually said they wouldn't go as far as to do so. They can only give you a high-level principle which is why...

Chuck Gomer: But they did say...

(Fabricio): Chuck, hold on. Chuck, Chuck, Chuck...

Chuck Gomer: ...that you have to define the purpose.

(Fabricio): Chuck, if you ask me a question, I'd appreciate if you'd just let me respond.

Chuck Gomer: Well you're not answering my question.

(Fabricio): Well, the I...

Jonathan Matkowsky: I think he did.

(Fabricio): I'm not done answering it Chuck. You obviously can't understand my answer. I mean, I mean to get aggressive but you're trying to railroad something here and it's not good.

Chuck Gomer: No, I'm not trying to railroad anything. I'm trying to help us make progress and...

(Fabricio): Right, but what I'm trying to say, like someone else said earlier, it's again, haste makes waste. I understand that we need to make progress but jumping over important facts doesn't get us anywhere. We're just going to have to revisit this later.

And so when you ask me a complicated question and I try to give you a substantive response back, cutting me off mid-sentence does not solve the problem. It just keeps reiterating what conclusion you've made and we're clear on the conclusion you've made. I'm trying to explain why others don't come to the same conclusion, including me.

Chuck Gomer: So, my apologies for the impatience, but so you believe that the existing policy adequately defines the purposes for the display of the data that is displayed in WHOIS?

(Fabricio): I guess that's my point, that nobody is saying - nobody including the legal opinions we received said, that actually delineate what the purposes should be. But the thing is you need to put one out...

Chuck Gomer: Agreed. We're not disagreeing there. I agree with you but they have said that those purposes do need to...

(Fabricio): Exactly...

Jonathan Matkowsky: But which has a data controller.

(Fabricio): ...which is why I'm saying to you from the outset, you have a difference of policy and implementation. If the policy, like the legal opinions and like the data the DPA said, you have to have a policy that specifically outlines what

the purpose is. It's left up to the registrars and registry to delineate that, then what we have isn't a policy issue, it's an implementation issue.

Chuck Gomer: Okay, so I think we're together here (Fabricio). That's my point. We haven't done that yet, whether it's implementation or policy or requirements, that has not been done yet therefore we do not comply with European data protection law. That's all I'm saying. And if we haven't done just that one little thing, then the answer to this Question 5.1 is, no.

(Fabricio): And again, and I get what you're saying so this is why I brought it up and why it seems so absurd but, the question you're asking is whether the policy complies. The policy may very well comply, it's the implementation that isn't complying.

Chuck Gomer: Okay.

(Fabricio): And so if we're going to - right, but if we're going to make it...

Chuck Gomer: I can change it to implementation. That's okay.

(Fabricio): ...if we're going to make a decision about changing policy, we need to delineate between the policy and the implementation. And so we can't have a situation where, as I'm arguing, much of, if not all of the policy does comply, it's actually an implementation rule which then would lead down the question, just the two different avenues, one could lead to an entire scrapping of WHOIS, the other could lead to a compliance issue of telling registries and registrars if they should follow the letter of law of the agreement they signed.

Those are two very vastly different outcomes on two different ends of the spectrum and it all stems from this question right here. Which is why we seem to be asking all these questions that people are basically chastising us on the chat saying, you know, this is semantic or this is very clear. It's not

very clear because what you and I are agreeing on Chuck, isn't what this question is.

Chuck Gomer: So okay, so we're not going - thanks. I better go to Jonathan. Go ahead Jonathan.

Jonathan Matkowsky: Yes, so I totally understand where (Fabricio)'s coming from and, you know, I don't think it's fair to just assume that the purpose of - that the motives of us raising this relates to a constituency interest and with intellectual property, you know. I have a respect for data privacy and protection and find this question obviously ambiguous because you misunderstood my answer before. It's asking about addressing compliance. It does not talk about whether or not it actually complies, number one.

And policies and implementation - like, and a protocol, you know, are two separate things. Like, if we're talking about the WHOIS protocol and whether that complies with applicable data protection laws, you know, that's a very - a different point than whether or not the, you know, the implementation does.

So I think that, you know, we need - there's no way to really analyze this without getting into data controllers and data processors and looking at, you know, who the controller is, who the processor is, in light of the memo that we, you know, if we take the Wilson Sonsini memo as a starter point. Like, it seems to me that without the data protection authorities for all of the facts that, you know, to inform the memo, but we did not get into the actual, you know, the way the architecture of the internet and the way the protocol works and the roles of the different players in the process. Like - so I think that, you know, we should've done that when we went to Wilson Sonsini. It would certainly help me to understand better the issues and where to go with them.

So, you know, I'm not trying to delay - slow us down but I do think that that is really, really importantly worded. And not, you know, I'd like to actually get an understanding of the role of the registrar as a controller whether they can use

the WHOIS - you know, what Maxim was saying of like, get some more input on that and whether or not, you know, the policies for exceptions to WHOIS. Like, the purpose and secondary - what the primary purpose and secondary purposes and whether the registrars could actually specify in more detail when they collect the data, you know, to comply with their local or - I mean if you look at GDPR, it's even going to be implemented, you know, somewhat differently within bounds within (unintelligible). Or could be even further limitations within GDPR by a EU member state.

So I'm sure that there's room for even different ways of implementing GDPR within the EU, from what I can tell so I think the registrars have a large role to play here. And, like, we need to distinguish the policies from the implementation. And to get more information, especially about the role of, you know, who the processor is, whether there's co-control going on or who the controller is because everything that the - a lot of what the memo said related to the data controller and we really didn't analyze the role of the controller in relation to all the players in the ecosystem to get - to draw these conclusions. Thanks.

Chuck Gomer: Thanks Jonathan. Let me try, and coming back to (Fabricio)'s distinction between policy and implementation, let me try a rewording of the question. I'm probably not as happy with the way the question is worded in the Charter as everybody else. That's common with Charters because, you know, they're early in the process and so forth.

What if we phrase the question; do the existing policy and/or implementations of gTLD policy sufficiently address the data protection and privacy laws in all jurisdictions? Does that help?

Jonathan Matkowsky: I think Chuck - so let me see if I could try to help you as what we assess, I mean...

Chuck Gomer: Is this Jonathan again?

Jonathan Matkowsky: Yes, sorry. Yes, I think that helps to talk about the policies and/or implementation. And sufficiently address compliance is, that's really tough to really understand what that means. Does that mean comply? Or does that mean the policies address what's required for compliance? That's not - it's not clear to me at all and not be going - can you shed light on that part? And then let's get to the last part of the question.

Chuck Gomer: Okay, let's go to Nick. Nick Shorey, are you on mute? Okay, not hearing Nick. Nick, you might try typing something in the chat. And (Natalie), you're up. (Natalie), are you on mute? Nick, you're now showing on mute in Adobe. Not hearing from either one.

Jonathan Matkowsky: Chuck, can you answer what I asked you about - isn't this one in the same, sufficiently address compliance, like, address the compliant issues or is it - or do they comply? Is that the same thing because you were...

Chuck Gomer: I - thanks Jonathan. Let me see if I can - so how - why don't you - you see what (Lisa) put in the chat, why don't you change...

Jonathan Matkowsky: I'm not on the chat.

Chuck Gomer: Oh that's right, you're not in chat. Okay, so (Lisa), see if you can address, rephrase the question to address Jonathan's suggestion there on compliance. I don't know if that's - if you can do that or not.

Jonathan Matkowsky: Well what is the intent of the question in your - is it to get at whether or not the policies adequately address compliance issues or is it asking whether or not the implementation or policies comply with the applicable data protections? It sounds to me like you believe it's the latter. My on the - what my real question is, complies from whose standpoint? There's a lot of players in the ecosystem and it totally depends on the facts and circumstances of

how that data was processed, who the controller was and what data protection laws apply.

Like, so just because the GDPR is coming out, doesn't answer that question. We did get a lot of helpful information on the GDPR but we saw, even within the GDPR, you have to ask the question with respect to the different players like, is there - who's the controller, is there a co-controller situation, who's the processor involved and whether or not they complied with the applicable laws depends on the facts and circumstances. So those vary within the ecosystem and within WHOIS.

So I'm not sure, like, that's where I'm having the most trouble even of getting past what - you know, assuming the question's asking whether it complies, not just addresses compliance. It's the answer to those latter questions that need answering before we can answer this. And the memo did not address them at all.

Chuck Gomer: Let me remind everybody that the questions asked were developed by the working group, okay. So I'm sure they could've been done a lot better but it was pertinent for those results...

Jonathan Matkowsky: Well it was a good start. I'm just saying that now that we've seen what Wilson Sonsini said and we're - and, you know, people have a better understanding of how these laws work, I'm not sure - you said there were certain follow up questions, like, did we analyze the role of the registrars as the controllers versus, you know, and ICANN as a processor versus a controller or are they co-controllers and how that relates to the, you know, the new system, like, that we're developing versus the WHOIS protocol that exists. Or how that data gets into the database to begin with through various entry points.

Chuck Gomer: Let's look at what (Lisa) put in the chat to change the question. Do existing gTLD Registration Directory Services policies and/or implementations prevent

compliance with applicable data protection privacy and free speech laws within each jurisdiction? Is that better?

Jonathan Matkowsky: That certainly isn't - I don't think it does at all. I don't see - at least I'd love to hear from those who think it does...

Chuck Gomer: I'm sorry...

Jonathan Matkowsky: ...like, I don't know if (Volker)'s in the chat.

Chuck Gomer: I didn't understand what you said. Did you say, it doesn't help?

Jonathan Matkowsky: I don't think - I don't have any reason to believe it does at all prevent them. But I'm sure there are others who have, you know, something to say on this. I'd like to get a better understanding. I'm sure there's some on the call who could help, you know, help shed light on that but I don't see why it would at all. Why can't the current policies and procedures - like Maxim mentioned and I couldn't fully understand what he was saying but he was explaining that maybe the exceptions to WHOIS doesn't work. But I'm not sure I fully follow that. I'd like to hear more.

Chuck Gomer: Okay, let's go to (Fabricio).

(Fabricio): Hey Chuck. So listening to this, I finally, I think I just figured out what the issue is here with this. You know, with the some of the things I'm reading out to you, for example like, you need to have a purp (sic), you know, in the RA. That's from a position where ICANN is telling registrars, giving a guidance basically as something they should be doing, but the ICANN's position until now, and I assume continuing until told otherwise, is that they're not a data controller. And so from a non-data controller perspective, the edict they've given under contract RRA, actually is fully compliant.

Now if you're taking the position that they are a data controller, to your point, they wouldn't - that what's written in the RA wouldn't be specific enough. And so to (Jason)'s point and not to kind of go in circles but, it makes a huge difference when you're looking at the current policy, whether you're taking position that that current policy is written by a data controller or it's not written by a data controller because what ICANN has basically done to RA is that, we're not a data controller but you need to have this data and we leave it open because we have so many registrars and so many different jurisdictions, to then comply with the law under these general principles that we know at least a high-level principle applies to all these different jurisdictions.

So we do need to know that that question to even answer the very high-level question. I do like the way (Lisa) has rewritten it and (Lisa) also pulls off in a clutch situations figuring out how to rewrite and interpret what we all say. And I think that that's a better question.

Chuck Gomer: Thanks (Fabricio). Andrew?

Andrew Sullivan: This is Andrew Sullivan. So in response to the question just a moment ago about whether the current policy is the issue or whether it's merely implementation, I don't, I mean I'm not a lawyer for my many sins, I did other things, but when RDAP was proposed to be implemented by the ICANN organization staff, several of us were very keen to have that happen and to use differential access features that are built into the protocol and so on. And the conclude at the time was that the policy has to change in order to permit any of those of innovations because of the way the policy's written.

So as nearly as I can tell, at least some people on the legal staff of ICANN org think that the policy is tightly bound to the details of the protocol that is being used, effectively WHOIS. I think that that's probably correct and therefore a part of the problem here is precisely that. The policy has always been written using the way that WHOIS works as a protocol. Unfortunately,

WHOIS is an obsolete protocol. It doesn't have a number of features that any modern internet protocol would have and therefore the policy's been written with a respect to a protocol that, you know, an implementation that just doesn't work to do all the things that we want it to do. So that's the reason that we've got a problem here.

But if that isn't convincing, then maybe what we need to do as a group is to show ourselves whether that's true. We could go through the current policy and attempt to reimplement it using, you know, this modern protocol and I propose RDAP for it since RDAP is the one that has already been developed and is deployed by some of the RIRs. And then we could see whether we can do things that are acceptable to everybody using that new protocol. It's a sort of - it's the kind of inverse of what we've been doing so far where we're working from principle and then we're, you know, supposed to converge on some sort of implementation. But it seems to me that that isn't working anyway. We don't see converging at all. So maybe we can just invert it and try doing it the other way. Thanks.

Chuck Gomer: Thanks Andrew. Anyone else? We've run out of time...

Jonathan Matkowsky: I have comments on what Andrew just mentioned. This is Jonathan. So just to try to understand this, like, the way I understand it, RDAP is the underlying protocol that the RDS will basically be built on and it's meant to replace the WHOIS policies that the - WHOIS protocol. And we're working on the RDS which will - are the policies that would implement that protocol, so to speak, the way that WHOIS is implemented by the policy's currently.

So it's possible that, like, RDAP is a better protocol than WHOIS because it allows for additionally - it, like, enhanced functionality or features. But I just don't know whether or not, like, to your point, those are absolutely, like, required by data protection laws or just desired in order to allow, you know, to allow for additional functionality.

So it would be great to know, like, what the underlying policies for WHOIS are that are inconsistent with allowing the features of RDAP. Like, because we can have RDAP and it would be in the RDS but, like, a lot of the policies they're talking about and whether what they - what's required to implement that protocol seems to be really what, you know, it could be implemented in different ways, right, using the same protocol, the RDAP protocol.

Like, there's already right now a pilot that I penned on the RDAP protocol. So, like, the RDAP protocol is really independent of the RDS policies that would govern it, right. I'm just thinking here aloud. Is that your understanding Andrew?

Chuck Gomer: So we're, and this is Chuck, we're - unfortunately, we're past time so I need to wrap this up. We're going to have to continue this. Let me go to David Cake and then we'll try and bring this meeting to a close.

David Cake: Okay, I just wanted to say a brief - I mean, I'm in general agreement with what Andrew is saying that the RDAP - if we were to redesign that policies now with RDAP as the basis rather than WHOIS protocol, we probably would come up with different policies. But the question about, could we just sort of redesign what we have now and not use them, use some of the features is, you know, is a pertinent one. So we could - there are features in RDAP that absolutely if we did design, you know, a RDS using that as the basis at the moment, of course we would use them. Of course we would, you know, allow for encrypted transit so as not to accidentally leak information that is not intended. That is a useful thing.

There are features though that there is a question about, would we use them or not. The particular one in here is, authentication. Do we want to authenticate a user to the RDS so that we know who they are and that they - we can offer different services to different authenticated users. And that is basically the question that is sort of very pertinent here and we don't - I mean, can we angst - it's very difficult to say would we have designed WHOIS

differently entirely. But certainly some features, of course we would have changed. So it is worth thinking about. Are we (unintelligible) essentially there only because we did not lack the capable capacity to do it differently at the time.

It's worth considering but some of these questions are unanswerable, others are very pertinent. Thanks.

Chuck Gomer: Thanks David. Okay, sorry for the meeting going over. It's been a good discussion. My apologies for my frustration. I really would like to see us make some progress but - and maybe we did, I don't know. What I'm going to suggest is that Julie, you send out a doodle poll for the leadership team for a meeting the next couple days so we can consider the discussion that's happened today and hopefully come up with some ways to move us forward.

I heard lots of different things. Some may not be mutually exclusive. So we will do that and we will get back to the working group in terms of next steps and thanks for the open discussion. We need that but we also need to figure out how we can move forward. And obviously what we did today didn't help that, or maybe it did and I'm not seeing it yet.

So the leadership team has an action item. If you haven't looked at the memo from Wilson Sonsini, please do so. If you haven't looked at the principles document, please do so. And we can continue to have discussion on the list if any of you have great ideas of how you think we can move off the dime and start making some progress, please share them on the working group list.

(Lisa) and Marika, anything else we need to cover? Okay, then let's go ahead and adjourn the meeting. The recording can stop. Have a good rest of the week.

Julie Bisland: Thank you Chuck. Thanks everyone for joining today. (Jay), you can stop the recordings and everyone enjoy the rest of your day.

END