

ICANN Transcription
GNSO Next-Gen RDS PDP WG – Purpose Sub-team Session
Tuesday 26 April 2016 at 1700 UTC

Note: The following is the output of transcribing from an audio recording of GNSO Next-Gen RDS PDP WG Purpose Sub-team Session call on the Tuesday 26 April 2016 at 17:00 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-nextgen-rds-purpose-26apr16-en.mp3>

Michelle: All right operator if you could go ahead and get ready for the Purpose Sub Team recording. Let me know once you've done so.

Coordinator: The recordings have started. You may proceed.

Michelle: Great, thanks Zack. All right Chuck please go ahead.

Chuck Gomes: And let me turn it over to Susan Kawaguchi.

Susan Kawaguchi: Well thanks Chuck and this is quite an interesting discussion so and I think a fruitful one. So let's start off as the other two sub teams have done. And everyone that is on the Purpose Sub Team please raise your hand in Adobe or if you're not in Adobe chat you can say here too. It looks like we've got quite a few.

And just as a reminder what we're been tasked with here is to determine if these documents that we've all reviewed and summarized are relevant and useful to the Working Group in answering the charter questions. And I'm not sure if the charter questions are up but, you know, I'm sure we've all reviewed those. But that's what we need to keep in mind as we go through this. And I think I'll just start at the top of the list of questions. And so anybody

you no longer unless you have a question you can take your hand out of Adobe now. I think they've gotten the count.

But let's start at the top with the first question. Did this input inventory produce any insights to inform the Working Group's work plan? And I'm assuming Greg that your hand's up for a question?

(Beth Hosby): Hi. This is (Beth Hosby). I just joined. I'm on the audio only.

Susan Kawaguchi: Okay, thanks.

(Beth Hosby): Thanks. Hi Susan Kawaguchi.

Susan Kawaguchi: Hi. And then (Donna) is your hand up just to be counted as part of the Purpose Sub Team or did you have a question? Oh, okay you're gone too. So let's go back to the first question did this input inventory produce any insights to inform the Working Group's work plan? Anybody want to comment on that? We simply put a yes or a no next to that.

Okay Stephanie's saying yes and (Fab), so thank you. And so the second question we had quite a bit of discussion. We started the discussion last week. And so we - you provided lots of different articles or documents. So the EWG recommendation, the 2002 Whois Policy Review Team report SAC 55 2007 GAC communiqué regarding Whois, 2013 RAA Article 29 Working Party opinion 2003 article 29 Working Party on ICANN procedure and Article 29 Working Party legitimate interests of data controllers 2014 and SAC 54.

So we did have at that point we did and I sent this all out to the team last night. We did have some analysis and summaries of why these were important. And I was wondering if there was anybody in the group that wanted to talk about the documents that have been considered relevant in that list or do we have other documents that

are relevant? And I saw somebody says, oh, I'm sorry Kathy you were SSI on my Adobe. Kathy?

Kathy Kleiman: Sure. Thanks Susan for sending things out and especially to (Lisa) for keeping on top of all of the documents that were coming in on summaries. I think we're missing three documents and I wanted to share them. One is the opinion of the Article 29 Working Party 3 2013 specifically on purpose limitation. So it's directly relevant to our work and provides clear input and insight to our understanding and interpretation of purpose as required under the EU data protective direction. So if it's there I apologize but I didn't see it so opinion 3/2013 directly on point.

The other thing is I think a lot of our documents -- and I circulated this in email -- I think we need to actually include a reference to two things that are kind of underlying a lot of the other materials. And that's the EU Data Protection Directive of 1995 and the Council of Europe Treaty 108 of 1981 foundational, you know, data protection documents. Because that sets out the legal requirement for purpose that affects so many registries and registrars. So I wouldn't include those three documents. And then this is an important and growing list. Thank you.

Lisa Phifer: Thank you Kathy. That's good to note and I think staff has gotten that note and I also wrote it down. In the chat it looks like (Fab) is also contributing the green white papers that those should be added to the list of relevant documents. And so and maybe if these are - are these newly added to the list or are these -- you're saying the most relevant inputs Kathy is that - so the documents you're talking about are in that list? Unfortunately I don't have them all memorized?

Kathy Kleiman: It looks like we need to add some additional summaries to which would be fair. So in terms of the Treaty 108 on data protection from the Council of Europe that summaries already on the privacy

framework side so maybe that could just be copied over as is the European data protection directive.

Lisa Phifer: Okay.

Kathy Kleiman: And then I'll go ahead and highlight the specific sections that just deal that set up legal requirements for purpose. In terms of the green and white papers I would love to see a summary of those because of course I've lived through them. But I'm not sure exactly what's being referred to as relevant to our purpose discussion because the Whois database preexisted the green and white papers so I'm not sure how it can add to our purpose discussion because the data was already being collected. I can continue to develop the, you know, continue to use the Whois that preexisted the Department of Commerce's involvement with the Internet infrastructure. But I'm willing to learn but I wouldn't put these documents in until we have a summary that identifies the purpose issue so that we can discuss them together. Thank you.

Susan Kawaguchi: Yes. I would be a little concerned about not including them because if you're saying anything that, you know, after the creation of Whois protocol and way back in the dark ages is not valid...

Kathy Kleiman: (Lisa) I'm not saying that. I'm saying I don't understand what's being pulled into this working, the subgroup so that I'd love to see a summary. Because I don't understand why they're being included in the list.

Susan Kawaguchi: Okay. So I mean it's a valid request to have a summary. We need any document that's added to the list should be summarized. But so we will definitely ask for a summary. We would not want to include documents that were not summarized. But I don't think we should keep it out. (Lisa)?

Lisa Phifer: Thanks Susan Kawaguchi. So I apologize. I'm taking notes As people talk and I believe that I missed a couple of documents that Kathy mentioned since she said she referred to three and I only caught one so I'd like to recap that. And I would also like to point out that the green and white papers have already been summarized. They're in the current consolidated summary. The – several of the Article 29 opinions have been summarized as well. And in fact I think this team is only missing one summary in this batch and that's the opinion three 2013 which Stephanie has on her to do list.

Susan Kawaguchi: And that was – was the 2000 article the working party - Article 29 Working Party 2003 document, is that what you were referring to Kathy? Maybe you could give us the list again?

Kathy Kleiman: Okay the - thank you, thank you Susan Kawaguchi. The Article 29 working party 3/2013 opinion is currently Document Number 14 in our list in our purpose team summaries. And the EU data protection directive and convention 108 are not currently in our list but I'm recommending that they should be because they're kind of the foundation of - they create the purpose requirement that all the Article 29 working party opinions and other documents refer to. So you – we're kind of missing a piece if we don't have those. And they were already summarized in the privacy subgroups summary so we can just bring them over.

Susan Kawaguchi: Okay.

Kathy Kleiman: Thanks. And (Lisa) did you get all that?

Lisa Phifer: Yes I did. And the other two were already in on the screen in red. That's why I missed them.

Susan Kawaguchi: Oh, okay. Perfect all right. So does anybody else for Number 2 have any other documents they consider to be the most relevant for

the working group and would like to add to the list? Kathy is that a new hand or an old hand?

Kathy Kleiman: Oops, old hand.

Susan Kawaguchi: And Stephanie?

Stephanie Perrin: Thanks very much. I've been scribbling this -- Stephanie Perrin for the record -- in the chat. But I just wanted to note that the numbers in the text in the list there are messed up. Where you have a gap saying the 2003 document that actually not the purpose document, purpose limitation document. That is the opinion on Whois. And the 2013 document that one is Number 3 2013. So it's three - it's very confusing. It's 3 2013 and two 2003. So you can see it's about four bullets up from the red piece starting European Commission okay? If I could highlight it I would. Thanks. Okay, did you get that because I'm not sure I did?

Susan Kawaguchi: Yes I did. I believe that I corrected the Opinion 2 2013 in the middle of my screen anyway, opinion on Whois and then at the end of the list is simply added the 3 2013 paper which Stephanie you're still summary's on correct?

Stephanie Perrin: No actually that one's done. The purpose one is done. Did I send that to the wrong group because I sent that to the Purpose Group. Maybe they didn't want it.

((Crosstalk))

Lisa Phifer: No I do not recall seeing the 3 2013 Summary show up at the Purpose Group so maybe resend it.

Stephanie Perrin: Okay. I will resend that and the one that I haven't quite finished is the obligations of responsibilities of a data controller. That one...

Lisa Phifer: Okay.

Stephanie Perrin: ...you haven't got yet.

Lisa Phifer: Actually I believe that Kathy submitted that one.

Stephanie Perrin: Oh.

Susan Kawaguchi: But Stephanie if you would like to summarize it also and submit it we're fine with that.

Stephanie Perrin: Well I could go find another one too. There's lots of good reading there on that one but, all right.

Lisa Phifer: And if I might suggest as we're adding these to the list it would be helpful to for people suggesting adding to also state why they think it's - the addition is helpful for example adding the green and white papers if (Fab) could recap what he thinks it's relevant to the work it would help us flush out this list. Thanks.

Susan Kawaguchi: Okay so was there any other documents that we should be adding to the list of most relevant? I mean we can always list all the documents. But I think it would be helpful for those who haven't lived and breathed this to continue with the list. If we've gotten to the most relevant document and we consider that done that would be great. But if we - if there are other documents that people have opinions on and would like to be added to the most relevant list.

Now the - you were asking if you could find other sources, if you could have more time to find other sources. We are trying to wrap this up by next Tuesday so as the other sub teams have done they've - Friday is sort of the deadline for submitting summaries and comments and

information for our Sub Team Report. So if you can do that by then that would be great.

All right. So maybe we - I think the third question maybe is easy, which inputs if any generated the most discussion within the small team? Does anybody want to weigh in on that? I think, you know, after listening to all the sub teams this morning I think, you know, there's definitely been Article 29 opinions and EWG recommendations, the Whois Policy Review Team Report have all been discussed quite a bit. Kathy?

Kathy Kleiman: I thought the conversation over the weekend between (Carlton) and Stephanie was really interesting one that should be noted as generating a discussion about the EWG and its discussion how it viewed purpose. And there seemed to be purpose and users and there seem to be two different views on that, at least two different views -- maybe more. And so I thought capturing that would be very useful for the Working Group.

Susan Kawaguchi: Stephanie or (Carlton) could we -- is (Carlton) on the phone? Could one of you summarize that? And we can take a look at the emails. I did see the email thread going back and forth but I could not summarize that myself right now but we'll put it on the list. Okay is there anybody else have any what inputs generated the most discussion? Oh Stephanie?

Stephanie Perrin: Stephanie Perrin for the record, thanks Susan Kawaguchi. I just wanted to say that I'm not sure that particular exchange between me and (Carlton) on this was either one of us at our most articulate. Perhaps it might be more useful to have an analysis of the EWG document from a data protection perspective which has not been done. The - I must say that I think it's been read with interest in data protection corners but the dissent was only on one - a couple of

narrow pits. It was not on the entire document from a data protection perspective.

So my point would be the EWG report is not gospel. You know, it's a very interesting very detailed research report on possibilities. But there are all kinds of perspectives on it that have not been put in writing. And it never went for public comment in its final form where all the good stuff was in it. Thanks.

Susan Kawaguchi: Okay, thank you Stephanie. Maryan Rizinski?

Maryan Rizinski: Hello everyone. This is Maryan Rizinski speaking for the record. Regarding the third question I think that each document has its own merit to be discussed separately in detail. But given the fact that everyone has been very busy during the summer is we've actually not seen a lot of discussion regarding the content of each of these documents except maybe for the Whois Report and the Article 29.

At any rate the single document that I would personally like to select as the one that's attracted more attention are the EWG recommendations with their pros and cons. And it became obvious that most of the members for a small team have consensus that the EWG recommendations are relevant, insightful and also comprehensive. Thank you.

Susan Kawaguchi: Thank you. Okay, and we do have those, you know, listed in the - on that - on our list as number one so good. And Susan Prosser?

Susan Prosser: Hi. Susan Prosser for the record. I agree with Maryan Rizinski about the EWG is probably the most relevant one that's brought a comment. The other thing I wanted to make note of not that I agree or disagree specifically but most of the Article 29 people question whether - the question was raised whether it was relative to purpose or data protection and privacy issues. And so it was whether or not it was a

relevant - those are relevant documents within our limit as a purpose team.

Susan Kawaguchi: Okay I'm - I didn't quite understand your - the Article 29 question.

Susan Prosser: Did the - there was quite a - there was comments about whether the - some of the Article 29 really addressed purpose versus if they addressed privacy and data protection laws.

Susan Kawaguchi: And I don't think we came to a conclusion on that.

Susan Prosser: No I was just saying there was comments being made. I want to make that notice of it.

Susan Kawaguchi: Okay, perfect. And Kathy has made a comment in the ones being listed are directly related to the - to purpose. So we may want to take a stronger look at that too. Okay, good comments. Anyone else on three of the inputs, the most discussion? If not we'll move on to is there anything - any inputs that may be obsolete or superseded by subsequent work, any opinions on that? So from the silence I'm assuming that everybody thinks that everything should be left in.

And then what input gaps if any may need to be addressed later? Is there anything there? So Kathy you did have a draft in the - under draft response. You wanted to include the perspective the Whois Review Team is expressly barred from looking at the purpose of the Whois system who is allowed to only - to look only at ICANN's existing policy relating to Whois for the affirmation of commitment. Even within that scope Whois Review Team final report expressly recommended protection of privacy for commercial companies, noncommercial organization and individuals finding that each shared with us legal and legitimate reasons for privacy including as yet unannounced mergers, new (unintelligible) names, unpopular religious, ethnic and policy views.

I just want to make one comment on that Kathy because I as you all know I was a member of that of the Whois Review Team also. And we did comment in - or in a state in report under companies. we, you know, basically on Page 88 of the report privacy and proxy services are used to address noncommercial and commercial interests which many view as legitimate. And then we gave examples.

We didn't have a - we did have pretty much a full-blown discussion of this is my recollection of commercial versus noncommercial but only came to the agreement to put in the report that, you know, companies have this need which I absolutely agree with, upcoming mergers, new product or service names, new movie names or other product launches.

What we never - my recollection is we never came to the determination that yes commercial use of the privacy or proxy service is legitimate. And so I would just I'll add a comment to be included in the response under yours that we limited ourselves to those examples and but that I don't think we can make the leap that commercial - all commercial uses should be - is a legitimate use privacy and proxy. I just don't think we all agreed as a team but there was definitely, you know, I was definitely on the other side of that argument.

So that was one comment I wanted to make there. And then Kathy had another comment about the accuracy which I don't disagree with that at all. So I think this - Kathy's input under gaps or just perspectives that should be addressed is good. And I was wondering if anybody else had any comments or concerns about documents and how they've been summarized and if we need to have a broader perspective? Have we worn you all out today by such a long call? Okay (Lisa)?

Lisa Phifer: Thanks Susan Kawaguchi. I would just note that a couple of purpose summaries are not really summaries as much as they are fairly lengthy excerpts from the for example the Whois Task Force on our reports. And that it might be useful for someone to take a look at trying to provide a couple of bold points that sort of wrap those up into how is this relevant to the work of the team since they are fairly lengthy excerpts?

Susan Kawaguchi: Okay. I'll put that on the to do list. And so did you have - shall we just take a - take a look at all of the summaries with that in mind?

Lisa Phifer: I think that would be useful. I particularly noticed the first two because they took, you know, a fair number of pages of the consolidated summary. But someone - anyone that wants to take a look at the consolidated summaries and identify if some are either, you know, too brief or some perhaps should be sort of whittled back to the relevance of that document to the team, but especially the ones that are excerpts from the source document. They really haven't been put in context.

Susan Kawaguchi: Okay.

Lisa Phifer: I think someone taking a look at the whole list with that perspective would be helpful. And Kathy I noticed in the chat asked if we're still missing some summaries and yes we are. We have a couple of summaries still coming from - there was the one on 3 2013 that we're not completely sure gets submitted to this group. I'll crosscheck and if I didn't get Stephanie's email incorporated I will and then we do have some other summaries coming in from (Karen).

Susan Kawaguchi: Okay. And then it looks like (Natalie) had a question whether or not - get back up there. You guys are chatting a lot. Is the psychology of the user taken into account at this stage in order to appreciate whether the purchases considered will actually meet their goals? I

don't I mean I think we should consider that and I do think that we took a look at that in the EWG but as this working group has not done that I don't think. And (Lisa) is that a new hand or old?

Lisa Phifer: Old, apologies.

Susan Kawaguchi: No problem. So if there's any volunteers to take a look at the full project - purpose team summary but I know that's quite - I don't know if it's like 50 pages. But I think it would be a quick review to see what needs to be summarized. And I can take a look this week to do that too. But if there's anybody else interested in reviewing the whole document and summarizing where needed we would appreciate the volunteers.

Okay I think we - well the last question on our list is are there other key takeaways from this input inventory the team wishes to share with the working group? Thank you (Natalie) for volunteering to look at the full summary. Is there any other takeaways?

Kathy Kleiman: Hi Susan. It's Kathy. I've got my hand raised.

Susan Kawaguchi: I'm sorry I was writing (unintelligible).

((Crosstalk))

Kathy Kleiman: It's hard to multitask on all these things. Anyway I just want to share. I'm sorry for talking so often during this call but I was surprised at how much guidance we've gotten on purpose. I wish the Whois Review Team had kind of had all of this laid out for it. It might've helped. But it's is a lot of information on the legal obligations purpose that I think a lot more than I thought and very clear. There's law, there's interpretational of law generally and there's even very specific interpretation for Whois itself and for ICANN.

So I think we've got a lot of material as we look to redesign this system, a lot of legal guidance and even accessible legal guidance so when we look at the definition on the European Commission Web site the definition obligation to data controller, you know, it's all been rewritten and kind of into easy and assessable English. And so it we can work with this. I think there is a lot of material to work with. Thank you.

Susan Kawaguchi: Thank you. And I would agree with that. There is I mean that is something the Whois Review Team struggles with. It's like what are we really talking about and looking at? Let's look at all the documents that we didn't have the resources that we have today. And some of these were written after the - after the Review Team. But so it's almost an embarrassment of riches but we need to wade through and use for our - the work for Working Group. So is there anybody else have any other comments? And Kathy you're okay your hand is up. Chuck?

Chuck Gomes: Thanks. I thought I would raise the same issue I did at the end of the data call today with regard to the order of questions when we start our deliberation. Again though if some of you weren't on when I did that I'll just repeat briefly that there was a lot of good discussion on our calls and our list, the working group list when we were working on the work plan specifically and in particular with regard to the order of deliberation. Again there were three areas where people had different opinions in terms of order. Should we cover data elements first and then privacy and then users and purposes or some other variation of that? In the charter uses and purposes was listed first and so on.

But let me just throw that out to see if there's any – and if this goes back to Question 1 on the screen. Any additional discussion on that? Some of you may have been involved in the discussion that occurred at the end of the data call and at the beginning of the privacy call, but just throw that out in case there are any additional thoughts on that.

Susan Kawaguchi: Okay Stephanie?

Stephanie Perrin: Thanks very much Susan Kawaguchi. Stephanie Perrin for the record. I think we've proven by the peace and quiet on this call that 135 minutes or whatever it was is too long for us because we weren't experiencing any gaps in coverage there on the privacy call. But purpose seems to have pooped out a bit. So I just want to register that we may have to return to this because I'm sure there's more to say on this. I think we're just tired.

Susan Kawaguchi: Well fare point but we also have to get on with the work. So we can continue this discussion on through the emails and then come to some determination by Friday so that we can have our summary to deliver on Tuesday of next week. Is that correct Chuck?

Chuck Gomes: Yes.

Susan Kawaguchi: Yes. So if there's no more comments and people are tired -- I understand that -- then we just continue on the list this week and see and make sure that we hit our deadline on Friday. Any other inputs or summaries or comments should be provided by there by Friday so that we can allow staff at least on Monday to put things together for us. And I want to thank the staff again for doing an amazing job because keeping track of all of this cannot be easy.

Chuck Gomes: So thank you Susan. This is Chuck. My complements to all three teams. And not only the good discussion on all three sections of our call today but certainly all of the great work that's been going on behind the scenes. It's much appreciated. And if there are no other questions or comments then I will adjourn this call and we can stop this recording. Thank you very much.

Susan Kawaguchi: Thanks all.

Woman: Great thank you. Today's meeting has been adjourned. Operator please stop the recordings and disconnect all remaining lines. Everyone enjoy the remainder of your day.

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