

**WHOIS Working Group C "nature of  
the registrant" Teleconference  
TRANSCRIPTION  
Wednesday 16 May 2007  
12:00 UTC**

**Note:** The following is the output of transcribing from an audio recording of the WHOIS Working Group C "nature of the registrant" teleconference on May 16, 2007, at 12:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://gnso-audio.icann.org/whois-c-20070516.mp3>

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

Attendance:

Jon Bing - sub group chair

Kristina Rosette - IPC

Avri Doria - NomCom Council

Bertrand de la Chapelle -observer

Christopher Gibson - observer

Lynn Goodendorf - observer

Tim Ruiz - Registrar

Neil Schwartzman- observer

Shaundra Watson - observer

Melanie Holloway - visitor observer from Enom

ICANN Staff:

Maria Farrell - GNSO Policy Officer

Glen de Saint Géry - GNSO Secretariat

absent apologies:

Philip Sheppard - WHOIS wg chair

Glen DeSaintgery: On the call we have yourself, Chair, Melanie Holloway, who is from eNom, who I think is the first time that you've been on this call Melanie.

Melanie Holloway: That's correct.

Glen DeSaintgery: Avri Doria, Nominating Committee. Lynn Goodendorf, an observer. Neil Schwartzman, an observer. Kristina Rosette, RTC.

Jon Yes, thank you.

Glen DeSaintgery: And myself.

Jon And yourself, yeah. We have sent out in pride to this meeting small update on the growth that (Maria) has been doing, and with an attempt of summing up the discussions so far.

Successful owner, no successful attempt that this, it gives suggested structure for trying to bogus through this call. And then, if there's some disagreement, I'd like to use that structure to take us through it.

Okay. Then the first point seems to be that there was a great deal of satisfaction with the matrix which divided the field into four dimensions, one division between the natural person, and one between commercial and non-commercial persons.

And there seems to be broadened agreement that this was useful to thinking but some of the thinking was at the distinct between commercial and non-commercial seemed to be difficult to make. It seems to be relative to jurisdiction, to have relative to different objectives.

And also to be vague in the sense that it was gradual rather than binary division. And that activity over time might slip from being non-commercial to being commercial and so on without really being clear across your line.

So the end for this consideration is that one will not use this distinction between commercial and non-commercial activities for the registration in the – for this database. Therefore the only distinction to which we will base or reckon base on is the distinct between legal and natural person.

Chris Gibson: Hi. This is Chris Gibson.

Jon Hello.

Chris Gibson: Hi. Good morning. Chris Gibson, joining the call.

Jon Yes. I see you. Yes, any comments on this?

Chris Gibson: This is Chris. I wanted to make a comment on the commercial versus non-commercial distinction.

Jon Yes. The two ways of doing the comments on that, one is to further hope to make the distinction and other is to address whether the distinction should be made or not.

And I'd like to keep it to the latter one, if that's the - we consider if there's other one who upheld - uphold the suggestions that this distinction should be made. And then will be doing that to upholding that distinction should be made.

Chris Gibson: Yeah. I would uphold that the distinction should be made.

Jon Is that you Chris?

Chris Gibson: Yes.

Jon Yes. Why?

Chris Gibson: I think that it's still something that can be implemented. And for example, if the distinction really only applies in the context of those who might be natural persons, then can easily capture it at the time of registration.

And indication whether they want to voluntarily indicate whether they're engaged in commercial activity or not. It could be a piece of information or data that's captured on the form.

And if they voluntarily indicate that they're engaged in commercial activity, then I don't see why we wouldn't want to capture that information.

And then secondly, I think it would be quite easy after the fact to supervise that type of activity. Because if someone sees a website of someone who is a natural person that says they're not engage in commercial activity you could obviously bring up pretty simple challenge to show up print-ups. Saying no you are engaged in commercial activity.

Jon Then there is must be that - there is some consequences drawn from the distinction. So what consequences do you draw from the distinction?

Chris Gibson: Well, the consequence would be that if it was a natural person who did not voluntarily declare that they were involve in commercial activities, if someone were after the fact to challenge that type of a registration because it's...

Jon I see that. But why do you want it in first place? The fact...

Chris Gibson: Then the consequences would be that they would be then subject to the more open Whois type of access because they were in fact engaged in the commercial activity.

Jon But the data protection legislation did not make that distinction. There is no distinction in data protection legislation to whether a natural person is engage in commercial activity or not. So you have to apply

the - for those contents that have data protection legislation. It's only a question...

Lynn Goodendorf: So - this is Lynn Goodendorf speaking. Are there not additional laws in those countries that require businesses to have some type of a business license or to in some way publish, you know, their contact information?

Jon They may or they may not. And then, some countries there also is an obligation for natural person to have that in my own country.

Lynn Goodendorf: Yes.

Jon Because that is how the central person register available.

Lynn Goodendorf: Yeah. I mean I believe that - I don't know that all countries do. But I believe many countries do have that requirement that if you're in some type of business activity, you're required to, you know, make some type of registration or public, you know, disclosed public contact information.

Jon Yup. But again, what is the use over that. Is not - the consequences is not that the data protection legislation did not apply.

Chris Gibson: This is Chris again. You know, if someone was let say, operating as a sole proprietorship or a small business and they were a natural person then, you know, a question would be do they then get their registration transferred to a more open file of Whois registration where we access to their contact details would be available.

And if it can be shown and they're operating as a business then the question is in many countries, I think the consequence could be that their registration should be transferred to a more open file registration.

It could be that if the case in certain countries they aren't, then normally the registrar they might have an OPAC that they would have dealt with no doubt. But in many countries it could have the consequence that I suggested.

Jon Yes. I'm not contesting the consequences for this data base, I'm only making that the simple observation that the - for those countries that I happened to know about, there is not a distinction made between commercial activities and non-commercial activities for natural person.

However, you're quite right to point out that there often is – for small businesses, difficult to seeing they're different, between a legal person which might be the business run by a single person and that the physical person itself.

That's an old problem which for the man European jurisdiction is considerable, and which have been a (bono) contention over the pass 20 years. But ended up in the one, nevertheless, making this distinction. So, I see...

Chris Gibson: I just think that it is a piece of information that can be easily captured at the moment of registration and that there would be many who would voluntarily indicate that they are involved or tend to be involved in commercial activities.

So, I although mainly focused on the legal person versus non-legal person distinction. I don't think this one is one that we need to completely use because in some cases it would prove helpful.

Jon                    So - I know that they (Jason) suggestion that if they captured, it gives however unclear to me what the consequences that will be. And all the possibility would be to say that at the same time you wanted to catch – be capture, the content of the person concern who is a natural person, to have a more open data process. That is probably possible under the data protection legislation which are based on concepts.

Of course, you would then be open to the limbs of the natural person but likewise, and similarly to the commercial position or activity, it is easy to capture at the time of registration. So you want to include that as an option?

Chris Gibson:      Well, I certainly. This is Chris again. I would certainly propose that as something if others would support it. Because, as I said, there are those who would be acting many most -- hopefully in good faith -- and that type of information being captured at the appropriate moment, will influence many registrations.

Lynn Goodendorf:        Yeah, this is Lynn. I agree with that and I support that proposal. I agree with you and I'd like the concept of people voluntarily self-declaring themselves as either intending to engage in commercial activity. And I think that natural persons who are running small businesses, you know, who are honest will do that.



And then I think that that does give us, you know, some footing then. That if someone is misrepresenting themselves for fraudulent purposes, then that provides a vehicle subsequently to address it.

Jon Yeah. I'm not quite sure I see that consequence. But I'll take a note on the two options. The options – one option being in (phone) content. The other option be - it will entirely registration or whether one is consequently involved in commercial or non commercial activities. And that is taking note and it'll be reflected in the document to be prepared.

Is there anyone else who would like to speak on this (decision)?

Chris Gibson: This is Chris again. One further comment, I know that – if - I think what you're saying is what would be the consequence also if someone inappropriately suggest that they are not involve in commercial activity but actually they are and that person is a natural person.

And I think you're suggesting in certain jurisdictions that still could have no consequence. Meaning there would be no ability to change the registration.

I have suggested in a proposal that I sent to the group yesterday that there could be a light way procedure and this would be some that of course is discussed in Subgroup A for challenging such an improper registration.

Jon Yeah, (unintelligible)...

Chris Gibson: And of course you're right in saying in certain jurisdictions it could have no consequence if data protection law says you cannot therefore force the disclosure of that private detail.

Jon No, but...

Man: (Unintelligible).

Jon ...I agree. This is not addressing whether if you voluntarily register misleading information. What the consequences of that would be?

Avri Doria: Avri, can I get in the queue?

Jon Regardless of what misleading information you are entering. And that might be subject to a challenge and there maybe consequences from that. And that might flow from the contractual situation in which the person is – has entered with the registrar already.

Chris Gibson: And I guess it's just one – for that reason that I would then say I would still want to maintain this as a distinction.

Avri Doria: This is Avri, can I...?

Jon Yes, please Avri.

Avri Doria: Yeah. I just have a couple of questions on this. One of them is - is this information that would then also be retrievable? In other words, is this information that you expect whatever happens in the other Subgroups that people would be able to – whether it's law enforce than whoever not getting into that issue would be able to get on the subscriber?

So we're actually adding more information, more – and second, how do you deal with - when you're looking at the small business, how do deal for example with the person who's putting the resume on because they're looking for a job? The one who's on occasional contractor, are they small businesses in your definition of where do you draw the line on something like this?

Jon                   That is a good question. And I'm afraid. As I have understood, there is no redo answer to it. In some countries, being a legal and if it's the person merges after a certain low level and it is a difficult - I have not come across on a case like though that addresses this.

But it's just -- as I've said -- a known problem which had been addressed over the past 30 years. Actually, in my own country, I had one solution to it. And we're forced to change that solution to - due to European directives.

Lynn Goodendorf:           This is Lynn. In my view, the people who are either collecting money, you know, in financial transaction or people who are collecting personal data, particularly sensitive personal data, that's where there's a need to have some accountability for data protection of people on the internet who are visiting these domains that have been registered. And it is the data protection principle of transparency and accountability.

So in my view, those are the two elements that define the kind of commercial activity that I would want to see open. It would be collecting money, credit card data, for instance, or collecting sensitive personal details of others.

Jon                    So you'd like the self-declaration to specify if it is they are acting in any of these or one of these two capacities?

Lynn Goodendorf:            Exactly.

Jon                    Uh hmm.

Lynn Goodendorf:            Because that – because I feel that that's where we consider the data protection for other communities using the internet.

Jon                    But again, you'll be drawing the conclusion from that. That if someone has not registered correctly. In such circumstances, this may be open to challenge and there may be consequences over contractual may direct this flowing from that.

Lynn Goodendorf:            Yes and I think that's reasonable that...

Jon                    Yup, I'm not challenging it.

Lynn Goodendorf:            Yeah.

Jon                    I'm only trying to understand what you mean.

Lynn Goodendorf:            Yeah, exactly. Because I think - again, I come back to the idea that if someone has registered a domain and they have activities where they're collecting either money or sensitive personal data of other people. Their contact information should be public.

Jon Yeah. Yeah, but that is not for us to determine because the data protection legislation will also protect an individual, physical persons who collects money.

Chris Gibson: This is Chris. I agree with the discussion that's going on. And I agree with the point that they'd be some close call. I think, you know, you could imagine a system where the consequences are subject to national law or delimitations of national law. But in general, I think that, you know, it – rather I - going to be some close cases.

For the vast majority, I would hope there would be both have voluntarily self-declare just like the same hardworking people that want to make sure they report their taxes properly in their respective countries and that they comply with all the laws. All those small businesses are trying to do the right thing.

And so the vast majority I think will embrace that system that makes this distinction. And then of course, there be those that don't. And even among those, they'll be some better – the very close calls which I don't think we should focus on because they're always be that.

But the (various) that aren't close calls and that are very easy to see after the fact that they could be challenged if someone actually has the incentive to challenge them.

Jon Yeah, that is a – that is the warning which I think is fair enough enough. If you look at that closely at the line which you present the distinctions, there always will be difficulties with examples from both sides of that line.

But each of them – someone has to look at it slightly that detail and see if it is an operational in everyday terms distinction.

(Maria): Yeah, (John), it's (Maria) here. Can I just make...

Jon Yes, please.

(Maria): ...short intervention. On the question, it's a question for Subgroup A. I understand and I know Chris made a submission. I'm also – if we need to be important that these distinctions such as they exist in many, many different countries can be operationalize to the point that we can propose a policy that can be implemented by a challenge mechanism.

Where the dot challenge mechanism be part of the existing system, who is data populating reporting system and which deals with very, very simple binary yes/no, is the address information accurate or inaccurate.

And at the moment, that's a system that doesn't even work very perfectly. And if we are going to have recommendations that are made – that are going to be difficult to operationalize then I think it's going to be very hard to convince the community that we have a policy that they wish to implement.

Jon Yup.

(Maria): So it's a question for Subgroup A but I want to bring that up here.

Jon Yeah. But I think we also agree that that is an important consideration. And at the moment, I'm not finalizing the conclusion but I'm concerned

that the views expect should at least be known to those of us who draft the conclusions and then open for further criticisms or comments.

Bertrand de La Chapelle: May I enter? This is Bertrand de La Chapelle. I would - I've been participating in the call almost from the beginning but I didn't want to interrupt...

Jon Thank you.

Bertrand de La Chapelle: ...by saying I was there. I just wanted to make a remark following the discussion. What seems relatively clear at the moment is that there are two clear categories.

One is the legal entities that are mostly publicly displayed. And the other one is the private person or individual that is likely to be benefiting from the protection.

The only thing apparently that we need to cover the discussion we had is a connection with the Group B and to say that if there is a reasonable amount of elements that show that although the site has been declared as owned by an individual person. This site is actually recording data in a specific manner or getting money then this triggers specific conditions for access.

In that way, we might be able to solve the question of the completely open or non-open. We have two regimes and our special conditions for accessing data that has been entered by somebody under the privacy protection but if that is conducting some activity that is likely to be considered illegal in another way.

So there would be a special mechanism for accessing the data that would make it easier.

Jon                    Yeah. If I understand this correct, I'm not saying that I'm going on the conclusion. I'm only trying to – some of my own understanding. The suggestion is that in the contracts...

Bertrand de La Chapelle: Uh hmm.

Jon                    ...when you register...

Bertrand de La Chapelle: Yeah.

Jon                    ...for the domain, you also at the same time enter contracts. And in these contracts, it is asked that you specify yourself, self-declare. But the sites would be used for recording of personal data or payment upon money or some similar terms. And in that case, you have to give your consent that data is made publicly available.

And we hope that this will be a consent that is seen as irrelevant under the - at least under the legislation following the European data directive. And I think (it's a day). And we then have the basis for a challenge mechanism.

Bertrand de La Chapelle: Just one second. Why should that be a challenge mechanism and why should the data be completely public? You can imagine something where – as an individual, if you're receiving donations for instance, for a weblog or other types of activity where nothing is illegal and nobody has any complaint about whatever. Then the...



Jon I agree that – that’s why I should – some - the criteria is certain enough at the moment, given a (verding)...

Bertrand de La Chapelle: A-huh.

Jon ...which is final.

Bertrand de La Chapelle: Okay, some criteria.

Jon Yeah. And the slippery slope for taking money. I’m not taking money. If obviously there...

Bertrand de La Chapelle: Uh hmm.

Jon ...that is a situation is very (unintelligible) characterized it, that’s commercial. But actually in certain cases, money is transferred using the website of the – part of the information for transferring.

Bertrand de La Chapelle: But even the simple situation of putting on Ad Sense or Google Ads on your site.

Jon Yeah.

Bertrand de La Chapelle: You might be getting a lot of money because of the content that you put in. Which category would that be in?

Jon Yes. I agree. So that is unresolved at the moment.

Bertrand de La Chapelle: Uh hmm.

Jon Yeah.

Tim Ruiz: This is Tim Ruiz. (Unintelligible). I've been on the call too and haven't...

Jon Yup.

Tim Ruiz: ...and (unintelligible) didn't help yourself. I mean just another question the media is kind of tied to the last one that, you know, if someone for example, you know, a number of hosting providers would provide free hosting with the domain name or something like that and what if ad supported hosting, so the page will come up and there will be an ad associated with the page.

Jon Uh hmm.

Tim Ruiz: I think that – we had a meeting with law enforcement officials so about a year ago, kind of discussing this kind of a thing, how would we identify commercial versus non-commercial. And they indicated in their minds that even an ad-supported webpage would constitute commercial activity.

Jon Yes.

Tim Ruiz: I know that's an open question but I think that, you know, at least on the minds of some that's the...

Jon                   Yup. But there is, of course, the possibility had to present qualifiers, even though that may seem to make it fuzzier. That attempt I think is on the making clear that actually the criteria, commercial or taking moment so on. It's not a clear criteria but rather slippery, so by putting in some qualifier to it, one may ease the program slightly.

Avri Doria:        Yeah. I think perhaps instead of the wording money, if it is – that it's recording or collecting sensitive personal data, I think that might work.

Jon                   Uh hmm.

Avri Doria:        Because, you know, for instance, credit card data, someone's entering credit card information to donate or pay money that would qualify sensitive personal data.

Jon                   Yeah. Not (unintelligible) under European law though. They have the actual special category of data called "sensitive" and that as not the huge economic data. So perhaps should avoid the term sensitive but I see what you mean.

Avri Doria:        Yeah. Do you think this personal data, would...

Jon                   Personal data would extremely by digging. So I think we need to find the term which explains that it is a detailed data and we can – I'm sure we could indicate some category.

Say, I – unfortunately, for instance, photographs that would always be sensitive data in the European definition because it's revealed ethnic background and that is rather unnecessary...

Avri Doria: Uh hmm.

Jon ...consequence of the definition.

Avri Doria: Uh hmm.

Jon So we have to escape from that definition (on there).

(Maria): Yeah. (John), it's (Maria). If I might - may I interject on the – in previous password discussion, this issue has come up. And one of the things that is clear is that the site or a use of the domain name because we are talking about mailing list as well, that includes the collection of personal data doesn't necessarily perfectly coincide with the commercial and objective...

Jon Uh hmm.

(Maria): ...of activity. For example, somebody's operating mailing list that is...

Jon Yeah.

(Maria): ...this (enforced) group for a particular medical condition. Again, you know, we are actually talking about sensitive personal data here. But there is no commercial intent or commercial purpose. So there are many ways in which domain names are used – in the many ways that they are used that collect personal data but that are not in fact commercial.

Jon Yeah. Yes, I agree. Although, there might – maybe a sufficient overlap impacted for this to be an operational term.

(Maria): It may well be. I'm just trying to think forward to (the days)...

Jon Yes, thank you.

(Maria): ...when I'm sitting in the Brussels office taking (clothes) from people who are...

Jon Yeah.

(Maria): ...you know, objecting to domain name registration because – and of all of the most simplicity of reasons they do so trying to operationalize this kind of distinction and would require (service) of (full time emergence) to make it, anyway clear cut and useful.

Jon Yes indeed.

Lynn Goodendorf: You know, but I think that the point Chris made earlier that if someone is operating site with honest legitimate businesses that self-declaration and having their contact information open would not be an issue, I would think.

Chris Gibson: And I would just add that I think still while we're focusing on the cases at the margin, they're going to be many, many, many cases where it's not hard to see what's going on, on a website and to say this is clearly either a non-commercial or clearly a commercial activity.

And so, yes they'll be operationalizing some of the cases that the margin might be difficult. But it shouldn't disregard the vast majority I think of cases that in some sense, they are even easier than

determining whether something's at corporate or legal versus natural person.

Avri Doria: This is Avri, can I mention something on...

Jon Yes, please Avri.

Avri Doria: ...French cases? One of the concerns and I think this one (seize) in to the operational concern, if the (unintelligible) is only 1% or even 1/10 of 1%, when we're talking in scales of millions or more from an operational basis for the person sitting on the phone saying, "What am I?" You're still ending up with an incredible operational burden.

Jon Yeah. That is certainly useful.

((Crosstalk))

Man: This has been...

Jon Yes.

Man: Another question. I – and I say -I just joined this group. So, I'm sorry some of this is a rehashing. But I just have a question about, you know, the common practice today for a lot of hosting companies is that when you come and host with them and get a domain name, many of them -- still today -- will – the domain is actually registered in the name of the hosting company although the actual website hosted is, you know, created and managed by their customer.

So, what – how would that...?

Jon Uh hmm.

Man: And I would imagine even outside of that there are cases where, you know, the registrant of the domain name and the actual user of the host of the website are different. And, you know - how and was there any (thought) given to how that would be resolved or...?

Jon But is that really a problem? Or are we not going to the registrant? And let's look at who that is. And that's may have distance which evolve, for instance, sub-registration or whatever. So that is qualified as a business on the par with others.

Chris Gibson: This is Chris. You might also want those hosting companies to eventually become as assistant comes in the place, some form of an OPAC. Because I think, (John) is right.

Jon Yup.

Chris Gibson: They would, as technically, you look to the registrant. If the registrant is a business it's a business.

Man: Yeah. That's maybe simple minded. But that's my – I just – but I think it's the opposite case that might be said that...

Coordinator: Excuse me. (Ramaraj)...

Man: ...could be opened to gain or might need some thought. And that is that, as a registrant it's – themselves is not a commercial business. But the way the site...

Jon Yes. I understand that. I understand that. But don't you think there will be many pipes of Chinese boxes set up under the ramp. And I think this is such one of the clients.

Bertrand de La Chapelle: Is it – this is Bertrand again. I'm wondering whether we're not trying to solve a thousand issues at the same time.

Jon Yes. That's right.

Bertrand de La Chapelle: And this is a problem that we're encountering as well in the Subgroup B and in the Subgroup A actually. It turns out that versus a – sorry, Whois data has been used in many ways for many purposes.

But in no way was this, the sole source of information for people conducting those legitimate activities - fighting, (stamo) fighting, abusive and so on.

And on the other hand, there is now way we can imagine a regime that will produce a good service that will solve all issues correctly. So, I'm wondering whether we shouldn't go more closely to the mandate in general of this discussion which is, there's a new proposal about an OPAC.

And the key question is - what is the regime that should be applicable to individual persons as opposed to entities? Is there more visibility or less visibility, given that this data collected is basically the same?

And I think in the summary that was circulated or the draft summary that was circulated, the fact that the previous discussions led to the



conclusion that somehow the legal versus natural distinction is much clearer or much easier to implement than the – all the others that we're discussing.

Money making, collecting information, privacy, these are regimes that can be decided either at the national level or in a global regime. But even making money or collecting money or collecting data are three different types of responsibilities.

And so, I'm wondering whether we shouldn't stick closer to the main distinction that we've seen as useful. And the only the question of under which circumstances in connection would be?

Data about individuals that are protected are more easily accessible if for instance there is a suspicion that they are engaging in a wrongful activity.

Jon                    Yeah.

Chris Gibson:      This is Chris. I appreciate your comment Bertrand but I do think that as part of our focus on commercial versus non-commercial, as I've said under a system of volunteers, self-declaration, its information that is useful and that could - even on a voluntary basis have an impact.

So, I would strongly not want to drop but I think it's something we can else we do and at the time a registration operationalize. And the reasons I still have these concerns is because even though we do have the mandate we have, the Whois as it's been used today has been so networked into so many different aspects.

So, you can't...

Jon Uh hmm.

Chris Gibson: ...think about these things in a complete vacuum. I can't. And so, I feel like we had a very specific – we had two distinctions certainly legal versus natural is the easier and more clear cut. But this other one is something that can be captured and is useful in certain degrees at the time of registration.

Bertrand de La Chapelle: Yeah. But just on precision. Does your suggestion mean that an individual registrant would then say, “I intend to use this as a commercial site and therefore -- second element -- I agree to making this data public.” For instance, this could be two different complimentary steps?

Chris Gibson: Exactly. They could both – both steps could be easily implemented at the time of registration.

Bertrand de La Chapelle: With separate...

Chris Gibson: Then inform the consent.

Bertrand de La Chapelle: In separate (unintelligible)...

Jon And I think that's the – all the way you (terribly) implement it under the regional regime of the European directive. But that might be possible. I'm not saying that I would recommend it to be implemented that way but that – the report from this group also should make clear the options, the final decision is we'll not be to always to make.

And so, we should make sure that the valuable suggestions made through this discussion become available for the latter of group. So we will be clear in the consensus that you're facing – the recommendation first.

(Maria): And (John), it's (Maria). Can I suggest that this group and consider whether it could develop criteria for assessing whether an individual is – their activities and use of domain name are commercial or non-commercial.

Bertrand de La Chapelle: Yes.

Jon I see that as effective (a direction) - the suggestion to look at the payments and the collection of private data - that private personal data. That these are two sub-criteria, the commercial which may – are meant to make commercial more operational than the term itself.

Man: May I – now, I'll ask just one more. Will it be – will this group be – is there an intention to just talk about who would – who's the ultimate authority to make that assessment if there's no agreement?

Jon But all of our advices have to go to the working group as such, isn't it? And then it will be the council to make the final decision. Or am I wrong?

(Maria): No, (John) that's actually incorrect. The idea of this group is to, you know, to collect all of the options and then provide them to the working group. And it supposed to work through consensus to come up with an outcome.

So, how that will actually happen in the working group process is that we will ultimately produce a report that should have a set of recommendations in it and each of those recommendations underneath it will say how much support.

So, whether there is a general support agreement on the recommendation or whether there is the next -- these is all in the charter -- whether there is just support.

And that indicates that some people are dissenting R&D if whether some -- whether a recommendation is simply one of a number of recommendations that didn't actually -- are a number of ideas that didn't actually get enough attraction and support.

So, that's how the group will ultimately describe what it's been able to agree on...

Jon                    Yeah.

(Maria):             ...and the level of agreement it had on each (think).

Jon                    Yes. And if we continue looking at our own (work), I understand that according to the plan this is the last ordinary call. And on the basis of this, I'd try to draft the report or (Maria). I would try to draft the report from the group and then we'll have a final sector on that basis. Is that right, Glen?

Glen DeSaintgery:   Yeah. That's being suggests up to the idea.

Jon                    Yeah. Indeed. There's also an idea of a face to face meeting after (some month) meeting in – for the whole Swiss working group.

Glen DeSaintgery: Uh hmm. There is...

Chris Gibson: This is Chris. I think it's, you know, it might make sense. I understand that the goal of trying to move forward very quickly. But if you're going to produce a report, it would seem that we would want to have at least one more phone call where we have the draft text.

Jon                    Indeed. And, in a nice sense...

Chris Gibson: That, you know, we discussed it – what's been circulated. So, I can't see that we – I can't – I would suggest we need at least one or two more calls where we reacted something.

Now, you've been very helpful in sending out drafts as we go along but when we get to something that reflects some of what (Maria) said as different levels of consensus on different items, I think we want to be able to react to that.

Jon                    You'd – of course you do. Of course you do.

(Maria):            (John), it's (Maria) here.

Jon                    Yes.

(Maria):            Can I make a suggestion? I think is Chris is absolutely right that we're, you know, we're maybe not quite at the level of agreement that we might have thought we were. And...

Jon Uh hmm.

Chris Gibson: Or maybe we are. I don't know. I just think we need to see the, you know, how it goes at the end of the day. Yeah.

(Maria): We need to affirm that. Unless the group, I think, we all want to be happy that, you know, we can stand behind whatever this group's comes up with. And could I suggest we do to at least one more call next week.

Jon Uh hmm.

(Maria): And we're – and, you know, (John) can look at what come out of this call and work kind of a little bit more, and I'll help (John) with that.

And, but I also think it will be useful because it seems to me that the concerns people have with are just commercial versus non-commercial are in some respect then kind of a practical issues about how it would work.

Jon Uh hmm.

(Maria): So, it could be useful. And I'm looking at Chris and Lynn here, as I may, and you know, if you guys were to do a little bit of thinking of how we would and just have some kind of descriptive criteria what we meant by commercial and non-commercial.

Jon That would be useful. And I completely agree. It was – I didn't mean to foreclose anything. I meant only that we should have a document

which if drafted with an oath guidance which is similar to what we expect at the final report to look like. And exactly in order to disagree over its details and – at this.

And all – disagree or agree? I understand it's foreseen that this wasn't group only should have one more call which should address the final report. But I'm sure that we can do something.

We can have a look after that, if it seems necessary or appropriate. But let's agree to have one of this – one more call after next week – at the same time.

Bertrand de La Chapelle: (John), this Bertrand, I agree on the process. I just wanted to raise one point to the questions that were mentioned just before we went on the procedure.

Regarding the assessing of the commercial nature, what I understood about the proposal earlier was that any private or individual registrants would on a voluntary basis indicate that he intends - he or she intends to conduct some sort of commercial activity on this domain name.

And second, potentially separately declare its acceptance to make his own data publicly available.

Jon Yes.

Bertrand de La Chapelle: Now, the discussion on assessing commercial nature, as its merits, but it seems to imply that there's a sort of obligation of declaring any commercial activity. Is that the purpose? And if that is the case,

isn't that contrary to the voluntary – contradictory with the voluntary nature?

Jon Yes.

Bertrand de la Chapelle: I mean does that mean that if you have some sort of commercial, then you would be obliged? Is that correct?

Jon Yes. I think it would be – I think you're quite right Bertrand that it should be contrary to the voluntary...

Bertrand de La Chapelle: Uh hmm.

Jon ...voluntary notion. But on the other hand, you are about to vent your contract. And if this is part of the contractual terms, then that data protection are active would a bit that after condition for contractual terms, certain data be published.

Man: Excuse.

Jon It may necessarily be of the directive.

Bertrand de La Chapelle: Now, it just to be completely clear on the proposal. I'm not sure I'm completely clear. First of all, if you take the purely voluntary, the situation can be of different sorts. Either I as an individual, I'm declaring that I intend to conduct an activity of commercial nature, what ever distinction, one.



And then potentially separately, not as a direct conclusion, I could opt for the first one and not for the second one, potentially, declare that I agreed because of that to make this data public.

Jon                    Yeah. But they also good think it – if they're thinking...

Bertrand de La Chapelle:    Uh hmm.

Jon                    ...three steps. First step being, do you agree voluntarily to make this data public. And then, a second step saying, "If you are entering into commercial activity, we will require you to make the data – require you according to contract to make the data public."

Bertrand de La Chapelle:    This is the point I wanted to make.

Jon                    Yup.

Bertrand de la Chapelle:    This is not a voluntary declaration.

Jon                    No that should be part – that should be a contractual term. And would be valid only to the extent of the contract would be valid.

Bertrand de La Chapelle:    Yes. But then, it's – what I wanted to stress, I have no preference on the option but what I wanted to stress is then it is not a voluntary declaration.

Jon                    No, no, then...

Bertrand de La Chapelle:    And then we get into the whole problem of verification which is not the case in case of a voluntary thing.

Jon                    Okay, I haven't talked about that. I haven't talked about that. But I'm not quite sure where I am. It was my imagination that it's efficient.

Bertrand de La Chapelle:   Why?

Jon                    And...

Bertrand de La Chapelle:   What do you mean?

Jon                    No, no. I haven't talked about the relation between voluntary and verification.

Lynn Goodendorf:            I have a question here. This is Lynn. In the EU countries, isn't it an obligation of parties who are collecting personal data, register themselves with the data protection authority?

Jon                    That has got some quite a very since they need substantial rules, that governs. So you have a self-governing regime.

Lynn Goodendorf:            Right, right. So it is voluntary but it's also an obligation, isn't not?

Jon                    It's just a little obligation according to this substantial rule, yes.

Lynn Goodendorf:            I mean, I do feel like this would be consistent, this concept.

Jon                    But I make sure that I – in discussing this in the forth coming notes, we will disclose the (rule) of the data protection directive, so that you

yourself can compare and see the whole correspondences. So – that if it's easy to accommodate.

Bertrand de La Chapelle: Yes, but for instance, if you're managing a blog, and you have an RSS feed, and people register their address in the RSS feed or they ask their reader to get the RSS feed, is there any recording of personal information in that respect? I'm not sure.

Jon Now, there must be a recording going at least some IT number. And that is contested whether an IT number's personal data or not.

Bertrand de La Chapelle: Yeah.

Jon But, I'm afraid if we are going to take a sample or more on domain or on now that you'll hold of networks and all the (weblogs), you very useful we're applying that directive was published 1995 and on the drop box at 1990. And those you asked the (red book) developed. So, the directive is very, very unsuccessful.

Bertrand de La Chapelle: But this is precisely to give a national example why the regime that was put in place in France has been changed and it was the growth of data basis.

At the origin in 1978, when the first data protection law was established in France, any kind of data collection and the database and the purpose and everything had to be declared to the privacy authority, each database.

Jon Yup.

Bertrand de La Chapelle: And as database proliferated in an orderly manner, the principle that had to be supplied to the collection of databases became the norm without having to declare them which is an evolution in the application of the rule. And the rule evolved.

Jon So, that is a lesson learned in several jurisdictions, of course.

Bertrand de La Chapelle: Uh-hmm.

Jon And problem's working with the data protection legislation from - on a day to day basis. Of course, it is a – it's a headache and it is regrettable that there is – currently a rather large gap between the law in the book and the law in practice. And that's also becomes a problem when we are doing an exercise like this.

Bertrand de La Chapelle: And the point - and to finish on that point, this might lead to an element that we have to take into account, is that the regime that we're trying to put in place should be adapted to an evolution of the web use that will make the distinction between commercial and non-commercial, blurrier and blurrier, and the distinction between collection of data and just registration of RSS feed blurrier and blurrier. So, we need a regime that withstands the duration.

Jon Indeed, indeed. And we cannot avoid that.

Tim Ruiz: This is Tim. Might - I just had a questions for (Maria) about the – she's talking about the consensus - different levels of consensus, now, what is the intent that that would be each of the three working Subgroups report would be submitted separately showing that Subgroup on agreement or would that also then be accumulated into a single report

showing the entire working group's report – level of support for all recommendation from all three sub-groups.

(Maria): Oh. Thanks Tim. Yeah, the – no, the intent is as you put it, that the working groups' overall report will be parts into this different levels of supports and recommendations.

And the individual Subgroups are tasked with coming up with options. And – so there, you know, it's not really in business that they would go through these agreements supports kind of criteria for how much support there is.

Lynn Goodendorf: Did I understand correctly that we just have one more week meeting in the Subgroup and that following that, we will meet again as an entire working group?

(Maria): That's correct Lynn, yeah.

Lynn Goodendorf: Okay, thank you.

(Maria): And in fact it's possible some of the other Subgroups may be given an extra week because they haven't made quite as much progress as this one. The idea is that we should have one more week at most here.

Jon Uh-hmm. Right. Is there any – be approaching in on the deadline, is there anything else you'd like us to take note of?

(Maria): And my open question to Chris and to Lynn as whether they...

Chris: Yup.

(Maria): ... might be able work on descriptive criteria for commercial and non-commercial registration.

Jon Yes, that should be very helpful. I myself would like to thank you for also being so kind in your comments on helping me to gather my – whatever (unintelligible) I have.

And I try to fit, put it out in a note until the next meeting which is – which with (Maria's) help will be appropriate for a discussion and for reflecting both the differences and the alliances there.

Anyone else like to have a word? Then I'd think I will thank you all for the call for this afternoon. Tomorrow is Norway's National Day, so I'm looking forward to a very festive later day tomorrow.

(Maria): Happy National Day

Man: Goodbye.

Lynn Goodendorf: Thanks everyone.

Man: Bye-bye.

Man: Thank you.

Man: Bye.

Woman: Bye.

Man:           Bye.

Man:           Bye.

END