

**WHOIS Study Group
Teleconference
TRANSCRIPTION
Tuesday 13 May 2008 15:00 UTC**

Note: The following is the output of transcribing from an audio recording of the WHOIS Study Group teleconference on 13 May, at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-whois-study-group-20080513.mp3>

on page:

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

Present:

David Maher, Jordi Iparraguirre (RyC) Eric Brunner-Williams, Stéphane van Gelder - (Registrars) Steve Metalitz, Lee Eulgen - (IPC), Norbert Klein - NCUC, Steve DelBianco - CBUC, Tony Harris - ISP,

Absent excused:

Beau Brendler, Ken Stubbs, Wendy Seltzer
Tim Ruiz who could not connect to the call

Staff

Liz Gasster, Patrick Jones, Glen de Saint Géry - GNSO Secretariat,

(Liz): Give it another minute and then get started.

Man: Okay.

Man: I just saw an e-mail from (Tim) that he will be joining late today.

(Liz): Okay good. Well why don't we go ahead and get started and he'll join when he joins.

First of all I did send out three updated documents last night and the one I think already needs to be updated again. But just to draw your attention to what they are.

The first is an updated tally sheet, but since then we've gotten, two things I was adding a submission from (Tony Harris) on suggested studies, the priority listing from the ISPs who are recommending that certain studies be done. And we should be seeing his submission shortly. It may be in your e-mail, but just not in mine yet this morning.

Secondly, we have a clarification from Norbert and the NCUC that understanding that the way we've approached this in this group is to ask a question about weather studies should be done, not assuming that the council will conclude that some studies will be done.

They've changed or modified their submission to say that in their view no further studies should be done.

So I need to do another update of this tally that reflects the ISP's submission and that also corrects and update the NCUC submissions.

Are there any other changes to the—and what I may do, although we need to have some discussion about this is—let me continue on with the documents first and we'll come back to that.

In the second document what I did was update the summary that previously had been done by Lori and I to and then subsequently updated to add, sort of the rational for the study submissions that has been provided from the public. I also took a shot at including each of the GAC recommendation in that, and looking at that as kind of a master spreadsheet at this point of the recommendations that are on the table.

So I created a new Category 8 that is other GAC Recommendations. And the first three items are actually somewhat related because they all involve data gathering and then the fourth is GAC Recommendation, three about technical measures.

So we actually could, and I'll throw this out for discussion, I know it's more relevant to those who think further studies should be done than to those who don't. But we could update tally to reflect your vote on the GAC recommendations that are not otherwise covered in other categories.

If you think there are recommendations, that any of these four recommendations, you know warrant inclusion, then we probably want to ask you all to re-do your tallies to include this Section 8 as well. So we need to have some discussion on that.

And then the other document that I sent out, the report, so we do need to produce a report to the council and we talked on the last call about the idea that the report is going to reflect these divergent views and that we would, the recommendation of the group, was to probably do one report which makes sense to me. So I took a stab at what the overview and background section would be, and totally appreciate anybody's input about it's attempting to be just a factual representation of what's transpired and so all suggestions are appreciated.

With a document like this we always wonder how much background to provide. You know you could write a book on background on Whols, so if there's any historical, really significant things that have transpired that I have omitted, that would be something we should pay close

attention to. To try to identify so that we make sure the report is inclusive.

And then I'll be adding information in the annexes that will simply be the resolutions that the council has considered related to studies of Whols, because there's been actually a couple of them.

In October, we have one postponing the date, some things like that and then also the GAC recommendation documents and some of our backup documentation will be included in that annex and that annex will have the tallies in it.

But what's also important for us to talk about today is how Sections 2 and 3 are going to be completed in just the time that we have remaining.

So hopefully you also saw Wendy Seltzer's couple of paragraphs which would go in Section 2 or you know some edited version would go into Section 2. And again I'm looking for volunteers to add or augment Wendy's statement which I can insert in Section 2 so there's a complete description of that viewpoint.

And then I'm looking from a submission from those who think that further studies should be done. But hopefully, ideally also (unintelligible) around specific studies in a priority that can be broadly supported by those that think studies should be done.

So that's a summary of the three documents that I sent around and also I think I hit the highlights of what we need to discuss today.

And why don't I pause there for general comments and we can get into a little more detail.

Man: Can I get into this, Tony Harris.

Woman: Anybody else before

Man: Steve Metalitz

Woman: Others

Man: Eric Brunner Williams

Woman: Okay. Tony.

Tony: I've got a problem, I'm sure it's my fault in my e-mail server or whatever. But I can't seem to pull up Wendy Seltzer's comments. I don't see an e-mail from her. Is it a very very long, could you read it out or is it sort of...

Woman: I'll read it and then Glen can make sure that you have it as well. It was sent yesterday evening in my time. And she's just noting her apology that she can't make the call and then she wrote a re-cap of some of what she said on the call opposing any further studies. So I'll just read it quickly and Glen if I could ask you to forward it to Tony to be sure he got it that'd be great.

And my thought would be that, for those who support this viewpoint, she's writing it in the I, it's her view, but it would get re-written as the collective view of that percentage of people that feel that way. Which I

could do the editing but I want to make sure it's what you all want to say. So this is what she say so far.

I object to spending any of my Icann's (unintelligible) funds on further studies of Whols. The primary barrier to resolving Whols/Privacy Issues is not lack of data but lack of political will.

So long as those who are happy with the status quo with full published access to registrant identifying information can maintain that status quo by blocking consensus around any changes, they will do so.

Requesting further studies, in quotes, is a way of maintaining status quo, volunteering to move forward. Until we can resolve a way around that blockage, further studies will not advance the policy making process, they will simply be subjected to the same spin: accepted by those whose agendas they further, criticized by those on the other side. Even well engineered studies with strong conclusions have no compelling force against the interest group politics that has been going on for more than 7 years so far.

Thus, without concrete commitment from constituencies to modify their policy agendas in response to studies, the council should reject any further digression.

This is consistent with what Wendy has said in the past on the topic and this is what she's putting forward as text that could go in that Section 2.

There are a number of participates on the call who have articulated a consistent view to that and so it's very important to me that they look at

this language carefully and add or edit, in any way to make this argument to say whatever you want to say about this point of view.

Tony Harris: Does this mean that some constituencies support this viewpoint?

Woman: That's right, so Tony I know you've missed a lot of the discussion to date and, you know, without getting statistics, roughly half of the people who are participating in this working group or graphing group do not think that further studies are useful.

Tony Harris: This would be the no's on your tally sheet.

Woman: The no's on the tally sheet right.

((Crosstalk))

Woman: Excuse me Metalitz you're next.

Steve Metalitz: I was going to say, I'd be glad to volunteer to put together a, what I think you have as Part 3 of the report.

I'm a bit non-plus though because we're seen as such a moving target as far as this tally sheet. And I guess I just want to understand the few changes that you talked about right at the beginning. One was Tony Harris' new list; I have a question for Tony about that. And the other was Norbert Klein's e-mail to you, which I went back and looked, and is your understand—what are you planning to do in response to Norbert's e-mail? Are you planning to just list no all the way across...

Woman: Well, I'll let Norbert speak to what he wants, but that was my understanding of what he wants.

Norbert Klein: Yes, that is my understanding and because that paper from Wendy's note is not received, the (unintelligible)

Steve Metalitz: So it would be no all the way across for Robert and Norbert?

Woman: Right, so that's the NCUC. The NCUC has a...

Steve Metalitz: And then my question to Tony is, just got here new votes about 15 minutes ago.

Can you explain why your constituency thinks that the Who Is accuracy work is not duplicative of what is already going on in the compliance audits. Because that was the issue we discussed extensively on the last call, or mentioned on the last call and it was earlier that no one's opposed to studying Whols accuracy, those of us who ranked it low thought it was already being covered by the audit and therefore this would be duplicative

So what is your constituency's view on that ? Because I see you ranked it first.

Tony Harris: Well this was done in consultation with the constituency and some people, specifically lawyers in the group considered it to be a good subject to pursue. But I can go back to them on that if you want, because you may have a good point there.

Steve Metalitz: I was just raising the questions because...

Tony Harris: Actually, basically our opposition was, we've always been consistent in pointing out that accuracy is a major concern and we, the constituency wanted to keep the same line of support and that's the reason it was ranked first. But you have a good point there and I can probably push back on that. It's no problem.

Steve Metalitz: Assuming, now that I know what the chart will look like, I could certainly put together a few sentences, or a paragraph or two, which I think we're talking about something very brief here, to be in Section 3 of your report.

Woman: And Steve I want to make sure, can you also then, has there been any effort among those who do think studies should be done to, you know, to get to a consensus about which studies, is that achievable?

Steve Metalitz: Where I think things stand is, and this is prior to these last two changes, so I don't know if that makes any difference, 2 and 7 were dropped off and that the others, I think you can just kind of look at where the general rankings are, 3, 4 and 6 said support and some aspects of 1 and 5 had support so that would kind of be the thrust of what I would say.

But I'm not necessarily setting priorities. I'm not listing those in an order necessarily, but just to say these are the areas that we think you should go at.

Man: There's a limit to how much effort to put into this when we have a situation that constituencies that voted to have further studies and to

have this process initiated to look at what further studies are now saying, no further studies should be held.

And that's the reality so let's, why don't we report back, report what those who are following what the council asked us to do, what we think and then let the council make the decision on the next step.

((Crosstalk))

(Stephen Van Gelder): Can I get in there.

Woman: I want to get to Eric, but yes definitely.

(Stephen VanGelder): Sorry I didn't realize.

Woman: Does anyone else want to be in the que?

Tony Harris: Yeah, Tony Harris, put me in also.

Woman: Anyone else?

Okay Eric.

Eric Williams: Well lets just take things in reverse order, Steve said that everyone supports accuracy. I can't think of a registrar who does with a possible exception of the representative of Iron Mountain, and I really don't know if you're speaking as a registrar or as and escrow for light of...

Woman: Let me just make one comment about Iron Mountain, (Krista) has dropped off the group and her vote, her recommended tally has also dropped off at her request.

Eric Williams: Thank you. So to respond to Steve's all, well it's not all with out any registrars, I won't speak for the registrees, the tabular summation, the first item of your mail, I'd appreciate it if it was aggregated by constituencies so that we can actually see the interest group politics more clearly then presently.

The registries are shown at the top but the registrars and the IPC and the other participants are not shown with their, sort of their, their constituency affiliation shown.

And then finally looking for a drafter of Section 2, Wendy's done a reasonably good job. There are things I'd add but I'm sure there are things everyone would add.

Woman: Okay. I'd like to make to make a couple quick comments and then we'll go to (Stephen).

Just one thing on the tally and the grouping tallies by constituency. I think we haven't done that in part because not, even within the constituencies, there hasn't necessarily been exact consensus. And because we didn't build the working group, this working group, this study group, with an effort to assign people in that way.

It's come one, come all, everybody get a chance to weigh in with their ideas, so that would be a change in the way in which we approach the tally and it might require individual constituencies to get together and

try to represent the constituency's viewpoint who haven't been doing that in the past.

So what I need to know is weather or not that's an important enough step to go back and ask people to do that Eric?

Weather you could discern enough from—what I could do more easily perhaps, is identify what each person's affiliation is, if they agree to have one, on the left hand side after their name.

Eric Williams: That would be good.

Woman: And maybe that would be an easier way. Everybody okay with the affiliation being added.

(Stephen): Yes thanks, just a couple of general points, going back to some of the things we said last week and some of the things I said last week and really moving on from what one of the previous speakers, I forget who it was, apologies for that, said, I'm getting slightly worried that we're moving back and forth but not really moving forward with this now.

And I'd really like to push for us to close this process and as someone suggested, just let the board take it up from here.

And with regards to the draft document that you circulated and the reports to the council, thanks for doing that, I think it's a very good way, a very good document because it's concise. And if we could jus include in there, and you've put that in Annex 1, I believe, the list of the votes or the recommendations or what ever you want to call them that each member took with the affiliations which you just discussed.

We've go really the two viewpoints already, partly through Wendy's work and partly through the other suggestions, I don't know what we're planning from here on, but I would certainly recommend we start to wrap-up and just send that to the council.

It's obvious that we're not going to reach consensus on—I mean some of the arguments that we're hearing are very strong arguments. Wendy's arguments for example, are very convincing in the fact that this has been going on for a long time and it does seem like some people are using this kind of process to stall.

It does seem that other people are genuinely interested in new information that could come out of new studies, and I'm one of them. But at one point you have to decide to do something and I think if it can help to move the whole Whols issue forward then we would have done our job.

Woman: Okay thank you. Tony.

Tony Harris: Just getting to these paragraphs by Wendy. I can see her point of view and those who support her of course.

I do think that it can be, the argument can be turned around and put in the other direction. Because there were very convincing studies during the previous years of argument which really showed, to have access to this information was vital for a lot of people who actually have the difficult job of protecting those same individuals who are supposedly being victimized by having their data exposed.

So I think that it really is a questionable argument in it's substance. None the less, I do think that the fact that Wendy's comments appear to be supported by the two incumbent constituencies, the R&R's the Registrees and Registrars and the NCUC, brings us to the same historical situation that we've had in the council since WhoIs has been debated which started back in 2001.

So if it goes to any type of vote as to weather we should do studies or not, the vote will obviously favor the position of no.

So my question is, is there any point in continuing this discussion on possible studies until we get that cleared up by the council? Will there be support for studies or not, I think is the question right now.

Woman: Right, thanks Tony. I want to make just a quick comment and then we'll go to Steve and anybody else. I think we are trying to wrap this up and I think this conversation and if we have another call on the 20th, this report is due on the 22nd, it's to finalize the report, finalize the language. Make sure everybody's comfortable with the way things are articulated and move this to the council as an accurate reflection of what transpired here and everyone's viewpoint.

So to those who are concerned that we are taking a step backward, you know, I don't really see it that way. I do see, as always we have Tony's constituency's viewpoint now and we want to add it.

We have a change from Norbert and (Robin) and we want to reflect it, so that's not really taking a step backwards, you know making sure that we give them this input that we reflect it in the documents, which I think is fine. And that we are all working at this point to get the

document right and to make the points that we want to make so the council has something to work with.

Man: Miss I wasn't suggesting that we were taking a step backwards, rather sideways.

Woman: Yes, well there is always a worry about that with Who Is, there's a lot of sensitivity, so we're trying hard to avoid that.

Steve DelBianca

Steve DelBianca: Thank Liz. The first is that on last weeks call I was the one who volunteered to help write Section 3, that's viewpoint number 2, explaining the rationale for why certain studies of Who Is would be valuable and should be done. And while I did not get it done for this week, I've begun some of the drafting, (Steve McCalaster) and I discussed it and we will have it done before the next call. So sorry about that.

So with respect to viewpoint Number 1, the one that Wendy began to articulate and that so many others on the call seem to agree with.

I would suggest to you that, somehow avoid, not avoid two important changes that have occurred that will increase the likelihood that we may have to have yet another working group on Whols. The first of those changes is the fact that the GAC so strongly asked Ican's board for a series of studies on Whols.

And the second is the fact that the market moved a lot faster than Ican did. The market evolved. Privacy protection service like Proxy,

over the last couple of years, it has taken off to the extent where people can shield their identity in Who Is by using those services.

In fact the GAC recommendations for further studies, they list 11 of them. Six of the 11 GAC studies are about proxy and privacy protection services.

In the list that you have in front of you, three of the categories, and they contain the studies that I had suggested as categories 3, 4 and 6, are about proxy registration services.

Because it really isn't, as Lenny described, some sort of preservation of status quo, because the status quo of Icann policy does not mean the status quo of what the world is doing.

The market has moved and the proxy registration services enable people to shield their identity in ways that may be good for some people, but also frustrating by both law enforcement and intellectual property parties who want to get at that data and try to do so by showing evidence of actionable cause.

So categories 3, 4 and 6, we will argue, reflect the fact that the world has changed a lot faster than Icann policy.

There's no attempt here to block anything, there's an attempt here to actually explore, weather the market has moved in a way this is constructive or a way that inhibits the ability to protect consumers by being able to get at the data who owns the domain, where illegal activity is occurring.

Thank you.

Woman: Steve I think it's very helpful for you to describe a little bit, both views, about what your going to say in your sections, because I think it would be useful for those who share Wendy's view to take that into consideration and to consider adding text that would respond to those points.

But I think that at least it gives you the chance to consider, because I think that particularly with regard to this long list from the GAC. There's definitely going to be further discussion at the board level. You know, that's just my own opinion, but given the fact that it is an extensive advisory from the GAC, to have, speaking to that specifically in your statement.

So I do want to make sure that we take the next week, or I would encourage both perspectives of those viewpoints to consider taking the next week to think about if there's more that you want to say overall supporting your perspective and to convey to the council what you think the next steps should be as a result.

Man: Steve I'll just finish up then on that point. I just went into an explanation of why both Steve and I will argue that Categories 3, 4, and 6 are studies that should be done because they enable us to assess the extent, scope and upside/downside of increased proxy registration for privacy protection services.

In other words, are marketplace and trends to trump all policy and to understand weather it really is consistent with the policy we have in the RAA.

In addition, I believe Steve and I will also suggest that category Number 1 on misuse should be done at the level set, particularly in light of the priority that the GAC gave us.

And finally we would also take a look at Category 5, which is the impact of Whols on crime and abuse. I'm not a particular fan of the way (Milton Muller) sort of constructed that study. But that category contains some good inquiries into the crime and abuses that occur in fishing.

So just to summarize, we'd probably suggest that the misuse category, category one be done as a level set, three, four and six be done because of the proxy evolution and finally number five, a part of number five anyway is check on the impact of who is stopping crime and abuse.

Woman: Others for discussion?

(Lee Elgin): This is (Lee Elgin), I have, I'd like to be in the queue I have one comment.

Woman: Anyone else before I turn to (Lee)? Okay (Lee)?

(Lee Elgin): Just a question for the NCUC representatives, I mean I note that originally they had prioritized studies, so when it comes to drafting viewpoint number two in the report to go to the GNSO does the NCUC or (Robin) and (Norbert) do you want your initial prioritization reflected in what's put together, I mean I see to some extent your priorities are, at least in some cases aligned with the priorities expressed by (Steve

Matelosant) and me and (Steve Delbianco) for instance you had prioritized category one very high and likewise had prioritized category number six in compliance with law enforcement and dispute resolution.

(Norbert): Okay, may I respond (Norbert)?

Woman: Yes please.

(Norbert): Yea, I'm really sorry that as I wrote last time our position to give categories was only the misunderstanding that (unintelligible) didn't make, so with this assumption (unintelligible) will be made the category (unintelligible) and but when it is the question that (unintelligible) study is very clear we kept the position that we should not have (unintelligible) now basically in the line as (unintelligible).

(Lee Elgin): So, just so I understand, you don't want your prioritization of studies reflected in the report?

(Norbert): Yes, that is the case. And I'm really sorry that I created this (unintelligible).

Woman: You know in part I don't think it's (unintelligible), the misunderstanding there I think is an evolution of, sorry I won't interrupt, (Norbert) you go ahead please?

(Norbert): No I just want to say if the question is new studies then it is definitely a no, but I mean it's a complex procedure we are facing now (unintelligible) studies after a decision has been made there would be studies then only I think the question comes up how to source the priorities and only at that point our opinion might be interesting again,

but when it is a question studies or no studies it is really along the lines of what (unintelligible) for the present time.

(Lee Elgin): Right. This is (Lee), if I can just respond and this isn't, this isn't directed at you (Norbert) or (Robin) or the NCUC but kind of dovetailing with what (Steve Delbianco) said, I mean you know, I'm a bit of a newcomer to this group and I don't intend to you know, put forth comments that are particularly divisive.

But the problem I have with the position that no further studies are warranted and in particular with (Wendy's) rationale for it is that you know, (Wendy's) stated rationale is that, in my view a cynical one that you know, that because of the apparent you know, intractable position of the respective constituencies, you know, no matter what data we come up with you know, those positions aren't going to change.

In my opinion you know, and you know I think I really believe that that is a vote for the status quo because without further data, without further objectivity brought into this debate I don't see how the parties views are going to change nor do I see how there's any possibility of consensus policy, so I just do not follow the logic of (Wendy) and those who support the view that no further studies are necessary or warranted because inherently I believe that you know, nothing is going to change as a result.

(David Maher): This is (David Maher) (unintelligible) in the queue.

Woman: Sure, are others in the queue?

(Steve Delbianco): (Steve Delbianco).

Woman: Others? Okay (David)?

(David Maher): Well I guess I'm also guilty of the cynicism because the registry constituency supports (Wendy's) statement and you, I think earlier you asked for volunteer to put that statement in the final report, which I would be happy to do because it does reflect the registry view and the reason for the view is the intractable position of the business intellectual (unintelligible) constituencies over the years have refused completely to recognize any interest in a right to privacy for personal data.

And with that intractable position it doesn't seem to me that a study of anything with ICANN's money is going to help change the ultimate outcome if and when the business intellectual property and any other, any other constituencies that believes that something should be done about who is, if and when they support a fundamental right to protection of personal privacy then we can move forward, then we can compromise on issues of giving more enforcement access to the data, trademark interests getting access to the data and so on. But until that happens more studies about any of the subjects really aren't getting us anywhere and if that's cynicism so be it.

Woman: For (Dave) just one clarifying question, when you said you volunteered to write that section (two) you have (Wendy's) as a foundation you would expand on that or just want to clarify how you would proceed?

(David Maher): Well I think it's a beautiful articulated statement and as far as I'm concerned I would just you know, grammatical or anything like that I'd correct that but...

Woman: Right. Okay.

(David Maher): I would express it as the position of the registries constituent.

Woman: Thank you. (Steve)?

(Steve Delbianco): (Wendy's) statement has the beauty of simplicity and we've all heard it before, this notion that the one party wants to preserve the status quo it can block the achievement of consensus. So that could be true of all working groups so we're going to have to figure a way to get past issues like that if we want the working group models of the (unintelligible) under GNSO.

Man: That's right.

(Steve Delbianco): I would say that if you look at the consumer protection and intellectual property interests among which I include myself, you could suggest that we have some intractable position that privacy was not as important as consumer protection or brand protection, but it's sort of irrelevant whether we were intractable or not since the market has moved on, consumers today do exercise their right to privacy as (David) talked about, whether I acknowledge it or not is not important, they do exercise their right to privacy by shielding their registrant data through the use of proxy registration services.

It already happens and to pretend that it didn't happen and that this is some fight over an old policy position is really begging the question because what I fear more than anything else is having to do this again because the (gap) request to ICANN's board for a series of studies,

and as I indicated earlier, six of their eleven studies have to do with proxies. So if ICANN's board turns to GNSO council and says here, what do you guys say on council about these further studies of (unintelligible) been requested by the (gap).

I can just hear it now, our GNSO resolution calling for yet another study group and another working group to take a look at the (gap's) recommendations. We're going to be right back here having this conversation and it really won't be a conversation about somebody dragging their feet to guard policy, it'll be a conversation of how the world has changed and whether that change properly respects privacy, you know, what regard does it allow bad actors to actually shield themselves from appropriate consumer protection and brand protection. Thank you.

Woman: Other comments (unintelligible).

(Norbert): (Unintelligible). Yes. I mean it is always difficult to just to come back with old stories and we have (unintelligible) I mean part of the situation we are facing is that this is dragging on for so many years we thought once we have a (unintelligible) and a (unintelligible) is decided and I think this was the only place in my memory when in ICANN context that after a vote it was said now we have to start it again. So this is part of the emotional side of this and (unintelligible) to have not gone through this for years I understand that they may be they not see so much.

And the second question whether the market and the situation has changed, I think yes there are certain changes but privacy protection is offered by some situations as an exception or as something which you

have to ask for while other people and some legislations with some countries says you only get privacy protection if the default only it's the other way around that the privacy protection is opened up can be made on special request. I mean this is I think very fundamental difference and I don't see that the market or the world has very much changed in this respect with the privacy in a default or whether it is in a special grant by ICANN or by (unintelligible).

Man: Gosh, it sounds like you're arguing for category three and four to assess the availability and the demands and motivations for a proxy service.

Man: Agree.

(Norbert): We had this before we voted a couple years ago.

Man: (Unintelligible).

Man: (David).

Woman: (David)?

(David): I think (Norbert's) absolutely right. The fact of proxy registration simply supports the public demand for protection of privacy but the real problem is that this has been an issue now for at least I think 12 years that I'm aware of and there is still the fundamental issue which I don't think the previous speakers have addressed and that is is there any value to personal privacy, once that is acknowledged then we can move forward, but arguing about the way people want to protect their privacy at this point is not an issue that needs more study.

Woman: Other comments today?

(Lee Elgin): This is (Lee Elgin) may I get back in the queue?

(Steve Metallica): And (Steve Metallica).

Woman: (Lee) and who else?

(Steve Metallica): (Steve Metallica).

Woman: Okay, anyone else? Okay (Lee)?

(Lee Elgin): Just one quick comment regarding what (David) and (Norbert) have said, I mean I actually think and that maybe (Steve Delbianco) you already mentioned this but I actually think that precisely the point that you two are arguing for suggests that as (Steve) said that categories, you know, categories three and four of potential study have merit.

I mean it seemed to me (David), that exactly what you were just saying suggested that the demand and motivation for privacy services should be explored. But really the reason I wanted to get in the queue was not to make that point, it was just to ask those who are not in favor of further study, in other words trying to understand what's going to be in viewpoint one of the report, is there going to be any basis articulated for no further study other than what (Wendy) has expressed?

(Norbert): This is (Norbert). May I speak?

Woman: Yes (Norbert).

(Norbert): Well what I tried to express by the propositions whether privacy protection is a default or an exception, I think this is fundamental and we have arguably a long time ago, and have (voted) on it and I don't see that there is anything new in the present discussion in spite of (unintelligible).

(David): This is (David) I agree with that and in response to the question it's possible that there are, I go off the top of my head I'd say it's a waste of money among other things to do further studies but I'm not limiting the arguments that might be made against further studies from other people.

(Lee Elgin): I guess my, this is (Lee) again, I just so my thought was it seemed that you know, those in favor of viewpoint one that's to be expressed in the report have sort of rallied around (Wendy's) stated rationale one basis of which is that it's a purported waste of money. I just feel that if there are other bases that are going to be included in viewpoint one that those should at least be aired.

I think (Liz) you were, that was the reason that you were asking, you know, those who are going to be the primary drafters to kind of express, you know, that you felt it was important for those who are going to be their primary drafters to express, you know, what was contemplated to go into the, each viewpoint.

And I just felt like if there were going to be you know, positions taken in addition to what (Wendy) said, you know, those should at least be aired but, you know, it seemed to me that, that really (Wendy's)

synopsis seemed to be the far and away the, you know, the sort of the crux of the position taken by those in support of viewpoint one.

(Liz): Yeah, I don't think we have everyone on the call today who's associating themselves with viewpoint one but that's my impression so far is that we're not going to get edits, further edits to viewpoint one, but if people have edits it's very important to bring them forward quickly so that everyone has a chance to respond and you know, I can send an updated draft, I'll send one after this call with a slightly edited version of (Wendy's) statements in it and then once (Steve) and (Steve) have provided the alternatives for section three I'll insert that. We'll keep circulating it but please if you have any additional edits, particular arguments, contribute those as soon as possible. I still have (Steve Metallica) in the queue, is there anybody else?

(Steve Delbianco): (Steve Delbianco).

(Liz): Okay others? Okay (Steve M.)?

(Steve Metallica): Yeah, just three quick points. First – you may not have received them yet but I think (Tim Ruiz) had some edits to (Wendy's) text so you'll, presumably those will arrive (unintelligible).

Woman: I still don't have (Tony's) vote yet, I don't know what's going on with (unintelligible).

(Steve Metallica): Second – I think the one thing that the group writing the other part of this from you updated tally sheet because I don't, we don't want to just state what...

Woman: Okay, I'll send that out today too.

(Steve Metallica): Also (unintelligible). So third I would just, don't want the record fail to reflect that I disagree with what (David Maher) says about the members of my constituency and others not acknowledging a right to personal privacy, I think that is not only untrue but also not constructive this process. (David's) viewpoint is that before we can say anything about studies we have to pass a litmus test of being appropriately dedicated to personal privacy, I think that's out of place and I also think there is no basis for saying that our constituency does not recognize the importance of personal privacy. Thank you.

(David Maher): This is (David), I'd like to get in the queue.

Woman: Okay I've got (Steve) next and then (David), others? Okay (Steve Delbianco).

(Steve Delbianco): I'll defer if (David) wants to (unintelligible).

Woman: (David), sure.

(David Maher): Well I think the record speaks for itself, the documents that have been filed and the (unintelligible) proceedings over the years have not acknowledged a right to personal privacy, I regular in particular the one that was done regarding the European Union had a directives and the conclusion was that the European Union required publication of personal data without any protection of personal privacy.

But that's neither here nor there, I'm sorry you feel that this is not constructive but I think there is a matter of principle and that if in fact

the intellectual property constituency now acknowledges the value of personal privacy subject to whatever limitations you want to put (unintelligible) I would say so. There has been abundant opportunities to do that and I have yet to see anything from the constituency that makes that acknowledgement. I'm really, I'm flabbergasted that in this telephone call for the very first time in 12 years I hear a representative of the IP constituency acknowledging that there is such a thing as the protection of personal privacy.

Woman: Thank you. (Steve D.)?

(Steve Delbianco): Thank you. In articulating support for study three, four and six and I would very much like to echo what (Lee) said and sort of pick up on (Norbert's) suggestion that yes the market has changed and that you're very concerned about what the default is when a registrant puts a name in, let's say they use a registrar like Go Daddy, does the privacy service come up in the shopping cart by default or does the privacy service have to be selected by the consumer? That's sort of what I'm paraphrasing (Norbert) what you said there and I think it's important for me to put that into our section three because I think it shows why even someone who says no to all studies that part of the rationale includes legitimate questions that would be answered by studies like three and four, categories three and four.

So my question to you (Norbert) is that do you want to put some of that in writing or would it be all right for us to paraphrase what we heard on today's call?

(Norbert): Well I think me editing the call and (unintelligible) either recording and if you include it just (unintelligible) your draft I think we can

(unintelligible). I think it's not necessary that it's stated twice or so in the fourth question.

(Steve Delbianco): Thank you. So if I paraphrase it in a way that didn't capture your personal sentiments you'd edit it at that point.

Woman: Okay. Other comments today?

(Steve Delbianco): This is (Steve Delbianco). I would love to hear what (David), (Eric) and others would answer to the question – how do we just simply ignore the (gap) request for the board, aren't we begging for yet another study group? How do people feel about that?

(David Maher): This is (David), I don't think we are begging for a study group and the (gap) has a lot of interest, I don't feel it necessary to grant every request for any kind of action by the (gap) provided there is a adequate answer to what they, what they've asked for, and I think in this case the – what the (gap) has voted for is not supported by what the (unintelligible) registries and non-commercial constituency has stated. I'm not saying that we're ignoring the (gap) but I don't think we have to just as a knee-jerk say, oh the (gap) wants this we'll do it.

Woman: Other comments?

Man: Anyone else have any feelings about whether and how we should acknowledge the likelihood that the board will now ask council to react to the (gap's) request?

(David Maher): Well my crystal ball is no better than yours. Frankly if another study group was formed after the (unintelligible) it wouldn't surprise me. I

was, I have to confess somewhat surprised by the fact that this particular working group was formed after the abandonment of hope on finding a compromise and of the preceding who is procedure.

The point really is that after all of this history and for those of us who have been involved in this for the whole 12 years or ten years or whatever, it's no longer a surprise that the things that keeps on going, and that's why I think (Wendy's) position is so well stated. There is just a fundamental difference, it's not just a difference of opinion, it's fundamental beliefs and value and as I say as long as that chasm in values exists I find it really pointless to have more working groups, study groups, studies, PDPs what have you, they're just not, you're just going to repeat the same tiresome arguments that I've heard now for many, many years.

Woman: Other comments and we're getting to the top of the hour?

(Steve Delbianco): This is (Steve Delbianco) I have one more.

Woman: Sure.

(Steve Delbianco): I'm only involved in (unintelligible) now for a year and a half so I don't bear the scars that so many of you on the call have, but what I witnessed the last year and a half we sort of concluded the debate between (OPOC) and status quo and that concluded (unintelligible).

Man: Hello?

Woman: Did we just lose (Steve)?

Man: Yeah.

Man: Yeah.

Man: I also have an e-mail here from (Eric Lerner-Williams).

Man: That's why I thought it was appropriate for us to (unintelligible).

Woman: Hey (Steve) you're cutting out for some reason we can't hear you. So we're going to need to try to capture (Steve's) additional comment online because we're clearly not, we've got some audio problems, he came in briefly so I know he's still on the call, but are there any other comments? Okay.

So in conclusion I am by the end of the day going to update the tally and insert (Wendy's) language in the draft report. Participants on the call (Steve) and (Steve) for one are going to submit the language for section three and hopefully with time and others who want to add anything to section two or for that matter section one, should feel free to do so. We've got one more call on the 20th before the deadline of the 22nd. I think the purpose of that call should just be to touch base about the report itself and any other changes, inclusions, or additions we want to make to it and I'd like to see us try to resolve on the list serve this week the inserted text so that we can just have a quick call on the 20th to finalize the document.

Any other suggestions for moving forward or, oh and then there is still the (Iris) and (Chris) question out there and I've been kind of trying to get the (unintelligible) to get some input and support to talk to you all further about that. I think there's still hope but it's just been slow, so we

could try to do that for the 20th as well if I can get closure for them.
And just intend to finalize the report on the 22nd.

Is there anything else we need to do or that anyone wants to bring up
in terms of business on this topic? Okay. Great. Let's talk briefly on the
20th, hopefully let's see some text online this week and let me know if
you have any other changes or requests to make on the report itself.
Okay. Thank you all very much.

Man: Thank you.

Man: Thanks.

Man: Thank you very much.

Woman: Yep. Bye-bye.

Man: Great work.

END