

**WHOIS Working Group C "nature of
the registrant" Teleconference
TRANSCRIPTION
Wednesday 23 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 23, 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://gns0-audio.icann.org/whois-c-20070523.mp3>
<http://gns0.icann.org/calendar/#may>

Attendance:

Jon Bing - sub group chair
Philip Sheppard - WHOIS wg chair
Christopher Gibson - observer
Lynn Goodendorf - observer
Melanie Holloway - observer from Enom
Ross Rader - registrar

ICANN Staff:

Maria Farrell - GNSO Policy Officer
Glen de Saint G ery - GNSO Secretariat

absent apologies:

Kristina Rosette - IPC
Avri Doria - NomCom Council
Peter Stevenson - registrar

Glen de Saint Gery: Philip Sheppard, is this – WHOIS Task Force Working Group Chair, Lynn Goodendorf, Christopher Gibson, Melanie Holloway, Maria Farrell and myself as staff, Glen de Saint Gery.

Jon: Thank you. Yes. The house been made available further note, I am afraid it was made available rather late, but hope that they have had the possibility to have a look at it.

And I'd like to thank those who contributed to the world's developing, the option two, which you'll find in the paper. Let's start just by taking a general glance at the paper. It consist of three parts, one is the statement of the things between actual and legal person.

The second is the issue on the commercial and that long commercial activities, the distinction between those. And the third is the note on declarations in bad faith. And as far I understand, this large, perhaps a good total consensus about the first part and actual and legal person and perhaps we could start by making sure that there's nothing we have overlooked in that respect.

Christopher Gibson: I'd like to put my name in the queue. This is Chris Gibson.

Jon: Please go on Chris.

Christopher Gibson: Yes. Good morning. I think that it would be worthwhile. I have just opened up and started to review your helpful summary paper. Thank you for circulating that. I think it would be helpful to add just before your reference to commercial or non-commercial activities, this is on the first page.

Jon: Yup.

Christopher Gibson: That there were at least some members of the working group that raised whether some form of verification could be made as to this first

distinction. And I understand the approach in the paper is to, you know, then consider whether a consensus was raised. But I believe at least, there are a few of us who have suggested that while we haven't – as I understand, it come through any agreement or any fleshed out approach on what verification could include that we started. It would be helpful at least in respect of natural versus legal persons that a verification approach of this would be made.

So, simply a sense to reflect that there were some members of this working group that had raised that as a possibility, I think would reflect the discussions. I know last call we focused on commercial versus non-commercial, but...

Jon: You're quite right.

Christopher Gibson: Yeah.

Jon: I think also, the information has been floated that some registrars today already have strategies for verification over – in this respect. So, I noticed, certain should be affect at least that one's to do not suggest such verification to be able to stopped. And the – that – so that's – as you say, either at the end of the first section or about the where it may say that it is a sub based or self declaration. A note will be made that this is an issue.

Christopher Gibson: My other point on that same point is this which is I know because last week, we had I thought a very helpful discussion on commercial versus non-commercial, and we went into it in some detail. I was hoping actually return to the question in this call of self declaration versus verification and perhaps to get some input from some of the

registrars on how that works. Because I felt like we hadn't yet finished off that issue. But anyway, thank you very much for your acknowledgment.

Philip Sheppard: Jon, Philip here. Just – this is also a thought on clarifying option one. It might be worth making explicit what I understand is there's been an implication of making the distinction between natural and legal. In the – as of a partial regime that we had laid after the matrix on the commercial and non-commercial would then be the implication of that distinction. I thought there would be for disclosure for legal...

Jon: Yup.

Philip Sheppard: ...and retain disclosure for natural persons. I think it's probably just worth...

Jon: Indeed yes. But that's...

Philip Sheppard: ...putting that explicitly to de-clarify that the intentions in terms of why the distinction is being made.

Jon: Indeed. Indeed. And that should be made indeed, yes. It is mentioned in reference to it but not on option one. And then I'll make sure that that is edited in a way which makes it clear that it's possible to both options.

Philip Sheppard: Mm-hm.

Jon: Thank you. There might actually be – the verification of self declaration may actually be displayed as an option under a natural and legal person which is not resolved. But – which – that tends to distraught in

as I see it, this – our main purpose is to make that options clear because there will be a procedure following this discussion which will make the fine choices between the options. And it would be, I guess, not appropriate to disclose options which might be opened at a later stage.

Philip Sheppard: All right.

Jon: That's rather to clarify them. So, there's that disclosures are as easy to make as possible.

Philip Sheppard: Yes. I think it's pretty (for) – I think, Jon that would be helpful because, I mean, essentially what were saying is if were not recommending a mandatory form of verification for either option, the implication again is that there could be a challenge process to self declaration...

Jon: Mm-hm.

Philip Sheppard: ...which indeed then falls into the – they do responsibilities in the OPAC which is being fleshed out in another group.

So, it's merely just one additional responsibility the OPAC would have in terms of a challenge of false information – alleged false information.

Jon: Indeed.

Christopher Gibson: This is Chris again. And just to make – to highlight the contrast on this point of self declaration, I think for option two, a self declaration is more appropriate, is much more appropriate in that context. And so, in that sense, you know, when you have a natural person who decides to

register a name, it would have to be, I would think, in most cases, it'd be very hard to verify if they don't have any track record, what they intend to do with it.

So it's self declaration for option two is actually a very different setting than the question of whether self declaration for option one. So, that's why using that word carefully, I think it has to be highlighted in each context. How – what the discussion has been?

Jon: Yes, that's right. I think yeah, that's on their primal registration. They will be declaring your future intentions and that that is extremely difficult. Verified by...

Christopher Gibson: Yeah.

Jon: ...the other URL or legal or natural person of course is something that is a verifiable and visible.

Philip Sheppard: Yes, exactly. One is – on of the past (factor) – yeah, there is a future intent.

Jon: Exactly, yeah.

Philip Sheppard: Yeah.

Maria Farrell: Sorry, it's Maria. Can I just recap the idea there was to do to present then two options, self declaration of commercial versus noncommercial as well is that it?

Jon: No, we've – keeping in is what only - one option for that except we only keep in self declaration for the things between commercial and non-commercial. All right?

Maria Farrell: All right, apologies. Thank you.

Philip Sheppard: And...

Jon: And I think, yeah, that makes sense.

Philip Sheppard: And as I see it right now even the...

Jon: (Unintelligible) otherwise, yeah.

Philip Sheppard: It's already highlighted as the distinction in the area of commercial versus non-commercial on page two. You already have that these distinctions should be made on the basis of self declaration, et cetera. So, you've touched on it there.

Jon: Yeah, it's perhaps just to emphasize a bit. It's better but it is (unintelligible). Also I see – I'm very grateful for those of you who have been working on their itemized list of a whole, the distinction between commercial and non-commercial activities should be made.

I think perhaps that the most important thing is that there is a socialist showing that you are able to get to a level beyond or below the distinction between commercial and noncommercial that then you can pick out some more concrete criteria.

And then of course, there may be a discussion or even a struggle over which criteria to put there. But that is secondary to the first one that it is possible to put this criteria there if one would like then that of course opinions are divided on that.

Christopher Gibson: Jon, if we're moving to that list can I make one or two quick comments?

Jon: I don't know Chris (unintelligible).

Christopher Gibson: Yeah, (you know), that's okay this have to be quick.

Jon: Oh okay.

Christopher Gibson: First of all, I think that there's a typo under what is that itemized aid, the very first one. It says the author and then the word for, I think should be changed to or. It's the Author or Sale of Good or Services

Jon: Yes.

Christopher Gibson: And that just a typographical. And secondly, I wanted to state something that, you know, having worked on this, I wanted to make sure at least one vision that I had of how this could work and it sort of builds out of my work in the early days when I was working on the first draft of the UDRP. And we came to work together with the Registrar Group at the very end of that space.

And we realize that the language we use has to be very user-friendly.

And so you could imagine that's something like this list of criteria could be worked on with fresh start examples such that if someone's on the website trying to register and demanding and that person is a natural person, they have this list and it said here are examples.

You can put it language that is relatively – suppose here are example of commercial activity. They could read the list and if we assume that person is a person in good faith, they can try to make a decision based on their future intentions of what do they fit into a commercial versus non-commercial category.

And so, you can see this list could be the basis with some further work on drafting in the future for a more user-friendly list perhaps with examples of things that might be considered commercial activities. I just wanted to give you that background view.

And just one other comment more generally on the paper, some of what you've touched on in your paper is referenced only to the European Data Protection Directive. And I believe to make this a stronger summary it would be helpful perhaps to consider referring also to the non-binding APEC Privacy framework.

And I know that Lynn and I – Lynn was able to find that. And I think she could forward a copy of that in PDF form or perhaps also to you as well because when you think about what percentage of the globe you're talking about, it seems in this international context that only referring to the EU Data Protection Directives sort of bring to the side of (kilter) with other parts of the world where we're supposed to be taking a very international approach.

Jon: Yes, that is - I think formerly that it is a very valid comment. On the other hand, the European Data Protection Directives is the only binding the instrument that for a region. All the others are non-binding and then they are at national long term non-binding. And it is the only one that is enforced for a region.

So the - all the others would be for jurisdictions. But of course the United States is a large jurisdiction. And if it had been a very appropriate against (unintelligible), that would be certainly a candidate to refer to. But I'm at a lost to find what to use under the U.S. jurisdiction as a reference.

Christopher Gibson: Yeah, I understand. Certainly, with all of the legislation's that's happening and draft before the U.S. Congress on various issues of related to the broader privacy issue but...

(Melanie Holloway): That I would say that for North America, the Canadian (PIPIDA), you know, could be at least something from North America and it has a schedule, you know, of can their information principle that, you know, could be useful at least in our thinking.

And I think coming back to the Asia Pact Economic Council Privacy framework, even though it's non-binding, it still has some value and I'm thinking about people in other parts of the world regard policy.

Jon: Yes, it have – as in all season of what systems based it made reference both of the APEC and the old (legal) guidelines which are between national sets of regulations which are widely aversive.

And under – let's see, I am – I was hesitant actually to do – to dive into the data protection thing because I seem to so familiar with that, that I may over emphasize it. But on the request side, certainly we do the APEC and perhaps OECD. And I'll look at the all – there's a Federal Canadian Data Protection on the freedom ware.

Christopher Gibson: So this is Chris. I know you're trying to keep this note short. And, you know, the goal would be to say, you could probably in the way you raise them, mentioned one finding the other one isn't. I mean the broader backup for all of us is we know that there's been a discussion over time that, you know, for example, sometimes that you approach on certain issues such the most – it's a mandatory approach because it's a regulation or directive transposed in the national (unintelligible).

Then what you have is a century – a region of the world that's somehow has a de facto threshold sets a push as pressure on other parts of the world. And that's something I think that we have to be - and we are being sensitive of in this context. But here I think quite appropriately you have to touch on some other sources in an international context here if you're going to get into any of these types of referring to (lost):

Jon: Yeah.

Maria Farrell: It's Maria here, I've got a question. And we have in a long process that we have been dealing with WHOIS have referenced and name checked many, many different national and international legal instruments regarding previously binding and non-binding.

And my question to this group would be what is it specifically about APEC, OECD, et cetera that is relevant to this question that we are trying to address in this paper? And if people want to have references to those instruments in, can they come up with specific insights of those legal instruments give on the issue at hand which is the distinction – the two distinctions that we're disclosing here?

Because it's not going to be terribly useful to just simply name check things. So what we really need to do is pull out of those instruments. What are the insights that are going to help us try and at least elucidate should not resolve these issues.

Jon: I thought that there – what the very response to was to say that's a legal person but not protecting them the majority of data protection instruments. And then a reference not only the European Data Protection Directives, (Arctic 2A), but also APEC and OECD and the Canadian Legislation for exactly that is with detailed reference.

Christopher Gibson: Yeah, this is Chris. I can at least say in having reviewed in a few days ago the APEC that the two points that I found that interesting. Now, they're - the first one what Jon suggested that the distinction between legal and a natural person in APEC is also reflected.

And secondly, there's some language in there that talks about the processing of personal data which is quite similar to the EU Data Protection. And from that language that the EU and the APEC that we're able to for example develop what is itemized as E on our little list there, Information and Relation to the Collection, Storing and Processing of Personal Data.

Maria Farrell: That's very helpful. Well then, could we - I mean, is Glen going to send the APEC guidelines where unto the list. That would be helpful if you - one of you might be able to do that and just to talk on the potential to the relevance of visions in them. And if they're going to be mentioning of the things like (PETETA), et cetera then you'd really need to have those things circulated as well. And again attention has drawn to the relevant section.

Glen de Saint Gery: Yes, you know, I attempted to send the APEC is in it – are there be file and it was too large to work in our email with. Is there another way that I can distribute it?

Maria Farrell: Yeah, if you could circulate the URL with the PDF could be fine.

Glen de Saint Gery: I'm done. You know, I actually didn't have that from a URL.

Jon: Okay, I mean what alternative there, would simply be extracting from it the one of them clues because I mean what we're looking at here is where the linkage between us saying legal persons for disclosure, natural person retain disclosure and the link is natural person have protection on the source of laws.

Glen de Saint Gery: Yeah, I think that's help full for (unintelligible), for example, in the scope which is Part 2 under commentary that one of the percent is that says this, "The framework is intended to apply to information about natural living persons common legal person." I mean, it's that kind of statement that is quite helpful and seen how they approach this from a big picture.

Jon: Yeah, (unintelligible). Yeah. Actually what – I think this is what you know we're starting is different setting a person from (unintelligible) because that is such a large word but at least from that legal as much as I'm aware of. And I've done a bit of comparative record on the exactly this basic concept. So I think I can say that to some - at least go down superficial launch to that both national legislation on...

Man: Mm-hm.

Jon: ...exactly.

(Rapsay): Just to jump in this is (Rapsay), I joined about ten minutes ago everyone, good morning.

Woman: Hello.

Jon: So I'm working the references to which you are indicating. I think I have them available so that that could be too difficult. And what the – it will be most as I said – see it on a substantial amendment but just both bring up so it is not so European who sent it.

And I do appreciate the comments about the intention that occasionally is to perceive to be (unintelligible) European property (unintelligible) to some other divert.

Don't you think if that could sum up all discussion option two, if anything else you'd like to add to what is discuss under option two. Then I understand that the (Cynthia) agree that there should be a challenge process if you look at the declaration in bad fate part.

Sorry, I think to me that becomes as a consequence particularly of a person of self declaration.

Philip Sheppard: Yeah, but we haven't said discuss a bit we have left that as a presumption, so we haven't discuss the whole each of them made the procedures decided toward the consequence or it's going to be bad fate.

Jon: Mm-hm.

Christopher Gibson: This is Chris, I'm just wondering whether we call it bad fate or I mean, I see a label there and you know, or whether we just if there's another one neutral way I know bad fate draws on language that's use in other context that irrelevant to domain name.

So, let me give you an example, someone registers as a natural person involved in non-commercial activity and they simply tick a box to indicate at the time they register that's their intention. And then, you know, three or four years later they're using their website in a very commercial way not in a one of these closed cases that we've discuss in our call.

You know, though I would suggest that, you know, it maybe - if the type of system that I believe is been envisage by Philip and others is that an after the fact sort of self pleasing mechanism. There maybe a third party out there in the world who would want to challenge that to a light weight procedure.

You know, then it's a matter of they need to, you know, they may want to challenge that this shouldn't be properly classified as that type of a

registration. So I would say that, you know, that, you know, you can just call it challenge procedure for certain - I don't know, but I just see that as one small distinction that might be worth it.

And then secondly, the question on – in general in this document is whether you would want any proposed small changes to language throughout...

Jon: (Unintelligible) display I'm very aware that I'm writing a language that (unintelligible) mannerism. But the average is very grateful for editorial amendment in (unintelligible) language and I'll be to take that be - I think that as rate of value that. So I hope - I know though the quality of my English, I'm afraid.

Philip Sheppard: To just came back the question of...

Maria Farrell: Bad fate.

Philip Sheppard: ...bad fate and the challenge mechanism. I mean to some extent there is already an existing mechanism isn't there, which is the accuracy policy which is in place and they remind that you get from your registrar to confirm that WHOIS data was accurate.

So that - to some extent that you get and that's every year. So that to some extent litigates the change of use thing that Chris was thinking at. I think I mean, in part – in terms of language - I mean, practice is also declaration in fast pace stroke of mission where it is basically a mistake in good fate throughout of them. And then the intense for bad fate but that's just a detail on the mechanism is going to be identical.

Christopher Gibson: I think you're right to be expensive becomes a piece of data that is collected at the time of registration. It becomes part of the data that is supposed to be submitted accurately.

Philip Sheppard: Yeah.

Jon: Indeed.

Maria Farrell: Jon it's Maria I'm just – sorry, coming back to page 1 on this document, the first sentence of distinction which is - sorry, second sentence of the section which is called commercial are non-commercial activities, it says there is an consensus to the extents that it would be appropriate to have such a distinction.

And I am not sure there is a consensus in this group - groups that it would be because I think and correct me if I'm wrong, Avri Doria did not agree that we should be making this talk of distinction.

Jon: No, sorry, that good for all you do is to point out because that is exactly is that these people have ways of seeing this. And I thought perhaps it was just an agreement that it can make – they made operational the commercial – the distinction of the both...

Christopher Gibson: Okay.

Jon: ...with the valuable.

Christopher Gibson: Yeah, actually I certainly don't agree with that.

Jon: You don't agree with that.

Christopher Gibson: Not with the distinction. I think the analysis is sound, so I'm sorry.

Jon: Okay.

Christopher Gibson: ...but with the – I don't think it's a worthwhile distinction to be making.

Jon: Mm-hm. Yup, so...

Philip Sheppard: I see. Well, maybe Maria in terms of language that we should be using this - I can't remember the exact word on that, it was support agreement of minority report or something this that this three categories of wording that we're going to be using for gauging level of support later. Maybe this is useful – that the language to clarify on what uses the consensus word.

Maria Farrell: Sure, I'll do that.

Jon: Yeah, thank you, Maria, I consulted you about that.

Philip Sheppard: Right, thank you for bringing that up. I had thought myself to being (unintelligible) because I was aware the fact that I had received some feedbacks that I haven't confirm.

Jon: All right, is there anything else you'd like to make, if not, I suggest that this – on this basis here they prepared the finals. Also this poor little paper or paper if it is one step ahead then next level up (unintelligible) become the options.

And the – take action on the basis of the options as they hope for they clarify for them. Why I do not propose this call next week.

Christopher Gibson: So you think it would be - this is Chris. Do you think it would be useful then to if to have one more call to set an opportunity to comment on the next draft? I know it's for some of us early in the morning but I just find that it's a lot more - sometimes the call is a lot quicker than, you know, having, you know, the various emails that, you know, relentless way come in on anything that is posted.

Jon: Yeah. I know that's odd. I won't be available on the next level in the state at this time.

Philip Sheppard: Okay. But I mean, Jon it may be (unintelligible). I mean, essentially we're not changing the content of the report, we might just be suggesting the old editorial clarification or intent or whatever are the (forth) back could be probably done happily by email.

And again I just remind everybody that the limit to the subgroups is merely to discuss and then list options is not required to make valid judgment about this option that comes in next page.

Jon: Indeed yes. And I certainly is hoping for - to just confuse, you may have – will have and I try to take (unintelligible) for the next draft. I thought we can traveling - I will be traveling for one month in various places that are is struggling along my portable so I probably will on it...

Philip Sheppard: Mm-hm.

Jon: ...available of most of the time though.

Philip Sheppard: But again, I mean, Jon if you wanted to do that then I'm sure Maria can...

Jon: Well, indeed yes.

Philip Sheppard: ...get to the final touches just in terms of, you know, clarifying words to the fault language of the main group perhaps.

Jon: Yeah, I rely on her to do and also to have a look at the language.

Maria Farrell: (Unintelligible), sure.

Christopher Gibson: This is Chris, I wanted to ask sort of one other questions and I know that - I believe Bertrand has been on this call before and also in some of the other subgroup. And he had a general sort of a day and maybe misstating his position but I think he sort of have a lack of understanding of what was the intended consequence of this distinction and what was the scope of application of the OPAC.

And, you know, as I see it in the basis upon which I put it in a proposal last week. And the way I read this document now particularly page 2 with the four boxes. The idea would do that perhaps based on some of the distinction this group has discussed. There'll be a fair disclosure of WHOIS data and link to that.

Then the idea would that perhaps an OPAC approach at some type of approach is implemented would only be retain for one of the boxes of non-commercial activities by natural person.

For example, as an alternative, I just wondered if the, you know, if that was a I saw for example, Maria headed definition of open versus close in one of the earlier draft and that's the basis upon which I've understand stood the discussion in this group.

Jon: I think I - that's correct for the calls we're any looking at distinction that can be made and therefore implications for the data that is displayed. The other side of the coin in terms of OPAC is also do the responsibilities of the...

Christopher Gibson: Yes, yes.

Jon: ...with the contractor.

Christopher Gibson: Yeah.

Jon: So I think that's as long as we're aware or just that one slice of the thing that we're looking at to making...

Christopher Gibson: Yeah.

Jon: ...to distinct options about.

Philip Sheppard: I think that's to care - I took into consideration yours and Bertrand's remarks and trying to make it out this a bit more clear what the consequences of the distinction would be.

Jon: Right. Anymore comments on that? It is a very bright and sunny days and not also. And I look forward to going out at this and start again.

Thank you all for coming in. And I'm looking forward to your contributions and you'll be prepared a final word from it (unintelligible).

Christopher Gibson: Yeah, one last thing. I think I'm coming out of sort of to-do item on this list I think perhaps Lynn and I can try to send in some information or some quotes from the APEC Privacy framework.

Jon: Yeah please. This is the wide...

Christopher Gibson: Yeah.

Jon: ...I did also without your prompt, look at the APEC the fact I'd be grateful for it – for any references or yeah, citations, yes.

Maria Farrell: Yes, I'd be happy to work with you Chris on that.

Jon: It was very helpful the work has been inspired if you got some - I hope you see that effect on the (unintelligible).

Christopher Gibson: Thank you.

Philip Sheppard: All right, well, thank you very much.

Maria Farrell: Thank you.

Christopher Gibson: Thank you.

Jon: Thank you.

Maria Farrell: Thank you.

Jon: Bye.

 And then I'm alone.

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