

GNSO Working Session in Los Angeles
<http://gnso.icann.org/meetings/agenda-27oct07.shtml>

Saturday 27 October 2007

Item 3.1 Whois discussion

Discussion of constituency and community comments

Staff presentation – Discussion Document

<http://gnso.icann.org/correspondence/whois-studies-gasster-27oct07.pdf>

Item 3.2 Whois discussion

Report on Studies

Brief SSAC report on Whois Spam Study – Dave Piscatello

<http://gnso.icann.org/correspondence/ssac-whois-study-27oct07.pdf>

Reference Documents

Staff Overview

<http://gnso.icann.org/drafts/icann-staff-overview-of-whois11oct07.pdf>

Staff Report on WHOIS studies

<http://gnso.icann.org/drafts/whois-study-overview-gnso-council-04oct07.pdf>

Staff Implementation notes

Final Outcomes Report of the WHOIS WG

<http://gnso.icann.org/drafts/icann-whois-wg-report-final-1-9.pdf>

Final task Force Report

<http://gnso.icann.org/issues/whois-privacy/whois-services-final-tf-report-12mar07.htm>

Attendance list:

Avri Doria Chair Nom Com, Jon Bing - Nom Com, Chuck Gomes Vice chair – Ry,
Edmon Chung – Ry, Cary Karp – Ry, Norbert Klein – NCUC, Robin Gross – NCUC,
Bilal Beiram – CBUC, Mike Rodenbaugh CBUC, Tony Holmes - ISP

Kristina Rosette – IPC, Ute Decker – IPC, Ross Rader - RR

Liaison

Alan Greenberg - ALAC

Remote participation:

Mike Warnecke - Observer WHOIS wg, Steve Metalitz - Chair IPC

Observers:

Milton Mueller - NCUC

Shaundra Watson INTA

Paul Stahura - eNom

Neal Blair - CBUC

Palmer Hamilton - CBUC pm

Philip Corwin - Attorney

Desiree Milosovich

Ching Chiao - dot asia

Margie Milam - Mark monitor

Marilyn Cade - CBUC

Jeff Neuman - Ry

Matthieu Crédou - .bzh

Werner Staub - CORE

Elmar Knipp - Core

Dirk Krischenowski dot Berlin

Paul Lecouthe - CORENIC

Laurie Anderson - Godaddy

Lisa Villeneuve - Godaddy

Pam Bunn - Godaddy
Martha Johnston - Godaddy
Lynn Goodendorf - InterContinental Hotel Group - WHOIS
Stefano Trumpy - GAC
Artur Lindgren - NICTRADE Sweden
Henrik Erkkonen - NICTRADE Sweden
Claudio DiGangi - INTA International Trade Association
- Chuck Warren

>>AVRI DORIA: Okay. It's 10 after 2:00. We should try to start. Wow. That was fast.
Okay. Sort of have a different group of people, sort of, than we did this morning. I'm wondering, is there a need to go around and reintroduce or -- yeah, it is a separate meeting, it is on the WHOIS. It's probably good to get everyone to introduce themselves again. Some of us will introduce ourselves many times.

I'm Avri Doria. I'm chair of the GNSO Council at this point, and the agenda for this afternoon is, we have two WHOIS discussions. The first one will concern discussion of the constituency and community comments, and of course with community comments still coming in, it's an ongoing thing, but basically to try and make sure that we've had a view of what the issues and comments that are coming up are.

And then we'll have a break.

And then after that, the second part will be a report on the studies that the ICANN staff is currently going through, and then Steve Crocker will be coming in to give us a SSAC report on the WHOIS spam study so that we basically have the studies.

Now, in the first part, one of the things that, you know, we can also discuss and was part of what we had gone out asking for discussion on is we do have three motions on the table that are scheduled to be voted on on Wednesday, so obviously those are also something to talk about, and as we go through sort of figure out what the best way to proceed with this is, and I'll sort of feel my way along as the discussion starts, as the opinions come out of how to head through that, and how to use the two hours or one hour and fifty minutes that we've got slated for this, as well as possible.

So I'd like to ask if we could just go around the room again, saying who we are, constituency or, if not constituency, you know, what your interest is quickly, and we'll first go around the table and then we'll go around the chairs. Oh, and there is -- this time there's an improvement. There is a hand-held mic, so when it's time to go around the edge, we can just pass the mic around the room.

So Norbert, I'll start with you again.

>>NORBERT KLEIN: My name is Norbert Klein. I'm a member of the GNSO Council. I am from the noncommercial constituency, and I work in Cambodia in a nongovernment organization involved in communication.

>>ROBIN GROSS: My name is Robin Gross. I'm also a council member from the noncommercial users constituency. I'm based in San Francisco. I am an attorney. I work with IP justice.

>>BILAL BEIRAM: Thank you. My name is Bilal Beiram. I'm representing the BC. I work with Talal Abu-Ghazaleh organization. We're based in Amman, Jordan.

>>MIKE RODENBAUGH: I'm Mike Rodenbaugh, councillor from the business constituency.

>>ALAN GREENBERG: Alan Greenberg, I'm liaison from the ALAC, and in real life I do advising developing countries and donors in how to use technology.

>>MARGIE MILAM: Margie Milam with MarkMonitor and I'm with the registrars constituency.

>>MARILYN CADE: My name is Marilyn Cade. I'm a member of the business constituency.

>>TONY HOLMES: I'm Tony Holmes, ISPCP, and a member of the council.

>>BRUCE TONKIN: Bruce Tonkin from Melbourne IT, which is a member of the registrar constituency, and I'm also a member of the ICANN board.

>>OLOF NORDLING: Olof Nordling. ICANN staff based in Brussels.

>>DAN HALLORAN: Dan Halloran, ICANN staff.

>>EDMON CHUNG: Edmond Chung, gTLD registry constituency.

>>AVRI DORIA: And I'm Avri. I'm a NonCom appointee to the council.

>>CHUCK GOMES: Chuck Gomes, representing the registry constituency on the council.

>>MILTON MUELLER: Milton Mueller. I'm chair of the noncommercial users constituency.

>>UTE DECKER: Ute Decker, member of the GNSO Council for the intellectual property constituency.

>>KRISTINA ROSETTE: Kristina Rosette, member of the intellectual property constituency.

>>PATRICK JONES: Patrick Jones, ICANN staff.

>>CRAIG SCHWARTZ: Craig Schwartz, ICANN staff.

>>STEVE DelBIANCO: Steve Del Bianco, business constituency, rapporteur to the WHOIS working group.

>>ROSS RADER: Ross Rader, registrar constituency, elected to the council.

>>JEFF NEUMAN: Jeff Neuman, gTLD registries constituency.

>>LIZ GASSTER: Liz Gasster, ICANN policy staff on WHOIS.

>>MATTHIEU CREDON: Matthieu Credon, dot bzh project, observer.

>>WERNER STAUB: Werner Staub from the CORE secretariat in Geneva as an observer.

>>ELMAR KNIPP: Elmar Knipp, also with CORE, also observer.

>>DIRK KRISCHENOWSKI: Dirk Krischenowski, dot Berlin, business constituency and also observer.

>>PAUL LECOULTIE: Paul Lecoultie from CORENIC, member of the registrar constituency.

>>AVRI DORIA: Okay. Who has the microphone around the edge?

>>ARTUR LINDGREN: Artur Lindgren, Nictrade, Sweden.

>>AVRI DORIA: Okay. Is the microphone on?

>>ARTUR LINDGREN: Hello? Artur Lindgren, Nictrade registrar.

>>AVRI DORIA: Thank you.

>>HENRIK ERKKONEN: Henrik Erkkonen, Nictrade, Sweden.

>>SUSAN CRAWFORD: Susan Crawford, ICANN board.

>>CLAUDIO DiGANGI: Claudio DiGangi, International Trademark Association and intellectual property constituency.

>>LYNN GOODENDORF: Lynn Goodendorf. I'm with InterContinental Hotels Group and a participant of the WHOIS working group.

>>KAREN LENTZ: Karen Lentz, ICANN staff.

>>PALMER HAMILTON: Palmer Hamilton. Represent JPMorgan Chase and a number of banks. Business constituency.

>>CONSTANCE BROWN: Constance Brown, ICANN staff.

>>PHILIP CORWIN: Philip Corwin, observing. I'm counsel of the Internet Commerce Association, representing domain name investors and developers.

>>PAUL TWOMEY:

>>PAUL STAHLURA: Paul Stahura. I'm with one of the registrars.

>>AVRI DORIA: Thank you. And I understand that we do have people on line.
So on line, who is on line, please?

>>STEVE METALITZ: This is Steve Metalitz with the intellectual property constituency and a member of the WHOIS working group.

>>AVRI DORIA: Thank you. Anyone else?

>>MIKE WERNICKE: Mike Warnicke, entertainment software association.

>>AVRI DORIA: Okay. Anyone else?
Okay. Thank you.

>>GLEN de SAINT GERY: Sorry. One more.

>>MARTHA JOHNSTON: Martha Johnston with Go Daddy.

>>AVRI DORIA: Okay. Thank you. I want to remind everybody that we not only have to use the mics for recording purposes but we especially have to use the mics because we have people that are on the telephone line and so -- and please, on telephone -- you know, obviously I won't see your hand come up, so please let me know when you've got something that you want to get into the queue for.
Okay. So the first thing we had on was discussion of constituency and community comments. I've asked Liz to give a very quick recap from the constituency comments. Now, her statements are going to be very brief, and very top-level, and so afterwards I would like to give each of the constituencies a chance to, you know, further elaborate on the position as -- because -- I asked Liz to give a very, very top view, sort of an outline, and then we need to talk a little about what the best way is to review the community comments because as I say, they're still coming in. There's lots of them. There hasn't been a full analysis of them yet. This is our first chance to talk about them.

Certainly they do fall into certain groupings. There are some that can be characterized as being similar to each other, but it's something that we need to start talking about. So, Liz, if you could.

>>LIZ GASSTER: Great. Thank you, Avri. Again, these are quite abbreviated summaries and feel free to elaborate or correct or clarify, as you like.

So beginning with the commercial and business users constituency -- and this is based, by the way, on --

>>MARILYN CADE: Sorry. Should we be looking at a document?

>>LIZ GASSTER: No.

>>MARILYN CADE: Oh, okay.

>>LIZ GASSTER: Actually, the staff overview -- that is a good question, though. The staff overview of recent WHOIS activity includes all of the constituency statements that we received by the deadline, and in addition, posted on the WHOIS site are the ISP comments on the overview that we also received.

So I think these are just basically characterizations of what the fleshed-out statements say in that overview.

So commercial and business users constituency do not see sufficient justification for abandoning or changing WHOIS, and essentially say that there is no adequate basis currently to implement the OPoC.

The individual NomCom appointee who submitted comments, Avri Doria, supports implementation of OPoC as long as it does not include a reveal function and that restricts access only to law enforcement on a case-by-case basis. Absent this outcome, this appointee supports sunsetting existing non-consensus WHOIS contractual provisions in all registrar and registry agreements.

The intellectual property constituency opposes adoption of OPoC unless or until an efficient, reliable, and speedy alternative mechanism for such access is ready to be implemented.

The noncommercial users constituency opposes the adoption of OPoC because of the reveal function and concerns about the reveal function, and the NCUC supports sunsetting existing WHOIS portions of the RAA that are not consensus policy at the end of 2008.

The registry constituency generally supports the underlying concepts of the OPoC proposal, assuming sponsored registries retain the ability to determine the eligibility of applicants, and as long as access to unpublished WHOIS for legitimate purposes is addressed.

The registry constituency supports a tiered access mechanism for this purpose.

The ISP constituency -- and again, the ISPs' constituency comments are not in the overview. You'll need to go to the comments site for that.

They do not support adoption of the OPoC proposal in its current form. That constituency is concerned about insufficient review of alternative approaches, such as special circumstances and tiered access, the need for speedy access to WHOIS data for anti-cybercrime purposes, and costs and other implementation concerns.

The registrar constituency did not submit comments on the staff overview. In its statement previously submitted as part of the WHOIS task force report of 12 March, the registrar constituency expressed support for the OPoC proposal. But just to emphasize, there was no registrar constituency statement associated with the WHOIS overview that was prepared by staff.

And that's kind of a summary. And I will just follow Avri's comments again that there are a very large number of comments coming in on the public comment page, and encourage everyone to take a look at those and give as much attention as possible to those many comments.

>>AVRI DORIA: So the first thing I'd like to ask -- and go through the constituencies as the statements were made and ask them if there's something they would like to add to the characterization that was just made, so starting out with the business constituency, would you like to go a little further or deal with that? Is there someone -- yes.

>>STEVE DelBIANCO: If you don't mind. Steve DelBianco. I was rapporteur for the BC to the WHOIS working group.

Our actual comments delineated three studies that were done in phases that we would need: The uses and abuses; the costs of the measures that we'll use; and also the mechanisms, what would be the mechanisms for access.

So I'll give you three alternative interpretations as to what the BC is up to, right?

The first cynical interpretation is: It's more studies because, oh, good, that's more delay. And that would be what some people would infer.

I would suggest a second, which is the true purpose here, which is what we suggest, that the proxy service is an example of a market mechanism that has arisen while ICANN has taken its time to figure out what to do, and that the proxy service, it seems, I think, is giving protection to people that would want to avoid having their information published.

The second, which I think is another sort of market mechanism, is that registrars have started to employ anti-spam measures for their display of WHOIS data, and this is documented in the SSAC study.

So I think that in two important ways, registrars have innovated in ways that allow people to protect privacy. So it makes the BC continue to scratch our head and ask, "Where is the harm in the current implementation of WHOIS that justifies scrapping that system or replacing it with something that is not well formed yet?"

So the idea of the study there is to really examine current market-driven mechanism as well as the harm that we can document which would justify moving ahead.

I said three interpretations. The three interpretation is we'll call it a fallback plan. And the fallback plan is that even if the OPoC were approved, we are going to need these three studies in order to do the implementation of the responsibilities for an OPoC, as well as to do the access mechanisms for the unpublished WHOIS data.

And I believe staff has done a good deal of work on that on the 11 October implementation notes, where the very same things that we discussed and debated in the working groups are going to need further study because the OPoC plan as presented in the motion that will be considered Wednesday still doesn't have enough meat on those bones to guide implementation.

So that's where I give you three interpretations of where the BC came out by asking for more studies. And I would -- I would encourage all of you to sort of disregard the old delay motivation and pay a lot more attention to our direct and our fallback plan. Thank you.

>>AVRI DORIA: Okay. Thank you.

Yeah, I think I'd like to go through all of them and then let people go and start addressing and asking questions of each of them.

I was the next one. I think what was covered in the statement I made was -- I made a fairly simple, short statement, and I think the overview included all of it, so I've really got nothing to add, other than, you know, I did not accept the reveal and that I had a real problem with the sort of self-definition of who was authorized to get information and believed that an authorization process for who had access needed to be dealt with.

The IPC was the next comment that was summarized. Does anyone want to add -- or Steve, do you want to, or someone --

>>KRISTINA ROSETTE: I was actually going to suggest that if Steve wants to, then he should.

>>STEVE METALITZ: I don't think I have anything to add.

>>AVRI DORIA: Right. Steve, do you want to be the one to -- or are you fine with what was read out?

>>STEVE METALITZ: Yeah. I don't have anything to add to the statement.

>>AVRI DORIA: All right. Thanks. NCUC was the next one. Did anyone from NCUC have anything, any further elaboration that they wanted to add to what was -- the overview that was given?

No? NCUC's fine with that?

Okay. Great. From the registry, is there any further comment or --

>>CHUCK GOMES: Sure. Because our statement did cover a little bit more than was in the summary there.

First of all, the WHOIS working group was tasked with examining three issues, and it was our conclusion that there wasn't consensus reached on any one of those three, or any recommendations regarding those.

We continue to believe that respect for registrants' interests and protection of personal privacy does demand change in the way data is published in a WHOIS service.

At the same time, to the extent that any data that would become private is needed for law enforcement or other interests such as intellectual property, that appropriate means for accessing that data should be provided through some sort of a tiered access system, which Liz did mention in her summary there.

We also recognize that a tiered access system does have some serious policy challenges, as was demonstrated in the working group, in looking at OPoC. But dealing with those challenges somewhere down the road seems like it could still be a valuable exercise when we get to a point where we can really work constructively on that.

With regard to the OPoC in particular -- and Liz mentioned this -- we do think that there are some needs of sponsored registries that aren't addressed in the OPoC proposal that would need to be addressed. They should be free to determine what data should be collected for their specific needs in their sponsored community, and determine what any data beyond that list should be published.

It's our opinion that the OPoC proposal in its present form doesn't deal with the question of access to unpublished WHOIS data, nor did the WHOIS working group reach adequate agreement in that regard. And we think that that question has to be answered.

We also don't think that there's a practical test for determining what types of use might qualify for privacy protection, and those points just reemphasize the fact that -- that we're not at a point where it could be implemented.

Completion of the OPoC proposal we believe would require considerable effort, and, you know, we need to answer who decides who gets access, who are requests for -- who are requests authenticated, to whom should access be given, who provides access, how would access be given.

Without answering those questions, you can't implement OPoC or any tiered access system for that matter, and those are the holes that we identified and were concerned with a long time ago, and they still exist.

>>AVRI DORIA: Thank you. Okay. The ISP had an update. Does anyone want to speak to that?

>>TONY HOLMES: Yes. Thanks, Avri. I will just provide an update, as it isn't in the document.

But basically what I'm going to say supports a lot of the dialogue that's already been stated. I think Steve suggested there wasn't enough meat around this, and we find it difficult to support this proposal without further review.

Certainly cyber crime remains a significant threat, and there are some basics which still need to be addressed before you can move forward down this path.

I'd just mention four of the items that are listed in the ISP response. Questions that still need to be answered.

How can quick and efficient spawns to cyber crime data gathering be ensured from an OPoC? What parties have access to hidden data? Who decides which parties have access to the data? And who pays for the costs involved in providing access to that data?

And I think they're some of the key elements that are still out there. Thanks.

>>AVRI DORIA: Thank you. And lastly, there was no updated statement from the registrars, but Ross?

>>ROSS RADER: Yeah. To clarify that, we didn't submit any comments on this. Not because we're not interested in the issue, but after years of discussion, we were hard-pressed to find anything new to say on this subject.

>>AVRI DORIA: Okay.

>>ROSS RADER: So certainly our position is on the record.

>>AVRI DORIA: Yeah. No, I didn't mean to indicate a criticism that you didn't.

>>ROSS RADER: No.

>>AVRI DORIA: Okay. I guess one thing I want to add, and then get into the rest of the conversation, is: In listening to -- as I put through the first one of the motions -- I mean there are three motions, and listening to the business constituency, I wasn't sure that that motion and what the business constituency was saying in its fallback position were necessarily that different.

In terms of -- because the motion, as I conceived it, sort of -- one thing is the studies are ongoing, and there's nothing we're doing at the moment, none of these votes suggests stopping the studies. The studies we're getting an original report on. They're ongoing.

That motion envisioned asking the staff to sort of take the melange of stuff that we've got -- there's an OPoC proposal, there's a working group, there's a lot of commentary out there on what needs to be done, what's not covered, whatever -- asking the staff to come up with an implementation proposal for an OPoC and then bring it back to the council and the community for us to look at, at the time at which we also would hopefully have the studies.

So I'm not sure that the fallback and that motion are necessarily that dissimilar, and I just wanted to put that in as -- as an explanation. Certainly.

>>RICHARD DELMAS: Thank you. I wanted to sort of respond to that in one respect. When I said it was a fallback, I mean well, we'd be falling, and it's never a good thing to be falling, so let me make the distinction here that if the studies -- I think we'll all agree that the studies are going to be necessary for implementation. And staff has certainly laid that out already in the October report.

However, by doing the studies, as part of implementation, you presuppose that you've already crossed the threshold, that you've met the gating condition to say that the harms of the current WHOIS, undocumented though they may be, are sufficient to justify moving ahead with an unformed, incomplete plan.

So I would say there's a fundamental difference there, in that I would -- the BC wants the studies done first, as a gating condition, because I truly believe that a study of the uses and abuses after taking a look at how well proxy services and registrar protection mechanisms have solved the problem would reveal that there's insufficient harm to justify changing the status quo of WHOIS. So it becomes a gating, rather than enabling of the implementation plan.

>>AVRI DORIA: Okay. Okay. Yeah, I -- I'd like to basically take a general queue and start opening up the discussion.

>>MARILYN CADE: Sorry. I just wanted as a BC member, to just support something that Steve said and note that I think you saw in the BC positions that the -- there was also a request to study the characteristics of registrants in order to inform the policy-making, and I think that was consistent with why it needed to come first.

[Speaker is off microphone]

>>AVRI DORIA: Okay. So I have Milton and then Chuck. And anyone else while I'm building a list at this point? Okay.

>>MILTON MUELLER: Okay. So Steve, the studies. What would you say if a European data protection commissioner said to you that, "This is against the law in my country"? Would you say, "Well, let me study it and see if it's harmful, by our criteria that we'll establish at ICANN, and if we sort of -- you know, we do an empirical study and we just don't think your laws have any rationale, we're just going to blow them off," is that sort of what you're saying here?

I don't really want you to answer that question. It's rhetorical.

>>STEVE DelBIANCO: Well, since you asked --

>>AVRI DORIA: Yeah, you asked.

>>MILTON MUELLER: Yeah. I know.

>>STEVE DelBIANCO: Since you asked --

>>MILTON MUELLER: I know what you'll say.

>>STEVE DelBIANCO: If -- if The European Commission came up -- or some European government came up with a statement like that, if -- and that's a big "if" -- but if they did, my next question immediately is, "Can we conceive of a less restrictive means of actually solving your problem than throwing out the baby with the bathwater on WHOIS."

And I would -- I would hope that the study, since the study would incorporate the characteristics of registrants and the study would incorporate, as we requested, an examination of the proxy service. If the proxy service can actually fulfill the privacy directives concerns, then it's a matter of educating people, of going to registrars that offer a proxy service. And that way we solve that problem if, in fact, there's a documentation that the problem exists.

>>MILTON MUELLER: Okay. As a social scientist, I have an another question about studies, and that is, are you willing to turn the tables a bit and allow us to do a study of countries that do shield WHOIS data, and find out whether the levels of cyber crime and other kinds of problems that are alleged to happen, if we shield the street address of domain name registrants, all of these terrible things that are going to happen, can we find out whether they're actually happening?

In other words, underlying my question there is a sense that these studies are -- and the way they're being framed are not exactly unbiased, that we are putting the burden of proof on people who want to protect privacy to prove that they have a need for privacy, which in some cases is a legal right, not an empirical matter.

And we're not asking questions about how much you really need the data, how much it really has to be there, where there are perfectly feasible empirical tests of that proposition, which we could -- we could do. That's all.

>>CHUCK GOMES: The four questions I mentioned at the end of my comments a minute ago, I think at least three out of the four are policy questions, not implementation questions.

The first one probably is -- or one of them, the one -- how are requests for access authenticated, that's probably an implementation question, but the -- who decides who gets access, to whom should access be given, who provides access, how would access be given, in my mind, at least in large part, involve policy questions and, therefore, I would think it's premature to turn it over to ICANN to implement until those are answered. And they're very complex policy questions, as we already know.

As I said in my statement, I'm actually supportive of us working on those. I'm not sure we're at a state right now where we can do anything constructive in that regard. In fact, I seriously doubt that. But that's why I would think it would be premature to go to implementation because I really think those are significant policy issues.

>>AVRI DORIA: Okay.

>>LYNN GOODENDORF: Is this on.

>>AVRI DORIA: Sounds like. Yes.

>>LYNN GOODENDORF: Okay. I just want to say that I think that the studies that have been recommended are a very positive way to build consensus, and everyone has acknowledged the lack of consensus on this issue, and we have been operating on a lot of assumptions and a lot of anecdotal evidence, and the benefit of these studies is to actually have more facts to move forward on.

>>AVRI DORIA: Okay. Thank you.

>>JON BING: Thank you. I also would like to echo the last -- last comment. As far as data protection is concerned, there is at least the regional directive in Europe. We have had anecdotes that the Dutch data protection authority has accepted a certain version with respect to WHOIS.

I have made great efforts in trying to verify that -- that story. I have been in personal contact with the Dutch regulatory agency, and I be that as head of the Norwegian data protection tribunal. We have not been able to verify that story. That may, of course, be because the Dutch data protection authorities do not have sufficient -- sufficient overview over their own decisions or comments.

But it is a rather straightforward analysis to see to what extent there is complication -- a policy would comply, or what it requires to have a policy to comply with the directive.

This is only a regional directive, but one could also have a look at other regional directives like the OPoC directive or Asian and the Pacific, and they are not, in my mind, major studies and they should be rather objective and then one could take the result from them and have a look at them.

I have also -- and I'm sure, again, this is my own naive background that shows through, but as far as law enforcement agencies are concerned, I -- I have difficulties really to grasp what is going on. I'm thinking if I'd been a bank and this had been -- we had had a discussion about our customers' data or data relating to customers and others, we would be concerned if there is anything we could do between ourselves to stop or to reduce fraud or misuse of accounts and so on. We would also be very eager to help law enforcement agencies, but we wouldn't try to formulate their policy. We would say that if they have a policy and they have authority and they approach us, of course we will comply. But that is the extent to which I think an agency or an institution like a bank would respond. It may even also encourage law enforcement, say, agencies to take an interest in the field and say that we will provide you the data when you come up with a request -- with the necessary authority.

But I have difficulty seeing that that should form part of an internal policy. Thank you.

>>AVRI DORIA: I have Ross next.

>>ROSS RADER: We've been discussing -- "discussing" is not the right word. We have been engaged in a PDP on this topic since before we actually had PDPs in the ICANN bylaws. WHOIS is the perennial policy question.

I really think it is time for the council to complete this policy process. There is one of two ways we can do that.

We can either move the stuff that's on the table forward or we can say the stuff on the table isn't good enough to be a policy recommendation.

We hear talk of additional study on this issue, and I think that's fine for the council -- for the community to engage in that type of study. But to do that within the ambit of this existing policy development process without any clear direction on how we're going to move this policy forward is not something that I'm even remotely convinced will bear any fruit in the next two to three years.

I would like to see the question of WHOIS policy closed off in our lifetimes, and I think the only way we can do that is by taking a vote at this next meeting as to whether or not these recommendations are sufficiently well-rounded enough to become policy. And if they're not, then we stop the policy development process until such time that we can actually figure out what we might possibly have grounds to agree on.

And I think within that, we can engage in the further study that's being called for. It need not necessarily be a gating item, I don't think, to moving or not moving our recommendations forward.

>>AVRI DORIA: Thank you. Steve?

>>STEVE DelBIANCO: The fruit of a PDP may well -- may be my apples and Ross's oranges, but the fruit is not necessarily the moving forward of a new replacement for WHOIS.

The fruit of a PDP properly conducted, that took way too long, may well be there is insufficient harm to justify changing it. That is also fruit to the process.

I simply want to respond to a direct question from Milton and one challenge. The direct question was would the B.C. in its call for the uses and abuses study be willing to really have scrutiny of the uses of WHOIS and to what extent do they contribute to law enforcement, consumer protection and the protection of rights.

And, Milton, the answer is, yes, we should. We should definitely count the uses of WHOIS when we balance it against the abuses so that we should ask governments to what extent are you using WHOIS to be part of the investigations. I think that was the essence of your investigation. Would we want to live with the study if the results could come out and -- they might say the law enforcement doesn't use WHOIS, and I'm willing to take that chance.

At the tail end of it, you said to me the B.C. was somehow saying to people that we were saying it is a burden on you to prove that you have a right to privacy.

Now hang on. The burden here -- and it is a burden that hasn't been met -- is the burden to show that your right to privacy is being compromised by the WHOIS system. That is the burden that hasn't been met yet.

>>AVRI DORIA: Jeff?

>>JEFF NEUMAN: I have a question for the B.C. because I think this is the first time -- I was one of the co-chairs of the original WHOIS group back in 2002, 2003. I can't remember now. This is the first time I have ever heard someone from the B.C. say that the proxy service might actually be a solution.

But I feel like the B.C. statement is missing something. My gut tells me once we say the current WHOIS system is fine, the next step is okay, now let's regulate the proxy service. Let's regulate what the registrars, when they have to make access, who they have to make access.

I'm asking you now in the open, B.C., is your next step, if the vote by the council -- And I'm not on the council. But if the vote by the council is to use the current mechanism and one of the rationals because market forces may be working, I want you to tell this group, is the next step to study proxies and to regulate proxies and have new process to do that?

>>STEVE DelBIANCO: I will give you a partial answer and rely on our counselors to help out. I did say the first part of the study is where you try to figure out the uses and abuses. I would like to know whether the uses and abuses, including a study of proxy, would reveal that registrars that operate proxy services, are they living within the RAA, to both relay and reveal, as I understand the current registrar accreditation agreement requires.

If that's truly the case in that registrars do relay through the proxy and that the proxy does reveal information when evidence of harm is shown, then that would indicate that that is a mechanism that both protects privacy and also allows for law enforcement and consumer protection to get through the information to the true registrant.

>>JEFF NEUMAN: Okay. If it doesn't reveal or relay in your satisfaction, then your answer is yes, we would want to seek to regulate what those proxy services do?

>>STEVE DelBIANCO: The answer is yes.

>>AVRI DORIA: Thank you. Okay, Bruce.

>>BRUCE TONKIN: This is really just some process comments and partly picking up on what Ross said because I think one of the challenges -- the purpose of what you're describing of a study should be what was in the issues report. I guess the last issues report on WHOIS -- I was trying to get online. Maybe someone else can look at that. Was that about 2001 or something? When was the last WHOIS issues report?

>>MARILYN CADE: The last issues report is --

>>AVRI DORIA: Microphone, please, if you have got an answer.

>>MARILYN CADE: The last issues report was -- I was thinking it was 2002 because I made -- because I co-chaired with Tony Harris. Sorry, I don't remember Jeff was a co-chair.

>>JEFF NEUMAN: He was the first.

>>BRUCE TONKIN: Let's just say it was a number of years ago. I think what you're saying or if I hear what some people are saying is the world's changed quite a bit since that issues report. A notion of what needs to be an issues report has probably evolved as well.

One of the comments, I think -- I'm again putting this from the perspective of some of the things that have come up in the various reviews of the GNSO. And that is around getting more data to help drive our policy processes and in the past, the issues reports have, more or less, been here are some issues individuals have raised.

And so the last issues report on WHOIS contained a number of issues that have been raised by people concerned about privacy. The fact that there is also in that same time frame there have been new laws and number of countries in the world have instantiated privacy laws that probably weren't in place at the time the original WHOIS protocol was put into place.

I think one of the options is, basically, as Ross says, you can say we have reached a level of agreement on a current policy and you are putting that before the council or the current PDP has not reached agreement. In which case you'd say you have got to have some point that a PDP ends, otherwise you've got no control of process.

Then you could reinitiate the process starting from square one, which is to say we need an issues report. These are -- this is the pieces of information we need. What are the new privacy laws that have happened in the last four years? What are the new changes that people have made? Are they having impact or not with proxy services or changes to the protocol and then you reinitiate the process.

But I think you've got to be careful of having something that is certainly perceived to be externally -- because the failure of the GNSO is that we never converge, we just keep going around in loops and we don't seem to be following any process anymore.

And I am sort of concerned that the process -- there should be a vote on what you have gotten to.

You have had a WHOIS report. You have a group that has given some comments on the implementation of that report. You have to make a decision, are you prepared to move forward or not and that's the end of that PDP.

And then you are starting a new process is what I'm hearing, which is perfectly legitimate. That starts at the top and that's something, okay, we are creating an issues report. What do you need in that

issues report? The lessons you have learned so far mean that that issues report hopefully is a lot more helpful to drive the development than the previous issues report.

>>AVRI DORIA: Milton.

>>MILTON MUELLER: I think the problem with the study option, Steve, is really that the study just becomes a sublimated way of fighting over the policy in the current context so that the question of what question the study asks, who does the studies would all simply become a continuation of the political fight that we're already in.

So what I would suggest is a superior option would be you guys commission a study about the issues that concern you, and actually you may do a perfectly fine study.

I mean, I am going to go over it with a fine-toothed comb but you may do us a service by documenting, for example, how many registrants are actually natural persons versus corporate persons, how many proxy services are being sold. This is all very interesting data, very useful data.

I would like to do a cross-correlational study with ccTLDs with more restrictive WHOIS display policies and see how that correlates with cyber crime in those jurisdictions. I think that would be a very interesting study.

Maybe I should go out and do that or find somebody to fund that study. But I don't think that the process of having one of these studies is going to converge us. I suspect one side or the other would try to use the nature of the study to beat the other side over the head with, and it really wouldn't get us anywhere.

>>AVRI DORIA: Thank you.

Do you have the microphone? Anyone else want to be in the queue?

>>LYNN GOODENDORF: I would just like to confirm, I have the impression that no data protection authorities have made inquiries of ICANN regarding data protection and the WHOIS. Is that correct? Have data protection authorities made inquiries of ICANN on this point?

And the reason I ask is that our company has received inquiries which we have satisfactorily responded to and they never progressed to complaints, but I'm thinking that if our company has received inquiries on our privacy practices and this is such a tremendous concern here, have there actually been formal inquiries received by data protection authorities?

>>AVRI DORIA: Would you repeat your question.

>>LYNN GOODENDORF: Has ICANN received in formal inquiries from data protection authorities?

>>AVRI DORIA: Bruce, got to use your mike.

>>BRUCE TONKIN: Normally, inquiring about what? I don't understand the question.

>>LYNN GOODENDORF: The inquiries that our company has received is different from a complaint. The inquiry is where they will contact us to clarify a particular practice, and we submit a response. And if they're satisfied, it doesn't progress to a complaint. When it progresses to a complaint, there is further investigation.

So that's the process of the data protection authorities.

And then, I guess, since I work in privacy, I would also add that anyone who registers a domain name has the capability of collecting personal data. And as such, there is a regulatory requirement to give notice and to follow the principle of transparency which is internationally accepted in privacy that you must disclose who you are and that contact details of name and address are not considered sensitive personally identifiable information. It's considered personal data but not sensitive personal data. So I would just -- again, my question is, has ICANN received inquiries?

>>DAN HALLORAN: I can't be 100% sure. This is Dan Halloran. I don't think we have ever received an inquiry just along the lines you said because we don't publish data. We don't hold data of registrants. We have, I guess, a tiny little bit of data and we do maintain a WHOIS at the root level so we list who is the admin contact for dot UK and dot DE, but beyond that we don't have registrant so I don't think the data protection agencies would be interested in us because we are not a data keeper.

We have received communications from those by entities but not about data we're holding. It would be about our policies.

>>LYNN GOODENDORF: The question here on data protection would be disclosing personal data in the publicly available WHOIS database. So if it was a concern to a data protection authority, I believe they would make a formal inquiry.

>>DAN HALLORAN: I think that would go -- there is no such thing as "the public WHOIS database." We certainly don't maintain it. Each registrar has its own database. They collect its own data and discloses it. I would imagine if a regulatory agency had a concern about that, they would direct the inquiry to the registrar.

>>LYNN GOODENDORF: So then I think the next question was have any registrars communicated that -- have any registrars reported they have been contacted by data protection authorities?

>>AVRI DORIA: I have Milton in the queue but I'm wondering whether any registrars here.

>>AVRI DORIA: You got -- Bruce, you got to use the microphone.

>>BRUCE TONKIN: I am trying to clarify your previous question about what the inquiry is about. We have been contacted by data protection agencies in Australia regarding data we hold. It is usually on a case-by-case basis. It is usually in relation to a complaint from somebody to that agency, and then that agency has then contacted us regarding the complaint.

>>LYNN GOODENDORF: Has there been anything specific to WHOIS and the personal data being publicly available or disclosed?

>>BRUCE TONKIN: Not in the context of the way you have described it. It was more a case of that particular individual's data. That's not a complaint about the system. It is a complaint about that individual's data. But I would be -- I'd expect that a lot of registrars would receive case-by-case stuff. It is not a policy question they're coming to us about. They're coming to us about a particular registrar.

>>LYNN GOODENDORF: I would just make one final point that again -- and making -- or considering a change in policy decision that if the whole premise of changing the policy is a belief that we need to comply with data privacy regulations then it just supports again that we need more study and more information on this.

>>AVRI DORIA: Thank you. Liz, did you want to comment on this specific issue? Okay, please.

>>LIZ GASSTER: It is more of a question. There has been discussion on the part of the Government Advisory Committee on this issue, which it is my impression anyway that the concerns and issues in discussion, that those government representatives are raising are at least in part on behalf of the DPCs in their countries.

So I am kind of raising the question as to the linkage there and drawing your attention to the work in the GAC on that because I think that would be relevant.

>>STEVE METALITZ: This is Steve Metalitz. Could I get in the queue at some point?

>>AVRI DORIA: I have Milton and then I have got you next in the queue.

Are you ready to be in the queue?

>>MILTON MUELLER: Just phoning a friend. This is why I am skeptical of studies. We have a set of facts stretching back to 2000 and somebody's questioning whether they exist or not. So let me just go through them for you.

May 2000, international working group on data protection and telecommunication warns ICANN immediately after the publication of the first RAA publication of personal data of domain name holders gives rise to data protection and privacy issues.

Okay. Second instance -- it is hard to find these things when you need them. There is a 2003 letter from the Article 29 working group which I can't find the exact data. In 2004, Giovanni Buttarelli of the European Union data protection entity spoke at an ICANN meeting and said both bulk access and the current approach to WHOIS was illegal according to EU privacy law.

Let's see. There is a 2006 letter -- No. There is a March 12, 2007 letter from the Article 29 working party on the draft procedure on potential conflict with WHOIS requirements and national laws. And just a few days ago there was a follow-up letter from Peter Shar, the Article 29 working group again.

I'm not even counting all of the instances in which data protection authorities -- of course, there is the Telnic case which is right now happening.

So I just don't -- I don't know how we get to this spot where we are saying -- I can understand we want to debate how much we should shield WHOIS and how we can respond to these concerns without doing damage to legitimate law enforcement interests. I don't know why we're debating whether these queries or even happening.

>>AVRI DORIA: Steve.

>>STEVE METALITZ: I really had two points to make. One was having heard from Ross and from Bruce and others, it seems to me that, I think, they've framed the question correctly here. If the council thinks that the OPoC proposal should be endorsed, which is the language of motion one and we should move ahead to implement it then we should vote for motion one. If you think the work that has been done does not amount to something that has been implemented as a policy, then you would vote against motion one.

In terms of the study, I think Milton has raised some good points about other well-be could be tension over the form of the study and it is not a panacea by any means. There may be some things that private parties can do, although some of the studies he talked about like finding out how proxy services operate, I know that the private -- only ICANN could do such a study because that information would not be made available to others since we've tried to get it in the past.

But if the thinking is it really wouldn't be useful to have these studies then I guess the council would vote against motion two. But if you think that -- and I think Bruce's point about whether the study is kind of happening out there and not in the context of a PDP, I mean, that may be a valid process point.

But if you think getting more of this information may be useful down the road to better policy-making on WHOIS in the future, then I think that would be the justification for motion two.

I would just add on this last thread that I don't think any of the documents that Milton referred to really is responsive to the question Lynn was asking. If a data protection authority thinks there is a legal issue, they certainly have a mechanism for raising that and none of the documents that he referred to would really do that. Thank you.

>>AVRI DORIA: Steve, I would just like to ask one quick question for clarification. On the motion two, I think -- if I was understanding a difference, the motion two as it currently stands is we would continue this particular PDP process until after the studies as opposed to what I think Bruce was hinting at in terms -- or stating in terms of process was that certainly studies could continue but this PDP process would end and another one would continue. Now, there is one motion that's not on the table which is top this PDP process and remain with status quo, whatever that is. No one made that particular motion so it is not on the table, but that is the other possibility that falls out of the discussions. Not that I am making that motion and it is late, et cetera. I said not that I am making that motion. But that is the motion that no one did put on the table in terms of terminate the PDP and leave things as they are. And that's not there but people talk almost as if it were but it's not.

Okay. Is someone else in the queue wanting to speak? Okay, Chuck.

>>CHUCK GOMES: Ross, I really like the way you framed the issues before us, I don't know, 20, 30 minutes ago in that we really need to decide whether to end this process or not.

And I really think there is value in us separating -- and maybe motion two needs to be changed a little bit -- separating whether or not any PDP happens again in the future from the studies.

I probably have one of those personally -- I am not speaking for the registries right now -- mixed feeling about the studies. I can see some value and am not sure that there is going to be a need.

But I do think we need to make a decision with regard to if we haven't reached consensus -- and I think it is clear we have not -- that we end that process. I also believe -- and this is me speaking personally right now, not for the registries. We will speak about this again on Tuesday and then I will represent the registry position.

But I really do not believe that we are at a point right now where we are going to make any more progress with regard to WHOIS. We can continue the working group. We can start a new one. We can open a new PDP.

I don't think we're at a point where we're going to have any success in that and all we will do is add to the frustration that has already been experienced. At the same time, as several people have pointed out, there are some market mechanisms that work that are dealing with some of these issues and it may be over the next six to 12 months that maybe we -- either we find that those are solving some of the needs that have been expressed or we find that at that point maybe the varying parties are willing to work together constructively to do something. But we could make that decision then if, in fact, there is the motivation to do that and the need is recognized by a significant portion of us so that we will indeed sincerely work together to come up with a plan to deal with that.

>>AVRI DORIA: Anyone? Okay. Werner.

>>WERNER STAUB: Many of us have been following this debate from the outside with growing sense of frustration as well because many of us have believed that this would, of course, lead to some result. I think if governments have been kind of -- how do you say -- gentle over this period because they are expecting something to be concluded.

Now, it is no problem to conclude we were on the wrong track. It is certainly not for us who did not actively participate in the process to look, this is all wrong. But it still strikes me that we have talked about radical methods, whereas we could have done easier things and we actually neglected the easy things and looked at the difficult things, simply because maybe we were too ambitious. It could, indeed, be the best solution to close the PDP at this stage and, basically, just look at a similar process as to what has been done just now with in the context of the registrar transfers with a clarification in spirit of the original setup is being published right now. Where we could just look at the technology used for the WHOIS and not the question of whether something is published or not.

If you have -- if you look at the problems we have, much of it is linked to the Port 43 protocol which is not in a position to do what it should. At least minimal information about who gets that data. We cannot get that decently with Port 43.

If we just allow some restriction in terms of the output on Port 43, we maintain the same obligations on a normal Web interface where normal technologies as it captures, whatever, as selected by the registry or the registrar enable the consultation of that data by people as opposed to robots and make sure it is the listing procedures that have been actually been initiated by ICANN for registrars and others are upheld and respected by registrars, I think we could make big progress.

>>AVRI DORIA: Okay, thank you.

Jon.

>>JON BING: Thank you, Mr. Chairman -- Madam Chairman. Sorry. My concern is perhaps not well-funded, but I noticed that in citing the documents that have been made available to ICANN, several -- at least two from Group 26 was mentioned, I'm not quite sure whether all are around the table understand that reference but that's actually the highest data protection authority in Europe, consisting of all the data protection agencies and their directors, headed by the data protection office of the commission itself.

That makes it, of course, extremely important to take such a request from an international organization, too, what they concede and other international organizations rather seriously and to react to it in a responsible way.

And it only strikes me that a lack of being able to cope with this in a responsible way might have affects outside the sector we are currently discussing because it will indicate how ICANN as an international organization is able to cope with requests on the international scene with other international organizations.

And I think, therefore, this matter is rather serious. Thank you.

>>AVRI DORIA: Thank you. Any comments? Okay. So we pretty much good all the constituency and comments.

One of the things I would like to ask is, in people's readings, and I know from talking to a lot of people, you have been reading the comments from the community. I've read probably about half of them. I have got about half to read yet.

In my half, I don't know that I've noticed new arguments coming up, but I would like to open the floor to people that have, perhaps, read them, to people that have found a new argument in there that hasn't been discussed to sort of bring it in. This is, basically, almost like a sanity check to make sure there isn't something in there that we haven't considered.

And I don't have one of those, but I admit that I have only read about half of them so far. I will try to get the rest of them read before the vote on Wednesday.

So does anyone have anything to add about the community comments that they've been reading? Would anybody like to reinforce or champion any of the comments that people have made?

>>MARGIE MILAM: Sure. I would like to follow up a lip bit on what Lynn was saying about the privacy issues and the data privacy concerns. I think one of the issues that really hasn't been explored is how valuable WHOIS is in protecting private information, and I think that's -- you know, when we talk about some of these laws in Europe, there's certainly an element of balance written into the policies where you look at how the public is affected by the changes.

And that's one of the things that I think may be a different angle on this, you know, to what extent is WHOIS used to help protect the privacy of the millions of consumers that actually go on to Web sites and provide their information and maybe that's something -- an issue we haven't discussed before.

>>AVRI DORIA: Can okay, thank you. Yes, Alan.

>>ALAN GREENBERG: I don't have anything new to say, but I have read a lot of the comments also and I have talked to a lot of the people. I can echo the absolute frustration of the community, certainly my community but not only my community, and the fact that there is no -- we have shown no ability to come to some compromised solution that meets the end despite all of the discussion. The level of frustration is growing and is coming out more and more.

>>AVRI DORIA: In that level of frustration, have you picked up any solution that the frustrated community wants? I see your hand, I will get to you.

>>ALAN GREENBERG: Certainly if I look at comments from people at-large, some of them disagree with each other. There is not necessarily a single front. There seems to be a general agreement that individuals need to be shielded under some situations and that a large company doesn't need to be. I mean, some of those things are evident. Exactly how we do it, how we make sure that law enforcement or other non-law enforcement people who have access can get access is not clear. But the problem cannot be that difficult. It is obviously.

>>AVRI DORIA: It could be an intractable problem. I mean, it's possible.

>>ALAN GREENBERG: But we still need to solve it.

[Laughter]

>>AVRI DORIA: We still need to resolve the PDP.

Okay, Marilyn.

>>MARILYN CADE: I want to reference the comment that Vernon made. It's very consistent with a contribution that I made quite a long time ago, now it seems to be, but it is actually only in the past PDP and it was about some small steps we could take, and that's what I want to address, Avri, because, you know, are there small steps we could take that improve or lessen the harms that people perceive to exist. And I -- I think, in fact, we could.

We could -- as Werner suggested, we could take some steps to address the technology. We could look for ways of limiting the ability for mechanized harvesting of displayed data. We could look at rules for Port 43. Those may not address the larger issues, but they might be smaller steps to be taken in the meantime that would still have significant meaning to parties who are concerned about whether WHOIS is being used with spam.

>>AVRI DORIA: Would those be policy actions or are those like proxy services and such sort of implementation things that -- and tools and such, or are they policy issues?

>>MARILYN CADE: Well, I would say that if we go back to what justifies to be a PDP. You know, we must remember that there was a time when we decided that we wanted to tell the board there should be a policy about something, but we left the operational details up to the staff to present. But we said that there should be a policy. That is, there should be a framework.

I think that in this case, since I assume we would be looking for adherence to practices across all accredited registrars, and that there is the potential of having impact on other parties, that it probably would take a like policy, at least.

>>AVRI DORIA: Okay. Thanks. Okay. Werner, I saw your hand up and then Steve and then Chuck.

>>WERNER STAUB: I just wanted to add, basically, why I think it is not a policy development question, but actually a simple tuning question, remaining in the spirit in those small steps of the original WHOIS requirement.

I can give an anecdote which actually happened here -- almost here -- the eight years ago.

There was -- the WHOIS was discussed in the ICANN meeting. Actually one of the first that was held. And Becky Burr, from the U.S. government, presented the WHOIS requirement. And it appeared at that point that people didn't understand what she was talking about, and only at that point, Becky Burr and many other people learned about what Port 43 WHOIS meant.

The original intent was WHOIS over the Web. Nobody in the policy-making area -- and even in the IP area -- had even understood that there was something like Port 43 WHOIS, yet Port 43 WHOIS is what, of course, is very practical for scripting, and easy, but we registrars are able to handle it, if it becomes a little bit more complicated there.

>>AVRI DORIA: Okay. Thank you. Steve?

>>STEVE DELBIANCO: I would characterize two kinds of frustration. I'm relatively new to the process, having been only here for about a year and a half. But there's frustration over process and this is something I see deep-seated in the comments, as well as what I've heard today from people that have been with ICANN for years. You're very frustrated with the process and I'd make a distinction between being frustrated over process and frustrated over an unsolved problem.

There's frustration over the process in that it's simply taking too long and makes a mockery of a PDP that goes on for six years. That's a process concern. This frustration over a process, if the status quo is really stubborn and sticky and it's hard to change the status quo, and that would be perceived as a - - as a frustration if somebody wanted to change, because the burden of pushing a change is rather high. And that, again, is a process frustration.

But when it comes to where is the frustration over an unsolved problem that's dying to be solved, I'm hearing over and over again that the nature of the problem has changed quite a bit from the time when the two sides staked out where they were and have fought this death -- death fight for seven years.

Things have changed, and we keep hearing comments that maybe you have to close this PDP down. I'm not familiar enough with the process to know if that makes sense. But if you closed it down and immediately initiated a new issues report that looked at 2007 state of the world and took a look at the problems, at least you should overcome the frustration of the type that says, "This has gone on too long." You should overcome the frustration of those that don't like the fact that the status quo is somewhat sticky. And then we move on to truly looking at what is the problem to solve.

>>AVRI DORIA: Thank you. Agree with almost all of that except for "immediately."

[Laughter]

>>AVRI DORIA: Chuck, you were next and then --

>>CHUCK GOMES: I don't know how many had a chance to look at the latest draft of the WHOIS provisions in the Telnic agreement but I looked at those this week, and I was actually quite fascinated by the work that's been done to try and solve some of the problems that we're talking about. Now, I don't know whether they scale to other TLDs and so forth or whether that one will even be approved, okay?

But I think it is evidence, at least, that some work has been done to try and grapple with these issues that we've had a terrible time solving, and if, in fact, it's approved, I think it will be very good data for us, and a model, maybe, that we can watch, to see how it works.

Because it confronts the issues we're dealing with here head-on.

>>AVRI DORIA: Thank you. Jeff?

>>JEFF NEUMAN: I was actually going to make -- I echo Chuck's comments wholeheartedly. I think it's something to watch and it's something that, by the way, the inability of the policy process to solve the problem will result in things like funnel requests and others to shape the policy.

So that's one ramification that the council needs to consider is that it's kind of pushing it off to another realm, because I think if the Telnic proposal goes through, you're going to have others that make the similar proposal and I'm not saying that that's good or bad. I'm just saying that that's inevitable.

>>AVRI DORIA: Right.

>>JEFF NEUMAN: The other thing is, just to address Steve's point as one who has been involved for seven or eight years on this issue, the frustration is not the process. The frustration that I see is that we have sides that are completely unwilling to move an inch or at all, either because they think that their position is right or because they're afraid that they -- if they give an inch, it's going to lead to a mile. So I'm not frustrated with the process; I'm frustrated with the lack of ability to focus on a compromise solution.

>>AVRI DORIA: Okay. I'd like to make actually a comment on that one.

I actually think that there's been a fair amount of compromise over the period. I look at -- when I look at the working group and what's -- I see about like 80% compromise. I see a lot of compromising happening.

I do see some final areas where people haven't been able to reach compromise, but I think in a lot of areas, there has been a lot. So I wouldn't go so far as to say we've got people unwilling to compromise. I think we've got people who are unable to compromise some last bit of the way, that prevents it.

I think some of the -- the things that have been said about terminating a process -- I mean, I look at the motions we've got, and I look at Motion 2, and it almost says, "Stop, stay with the status quo, do studies and then after those studies we'll figure out what to do with the WHOIS policy development," but doesn't quite say it.

And at some point, somebody may make a friendly amendment to it that does make it say it. I don't know.

We have basically three motions that basically -- two of them say stop it in one way. One of them says stop it, move it to an implementation, let's see what comes out of it. One of them almost says stop it and stay with the status quo. One of them says stop it, there is no consensus. A policy without consensus shouldn't be.

The other thing on the Telnic that I wanted to bring up is: Part of that is really based upon a policy decision that was made that sort of said when you've got a government issue that forces you to do something different, propose something different. In other words, we already passed that policy.

>>JEFF NEUMAN: But not in that form. I mean, but it was supposed to be a -- you know, but it hasn't been ratified by the GAC or whatever process that has to go through.

>>AVRI DORIA: Well, that's another issue that the GAC hasn't ratified what the board decided, but, you know --

>>JEFF NEUMAN: And again, I'm a registry and I'm fine with taking certain things through the funnel if that's the way, you know, those issues have to be decided.

But I'm just saying an inability to make a decision here is just going to result in more there.

>>AVRI DORIA: Okay. Thanks. I had a comment in the back? Okay. I had Susan.

>>SUSAN CRAWFORD: Avri, just a friendly amendment to your characterization of the third motion, which is an interesting proposal that I think should be explored in a little bit more depth. It doesn't necessarily say stop. It says, "Unless this is resolved within the next year and a half or so, no more WHOIS."

This has been characterized as dropping the WHOIS clause from the contracts. It could also be understood as, "All right, now it's time to go the rest -- the next 15 to 20% to get to a resolution."

>>AVRI DORIA: Yes.

>>SUSAN CRAWFORD: So I just want to make sure that that's understood by the council. I think that's the import of the third motion, and I think -- I think it's interesting and at least worth discussion. Thanks.

>>AVRI DORIA: Thank you. Okay. Who did I -- I had Ross but I had you, right. Yeah. There is a microphone. There's the microphone.

>>DAVE PISCITELLO: Dave Piscitello. I'm with ICANN, and the Security and Stability Advisory Committee and I wanted to ask a question in response to your comment about making 80% progress and having seen it in here.

One of the things I worry about is the effect on the perception of the ability of a multistakeholder and consensus process having -- or being perceived as failing if -- you know, if we don't do this correctly or we don't come up with an outcome for WHOIS.

And I think a lot of people in here may see significant progress. I don't think that the community at large is aware of that, and I think at the very least, it's incumbent on the GNSO to do a very good job of explaining the kind of progress that they have made here, because that is not visible outside, you know, the confines of these meetings.

>>AVRI DORIA: Okay. Thank you. Ross, I had you next.

>>ROSS RADER: Yes. I think I was going to -- not "I think." I was going to raise the same clarification that Susan had raised.

You know, I'm not sure that it calls for an end to this PDP as much as it calls for an incentive to move forward with something. Certainly Motion No. 1 does call -- it naturally must mean the end of the PDP. But I -- I think the -- I would certainly be much more comfortable with the statements or the intent of Motion No. 2 if that was made explicit within that motion that this was, in fact, going to be an end to the PDP.

My question is: You know, at that point whatever our intent is moving forward, but I think that we can deal with that as part of that process going forward.

>>AVRI DORIA: Okay. Yeah. Chuck, you. Oh, and then Milton.

>>CHUCK GOMES: Some of you have heard me say this quite a few times before, but I strongly believe that it's a faulty assumption to assume that any PDP should result in a consensus position. Somebody -- maybe a couple people -- have already made this point.

It is good data when you find out you can't reach consensus. I understand that people are frustrated by that, especially if you wanted something to happen there. But it is, I believe, totally false to assume that we should always be able to reach a consensus position, and if we can't, that is information we should accept -- now, maybe it will change going forward, circumstances will change and so forth, but I really strongly believe that's a faulty assumption, and we need to get rid of that assumption.

Otherwise, we will look at failure every time we can't reach consensus. It's naive to think that we can always reach consensus on any issue.

>>AVRI DORIA: Okay. At the moment I've got Milton, Jeff, Susan, Alan. Okay. Milton.

>>MILTON MUELLER: Yeah. Chuck, that's precisely the point I wanted to make is that let's -- let's face it when we don't have consensus.

However, let's be also honest about when we don't have consensus, let's not make something into a policy, okay? And that's the genius of Motion No. 3 in this case, is that it's the way ICANN was supposed to work. And you know that because you registries insisted that nothing that wasn't a consensus policy could ever regulate you. Right?

Now, our end users, the people who register domains, are being regulated by a policy that has no consensus, so let's face that fact and get -- you know, not get rid of it, but -- but sunset it, and the genius of that, again, is that it makes us go back to the table on equal terms in terms of defining what the consensus is. Okay?

If you say, "Okay, I'm sitting here on a big pile of money and it's considered mine" and you're all negotiating about who should get pieces of that big pile of money, all of you have none and I have it all, and I say, "Well, I just don't agree that anybody else should get a red cent, and since we don't have consensus, I guess I just get to keep it all, right?" I mean that's not an intelligent or honest bargaining for anybody to be in but that's the position we're in with WHOIS. People who have open access have what they want. Why should they agree to anything different? Now, you know, it may seem radical to sunset WHOIS, but I just think that's the way -- I thought that's the way ICANN was supposed to work. That if we really didn't have consensus, it wasn't supposed to be a policy. It was supposed to be up to the market. And so that's why we're supporting this Motion No. 3.

>>AVRI DORIA: Okay. I've got Susan, Alan, Steve, Mike. Huh? Oh, no, I've got Jeff. Sorry. I -- forgive me. I've got Jeff, Susan, Alan, Steve, Michael.

>>JEFF NEUMAN: Yeah. I just -- Chuck, you made a point, and you constantly make it. I think you're right, you know, that there's nothing wrong with not being able to make consensus. But to state Milton's position a little bit different is, okay, so then what are the ramifications of not reaching consensus?

And it's different if we were thinking, okay, what's the best practice way to implement a new program that's never been implemented before, and you can't reach consensus, then -- then your position can be, well, let's let market forces work it out. But here, Milton's absolutely right. If that -- if the position is you can't reach consensus, therefore, you always rely on the status quo, then there's not going to be an incentive by a certain subset of groups to ever reach that consensus.

>>AVRI DORIA: Okay. Now Susan.

>>SUSAN CRAWFORD: What he said.

[Laughter]

>>AVRI DORIA: Thank you. Alan?

>>ALAN GREENBERG: I'll just state a bit of -- a bit of unease I have over both 2, the way it's been slightly reworked -- that is, stop this PDP, do a study and then start another one or something --

>>AVRI DORIA: By the way, that hasn't happened.

>>ALAN GREENBERG: No, no. I understand. But the way the discussion has gone a little bit. -- and No. 3, which says twilight the WHOIS policies and then people will be forced to discuss it. Both of them have an almost unending time frame associated with an eventual resolution.

>>AVRI DORIA: Actually, No. 3 has a sunset of 2008.

>>ALAN GREENBERG: No, no. Right. But then we have to start discussion and we start all over again.

[Speaker off microphone]

>>ALAN GREENBERG: Perhaps. But if not --

>>AVRI DORIA: Yeah.

>>ALAN GREENBERG: As people have pointed out, it's seven years already or eight years or something. I -- I understand the concept of intractable problems. I understand the problem of not reaching consensus. On the other hand, the Internet's going to keep on going, and we have to make decisions.

>>AVRI DORIA: And -- yeah. Okay. Steve?

>>STEVE DelBIANCO: And I can concur with the cleverness or even brilliance of the sunset proposal, but, well, the nuclear bomb was a brilliant invention too.

[Laughter]

>>STEVE DelBIANCO: And I would ask you to think about this for a second: How many contractual provisions that we have today at ICANN, how many policies that we have at ICANN today, were not the result of a PDP? Count them. Let me count the ways. And every single one of those would be subject to the very same challenge to say that this needs to come out, this needs to shut down unless in 18 months someone can develop a consensus-driven PDP.

That is not a process you want to set loose right now on this organization.

>>AVRI DORIA: I'm not sure the atom bomb analogy holds, but...

[Laughter]

>>CHUCK GOMES: Hey, we liked it.

>>AVRI DORIA: I didn't. Mike?

>>MIKE RODENBAUGH: So here's to follow on, Steve, and maybe finish the point, it's -- you know, while the current status quo is not, you know, quote, capital C, capital P, consensus policy through a PDP, it seems to me when the RAA was put in place with these provisions there had to be consensus between the registrars and ICANN staff --

>>SUSAN CRAWFORD: No.

>>MIKE RODENBAUGH: And the other people, but honest -- everyone else, I wasn't here then in 2000, so please educate me. How did it get if there.

>>ROSS RADER: If I could just clarify from a historical perspective what happened there, there was no consensus around WHOIS. It was put in as a placeholder. There are policies governing the fact that we have registrants and that led to the creation of an RAA. There is consensus policy that wasn't developed through the PDP back in 1999 that led to that happening. But there --

[Speaker is off microphone]

>>ROSS RADER: No. It exists. There is consensus policy there. There's official ICANN consensus policy on these subjects.

So we're bound to those things. The community is bound to uphold those until that consensus goes away. Then we need to form new policy to replace them.

The WHOIS is the one area where we have neither consensus nor policy to support what's in these contracts, so -- I'll stop there because I'm now -- it's not factual anymore, it's my opinion, so -- but there is consensus policy behind -- behind this stuff.

>>MIKE RODENBAUGH: It just seems to me again on Steve's point, there's many situations where there's not been consensus on contractual conditions. There's certainly no -- by no means consensus on VeriSign's, you know, 7%, you know, price hike for every year six out of seven years forever, you know, but it is. So -- WHOIS, same thing. It is. Not only is it, but it has been for eight years. I think very strongly that the burden on -- is on those who seek to change it to prove that it needs to be changed.

>>AVRI DORIA: Okay. I have Chuck and then Kristina. Oh, and then I got Marilyn. Thank you. And

--

>>CHUCK GOMES: And I certainly -- and there's a few other people in the room that can probably provide this history but I certainly was there when the first contract -- and it was just one contract for com, net and org -- with Network Solutions and ICANN.

The WHOIS provision was basically a historical artifact because the technical WHOIS that was provided was pretty much, other than maybe adding a billing contact because we had just a couple years before started charging, so that was a new element, but it really was a historical artifact in that that's the way it always was.

And I don't think anybody at that time -- and I welcome others to challenge this if I'm wrong -- really thought about the ramifications of WHOIS because it had always been public, it had always been that way, and so I don't even believe it was even discussed or negotiated. It was just kind of assumed, "This is the way it's always been" and nobody questioned it.

>>MILTON MUELLER: Could I introduce a quick factual correction.

>>CHUCK GOMES: Sure.

>>MILTON MUELLER: Actually, the process was actually very carefully thought about, because when you created registrars, the whole technical basis of WHOIS was changed, and you had to make it an obligation of the registrar rather than the integrated registry. And the trademark attorneys at the time knew exactly what they were asking for and what they were getting by insisting, for example, on bulk access, and there were also attempts by -- by your company to fend off the massive inundation of requests. There was a zone file access agreement, for example, just before ICANN was created in which you were saying, "My God, we're being inundated with too much requests."

I guess this is mainly of historical interest, but the main point is, people did know what they were doing when they created these contractual conditions, and it was done to serve the interests of the trademark people who were going crazy with, you know, cybersquatting at the time, and thought that they needed this -- this capability, but it was not a consensus policy.

>>AVRI DORIA: Okay. Kristina?

>>KRISTINA ROSETTE: This is not intended to be inflammatory. Having said that --
[Laughter]

>>KRISTINA ROSETTE: No. It's really not.

I am sitting here as someone who is relatively new to this process, and I can certainly understand why those of you who have been working on it for so long are extraordinarily frustrated with what you may perceive to be the inability to reach some kind of resolution.

But as far as I'm concerned, it seems to me that it's more important that we get it right, that we make sure that we either get to the point where we acknowledge that there's no way we're ever going to come to an agreement or we say, "Look, there's more work to be done." There should have been more work in the first instance. And as far as I'm concerned, that's really -- you know, that's the camp I'm in. That's why I proposed Motion 2 in the first place.

I mean Bruce has just posted to the council list something -- a quote from the issues report back in 2003 where the staff recommended that the council not initiate a PDP until there was significant additional factual work done.

The council itself has recently recognized that, as recently as San Juan, when we decided to hold off on going ahead with the PDP on domain tasting until we had the opportunity to gather more facts.

And as far as I'm concerned, it seems more important to me that we get it right than we just throw up our hands and say, "We can't do this anymore, and we have to just decide now because we're just tired of it."

>>AVRI DORIA: Okay. I had Marilyn next.

>>MARILYN CADE: I was actually in the queue a little earlier, but now I can -- having not spoken then, I can only applaud the comments that have just been made.

I remember the staff managers issues report of 2003, which very clearly suggested that there had to be more analysis done before we started a PDP.

I also believe that we have all come to understand the importance of starting our understanding of an issue with the data gathering and analysis before we get into opinion vetting, and, you know, our present policy process frankly has put us too early for many topics into opinion vetting.

I don't think we can suggest that it's good to make uninformed policy. Even if we have spent a lot of time so far, the question really is: Do we have the data we need to make informed policy? And if we don't have, I think we actually have the means to get that data and then decide whether to move forward. So I'm in the camp, as well, as a member of the community, of thinking it would be worth knowing these facts, and then deciding whether or not we modify policy.

I'll just make one final point. You certainly can pass a resolution that says, "Okay, we've decided we've had enough and so now we're going to sunset something," but I'll point out that you actually didn't start with an issues report that took that into account, and so I would say you actually haven't thoroughly considered the consequences of that.

>>AVRI DORIA: Thank you. Any other comments? Okay. Susan? Oh, I have a Susan hand and what other --

>>PAUL STAHLURA: I just didn't want Marilyn to have the last word, so go ahead, Susan.

[Laughter]

[Speaker is off microphone]

>>SUSAN CRAWFORD: Just very briefly, there hasn't been a lot of discussion about the working group report. Just this afternoon. And I actually didn't feel it was so lacking in substance as some of the comments seem to suggest. Are there any supporters of the working group report here in the room who think that there's enough flesh on the bones? Anybody have that view?

[Speaker is off microphone]

>>SUSAN CRAWFORD: What's that?

>>AVRI DORIA: I'm not sure I understand the question.

>>SUSAN CRAWFORD: Okay. Here's the question: I'm not hearing a lot of discussion about the OPoC proposal, what's left to be done on it. I mean, I haven't heard anybody saying there's enough in the working group report to use to go forward with an implementation document with staff. So far, I've only heard the negative of that, that there isn't enough, we shouldn't go forward with the implementation.

I just, as an observer here, I'd be interested in hearing from anybody who has the other point of view, that there's enough to go forward with implementation.

>>AVRI DORIA: Yeah. I mean that's certainly the point that I was arguing in putting through the motion and saying that there's enough in the report, plus community viewpoints, for the staff to go forward with an implementation. Maybe it's -- it's from my background in coming from you design, you code, you change the design because the code didn't look quite right.

And so at a point of -- I see a lot of stuff has happened, and I certainly think enough has been done for the staff to implement the 80% or put an implementation proposal forward for the 80% that is in fair agreement.

There's a few things that don't have agreement. There's a few things that are still open issues. I've noticed from working with the staff on the gTLD process that when they have one of those issues that we haven't responded to adequately, they get really creative in asking the questions about, "Well, did you mean this or do you mean that? How would this work? Does this satisfy?" And at that point, you've left the realm of us arguing about our principles and are arguing about, well, does this satisfy, does that. That was just sort of trying to answer, was there anyone that thought there was enough. Yeah, I thought so. And now I've got Ron and Steve but I had Paul before, right?

>>PAUL STAHLURA: I'm good.

>>AVRI DORIA: Oh, you pass and I have Milton. So I have --

[Speaker is off microphone]

>>AVRI DORIA: Okay. I just wanted to make sure. So I've got Ross, Steve, and I couldn't tell which of you got your hand up first because I was so busy rattling on that I wasn't looking. And I have Milton.

>>ROSS RADER: I'll just take the mic then.

>>AVRI DORIA: Oh, okay.

[Laughter]

>>ROSS RADER: I don't want to forget how we got here, and I think Susan's question kind of turns that rock over for us.

Back in March, there was a -- a view that there was -- there wasn't a view. There was a vote of council whereby the majority of the council supported the recommendations as written at that point in time. There was a proposal put forward which benefitted from supermajority support of the council that further discussion might bring about further agreement. We then went through a working group process whereby we had reams of paper and multiple recommendations put forward that turned into a report that magically nobody now agrees with.

I think to answer Susan's question, nobody supports -- as far as I can tell -- what happened in that working group, which means we need to go back to the last point of agreement and move forward from that basis, or take an explicit action to move in a completely different direction, as has been discussed today. But I'm not hearing that that includes the work of that working group.

>>AVRI DORIA: Okay. Thanks. Steve and then Milton.

>>STEVE DELBIANCO: As Susan indicated, there's quite a bit of meat in there, and I agree: The meat that's in there, however, is a problem.

Milton said, just as you were saying that, there's too much meat on those bones in the working group report, and that's because the working group report, it really didn't go away. It's resurfaced. Staff -- and by the way, staff has done an outstanding job on these WHOIS summary reports and the implementation notes. Read the implementation notes. You'll see that once you get back the seemingly simple decision to proceed with OPoC, you're left with the critical confrontation problems about, well, what responsibility does the OPoC have?

Take a look at relay and reveal as indicated in the implementation notes. These are problems the staff has identified are going to have to be dealt with anyway. I don't even know what mechanism ICANN has to work out controversies when staff is being charged with doing implementation. I mean, in the PDP is over and they're in implementation, what process do we invent to work that out? And then go to the next page of the staff implementation notes. Once we figure out what are the responsibilities of an OPoC, you know, reveal and relay, then there's access. And as Chuck indicated at the beginning, in the registries' comments, access isn't worked out at all.

Motion No. 1 of approving a proceeding with OPoC doesn't really say anything about access to unpublished data, so all those controversies, the place where the meat of the report is and the place where the controversy still lives, are still there. The implementation notes reveal that we are -- we are not really making a giant leap forward by approving OPoC. We're just simply changing the venue in which those controversies have to get worked out.

>>AVRI DORIA: Okay. Milton?

>>MILTON MUELLER: Yeah, I think in some ways, I'm agreeing with Steve, which is interesting, but

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[Laughter]

But I did want to emphasize there is a lot of good stuff in the working group report, we did work out details of a lot of things. For example, it was clear that it was a crazy idea to try to accredit OPoCs. Nobody wanted to do that. Well, some people wanted to do that.

It was clear that we would only protect the data of natural persons and we rejected the idea of trying to also add on to that the criterion of non-commercial natural person activity. That was a good discussion. We came pretty much to an agreement on that, agency and so on.

So we got quite a bit down the road and then it came down to the reveal which is where some of us just started getting really scared about the implications of this.

And when it came to access, I never understood what is the difference between "access" and "reveal." If you can tell people to reveal the data, you are getting access, aren't you? that's what we called Tier 1 access. But it really was -- it came down to these disagreements about taking it the next step and giving people access with conditions under that and that's where it broke down.

>>AVRI DORIA: I had Jeff next.

>>JEFF NEUMAN: The same arguments you raised, Steve, number one be could be raised against number two because instead of going forth trying to figure out a solution to reveal, the proposal is to do studies opposite what the actual harms are in privacy that's affected which seems to me be to a huge step backwards.

It shouldn't be future studies. It should be maybe solicitation of experts from different industries to figure out if there's any parallel or some kind of expert analysis on how to solve the problem rather than let's just do a study of how people are affected because that takes us back to the workshops way back. Marilyn led the workshops in Montreal in 2003.

There is plenty of data from different groups on how they're affected. Plenty of data from law enforcement of how much they needed.

I don't think anyone should take a step back and do those kinds of studies. It should be -- two should not be studies, but it should be -- let's figure out how to get a solution.

>>AVRI DORIA: Okay. Steve?

>>STEVE DELBIANCO: Jeff, I'm more optimistic because I really trust the innovative drive of the registrars in the market. Samuel Johnson once said, The man is seldom as innocently employed as in the making of money.

And it is certainly the case that services that registrars and others, that registries can offer are actually going to be a much better answer than another round of ICANN processes.

So I'm optimistic that if we shut down the PDP and do an issues report that if we discover -- to Milton's point, if we truly discover there are nations -- privacy officers that are concerned and we discover that certain spammers can still get access to unprotected WHOIS data, that he we can see market solutions to those two that are far less controversial than moving forward with something like OPoC where we haven't worked out any of the details behind "reveal" or details behind "access." So I'm optimistic.

>>AVRI DORIA: I was going to object that we haven't worked out of the detail but having worked out any details to "reveal," that's...

Was there any other comment at this point? Okay, Ross.

>>ROSS RADER: I had a question, actually.

>>AVRI DORIA: Sure.

>>ROSS RADER: Was pressure points for the registrars, registrants, is the lack of meaningful exemptions under the current contractual conditions. I believe that we implemented a policy

recommendation -- or we forwarded policy recommendations to the board many, many moons ago. It's been hijacked -- I mean, analyzed, considered by the GAC.

What's the current status of that?

>>AVRI DORIA: Okay. And someone from the board will correct me. As I understand it, the board actually approved -- I mean, we sent it as a supermajority opinion so the board did not have a supermajority opinion against it and approved it, I believe, by a supermajority.

And I believe that if there is an issue anywhere, it's in the implementation. Now, I personally -- maybe someone from the board can explain where the waiting for the GAC to respond becomes material at this point. The GAC certainly has the ability to -- while the board is considering something, to send advice and ask for that, but the board has already approved it.

So I'm not really sure that I understand -- I understand that there is some issues in the implementation of that.

>>ROSS RADER: The only reason I ask that question is because -- I'm sympathetic to Steve's argument that the market will help take care of the problem. Unfortunately, there are legal reasons for following the law as opposed to selling a service.

I'm not sure that the capability to sell a proxy service will necessarily fulfill the requirements, for instance, Canadian privacy legislation.

I'm not saying that WHOIS is currently consistent or inconsistent with Canadian privacy legislation. But were it found to be inconsistent, it would be nice if we could avail ourselves of those exemptions sooner than later.

>>AVRI DORIA: And as I understood it -- I don't know if there is anyone either from staff or the board that can respond to the question. Yes, Olof?

>>OLOF NORDLING: Just give full background of the situation, I think there is an expectation that the GAC should provide a comment to this, and that is part of solving it.

>>AVRI DORIA: But on what -- I mean, certainly the GAC by bylaws was certainly free to comment before the board made its decision. The board having made its decision, why would people still be waiting for a GAC comment for implementing the decision?

>>DAN HALLORAN: If I could -- I know this is of interest. I saw there was something about I think Kurt in some minutes that said something about this. I thought Milton had a block of specific interest, so I'm guessing there will be a better answer coming at some point.

>>AVRI DORIA: But there is a fair amount of interest.

>>DAN HALLORAN: Just to respond to Ross' immediate question, I don't know what will be the formal answer. Keep in mind, this is -- the thing that the GNSO recommended and that the board adopted was that ICANN should have a procedure. It wasn't a new -- like a consensus policy that was going to be binding on registries and registrars. It was we want you guys to have a procedure when a registrar or registry comes to you and says we got a problem with our privacy laws.

We posted a draft implementation of that procedure in order to comply with the recommendation. That doesn't mean you guys can't come to us if you got a problem today and means we might not follow exactly that procedure that's documented. I am not sure exactly what procedure we would follow. It doesn't mean you guys are out in the cold if you do have a problem today.

>>AVRI DORIA: Any other -- yes, Milton?

>>MILTON MUELLER: So what's the problem with just implementing the procedure that was passed unanimously by the board?

>>ROSS RADER: (inaudible).

>>AVRI DORIA: You don't want that one on the microphone?

>>MILTON MUELLER: I didn't hear you.

>>AVRI DORIA: Tell you later.

>>DAN HALLORAN: I won't comment. I don't know the official answer about all the niceties of what's going on with the board, the GAC, the policy implementation.

But whether or not -- even before we had a procedure, if Ross as a contracted party came to us and said we got a problem, we will sit down and deal with that problem like we did -- in the past, we made changes to WHOIS. I think it was dot name we modified their WHOIS.

Just because we haven't implemented this procedure based just on your consensus policy advice doesn't mean the contracted parties are -- I just didn't want Ross as an important partner of ICANN to think he is left out twisting in the wind because we haven't implemented this procedure yet.

>>AVRI DORIA: Okay. Anyone else have a comment?

So we've talked about the motions. As I say, the motions are on schedule to be voted on on Wednesday. We will have more discussion on this. We will have open discussion. There can still be proposed amendments on the motions, either amendments that need to be voted on or friendly amendments or self-amendments, now that we've talked about it.

If anyone feels -- especially with discussions on constituency day, whether people come up with, you know, some other that takes into this.

I would actually like to add one last comment as I close and one of the things that I think has also -- and this is sort of in this success but hard to touch, I think some of the changes in the status quo, some of the new features, some of the new whatevers may have actually had some sort of origin in the discussions that have been going on as part of the PDP.

And so I think in going along with sometimes the process can be a success even if it fails is because people understand the whole lot more about the concerns of each other, what the problems are and it is what allows the people to be creative and say, Oh, okay, I understand the problem, let me create a widget that fixes it.

So I in no way -- seven years -- fortunately I have only done three of those seven years -- maybe four. No, three of those seven years is a long time not to reach a closing and consensus.

I truly believe that we have to bring this one to a close one way or another, but whichever way it ends, whether it's sunset, whether it's whatever, I don't believe it is a failure because the status quo has changed, the world has changed, we understand a whole lot more about what the role and non-roles of WHOIS are.

So at that, I would like to say there is break -- coffee break and then we will come back and we will start betting into some of the studies to date and what facts are actually on the table at this point. Thanks for these discussions.

(Break)

>>AVRI DORIA: Okay. Hello, hello? It is now time to get started again. In fact, I'm actually a minute late in doing this. I apologize. But I know people don't want to go too late tonight and I did stick an extra hour on to the schedule so we should get started. Okay. That's great, thank you.

Okay. What we've got on at the moment is for the next essentially hour and half we, basically, have a discussion on the studies that are being done. The first one is on the WHOIS study that the council asked ICANN to do, and then there will be discussion on the SSAC report on the WHOIS spam study. Obviously, it is a time for us to ask questions to try and understand what's going on.

Certainly, the -- many of these studies are not complete yet so it is a really good time, perhaps, to comment on them so I guess, Liz, you'll start and I'm not sure. Is Steve coming in -- you will be doing it, okay?

So in which case...

>>LIZ GASSTER: Great. The slides that I am going to take you through are essentially just an abbreviated version of the staff report on the WHOIS study requested by the GNSO Council that was distributed on the 4th of October and also is available on the GNSO and the WHOIS Web site.

So if you want to kind of follow along, that's the document to look at. And the purpose of the slides is really twofold. One is just so I can summarize very briefly questions that staff had and the thought that staff gave to the resolution that the GNSO Council approved and also just to highlight the questions that we as the staff had in terms of actually implementing the studies. So hopefully we will stimulate some discussion.

And what we'd really like out of that discussion is further guidance from the council on the questions that we've identified.

The first slide here just restates the resolution that was passed with regard to the studies. And I'm just going to read through it. The GNSO Council requests ICANN staff proceed with a study of gTLD registrations and registrant it's and how WHOIS data is used and misused as described in the GAC principles regarding gTLD WHOIS service, paragraph 4.2, and by the working group final outcomes report. This study should include a review and analysis of the different proxy services available today and summary of any other statistical studies that staff can locate and the GNSO Council ask that the staff report back to the council on the 4th of October.

That is the resolution that was passed, and what we did as staff was essentially just tried to parse through the language in the resolution to understand what was really being asked of us to do and so that's what the rest of the slides are intended to do, just highlight the specific directives that we were given and highlight questions that we had about what was really being asked of us in terms of proceeding with the report.

So when you look at this statement of the resolution, you notice that the first substantive phrase talks about requesting ICANN staff to proceed with the study of gTLD registrations and registrants.

So let's just stop right there and calling that first clause, if you will, study number one or study portion number one because I think it is a discrete -- if we're understanding what has been asked of us in the resolution, I think that's a discrete concept and so the question that staff is really asking you-all is how should the school of this study of registrants and registrations be defined. What is it that we should actually be studying? What are the questions that the council has that they want this study to answer?

And what we've done is just highlighted what we think would be some possible or, perhaps, likely areas of interest just based on the discussion to date but these are by no means definite at all. They can be changed, modified, amended, deleted, added to at your direction.

So, you know, just to kind of throw these ideas out, we could do a study that would look at the number of total registrations that are natural persons, or try to determine how many are natural persons versus legal persons.

We could try to assess levels of accuracy of registration data. And just as an aside there, that's not something that we would do independently, meaning there is already a study underway by the ICANN compliance group to look at who -- the accuracy of registration data.

If that is the kind of information that's being sought, if people feel that greater understanding of accuracy of registration data would be useful for the purpose of exploring WHOIS, then we would look to that study which is underway and which I think there will be an update to that study provided in the course of the next week. We would look to that data as fulfilling that need but we could possibly tweak future accuracy assessments by the compliance group if there were additional attributes or aspects that you'd want to include.

Certainly, we could look at the use of proxy services and privacy services among registrants and just to distinguish between this and the request further on in the resolution that asks us to look at proxy services available today, what we are suggesting is an area of study would be the quantifiable aspects rather than the qualitative what is a proxy service and what is available today and what is a privacy service. So it is a quantified of how many registrations are using proxy services.

What other characterizations of registrants and registrations should be studied.

I should briefly tell you that the subsequent slides look at the other phrases in the resolution.

The next one being uses and misuses of WHOIS. The third aspect of the study more detail and looking for more understanding on the proxy services. And then the fourth aspect is just the -- what other studies that staff is aware of.

What I would suggest, Avri, is that I pause after each slide and give you a chance to discuss maybe what was meant here and we will capture that and then go on to the next area of study.

>>AVRI DORIA: Great suggestion because I was about to ask you if it would be okay if we did that. I have Steve and I have Lynn and I have Chuck and Ross for an initial list. Okay. Steve.

>>STEVE DelBIANCO: Thanks, Liz. With respect to the third bullet on there, percentage use of proxy services, it won't be sufficient to just analyze the current stock of all registrants and those which use proxy and not. What would be necessary to support the decisions we would want to make is to look at the new flow of new registrations and of the new registrations how many of them are electing proxy. So it is more of looking at the flow of decisions that are made by consumers than just the stock because there is quite a big stock in place and it is very hard to move that average.

Secondarily, looking at some registrars who are -- registrars who are vocal about advertising, the ability to offer proxy because with some registrars, there will be a higher percentage accepting because there is a better consumer awareness of that option. So it would actually be -- flows, perhaps, by month, by registrar in order to know the data of consumer uptake of a privacy protecting service like proxy.

>>AVRI DORIA: Okay. Lynn, do you have the --

>>LYNN GOODENDORF: I will just use this one. On the last point about what other characters of registrations and registrants should be studied, I think it would be very relevant to try and study what percentage of registrants in all categories are collecting personally identifiable data.

>>BRUCE TONKIN: Do you mean registrants?

>>LYNN GOODENDORF: I'm sorry, I may have said this wrong, registrants who register domain names that I think it would be relevant to try and determine how many of those domain name registrants are collecting personally identifiable data.

>>MARILYN CADE: Can I ask a question of clarification? I think I probably understand what you would mean but it would be better to illustrate it. So, for example, hypothetically, not to pick on an industry, sector, but a hotel or a bank might themselves -- they are a registrant. They may in a service they provide also collect identifiable information.

I'm not sure that would be in any way visible or measurable, but I wanted to make sure that was what you were asking. Is that --

>>LYNN GOODENDORF: Yeah.

>>MARILYN CADE: I will pick on AT&T as my client as an example. AT&T is a Tier 1 in the U.S. and they are also a broadband provider in ISP. There would be no way of telling of their registration of ATT.net or ATT.com what the services are that they operate that might collect data.

They are subject to U.S. law, and they have an online privacy policy so you can tell from going to their Web site but you couldn't tell from going -- you couldn't tell -- I mean, I think it really depends on how this test -- how this were structured.

>>BRUCE TONKIN: (inaudible).

>>MARILYN CADE: You have to do an online survey.

>>AVRI DORIA: Did you want to comment? Yeah, grab a microphone.

>>DAVE PISCITELLO: So --

>>AVRI DORIA: Give your name. >>DAVE PISCITELLO: This is Dave Piscitello. There are two different aspects of what you're asking. One is, I think, Marilyn addressed. If the company has a domain, there are any number of ways that they would collect personal information.

The second way is that you can go to the Web site and you could check the privacy policy. If they are P3P compliant they would have a privacy policy that would disclose whether or not they're collecting personal data.

That could be automated. The problem is that the degree of acceptance of P3P policy is relatively low and so the accuracy of the study would be biased by the ability to automate to the sites that would be compliant to P3P.

>>AVRI DORIA: Go ahead to the queue ahead. Chuck, you were next.

>>CHUCK GOMES: As I look at the third bullet there, it seems like it would be useful to not only give the broad percentage but to identify the percentage of use of proxy services for natural persons and for legal persons so that you see the use of both there to the extent that it's visible.

>>AVRI DORIA: I have Ross next. I have got you on the list.

>>ROSS RADER: Just two quick comments. Each TLD has policies that would affect the use of those TLDs so I think it would be interesting to see that broken up by TLD. I think it would be useful to see the inverse of this data. I think if we see 30% of registrants are natural persons -- or even a better one. 30% of registrants using proxy services, I would like to know a little bit about the 70%. For instance, are there a conscious segment of the population that is declining proxy services because they see a benefit in being publicly known?

>>AVRI DORIA: Okay, thank you. At the moment I have Paul and Alan, then Jeff, then Tim, and then Milton. Okay.

Paul?

>>PAUL STAHURA: Besides looking at which registrars are offering the proxy services or marketing them, I think we should also look at resellers because I know, for example, Google, every name they register is automatically on proxy service. So I wouldn't single out just registrars. I would look further down the chain into the resellers.

And then also, I think I agree that we need to look at what's happening most recently, and it takes a lot to move the needle in the giant mass. I would split that up into the names that choose to use proxy during the tasting -- during the five-day -- people call it tasting period and then also look at which ones that exit the five-day add-grace period, which ones are on proxy after that. So I would split that up into two components.

>>AVRI DORIA: Okay, thank you. Alan?

>>ALAN GREENBERG: I would like to think the results of this kind of study mean a lot. I'm not 100% convinced we'd only have organizations like Google that put things into proxy. We would have all of the Web site hosting services that sell a Web site for \$3 a month and free domain name which they register in their own name and the name of the real customer never gets outside of the hosting company.

So there is just so many noise in the data that we out there right now, it is hard to know how much faith to put in the final results.

>>AVRI DORIA: Dave, were you going to comment on that?

>>DAVE PISCITELLO: Yeah, just one more. I think you are right about the noise. Addressing an earlier comment about trying to understand degrees of harm or misuse, one of the things that we have been discussing with some of the people from the anti-phishing working group is trying to correlate use of proxy services with domain names that are demonstrated to have been used for phishing attacks.

And so that actually gives you a correlation in saying are natural persons using proxy services or are people using proxy services to conceal themselves or their identities from a malicious act.

>>AVRI DORIA: Okay, thanks. Going back to my list, I now have Jeff, Tim, Milton, Paul. Okay, Jeff?

>>JEFF NEUMAN: So as a non-council --

>>AVRI DORIA: And Margie.

>>JEFF NEUMAN: As a non-councillor, I have a question and then a point. My question is, what is the relationship between these studies and what we were just talking about in the last -- for the last

three hours or so? In other words, I guess, my ultimate question is why are these studies being done and being led by the GNSO Council as a mandate? I don't understand the relationship to the last few hours.

Because let's say hypothetically if option one is voted, which is to go forward with OPoC, then why is this being done? Or number two is are these the studies that are referred to by the motion number two?

>>AVRI DORIA: Okay. I will answer the question, even though I am not on the list. In terms of motion one, the way I conceive of it is we would have results of these studies pretty much the same time we had the draft implementations and that one would serve as almost a sanity check on the other.

In other words, they would proceed in parallel. Why are we doing this? Partly because the working group recommended that the studies be done. The GAC recommended that some studies be done. Therefore, we requested that studies be done.

The difference between motion one and motion two as I understand them is motion two says wait for the studies before proceeding with OPoC or anything else. Whereas, motion one says proceed with OPoC in parallel with the studies and then when you've got the draft there and you've got the studies, then you, basically, check and obviously staff is working on it all at the same time and it's, basically, proceed on parallel tracks.

So I would say that's the relationship. And the relationship to motion three is the studies go on in parallel with the moves to --

>>JEFF NEUMAN: I guess, I'm not sure it is in the GNSO Council role of manager or policy developer. I'm not sure why the GNSO Council is leading this. It certainly -- if GAC recommended studies be done, that's great.

>>AVRI DORIA: And working groups.

>>JEFF NEUMAN: Putting that aside I am always a step aside. So what are we going to do with the results. Studies are great and good and maybe even academic. But what's the purpose? How are we going to use them?

Let me get to my actual comment.

>>AVRI DORIA: Sorry.

>>JEFF NEUMAN: On proxy services, it is kind of interesting because you need to define it because a lot of people -- us as an intellectual property owner do it a lot. We have law firms that register names on our behalf, and they are in essence our proxy until we decide to make it public that it is actually us that owns the name for a number of business reasons. It is not uncommon for companies to do that.

So you really need to define what a proxy service is or a privacy service. Paul and I were having the conversation. A lot of companies use so-called privacy services for a number of different reasons.

>>AVRI DORIA: Okay, thanks. I have Tim, Milton, Paul, Margie, Steve.

>>TIM RUIZ: My question or comment was, basically, what Jeff just had expressed that defining what proxy service is or defining what privacy service is they have existed for a long time, long before registrars or anyone else started calling them proxy services or privacy services.

So that was a question if that was going to be all-encompassing or just how that was going to be defined.

And then the other question I had is there a potential outcome on Wednesday where the studies would not be done. I guess, what I am hearing is that regardless of what resolution is passed or how it is amended or anything changes these studies are going forward. Is that correct?

>>AVRI DORIA: I believe so unless someone comes up with a motion to recommend that they stop the studies. But GAC also asked for it. So, yes, I believe none of the motions stop the studies.

>>BRUCE TONKIN: Because the GAC is, I guess, providing advice whereas the GNSO is the policy body that can initiate a request to staff to do it. I guess under your -- I just want to clarify, is this being done under the current UDRP or are you requesting an issues report and saying this is the information you need?

>>AVRI DORIA: Right. It was not done as an issues report. It was a request under the PDP.

>>BRUCE TONKIN: Under the current?

>>AVRI DORIA: Yeah.

>>TIM RUIZ: Can I finish the question?

>>AVRI DORIA: Yes.

>>TIM RUIZ: So then, I guess, what my follow-up question would be then is that if the outcome on Wednesday is that, you know, "thanks for all the hard work but there is no consensus, we can't move forward with anything, we are not making any recommendations and this is the end of the PDP," if

that's the outcome, then what policy development process or what policy work are the studies supporting or being initiated for.

>>AVRI DORIA: Okay. Thanks for the question. It is a good question.

Okay. I will have you on the list. I have Milton next.

>>MILTON MUELLER: Yes. Part of what I was going to say was covered well by Jeff, thank you very much.

I think just to put a finer point on it, I want to know when you're saying a particular piece of data should be collected, how does that relate to a particular policy decision that we would be making? For example, if we discover that, you know, 30% of the natural persons are registers under proxy services and -- does that say something meaningful to you? Does that 40% mean -- I can understand this is interesting data. It provides a factual basis that we need to know.

But I would want any GNSO-supported study to be extremely closely tied to specific policy questions that we're trying to answer and we feel we can't answer properly without having the data.

>>BRUCE TONKIN: The cost to do so (inaudible).

>>AVRI DORIA: Let me put you on the list or use the microphone.

>>MILTON MUELLER: Aside from that I wanted to say that the GAO had done a study of accuracy of registration data, of fairly systematic analysis of that.

And just partly in fun I wanted to add some other data points we might collect. For example, number of automated cease and desist letters sent out by trademark attorneys based on WHOIS data. That would be interesting to know. Number of automated cease and desist letters that have to be withdrawn because they weren't really dealing with infringement. Identification of companies that make money selling and compiling WHOIS data. How much money they make, how much they charge for it. That would be interesting to know a couple of those. That's it.

>>AVRI DORIA: Thank you. Paul?

>>PAUL STAHLURA: They are going to make a lot on this survey because this is a really difficult, in my opinion, nut to crack, especially -- the first subbullet on the second bullet, percentage of registrants that's natural persons, that's going to be really difficult because, first off, you have proxy. How do you know the information behind the proxy? You'd have to somehow -- right -- get through the proxy service or the protection service amongst all the registrars to get that information. That's going to be -- or a giant sample size or something. That's going to be a tough one.

Then the data that's not behind the proxy, it's just by looking at the data, it is not easy to detect whether or not it is a person or a sole proprietorship or whatever. I just think it is going to be a tough problem to solve.

>>AVRI DORIA: Margie?

>>MARGIE MILAM: My point follows up on what Paul just said. I think it might be interesting to study because it is difficult to determine whether someone is a person or not, whether the use of the Web site is commercial or non-commercial because I think the policy may depend upon what the actual use of the Web site associated with that domain name is.

>>AVRI DORIA: Can, thank you. Steve?

>>STEVE DELBIANCO: Jeff's question about why is the study being done under GNSO auspices, and then Avri your answer was about being in parallel with regard to your motion, motion number one of proceeding with OPOC.

But just before the break in response to a question that Susan brought up, the working groups said that the responsibilities of the OPOC were unspecified in the OPOC proposal. Does that mean that on purpose there was to be no responsibilities or was that simply left to be an implementation option? And the working group took it as the latter, that doing the implementation plans for the OPOC would include an assessment of what could and should be the responsibilities of the OPOC for relay and reveal in the same sense a proxy does a relay and reveal.

So the need for the study, I said earlier, should be, in my opinion, a gating mechanism as to whether to proceed. But even under your motion to proceed with OPOC, I think staff has to do the study to figure out what the responsibility should be in implementation.

And then the second part of the study that has to be done, what are the mechanisms for getting access to unpublished data. That's another of the studies we had asked for in the BC motion because again the OPOC proposal as written says nothing about access mechanisms to the unpublished data. Therefore, there has to be an implementation plan done by staff.

So if staff does a study in order to do an implementation plan, I guess it is under GNSO auspices because we've asked them to do an implementation plan. But it isn't if it's a study as an end in itself. Rather, it is a study to feed the implementation plan.

>>AVRI DORIA: Okay, thank you. I had Marilyn next. I got you on the list.

Marilyn?

>>MARILYN CADE: I'm just going to point something out on a document that I'm reading here published --

>>AVRI DORIA: On your Mike.

>>MARILYN CADE: On the question of percentage of registrants that are natural persons, there is a 2005 study by VeriSign that has data about natural versus legal persons and dot com and dot net. And what I recall is it gave an estimate of X percent. So, clearly, there is some methodology that can be used to get at that.

I think there is another characteristic that would be helpful to just remember, and that is not all registrations turn into live DNS. So let's say there are one or two or three, four, five million names that are registered but do not have live DNS, you won't be able to go to a Web site to verify them.

The only -- and so you probably need to know that because those are names that are, perhaps, in the secondary market or, perhaps, they're on my shelf and I polish them. But whatever reason they're registered but they're not -- there is not going to be a Web site. So we ought to think about that whenever we think about structuring the study.

But I did just want to call your attention to this 2005 study by VeriSign which apparently able was to discern the difference between natural versus legal persons.

>>AVRI DORIA: Thank you. Ross?

>>ROSS RADER: I guess, I'm confused again. Going into this first slide, I was under the impression that we were conducting the study pursuant to passing motion number two. I'm hearing that's not the case. We are proceeding with these studies no matter what?

>>AVRI DORIA: That had been my assumption. But on hearing a lot of people speak, I am coming to the conclusion that's something that we'll have to discuss on whether the studies would continue or not. My presumption had been that, yes, and certainly with motion one it seemed reasonable to me that they would proceed.

With motion three, it seems less reasonable to me. But it is something that obviously we would need to discuss. And because of the formality, I guess, of the studies being part of the PDP and if the PDP has terminated under what study -- under what authority is the study being done, we would need to look at it under one or three.

That under two, yes, it is automatic that the studies would continue. Under one and three, for the studies to continue, based on the corrections that I've gotten and the feedback, it seems that we'd have to look at it.

>>ROSS RADER: Okay, okay. I guess my only concern around -- that's great. Thanks.

>>AVRI DORIA: So, yeah. Okay. I've got Chuck, Jeff, Kristina.

>>CHUCK GOMES: A couple things, just to follow up on Marilyn's comment about the VeriSign study, as well as the comment from Paul that some of these things are really difficult to do.

VeriSign doesn't have any data about registrants. I think everybody knows that, okay? So that study -- and I was not involved in it, so -- but it had to be done by hiring somebody to make some calls. And the data that you were saying is not available, you probably have to call and if they get -- you know, see if they will identify themselves as a proxy or the user or whatever. So some of these things are more expensive to do because they would actually require a phone call or a letter or something like that.

Now, that was not what I wanted to say.

It seems to me it would be useful for -- to identify how many of the proxy services are operated directly by registrars versus those who are operated by third parties. And the basis where I think that - - why I think that would be valuable is because ICANN obviously has a direct relationship with registrars, a contractual relationship. They don't with the third parties. So that would -- could be useful data, going forward, on that.

>>AVRI DORIA: Okay. Thank you. Kristina? Oh, sorry. I had Jeff, yes. I'm sorry.

>>JEFF NEUMAN: This is the second time I was skipped. So someone humor me, please, and to pick up on Bruce's point about the relationship to the policy process, so let me give you some numbers and just made-up, but just help me understand what you would do with that data as part of the policy process.

So, in other words, let's say the answer to No. 1 is that there are 40% of registrants who are natural persons. The level of accuracy is moderate, okay?

The percentage of proxy services is 12%. And the characteristics -- all right. So that's it.

So, great. Now, how does that relate to the policy process?

In other words, if we went with Option 1, which is, "Go OPoC" okay? -- the data I just made you, I completely made it up. It can go either way, right? How is that going to help you further the implementation of the policy?

Aside from the fact that the GAC asked you to do a study and aside from the fact that the ICANN budget is just way beyond control to begin with, and to ask them to do a study of this, this is not a thousand dollar project or even a hundred thousand dollar project. You're talking about a million or higher to do a study like this with phone calls and everything else.

[Speaker is off microphone]

>>JEFF NEUMAN: All right. Maybe half of it, but --

[Speaker is off microphone]

>>AVRI DORIA: Excuse me.

>>JEFF NEUMAN: So my ultimate point is, I've given you mock data. Someone help me understand what you would do with that data and how it would lead you to the next step in the policy process.

>>MILTON MUELLER: The Cade/Miller consultancy wishes to --

>>AVRI DORIA: Excuse me.

>>MILTON MUELLER: Trust the result.

>>AVRI DORIA: Okay. I have Kristina, I have Patrick, I have Steve. Oh, and I have Marjorie. I expect one of those will give you an answer. Okay. Kristina?

>>KRISTINA ROSETTE: I am under the understanding that our motion of September 6th is still in place and if that's the case, then I would read that to indicate that the study does, in fact, have to go forward, regardless of how we vote on Wednesday, unless those motions are amended between now and then to indicate to the contrary, I guess would be the first point.

And second, Jeff, as to your specific question, I mean, for me, at least, it helps me understand -- and I think it's important information to have -- if, for example, our concern or the stated objective, the stated impetus for revisiting and revising WHOIS is a concern out of the harm to individuals based on having their public -- their personal data, their contact information, publicly accessible. I think it's important to know what the scale of that harm is likely to be in terms of the scope of the number of registrants, to what extent we can try and figure out, for example, what cross-section is actually availing themselves of market mechanisms, and to essentially get a true sense of, I guess, the benefits side of going forward.

>>JEFF NEUMAN: But if the choice is already made to go forward with one decision, I don't understand. Sorry. If the choice is already made to go forward with one mechanism, and some would argue -- I'm not going to argue the noncommercial position, but some would argue whether that number is 5% of people or 1% or 60, 70%, that percentage is being harmed and still -- that still needs to be addressed. It's not -- whether it's 10%, 1%, who are we to judge, you know, what the threshold is?

>>KRISTINA ROSETTE: Well, no, if the decision is made to go forward with OPoC, then it may be that knowing the exact numbers of registrants, affected strategists that we're talking about is going to be critically valuable information in determining implementation.

>>JEFF NEUMAN: Why?

>>KRISTINA ROSETTE: You know, how quickly do we do it, how far do we do it, how many people are we talking about? Are we talking about having to go -- are we doing it for, you know, a point forward for, you know, 10 million registrants or are we doing it for a point forward for 150 million registrants? I mean I think that's where this information is going to come in particularly useful with regard -- I mean, if it is OPoC implementation. I mean, I think that's going to be valuable information to have in trying to figure out how to make it happen.

>>JEFF NEUMAN: I don't -- I don't agree, but that's --

>>AVRI DORIA: Okay. That's...

You wanted to make a comment about --

>>MARILYN CADE: Directly about that.

>>AVRI DORIA: Okay. Please.

>>MARILYN CADE: And I'm not suggesting I'm going to persuade but I'm going to try from my new vantage point of my partnership with Milton.

[Laughter]

>>MARILYN CADE: Even if it's temporary.

I do think that the information about how many registrants have to be informed about a change that is going to be systemwide is going to matter, and I think the -- I think that if I were running a business that potentially was going to get customer support calls about how do I do this, how do I do that, who do I pick to represent me, I'd like to know whether I'm dealing with 70% are corporations who will have 500 to 1,000 to 1500 names, and I'll be dealing with one person to make that decision, or whether I'm going to be dealing with 150,000 individual -- 150 million individuals who are going to be making customer support calls, Jeff.

So, you know, from the point of implementation, I think it's valid information.

>>JEFF NEUMAN: Yeah, but that's for like the company to do. So if there's a policy that's passed and let's say it's consensus and it's required upon the registry -- you know, OPoC's going forward already. Let's assume. Right?

At that point in time, it's definitely useful for a company like Go Daddy that offers proxy services, they're going to need to know, okay, how many of my registrants is this going to affect and then they're going to need to work on how they're going to implement it.

But for the GNSO -- again, my whole point in asking these questions, it's not that it's not good data to know or we can make some use of the data. The question is: How does it further the policy development process or the implementation, if the choice has already been made to go forward in a certain direction.

>>MARILYN CADE: And the follow-on to that question would be: And how is this going to implement -- how is this going to affect an implementation practice that is going to involve the ICANN staff where they will get calls asking for information or guidance or what to do. And I think it's going to be information that will be helpful to inform them. I didn't suggest I was going to persuade you.

>>AVRI DORIA: Okay. I'd like to stop the -- yeah. We've got -- I've got three more people on this particular list. Yeah, I've got you. And then I'd like to move on to the other slides so that we have some time to talk about them.

So I still have Patrick, Steve, and Marjorie. And -- yeah. Marilyn spoke. Okay.

>>PATRICK JONES: Okay. I'm Patrick Jones from ICANN staff and I just wanted to raise a point before I have to leave that the staff implementation notes, the document of October 11th, raised a lot of questions that have yet to be discussed by the council and they're questions that should be addressed before -- or at least within the context of the studies because -- or at least outside the proposed studies as it goes to the heart of how OPoC could potentially be implemented. And they're just a wide range of questions that are in this document that we don't have answers to that staff would need before OPoC, if it's going forward, would need addressed.

>>AVRI DORIA: Okay.

>>MARILYN CADE: And could we just ask for you, before you disappear, to -- are there particular pages that you would call our attention on or just the whole report?

>>PATRICK JONES: It's throughout the document.

>>AVRI DORIA: Okay. Steve?

>>STEVE Del BIANCO: Patrick, what you said is exactly what we have tried to do to answer Jeff's question earlier. Motion No. 2, which was the gating motion: Do the studies as a gate whether to do OPoC. If we got off 12% or 13% number for the percentage of natural persons using proxy, it would be -- that would be the number we'd look at to say, "Wow, are people who are aware of and have available to them proxy taking advantage of that as a way to protect their privacy?" And the higher that number is, then the more feasible it is that the market has already given us a mechanism to give the privacy protection they seek. So that would be in the gating. Because the higher that number is, the less need there is to do OPoC at all.

But under Avri's motion, Motion No. 1.

>>JEFF NEUMAN: But No. 1 would have already passed.

>>STEVE Del BIANCO: Okay. Right. I'm going to go to that next. I'll go to No. 1. As Patrick just indicated under No. 1 where he's doing this implementation plan about what staff needs to know to implement, think about OPoC is already implemented, it's already done and I go in to register a domain name and suddenly I don't see technical administrative, I see the OPoC. When I fill in a name and address for my OPoC, well, what is the registrar going to be telling me about the roles and responsibilities of the person whose name I just typed in? Don't they have to tell me with respect to like a proxy that there is a reveal and a relay, legal responsibility there?

>>JEFF NEUMAN: Absolutely. Those questions are relevant. I'm talking about the percentage of registrants who are natural persons.

>>AVRI DORIA: Okay. Yeah. I -- I didn't want to --

>>JEFF NEUMAN: But what does that have to do --

>>AVRI DORIA: Reopen the debate at this point. Okay. Marjorie?

>>MARGIE MILAM: Maybe this will address it. If we knew the number of natural persons were really low -- say 1%, as an example -- if you're looking at the cost of implementing OPoC, you may end up deciding that the cost is far in excess of the benefit for the, you know, 1% or less of natural persons that -- you know, that would benefit from this OPoC proposal.

So that's why I see that information as being relevant, because you could do a cost/benefit analysis and you could use it in the implementation in determining how onerous or how difficult -- you know, what kind of procedures are involved in actually implementing the OPoC.

>>JEFF NEUMAN: Aren't we a couple of years late on the first part.

>>AVRI DORIA: Okay. Thanks.

>>JEFF NEUMAN: I agree with the second part as far as implementation and companies needing to do their own studies of how -- and whether to implement in a cost-effective way but I think we're a few years past the first part.

>>AVRI DORIA: Okay. Thank you. Okay. Liz, would you go on?

>>LIZ GASSTER: Yes.

>>AVRI DORIA: And perhaps we'll go through the slides and then come back for any --

>>LIZ GASSTER: Okay.

>>AVRI DORIA: -- other questions at this point. I'm sure many of the questions have already sort of come out.

>>LIZ GASSTER: So the next piece of the resolution dealt with how WHOIS data is used and misused, and in trying to assess what the scope of the study would be to take a look at how WHOIS data is used and misused, unlike the preceding phrase which focuses on registrations and registrants, this would really deal with WHOIS queries, and, you know, whether queries of WHOIS are being used for good or bad purposes, misused or used for legitimate purposes, in quotes.

So I think the questions, again, that we're attempting to get clarification on is, first of all, if we were to proceed with such a study cataloguing uses and misuses might be one place we would start. A qualitative review of what might be good uses, if you will, and what might be bad uses, if you will. And the question there is, you know, is there a common understanding? Is there a consensus understanding if staff were to engage in such a qualitative review of what would guide us in terms of the legitimate uses and illegitimate uses.

And just on that point, there is some qualitative, descriptive data available from a variety of different sources that try to -- and one place -- the GAC principles, for example, enumerate many uses of WHOIS data that might be considered legitimate or ill legitimate and other sources do that sort of thing.

So the question really is: Is that useful? Is that part of what the council would be looking for? It's our view that that could be done. Just the qualitative piece. But would be perhaps of -- tell you only a limited story, because it's not going to give you data about the volumes of each, or the percentages of each.

It would be just kind of a qualitative description of what good things might be done and what bad things might be done.

It may be harder to collect accurate quantitative data which may be more in line with what the council was envisioning when they recommended studying how data was used and misused, because, you know, obviously the data -- the underlying data to make those determinations -- may be difficult to come by, and I think it will be important to get input on the methodology or approach that should be taken.

In other words, there are approaches that might be, in a sense, simpler to implement, and I again use all of -- it's all relatively speaking, but, for example, a survey of queriers. Why are you asking for this data?

But of course that would be self-reported data not unlike a study that had been done several years ago by various participants in the community, and so the question would be: Is that what the GNSO Council is looking for, understanding that self-reported data is perhaps going to be more useful on the side of providing uses than providing misuses since it's unlikely to think that people are going to self-report that they're misusing the data.

And then, you know, beyond that, if there's concern about that being not sufficient for that reason, should we, in turn, look at some more, I think, challenging but perhaps useful independent study that would try to get at, in a more systematic way or quantifiable way, uses versus misuses. But again, I think access to the underlying data in order to make those determinations might be re- -- might require, or at least be facilitated by willing service providers, either registrars or registries or both, and may still have limitations in the information that's resolved, and certainly the utility of the study may be enhanced by participation from service providers.

So you want me to go on to the next slide.

>>AVRI DORIA: Yeah, I think at this point, we should go on and then people can come back for questions. Otherwise, we won't get all of the questions listed.

>>LIZ GASSTER: The third study that was --

>>AVRI DORIA: But I've got the two names, your two names on the list already.

>>LIZ GASSTER: -- was a review and analysis of the different proxy services available today and noting some of the clarifications and comments that folks have contributed already today, I think it provides some additional food for thought on that.

But I -- you know, I think staff does intend to engage a researcher to perform this analysis of the proxy marketplace based upon the GNSO resolution, but the question still is: Are there specific aspects of proxies or privacy services that we should study or that we should be specifically looking at, based on your interest and your resolution.

And then lastly, we will -- we have already provided you with a summary of available WHOIS data points, available data points, and we will be happy to continue to compile new studies or studies and data that may be old but may be useful, and that we haven't identified previously, so we encourage your input, continued input, on that, and there is a second version that you all have that actually does include a lot of additional reference points that you all have provided me.

So any additional reference points that are provided, I'd be glad to include in future studies, and we would continue to support that as well.

>>AVRI DORIA: Okay. Thanks. We've got about -- like to give another 10 minutes or so to the discussion. I've got three people on the list before moving on to the SSAC report. So I'd like to ask people to make comments, talk about the questions, but try to avoid getting into a one-on-one discussion at any point. And I have so far Jeff, Ross, and Milton. Who else should I put in the -- in the queue? Okay. And Kristina. Okay.

>>JEFF NEUMAN: So with respect to No. 2 -- and I wish -- I guess Marilyn walked out. But I feel like I'm back in 2002 or 2001. No. 2 is, there was a survey done in 2000 -- 2001. We've had workshop after workshop of law enforcement, you know, FBI, DOJ, EU -- God, person after person -- and even on the privacy side we've had so many people come in and give reports and comments about how we -- how WHOIS is used or misused or both.

Please don't do it again. Please don't waste your money.

[Laughter]

>>JEFF NEUMAN: I don't think there's anyone in this room that doesn't know how WHOIS is used or misused. I think -- there may be some additional things, and I think, you know, the SSAC report on front-running -- I think is the term -- that's kind of new, in that people didn't really necessarily know.

But please don't go down that road of studying why WHOIS is used and misused.

But No. 3 is actually something that has not been looked at in detail and if there is a study, that's -- if there is a way to tell what a proxy service is versus a privacy, that's something that has not been studied before. But please don't do No. 2. Please!

>>AVRI DORIA: Thank you. Got the message.

[Laughter]

>>AVRI DORIA: Okay. I'll put you on the list. Ross?

>>ROSS RADER: To the extent that we actually move forward with these, Liz, I think it would be useful for us to focus on gathering statistically significant data, which would imply that we would avoid collecting qualitative data, to the extent that we can. I think I -- I would really agree with what Jeff has said. We've seen a lot of kind of surveys, gathering of opinion, comments, et cetera, et cetera, et cetera over the years, but what we lack is real hard-core concrete data that we can base decisions on and form new opinions on, and I think at this point, we're completely -- there are no new opinions that I'm aware of. And maybe this data will help drive some formation of those.

>>AVRI DORIA: Okay. I now have Milton, Kristina, Mike.

>>MILTON MUELLER: Yeah. Quickly, I just have to agree with Jeff about the -- the sort of weariness with which we can only approach the No. 2 part that the last thing we need is another laundry list of how people are using WHOIS. We just don't need that. Don't do it, please.

With respect to -- I mean, I don't know if you're privy to this, Liz. You're an innocent staff member. But, you know, when you say that the GAC principles call for this study, I mean you got to understand the politics of what's going on there.

The U.S. government had to concede to the Europeans that whatever happens with WHOIS, it has to conform to national law. And they had to get something sort of to cover themselves, and so they said, "Well let's -- let's do studies that show that there's really no abuse of it." And that was the bargain that gave us the GAC principles. At least one of them.

And the -- if this is going to be taken as gospel, you know, every time the U.S. wants to stall on something or somebody else wants to stall on something, they call for a study and then our staff is going to devote massive resources to doing studies of things that have already sort of been done, I think we're in trouble.

And just to -- to -- to me, the fundamental point is, if you think that shielding private data is a legal and ethical right, you know, you don't have to prove abuse. It's like, you know, you sort of say, "Well, I've been peeking in your window all night, but I didn't do anything. I didn't, you know, come in and rape you or you -- nothing really bad happened to you, so you shouldn't worry about it," right?

I mean it's just something about it is inconsistent with the spirit of privacy protection, which is that the data is yours and you should have control over it. You don't have to prove that somebody's abusing it.

Now, there probably are abuses. Maybe they're not gigantic. Maybe they -- maybe they're more pervasive than we think. But fundamentally, this -- as far as ICANN is concerned, ICANN is not a policymaker. It's an administrator of the DNS. So the issue of -- the only issue, as far as ICANN is: Where can they draw the line that is consistent with the legal regimes that governments have established? And it's pretty clear that for natural persons, you have to do something, and it doesn't -- the policy decision does not hinge in any way on proving, you know, how many times it's been abused.

>>AVRI DORIA: Okay. Thank you. Kristina?

>>KRISTINA ROSETTE: I just -- I have a clarifying question that relates, in part, to the analysis of proxy services, and that is: To what extent is the current review of the RAA looking at providing some definition of reasonable evidence of actionable harm under 3773? Can anyone answer that?

>>AVRI DORIA: It looks like something we're going to have to find out.

>>KRISTINA ROSETTE: Okay. Because the one thing that I would note is that it's all well and good for us to encourage marketplace innovation and to encourage the movement to proxy services, but if, as a practical matter, the registered name holders are not compliant with that provision, then I think we need to revisit to what extent we really want to rely on it.

And just to give you kind of some more specific examples, you know, I can go to an ISP with information that -- a U.S.-based ISP that with all the information I need for notice and takedown under DMCA, and I get a remedy. I don't get a reveal; I get a remedy.

I can take that same information and go to a U.S.-based registrar that's operating a proxy service and get nothing. Not a reveal, not a remedy.

As far as I'm concerned, that's not acceptable. And I'm not in a position to endorse adopting that scheme wholesale unless we're going to have some definition and some agreement as to what exactly is the scope of reasonable evidence of actionable harm.

>>AVRI DORIA: Okay. Thank you. Mike?

>>MIKE RODENBAUGH: Yeah, I was going to make a similar point on that. I would just call for No. 3, a study about how many registrars by their stated policy or how many proxy services by their stated policy even comply with this RAA.

Because I'm not sure it's a majority of them.

And then, you know, re- -- outside of what their stated policy is, I'd like to get some impression on how many of them actually follow the policy, the ones that do have an acceptable policy.

Then the second point I wanted to make was kind of in response to Milton.

I don't understand the argument why we at ICANN need to accept that privacy of name and address is, you know, a God-given right. I mean, it's really clear in the United States it is not. I mean, when you buy a house, your mortgage records and the amount you paid for your house is all a matter of public information and you're deluged with direct mail and for whatever reason, I'm not really in favor of that, but Americans generally accept that.

So, you know, I do understand that we need to try to have our policies as consistent with as many nations' laws as possible but I don't think that means we have to go fall to the lowest common denominator.

>>AVRI DORIA: Okay. Thank you. Was there any further clarifying comment or question on these? No? Great. Thank you, Liz. And we're going to have -- on the question of the continuation of the study on the motions, one, I have passed on a question to legal. I'm looking at the motion. I'm not sure that the motion is subject to a PDP ending or not. So it's something that we'll have to talk about some more. I have asked, though, for a sort of view from legal that if the study was originally designated as part of a PDP, does it need to stop if the PDP is concluded.

And also, though, we need to look at it, and I don't believe that -- well, anyhow, so that's -- I've asked for more information on that before we do the vote. So we'll see where we're at on that.

I'd like to ask -- and I guess it was Dave was going to do the -- I mean who was going to do the report on --

>>DAVE PISCITELLO: I will.

<http://gnso.icann.org/correspondence/ssac-whois-study-27oct07.pdf>

>>AVRI DORIA: You are? Okay. Do you need the -- the thing to plug in?

>>DAVE PISCITELLO: Yeah, that would be nice.

>>AVRI DORIA: Okay. So Liz has it at the moment. Do you want to come sit -- are you going to do from back there?

[Speaker is off microphone]

>>DAVE PISCITELLO: Yeah, you can project it. We can use Bruce -- I just sent it to him thinking it would be easier to sit next to him and he could poke me if I said something wrong.

>>AVRI DORIA: Oh, okay. Ah, the projector plug is in the middle.

>>DAVE PISCITELLO: Are we all set? Okay. Well, thank you for having me, and for the record, my name is Dave Piscitello, and I'm a fellow to the ICANN Security and Stability Advisory Committee, and I'd like to report on a study that, you know, Ram Mohan and staff at Afilias and other members of SSAC conducted from approximately February to April, and then again revisited some data in the August/September time frame looking into the WHOIS service as a source of e-mail addresses for spammers.

So our objectives were relatively simple. We sought to study the correlation between the publication of WHOIS data and the delivery of spam to e-mail addresses that were accessible through WHOIS services.

I don't want to go into a lot of detail about the different ways that spammers obtain e-mail addresses. I think that you're all exhausted by that, and so I'm not going to cover that. I think that's all covered quite nicely in the report, which is available now at the SSAC Web site. It's sac023. It's in PDF format.

What we wanted to do was not necessarily say or claim that the WHOIS service is the definitive source of spam, or e-mail addresses for spammers, but it is one of perhaps many.

And it's important to keep that in context, because the primary reason why we actually are considering both protected WHOIS services and delegated WHOIS services in this study was that it was a way for us to discern whether or not any sort of measures might abate the delivery of spam.

When we were formulating the study, what we tried to do was consider, you know, a variety of protective measures that registrars and registries offer to either rate-limit or block the delivery of unsolicited mail to registrant e-mail addresses.

We categorized these into two groups. The one group that we looked at that essentially attempts to thwart automated collection of addresses either through port-based WHOIS or query-based WHOIS, through rate-limiting or CAPTCHA or other anti-scripting techniques and measures we call protected WHOIS.

There is also a second form that is -- that is popular that we call "delegated WHOIS" and in delegated WHOIS, we have either an e-mail substitution alone or an e-mail substitution by the registrar, along with some sort of spam and antivirus filtering measures to protect the registrant from receiving not only unsolicited mail to his published e-mail address, but also any sort of malware that might be attached to that mail.

So we had fundamentally, you know, the following objectives.

The first objective was to determine whether or not spammers collect e-mail addresses from domain name registration records using the query-based WHOIS service. And then in our studies, what we attempted to do was carefully prevent the publication of an e-mail address anywhere other than the WHOIS, and we decided to try to measure two things: Do measures to protect query-based services from automated collection reduce the spam delivery to the registrant? And do substitution and anti-spam measures reduce the volume of spam delivered to the registrant?

Finally, we wanted to see whether the traditional security notion of layering defense would even further abate the delivery of spam, so what we did was we ran a study of another set of -- you know, of test domains to determine whether combining both those measures would result in even further, you know, abatement of spam delivery.

Our methodology was relatively straightforward. We took and registered domain names in four TLDs -- com, de, info, and org -- and at the second level label, what we did is we randomly composed rather large and what we viewed to be non-guessable second-level labels.

For the address that we published as the registrant e-mail address in the registration record, we also randomly composed the user ID of that e-mail component.

As I said before, we tried to keep the e-mail addresses off the radar, so they were not published anywhere. They weren't used in a forum. They weren't used in any other venue that people normally use to harvest e-mail addresses.

And then we began monitoring. And we monitored for a period of approximately six weeks.

This basically talks about our experiments, you know. Our experiments essentially wanted to take a look at and determine whether there were differences when there was no protection used, where -- when there was protection in the form of a protected WHOIS access or a delegated WHOIS access were used, and whether there was even more significant protection when both services are used.

As a sort of side effect of doing this analysis, we also tried to look and classify the kinds of spam that were delivered to these addresses over that same time frame. I'm not going to talk about that today because it's -- it's -- was really, you know, something that we considered later on in the study and we just offered it as anecdotal information.

In the Case 1, where we had neither protected WHOIS service and we didn't -- also didn't have a delegated WHOIS service, as you can see, the spam delivered to the published addresses accounted for approximately 29% of the overall spam delivered, but the numbers were fairly -- you know, fairly considerable. Spam delivered to all other addresses than the published address was even, you know, more pronounced, at approximately 70% of the total of 200 -- nearly 280,000 spam that were delivered to these addresses.

You can also see by the statistics and actually these are worth looking -- you know, looking at more carefully when you look at the results in the report, that there's -- there's significantly, you know, large in number spam delivered to dot com. However, we don't have any significant data yet to determine whether or not an it would is a particular target or not for a spammer. Yes.

>>ROSS RADER: Just a quick question about that last column there, Dave. Do you mean that spam delivered two other recipient addresses on the domain registered, in other words, unpublished but existing at that domain?

>>DAVE PISCITELLO: A typical spammer, if they grab a domain from the DNS, what they'll do is they'll grab a domain and, basically, generate either from a keyword list of admin, user, all staff and any other -- common surnames, common given names and combinations.

So once you were on a spammer's list as the domain, the chances are that you are going to receive anywhere from 100 to 1,000 possible recipients in addition to the specific published address.

So these two columns say, in the first column, we published an address and we got lots -- or we got spam to that address.

The second column says, in addition to those, we also received spam to all these other addresses.

>>ROSS RADER: Here is all the dictionary stuff.

>>DAVE PISCITELLO: The dictionary stuff, right. It could have been a harvest attack. It could have been a dictionary or just random string.

>>BRUCE TONKIN: What was the period?

>>DAVE PISCITELLO: The period was approximately six weeks. The period was from February to about mid March. And that's -- if I'm incorrect, it will be correct in the report. You have to remember that.

In the second case, what we did was we had protected WHOIS service offered from one of the registrars but not a delegated WHOIS.

Just going quickly, so we have some time for discussion, you can see that there is a pronounced drop in the amount of spam to almost all the domains and accounts that we used and so the percentage of total actually is sort of interesting as well because it was rather evenly distributed between any address and published address.

We don't actually have any insight yet as to why that might be the case, but we just put it up as a data point.

In the third case, we used a registrar and registry where we could get delegated WHOIS but no protected WHOIS. You can see that there is a fairly significant drop in the amount of spam that's delivered to any of these registered addresses or published addresses.

And in the fourth case -- Yes?

>>MILTON MUELLER: I guess, I'm not sure what you mean by "delegated WHOIS."

>>DAVE PISCITELLO: The delegated WHOIS is the substitution of an e-mail address by the registrar for the registrant's e-mail address.

>>MILTON MUELLER: Okay.

>>DAVE PISCITELLO: It would be something similar to the proxy by domain kind of service.

>>AVRI DORIA: Quick question. I know it doesn't relate to the percentages, but were the sample size of each of the kind of problem the same? So, in other words, from your case one to the case three?

>>DAVE PISCITELLO: The sampling period was the same, or the result -- the resulting spam was significantly different.

>>AVRI DORIA: Right, right. But the same number of domain names?

>>DAVE PISCITELLO: Oh, yes. >>AVRI DORIA: That's what I meant, the basic sample.

>>DAVE PISCITELLO: We used ten in each.

In the last case, what we said let's pile on the defenses and we used both protected WHOIS and delegated WHOIS. In this case, we had again ten domains and when you use the combination of the two, we get some very, very significant results, if you are looking to block spam.

If you compare the results in Steve Crocker's favorite chart, which is a logarithmic illustration of the data, one of the things that you get to see is that unprotected registrant e-mail addresses received the most significant amounts of spam.

If you protected yourself with the protected WHOIS services, you could achieve up to two orders of magnitude better defense against spam.

If you used a delegated WHOIS service, you could get up to three orders of magnitude better defense against spam. And if you used the combination, you could get almost four.

What does this all tell us? We only had one very small objective here. We weren't trying to demonstrate whether or not proxy services are good or bad or whether they satisfy any other criteria than to provide some sort of protection against the delivery of spam because prior studies had suggested that the WHOIS was not a source of e-mail addresses for spam.

So our first conclusion -- Yes?

>>TIM RUIZ: Were the domain names used, were they actually in the DNS?

>>DAVE PISCITELLO: They had to be in the DNS so we could resolve NX records and be able to forward mail to those domains.

>>TIM RUIZ: So if I am a spammer and I am just looking at the DNS, say I got the zone file and I see a new domain shows up, how can you tell the difference between -- that they actually used the WHOIS versus just grabbing the name out of the DNS --

>>DAVE PISCITELLO: Right. The way that we tried to make that discrimination was to use a random user I.D. as the registrant contact e-mail, one that would not be easily deduced by anything other than brute force attack. So you had a randomlygeneratedstring@randomlygeneratedstring.TLD.

>>TIM RUIZ: The first column was mailed.

>>DAVE PISCITELLO: The first column was e-mailed to that randomly generated string at --

>>TIM RUIZ: So it could be anything.

>>PAUL STAHURA: Was that user changed periodically, like every 12 hours in the WHOIS output or was it just set once and forget it?

>>DAVE PISCITELLO: It was set once.

>>PAUL STAHURA: And then on the protected, that's the CAPTCHA code? By "protected," you mean protected by the CAPTHCA code?

>>DAVE PISCITELLO: It is either protected by CAPTCHA code or rate limiting or some other vehicle.

>>PAUL STAHURA: (inaudible).

>>DAVE PISCITELLO: It was dependent on the registrar/registry combination.

>>BRUCE TONKIN: Would you know what they were doing? You say the CAPTCHA, but you wouldn't necessarily know what sort of rate limiting is being applied. How did you know what sort of rate limiting they were using?

>>DAVE PISCITELLO: We used -- Was it DE? We used Afilias. I'm sorry. Afilias ran the study, and I believe that they -- they used one registry that provided one particular rate limiting mechanism, which was one I.P. per hour.

>>PAUL STAHURA: On the dot com names at the registrar level, can you just tell us which registrar the dot com names were registered at? That will help me.

>>DAVE PISCITELLO: I can't. You can ask Ram.

>>PAUL STAHURA: It would depend on that particular registrar's mechanism.

>>DAVE PISCITELLO: There's different types, exactly.

As I said before, to determine whether or not you could block spam using these services not to determine whether or not the particular registrar's proxy service was the most efficacious service of doing so. And it may be the case that some of the anomalous data that we have in some of the instances of domain names illustrates that for given spammers' mechanism of generating e-mail addresses, this particular registrar's protected WHOIS service is not as effective as it could be. We didn't go into that analysis. That might be something we could do in the future, but that's not what we did.

>>PAUL STAHURA: I am making sure I have it straight in my mind. What you're saying, I think, is there was an earlier study that said the WHOIS was not a source for spamming. But now you are, basically, contradicting that and saying there is.

>>DAVE PISCITELLO: That's correct. The study was performed in 2003 by the FTC and they had come to a meeting earlier -- I guess, late last year in Marrakech, was it? Is that the meeting?

And they had made it very clear that the WHOIS isn't used at all for pharming addresses.

One of the things that Ram and I considered was that that doesn't seem consistent to what we've seen, and that's one of the reasons why we started this study.

Dr. Crocker has a comment.

>>STEVE CROCKER: Let me emphasize exactly the point that you've just made. That was the motivation, that was the trigger for this piece of work. All of the additional effort looking at the difference of protected versus delegated or all of these controls were secondary because as long as we were in there, we might as well take a look at that.

And all of the additional questions one might ask about, that's interesting, what about this registrar versus that or so forth are way, way beyond the scope of what we set out to do and we invite others to go after that avidly.

We wanted to nail exactly the single point that the claim was made in a somewhat reputable venue that WHOIS didn't seem to be the source of spam. That just seemed completely contrary to our daily experience.

And we said we could run a short study and nail that and just drive a stake through that. And everything else above that is gravy.

>>MILTON MUELLER: The FTC did not do the study. It was CDT.

>>DAVE PISCITELLO: It was FTC researchers. The paper cited -- And we finally found a copy of it because it had been removed from the FTC site. But we do have a citation in the report and the FTC did, in fact, perform the study. They took, I believe, like 180 to 190 domains and they put them up under various circumstances, publishing them on the Web, put them in an I.M. chatroom, putting them on an IRC and then they compared the results. Their methodology was very different than ours.

The conclusion was we received no spam to any of the domains where we created a registrant e-mail address. I just found that to be rather astonishing.

>>BRUCE TONKIN: (inaudible).

>>MILTON MUELLER: We have somebody from the FTC here.

>>AVRI DORIA: Did you want to respond to that? I had questions from others, but if you wanted to respond.

>>SHAUNDRA WATSON: I felt like I should say something.

[Laughter]

My name is Shaundra Watson, and I am an employee at the FTC but I don't speak on behalf of the commission or any individual commissioner. I think there was a study in 2002 and I think the interesting thing to point out is that it looked at the source of spam.

Generally, WHOIS is not the only source of spam, nor is it the primary source of spam. So they looked at the chatrooms and everything else and they did conduct a study. We have a Bureau of Economics who advised them on the methodology.

So in that study, they found the WHOIS database -- And the WHOIS database was actually not the primary focus of that study but they went ahead and seeded names on the WHOIS databases as well in addition to all of the other locations.

And while they found abuses in other locations in the e-mail addresses that they had actually seeded, they concluded that they did not receive spam at any of the e-mail addresses.

So there was a study done but that study did indicate in 2002, which is a long time ago, in that study it was not a significant source of spam by itself nor was it the primary source of spam that people receive.

And during the visit that you refer to it was in Morocco where Commissioner Leibowitz participated on a panel with other consumer protection agencies. He referred to that study and Commissioner Leibowitz acknowledged that that study had been done a while ago and that it could possibly be revisited, but I don't want to just kind of disparage the results of that study because it was conducted with different methodology.

>>DAVE PISCITELLO: We tried not to do that in our report.

>>SHAUNDRA WATSON: It was not a significant source of spam or primary source of spam.

>>DAVE PISCITELLO: Just for the record, we try very hard not to disparage the study because this is just data and you performed a study five years ago and you came up with a conclusion and we performed one five months ago and came up with a different conclusion.

That's the beauty and horror of data in doing studies. You can put together a study to look at something and it is not necessarily going to tell you what is true forever. A lot has changed in the phishing industry, in the pharming industry, in the spam industry. I call them industries because they are -- in the last five years.

I would appreciate it if you would read the report because you will find that we are not jumping all over you at all.

>>AVRI DORIA: Alan, you had a question but couldn't be seen.

>>ALAN GREENBERG: Just a very quick question. You said you ran the study for six weeks. How quickly did the spam start flowing in?

>>DAVE PISCITELLO: You would have to ask Ram, but it was very quick. I can tell you that I put up an e-mail address for SSAC-dnfr@ICANN.org for the domain name front running report. I started receiving spam four hours after that mail was published on that one PDF file so go figure.

So PDFs, there is another good data point. PDFs are not a great way to prevent an e-mail address from being pulled out of cyberspace. They can be harvested there as well.

>>AVRI DORIA: And you had a question?

>>TIM RUIZ: I was just going to make the comment. It sounds like the difference between this report and the FTC report, although I haven't read it for quite some time, is this a matter of one's looking at a relative picture of how -- what contribution WHOIS plays and yours is just looking at raw numbers that WHOIS is a factor, was there any -- was there any attempt or is there likely to be any attempt on the SSAC's part to look at it from a relative point of view in the overall spam picture?

>>DAVE PISCITELLO: I'll let Dr. Crocker answer that question.

>>AVRI DORIA: Yeah. Do you have the microphone or...

>>STEVE CROCKER: So thank you, Tim, because that's exactly a point that I wanted to emphasize, that the FTC study looked at the relative contribution, as you said, and found that the relative contribution due to WHOIS was zero or minimal or low by comparison with others. And we don't take any issue with that. That's undoubtedly true.

The thing that motivated our work was, in the dialogue about WHOIS, that result was being transformed into publication of e-mail addresses in WHOIS is not a source of spam.

We thought that was not accurate with respect to the facts on the ground. Whether or not that's a correct interpretation of the FTC data is maybe a more subtle distinction but in any case we wanted to highlight exactly that point, and say, "Hey, it really is the case that even if you only put the e-mail address in WHOIS, you're going to get a lot of spam. Full stop."

And so your point about the relative versus the absolute is -- is exactly what we wanted to do. We wanted to separate that out, and have that contribute, and it was motivated by the WHOIS discussion taking place here as opposed to a general discussion about spam that's taking place in the world.

You then asked the question do we intend to do a study about the relative contributions of spam. And the answer is no. We got a lot of other fish to fry, and we really just wanted to try to help the discussion and the dialogue in the ICANN framework with respect to what's happening with WHOIS, and there are more -- spam is just too big for us to go after and it's outside, in general, the ICANN scope.

>>AVRI DORIA: Okay. Thanks. Kristina, you had a --

>>KRISTINA ROSETTE: I have a feeling I might know the answer to this, but I just want to make sure that I'm right.

Do you have information about, for example, the percentage of -- or even just the absolute number of registrations with registrars in each of these TLDs that are neither delegated nor protected?

In other words, I'm trying to kind of put all of this in a big picture.

>>DAVE PISCITELLO: The answer is: No.

>>KRISTINA ROSETTE: Okay.

>>DAVE PISCITELLO: What we did -- I mean, that's something that's interesting to me and, you know, if I had, you know, my way, I'd be -- you know, convincing Mr. Crocker that that's an interesting thing for us to pursue but that's a topic for the SSAC, not -- you know, not here.

We don't know that, but it would be a very useful, you know, data point.

It's particularly useful from the perspective of trying to understand whether proxy services are being -- you know, are being used, not only by natural persons, you know, but also being abused as a way to -- you know, to essentially, you know, operate covertly and get registered phishing sites. My suspicion is not but it would just be nice to know that my suspicion is correct.

>>KRISTINA ROSETTE: Okay. Thank you.

>>DAVE PISCITELLO: Yeah. So quickly going through the rest of the findings because I think lots of people want to get to alcohol, Finding No. 2 essentially summarizes the results of that -- you know, of that logarithmic graph that we produced in the report. Basically depending on the kinds of protective measures that you apply when you are -- when you register a domain name, you will -- you will be able to get incremental or orders of magnitude better protection against spam delivery if you use protected WHOIS, delegated WHOIS, or combinations.

When we looked at our study, which is admittedly relatively small to draw -- you know, draw a definitive conclusion, in our study the delegated WHOIS appears to be somewhat more affected than the protected WHOIS.

This means that rate-limiting measures, you know, and CAPTCHA measures are not as effective as an e-mail substitution measure.

I have to read this because it's so long.

Spam messages were delivered to the e-mail address registered as the contact for domain name and to other addresses as well. We don't draw a definitive conclusion, you know, as a -- you know, as a body on why there's -- you know, there's so many other deliveries but it's fairly -- you know, fairly well-known in the spam community, in the anti-spam community, that once a domain name is out there, it is used -- you know, it is pulled from -- you know, from the Domain Name System and all sorts of

measures are used to try to find recipients at those addresses. And then once those recipients are known, those known recipients are generated into a list. Those lists are marketed. And so, you know, once you get hit, you just -- you know, it's just like a massive infection. It's like a virus attack. You'll just keep getting hit again. And we believe that that's contributed to some of the anomalous results we had with one or two domains that we had in our study.

We believe that it's very possible that, you know, by sheer luck or sheer brute force, one spammer managed to deduce the, you know, user ID of one of our e-mail address -- one of our e-mail recipients and once it was let loose in the wild, it was used everywhere.

So our conclusions were -- are that registries and registrars that implement anti-abuse measures such as rate-limiting, CAPTCHA , and nonpublication of zone file data and similar measures can protect WHOIS date from automated collection.

Conclusion No. 2 is that anti-spam measures provided with the domain name registration services are effective in protecting e-mail addresses not published anywhere other than the WHOIS from spam.

Again, it is very important to remember we're always talking about "if it's not published anywhere else." Once it's published anywhere else, all this data goes -- you know, goes out the window. And this is one of the reasons why I think the FTC result is very, very, you know, meaningful, even still.

Once it's published anywhere on the Internet, it's going to be used. It's good going to be collected. Because the collecting measures -- collecting methods of spammers are -- you know, are vast.

The appearance of e-mail addresses in responses to WHOIS queries virtually assures that spam will be delivered to these e-mail addresses. This is just, you know, a confirmation of what I just said.

The protection -- the combination of protected WHOIS and delegated WHOIS services, as defined in our report, are an effective way to prevent e-mail addresses publish new WHOIS service from being used as a source of spam. And again, that's in the limited context of saying if I'm going to register an address and I have a specific e-mail address that I want to use as an administrator or a mail administrator and I want to keep that solely for communication with my registrar or solely for communication in a very, very limited context, I don't want to be publishing it in the WHOIS.

Some of the things that we did was think -- you know, in the processing of all this data was think about other studies that we might want to look into or that might be interesting to the community at large. One might be, you know, are certain TLDs more attractive to spammers?

If you look at our results, it sort of looks like, you know, com is a big -- you know, com is more attractive than info. Well, that's sort of, you know, intuitive to some people but maybe that's not the case and we'd like to find out more about that.

We also wanted to look at whether or not large or small registrars are more commonly targeted for automated, you know, collection.

Do spammers favor registrars who have a reseller or a retail business model?

Does the price of an it would affect its popularity for use in spam?

Can registries adopt any measures that would reduce the level of spam in general? You know, is there some best practice that we could recommend as -- you know, as SSAC for all registrars to implement that would essentially help abate spam to their registrant e-mail addresses? And is there any material difference in the spam level for ccTLDs versus gTLDs?

So that's it. Thank you very much. I appreciate your attention.

>>AVRI DORIA: Thank you.

[Applause]

>>AVRI DORIA: Okay. So I don't know if anyone had any last questions before we moved on to -- you guys can go to the alcohol. We had one more thing on our schedule.

>>DAVE PISCITELLO: Rock on!

>>AVRI DORIA: But Mike, you had a question.

>>MIKE RODENBAUGH: I hope it's a quick question. I feel like I'm just having a mind block here or something. But I'm not understanding why, with delegated WHOIS service, why so much less?

There's still an e-mail address there that's published. Why is it not getting spam, or were you just not collecting it because it was going to the proxy?

>>AVRI DORIA: Microphone, please.

>>DAVE PISCITELLO: I'm sorry. The published address is getting spam. So if --

>>MIKE RODENBAUGH: Okay.

>>DAVE PISCITELLO: Yeah. And it's getting probably as much spam, if not more, because it's -- you know, it's a fairly well-known domain.

>>MIKE RODENBAUGH: But it's not getting forwarded to the registrant.

>>DAVE PISCITELLO: But it's not getting forwarded by some mechanism that is very registrar-specific at this point. Yes.

[Speaker is off microphone]

>>AVRI DORIA: You don't have a mic, please.

>>PAUL STAHLURA: I just wanted to quickly add that if he was to change that address every, like, 12 hours or once a day, then that address wouldn't get spam -- the new address wouldn't get spam because the spammer has to remind the WHOIS, you know, every 12 hours to get the new address.

>>DAVE PISCITELLO: And that may be, you know, a mechanism that -- you know, that a registrar could use in providing the e-mail obfuscation, yeah.

>>STEVE CROCKER: Let me... I haven't actually tried to change my e-mail address that frequently but there's Type 1 and Type 2 errors.

[Speaker is off microphone]

>>STEVE CROCKER: I'm sure I have a lot to learn from you and I should probably spend more time doing so, but it occurs to me there's Type 1 and Type 2 errors in that kind of process, so that things can get lost that ought to go through, and we can take it up over dinner or something.

>>AVRI DORIA: Okay. I thank you.

>>DAVE PISCITELLO: Thank you.

>>AVRI DORIA: So thank you, Dave, and thank you, Steve, for coming. And talking to us about it.

>>STEVE CROCKER: Thank you.

>>AVRI DORIA: Interesting report.