

WHOIS Study Group

Teleconference

TRANSCRIPTION

Tuesday 15 July 2008 15:00 UTC

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<http://audio.icann.org/gnso/gnso-whois-sg-20080715.mp3>

<http://gnso.icann.org/calendar/#jul>

Participants present:

Chuck Gomes - GNSO Council vice chair -gTLD Registry C
David Maher - gTLD Registry C
Ken Stubbs - gTLD Registry C
Jordi Iparraguirre - Registry C
Steve Metalitz - IPC
Lee Eulgen -IPC
Steve DelBianco - CBUC
Robin Gross - NCUC
Tony Harris - ISP
Tim Ruiz - Registrar
James Bladel - Registrar
Olga Cavalli - NomCom appointee to Council
Alan Greenberg - ALAC Liaison on the GNSO Council
Bertrand de la Chapelle - GAC

ICANN Staff:

Liz Gasster
Glen de Saint Géry

Absent apologies

Wendy Seltzer - ALAC Liaison on the ICANN Board Participants

Chuck Gomes: Okay again, Welcome to everybody that is on the call. For the sake of everybody knowing who is who when your speaking and also for the recording if you would identify yourself when you speak that would be helpful.

Glen would you quickly do a roll call?

Glen DeSaintgery: Yes I will indeed Chuck. Chuck Gomes, who is the leader of the call, James Bladel, Registrar, Ken Stubbs, Reg C, Tony Harris, ISP, Tim Ruiz, Registrar, Allen Greenberg, ALAC, Bertrand de La Chapelle, from the Observant, David Maher, Registry, Robin Gross, NCUC, Steve Metalitz, IPC, Lee Eulgen , IPC, Steve Del Bianco, Business Constituency.

Have I missed anybody?

Chuck Gomes: Thank you Glen.

Glen DeSaintgery: (Unintelligible).

Chuck Gomes: And possibly others will join us as we get going here. Any concerns about the agenda that was distributed and that is posted on the site. Okay.

The first thing I had on the agenda then was to briefly discuss the question I raised. We obviously as a group are, you know, kind of re-writing some hypothesis in some cases. In other cases they are really not changing very much.

But the question I raised was whether or not we should go back to the original submitters of the studies in cases where those people are not on this group, and just communicate to them what we are doing and see if they have any comments.

I am not thinking of initiating a process where they have veto power or something like that, but rather to at least get their comments in terms of what we are doing.

So what I would like to do first of all is just see what you guys think about that. Should we do that? Should we just go ahead and do our exercise without communicating with them?

Olga Cavalli: Sorry Chuck, this is Olga. I just joined the call. How are you?

Chuck Gomes: Thanks, thanks, Olga.

Ken Stubbs: Chuck it is Ken Stubbs.

Chuck Gomes: Go ahead Ken.

Ken Stubbs: Yes, I think that is a good idea. I think these people invested a lot of time and energy to begin with I think - good idea to call on their expertise.

Chuck Gomes: Ken you are very hard to hear.

Ken Stubbs: I am sorry, the - yes these people spend a lot of time and energy developing these things. I think that we can benefit from their assistance fine tuning any - forward - makes sense.

Steve Del Bianco: Chuck this is Steve Del Bianco.

Chuck Gomes: Steve, anybody else?

Allen Greenberg: Yes, Allen.

Chuck Gomes: Okay. I have got Steve and Allen. Anyone else? Okay Steve Del Bianco go ahead.

Steve Del Bianco: Two things. I do think we should consult with the original drafters of the study and perhaps even with the GAC considering a number of their questions made it in there.

Chuck Gomes: Right.

Steve Del Bianco: One of the questions is the timing. I think we ought to first do our best at translating, consolidating, textualizing their hypotheses in this broader document and give them an opportunity to see that document typically on whether we have, you know, butchered or benefited their original hypotheses. See how we drafted it together. That would be my recommendation.

Chuck Gomes: Thanks Steve. Let me make a - let me comment on that before I give it to Allen.

My thinking, and I guess I am guessing my thinking on the rest of you right now is that we would probably give maybe a week turnaround time for them to comment on what we do, and that I do not think we would have to wait until the very end of all of our work to send out what we have done.

For example, this morning we should finish Area 1. We are just going to follow up to see if there is anything else on Area 1.

The - it is my opinion that the - we could actually reach out to those who authored the studies in Area 1 - who suggested the studies in Area 1, with regard to what we have done, I mean, this week, and given a week turnaround time.

Is there - let me first ask Steve that - if that is consistent with what he is thinking and then I will allow others to comment on that.

Steve Del Bianco: Yes, it is consistent Chuck as long as they see it in context, so that if you asked Claudio DiGangi with INTA to look at Area 4 for instance, it would be after we have consolidated and combined and restated the hypothesis for the whole Area 4.

Chuck Gomes: So you are talking about the context of the whole area. Okay. Yes, so in other words, what you are suggesting then is that when we go, not just to go back with a specific hypothesis of one study to the individual, but let them see what we have done for that whole area.

Steve Del Bianco: Especially so if we decide to consolidate in any way. If Study 1 of Study 7 are effective the same thing and we consolidate the...

Chuck Gomes: Oh, got you. So it is not so much by area as with respect to any consolidation we may have done.

Steve Del Bianco: Yes but, of course we are doing the consolidation within area. So you sort of get both.

Steve Metalitz: Well this is Steve Metalitz. Could I get in the queue?

Chuck Gomes: Yes, I will put you in right after Allen Steve.

Allen Greenberg: Uh. Sorry.

Chuck Gomes: Go ahead Allen.

Allen Greenberg: Okay. I basically support what is being said. I see no reason to sep - once we have a given area done, I see no reason to cut it into pieces and only send select pieces to the pe - back to the people. I do strongly support going back to them.

We already had one case where the originator was present and said you mangled it. So I think that there is a lot of merit in doing that. I agree with Chuck that - or Chuck and somebody else, that turnaround is going to be critical and a week should be enough.

If they cannot get back within that time, then, you know, we probably have an issue.

But I see no reason not to send them the whole area, but with a little arrow pointing to the one that we think is theirs.

Chuck Gomes: Okay. Alright. Steve Metalitz.

Steve Metalitz: Just to say that if we want them to see it in context, I mean, I am not confident that there is totally water tight divisions between these different categories that have been recognized.

So I mean if they want - you want them to see it in context, you might as well send them the whole thing. And if you give them just a week to

turnaround, then it only holds things up a week. Otherwise we might be doubling back to areas we have already completed and so forth.

This way, if you wait till the whole document is ready and send it to all of the study proposers, then you get all - any comments they have and decide what to do with it.

Chuck Gomes: So your suggestion Steve is that we wait till we are done with the whole package and send the whole package out.

Steve Metalitz: I think if you - yes, if you want them to see the context, that is the whole context.

Chuck Gomes: Now keep in mind, and then that may be find, but keep in mind that that is probably more than a week delay especially if there are serious concerns about us mangling their hypothesis.

Steve Metalitz: That is true. In the case of mangling, we have to just - they would have to tell us within a week, but then (unintelligible).

Chuck Gomes: So I wonder if it would make sense to do it on an area by area as a preliminary step so that we can flag any mangling issues earlier, and then with the commitment that we will send them the whole package when we are done.

Allen Greenberg: It is Allen. I strongly support that.

Chuck Gomes: Does that work Steve?

Steve Metalitz: Yes that, I mean, yes, that is okay with me. And I do not feel, you know, real strongly about this, I just think that the whole (unintelligible).

Chuck Gomes: Yes, that is no, it is a good point, okay, thanks. Anyone else on that?

Lee Eulgen : Yes, this is Lee Eulgen again. I agree with Steve. I mean I do not feel really strongly about it. I mean my thought is we should just wait till the end and send everything out at the end once we get all the hypotheses, you know, distilled as we see fit.

Only because I feel like from a process flow perspective for our group, if, you know, we are getting every week comments back from the various, you know, original, well study originators, I feel like it is just going to bog us down week to week.

I would rather just push to get through all the hypotheses and then send them out to everybody at the end and see what they...

Chuck Gomes: So you would not send out a early message like I suggested.

Lee Eulgen : I, you know, I guess not. Again, I do not feel really strongly about it if the group thinks otherwise. I mean, this is just a process issue but I just kind of feel like - I thought the progress we made last week in just trying to forge ahead was productive and I feel like if every week we, you know, spend X amount of time talking about comments we receive back, I feel it could be maybe better to do that in one session all at the end, you know, after we give a week or two for the submitters to provide comments on the entire package.

Chuck Gomes: So is there any strong objections to that approach?

Tim Ruiz: This is Tim Ruiz.

Chuck Gomes: Hey Tim, go ahead.

Tim Ruiz: I just wonder how this - how that really fits in with our, you know, with what we have been asked to do. Not that we have probably some latitude to do that, but I guess my thinking would be that we do it at the end. We do not allow that to hold up our report to the council. And subsequent comments that may come in could be gathered by the council and considered as they deliberate on the report that we create.

So I guess I do not see why this would - why it would need - I would agree with sending out the request for comments, but I do not see a need for holding up our report to the council.

Chuck Gomes: Well I could see us giving a preliminary report to the council but if in fact there is any significant responses back after we send the whole thing out, if we leave that - put that in the council's lap to deal with those, I think that is an awkward task for the council to handle not having gone through what we have.

So I think there may be some delay. Maybe it will not matter depending on the timing of the next - when the next council meeting happens after we are finished.

But I would think we would on a - at least if we gave everybody a week to respond, I think we have got to have at least a week to deal with that before we finalize a report to the council, otherwise we are just

stomping that - any possible changes in the council's lap, which I think would not be very constructive.

Tim Ruiz: So this is (Tim). Yes, then I guess I do not really support you requesting the comments that we complete our work, resubmit it to the council and let it go from there. My one opinion.

Chuck Gomes: Okay.

(Liz): It is (Liz). I do not know if this is helpful or not, but we are really not talking about a cast of thousands here. For once I am just looking at the - for the exact number, but we are probably only talking about a half dozen people at, you know, or eight at the most.

And, you know, Steve and Claudio actually have the greatest number plus Steve Del Bianco and Claudio and then just, you know, there is one for (Milton), you know, these are folks we know who can for the most part probably participate in this process.

We could reach out to them, you know, at any time we want and ask for a - I think they will be able to be responsive very quickly.

Chuck Gomes: Yes, and I guess I am not totally clear on why we would not want to reach out to them earlier rath - and then with a commitment to reach out to show them the whole package when we are done.

(Liz): I mean probably one reason is the back and forth, you know, the language is obviously still in flux and we do not want to go back to them too many times, but that is a good question.

Chuck Gomes: Alright. Well let us - I do not want to spend any more time on this. I think our - what we need to spend time on is on the hypotheses. So let us just go ahead and we will once we are finished with the whole package send it out and again, I do not think we have to send it to people that are on this group.

We are talking ab - so in other words we can narrow the group down to those that are not on this group and in cases where we didn't really significantly change a hypothesis that was clearly stated - now one problem I think that a week is not going to work is certainly with the GAC.

So let us now try and resolve that now, but we may want to be thinking about that as we go because their situation is a little more complicated and their ability to respond is more timely.

So, alright, then let us go on to then the next agenda item. And are there any - is there any further discussion on the Area 1 hypotheses that we did last week? I did not see any on the list.

Steve Del Bianco: There was just what Tim Ruiz and I, this is Steve Del Bianco, we are assigned - sort of articulate that note at the top of Area 1 Chuck.

Chuck Gomes: Right. And are there any comment - are there any - is there any discomfort with what they did? Is everybody okay with what they did that would be part of our submission? And you can see that on the WIKI if you look at that at - Steve put it right in at the beginning of the Area 1 studies on that. So.

Tim Ruiz: And this is Tim. I figure, you know, I submitted just a note to the - the list to about it. And I do not know if it is worth being concerned with or not. But when we are talking about, you know, what is returned from Whose queries, there is a difference between, you know, what you might get the way it would work on a Web page or a Web-based Whose query versus, you know, somebody was just getting the Port 43 data straight up.

So that, you know, with number 1 there on the capture that is going to apply really only to the Web-based Whose where number 2 could apply either way.

Man: Good point Tim. Don't we have a Port 43 (unintelligible) explicitly in another area?

Chuck Gomes: It is raised in another area, whether it is applicable to this I am not sure right off. So Tim are you suggesting a modification of that introductory comment for Area 1?

Tim Ruiz: You know, maybe only that we just note that number 1 is, you know, in regards to Web based Whose query from Registrars and automated email harvesting. Number 2 would apply either way.

But again I do not know if that is an important enough distinction to have to make or not. I mean I think that the comment that is made there is specifically accurate.

Man: I could narrow it Tim to say under one. Some Registrars prevent automated harvesting by allowing public Web-based access.

Tim Ruiz: Here we go.

Man: That would help?

Tim Ruiz: Yes I think that would clear it up perfectly.

Chuck Gomes: Okay? So Steve, why don't you make that change in the WIKI and go ahead and save it. And then if we each refresh then we will see the change in there.

Is there any other discussion on what Steve and Tim did here?

(Liz): Hey Chuck it is (Liz). That is fine and helpful for them to make the change right in the WIKI but I wanted to let you know that I also created another word doc of the updated hypothesis...

Chuck Gomes: Oh good.

(Liz): ...that you - including the way you have the statement from Steve added, so that when we get down into Area 2 if we start doing heavy editing, I can capture it...

Chuck Gomes: Excellent.

(Liz): ...for everyone and then I can put it back in the WIKI.

Chuck Gomes: Thanks. I appreciate you reminding me of that. That is helpful so the people can see the actual changes made.

Man: Change is made so you can refresh.

Chuck Gomes: Okay? Alrighty.

(Liz): What is he, like Steve?

Chuck Gomes: Alright. Anything else on Area 1? Alright, then let us jump into Area 2. Now I hope I did my cut and pasting okay, but I took Jim's proposed hypotheses for Area 2 and pasted them into the WIKI here so everyone should be able to see those right in the documents.

And (Liz) did you get them in your - so that you can use them in your Word document as well?

(Liz): I just did it, so, right before the call so I think I have it the way you.

Chuck Gomes: Thanks, okay. So. We have got Area 6 - Study 16 is the first one that comes up there. And that study is to conduct legal analysis under the laws of a variety of jurisdictions of the terms of various Registrars' registration agreements concerning data collection and disclosure and their process for collecting such data and obtaining consent.

So, let us take a look then at what Jim did. And what he suggested here for us to start with is that Registrars are not or are incapable of collecting consent in their what TOS terms of service?

Man: (Unintelligible) correct.

Chuck Gomes: Yes, and/or registration agreement that satisfies the consent requirements of some most all data protection and privacy laws. Let us stop right there for a moment. Okay?

Steve Del Bianco: This is Steve Del Bianco and when I checked this against Claudio's original, it is very close, although Claudio had said to obtain legally valid consent in the first line. And I took that to be a subtle but important distinction.

I do not think we are implying here that Registrars do not understand about the consent it is really whether it is legally valid under the second half of the sentence right?

So I just would wonder Jim if we put legally valid back in to stay true to what Claudio had in mind.

James Bladel: I agree.

Chuck Gomes: And where would you put that Steve?

Steve Del Bianco: After collecting? Implic...

Chuck Gomes: Okay, so collecting legally valid consent.

(Liz): Okay, I have got that.

Steve Del Bianco: And the Claudio's - I am sorry, Jim, your first bullet, your first assumption here is that local laws have exclusion, explicit exclusion. And I did not see that in Claudio's submission, anything about this assumption.

So you added that and I wondered if you could explain the thinking behind it.

James Bladel: Well I tried to gather anything that I thought was implied by the statement and then the falsification that was submitted. And I felt that that was implied in - that if such an exclusion could be what was present that gathering consent would satisfy that exclusion.

Steve Del Bianco: So may I ask a follow up on that because I...

James Bladel: Sure.

Steve Del Bianco: ...(unintelligible) a little bit of that but I never saw where Claudio assumed that some nations have explicit exclusion for something like Whose or was he simply implying that nations have exclusions if you obtain proper consent.

James Bladel: Yes, I took - that is a good question. And, you know, I am fine with the assumptions. I was just trying to provide some context with what I was trying to gather from an implied statement of the hypothesis and of the falsification.

Steve Del Bianco: Thank you. And I...

James Bladel: So if it can be removed, I really do not have strong feelings about that.

Steve Del Bianco: I would say we keep it and I am just seeking some clarification for how you came up with it.

Bertrand de la Chapelle: Hi this is Bertrand de la Chapelle. One suggestion do I understand well that for the first assumption the question implies that in the end, it actually means that there are exclusions that for information submitted under consent to publish in a public database, that would be applicable to a database such as Whose, meaning that it is not an explicit exclusion mentioning Whose, but that the general rule would be applicable to a database such as Whose?

Chuck Gomes: I think that is correct. Does anybody disagree with that? Thanks Bertrand. So...

(Liz): So how would I capture that?

Bertrand de la Chapelle: Yes, that would be in the end for information submitted under constant consent to publish in a public database comma that would be applicable to a database such as Whose.

(Liz): Thanks. Great.

Steve Metalitz: Now this is Steve Metalitz, could I get in the queue?

Chuck Gomes: Go ahead Steve. By the way, let me, as a general rule, if we do not have multiple people trying to talk, I am not uncomfortable if people jump in like you just did Steve.

When there is multiple ones, I will immediately start forming a queue, but just to fulfill it, keep things moving I am okay if you jump in. We do not have that super large a group that - if it becomes a problem I will manage it differently. Okay? Okay. Thank you Steve.

Steve Metalitz: I am still a little unclear about what the assumption is intended to convey here. Is this an assumption that - is this part of a hypothesis? In other words, would be investigation try to prove or disprove this statement, or would we - if it is an assumption, then - what if that assumption turns out not to be true I guess is my question.

I am not clear about - does that mean we cannot conduct this study?

Chuck Gomes: Let me take it a little different direction and see if I am going along the same path you are Steve.

First of all, is it if I can get my screen to show back up here, okay, there we go. Are the assumptions really different hypotheses?

Steve Metalitz: Hmm?

Chuck Gomes: In other words, is the first assumption really a separate but related hypothesis that needs to be tested?

Lee Eulgen : This is Lee Eulgen . I tend to agree with that. I mean I feel like the second - there is a fir - rather the first assumption sounds like to me as sort of a different hypothesis.

And frankly in my view, and I could be wrong here, but I kind of feel like it is subsumed within, you know, the ambit of the first hypothesis and, you know, I guess I do not - I do not really know whether the assumptions are necessary because I think - I do not think necessarily especially with respect to the first one, that it builds per se on what was originally submitted by Claudio.

And I know we are all sort of trying to read tea leaves as far as what the original submitter intended. And of course if we go back to the original submitter maybe we will get some clarity on some of those points, but with respect to this, I think that this first hypothesis or this first assumption rather which I think is more like a hypothesis, is something that would be considered in the context of considering the overall or testing the overall hypothesis.

Chuck Gomes: So are you saying then Lee that maybe we do not need the assumption?

Lee Eulgen : Yes that is what I am saying.

Chuck Gomes: Okay, thank you.

James Bladel: And Chuck I would just throw out, this is James, I would just throw out there that by including the legally valid statement after collecting that it really kind of obsoletes the need for any other - for this assumption.

Chuck Gomes: Okay.

James Bladel: By putting that back in maybe that was the thought that I was trying to expand upon, but again, you know, I am...

Chuck Gomes: Thanks James, appreciate that. Now is anybody opposed then to deleting the first assumption? I think it keeps the hypothesis simpler. Okay? So we could remove that. What about the second assumption. Does the same thing apply or is it diff - by the way Steve Metalitz, are you okay with what we just did since you raised the issue?

Steve Metalitz: Yes I guess I am. I mean, I have a kind of a broader concern about this, but I do not know if I want to re - if I should raise it now or after we get through the other assumption.

Chuck Gomes: Go ahead.

Steve Metalitz: Well, you know, I know that we are just here to draft hypotheses and not to evaluate, but the direction that the GNSO Council originally gave was for comprehensive objective and quantifiable understanding of key factual issues.

And this is not a factual issue. This is a legal analysis, you know, a judgment to a greater or lesser degree subjective. The factual issue here would be what are Registers doing to collect consent and have there been any legal proceedings in which the validity of the consent that they have obtained has been adjudicated.

If that is what is meant here, maybe we should spell that out, because I think...

Chuck Gomes: Um-hmm.

Steve Metalitz: ...analyzing, you know, what the law is and whether this particular practice satisfies it is going to - is not really a factual investigation, it is a legal issue.

Chuck Gomes: Yes and in fact Steve, my personal perception is - is that several of the suggested studies are really more gathering of facts than they are really testing hypotheses.

Now it may be very good idea to gather the facts and probably that is a much less expensive exercise then doing a study testing hypothesis.

Steve Metalitz: Not if you involve lawyers.

Chuck Gomes: I will leave that one alone for now anyway. So, the, yes, I think we are going to end up with several things that are in that category. And I think it is going to be the Council's responsibility to differentiate between those kinds of things and we may still want to go back to staff and say hey, we do not see this as more - as a study that is going to test the hypotheses so much as we see gathering some data.

How much would it cost to gather the data because we may still want to do that? Does that may sense?

Steve Metalitz: Well my, I mean, my, what I said could also be put in terms of hypothesis. I mean you could say the hypothesis is that Registrars do not have a uniform method of obtaining consent to collection of this data. And hypothesis 2 would be no Registrar has been adjudicated to - the method that Registrars use to obtain consent has not been adjudicated to be invalid under any country's law.

That - those are - hypotheses can be proven or disproven...

Chuck Gomes: Okay.

Steve Metalitz: ...but they do not go to whether the investigator thinks something is, you know, what is the Belgium law is on this and whether the investigator thinks it is being honored or not.

I would ask has the Belgium authorities ever - or has there ever been any litigation in Belgium in which the invalidity of this method of obtaining consent has been adjudicated.

Chuck Gomes: Well Steve with regard to study number 16, do you have a specific recommendation with regard to the hy - and keep in mind, we can have more than one hypothesis for this study. What do you suggest...

Steve Metalitz: Well I do not know if this is consistent with what Claudio has proposed, but I guess my hypothesis would be that there is no - there is not a uniform method of obtaining consent - that Registrars use to obtain consent to collection of data for Whose purposes and that no Registrar has been adjudicated to have an invalid method of obtaining consent.

Chuck Gomes: Now are you suggesting that that wording replace what we - what the main hypothesis is right now...

Steve Metalitz: Yes.

Chuck Gomes: ...or in addition to?

Steve Metalitz: Well I would put it out as an alternative to that.

Chuck Gomes: Okay, thank you. That is what I wanted to know. Thoughts on that.

Jim Bladel: Chuck this is Jim.

Chuck Gomes: Go ahead Jim.

Jim Bladel: Yes, I agree with what Steve is saying and just that wanted to point out that that concern could really be more broadly applied to almost all of the studies grouped in this area.

There is several of them that explicitly mention a comparative legal analysis as opposed to fact gathering.

Chuck Gomes: Yes, and let us not worry about that aspect of it. I do not think that is our concern in this group. But what should we do with this hypothesis?

Steve has proposed an alternative. But why don't you say that again Steve?

Steve Metalitz: The alternative hypothesis which has two parts is that Registrars do not have a uniform method of obtaining consent for collection of data for Whose purposes and part 2, no Registrar has been - the method used by - excuse me, there has not been an adjudication that the method used by any Registrar is invalid under the laws of any country.

Chuck Gomes: Thoughts on that as an alternative to what we have down now.

Allen Greenberg: That does not really address the disclosure part in the original description.

Chuck Gomes: Elaborate on that a little bit Allen.

Allen Greenberg: Well, the original one, if I am reading the right thing, says conduct the legal analysis on the laws of various jurisdictions and so on. And the various terms - the terms of various Registrars' registration

agreements concerning data collection and disclosure of their process for collecting such data and obtaining consent.

Man: I think that is a good point. I think that the original proposed hypothesis does not address that either, but if you (unintelligible)...

Chuck Gomes: Right, correct. Allen do you have a suggestion as to how that - maybe a third hypothesis, assuming we had two like Steve suggested?

Allen Greenberg: Registrars, you know, appropriately or not appropriately depending on which tone do you want, clearly disclose the, you know, their intent to collect and use that - and how they use the data.

That is not well worded, but that is essentially the hypothesis.

Chuck Gomes: Okay. Now do you think - go ahead who is this?

Bertrand de La Chapelle: Yes, this is Bertrand. I am sorry and apologies to everybody for my insufficient knowledge of all this things, but when I read the sentence, do I understand right that what is addressed here is that there are some laws that require when you collect personal data that you explicitly give consent and the assumption that all the - my thoughts (unintelligible)...

Chuck Gomes: Request consent.

Bertrand de La Chapelle: Yes, request consent. The hypothesis that is intended to be tested here is that when for instance a Registrar says in order to get the domain name you want, you need to make your data available in the database.

This is not, or could not be, or could be considered as not valid free content because it is forced in some way? Is that what we are trying to address? And sorry if I misunderstand everything. Is that the point that was - because it is different from disclosure.

It is basically, if I go to a Web site to a Registrar and I request a domain name and this Registrar tells me in order to get this domain name, you give me a certain amount of information and this will be put in a database that will be public and have no way to opt out - is the question - is this a valid consent?

Chuck Gomes: I think that is - I think the questions you are raising are a part of our dilemma in terms of finalizing a hypothesis here Bertrand.

((Crosstalk))

Chuck Gomes: Let me make a - let me make...

Tim Ruiz: This is Tim can I (unintelligible) for a minute?

Chuck Gomes: Go ahead, who was that?

Tim Ruiz: This is Tim.

Chuck Gomes: Tim was there someone else there?

Steve Metalitz: This is - was Steve. I will go after Tim.

Tim Ruiz: Hey Steve, maybe...

Chuck Gomes: Okay Tim.

Tim Ruiz: I was going to say maybe Steve can sum but I think the second part of Steve's suggested hypothesis covers just that right that the method of consent or whatever has not be invalidated under any set of laws or something to that nature.

Chuck Gomes: Yes.

Steve Metalitz: Yes, I think that is right. I think the question - there are two ways to pose this question. One is in the situation Bertrand was just talking about. One is - is it a valid consent.

Man: Um-hmm.

Steve Metalitz: And someone - some ICANN investigator would decide whether it is an invalid consent or not based on his or her legal analysis.

The other way, which is a more factual approach, is to say has the validity of this consent been drawn into question under that country's law and has it been adjudicated.

So that if a court has said this method of obtaining consent is not valid, then that is what the - that would prove or disprove depending how you phrased it, the hypothesis.

And I am supportive of the latter way of doing it because I think it is better for us to be trying to test factual hypotheses rather than commissioning legal analyses.

Chuck Gomes: Right, yes. I would agree with you on that. Now, does anybody disagree with what Steve just said?

Steve Del Bianco: Steve Del Bianco asking a question?

Chuck Gomes: Okay.

Steve Del Bianco: As a factual matter, will we be able to determine whether challenges were filed and how they were adjudicated. Is that something that we can research in a factual way?

Chuck Gomes: Well I think, again, that is getting into a question that really is not the mission of this group. I mean, it is a very important question to ask when we decide whether we can do some studies or not, because if it is not doable, there is no use spending money on it.

Steve Del Bianco: Well it is vital to a distinction because Steve is indicating that asking - finding lawyers to figure out whether something is legally valid is a different kettle of fish than researching to determine whether challenges have been filed and how they ended up being adjudicated.

Chuck Gomes: Right.

Steve Del Bianco: So the second part of that, I think is implying, is something that is a fact that could be tested. The first is something that only lawyers can speculate on until things have been adjudicated.

Chuck Gomes: Steve Metalitz do you agree with that?

Steve Metalitz: Yes, and I think, I mean, Steve Del Bianco was raising the question of is that data available, and I think that is probably going to vary from country to country. It is probably more available in some countries than in others...

Chuck Gomes: Right.

Steve Metalitz: ...but that would be, you know, we also say various jurisdictions. Someone would have to decide which jurisdictions we were going to look at.

Chuck Gomes: Now is there anybody that is opposed to Steve Metalitz' suggestion in terms of the two hypotheses for number 16?

Bertrand de La Chapelle: Chuck this is Bertrand again. Sorry for taking the floor so much. Just a comment to Steve Metalitz, at the same time, I fully understand that one is more factual than the other, but the point I just want to highlight is that by choosing this, we are indeed indirectly bringing a bias in favor of a situation that could be not positive, but that has not been tested in the courts yet.

So fundamentally it is raising the bar very much by considering that as long as it has not been challenged, it is natural and should be preserved.

And this is where the two approaches are potentially conflicting. One is easier to test and it is true, has it been challenged? And then if it has been challenged, at least we have a very factual answer.

But the general public interest approach requires also to wonder whether something is appropriate or not. Whether we can give answer or not is another question.

And I agree it is harder, but I just want to highlight the fact that we are naturally giving a bias in favor of the status quo by taking into account only the factual position in the court.

Chuck Gomes: Okay let me suggest (unintelligible).

(Tim): This is (Tim) could I get in the queue on that one?

Chuck Gomes: Just one second (Tim). What I would like, (Liz) have you captured what Steve Metalitz has suggested as the two hypotheses for number 16?

(Liz): I have tried, but I have not.

Chuck Gomes: Okay, then let us - right now let us do that. Okay? So Steve is you can give back to (Liz) in a deliberate fashion so that she can capture it I would appreciate that.

Steve Metalitz: Okay. The hypothesis A would be that Registrars do not have a uniform method of disclosing and obtaining consent for collection of data for Whose purposes. That is A, and...

Chuck Gomes: Hold on one second make sure she has got...

(Liz): Method of disclosing and what consent?

Steve Metalitz: Obtaining.

(Liz): Yes, I have got, oh obtaining, okay.

Steve Metalitz: Obtaining consent for collection of data for Whose purposes.

Chuck Gomes: Why don't you - when you are done (Liz) why don't you read that back - make sure we have got it and then we will go to B.

(Liz): Why I was a lawyer I could not tell you. Registrars do not have a uniform method of obtaining or disclosing of data for Whose purposes.

Steve Metalitz: No, of disclosing or obtaining consent for collection of data for Whose purposes.

(Liz): (Unintelligible) disclosing or obtaining consent for collection of data for Whose purposes. Got it.

Chuck Gomes: Okay? And now B.

Steve Metalitz: And B is the methods employed by Registrars to disclose and obtain consent have not been adjudicated as violating national law.

(Liz): Okay.

Chuck Gomes: Read it back please?

(Liz): Hang on.

Steve Metalitz: Is this going into a WIKI right now or is this offline?

(Liz): This is offline.

Steve Metalitz: Okay.

(Liz): It is too hard in the WIKI to edit or...

Chuck Gomes: Yes it is.

Steve Metalitz: No, no, just asking.

(Liz): No I know, I am just tell - I was a (low med). The methods employed by Registrars to disclose and obtain consent have not been adjudicated as violating national law.

Steve Metalitz: That is right.

Chuck Gomes: Did I get it?

Steve Metalitz: Yes.

Chuck Gomes: Okay, now, my first question to the group, and Tim I have not forgotten you okay, is that the, you know, is there anybody generally opposed to going this direction? Keep in mind that we may need to tweak these a little bit more.

I think Bertrand was suggesting maybe a possible - maybe we need to adjust the wording of the second one, but we will get there in a minute.

Is there anybody that is generally opposed to the direction that Steve Metalitz is suggesting? Okay, so we are kind of on the same page there.

Now let me go back to Tim. Go ahead Tim.

Tim Ruiz: I was going to respond to the concern about the bias. And I think that, you know, I do not really necessarily agree with that. I kind of understand what he is saying but the other thing to consider is that, you know, if we - that the going the other way probably ensures a lot less likelihood that the study could - would be pursued. And so that is a consideration as well that in regards to this hypothesis.

So I think what Steve is proposing is a good compromise and that, you know, as because the bias is concerned I think whether it has been adjudicated or not is a good indication at least as to whether it violates national law or not.

But I think the main - the biggest concern is just making sure that what we produce is what the Council has asked for. And I think what Steve is suggesting is more closely in line with that.

Chuck Gomes: Okay. The (Liz), let me suggest that you cut and paste, if you do not mind, what you have on this one since we have spent time on it, into - in addition to, do not delete what we have in 16 right now on the table, but just add the - what you have after what James put in there so that everybody can see it.

(Liz): Okay, I am going into edit mode now, so.

Chuck Gomes: Thank you.

(Liz): Take me a minute.

Chuck Gomes: We will not do this every time, but in this particular case, because of a major change, I think it would be easier for people to follow. And then once she has that in there and saved, we can each refresh and see that. We can clean up the overall thing later. We do not have to worry about that now.

And then what I want - once we can do that, my next question is - is okay, any further edits to what Steve Metalitz has proposed, keeping in mind that next week we will have a chance to come back like we did with Area 1 today. We will do that each week to follow up to see if anybody thought of something else.

(Liz): I am saving now, so it would be just a second before we can.

Chuck Gomes: Done?

(Liz): Yes, I am done.

Chuck Gomes: Okay, so if you refresh your screen. I get...

Man: Maybe I am the only one, but I am not sure where on the WIKI these things are.

Chuck Gomes: Just if you go to the main page for this working group and you scroll down, there is a very big table. And I did not get anything when I refreshed.

(Liz): You know what, it said when I did it that someone else was editing at the same time, so.

Chuck Gomes: So if everybody would make sure you are out of edit mode so that (Liz) can have the (unintelligible)...

(Liz): So I refreshed too and I did not see it either. It did take though, so I am wondering if we need to refresh again.

Chuck Gomes: I will try it again too, refresh.

(Liz): I want to make sure I don't just...

Chuck Gomes: You did it in the big table right?

(Liz): Yes.

Chuck Gomes: Yes. I did not get - I am not seeing anything when I refreshed under 16. You put it right in 16 right underneath Jim's.

(Liz): I even put like new above it.

Chuck Gomes: Yes, okay.

(Liz): And then I had old (unintelligible).

Chuck Gomes: And alright, well, okay, I do not want to spend any more time doing that. Read them back for us one more time and what I would like

people to focus on, sorry it is so early only, to see whether you think there are any other possible edits you would like to suggest.

(Liz): Number 1, Registrars do not have a uniform method of disclosing or obtaining consent for collection of data for Whose purposes.

Number 2, the methods employed by Registrars to disclose and obtain consent have not be adjudicated as violating national law.

Chuck Gomes: Any suggestions - suggested changes on that? Okay. Then (Liz) I need - do not try to change this in the WIKI now, just in your Word document, but that is what we will go with for now and we, if you have comments on that between now and next Tuesday, please put them on the list and secondly we will - there will be a brief amount of time early in the agenda for reviewing these.

Bertrand de La Chapelle: Chuck this is Bertrand. Sorry one...

((Crosstalk))

Chuck Gomes: (Unintelligible).

Bertrand de La Chapelle: ...possible word change for the second sentence...

Chuck Gomes: Okay.

Bertrand de La Chapelle: ...is to start with whether the methods blah, blah, blah, have been adjudicated as contrary to national law.

Chuck Gomes: Any problems with that?

Steve Metalitz: It is only a question of whether you have a hypothesis that you want to prove or disprove. If it is a whether statement, then you cannot...

Chuck Gomes: Yes, I think Steve is right on that.

Steve Metalitz: I mean it could be either way, you could take out not - have not been adjudicated. You can say have been adjudicated.

Bertrand de La Chapelle: No but this is why the question is whether it has been adjudicated or not. It is testable still and it prevents the choice of it has not been or it has.

Steve Metalitz: Well but the answer could be yes.

Chuck Gomes: Yes. I think - my suggestion is - is that we leave it as it was and we can have some discussion on the list in the coming week in that regard.

Okay, going to Study number 22. Now James did you and Tim, they used to be three separate hypotheses which is fine by the way. Is that the way we should look at these in number 22?

James Bladel: Well more of a compound hypotheses that I was trying to extract from the first paragraph...

Chuck Gomes: Okay.

James Bladel: ...of the study was that - and if everyone has it there we can read it again, but I would say they are linked. It is a compound hypothesis.

Chuck Gomes: And what, thank you, and what Kathy Kleiman has submitted there was survey top 25 to 30 CCPLD determine the extent to which CCTLD Whose policies reflect national data protection laws and priorities.

So, and so what - you can see what Jim has put there. ccTLDs contain Whose policies that are more restrictive than ICANN requirements for GTLDs. National data protection laws within the CCTLD territory are driving the more restrictive Whose policy and then third or C, a trending as a group ccTLDs are moving towards more restrictive Whose policies that satisfy national data protection laws.

Tony Harris: Chuck this is Tony Harris. Can I...

Chuck Gomes: Okay.

Tony Harris: ...call in?

Chuck Gomes: Tony you are first. Let me go ahead and take a queue on this one. Anybody else?

Steve Metalitz: Steve Metalitz.

Chuck Gomes: Okay. Anybody else? Okay Tony go ahead.

Tony Harris: Well more than a comment, it is just a question. I do not know, it is probably if it is too much work but it would be perhaps usable to know which ccTLDs were considered to make these conclusions - to come to these conclusions.

Chuck Gomes: First of all, nobody is making these conclusions Tony, if I am understanding you correctly. These are conclusions that would be tested to see if they are true or false.

Tony Harris: Okay but it does mention, (Kathy) does say survey top 25 to 30 ccTLDs.

Chuck Gomes: Correct.

Tony Harris: I was wondering if, you know, any ccTLDs in particular had been looked at - which produced this comment or this hypotheses.

Chuck Gomes: Not yet.

Tony Harris: Okay.

Chuck Gomes: Yes, you know, I think that is something and...

Tony Harris: Just curious, that is all. Just...

Chuck Gomes: ...if we decided to pursue - if the Council decided to pursue this particular study, then it would have to be decided whether you survey 25 to 30 or do a...

Tony Harris: Okay.

Chuck Gomes: ...random sampling or whatever. That is the kind of details...

Steve Metalitz: How to define talk.

Chuck Gomes: ...makes sense of...

Tony Harris: I understand. Thank you.

Chuck Gomes: Make sense Tony? Thanks.

Tony Harris: Yes.

Chuck Gomes: Oh, good, good question. And then I have Steve Metalitz.

Steve Metalitz: Yes it strikes me that A is a testable hypothesis here because you can look at what the policies are and compare them to the GTLD policies, but I do not think B or C are testable based on this survey because B is a causation question.

You know, we know we can determine what the CCTLD who his policies are, but they do not usually say why they are that way. I mean maybe some do, but I just think (unintelligible).

Chuck Gomes: Yes. And I do not want to get too much into the testability, but I actually think you are raising some points that are really important here.

Let me just, you know, I think - I - my personally I lean with - I agree with you on B. I am not sure I do on C.

I think that you could actually test to see if there is a trend that direction. That would not be too hard to test.

Steve Metalitz: Well on C you would have to look at what the policies were in the past too.

Chuck Gomes: Yes. Or you could survey, you know, you could actually...

((Crosstalk))

Steve Metalitz: (Unintelligible).

Chuck Gomes: ...survey the CCTLD operators and trust their judgment in terms - and that probably would not be too risk a thing to do, but I think you are probably right on B.

Allen Greenberg: I - it is Allen.

Chuck Gomes: Go ahead Allen.

Allen Greenberg: I am finding - I have a disconnect between what was in the original submission and the hypothesis. The original submission seems to be asking...

Chuck Gomes: Um-hmm.

Allen Greenberg: ...do ccTLDs respect the laws of the data connection laws and priorities of the countries in which they reside.

The hypothesis all seem to be how do these laws - how do these policies, which may or may not respect their local laws compared to ICANNs and GTLDs.

Chuck Gomes: You have a strong (unintelligible).

Allen Greenberg: Or and which direction they going on. I do not seem to see the connection between what (Kathy) submitted and what the hypotheses are.

Chuck Gomes: Well you have a alternative suggestion? Don't you guys love it when I do that?

Allen Greenberg: I guess the alternative is, you know, considering the top 20, 25 to 30 ccTLDs do the Registries respect or Registrar or do, you know, whatever, do they respect it in a natural data protection laws and priorities of the countries in which they reside.

Or is it - yes, sorry - the hypothesis they do.

Chuck Gomes: Well

Allen Greenberg: Or they do not.

Chuck Gomes: Go ahead jump right in.

Allen Greenberg: I am not saying that the hypothesis there are not interesting, but I do not see the connection between them and what was submitted.

Steve Del Bianco: Steve Del Bianco in the queue?

Chuck Gomes: Go ahead.

Steve Del Bianco: Okay. And we are talking about study submission number 22 and the letter A under tentable hypothesis right? A, B and C.

Chuck Gomes: Well we have not restricted ourselves to A, B or C, but so, but we are talking about 22, you are correct.

Steve Del Bianco: 22A does add the GTLDs at the last part of the sentence. And I think that is what the previous speaker just noted was not really in Kathy Kleiman's original submission 22.

I think you are right and we could fix that by changing A to say that they are more restrictive than ICANNs Whose requirements for Registrars.

James Bladel: And this is Jim.

Chuck Gomes: Go ahead Jim.

James Bladel: Yes, the original wording in the submitter's hypothesis was general ICANN Whose policy.

Steve Del Bianco: Okay, I do not have those in front of me, so.

James Bladel: Okay.

Steve Del Bianco: Those are yet a third place.

((Crosstalk))

Chuck Gomes: Yes, Steve (unintelligible).

Man: (Unintelligible).

Steve Del Bianco: So if I made an assumption or presumption by compressing that two GTLDs then.

Chuck Gomes: Well keep in mind that ICANN does not have Whose policies for ccTLDs. So when we are talking about general Whose policies...

Man: Um-hmm.

Chuck Gomes: ...we are talking about GTLDs.

Man: Yes.

Chuck Gomes: Okay. So I do not think we need to be worried too much about that part. Steve Del Bianco say it again how you would rephrase A please?

Steve Del Bianco: The last two words. Instead of ICANN requirements for GTLDs, ICANN requirements for Registrars capture Whose data.

Chuck Gomes: Is that really any different than for GTLDs?

Steve Del Bianco: Well apparently based on your clarification the only place Registrars are required for Whose data is if they are selling a GTLD name. Is that correct?

Chuck Gomes: And I think that is correct. Does anybody disagree with that?

Steve Del Bianco: But I do think that using just GTLD the way it is written now makes it seem as if this is a conflict between what we - what ccTLDs and GTLDs. But the question here is whether ICANN is requiring Registrars

to do things in the ccTLD that are in conflict with the laws of that country, right?

Chuck Gomes: In GT...

Tim Ruiz: And this is Tim rejoining.

Chuck Gomes: Okay thanks, okay, welcome back Tim.

Steve Del Bianco: Chuck can I just put 22...

Chuck Gomes: Sorry about the other line ringing.

Tim Ruiz: I would like to get in the queue too Chuck.

Chuck Gomes: I cannot talk (unintelligible) mute, so. Let us go ahead and Steve I am okay with your suggested change. How do others feel about?

Tim Ruiz: Chuck this is Tim.

Chuck Gomes: Go ahead Tim.

Tim Ruiz: Can I, I got knocked off and I just rejoined.

Chuck Gomes: Okay, Steve Del Bianco, read your suggested change to A, 22A. Did we lose Steve Del Bianco?

Steve Del Bianco: That are more restrictive than ICANN requirements for Registrars to collected data for Whose. But I will defer to James. I think he is trying to finesse the question. It is just the use of the GTLD that throws off

our audience that we do not want to do that. We want to really focus them tightly on the ccTLDs in the national law.

Chuck Gomes: Right, right. Okay. James did you want to talk?

Tim Ruiz: This is Tim. Can I make a - can I ask a question here?

Chuck Gomes: Go ahead.

Tim Ruiz: I mean what - the results of these studies will be used and applied towards Whose policy regards to GTLDs. And this is the GNSO, so it seems to me that if the hypotheses that we come up with, you know, are not going to, you know, result in data that is going to be applicable to policy in regards to GTLDs, then what is the point?

So I think, I do not know what James' reasoning was to, you know, straight out, but it seems to me that it would be a reasonable thing to try to assume that any study requested or proposed, you know, ultimately is going to resolve in data that would be somehow compared or used in regards to policies for GTLDs. I do not see the problem with that.

Chuck Gomes: So you are okay with the way it is worded right now? Is that what you are saying?

Man: Yes.

Tim Ruiz: Yes, absolutely.

Chuck Gomes: Okay.

Steve Metalitz: Chuck this is Steve Metalitz and I would like to (unintelligible) queue.

Chuck Gomes: Go ahead Steve.

Steve Metalitz: I agree that A is worded okay as it is. I think Allen was raising a somewhat different question and it really kind of goes back to what we talked about on number 16 which is are we trying to do a legal analysis here or a factual analysis.

And I think in that sense it does - it may deviate from what Kathy Kleiman had asked for. But I think in line with what we discussed on 16, you know, I would agree with you that A is testable, and I guess you are right, if you survey the ccTLDs and ask how their policies have changed and why, then you would get some information about C as well, I suppose.

Chuck Gomes: Yes. And of course we are going to all like - the Council is going to ultimately have to decide in consultation with the constituencies and so forth whether or not to pursue...

Steve Metalitz: Correct.

Chuck Gomes: ...any of these further. So that will be decided later. But, so, let us see, is there any problem with eliminating B?

Bertrand de La Chapelle: This is Bertrand. May I make a suggestion regarding A because in the present...

Chuck Gomes: Alright. Okay before you do that, let people answer my question, okay?

Bertrand de La Chapelle: Sorry.

Chuck Gomes: Is there any problem if we delete B? And does it detract in any way from what we think Kathy intended? Okay so we will...

Bertrand de La Chapelle: No, there is something missing if you delete it. The wording is probably not appropriate, but the relationship between the more restrictive policy and the national law is the purpose of the study that is proposed by Kathy Kleiman if I understand well.

Chuck Gomes: Other thoughts on that?

Robin Gross: This is Robin.

Chuck Gomes: Go ahead Robin.

Robin Gross: Yes, hi. I am just been having a hard time following the discussion but I am included to agree with Bertrand that we need to make sure that that element remains in the study that Kathy is proposing.

Chuck Gomes: Okay. Can you come up with a way to frame it in such a way that it is a testable hypothesis?

Bertrand de La Chapelle: May I have a go?

Chuck Gomes: Sure, go ahead.

Bertrand de La Chapelle: On B, that would be those Whose policies have been adopted in order to become compliant with the national privacy law of

the territory for data protection, sorry, data protection laws then the territory.

Chuck Gomes: Steve Metalitz, let me give you first crack.

Steve Metalitz: Yes, well one way you might do that is to say ccTLD administrators report that.

Bertrand de La Chapelle: Um-hmm, um-hmm.

Steve Metalitz: And then would bear (unintelligible).

Bertrand de La Chapelle: Fine with it.

Steve Metalitz: Yes.

Chuck Gomes: Okay, good.

Steve Metalitz: So basically we would be asking them why do you...

Bertrand de La Chapelle: Um-hmm.

Steve Metalitz: ...have this policy and they would say this is why or (unintelligible).

Bertrand de La Chapelle: Yes.

Robin Gross: Or that it is a factor in the policy.

Steve Metalitz: Yes.

Bertrand de La Chapelle: Um-hmm.

Chuck Gomes: Yes, that is - anybody opposed to that? Okay, good. So we have actually tweaked it so that it certainly becomes more testable.

Bertrand de La Chapelle: Um-hmm.

Chuck Gomes: Again our goal is not to determine testability of these, but some of them kind of jump out. If we do not word them correctly that...

Bertrand de La Chapelle: Um-hmm.

Chuck Gomes: ...it is kind of a waste of time. So, so that is helpful. One (Liz) were you able to capture B?

(Liz): Yes, the ccTLD operators report that Whose policies have been adopted in order to become compliant with data protection laws of the country.

Chuck Gomes: Any concerns with that?

Bertrand de La Chapelle: The word territory is more appropriate than country.

Chuck Gomes: Okay? Got it?

(Liz): Got that.

Chuck Gomes: Okay. Let us go back to A and Bertrand, I think you had a comment on A?

Bertrand de La Chapelle: Yes, actually I would support using in the end the term general ICANN Whose policy instead of ICANN requirements for GTLDs. And as worded today at present, actually hypothesis A is not testable because you cannot answer by yes or no because it implies that all ccTLDs contain.

So I would suggest that we - and furthermore the term contain is not appropriate for policy so I would suggesting the wording some of the 30 top ccTLDs have adopted Whose policies that are more restrictive than the general ICANN Whose policy.

Chuck Gomes: Okay. I guess I miss the distinction of your change from what is there now. Run that by me again please.

Bertrand de La Chapelle: The first one is introducing some of the 30 type ccTLDs instead of having ccTLDs and that is all because ccTLDs (unintelligible)...

Chuck Gomes: I got that part. I got that part.

Bertrand de La Chapelle: Okay? And the second thing is just replacing contain Whose policies by have adopted Whose policies.

Chuck Gomes: Oh, oh okay.

Bertrand de La Chapelle: The choice of linguistics.

Chuck Gomes: Alright. Oh, got you. Yes. I was looking for something different...

Bertrand de La Chapelle: No, no.

Chuck Gomes: ...than just the linguistic change. So I got you now. So, that is why I was missing it because I was expecting something different.

Bertrand de La Chapelle: No, no. Sometimes it is good.

Chuck Gomes: Okay, (Liz) were you able to capture that?

(Liz): Some of the 30 top ccTLDs have adopted Whose policies that are more restrictive than ICANN's requirements for Registrars that collect data for Whose.

Bertrand de La Chapelle: No, the formula that was then the general ICANN Whose policy.

(Liz): Thank you.

Bertrand de La Chapelle: You are welcome.

Chuck Gomes: Now, just a comment. My own personal opinion is I do not think we want the word some there because that becomes - what does that mean, two or three, four? You know, just delete the word some and say the top 30 ccTLDs have and so on.

Bertrand de La Chapelle: No.

Chuck Gomes: Now, the study then can determine whether, you know, evaluate in terms of quantifying it and so forth.

Steve Metalitz: Now Chuck when we say top do we mean largest?

((Crosstalk))

Tim Ruiz: This is Tim, (unintelligible).

Chuck Gomes: I assume so. Anybody think differently?

Tim Ruiz: About the only way we could really gauge it. This is Tim, I have a comment as well.

Chuck Gomes: Go ahead. Go ahead Tim.

Tim Ruiz: When we say, you know, the general ICANN policy, I mean I do not know what that is. ICANN contracts with GTLD operators and with GTLD accredited Registrars contain Whose requirements.

There have been subsequent policies, but I do not think we would want to imply any restriction to get those separate consensus policies because they are very few and very - have very minor effect on what actually the intent is for some of the data gathered from these studies. So to me it still seems that requirement is more appropriate.

Man: Um-hmm.

Tim Ruiz: That is the bulk of what we are concerned about and...

Chuck Gomes: Let, let, let...

Tim Ruiz: ...what we have not been able to find consensus on to date. Yes.

Chuck Gomes: Yes, let me make a suggestion on that because I think we are spending too much time on whether we use GTLDs or general Whose requirements or whatever. Why don't we just say then ICANN Whose requirements?

Now, for anybody that knows...

Man: Um-hmm.

Chuck Gomes: ...anything about those, it is just related to GTLDs. It is just related to the GNSO today.

Man: Um-hmm.

Chuck Gomes: So is that okay?

Man: Yes.

Chuck Gomes: Then ICAN Whose requirements?

Man: Um-hmm.

Chuck Gomes: Okay. So what do we have now for A (Liz)?

(Liz): Actually I did not catch that last change. You want to do ICANN Whose...

Man: Requirements.

Chuck Gomes: That are more restrictive than ICANN Whose requirements.

(Liz): Got it, okay. The 30 top ccTLDs have adopted Whose policies that are more restrictive than the - and no more generals?

Chuck Gomes: No.

(Liz): Okay. Then, the ICANN Whose requirements?

Chuck Gomes: Correct. Any concerns about that?

Bertrand de La Chapelle: What if the answer is no and there are only 15 of the 30?

Chuck Gomes: That is part of the - that is the data we are going to get back.

Bertrand de La Chapelle: Yes, so the point is to know how many. So this is a testable hypothesis that how many have actually adopted more restrictive policies (unintelligible).

Chuck Gomes: So, okay, good point. Maybe we need to say a significant number? See I did not like the word some because some is so vague that how do you test it.

Allen Greenberg: Chuck, Chuck it is Allen.

Chuck Gomes: Go ahead Allen.

Allen Greenberg: It strikes me that by trying to adopt methodology which says everything has a testable hypothesis with an answer of yes or no...

Bertrand de La Chapelle: Um-hmm.

Allen Greenberg: ...implies that the people doing the work are going to have an awful lot of detailed information which they are not potentially going to pass on to us. You know, so...

Chuck Gomes: By the way, I am not sure where we came to the conclusion that testable hypotheses have to be yes or no answers.

Allen Greenberg: Well even if it is 23%, they are collecting data which is going to be useful to us and I would like to think that whoever is next in the list of working groups of actually trying to formulate some policy out of the - out of what we learn will be able to use that kind of data.

We really do not, you know, it is elegant to say let us test the hypothesis, but it is not clear that that is really going to get us to some end point in a lot of these cases.

Chuck Gomes: Well keep in mind too that even if it is a short answer, like a yes or no hypothesis, that any study that would come back would have the supporting data to back that up.

Allen Greenberg: We need to make that clear.

Chuck Gomes: Yes. Well and that is easily doable.

Bertrand de La Chapelle: Why cannot it be formulated, sorry to jump in, formulated just as a simple question like how many of the top ccTLDs have adopted policies that are more restrictive (unintelligible).

Chuck Gomes: Well we want to - we are trying to work these in the form of a hypothesis, okay? So...

Bertrand de La Chapelle: Why, I mean, sorry I was not in the first conference call, but I see, I agree with the previous comment, this is here as before, restricting us in a way that does not lead to a very simple formulation.

Chuck Gomes: Well I do not really...

Bertrand de La Chapelle: In this case we have a simple question.

((Crosstalk))

Chuck Gomes: I do not really think that (unintelligible).

Allen Greenberg: (Unintelligible) by the Council and I think a lot of what is being raised here will be debated on the Council, but those are Council issues. Those are the questions that will be deliberated during the Council meeting. What we have been asked to do is to create hypothesis.

Man: I question that decision at this point, but I know it is not ours to question. Nevertheless we are using our time. Well...

Chuck Gomes: So, let us see if we can zero in on A. How should we start it? Should it be most of the top 30 ccTLDs? Should it be a significant number of the top 30 ccTLDs? Should we not have any qualifier and just say the top 30 ccTLDs?

Any one of those, a study is going to have to provide some data to answer the question. And in my opinion, in a study, it is not just the short answer that you are looking for, it is the data that backs it up.

Bertrand de La Chapelle: Yes, but if...

Chuck Gomes: Any opinions in terms of how we start that - start A off? Okay. Anybody opposed to us saying most of the top 30 ccTLDs? Okay.

Bertrand de La Chapelle: Why most? How much is most? Can we say 67.3% of the top 30 ccTLDs?

Chuck Gomes: We are getting - we are knick picking, okay? I do not want to go there.

Allen Greenberg: Just say a significant - say a significant number. The, you know, the - it is not that.

Chuck Gomes: Do you like significant better?

Allen Greenberg: Yes, restrict - yes, and it does not restrict what is done with the data once it is collected.

Chuck Gomes: Exactly.

Allen Greenberg: This is just a hypothesis for the Council to use to deliberate on which ones to pursue. A lot of us on this call are on the Council so we are hearing all these arguments already, and the data will still have to be collected and will still be available to the Council and any decision as to whether (unintelligible) policy.

Bertrand de La Chapelle: Yes, but I am sorry if I am the black sheep here.

Man: You are not alone.

Bertrand de La Chapelle: But what I am seeing is a general trend that is totally bias in terms of getting answers that say no the maturity of actors have not adopted stronger policies even...

Chuck Gomes: I heard you on that.

Bertrand de La Chapelle: ...if they are tend to (unintelligible) I am sorry, it is important.

Chuck Gomes: Please make, Bertrand. Please make a specific suggestion as to how you would start this. I want it formed in...

Bertrand de La Chapelle: I said transform this into a very specific question which is how many ccTLDs are...

Chuck Gomes: We are not going to - we are not going to go the question route. We are formulating testable hypotheses.

Bertrand de La Chapelle: Well, I mean, I am - okay.

Chuck Gomes: That is our task.

Bertrand de La Chapelle: But I have a problem with the method there. So I am sorry I was not (indifferent).

Chuck Gomes: Okay, well that is what this group has been tasked with.

Bertrand de La Chapelle: Yes, but I mean.

Chuck Gomes: Okay, Allen do you have a suggestion?

Allen Greenberg: I do not have a suggestion. I am basically in agreement with Bertrand. I think we need to follow up with this on email and not have the conversation right now in the last ten minutes of this meeting.

Chuck Gomes: (Alright).

Robin Gross: Yes, I agree with Allen and Bertrand on this. This is Robin.

Bertrand de La Chapelle: Yes. I have no problem following up on email but this is a methodological question that we will find over and over again.

Allen Greenberg: I think we are doing a lot of mangling to meet our set of criteria which perhaps we are wrongheaded despite the good intent. But I will say it further on email.

Chuck Gomes: Well, I would appreciate it if you would - keep in mind that we need to follow the task that we have been given. Okay?

Let us go to C?

Bertrand de La Chapelle: May I have a formulation and if it does not work, we will close it here?

Chuck Gomes: Sure, that is what I have been looking for.

Bertrand de La Chapelle: Okay and the formulation is more restrictive Whose policies than the general ICANN Whose requirements have been adopted by some of the 30 top ccTLDs.

Chuck Gomes: That is fine. I think we can probably smooth it out a little bit...

Bertrand de La Chapelle : Yes, yes, but...

Chuck Gomes: ...but that was your first, so anybody have a problem with that? Allen?

Allen Greenberg: I can live with that.

Chuck Gomes: Okay. (Liz) do you...

(Liz): Okay, let me be sure I have got it. More restrictive Whose policies than the general ICANN Whose requirements have been adopted by the 30 top ccTLDs.

Allen Greenberg: By some of...

Bertrand de La Chapelle: By some of the...

(Liz): Thank you.

Chuck Gomes: Any problems with that? Okay. Let us go to see.

Bertrand de La Chapelle: Thanks.

Chuck Gomes: Yes, no problem. That is what I was trying to get to. C - the - suggestions on that one. Should - I do not think we need the word trending there.

Bertrand de La Chapelle: Um-hmm.

Chuck Gomes: Is it okay besides that?

Man: Well, could someone remind me what B now says?

Chuck Gomes: (Liz)?

(Liz)? Sure. ccTLD operators report that Whose policies have been adopted in order to become compliant with the data protection laws of the territory.

Man: As a, okay, I guess I am not sure what C adds here except it is sort of longitudinal right? It is saying that more ccTLDs now have restrictive policies than did in the past? Is that...

Man: Um-hmm.

Man: ...what we are trying to get at?

Man: And maybe we - and maybe that is just the way to put it. More ccTLDs have restrictive policies now than they did in the past.

Man: Um-hmm.

Man: Because first of all, as a group, these ccTLDs are not doing anything as a group, I can be pretty sure of that. I mean each ccTLD is setting its own rules.

James Bladel: Yes Chuck this is Jim.

Chuck Gomes: Go ahead.

James Bladel: Yes, I just wanted to point out that the original submission uses the word momentum and asks is there any direction or momentum on this issue.

Chuck Gomes: Again, I think we can, without spending too much time on this, and as James points out, you know, it was in the original, so whether or not the GNSO decides to move forward on this, I think Steve that you did capture it right, is there a trend of ccTLDs becoming more restrictive in their Whose policies to satisfy national data protection laws.

Man: Yes, and you just say, the hypothesis I guess would be more - some of the ccTLDs surveyed have adopted more restrictive policies than they have followed in the past motivated by concerns around the data protection laws or something like that.

Chuck Gomes: Is that different than what James had there? ccTLDs are moving towards more restrictive Whose policies to satisfy that national protection laws?

Man: No, I think, I guess I would just take out as a group.

Chuck Gomes: Oh, okay, okay, yes. That is actually that is a very good point, yes.

Man: Because they are not doing anything as a group.

Chuck Gomes: Yes. So is it okay if we leave James' alone. We delete trending as a group and then leave it as is?

Man: Well again, I been want to say motivated by data protection concerns because we are just - we are not making a legal judgment here about whether they are following (unintelligible)...

Chuck Gomes: They satisfy, okay.

Man: ...but we are just reporting what they say.

Chuck Gomes: So that - so it would read ccTLDs are moving towards more restrictive Whose policies motivated by national data protection laws. Is that right?

Man: Yes.

Chuck Gomes: Okay. Did you get that (Liz)?

(Liz): Let me just be sure. ccTLDs are moving towards more restrictive Whose policies motivated by national data protection laws. Yes.

Chuck Gomes: Alright. Alright, so, then we are to - we are then to number 23 and several others that I had lumped together that seemed to be pretty similar in terms of intent of study. And James took a crack at several of those within there.

This one obviously gets a little more complex and we only have about six minutes or so left. So I am not sure we can tackle this one here.

Man: Chuck, can I make a suggestion? (Unintelligible).

Chuck Gomes: Yes you may.

Man: It may be that we will want to re-look at some of these others in this area based on what we have discussed on 16 and 22. For example 23 really is about a legal analysis so I think we need, I mean I am not quite sure how we do the hypothesis there...

Chuck Gomes: Right.

Man: ...to make it a factual question.

Chuck Gomes: Right.

Man: But I think it might be worth looking at all the others in this area - well to some of the others in this area in light of what we have done on 16 and 22.

Chuck Gomes: Correct. The - and let me see if we can get a two or three volunteers, or it can be one person if that is the way it works out, that would tackle this group and it can include 12 and 13, GAC 12 and GAC 13 that James added in there because they were a part of the original grouping, and take a stab at this one for us to start with in our meeting next week.

Any volunteers?

Steve Metalitz: Well Steve Metalitz. I will take a crack at some of these.

Chuck Gomes: Thank you. Now...

James Bladel: And Steve this is James. I will volunteer or, you know, serve as an adjunct or whatever you need from me.

Chuck Gomes: So, so...

Steve Metalitz: Great, let us work together on that.

Chuck Gomes: That would be great. Now let me ask you two guys, does it make sense for you to also take a crack at 24 in light of everything that has gone on today, or is it sufficient to treat 24 separately?

James Bladel: We can put 24 in that group as well.

Chuck Gomes: Is that alright Steve?

Steve Metalitz: Yes, that is fine.

Chuck Gomes: Okay. And, Steve Del Bianco already has some suggested hypotheses in Area 3. Tim you were going to do Area 4. Can you still work on that?

Tim Ruiz: I submitted it to the list. Did it...

Chuck Gomes: You did submit it to the list?

Tim Ruiz: Yes, this morning.

Chuck Gomes: Let me look. I have not obviously been looking at email here. Let me take a quick look at my email.

Tim Ruiz: Double check and make sure - send it by 1:00.

Man: And Tim I have not been getting any of your stuff either.

Chuck Gomes: Do not see it Tim. So that is probably the problem. I do not know what is happening there, but what you may do is resend it to the list and why don't you list me separately so that if I see that it is not going to the list, I will forward it onto the list.

I do not know what is happening okay?

Tim Ruiz: Alright.

Chuck Gomes: And I think that will be more than enough for next week's meeting. So, the - so next week what we will do is we will pick up in the second area where we left off.

And of course we will review 16 and 22 just to see if there are any final changes. Hopefully we will not revisit the whole - have to spend as much - near - only a brief amount of time there.

And then our next meeting will be the same time next Tuesday, and any questions or comments?

Steve Del Bianco: Chuck this is Steve Del Bianco. With respect to Area 3, I may not be able to be on the call next Tuesday. I would welcome people who

have suggestions on the way I wrote up three to send them before Tuesday and I will try to respond.

Chuck Gomes: That would be great. So please, please try to do that. His are fairly concise so it should be a fairly easy exercise other than going back to the original study submissions. So if you would do that I would be much appreciated and would facilitate our time next week.

And again, any discussion we can do during the week on the list hopefully will speed up our time on the call. So that would be encouraged.

Okay, if nobody has anything else, I think we have spent another hour and a half.

Thanks everybody for the contributions. And we will continue during the week.

Steve Del Bianco: Thanks Chuck.

Chuck Gomes: Okay, bye.

Man: Thanks Chuck.

Woman: Yes.

Bertrand de La Chapelle: Thank you.

END

