WHOIS Council Discussion
Teleconference
TRANSCRIPTION
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At: http://audio.icann.org/gnso/gnso-whois-20090121.mp3
http://gnso.icann.org/calendar/#jan

Participants present:
Chuck Gomes - GNSO Council vice chair -gTLD Registry C - coordinator
Avri Doria - GNSO Council chair - NCA
Steve DelBianco - CBUC
Tony Harris - ISPC
Tim Ruiz - Registrar
Steve Metalitz - IPC
Alan Greenberg - ALAC

ICANN Staff:
Liz Gasster - Senior Policy Counselor, ICANN Policy Support
Margie Milam - Senior Policy Counselor
Glen de Saint Géry - GNSO Secretariat

(Chuck):   Okay. Welcome to everyone to our meeting today. I don't think we'll go over an hour. That's my goal anyway.

                So let's go ahead and get started. We have Steve DelBianco, (Steve Metalitz), Tim Ruiz, myself, Avri, Alan, Liz and Glen on the call. Is anybody else on the call?

Tony Harris: I don't think you mentioned me, Tony Harris.

(Chuck):   Oh I didn't. Sorry Tony - because - and I acknowledged you earlier. But I...

Tony Harris: That's true. Yeah.

(Chuck):   Okay. I got you. Okay, good. Thanks. All right so...

Liz Gasster: Also -- this is Liz -- I have with me Margie Milam.

(Chuck):   Oh hi Margie.

Margie Milam: Hi. My first day.

(Chuck):   Yeah. You're wearing a new hat today.

Margie Milam: That's right.

(Chuck):   How does it look, Liz? Are - is she - does it look good, the new hat?

Liz Gasster: Yeah. She's smiling. She's smiling. But I'm going to check in with her at the end of the call, okay?

(Chuck):   Okay. Yeah.

Man: Is she a new staff person?

Liz Gasster: She's a new staff person.

(Chuck):   Oh my. She's on the policy team, right?

Liz Gasster: Yes. She is senior policy counselor. She has the same title as I do in the policy group. And she'll be taking over some issues like for

example - she doesn't know this yet but the registration abuse too. But she's just listening today on WHOIS.

(Chuck):   Okay. Welcome Margie. And I don't think you're a new face to any of us. But we do welcome you on board to the ICANN policy team.

All right, the - so any suggested changes to the agenda? Okay. Then we'll go right to Excel file of priorities.

And if you're on the Wiki, Liz did one there that is - I - in my opinion extremely helpful. I don't know where it disappeared to on my - I must have replaced it with something else. I'll go back to it.

The one - the last one she has on there is a kind of a condensed version. I think it has priorities. And it has some columns hidden.

So if you want to see each constituency's views then you need to look at a different version. But if you click on the last one it's a real easy way in my opinion to look at the Excel - that Excel file because you can see it all on one page very concisely.

It shows your - the study area, the study numbers, the type. It gives an average priority rating, an average feasibility rating and then some other data there as - statistical data there as well.

Now is anybody uncomfortable with this, looking at that version for our working document for the next few minutes so that we're all on the same page? Okay.

Alan, have - now this does not include any input from the ALAC or the GAC, okay? So Alan, can you kind of give you update where the ALAC is on this?

Alan Greenberg: We are likely to have some input but it's not ready yet and probably won't be for at least a week, maybe a little - somewhat more.

(Chuck): Do you have any clues to how the ALAC is proceeding in terms of will it be very different than the things we're looking at here or - because our plan today is to kind of start working towards maybe coming to some decisions where we could make recommendations to the council?

Alan Greenberg: I understand. We understand. But we just don't have any concrete numbers at this point.

(Chuck): Well then let me suggest that, you know, if we're going to go - I don't know how far we'll proceed in terms of coming to some sort of agreement on this drafting team today. But if we proceed, if you could kind of redirect - I - we can obviously incorporate your numbers. So I still encourage you to submit the numbers if...

Alan Greenberg: And...

(Chuck): You can.

Alan Greenberg: And we will. And essentially at this point assuming we come - this group comes up with some sort of recommendation or something closer to a recommendation I'm going to pass that on and...

(Chuck): Good.

Alan Greenberg: And at that point our job will be more to say: are there any major differences as opposed to giving a detailed summary perhaps or detailed...

(Chuck): Okay.

Alan Greenberg: Point by point one.

(Chuck): Thanks. That's what I was going to suggest so that you're on the same page.

Alan Greenberg: Yeah.

(Chuck): (Unintelligible) me. That's...

Alan Greenberg: No. We're unfortunately couldn't make the deadline but we will get...

(Chuck): Okay.

Alan Greenberg: Something you need or confirming what the group has decided or identifying where there's...

(Chuck): Okay. Now the ultimate objective for the council is to identify some if any studies for which we would ask staff to develop some cost estimates and some feasibility estimates.

The - and so what I'd like to suggest we do now -- and I'm welcome to other suggestions if you don't like mine -- and that is that we kind of

look at the priorities for right now. And it seems to me as we're looking at the average priority we have two that it - three, excuse me, that are greater than three as an average priority. And we have one other one that is in the, you know, nearly to three.

So if you look at - in fact, Liz, and this is another advantage to this chart -- sorry I didn't mention that -- is the - they are sorted by average priority. And so the top - actually the top five, six maybe - if you go to the top six there - are all at 2.81 or higher. Then it drops off a little bit after that.

So one approach - and I'm just throwing this out to get discussion started. We can go a totally different direction so please don't take what I'm saying as determinative. One approach we could take as a first step, if there's agreement in the group, you know, strong support, not necessarily unanimous, then we could ask staff to take the first six categories there. Or some lesser number we could do as well, like we take the top three or something. And say hey, let's go ahead and proceed - our recommendation is to go ahead and have staff proceed with cost estimates and feasibility estimates for these studies.

Now keep in mind the council ultimately has to make that decision. Our task is just to put something forward. And if we go a direction like that or some other direction then maybe we can also draft a motion that could be considered at the next council meeting on the 29th.

So let me stop talking there. I just threw that out to get things going. Let me open up a queue and let's see what other people are thinking.

Tony Harris: Put me in queue, Tony Harris.

(Chuck): Okay, Tony. Who else? Anybody else right now? Okay. Go ahead Tony.

Tony Harris: I was just going to say that I think that's quite a good suggestion. I mean if you take the top six there is - they are the closest ones to a general consensus by default, right?

(Chuck): Yeah. That's kind of what I was thinking. Obviously, there's not a full consensus. We know that because we have two constituencies that don't think any studies should be done. And we need to always keep that in mind and recognize that.

Any other - anybody else want to comment on that or make an alternative suggestion? Now if we went that route -- while you're thinking, hopefully -- if we went that route that wouldn't necessarily eliminate other studies. I think that what that would do is it - I think, you know, we don't want to overload staff with too much at any one time so it's actually pretty helpful if we don't give them everything at once. And maybe I should ask Liz to comment on whether six maybe are too many to start with.

Liz Gasster: I would be a little concerned although I'd have to get some experts involved to even assess it only because when you look at the six, several of them are studies that we've already combined because we think they overlap or relate. But I think we would still need some expert, you know, intellect to craft a study out of, you know, the three or four ideas that we think are related, that make the most sense where there could be puts and takes to various approaches even to a single study potentially.

So my preference is less rather than more to start. But, you know, it's up to you all.

I think it is complex. It's not an automatic or simple process I think to take, for example, study letter A which is several studies and say okay, of the - that are related, that overlap, and say okay, what's the right study to craft out of this with - and what are the ingredients that we would need, the data points and etcetera.

So that's just a thought. But again it's just based on my reaction not having consulted with an expert at this point.

(Chuck): Now another thing we could do if we went this direction and identified six for now would be to give staff the flexibility -- they probably would have it anyway whether we give it or not -- to, you know, proceed progressively, that they don't all have to be done at the same time. So they can, as they have resources, proceed through the studies.

I do believe that it would be very good from a PR perspective for the GNSO to take some action as soon as possible. We know that the GAC is very concerned in this area, and other members of the community.

So to actually show some progress I think would be very nice if we could do it as soon as the meeting on the 29th. But I'm not trying to push that. We as a group need to come to at least rough consensus on that.

Avri Doria: Can you put me into queue? This is Avri.

(Chuck):   Sure Avri. Go ahead.

Steve DelBianco: Steve DelBianco as well.

(Chuck):   I got you Steve.

(Steve Metalitz): And (Steve Metalitz).

Avri Doria: Okay.

(Chuck):   Got you (Steve Metalitz). Okay Avri, go ahead.

Avri Doria: Okay. I think in doing six, I mean one of the things that the experts can also do because I think one other place where all our evaluations -- at least I know mine were -- were (unintelligible) was on what is feasible and how long various things take. So in other words while they're looking, whether it's the top three, the top five, the top six, they can look at that sort of issue.

In terms of making the GAC happy notice that most of the GAC studies did not show up in those top six except for those that got combined into some of the others. So I'm not sure that it'll do a lot to make them happy.

(Chuck):   Yeah. And it's hard for me to lead the meeting and go back and look at the - at how many GAC studies are incorporated in those top six. Could somebody do that while we're talking here? Just take a look at the top six there and see how many GAC studies are...

Tim Ruiz: All right.

(Chuck):   Included in that.

Tony Harris: (Chuck)?

Tim Ruiz: There's...

(Chuck):   Yeah.

Tim Ruiz: The data set.

(Chuck):   I heard Tim and Tony I think.

Tony Harris: I'll defer to Tim because I've already spoken. And then I'd like to say something.

(Chuck):   Oh okay. So you want to be in the queue. Got you. All right. Tim?

Tim Ruiz: There's six GAC studies in the data set.

(Chuck):   That - so there's actually seven if we include the data set in those top six.

Tim Ruiz: Right.

(Chuck):   Thank you very much. So that's not bad in my opinion. I - Avri, you're probably right. It's probably going to not thrill the GAC. But at the same time it's - we've used a fairly objective process to the extent that it can be objective.

And so I think it's - we can at least explain the rationale how we got here. And we're not eliminating - we don't necessarily have to eliminate any other studies at this point in time either.

Okay. Avri, are you done?

Avri Doria: Oh yeah.

Tony Harris: I had something (Chuck), now.

(Chuck): Yeah. You - something about this specifically Tony, you want to follow up?

Tony Harris: Yes.

(Chuck): Go ahead.

Tony Harris: About this. Yeah. I'm speaking from memory because I haven't gone back to exactly how we made our - submitted our preferences. But just looking at the chart I think that several of the top six are right at the bottom of the original chart, the last - among the last five or six.

And from memory those, I would say, pretty sure, they deal with data gathering and collection and in a way with accuracy too. So I'm - I struggle to find how that would not be of interest to the GAC.

(Chuck): In - explain that for me, Tony. I don't...

Tony Harris: I'm saying that when we're talking about the top - the priority ratings, the first six, right?

(Chuck):   Right.

Tony Harris: I don't - I haven't been able to open that document where you've - you ordered them. But I do see the ones that are over three and the 2.9s on the original general chart where all the submissions are from all the constituencies, okay, the priorities.

                 And they are in the slots which in my short memory from when we made our submission some days ago, the top ones would actually call for studies on data collection and gathering and in a way accuracy also. I could be wrong. But I think they referred to that, the ones that have the highest...

(Chuck):   Okay.

Tony Harris: Average rating, okay?

(Chuck):   Thanks Tony. Steve DelBianco?

Alan Greenberg: And could you put Alan?

Steve DelBianco: Thanks (Chuck).

(Chuck):   Got you Alan.

Steve DelBianco: (Chuck), I was focusing on the suggestion you made earlier that we might on this call try to move towards a resolution, a council resolution, right?

(Chuck):   Right.

Steve DelBianco: And I was going to ask whether such a resolution - what would be the parameters of it because I think it would help to focus discussion given we want to do this in an hour? Would it be an initial set of studies for costing or is it meant to be the only set of studies?

And I would recommend it also include a - it should be a self-evident resolution so that one doesn't have to refer back to the Wiki or drill down into all the documents to understand what's in group B for instance. But we could delineate elements of each study as part of the resolution.

And I think it would be pretty substantial. And we could indicate that the GAC has got five studies and one full data set that are covered within this initial set.

So what - could you tell me more about what you're thinking in terms of what a council resolution might look like if we could come to one?

(Chuck):   Well we're getting the detail that you suggested which I think is a very good idea. Okay? Making it self-contained, the motion self-contained would be very helpful I think for the council and others that look at the motion and constituencies and so forth.

The idea would be to recommend to the council that they consider asking the staff to initiate the process of developing cost estimates and feasibility estimates for the following studies and progressively as they're able to do it. They don't have to all be done concurrently I don't think.

And my suggestion basically was not to shut the door on the rest of the studies at this point but to get something started. And then this group could continue to look.

And maybe we want to postpone it a little bit because I don't know how good it is to overload staff any more than six for awhile. But we can talk about that too. So does that make sense?

Steve DelBianco: Yes. Yes it does.

(Chuck):   Okay. And by the way I hope you're ready to volunteer on that detail motion. I'll let you think about that while I turn it over to (Steve Metalitz).

(Steve Metalitz): Thank you. I had two questions. One really builds on what Steve DelBianco and - was just asking. And that is really kind of to ask the staff if you - if that - a motion like that were adopted what would you do. I mean would you find a vendor to give - to work with you on doing cost estimates or how would - I guess my question is how do you think the staff would proceed if that were the motion.

(Chuck):   And let me tack a corollary question to that, Steve, if you don't mind. And that is: is there - are there funds in the budget to do this now?

Liz Gasster: Well I don't have a exact recipe for how we would go about this. We would clearly consult with expert resources to - I would then venture to guess most likely would be external to ICANN done on some, you know, bid or consulting basis both in terms of assessing cost and feasibility and in terms of actually conducting the studies.

And again I have given some thought to researchers and approaches that we might engage in. But I don't have a direct answer.

There - the - in terms of the budget it has been understood for - ever since, you know, we've been talking about studies that there would be costs associated with studies that ICANN at least - there's no budget set aside for it. But there is a placeholder for expenses associated with studies in the operating plan with the assumption that based on the estimates that we get we would just insert those numbers and deal with the costs at that time. But there is the understanding that there would be costs associated that ICANN would be prepared to bear at least to some degree.

(Chuck): And so...

Liz Gasster: But I can't...

(Chuck): It would be possible to at least, you know, come back with the cost estimates and feasibility estimates in the relative near-term. More may need to be budgeted to actually do the studies in the next year. Is that correct?

Liz Gasster: That's right.

(Chuck): Okay.

Liz Gasster: But it...

(Chuck): That...

Liz Gasster: Could be done this year. I mean it's not to say...

(Chuck): Okay.

Liz Gasster: That there wouldn't be...

(Chuck): Okay.

Liz Gasster: The ability to proceed.

(Chuck): Okay. Okay. That's great. (Steve Metalitz), did that answer your questions?

(Steve Metalitz): Yeah. It did. I had a - I did have a second question.

(Chuck): Go ahead.

(Steve Metalitz): It's actually...

(Chuck): Go ahead.

(Steve Metalitz): A much narrower which is: could someone remind me what the significance of the double asterisks in some of the study consolidation...

(Chuck):   Oh the notes. They refer to notes that were at the bottom of a - does anybody got the original table?

(Steve Metalitz): Is it relevant anymore I guess is my question. I'm just not sure what those mean, whether they're...

Avri Doria: Yeah. I had to write email. I have to - I'll dig up the stuff because when I was going to the other (non-com) appointees I had to answer that question and did put it somewhere. So let me find out where I put it and...

(Steve Metalitz): Not urgent. I'm just...

(Chuck):   Yeah. And that's a good point. It kind of illustrates...

Avri Doria: My...

(Chuck):   It kind of illustrates Steve DelBianco's point...

Steve DelBianco: Yeah.

(Chuck):   That in any motion we develop we should make it self-contained.

Steve DelBianco: Absolutely.

(Chuck):   So that's an excellent suggestion.

Liz Gasster: I'll follow up on that too. Sorry.

(Chuck): Okay. All right, thanks. Okay? Let's go to Alan.

Alan Greenberg: Yeah. This goes back to the issue of to what extent are we satisfying the GAC. I haven't taken part in many of the earlier calls so I don't know the answer. Was there any consideration given to essentially filling in the table on behalf of them, giving a moderately high rating to the studies that they initiated and they suggested and lower or negative rating to the studies that didn't come from there just to try to factor in their interests in doing...

(Chuck): Well...

Alan Greenberg: It's a bit late to say it now but...

(Chuck): We did talk about that just briefly, Alan. And correct me if I'm wrong in my memory but we came to the conclusion I think that - well it's pretty hard to put numbers in for them. And I don't think very many of us if any felt comfortable with doing that.

Now does somebody else want to respond to that? Is...

Tim Ruiz: This is Tim. I'd like to comment on that.

(Chuck): Go ahead Tim.

Tim Ruiz: The - weren't the GAC study recommendations all based off of the collection of two sets of data? And so why would we not in this case request them to the staff, just simply request, you know, a feasibility and cost study on the collection of those two sets of data? Because that would seem to be the logical first step, to get into the rest of the

GAC's requested studies and would likely collect data that potentially could be used for some of the other studies that the council might recommend or request?

(Chuck):   That's an interesting idea. Comments on that? Well Alan...

Steve DelBianco: This is Steve. I think GAC data set two is encompassed in one of these, in A, right?

(Chuck):   So it'd be just the other data set that we'd have to...

Steve DelBianco: I have no recollection what that is but...

Tim Ruiz: Right. I thought...

Steve DelBianco: I don't know whether there was...

Tim Ruiz: In the other groups we would just take out the other GAC studies for now and just say data, you know, that data set one and two because a lot of the costs associated is going to be with collecting the data.

(Chuck):   That's a very interesting idea in my opinion. Other thoughts on that? So in other words, Tim, if I'm understanding correctly we would add to the six the collection of the data for that first data set from the GAC in addition to the six.

Tim Ruiz: Yeah but then remove the feasibility and cost studies for like GAC 1 and 11, 5 and 6, 9 and 10 that are all included in there.

(Chuck): Yeah. And that - yeah. You're not suggesting getting cost estimates for the associated studies with that data set, just getting - collecting the data for it, correct?

Tim Ruiz: Yes, correct.

(Chuck): Okay. I got it. Okay. Anybody else have a question on that?

(Steve Metalitz): This is Steve. Could someone remind me what GAC data set one is?

Liz Gasster: Yeah. I've got it right here. It's the amount and source of traffic accessing WHOIS servers and the types and numbers of different groups of users and what those users are using, who is data for.

(Steve Metalitz): Okay.

(Chuck): Yeah?

(Steve Metalitz): I think I would tend to agree with Tim that we should look at costing and feasibility on that. I'm not sure it's feasible but it's...

(Chuck): Yeah.

(Steve Metalitz): It's worth looking at.

(Chuck): Yeah. And Alan, were you finished on your comment?

Alan Greenberg: I was - on - yes I was finished.

(Chuck):   Okay, good. I just wanted to make sure. Anybody else want in the queue here?

Steve DelBianco: Steve DelBianco.

(Chuck):   Go ahead Steve.

Steve DelBianco: I really appreciate the sentiments of most of the folks on the call as to how do we handle the GAC, how do we make the GAC feel as if we're - ICANN's paying attention to them. I think that's a good move.

I have a question. Liz, there was a discussion two or three weeks ago about a communication that we would send to the GAC sort of explaining where we were, where we're going and inviting them for input. Did we ever do that or decide not to?

Liz Gasster: No. We did it. And we - (Donna) talked to (Yanis) and (Yanis) sent an email to the group. And we've heard nothing since then.

Steve DelBianco: Got it. So we've made one critical outreach. That's real important.

And second thing I wanted to note is that members of the GAC will often say that they didn't give their letter to council, they gave it to the board. And some of them don't even appreciate that the board turned around and gave it to council for a bottom-up consensus or even policy development process.

So in some sense when council speaks on this, would council then communicate what we do today to the GAC so that they'll know that we're recommending that council pursue this, that staff come back with

numbers and that the board ultimately considers itself the one who receives the GAC letter?

So if the GAC is not happy with us picking six of their studies and two of their data sets they would probably do their outreach and communication directly to ICANN's board and not to council anyway. So I support Tim's idea and as well that we do as much communicating to the GAC as possible but we never should expect a direct reply.

Man: I think you're right on.

Avri Doria: Can I comment on that?

(Chuck):   Yes.

Avri Doria: I think it would be a good idea. I wouldn't do it with what came out of here. I would certainly, you know, after a motion, assuming a motion is made and assuming a motion passes, would certainly, you know, consider it reasonable to forward a copy of that.

After, you know, after a motion's passed I normally forward it on to the board secretaries, etcetera. And to send a copy of that to the GAC at that time would seem a reasonable thing and could even be stuck in the motion as a recommendation that, you know, that it be forwarded to them.

But I wouldn't do it with what comes out of this drafting team. I would do it with what post-motion getting acted on.

(Chuck): Okay. Thanks. Yeah. No I think that's - I think that makes sense too, Avri. Good, good, it's a good point. Any other comments?

Now I don't want to be overly aggressive here. So slow me down if I am being that way. But if Steve is willing to take a first cut at the motion I'm certainly willing to work with him in terms of finalizing it.

To get it in front of the council by the meeting on the 29th we have to submit it to the council tomorrow. Now that doesn't mean that a motion can't be modified some, amended after it's submitted. But we would need to get the basic motion on the table with the council tomorrow.

So first of all let me ask: is there anybody on the call right now that's opposed to the general direction we're going in?

Avri Doria: This is Avri. I'm not at all...

Tim Ruiz: This is Tim...

Avri Doria: Opposed to - can I be in the queue first?

(Chuck): You may. Go ahead. So did somebody else want in the queue? I heard another voice.

Tim Ruiz: Tim.

(Chuck): Okay.

Liz Gasster: And Liz at some point.

(Chuck):   Okay.

Avri Doria: I am not at all opposed to the notion. If we're trying for the detailed explanatory motion I'm not sure that getting it there for tomorrow's meeting is necessarily necessary. We have one more meeting before the face-to-face.

                So I favor the direction. I'm not sure that it doesn't take a slight bit longer to work out the explanatory motion and then for the constituencies to have a chance to look at it and talk about it because it's sort of a big thing. And it hasn't been taken back to them. But that's just an opinion.

(Chuck):   Yeah. Okay. And I - that's why I was asking am I being too aggressive. But the next council meeting by the way is on the 19 of February. So it's about a month away. So - and that might still be okay.

                I think sooner is better just from getting things going. But I'll certainly respect the view of the total group here whether it's - whether we want to try to get something on the table for the 29th or do we want to just shoot for the 19 of February.

                And I had Tim in the queue and Liz. Anybody else want in the queue? Okay, Tim.

Tim Ruiz: Thanks. You know, I don't have any - I'm not objecting to the direction we were just discussing. What I would like to do is just point out one area that concerns me in the top six.

And I had - I know I debated some of this so I don't intend to restart a debate but just something to think about I think. And that is with regard to study group E.

And again my concern with that is that sounds like - both of those sound like requests or compliance activities on the part of staff. Seems that that is separate from what, you know, what the real goal here is with doing the WHOIS studies. And I don't see why that compliance effort couldn't be requested or, you know, discussed outside of the WHOIS studies.

So I don't know - I'll be - the IPC seem - how strongly they feel about that. But, you know, four of the other - three of the other constituencies didn't feel it was a top priority. The (MCA) evidently were all below - maybe there was one that must have said four because it doesn't seem quite as much support for grouping anyway but primarily just thinking that that's something we could request outside of these WHOIS studies. I just wanted to throw that out there.

(Chuck):   It's a good point, Tim. And it - would it be reasonable that staff - and when we're asking for cost estimates of a study and feasibility I would think that first of all they're going to focus on the feasibility because you can't - if something's not feasible it's pretty hard to cost.

But couldn't they also - I mean would there be enough freedom for staff to come back and say yes, we saw that it was suggested this might be a compliance issue and they could come back and say that and working with the compliance staff and whatever they needed to do.

So I would think we would think we wouldn't want to overly restrict staff in terms of what they come back with. If they in their work found out something that you know, this really is a compliance issue and we don't recommend a full study. Now the council could go ahead and do a full study anyway or request one, but it is, would that be a possible outcome from the staff work? Any thoughts on that?

Tim Ruiz: From my perspective, (Chuck), this is Tim again, this is my perspective if that was you know, (unintelligible) flexible that way and assume that that could be a response then I have no problem with that.

(Chuck): Okay. Thanks Tim. Avri?

Avri Doria: Am I in the queue?

(Chuck): Yes.

Avri Doria: Oh, drop me.

(Chuck): Okay. You are dropped. And Tim did you have any, I had you in the queue but are you, do you have more?

Tim Ruiz: No that was it.

(Chuck): That was it. Okay. And then Liz.

Liz Gasster: So just starting, Tim were, for clarification, you were talking about area six there? Just there when you were talking about compliance?

Tim Ruiz: Right. It's (33 and 20).

Liz Gasster: I just want to reiterate again, I know there may be some disagreement about this but from the compliance group's perspective they don't view those two studies as being in the ambit or remit of compliance. They're not, you know, when we talked about that on an earlier call we can certainly revisit it but this goes to 3773 and the adequacy of 377, (RAA) Provision 3773.

                 But that wasn't my comment that I wanted...

Tim Ruiz: Yeah. My point was, this is Tim, my point was that you can't determine that unless there's some compliance data that goes with that. I mean if you don't know, if registrars aren't compliant it doesn't necessarily mean the provision isn't sufficient, it just means there's no compliance, that's a different issue than whether the...

Liz Gasster: But they aren't required to comply, I think it's a problem with it being a compliance test. So they're reading of (RAA) Provision 3773 is it doesn't require them to respond it just means that they accept liability if they failed to respond.

                 So in their view they weren't making a judgment about whether a study should be done or not. They were merely saying that it wasn't a compliance issue and that the study, it might be better to postulate a study that discusses whether 3773 as currently defined in the (RAA) is adequate to address the concern of those who are trying to use that provision to get information that they need.

Tim Ruiz: Yeah, so maybe that would be something that would be commented on by the staff in response to the council's request or?

Liz Gasster: I mean yeah, we could put that in writing but that's, you know, that was
                 something that I was anxious to take back to the council in discussing
                 these because those were mentioned as possible studies that
                 compliance could do and you know, so I reviewed it with them and that
                 was their pushback. But we could certainly formalize that assessment
                 that it wouldn't be a compliance study.

                 But I guess it's my take at this point that the study hypothesis would
                 need to be rephrased too and that there would need to be agreement
                 in this group to rephrase the hypothesis to evaluate whether 3773 is
                 adequate, not whether there is compliance with 3773.

(Chuck):   But that then goes in the direction of if we discover it's not adequate
                 then it becomes a policy issue.

Liz Gasster: That's right.

(Chuck):   Okay. Now...

Liz Gasster: But I wanted to just hedge on a little was GAC data set one. I'm just
                 not remembering what we did with it in our hypothesis group check, I'm
                 having a...

(Chuck):   I'm not either, so...

Liz Gasster: And I'm sure we did something very wise, but I think there was a
                 reason why we didn't leave it like we did Dataset 2. And I just don't
                 want to commit to doing any kind of feasibility on that or assessment of

that until I go back and retrace what we actually did with GAC data set one, so I'd like to just put that caveat out there.

(Chuck): Thanks. Well I'm getting the sense that it's probably not a good idea to press for a motion for the 29th. But I think the sooner we can get a motion out there in advance of the February 19 meeting the better, and I mean more than seven days if possible because each of us are going to have to go back to our constituencies and the more lead time we have on that the better. So if we could get a motion out I would say in a couple weeks I think that would be very helpful. Now is, anybody disagree with that sense that I just communicated? Okay.

So my next question then is Steve DelBianco would you be willing to take a first crack at a detailed motion?

Steve DelBianco: (Chuck) I'm perfectly willing to help especially with the part that resolves what we're going to study, but I need your help and Liz's help to surround it with all the whereas...

(Chuck): No problem.

Steve DelBianco: ...(unintelligible) we are.

(Chuck): If you'll take a first crack I'll certainly help and Liz you would as well, right?

Liz Gasster: Of course.

(Chuck): Okay. And if anybody else wants to work on crafting that motion just let us know right now and we'll involve you too.

Steve DelBianco: And am I right that we are going to try to pick up the GAC data sets in addition to the six items listed?

(Chuck):   Well let's start there right now and then it's going to be important for us to have a discussion on that on the list once we get it. And hopefully in a few days we can get a motion on the list and let's look at that and then people can take a look at data set one and comment on that and we can decide in the next two weeks whether we want to include this. I think we're going to need probably another meeting two weeks from today if that date works in February, I may look at that date myself so that that's the fourth of February. I think that'll work for me.

Steve DelBianco: Working backwards from February 19th when do all the constituencies need to see a draft motion? Is this going to be in front of council on the 19th?

(Chuck):   Well...

Woman: In this case two weeks in advance would probably be good.

(Chuck):   Yeah, two weeks in advance would be the 12th, or excuse me the 5th, the 5th. So we could actually probably get it done on the 4th in our meeting. That probably would be our main agenda item, to just finalize the motion and decide whether we want data set one and so forth and we could all come prepared having done our homework and so forth so that our main agenda item, maybe only agenda item on the 4th would be to finalize that motion.

Steve DelBianco: It's Steve, may I make a follow-up (Chuck)?

(Chuck):   Yes.

Steve DelBianco: To maintain some momentum if we do the work of drafting a resolution I would recommend we convene this call a week from today not two weeks from today while it's all fresh in our mind and try to come to an agreement on the language of the resolution rather than wait two weeks because...

Woman: I think we have a council meeting in this time slot or close to it this time next week.

Man: I think it's after isn't it?

Woman: (Unintelligible).

Woman: But I don't...

(Chuck):   Let's see, in February the...

Woman: Oh no it's Wednesday not Thursday, yeah.

(Chuck):   ...January the...

Woman: 28th.

Woman: 28th, yes.

(Chuck):   Yeah. I'm not...

Woman: You and I will be somewhere in (Oslo).

(Chuck):   Well no, I'm aware of that but I was talking about the council activity, I
              don't see any on the master calendar.

Woman: No it's Thursday, I was a day off.

(Chuck):   Yeah okay. So yeah, no I was going to bring that up Avri. You and I
              both are in (Oslo) on that day so it might be a little tougher for us to do
              it but I wouldn't have any problem if someone else wanted to lead the
              call, would you Avri if?

Avri Doria: (Unintelligible) probably may.

(Chuck):   We might be able to make the call but in case I can't if somebody else
              wants to take the responsibility...

Steve DelBianco: (Chuck) it's Steve, I was going to recommend that we can all
              commit to get back and mark up the draft resolution by next
              Wednesday even if we can't have a call.

(Chuck):   That's good, in fact I was hoping that we would do a lot on the list
              before we get to a final decision. Does that work?

Avri Doria: Okay.

(Chuck):   All right. So times going by very quickly here, our hours haven't got
              much left but I don't think we're going to need a lot of time on the
              terms. So Steve, you've got the primary action item there in terms of
              first cut. And then if you'll shoot that to Liz and I and then the three of

us via e-mail should be able to work that I think and let's try and, if we can get that done this week it would be very good. So we can get it out to the list so that they have a few days to meet your Wednesday deadline next week that would give them three days for maybe the weekend too to start having some dialog on the list.

Steve DelBianco: All right. I'll try to commit to get something to you guys by midday tomorrow.

(Chuck):   Excellent. Okay thanks. Any other discussion on this topic? Okay then let's go to the terms, the definitions, thanks for the work that happened on that and thanks (Steve Metalitz) in the IPC for suggesting some edits and so forth.

Liz I want to let you take a crack at talking about where we're at there including talking about or having (Steve Metalitz) talk about their suggested edits.

Liz Gasster: Okay. So just to remind everyone there were eight terms that back in (Cairo) the group identified as needing working definitions, with the idea that if we could come up with definitions that essentially articulate the collective thinking about what was meant by these terms. That it would guide the conductors of the studies to know what was meant when these terms are used in study hypotheses.

So that's the back drop, there were eight terms that were identified that are in the study hypotheses that the group thought needed to be defined by the group. I want to draw your attention, so the document that is dated January 9 we have two documents versions of this now swirling, one is the updated version that I posted on the (Wiki) January

9 that reflects the conversation we had on the 7th of January plus some edits from me that I'll explain.

And then just yesterday I forwarded revisions that the IPC proposed to the earlier draft that I sent out and I just - before turning it over to Steve to discuss the IPC draft, the one that I sent that's posted to the (Wiki) also dated January 9, which includes edits that we discussed on our last call, also makes two suggestions for revisions to the terms themselves. Because I went back and checked each of the study hypotheses and realized that the terms actually used in the hypotheses were slightly different than the terms that made it to our list.

I apologize, I thought I had double-checked that in (Cairo) in but it seems that a couple slipped through. So the two that are a little different when you actually look at what the study hypotheses say than what was originally defined is the term undesirable content, the first one, which is actually referenced in the study hypotheses as illegal or undesirable activities, not undesirable content.

And then the very last one, number eight which I has previously identified as adequate protective measures, when you look at the study hypotheses themselves, the terms that you actually see are technical measures or effective measures or adequate corrective measures but not adequate protective measures.

So in going back to the first term this illegal content, which I think should be illegal or undesirable activities. I'm suggesting that we might want to consider changing the definition of that to something simpler than what was laid out, it's just an idea, you may want to, in other words it may be appropriate to change the definition a little bit based

on the fact that the actual term used is illegal and undesirable activities, not undesirable content.

And we could do something like illegal or undesirable activities or activities that violate the law somewhere or activities that somebody finds harmful or objectionable. Just a suggestion but to deal with that slightly broader term.

And then my sense about number eight, which is actually technical measures, effective measures and adequate corrective measures is that probably the definition could stay the same but I wanted to bring that to your attention to see if you agreed or wanted to suggest changes to the definition that matched that term.

(Chuck):   Any questions or comments on these two suggested changes that Liz just discussed? Is anybody opposed to those changes?

Tim Ruiz: But isn't...

(Chuck):   Tim, go ahead.

Tim Ruiz: Didn't the, oh I'm sorry this is Tim, didn't the IPC propose to strike eight completely?

Man: Yes we did.

Tim Ruiz: So that would change if we...

Man: Yeah.

Tim Ruiz: Okay.

Man: I'd be glad to talk about that if that's...

(Chuck):   Yeah, it'd be good to talk about it right now Steve.

(Steve Metalitz): Yeah. Well first I apologize that we edited the earlier version here but looking at, really was once we looked at the January 9 version after we'd already done the editing that we had this concern. First of all, as Liz pointed out, the original phrase was not in any of the hypotheses. And as I understood it our goal was to clarify what was meant by the use of the terms and the hypotheses then that seemed to be, we didn't need a definition of a term that wasn't used in the hypotheses.

And then you know, there are phrases that look kind of similar but in fact they mean totally different things in GAC study three and GAC study four, one of them has to do with measures to prevent misuse of who is data, the other has to do with measures to correct inaccurate who is data as I recall. I mean these are, you know, they're both measures but that's about all they have in common, so bringing them under one umbrella doesn't seem to be clarifying and perhaps the opposite.

So you know, on the theory that we wanted to move ahead with this document and get it out, we just suggested striking this because it referred to a phrase that wasn't in any of the hypotheses. And since the phrases that were kind of similar and other hypotheses actually meant different things, you know, maybe that we want to, that it would be helpful to have this, the definitions of both of those phrases or all

those phrases but we didn't think we should go ahead with eight as it stood.

The other point I would make is that to talk about a proxy service as a technical measure doesn't seem right, I mean I think what's involved there, I mean I would defer really to Steve DelBianco, I think is probably the author of that original hypothesis. Going way back as to whether he was talking about things like captcha, or whether he was talking about privacy services as a means of preventing WHOIS misuse.

(Chuck): And...

(Steve Metalitz): And it just seems like that's, I mean privacy services are marketed on that basis but they're not a technical measure I don't think, they don't really, I don't think they really fit the definition of a technical measure they are you know, a marketing or a service that's being offered.

(Chuck): Now Steve are you talking about in that regard are you talking about eight or one?

(Steve Metalitz): Eight. I'm only talking about eight.

(Chuck): Only talking about eight, okay. (Unintelligible).

(Steve Metalitz): I don't have any problem with one, and again I apologize that we seem to have edited the earlier version...

(Chuck): Okay. Right.

(Steve Metalitz): ...I agree that we should use, I certainly agree with Liz we should use the phrase that's used in the hypotheses and not some other phrase.

(Chuck): Okay. Steve DelBianco.

Steve DelBianco: Thanks. (Steve Metalitz) mentioned the notion of technical measures and the context in which that was used strictly with respect to whether SPAM is enabled through harvesting of e-mail addresses, harvesting in an automated fashion from WHOIS data records and it was prevent that very abuse that captcha was suggested as an effective technical measure.

It was not a privacy so much per se but rather to prevent the automated harvesting of e-mail addresses for the purpose of defending SPAM. So in that context it's okay to call it a technical measure but I don't think it's a technical measure to protect privacy per se.

(Chuck): Thank you. Now anybody opposed to just deleting number eight?

Tim Ruiz: Was the original term that we had identified from (Cairo)?

(Chuck): Say that a little bit louder Tim?

Tim Ruiz: What was the original term that was identified in (Cairo) that?

Liz Gasster: So I mistakenly wrote adequate protective measures but there are several studies, study three contains the term technical measures, study four refers to adequate corrective measures. So adequate protective measures actually doesn't exist literally in any of the

proposals but technical measures appears in study three and adequate corrective measures appears in GAC study four.

(Chuck):   Do those two terms need definitions?

Man: (Unintelligible).

Tim Ruiz: This is Tim I, (unintelligible) one of them that suggested we keep a list of terms I, obviously I don't have a problem with leaving eight out, (what) are those other terms?

(Chuck):   What was the last thing you said there Tim?

Tim Ruiz: Leaving eight as it is now or either of the other terms Liz just mentioned I'd have no problem just leaving those out.

(Chuck):   So are you suggesting leaving eight as it is, is that what I heard you say?

Tim Ruiz: No I'm suggesting we just delete eight...

(Chuck):   Okay.

Tim Ruiz: ...and do not add the other two terms.

(Chuck):   Oh. Got you. Okay thanks. You were breaking up a little bit on my headset so that's why I asked you to, thanks a lot. Anybody opposed to just removing eight and not adding the other two terms? Okay. Liz we've got our direction there I think.

Liz Gasster: Great. I'm sorry for the confusion.

(Chuck):   That's okay. And now (Steve Metalitz) would you talk about the
                   suggestions, and if I remember correctly they have to do with the
                   context right, of the terms?

(Steve Metalitz): Well no, I mean our other suggestion, I mean we have a few
                   suggestions to several of the definitions I guess in number two, in
                   number three...

(Chuck):   Why don't you just go ahead and go through them and we'll take them
                   one at a time and see if there are any objections...

(Steve Metalitz): Okay.

(Chuck):   ...to making the changes.

(Steve Metalitz): The main point in 2 is to take out a parenthetical, it now reads you
                   know, listing some harmful actions, when applied to WHOIS data such
                   harm -- this is the second sentence of Number 2 -- when applied to
                   WHOIS data such harmful actions may include the generation of
                   SPAM, the abuse of personal data (using the data for purposes not
                   disclosed to the individual).

                   My concern with that is that I don't think that's an entirely accurate
                   statement of what constitutes abusive personal data. Often it's
                   considered acceptable to use data for purposes that are compatible
                   with the purposes that are disclosed to the individual. And the other
                   thing is since we're talking about this in the WHOIS context and the

party that's making the disclosure in this case is not the party that's using the data or may not be the party that's using the data.

The disclosure is made by the registrar and there are certain requirements for what they have to disclose in the (RAA). The use is being made by someone who acts, who makes a WHOIS query so it's like it's two different parties and I just think it's confusing to use that example in the parenthetical. I'm happy to say the abusive personal data and leave that in there.

(Chuck): And just strike the parenthetical.

(Steve Metalitz): Strike the parenthetical, that's the main change, the other in two, the others are really just kind of stylistic.

(Chuck): Did somebody want to (unintelligible)?

Tim Ruiz: Yeah this is Tim.

(Chuck): Go ahead.

Tim Ruiz: That parenthetical actually doesn't exist in the more recent version that we were working with.

Man: It doesn't?

Tim Ruiz: And the first part of that is actually worded a little different, so I think maybe Steve should look at that so that we're all on the same page and make sure...

Liz Gasster: Actually we added it, that was something we added on the last call.

(Steve Metalitz): I see it as something added.

(Chuck):   Yeah I see it on what I'm looking at.

Tim Ruiz: Oh, so then the last part of the first sentence then was removed, if such purpose was disclosed.

(Chuck):   Yeah that's not there.

(Steve Metalitz): Yeah I don't see that.

Tim Ruiz: Then so why was that, you know, why was the change made then? I guess I must've missed the call.

(Steve Metalitz): I missed the call to so I apologize I can't really...

Tim Ruiz: The original first sentence said, "Misuse of an action that causes actual harm is accredited to such harm is illegal or illegitimate whereas otherwise considered contrary to intention and design of the stated legitimate purpose" and then a comma was added and the words "if such purpose was disclosed."

(Steve Metalitz): Yeah. I wouldn't have any problem with that if we want to go back to that language.

(Chuck):   And that, if that was there Tim you would be okay with leaving the parenthetical in the next sentence?

Tim Ruiz: No, yeah deleting it yeah right. And then the other two changes I think clarifying and...

(Chuck):   What other two changes are you talking about?

Tim Ruiz: Just (unintelligible) often includes automated e-mail harvesting I think that makes sense and then the last sentence contrary to predicate makes sense.

(Chuck):   Okay. So then is anybody opposed to reinserting the phrase after the comma in the, at the end of what is now the first sentence and then deleting the parenthetical in the second sentence? Okay? Liz you got that?

Liz Gasster: Yes I do.

(Chuck):   Steve go ahead.

(Steve Metalitz): Okay the next is on three, commercial purpose and it's really just to insert legal or legally when we're talking about legal activity, exchange of good and services information.

(Chuck):   So which sentence are you in there?

(Steve Metalitz): It's in, well it's in the second sentence I guess after the colon and we would say to legally exchange goods, services,...

(Chuck):   Oh, got you. Okay I found it.

(Steve Metalitz): ...etc., or facilitate (roman at one) the legal exchange of goods and then we, and then (roman at two) the ordinary course of legal trade or business.

(Chuck): So there's two insertions of legal there, correct?

(Steve Metalitz): One of (legalee).

(Chuck): (Legalee) and legal. Okay.

(Steve Metalitz): Yeah.

(Chuck): Any problems with that? Okay Liz got it?

Liz Gasster: Yes I do.

(Chuck): Okay. Go ahead Steve.

(Steve Metalitz): And then in it's just to change copyright owners to intellectual property owners since it also affects trademark (unintelligible).

(Chuck): Any problems with that?

Woman: Maybe just because some people are careful we should list both as opposed to going to intellectual property which can be seen as even a broader or indistinct category sometimes just list copyright and trademark owners if you want to be specific.

(Chuck): Would that be okay Steve?

(Steve Metalitz): I don't have a problem, I mean this is obviously not, it says and others so it's not an (unintelligible).

Woman: Okay.

(Chuck): Liz you got that one?

Liz Gasster: Yes.

(Chuck): Okay.

(Steve Metalitz): And then in six it's just, I think it's just stylistic because it says balances the need to balance and so we took out one of the balances.

(Chuck): Sounds like a good idea.

Liz Gasster: I'm balancing baby.

(Chuck): You got that one Liz?

Liz Gasster: Yes I do.

(Chuck): Okay. Go ahead Steve.

(Steve Metalitz): I didn't think that would be too controversial. And I think that was it, I'm looking at (unintelligible) taken out then.

(Chuck): And keep in mind that this'll be ready to be referenced in the motion and so forth and that doesn't mean that if we found something later on that it couldn't be fixed so it's not as if this is a you know, a real rigid

deadline in terms of fixing anything we find. In fact the staff may come back and say hey, this definition isn't clear still and we need to work on it so.

All right. Does anyone else have any comments with regard to the seven terms that are defined?

Avri Doria: This is Avri.

(Chuck): Go ahead Avri.

Avri Doria: I think this goes with what you said but I mean we need to make sure that we're marking these as working definitions and so it is in the nature of working definitions that they're always being worked on.

(Chuck): And in fact would it make sense to modify the title slightly and say working definitions of key terms that may be used in future (Hewlett) studies?

Avri Doria: I think that would be good.

(Chuck): Any objections to that? Okay. So anything else on the key terms?

Started to go a little bit over here. I think that brings us to the end of the agenda. Our next meeting will be same time two weeks from today and at that time we will finalize if we haven't already done so, if we were able to finalize it on the list we might not even have to have the meeting. But assuming that we don't finalize the motion on the list we'll have the meeting two weeks from today.

Woman: That's on the 4th of February (Chuck).

(Chuck):   That is correct.

Woman: Thank you.

(Chuck):   And the sooner you get that message out on that meeting the sooner people get it on their calendars and (unintelligible).

Woman: I'll do that.

(Chuck):   Thanks. So that was 4th of February.

Avri Doria: And I think offering to not have the meeting if we finish all our work in the list has shown itself to be one of the greatest incentives...

(Chuck):   I know.

Avri Doria: ...to getting work done on the list.

(Chuck):   I will do that. That's good. So we did that in the OSC and avoided a meeting, so that's excellent. Okay. All right. Anything else?

                Well thanks everybody. A good productive meeting and we'll talk to you on the list, okay.

Woman: Thanks (Chuck).

Man: Thanks (Chuck).

(Chuck): Bye.

END