

**ICANN  
Transcription  
Thick Whois PDP Working Group meeting  
Tuesday 24 September 2013 at 14:00 UTC**

Note: The following is the output of transcribing from an audio recording of THICK WHOIS PDP Working Group call on the Tuesday 24 September 2013 at 14:00 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-20130924-en.mp3>

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

Attendees:

Amr Elsadr - NCSG  
Carolyn Hoover – RySG  
Steve Metalitz - IPC  
Mikey O'Connor – ISPCP  
Marie-Laure Lemineur – NPOC  
Roy Balleste – NCUC  
Chris George – IPC  
Marc Anderson – RySG  
Avri Doria – NCSG  
Tim Ruiz - RrSG

Apologies:

Susan Prosser – RrSG  
Frederic Guillemaut - RrSG  
Don Blumenthal – RySG  
Alan Greenberg – ALAC

ICANN staff:

Marika Konings  
Lars Hoffmann  
Berry Cobb  
Glen de St Gery  
Nathalie Peregrine

Coordinator: Go ahead, we're now recording.

Nathalie Peregrine: Thank you very much, (Ricardo). Good morning, good afternoon, good evening, everybody. Welcome to the Thick Whois Working Group call on the 24th of September, 2013.

On the call today we have Mikey O'Connor, Steve Metalitz, Roy Balleste, Chris George, Marc Anderson, Avri Doria, Tim Ruiz and Carolyn Hoover. We have apologies from Susan Prosser, Frederick Guillermo and Alan Greenberg. From staff we have Glen de Saint Géry, Marika Konings, Berry Cobb, Lars Hoffman and myself, Nathalie Peregrine.

I'd like to remind you all to please state your names before speaking for transcription purposes. Thank you very much and over to you, Mikey.

Mikey O'Connor: Thanks, Nathalie. Sorry about the confusion. And welcome, everybody. We'll take our usual short stop to take a look at the agenda, which is pretty short and I think we're mostly going to focus in on this proposal and see if we can get to something that works.

And this is also the time to let you know - to let people tell us about changes in their statements of interest so I'll just take a pause and see if there are any issues there.

Okay well the screen is my screen. This is a session where I think our primary agenda is to really work through this proposal, see if we can find a place where we can meet in the middle. It's too bad we're missing a couple of people. Alan has his monthly ALAC meeting so we have apologies from him. And as I mentioned before the recording I think we may also have apologies from Don Blumenthal because I think he may be flying (unintelligible) today.

So with that what you see on the screen is a version that Steve - there's my original, Steve revised it a bit and then I revised it a bit as well. And

unfortunately I think it's my version of Word turned everything into author so you can't tell which ones are mine and which ones are Steve's so the smart ones are Steve's and the dumb ones are mine.

But let's just go through them one by one and see if we can get to a place that works. And if we can we'll (unintelligible) and if we can't we'll figure out what we do from here.

The first one is - well let me do one more little bit of background. There's (unintelligible) of the report that we're talking about, Section 7.1 which is where our - right now our single recommendations resides - that recommendation is we move to thick Whois.

And 7.3, which is essentially a section that we created for observations that we wanted to pass along but fell somewhat outside of either our scope or our capability. The first two are really aiming at expanding our formal recommendation to include a request for an independent legal review to be undertaken as part of the implementation of the transition to thick Whois on the privacy implications of a transfer of registrant data between jurisdictions.

And I think we'll lump 1 and 2 together because they sort of belong together. The second one is that we essentially change just the sequence of the report. The paragraph that's there, Page 30, and the original recommendation was to just move that down one section in the report so that it is a conclusion part which is the privacy and data protection part.

And then there's some language in terms of the sequencing that we need to work through. Those are the two essentially what I've been calling in shorthand Big R recommendation changes. And I think I'll stop there. We can certainly move around. I don't want to box anybody in. But it seems like a reasonable spot to stop the conversation and maybe take a queue.

I'll note, Avri, I think it's your mic that may be unmuted. I can hear you - the microphone is like mine, it's super sensitive. So you may want to mute it when you're not talking.

Where are people at? What do we think? Are we close, horribly far apart? Are there issues that we can try to address by changing this language somehow? Don't all speak at once. I know that - I know this is hard. But I think it's worthy work and I think it's, you know, if we can get through it it would be very helpful. So, Tim, go ahead. Thanks.

Tim Ruiz: Yeah, I was just going to point out that I think Steve is having some problems so he's trying to phone in. And then it looks like Amr is just now dialing in or it looks like he might have just joined. So we might want to just kind of maybe...

((Crosstalk))

Tim Ruiz: ...back up a little bit and go through that again because I think they're both - might want to comment...

Mikey O'Connor: Yeah.

Tim Ruiz: ...on it so.

Mikey O'Connor: Yeah. Steve is typing. I see what's going on. Yeah, Steve, can you hear us or - presumably you can hear us jabbering away even though you can't speak yet.

Tim Ruiz: Yeah, he's waiting for coordinator.

Mikey O'Connor: Yeah, okay so he can at least hear. Amr, are you on the call? Can you speak or not? It seems like he's in the same boat. Yeah, see, Nathalie, I think this is the problem that we ran into yesterday on the IRTP call as well that they may not even be presented the option to use their mic. And this, I think, is related

to that change that happened that we were talking about before the call started.

So maybe what - while they're dialing in - it sounds like the - they sort of beef up the number of them then they let them slide off as the hour drifts by. So it might be, Nathalie...

((Crosstalk))

Mikey O'Connor: ...you and I can just hang on the call. Yeah, go ahead.

Tim Ruiz: This is Tim Ruiz. So I just thought I would just comment on it myself. And I'm trying to be flexible about it so I, you know, I'm good probably with either of the versions that I've seen here. And I've made a lot of comments supporting, you know, the privacy concerns. And I do feel that way.

However, I just want to make it clear that I'm a lot more flexible probably about what goes into the report and still supporting it. And I think my goal would be, you know, just - if we could find a compromise that everybody could support so that we could just have the report and that of a minority view but I'm not sure that's going to be possible at this point but I hope so.

So I'm flexible about what's put in here even though I've made strong - I've given strong support about the privacy concerns and I just want to make that clear.

Mikey O'Connor: Thanks, Tim. And I think that's where I'm at as well. You know, I think I said in my last little comment, you know, if we can move the ball forward on thick Whois and then privacy I think that's a good thing. So it's literally in the same spot.

Okay so Amr is on. Steve, are you in the bridge yet?

Steve Metalitz: Yes I am. Thank you. Sorry.

Mikey O'Connor: Let's see if - whole hurray. No worries. Again, I've got deep questions about all that but we won't soak up any more of the call on that. So presumably you all - Amr and Steve, did you hear the prelude to this or should I run through that again? I'm happy to run through it again if you missed my lead-in.

Steve Metalitz: No I - this is Steve, I heard it.

Mikey O'Connor: Okay. Amr is typing. Let's see what Amr is got to say. Yeah, it sounds like Amr wasn't quite there. So let me just zip through this again. Basically what's on the screen is my screen. I stand here as your scribe ready to type things in, change things, whatever.

The goal - and I think Tim put it pretty well - is I, like Tim, am pretty flexible. I'd really like, today, to get to something that we could all agree to. I think it's always better especially in a consensus situation to have (unintelligible) and get there and I'm willing to give it a try.

And the other distinction that I made is that Parts 1 and 2 - Suggestions 1 and 2, are the - are aimed at Section 7.1 of our report, which is our recommendation. And Section - Part 3 of this little thing is aimed at Section 7.3 which is a section that we created as a way to put stuff that we felt - fell either outside of our scope or competence or both but that we felt were good ideas. And so that's, you know, that's the distinction on that.

The draft that you're looking at is the one that Steve sent round and then I modified ever so slightly and unfortunately the - I think it's my version of Word did this business where it converted everything to author. I'm going to - don't know what happened there.

So somewhat lightheartedly I'm saying all the good ideas are Steve's and all the bad ideas are mine. And I think it's the (state) setting that we did. And

with that I sort of turned it over to the group. Tim sort of went first and you heard his comment. And Avri's in the queue. Let's go to work. Avri, go ahead.

Oh, you may be muted now.

Avri Doria: Thank you.

Mikey O'Connor: Yeah, no you're...

((Crosstalk))

Avri Doria: This is Avri speaking.

Mikey O'Connor: Go.

Avri Doria: ...me now? Oh okay thank you. Yeah, it took me a while to unmute myself. This is Avri speaking.

Mikey O'Connor: Yes, you're fine.

Avri Doria: I double - I had double-muted myself. Okay. So as the one that probably stands out as one of the least flexible on this - up front - I think even my colleagues in NCSG tend to be more moderate on this than I am. I find thick Whois in itself an unfortunate attack on privacy and local law.

However, I have also come to accept that that's a ship that is probably sailing and such. But with regard to this particular transition where there still are registrants - most registrants - who still have certain rights, I only agree to a thick Whois change if there is the same regard for privacy that there is for security and tracking the bad guys down.

Now since we weren't able to add any (unintelligible) considerations to Whois to compensate for the fact that all of these registrants, most of the registrants

in the Internet, were going to lose a certain degree of rights - and I know that it has been very difficult to prove the cases and yet the law, I've seen from international covenants (unintelligible) privacy and their extension to Internet rights that those rights exist and that those rights are real. And, you know, we'll see if and when they get to court.

So unless there is an equal respect and concern for privacy as security, which to me translates as an unambiguous (unintelligible) I'm not comfortable with this. However, I've sort of been one of the later participants from the NCSG delegation so I will acquiesce to what may seem like the lesser degree of equal protection for privacy if others - so I'm willing to show some flexibility but I really would like to make it quite clear that I see the thick...

Mikey O'Connor: This is terrible.

Avri Doria: ...really matter. To me it is there are registrants' rights that are international and local and national and that we lose that when we switch to thick Whois. So in essence I'm against a switch to thick Whois without equal protection for privacy. Thank you.

Mikey O'Connor: Thanks, Avri. And you can see in the Chat that, you know, this is another type of geek thing but it's clearly a big problem and that - this happened on the IRTP call as well is that I think when people are speaking just a little bit (unintelligible) and a little bit more emphatically they cut out. And unfortunately what that means is that usually right when they get to the good part of their talk it drops off.

And so, again, this happened with Avri's talk. And we're going to have to check to make sure that we captured the whole (unintelligible). Avri, you can recreate that because it - we got most of it but we didn't get all of it. And it's very frustrating especially on a policy call like this, especially a critical call like this.



((Crosstalk))

Avri Doria: ...does that help?

Mikey O'Connor: That's unfortunate...

((Crosstalk))

Avri Doria: Okay.

Mikey O'Connor: It might. I don't know. Sorry about that. Anyway let's - and I think I've got the gist of it and - yeah, we do and if we don't get there towards the end, Avri, I gave you sort of a special ticket to come in and take a last second bite at the apple on this because it's pretty rugged.

Steve, go ahead, you're next.

Steve Metalitz: Thanks, this is Steve. Yeah, I'm not responding here to what Avri said, which was sort of a general statement. But I'm really looking at the text that's on the screen. And I think by the way that at least for the comments - some of this is color-coded on my screen anyway.

But in any case my first question about the first point was to ask the drafters or supporters of this to explain a little more what they mean by an independent legal review.

I note in Item 2, which is kind of the basis for this, according to the text in front of us, it talks about these questions must be explored in more depth by ICANN staff leaving us - I'm leaving out the timing issue here - starting with the general counsel's office and then by the community. So does that constitute an independent legal review that is proposed that we recommend? Or what is meant by that? I guess I'm directing that...

((Crosstalk))

Mikey O'Connor: This is Mikey. And I was the - yeah, I think that what's going on with that difference in the language is that - let's see, is Volker on? No. I'm going to (unintelligible) Volker. I think Volker is the one that came up with the language in Part 1. And I'm the one that just stapled in the language in Part 2. I bet - and the language in Part 2 was discussed in quite a bit of detail by the group several times.

So I would take as a friendly amendment and I think Volker would too, just picking up that phrase and sticking it in to replace independent. The - let (unintelligible) and see how it reads. Hold on a minute. I just took this here. Copy it in. Oh, wrong place. Hold on. Let's just see - take this here, say it's going after the undertaking.

There is a rough cut. I don't know what we would do in that instance, delete (unintelligible). I think - that - there may be grammatical things that need to be fixed but I think that captures the sense that Volker was coming from because I know Volker was pretty engaged in the discussion when we were working on the actual draft. So that's a tentative first try. How does that work, Steve?

Steve Metalitz: I think that's a helpful clarification. I think what's - I mean, you've kind of subsumed two issues there. One is what's independent and second is should this be in connection with implementation which is certainly my view but I'm not...

Mikey O'Connor: Yeah.

Steve Metalitz: ...sure it's unanimous. But I think that - I find that helpful.

Mikey O'Connor: Okay. As long as you're in the queue and nobody else - oh Marika is in - let me (unintelligible) Marika, and then I'll circle back to you. Let's beat on the, you know, one of the consensus issues in the discussion on the list was the

original language which was before the transition to thick Whois as opposed to your change to as part of the implementation to thick Whois.

Would you give me a - I'm sort of putting you on the spot and, you know, if you don't want to comment you don't have to. But describe to me how it would be horrible if they did the legal review before - I'm just having a hard time figuring out the sequence.

They went ahead and did the transition but then did the legal review afterwards. That seemed odd to me. I couldn't quite get my arms around that. So if you could (unintelligible) that one that would be helpful for me.

Steve Metalitz: This is Steve. Is that directed to me?

Mikey O'Connor: Yes. Yeah, sorry.

Steve Metalitz: Yeah, I think, I mean, look the - one of the concerns that I have and I think Alan has expressed it very well in the - his posting last night is that this is a delaying factor. And while I still don't understand why we're putting, you know, we're supposed to be recommending consensus policy here. And now we also have a recommendation for a legal review.

And I don't know whether that's means that's consensus policy or what. But I guess I want to rule out the scenario in which this consensus policy is adopted and then there's a - the thing is sent out for a legal review somewhere that could take months or years.

We actually have discussed these issues in some detail and we, I believe, succeeded in separating the overall privacy Whois issue, which I agree, needs attention from the issues related to the transition to thick where we did not find issues that needed to be addressed prior to adopting this consensus policy.

So I am concerned about the potential delay on an issue that we found should be - should not be a reason for delaying. I mean, we say that in our report. So that was the reason for my suggestion that we talk - if there is going to be a legal review - and again I don't see why this recommendation is 7.1 but if there is going to be a legal review it should be in connection with implementation.

Mikey O'Connor: Thanks, Steve. And we use this - go ahead. I thought I heard Steve speak again. There's a lot of latency between the people on the phone and the people coming through the Adobe Connect.

Marika is being patient. Hang in there for a minute and then I'll go to Marika and then go to the rest of the queue. One of the thoughts that I had on that, Steve, is that we do indeed have language in the report where we talk about a consensus - I think a consensus view that this be done without delay or urgently. Have to go scurry off and find that piece of language.

But as one way to address your concern, which, by the way I share, we could elevate some of that language as well into this as at least one way to address this.

But let me run through the queue and we'll see sort of where we're at. Marika, you first.

Marika Konings: Yeah, this is Marika. Two points mainly and as well I think partly supporting what Steve was saying because if you actually look at our conclusions on Page 30 we're actually saying that there are no specific data protection issues that are specifically thin versus thick and the same for the privacy concern although we do recognize that there are broader issues.

So the question first of all will be what would that legal review specifically investigate if, I think, we already conclude that we're saying just looking

purely at thin versus thick we have not been able to identify any specific issues.

And also more on the sequencing why would we recommend that the Board requests a legal review? Why wouldn't we just say, you know, the GNSO Council recommends that as part of the implementation there would be such a legal review. So it's more - and I think the same question applies when we go forward with that one in the recommendations. But I can make that point there again.

That would be my two points I think where we're asking for something to be done I think we should be very specific as where we are asking for especially if it's something that ICANN staff is tasked to do. I think it doesn't address here what are the questions we're looking for and especially if in the report we state before that we actually found that there is no issues when we're just purely looking at the thin versus thick.

And it also applies, again, to the box and, you know, really being specific what the issue is that is expected to be investigated because, you know, privacy as related to Whois is rather broad.

Mikey O'Connor: Yeah, I think it's this one that they're - and this may need to move down into the Section 30 portion. I took the GNSO change as friendly. I think that, again, I think Volker would take that as friendly so I went ahead and did that one. Let's put that one on hold, take the rest of the queue and then sort of see where we wind up.

So Tim, you're next.

Tim Ruiz: Yeah, you know, I realize that we say in the report, you know, that we've determined there's no implications or issues on privacy between thin and thick. I will point out though that I don't know of anybody in this working group that's any kind of expert on those issues and we have consulted, that I know

of, any experts on those issues. So I can still see why some would feel that there may be some concerns.

The whole privacy landscape is a continually changing thing. We've seen that from, you know, registries that have requested waivers on certain aspects of Whois to, you know, registrars now looking - it looks like they'll be gearing up and requesting similar things whether some have now or not. And I think that's going to continue to grow.

And that isn't anything to say about, well, you know, what's changed in the legal landscape. So I think it's a very practical thing to say that we - that we think that there should be some, you know, legal review, you know, somebody who knows the laws looking at any possible implications in regards to this data transfer. And I think that's a very reasonable thing to expect.

I will say though, too, that I think that for those who have concerns about whether we say this is before the transition occurs or not I don't know if that needs to be said. I mean, when I think back to how the org transfer happened it took months of preparation for that actually to occur.

So I think, you know, we're looking at least at months in regards to this other transfer, maybe, you know, more months than it took before because there was a much bigger data issue here. And in reality there's actually probably more registrars because there were a number of registrars, at least at one time only, offering Com and Net.

And so I think during that preparation time my feeling is there should be plenty of time to, at least, do a legal review of any implications that might need to be pointed out in the actual transfer of the data before the actual transfer can take place.

So I don't think we have to specifically say that because I think there's going to be plenty of time for that to occur. I don't - my belief isn't that that legal review is going to take years. I think it could be done in a relatively short period of time.

Mikey O'Connor: Thanks, Tim. Roy, go ahead.

Roy Balleste: Can you hear me?

Steve Metalitz: Yes.

Mikey O'Connor: Yes, sir.

Roy Balleste: Okay just checking. Thank you. Have a couple of observations to make. I agree 100% with Tim and what he just said. The language that Marika just read really doesn't reflect the feeling of all the members of this working group.

And so I don't want to say that we need to go back and do that but this is why we are now discussing this recommendation to bring balance to that language. If we're going to move forward with the recommendation then, in my opinion, the review should not be done - I mean, it should be more specific rather than saying that ICANN is going to be the reviewer it should be some kind of multistakeholder body that reviews the recommendation.

And I agree with Tim there should be real experts in privacy protection. Whether we add the word before to the language that won't be necessary if we can agree on the rest of the language although it will be with the understanding by pure logic that it will have to do before.

And I certainly don't believe that this will take months. I mean, the Article 29 working party took them a few days just to tell ICANN there were issues with the RAA rules. And so I don't see any problem with it. That's all. Thank you.

Mikey O'Connor: Thanks, Roy. Amr, you're next.

Amr Elsadr: Hi, this is Amr. Two quick points on both the issue of the legal review before or during as well as Marika's earlier comment. First regarding the legal review, there's a point of having it as part of the implementation process but making sure that this is done before the transition actually takes place.

The way I see it is that the purpose of this would be as you - as Mikey put it before is to really investigate and mitigate the risks involved. And by that I mean legal implications and legal risks to perhaps both registrars and registrants in terms of registrants' legal rights.

So that's why I think that it's important to do this before the transition actually takes place but as part of the implementation process and that's why when this particular point - when Steve sent edits to both Points 1 and 2 I said that I don't mind this being included as part of the implementation but I don't see a reason why to remove the term "before" because that really defeats the purpose as far as I'm concerned at least.

On the first point that Marika made as well that the working group members could not identify any risks or (unintelligible) data protection and privacy. That is true, that is in the report. And it is absolutely correct. However, the report also says that we lack the capacity to do so.

And so asking for an issue report and perhaps the involvement of experts who would be qualified and capable of addressing these concerns this would be something that I would personally think would go in to the drafting of the charter presuming that this issue of the report does move forward.

So it's not that we - or the report said we couldn't identify any risks and that's it. Well, we did clearly say - and I think we all agreed on this that we were not capable - we lack the capacity to do this.



And as one of the items that we were asked to study the implications of and the transition of thin to thick I think it is the responsible thing to do since we could not really provide a concrete analysis on the implications regarding privacy and data protection then we should recommend that this be taken up on another PDP. Thanks.

Mikey O'Connor: Okay oh Marika's got - I assume that's a new hand, Marika, right?

Marika Konings: Yeah, this is Marika. That's correct. No, it's new hand.

Mikey O'Connor: Okay.

Marika Konings: Just one suggestion I would like to make is maybe to, in the first recommendation, to actually change a little bit the language around and actually move maybe the last sentence on the privacy implications of a transfer of registrant data between jurisdictions behind the legal - after legal review so it's really clear what the legal review is about and link those two together. And having a chat with...

((Crosstalk))

Mikey O'Connor: Hang on a minute. Hold on a minute.

Marika Konings: Having a conversation with Avri in the Chat and maybe someone can clarify our understanding or misunderstanding here because we seem to disagree on whether a transition from thin to thick whether any information is made public that before was actually held through either a privacy shield or a proxy service.

My understanding has been in this conversation that any information that moves from a thin to a thick registry is that information that is already publicly posted by the registrar at a thin level. It would not include sharing of information that is held either through a proxy or a privacy service that isn't

currently publicly posted. But maybe someone can enlighten us in relation to this conversation whether indeed it's thin versus thick requires a transfer of information that is currently not publicly available or whether it doesn't.

Mikey O'Connor: Okay, Marika, I'm going to ask you and everybody to help me. I'm going to stop for a minute. I note the queue building. Hang in there, folks. But I want to try and drive a few stakes into the ground here. And so if I miss something that you've mentioned like the one that Marika just did, stand by to remind me.

First thought is what if we said early in the implementation process not insisting on before but giving people a nudge what if we added, "Starting with the general counsel's office privacy experts and..." just to tidy up the grammar, "...and the community." So that we get, you know, I think that the notion that we are needing privacy experts in the conversation is important and it's not clear.

That the - that this phrase - so what we could do - (unintelligible) what if we just replaced this with this? See what happens. Something along those lines.

Okay, (unintelligible) memory is now purged. The nice thing about this is any of these ideas that I've just jammed down are easy to back off. Off to the queue. Tim, you're next.

Tim Ruiz: Regarding the changes you made I'm fine with those. On first read I don't see an issue with anything. But I just want to make clear, you know, that the public-ness, if you want to put it that way, of data is one issue. But, you know, the other issue is that having data public is one thing.

You know, within the jurisdiction and as a registrar that you've done it for so long now all of a sudden if they have to take that data that they've been responsible for and now move it to a completely different jurisdiction that's what my concern is about is understanding what, if any, implication there is in

doing that at this point in time because this point in time is different than the point in time we did it with DotOrg.

And we're not doing this with, you know, with - I don't think we're going to go back and try to get every registrant to say okay because that would be impossible. So this is going to be done without registrants', you know, approval.

So I think, you know, there could be some implications in certain jurisdictions. Just because the data (unintelligible) mean that it's necessarily okay for that registrar, under their local laws, to just pick up and give that data to somebody else. You know, it's two completely different things.

Whether it's public now or not isn't the issue; it's who is responsible. And I know that, you know, in this world of this virtual world where, you know, because you view something it's like you've downloaded it, but, you know, unfortunately governments, lawmakers, don't see things that way.

They see it, in many cases, as you're the holder of the data. And just because somebody else can look at it doesn't mean that that data is transferred in their minds. So and these are the things that we've got to keep in mind. We're not - we can't just look at this strictly as, you know, computer geeks and policy geeks; I think there's other things here.

And not always do lawmakers and governments always understand all of these things. So there's just - I think this is a reasonable thing that we have this looked at. If it's, you know, while early in the implementation, before the implementation, while the implementation is going on, I don't care. But I think it's a reasonable thing to request here.

Mikey O'Connor: Thanks, Tim. And welcome, Don. I put you on an airplane to the SSAC meeting in LA but I guess I was mistaken. It's great to have you on the call. Go ahead.

Don Blumenthal: Yeah, I appreciate it. I got to the airport earlier than I expected. To go to the question you raised a few minutes ago, it's my understanding - Tim is in the business, I hope you would - going to step in here. It's my understanding that the same information would transfer - the same information is involved in thick versus thin Whois.

I'm not quite sure what this hidden information might be. But when you're dealing with thick to thin things like credit card information, financials, the business transaction details stay put.

Mikey O'Connor: Thanks, Don. I'm going to sort of take a checkpoint here - oh Tim's got his hand back up again. Go ahead, Tim.

Tim Ruiz: Yeah, just quickly, again, I don't think it's just about hidden data becoming unhidden. That's not the entire issue. Because I maybe didn't explain very well, I guess. It's that data being held in the minds of lawmakers and governments being held by one party now moving to another party in a different jurisdiction I think there's possible implications there.

And it doesn't matter that that information is public and others can view it because I know in our minds we understand that when they view it they've downloaded it so it's actually moved across jurisdictions. That's our understanding. That isn't necessarily the way lawmakers and governments view things.

And so I just, you know, it's hard to find - to see that distinction but it's there. And I just want to make sure that doesn't get missed.

Mikey O'Connor: Thanks, Tim. All right so I want to take a checkpoint here. This I think was pretty good discussion.

Don Blumenthal: Yeah, Mikey?

Mikey O'Connor: ...something together, I'm not - yeah, go ahead.

Don Blumenthal: Yeah, no, that's a new hand here. Just you're absolutely right, you know, what Tim said is absolutely correct but I just wanted to make sure that the specific answer to the question was put out there and make sure that we weren't missing something or were addressing the concerns about hidden information and curious about what that might be.

Mikey O'Connor: Can you reframe that? I'm not sure where you're going with that.

Don Blumenthal: Okay, no, you know, I wanted - my comment was specifically to the Chat between Marika and Avri. You know, Tim's absolutely right about the broader issues but I want to make sure that it addressed the concern that some kind of secret information or different information is involved here than is involved - is involved in thick versus thin Whois data movement.

Mikey O'Connor: Yeah, okay. So it sounds like we've got two issues that - at least that this legal review needs to address; there may be more. I think that the - there are a couple of things that we'd probably need to do. We'll probably need to nail down a little bit more specifically than we have today what's in there. But I don't think that's going to be too hard to do. It's kind of like a chartering thing.

I want to get to the fundamental issue that Steve had early in the conversation. I see Steve's hand - I'll - your timing is really good, Steve. And that is I've snuck in a modification that does edge us towards a sequencing thing again. And so your timing is good, Steve; I was going to turn to you anyway and see if that's acceptable, not acceptable, whatever. Go ahead.

Steve Metalitz: This is Steve. I actually wasn't going to address that. I was going to address your last comment that now there's - we've doubled the number of issues, apparently, that this legal review would undertake. And, quote, there may be more, unquote.

This is the problem that I was concerned about. We now have a mushrooming additional recommendation framed almost like a consensus policy that I think is just - and it's obviously is offered by people who state very frankly that they are opposed to the transition to thick Whois.

And I think we're undercutting the work that so many people on this group have done in the last year, as well as in many cases previous years. I'm still quite disturbed by that. Thank you.

Mikey O'Connor: Yeah, I have to admit I'm a bit - I mean, I got a little cranky on the last call. Too bad that we're dealing with this at this stage in the process but nonetheless that, you know, my view is this is where we find ourselves and we need to, you know, we need to play it from here.

I think that the...

((Crosstalk))

Mikey O'Connor: ...hope would be that we can...

Tim Ruiz: Are we considering actually expanding it? I mean, when I read the recommendation I don't read in there that we've doubled anything in there. I mean, we talked about some things, you know, in the queue but, you know, that's just arguments about why we think, you know, some change here - some recommendation here is needed.

But I don't see in the recommendation itself where we've doubled the number of issues. It still only says, "With respect to transition from a thin to thick environment." And I don't think we've expanded on that so I'm not sure what Steve is concerned about there.

Mikey O'Connor: I think - yeah, I think that where Marika, I think, would like us to go is to get more specific than that although maybe that, from thin to thick, addresses her issue. Marika, your hand is up; go ahead.

Marika Konings: Yeah, this is Marika. I think the - with specificity I think that part at the end - I think we do change applicable laws because I think before it said something else. But it needs to be specific that is the transition that is supposed to be (unintelligible). My comment was actually about - I think there's a word missing currently talking about early in the implementation - I'd actually want to say process there.

And my other question relates to - I'm not really sure how this is envisioned, like a legal review that would involve the general counsel's office, privacy experts and the community? I always thought that a legal review is basically carried out by legal experts and that information is then, you know, provided back to whoever has asked for it. So I'm not exactly clear on what process is envisioned here or how we are expected to conduct that.

I think it's - I think what it, you know, if the intention is as part of the implementation process we make sure that we consult experts in this area to make sure that there are no legal implications related to the requirement to require, you know, thick Whois for all gTLD registries, if that is the question I think that is perfectly clear and I don't see any major issues with that.

But if there's something more foreseen here as a kind of community process or discussion or, if indeed, there are other questions hidden in this that don't directly relate to the thin versus thick I think either we need to spell them out and - that belongs indeed somewhere else.

I think we're looking here at the specific implementation of going from thin to thick and making sure that there are no, you know, unexpected effect there or things that we didn't perceive from a legal perspective. I think that's obvious.

So I think the way it's currently written it's not really clear what's intended or how that would work in practice or whether we all have a common understanding of what it actually means.

Mikey O'Connor: Let's take a snapshot here. It's 5 until the hour. I want to get a sense of the group as to where we're at. We'll - I will get through the whole queue, I promise. Clearly we're not done; we've got more conversation to go. But I guess where I'm interested - and maybe those of you in the queue can weigh on this as you make your comment - is this going in the right direction? Is this useful? Is this helpful or are we making things worse?

You know, give me a kind of a grade on today's conversation. You know, if we're moving towards consensus I will smile. If I'm taking us further away I will frown and act accordingly. Anyway, carry on. Avri, you're next.

Avri Doria: Okay thank you. And I dialed in so hopefully I am more easily heard this time. This is Avri Doria speaking since no one has said we're can't hear you I'll assume you can.

Okay to answer your question with the phrasing on 7.1 I actually think we're heading in a healthy direction. First of all, I want to make a correction statement: I am against thick Whois without equal protection for privacy. It is not that I am, you know, in any set against a piece of technology one way or another.

In terms of this I think that when we say with the implementation of the transition to thick Whois I think that that has to include understanding the privacy threat under thick Whois. So while I think putting the word "implementation" there is problematic, it probably will be okay because how can you understand the new problems you get when you transition to something without understanding the state before and the state after?



I think the general counsel's office consulting with privacy experts - and I think what we need to say is basically we're talking about both national and international privacy experts. I think we're talking to the privacy regulators of the various countries.

In terms of oh my God, they're heaping all kinds of new legal questions on us, what I have been accepting throughout this whole discussion was the statement that came out that, you know, it is not within this group's capacity to do a full legal analysis of the liabilities and other privacy problem issues that may be incurred.

And when, you know, a statement comes out of we've looked at it and there are none, is the point at which I'll respond with, well but what's the situation with privacy services when you transition from one to another?

Well what's the issue with moving data from one country to another country that may end up publishing data that wasn't published before because there's no longer the same level of privacy service or the privacy service needs to be paid in a different currency that - there's all kinds of things that we have not explored in terms of legal liability, in terms of what things change. And so that's what I'm saying.

Now in terms of whether it happens before or whether it happens during as long as there's an end to end dependency and for those that don't do project scheduling by that I mean you do not make the switch to Whois before you have fully understand that there are no threats or that those threats have been adequately mitigated.

And, I mean, this is a process that, you know, ICANN has been learning over the last there years is that there are threats that we don't understand when first we make policy but then as we start to think about implementations we realize oh my God, there are threats and we need to mitigate them.

So as long as there's an end to end dependency I see no issue with oh does it happen at the same time? It's just that you don't go ahead with the starting gun to actually do anything until such time. So, yeah, I think it's heading in a healthy direction. I encourage us to continue working on this 7.1 statement. Thank you.

Mikey O'Connor: Thanks, Avri. Tim, you're next. Tim, you may be muted. Maybe not.

Tim Ruiz: Okay, sorry about that.

Mikey O'Connor: Funny noises.

Tim Ruiz: I just wanted to weigh in as you were asking for various views on it. And I support this change. It looks like the change has changed again. But in reading it I would still support what it says with the new change. I'm losing track.

Mikey O'Connor: Pay no attention to where the P is under the - Amr, go ahead.

Amr Elsadr: This is Amr. Yeah, I also wanted to say that I think the language is so far it's looking good and I hope that the same language would be reflected in the next point - in the second one. I also - well also addressing Marika's earlier statement about the community being in the middle of that sentence, well I think she might actually have a point there.

If we are asking for a legal review it might be - we might want to specify that the experts are involved and that seems to be the case. If she (unintelligible) the community out of that sentence I think it would be all right as long as they are shifted towards the final recommendation on Point Number 3 which I doubt we're going to get into today because that's probably where the community's role is going to come in more in the issue report and the potential future PDP addressing privacy issues and Whois.

But we haven't gotten there yet, I understand that. And well also - so far I think the language and the third point still needs a lot of work. I personally support the earlier draft that was sent to the list by Mikey before the edits that Steve made. I thought that was all right - that was all right with me and I was willing to - I think I said this - I was willing to go ahead and endorse a full consensus based on that - on these additions.

But I think we still need to get some work done on that. Those are just my thoughts, thanks. And, yes, we are headed in a good direction so far. So far so good. Thanks.

Mikey O'Connor: Good deal. Thanks. Roy, you're going to get the last word. We are running just a little bit over the top of the hour so I'm going to pressure you to be brief.

Roy Balleste: No problem. Thank you, Mikey. Just briefly to echo what Avri and Amr said I think that we're going in the right direction. And I think the language is looking good. Thank you.

Mikey O'Connor: Thanks, Roy. Okay, I'm glad to hear that. It sounds like we've got a little more work to do. I am open to just waiting a week and doing this - I think that's the way we'll do it; we'll do it on the next call. It seems like we're at the stage now where we need the nimbleness of real time conversation rather than the list. The list I think sometimes gets in our way.

So I think this salutary conversation on the list is fine. I'm not going to push us as hard to engage this week because I thought this was a good conversation as well and so I will drive some changes into this based on some of the comments. And I'll probably listen to the transcript and pick some things out as well.

But let's stay with it and see if we can get her done. Oh, Marika and Amr, gracious. If people have to drop off go ahead but, Marika and Amr, go ahead.

Marika Konings: Yeah, this is Marika. Mikey, just to note that as we - there are a couple of regular that are actually not on the call today. I think it would be helpful if you actually maybe just circulate the language of the first paragraph noting that based on the discussions those modifications have been made and maybe encourage them to either, you know, come to the next meeting or share their particular views on that specific item because I think we do need to be conscious that we do have some people that are not here today for, you know, conflicts, so other meetings they attended.

Mikey O'Connor: Yeah, I'm sorry, you're absolutely right. That was sort of my plan. Amr, go ahead.

Amr Elsadr: Hi, this is Amr. Yeah, I forgot to address one thing, not in the language of the text we're looking at but I'm - the concern Steve and Alan raised regarding last minute delays to implementation because of a stakeholder group that is, in principle, opposed to any violation - violations of privacy and perhaps also thick - a transition to thick Whois.

I just wanted to say on the record I think it's understandable that they feel this way. And I think it's - I mean, I personally don't blame them but I would like to, for my part, give reassurance that this is not an underhanded attempt to undermine the work that the working group has been doing over the past - well better part of a year. And I really appreciate the work that has been done.

And I am just trying to reach a recommendation that reflects the language that has been developed over all this time and with all the effort put into it. And well, to be frankly honest, I only read the PDP manual recently as part of my homework for another working group. And the idea of recommending an issue report is not something that I thought - or actually it's just not something that occurred to me until recent - until Avri pointed out a few weeks ago.

And so - and without this sort of recommendation, which I now completely endorse, I thought it would have been pretty understandable that we would not opt to provide a full consensus and sort of give a minority statement expressing our views and our concerns that have not been addressed in the recommendations.

If the recommendation is simply a yes, we think - the working group thinks that we should go ahead and transition from thin to thick and, yes, there were probably the issues we couldn't address them, oh well. So I just wanted to put that on the record and try, for my part, to reassure Steve and Alan as much as I could that this is really not an attempt to impede implementation efforts based on the recommendations. Thanks.

Mikey O'Connor: Thanks, Amr. I think that's it for the call. And one suggestion that you may want to try out is if we can figure out language that goes into the recommendation that makes that clear. I think that would be helpful. I think that's where Steve - I'm sort of channeling Steve here but I think that's what he's trying to accomplish is to head that off.

And my idea is that we do have language in the report that says all due urgency, all due speed, we might be able to yank that up into this somehow and add that concept to it and that might be helpful. Wow, sorry we went so long over. I hope this was useful, helpful. It sounds like it was at least a step in the right direction. We'll carry on and see you in a week. Thanks, all. That's it for me.

Steve Metalitz: Thanks.

Nathalie Peregrine: (Ricardo), you may now stop the recording.

END