

WHOIS Study Group

Teleconference

TRANSCRIPTION

Tuesday 26 August 2008 15:00 UTC

Note: The following is the output of transcribing from an audio recording of the WHOIS Study Group teleconference on 26 August, at 15:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-whois-sg-20080826.mp3>

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

Meeting recap by Chuck Gomes

<http://forum.icann.org/lists/gnso-whois-study/msg00158.html>

Participants present:

Chuck Gomes - GNSO Council vice chair -gTLD Registry C

David Maher - gTLD Registry C

Steve Metalitz - IPC

Lee Eulgen - IPC

Steve DelBianco - CBUC

James Bladel - Registrar

Tim Ruiz - Registrar

Eric Brunner-Williams – Registrar

Alan Greenberg - ALAC

ICANN Staff:

Liz Gasster

Glen de Saint G ry

Absent apologies

Ken Stubbs - gTLD Registry C

Olga Cavalli - NomCom appointee

Wendy Seltzer - ALAC Liaison on the ICANN Board
Jordi Iparraguirre - Registry C

Coordinator: Excuse me, the recordings have now started. Thank you.

Chuck Gomes: Thank you very much. Well welcome everybody to what hopefully will be our last meeting, not that it has not been fun. But we I think have made some real good progress and I appreciate the great cooperation of everybody that has worked on this.

The agenda I sent around some time ago and it is posted on the Wiki as well as the LINKS there including the link to the latest document with comments from the original submitters.

Before we actually get started, (Liz) did any - did late comments come in?

(Liz): No nothing after the summary that I posted.

Chuck Gomes: Thank you. I did not think they had. I was sure I would have seen them, but I thought I would ask anyway.

So, we have what was sent in and I think it was a pretty good response actually.

(Liz): Yes, not bad.

Chuck Gomes: So, we were missing responses from what two or three?

(Liz): Right.

Chuck Gomes: Yes, okay.

(Liz): I think it was three different studies that...

Chuck Gomes: Okay. Well is there any suggested changes to the agenda? I think, I do not know that we need to do a roll call. Glen I think kind of went through that that (Tim) joined after she did that. (Tim) I guess maybe for (Tim)'s information, Steve DelBianco is on. (Allen) is on. Lee is on. David Maher, (Liz), both Steves are on I should have said DelBianco and Metalitz and Glen and myself.

So let us go ahead and move forward here. The first item then we did some alternative wording last - in our last meeting two weeks ago - or excuse me, we have alternative wording from four of the submitters. All the others that responded were fine with what we did in terms of the hypotheses we proposed.

Three studies, Study 8, Study 13 And Study 16 where alternative wording was proposed, so my suggestion is we go right to that. And you are ready for that right (Liz)?

(Liz): Yes I am.

Chuck Gomes: Okay. So if we go to Area 2 and Study 16, (unintelligible) a change and let us start off with that. We have two hypotheses there as you can see. Registrars do not have a uniform method of disclosing or obtaining consent for collection of data for Whois purposes.

And the second one, the methods employed by registrars to disclose and obtain consent have not been adjudicated as violating national law. And we provided a link there.

The (Claudio) restatement, he - you can see it there. It is kind of lengthy. I assume - is it fair to assume that everyone has read that? Now part of it is just his justification. But what is the thinking - he actually broke it up into four hypotheses and then provided supporting rationale.

Let me just open it up for discussion. If anybody wants me to go ahead and read those four I can. Not hearing anybody say that I will just leave it to everyone on that.

Steve Metalitz: This is Steve Metalitz. I am fine with the change he suggests to be, which is to change adjudicated as violating national law to adjudicated with regard to their consistency with national law.

But I think on C and D, I think we made a conscious decision that the factual studies that the council asked us to look at did not include legal analysis of the type that (Claudio) is suggesting here.

And I think if you just look at C and D you could see how hypothetical this gets to be, not only what a national - what an adjudicator would decide, but also whether there would be ways to fix any problem they identify.

So I just think that is way ahead of where we should be in terms of factual studies. So I would not support C and D.

Chuck Gomes: Okay.

Man: David I agree with that.

Chuck Gomes: Okay. Other comments?

(Tim): This is (Tim). I agree with that as well.

Chuck Gomes: Anybody disagree with that? It sounds like a pretty solid basis for what Steve is suggesting and it is consistent, like he said, with what we decided before. Anybody disagree with that?

So in other words, we will make the change in Number 2. We do not need to call them A and B, we can just leave them the way we have them, but make the change in our second one correct? You have that (Liz)?

(Liz): Right.

(Tim): Okay.

Chuck Gomes: And then...

(Tim): Have a good day.

Chuck Gomes: Go ahead (Tim). Did you want to say something?

(Tim): No I am sorry. I was just wishing my wife a good day. She is leaving now.

Chuck Gomes: Well wish her a good day for us.

Man: For us, all of us.

(Tim): I got to remember mute, (forward).

Chuck Gomes: Not a problem.

(Liz): So we are deleting C and D and leaving A and B?

Chuck Gomes: Yes, except you can just leave what we had there and make the changes - I think he just made one change didn't he?

Man: Yes, I think it is just a change in our 2, his B.

(Liz): Okay.

Chuck Gomes: Yes. Just make our...

(Liz): Right.

Chuck Gomes: ...Number 2 look like his. It is just a simple change there. Now, (Liz), would you send (Claudio) a message explaining our rationale? First of all explain that we accept that the change he made in Number 2 that we had already decided that that legal analysis was not part of this effort is why we did not include those.

Steve DelBianco: Steve DelBianco, one quick question on that. Was it a scope with respect to that it is legal, or was our concern more that the legal analysis itself would be very speculative because we are trying to predict the way courts would rule?

Chuck Gomes: (Unintelligible).

Steve DelBianco: Also the scope issue is slightly different.

Chuck Gomes: Is that a better way to say it Steve?

Steve DelBianco: Yes.

Chuck Gomes: What you...

Steve DelBianco: That would be fine, yes.

(Liz): So Steve I am sorry, you are just saying that it would be ambiguo - the outcomes would be ambiguous. Can you say that again?

Steve DelBianco: No. What I was suggesting is a simple answer like it is out of scope because it involves legal analysis could hamstring us with any studies that involve legal aspects. So instead, I think it is better to tell (Claudio) that the analysis that is suggested as C and D would be entirely speculative in nature.

Speculative about what courts would do about a entirely hypothetical...

(Liz): I see. I see what you are saying. Okay.

(Tim): But that - this is (Tim). But and then, but that in effect then does make it - does put it out of scope so there might be cases where an legal would not do that, but in this case, given the speculative results, that does actually put it out of scope.

Steve DelBianco: I agree exactly (Tim). I am just suggesting the reason it is out of scope has more to do with the speculative nature than just the fact that it is a legal analysis.

(Tim): Yes, that is right.

Chuck Gomes: (Liz), why don't you draft something on that on your best understanding and send us the list after the meeting and anybody that wants to comment, if you would comment fairly quickly, like today...

(Liz): Sure.

Chuck Gomes: ...so that we have (keep) (Claudio) does not see our submission to the council before he sees our response.

Lee Eulgen: And this is Lee Eulgen. I am involved in the organization that (Claudio) represents and I have occasion to interact with (Claudio) on a relatively basis so I can kind of - and I think it is a good idea that we do put together sort of a formal response, but I can speak with him too just to give him a flavor as far as what the group was thinking on this.

Chuck Gomes: Thanks Lee that is very helpful.

Lee Eulgen: Okay.

Chuck Gomes: Any other comments on this? Okay. Rolling down then on the table to - let us see, where am I at? We have got a bunch of okays there.

((Crosstalk))

(Liz): It is Number 13?

Man: I think we are counting (unintelligible) five.

Chuck Gomes: Thirteen which is okay, hold on a second, I think I just got, oh...

(Liz): That is in Area 5.

Chuck Gomes: Oh yes, 13 and GAC 11 huh?

(Liz): Right.

Chuck Gomes: Okay.

(Liz): And of course GAC 11 we made into D of 13. So the APWG suggested revision just has A through (G).

Chuck Gomes: Just the first three.

(Liz): Right.

Chuck Gomes: Yes. Yes. Correct. All right, so, let - again, if somebody wants me to read them I can, otherwise we will just go ahead and open it up for discussion.

Steve DelBianco: Steve DelBianco. I would support APWGs reformulation.

Man: I think, I mean, basically what they have done is they have added to phishing, malware and other electronic crimes, right?

Steve DelBianco: That is right.

Man: (Unintelligible) any difference. Yes, I would support that.

Man: Yes, and then just replace can field Whois with private Whois records which I do not really have a problem with either.

Chuck Gomes: Okay. Anybody opposed to the APWG suggested revision? And then the D GAC 11 stays the same. Okay? Good. That was easy.

And then going down to I think Area 7 and Study 8, (Chris Paul) suggested a revision and he provided a rationale as well. Comments on that.

(Tim): Well this is (Tim). I, you know, I do not have a problem with the change. It just seems like we had that discussion around benefits financially and for some reason we ended up at retain. I cannot recall exactly...

Steve DelBianco: I, this is (Steve) again...

(Tim): ...why but...

Steve DelBianco: (Tim) this is Steve DelBianco. I think I was the one pushing for that because I felt like benefits financially implies that they participate in the upside of money that is made in criminal activities, whereas by saying retaining fees, we are only suggesting that they are keeping the C revenue and not that they are participating in any other form of criminal activity.

Chuck Gomes: Discussion on that?

Man: Well I think the point that (Chris) is making here is that not just retain the fees from those registrations, but that if you develop a reputation as a place that where this activity is welcome, then others like it like that will flock to it.

I am wondering if there is a way to tweak our language to incorporate that, but...

Man: Could we just - could we just say that some registrars knowingly tolerate inaccurate or falsify Whois data to benefit from registrations by spammers and other (acures) and do not face deterrent consequences for doing so, and...

Chuck Gomes: Take out the financial, yes.

Man: ...leave the, yes, just leave the benefit kind of, you know, in any manner.

Chuck Gomes: Thoughts on that?

Steve DelBianco: One other way to - this is Steve DelBianco, one way to really hit Chris' suggestion is that you would say that registrars knowingly tolerate inaccurate or falsified Whois data so as to attract and retain registration fees by spammers.

I only say attract and retain because he makes that point in his described write up and it allows us to keep Cs in there.

Chuck Gomes: What do you think?

Man: Yes, I think attract gets to one of his points. So it would just be adding attract and retain.

Steve DelBianco: To attract and retain registrations.

Chuck Gomes: Yes, you do not even have to mention fees, although that would not be necessarily problematic.

Man: Yes, I think that that would make sense. Okay, it kind of takes it right out of his own rationale.

Chuck Gomes: So what do you have then on that (Liz)?

(Liz): I am not sure. Is it some registrars knowingly tolerate inaccurate and falsified Whois data so as to attract and retain registrations by spammers?

Chuck Gomes: Yes.

Steve DelBianco: Yes.

Chuck Gomes: I think that is it - and etcetera, yes.

(Liz): Right.

Man: I did not understand his last paragraph about replacing to with do because he didn't seem to make a change in that last phrase, so I do not know.

Man: I noticed that too. I wonder if in...

(Liz): I think it was not to face and do not face.

Man: To not face maybe I am do not face.

(Liz): Something like that.

Man: I just thought it was a mistake but...

(Liz): Right.

Man: I think in an earlier version there was a two and two not face.

(Liz): No.

Man: But I did not see it in the one that he commented on.

(Liz): Yes. I should have caught that too.

Chuck Gomes: Yes. So I think it would be good in this case also to go back to (Chris) and let him, you know, a brief explanation of our thinking and that we tried to accommodate the points in his rationale without directly taking his revision because we did not want to imply that they were necessarily participating in the illegal activity or financially benefiting from that.

And (Liz) why don't you do the same thing - first of all, if you have more questions on the response to him, let us talk about that now, but then

send a draft fairly quickly to the list. And if anybody has any suggestions we can refine it today and then get it off to him.

(Liz): Okay.

Chuck Gomes: That all right? Do you have any - are you okay on that (Liz)?

(Liz): Yes of course.

Chuck Gomes: Okay. Any other comments on that? Okay. I think that covers the three that were - that were suggested revisions from the submitters of the studies. And so are there any other of any of the studies that anybody wants to focus on further for alternative wording?

Okay. Now, then let us take - kind of focus in on the total document and decide whether or not we need to make any changes to any of the notes or hypotheses that we have in total.

And the first question I have in regard to that is should we add notes to the table indicating confirmation or lack of response from study proposers?

Now there it - those are in there right now, as (Liz) put them in. Now I do not think obviously we do not need - I do not know if we want to keep the ones that we just acted on. I do not think we want the rationale and so forth, but let us talk about that.

Generally, would it be helpful to show whether we got a response from the proposer of the study and what their response is?

Lee Eulgen: This is Lee Eulgen. I do not necessarily think that that level of detail is necessary or helpful because it may lead to second guessing whether inappropriate opportunity was given to provider response.

I mean in my view, we should just communicate that everyone was given the opportunity to respond and we heard from a number of the original submitters with comments, and those comments were, you know, to the extent possible incorporated into the final document.

Chuck Gomes: So what you are suggesting is a general note to that effect before the table, rather than specific notes in each of the study areas.

Lee Eulgen: Yes.

Chuck Gomes: Okay.

Steve DelBianco: Steve DelBianco. I would agree with Lee and I have a question for (Liz). (Liz) what was the extent of our outreach to the GAC although we expected nothing, what was the extent of spending (unintelligible) to them.

(Liz): We sent - (Chuck) sent a letter to (Yanis), (Bertran) and (Suzanne) and got a response. I believe (Chuck) only from (Bertran) and only to say he was off on vacation and would defer to others.

Chuck Gomes: That is correct.

Steve DelBianco: And some of this is not their own - is not their fault because the GAC presumably cannot act unilaterally without having its members review and vote on it.

(Liz): Yes, and they do not meet intercessionally so I think that is right, although, you know, some of them may have been particularly active in developing these, and therefore been able to give insights about what they intended just as other study submitters did, but we just did not get any feedback. So.

Steve DelBianco: So in the - in the note as Lee was suggesting, the note at the top that describes how we solicited confirmation or revision, we should mention that we reached out to the GAC but sort of acknowledged that lacking an intercessional meeting, we received no substantive reply.

Chuck Gomes: So are you suggesting adding that note Steve?

Steve DelBianco: At the top, but not on every one of the GAC items. I agree with Lee, we do not need to indicate on every item whether it was confirmed or revised, but this...

Chuck Gomes: So...

Steve DelBianco: ...this general...

Chuck Gomes: So in addition to the note, we just agree to, per Lee's suggestion, we would add a note with regard - a special note with regard to the GAC.

(Liz): Or we could merge them into one note that deals with validating - when we changed hypotheses from the text originally there, we made an effort to consult with the original submitters including the GAC.

Steve DelBianco: Right.

Chuck Gomes: And in the case of the GAC, we recognize that it may be difficult to get a response until there is an intercessional meeting.

(Liz): Right.

Lee Eulgen: Yes, this is Lee. I mean I think it is fair to add that degree of specificity with respect to the GAC.

Chuck Gomes: Okay? Good. Now what about the pearls of wisdom? (Liz) did some work on that. Steve DelBianco I do not know if you spent any time on that or not, but the - she came to the conclusion that I just copied in the agenda here that nothing seemed to rise to the level of relevance for the report.

(Liz): Above and beyond what Steve had already (called). And actually Steve I needed to check with you about whether that was shared just with me, your pearls.

Steve DelBianco: Right. I had sent you four or five two weeks ago, and...

(Liz): Which I was fine with so I am not making a value judgment on yours, I am just not sure have others seen those?

Chuck Gomes: I do not think so.

(Liz): That is my mis - that is my fault. I should have...

Chuck Gomes: So there are four or five that were proposed. Is that correct?

Steve DelBianco: That is correct.

(Liz): Yes.

Chuck Gomes: Oh okay. I was unaware of that.

(Liz): Let me send that to the list unless you have it right handy Steve. I will do it if you do not and make sure everyone can take a look at those.

Chuck Gomes: Yes, we probably should take a look at those.

(Liz): But there was this - there was a - let me just say that there was a substantive difference between the kinds of things Steve pulled out and the kinds of things I saw that were also important.

Steve's were more germane to the actual - in my opinion anyway, germane to the actual decision making about do we, you know, pursue this hypothesis or not, whereas the things that I saw that were - that I was remembering that were important had more to do with the methodology for how you would do a study if you decided to pursue a hypothesis, what kind of study would you craft, and, you know, what would it likely yield or those kinds of things.

So there was a real difference. And so I was pleased to be able to go back and check but I did not see anything that was appropriate for adding for council consideration.

Chuck Gomes: Okay. So we will watch for (unintelligible) - let us know when you sent that so that we can watch for it here.

Now while we are waiting for that to show up in our email boxes, Steve or (Liz) either one, what is your thinking in terms of where - how we would incorporate those pearls of wisdom? Would we just incorporate them in the table associated with the particular study or somewhere else?

Man: Yes. I had just four sentences drawn from the underlined study submissions and I have pulled them into the actual table. Trying to find that right now as well.

Chuck Gomes: Okay.

(Liz): I have got it. I am sending it. It is actually entitled Pearls.

Chuck Gomes: Uh-huh.

(Liz): I apologize for not posting that earlier, it just slipped my mind until this morning. I have a slightly slow connection, satellite connection, so it may take a little while but I have sent it.

Chuck Gomes: Okay. Well while we are waiting for that, the - let us talk a little bit about how we want to finalize the report. Well let me ask a general question first of all. Any other notes that anyone thinks we should add either within the table or before the table that in anything - any things that we should communicate.

(Liz): I mean as background, I think we should include the resolutions that created this group and this effort, this specific effort on the hypotheses, but that would just be...

Chuck Gomes: And that could go into an introduction to the...

(Liz): That is right.

Chuck Gomes: ...host document, right?

(Liz): Right.

Chuck Gomes: And I - it probably would be a good idea to show the group members as well.

Man: And I assume it will include the notes that are in the Wiki that are just about the table.

Chuck Gomes: Oh yes. Those - I was assuming those are - we have already decided to include those.

Man: Right.

(Liz): Yes, those are really integral to the report.

Chuck Gomes: What good point. We do not want to assume anything and miss it. So. Let us talk a little bit about, and if somebody sees that I am not looking at my email because I am looking at the agenda right now, so if somebody sees that come in I will flip over and pull it up, but just let us know when it shows up.

But in terms of finalizing the report, hopefully on this call we will, you know, pretty much agree together on what the report will include, and then (Liz) you can pull it together, right?

(Liz): Yes. I am going to try to do it today because I am actually on vacation for a week.

Chuck Gomes: Uh-huh.

(Liz): So, I am hoping it is pretty simple.

Chuck Gomes: Well...

(Liz): But it should be. I mean, you know, a background statement that just explains who participated in the scope of work and then the chart with the notes that we have discussed. You know, let me know what else you think is needed, but...

Chuck Gomes: Sure, and I can pick up if there is anything that needs to be done after you are on vacation, there is - I am sure I can pick up on it. I doubt if there would be much if anything. So, it would be helpful though if all of us can take a quick look at what you send around today.

Now again, the notes to the two submitters I would put as a first priority because I want to make sure they get those before (unintelligible).

((Crosstalk))

(Liz): Yes. I will do that too today and send that to the group separately first thing.

Chuck Gomes: Okay, good. And so the goal then will be if not today, our ideal goal will be to finalize this thing on the list today. If there is anything that needs

to be done after today, we will handle that via the list and (Liz) I will take the lead on that after today so that you do not have to worry about it on your vacation.

(Liz): Thank you, but I promise I will not leave you much.

Chuck Gomes: Yes. No I am sure. I really would be surprised if you did, but I just wanted to set your mind at ease so that...

(Liz): Thank you.

Chuck Gomes: ...enjoy your vacation from the beginning. And then, so, - so then as soon as it is ready, I will go ahead, unless it - if we finish it today, you are welcome to send it to the council (Liz). If not, I will go ahead and pick up the ball on that...

(Liz): Okay, thank you.

Chuck Gomes: ...and send it to the council. Okay? And we just need to get it out by tomorrow. That gives - at least we could actually get it out I suppose as late as Thursday, but it is really a full seven days if we do it tomorrow. So that sounds like that should not be a problem.

The - then the, I think the action items that I have on the agenda we have already covered those and so we are just waiting for these pearls of wisdom and...

Man: I think my pearl arrived.

Chuck Gomes: Your pearl arrived. Mine did too. I just took a look, thank you. Okay, I am opening up that document.

Man: They are in red and at the risk of prolonging working group and calls that have gone on quite a while, I could quickly just summarize and the group we can give a thumbs up or down as to whether to add the text.

Chuck Gomes: Why don't you do that? That sounds good.

Man: Under Area 1, Study Commission 1, that was one of mine. And what I added was that as council looks at this and it commissions somebody to study it or commissions a consultant to figure out what it would take, I think it is important to note that any analysis of this misuse, you have got to determine whether the data was actually obtained or could have been easily obtained from a source other than Whois.

Chuck Gomes: Good point.

Man: The SSAC study of spam under Whois worked that in. So I understand that they understood it, but we are going to have to make sure that both council and the consultants that we charge work that into their budget. That makes it more complex. Any reaction?

Steve Metalitz: This is Steve. I just have a question on all of these. Would these be preceded by the word note or something to make it clear that this is not really part of the hypothesis?

Chuck Gomes: Yes. I was wondering whether to talk about that now or at the end, but let us talk about it right now because it is helpful.

It certainly needs to be distinguished from the hypothesis itself.

Man: Fine with me.

Chuck Gomes: I would think, now that possibly preceding it with note and leaving a line between the hypothesis, a blank line between the hypothesis and the note just to make it clear that it is something distinct would be a good way.

Other suggestions on how to format this?

Man: That is the right way to do it.

Chuck Gomes: Okay? Does that make sense (Liz)?

(Liz): Yes, got it.

Chuck Gomes: Okay. Any discussion on Number 1? Okay Steve, go ahead.

Steve DelBianco: And then Number 14. Fourteen was the study of the Whois database is used only to a minor extent, that is the hypothesis, to generate spam and other such illegal activity.

I added the note that ICANN's SSAC has already studied email spam arising from Whois including analysis of data protection measures used by ICANN accredited registrars. And then I included a link to it.

So this one is also meant to inform our consultants that they are not having to invent this from whole cloth, but that they can stand on the shoulders of work SSAC has done.

This would make the cost associated with the Study Number 14 presumably lower when you consider that some of the framework and structure is already in place.

Chuck Gomes: Okay. Any discussion on that?

Steve Metalitz: This is Steve. Well others have studied this too. So, I think at one point (Liz) had compiled a bunch of links to other studies. The FTC studied this. CDT studied this. So, maybe we should, I mean I agree that the SSAC Study is the most recent one that I know of.

Chuck Gomes: Would it be easy (Liz) to reference those other studies as well? Is that something that is readily available?

(Liz): Yes, and we have it on the, I mean we have a link to it, so we could actually add that as another link at the top. You know, you could say something like the council is urged to also consider where studies have previously been done - factual studies have previously been done.

Chuck Gomes: So would this - would that link to the other studies fit better at the beginning of the - before the table or at with this particular one?

Steve Metalitz, let me let you respond first.

Steve Metalitz: Well I think the studies I am thinking of any way are really relevant to this particular hypothesis. Is there about spam - the relationship between Whois and spam.

Chuck Gomes: Okay. Steve DeIBianco did you start to say something?

Steve DelBianco: I agree with Steve Metalitz and when we list that there are other studies that have been done on this particular hypothesis, it is not to imply that you do not need to test it, it is to imply that the consultants that we would hire would either summarize the work that has been done by the others and try to draw conclusion, or they would learn from the results of the other studies in fashioning a new study.

Chuck Gomes: It might be helpful to specifically state that. In particular the fact that we are not suggesting that this means the studies do not need to be done, but rather the work that has been done should be incorporated.

Steve DelBianco: Yes.

Chuck Gomes: Anybody opposed to adding to Steve DelBianco's note here - the reference to the other studies and the comments we just talked about? Okay. (Liz) you got that?

(Liz): I got the reference to the other studies. What was the last twist?

Chuck Gomes: Steve you want to take a crack at that again? Steve DelBianco?

Steve DelBianco: (Liz) read what you have.

(Liz): I do not have any. I just have the reference to the other studies, you know, I have not drafted specifically what (unintelligible).

Steve DelBianco: Got it. So that if we are going to include two or three links to other studies, then I think you should preface it by saying that other studies have been done on this exact subject and the results and methods of

those studies should be considered in designing subsequent study in this area.

(Liz): Great. Got it.

Chuck Gomes: And that sentence probably is the lead in sentence to the note, right?

(Liz): Right.

Chuck Gomes: And then it goes to the security and stability study and then the reference to the other studies.

(Liz): Got it.

Chuck Gomes: Any other comments, questions, suggestions on that? Okay. You are okay (Liz)?

(Liz): Yes I am.

Chuck Gomes: All right. Steve? Go ahead.

Steve DelBianco: The next one is with respect to study submission Number 21. And I believe it was (Cathy Climan) right? And ironically her hypothesis was more extensive as originally submitted, more extensive than what we had in here.

And all I had done in terms of referral was to pull the rest of her hypothesis, original hypothesis in here. And the key words there is that her other hypothesis is that the public Whois databases are being used in mind regularly by direct mail and related companies for the

commercial benefit about personal data that they use, combine, sell and distribute as part of massive lists and databases.

And I am still curious about why we never included that to begin with. And then second, when (Cathy) was given a chance to certify that we had come up with, she did not seem concerned about bringing that in.

((Crosstalk))

(Liz): But...

Chuck Gomes: Well she did not respond.

(Liz): She did not respond so we do not know.

Steve DelBianco: I got it.

Chuck Gomes: They probably did not see it.

Steve DelBianco: I got it.

Chuck Gomes: Yes.

Steve DelBianco: And in deference to the person who put the work into that hypothesis, that was part of our hypothesis and I cannot see why we would leave it out.

Chuck Gomes: Well maybe this should not be a note. Maybe this should be a second hypothesis.

Steve Metalitz: Well, are we now in the stage of revisiting hypotheses here?

Steve DelBianco: I do not want to do that Steve. I am sorry. I did not mean to go there.

Chuck Gomes: Well, I mean if we missed one, I mean that was the idea of the comments. Now obviously (Cathy) did not respond, but if we discovered that we have missed one that was proposed, keep in mind that the council is going to decide whether to pursue any particular hypotheses further, but don't you think that if we missed one that is significant, at least from the point of view of the submitter that we should at least include it?

Steve Metalitz what is your thinking about it?

Steve Metalitz: Well, I do not really know because I do not remember our discussion about this. We had her proposal in front of us. You know, I do not know that we were all (unintelligible)...

((Crosstalk))

Steve DelBianco: I do not think we ever act (unintelligible).

Steve Metalitz: ...caused us to overlook it, so I am just not sure. I mean, I also look at this and I think there is a word missing from what we did approve because we have a sentence significant abuses would include economic comma. Economic what?

(Liz): I guess abuses was what was meant.

Steve Metalitz: Well I think something has gotten dropped there I think.

(Liz): I think you are right.

Steve Metalitz: I do not know, what is an economic abuse?

Chuck Gomes: Yes. Anybody help out there?

Steve DelBianco: We would have to go back and look in the...

Steve Metalitz: If you would click on the hyperlink to the forum, you will see (Cathy)'s original.

(Tim): You are saying the word significant got dropped?

Chuck Gomes: No, something appears to be missing (Tim) after the word economic in our formulation of the hypothesis.

Man: I mean do we remember who on our team formulated this in this, you know, worked in that area. I do not think it was me. I hope it wasn't me because I do not remember it.

Chuck Gomes: Without going back and looking at agendas, now I can do that if it is helpful, but let us see if we can figure it out here.

(Liz): Yes, it was pretty early on.

Man: I mean I do not have - I do not really have an objection to incorporating what (Cathy) put in there but I just, I mean, we really did change her suggestion. If you go back and look at her suggestion, I think we try to

focus it more and maybe this is an example we ought to include, but I think it is - I am at a bit of a loss to know why we dropped it in the first place, but I know each of these was discussed.

Chuck Gomes: Steve DelBianco, I am trying to figure out why the added one is different than the one we had because it is the use of Whois data and spam generation - isn't that what you added? Isn't that what it is talking about?

Steve DelBianco: She was more specific in the way she described the entities doing it, direct mail or related companies and how they do it. If we all think that Whois data used in spam generation is sufficient, then we do not need to bring in the rest of her phrases. I was just...

Chuck Gomes: Or we could bring the rest in as a note. You know what I am saying? Just to clarify a little bit about some of the ways it happens because they do not really look totally separate to me. But what do others think?

I am glad she did not see it and respond, but should we, I mean would it - would we really lose anything if we just totally delete economic comma in our version?

Steve DelBianco: That is what I am beginning to wonder if it is...

Man: Yes.

Steve DelBianco: ...a word we inserted, if it is a word we forgot to delete.

Man: Who worked on that section? Was it, I am trying to go off my memory here. Was it (Tim)? Is (Tim) on the call?

Chuck Gomes: (Tim) is on the call. He just...

(Tim): Yes, but that was not - I did not do that one.

Man: Yes.

(Tim): I do not believe.

Chuck Gomes: I can go back.

(Tim): I could be wrong.

Chuck Gomes: While you guys are focusing on it, let me go back to some agendas and see if I can find out. That was in which area?

Man: One.

Man: One.

Chuck Gomes: Area 1 should it should have been really early. That will help me find an agenda. Bear with me while I do that. And in the meantime, I would like - feel free to talk about what I just suggest, I mean, does it make sense to have two hypotheses there or is it really - is the second one that Steve added really incorporated in the one that we had and maybe just with a note.

Man: Yes, why don't we do it as a note and just say something like, you know, as an example of such abuses, the original submitter of this hypotheses suggested that public Whois databases blah, blah, blah.

Man: That would be fine.

Chuck Gomes: And we are talking about Study 21 right?

Steve DelBianco: Yes.

Man: Right.

Chuck Gomes: Not in that agenda, try another one.

Steve DelBianco: I would support that suggestion though and with a note, but it is a note that explains that the original submission included the hypothesis that.

Man: Yes. Just as an, you know, as a very specific example of the types of more general abuse described in the hypothesis as now framed.

Chuck Gomes: I am still looking here so. I am going up a bunch of different agendas.

Coordinator: Excuse me, this is the Operator.

Chuck Gomes: Yes.

Coordinator: May I take your name please sir?

Chuck Gomes: Chuck Gomes.

Coordinator: Thank you sir. I will join you back into the conference. Sorry about that.

Chuck Gomes: Was I out of the conference?

Man: I think you were with us all along.

Chuck Gomes: That is what I thought. You guys seemed to be responding anyway or else I have a good imagination, which is possib - well I do not know how good of an imagination I have.

Well I still have not found the one - Area 1. Maybe I did not include it in the agenda as clearly as we.

Steve DelBianco: We might have just tackled it on the very first call.

Chuck Gomes: I think probably we did, and that is why no particular person was really assigned to that. I think you are right on that Steve.

Steve DelBianco: And try to be rigorous about bringing forth anything that the original submitter put in and...

Chuck Gomes: Yes. Well let us - now, I was busy looking up. Let me go back to what was suggested while I was hunting in agendas there and hear what was said there in terms of adding the note. I think was it - Lee were you the one that supported the note there?

Lee Eulgen: Yes, I do not remember exactly how I phrased it, but something - adding just a note saying, you know, as an example of such abuses, the original submitter of this hypothesis suggested that, and then start with, you know, the public Whois databases are being used, etcetera, etcetera.

Chuck Gomes: What do people think about that? Any objection to that? Adding it as a note as Lee has just suggested?

Man: That is fine.

Chuck Gomes: Okay. (Liz) did you capture that?

(Liz): Yes I did.

Chuck Gomes: Very good. Okay Steve DelBianco, go ahead.

Steve DelBianco: There is only one more. And it is under Area 2 which is compliance with data protection laws and Number 16, Study Submission Number 16. And I added the note that because there may be significant variations in consent, different jurisdictions that the population should be segmented by jurisdiction.

This is a guide to the consultant that we would retain to do this study so that the results would not simply be aggregated but the results would be also disaggregated by jurisdiction that have similar consent regimes.

Chuck Gomes: Any comments or questions on that?

Man: I think that is an excellent note.

(Eric): Chuck this is (Eric).

Chuck Gomes: Oh hi (Eric).

(Eric): Hi. We need to identify that the similar regimes are. When I was doing P3P a decade ago we had three basic privacy regimes - UF, OECD and EU. If we do not provide guidance here, it looks like we got, you know, on the order of a hundred jurisdictions and that couldn't be that useful.

Chuck Gomes: Now when you are talking about similar regimes, help me understand where you are at (Eric).

(Eric): Well with P3P we were trying to express the data collection practices of data collectors. And in the European regime, the privacy rights comes out of the European treaty.

And the U.S. privacy comes out of contract law or private arrangements and then in Canada and Japan it is sort of a - and New Zealand, it is sort of a mish mash between those two.

So this is a pre-basic jurisdictional category that we are really able to deal with treating England and Holland as the same jurisdictionally although when you actually look inside their actual implementation of the directory, (unintelligible), there are some differences.

But for the purposes of trying to come up with a mechanism for P3P to express data collection practices, which I think is equivalent to what we are trying to do here, those three buckets were enough.

Chuck Gomes: So, but with regard to the two hypotheses for Study 16 and when we refer to national law and in the note we are talking about jurisdiction, are you suggesting that we need to be more specific in the hypotheses or in the note or is that...

(Eric): In the note...

Chuck Gomes: ...something that should be handled when the study is developed further?

(Eric): If we are providing guidance to the consultants who will be conducting the study forbidding that there is a study, a (unintelligible) to guidance should not be that there are a hundred or more different jurisdictions that are of equal (intera), but that there are already smaller number of jurisdictions which are of primary interest.

And I do not mean simply because of the size of the U.S. market or the size of the Chinese market, but the types of jurisdictions or the types of privacy laws so that we have aggregation along simi - jurisdictional similarities rather than simply dividing them up by country code.

Chuck Gomes: So what you are suggesting, if I am understanding it correctly (Eric) is that we add a second sentence to the note that points out that what basically what you just said in the sense that it is really not a matter of going country by country but there are some - there are just a few major...

(Eric): Consent regimes.

Chuck Gomes: ...yes, consent regimes, is that right? Can you draft a sentence that could be added that we could consider there right now?

(Liz): What if we said, instead of saying population should be segmented by jurisdiction, say the population should be segmented by common legal consent regimes.

Steve DelBianco: That is fine.

Chuck Gomes: Does that cover it (Eric)?

(Eric): That does it. I am not sure what population is, but that does it for the jurisdictional issue.

Chuck Gomes: I think we are talking about the study population.

(Liz): Yes, maybe we should say the results should be segmented?

Man: Agreed.

Chuck Gomes: Well it is not just the results, it is actually your - wouldn't you actually...

((Crosstalk))

Man: The analysis.

Chuck Gomes: ...(unintelligible) probably would target...

(Liz): The analysis, that is good. How does that sound?

Man: Good.

Chuck Gomes: So why don't you read back, once you get finished there (Liz) what you have?

(Liz): Sure. Because there may be significant variations in consent in different jurisdictions, the analysis should be segmented by common legal consent regime.

Chuck Gomes: Okay? Any problems with that?

(Eric): Thank you very much.

Chuck Gomes: Thank you (Eric). I am glad you could join us in what we think is our last call. So, and thanks for your contribution offline on the list as well.

So, any, now that I think covers the pearls that we had on our agenda. And unless I am mistaken, we should have just about wrapped up our work, other than what we need to do on the list today.

(Liz) is going to prepare a couple draft messages to two of the submitters that suggested revisions that we all need to look at very quickly. And just give her a response as, you know, within the next couple hours whether or not they are okay.

I would suggest (Liz) that if by, let us see, what is - by oh noon your time, you are on the Pacific coast. If you have not heard anything from people objecting to the messages, that you go ahead and send those out.

(Liz): Okay. I will try to send them quick (unintelligible).

Chuck Gomes: Yes, that would be great. And then she will also, and this does not need to happen quite so quickly, but if you can get the final document out today and then, again, if we can respond today (Liz) will react, but she is going on vacation tomorrow so I will pick up the ball there as needed.

(Liz): Thank you so much.

Chuck Gomes: And I will make sure that we send this - send our final document to the council tomorrow.

Anybody have anything else that we have forgotten?

Man: Chuck you did a great job with this group.

Man: Yes, just thank you Chuck.

Chuck Gomes: It has been an easy group to work with. You guys were great. Everybody picking up the ball on different things and taking the lead, thank you very much, so.

(Eric): Thank you also Chuck.

Chuck Gomes: Okay. All right everybody. Thanks and then we have got a little work to do on the list and then we will see how the council responds to our suggestions. Okay.

Man: Sounds good.

Steve DelBianco: Thanks everybody.

(Liz): Okay.

Man: Everybody.

Man: Bye.

(Liz): Bye.

Man: Bye.

Woman: Bye.

Man: Bye-bye.

END