

**WHOIS Working Group C "nature of
the registrant" Teleconference
TRANSCRIPTION
Wednesday 9 May 2007
12:00 UTC**

Note: The following is the output of transcribing from an audio recording of the WHOIS Working Group C "nature of the registrant" teleconference on May 9, 2007, at 12:00 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://gnso-audio.icann.org/whois-c-20070509.mp3>
<http://gnso.icann.org/calendar/#may>

Attendance:

Jon Bing - sub group chair
Philip Sheppard - WHOIS wg chair
Paul Stahura - registrar
Jay Westerdal - registrar
Kristina Rosette - IPC
Mawaki Chango - NCUC
Avri Doria - NomCom Council
Bertrand de la Chapelle -observer
Christopher Gibson - observer
Lynn Goodendorf - observer
Lane Mortensen - observer
Neil Schwartzman- observer

ICANN Staff:

Maria Farrell - GNSO Policy Officer
Glen de Saint Géry - GNSO Secretariat

absent apologies:

Wendy Seltzer

Jon Bing ...say that we start the conference at this time? Do you agree? If you agree, we perhaps should take a roll call which I forgot to do last time and...

Glen de Saint Géry: I'll do that for you if you like, Eun.

((Crosstalk))

Jon Bing Thank you Glen.

Glen de Saint Géry: On the call, we have Lynn Goodendorf, yourself Jon, Philip Shepherd, Avri Doria...

Mawaki Chango: Excuse me. It's Mawaki Chango...

Glen de Saint Géry: Chris Gibson, Kristina Rosette, Bertrand de la Chapelle...

Bertrand de la Chapelle: Yeah.

Glen de Saint Géry: ...and Mawaki Chango.

Have I missed anyone?

Okay. Shall I ask them to start the recording Jon?

Jon Bing Yes. All right. We will ask them to start the recording now, yes.

Glen de Saint Géry: All right. Just one minute please.

(Unintelligible) joined the call.

(Paul Stahura) has just joined the call as well.

(Paul Stahura): Can you tell me which call is this so I make sure I'm on the right call?

Glen de Saint Géry: (Paul), this is Group C Nature of the Registrants.

(Paul Stahura): Okay.

Woman: Excuse me. Neil Schwartzman has joined the call.

Glen de Saint G ry: And Lane Mortensen and Neil Schwartzman are on the call.

Jon Bing Yes, thank you.

And I have often - I'm not saying I'm prepared for this call for several reasons. And I should have - although I'd like to have that made you an update of the notes made before the last call.

There had been several (unintelligible) for projecting to the discussions of points made in that note. And I just summarized the main points in a second and I'd also like to have made an agenda for this call.

I thought - by the way, it was small explanation. I thought until for an hour ago that I would not be able to join the conference at all but luckily, I was able to.

And I - the main summarization that I got from the discussion is that the small index or the small distinctions we made a last time, the things in between individual and both corporate or business and between commercial and non-commercial still seems to be opposed by a majority of what it makes it possible at the basis to go ahead.

This implies that the data protection issues are valid for those two (unintelligible) across which bears on the individuals while it's not valid for those bearing on a business.

And for the section which both is commercial and individual, it is thought that the individuals who have consent to make data on the individuals available to a greater extent than the last quarter where it is non-commercial and individual.

And this seems to be a sort probable consensus so there are discussions around this. Would anybody like to comment - you could comment upon that basis of continuing (unintelligible) last time in the sense that this has been confirmed by the discussion (office).

Lynn Goodendorf: Yes. This was Lynn Goodendorf.

I thought this was very useful to organize this way and I'm looking at the matrix now on my computer screen and I think that the whole question of or the whole issue of what's causing the problem for various communities in the Internet is the question of the criteria we're establishing the status.

((Crosstalk))

Lynn Goodendorf: That seems to be the problem area.

Jon Bing It seems to be a piece of data problem area, they perhaps (unintelligible) issue that emerge to the discussion we tried last year (unintelligible) but certainly, I agree that the main question then is to how to make this operational.

Lynn Goodendorf: Yes.

Jon Bing So which criteria to use and then using in the criteria - in which procedures to follow in order to collect information about which of various categories are certified.

Any other comments to the...

Christopher Gibson: Yeah. This is Chris Gibson.

I also wanted to, you know, support the very clear matrix that was circulated. I think it's helpful. They're showing the four different possibilities. I think in relation to natural person with a commercial objective that is the criteria there.

I understand the concern that there would need to be clear consents of the individual involved if they were to be in the "open status" and for example, a self-declaration would be something that would need that consent if they indeed voluntarily self-declare that they were intending or actually involved in commercial activities.

The other point I think is if there is going to be any move towards self-declaration which would obviously be the easiest to implement in many respects, it would have to then tie in very carefully to a number of the enforcement concerns that are being dealt within Subgroup A.

Because obviously, there would be some potential incentive for those who are involved in online abuse to self-declare as a - I suppose a natural person with non-commercial objectives in order to, you know, do more towards masking their identity and therefore, it just re-enforces us how distinctions in the Subgroup C are necessarily tied to some of the issues that might be addressed in Subgroup A.

Neil Schwartzman: Neil Schwartzman here. I'd like to follow up on that point.

Eventhough this actually speaks against my intent, we do have to say that spammers and virus people and the spyware people tend to register tens, you know, dozens or hundreds or thousands of domains at the time and do domain tasting.

And so, one of the other issues that we certainly have to deal with completely tangential to this process of course is to main tasting but certainly, where we to limit the ability of a person who register self-declared - you know, Neil Schwartzman declares that Neil Schwartzman.com but I'm not allowed to have Neil Allan Schwartzman.com or whatever.

If we can limit the self-declaration, yes, you can have your single domain. I think that that would go a long way to also addressing some of the concerns that we have.

Kristina Rosette: This is - I'm sorry.

Jon Bing Yes please go ahead.

Kristina Rosette: This is Kristina.

I - this matrix is extraordinarily helpful and I was hoping that I could just get some clarification. I wasn't on last week's call but listened to the recording last night.

Excuse me.

And I think the one thing that I'm a little confused about is that the conversation last week and thus far today, seems to be focused on commercial non-commercial use - commercial, non-commercial activity.

But the matrix is based more in terms of objective which to me is a different standard and I wasn't sure if there been a decision to frame it that way or not in the sense that you can have an organization, for example, that may have a non-commercial objective but nonetheless, engaged in commercial activity.

Jon Bing Yeah.

Kristina Rosette: Similarly and I think Ross gave the example during last week's call that I guess he's got a blog or a Web site in some cases there might be links or, you know, other types of indicia of commercial activity.

So under the matrix as it's couched now, you could take the position of that use of his is actual person non-commercial objective.

But that wouldn't necessarily capture for example natural person, non-commercial activity in the sense that the objective versus activity standard seems to be a different one.

And I just want to make sure that if we are going to continue down that road that we've intentionally decided to do that.

Jay Westerdal: Hi. This is Jay Westerdal.

Jon Bing Yes, please go ahead. Jay, go ahead.

Jay Westerdal: Yeah. This is Jay Westerdal and I'm just joining the call.

Jon Bing Oh yes. Thank you.

Yes.

Woman: Yes. I agree with the previous comment that Lynn Goodendorf that I was working now at the objective is being similar to the concept of purpose that it's almost as if we we've organized this by purpose of the domain rather than really what types of entities or registrant is.

Woman: Yeah.

Jon Bing Uh-huh.

Christopher Gibson: I had - this is Chris. I hadn't focused on the word "objective".

Previously either but in the matrix, I think it actually is more helpful to remove it because then you're looking more objectively at whether it is a commercial entity or not or if there is commercial activity or not and that is something that for example, could be also tested after the fact.

In an objective way, if someone had somehow qualified to initially to be a natural person with noncommercial use and someone later were to be able to point out, no, this Web site is clearly being intended to use in commercial.

You wouldn't really focus on objectives or purposes, you simply be able to look at it.

Woman: Great. Exactly. That was my concern.

Christopher Gibson: So I would actually propose to delete the word -- the simple word "objective" in the labels of those four to take emphasis away from purpose or objective as to more objective state of whatever the conditions are for each of the 4000 matrix.

(Paul Stahura): Speaking of purpose -- it's (Paul Stahura) -- I don't understand. Maybe somebody could explain to me the purpose of this distinctions.

Woman: Well, it seems to me for example, (Paul), the reason I raised this is that what - the entity of person's objective is - it can be frankly a very subjective thing.

(Paul Stahura): Yeah.

Woman: And not necessarily measurable whereas if you do - if you use "use" or you use activity, that's much more easily identifiable. And it's kind of use the example that is, I guess, the legal person non-commercial objective.

In the U.S. for example, organizations that have qualified under the relevant tax guidelines as nonprofit organization has nothing to do with whether or not they're engaging in commercial activity. It's whether or not the profit is going to a particular person or not.

(Paul Stahura): Yeah.

Woman: So you can say if you use objectives that's one way you're going to get a different characterization of where they fall.

(Paul Stahura): But I understand that. I don't understand why we're making this distinction. What use after we make this...

((Crosstalk))

Man: You know, if I may make an observation, I think that whoever your qualified commercial, you will be in the - it will be possible to interpret it in different phase.

And even within the law of one jurisdiction, you'll find that definition of commercial is made in different place as with respect to tax laws or with respect to the - how to contract - and making calls to contract and so on. At least this is what I see within my own jurisdiction.

So I think we need perhaps to get to the (unintelligible) below commercial and see if by which criteria do we determine commercial. And one of the possibilities is only to rely on self-declaration. If you rely to self-declarations then of course again that, you know, calls on sanction -- the sanctions then the self-declaration is balanced.

But I think I'd like to see some criterion if we could point out some criterion, objective criterion. I mean one possibility would be to say is you just make a reference (unintelligible) if you are treated that's a non-commercial organization according to the national tax law, this is what seems like commercial or not. That possibility exists (unintelligible).

(Paul Stahura): That's still not clear. I'm sorry.

But if I - let's say I declare myself as commercial and poor profit and not a natural person, so I'm definitely on that side. What happens to my name? In other words, do I - can I keep my name private?

Man: Well, as I see it, we haven't really made the decision of what happens to your name but we're saying that in that case data protection considerations do not apply because you are (unintelligible) by this so called data protection consideration according to the majority of national legislations on the subject matter.

Man: But I have a question over there for Mawaki here.

Man: Yes, please.

Man: I was wondering - I was not on the previous call either. I was wondering whether you consider using the word business or the category business as opposed to not the opposed to commercial but I mean instead of commercial because I'm not sure if you (unintelligible) mean that a commercial is an entity but a - stuff - the person or the (unintelligible).

Man: Yeah.

Man: So I'm not implying where in this (unintelligible) but I just wanted to just to be clarified so that...

Man: Yeah. Thank you.

Who would take a step back and say is the (unintelligible) the appropriateness of making the distinction between natural and the (unintelligible) person. If both, we have that baseline.

And then we have the problem over - oh then we can check whether we see that the dimension of commercial business or otherwise that that is a useful dimension.

And if that is so then (unintelligible) that are hard to program hold you to make the distinction between non-commercial non-business or whatever and commercial business or whatever.

And I think that is the program that is not (unintelligible) by a single word or a single term. We need to have some more operational criteria for making that decision.

((Crosstalk))

Man: Okay. Let's see.

Kristina goes first, I think.

Lynn Goodendorf: This is Lynn Goodendorf.

Man: Yes, Lynn, I'm sorry.

Lynn Goodendorf: I was going to say I agree with that and for example in this question of business and commercial and different connotations there, I thought about Web sites that perhaps do not collect money or have financial transactions but do collect personal data such as collecting

people's email addresses, you know, having people register or asking - or in some other way, collecting personal data themselves.

And so, I think that there could be some activities that we might not think of as commercial but involved collecting personal data of other people on the Internet.

Man: But it's just a link that you click on and somebody makes money from.

Man: Yeah. Yeah. There are many of these who are making money and then...

Lynn Goodendorf: Yeah. Exactly.

Man: Yeah.

Lynn Goodendorf: And maybe that's...

Man: And also that tends to change over time something that stop us such as...

Man: What if there is no Web site at all? They do make money by selling something then on the Web, they just collect - they just use their domain to receive the email for example.

Man: Yeah. And something can be commercial without their being anything but the law in all jurisdictions. Education is seen as commercial activity and even though with this real (unintelligible) have to be funded by all (unintelligible) commercial activity.

So, depending (unintelligible) point that would not make a reference to earnings helpful in the...

Man: What is it - the commercial activity but the proprietary is underage like child movie star.

Man: Yup. That is something else again that we have to...

((Crosstalk))

Man: Yes, speak.

Man: Thank you.

I think (unintelligible) of making this more complicated than it needs to be. The - I think my take is that (John) had just outlined earlier, I'll remind you all, I would also add that this subgroup is just to list some options.

In my mind, we already got Option 1 and that is the clear distinction between legal and natural person, and maybe the outcome of that is legal person open as opposed to close is Option 1.

What went out discussing I think is Option 2 with the small complex chart and I think I would certainly agree that perhaps the compilation activity is clear to our earlier intents and objectives and that conversation would usually I think add that confirmation.

But I think the only distinction we need to make, and certainly, and the next suggestion I'd like to suggests is all we were happy that self-

declaration is the only practical mechanism at this point and anything further should be subject to challenge mechanism, I think.

Man: Uh-huh.

Man: I do have a question about that. Who is self-declaring?

Man: The registrant. Yeah. The registrant is self-declaring.

Woman: Yeah. My feeling of this - this is really one of the main problem areas today and that we have so many people who are not being honest and self-declaring.

Man: Yes. That's exactly right but to my mind, that is no longer our job since you have evidence of (unintelligible) in terms of declaration. You then want to get a hold of the operational point of contact to do something about that.

Man: Uh-huh.

Man: And that falls into the work of Subgroup A.

Man: And so a strong relation within sanctions and the initial (unintelligible).

Man: And that is going to going to be my next point. And that we don't need to try - we don't need to look at every possibility that we though of Web site. What we need to think of is where a declaration - whether a self-declaration combined with bad faith. In other words, it's a fool's declaration.

(Unintelligible) something about that in which case to my mind, yeah, you want to contact the OPoC and sort it out and that's just not the job of this group. And I would suggest that that's all that needs to be done actually for what we're saying.

And the only discussion we should have I think is about this Option 2, do we need this level of detail in the matrix of these four combinations or two combinations, either legal or natural efficient.

Man: Yeah.

Man: And that I think is a question we should be debating.

Man: Yes. Of course, if you have the (unintelligible) for natural person of course, there might be, yeah, options to say "do I want to reframe my data or do I want to make them available?" There maybe the possibility or I mean form consent at this point and that have (unintelligible).

Avri Doria: Can I - this is Avri. Can I come back to the first part of the discussion that people were still on what still needed to do?

I think that I agreed that it isn't the responsibility of this group to figure out how the review or how the sanction if necessarily so I do think that - and this may tie up in the second that it is helpful in terms of passing on a suggestion that we face if natural and legal person is self-declaration.

And it's also helpful though to try and give a little bit more shape to what sort of criteria can be used to indicate that someone is not. In other words, because the definition now exists on a legal and

philosophical plan but we may actually wanted to just go down the level and indicate a certain number of things that indicate where the borders are at.

I don't think we can get necessarily the ties but I do think we need to go at least that one step further.

Man: Uh-huh.

Man: There's a comment regarding the ongoing discussion. I think there are two criteria that are very important that we haven't necessarily mentioned although a bit on the side. One is simplicity and the second one is durability, and simplicity including for the users so that they understand very easily what...

Another element is I noticed the remark saying if you take a bad faith, we should contact the OPoC and move forward from there.

From what I understand about the OPoC proposal, the OPoC is just a contact point. It's not an organization that is in charge of importing anything but if somebody is acting on bad faith, there is a great likelihood that the quality of the information that is on the OPoC element is bad.

In addition, this is in connection directly with the work of Subgroup B on the conditions for accessing more precise information. But the main point I wanted to make is I agree with some of the comments.

The distinction between legal versus legal entities registering a domain name the natural individual is relatively here. Is this relatively verifiable and relatively straight-forward?

The distinction between commercial and non-commercial is much more blurry and the situation we have today might not be the situation we will encounter in a couple of years and so on.

So, I'm wondering whether the distinction between legal and natural is not the most important and let's assume that would provide the open mechanism for legal entities and for all entities in general and provide an option, a sort of option self-declaration by people registering saying, "I am a natural person and - protection somehow of the above (unintelligible).

And then in that case, the control that would be made afterwards would be relying on the possible (unintelligible) regarding the self-declaration. And this self-declaration is for instance includes not only the fact that you are natural person because the main purpose of the activity on the domain names is non-commercial.

This might include in the blog having a few (unintelligible) for supporting your activity but the main purpose is not commercial. And then, if it happens that because of abuse of - because of various cases where it has been demonstrated that the person has made a declaration in that space then this would trigger specific regime or access to the rest of the information which is the work of Subgroup B.

But I think that the experience shows that the Internet has been basically built on good faith and a principle of flexible behavior for individuals and (unintelligible) in this work.

And I'm wondering whether an excessive delineation of reviews with subgroups and different modalities might not go (unintelligible) to the notion.

Man: Thank you.

Man: It seems to be going towards a consensus that the main distinction between natural and (unintelligible) person is sufficient.

And about the - that is reasonably clear. It's not totally clear but it is reasonably clear and that it can be based on self-declaration which at least is a simple procedure then it has to be combined further with what to do if it is discovered that this is - this self-declaration is done in bad faith. Is that some sort of summary of what we have - where we are?

Man: Just for me?

Man: Uh-huh.

Man: I think that once it is - I do very much agree on that criterion simplicity and that it is easy to implement and anything but relying on self-declaration would need some third party or some person to be active in one way or the other.

This seem to say we're shaking with of course (unintelligible) shake that the person exists according to a telephone directory or the types of open sources but even that would be a certain amount (unintelligible) required certain amount of resources.

Woman: You know, I do agree that it's simpler and easier to just go with natural and legal distinctions but I don't think that this really steps out to addressing problems that user on the Internet or encountering.

And just because this other area is more difficult and more complex, I don't think we should disregard it or, you know, step back from trying to address it somehow.

(Laine Mortensen): This is (Laine Mortensen).

And I agree with that kind and actually I think one of the issues we're going to run into is that we're not entirely connecting with some of these other groups that would - that we are, you know, still should be taking on some of these issues such as the verification of status.

And so if we entirely drop the issue as part of this group, we need to make sure that we connect with Subgroup A in terms of enforcement.

Man: Yes. Yes. I see that. I don't have your experience but use your finger and draw a simple figure of what types of other problems you want us to address the department of privacy issue.

I understand that the correspondence to reality is that it should act to be the - that the data registered correspond to the read data that

(unintelligible) the quality of data. But this (unintelligible) issues that I should...

Woman: Yeah. To me, the experience that we're having is being receptive registration people and organization who were misrepresenting themselves in their domain name registration and it's for the purpose of malicious and often illegal activity.

Man: Yeah.

Woman: And so, I mean, this is - in my mind, this is the real problem...

((Crosstalk))

Man: How would the staff selection help that?

Man: Yeah. I think it is easy to (unintelligible) that receptive registration and misrepresentation is something one would like to avoid and that is the problem. So that I think should go without saying - that was actually what I was trying to say in my early (unintelligible).

Man: But no question, we would all agree with that but I don't understand how the self selection could help that because if that actors are just going to lie...

Man: Yeah. That is...

((Crosstalk))

Man: The (unintelligible) proposal is that everybody (unintelligible) would have this limited set of data (unintelligible).

Man: That's not true.

Man: Uh-huh. Well, that's true.

Man: Not true.

((Crosstalk))

Woman: I would you like to elaborate on that because I think we should all understand it better if somebody...

((Crosstalk))

Man: You know, I sent my opinion to the list about what's, you know, the must and the maze and the OPoC proposal, what it does is it (unintelligible) to context, the technical context and the administration context. That's how I look at it.

Man: (Unintelligible), you're not making it so clear. I don't understand what you're saying.

Man: Right now, there's three context shown in output, the registrants, the administrative and the technical context.

Man: All right.

Man: So, with the OPoC proposal, the technical context and administrative context go away.

Man: Yeah.

Man: And we're left with the registrant context and there're three fields for that and we're left with an OPoC context which has a number of fields including email address, telephone and so on.

Man: Yeah.

Man: That's it.

Man: Hey, what I was saying to be more explicit is it (unintelligible) proposal is that the information directly relating to the registrants would be more limited to everybody.

((Crosstalk))

Man: Because it depends what the OPoC kind of success and that I put in my message to list I said that's debate -- it's a debate.

Man: Okay.

Man: Whether the registrants, if it doesn't select some other context, whether the registrant output or whether the OPoC output would be the registrant.

Man: So what (unintelligible), that's indeed a (unintelligible).

Anyway, but the purpose of the discussion we're having here is to see whether or not we want to categorize various strengths in a way that the OPoC proposal effect would be different.

Man: Right. So you're saying if the person selects legal person then they have no - you know, the data protection does not apply somebody said.

Man: Uh-huh.

Man: So therefore, the OPoC, I would assume must be the registering information, is that correct?

Man: No.

Man: Okay. Well, what is it then?

Man: I would say again, it's not the registrant to make whatever they want but the - I think what we're saying here is that in the case of the (unintelligible) but a legal entity for who information will still be available including the new OPoC.

Man: Indeed.

Man: In the case of natural, we would have it. We would limit the information, full information about the OPoC, limited information about registrant and nothing else.

Man: Yeah.

Man: Okay. Let me - I just want to do one example. Let's say a check legal and I'm Exxon Mobile and - or I'm Exxon. I'm about to merge with Exxon Mobile so I register Exxonmobile.com but I don't put Exxon in it. I put something else. Will that be allowed?

Man: No. Allowed is - also, I would say yes because nobody is stopping you, are they?

Man: Yeah.

Man: And the question is would that be challengeable, is a separate question in terms of the role of the OPoC in dealing with that challenge.

Man: Sounds like to me that if the person who likes natural person in life then that something that's actionable? But if the person is the registrant who likes legal and lied, what's the damage? So it should be actionable.

Man: Probably - that's probably first thing we would ask but I don't think it's our job to determine liabilities.

((Crosstalk))

Man: It makes a big difference to me and what - how this choice to be used. So, it's to me, it does make a huge difference.

Man: Yeah. If the choice will be used to - at least to him and forward sort of make operational data protection legislation. That is one thing that you will be using.

Man: I agree with that. I'm okay with that. It's that I think you don't see, you know, these side effects that could occur besides that good benefit that get out of this selection.

Man: Yes, certainly.

Woman: Oh I think we still come back to these criteria we're establishing the status that if someone is registering as a legal entity than what would be the criteria we're establishing that status. Would they not have to provide some type of verification that they are who they say they are?

Man: But those aren't the basic questions but there should be a verification procedure related to the registration.

Woman: It's very severe verification procedure then we can start to ask what is that most simple registration verification procedure or something like that.

But if we do not want to have a verification procedure then everybody can register whatever they want and there is no function in the registration to reduce receptive registration.

Man: This is...

((Crosstalk))

Jay Westerdal: This is Jay...

((Crosstalk))

Man: With regards to the question of misrepresentation of data...

Man: Sorry. Somebody is typing loud in their computer. Could they mute please?

Man: Yeah. Coming to the misrepresentation of data, what I use to in previous discussion (unintelligible) is that basically there were two different reasons for misrepresentation of data...

One was the misrepresentation by individuals who I hear said their privacy would be invaded and that's one thing that could be the target of (unintelligible) and they provide both (unintelligible).

The other category is the voluntary misrepresentation of people who have a wrong intention of it.

Man: Yeah.

Man: What I understand at the moment from the opaque proposal is that somehow, if we do changing the default setting of the who is database from what it is (unintelligible) which is basically open (unintelligible) do something that is basically both for all and with much less information on the contacts and the registrants.

The conclusion of that is this covers pretty well the first case of misrepresentation of data because then individuals would have no reason not to provide their correct (unintelligible).

On the other hand, the question that maybe we are asking ourselves here is should there be some additional requirement for more visibility to data that is provided by legal entity. Isn't that the question that we are facing?

And in the example of (unintelligible) model is something that is slightly different because this is not a question of misrepresentation of data. It's a question of confidentiality.

Man: Correct.

Man: And in fact, I don't see anybody having a problem with somebody registering Exxonmobile.com during this period on a personal data and transferring it afterwards.

The key problem is when the domain is registered. It's leading to an (unintelligible) then we need to have procedures afterwards to get access to the correct data.

Man: I think what the Exxon Mobile case it's like - I think it was (Phil) who said "it depends whether the legal - where the liability lies." With the current registrar correlation agreement, the liability does not lie with what's - with the entity that's shown in the WHOIS output as long as that entity gives up the information to somebody who's demonstrating actionable harm. So that is because of that side of it (unintelligible).

The part about, you know, what if somebody lies, if somebody checks his checkboxes as yes, I'm legal and lies about it, do you think they're going to not - do you think they're going to tell the truth about their contact information? I don't think so.

Man: Uh-huh.

Man: The whole point is it doesn't matter because the moment you play publications on the OPoC and you've got a whole OPoC as well, if you're taking a bad faith, you have a...

((Crosstalk))

Man: That could be a legal entity. You check the box Legal Entity and be truthful about it but then fill in false information for the rest of the information then you don't have any action to take because he told the truth that he is a legal entity.

Man: Yeah.

((Crosstalk))

Man: But you also - you are interested as if there's something illegal or against your civil rights happening on the Web site. And that's been the basis for eventually leading to take down the (unintelligible) is what the...

((Crosstalk))

Man: Was it the same exact same situation we're in today. We have - it's exactly what we have today.

Man: Absolutely.

Man: So this won't improve it?

Man: It won't improve this aspect.

Man: Correct. That's right. It won't improve this aspect of it. In other words, if...

Lynn Goodendorf: So - and I'm worried that it may make it worst because even though today, we have this problem. The transparency of the WHOIS is database at least provides some vehicle for identifying fraudulent side or at least pinpointing where malicious or illegal activity it's coming from.

And, you know, with the parts of who is not transparent or not open which is how I perceive the OPoC proposals then I think it actually makes the problem worse.

Man: Yeah. So your argument is that (unintelligible) representation is a problem that use (unintelligible) and then (unintelligible) problem. Transparency is one strategy for directing functions or pressure towards those who make a misrepresentation.

Lynn Goodendorf: Well, at least for identifying, you know, to some extent...

Man: Yeah. But you see, that's...

((Crosstalk))

Man: We have that now because if you (unintelligible) you could take down the main.

Kristina Rosette: This is Kristina.

I have to agree with Lynn and I actually - as much as I would like to believe that people are acting in good faith. I think as long as we're focusing - my personal belief is that as long as we're focusing solely on a national person, legal person distinction for all intents and purposes, we might as well be pointing big neon arrows at the national person categories saying "commit fraud here."

And I think that in that context, remind that self-declaration isn't really going to advance the situation and to the extent that I think I understand what Lynn...

Woman: Yes.

Kristina Rosette: I see folk who is (unintelligible) all the time. But I can look at it immediately in those cases and know that it state as opposed to having to wait, contact the OPoC and then find out mistake.

(Laine Mortensen): This is (Laine Mortensen).

And so I agree with that statement. I would also say that there are many cases that we run into when we're investigating fishing attacks in our organization where WHOIS data is very valuable because the (unintelligible) don't always register domain name to perpetrate their fraud but they often take advantage of the vulnerability on the Web site and the actual owner of the domain name isn't even aware that they're hosting the particular content they are.

So we used that information to contact the owner of the domain name and ask them to assist us in getting that content removed from their site so they maybe perfectly legitimate individuals.

Man: Right. If that's then case in contactability, it will help you and I think that opaque proposal increases contactability because, you know, there could be - you know, I think this is one of the other subgroup looking at this but there could be some responsibility to OPoC to make sure that messages get to the registrants so that - especially to the right people as the registrant.

((Crosstalk))

Man: So things like that would help your situation.

Neil Schwartzman: I'd like to interject here. Neil Schwartzman here.

Look, with a lot of spam investigations, we're not talking about law enforcement. The vast majority of security investigations that go on the net are done by private companies and private individuals, private organizations that are looking to help mitigate the problem.

By the time it gets to LEA, it's a real problem and we're talking about big man with big gun is going into arrest the people.

Man: Uh-huh.

Neil Schwartzman: The investigations that go on that use WHOIS, I can assure you on a stack of bibles, we absolutely use WHOIS every single day of the week to look for patterns and we can hide those patterns to actual

individuals and at least put blocks of spam host projects being a primary example of an organization that as exactly that.

And it is to my great frustration that the individuals from spam house are simply too (tappet) for time to be here to underscore this fact for you in vivid detail.

But please believe me, this is not some fantasy or anything to that nature. It is a natural reality.

Man: I certainly belief that but it seems to me that we are no returning to the - or rather the old - what is contrast between data protection on one side and it's trying to reduce further or misrepresentation on the other side.

And it is by no means controversial. That's increasing data protection. It makes it more difficult for law enforcement to similar activities but that is - but the conclusion on that observation is not necessarily that you therefore have to reduce data protection.

You may see that you then have to tolerate that increased risk and that is the conclusion which has been drawn by the European data protection legislation of course.

Woman: Yeah. But I would like to think that data protection is something that we consider for everyone in the Internet community and not just registrant...

Man: Thank you.

Woman: ...because there's also a data protection element for people who are using the Internet who are expecting domain name registrants to be who they know or representing them so...

((Crosstalk))

Man: But that is not data protection because that is not the processing in personal data. That is being deceived by misrepresentation and that is something...

Woman: I'm confused. Are we turning the subgroup into another subgroup at the moment which talking about...

Man: Yeah.

((Crosstalk))

Woman: ...WHOIS - that can have access to data and why they need to access the data? I thought - I forget what the letter was but I thought this one we really talking about what category...

Man: Yeah.

Woman: Whether it was possible and feasible to find categories of individuals. And if feasible then what were they...

Man: Yes.

Woman: ...and how do we define that.

Man: Absolutely.

((Crosstalk))

Man: That's true . We were talking about that but it's...

Woman: Well, it sounds like we were talking about...

((Crosstalk))

Man: That's the basis of this group but I - we still need to (unintelligible) the use of that.

Man: Exactly. We're not operating and avoid here. Decisions that are made here definitely have impact on the way that other things work as well. So, this is not a vacuum.

Woman: Since perhaps we think it is not possible - category.

Man: It might be possible and it probably is possible but what then is my question.

Man: I do think that this ties very closely into the responsibility to validate the data that's provided.

Man: Indeed. Yes.

Man: Correct.

Man: Yeah. That sort of thing seems to be a key element.

((Crosstalk))

Woman: Yeah. I think that's the whole key.

Man: Yeah.

Man: I agree that would be great but it's very difficult.

Man: It does. But I think - all this to my mind and the critical groups or those of you who are interested in the (besut) of prevention of that phase activity.

The critical group is for (4A) to do with the roles, responsibilities and requirements of the point of contact.

Man: Yeah.

Man: If nothing more comes out of that then the absence of responsibility is the admin and tech contacts we have today then nothing whatsoever is achieved in the (besut) of bad faith by its proposal.

If we are to make responsibilities and requirements concrete and have sanctions based on say a responding center then I think there was improvement in the (besut) of bad faith activities that we all are seeking.

And staying back to Avri's point, I think, to me at any point, this subgroup is to say can we from Stage 1 make a useful distinction

already? Part of which would be challengeable in terms of bad faith and then lead to this sort of activities, what would we need to do?

Man: I agree that that seem to be the (unintelligible) what they may achieve. If we look at so much, we are closing in on anytime. It should be tied just to make or should I try to promise you to have - as coming up or just discussion which have type of focus of some of the points we try.

I myself, with all my limitations have been able to identify as critical and hope that this will - I certainly feel that this discussion has brought us a step farther and perhaps another step can be added to it (unintelligible) next conference which is maybe (unintelligible) perhaps.

Man: (Unintelligible) and by all means more - with more (unintelligible) and doing that short summary.

Man: Uh-huh. Good.

Man: This is (unintelligible) what Avri was saying. The key question with the distinction we have here is about one, could there be different information gathered for the different categories?

Second, could there be a different regime in terms of what is visible given for instance that protection for legal entity.

And three, are there or should there be different rules of access through the non visible data depending on the category? Maybe that would have (unintelligible) into the other...

Man: And I would add a fourth to that and that is the responsibilities of those collecting that data to registrars, I suppose, as to validate the information.

Man: Yeah. And you could add these (unintelligible) that there should be the same rules for liability if misrepresented.

Man: Yup.

Man: Yes.

Man: Then I think I'll have to thank you all for joining the call. Thank you.

Man: Thank you.

Woman: Thank you.

Woman: Thank you.

Woman: Bye.

Woman: Bye-bye.

Man: Bye.

Man: Bye.

END