

ICANN

Transcription ICANN Copenhagen

GNSO Registration Directory Services (RDS) Policy Development Process Working Group Meeting

Wednesday, 15 March 2017 at 1:45 CET

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Chuck Gomes: Okay. Have the - has the recording been started? Thank you. And do we have anybody online? Apparently none right now, okay. Thank you very much.

Okay. My name's Chuck Gomes. I'm the Chair of the RDS PDP Working Group. And we have a very full agenda in follow-up to the Cross-Community session that Becky led very well. And Becky's here with us. Thanks, Becky, for joining us on Monday, okay. So welcome to all of you.

As usual, the first thing we need to ask is if anyone has an update to their Statement of Interest with regard to working group members? Okay.

And by the way, if you're a working group member, I hope you'll be at the table up here. There's still plenty of room.

And I will also say that those of you in the audience that aren't working group members, maybe not even an observer, you're welcome to participate in this meeting.

So I'm looking at my Adobe screen here. Oh, one last comment, introductory comment. If you have a computer and access, I encourage you to access the Adobe link. It's not our regular Adobe link for our teleconference calls. It's the one that's in the meeting page for this meeting.

If you click on that, you can raise your hand in there, you can see the chat and so forth so. So please do that if you can.

Now I'm looking on - in Adobe and I'm not seeing the agenda in Adobe like we normally do.

(Lisa): Yes, this is (Lisa) from staff. That's correct, Chuck. We don't have the agenda and pod posted.

Chuck Gomes: Okay.

(Lisa): But the first item is to welcome our guests and introduce them.

Chuck Gomes: Okay. Thank you. Well, our agenda is unique today. I think we told you this was going to happen on our - in our working group meeting on Saturday.

We're going to probably take the whole time that we have -- which won't even be enough -- to ask the questions, the 19 questions that we developed for the

data commissioners. Some of them were touched on in the Cross-community session. Probably none of them were completely answered.

So - and we have with us one of the commissioners that was here and - Joe Cannatachi. I probably butchered your name, Joe, I'm sorry. The first one's a lot easier.

But Joe participated not only in the session with the board on Monday and the Cross-community session, but also the GAC session with the commissioners.

He's with the UN. I'm not even going to try to go over all of his qualifications. He lives in Malta. You must be on the road a lot.

Anyway, got a chance to chat with him a couple times over this week and very much appreciate his willingness, not only here this week -- and he stayed all three days which we greatly appreciate -- but also his willingness to help us going forward.

Now I want to re-emphasize again that this is not the time to deliberate. Most of the time we're trying to deliberate on requirements and so forth in this working group. We're not going to have time to deliberate today.

Our goal is to improve our understanding on data protection and privacy requirements in many sections of the world. We'll have plenty of time to deliberate later.

And for those of you who are not privacy advocates and I - you're going to have plenty of time to make your case for law enforcement access, for IP access. We have to do that and we will do that. But I would ask you not to try and make your case today.

What I'd like to encourage you to do, we're going to be asking Joe to respond to as many of the questions as we can get through. And we will, by section of the questions, open it up for Q&A.

But please don't use that time to make your argument to counter what we're talking about with regard to data protection and privacy.

The more we can learn today, the better we'll be able to deal with these requirements in complement to competing needs and requirements.

So I hope everybody will follow that guidance so that we can maximize our time and take advantage of the time with Joe here.

Now we also have Peter Kimpian who's one of us. Peter has helped arrange a lot of the commissioner that attended. He's been working on this since Hyderabad and before. Stephanie has also been a great assistance in this regard. And so we thank both of them for their contributions to that as well as the panel that was formed on Monday and everybody that contributed to that.

So I'm doing way too much talking because we need to get to questions. And I think the questions are next, right, (Lisa)?

(Lisa): Yes.

Chuck Gomes: Okay. Remember, when you do have opportunity to speak and I'm concerned that - oh, there's the mic. Okay, there is a mic there. So when there is Q&A, please line up at the mic. But always identify yourself first for the transcript and the recording.

And we have in Adobe, if you're in Adobe, and on the screens behind us here the full list of the questions that the working group developed. And we sent these to Joe as well as the other commissioners in advance so they're not seeing them cold.

And I'm not going to read the full questions. I'm going to do some abbreviated versions of those. But you have them on the screen. You have them in Adobe so.

And if - we won't be able to give you scrolling capability unfortunately because that would affect - would not be possible with what we're displaying.

So getting started. What do you mean when you tell ICANN to specify the purpose of whois? And all of you know, we're working on purpose of - not - we're not going at whois anymore, of a registration data system. What do you mean by that? And for example, what does purpose apply to?

What does a purpose apply to in RDS? Where will purpose apply or not apply in data and RDS policies? What criteria should be used to determine legitimate purposes? Remember, the legitimate work came up in our meeting on Saturday. What is the difference between primary and secondary purposes?

Now, Joe, I'll be glad to go back and cover those one by one if you prefer. But let me ask you to go ahead. Certainly if you have any clarifying questions, ask. But go ahead, take it from there.

Joe Cannatachi: Thank you. First of all, thank you very much for the invitation. I really appreciate being here. It's given me the opportunity to meet a lot of new people as well as meet a few people I already knew already.

And before I - we get into the substance, if you permit me a small comment about future procedure perhaps. And while I can understand what you're saying about the rooms and having meetings back to back, Chuck, I think that the warmth of the reception we've had over the past three days indicates that ICANN might wish to consider a couple of things.

One is sustainability, how do you keep this going because whether we're going to have 70 minutes or 70 hours or 70 weeks, we're not going to finish. Right? The substantive debate is not going to finish.

And I think that you might want to have a look at setting up a group which is a transversal group which cuts along - across many of your committees, one which not only deals with privacy but also deals with other human rights like freedom of expression, etcetera and where you would invite other people in to join in the discussion.

I mean, I for one, wearing my United Nations hat, I'm sure that the Council of Europe and the EDPS and the Article 29 Working Party, if invited, would contribute.

That way you would have a full room where practical questions could be bounced off. And eventually you might also want to think about institutionalizing it in some form in your bylaws.

Let me explain why. As we're going to see when we discuss purpose, new purposes are going to come up. New answers on purpose will come up. And there will be occasions where some of your groups and subgroups will want to come away and test the waters or ask advice.

And I think that's - you might need to... And I'm thinking out loud here. I don't have anything written. This is not a prepared position. It's something which has come to me this morning as usual. I don't know about other people in the room but when I'm shaving, I - those minutes count.

And I was thinking now, yes, we've such a lot of positive feedback, how do we take it forward. Well, I would impart this idea with you. Please just consider it to be an offer of continued support. Right? Then the best way we work out the logistics on this we can discuss in detail. But I think you'll understand how much there is to it.

Let's go to purpose, right? Now let's leave procedure and go to substance. Purpose remains the key. We could spend the whole hour or day talking about purpose. And the tests for purpose basically should be ones based on case studies or use studies.

And I'll give you a couple of examples, some of which you may have heard me use before.

Whenever you have somebody stipulate and say I want to collect this data, right, at that very minute you have to ask the question why and immediately ask why and - if it's your banker who's asking the question.

If you've applied for bank loan, right, the banker tends to ask you quite a bunch of questions including sometimes some things about your sexual life, right? There were days in the 1980s and '90s where they even asked you, do you have HIV, etcetera. They wanted to know how big a risk you were. Right?

So the same applies to taking out an insurance. I mean, you guys, most of you guys have filled out insurance forms and you know. But what's the purpose there?

So if the purpose is to be given a life insurance, if the purpose is to be given a loan, then each bit of information that you're asked must be in line with the purpose. And you have to take a pretty strict approach when you're being asked that.

And you have to remember too that the purpose can never be a general purpose. And there's a lot of jurisprudence which says you can't go away and say just in case I need it.

So if you you're for example - if you're Vodafone or Orange and you have - you're collecting data about your customers and you're collecting geolocation

data, very often in the past one of the reasons they used to do that was in order to be able to understand reliability of the network.

They would triangulate, check the mast, etcetera. And they had a period, an engineering-defined period for that. And they would say we're going to collect it. We're going to keep this for three months, possibly in a nominate form so we can follow up with the people concerned just to check.

But after that we're going to remove the links from names completely because all we're interested in knowing is how many sets can the network maintain in a given area without failure.

In fact very often, for the engineering crowd here, it's - most of them would be aimed at MTBF, right? They would be trying to establish mean time between failure and they would be trying to establish also the amount of load the system could take.

So if I continue with my Vodafone example, they would keep the records on Peter or Chuck or Joe only for as long as I've paid them or not, right, if I was a subscriber.

The minute that I've paid, right, then unless they have some kind of fidelity scheme to which I've signed up and to which they're going to give me discounts and whatever else, the extent to which they would keep my phone records -- depending on which particular part of the world they're in -- they would tend to delete them between three to six months if I've paid my bills. Right? So what's - because what's the point of keeping it otherwise?

So what's the point becomes a very important question. You know, what's the purpose for your keeping the data? And as I was saying yesterday and the day before, the devil is in the details.

You have to ask all the pesky questions, right? And you have to become a specialist at asking those questions. And what you learn, the more questions you ask.

The next case that comes along could be a different one. So don't be surprised that it's going to be a different one. It's going to be a different one.

And some new things keep coming up too. If you look at wearables and data associated coming out of wearables and then you're going to think about NFC and all the data that's coming out of that, you're going to say -- and I'm deliberately giving examples which may or may not be applicable or of direct interest to ICANN members -- but you begin to see how it comes - the story starts to come together. Right?

Because wearables are often transmitting your heart information, your - and other information about yourself. And that's suddenly medical data. Medical data, under many systems of law, is sensitive data.

So what do you do about that? Before wearables were invented, we didn't have the problem, did we? But now we do. So we have to be agile. I mean, agile has become a rather fashionable term now but we have to be agile in handling these things.

Could I make a quick comment on what you were asking about primary and secondary purpose, right? I could answer - you know, I could be a wise guy and say I don't understand your question, what do you mean, secondary purpose because it is not up to us to assign the secondary purpose. It's not up to the regulator to assign the secondary purpose.

Any secondary purposes should be very carefully stipulated at the word go when you're collecting the data. So let me give you an example of some debates that used to arise in the past.

If you are a telecoms company and you develop a new servers, if you are a bank and you develop a new servers... This happened especially in the '90s when I was still also working very actively in banking and introducing Internet banking and telephone banking in those days -- we were getting this question.

And the question was so can the bank then use its customer database to market services which are not banking services. You will remember in the '90s the banks especially started going to bank assurance and insurance services. So what do you do there?

So we had, and also the Council of Europe, we used to have, when we were drawing up the recommendation on insurance, we used to have a lot of those discussions to see whether that was admissible as a secondary purpose.

And at some point in time it became fairly okay that if you had the relationship with a client, you could go back and market a different service to the same client but your service to that client.

Then some people got pretty liberal and then we went into gray areas. Oh but once I have your address, can't I give you information about my friends, you know, and linked companies and associated things? And then we got into a whole mess on that one.

So when you're talking about secondary purpose, please be specific and don't expect the regulator to come up with secondary purpose, right, because it's...

When you further specify the purposes that you have for whois -- and this is where I'm going to shut up because I'd really love the audience to come up and the participants here to come up with the questions, right -- do you have concrete cases in mind where you think that the purpose is not clear? Right?

Because if the purpose is clear... And let's take a relatively easy one, right?
So the purpose is in order to enable enforcement of a specific law. Okay?

So let's imagine that you have in one country or another but possibly in many countries eventually a law which facilitates checking up on information on libel, all right? So while we're all for free speech, free speech is one thing but there are consequences for free speech, right? So in many countries, although many countries have decriminalized libel, civil libel still remains there.

So is that a legitimate purpose? If it's provided for by law and the court comes along with a warrant or somebody comes along with a court warrant, then one should assume that the law has been properly thought out and that therefore anybody granting access to anything, right, whether it's just informational for actually holds, who controls the sites. Let's start from that on whois which is an important thing.

But then of course we get into next murky waters. And what about all those people who are currently on whois but are on proxies, right? What do we do about proxies? What's the approach to proxies?

You might have a whole bunch of other questions that you might like to ask. And I'm very happy to engage about those. But after these introductory remarks, Chuck, perhaps we should let the audience come in and see what they would like to raise about purpose because if not, we can go on to other questions but.

Chuck Gomes: Thank you, Joe. I'm going to ask the second question in this category under purpose and let you just make a few comments on that. And then we'll open it up for questions about either questions or new thoughts that have come up. So prepare your questions.

Remember, if you're at the table of course, you can -- and if you're in Adobe, you can raise your hand in there. If you're not in Adobe, go to the mic and raise your hand and we'll acknowledge you.

So the second question under purpose is under what circumstances might the publication of registration data elements that are personal data be allowable.

Joe Cannatachi: Okay. So what's the purpose of publication, Chuck?

Chuck Gomes: The ability to bring up the purposes that we're working on right now. We'll actually bring up the...

Joe Cannatachi: That would be helpful because...

Chuck Gomes: ...purposes that we're deliberating on. Okay.

Joe Cannatachi: That would be helpful because you're asking me what would be publishable and we don't normally start from there. We start A) why on earth would you want to publish anything? Right? B) If you want to publish anything, then there must be a reason for publication. What's the public interest in having free access to that information?

Because if it's purely a law enforcement interest or a chance for organizing that, if it's a transparency issue, then perhaps there are other ways to handle that.

Chuck Gomes: Okay. Thanks, Joe. So - and this is not a finished document, not even close. But so far we're tentatively come up with five elements to a purpose statement for registration directory services.

You can see the first one is... And by the way, the one that's shaded we're still working on the wording of that. We're probably going to still have to work on the wording on all of them but we're a little further along on those.

So a purpose of GTLD registration data is to provide information about the life cycle of a domain name.

Joe Cannatachi: Okay. But why should the information about the life cycle of a domain name be in the public domain? I mean, is it for performance purposes? Is it for liability purposes? Is it for - I don't understand and I'm being deliberate here just because....

Chuck Gomes: No, no, that's...

Joe Cannatachi: ...so that would tease the question out, right?

Chuck Gomes: Sure.

Joe Cannatachi: If you're trying to understand usage of domain names, it's one thing, right? If you're trying to understand another purpose, it's another. So what precisely is the objective here? Is it a performance objective?

Chuck Gomes: And so what you're... This is Chuck again. What you're getting at now is the use cases. Is that right?

Joe Cannatachi: Yes.

Chuck Gomes: And it depends on the user. Okay? If it's the registrant, they may need to see okay am I getting close to expiration, do I need to renew. If it's somebody who would like the domain name, they might want to see when it expires and whether they - it might not be renewed and they could get it.

We could on and maybe some of them - let me open it up to the Leadership Team if you want to respond to that a little bit. And then - and let you respond and then we'll open it up more broadly.

Joe Cannatachi: And when responding, please could we distinguish between an access right or an information right and the publication right, right, because publishing means that it's available to most anybody? If you're going to make it accessible in a more limited way, then different safeguards could apply.

Chuck Gomes: Anybody want to give another use case for why the life cycle of a domain name would be needed? Susan?

Susan Kawaguchi: Hi, I'm Susan Kawaguchi. I manage the domain names for Facebook, Instagram, WhatsApp so major Web sites and I use the whois record daily for our own domain names.

And the reason I do that is I can log into a portal with our registrar and check all the details but it's not real until you see it in the whois record because what's in the registrar portal -- which for me to look at in my account -- might - may not always be reflected in the whois record if things go wrong.

So I review and sometimes at three o'clock in the morning when I wake up startled and thinking oh who's attacked us now to see, you know, has the name changed, has the registrant changed, has the admin contact changed, has - you know, is this e-mail address still valid, what name servers are on the registration. So I go through all of the details that are in the current dotcom whois for example and review those.

Just - it's our own information but if it's not publicly displayed correctly, then it may be lead to issues. Like if the name servers were wrong or something it could - you know, maybe the site wouldn't resolve so - or - you know, if the renewal date is incorrect or I am missing the fact. Or my registrar did not renew it when I put it on automatic renewal.

So from a domain name management perspective, that public record for a corporate domains is critical to my being able to control and secure the domain names.

Joe Cannatachi: Thank you, Susan. I think if I have understood well, you mentioned at least three or four purposes, right? One of them, when you said I want to see who's attacked me last...

Susan Kawaguchi: Right.

Joe Cannatachi: ...is a - would be more of a law enforcement purpose or. And then you have other purposes to ensure renewal which is something else.

And what I'm asking I suspect at this moment in time is do you need access to all parts of the record. Right?

You see, expire date is one thing. An expire date is not a piece of personal information. It doesn't fall within the - it wouldn't be a major concern from a privacy point of view. Right? Very often...

And this is why I was suggesting first that you might want to look at that part of the record which is - which can be made public and easily made public and if that's enough for your purposes, that's fine.

It's - as soon as you get into personal data, so we have to try and find out that part of the record which deals with an identified or identifiable person. Right?

So if you check a couple of my sites on whois or you check somebody else's sites, then we can see the relevant information but relevant for a purpose. Right? And so we have the elements there so domain name, registrar, sponsoring registrar, whois server.

Let's remember also it's registered to a company. If it's registered to a company, in most jurisdictions, not all, but in most jurisdictions that doesn't qualify as personal data.

So in fact to a certain extent, I would stand the question on its head and ask you if all of that was published except for the fact that you have the name not available, is it going to make is easier/

Then of course -- and I'll conclude here -- we have a bit of a problem if I have to think about triangulation, finding out who owns it and is reverse engineer - you know, can the - can somebody get to the identity in another way.

But as such, when I look at the elements there, right, many of them, many of them would not constitute personal data unless they could be linked to an identifiable person.

Chuck Gomes: So you can see, I asked (Lisa) to bring up this slide because it followed up very nicely. By the way, this is Chuck speaking. It fit very nicely in what you were talking about.

What we've done recently is look just at what we refer to as thin domain name data, okay, registration data. And using a definition of source that we chose, these are the thin data elements.

So another -- you can see it's question five and you probably saw it before -- are - and assuming it's - are of those elements in your opinion personal information? Would they be problematic from a personal information point of view, whether the registrant is a company or an individual?

Joe Cannatachi: Well, the minute that it becomes an individual, then I suspect a number of people will tell you it becomes personal information.

Chuck Gomes: Can I follow up on that?

Joe Cannatachi: Yes.

Chuck Gomes: Chuck again. The - so this - nothing there identifies the individual if the registrant is an individual because none of these elements tell you who the registrant is. Obviously the registrar is a company.

And so are you saying then that if this name... This one obviously is CNN.com. It's not a very good example but let's say it is Chuck.com.

Joe Cannatachi: Well, in that case, what's his name, Ted...

Chuck Gomes: Yes, Ted.

Joe Cannatachi: I mean, do you see what I mean?

Chuck Gomes: Yes.

Joe Cannatachi: So if it is easily linked to somebody who is identifiable, it becomes personal data.

Chuck Gomes: So we have people in our working group that think that some of these elements could be linked to an individual. How far do you take that because in this day and age, you can link just about anything to an individual if you want?

Joe Cannatachi: Yes. Well you take it all the way that you need to take it. If you have Cannatachi.EU, which is my domain, no prizes for guessing who that belongs to.

Chuck Gomes: Yes.

Joe Cannatachi: So is that personal data? Yes it is personal data.

Chuck Gomes: So if the domain name identifies an individual, that would be personal data.

Joe Cannatachi: Very clearly. And if you remember, I suggest you might want to construct this in the - deconstruct some of the arguments here. Right? So let me take off my privacy hat for a minute and let me put on my TLD arbitrator hat, right? So since 2005 I've been working with Wiper Rules. I've been working the EU TLD Rules. Right?

And when we try to - when we have two people competing for a name, right, what are the rules that we apply? Right? On what basis do we try to decide that Chuck.EU should go to you or should go to me? Right?

And the arguments aren't - there are quite a number of arguments. And when we try to dissect them and you notice the grounds on which somebody is taking a decision to say no, listen. And if you remember this is where intellectual property comes in, right? And we had trademarks as a basis for the name. We had other basis for a name.

So we - you have to be careful that you put all of those in the mix, right? I think it would be oversimplistic to say just because it's Cannatachi.EU, it's - it becomes personal data. And I'll explain why.

Because Ferrero -- there are so many companies which took over the name of an individual, right, and where you could argue today that that company has the right to use that name and that therefore, if it's that company...

People all know who Ford is for example. When you think of Ford, do you think of Ford the company or Mr. Robert Ford? Right? There are a lot of those arguments which also have to be weighed in.

I saw Susan react. And I suspect that she might want to come on this. And several other people out there got up and down but.

Chuck Gomes: I'm telling Becky to go to the mic. Any of you can. This is really important. I'm going to Susan. Okay? But I just wanted to let you know because I saw others out there. Go ahead, Susan.

Susan Kawaguchi: So I own SusanKawaguchi.com. I'm an individual. So that shouldn't be in a whois record, even the domain name? No name server? So if it's completely private, it wouldn't be entered into the system?

I'm not quite understanding when you said that a domain name that is a name, a person's name is a - is personally identified information.

Joe Cannatachi: Well, I need to qualify that statement, Susan. And the way that I qualify it is this. If the data, any of the data is easily associated with an identified or identifiable individual, then it becomes personal data.

And I used my sir name deliberately because don't ask me how they've done it but my parents have somehow organized things that I'm the only Joe Cannatachi on the planet. And I'm actually awarding prizes to anybody who finds another Joe Cannatachi. So the minute you Google Cannatachi, right, the minute you associate something in many cases, in that case it's very often linkable to myself.

But that doesn't mean that every sir name... And that's why I was bringing in other factors such as sir names which have been taken over by companies, etcetera. It doesn't mean that's the case in every one. And that's why I mentioned Ferrero for example.

Chuck Gomes: So I'm going to (Mikaili) next and then to Becky.

Let - one of the problems I'm having -- and this is Chuck speaking -- is that if you can't display the domain names, it's the connector of all of the rest of the record.

Becky, you look urgent there. Let me let you go.

Becky Burr: You guys are conflating two issues. If I have BeckyBurr.US, that's pretty clearly - and I'm here or if I am the only person in the world who has BeckyBurr.US, that probably is personally identifiable.

That has nothing to do with whether it should be published on the Internet. So I just want to stop the - because I think that's a critical issue. So just because it's personal data doesn't mean it shouldn't be in a whois record.

And so CNN.com to me, even if it - if you know who the president of CNN.com, that doesn't strike me as personal information. But BeckyBurrICANNBoard.US, that is. Okay? But just looking at that and looking at...

So I think that Professor Cannatachi was trying to make a clear sort of statement about what is and what is not personal data. If we looked at that record specifically, I don't think there's anything in it that's personal data.

And - but then you would have to go in the more specific case to the question of I've registered a domain name, it's not hidden, I want people to find me, it's the address book, nobody can get there without it. Then there's a different analysis.

I guess - so I'm just, we just need to take one step back. We are used to talking about these things in a very kind of precise way and we may need to go a little slower.

John Cannatachi: Yes, can I just agree with everything that Becky has just said? And that when I referred to CNN and Ted, I wasn't saying that this would be personal data, right?

I was just trying -- and I didn't do so for the sake of brevity -- I was just trying to point out why in a number of jurisdictions they had even gone to the extent of having small companies and others qualify for personal data because the names had become so - sometimes it was difficult to distinguish between the person and the small company.

But having made that distinction, I think we can continue to drill through the cases because as you see, we begin to realize difficulties or lack of difficulties as we go through a case.

Chuck Gomes: And before I go to (Mikaili), so I think I heard Becky say that just because it's personal data doesn't mean it can't be displayed. Is that correct? And do you agree with that?

Joe Cannatachi: No. What I think Becky said is just because it means personal data doesn't mean it's going to be automatically published. You can have personal... That's what I understood Becky as saying.

If - you can have a personal domain name which is not published and it doesn't raise any problems. What you - we should think about is how does one access it. How does one know that one isn't now going to clash with it?

Yes, Becky.

Becky Burr: So that is clearly correct. That just because it's - the fact that it - what - I think what you have to ask is what is the purpose of publishing it before you get... So I think we would agree that the - no data protection law prohibits publication of personal information for legitimate purposes.

And so there's a secondary question. I would submit that it may be different if there's some world of private domain names where nobody ever gets to them unless they have a secret password. But even so, you're going to have to have that information in the DNS or nothing will get there, right? It's...

But if I want people to find me, I want people to come to my Web site, obviously there's a legitimate interest in publishing that information.

So something can be personal data, it can be perfectly okay to publish it. Something can be personal data and there's no legitimate purpose for publishing it.

Joe Cannatachi: Could I just quickly comment because this is where the telephone directory is still a really good analogy, right? So in most countries the data subject, the subscriber, has the right to decide whether his name or her name is in the telephone directory or not.

So the issue which was just being raised... And in this case I can also use myself as an example, I have some sites and some addresses which I want to advertise, which I want to publish and others which I absolutely don't want to, especially in order to avoid a whole lot of spam.

So if at that stage you ask the subscriber for his or her consent for it to be published, that's already going to resolve a whole bunch of things.

Now consent in a number of cases is not a perfect solution because there are many... If you had to interview and in my case I've actually led the project called Consent and have interviewed more than 10,000 people for that project...

If you have - there are certain cases where consent may be explicit but it's not free and informed, right?

With all due respect, if you ask anyone, a whole bunch of consumers, do you think that when I sign with Company A or Company B and get onto their Web site or get their services, it's free and informed consent? No, it's explicit. I've ticked it but it's no real concern.

That being said, in this case when it comes to the equivalent of whois or the new whois, whatever we're going to call it, I don't see the same arguments apply.

I think in most cases you would see a fairly free market and free decisions by people, do you want your data to be published or don't you want it to be published.

And that already is a great way forward, right, because if then somebody like myself has some of his private e-mail addresses deliberately kept private or a site which is deliberately kept private, then there might be good reason for that. Right?

Becky Burr: So can I just suggest that you can see how easily it is to go off into - this is looking like (Yorin's) wall and it's not six meters, it's 12 meters.

I think the question in here is is it personal data or not. The answer here is in this case probably not personal data. It's possible that a name, a domain name itself could be considered personal data.

There is an entirely separate question about under what circumstances it is appropriate, legitimate, whatever to publish it. That's a secondary question.

I just - I'm just concerned that we could go forever down this rabbit hole and not get to the rest of the questions.

Chuck Gomes: Thank you, Becky. Now I have four people in the queue and I apologize for it taking so long to call on you. Let's go to (Mikaili).

(Mikaili): Thanks, Chuck. (Mikaili) for the record. This is very, very helpful I think in some respects.

But I think part of the problem we're having here is we're looking at what is called in the ICANN space thin data whereas what the really much more contentious thing from a data protection and privacy is going to be around the thick data.

Now if I choose to register a domain name that happens to include my full name and my physical address, then I'm an idiot and a moron if I wanted any real expectation of privacy. I mean, but I could also go off and register ChuckGomes.guru to myself. It's just a label. I mean, there's nothing personal about that.

So I suppose the thing for me is like looking at this kind of personal domain name I think is clouding issues.

And the telephone directory analogy is quite imperfect because as long as I have your phone number, I can ring you. You don't need to be in the... You don't - the fact that you're not in the directory is a matter of choice which is something within the ICANN space I could apply to the thick data. So my - so the registrant name, address and everything else, opting that out and removing that will be fine.

But in order for me to be able to access a domain name via - be that via e-mail, Web or any other protocol, it has to be in the DNS because it's technically impossible to reach if it is not in the DNS. But the DNS is not like a phone directory. So either - you know, for a resource to resolve on the network, it has to be in there.

If you wanted to obfuscate it by removing it, well you've completely removed it. It's not - there is no technical way to reach us.

I mean, so I think there'd be more - personally I'm - when it comes to these thin elements, I find them very, very, very uncontroversial and I can't get - see why we would get excited about them.

I think it's much more interesting when we start looking at the personal data, the contact piece, all that. That entire thing I think is where it's more useful now unless I'm missing something -- which I don't think I am -- but maybe I could be corrected. Thanks.

John Cannatachi: Well, I agree to a considerable extent. In fact I only pointed out what I considered could be the exception in many cases, right? In other words, for those people who rather than having put in a company name or something else which is normally already in the public domain in most countries because there's a company register...

There are however and the - one of the few points where I would disagree is that yes of course I understand perfectly well what you're saying about DNS.

But in many cases, the fact that I give my address away sparingly to those - only to those people whom I want them to write to me on that address actually achieves a purpose. Right? And one of the purposes especially in mnemonics. If some people find it easier to remember Chuck Gomes or whatever, then that's a perfectly good way to go about it. And we shouldn't stop people doing that.

Right now the fact that you didn't publish it and make - possibly make life a bit easier for people to find addresses without being invited is a small concern.

But that being said, you know, I started by saying that a lot of what I see there, which you're calling thin data, doesn't worry me, right? And what I - I could be wrong and I wouldn't like this to be my definitive word about it because perhaps there are things which are not seen.

I just pointed out the thing which to me struck me as being one of the problem areas that you could have, where you could have somebody's name or a name which can easily lead to an identifiable person. And I gave you my

name as an example. But that's, as usual, my playing devil's advocate in this case, right?

And perhaps, as Becky said, we should go on to other questions. But it's - I've shown you the small problem you have there. So you might have - we might have to think... I'm just raising a flag so it's something you might have to think about. But as for the rest, a lot of that does not strike me as being controversial.

Chuck Gomes: Thank you. Okay. (Theo), your turn.

(Theo): Thank you, Chuck. And this is (Theo) for the record. And I would like to thank the speaker here. I'm a registrar and I've been looking at whois records for a long time. And you just completely changed my way of thinking when it comes to thick whois or thin whois.

I'm just going back to the original question, what is the purpose. And if I'm looking at this slide here and I'm looking at the expiration date and I'm thinking why do we put that in a public directory.

I mean, the subscription of my newspaper, it isn't published in a public directory. If I want to know my expiration date, when my subscription is going to end, I'm going to the newspaper and ask when is my subscription going to end if I cannot find it. But I don't go in a public directory. So thank you, sir. Excellent.

John Cannatachi: And quite frankly, I don't know about the other people in the room but I'm constantly chased about my expiration dates, you know. I'm chased for months in advance about them because somebody has day one written the program to be written - it's written that way. It chases me six months before, three months before.

And I mean, I can accept that there may be some cases where people want to go and check and they've lost their computer records and they haven't kept the computer records properly.

But really, is it really for the expiration date? I mean, I - you guys do this more than I do. I'm a user in this sense. But as you said, what is the purpose of publication. That's all I would say, what's the purpose.

Chuck Gomes: Andrew, your turn.

Andrew Sullivan: Thanks. My name's Andrew Sullivan. I have a follow-up question to the earlier thing that we were talking about, purpose. And we've had a bunch of rat holes, I guess, that we have explored around whether something is primary versus secondary purpose.

And I guess what I don't understand is the implications of this distinction. Is there any practical reason why we have to care whether something is a primary purpose or a secondary purpose?

John Cannatachi: Well perhaps you would give me some examples of what you understand to be a secondary purpose and then perhaps I can answer.

Andrew Sullivan: I don't understand the distinction between these terms at all so that's the reason I'm asking because it... I mean, if I can continue to be ignorant blissfully about this distinction, then I will just ignore it and I will only pay attention to purpose. That's the question.

Chuck Gomes: Thanks, Andrew. And I'm going to ask - some of you have been making distinctions between primary and secondary purposes. Who would be willing to share what you think in that regard? Stephanie, I thought I can count on you.

Stephanie Perrin: Stephanie Perrin for the record. And data protection laws specifically talk about - you know, make a distinction here between primary and secondary.

So in my view, the limited -- and this is a personal view, not one that has been agreed in the RDS group by any means -- the purpose of the collection of registrant data is to ensure that the domain name system works.

There are important secondary purposes that I would describe as being a purpose for the disclosure of data to authenticated parties with a reasonable purpose to access the data, which is totally different than the purpose of collection. And that's why we kind of conveniently lump it into primary and secondary.

We certainly - as ICANN has a public responsibility to support the enforcement of law, particularly criminal law and cybercrime, and those parties that are investigating that have a purpose to access the data and investigate what they see on the Internet.

But that doesn't mean that we collect data for law enforcement purposes. They get access to the data that is collected to run the DNS not another... They don't get to say we'd like this set of data for our purposes because that would make our lives easier because ICANN is in the business of running the DNS not in the business of running a law enforcement agency. So that would be an example I would give.

And if I could just... Whether it's going to be rejected or not, of course this is just my personal opinion. If we go back to this issue of the thin data because we had a fairly healthy discussion about it... I don't know how long that went on. Days? It felt like days.

And I'm sure many of the parties here think I'm crazy because that thin data obviously is talking about machines and time stamps and expiry dates. It's not intrinsically personal information per se when you look at the face of it.

But is it associated with an individual? If that is my thin data for my Web site, it could be StephaniePerrin.com or it could be some crazy name that I don't want to bother with making up at the moment.

But regardless, if that Web site associated with that data -- and bearing in mind not every domain name means a Web site -- is of interest to someone, be that a marketer, be that a competitor, be that a cop, be that a criminal -- and they want further data, all they have to do is go to the registrar and get that data.

And so it's - it could be personal data if it's associated with an individual. So that's my position.

And I'd love to hear whether that makes any sense to you because if it doesn't, then it'll make all these guys' lives much easier.

Joe Cannatachi: You know, everything that you said, Stephanie, makes a lot of sense to me because - and I'm just going to think about it on the plane that I have to leave for in about 15 minutes.

But the - you see, when you talk about secondary, right, isn't this - it could be becoming a secondary purpose. And we people here could be accepting it to become a secondary purpose.

But in reality my billing information is collected for the purpose of my paying a bill, right? If American Express or MasterCard or VISA gather data about it, it's in order that they provide me that service.

Now of course as we've seen ever since the Watergate affair, can that data be used in a criminal investigation? Of course it can be. But in reality that was not the primary purpose for it being collected.

Now what's happened is this. Now law enforcement, intelligence, marketers, a whole bunch of people whom you mentioned have realized hey, we can use this data for this too. Right? And what - in terms of law, that's actually not a secondary purpose. That's a derogation of purpose, right?

So to me - I find - but I'm just going to think about it just a personal bugbear. Or is it an issue of semantics. But in terms of law, it's not a purpose. It's a derogation of purpose. You have - it's one of the few exceptions in which the law doesn't - the law permits the data to be processed for something else.

So I'd be careful how you guys use the words secondary purpose. I know that some people in some laws, not all, have used the word secondary purpose. But I don't think it would be particularly helpful here because it would - you would actually be admitting to the fact that keeping the data for law enforcement purposes is a purpose.

And I'm not sure that we've had a public policy decision about that at all. Up to now, a lot - we've had a debate which has been relatively minimal on that front. We haven't had a wide enough debate with all its ramifications to understand what we're doing there, right? And we've only now begun to discuss certain issues in the post Snowden era. So, you know, let's go a bit slowly here.

I mean, I'm not saying that law enforcement doesn't have a very important task to carry out. Of course it does. But does that mean that it acquires the status of secondary purpose? I have strong reservations about that.

Chuck Gomes: So unfortunately we're almost out of time. But first of all, I want to come back to Andrew. Did your question get answered?

Andrew Sullivan: Almost. So let me propose something and see whether this makes sense. The distinction that maybe we're trying to get at with this primary/secondary thing is that we have reasons to collect the data in the first place. And those

are potentially also reasons to publish the data but at the very least we have a bunch of reasons to collect the data. And they have to do with the operation of the service or whatever.

And then like sort of following on from that there are additional reasons having to do with like knowing about the service or something -- they're kind of meta reasons -- that you might also want to look at the data. And this might be what some people mean by secondary.

And I guess maybe what I'm asking is for the purposes of this discussion, does it help us to make that distinction. That's really not a question for you but for the whole room. But does that distinction at least make sense to you?

John Cannatachi: It does, especially if you bear in mind at the point at which you are going to cut that off from nominate - from ways of identifying the data because you might have perfectly valid engineering reason in order, as Stephanie said, to operate the service to keep the data. But very often you don't need to know the name or to whom it's related.

All you need to know is that you have 5,000 people using it at this moment in time. It peaked on, you know, Christmas Day or at midnight on New Year's Eve or whatever. And you want to look at those kinds of data, that's fine.

But you don't need to know that it was Stephanie Perrin or Joe Cannatachi or Chuck who actually using the service at that time.

And by the same token, therefore, you might want to as you go along decide when the data is disassociated from other bits and pieces what you have.

I think that perhaps may be a bit confusing if you continue to take it all together at the same time, if you continue to take all your thin data and all your thick data together at the same time.

In many other cases what people have done is, you know, they've kept part of the record and the other part they've shut off. They haven't necessarily thrown away the keys. Now that's what you have to think about.

Do you want to throw away the keys? Or do you want to put it up in an old fashioned style, safe style, with three people holding the keys? That's where the law enforcement and intelligence aspect comes into it.

Chuck Gomes: Thank you. Jim?

Jim Galvin: Thank you, Chuck. Jim Galvin from Ophelius for the record. I think I may have been the first person in the RDS group to use the phrase primary purpose, secondary purpose. And even if I wasn't, I latched on to it very quickly. So I thought I would take a moment to explain the context of that phrase, at least from my point of view.

If you go back a few slides, there's a slide where you had your sample purposes and purpose one and purpose two. And number one was, you know, the life cycle of a domain name to represent that on those slides.

You know, originally when we started talking about what is a purpose, okay, and what is the purpose of registration data, we were also examining it from the context of the Whois Expert Working Group report.

Because although it never answered the question what is the purpose of registration data, the one thing that it did do was to catalog a whole series of use cases for published registration data and simply exposed that in a very nice way and made it perfectly visible to everybody, this is what's going on and this is what we're doing.

And so the question to consider is whether we're going to continue doing that going forward. Now as Andrew started to say over there, there is - it's interesting that I think we can draw two different purposes here. We can have

a purpose for collection and a purpose for display, right. And there are those two things.

But the way that I looked at the question of purpose is if there was a singular purpose, it seems self-evident to me that the purpose of registration data is to support the life cycle of the domain name. And you simply have to define the events that you think are interesting in that and that's the only reason why it exists.

That tells you what to collect, okay? But it doesn't tell you anything about why you might publish it.

So after you've decided on that, to me, if we agree on that or whatever we turn that into, that's the primary purpose of registration data. It's sort of the self-evident obvious thing, hard to discuss or debate.

Everything else that you might collect it for is secondary. And that was the model that I had when I started using that phrase.

And I wanted to keep totally separate from the collection of data the display or publication of that data thinking that that's an entirely different discussion and it will be a separate purpose things that we have to do in that case and statements to have. Thank you.

Chuck Gomes: Thank you very much, Jim. And I'm going to kind of follow up and add to your question so - and I want you to respond to what he just said. But do we need separate purposes if they're not covered by the one purpose for collection, for display, for access? And go ahead and respond to that.

Joe Cannatachi: Well, Chuck, that's the easiest question. Yes, of course you need separate purposes and that's why I think Jim was right in splitting the two.

You see, I think that if we go back to the way Stephanie explained things -- and I think Becky was on the same page -- you're collecting some data to provide a service.

And then you have to think about what do I get out of publishing it, what's the objective of publishing it and - unless there's a public policy decision about publishing which may be forced upon you. And I'll go into that in a minute.

Many say okay the objective of my having this form of addressing system is to enable Stephanie to connect with Joe and with whoever she pleases, right? So if she pleases... And that's where the telephone directory comes in.

If she pleases to give Joe the address, in the same way as I give some people my private address, for whatever purposes, it's not only an address, you then say okay then. But if she pleases or I please to make it public, it's something else.

But let's think about public policy issues, right, so - which go directly to publication which are not related to the DNS but just to illustrate things.

So in most countries it's considered not to be the done thing to publish financial information. Go to Sweden and everybody's public information, everybody's tax, how much tax they've paid and you can actually go and do geolocation on some of the stuff they have, right, in Sweden. That's a public policy decision. Right?

In the same way as in some countries if you go to court, your name is de facto published unless it's a relatively small number of cases like rape cases, etcetera where the victim, etcetera is not automatically published.

So the notion of publication, the purpose of publication must be clearly defined, right? What is the service that you wish to give to the public? Do you

have a transparency principle as the Swedes have when it comes to tax data, right? Do you have another principle which you're trying to achieve?

And I think that that discussion needs to take place which is why we're so quick to tell Chuck yes because once that takes place, things become so clearer. Because then you might think and say perhaps I should collect something else, right? Or perhaps I shouldn't collect this because it's redundant, right?

And I think those discussions, the collection discussion and the publication discussion and of course between the use discussion, right, are discussions which should be carried out both independently and interlinked because that way you're testing yourself every time when you do it. And it's a very healthy exercise. So let me stop there, Chuck.

Chuck Gomes: Thank you. And unfortunately we're all going to have to stop. I apologize for running into your time for the next meeting that's occurring here.

Peter, can you very briefly tell what the plan is in terms of submitting some at least preliminary answers to the 19 questions?

Peter Kimpian: Yes, thank you. Thank you very much. So the plan is that we are going to collect - well actually we have already provided answers to the subgroups' and the groups' questions, all 19 ones. But - and we have in principle with the member of the delegation have agreed upon the answers.

But some of them however need to be fine-tuned. So we are going to make sure that they are fine-tuned in the shortest time possible. And okay, yes, sorry. So we're going to make sure that we will collect all the answers and fine-tune it in shortest time period possible.

We'll get back to you on this. And if you think it will be useful, we could publish it on the group's Web site or elsewhere.

Chuck Gomes: Thank you very much. And before I turn it to (Lisa) just for wrap-up, Joe, thank you very, very much. We - and thank all of you too.

I'm sorry, we just barely scratched the surface, as you can tell. We're going to have to come back to you I'm sure. But I like that smile and the nodding.

So apology for rushing but we're running into another group's time. And I'm going to let (Lisa) give final action items. Go ahead, (Lisa).

(Lisa): Thank you, Chuck. (Lisa) from staff. So what I've just displayed here and will distribute to the working group by e-mail is actually there are - there's a workshop tomorrow that some people involved in this conversation may want to check out if they have time.

It is unfortunately short notice but it does deal with some of the questions that we've been talking about and perhaps maybe will help us understand some of the concepts that are being presented because I think we are having a challenge with understanding the concepts and then how that applies to our work.

So again we'll distribute this link by the working group's mailing list. And it is a free workshop but it does require advance registration.

So our next working group meeting is on the 28th of March at the usual time. We will put out a poll covering rewording of the questions from our Statement of Purpose that we discussed on Saturday. And the poll answers will be due by end of day, whatever your end of day is, on Saturday the 26.

And I guess our first - next order of business will be to return to the Statement of Purpose. With any luck, we'll have the answers that Peter just referred to and we'll try to pick up the baton then and understand better what these principles mean and how they apply to our statement.

Chuck Gomes: So the meeting is adjourned.

END