

**ICANN
Transcription
Thick Whois PDP Working Group meeting
Tuesday 05 February 2013 at 15:00 UTC**

Note: The following is the output of transcribing from an audio recording of THICK WHOIS PDP Working Group call on the Tuesday 05 February 2013 at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-thick-whois-20130205-en.mp3>

On page: <http://gnso.icann.org/en/calendar/#feb>

Attendees:

Marc Anderson – RySG
Roy Balleste – NCUC
Don Blumenthal - RySG
Avri Doria - NCSG
Amr Elsadr – NCSG
Alan Greenberg – ALAC
Volker Greimann – RrSG
Frederic Guillemaut – RrSG
Caroline Hoover – RySG
Susan Kawaguchi - CBUC
Marie-Laure Lemineur – NPOC
Steve Metalitz – IPC
Mike O'Connor – ISPCP
Susan Prosser – RrSG
Tim Ruiz - RrSG
Jill Titzer – RrSG
Rick Wesson - RrSG

Apologies:

Iliya Bazlyankov – RrSG
Christopher George - IPC

ICANN staff:

Marika Konings
Berry Cobb
Lars Hoffmann
Julia Charvolen

Coordinator: Yes go ahead. We're now recording.

Julia Charvolen: Thank you. Good morning, good afternoon, good evening. Welcome to the Thick Whois PDP Working Group call on Tuesday, 5th of February.

On the call today we have Mark Anderson, Roy Balleste, Don Blumenthal, Avri Doria, Alan Greenberg, Volker Greimann, Frederic Guillemaut, Carolyn Hoover, Marie-Laure Lemineur, Steve Metalitz will be joining a little later, Mikey O'Connor, Susan Prosser, Tim Ruiz, Rick Wesson. We have apologies from Christopher George and Iliya Bazlyankov.

And from staff we have Marika Konings, Berry Cobb and myself, Julia Charvolen.

My I remind all parties to please say their names before speaking for transcription purposes. Thank you very much and over to you.

Mikey O'Connor: Thanks Julia and welcome all to the call today. And you can tell my voice is better. It's not quite there, but it's much better than last week.

And just take a quick look at the agenda and see if there are any changes you want to make. And we'll take that pause for the statements of interest before we proceed. Okay.

On the screen in front of you is the list of the sub-teams. Some of which have been formed and some of which haven't. And I think what we're going to do is take a moment to sort of check in with the sub-teams that are sort of actively working.

And take a checkpoint and see how to proceed. Let's see Steve is late. Is Susan Kawaguchi, are you on the call or not? I couldn't remember. I wasn't paying attention. It doesn't sound like she is.

So Alan I think you're the only sub-team leader on the call. You want to share any thoughts with us? I have a rant that I've been thinking about. But before I do that I'd be interested to hear sort of your views. I saw your note on the list. Anything you want to chime in with there or?

Alan Greenberg: Sure.

Mikey O'Connor: Go ahead.

Alan Greenberg: Nothing's changed with regard to the information we have to work with since last week. And I don't believe we can effectively try to summarize positions until we've heard from the two groups that have to implement the policy.

Mikey O'Connor: Let me...

Alan Greenberg: Whether we agree or disagree with what they say is to be seen. But without hearing it, I think we're missing too large a part of the equation to do the work.

Mikey O'Connor: Yes I hear that. Here are several mitigating thoughts. I think we're at a point where the sub-teams could start. I think the sub-teams are probably going to have several weeks of work to do no matter what.

And the understanding I have from the registrars gleaned through several channels is that they are really close. They've got a draft that's up to the (EXCOMM) level.

And so it may fall out yet today or early tomorrow. There - may of the (EXCOMM) members are traveling to meetings in the US right now for the RAA negotiations.

So I think we're very close on that one. And it's my understanding that the draft that's circulating on the registry side is very similar to the draft - to the comments made by the PIR.

And so I am of the tentative opinion that - and I guess the other thing is that there is a tremendous volume of information to go through even without that. And so it might not be a bad idea to at least try and get started.

But with that, let me go to Don and then Volker. Both, since each of the two key constituencies are represented by those two guys, maybe you guys can fill us in, Don.

Don Blumenthal: Yes, Don Blumenthal for the record. A couple of things, I agree with you about the sub-teams moving forward. If nothing else, the discussion over the last week is kind of, on the broad list has kind of highlighted that maybe some of the members of the sub-teams could concentrate on some areas. And folks would have some expertise, apart from any formal submission.

Beyond that though, the registry stakeholder group is still working on what we want to submit. The fact is we've got verifying already in. We've got public interest registry already in on their own behalf.

And I think it's safe to say we've got, just through those two, we've got a pretty solid range of discussions of the issues, even if we don't have a consensus of the overall group.

Even if the stakeholder group didn't submit its own position paper. And I expect it to. I really do think we have enough from the registry side to work with.

Mikey O'Connor: Thanks Don. Volker go ahead.

Volker Greimann: Yes just as an update, we have a draft. We have comments on the draft. So we only need to incorporate the comments and then we're ready. Had expected that we would be able to present something today. But if not, then by the end of the week I hope.

Mikey O'Connor: Oh end of the week. That's alarming. I was thinking we were at...

Volker Greimann: Being part of the RA negotiations, I have learned that making too big a promise about deadlines bites you in the behind. So I'm careful with that now.

Mikey O'Connor: Yes okay, heard and understood. Do pass back to the rest of the (EXCOMM) though the heartfelt plea for haste because we are, you know, Beijing is drawing (Nye). And I think we are starting to frustrate the working group a bit by sort of twisting in the wind on this.

So if there's any way even to get a draft, you know, an un-approved, un - I don't know. Some intermediate document out that the working group sub-teams could start working on. I think it would be extremely helpful, but understood.

Anyway, back to your point Alan. Oh sorry, somebody's hand went up and down. Oh it's up again. Frederic go ahead.

Frederic Guillemaut: Yes Frederic Guillemaut. The final draft is really close. I mean I don't want to make any promises better than Volker. But I really expect the thing to be ready soon.

But I don't think it's a good idea to have a draft, un-approved draft just in case they have some changes.

Mikey O'Connor: Yes, no I understand. I think the main message is please, please, please get that thing out. We really, really, really need it.

Frederic Guillemaut: Yes we are really working on that.

Mikey O'Connor: Cool, thanks Frederic, so back to you Alan. I think given where we're at. I would encourage sub-teams to get underway. I mean we have a tremendous corpus of terrific comments that I think it's going to take people a while to get through and think about and formulate opinions on.

And so I would encourage people to get underway. And then I think what we will do is also kind of continue at the holist level some of these conversations because clearly some of the conversations are ones that everybody's going to want to be involved with anyway.

And so we'll sort of run the three sub-teams that are formed, plus a conversation on the list in parallel for a while. Marika go ahead.

Marika Konings: Yes this is Marika. Maybe just to reiterate your point. For those that have had a look at the public comment review tool, you'll see there we actually already have 45 pages of comments, which should give all the sub-teams sufficient work to look at. Because maybe as a reminder as well, you know, there is a requirement to respond or review each of these comments.

So the idea would be as well that each of the sub-teams for their respective topics looks at these issues and develops a draft response, which that can be reviewed by the whole working group.

And also indicates if there's any recommended action or conclusions coming from the comments. So I think I completely agree with them. Mikey said there's enough there to get started. Even if, you know, once the registrar comments come in that those get added to the specific items on the list.

Mikey O'Connor: Thanks Marika. So I think that's kind of it for that agenda item unless anybody's got any further thoughts. I think the main message is it's time to get rolling folks. And please do.

Let's talk a little bit about work plan here. And here's my grouchy status report. And apologies to Steve Metalitz, I totally forgot that he had done all that stuff. And so I maligned him. Hopefully - is Steve on the call yet Julia or anybody who can see that gizmo? It sounds like he's not. Anyway...

Marika Konings: He's not here yet.

Mikey O'Connor: All right, for the record, my bad. I whacked him unnecessarily. And I apologize for that. I don't know if the work plan is the best vehicle. But, you know, I think what I want to do is just have a conversation about what do we think we can get done by Beijing?

If you sort of look at the dates out there. The key date is let's see if I can synch it and make it bigger so that you can read it for a minute. There, that's easier to read.

The key date is sort of the end of March. And here we are in sort of verging on middle of February. Well clearly we're not going to have an initial report done. That's a pipe dream.

The question in my mind is what can we have done? And given that, what should we do with the opportunity that Beijing presents to meet with the community about this?

So with that, off to you Marika.

Marika Konings: Yes this is Marika. Just a small correction to the dates that are in this document because it's actually the 15th of March is actually the publication deadline for Beijing.

And maybe just to remind everyone that the publication deadline means that if there are any documents that are intended for public discussion or public review, they would need to be published by that date.

Of course if there's nothing specific or a document you want to present. But there's a more general discussion or possibly questions you want to debate, you know, then the publication deadline is of less importance.

But if you want to have a kind of document that is intended for public review and discussion, then we're supposed to respect that 15th of March deadline.

Mikey O'Connor: So question for you Marika. Suppose that we decided to have a public meeting. And we wanted to develop a slide deck to structure that meeting. Is that slide deck subject to that publication deadline or not?

Marika Konings: This is Marika. No, I don't think so. It's really intended for if there are documents that are intended for public review. And a presentation is more to guide your discussion. It's not something that you're expecting to have community input on and revised versions or things like that.

So usually those are not - at least that has been my interpretation. Those don't follow the deadline as we usually produce publications a bit closer to the actual meeting.

It's more reports, you know, papers, those things where people really need time to review and prepare. And are expected to come prepared to a session and then discuss those items that are in the paper or document.

Mikey O'Connor: Oh okay. So it seems to me then the realistic expectation to set is that we may have some very substantive issues and conversations that we want to discuss with the community in a public meeting.

And in order to do that we would have a slide deck that we could prepare somewhat closer to the meeting that would be published in the meeting working space for the remote participants.

And in that case, I'd get a lot more comfortable. You know, I wanted to clear firmly and up front that there's absolutely no way that we're going to get to an initial report or something that can be formally reviewed in the remaining roughly six to eight weeks that we've got between now and Beijing.

But I was quite taken with the conversation we had on the list this week. I thought it was terrific. And, you know, I think that if we can have more of that, we will have some pretty interesting hopefully conclusions that we can share with people in the form of a public conversation.

So if that's the right expectation, I'll sort of drop a few dates into the next status report with that in mind. Go ahead Marika.

Marika Konings: Yes this is Marika. What we typically do for like public meetings or face to face meetings of working groups is that when we request a meeting, we create a Wiki page that is specifically linked to that meeting. So that the working group has an opportunity to add information or data to that as the meeting gets closer.

So something you could do for example, something we can already post there is like the issue report for example. So as a background information for those people that are interested in the topic, that they can already read that. Or just include as well a link to the mailing archive.

So people do have a reference where they can go to find further information. And then as we get closer to the date, I hope we will be able to put together a more detailed agenda. And as you said, possibly a slide deck that people can then look at before they actually go into the meeting itself.

Mikey O'Connor: Cool, Alan.

Alan Greenberg: Thank you. I'll make another blunt statement. We're clearly not going to have a preliminary report ready for middle of March. But I would say if we don't have a direction that we're going in by then, then I won't say this working group will be a failure.

But I question whether we're ever going to. This is not the most complex of problems. And if we can't come to closure on the issues that are moderately controversial in six weeks or five weeks, whatever it is. I think we have a real problem.

So I think we need to start moving towards a direction. And that's got to be within the sub-teams and the group as a whole. Thank you.

Mikey O'Connor: Yes, I support that idea. Rick, go ahead. Oh can't hear you Rick.

Rick Wesson: Yes sorry, I keep myself on mute. I was just looking at our Web page on ICANN's Website and noticed that the link to the charter was not actually on the page.

And I think, you know, it does help to move the group forward if we all have access to the charter and can refer to it because that will (uninrate) our main goals.

Mikey O'Connor: Oh yes that's weird.

Rick Wesson: So if we could get that link up there that would be awesome. Thanks.

Mikey O'Connor: Yes. I'm a little startled to hear that. But yes, we'll take - if it's not there, we'll for sure fix that. It may just not be in a very obvious spot. And so maybe the thing to do is yank it from whatever spot it's in up to the top because...

Rick Wesson: There's a page for the Thick Whois PDP process. I can send links to the mailing list. And there's a clear demarkation for our charter, which is - it's still blanked out. It's not...

Mikey O'Connor: Oh okay. Well Marika can you and the gang take an action item and get that squared away? Because yes, clearly that's - there is a lot of work that went into that charter. We certainly want to have it front and center. There's the link anyway. Marika go ahead.

Marika Konings: Yes this is Marika. Just to note indeed, like I mean I agree that on the - I think what Rick is referring to is this status page on the GNSO Website. And I'll take an action item to update it there.

Just to note for everyone that really the working group documents are all posted on the Wiki. And that's really the live space where we have all, you know, drafts, links to reference documents.

The charter is also posted there. And the page actually here, it's more for as a background for people that are wanting to follow the process to see what status it is. But it's something that we missed. And I'll make sure that gets updated as soon as possible.

Mikey O'Connor: Great thanks. Anything else Rick, I see your hand is still up? That's why I'm asking. Oh okay thanks. Oh did I interrupt you Rick or are you done? I'm sorry. I just - there's enough latency on this call that sometimes I step on people's comments when I speak.

Rick Wesson: For the moment, yes. Thanks.

Mikey O'Connor: Okay thanks. Alan go ahead.

Alan Greenberg: Excuse me, just a suggestion. And I noticed this seems to be a standard because it applies to several PDPs. But the stakeholder group comments are published under the heading Working Group Documents Drafts Published.

And nobody seems to be able to find them there. So maybe they warrant a state - a heading of their own. Or perhaps change this heading to allow people to find them better.

Mikey O'Connor: Yes, you know, I hadn't thought about it. But one of the things that is - that we should not do in this PDP. It's not our job. But it would be nice to get some consistency to these Wikis there.

And I would bet that the staff gang is thinking about this because it does make it hard to navigate when each Wiki is sort of a unique creation all on its own.

Alan Greenberg: Yes Mikey to be clear, there is standardization. But it's obscure standardization.

Mikey O'Connor: Oh better yet. Okay well anyway, Marika go ahead.

Marika Konings: Yes this is Marika. Actually Alan's already made my point because it needs - actually the whole point is to have standardized categories. And try to avoid that we have too many pages with a lot information.

And, you know, I agree. Maybe if you want to, you know, have a separate category for a stakeholder group constituency statement, we could definitely create a page.

But we did take quite some time and effort to try to standardize the model of the entries. And try to be able to, you know, put documents in places where it was hopefully obvious for groups to find them.

And I mean working group documents is also documents that are being reviewed or submitted to the working group. And that's why they were posted there.

Alan Greenberg: Yes and as I said, maybe the title needs to be changed. I spent a lot of time finding it on one group. And then somebody else, I don't remember if it was Mikey or someone else. It may have been, I think it was Chuck on the IOC Red Cross one who couldn't find the stakeholder group documents in that. and I had to point him to it.

It's not clear to someone who didn't participate in designing it. So I don't really care where they are. But the titles should make it semi obvious that's where you go.

Mikey O'Connor: Yes well and I agree with Rick. Engineering the Website is out of scope. But, you know, the point that you raised Rick is a good one which is, you know, the charter ought to be front and center on these things so that people can get right to it.

Anyway, enough on that. Are we done Alan? Is that an old hand or a new one?

Alan Greenberg: That's an old hand.

Mikey O'Connor: That's an old one, okay. Okay onto the next agenda item. Review update on the statements received to date. And input from other ACs and SOs. Start review of comments received to date.

We sort of had the update. And then we talked about, you know, especially the registry and registrar ones. And so I think we're basically at the start of this giant document, 45 pages long filled with a huge collection of really good statements.

So I have a proposal for the group, which you can shoot me down on if you want. We had a pretty lively discussion this week on the list. I thought it was great.

And I'm wondering whether it seems like there's a Gordian Knot in the middle of all this. And this is the discussion about whether, you know, I'm going to frame it as a question. It may be the wrong question. Feel free to beat me up.

Is Whois data public, and thus not subject to all that privacy stuff? It seems to me that's at the core of this debate. And I don't know how you feel, but if we could get through that discussion, it seems to me then a lot of these other issues start to fall in place. And we start to get this direction going that Alan was talking about.

So I'm curious whether that would be a useful topic of conversation for the rest of the call? I'm getting thumbs down from Steve. But Alan go ahead.

Alan Greenberg: I don't know if I want to try to define whether it's public. It is clearly whatever - what is in Whois is clearly publically distributed and freely distributed now, with no restrictions as to how one can use it.

So, you know, I'm not sure putting the label on it that it's public data, you know, starts getting into the realm of no, it's private data. But people have given permission to use it.

I don't think that level of definition helps us. What I do believe, and that long discussion on the list demonstrates it, is we need to focus on what our question is. Not get into a generic discussion of the evils of Whois and the evils of the current Whois implementation, which all of us agree to. Thank you.

Mikey O'Connor: Yes okay. Tim go ahead. And then for those of you who disagree, if you want to throw your hand up and join the conversation, by all means do. It looks like Rick did that. Okay. So Tim, you first.

Tim Ruiz: Yes I guess for the most part I agree with Alan that it's not really - I think it's clearly not in scope of this particular working group to discuss how the - whether Whois is public or private or whatever it is.

It is what it is. And we need not to get distracted by discussions about privacy and other, you know, more (unintelligible) things outside of whether, you know, the Thick Whois question.

I mean we need to try to keep focused on that. And that's what concerned me about the - and I think it completely caught up on this whole discussion about threats. But that just concerned me there because I guess it just seemed to me as being a way of getting off of the right path, to getting sidetracked onto other things if we go down this road of threat analysis. Because all we're really talking about is who is going to be the repository of the data, all the registrars or just a registry or something in between?

And might there be some risks or things associated with that as we go down that path and review those possibilities? That may be true. But I think we need to just deal with those as they come up.

And this idea of a separate threat assessment or separate discussions about privacy I think are just going to be distracting.

Mikey O'Connor: Okay, Rick go ahead. You may be muted. Oh, there we go.

Rick Wesson: So my point (unintelligible) privacy and other side where it's in this conversation is that anything that we identify within this model strictly to the question of moving from thin to thick.

Any security constraint that we identify, any privacy issue is going to apply to all Thick Whois registries, all registries that publish Whois in a thick model. And so anything that we identify that should prevent or have some kind of negative connotation to moving from thin to thick would then have to apply to all of the thick currently operating registries.

So one of the issues that I am concerned with is that when we try and look at policy issues that are actually outside of the scope of the charter. Which is why I asked where the charter was and prominently (being).

And I could have actually been looking in the wrong place. So this is why I think it's really important because everything that we apply in this - in the calculus for this position is going to apply to all of the other gTLD registries that implement the Thick Whois.

And I think that's why it's important. If we were to identify something that would somehow negatively impact the move from the thin to thick, then we would need to look at the .org transition again.

And that means that we missed something that has lied in wait for five years. And so that's why I'm very concerned about the conversation. Thank you.

Mikey O'Connor: You bet, and helpful. Let's see. Alan go ahead.

Alan Greenberg: You know, I can cert - I certainly have no problem with threat analysis, as long as we're dealing with specific, well defined threats. You know, a threat analysis can only be done when we really understand what it is we are looking at.

And it can't be stated in vagrancy. It's got to be stated as real things that have happened, real scenarios that might happen. You know, I believe that if it is something which changes substantively from thin to thick, then it's something that we want to look at. That is within the scope.

You know, and if we identify some great evil by going from thin to thick, then yes, that does pull it a question the overall decision of ICANN to do everything thick. That may be out of our scope. But it raises the issue.

But I think we need to be dealing with things that we can analyze. And not just, you know, generic concepts. Thank you.

Mikey O'Connor: Amr go ahead.

Amr Elsadr: Hi. Well for starters I'd just like to say that I really appreciate the dialogue that's been going on on the list. It's been a great educational experience for someone who is a first timer on a working group.

Thank you Alan for initiating the discussion. I think a lot of people made some very interesting points. I just wanted to say a few things, and excuse my inexperience.

But first I would like to stress again what I did bring up last week is that the working group charter clearly states that the mandate is not just about the transition of existing registries from thin to thick, but also all future registries operating TLDs.

The second thing is I think it's pretty fair for a request such as the one Alan made on wanting concrete examples on how this is going to be a problem. I think the - from where I sit, I feel that the jurisdictional issue will be a big issue. It's going to be a problem.

And well I, what I will try to do, and what I've been trying to do since joining this work group is pretty much keep the rest of the folks at NCUC pretty well informed about what's going on. I've been trying to map for myself what's been going on over this past week over the list just to - not just to get a good

understanding of what everybody is trying to say, but also just to relay this information accurately to the rest of the people at NCUC.

And I will do what I can to bring in any concrete examples or references to how this might be a problem. I can't promise that I will, but I will try. I think it's a fair request and thanks again everybody.

Mike O'Connor: Great. Let's see. I see what's going on. So I see a couple of disagrees. I won't put Steve - now that you are on the call, I will repeat my apology for forgetting that you guys came up with questions. That was my bad. You can listen to the earlier transcript where I got a little more abject, but that wasn't intentional in any way.

I am like this conversation a lot because I think that you know we need to finish it in order to essentially get out of the blocks. You know we either get to some place that we agree or we don't. If we don't, then I think real quick I'm going to short circuit this and say look. This is a working group that can't get to consensus, so I want to keep going on this.

Avri, you are pretty vocal in the chat. Do you want to devocal on air or do you want to just stay in the chat? I don't want to put you on the spot. Go ahead.

Avri Doria: This is Avri. I'm fine with being put on the spot. I mean I got sort of head shy on the conversation you think was so good last week. At a certain point, I decided I better just shut up in this group because it was a hostile environment. But none the less, I believe that until we recognize the jurisdictional issues, we are basically just spinning our wheels in the sand.

The point is that, yes, it's unfortunate that all of the new gTLDs were forced into this model without anybody ever talking about it, but that's not the point. The point is we have a situation now where registrars in countries that have a different set of laws or are in a different jurisdiction could be offering different conditions.

Now the fact that no one has taken a registrar to court yet for displaying Whois data that it should not be displaying because it is private data under the their rules, is not I think the point. I mean that's like saying please hurry up and start a court case so we can see what's happening.

I think it's quite clear and we are seeing in so many places in industry where there is a real conflict between the U.S.-directed industry people that really want to keep things at the U.S. centric, there is no privacy, forget about it you know level. And people that say yes, but if you are going to want to do business in Europe, you are going to have to think about using European levels of privacy and definitions as your threshold and not the absence. And so as that is happening in the wider world whether it's (Davos) or other places that discussion also needs to happen with Whois. And we are saying that we are going to take a worldwide of people whose registrations are subject to jurisdictions other than the U.S. And yes there is a contract binding, but if the contract is against national law, even ICANN says you are allowed to go with national law, which was really quite nice of ICANN.

So you know I think we have a real mess facing us and I think we have to deal with those jurisdictional issues and the fact that sooner or later, someone's data is going to be moved from a jurisdiction that should be protecting it even if they are not according to their national law to a jurisdiction that doesn't care and that is a significant issue.

And as long as we have this whole PDP without understanding that and taking that into account and just basically bullying the people who come with it, is - you know I think you are right. You will end up with a dead-end PDP because that jurisdictional issue is central. Thank you.

Mike O'Connor: Thanks Avri. And you know that's part of the reason that I (weighted in) on the list, because I don't think we can get through this PDP without getting through this discussion somehow. Alan go ahead.

Alan Greenberg: Thank you. I don't disagree at all with the issue that Avri has just raised and the importance of it. The way I would like to approach it however is to try to identify any concrete examples. Because if indeed there is a registrar who is currently violating local laws or would be violating local laws, you know if someone took them to court or whatever, then that situation exists in (thin).

And ICANN does have as Avri pointed out - although it's worded in such a way that you can only address local laws after you've violated them. Hopefully, that will be fixed sometime real soon and a registrar or a registry can take preventative action.

So if indeed a registrar should not be distributing information that is currently in Whois, then they should not be distributing it. They should not be posting it in Whois, and ICANN is going to have to figure out a way to accommodate that. And if they are in the thick Whois model, then the corresponding action they would be taking just as they are not putting it in their local Whois, they wouldn't put it in the registry's Whois.

So I don't think it changes the situation; it just changes the mechanism that you address the local laws. And I think that's why it's so important to get some concrete examples. Because if indeed there are problems like that, it has to be addressed thin or thick, and I think the solution ends up being the same solution in both. Thank you.

Mike O'Connor: Thanks Alan. Don, go ahead.

Don Blumenthal: This is Don Blumenthal. I had something ready to say and then I listened to Alan and I had to kind of rethink a little bit here.

Mike O'Connor: Do you want to break and rethink it or do you want to plunge ahead.

Don Blumenthal: No, I'm a lawyer. I can fake it with anybody.

Mike O'Connor: Okay.

Don Blumenthal: I guess I am starting to wonder. Look, the first question is I sent an email to somebody in general counsel and have not had a response. So I guess the question is does anybody have a contact there who are notorious for not answering emails and can find out if any cases or if anything isn't brought under this ICANN procedure. I'm not aware of any, but I would like to lock that down. That would at least give us one concrete example.

The more I thought about this, the more I'm starting to wonder the extent to which there are any new issues here. We do have thick registries, the vast majority. Data has been transferred across borders, so I think we have to acknowledge the issue as somebody said a minute ago as it scrolled up to the top of the chat, but I'm starting to be concerned less and less as to whether there is anything for us to address here that's new.

Don Blumenthal: Thanks Don. Steve, do you want to throw your comment in the audio transcript, otherwise I could just read it.

Steve Metalitz: No, I'm happy to say it. I mean I think we are spending a lot of time talking about what we are supposed to talk about, but I think if the people - and Avri has been speaking from this point of view. Those that think this is a topic that we need to address, I would suggest they draft something and then we can all look at a specific text and try to you know - and then have a discussion about first whether it's in scope and second is that - if it is in scope, is that what we want to say.

But it's - and maybe this is similar to Alan's request for specific examples, because I would hope the text would be specific, but maybe that would be more efficient than prolonging the discussion we are having now about whether we should be talking about this.

Mike O'Connor: Yeah, Roy, I will get to you in a second. One of the things I would commend everybody to is the comment summary. There is a pretty extensive series of comments from the NCUC in there that - it's especially in the privacy subgroup, but it shows up sort of in other contexts.

And so, I think that in addition to the - because you know that text is pretty specific. But I think that in addition to the specificity that's in that text, what would be useful I believe is specificity in how those issues are affected by the transition or the difference between thick and thin Whois, because I think that that might help. I'm not sure, but anyway, that's just one little plea that I would put in there.

Roy, go ahead.

Roy Balleste: Yes, thank you. I'm also - this is my first time in a working group, so I am very appreciative for the opportunity.

What I wanted just to point out is that as the discussion goes on, we don't have at the moment an agreement, except to the fact that there is an issue here. and perhaps you know my humble suggestion would be that this might be an issue that the (unintelligible) Protection Sub Team could tackle in the immediate future and then bring it back to the working group at the very least to clarify if indeed we have a problem here. I think that we have one, but if some members don't agree with that, perhaps we could do that. Thank you.

Mike O'Connor: Thanks, Roy, and thanks for your contributions. Okay, well I don't want to hijack the whole group. I mean I do hear Steve's plea for sending this to the privacy subgroup. Avri's comment was that she is not a member of that subgroup, and Avri I guess I would gently suggest that you might want to join it.

Avri Doria: Can I ask a question?

Mike O'Connor: Yes, go ahead.

Avri Doria: But this isn't (privacy); this is a jurisdictional issue. And it may even go wider than privacy, but I'm really hoping some international lawyers and not just you know an itinerant philosopher attacks this issue. Someone that understands comparative international law on comparative jurisdictions. You know it's a problem, but I'm not the skilled international law researcher.

Mike O'Connor: I guess I'm getting - I'm going to venture off into a flight to fantasy for a minute and say that you know as I have been listening to this conversation, it seems to me that Whois data is already all over the world irrespective of whether a registrar publishes it or a registry publishes it, and the issue of how data gets into Whois is clearly outside our scope.

Our scope is what is the difference between Whois published by a registrar as opposed - and published worldwide irrespective of where the registrar is. I mean you know I went and logged on to (.cat) and looked at I don't know, something like registry.cat or (nick.cat), and you know there are copies of the data all over the world.

So it's not in our scope it seems to me to try and figure out how data gets into Whois. It seems to me that it's in our scope to understand the difference between worldwide published data in a thin Whois as opposed to worldwide published data in a thick one, but you know that's just my naïve view of the whole thing.

Don, go ahead.

Don Blumenthal: Okay, I'm following up kind of what Avri said and then Steve. At this point, I would like to suggest that the Privacy Sub Team was not one of the top three. I think we really need to start focusing on it and get it moving.

Mike O'Connor: Yes.

Don Blumenthal: And because we do have some people on that group, and I will just speak for myself, who has done privacy work as an attorney and has done it in an international context, we do have the expertise here. We need to get the people who got that together to discuss the issues.

This is with all due respect a privacy matter as it follows - I've got to slow up here. This is a battle of jurisdictions over privacy issues or a potential battle. I think trying to say it's a jurisdictional issue versus a privacy one really doesn't serve any purpose.

We need to look at the different jurisdictions. We need to come up with some set of concepts on how these issues might play out in the different ones. and if at the end we say we don't know, then that's fine, but we need to get on it and we need to avoid saying it's this kind of issue versus that kind of issue. We need to just tackle it.

Mike O'Connor: Before I go onto the rest of the queue, let me offer one idea, which is - and maybe hand this off to Marika if people think it's right. I agree that maybe what we need to do is get that privacy team running and underway. You know this is clearly going to be a tough one to do in the whole group and it would be a way to capture some of the people who have expertise here, and if nothing else, generate questions for an expert group. And if the expert group doesn't have the right kind of experts, we will go find the ones that we do.

So unless anybody just throws their body on the tracks and says that's a terrible idea, I think we do need to get the privacy sub group spun up. and Avri, in terms of the privacy versus jurisdictional, I think unless it just makes you crazy, let's put all of that in that group, because it just seems like this is at least in my mind a core issue that we need to get through and it needs focus and attention.

I will listen to the comments, and if anybody thinks that is a terrible idea, let me know. Let's see, Avri, go ahead.

Avri Doria: Okay, yes, thank you. First of all, I totally agree with you. It is about what data is displayed and it's not about what data is collected. And I didn't know that anybody was arguing that it is about what was collected, it's about what's displayed, and it's about what various jurisdictions say about what's displayed.

When I said that it's not a privacy issue, but a jurisdictional issue, I was not trying to you know kill somebody's turf in terms of a sub group. But the reason I say -- and perhaps this is the philosopher getting in the way -- it's not a privacy issue, because we are not talking about privacy good, privacy bad, which is what tends to happen when you get into a privacy group. You are talking about we need more privacy and we need less.

What I'm saying is yes, of course, it's about policy, but it's the meta issue on policy. What do the various jurisdictions say about what can be done with policy.

Mike O'Connor: Policy or privacy just to interrupt you there.

Avri Doria: What.

Mike O'Connor: Did you mean to say policy or - so yeah, global replaced policy should really mean privacy, right.

Avri Doria: Yeah, I'm sorry.

Mike O'Connor: No worries.

Avri Doria: So the discussion is more not about you know how much we are against privacy or how much we really love privacy, but it is about how that varying jurisdiction.

And the other thing I think we have to look at -- and I'm fine with us doing it in the so-called privacy group -- is that it's not stasis. This is a dynamic that is moving forward; this is a very active global issue that is moving forward. And I think we need to take into account that we cannot create policy for what has happened in the past, but we have to create policy.

And we are talking about a global set of jurisdictions. When we talk about taking it away from all local registrars and moving it to U.S. jurisdiction for (dot com), we are talking about every country there is. And unless we really understand that jurisdictional issue, I think we are walking blind. So fine, we should talk about it, but I do not think this PDP can be resolved without it. Thank you.

Mike O'Connor: Thanks, Avri. Now I'm going to make another - one of the beauties of not being too up on Whois is I'm going to make incredibly stupid statements, and Rick, I will get to you in a minute and you can whack me for it, but this still seems to me about how data gets into Whois.

So for example, if I am in Catalonia and I have restrictive privacy local jurisdictional laws that say that the process for and the requirements on registrants to put data in Whois are subject to those rules, that's fine. But once it is in Whois, once it is published thick or thin is the question at least in my mind. It's not about the jurisdiction of putting it in; it's about once it is in what happens and what is the difference.

And that's why you know - and enough on that because I'm an idiot. Let's see, Don, is that an old hand? Can I go to Rick or is that a new hand? I've forgotten who is in the queue.

Don Blumenthal: Sorry about that.

Mike O'Connor: Okay, so Rick, you are next.

Rick Wesson: So my issue with the PDP process is that we don't have to solve the world's problems. We can identify problems that exist within the world and enumerate them, and I think that is really valuable for the community.

The question that we have to resolve is is it reasonable to move from thin to thick. And if so, what issues are raised at this time, and so identifying all of these things and creating language around them I think is really valuable.

But we have to keep our eye on the ball to be successful and come to some kind of successful closure in this topic, so identifying all of the issues that some organization or that some country might have to address should this go forward is incredibly valuable. We don't have to solve each one of them; we have to identify and enumerate them. That is what success is. Thank you.

Mike O'Connor: I will buy that. I'm not sure - well, yes. Kim, go ahead.

Tim Ruiz: Yeah, I guess I would agree with that too that we could try and identify them, but trying to solve them is a recipe for failure for this PDP. Every PDP that has tried to solve those issues has failed. So if there is going to be any sort of resolution or answer or policy changes that are going to address those issues completely, I just don't - it can't come from what we've been trying over, and over, and over again, which is through this PDP. It's got to be some other type of process that's going to solve those things. So I really hope that wherever we go with this that we have enough sense to realize that we cannot solve these problems.

And the thing is that there is nothing new, because we are considering whether (com) should go thick or not, which is really what this is all about or future smaller registries as they come into existence with gTLDs. (Org) has already gone thick. Every issue that we talk about that could affect (dot com) or affected (dot org) or you know that involves any other thick registry. And even to the extent to several registrars.

I mean GoDaddy has tens of millions of domain names of which we transfer huge amounts of that data all over the frickin place, whether it's to ICANN, or to escrow agents, so you know all of these issues already exist. We are already aware of them all. You know all we need to do is maybe at most just collect them so that we are all aware of what they are.

But if we sit down and we start trying to solve them, that's where things are going to go south and we are not going to - this PDP will not be successful. No PDP has been successful to date. That's not even the reason that this one was formed. So to think that we can go off sidetrack and try to solve these things and somehow be successful is just ludicrous.

So that's my concern and that's what I seem to hear to some extent is you know trying to solve these problems. so you know in fact, if that is going to be the case, I think what we need to do is go back to the council and make sure that they are aware of where we are heading, and where the issues are, and let them give us direction on that so that they are aware of what we are doing before we go off and do it.

Mike O'Connor: Yeah, I tend to agree Tim. You know I think that basically what this gets down to in a way is an issue of scope. And you know back to Rick's initial comment that you know where in the heck is the dang charter, I'm going to go back and reread the charter.

I thought that we paid an awful lot of attention to the language that we put in there to clarify the scope boundary between what we were supposed to tackle and what we are not.

Rick Wesson: Right and if we are supposed to solve these things.

Mike O'Connor: Yes.

Rick Wesson: If we are supposed to solve these things we move forward, then I think we've made a mistake and there needs to be something formed to resolve these things and then we can come back to this question about thick Whois. Because I don't believe the intent was that we were formed to solve the questions that some are thinking we need to solve.

Mike O'Connor: and I agree with that. Having as Tim did live through the chartering working group or the drafting team, you know we were very conscious of the narrowness of our charter and our charge. And to the extent that - and that's why - part of the reason why I was drawing those pictures that so drove Rick crazy. I apologize for the Rick. I didn't really mean to drive you nuts there.

But you know what I'm really trying to get at is this scope issue and make clear the boundaries of what's in our purview and what's not. and to the extent that the pictures set us back, that's a bad thing and I apologize for that, but it seems to me that several paths - and by the way, Rick, is that an old hand that you have up or is that a new one? If it's new, I've been ignoring you and I apologize for that.

Rick Wesson: It's an old hand, but I will take the opportunity, since we are already past the top of the hour.

Mike O'Connor: Shit. I'm sorry. You are right. I haven't been paying attention. Go ahead and then Amr and then we will wrap up, and I deeply apologize to everybody. I got so engrossed in the conversation I forgot, but go ahead Rick.

Rick Wesson: It seems reasonable to me by reviewing our charter that we simply say or remind the council that we are not going to solve these problems. That the path to success is that we enumerate them and that whatever we enumerate continues to exist with current registries.

And so I think that the path forward is the numeration on each one of these topic areas. I think it's a set of work that we can accomplish and that would

be valuable for the community. And it seems irresponsible if the committee or the council were to task us with solving these things. Clearly, we don't have the expertise ND capability to do that nor the mandate within ICANN.

So I think that merely reminding the council rather than asking permission and then trying to move these various sub groups forward in these topic areas to enumerate the issues of should this occur - from thin to thick. I think it would be extremely valuable and that's all I have to say. Thanks for your time Mike.

Mike O'Connor: Sure. Thank you, Rick. Amr you get the last word and then I'm going to close this down really quick. Sorry about that. Go ahead.

Amr Elsadr: All right, thanks Mike. If I understood Rick correctly, I think what I wanted to say is pretty much in line with what he said. It was not my understanding that we are trying to solve the issue of privacy, rather simply that we were going to as a working group recommend policy on the use of thick Whois. And so we were tasked with considering a number of issues, amongst which are privacy regarding jurisdictions, which is what we've been doing the past week I think.

So I just - that's all I wanted to say. Thanks.

Mike O'Connor: Thanks Amr and thanks all. Let me take a couple more seconds of your time and then we will wrap this up. I think we should get the privacy sub team going. I didn't hear anybody deeply opposing that. I think that if we could agree you know I think that Rick did a good summary of certainly my view, but I'm just a member of the working group. I'm not anything special there.

And I think with that we are going to wrap it up and take this to the list. Amr's question is who is leading the privacy sub team. We've got nothing there. We don't really have final membership. We did sort of a casual job long ago with a poll, but others may want to join now, so if I could leave it up to Marika to sort of get the assembling of that group organized on the list.

Marika Konings: Mike, this is Marika. We actually do have a sub team set up, including a mailing list, and the details of who is subscribed to that can be found on the wiki. All of the sub teams now have their dedicated mailing lists with membership. And of course, if anyone wants to join any of the sub teams, they should send me or Glen an email so we can get you added to it. So it is all set up and ready to go, but you are right. There is no leader appointed for that group yet.

Mike O'Connor: Right, so could somebody who knows that they are on that sub team volunteer to at least convene the conversation to pick a leader and get it underway. Does anybody want to do that? Otherwise, you may get an arbitrary selection from your chair.

Don did. Way to go Don. Thank you, sir. All right, that's it. Thank you all. It was a wonderful.

Alan Greenberg: Mike, before we leave, which sub team are we talking about. There is not one called privacy.

Mike O'Connor: There isn't? I thought there was.

Alan Greenberg: There is data protection.

Marika Konings: Yes, this is Marika. We basically shortened that. It's the data protection and privacy. I think they were grouped together as well as a category in the issue report and the charter, so it's just shorthand.

Alan Greenberg: Thank you very much.

Mike O'Connor: Thanks for the clarification Alan. Okay, that's it. We are over time, way over time. We will see you in a week. And by all means, carry on on the list. I think

we are doing really well on the list and I hope that this continues. See you in a week. Bye-bye.

END