

**WHOIS Study Group
Teleconference
TRANSCRIPTION
Tuesday 8 April 2008 15:00 UTC**

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<http://audio.icann.org/gnso/whois-study-group-08apr08.mp3>

on page:

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

Present:

Lee Eulgen (IPC), Jordi Iparraguirre (RyC), Ken Stubbs (RyC), James Bladel (RRC), Tim Ruiz (RRC), Wendy Seltzer ALAC Liaison to ICANN Board, Danny Younger, Liz Gasster Staff, Glen de Saint G ry GNSO Secretariat,

Absent excused:

Beau Brendler, Steve Metalitz, Eric Brunner-Williams,

(Liz): ...forwarding. I just want to reference again for those who just joined. There is a summary document that is seven pages. It summarizes the public suggestions that we got on the further studies of Whois. The link to that was in Glen's invitation letter.

And there's also an addendum to that that just provides the names of the people that submitted study proposals because there was a little problem in the way that the study suggestions were posted that prevented those names from being circulated. So it's a separate addendum that does that.

And I don't have a specific plan for how to move forward on this call today. I think that's the primary thing we need to talk about. We are missing, I guess, five – roughly five people who couldn't make today's call but who can make subsequent calls at this time. And I assume we will have several calls at least in order to make the deadline of the 24th of April.

So first of all does – has anyone not seen the summary of – because I think that's an important place to start.

Glen Desaintgery: Shall I resend it to the group, (Liz)?

(Liz): Well does everyone else have it? Anyone not have it besides (Ken).

Lee Eulgen : This is Lee Eulgen . I have it but I don't have the addendum, not that that's super material for proceeding today. But it sounds like a useful document. Is that published at the ICANN Web site?

(Liz): It is published on the Web site, yes.

Lee Eulgen : Okay, I can pull it up.

(Liz): Also – is that also embedded in the email, Glen?

Glen Desaintgery: No it's not up but shall I send that?

(Liz): Yeah, why don't you go ahead and send it. And it is just a list of the folks that submitted studies but people may find it useful so absolutely.

And then the – if people have ideas, and I'll pause for a minute, about how we should proceed those are welcome.

(Ken Stubbs): Yeah, (Liz), it's (Ken Stubbs). May I make a real quick comment here?

(Liz): Please.

(Ken Stubbs): Yeah, this is not a policy comment but rather a comment on inclusion. An awful lot of the proposals that are out there and as well as just the pure reality of who ends up being in the middle of a lot of these issues involves, in one way or another, people who are actually providing the Internet services, access services to the end users or to the people making the queries.

I am somewhat disappointed that nobody from the ISPs is represented. I'm not concerned about the intellectual property issues for ISPs but rather the technical coordination issues. And I'm going to encourage someone to reach out to the ISPC and see if they can't provide somebody who has some time to get involved in this thing. It's somewhat a concern.

(Liz): Yeah, I think that's a good point. And we're happy to follow up and encourage them again to participate. So the next call we'll have greater participation, anyway, and hopefully we'll have someone from (ISU) as well, so good point.

And duly noted as far as even among the registrars and registries in particular when you look at some of the information that the studies envision being gathered that there could be a similar request or need. So we appreciate the participation there as well.

Any other suggestions or comments for beginning?

The one thing I might suggest is when we put together the summary we organized the study suggestions into categories; there are basically seven categories. And I think there are – I can run through what the categories are real quick.

They are Whois misuse compliance with data protection laws and registrar accreditation agreement; availability of privacy services; demand and motivation for use of privacy services; impact of Whois data protection on crime and abuse; proxy registrar compliance with law enforcement and dispute resolution requests and Whois data accuracy.

And one thing we might think about doing as an approach is, you know, you may find it useful to first consider which of the groupings address questions that you think having data about would, you know, inform the debate. That's not a necessary approach it's just an idea that you might find useful.

It's certainly true that some of the studies, you know, suggest answering slightly different questions. And so a secondary step might be, you know, if there were thoughts or opinions about just the – what are the questions we want to have answered.

So you could take the seven categories that I ran through and actually reform them into – reformulate them into questions. For example you could take the misuse category and say, well, how big is the Whois misuse problem that may need to be solved? And is that, in your view,

a good question, a useful question, constructive question to try to have answered in terms of informing the debate.

The second category, which is compliance with data protection laws and registrar accreditation agreements; you might turn that into a question and say, is there a noncompliance problem with data protection laws that needs to be examined or solve?

When you look at number 3, the availability of privacy services, a way of formulating a question about those privacy services that seems embedded in the proposals that are being put forward is, you know, are there already market driven solutions available?

So I've restated these just, you know, on a draft piece of paper into questions with the idea that you all might find it useful to say, okay, of those questions, you know, which are the questions that we think are most important and that you might find it easier to go through then the specific studies saying, you know, what do we think about these questions as a threshold matter.

And then look at the studies for any area that you think is a useful question to answer the studies that are listed under that question. So that's a suggestion as far as moving forward but I'm going to stop there and if others have ideas or opinions about that approach let me know.

And I'm very open to other suggestions about how to go about this. I mean, we have a laundry list of ideas here and, you know, I always find it helpful myself to try to put them into categories, but...

(Wendy): Sure, this is (Wendy) and I'll jump in. Thank you for putting them into categories and helping to arrange the laundry list as the proponent of the no more studies proposal though I will say that I would err on the side of asking what's going to change in our policy making as a result of having the answers to these studies?

Unless we can answer that there is something specific that we will change as a result of knowing more about one of these categories we shouldn't be wasting the registrant's money on them.

(Liz): In coming up with a recommendation that says we shouldn't proceed with any studies is an option and it was an option discussed when the resolution was passed. And they carefully phrased the resolution so that that could be a conclusion of the group. So it was (Wendy)'s comment and it also is, you know, a possible outcome as well as I guess, you know, alternatively identifying certain studies.

And there's a threshold question embedded as you stated well, (Wendy), and that, you know, what's going to change in our policymaking as a result of, you know, answering any of these questions.

And that might even be a way to go through the questions to try to, you know, if you thought the questions were useful to try to identify, as (Wendy) suggests, you know, say for question 1 or for question 2, how would this change our policymaking, you know, approach or consideration.

Any thoughts about that?

Lee Eulgen : Well and this is Lee Eulgen . I mean I certainly think that, I mean, you know, I guess I respectfully disagree, (Wendy) with your position in that regard because having been involved in, you know, the debate about (OPAC), I just feel like the positions taken by the various constituencies, the various stakeholders in that debate largely were based on, you know, subjective, you know, views on, you know, on kind of how some of these issues, you know, would impact the debate, some of the issues that these studies are trying to get at.

And my feeling is that having looked through all these study suggestions, apart from the ones I think (Liz) and company have identified as being out of scope, I think a lot of the studies would actually help inform the debate by virtue of getting some sort of objective data, bringing some sort of objective data to the table to either validate or not some of the positions, some of the subjective positions taken by the various stakeholders throughout the (OPAC) discussion.

I mean I certainly think that that's...

(Wendy): I just...

Lee Eulgen : ...that's what the (GNSO) Council was focusing on when it passed the resolution to, you know, to consider, you know, and to look at possible studies to help inform the debate.

(Liz): (Wendy) were you going to say something?

(Wendy): Thanks. And I agree but I also wonder how much any of the positions are based on or concerned with the objective underlying facts. And

how many of them are really open to change. There seems to be so much entrenched partisan politics but I don't see anyone asking the questions is this real and reexamining positions.

Lee Eulgen : Well that's a fair point. I mean I think the notion, I mean, obviously the hope would be that all of the stakeholders would be, you know, come to the table here with an open mind and be willing to be, you know, to be I guess proven wrong in terms of at least some aspect of the position taken throughout the debate.

On the other hand, however, I feel like these studies, as much as they may not, unfortunately, change the minds of all the stakeholders as to some of these issues because of, you know, the vested interested of the stakeholders, my thought is that it may at least help inform the Council and, you know, the ICANN Board regarding these issues. And hence, you know, help to mold policy that way.

Of course ICANN is meant to be a policy driven, you know, a bottom up policy driven organization so you'd like to think that, you know, we could all as a part of, you know, in moving ahead with these studies be able to identify some consensus, you know, that we could take to the Council and perhaps then to the Board that would, you know, would assist in molding policy going forward.

Obviously thus far at least in the context of the (OPAC) debate, you know, that consensus unfortunately hasn't panned out. But the, you know, I personally again I'm an optimist by nature but I tend to think that having some information on some of these points would be very useful.

I certainly, (Wendy), respect your position that, you know, this is going to cost ultimately, you know, registrants' money. So I, yeah, that point is certainly not lost on me.

(Ken Stubbs): (Liz)?

(Liz): Yes.

(Ken Stubbs): Yeah, it's (Ken Stubbs) again. I would like to present an observation that's based on over 10 years in ICANN and being one of the few people that's never missed an ICANN meeting, I don't know whether that's good or bad.

I think this falls in the Whois (unintelligible), absolute very beginning where (Louie Touton) attempted to get a few people who had some concerns about it, namely (Sharon Dosh), myself and a few other and just to try to discuss the issues and that's what originally started all of this.

What we have really is this situation where I feel you have intractable positions on two sides and the last 10 years have proven this; you have the side that's primarily concerned with protection of brands intellectual property and so forth. And you have the side on the other side – and I'm talking – I'm going to use extremes as the – on the other extreme you have the side that's very, very concerned about individual's rights, privacy and so forth.

The classic (stalking) case on one side; it doesn't really matter. But what – over the years no matter where we've gone with this we've

always ended in the same place, you know, and I have to give credit to both sides.

But from a practical standpoint if the only thing we're going to do is spend another 18 months putting together studies to present to a bunch of people who aren't going to change their mind for any reason whatsoever and who will only use information in the studies to reinforce their – bulk of their respective sides then all we're doing is just wasting our time; let's just acknowledge this fact and move on down the road.

It's all – if it's all being done for (optics) it's a joke; it really is. It's a huge waste of resources. I'd rather concentrate in areas where there appears to be the opportunity for concessions and for finding a middle ground. I appreciate the optimism on your part but I got to be honest with you, after 10 years I don't care how optimistic you are, you have to be realistic.

And, I mean, I've been a member of (Inta) for six or seven years, I was, you know, Registrar's Representative on the Council, I've been Chairman of the Council, I've been involved in the registries. It hasn't changed.

We have made major concessions, we've gone from acknowledging the fact that nothing gets done in 15 days so if you're going to be incredibly assertive in trying to get somebody adequate notice that they're not compliant and take them down in 15 days, you know, those are the kinds of concessions, well, maybe we'll give them another week or two or something like.

But in the long run the IPC's (unintelligible) position has been one of requiring open, unfettered access to Whois data and requiring, you know, on the other side you have people who are very concerned about the abuses that providing this Whois data on an open access environment can wreak on them.

And I guess from a practical standpoint the only thing I see coming down the road is more and more proxy registrations, more and more finding (unintelligible)...

(Liz): So, (Ken).

(Ken Stubbs): I'm not going to preach but it's – I'm just trying to be realistic.

(Liz): Yeah, sure. So, (Ken), let me just ask you point blank; are you saying you're supporting (Wendy)'s position basically, right? That there's no benefit given your 10 years of history here, in your view there's just no benefit and there are - clearly costs that would outweigh any benefits to proceeding with studies.

(Ken Stubbs): Well I have to support (Wendy)'s position because let's be frank, I mean, (Wendy) has been one of the advocates that I would've considered on the opposite, direct opposite side of the IPC. And if she sees this writing on the wall she's trying to be realistic...

(Liz): Yeah, yeah.

So let me just ask others. I just want to get kind of keep the call going and get a sense of what do other folks think about – I understand where (Lee)'s coming from. What do other folks think about just the

merits of doing more studies to enhance the information available to the Council in terms of making policy recommendations?

Do others feel prepared to comment?

I know we don't have a full group and that makes it hard but (Jordy) or (James) or...

(Jordy): No this is (Jordy). Sorry I wasn't (unintelligible).

Well first of all (unintelligible), I mean, our registrars (unintelligible) so I don't have what many of you have and the long view of the history of how the things have rolled and why the things we have done on that way in a given moment.

But nevertheless we have a registry, we do have an issue. I'm not going to (unintelligible) the registry (unintelligible) here (unintelligible) registrars. But having – based on that and from my very limited experience on that I would like to I don't know, (express something) there. But that would be, it seems on one side that there is a meet for certain distributions, whatever you want to call them, to access Whois data. That's clear.

And I don't think that anybody opposes to that as far as those that need to know more or less do, but let's keep it like that. We can define what (unintelligible) whatever.

On the other side we do have also certain (CCTLD)s but also certain (DTLV)s that meet because of the laws of the different countries (unintelligible) that need to restrict the access to certain public data.

So it seems like somehow we have to find the solution between information available and information that's restricted. It seems that by the (unintelligible) that by the different actions, different registries, even particular (CCTLD)s in Europe have been taken; it seems that the least certain agreement on, well, a way to solve both things that is we may allow certain registries, the ones that need to be (unintelligible), we restrict access to the whole set of information that we find.

But on the other side we may also provide an easy way for those that need to know to access to the full data if need to. And maybe, and this is just a proposal that ICANN could play here an interesting role in not deciding who needs to know at least somehow (unintelligible) has because, for instance, we have a small registry we do not need to know, and again this is just for example, (unintelligible) extrapolated to one of the registries.

We can not know all that police, courts or, I don't know, IP agencies around the world that do have a clear reason to access that data (unintelligible). So maybe if ICANN in the same way that (unintelligible) registrars, there's something (unintelligible) whatever need to have access, that may help the registry to say, okay, I'm giving a direct entry to the Whois data to those institutions that ICANN has told me that (unintelligible) and not have access (unintelligible) may have access to that data.

And on the other side I may (unintelligible) my country's asking to (unintelligible) to restrict the bulk of the data to (unintelligible). So I don't know. I think that around that idea we can try to find a solution.

(Liz): So, (Jordy), it's (Liz), if I can just jump in then. Are you proposing, just so I understand, are you proposing that a study actually be done to look at this process and try to find that role or that set of activities, flush that out? Or are you moving away from the concept of studies and looking more at solutions and proposing that more as an overall solution?

I just want to be sure I understand because, you know, we're kind of looking at these studies, is that an idea that you're putting forward in terms of – and there are some things I think we could say that are trying to get at some of that in the studies that have been proposed which we could look at more closely. But I just want to be sure I understand your thoughts here.

(Jordy): Yeah, well again, the view may be and proposing something that's not working that used to be or what has to be or whatever. I just tried to propose as much as possible to offer a set of solutions. Okay, we've been looking around, trying to understand the different needs of the different constituencies and the different (players) and that being around the Whois.

And we believe that it's not a close solution, I mean, solutions 1, 2, 3, whatever, at least proposal for solutions. So maybe one solution may get in that direction, for instance, being ICANN (unintelligible) solutions that must have access to the whole set of Whois data, for instance.

Solution 2 being whatever; solution 3 being whatever and then among those solutions (unintelligible) board and help whoever needs to decide on that to try to find the final one or maybe the combination of those solutions whatever. So that would move (unintelligible) for proposing

solutions rather than starting again how many registries have to comply with the local law and how many (unintelligible) for months or register whatever. (Unintelligible).

(Liz): So it's not unlike the (Telnick), the conflict of laws process that ICANN has put into place today but focusing in more deep and more detail on the segment of people that would, you know, quote, legitimately, unquote, need to have access. And making sure there's a mechanism for that process that, I mean, that's effective and responsive is that...

(Jordy): I think that could help. I mean, on one side we have the (CCTLD)s that based on the local law and basically as part of the government, I mean, part of the ministry, part of a, I don't know, private institution, university, they are going to be much more or less (unintelligible) force to comply with the local law. At least in Europe; I don't know in Asia and other places of the world the covenants regarding the data protection laws and such.

But again, based on the (unintelligible) countries because we (unintelligible) based on...

(Liz): Oh sure, sure. I think it's fair to say that the registries, you know, want to be able to comply with local law.

(Jordy): Exactly. But (unintelligible) because for instance there are certain registries which are managed by the government, I mean, the (unintelligible), the ministries of (unintelligible) or something like that, that being part of the government, being part of the administration they may not define by the administration itself.

Maybe in the states this is possible but at least in certain countries in Europe the government can not (fine) itself somehow and you can send the government to court if they don't comply with the local law but they can not fine them, I mean, fine...

(Liz): To actually – to actually bring a case.

(Jordy): Exactly.

(Liz): Yeah.

(Jordy): So you cannot ask the whatever, the (CCTLD) whatever registry to pay a fee because they are not complying with the data protection agency laws for instance. (Unintelligible)...

(Ken Stubbs): (Liz)?

(Liz): Yes.

(Jordy): ...but they are not going to pay money for that.

(Ken Stubbs): Yeah, (Liz)?

(Liz): Yes.

(Ken Stubbs): We, I was supposed to get into a long discussion about the application of these procedures with respect to (CCTLD)s. The thing that has me more concerned is the fact that you alluded to it very lightly and that is in many ways ICANN has its head in the sand on issues that could be coming up in the future.

Let me give you examples of what I'm talking about. To date no country to the best of my knowledge has ever enforced specific privacy laws on registrars domiciled in that country with respect to generic top level domains.

In other words if you're a registrar in Germany and you maintain Whois information and you're required to disclose this Whois information, the German government has never stepped in and said, "You cannot disclose this information."

At some point in time down the road we have got to stop deluding ourselves as more and more pressure apply to these governments; these governments are going to start. Canada is very close to that on some of their registrars; Japan, Australia has privacy laws and so forth.

If they start enforcing these regulations on registrars, on generic top level domain registrations these issues are all going to come to the top right off the bat. We've alluded to dealing with this in resolutions to the Council in past and so forth. There is no specific process for dealing with this.

There are, you know, what ICANN needs to do is to take a close look at how to deal with these processes in the future. How do you deal with the intellectual property issues that result from not being able to disclose this information? How do result from law enforcement issues.

You know, these are stability issues; they're not intellectual property positions but rather basic stability issues that really need to be looked at. And yet we're spending all of our time looking at the impact on

Whois on law enforcement without even looking at what the impact on ICANN would be if the various countries of the world start enforcing these privacy laws.

And there are people on this call like (Wendy) who have a much, much deeper knowledge of the potential for this than I do, I'm not a lawyer. Thanks.

Lee Eulgen : (Ken), this is Lee Eulgen . I mean, I think what you're saying though, correct me if I'm wrong, is that some of the studies suggested concerning, you know, international data protection laws might actually be useful in so far as, you know, there may be some legal schemes out there that would pose problems for international registrars even at the, you know, Who registrar (GTLD)s, you know, that may be, you know, like a time bomb.

It seems to me some of the – and I think your points well taken that it may impact, you know, ICANN as much as any party. But it seems to me, you know, some of these studies that have been suggested related to looking at, you know, international data protection laws, you know, may be worthwhile from that perspective because at least it would provide some data for all of us to consider, all of those who are involved in this discussion.

(Ken Stubbs): Well you may be right there because at least ICANN would have enough (need) to realize the community as well as the staff itself, what the scope of the potential is for the unsettling situations that could result.

Let me give you an example. One on one, there's registrar on the call, one on one (Schlund) it's one of the largest registrars in Europe; they're German based. You have Melbourne IT that's Australian based. What happens if these countries start imposing on these registrars strict laws with respect to privacy?

You know, now can they transmit this information to the registry? You know, technically...

Man: (Unintelligible) joining late.

(Ken Stubbs): ...we're a (thick) registry; we're obligated by our contracts with ICANN to be a repository for this data. These registrars could be in violation or held to be – they could literally have injunctions against transmitting this data to the registries if the registries are located outside of German. So there's tremendous stability issues down the road.

ICANN's talking about registry fail-over issues and so forth. This is a hell of a big issue down the road for ICANN. And maybe that's areas we need to talk about. What would the impact be and...

(Liz): Now I don't think the issue is that they wouldn't be able to transfer the data; I think the issue is that they would have to comply with the European data protection directive in order to transmit for – if it was personal data as defined by, you know, the European data protection directive.

So, you know, I'm not an expert in that area. But I don't think it would – it would put constraints on their ability to transfer the data unless they were in compliance with the European law.

(Ken Stubbs): Well those are the questions that I would be most concerned about myself right now because I'm going to take the given. My given is that the IP constituency is going to continue to maintain its position and the people, the privacy advocates, people that (Wendy) has advocated for and (Denny Younger) and other people are going to continue, (Milton), are going to continue to maintain their position.

So let's talk about things that can impact us in the future from a stability standpoint. How do we deal with those kind of issues? That's the last I'm going to say on it. Thanks for hearing me out, folks. I'm sorry I didn't mean to monopolize.

(Liz): Well and I think, you know, (Lee), as you point out, (Ken), your idea – there's an idea there for a study that may in fact be embedded in some of the other ideas that were proposed as well in terms of looking at what the laws require in other countries both, you know, in their (CCTLD) context and implications to the (GTLD) context. So that may be something we want to explore further as a group.

Lee Eulgen : Yeah, I guess my thought on that is, and again, I mean, I hope this shows some flexibility on the part of the (IPC) but, I mean, and I think as to all seven categories, (Liz), that, you know, that you've broken all these studies down into, there's similar arguments to be made with respect to each of them as far as their usefulness.

But with respect to, you know, data protection laws, you know, we've all been talking about well, there are these laws out there that may somehow restrict or, you know, that Whois may even – the current Whois regime may violate now. But I don't think anyone, and correct

me if I'm wrong, because I'm sort of the Johnny come lately especially relative to (Ken) and the likes of you who have been doing this for 10 years.

But I don't think it's ever, you know, any sort of comprehensive review of those types of laws have been undertaken that again might inform the debate about, you know, proposals like (OPAC) to tell us whether, you know, (OPAC) is truly a solution – oh, sorry – truly a solution to some of those issues or whether, you know, there might be some other proposal that could kind of rise up as an alternative to try and address some of those privacy laws that, again, may be out there that no one seems to have an entirely firm grasp on to try and determine, you know, in what direction ICANN as an institution should go with respect to some of these issues.

(Liz): One of the things we probably need to spend some time on in this call is just process for going forward. We have a few more people who are going to join us next time. And it sounds like, you know, we have at least a plurality of views on this call with a sort of threshold question on the table about, you know, should we do more studies at all.

And, you know, at least some support for that position of just, you know, that isn't going to advance the debate and therefore more studies would not be appropriate. But also some interest in really looking at, you know, where some information might be useful.

So any thoughts about what we should think – how we should proceed and, you know, what we should tee up for the next week's call when hopefully we have a bigger group and, again, an even more diverse group. So just thinking about next step too.

Lee Eulgen : Well this is (Lee) again. I mean, I sort of came to the call just thinking that maybe, you know, if we could all – and again I don't have a firm idea but my thought was if maybe we all could kind of come forward with our, I don't know, ranking of studies or, you know, some notion of which studies we think are the most viable along with perhaps which could – some of these I think are amenable to being combined perhaps.

But again, obviously, there's some on the call who believe that, you know, maybe perhaps no studies should be undertaken. But my thought was that if we – if there was some sort of means by which we could decide, you know, everyone would put forth kind of their favorites if you will, then maybe we'd determine that, you know, there might be – we might be able to see some trends; we might be able to see that, you know, that there is some agreement on some of those things.

But again, exactly how to do that I don't have a firm idea.

(Liz): Well it occurs to me that for the next call we should certainly put the special question on the table and, again, (Ken), I may ask you to, you know, carry that gauntlet if you will to, you know, describe why you think it doesn't make sense to, you know, for the larger group to proceed and have some discussion in the broader group about whether it makes sense or not and if so where it might make sense.

And I think that's kind of where (Lee) is going, where we should be able to collectively both take a pulse on this concern about why are proceeding at all and if there is a significant percentage of the group that still wants to go forward – go forward with that caveat in mind that,

you know, that it should enhance the policy debate and which are your favorites for going forward so that we could then discuss those favorites, if you will, in the context of maybe the harsher test of not only would it be good information to have but would it be useful and how it would be useful to have the information that calls.

So I guess I'm struggling with how to proceed but suggesting that we, you know, in the broader discussions have some discussion allocated for this special question of why proceed at all. And then also ask everyone and I can do some maybe some notes that tee this up, ask you all to look at, okay, if were going to do studies, which are the studies that you think either have some merit or definitely don't have some merit, take them off the table to try to look at those threshold questions on the next call.

(Ken Stubbs): I'd be happy...

Lee Eulgen : This is (unintelligible).

(Ken Stubbs): ...my only problem is that I'm going to be out of the country next week and I think you have a call scheduled for next week. But I'm...

(Liz): Well that's what we're aiming – we're aiming at keeping this slot because I'm told that it works for most or all most of the time and that this was just a bad day because we were organizing it fairly quickly to get the full attendance.

(Ken Stubbs): I do think that there might very well be some good thinking with respect to doing some additional work on the impact of the various data

protection laws and how they stand in different parts of the world and the impact of this.

So let me give you one more example so we could see where we're going, okay?

We all know that there is a tremendous push on right now for ideas. And as we know most of the script that they're talking about and many of the languages that they're talking about are – reside in specific communities. And if (Catalan) was an IDN that community would have specific views and perspectives on privacy that could very well be much more strict than let's say an IDN – an English ASCII community.

So the point I'm making very simply is if we're going to be proposing IDNs for generic (tandies), let's take CCs off the table entirely. What the French do, what the Germans and the Spanish and so forth do ties specifically to their own specific community; we don't have any right to get in the middle of that.

But we do have the right to be concerned about IDNs that are going to be under the purview of ICANN, which may in fact be primarily used in communities that have very restrictive laws or regulations with respect to protection of individual privacy and so forth.

So it's going to come up to bite us right off the bat because hypothetically we could have IDN (TLD)s being sanctioned by ICANN that have entirely different regulations with respect to disclosing Whois data, registrar requirements and the reason very simply is the community that would be using these IDNs has it.

So if we have no idea at all as to what the impact is going to be in the future on where these new (TLD)s will be used and how they're going to be managed from a Whois standpoint it behooves us to find this out, you know. If in the last five years two-thirds of the world is starting to tighten up very much on individual privacy we'd be prepared for it because ICANN is not just for next week or next month or next year, you know, we're talking about tens of years in looking at trying to establish some sort of management policies for the DNS that make sense and they can evolve in an orderly way.

(Tim): This is (Tim). I apologize, I kind of joined late and I – this question about this threshold issue; are we talking about, you know, for example the – a threshold that's, you know, the result of the study should generate something that would resolve some of the impasse that we've had in the past? I mean is that the kind of thing we're talking about when you say threshold?

(Liz): Well that's a tall order that it would actually resolve...

(Tim): Well then it would have – it would provide information (unintelligible)...

(Liz): Yes that it would inform the debate I would say and others may have a better way of articulating it.

(Tim): All right.

(Liz): And specifically inform the policy debate in terms of policy steps that could be taken versus other steps.

(Tim): Got it.

(Liz): Because – and I guess if we take a step back, (Tim), there are at least one view but maybe several views that it doesn't make sense to commission more studies on Whois and, you know, but I'll let them speak for themselves and not try to articulate why. But, you know, that (unintelligible) entrenched positions and that it's unlikely that we're going to change the hearts and minds here and that studies are costly and time consuming and may not advance the debate at all.

And so there was this sort of threshold question there – do we want to recommend to the Council that studies be done or is there, you know, a significant percentage – majority percentage whatever of the group that doesn't think studies ought to be done.

And since we don't have a full team here today we didn't want to kind of answer that question on the call but we wanted to try to tee things up for next week to say, you know, how do people feel about that; that's a serious threshold question because if we do have a consensus that more studies should not be done we can get done quickly and, you know, go back to things we think will make a difference.

On the other hand if there's a consensus that there still could be benefit to crafting some studies that are targeted and that – where we can articulate what the potential benefit would be to having that information available then we should, you know, proceed to talk about what those might be.

And my suggestion for proceeding if we did think that was the case, is to look at the studies that have been proposed in the context of the categories that I put them in and to talk about the questions that are

implied by the categories. If they, you know, are these questions questions we think if we had the answers to would inform the debate.

So, you know, if you just look at the first category, which is Whois misuse and say, you know, how big is the Whois misuse problem that may need to be solved if the group felt that that was an important question to try to answer then we would look at the studies, you know, in that section and see how they might need to be tweaked, combined, changed, modified to put a recommendation forward on that.

So there are seven categories as we saw it of recommendations and if the group thought it was worth really looking at what recommendations might be then we would like do a deep dive on those questions and go through them and try to narrow it down what we thought was useful.

So that's – the threshold is do we proceed with studies at all and then if so do we look at these categories and say what are the questions that we really think if we had the answers to would give us a pass forward.

(Tim): Right, okay.

(Liz): And, you know, we don't have a full group; I'm not sure everyone's taken the time to really look at the summary that was done. I would propose for the next call – I'll do a summary anyway – but I'll also articulate these seven categories in the form of a question so that you have an idea of what I was thinking anyway in terms of trying to answer those questions.

And I think we should try as much as possible to think about, before the next call, do we think more studies are going to in fact move the

debate further? We had I think a good discussion about specifically how registrars might comply with laws in countries if they were enforced more rigorously as to data when they are in those countries, so they are obligated to comply with those laws and what the implications of that might be from the standpoint of Whois policy going forward.

So that might be an area that we concentrate on a little further in terms of flushing out, again, assuming the group agrees that we should go forward at all.

But, you know, I think the homework for the next week I would propose would be to talk amongst yourselves if you will about would more studies help? And if so, you know, which are the ones that you really think would advance the ball? And if not, you know, making the case or joining hands, you know, in terms of saying we don't want to proceed; we don't want to recommend more studies which is, you know, a permissible outcome of this effort as well as recommending studies.

(Danny): This is (Danny). Sorry for joining the call late. I was on an (ALAC) call...

(Liz): Well hopefully you heard that, (Dan), just that little review for – because that kind of sets things up in terms of what we've been talking about.

(Danny): Oh no, I mean, I was on since the threshold question section.

(Liz): Oh okay, good, good, good.

(Danny): I guess the only question that crossed my mind is we've got a budget process going on right now; will there be sufficient funds to handle numerous studies if required? I know that zero studies is an option but has anybody on staff looked at the budget component of this particular process?

(Liz): Well we know that there are budget implications to – initiating studies and I think it's fair to say that the studies would not actually be done by ICANN staff depending on what they are; that may be a relief to some of you, it's somewhat of a relief to me.

So there would definitely be a financial component and depending on the scope of the studies involved it could vary tremendously, you know, what the cost of the studies might be, which is why the Council has gated this in terms of a multi step process. Do you think studies are warranted? If so which studies are warranted?

Then direct staff to go back, you know, based on some selection of studies that you do think might be warranted we could get some cost estimates for conducting those studies using whatever resources and expertise is appropriate to accomplish them which might vary depending on the nature of the specific studies. And then go back to the Council with those costs. And I guess at the same time, you know, look at the budget implications internally.

So it's understood that there are budget implications; what there isn't, is a specific budget line item that says we've allocated XYZ amount of money for this project. It would need to get done based on what the Council's recommendation is and there's probably some measure of, you know, how extreme or costly the studies might actually be.

(Danny): All right well my question is prompted by the fact that in a prior Board resolution the Board resolved to engage in an economic study of the DNS; I think we all remember that particular resolution, and yet I've never seen such a study materialize, you know. What that as a result of budget decisions or will our studies in this area preempt the work scheduled for this economic study?

(Liz): What was it? An economic study of what?

(Danny): The domain name system.

(Liz): The whole domain name system?

(Danny): Yep.

(Liz): I don't know, well, how do we define that? But, okay. I know nothing about it. You guys have the history there, I don't. So do others know more?

I'd have to check, (Dan).

(Danny): All right.

(Liz): That is a fair question, you know, if, I mean, leaving aside that...

(Danny): I mean the Board already resolved to do an earlier study and they haven't done the study so here we are recommending studies to a Board that, you know, approved one and hasn't even started it. So I'm just wondering where we're going with all these things.

(Liz): Yeah. I'll find out but I have no idea. How long ago was that roughly?

(Danny): I think a year ago November.

(Liz): Okay.

(Wendy): From all the time I've been Board liaison I can't report learning anything about those studies either.

(Liz): Okay, well I'll check on that for the next call then. And if I learn anything before then I'll post it to a little (unintelligible). So...

(Danny): Do you think by next week we can actually have consensus on whether there will be value in going down this road I mean in terms of actually pursuing studies?

(Liz): (Unintelligible) probably not.

(Danny): I know the (unintelligible) on that topic.

(Liz): I think it would be a lot to expect that we would have consensus by the next call. We don't even have a full group of people here today. And I apologize for the short notice, we just are under such time constraints with what the Council has asked us to accomplish. But we are missing three or four people who we're expecting next time.

So to my mind we do need a plan for going forward. We're supposed to come up with the recommendations by the 24th of April; we're somewhat hampered by not having everyone here. But my thought is,

again, that we try to look – be prepared for the next call in the following ways: Number 1, read through the report and make sure we really understand what's being proposed.

Number 2, that we give some thought and discussion even on the list is fine, to the question of whether we should proceed at all with studies or not. And then third, look at the specific questions that I'll send out just basically taking the seven categories and turning them into questions and beginning to identify from your perspective what your priority order or your favorites and least favorites might be assuming that you think there's any benefit in doing any of the studies, which some of you, you know, may not believe.

And in the meantime I, of course, will find out about the budget question (Dan) has raised. But with the idea that on the next call, A, we'll have a full complement of people; B, we'll know what's in the – what's been submitted in terms of recommendations; C, everyone will have a sense of whether you want to support not doing studies or doing studies as a, quote, threshold matter.

And then, D, if the consensus is that some studies at least need to be done which ones do you think either, A, should definitely be done or better to be done and which ones do you think should not be done. Is that a reasonable set of tasks for next week?

Or does anyone have any suggestions? And does anyone want to take over the organizing here because I know I'm doing a lot of the organizing and I don't mean to chair this at all. So if there's a volunteer to either chair or organize or amend anything I just said, feel free.

(Ken Stubbs): I think you're doing a fantastic job.

(Wendy): Here, here.

(Liz): Well I promised (Wendy) we'd try to have some fun and that was a tall order.

(Danny): Will we actually be able to recommend the group that will be performing the study?

(Liz): You know, I hadn't thought about that.

(Danny): I mean I was quite satisfied with the work that the (Sera) folks did for the (unintelligible). I thought the way they handled it; their process, the study that they handled for us quite well done.

(Liz): Which group? Sorry.

(Danny): I'd like to have, you know, whoever handled the (Sera) study...

(Liz): What is the (Sera) study?

(Danny): Oh, well that's the Canadian registry. They commissioned a study on Whois, I think it was probably two years ago they commissioned the work. The study report came out, the proposal went up to their Board of Directors, there was public comments, decisions were made.

(Liz): Okay, I'll look into it. Anything else? Any other suggestions? Are we exactly at the hour? Okay, well thank you all for your participation today. Any suggestions for – I'll do a summary and post it to the list,

which you all can feel free to update and correct. We'll try to get everyone on the call for next week. And we'll all do our homework.

Lee Eulgen : Thanks in particular to you, (Liz).

(Liz): Oh, my pleasure, really.

(Wendy): Yep, thanks.

(Liz): Okay, thanks to everyone.

((Crosstalk))

(Liz): Take care.

(Tim): Bye everybody.

(Liz): Bye.

END