

Emily Taylor:

Okay, shall we take our seats and get started? Welcome to our Singapore meeting everybody and welcome to those who have joined us in the room and online. I think we're just expecting one or two more members of the team but why don't we just get started. Have you all got – the bridge is open for Lutz and Kathy, I think Kathy is going to join us until mid-day our time. For those who aren't aware, because there was a question mark over Kathy's continued role in the group – she wasn't able to join us, but I'm very pleased to say that her role has been confirmed and she will be continuing with us.

So this is the agenda that we have, a draft agenda; it's quite detailed, but perhaps I think that thinking about our overall goals for this week and based on our one to one calls that we had over the last month, I think that generally we would like to have a sense that we are moving forward with drafting the report, and that's the first item on the agenda. I think the other thing that would be useful for us to do today is to think quite carefully about the outreach meetings we have this week and what we're going to get out of each one of them and which areas of the issues paper is going to most useful and most relevant to the different stakeholders that we meet.

And then I think that we've also all talked at various stages about thinking about the composition of the subteams that we've been in and revisiting that as we go forward. So this is confessional time – has anybody actually written the draft bits of the report that we all

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promised we'd arrive with? Can I make a suggestion, which is that while we're all here thinking about WHOIS, it would be really good to leave this room today with something concrete. And I was wondering whether, what you think of the idea of taking an hour, hour and a half now and just getting something on paper from each of those subteams. Shall I remind you what it was supposed to be?

Lynn Goodendorf:

Emily, looking at the outline, one of the questions I had is that for instance for the Consumer Subteam we've proposed this consumer research and we're waiting to get the budget approval and I really don't know what more we can say at this point in time. I've started putting together notes and organizing information so that we can put an RFP together very quickly, and I have a list of companies that I think would be qualified, but other than that I'm just not sure what we can contribute.

Emily Taylor:

Can I just give an idea of what I think we were heading for is that we're now moving into the stage where we've issued the discussion paper, which is really trying to get people to think about the substantive questions, the sort of meaty issues around WHOIS – what's working, what isn't working, what needs to be clarified, what doesn't. The work that we've done up to date has been very much preliminary in nature. We've tried to define these terms, we've then got some feedback on our definitions from the public comment and really I think that is absolutely right, the consumer

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trust group, also the law enforcement group, you've got work in progress or you're waiting on decisions – however, I think that what we were hoping to do is get some of the early definitional work written up.

So on the consumer trust what do we go out on the consumer definitions? What do we go out in the public comment with? How do we get to that? And then what did people say to us and what are we doing as a result? It's just that very simple step through. And the same with law enforcement definitions; the same with applicable laws, and so on. And for those who are looking at the inventory of policy it's very much the putting together the narrative to go with the slides that we saw last time.

I'm just aware that because we're all busy in our working lives and we will also be busy here at ICANN once we leave this room today that the chances of getting some quality time to just devote ourselves to the writing up this stuff is not a great big piece of work, it's actually very much writing up and pulling together things that are already written, but it might be a good use of time now to just do that.

Lynn Goodendorf:

I think the only other predicament is having just issued this discussion paper that we don't yet have comments back from that. And I certainly have strong enough opinions of my own that I'd be happy to go ahead and write up my views on both applicable laws and consumers, but then I feel like I might end up having to revise

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that substantially. So that's why I feel a little bit awkward trying to tackle it right now.

Emily Taylor: Can I just clarify that – sorry go ahead Bill.

Bill Smith: This is Bill Smith if we're supposed to announce ourselves or not for the remote people. I share some of Lynn's concerns. I've also been doing a fair amount of thinking about – I know, it's hard to believe that I can do that – but one of the things that has struck me in the past few weeks, we absolutely need to solicit and obtain and analyze public comment that we get from the various constituencies taken into account.

But I believe in the end we are and are expected to be an independent Review Team. So our opinions do count. I'm not saying they count more than what others might be saying, but it's our job to take in whatever input we get from whatever source we get and to make a determination both individually and as a group.

So I think we actually can go ahead and start on some of these things. I think if we have an outline of the final paper we can go in and perhaps fill in, if nothing else, some detail and some bullet items; get maybe some quick consensus on some things at least. And yeah, there are a number of outstanding issues, like what is the Board doing with our request; it's been two months now, something like that, at least six weeks. Personally I believe that

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alone should go into the report; that fact that we submit a request and it takes this long to get stuff back. And we don't have to say anything but that, report it as a fact. We can choose to comment on it. I certainly have a comment on it. But we don't need to, we can just list some of those things, and I think there are other things like that that we could put down.

Another one for me is generally sort of the lack of clarity around what the WHOIS policy is. The fact that we spent I think months really, working with staff and others in trying to find the thread of what policy is. I would hope we might be able to agree that that's kind of an issue; that there's no clear place or even small set of places to go to find out what the policy is. That's problematic for anybody who's doing a review or attempting to figure out, for whatever reason, what policy is.

So I think there are some things like that I hope we can get agreement on. We might be able to flesh some of this out. And then I think we should just highlight the areas where we can't make a lot of progress here.

Emily Taylor:

Thank you Bill. Peter, did you want to...

Peter Nettlefold:

It's Peter here speaking, for the remote people. I agree with a lot of what Bill has said; I think our opinions do count. And with what Lynn has said; certainly I have at least some preliminary

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views on some of these issues. Now I think as Bill said a lot of these we've already talked around and some of the issues I think are pretty clear to us. For example, as Bill said, the lack of clear policy; the lack of clear place where you can look and so on. And we may well be able to come to a rough consensus position on that relatively easily.

I'm sort of wondering if it will be – and I'll just put this out there – more useful to break into little groups and try and actually draft texts or whether it might be better to stay as a coordinated group and see if we can agree on some areas on consensus in the group and actually use our time while we're face to face to come to that. And then we can draft text later potentially; I'm completely open to that. It seems that there are potentially some areas where we could almost agree that we've got an approach and put down some ideas. I mean whether we can actually come to something we could consider options for what we might be able to suggest in these areas even.

Emily Taylor:

Thank you. Does anyone want to comment? Can I just clarify what I was talking about, which is, do you remember this document which was the outline report that was going around months ago? I'll just remind us a bit – executive summary, that's going to be written – introduction will write itself – there's a background which is a very short summary of the history of the WHOIS to date which I think is a writing project for somebody at some other point – the bit that I wanted us to have written up is

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actually just covering off our work to date on the definitions and the public comment, which is our section five here. So it's headed up – definitions: what do the terms contained in the AoC mean – I think – which is law enforcement, applicable laws, consumer including producers, maintainers, etc., and consumer trust.

So just to clarify, Lynn, your point – absolutely, there's not point in us writing up our full narrative and our analysis on what's wrong and what needs to change because we've just actually published something asking people to help us with that. However, the feedback and one to ones from several of you was that you would feel a lot more comfortable if we had at least some text of our final report happening. And when we discussed this in our calls we all agreed with that.

So, my proposal is that we just briefly spend some time today writing up the definitions and stuff and then move onto what you were suggesting and that was also another suggestion in our one to one calls, which is can we use this coordination session to just brainstorm where we think we're going on some of the big issues. I think that would be a very useful use of our time. Peter?

Peter Nettlefold:

I entirely agree we should focus; I'd quite like to focus on getting some substantive movement forward too. Just to add to the previous comments about focusing on the definitions, one thing that I've noted and I just mentioned I was briefly discussing with Sharon is we've started to get some input back from the law

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enforcement paper and one issue that seems to be coming up in the feedback I've got and I gather from Sharon as well, is commentary on the law enforcement definition. So that's useful but it will make it difficult as well because we haven't got all our feedback to write up something on law enforcement definition. So to build on my suggestion before, perhaps we could look at just a different part of the report. Could we actually start to look at a substantive, fleshy part of the report which deals with issues and see if we can figure out a way forward on those?

Bill Smith:

I'd actually offer along those lines – this is Bill – and that would be to pull from the discussion paper, which we spent a considerable amount of time on, the section that is titled background. And just pull that and lace it into the report as, and this is draft only, but just as something that says here's a placeholder for our background discussion. And if there are other pieces of that discussion paper that we could pull, as is without modification given the amount of time we spent on it, we might begin to flesh out a paper. I'd also be happy if we added notes in places where we might still have some disagreement, but it would at least give us a little bit of flesh in the paper.

I too am concerned with the definitions – not so much law enforcement, though there may be issues there, but I don't believe we've come anywhere near consensus on consumer trust. I still believe we should be defining the term consumer trust and we should not be defining consumer. For me, it makes no sense in this



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discussion. It's just a way for us to remain divided, but that's my opinion.

Emily Taylor: Susan, did you want to come in?

Susan Kawaguchi: I would agree with Bill on that we haven't decided on consumer or consumer trust definition – I mean that was definitely something we spent a lot of time on in San Francisco, but I think we had a room divided. And I think it's going to take some more talk. The other thing, and actually I meant to work on this and only started and didn't get anywhere, but in the IPC call one of the recommendations was that someone needed to sort of diagram, do a flowchart on where the WHOIS policies are. And because I'd read all of those many times but I'm still confused.

But if maybe we took even a half hour to say this part of this policy exists here and give it a label and put it on a board somewhere and sort of White Board it; actually do a flowchart and see all the moving pieces because I do feel like they're not very connected, the policies. And I thought maybe with the whole group we'd get farther because I started going through it and went I am just so lost.

Emily Taylor: James, I've got a question for you on that.

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James Bladel: Good morning, Emily.

Emily Taylor: Good morning. We're just sort of thinking about how to use our time best today and Susan suggested – many people – I'm glad it's other people as well seem to be confused about where the policy is and how it fits together and the suggestion made in the IPC call is that we somehow diagram or bring it together in some way that makes sense to people. Would you feel able to help us with that because of your work that you did on policy?

James Bladel: Yeah I absolutely can get that started, but I would never presume to raise my hand and say it was an exhaustive list of all those policies and I don't think anyone, including ICANN staff, would be willing to say that. But yeah, I can get that started.

Emily Taylor: Okay, Peter.

Peter Nettlefold: I entirely agree with Susan's suggestion. I think that's a really useful thing to do. And to build on what Bill said as potentially a useful way forward, as he said, we did finesse our issues paper text quite substantially. One way to start work on drafting the report may be to, as Bill said, put the background text in the background.

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We could possibly do the same with other parts of our issues paper; put that text in simply as placeholder starting points and then brainstorm what else needs to be in these sections; need to inert from notes from the feedback that we've received from such and such; need to put in comments we received from this stakeholder at a face to face and actually flesh out the skeleton. And then potentially go away and fill in the gaps in the drafting when we're away from here so that we've got some agreement on what needs to be in there and filling in the gaps is a little bit easier.

I guess I'm a bit sensitive to this because having just had a drafting exercise yesterday looking at actual text with the GAC, it can sometimes be very time consuming when you're actually writing stuff down, but getting agreement on what needs to be there and what are the key points we need to hit and so on could be a useful way to go. We could potentially walk out of here with a skeleton and then just someone needs to flesh out the paragraphs.

Lynn Goodendorf:

I like that approach, Peter, because that kind of relieves my concern that we would be going ahead and making conclusions prematurely and that's what I was worried about. But I feel very comfortable if we go ahead that way.

Emily Taylor:

Bill?

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Bill Smith: This is Bill. Peter's comment made me – and I agree with what Peter is saying – reminded me of something that I had forgotten, another senior moment of mine. Basically I would like us to get back to respond in some way, at least quasi-formally, to all of the input we have received. It's something that I, as a relative newcomer to ICANN, feel is missing in the process here.

Requests go out for people to provide comments, they come in, staff summarizes and then you never know what happened. In other organizations I participate in where public comment is requested, especially specifications, there will be a column – this was received, this suggested edit, whatever this was the disposition. And it could all be in red “ignore”, “ignore” or “no”, “no”, “no”. But at least people who submit it can say well at least they thought to respond, to tell me what had happened. I think that would be a good thing for ICANN to start doing institutionally.

Emily Taylor: Thank you Bill. And that actually highlights one of the recommendations of the ATRT and I'm seeing quite a few people nodding around the table. Also, I think bringing together all of the discussions- Olof?

Olof Nordling: Just briefly to respond to Bill's comment. Indeed what we do for a new gTLD and you can perhaps follow that, for the public comments on new gTLD we do a thorough analysis of all the various topics that are addressed, all the comments on that what

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actions we take for the subsequent version of the Draft Applicant Guidebook. So yes, we do that. It's not in the same for all kind of public comment period, that's true.

Emily Taylor:

Thank you. The plan that I had hatched in my own brain to leave this room with some draft text, I can actually see from what you're saying for me that many of these issues are still moving targets and that it would be premature to write them up. However, the idea of lifting placeholder text both from our issues paper as some of you have suggested, and probably from our previous public comment and our scope, we can do. And I think that we can probably whip through the latest thing, the issues paper together and just highlight where we might have some text that could be useful.

Bill's point about how are we going to respond to public comment does actually feed into the agenda item 1A and maybe even if we can't write up our bits of the report, which I was keen to do, perhaps we can have members of each of those subteams who would be willing to take us through the comments received and what you decided to do about them or not. Okay? Does that sound – I've got at least one fearful haunted look from my left here.

Do you want to have a few moments to review the comments with that in mind and then come back and report to the big group? I think that, can I just say that's one thing I think we can usefully do is get a shared understanding of what the public comments said on

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each of the definitions and our initial response and then we can kick that around.

I'm hearing that we're ready to really start to brainstorm several things. So there's the where are the different bits of the policy contained, I think we could do a useful session on that, which is actually not on the agenda but I think would be useful while we're all physically together. The other thing that I think I heard is we are ready now to start to kick around our initial views on what the problems are.

Yes we put out our issues paper, we're waiting to hear back, but I think that we know are embedded enough in our various areas of this subject to start to do this. And the final thing is to try and dig into this issue of consumer trust which we started in San Francisco – it is a difficult one and therefore we do need to spend more time on it.

Does that sound like – if we went away from today feeling like this was time well spent, would those be useful to have done? And I think the other thing that I've heard from various people is, think about what we're doing this week in terms of outreach, what each of those groups can tell us about, why we're actually talking to each of these groups, what we want to get out of that session, and how we're going to record and work on the feedback we get because certainly one of my learnings from San Francisco was I had several very good and useful conversations but apart from my own notes about them I can't really bring it all together. So I think we need to be a bit more structured in the way we approach that.

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Does, I know that everybody is a bit tired so what I suggest we do first is break into the small groups for 20 minutes or so and just review the public comment and work out what you're going to feedback to the whole group on what you accept, what you reject. And that will start to build up our response to the public comment. Then I think the next thing we should do is to revisit policy and try and work out what those were. Yeah? I think that's enough information for one time – can we do that? Just go into our small groups and work on the public comment and then come back and be prepared to feedback at 10:00. James did you want to say something?

James Bladel: Yeah just a quick question. The discussion about policy will be, that's the whole group correct?

Emily Taylor: Yeah.

James Bladel: Okay.

Emily Taylor: And just as a teaser, we are prepared, the Implementation Subteam has done some slides to take us through all the inventory of compliance activities as we understand it so far. So that's another thing that we all will be doing together.

Bill Smith: Can I suggest an alternative schedule then? That is we just put the document up and start pulling text in. It will get us going if nothing else and perhaps we'll get some consensus around things and establish – and I think, personally I think we are working very well as a group right now. I think just getting the ball moving and doing things would be a good thing. I was sitting here saying actually I think your idea is good Emily, but I'm like practically how do I sit in three different places at the same time. It's a detail.

Emily Taylor: How are we going to do this? Now this has been hanging around for more than a month. How are we going to respond to the public comment? If we're not going to do it now please can we have a plan that actually we do? Bill?

Bill Smith: Again, I would suggest that we either do the pull some text in right now for 15 or 20 minutes, half an hour – my suggestion is we give ourselves a break so we can each go back and review the comments, refresh our minds. I'll give us all the benefit of the doubt to say we've all read it and now we just need to refresh our minds about what the comments are. And that we come back, and we may need to do it as a group since we're all on so many different teams, and hopefully we could be relatively quick with what we think and come to agreement. And if not, we may – my suggestion is for us to work on those things that we can reach



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agreement on quickly and agree to stuff and push some of the harder stuff to the end.

Emily Taylor:

Alright. I suggest then we have a longer lunch break in which we re-familiarize ourselves with the comments and be prepared to return first thing after lunch and have a group discussion on those. Okay? I think that we'll go to agenda item three then, which is the final report sections, and just slightly finesse what we decided to do with what I think we want to do now, and just get the proposed report outline up there on the screen and start to flesh out what could go under the various headings. And then we'll start to feel like we have a sense of progress.

Alice, would you mind getting that? I don't think, unless anybody wants to argue with me, that we can really do very much under sections one and two at the moment.

Bill Smith:

This is Bill again. Not in a way to argue but I actually think the introduction on the WHOIS that's in the discussion paper contains a fair amount of useful information somewhere in those sections. And its information we debated pretty heavily and could go in there. I don't think we have anything about conclusions we've reached, suggestions, or anything like that and I'm not saying it would remain as is, but it is a good introduction to the topic, I believe.

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Emily Taylor: Okay, that's a proposal to put in the first paragraph – have we all got the, you should actually have a hard copy of the outline paper, the discussion paper. So we're now looking at page two of that under introduction WHOIS Review – that's your recommendation Bill, that we put in that initial paragraph under introduction?

Bill Smith: I'd actually pull in the section that's titles WHOIS Review, either into the executive section summary or the introduction. If the introduction is setting out the structure of the paper, no; but as an Executive Summary it lays out for someone who has never read, or knows nothing about WHOIS what this report is going to be about, with modifications to the text, but not suggesting those now – tenses would need to be change, things like that. But it sets out here's what this team is about, why it was constituted and then we could add sections about here's what we did, rough conclusions, read below for the details.

Emily Taylor: Okay. Anyone object?

Male: Just a quick question. I thought these sub-topics are just all part of the introduction and they're just sub-categories within the introduction. So I'm not exactly sure what Bill is proposing.

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Emily Taylor: I think Bill is proposing the one to three paragraphs in bullet points contained under the subject WHOIS Review be inserted into Executive Summary as a placeholder.

Bill Smith: Yes. That's not a complete Executive Summary, I'm just suggesting as potentially something like the first paragraph.

Emily Taylor: It's a nice description of what this is about.

Bill Smith: Exactly.

Emily Taylor: We will do that. And then the other suggestion that I heard, while Alice is figuring out how to actually make it happen, is the background on WHOIS section was suggested as a placeholder for our paragraph three in the final report. Thank you, James.

James Bladel: Sorry, but Kathy is raising her hand in the Adobe.

Emily Taylor: Oh she is? I'm sorry. Kathy, please go ahead and welcome.

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Kathy Kleiman: Too many things to follow at once. I apologize out here in the Netherlands. Hello everybody.

Emily Taylor: Kathy, just to say I'm not following the Adobe Room as I'm chairing it so I'm going to ask one of the other members of the team, or perhaps Alice to let me know if your hand is up. So, apologies for skipping you.

Kathy Kleiman: No, no. My hand just went up and thank you so much. I can also just let you know verbally as well. I'll do both. I just wanted to double check the format that's going on, that we're just kind of plugging in some text from the discussion paper into the report but at some point we're going to assign that to teams to flesh out further? Do I have that right?

Emily Taylor: That's exactly my understanding, Kathy. And in fact, I'm glad you're on the line because I think that what we're trying to do is leave the room with a sense that we've started work on the final report, which was one of my, anxieties is too strong a word, but one of the things that I wanted to achieve. One of my goals, thank you. And a very sensible suggestion, given how hard we worked some of this text in the discussion paper, was that we could easily pop it in as a placeholder. Okay?

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Kathy Kleiman: Fantastic, thank you. Thanks for the background and regards to everyone.

Emily Taylor: I've got Peter now.

Peter Nettlefold: It's just a quick logistics question. The report outline, could someone send that to me electronically or a hard copy so I could have a look? Thanks.

Emily Taylor: Okay. How are you doing, Alice? If we do this thing of putting the text in from one document into another is that going to be doable? So just to let you know Kathy, we're just getting the documents up on the screen to cut and paste and Michael has just joined us. Hi, Michael.

Kathy Kleiman: Okay great. Hi, Michael.

Emily Taylor: Okay. I think that that's now done. Thank you very much Alice. Can we now move on to – I'm assuming the introduction is just going to be "this is how the paper is structured". Background – the

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suggestion was that we just simply lift the background and history from this paper which seems a good idea. James?

James Bladel: Sorry to interrupt. Is there anyone, besides me, getting older who can't read that from here?

Emily Taylor: I thought we just thought that everyone else could.

James Bladel: Thank you very much. I was ready to move.

Bill Smith: James, I couldn't see it here so...

James Bladel: Thank you, Alice.

Emily Taylor: So this is, Alice, this is our paragraph three – can we add in the background on WHOIS from the discussion paper here so that we could have a look at that. The section starting, “WHOIS is a protocol” and ending “the Review Team will take account of these issues when developing its recommendations”. Okay, the next section is methodology – any suggestions for what might go in there Peter?

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Peter Nettlefold: Well I could take a quick stab at a few things which we might want to pop in there. We could say that the Review Team met face to face on “x” dates and held regular teleconferences to discuss issues. The Review Team met face to face with segments of the community on such and such dates – this to be filled in later. The Review Team issued a paper on definitions and scope on such and such a date; issues paper on such and such a date. We could potentially reference our responses to feedback that we’ve got. We should mention the law enforcement paper. What else – consumer research.

Emily Taylor: We might also revisit our outreach plan which might have some wording in that. So Lynn and then Bill. Thank you very much.

Lynn Goodendorf: And we can also just make a simple statement that even the composition of our Review Team represents the constituencies across ICANN. So it’s another aspect...

Emily Taylor: I’m seeing nods for that; nods of agreement. Bill?

Bill Smith: Yeah I agree with what Peter and Lynn have said because I think we are truly a good representation of the multi-stakeholder model.

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I think it would be good to note that some of the difficulties we might have had, not specifically but just say, make mention of the fact that the multi-stakeholder model brings together lots of people with lots of different opinions, perhaps agendas, whatever, and to finish with “we have found a way to work through those and to reach consensus”. Because I personally believe we have, we have found a way to work together. It may not have always been easy, but we are doing it. And that, I think, it’s important that we send a message to the community about that.

Emily Taylor: Thank you. Michael?

Michael Yakushev: I would also like to mention here that there was support by ICANN staff and the documents that they provided us and their opinions also helped us develop.

Emily Taylor: Thank you. Bill?

Bill Smith: Yeah I think we should note the excellence of work that we had.

Sharon Lemon: I think it’s worth mentioning, as well as the difficulties of different viewpoints, the difficulties of our different geographies and the



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fact that trying to talk to each other about an issue when you're 12 hours apart and you're getting up and the conference calls not everyone could attend, and that that has delayed progress to an extent. So I think that's worthy of mentioning.

Emily Taylor: Thank you. Any more for anymore under this because that's filling out very nicely. So we've got teleconferences, face to face meetings, and this is just short hand for a description of the dates that we met. Bill and then Peter.

Bill Smith: Okay. Quick thing on that is we may want to have, as an example, our Action Plan as an appendix or something and we just reference here from here to say here it is, you can see that, here's this, go see that.

Emily Taylor: And we might want to just review our Action Plan to see – because certainly haven't looked at it in a while. I've got Peter and then Sharon.

Peter Nettlefold: So one thing I think just a sort of detail that may be missing is our proposed consumer research. We probably should have a reference to that. and the other thing I guess is the way that – I guess part of this might be a questions for me – but I think the way

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that we're working is to, and we could flesh this out a little bit in the methodology section, is to have an intuitive approach to our consultations so we're building from one thing to the next. So our issues paper identifies are issues of concern and then based on the feedback from stakeholders I'm thinking we will then issue a draft report for comment and then from that we will refine and so on. So that we give the community the sense that our methodology is one of coming to interim; taking in feedback and making an intuitive approach.

Emily Taylor: Did we capture that, the sense of iterative approach – iterative rather than intuitive. I think that the iterative approach is more about the entire approach as I understand it rather than part of the consumer research. So I've got Sharon and then Sarmad.

Sharon Lemon: I just wanted to make sure that we included our questionnaires that we sent out and we should probably put those in appendices.

Emily Taylor: Sarmad please.

Sarmad Hussain: Yes. I think the scope of work and what we want to achieve must come before the methodology. So methodology should be clear,

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before we get into the methodology we should be clear what we're aiming to achieve.

Emily Taylor: Thank you Sarmad, I'm seeing around the table people agreeing with you on that. So, are you suggesting that scope of work in fact be a cut and paste job above methodology as a heading in its own right? Yeah? Peter?

Peter Nettlefold: I've just got the draft, just noticed in the proposed report outline that the previous proposal was to put statement of scope in the background. I guess we don't have that seeing as we're just...so it may well be methodology, whether we need a separate heading separate from the background...

Emily Taylor: It looks like the first paragraphs of the introduction, as they now are, are actually from the scope of work itself. Does that sound familiar to any of our drafters?

Bill Smith: This is Bill. I agree with Sarmad that we should have scope somewhere else. I think we might want to in the report indicate that we spent a fair amount of time figuring out what our scope was. It isn't something that was handed to us. And I think that generally some of what we let people is these Review Teams, at

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least the first ones, are spending a lot of time figuring out what it is they're supposed to do, how they're supposed to do it, lots of things. And we might chose to make a suggestion at the end of that, but I know some people I've talked to are wondering what we're doing. And we have been working pretty hard in my opinion and it's really, a lot of it has been figuring out what is it we're doing and how do we do it.

Emily Taylor:

Okay. So why don't we take that scope of work suggestion and put – can I suggest a sub-heading, or sorry, a heading before methodology with Scope of Work? And that this section is actually just as much a description of how we got to our scope of work, making the point that there was no scope of work handed to us and that our first task was to create that. And then we consulted on it. Is this sounding like it's overlapping with the methodology a bit, should it...Peter?

Peter Nettlefold:

This may be an intricate things as well with working through but I'm looking forward to the section after methodology which is the definitions and what do the terms contained in our scope mean. So I guess one of the things Bill was referring to when we spent a fair bit of time figuring out what our scope was, was figuring out what the various words meant as well. I'm not sure I have a solution, but we have potentially an overlap across all three sections. The suggestion by Sarmad to put scope before methodology makes

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some sense to me though. So potentially...I guess if we talk about our definitions before methodology we're sort of potentially jumping the gun because part of our methodology was to consult on the definitions. I just put that out there as issues. I'll see if I can think about a solution.

Emily Taylor: Should we go to Lynn and then Bill?

Lynn Goodendorf: I was just going to say under scope that one of the things we all came to agreement on is that it's not in our scope to change WHOIS policy and I know we had a lot of discussion on that. And in San Francisco when we met with different groups we clarified that. That we did not intend to propose changes to policy; that we were evaluating the effectiveness of the implementation of the current policy. And so it makes sense then that we had to examine what is the current policy, but I think that that point definitely needs to be noted under scope. And that the scope is not making or changing the policy.

Emily Taylor: Bill.

Bill Smith: This is Bill. I was going to suggest on some of the are we overlapping and things like that that perhaps we just put comments

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in the sections at this point to say we're not sure where this goes basically; most or some of this content we think belongs somewhere and we need to figure that out.

Emily Taylor:

I think we're in the zone at the moment so let's just throw everything into it and then we can always take things out later on, but I think it's a good flag to raise right now that it's going to be quite a job to finesse the flow in this early part so that we're not repeating things so we just flag that. Does anybody have any other suggestions on the scope? We did put it out for public comment didn't we? Did we receive any comments on it? Could you remind me? Just for those who look like they're feeling like I'm feeling, should we have coffee at half ten?

Kathy Kleiman:

Emily, I've got my hand raised.

Emily Taylor:

Please go ahead, Kathy.

Kathy Kleiman:

Thank you for whoever was able to get the editing up on the Adobe screen; that's great and much appreciated. I like this idea of the scope discussion. In the comment section I wrote in a few notes but maybe I like the idea of Emily throwing things right now at the report so that we don't forget something we might want to

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think about later. So some of the thoughts that I put in are the process that we came to in coming up with our scope because I really agree with Bill, we spent a lot of time on that and we should be telling people how we got to what we got to assuming that people that are reading the final report may not have read the comments. Those who have should see that we're being responsive, but those who haven't should also kind of see the whole cycle of what we've been doing.

So, in terms of scope, we met in London, we had the wonderful meeting at (inaudible) where we talked with Larry Strickling, a drafter of the materials. We'd also talked to Rod prior to that. Let me go back up – we talked extensively among ourselves, we reached out to the community. And while I don't remember written comments on the scope I do remember comments in our discussions with the community in San Francisco and that there was questions, as Lynn remembers. There were questions about what our scope was and what we were doing, and some back and forth in some of those discussion times. So, I think laying all that out is a great idea.

Emily Taylor:

Thank you Kathy. So your suggestion is that we recall in the section on scope that we discussed scope in some detail during our outreach to the community in the San Francisco meeting; something like that.

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Kathy Kleiman: As well as in the London meeting...

Emily Taylor: As well as in the London meeting, sorry, yes. And you made the point that we actually arranged to have a call with Larry Strickling in order to understand the Department of Commerce's objectives in relation to this when they signed it. I think we also invited Rod as representing the other signatory of the AoC to explain ICANN's objectives in this regard. I'm not sure whether that ever happened. Anyone remember? Yes it was. Yes. Bill?

Bill Smith: This is Bill. Yes, we tried to meet with him but were unable to. I don't know if he was available at the call with the Department of Commerce or not. I don't think he was available.

Kathy Kleiman: But Rod also expressed to me in an email that he thought he had shared a lot of his thoughts in some of those initial meetings that he had chaired, that went when he was chairing, before we elected Emily.

Lynn Goodendorf: Yep I agree because before we had Michael join the team, Rod actually chaired he calls. And I remember one call in particular where he went round the group and asked each of us our expectations and what we felt the objective should be. And I don't



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actually recall if he said what his thoughts were, but I know we did have a discussion on it.

Emily Taylor:

I think that's fair. Peter, you wanted to come in?

Peter Nettlefold:

Just some additional potential things for the scope of work. I recall that in the issues paper or discussion paper that we put out we mentioned some thinking that we'd done about things which were things potentially outside of our scope.

So I think we may have considered whether internationalization of the protocol, questions about a new protocol, those kinds of things. and to flesh out Lynn's point, it may be worthwhile expanding that "we're not making policy" section a little bit to explain the environment that we're working in so that there is a policy making body within ICANN and given the sort of policy and its implementation and the issues we've been dealing with finding it there that if we were to make recommendations we would be potentially asking someone else to look at policy; we would be looking at documents which are between contracted parties and so on so that we're working in an interesting environment in terms of if we do make some recommendations, the team is sensitized to how they could possibly be implemented or taken forward.

And the other thing we might want to mention is the ongoing studies as well because we're aware that we're also playing in an

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environment that's like a moving field. So there are studies and work going on within the community on this whilst we're doing this work.

Emily Taylor: Yes, thank you. Anyone else? Lynn?

Lynn Goodendorf: Yes. Down on the scope, Alice, if you could scroll down a little bit...let me see. Under evaluating effectiveness of current policy – just as a suggestion because in my own work I do a lot of policy reviews. Standard elements there when you're looking at effectiveness of policy is you look at is the policy clear, is it enforced, and is it communicated. So those are like three components of a policy review. And is it communicated to all the relevant parties.

Sharon Lemon: I certainly think that's a good suggestion but is that the way we've been modeling our work? Is our scope – has our methodology been around establishing those three things? I'll just ask the question.

Lynn Goodendorf: I think it's a good question. I don't think at this point that's been our approach. But in describing the scope and that we did agree our scope was to evaluate the effectiveness of policy, I'm just

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suggesting that again, with this being a placeholder, those are things to think about as we go forward.

Emily Taylor: Sarmad did you want to come in? Anybody else – Sarmad, Bill, Peter.

Sarmad Hussain: Okay, so a couple of things. First of all, I think all of the points which are up there are quite important but they're not really talking about the scope of work. It's more like how we got to the scope of work so that could probably go into background context or introduction. Scope of work should actually focus on what we're aiming to do, which is eventually covered in methodology. Just a thought.

Emily Taylor: Perhaps we could address that as just a suggestion by having two sub-headings saying how we got there and the statement of the scope so that we do have one clean statement of the scope that anybody wants to have a look at. Okay, next on my list is Bill.

Bill Smith: Sorry. I wanted just to agree with both Sharon and Lynn. I'm not sure in working on our scope or the work we did, did it necessarily in the way Lynn proposed it, but I absolutely think that is what we

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need to do at some point – is it clear, is it communicated, and is it enforced because that’s what you’re supposed to do with policies.

Emily Taylor:

I think that actually we haven’t said it to ourselves in such a punchy way, but in fact if I can calm us all down, we are looking at the policy – we have actually said well let’s look at the policy and I’m sure that the implicit question is that is it clear. We are looking; our scope is about the extent to which policy is effective. So part of that is describing the way it’s enforced. And the communication I think is a new issue, but one which I see chiming around this room. I think it is a very good point Sharon to say that’s good but we haven’t actually really incorporated that so far. Peter please.

Peter Nettlefold:

I’ll be very brief because you kind of said what I wanted to say Emily, but I would further defend ourselves just having a look at the discussion paper two of our three main headings in the discussion paper are Clarity of Policy and ICANNs Enforcement. So I think that communication is an interesting thing to draw out from that because those two things together – communication can be a subset of those. Like is the policy clear and part of that in my mind is making sure the people also know about it.

And the communication is also a key part of enforcement like it’s very difficult to enforce things if it’s not out there and communicated. But I think drawing the communication out as an

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explicit separate thing actually may add some clarity to our thinking on the clarity of policy and enforcement side of things as well. I think we've done some of it and the more we add to this I think the sharper our points will become.

Emily Taylor:

Thank you all. Anymore comments on the scope? Alice, could we just capture Sarmad's idea of the two sorts of sub-headings that we actually describe, we have a statement of the scope itself and then kind of how we got there. Oh sorry, you did already. And there was one thing, I'm not sure that I see it, one of the points Peter raised earlier about some of the issues that we're talking about involved contracted parties and we're not privy to those contracts. So that makes the review, just gives an extra angle to the review. Sorry, was that a different point?

Peter Nettlefold:

Maybe a slight tweak on the point. I think I'm not sure that we're not privy to, but I think the point is much like we have a GNSO that makes policy, the contractual documents to the extent that that policy or implementation of policy or whatever are between contracted parties. And we need to be sensitive to, when we're formulating our recommendations what we're going to suggest in the framework that we need to be aware that people make policy, that some of the things that we may want to comment are in documents which are between contracted parties and so on. We just need to be sensitized to the framework and I think that's

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influenced our thinking in terms of methodology and scope and so on.

Emily Taylor: Thank you all. That's a very interesting and helpful signpost for when we come to redo this. Susan?

Susan Kawaguchi: This is Susan. Actually it's a comment on our methodology. On the face to face meetings, and I don't think we really did, we sort of did this at the San Francisco meeting, but we met with a lot of different parties at the meeting but didn't really come up with consensus on what information we came out of those meetings with. I have some notes, I think everybody has a few notes, but I think this time we should definitely – I can take notes each of those times, but I think we also need to agree because I may have walked out of a meeting thinking Okay this should be our focus but somebody else may have interpreted that differently.

Emily Taylor: I think that that's very much something that I learned from the previous discussion. I think we will be having our follow up meeting this week, which is something that we've introduced as a result and I hope that we can use that time together to go through the meetings we've had and go Okay, what are the key points that we took from all of this. And I'm proposing to spend some time later today to tee us up for those meetings as well and say Okay so

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what is this group going to bring to our issues paper and what do we want to particularly focus on with each one. Okay. So can we leave scope of work and methodology for now? And go on to definitions? Oh, Bill?

Bill Smith: Point of order – we said we were going to break at 10 didn't we?

Emily Taylor: Not so fast. 10:30. Are we flagging? Shall we see how we do, we'll make a start on the definitions because I've got an idea here that we can go back to our call for public comment on those definitions. And just put the introductory text that we again, we worked quite hard on in that call for public comment, which will help us introduce them. And then we'll obviously have to have placeholders for what we got back and what we did as a result.

Bill Smith: At the risk of being disruptive, perhaps on the definitions, once we come to an agreement perhaps on the definitions, we could send them back to the Department of Commerce and to ICANN, the Board, and say is this what you meant. They are the parties that agreed to this and we are attempting to interpret it and we need to know what they intended. And to say yes or no, and for them to comment back to us. Because what the affirmation of commitments is, is a promise from those two parties; it is a covenant that says here are the things ICANN is going to do and

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this is what the Department of Commerce and the United States Government is going to do; things that we see that are principles, etc. And that is sitting up there for the world to see, the internet community to see.

Emily Taylor: Reactions?

Peter Nettlefold: This is just a preliminary reaction I guess. One was I think we asked this question of Larry Strickling when we were in our London meeting and from my recollection was that his view was it would be up to us to decide what the terms meant. And following from that, I guess the AoC says that ICANN will establish a review to do these things, but as we've said before we've been set up to conduct that review and to some extent I think it would fall to us to decide what these terms meant.

And I also note that we did put our definitions out for public comment and there would have been the opportunity for the contracted parties to discuss those with us if they had wanted. That's just preliminary thinking, I'm not saying it's necessarily something we shouldn't do, but I think it is potentially in our ballpark and we have consulted publicly on them; there has been the opportunity for feedback.

Emily Taylor: Thank you. Michael?



Michael Yakushev: I'm mostly agree with Peter. There is a real science as to how the definitions should be somehow interpreted and that could be opinions. So the legal experts or independent of the public comments etc., etc. And the proposal to ask for the opinion for both the Board and the Department of Commerce is good, but only in case if they really give us the feedback and if they coincide, because if they have different opinions on any of the definitions then it will be a problem.

So I would rather mention here upon the definitions that there could be different opinions how it can be interpreted etc., but our position, based on both the expert views and the public comment, that such understanding of these definitions is the best for the purpose of our work. So for the purpose of WHOIS Review Team this definition is like that. we can assume that for other purposes it can seem strange or too wide or too short, but for us it's Okay, like that.

Emily Taylor: I have Kim first and then Lynn.

Kim von Arx: I actually completely agree with Peter's comments and actually with Michaels' comments as well. I don't think – first of all during our scope discussion certainly I think at least as far as I understand that there is fault within our scope to actually define the realm in

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which we are going to be moving. And I think it would be faulty, on us anyway, to now seek a nod from the Department of Commerce and from the Board and Larry Strickling has clearly indicated to us, in the phone call at least, that it is within our scope anyway to provide those definitions which is part of our scope in any event. So I strongly suggest that we don't. And as Michael and Peter have mentioned, we've certainly done our public consultation and if they had some comments they could have certainly submitted their own.

Emily Taylor:

Lynn?

Lynn Goodendorf:

Yes. I do agree with Peter, Michael, and Kim, but this brings up a thought that as a step and as we progress our work, probably before we get to the very final report, I mean it's customary, at least when you're a consultant, to go back to your client with your preliminary findings to make sure that you've met their expectations and that there's not something that you've misunderstood or you've left out or something of that nature.

Now you might consider it a courtesy, but I don't know that we've really planned that and it can be done a number of ways. It can be done as a briefing for instance. But I do think that there's probably, it would be good for us to plan to do that. Yeah, before we get to the very end.

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Emily Taylor: Kim, I see just on a point of information, one of the outreach meetings we were trying to set up this week was with the Board and very sensibly they came back and said have you anything specific to say to us at this stage. And I felt that taking an executive decision perhaps that the best time to meet with them would be in Dakar where we, I hope, will have at least an indication of our preliminary findings and that we could use that meeting at that point to take them through that. But I hear what you say about the other signatory of the AoC as well. Go ahead Kim.

Kim von Arx: This is just a very preliminary reaction to Lynn's comments and I think the comparison to us, to compare us to consultants is not necessarily the best approach considering that consultants actually leave contract, or actually take on a contract with particular deliverables and a scope and we didn't get either. We had to develop it all ourselves.

Lynn Goodendorf: No, we didn't have a statement of work.

Kim von Arx: Exactly. So I think that I do actually agree for example with what Emily said and I think it follows your comment, that we should debrief the Board and tell them – I don't know if now my voice is

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going to be on their voicemail – and tell them what actually our overall, I suppose, findings have been, but I don't think we should ask them for advice or do you think this is necessarily the right approach. It's just a matter of here, this is FYI and we go from there.

Lynn Goodendorf: Since James was on the previous review – was it AR, I forget the acronym, did you guys have a similar step or did you make that kind of a step in your work?

James Bladel: I don't know if you can draw a direct comparison anymore. I mean earlier in the process it seemed to be clear what path we were going down and how that mirrored what the ATRT went through as well in their bootstrapping process. But I don't think we're, we diverged a long time ago from that.

Emily Taylor: Okay, I think that Bill, no offense, but I think we're going to take out the suggestion, but take up the thought by saying we would like to debrief the Board and probably the DOC prior to issuing our preliminary findings or at that point.

Bill Smith: I take no offense at having it left out. It was clearly a consensus view in the other direction.

Emily Taylor:                   Okay. Can we, I think that we're ready for our coffee now and perhaps we could ask, why don't we come back in 15 or 20 minutes and Alice, would you mind just sort of taking across some of the definitions and populating the next section and then we'll work through that. Okay? Thank you.

[break]

Emily Taylor:                   Oh, very nice. Okay, well with that in mind, let's move onto just putting placeholders in our definition section; which I think is probably– It's taken mainly from our previous call for public comment.

The first definition is on law enforcement. Now the two paragraphs in italics was stuff that I put in as a placeholder, when I drafted this, so I think we can probably lose that now. Okay, stay with it – stay focused, Peter?

Peter Nettlefold:               I guess in place of those two paragraphs just for – well, you know this is really putting in placeholders with consultant twice now on the law enforcement definition; once with our scope definitions papers, and there was specific questions in our law enforcement

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paper as well, so we can probably note that we need to incorporate feedback from those two processes for this one.

Emily Taylor: Just to recap that, if you just pop underneath the law enforcement that we need to include feedback from the first public comment and from the law enforcement questionnaire, Sharon, please?

Sharon Lemon: Yes, just a question on process really. We have got some feedback from the public comment and from the law enforcement. What is the process for inclusion or decision-making about whether we're going to amend the definition in light of those comments?

Emily Taylor: Well, that was part of what I hoped that we can discuss after lunch, okay, is that we come back with the feedback on our different sections and start the job of kicking that around, okay. Do we want to put anything else under law enforcement for now? Nope.

Applicable laws? Again, I think that we need to just note that we need to include feedback from the first public comment and San Francisco meeting.

Peter Nettlefold: Yes, which is part of the first public comment I guess, but kind of light.

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Bill Smith: This is Bill. Did we – I wasn't here for perhaps some of this discussion. Are we going to put in anything in this section about sort of how we arrived at these, and perhaps some of the difficulties that we had, because I also think that would be instructive. I don't think we have to go in terrible detail, but I think it would be a useful thing.

Emily Taylor: I would tend to agree. I think that that would also follow on from the methodology section quite nicely. So if we do a sort of little bit of an introduction in this section about how we arrived at the definitions, and the difficulties that we encountered. Anything else that we need to put in here? Just note that down. Lovely. And then we'll go onto applicable laws. I know that applicable laws has been the subject of quite a lot of feedback in the both verbally and in written comment, so I imagine that that will probably expand out quite a bit.

Now the producers and maintainers again, the same note applies, doesn't it. One of the questions in public comment is how are we using these definitions; and I couldn't immediately think of the answer when I read those. I don't know whether anyone can help with that. I think James?

James Bladel: I'm sorry, I couldn't think of the answer when you were in which?

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Emily Taylor: We might be delving into doing the definitions rather than just noting them down, but we have here the producers and maintainers of WHOIS data, and one of the questions in public comment and orally was how are we using these?

James Bladel: Right. One of the questions was why are we doing this? And I think that if we don't respond to any of the others, we definitely owe that question a response, because it's not specifically described within the AoC, and it's not clear how we got to the point where we are defining producers and maintainers. So I think that we definitely need to address the why question first, before we can dive in further into the how.

Emily Taylor: Can anyone remember why?

Bill Smith: This is Bill. My recollection, which is always suspect, is that we began talking about producers and maintainers because we talked about consumers, and not consumer trust. And as a consequence, we then you know there was discussion as well, then we need, if we're going to talk about consumers, we should talk about the producers and the maintainers with respect to data protection laws, etc., etc.



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It's my hope actually, I mean if I have it right, my recollection and as I said that's entirely suspect; I would actually hope we could drop these definitions along with the definition of a consumer. Because I think it makes our work that much more difficult and I'm not sure it advances things.

Emily Taylor: James responding and then I've got Susan and Lynn.

James Bladel: Well, maybe I should let Susan go first. I think that sounds very familiar, Bill, at how we arrived at this. I think the part that concerns me the most about that particular comment was that we don't have a hook in the AoC to hang this section on.

Susan Kawaguchi: I think also, James you and I and Wilfried sort of talked about this, this started in London. And I think one of the ways this came up was defining proxies and what is a proxy registration, and who is the registrant, you know where is that information coming from?

And there's some definite points we don't agree upon, but and then most of these definitions came from you James; but and I do find them a little confusing, but I understand them at this point. Maybe if we simplified them, and your opinion on that – you know the AoC, we have nothing to hang our hook on for probably for proxy. I may be putting words into your mouth, but I think the SSAC

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definitely and other groups we met with definitely felt like we should talk about proxy registrations within the context of WHOIS.

James Bladel:

I know you've got a queue building here, but no, I think you're absolutely correct. We wanted to draw a distinction between privacy services and proxy services. I think that they're comingled quite a bit in the narrative about WHOIS, and we wanted to draw that to contrast.

But I think that – and to your point about where these came from, absolutely correct. I went back to our privacy counselors in house, they gave me a crash course on this stuff; and now it seems that the folks in the European group are weighing in on our definitions which is what we thought we were aligning these definitions with. I think it's also a little concerning, you know maybe a little less so than the person who says that they're not referenced in the AoC.

So you know we can keep them, we can modify them, we can throw them overboard. At this point, I think that the part that we really wanted to capture was that distinction between privacy and proxy services. But if we're not going down the consumer route, or the consumer – depending on what we do with the consumer trust thing, these may not be – what's the word, they may not be operative definitions any more, or useful to us in that regard. But whatever the group decides is fine.

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Emily Taylor: Okay. I've got Lynn and Sarmad in the queue.

Kathy Kleiman: And Kathy too.

Emily Taylor: Thank you.

Sarmad Hussain: Okay, so I think producers and maintainers are important parts of this whole ecosystem to keep one of the things which are interacting with the other groups I found is it's not very clear who is the owner of the data. And you know we've actually been assuming that the consumer is, but that's not necessarily the understanding of everybody.

And so I think if we have this three-way distinction and we actually somehow through whatever the policy framework is, we can very clearly demarcate these different roles, and actually a certain way if they want to show the data lines, that will be a very useful thing to do in the process as well.

Emily Taylor: Thank you, Lynn?

Lynn Goodendorf: Yeah, I have a thought on how we could take this and kind of move it to the applicable law section. And change it somewhat

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and modify it, because in the major privacy frameworks beginning with the OECD Guidelines, which is the Organization for Economic Development, the terms data subjects, data controllers and data processors are set out.

And I think that you know reading this it has value in trying to draw the relationship between WHOIS data and applicable privacy laws, that we're attempting to kind of – at least explain so for instance, in the world of domain registrants, we have registrants who are data controllers – some are data subjects, and some are data controllers. So I mean just explaining that I think can be enlightening to people on why this policy is difficult.

Emily Taylor:

Okay, thank you Lynn. So just a recap where we are at the moment. I've got in queue, Kathy, Michael, Sarmad. We've got some recognition that this section, if we keep it, demands an explanation of why it's there.

It's felt to be important by some of us because it's part and parcel of unpacking the concept of consumers, we also have a sense of do we need to go there, or is actually the important concept consumer trust. We may well want to be unpacking all of these sorts in the report itself, even if it's an appendix somewhere about explaining how we go there.

So Kathy, please go ahead. And then I have Michael and Sarmad.

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Kathy Kleiman: Can everyone hear me clearly, I can hear you.

Emily Taylor: Yes, very clearly. Thank you.

Kathy Kleiman: If I get too loud let me know too, I can a little bit of an echo there. I agree with Sarmad with Lynn that it's important to keep these definitions, although I agree with Emily, I think there's more we can do to explain and clarify what we're talking about here. I certainly wouldn't throw these overboard.

I think it's particularly important to the contracted parties that we identify who provides the data, who maintains the data and who sets the rules for the data within the ICANN context.

And as Lynn pointed out, that's important for assessments and data protection laws in applicable law context, but it's also just extremely important for understanding the flow of the policy process, because contracted parties, the registries and registrars are not making the rules by which the WHOIS data is collected and maintained. And so that it's a critical part of what we'll be analyzing within the report, so I think it's critical to define it, and I think James was right when he set out these definitions. But since we do have lots of questions coming in, I think we will have to clarify this a lot. Thank you.

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Emily Taylor: Thank you, Kathy; just so that I've understood your point, you're saying it's important to unpack this, because particularly for the contracted parties, it's important to understand who has control over the relevant bits.

I can see a lot of people wanting to come in on that. In my queue, I've Michael, and then Sarmad, and I've got Bill and James wanting to come in to.

Kathy Kleiman: In summary, if I just may add, and who sets the rules for the contracted party.

Emily Taylor: Sorry, thank you.

Sarmad Hussain: I would like to react to Kathy's proposal. So in brief it can be interpreted as we should also think about a regulator, not only produce and maintain but also regulator. Unfortunately, I'm not sure that we do have such regulator now and I would like to reformulate the question whether we have recommend to create such regulator, and it will be our proposal.

But it is just my reaction to what Kathy said. I had an open question about the divisions between producers, maintainers, and the subdivisions among the maintainers. I have only one question, whether it's possible or reasonable to mention that such different

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subdivisions can coincide in one person. So it means that whether a person can be simultaneously a data controller or data processor, but for different purposes actually he or this organization should be treated separately as it is written here. So just the question is whether to mention that they can coincide or it's useless. Thanks.

Sarmad Hussain:

So one source of confusion that we have a huge do levels or two different kind of definition which are mixed together. And the way to clean that up is actually perhaps make a separate section on stakeholders and try to define who are actually the stakeholders of the WHOIS data; and what the roles and responsibilities are around that.

So I think this is leading from some of the comments which were earlier made and that should be a separate section, maybe going somewhere not here, and this section should focus on the definitions, those definitions which are more directly being inherited from the AoC statement. So both are settled definitions are needed, but maybe they need to be separated out in two different sections.

Emily Taylor:

Thank you. Next Bill, then James. Does anybody else want to join the queue?

Bill Smith:

This is Bill. If I understood Sarmad's suggestion correctly, I believe I agree with it, whether it's before or after I – and I think Emily suggested, or said perhaps we might move this to an appendix or something like that.

That would be suggestion is that we move, get this out of the primary definition section, and perhaps put a forward link to it. And later in the document as an appendix, say here are discussions that we had, they were issues around this, and it requires at least for right now, okay, today; I'm not suggesting it would maybe stay this way, but we still have issues around producers, maintainers, data controllers, whatever, you know, regulators, people who use it and they remain unresolved, but they are things we talked about.

Kathy made a comment that you know the registries and registrars don't set the rules. I would question that, given that the registrars and the registries down with ICANN and negotiate the terms of their agreement. And part of the terms of those agreements, at least in the discussions here are what the registries and registrars are required to do with respect to WHOIS policy. So the extent that those contracts may differ from what policy is, they in fact are responsible in some way for setting the rules for what is required.

And I also had a note on ownership. I am not sure – we can have a discussion about that, but I believe we will end up that ownership varies based on where the activity is taking place. As an example, I think we all know in the US the ownership of the data is going to with the company that holds it, not the individual, whereas in Europe it would be the other way around by default.



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And so I don't know that other than discussing it, we could say this is where it – you know who owns it, who maintains, who controls, that is going to vary by jurisdiction. It may be good to point that out that this is a complex issue, but I don't think we're going to come up with a single – a single set of definitions for all of these things.

Emily Taylor: Thank you. James.

James Bladel: Thanks Emily, James speaking. So a couple of quick responses here, first to Kathy, because I think that – well whether or not the rest of the room cares, I want to make sure that my position is clear. I think she may have misunderstood this that my concern about these two parts here being critical to contracted parties, data controllers versus data processors and keeping that distinction is conditional on keeping the definition itself, A and B. If there is a B, then I agree, we need to break it into those two sections for the interested contracted parties.

However, if they are both thrown overboard, then I think that the need to preserve that distinction goes with it, so I just wanted to make sure that was clear. The second part was with respect to what Bill was saying, the WHOIS sections of the contract whether it's registries or registrars are kind of like – I want to say like an artifact of an older era, in that they are not – they are the same for

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the various contracts, they are not usually a hot topic that's up for negotiation or something like that.

And I think that at least when I talked to our legal folks internally, they've established that we are not a data controller, we participate in ICANN, we participate with the contract, we participate in working groups to find WHOIS policy, but that does not put us in the position then to become a data controller. So I just wanted to point that out, that I understand that these things are very rarely black and white, and there's a million shades of gray, but that's how it's come up fairly consistently and at least with our stuff.

Emily Taylor:

I see you want to come in, can I just – Sarmad, can I just refocus us on what we're doing here which is to think about the structure of this final report. And I think it's always difficult to know whether we do the discussion, or whether we just note you know that this is going to be in the final report or not. And what I'm hearing from around the table is that this is something that you know, there are strong views on either side. Some people would like to see it in very much; some people really either don't care or would like to see it go maybe.

What I think I need to hear from us, is what is this doing here, and how is this helping us to explain the issues to people who are reading the report. So Bill, Sarmad.

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Bill Smith: Okay, this is Bill again. So to quickly respond to James, I absolutely understand the position that you are taking, right, and your attorneys, I respect it, and there's a high probability that it is the correct interpretation. I'm just offering a different one, that's all. And I don't want to debate it, I just you know at this point, I just think there are issues.

So Emily, to your question, my suggestion is that we move this to an appendix, and perhaps deal with it later because it's clear we have some disagreement there. There are very important issues here around privacy, and you know personal information, etc., who controls the information, who owns; we may never get to a consensus view and I think that may be okay in this case, because this really isn't called out in the AoC, right?

It is something we talking about and I think it's important that we talked about it in our review. But we could choose to say, while we spent a lot of time on this, we didn't reach consensus and in the end determined it's not necessarily part of our review, but we included it for completeness.

Emily Taylor: I've got Sarmad, Lynn, James and Peter, I think. Can we think about how to get through this, and how to deal with it, Sarmad?

Sarmad Hussain: Okay. So I think even if you're going to move this section in the appendix and some of these details can actually go there, there still

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must be at least an anchor point within the report on the stakeholders of who WHOIS, which can summarize whatever, is being moved to the appendices. And that could probably could into the background section or probably best go into the background section, but if we are actually go – if we're actually going to investigate this a bit, and get some information, it can actually also go into the results section.

But it's actually important to document what different roles are, and what their responsibilities are, and I think following what Bill said it is actually important to bring out how those rules and responsibilities may be change geographically. Because that complicates the situation and that has for example implications on consumer trust, based on where the ownership of the data lies. So that context has to be relative.

Emily Taylor:

So Sarmad is suggesting actually a new section that we really haven't done a comprehensive piece of work on, and I say that because I think we thought a lot about law enforcement, we will be thinking about consumers, so we are getting to some of the stakeholders; but there are others, clearly there are people in business, there are people in the supply chain who are producing and maintaining, which is what this is going to, and I think the reason why you're calling it. So let's have responses to that suggestion as we move through the queue, Lynn, James and then Peter please.

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Lynn Goodendorf: Yes, I agree with the idea of the section on stakeholders, and just another stakeholder that comes to mind is the dispute resolution process that that's a stakeholder. I do think that in the applicable law section, I just anticipate that in – as we flush that out and explain the applicability of privacy laws, we're going to have to talk about consumers as data subjects, we're going to have to talk about registrants, who may also be data subjects, we're going to have to explain the concept of data controllers and processors.

So I don't know that we can use this exact wording, but I don't think its wasted effort, and I think that we can take this and at least use it as input in the applicable law section.

Emily Taylor: James.

James Bladel: Thanks, James speaking. So I had a suggestion or proposal for a way to kind of untangle our way out of this discussion, but I think you know – I think I'll just throw that out and just go with what Sarmad is suggesting, and just lend my support to his ideas about creating a stakeholder section and going from there.

Emily Taylor: Peter?

Peter Nettlefold:

I think I'm inclined to almost in James' position and with Lynn as well. Like I think from the way I understand it, I think I'm slowly coming to an understanding of what this is about. I think my preliminary view is I wasn't really sure how it was helpful, but I think the ideas that are in here are really helpful and they may be helpful in two sections and I think they've both been touched on in terms of stakeholders.

And I think we, in these first overlapping sections that we discussed methodology and so on, one of the things that we were talking about before, was an awareness that the Review Team has of the environment that we're dealing with. So in terms of how there is contracts and policies and so on, so I think there is an element of this which will be useful there in terms of the supply chain and who has requirements on them, and who has obligations and so on.

And then the other one is potentially once we start unpacking issues and so on, and we start talking about privacy laws and so on, and that will potentially flush it out. So we may be able to flag it a little bit in our intro sections that we're aware that there are various obligations on people who are within this ecosystem, and then unpack it a little bit more. But perhaps we could just remove it from this section and use the ideas and concepts in these other two areas. So I think I'm agreeing with everyone else.

Emily Taylor:

Bill?

Bill Smith: I like the idea of stakeholders. I was going to suggest that one way to break down the stakeholders is ICANN registries, registrars, registrants, law enforcement and the public. If we get into the you know WHOIS – whichever one it is, the process that you do stuff by, yes there is a portion of that, there is a stakeholder aspect to that, but it isn't an entity.

And I was suggesting these because ICANN has contractual obligations. The registrars and registries have contractual obligations. The registrants actually do via the registrars and registries. Law enforcement is clearly a stakeholder, they're called out in the AoC, and I believe the public because of ICANN's public benefit nature.

I know that there are issues around the definition of the public, and public benefit within ICANN, but we may be able to rely on that, and just state that the public, the community generally is a stakeholder in this, and they have an ill-defined role, but that's where the consumer trust comes in.

Emily Taylor: I've got Peter and Lynn both wanting to come in on that, and then I have a suggestion.

Peter Nettlefold: Mine is just a suggestion also, and potentially reflects the way that I like to think visually. But is this another chance for a world-

placed diagram in our report? And it seems that it may actually cross-over with the one that we talked about before, where we were talking about showing the, as I understood it, how the various policies and obligations flow legally.

It may be a similar type of thing that we're talking about here in that ICANN has contractual links to these people, and the registrars have relationships with their registrants and so on, and if few can somehow flush this out visually to clarify how it works, it will talk about our stakeholders and why they're – I mean the question of where the public fits into this, in terms of legal obligations, but I think if we can unpack this visually it may be useful for those who follow us and potentially for us as well.

Emily Taylor:

Thank you.

Lynn Goodendorf:

Yes, I feel really strongly that the dispute resolution process is dependent on the accuracy and available of WHOIS data, and so that's how I'm thinking about them being a stakeholder, because hypothetically, if that WHOIS data was not available, then there would not be a way for domain name holders to interact between each other, to you know even have some kind of process other than through you know like civil litigation means, I guess would be the only other alternative.



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So I know that we had reached out to WIPO to give us input, and I just don't want to forget that. And again, I would just emphasize, I think it's very important to include that process as a stakeholder.

Emily Taylor:

Thank you, thank you all for your contributions on this. Sarmad has made a suggestion that we need to do a stakeholder analysis you know for those of us who do management. There are a number of models that exist to help people to think about stakeholders, who are the relevant stakeholders.

One way of looking at it, is to think about what people's power and legitimacy is, how urgently an organization needs to respond to them that can help with just thinking. Another one is just literally thinking about a diagram of you know the organization or the WHOIS, and you know who owns it, who's the supplier, who is the customer, and who are the competitors, these sorts of things.

So what occurs to me is because we haven't actually brought together these – this thinking before, this is an idea for a new section, this might be something that we could use the time before lunch to do a quick and dirty brainstorm of just getting out who the different stakeholders are, what they need, and you know I think it's quite useful, I find it quite useful in stakeholder analysis to think about things, concepts like legitimacy, and also the operational power that different stakeholders have versus their legitimacy.

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Because quite often in stakeholder analysis, you find that say the far customers have a legitimacy because you know they're what it's all there for, but in fact they have very few ways of affecting the organization directly, whereas people placed within the supply chain tend to have higher operational plans.

And I'm seeing blank faces around the table, so maybe I'm just losing people, but my suggestion is that we spend half an hour or so now, just brainstorming, getting down who the different stakeholders, we've got different ideas and just think about different ways of categorizing their needs. Sarmad.

Sarmad Hussain:

Just a suggestion that if it is at all possible, could we still go through the report and then come back to this discussion; is that possible, just to make sure that you know the bigger picture is clearer, if that's okay, you know and if –

James Bladel:

I'm fine with that, I would like to note that I threw a suggestion out for who the stakeholders would be and I would like us at some point and preferable later to discuss that. In terms of Lynn's suggestion on the process, I would offer to add WIPO then as a stakeholder, okay, because they're part of the process. But that process includes the registrants and WIPO with the process that they do and others. So the way I was looking at it, that's somebody that's been left out. So I would put into that classification.

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Emily Taylor: Okay, thank you. I think that Sarmad makes a good point. Let's finish what we're doing, but note this as a piece of work, I think it's suitable to do while we're all sitting around together, rather than agreeing to go off our separate ways and do something on it. It's something that will benefit from group discussion and interaction. So as we think about the rest of the day and the rest of the week unfolding, my proposal is that we find some time for this.

Peter Nettlefold: If we could just 30 seconds before we move on, I'm very comfortable with Sarmad's suggestion of moving through, because I think we had a nice momentum. But Bill did throw out a list and I think we've had one addition. Could we just repeat that and maybe Alice could type it in, and we could all write it down or something so that we can think about it while we're moving through the report, so we don't lose that idea?

Emily Taylor: Just as we did with earlier sections, let's now just spend a few minutes throwing out ideas about who the relevant stakeholders are please.

Bill Smith: Okay, so the list I ran through was ICANN, registries, registrars, registrants, law enforcement, the public and WIPO, that was the – in response to Lynn's suggestion.

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Kathy Kleiman: Am I on the queue?

Emily Taylor: Okay, I've got James –

James Bladel: Public is the one that's missing I believe.

Emily Taylor: James, Susan, Kathy, Olof. Olof, did you want to come in on the point of just a point of fact?

Olof Nordling: Very, very briefly. Instead of saying WIPO, it should read UDRP service providers.

James Bladel: It should be what?

Olof Nordling: UDRP service providers, because WIPO is one, but there are more.

James Bladel: Okay, I agree and I withdraw from the queue; that was my question.

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Emily Taylor: My question is you've got the service providers, but is that short term for intellectual property rights holders or people seeking to enforce intellectual property rights, or is it actually the providers in and of themselves—

Olof Nordling: Sorry, they're providing the service of taking care of UDRP cases, that's what they do.

James Bladel: They're doing the arbitration right?

Emily Taylor: But my point is, I understand that, and I think we do, but they are — they are providing the service. Who are the users of that service and they would tend to be one side registrants, and on another side intellectual property rights holders, right?

Bill Smith: So if it's an individual they'd be covered under public.

Emily Taylor: Could we say UDRP users then, would that capture it? Yes, I think without going into the detail, it's the users of that service that we need to capture as stakeholders, right? Of the various

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complexions as you say it, spans right from individuals to you know large corporations, but you're looking puzzled at me, so –

Susan Kawaguchi:

This is Susan. So just to go to Lynn's point, I'm a little concerned if we're going to use, you know I agree UDRP may fit in here, but there is probably some other services we may need to brainstorm that you know it's like the inaccurate WHOIS report, I mean you can report that to ICANN and how does that fit within that same realm? So we may need to discuss that more.

I also think we should add reseller to that list, and that could, you know, they should fall under the registrars. Do they always? No. In actuality, with Go Daddy they may, but they probably do; but you know I think resellers are definitely a stakeholder here, that they are supposed to comply with the registrars' agreement down the pipeline I guess, but I don't find that in actuality happening.

And then once again the proxy the privacy providers, because those are outside of any ICANN agreement as far as I can tell; so those three terms I think we should define. I also think if we don't define consumer or consumer trust, and I don't know how we're going to do this really, we need to define all of these at once including consumer and consumer trust, because we're going to go down a hole.

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Emily Taylor: I think that what we can probably do is just throw out the ideas as we're doing now, and then start to group stakeholders by various interests if that's the way of organizing it. The queue, Susan, we had, Kathy next, then Bill, Sarmad and James. Anyone else want to join the queue? Kathy, please go ahead.

Kathy Kleiman: In finding the stakeholders, it seems that with law enforcement, we should also have data protection commissioners, or data protection commissions as a stakeholder as well. And given some of the public comment that we received, I think that would reinforce this as well.

Emily Taylor: Thank you.

Kathy Kleiman: Thanks.

Emily Taylor: Bill?

Bill Smith: Sure, and this is Bill. Yeah, I agree that the – I guess I would say regulatory bodies, data protection people, they are indeed a stakeholder. I guess I would, in hearing some of the conversation, my thinking on the short list – a shorter list would be better in my

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opinion, and that in the list, as we define what those stakeholder groups are, we might describe why they are a stakeholder, and that we might then cover some of the other cases.

Otherwise, we could have you know what looks like a glossary of terms for stakeholders and it may not help our discussion or the community's understanding what we're trying to do. It is very complex, no doubt, there are lots and lots of stakeholders; but I hope we can come up with as clean a list as we can with as few overlaps and things like that, and then in definitions kind of explain how specific things may fit in one group or not, that's all.

Emily Taylor:

Thank you. Sarmad and then James.

Sarmad Hussain:

So I'm actually looking at it from two different perspectives. And I think in looking at this list, we are probably mixing the two perspectives. One is the view of the whole situation as entities, and the other is the view of the whole thing as roles and responsibilities. So for example proxy services could be actually given by registrars, so the two different views of the whole thing, and from a WHOIS data context, I think it's also important to have the other view. I'm not sure which one should be first and which one should be second.

Both views could be actually simultaneously given, but this particular entity view would be overlapping in roles, if we can



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identify individual, the kind of roles which are available we can actually perhaps put different entities which perhaps were providing multiple roles or acting in multiple roles. So just a comment on you know maybe we can bifurcate this view into roles and responsibilities separately and entities as separate things.

Emily Taylor:

Yes, and it may be that we actually come back to that section that we were a little bit puzzled by earlier, because it seems that what underlies the definitions of producers, maintainers and so on, was this sort of stakeholder analysis, it's just that we haven't really made it visible yet. James.

James Bladel:

I'm rewinding it a little bit back now to I think its resellers. You know I just want to point out that that term is not really well-defined. It could be anyone; it could be very well be put into public. And I just want to once again reiterate this idea that somehow that registrars or the contracted parties can get out of their contractual obligations by delegating them two-third parties who don't have contracts with ICANN. And if there is a contract and that someone has established a reseller network, then that registrar is responsible for the resellers period.

So there is no separate special category for resellers in my opinion. Thanks. Well, then that is a compliance issue, I think if they are finding shelter or safe harbor, by calling themselves resources, then that means –

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Emily Taylor: Any more for just throwing out identity of stakeholders which is our kind of task at the moment. Lynn?

Lynn Goodendorf: Yeah, since Lutz is not here, I just wanted to say that as we're brainstorming these ideas, I was reminded that in our meeting in London, Lutz recommended that we identify use cases of who uses WHOIS data, and why and for what purpose. And I think actually this may be what he was thinking of, you know it's really – those really are the stakeholders and whether or not you know it's in the contractual compliance or not is – doesn't have a bearing on whether or not people are using the data.

And I guess my other observation is that in the interest of brainstorming, it's been my experience that it's useful just to get all the ideas out and then we can come back and filter them and weed them and fine tune them.

Bill Smith: I think following on certainly to Susan and James' point on resellers, again, so I'm reminded of you know the quote attributed to Einstein, "Make things as simple as possible, but no simpler." Again, if we can get back to that; and then we might tease out as an example resellers and things like that, and note that this is how it is, this is the policy, here is how it is supposed to operate and here is how it operates in practice potentially, all right. And – sorry?

[background conversation]

Bill Smith: Well, exactly, so I believe we do need to get all this stuff out, writing it down is a good thing, but then how we choose to organize it and present is in fact going to be an important thing. And I believe what we're talking about now sort of is the beginnings of the presentation to the community, all right. And all of these things are very important issues. And as Lynn said the gap analysis, I for one think there are lots of gaps.

Emily Taylor: Well, the good news guys is that in fact thank you for bringing up these cases on behalf of Lutz, because when I was looking through the proposed report outline last night thinking about this meeting, I came across that, and thought well goodness, what's that about? But actually that's a nice hook for a stakeholder analysis.

So is the section on producers, maintainers and so on, I think that we're starting to understand where these all fit together. To take your point Bill, I totally agree, the simpler the better. But if I can just throw back a quote at you, that Bernard Shaw says "I'm sorry I'm writing you a long letter. I didn't have time to write you a short letter." And in order to get to the short letter, we need to get all of these ideas out right now, so – can we just all think about are who are the stakeholders, just for another five minutes, and just

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throw everything out, to take your point, Lynn, let's just get them out there, we don't need to do the analysis right now about whether or not they really should be on the list, but just get them out there, and then they are a placeholder for us to revisit, and we can think about how we pull together things like the use cases and those producers, maintainers.

Okay, so does anybody want to add anything to our list? Are we comfortable that we've captured everything?

Lynn Goodendorf: This may not be valid, but possibly regulators of some kind, because I'm thinking in the United States of the Bureau of Consumer Affairs is what came to my mind and other countries, it might be different types of regulatory authorities.

Emily Taylor: Thank you. Anything else? Can we put... I keep saying this and people keep looking at me, so intellectual property rights on this, aren't they a stakeholder, hello? James, you're waving.

James Bladel: Well, as long as we're kind of casting a wide net for the time being, I also saw certificate issuers and certificate authorities use WHOIS to validate the entity or person they're issuing a certificate to so that they can conduct a secure online commerce. And I think that that's a key, especially as we start to talk about changes or when we run into issues, particularly in country code space, but in

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changes within the gTLD space we need to be mindful that we're not disrupting that industry.

Emily Taylor: Peter, you wanted to come in?

Peter Nettlefold: I'm not sure how to summarize this group of stakeholders, but it would be people involved in security and stability of the internet, so the peace fighters, people who operate and maintain networks and so on. One of the original I guess intents of WHOIS was to allow these people to communicate when there were problems.

Emily Taylor: Thank you any more, Lynn?

Lynn Goodendorf: Yes, along those same lines, there is the groups like the anti-phishing task force, and the various anti-spam you know organizations that they're not law enforcement, they're not government, I don't think that they're actually a constituency in ICANN, but they're definitely I think a stakeholder in the use of WHOIS data.

Emily Taylor: And that's a nice thought actually. Can we mentally run through the different stakeholder constituencies in ICANN and think about

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how they may or may not be relevant stakeholders in WHOIS, just an idea. Anybody else coming forward with any ideas? Have we done our bit on this? Can we now leave it? Kim.

Kim von Arx: Just for clarification purposes. What do we mean by public?

Emily Taylor: What do you think that means?

Kim von Arx: Well the way I saw it anyway it just encapsulates basically everything else, but the first few which is ICANN registries, registrars, and the specifically identified organizations. But I thought for example that as SSL certificate issues, anti-phishing groups and so on, they would be part of the definition within the public, but that's just for clarification purposes that we should clarify anyway how we define public.

Emily Taylor: Thank you, I've got Sarmad and then Bill.

Sarmad Hussain: So in the doodles as far as public is concerned, one is people who providing the data and registering domain names and the other people who are actually using that data for communication

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purposes to these domain holders; so at least two different roles which public may actually have.

Emily Taylor: Bill?

Bill Smith: So let's see to answer Kim's question. I threw public out in a sense as the catch-all for everything else, so I might not have chosen to put up some of the things that are up there, I think they would have fallen into \sort of the other category or public; that was number one. The second thing I intended public for was as a hook for a consumer trust definition because the public at large in my opinion that's who we're talking about with consumer trust, so it fits there, ties back in.

To Sarmad's point in terms of the public providing the information, I believe that's covered for registering domain names, I believe that's covered in registrant, that while they may be a member of the public, they're a special circumstance, because they are choosing to register a domain and then have obligations to provide information. So they may in a different role be a member of the public but that was – I didn't mean registrant, but people providing information as a registrant to be covered under the public term.

Emily Taylor: Thank you. Kim.

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Kim von Arx: I just want to caution, I mean if we do start defining things or actually describing things in a more detailed fashion then we should not mix up the general with the specific. In other words, we just mix up the entire definition.

Emily Taylor: Okay. I think we're... I agree with you, Kim. I think that what we're doing at the moment is just throwing out the ideas and not – I think this is Lynn's suggestion to just capture everything that we think of, however good, however bad, and then revisit it at a later point. Sarmad.

Sarmad Hussain: Just a short comment that we can eventually actually structure this into – and to look at this with more detailed subcategories and those kind of things.

Emily Taylor: There's one I think we've missed, which is people who want to buy or sell domain names; are they a user of WHOIS, a stakeholder?

James Bladel: I think they like to be called domain investors.



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Emily Taylor: Domain investors. Well, I mean my–

James Bladel: Among other names that we –

Emily Taylor: My experience in working in a registry is that domain investors are often responsible for most of the WHOIS traffic.

Sarmad Hussain: Well there's lots of domain business.

Bill Smith: Yes, in other areas buyers and sellers would be called market makers.

James Bladel: I think that in the context of policy in some of the working groups we have referred to that as the domain name aftermarket, or the domain name secondary market, if we consider this to be the primary market, then the buyers and sellers would be the aftermarket or the secondary market.

Emily Taylor: So can we pop up secondary market, after market, something like that, players, actors?

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Lynn Goodendorf: I guess this would go along with public, but I know in the definition of consumer, we talked about internet users or global users of the internet. So to me that's not everyone in the public space. It's those who use the internet, or have internet access.

Emily Taylor: Which is about a third of the world at the moment, but it –

Lynn Goodendorf: Yeah, it's huge.

Emily Taylor: Bill.

Bill Smith: Yeah, this is Bill. I guess I would argue too, yes, we can choose to only look at those who use the internet, but if we look at growth rates, we're going to end up with virtually everyone on the planet, in the not too distant future. So we may make a distinction for certain discussions, but in the end, it really is going to be the public at large, very soon. That's my opinion. So making that distinction may be useful for certain things that we may want to discuss, but within just a few years, it's going to be largely irrelevant.

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Emily Taylor: For now, can we put in brackets after the public internet users so that we just got a reminder that we can view that in different ways or not.

Bill Smith: Yes, I'd ask that we'd put, if we're going to have it as internet users, that we also put a comma and say and those who are not. I intended it in the large.

Lynn Goodendorf: Yeah, I don't have a strong feeling about it. I mean I only just offer that –

Bill Smith: Lynn, I think it's a good suggestion. I just, you know what I intended it for was actually everyone on the planet. But I note that there are reasons we want to talk about only those who use the internet, it's actually, it will help us I think at times.

Lynn Goodendorf: Yeah.

Bill Smith: But if we're talking – as an example, if we're talking about public and consumer trust, you have a person who isn't currently using the internet, if they don't trust the internet for some reason, they're

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not going to move to become a user, and we should consider that. All right, if they are so afraid of the internet.

Emily Taylor: Let's just keep on task for a second. This is a valuable discussion and one which no doubt we will revisit again. I think that we've probably done as much as we can usefully do on just throwing out identifying stakeholders. Let's note under that section that we need to do more analysis on the stakeholders' needs and also highlight where those needs might conflict and also on stakeholder power, I think. Bill.

Bill Smith: In security and stability, are we including private actors who use WHOIS to reduce criminal activity? If not, I'd ask that we specifically put that up, since we're becoming more specific.

Emily Taylor: Well, at the moment, we've got a mixture of general and specific and I think that's fine just at the moment, as we're throwing out the ideas. So let's by all means capture that. Kim.

Kim von Arx: Well, I think we should put the DOC down as well, then.

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Emily Taylor: So the two suggestions are private actors engaged in crime reduction – can we say that? Does that capture your thought, Bill? And Kim had the DOC. Anybody else? Any more for any more or should we just close this for now?

Okay, thank you for that. I think that's given us a good start, and let's all think about how we can bring that stakeholder analysis on, we definitely need to do it. One of the thoughts that I have is we could discuss relevant frameworks for looking at stakeholders in our cause over the next few weeks, and then when we meet again in September actually finish that; do the analysis. Does that sound too late? Do you think it's too late or do you think it's okay. It's too late. What's your alternative suggestion?

Olof Nordling: What you propose something, we actually at least take a first shot at it today and then we can follow up on it.

Emily Taylor: All right. So we'll do that. Let's go through the rest of this draft report, and we'll make a note that we'll try and do a bit of stakeholder brainstorming, at least a first shot today. Okay, moving on, here we have... I can't even remember where. Can you just go back up to the top of this section, Alice to the blue title, so okay, right. I think the stakeholder analysis is probably ought to go somewhere else, maybe before the definitions.

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Bill Smith: Yeah, can we just note that though at this point? Just put in a note that may need to go someplace else.

Emily Taylor: Yes, okay. So let's move onto consumer trust. So we have our what is a consumer placeholder text, this is something that went out on public comment. Again, we need to note that we need to update this with the inputs from the public comment. We also to take a point raised earlier, consumer trust is an issue that we're hoping to do some research on. We also need to unpack what we mean by – Sarmad, do you want to come in?

Sarmad Hussain: Yes, just note that consumer should be taken out now, it should go into the stakeholder section and only consumer trust should be here in the definition section.

Bill Smith: This is Bill, I'm supportive of that.

Emily Taylor: Okay, that sounds like – anyone objecting to that? So we just take the definition of consumer out of and pop it into our stakeholder analysis. Consumer trust is the big definition that we've struggled with. Let's just put that as a placeholder for now, because I think we're going to revisit. Let's continue through the report as we go.

So yes, please carry on, Kathy.

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Kathy Kleiman: Sure, before we move consumer out into the stakeholder section, I would think that some of the... I mean part of the process of coming up to a definition of consumer trust, has been exploring what consumers are in the scope of consumer. And that's in part of the public comment process.

So I would think that the definition, as the other definition applicable was – law enforcement will be referencing our methodology and the public comment process, I think in consumer trust, that discussion of the consumer definition scope, how it was arrived at, how it was commented on all will be part of this consumer trust section as well.

Emily Taylor: Thank you, Kathy. So you're saying the section on consumer definitions, we should just note that we need to revisit the public comments on that; is that correct? Have I understood you correctly?

Kathy Kleiman: No, I think consumer trust when we get to it; we'll be unpacking kind of the elements that we saw of it. Just as we're talking about methodology in other sections, how we ultimately arrive on what we agree on as consumer trust, will be part of an evolution of this consumer concept. So I'm not sure we should relegate it all to stakeholders.

Emily Taylor: Oh, okay.

Kathy Kleiman: Does that make sense?

Emily Taylor: Yes, it does, yeah.

Bill Smith: So this is Bill, and I remain supportive of Sarmad's suggestion to move the discussion on consumer up into stakeholder. I believe in this section, we need to focus on a definition of consumer trust, not the individual words, we defined applicable laws as a phrase, we defined law enforcement as a phrase, we didn't go off and attempt to define each word.

And I believe we have, in trying to come up with a definition for consumer trust, we have – we basically have failed to come up with a definition, because we have yet, we can't all agree on the term consumer. So I'm hoping we can up level the discussion on consumer trust and take it back to where we did for applicable laws, law enforcement and treat them all similarly.

Emily Taylor: Thank you, Sarmad?



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Sarmad Hussain:                    So I think some of the things listed here are at different levels, and I just think we need to clean that up, exactly how – because if you’re talking – yeah, so law enforcement is at the same level of consumers or consumer trust; I’m actually a little confused on that. And so whatever we’re putting in this section should all be at the same level and I think that’s something we need to revisit at some point and see.

Emily Taylor:                        So can we just put a note to self in this section about the levels that we’re defining. I think that the – it sort of goes to a point of it, Bill that the point – the terms that we have actually defined and that we should define are the ones included in our scope, that’s where we need to – in the definition section, that’s what we need to explain to the user.

I think that we’ve come to this idea that we all agree with, there is a wider job of stakeholder analysis and who are the legitimate players in this, who do we need to be thinking about, what are their needs, what is WHOIS actually doing for these people, and that’s probably going to be a separate section, but in terms of the flow of this report, we need to explain to people how we’re understanding the terms used in our scope of work.

Can we leave this as it is for now in its current state and go onto what we expect to see in the identification and inventory of existing WHOIS policy. Not forgetting that our gap analysis is going to be later on in the report, we know that. So this I think just

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as the definitions is, it's primarily a descriptive section saying this is what we did, and this is what we found, and then we will come on to analyze it. So can we move onto what's now Section 9 of the report? We're doing well. This is actually – there's three more really, apart from recommendations, but maybe – okay, let's go.

Policy, Peter.

Peter Nettlefold:

Just to get the ball rolling and hopefully consistent with what we've done with the earlier sections, I'm looking back to our issues paper which is you know the document that we have all agreed and finessed most so far.

So it appears to me that there is a paragraph in the background on WHOIS which is relevant where we refer to the WHOIS protocol, and then the clarity of existing policy we reference the consensus policies, and we also talk about the Affirmation of the Commitment and the GAC principles. And there is a consensus procedure on handling WHOIS conflicts with privacy law.

So as a starting point, that seems to point to at least a good range of the policies and we've got some agreed text which we can probably, relatively easily modify to flush those out. So that's my recommendation for a starting point.

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Emily Taylor: Okay, I think that we've already grabbed that background text, haven't we; the background on WHOIS is already in the background.

Peter Nettlefold: On just that one specific paragraph on the WHOIS protocol, I think we could probably replicate.

Emily Taylor: Okay. The main point is the section on clarify of existing policy, we've wordsmithed in quite some detail, so Peter's suggestion is that the place for that is under this heading here of identification and inventory of existing WHOIS policy. Any objections? Okay, let's get that in, then we'll feel good, because we've gotten nearly half a side there, woo-hoo! Right.

Can I ask a question, is this the point, thinking back to Kathy and James' presentation to us in San Francisco, the subject matter of that was how the WHOIS obligations end up reflected in the contracts between registries and registrars. Is that something that we need to deal with here? Bill, thank you. James.

Bill Smith: We could put it here, if we have a section later, it talks about implementation, it could go there. With references back to these things and then without looking forward if there is a gap section or something like that, that's where we were potentially put in gaps

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between the policy and the implementation or you know or discussion about those.

So I think it depends how we want to – where we want to do the discussion, I think it's a valid question to ask. I think it could go either right here, or we could put it elsewhere.

Emily Taylor: Thank you. Peter? Sarmad, James.

Peter Nettlefold: Again, this is not definitive, just sort of thinking through. I quite like Bill's suggestion of looking forward in the report, because from what I've seen so far, if we were to put in a definitive list of clauses and so on here, it's a very big list; and potentially makes our report unreadable. So if we want to do the definitive list, potentially could be in an appendix, and we keep something quite high level here. And then as we go through our use cases, and our gap analysis, we can draw out specific things from the appendix, you know like the particular clauses or relate to accuracy and so on, I expect will come up in a use case in a gap analysis, and be taken forward.

So my suggestion is potentially here we keep this relatively high level, we note in an appendix where there is detail, and then we draw out the particular bits of the detail that we're interested in, our use cases, gap analysis and then forward to our recommendations.

Emily Taylor: Thank you. Sarmad and then James.

Sarmad Hussain: I'd second Peter's suggestion of – to have a summary of – a high level summary just to make the report readable; but also I want to stress that if we do have factual information, it should not be left out, so it should actually be put into an appendix. So we shouldn't be leaving out anything, which is actually available in terms of policy, even from an implementation perspective if that's what it is.

Emily Taylor: Thank you, James?

James Bladel: I'm going to withdraw my original comment and lend my support to Peter and Sarmad. I'd like to add something to that which would be just some sort of a note on how... I don't want to say the word "difficult," but how challenging it was to get all of those provisions in one place and how that was essentially a scavenger hunt, so thanks.

Bill Smith: This is Bill, yeah; we should be doing that in bold face or something, right. I mean this needs – I believe needs to be emphasized.

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Emily Taylor: Could you just help Alice and say it so here what do we want to emphasize here under our description of policy? I think I'm hearing from everyone keep it at this sort of level, but definitely include the provisions in the contracts, possibly either here in policy or in implementation, let's decide that later. I mean we just need it in. What's the high level point that we want to make?

James Bladel: I think the high level is to say that – to emphasize that there is no single centralized authoritative document or place where all WHOIS policy resides, that it stems from numerous documents, numerous contracts, and comes as a variety of different agreements.

Peter Nettlefold: I would just second James and Bill's point and making it bold point, and one thing – one reason for that just to look ahead a little bit, I mean, we've got it in our discussion paper that this is you know a question and a potential concern. And from my point of view looking ahead without wanting to jump too far ahead, this is potentially something we could make a recommendation on. So if we make clear flags through the first part of the report, then I think that's useful to then build towards that.

Emily Taylor: I'm seeing nods around the table. Bill.

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Bill Smith: Yeah, and James, the scavenger hunt, in addition I actually think we had to rely on verbal history in some cases, in order to find the things, right, that there was – there weren't clear bread crumbs even in some cases to find the pieces that we needed to find.

Emily Taylor: The other two documents that were famously passed on through hundreds of years of oral history are the Odyssey and the Iliad and I think it's quite interesting that here we are in the 21<sup>st</sup> Century, still doing the same thing. So just for clarity, Alice, I think that the section on the WHOIS policy has sort of found its way, cut and pasted into the section above, so we just need to move it under that. No, not that one, that section here, I don't know what heading that's under at the moment. Oh, no, it's in the right place, sorry. I withdraw that.

Peter Nettlefold: Before this heading, do we pick up the reference to the RFC from the background or if that's not the right wording, we should at least when we do the identification inventory, we should make sure that we pick up the RFC, because that's obviously important.

Emily Taylor: Yes, that was your earlier suggestion, thanks for the reminder. That is the second paragraph in background on the WHOIS in the

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discussion paper which just references the RFC and it would seem to be a sensible place to just pop it in. Bill.

Bill Smith: Yeah, we also need a reference to Homer.

Emily Taylor: Homer Simpson. Are we done on the existing policy? I think that the contractual provisions, the stuff that really was the guts of James and Kathy's presentation in San Francisco needs to go somewhere, and we have it in our mind that it's either this or the next section, Bill.

Bill Smith: Yeah, I just – I just wanted to say that James and Kathy did yeomen's work there. Its mind boggling how difficult it was to nail some of this stuff down and I think they did a fabulous job.

Emily Taylor: I'm sorry carry on.

Peter Nettlefold: Kathy is asking for the floor.

Emily Taylor: Kathy, please go ahead.



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Kathy Kleiman: Thanks for the kudos, it was difficult. I just wanted to see if we could put that placeholder and I'm having some trouble seeing remotely, but put the placeholder about the contracted party contract in both nine and ten, so that we can remember to decide later where we'd like to put the details. Thank you.

Emily Taylor: Thank you for that. And it must be pretty late where you are at the moment, Kathy. And I remember that you said that you'd joining us until midday our time, and it's now quarter past, so we understand if you have to drop off at any stage.

Kathy Kleiman: I was sort of thinking of leaving around midnight, noon your time, but the discussion was too interesting.

Emily Taylor: Yeah, great. Okay, are we done now on the policy bit? Okay, let's just quickly do implementation. I think we'll have some, have we got some text in the discussion paper that we..." We have, I think that one of the things that I was conscious of reading the discussion paper and then comparing to our outline, is that in the discussion paper we really break out applicable laws, privacy and proxy issues into a separate heading.

And I just wonder what our – now is this, we're going to be doing – revisiting that in the gap analysis or is it something that we need to put in here, I'll just throw that out, and if we don't feel like

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answering it now, fair enough. Should we move on through implementation because we're going to come back to that with some information later, Bill?

Bill Smith:

I think in the discussion paper, the – really the applicable section is the compliance and enforcement activities in terms of if we want to pull language in. There may be some other spots, but I also think that we should note that contracts are part of the – the contracts are actually part of the implementation, at least currently, and the rest of it really is, a lot of it is in ICANN's lap, as best I can tell at this point.

Lynn Goodendorf:

You know in my mind, a big part of implementation is enforcement and that's where the contract – I mean the contracts are a vehicle of enforcement, of enforcing the policy, but –

[background conversation]

Lynn Goodendorf:

Yeah, and also in implementation, I think comes back what we talked about earlier today about awareness or communication of policies, that would be a part of implementation.

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Emily Taylor: Yes, thanks for that reminder. Sarmad?

Sarmad Hussain: So would these be then the three subheadings, the contracting, the compliance and the enforcement?

Emily Taylor: What distinction do you make between enforcement and compliance? Is there something...

Sarmad Hussain: Compliance would be voluntarily right and enforcement wouldn't be.

[background conversation]

Male: Compliance, I think in compliance or in enforcement. So where is the text which can be analyzed?

Sarmad Hussain: So I think what we're probably doing it is stating the state of practice, right. And eventually we will need to document the state of practice, so that you can see what the gap is between what is going on, and what we really want actually ideally things to be. So

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this is sort of the base line – this is documenting the baseline to do the gap analysis.

Emily Taylor: Okay, I've got Peter, and then Bill.

Peter Nettlefold: I've got I guess two comments, my – the reason I put my hand up was to suggest that the difference between compliance and enforcement, ICANN can encourage compliance in a number of ways, so it could be through education, awareness raising, communicating the policies and so on, and that's quite distinct from an enforcement activity. So that's one reason I think the distinction Sarmad made could be very useful.

And then subsequent to that I've also – I'm not sure – one reason that we may struggle for content under this heading, identification and inventory of ICANN's implementation may be, and I haven't thought this through fully, is that we've – the heading before we've inventoried the WHOIS policy, the subsequent headings are use cases and gap analysis.

And I think from use cases and the gap analysis, one of the – some of the examples we will have in there are ICANN's enforcement or questions about ICANN's enforcement going forward and then one of the gaps we may have is with ICANN's enforcement and implementation and awareness raising and communication and so on.

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So it may be that this inventory of ICANN's activities is a little bit too early in that it may come out more through the use cases and gap analysis. I'm not sure though. I'd really like to hear other people's views on that.

Emily Taylor: So we've just got a bit of a queue, so we've got Bill, Lynn, does anybody else have their hand up?

Bill Smith: Okay. This is Bill. So is number nine identification and inventory of the policy itself?

Female: Yes.

Bill Smith: Okay. Could we then make the next section perhaps identification and inventory of existing WHOIS policy or WHOIS implementation?

Emily Taylor: I think it is. It's just got, I think it's my wording, it's quite confusingly written, because it looks like its policy as well. So we could just take off it, WHOIS policies, so it's clear what we're talking about.

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Bill Smith: Okay, that would help me.

Emily Taylor: Because that whole detour we had where I was asking Alice to move stuff under that heading is because I had meant exactly the same.

Bill Smith: Okay. I just think if we really do focus on the implementation, we'll find a relatively small number of items there.

Emily Taylor: Lynn.

Lynn Goodendorf: In this point about enforcement, have we already asked the ICANN staff to provide us with any enforcement actions taken and I just don't remember if we've asked for that?

Emily Taylor: Yes, I think we're sort of jumping into... We've got a presentation from the Implementation Subteam, which will go into that in some detail, but yes we have, and we had some discussion in London if you recall, and we've got a meeting today as well.

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Lynn Goodendorf: Denise behind you looks like she might want to say something. Yes, well what I think would be useful is to know you know has ICANN taken action against anyone for lack of compliance with the WHOIS policy and if so, you know, what were the consequences for failure to comply with policy? And those are the kinds of just, to me, logical questions that come to mind.

James Bladel: If we're counting escrow –

Emily Taylor: I've got Kim and then let's decide what to do because it's half past 12 nearly.

Kim von Aux: Actually my comment was resolved by – by Bill.

Emily Taylor: Should we keep working through the documents until we get to 1:00 or do you want to break now? How are the energy levels going? We're good. Olof. I see some heavy, heavy eyes around the table.

Olof Nordling: And may I just add that lunch is served, which is looks like consensus policy boxes in the back – our lunch – and those are for

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the Review Team members, if I may add. So whenever you feel ready for it, lunch is there.

Peter Nettlefold: I was just going to say the practical consideration maybe is what's in the boxes hot or cold. If it's hot we may want to get into it sooner rather than later.

Olof Nordling: I have no idea.

Emily Taylor: Yes, I was just going to suggest, why don't we have like a 15 minute comfort break and then eat and work? Yeah?

[break]

Emily Taylor: ...we will have all got a sense of bringing some threads together from our previous work, which I think will help us as we go on. Have we finished with implementation compliance enforcement? I think we've probably got as far as we're usefully going to get on that, so I propose to go into use and use cases, use cases and case studies. Does anybody want to take the floor on this issue and think about what we would be covering under it? Peter?



Peter Nettlefold:

Just preliminarily, I guess I had seen this section if I understood correctly, and how we would use it would be a stepping stone between the sort of background sections where we've got the policy and the implementation and so on and a stepping stone to a gap analysis. In my view it would be useful to pick case studies that step through to where we want to end up.

So a number of case studies that didn't lead us anywhere, I'm not sure how useful they would be so I think if we think through where we would want to end up, and then we think of a case study which helps us to move through to there. So one that I was writing down from our discussion earlier this morning where we've got a potential expectation reality issue is that resellers should be looked after by registrars or somehow, but in practice potentially may not be, it may be useful to have a use study there which could lead to a potential gap just thinking through.

We have certainly identified questions around proxy and privacy services, so it may be useful to have a use study or a case study around that issue. It would, I think given our scope, certainly be useful to have one around a law enforcement type example, and whether that links to one of those previous to, I'm not sure.

And the other one that I thought this morning maybe I would to help more here or someone else, this is not an area I've delved into very much but a case study around the use of WHOIS for the dispute resolution providers. That's just some suggestions to get the ball rolling.

Emily Taylor: Thank you, Peter. James.

James Bladel: I'm not going to necessarily... I just wanted to perhaps just take an opposing view just as a thought experiment, whether or not I'm not dead set against what Peter is proposing. I just wanted to think through the contrary case which is that when we start to enumerate case studies or use cases, we have to be comprehensive and we have to get them all. And my concern is that we are bound to leave something out or that something shortly after the publication of our report and recommendations in between that and the next three-year review, some new case study or use case will have arised.

So I guess my concern is that when we get detailed and prescriptive like that, we have to be then exhaustive and if we are not, we leave gaps, we leave loopholes and we really kind of doom the next iteration of this review.

So it's just a thought that if we can keep things abstract, then we can be flexible to deal with those things as they arise, either immediately or in the next review cycle. And I think that might be more informative to the policy-making arms of ICANN. So again, not married to this position, just thinking it through on the other side. Thanks.

Emily Taylor: I've got Sharon who wants to come in and then Peter.

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Sharon Lemon: I tend to support James actually because I think if you, for example, I'll just focus on the law enforcement. There will be a tendency to dive straight into (inaudible) wrong and because of who is not being accurate with the investigation. We will have to go elsewhere.

And that's not a complete picture actually, and I think you're right – there's a danger of not giving an accurate picture. And in our previous bit of work, we were talking about the stakeholders and the legitimate use of WHOIS for all those stakeholders.

I think that paints a picture of what people expect from it. We could have semantics as if people specifically wanted to know examples of when it worked and didn't work. But I think that we will be in danger of leaving stuff out and it wouldn't be a whole picture.

Emily Taylor: Peter and then Bill.

Peter Nettlefold: I'm agreeing with what James and Sharon have said, but it's always the suggestion just to be clear that we don't have a section on case studies, that we go from the sort of background stuff where we lay out the policies and the implementation and then we move to a gap analysis, building in comments that we receive from

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stakeholders and so on, but we don't necessarily dive into a deep dive on a case study just to be clear.

So I would suggest that, yes, we would skip this and instead, in our section where we're identifying stakeholders, we identify the stakeholder and then their stake and then in the feedback and the outreach, let them give us their use cases so it's not something that came from this group, but it was something that this group collected. And that way we're not necessarily on the hook for getting them all. It's just a thought.

Emily Taylor: Bill and then Lynn.

Bill Smith: So at the risk of agreeing, I agree.

Emily Taylor: Well, it is after lunch.

Lynn Goodendorf: I'm satisfied that the stakeholder is going to be useful and that it makes this section actually somewhat redundant so I'm satisfied with the stakeholder section.

Emily Taylor: I think that we all seem to be thinking the same way, which is I haven't really... You made me understand this earlier, the whole

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idea of use cases actually came from an idea of Lutz when we were talking about different stakeholders and I hadn't understood it in that way. And what in fact its part of is what are the stakeholders, how do they use WHOIS, what are they expecting and stuff.

And so I think that... So should we just delete this section and insure that in our bit about stakeholders we have how are they using the WHOIS and what are they expecting?

Bill Smith:

This is Bill. I think that's a good idea and we don't have to be... In doing that, there are examples of how. And we're not saying this is the definitive list and we don't need to be complete. We can show "used in this way," "used in this way." And as James said, we can let people comment, come back and see if we've missed big things.

But I'm concerned that if we have a section like this, we absolutely... There's no way to be complete - same thing that we have on applicable laws really. We can't define everything.

Lynn Goodendorf:

So the one thing that comes to mind that may belong here is just a simple reference to the WHOIS studies that have been done because, hopefully, everybody that is going to be so interested in reading this report, they may not have followed what else ICANN is done. And there is a case study where they evaluated domain registrations and we came up with there is a statistic out there on

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inaccuracy, so maybe a simple link and a reference to that. And there may be other case studies that I'm just not thinking of right now.

Bill Smith: I'm okay if we basically have a list of studies that have been done.

Emily Taylor: Perhaps under the background section or something earlier on.

Bill Smith: Yeah, but I mean in terms of trying to figure out all of the ways that it can be used or can't be used, I very much agree with James and others that we just can't do a good job of it, no matter how hard we try.

Emily Taylor: Okay, so thank you. Did you want to come in, Lynn?

Lynn Goodendorf: There's another point that I don't think we've captured and it's not really use cases, but perhaps it fits under implementation and I don't think we've talked about it. And it's the ease of use or the difficulty of use in looking up WHOIS data. And for those of us who've had to look up WHOIS data, it's not straightforward and I don't think the average person can really look up WHOIS data very easily. So I think it needs to be addressed somehow. I have,

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in my own mind, thought about either a flowchart or a table, but I think we need to capture that somewhere in this report.

Emily Taylor: Perhaps if I can suggest that we put that in the gap analysis because if we go back to what we understand the policy to be, there is the thing about availability and part and parcel of availability is that people actually know where to find the information. So perhaps that's where we could capture that idea.

Lynn Goodendorf: It shouldn't be like a detective. Really, you shouldn't have to be a detective to look it up and to go from one place to another. Some of the registries, you actually have to log in, you have to go through a captcha, only to find that it's a thin WHOIS and then you've got to... It's only going to give you the registrar information. Then you've got to go to that registrar; then you've got to look that up. So it's not easy. And then you run into a proxy or you run into something that is blatantly fictitious.

Emily Taylor: Okay, so if we can just scroll back up, Alice, I think that we're all comfortable taking out the use cases and case studies and just deleting that, and then if you go back up to our little highlighted section on stakeholder analysis, if you just pop... Oh, yeah, we've got that there anyway, use cases. So if you just add onto use cases how different stakeholders use WHOIS and what their expectations

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might be or something like that. So we've just got the placeholder there.

So then I think we're quite comfortable down to the gap analysis. We can do this now, or would it help to have a bit of the presentation on implementation to feed the ideas or do we feel comfortable that we can just do a bit of a brainstorm on this? I think we probably know what the gaps are to a sufficient degree to just throw some ideas out now and that will take some as point... Yeah?

Male: I think that perhaps the first gap is there is no WHOIS policy in a sense, right? It is not defined in a single place and...

Emily Taylor: So, Alice, can you... I think we'll keep that there – the text that we have – and can you just do another subheading, a bit like you did with the stakeholder things and just put gaps and just maybe put the date or something like that so that we know when we did this work. Then just throw out... I think everybody would be in agreement that...

Lynn Goodendorf: If I can suggest phrasing there, I would call it the lack of a formal document or of a formal single document.



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Bill Smith: That's fine.

Lynn Goodendorf: It doesn't mean there's no policy; it just means we're lacking a formal document.

James Bladel: I think we already kind of answered this when we said earlier, we said, "comprehensive centralized and authoritative," and I don't even remember the adjectives, but there was a chain of them that we kind of worked up some language on. We can probably reiterate that here - there is no or a lack of, or there is an absent - something like that.

Bill Smith: I agree with James verbatim, I think just the way he said it would be perfect. It is written down somewhere, but that would be good to say that basically what you were trying to get out. There isn't one place to go...

Emily Taylor: Peter?

Peter Nettlefold: I think I mentioned this at one of our previous meetings, but for those of us who don't follow all of the other little parts of ICANN, of interest the ccNSO has faced a similar issue to us, I guess, in

that they also lack a single definitive source of policy for delegation and re-delegation of ccTLDs and one thing that they have decided, they've formed what they're calling a framework of interpretation working group.

So I think at this stage they're not necessarily looking at changing policy, but they're looking to put together a document that helps people to understand what the policy is and the linkages between it and so on. So they're looking at key words in the policy and if there are any differences between the key words and the key phrases across the different documents where that policy is spread and so on.

So I think that may be something useful for this Review Team to keep in mind that we're not alone in having this problem and a different part of the community is looking at a potential solution to this.

Emily Taylor:

That is part of the oral tradition I think that it doesn't mean there isn't a policy; it just means it's difficult for a newcomer to find it. So, Alice, are you comfortable that we've captured that thought? Lack of centralized, authoritative, comprehensive policy document. Single source. Are there any other policy-type gaps? No regulator.

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Bill Smith: Okay, specifically I suggest there's a gap between what the AOC indicates is policy and what the implementation, the contracts, specify.

Emily Taylor: Should we take those in turn? Michael suggested no regulator as a gap. Does anybody have any thoughts, responses?

Lynn Goodendorf: Michael, could you just explain further what you mean by regulator?

Michael Yakushev: I refer to the segmentation of different stakeholders which we did previously, and if it's found out that we should somehow define or locate an entity which is responsible for the implementation of the policy and the provision of what happens here. So to my mind there is no such reasonable regulator and no such body and the open question is whether we should treat it as a gap, as an issue or we should not.

Emily Taylor: I have James. Peter, do you want to... So, James first.

James Bladel: I was going to address Bill's question so I'll pass.

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Emily Taylor:                    Anyone on the regulator? Peter, Bill.

Peter Nettlefold:                Just have a question. Is ICANN not the regulator? Just to help me out here, in what sense is it not given that it has contracts which it should be enforcing and it's ICANN policies, so to what extent is ICANN not the regulator?

Michael Yakushev:                I would rather call ICANN the environment, not the regulator itself. Who within ICANN can be treated as such regulator? Which entity, which person, which position, who is the...? I do not insist, I'm asking.

Bill Smith:                        I think Michael asks a good question and it's something I see a lot at ICANN actually, but it where I'm coming from on this. ICANN is at least three things in my mind. There is ICANN the community, right? We're all part of the community. There is ICANN the staff and ICANN the corporate entity.

And I think we need to be specific when we're talking about different things. So from my perspective, ICANN the corporate entity may, in fact – I'll just throw it out – may, in fact, be the regulator here. They have the responsibility to insure compliance and to enforce. So that's very much a regulator.

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ICANN the community is supposed to establish the policy that the Board then, the corporation, then says, “yes, that’s really it.” So I tend to agree with Peter that ICANN, the corp, is in fact, the regulator, and that we just need to be cautious when we’re talking about things.

Emily Taylor: Thank you. James?

James Bladel: So I’ve always been very careful not to use the “r” word when referring to ICANN and we sometimes refer to it as that. But I would submit that if we were looking at something that has the force of law, which usually is encompassed in the definition of a regulator, then now we’re looking at the Department of Commerce and the NTIA, which has delegated quite a bit of its authority or responsibilities to ICANN *via* the AOC and the IANA contract.

But that, to me, at least my, granted clumsy, understanding of the word regulator, that’s where the regulation lives because that could, through force of law, for example, change at that point, not through ICANN.

By the way, been trying to explain the three different faces of ICANN to other folks in other contexts, so thank you for getting that clearly on the record. I couldn’t agree more that there’s a lot of confusion, especially when somebody says, “We’re signing a contract with ICANN,” and folks in the community think that

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means us. And the answer is, “Well, no, we can’t sign a contract with the community.”

But anyway, going to the question of no regulator – I think there is a regulator at that level. It’s then delegated to this international, what’s called, I believe, a technical and policy-coordinating body that this animal that we all participate in has all these three functions that Bill enumerated.

Emily Taylor:

It’s an interesting question, though, isn’t it because I think it does highlight a bigger point which is something about empowerment and legitimacy that the focus comes from an environment where self-regulation is a bit of a norm or has been, then there’s no conceptual difficulty with the idea of a corporation being a regulator.

But there is something that’s different about a corporation towards a government type of body or something that is a bit and it goes to legitimacy and power. And one of the things that I think struck me, and I’m speaking here as a sort of participant in the group, about speaking when we had our session with the Compliance Team in London, was the sense of lack of empowerment that they have. “We can’t really do anything about this. We can’t really do anything about that.”

Now I’m not sure whether it’s my ignorance but I don’t know whether you would hear a government style regulator saying that sort of stuff, but maybe that’s just me. Did anybody...? Okay.

Lynn Goodendorf:

I think of this more as accountability because in the corporate world I've been an information security officer and I've been a chief privacy officer, and that's how I thought about those responsibilities. It's in the context of self-regulation that you have a person who is authorized to be accountable and that accountability carries with it the authority to enforce it, to enforce the policy.

So perhaps the gap is that there's no clear accountability in ICANN who's really accountable if this policy is not carried out well. Who does it reflect on? Whose toes are in the fire? I don't think there is anybody.

Bill Smith:

So I'll just keep this free-flowing discussion going. But my understanding was that if one of ICANN's contracted parties breached a contract, the responsibility would be for ICANN to take an action and presumably, again, for a breach of policy and that if ICANN didn't do that, ICANN may be accountable to the Department of Commerce.

So in the first instance, to my mind, whether the regulator is the right word, but the entity responsible for contractual compliance and policy adherence - whatever the right word is there - is ICANN, and I assume this is what ICANN compliance staff do.

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The main question is that I agree that ICANN compliance staff, we've heard, say they don't have power here in some cases and they can't enforce and so on. But my understanding was that's not so much a question of not having the authority, it's that the contractual tools that they have been given are particularly clear or able to be enforced, and coming from a government perspective, that's not that uncommon for governments. Governments try to make laws where they've got a clear head of power from their constitution or what have you.

But when it comes down to taking these things to a court, it's entirely possible that public servants like me have not written the legislation or what have you, you know, the contracts in the best way that proves that they are difficult to enforce. It's not a question that you don't have the power. You just may not have put it together appropriately.

So I'd be potentially interested in hearing back from Compliance staff whether they think they've got a difficulty in enforcing things is because of the tools they have, or an actual concern about their authority to be in this space in the first place. I think I'd understood it to mean the first of those. That's just my thinking there.

Emily Taylor:

Kim?



Kim von Arx:

Actually, I agree with Michael that there is a lack of regulator, however we define that term, and I don't think actually that ICANN would be necessarily, at least the way that it's currently structured, actually appropriately called regulator since it's just completely based on contractual obligations and based on at least what the Compliance Team told us. As Peter pointed out, in London they don't seem to have fully the feel that they don't actually have the tools in place to enforce their policies. And any kind of regulatory body anyway comes with...

I mean, you're only as good as your enforcement tools are and any policy is only as good as far as it is actually enforceable. And so far I don't think that ICANN has shown, and as a matter of fact that they actually don't have, contractually speaking anyway, the tools to do so and they don't have the support from the community, as James clearly pointed out. He doesn't like to use the "r" word and they'd rather be called the coordinators as opposed to a regulator, so there really is no significant support from the community in general for ICANN to actually take on that particular role.

So I think there is really no justification right now to call them a regulator in whatever fashion, however, it will build to find them in whatever those three particular definitions.

Emily Taylor:

Thank you. Bill, and then Susan.

Bill Smith:

Okay. So hearing the discussion, I've got a number of things going through my mind. Emily asked a question, "Would government have the same problem with a regulator and would they know?" In the U.S., I would say generally, at least the regulators I have dealt with, by and large they know what is within their purview and what isn't.

There are questionable areas. I think one's going on right now at the FCC, but the FTC, the FCC and some of the other organizations – they have been given pretty clear guidelines, areas to operate within a legislative authority. And that I think, for me, gets to Lynn's point, the authority.

In a governmental sense, the authority is that there is a law or a set of laws and a regulatory body is directed to do something. So the attempt is to be clear. As Peter indicated, it may not always be clear, but that's the attempt.

A gap I'm seeing is this isn't clear, whether there is an official regulatory body or not. The fact that we can't identify who it might be – again I would throw out actually – this team might, in fact, be the regulator in a sense. We're not sitting by all the time regulating, but our job is to go and look and say, "Here's the law, here's the policy, here's the implementation, are there gaps? Yes, no?" And we make recommendations.

Government regulators have more power than that, but they are performing some of those same tasks. Here's what you're

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supposed to do, here's what you're doing and we're calling you to task. So I think we could be seen as the regulator.

I agree with the comments in the conversations we had with the Compliance staff - they don't think they have the tools, they don't think they have the authority. The other thing that has become pretty clear to me - I sense actually fear when I talk to them. I think they're afraid to talk to us. I think they're afraid to act and that's a concern for me.

If these people are in fact charged with attempting to do enforcement and other things, and I don't know the source of it, alright, but the number of times we have sat down with them and tried to tease out information, and our attempts to have meetings with them, my senses are on high alert around this, and I believe they need to be given clear authority to enforce the contracts and to develop tools and do the things they need to do.

I'm not suggesting they go overboard or whatever, but it's almost like we hear a lot, "Oh, we can't go there; we can't go here," and that's not what you would see out of a normal regulatory body. They would be aggressive frequently if they see issues.

Emily Taylor:

I've got Susan coming in. Can I just ask a question since we're coming out with various elephants in the room here. In other people's experience, how often is a regulator funded by its regulatees?

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[background conversation]

James Bladel: Yeah, I can think of a few and complaints, dispute resolution companies like ombudsmen in the industry. Ombudsmen are often funded by the people that they're investigating complaints on in industry self-regulation the body is often...

Susan Kawaguchi: Okay, so I can't answer that question at all, and in some points I'm agreeing with what's been said. I don't think that ICANN has the tools, but I also do not think that they have the clarity in the policy that they need. And then also I think they've run into situations that were never predicted within that policy.

And I have recently had issues in my own day to day work that required ICANN compliance. These were both issues that surrounded UDRPs and there seemed to be sort of an all or nothing enforcement. It seemed like someone could rationally look at an issue at hand and go through it and go, "Well, this makes no sense at all. Yes, we should transfer this domain name, but it resulted in a notification of breach to the registrar."

And as they sort of laid it out for me, I'm like, "Whoa, whoa, whoa, do we really want to do that? I don't want to take somebody's business away from them. I just want my domain name, which I have won in a UDRP action."

And then the other was surrounding the UDRP again, but it was definitely, there's no clarity, depending on who you talk to, how you read the policy on different parts of the requirements of the UDRP. So just taking that and assuming that they're running into the same issues with WHOIS policy.

So it's back to our first recommendation as let's create, not us create, but let's have one central source authoritative document. So I think when we talk to the Compliance Group today we might get some more input from them on this.

James Bladel:

Yes, thank you. I'm trying to remember a couple of the things... But I did want to just mention something to Bill's comment about the fear or the apprehension or the tension when dealing with Compliance and really just staff in general, present company excluded.

It was much worse in the previous Review Team that I was involved in, so now it's downright warm and friendly by comparison. But I don't know what the source of that is. I would also be curious of that as well. I suspect that there are concerns that any answer given is always the wrong answer to somebody and that since they're beholden to so many masters, they just would rather say nothing. That's my suspicion. Olav's laughing. I'm going to take that as I'm getting real warm.

But going back to this concept of a regulator and where that ability – and we've got more than a handful of lawyers in the room – so

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I'm going to ask for some help with this legal theory concept. If a giant corporation decided it wanted to leave a bunch of toxic waste in my yard for no reason except they just felt like that was a good thing to do and I called the EPA and they said, "We're not going to do anything about it," I could take both of them to court because under the force of law I have rights.

I'm drawing a contrast between, let's say, if I as a registrant am angry about what ICANN and VeriSign have done or what ICANN and GoDaddy have done, I don't necessarily have rights under their contract. In fact, I think it explicitly says I do not have rights in that agreement.

So I think there's an important distinction when you talk about a regulation force of law and consumer trust, consumer advocacy, there's an important distinction there between what it means in practical terms for people who are not a party to those contracts. Is that a correct or even a close interpretation of the...

Emily Taylor:

Well, the themes that are coming out from the various interventions that we made – and we are having quite a free-flowing discussion – but I think it's important. It starts from Michael's comment that there was no regulator which made several other people in the room go, "Oh, yes there is, there is."

But I think that whatever language we use, what we're describing is that in this situation there are things like authority accountability which is I think behind what you just said James, about if

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somebody doesn't... You said it in your original intervention, if somebody doesn't do something that they're supposed to do here, so what? What can anyone do about it?

And I think that that might be the source of some of the frustrations that we see bubbling up from the community. And Kim's point about the regulator having to have the support of the community and the various self-regulatory environments that other people were talking about that the industry itself has decided to place some authority in some third-party hands to a limited extent usually, but to fund it.

So I think that they're all things that we can capture here, the gaps that we're sensing, even if we can't quite develop it at this stage, I think the concepts like authority, accountability, community support for enforcement, might well – can we pop them up there. I think those are coming through in what we're saying. Kim, Peter and Lynn. Sorry, Lynn, you were in the queue first. Let's go to Lynn first and then...

Lynn Goodendorf:

Yeah, just to follow those thoughts on and thinking about a lack of a regulator and the lack of clear accountability, it seems that people who've worked in the domain business for any length of time have a sense of who the bad actors are, that it's not a secret, but for some reason, these bad actors aren't dealt with and the bad actors aren't here on our Review Team and they're not participating in the consensus based model.

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And maybe it comes back to the thing that nobody has that clear role and responsibility to go after them. I don't know, but I just think that this is part of it is that somehow the bad actors aren't dealt with. And there is at least some sense of people in this industry of who they are.

Susan Kawaguchi:

I'm not sure ICANN realizes who those bad actors are. They don't live and breathe the domain registrations. They don't live and breathe how many WHOIS records does a compliance person look up, for example. How much in-depth research do they do?

They will review a specific issue if you bring it to them, but their job is not to – and maybe these are some of the questions we should ask them this afternoon – but I think Stacy stated that pretty clearly in London was we need your help. We need you to bring this to us, to identify them.

And when there is an outcry and there is – there was a registrar from Estonia a few years back when somebody realized he had been to jail for fraud and they did act once they had the information. But I just don't think that they see in the ways that some people in this group have to live and breathe it every day.

Emily Taylor:

Thank you. Kim, then Peter.



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Kim von Arx: I just wanted to quickly respond to James and just confirm that that is correct privy of contract, you are right about that. But at the same time I think ICANN is at least in a different position, I would argue anyway if I ever was to take to court. And I would certainly claim that they have some trust and fiduciary duty relationship and as such, you can actually possibly try to sue them based on contractual obligations, even if you're not party to it.

James Bladel: When we were in Cartagena, the Ninth Circuit in California, which is the circuit that ICANN is in, I think, issued a ruling that was the exact opposite of what you just said, unfortunately. Or fortunately. I don't know. I depends on how you look at it, I guess, but it was just interesting.

Kim von Arx: Actually, I don't want to get into a legal *juris prudence* discussion here.

James Bladel: Good, cause I am not equipped to handle it.

Kim von Arx: They may very well go to appeal or whatever else. But I would argue that ICANN certainly has some fiduciary duty and I can just talk about it obviously from the Canadian perspective and I definitely think that for example, [CIRA] certainly would be

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subject to some kind of fiduciary duty obligations which are certainly much higher standards than just a regular contractual relationship.

Emily Taylor: Thank you. Peter, then Bill.

Peter Nettlefold: I think what I've said has been just discussed here. I was going to follow up James' point and say I think this is something we should be looking at in terms of the regulator question if it's true that ICANN isn't responsible for the behavior of its contracted parties.

I'm really quite intrigued by this and this could be a key question that goes to what Susan said as well. Like, if ICANN staff are waiting to be prompted and given names and so on before they'll do something, that's a particular regulatory mold, not a very active one, I guess.

Which goes to my point of the difference between compliance and enforcement before. There are some things that people can do proactively in terms of education awareness raising, audits, all kinds of things where a regulator can try to put themselves on the front foot.

And then there is reactive stuff where you're waiting to be told of a particular very bad actor and then it's still things we may have a question about whether they can act. And if they are responsible for not acting I guess I'll start from the simple assumption that

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perhaps they were, so I'm getting more and more intrigued as this conversation goes on, particularly this judgment saying that potentially they were not responsible.

Bill Smith:

Sure, so I agree, this is an interesting discussion around the - and I am not a lawyer - whether the liability of ICANN and the other actors, contracted parties, do, in fact, do what they say they're going to do in their contracts. If a third party can't bring a complaint about that under the U.S. judicial system, and therefore there's no way to do it, this is a gap potentially.

Because as a registrant, I rely on those contracts, the promises made within them in order to conduct my business, I make assumptions about how these parties are going to interact. So if it turns out we can't bring actions that way, then we perhaps need a body within this ICANN, the organization, to bring such issues perhaps.

Susan's point - and it's a factual statement that staff said they needed our help and they didn't have that information - and this is my statement. Next statement is not about staff; it's about ICANN, the corporation.

If they need us to tell them who the bad actors are, then ICANN the corporation hasn't been doing its job for 10 years or more. They are the collection point for many of these complaints. They know better than anyone. They have more data than anyone potentially.

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Yes, we could help them, we individually could – PayPal, as an example, eBay – we have lots of information about who we think are bad actors. We may be able to provide it to them; we may not, based on some certain interpretations of privacy law.

Lynn Goodendorf: I know WIPO knows who the bad actors are and you could go to the WIPO website and just look at the statistics and the cases there and you can see patterns.

Bill Smith: Yeah, but to me, this, then is an example of ICANN the corporation, not taking the action that we expect it to. At PayPal, we look at malevolent behavior. We look for criminal activity. We have large numbers of people that do this. And if nothing is being done on the domain name system front to try and go after the bad actors at ICANN, I don't know where it's happening except in private industry and a bit in law enforcement and we can't do it on our own. And ICANN has the... They are the place basically where most of the stuff is coming together. They have the information, or should.

Emily Taylor: Just to help Alice record some of the elements of this discussion, with no regulator can we put a dash. And I think if we put the words “authority accountability, support from the community, information about bad actors,” can we also put – this is your point,

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Peter – sort of strategy. It’s about reactive or proactive enforcement strategy. You know, we don’t know, having a strategy reactive or proactive.

There’s also – it came out in what you were talking about obliquely, but it comes back to our presentation on implementation, is resources; it’s a sense of organizational priority for this and what flows from that is resources – adequate resourcing. And so I think this might well be a gap that we have highlighted. I just wanted to state it.

Bill Smith:

Yeah, and in the resource – I mean the people that we employ to do these, the eCrime people we employ – they’re not contract compliance staff. They’re people who... Lynn described what you have to do in order to get through WHOIS. These are people that are highly technical and can track down this stuff and it’s difficult. And I’m not aware that ICANN has staff like that. Perhaps they do, but I’m not aware of it. And these investigations that we do are time-consuming, but we end up providing to law enforcement basically, “Here’s a case.”

Emily Taylor:

Does anybody else want to join the queue? James, Susan.

Bill Smith:

Just quickly going back to James’ point, and following up on the terminology of bad actor. We just have to be clear that there’s a

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distinction between the different bad actors that ICANN has direct enforceability rights versus others.

For example, PayPal's and the bad actors that you're referring to are quite different from what I think James is probably referring to as far as which would be rogue registrars and resellers as opposed to in your particular instance, you're probably just talking about registrars and domainers and those kinds of what we used to call squatters and those kinds of people.

Susan Kawaguchi:

Maybe I can just clarify that it seems that people who want to engage in malicious activity on the internet know which registrars, if you will, are lax or not going to be diligent in WHOIS data and that they can procure domain names without providing any WHOIS data.

So that's why I say there's patterns and the patterns reflect on registrars. They're not necessarily the people who carry out the malicious activity, but they're enabling it. And it comes back to lack of adherence to the WHOIS policy.

Emily Taylor:

I've got James, then Susan, then Peter.

James Bladel:

Thanks, James speaking. This has been a good discussion and it's funny how Michael gave two words – regulator and now we've

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written a whole new book with some sort of international legal theory and some really amazing stuff going on.

But I have to wonder now, as someone who has really enjoyed this conversation just because it was very interesting, but I have to wonder what the practical implications for what we're doing are. And I think that we could say, "Here's a gap," and make a recommendation, but we should probably know right now it's going nowhere.

As far as the chain of authority of ICANN, from NTIA and the Department of Commerce – those arguments are much bigger than what's going on in this review I think. So I guess my question is what is the immediate and practical impact on WHOIS that we have this lack of clarity, I guess on the role of a regulation or a regulator; what can we do about it and what's the likelihood that... Is it even incumbent upon us to try and fix that or to even note on that? Just putting that on the table.

Emily Taylor:

Thank you, James, and I can see already hands up to think about that. And maybe the point where we fold that in is under our recommendation, so what can we usefully recommend in the context of WHOIS that is actually achievable, measurable and timely and all of that stuff, and relevant and possible.

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James Bladel: Right, and maybe we can make specific recommendations about WHOIS that would require this larger question to be addressed or examined, okay? And we can back the powers that be into that corner. But I don't know that we can take that one on head on.

Emily Taylor: Susan, Peter and then I saw various other hands. Michael, Bill.

Susan Kawaguchi: I just want to comment on your comment, Bill, where you used the example of PayPal, and Facebook has the same resources and we provide a full blown case developed to law enforcement. In the same way I think we can look at ICANN in the same way. Our responsibility is to provide all of that because ICANN is never going to have the resources or be able to have that knowledge base and have the drive to do that.

So I think even though I think there are some recommendations here that we would request that ICANN look at, do periodic reviews of registrars, I'm not sure that that's something they would have the band-width for, but maybe we should recommend... I mean, to me we should make a long recommendation list and then sort of weed them out.

Emily Taylor: I've got Peter, Michael, Bill.



Peter Nettlefold:

I've got two comments I've been accumulating. The first one is to the discussion between Kim and Lynn. I'm not sure I'm right here, but I'd like to add something - the distinction between bad actors between registrants and registrars. One thing I've heard from discussions within the community is that some registrants, potentially bad actor registrants, have large portfolios of names and it's actually cheaper for them to get those names to become accredited as a registrar and buy the names in bulk.

I've heard rumors that people are simply being registrars to get large portfolios of names for themselves, so I think that distinction may be blurry. I'm not sure if that's 100% correct, but that's something else I've certainly heard.

The other comment I was going to make, I think James has covered. I think this is definitely an area we should be looking at if we are tasked at looking at how effective ICANN is in enforcing its policy and the implementation. Then if we've got a problem here in terms of its ability to regulate its ability to enforce, I think we need to go there and I think James has hit on the way that we can do that.

Maybe we can't attack this big problem head-on, but we can craft our recommendations in such a way that it becomes important that it is dealt with to get there. I can't imagine we can shy away from this.

Emily Taylor:

Michael?

Michael Yakushev: I am very pleased that my modest input was so highly appreciated. I repeat again, it was my question so my main issue was to understand whether it is an issue. Of course, it was clear from the discussion that it mostly may be an issue of accountability. For me the question is – I will just put an example.

If we learn that there is some irregularity in terms of compliance as for sudden registrar, there is a clear understanding where within ICANN it should go and who will take which action.

Unfortunately, I'm not sure that such understanding exists as for the violation of WHOIS policy and to my mind, if it's like that, it's better to give a recommendation to create such kind of policy or understanding and it goes to the part 12. But even now sitting in the part 11, we should define this as a gap. I do not insist to say, then the problem is so that there is no regulator as such, but we should indicate that the gap exists and it is like that. That's all. Thank you.

Emily Taylor: I was going to suggest that we just pop “no regulator” into inverted commas, because it's now become a kind of code that we understand. We don't really mean that there's no regulator; it's the issues that follow from it about authority, accountability, support, a sense of partnership in the compliance I think was the point that you were raising. Bill?

Bill Smith:

I too thank Michael for the brevity of his interjection and his initial interjection and the conversation that it spawned. I found that it's been one of our more interesting conversations.

I especially like the putting in quotes the "regulator." I think what we are looking for is essence is the effect of a regulator and I think we're seeing – I certainly am – significant gaps in terms of what a regulatory authority might provide in the current implementation.

And to Susan's point on private action, I absolutely agree that we, the private actors, can do more to help ICANN. I think we may need to look at some contractual things that would enable us to provide more information. But there has to be then people who are accountable and will take action if we provide information.

I know that we have some difficulties, but I'm pretty sure all of the private actors do in sharing information at times. We, PayPal, think this is a pretty significant issue that needs to be addressed internationally and then sort of locally basically where it's okay to share certain pieces of information, not necessarily sensitive, personally identifiable information, but pieces of information that will help track down criminal elements where we're dealing with cybercrime or cyber-security in particular.

Not to breach data privacy laws, but basically there are some gray areas that we certainly see when we go and attempt to do some of this stuff with partners. There's push-back, certainly in the U.S., with some U.S. laws and regulations and we think it would be

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great if that were cleared up, but there is a way to do that through contractual arrangements currently.

Emily Taylor:

Right. I think we've done a good job on gaps on policy. I'd like to move onto gaps on compliance. But first of all, I want to just think about our timekeeping this afternoon. We're going to be finishing at 5. The implementation sub-team have then got a meeting with the Compliance people and obviously anybody who's interested is welcome to join that.

One of our priorities for this meeting, before we go onto our stakeholder meetings, is to understand why we're doing what we're doing. So I want to give a good hour to that before the end of the day. So, 4:00, whatever we're doing, we're going to start on that, alright? Which it's now quarter past 2.

We've got various things that we've said we wanted to do and we're going to have to do some triage here. Okay, we want to get through to the end of this document; we want to do some brainstorming on stakeholders and we also want to hear the presentation, see the presentation from the implementation sub-team.

Can I get a sense of how we're going to fit that into an hour and three-quarters from people? Or do you want some direction from me? James.

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James Bladel: Just a thought here that the brainstorming on stakeholders and the stakeholders section and the merging of the definitions and the use cases into that new section was born this morning on this table. So maybe that one can cook a little bit longer on the mailing list and allow folks to brainstorm a little bit. I don't know that we're going to do it justice if we move right into... Just my thought. That one can go. I guess that one can be deferred.

Emily Taylor: Sharon?

Sharon Lemon: I'd agree with that. Just on the part we've been dealing with law enforcement, it is half-cooked. So whatever we'd present to you would be half the story at best. I'd very much like to see the presentation.

Emily Taylor: Anyone else? Can I suggest that we stick with this until 3:00, okay? Because I think that we've still got some gaps, particularly on implementation to highlight. It may make sense to go to the implementation presentation now and come back to this? I don't care.

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Peter Nettlefold: Just a quick question to those who are on the implementation sub-team and just a quick question to the others on the implementation sub-team. Have we got a presentation? Excellent. Thank you.

James Bladel: You didn't see it, Peter? I'm sure you did.

Peter Nettlefold: I really am very, very happy. I'd be, for what it's worth, quite keen to continue on this just for a little while because I think if we move onto the next gap, if we stick with this just for a little while longer and we identify a few more gaps, I feel like personally when I get home, and I get a chance to do the things that we promised before here, like start drafting some text, I'll know where to go.

Emily Taylor: Okay, can I suggest that we have a 5-minute comfort break, come back, do the rest of this till 3:00, think about finishing this at 3:00 in all of our interventions. We're going to finish our gap analysis and have a first stab at what recommendations, then we'll go to the implementation presentation at 3:00 and at 4:00 we do our What's Happening This Week.

[break]

Emily Taylor:

If we can – Alice, I think we’ve probably made a good start on our GAP analysis thinking about policy, and of course it strayed to implementation. Can we just do another round of gap analysis, thinking about issues that we’ve highlighted in our discussion paper? Things like proxy privacy, applicable laws, compliance enforcement, thinking about issues like data accuracy, does ICANN have sufficient powers to do what it wants to do to effectively enforce its existing commitments, do we know what’s going on elsewhere in the landscape?

For example, in ccTLDs, what are the barriers, cost or otherwise to compliance, these sorts of things; so shall we just start to kick around some more gaps on – and if we need to prompt ourselves, have a look back at our discussion paper and remembering that we’re finishing this by three. Bill, thank you.

Bill Smith:

As I recall, we did say proxy privacy somewhere was – we wanted to put a forward reference or something, so I have very little understanding of those services. But it certainly isn’t clear to me that they’re truly covered in the policy.

Emily Taylor:

So we’ve got a bid for proxy privacy somewhere in our gap analysis? Peter, did you want to come in?

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Peter Nettlefold: I haven't got my hand up, but yeah, I would like to see proxy privacy in there somewhere, and one other question about is it clear how they're dealt with in the existing policy framework, and I guess similar to the potential gap that exists with resellers, are they captured in the contractual/regulatory net? Are they able to be touched? If not, I think that's a gap.

Emily Taylor: And just to highlight the other gap that we highlighted earlier, we feel that there's a gap somewhere about resellers. We think that might be a compliance gap rather than a contractual gap. James?

James Bladel: I'd like to examine – there is an operational gap relative to WHOIS, is that the parties that are required to have a WHOIS system that is both responsive and available, particularly in inter-registrar operations, such as transfers, we noticed that there is a disparity between how registrars will operate.

For example, a mature and large registrar might have very sophisticated WHOIS systems that are available 24/7, while other ones might go down periodically for days or months at a time. So you know, I think operationally this can be an impediment to the free transfer of domain names between registrars, and I think that we should take a look at whether or not the current policy permits



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ICANN to take action in those cases where a registrar whose system is simply not available.

Emily Taylor: Thank you. Lynn?

Lynn Goodendorf: Yeah, I think we need to address the thick and thin WHOIS; because the WHOIS policy doesn't, in my mind, permit a thin WHOIS. So why is thin WHOIS permitted? Why is it allowed?

Bill Smith: Can I just jump in on that one? The thick and thin WHOIS really is a determining of who holds the contact data, not whether it's held. So I think that it's – I don't see any compatibility between what's required of WHOIS versus the model. I think operationally it poses problems for registrars and registries, but I don't see them as being any more or less of a problem than other –

Lynn Goodendorf: Well, maybe this comes back to someone having to look up WHOIS data that if you're the person looking up WHOIS data, and you first go to a thin WHOIS and you go through steps there, and then you get to the registrar and get to the thick – I mean, why shouldn't you just be able to look it up and find the data in one spot?

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Emily Taylor: So maybe the gap we're identifying here, Lynn, is your point earlier, a while earlier, it was about ease of use for the uninitiated in getting the data. Sharon?

Sharon Lemon: I think – I was going to say it is so overly complex, and I think the reason why this hasn't been exposed before is because most members of the public or users, so far, wouldn't know really what WHOIS is, let alone want to exploit it. But as more and more people go on line, as more domains, and everyone's... But people are going to need to do this easily.

I think that this review we're doing is a real opportunity to propose that this needs to be a lot simpler. People would expect something like a directory, a phone directory, not three hours of trying to plow your way through and going around in circles and circles until you give up. So I think we need to expose that.

Emily Taylor: There is an ease of use point. Bill, I apologize, I skipped you in the queue.

Bill Smith: I'll pass for the moment, because I've forgotten what I wanted to say.

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Emily Taylor: I think, Alice, if I could just ask to capture the sense of ease of use, and perhaps I could also suggest that it goes back to the thing we had – James, okay, -- the thing we had about communication, as perhaps as gap, when we were looking at the effectiveness of the implementation of policy. Peter, then James, oh, Bill’s remembered what he was going to say. So should we go Bill, Peter, James?

Bill Smith: Yes, before I forget.

Emily Taylor: Bill, James, Peter.

Bill Smith: It was around SLAs, and it was to James’ point. I think there are gaps there, and any number of them – so SLA is what captured James’ point, and I think there are other things as well.

As an example, when we want to – if we need to do a take down, because we’ve got a phishing site or whatever, we run into problems where we have sites “Oh, I’m sorry, it’s 5:05 p.m. local, Friday, we won’t be back until Tuesday, because we have a national holiday on Monday and we’re closed over the weekend.” Right?

Those types of things, there are – we certainly, we, Paypal, would like to see some SLAs in the agreements that we could rely on.

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Emily Taylor: Okay, so Alice, that's SLAs, and I think if we just put disparity amongst registrars, which was James' point. I think the disparity of service levels between registrars.

Bill Smith: The other thing from our perspective is, on some of these, is the amount of time that is allowed. We understand why, in some cases, there needs to be a longer period of time, but frankly, if we're looking at a phishing site, for some action on it, if it isn't done within a matter of hours, on the outside, it's almost not worth doing. The half-life of a phish site is 24 hours.

Emily Taylor: And that's timeliness of response. So Peter, then Susan.

Peter Nettlefold: I just want to tell you, I think –

Emily Taylor: Oh, I'm sorry. James was next in the queue. I'm losing it. James, Peter, Susan.

James Bladel: See, we need some ice quickly, so we can get that Diet Coke, they're just sitting over there, warm. So very quickly Bill, I think you're right on the money with SLAs, and I was trying not to say

that specifically, but hint at it. But now I think you're getting into just a general abuse handling and responsiveness issue, which is much bigger. So I would like to touch on something else.

We have, I think as a group, not been shy about talking about what to do about registrars who are not giving up the goods to people who need their WHOIS data, but I'm going to turn this around a little bit. There is an escalating and quiet, silent arms race, if not an all-out shooting war between registrars and registries and other folks who are very, very clever and very, very sophisticated at harvesting WHOIS, and mechanically crawling WHOIS zones, and automated systems to gather contact data.

Now we are, I believe, in our existing policies, and probably law, depending on where you hang out your shingle, are obligated by ICANN to show the WHOIS data upon request, but also to protect the WHOIS data. It's a two sided coin, a dual responsibility to provide that service but also to be responsible with that service.

I think that we should take a look at does the existing policy provide sufficient protections for registrars who are engaged in the responsible management and metered and responsible access to their WHOIS data? Are they given sufficient protections under the existing policy? So I think we put that in a bullet point.

Emily Taylor:

I think that's a huge area which we probably haven't given enough air time to, about – I know that there's, I think we're all conscious that there's a study on WHOIS abuse, which goes part of the way

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to it. I think the other side of that is why are people doing this? Are they doing it for illegitimate reasons, or are they doing it because they feel that they need the data in one place, this is Lynn's point, without having to go all over the place, or what is the reason?

James Bladel: The short answer is they're selling it.

Emily Taylor: Okay, right, and in the interest of time, because we've got 15 more minutes on this, I'm re-establishing the queue. Peter, Susan, Bill, I see you want to come in. Anyone else? Go for it, Peter.

Peter Nettlefold: So James may well have just answered the question I have, which is on his point about disparities between different registrars; I was going to come in with a question saying is the issue a contractual issue, that there aren't requirements in the contract to deal with that concern, or is it a compliance issue that no one's potentially dealing with the registrars who aren't doing anything?

I'm not sure if the SLAs answer captures it, but one thing I think we should be aware of here is if, to use James' example as a classic case, if there are large or good actor registrars who are doing the right thing, and then there are small registrars or bad actor registrars who are not, I think as a Review Team we should be very careful to ensure that we are incentivizing good behavior.

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So if I understand James correctly, there are some people doing potentially the right thing, some people not; as a Review Team we should be looking to incentivize the people doing the right thing, as well as necessarily doing enforcement against the other side. I think we should be looking at both sides.

I think that will be an important thing for us, going forward, and crafting our recommendations and getting support of the community, so something to keep in mind.

Emily Taylor:

I noted that, and I think that you're right. When we come on to the recommendations bit, which we're going to do after Susan's intervention –

Susan Kawaguchi:

Well, just back to Lynn's point, that why is there a thick WHOIS and a thin WHOIS, and ease of use; maybe that's something we might want to put in a recommendation. I understand this is going to be very controversial, but why doesn't the registry control it? Why isn't there a central source?

I know a lot of the arguments on that, but you know, that might, if we can come to an agreement on that, that might be a solution to make the WHOIS -- or give one entity an ability to actually make the WHOIS accurate and validate the accuracy. There's a lot of the registrars who would argue against that, I'm sure, but –. And

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then on the other, on James' point, basically I'm assuming you're talking about aggregators, James.

And so yes, people are harvesting WHOIS. On a day to day basis, I use two different company's tools that do that, and could not do the enforcement that I need to do and protect our users in the way that we – we're pretty limited anyway, in protecting our users, because of the invalid WHOIS, without that aggregators.

So, although that may have been the point of the policy at one point, maybe we need to re-evaluate that policy and the policy needs to be updated to today's needs of the market; these entities have created a product that is – I mean, sure there's other aggregations that may not be as helpful, but it's sort of a market response to the need of a product.

Emily Taylor:

Thank you. So how do we capture the last few things? I've noticed that we haven't identified a gap on data accuracy. Are we saying there is no gap on data accuracy? Okay, shall we put that in? Okay. Do you want to go? Please.

Bill Smith:

Okay, so I wanted to agree with James. Basically, if we're looking at abuse, we need to look at it sort of from all parties. So I think that is something we should do. To Susan's point, yeah; because of certain situations that the ecosystem has allowed, there now are these aggregators and other things that are providing useful



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services to some that we would think are, arguably, appropriate and not an abuse, but those same services could be used in a different way that is abusive. On the accuracy, is that a policy issue, or --? I actually think it's both policy and implementation, potentially.

Emily Taylor:

I think what we're doing is kind of ending up just throwing out all the gaps that we can think of, because lots of these are about implementation as well, so let's just not be too fussy at this stage, and get them out onto paper, I think is probably the way to go.

I don't think we've captured this point that we started to discuss, which is about data harvesting, and the fact that on one level the data harvesting breaches WHOIS fair use terms, on the other hand, some of those people who are harvesting the data are providing people with the only tools that they can use to do their job. That is a situation where there's a problem. Sarmad, then James. James, go first.

James Bladel:

I just wanted to respond to that somewhat, because you know, the fact that the service provided by aggregators is useful, I'm sure that the people who are selling male enhancement drugs believe that the service provided by spammers is also useful.

So I would like that not to necessarily be the criteria for something being allowable. For example, in our WHOIS terms of service, it

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very clearly says that what they're doing is wrong, and is a violation of the terms of service that we set forth in our WHOIS system, so it is an abuse from our perspective, plain and simple.

What is done with it, whether it's done to initiate a phishing attack, or whether it's done to help people protect intellectual property marks, it's kind of irrelevant. They're violating our terms of services.

Emily Taylor:

I think that the issue for us, as a Review Team, is what is the alternative? Now, we've kind of already, in our stakeholder analysis, we've already said that people use the WHOIS for – let's call it law enforcement, or enforcement of private rights. If there is no other way of them getting those tools, then that's a gap. It's not – how do we square that circle? Because you're right, they're right.

Lynn Goodendorf:

If you think about it, if the policy was consistently implemented, and the WHOIS data was consistently accurate and publically available, and wasn't so difficult to obtain, companies like Susan's wouldn't have to resort to these aggregators. Okay, so they're resorting to that as a work-around, because the current policy implementation is so bad.

[background conversation]

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James Bladel: No, this is good. I just want to point out there's something that's important and I think a very key distinction here, which is we're not talking about WHOIS information or contact information as a domain registration sits today. Aggregators are doing something different. They're selling history, okay? And that is not within the definition. And that is, I think, extremely valuable information, as a product or as an information service, but it is an abuse of our systems to acquire and compile that archived data system.

Emily Taylor: I'm just going to – because we can spend the rest of the afternoon, very usefully on this, but we're not going to do what we wanted to do. How are we going to capture this so that we can remember and revisit it? We just talk about harvesting WHOIS, aggregators and stuff, and I'm sure that we'll then spark and remember what we talked about. Bill?

Bill Smith: I'd like to understand, I guess take a little more time on this, if we could. What the acceptable use policy is, and why an aggregator is in breach. Are they in breach because they provide a service, or would it be a breach of your acceptable use policy if I went and obtained information and kept the history, on my own? Is that an abuse of the current policy?

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Emily Taylor: I've got Sarmad waiting to come in on this. We're going to finish this section at 3:00, and we haven't got to the recommendations yet, so –

Sarmad Hussain: So I have two concerns about the content; it's about how this content is actually related to both needs of law enforcement and promotion of consumer trust. That's really what we're after.

Emily Taylor: Sorry, just on – I'm sorry to interrupt you, Sarmad, but there's other elements as well, which are how is the policy and implementation effective. So I think that the –

Sarmad Hussain: Right, so what I was going to say was that we need to eventually divide these things up to those particular things somehow, from an implementation point of view, and the second question that was just coming to me was suppose that the policy was realized or implemented to the last lead in, would it legitimately cover the legitimate need of law enforcement, and promote consumer trust? Or is there any gap in policy which actually still is lacking and is there something we need to think about as well?

Emily Taylor: Are you saying – I think that's a fairly good steer for us, at this stage, to remember the lens that we're meant to be looking at this

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stuff through is in part promoting consumer trust and meeting the legitimate needs of law enforcement. So as we're doing our gap analysis, as we're making our recommendations, we should be saying each of these actions should be contributing to one or the other.

Sarmad Hussain: So that's the first part. The second part was if the policy as defined at this time is actually realized as it is defined, does it really meet those two goals?

Emily Taylor: So can we put a marker down now, to say extent to which policy meets needs of law enforcement and promotes consumer trust?

Sarmad Hussain: That's also gap in policies, but it may not be an implementation issue.

Emily Taylor: Yes, which I know we'll get the information through Sharon's study and through our hope to study.

Peter Nettlefold: I just wanted to add a couple of things to the points we've already got there; so for the proxy privacy one, the current question we've got there, is it clear – how is it captured by the current policy

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contractual framework? In terms of the gap, we've got the AoC stating that there's a requirement for unrestricted and public access, so I think if there is going to be a tension between proxy privacy and unrestricted and public access, so if we could reflect that as a potential gap attention. And the other thing, which is in the –

Emily Taylor: Sorry. Alice, did you get that? There's a – up there where the cursor is, we could say interplay with unrestricted public access.

Peter Nettlefold: Yep, that's right. And for the point on the SLA agreements, I think one of the things Bill talked about there was timeliness, and I note that again we've got timely, so if we could actually reflect that at some point, just to be clear about which element should be there. It's not that we think it should be there, the AoC mentions this word.

Emily Taylor: Anybody want to come in with anything else? I think, although we haven't gone through the recommendations, from what I've heard around the table, we are assuming that the gaps we are identifying will lead logically to recommendations to fill those gaps, but just in the last few minutes, is there anything we haven't captured that we think we need to be making recommendations on? James?

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James Bladel: I'm going to struggle with this one just a little bit, but there was a very healthy discussion, I believe in London, relative to what the existing policy may or may not be providing when we start to talk about non-ASCII IDN WHOIS data, and internationalized character sets, and does existing policy fit the bill? I don't – I really lost the handle on that topic, sometime between London and now.

Emily Taylor: Yes, this is something that Sarmad has consistently raised. We haven't adequately explored -- before I come to you, Bill, can I just say that it's something highlighted in the accuracy study, as one of the major reasons for inaccurate data is actually just simply the translation between ASCII and non-ASCII in the contact details, in some cases. Or that's my understanding of it.

James Bladel: And further, that – okay, we have a requirement for port 43 WHOIS, in existing policy. Port 43's not defined, outside of ASCII; so it gets very – it's almost like in order to support some of the non-character sets, we'll have to break the RAA.

Emily Taylor: So can we put non-ASCII character sets as a marker down? I think Bill wants to expand on that. I've got Sarmad and Lynn, too.

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Bill Smith: To James' point, port 43 WHOIS service, I believe is required to be 7 bit clean so it'll be ASCII. And that, going forward certainly, and even now with IDNs, is a huge gap. Okay? So we should mention it. I don't know that we can have a recommendation on it.

There is something I want to note, and that is the fact that ICANN has hosted discussions on the technical evolution of WHOIS, there now is an IATF discussion, I think technically it's a discussion group, where some documents have been – IATF drafts are out for conversation. They're talking about requirements and lots of other things are coming up. I actually have some – we may want to offline talk about this, but some serious concerns about the direction those conversations are going, and the mess it might leave us in, as a community.

Emily Taylor: So to capture the gap on the non-ASCII characters, we could just say evolution of technical standard, and that, I think, will remind us of this conversation. So I have Sarmad and Lynn. Does anybody else want to come in? Okay then, I'll take Lynn as the last come in. So Sarmad, please.

Sarmad Hussain: So I think at the general level we should probably just be talking about non-ASCII characters, talk about technical side of WHOIS and if there are any limitations in the context of again, those two goals that we have to promote consumer trust. And so there may be other issues, technical issues, in addition to non-ASCII, so there



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should be a more generic placeholder, and we can come and look at some other things as needed.

Emily Taylor: Thank you, so perhaps Sarmad, if we put at the beginning of that line, we put technical issues, e.g. non-ASCII character sets, so we know that's just an example of it but it's not the whole story. Lynn?

Lynn Goodendorf: In our previous meetings, just on this list of gaps, we talked about the contracts are not the same, depending on when the contract was put in place, and when it comes up for renewal. So for me, the gap is lack of consistency in all the contracts. You know, there's an explanation for it, but it's still a lack of consistency.

Bill Smith: So a quick recommendation attached to that would be to have policy pulled into a separate document that the contracts, regardless of when they are signed, point to. That's a way to harmonize the policy, even when your contracts are different dates.

Emily Taylor: Sort of object orientated approach to contracting, perhaps. So that brings us to just after 3:00, and that was the point where we all agreed we would move on from this. Can I say thank you very much for engaging with this. I know that the amount of sleep

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around this table can probably be calculated in minutes rather than hours, in the last 24 hours, so thank you very much, and thank you Alice and all for scribing that very well.

I think that this has given us a very healthy start to our draft outline, and it means that in starting to flesh out the sections now, whoever takes that forward, and I think we'll probably split that up amongst the team, will have a good idea of what we, as a group, all think of the issues under each heading, so thank you and well done.

Now, this is the moment where we go to the implementation sub-team to take us through the inventory of WHOIS compliance as it is. I think I sent that you, Alice, didn't I? Members of the implementation sub-team, Peter, perhaps you'd like to take us through the presentation? Or would you like me to do it?

Peter Nettlefold:

You're doing such a good job, Emily.

Emily Taylor:

Fine, if everybody's comfortable, I'm sure that Bill and Michael will jump in at relevant points. I don't know whether this is visible to – it's sort of pale blue and white on pale blue, isn't it pretty? Okay, it's peaceful. It's neutrally branded, recognizing that this is just a sub-team's work, so very similar to the work that James and Kathy did prior to San Francisco, we have gone through the materials available to us.

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I think that a bit like the policy work, what we found was – I’m sure what we’re presenting here is not the full picture, but it’s as good as we have at the moment, if I can put it like that. So what we’re going to try and do is link back to the contracts, which very much sort of passes the baton, and then look at what was on the website and what we know about the Compliance Team’s activity.

I’m sure this will be fleshed out more as we learn more from the Compliance Team, and then just have an idea of what the different stakeholders reported so far, on issues with compliance. So the link between the contracts and the compliance, this is a recap, really, of what was in the registrars accreditation agreement that James took us through last time.

The requirements are for public access to WHOIS data, to secure the registrants consent to the terms of registration, in fact, putting the ball in the registrants court about maintaining and providing accurate data, and actually the domain name can be cancelled for failure on the registrants part to comply with this. The registrar is also obliged, under the contract, to take reasonable steps to investigate inaccuracies, when they’re brought to their attention.

Then looking at the registries, I think Michael’s slide on this isn’t included. I’m sorry, please take us through it.

Michael Yakushev:

So I managed to look through the registry agreements with A Team gTLDs, which are currently having such agreements with ICANN.

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Emily Taylor: This is my poor documents control, because actually Michael sent me this slide, and I failed to put it in.

Michael Yakushev: Excuse me, this will take a minute.

Emily Taylor: So the way that we divided the labor was Michael was volunteered to do going through all of the registry agreements, and you said that there were 18 in place, and to see whether there are standard obligations right across, and highlight any differences between them.

Michael Yakushev: Well, I would say that there are not substantial differences between different agreements; however, I was a little bit surprised, there is no unified terminology. So in different agreements, same thing and same actors, they are called different things, so there is a variation. However, it is clear what is meant, fortunately. Yes.

The information on the WHOIS is concentrated in Section 3.1 over each agreement which says about data escrow, has a mechanism how this data escrow or mirror site policy should be arranged by the registry, and there is also a (inaudible); and also there is a reference to the appendices to the agreements which describe the requirements, what should be inside WHOIS data.

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As for the appendices, there are at least four of them, some agreements just have a very detailed description, yes, and some agreements which seem to be older, there are no such, maybe no such details. But in general there is appendix 4 which says about the report container and the technical requirements to this escrow container. The most detailed information is in Appendix 5, which is called WHOIS Specification and it's exactly how it is implemented and what is mentioned there; there is a reference to the RFC 954.

There is a description of WHOIS service data elements, their full list of WHOIS output fields, the specification of WHOIS provider data including procedures and forms, and their section which is called the WHOIS Data Specification ICANN which also says about the four months that are interchangeable – or exchangeable between the provider and ICANN.

There are also some information in Appendix 7 and Part 6 of Appendix S, which relates with the service requirement performance specifications, et cetera, and it's mostly about the interruptions of the service availability, so it's fairly extensive technical information which has a lot of fields, and just very briefly is like that. So I think that most of the people have already seen this. So I will say that in most of the agreements, the information is the same with a slight differences for the terminology.

Emily Taylor:

Thank you very much, Michael.

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Lynn Goodendorf: Michael, based on what you're researched here, it makes me wonder all over again how thin WHOIS information is permitted for registries. It doesn't – I mean it sounds like in the registry contracts that would not be permitted.

Michael Yakushev: It's not. It's not permitted.

Lynn Goodendorf: Yeah, maybe I'm misunderstanding, but it sounds to me like their contract is requiring a thick WHOIS, and that's not what they've actually implemented, most of them.

Emily Taylor: I think the thin WHOIS is –

James Bladel: Did you say most registries are? Yeah, there's just Comnet and I believe [Jobs]. But that particular contract I think maybe predate ICANN.

Lynn Goodendorf: Okay, but yeah, I guess I'm just saying, I'd like to get a better understanding of the thin WHOIS and who is permitted to have thin WHOIS and why.

Emily Taylor:

Okay, sort of just summarizing the contractor obligations for both registrars and registries, there are two key concepts which are also found in the AoC as well; concept of availability and accuracy of WHOIS data.

So this is our first stab at inventory of compliance activity. I think the way I looked at this was to look at what – if a member of the public wanted to find out what’s being done about WHOIS, they might start at the ICANN website and look for the compliance pages, and look at what the Compliance Teams say they are doing.

So there was something that was very interesting which is an eight-stage operating plan, and I’m not quite sure when this dates from, but it actually brings up a lot of the issues that we were talking about earlier today, about fostering culture of compliance, and I think the point – the difference between compliance as a sort of proactive consensual thing, rather than enforcement, which is more of top down hammer blow is quite interesting here.

So it’s the idea of working partnership with the registries and registrars to do this proactiveness resolving matters informally. I think this is a point that you raised here about and also timeliness, which again came up in our gap analysis.

And moving onto the next principles?

James Bladel:

Oh, we just – I didn’t know what, are we asking questions or...?

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Emily Taylor:                    Yeah, I think so.

James Bladel:                    Okay, can we go back one step?

Emily Taylor:                    Yep. Sorry, I've just realized by looking at the next slide though, I haven't put down all eight principles. I've just highlighted some of them.

James Bladel:                    Your favorite principles not all eight principles, I got it.

Emily Taylor:                    Okay.

James Bladel:                    And after all that, I lost the handle on what I was going to – no, I think this is important, and I think that there is a – I hope, that's maybe I'm not catching it correctly, but we want to make sure there's not a misconception on this group that ICANN compliance versus an enforcement group – it is a culture of where I think that they want to work constructively with contracted parties. Of course, I would prefer they work constructively with me and crack the whip over everybody else, but that's just you know how it goes.



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But I think that you know it boils down to complying with existing policy is expensive and resource intensive. So those folks who are doing the right things, and are being the good actors want to you know preserve that investment, by working constructively with compliance, whereas the folks who are cutting corners, skipping that probably need a healthy dose of enforcement. Thanks.

Emily Taylor:

So I think the general comments on the website is good that there is an operating plan, and there's quite extensive reports of activities, there's published studies on data accuracy, on the privacy and proxy, which you know highlight what's being done. I think there are a number of areas for improvement just to highlight those. There was a space of monthly newsletters I think in 2008, and then they've dwindled to once a year, and then nothing since 2009. Again, there are semi-annual reports which – and it may be that these have been done, and they're just not on the website. The semi-annual reports again kind of dwindle and haven't been updated recently that I could see.

Generally, as a general point and this comes to your point, Lynn about communication and locating information is very, very difficult; very, very, very difficult. And I have a sense that key documents might well exist, but are not there. And I think that this is evidence of a team that's maybe under resourced or over-stretched and can make communication, the simple things like updating the website with what you're doing at the last thing – the

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first thing to go, and actually the last thing you think about when you're firefighting. That's my speculation.

Next slide. Well, what we do have as I said earlier, is we have the report on data accuracy, and a study on proxy and privacy, which I think is relevant to our activities, given our discussion paper. So the findings of this study was that it – that proxy and privacy are used between 15% and 25% of records. That's not a sort of blurry amount. It actually all depends on how you define it. Because whilst there are well-known and very popular privacy or proxy services offered by some of the larger registrars, then there are other records which the study found effectively a proxy or a privacy, they're just sort of not particularly official in that way.

Something that we might want to look at is their definitions and the differentiation that they make between a proxy service, and a privacy service, privacy being I think where they name the registrant accurately but the other details are suppressed, and proxy where somebody else entirely stands in the place of the registrant for all the records. They didn't look at costs or the differentiation of services out there.

Good points are that it was an evidence-based approach, and I think that you know it came back to our conversations earlier about what is going to assist in help – in a proactive enforcement or compliance regime is knowing what's out there, just having the basic evidence is useful. And but it's just a very straight forward simply defined, simple parameters, it doesn't sprawl all over the place, it just does what it says on the tin.

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I managed to find this report by following a link in the Compliance Team's presentation to us in London, but there was no way that I could find it on the website without that link. So I think that's an easy area to improve on. And I think so what, I was left with a feeling of well, and –you know and which I think is a very important question for us to ask ourselves when we're thinking about the effectiveness of compliance is what is better as a result of the compliance intervention, what is better as a result of our implementation.

Next, there's a study last year of WHOIS accuracy, which we discussed in some detail on some of our calls. And these findings are actually taken – we highlighted those in our discussion paper, so that I think they're familiar to us. Again, it's notes that proxy, privacy are used by a substantial number of registrants in some way. I think they actually looked back at the – they're using similar figures too just so I think they've used that study to inform their work.

And then the next slide. So I think that's – when we're looking at what can be done on data accuracy, there were some quite useful pointers I thought in this study. The most common error was tardiness in keeping data updated, because of change of address. Now, that's on one level not criminal, not suspect, it's the sort of easy mistake that everybody makes, but just tackling that or having a program to tackle that could really make an impact and help.

It also noted – Peter was talking about incentivizing good behavior, punishing bad behavior. What are the incentives for

registrants to keep the data accurate? There's a sense that there's no adverse consequences of failure. But actually if we think back and here we go to our gaps, if we think back to the contract, there is a very, very clear obligation on the registrant to keep that data up to date and accurate on pain of losing their domain name. So there's a very clear dis-incentive and adverse consequence of failure, so why are they not perceiving that query, is it being done?

Now a barrier to accuracy which we heard a lot about from the Compliance Team, so this is obviously very – figuring very large is essence of what tools are not available to them was no proof of identity. No requirement for the name of your domain name to be your full legal name, for it to be your registered address, for it to be – they used an example of somebody had put their registrant address as the name of the person who's computer they used to register the domain name. And there's a lot of examples of that.

And also the respondent confusion. Now, it took me a long time to find relevant information looking at the ICANN site, looking at the cross-registrar sites about how to find terms of use, what terms, you know so it's not surprising, I would suggest to us all, that respondents, registrants sometimes find it confusing to know what's required of them, communication.

And this other element that we just picked up in our discussion just now about strict translation problems leading to apparent inaccuracies in WHOIS data.

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So the good points are a nice evidence-based study. Now, I know from our discussions when we talked about this study, that you know it's not been welcomed with open arms by everybody. People have issues with certain categorizations or the way things were done, but it is there, it does provide some quantifiable basis for moving forward. It provides a baseline so that you can say well in 2010, the situation was this, and now using the same in never to be in perfect parameters, the situation is this plus 10% better.

What I was looking for, now we've got this, I think it was done at the end of last year or maybe in the middle of last year, I couldn't find ICANN Compliance Team's response to that, what they're going to do as a result, and maybe this will come through in our discussions later on, where's the plan to demonstrate improvements over time. What follow up measures has been implemented, how are you going to prove that because of your existence the world is better, the world of WHOIS and data accuracy is better as a result of what this study told us. So we've paid for this study, what do we learn, what's our plan. I wasn't sure of that.

James Bladel:

Here's a question. Was this study meant – was the purpose of this study meant to inform compliance or – I'm not sure that it was. I thought that these studies were – I'm genuinely asking, because I don't remember, but I thought these were kicked off by the GNSO to inform policy development. So maybe – maybe in here for areas of improvement instead of what is ICANN's compliance

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response, we should presume that this was aimed at them, and ask who at ICANN you know is receiving this and what are they doing about it?

Emily Taylor:

Well, I think that's a very – a very good question. I mean, I made an assumption because the Compliance Team highlighted this as a relevant study and highlighted on their site as a relevant, that therefore there was some sort of follow up, but good point, maybe not. In which case, I do ask myself, what's it there for?

Peter Nettlefold:

To follow your point, Emily, if it was put on their – their website, and also on their website is their plan, eight-point plan which talks about being proactive and so on, so there's a study that says a quarter of the records are inaccurate, if the Compliance Team is being proactive, arguable I would be with you, Emily, assuming that there would be a plan to improve that situation.

Lynn Goodendorf:

The – I guess the recollection I have or the impression I have is that this study about accuracy was triggered by complaints from both the intellectual property constituency and the business constituency about domain name abuse, and so there were so many complaints, and so much discussion about it, that this study was initiated. Denise is nodding her head. I mean that's my impression of what instigated it.

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Susan Kawaguchi: I wouldn't make an assumption that this was done for the compliance office, and there was intended specific follow up for compliance. But over the years there have been discussion and lots of questions raised about privacy and proxy services and that is why ICANN launched this sort of initial survey assessment that Stacy had referred to in her report. And we can talk more about – and so it was – the intention was to inform the discussion both inside ICANN and I think within the GNSO; does that help?

Female(s): Yes.

James Bladel: Well, yeah, I think that's correct, and Denise wasn't this and the other studies proposed as kind of a way you know in the wake of the collapse of the OPAC idea or proposal, there was a discussion about they just – the whole – the whole mechanism of WHOIS discussion had just hit a wall.

And that there were – I think I remember almost 100 different hypotheses that were presented for studies, WHOIS studies, and there was a group put together that I was on that was trying to cull these and categorize these and prioritize these into something manageable.

So I guess, that's how I remember this coming about, and it was a pretty large group of the community that was really trying in good

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faith to break the log jam on these issues after OPAC died on the table, and tried to get something going and inform the policy folks. So that's why I going – I don't think it was put the ball in the compliance folks –

Emily Taylor:

I was aware that the impetus for creating some of these studies did perhaps not come from the Compliance Team, however, the point I'm trying to raise here is the studies exist, they highlight some areas where the situation can be improved, and so it begs the question of what the response is, not actually meaning that in a kind of getting it any one way, but just like to know. Bill.

Bill Smith:

Yeah, I mean I note that in the current – well current year – fiscal year and the coming fiscal year, we, ICANN and the community will be spending a fair amount of money on WHOIS studies. I know that we've done in the past, and my look at this is saying okay, great, we did studies, now what have we done with them.

And one of the interventions I've made, I think a couple of times at the ICANN meetings is why are we doing more? You know we're – basically and we're spending a lot of money doing studies and what has been the impact of the studies that we have done. What is the result?

And if it isn't – and again this is to Emily's point, this is not point fingers or do anything, but hopefully the result of the study all



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right is that some action is taken from my perspective, and the action shouldn't be let's go do another study, right? It's – we should learn something from the study, either as a community, as you know staff, as a corporation, we decide to do something. Unless, we've determined that the study was you know completely faulty, in which case shame on us for putting an RFP, that didn't get us a result that we wanted.

Emily Taylor: Okay, Olof and then Lynn.

Olof Nordling: Just a highlight that there is an ongoing policy work within the GNSO on registration abuse policies. So it is most certainly one of the background papers for that one.

Lynn Goodendorf: I think that when we consider consumers, that a typical consumer who wants to find out who the owner of a website is, they're not even probably going to use the term domain name, they're going to go a search engine, and they're going to put in those – that phrase like website owner, or URL owner, and even if you put in the term WHOIS, like if you go to search engines, they're not going to know typically who ICANN is, and if you go to search engines and put in those phrases, you just get all kinds of things. And you will get responses that lists all kinds of WHOIS services, all kinds of domain name companies, so again, like looking at the consumer

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trust aspect, I think we need to – we need to recognize that and capture it somehow in our report.

Emily Taylor: I think that comes back to the ease of use theme that we've highlighted as you know – and also communication about the policy.

Lynn Goodendorf: Yes, but it is the implementation.

Emily Taylor: So can we move onto the next slide please, Alice. There – one of the things that the Compliance Team told us about in their report to us in January, it was the WHOIS Access Audit Report, which at that time was ongoing, and is now being published I think.

So this is about access. Do you remember our two key terms, access – sorry, this is availability of WHOIS services rather than accuracy. So they found that there was a 99% compliance rate on via port 43 which is very good. Then there were basically 11 registrars who weren't really doing things right, and going back to the operational plan, ten of those were resolved through dialogue just helping the registrar to comply, sorting it all out, and one registrar who didn't comply was terminated.

So I think that this is a very successful compliance intervention. Limited parameters, limited scope, we know what we're talking

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about, very much evidencing working constructively with registrars and fostering this compliancy culture, and effective intervention, things changed as a result, you know going from this is perhaps on the polishing a shiny bit-type of thing that you're dealing with a very, very high compliance rate to start with, but as a result of the information or sorry, the intervention, things got better.

Communication. Why did I have to search so hard to find this successful piece of compliance, because this is a very good story in my view, in a number of ways. And I think that as with any intervention, it's always a challenge then to sustain the momentum and to make sure that the – the compliance rate doesn't drop off and also how can we measure this over time to track our performance in ways that are meaningful as a snapshot.

Then – and I must say I struggled here with the acronyms, because there's – they're like almost identical, but they mean completely different things. So this is about reporting a problem with data in the WHOIS that we found out about in London. So this is what I managed to find out. There was a drop off in reports received, and I think this came through in the Compliance Team's presentation to us.

But ICANN is actually, has developed a multiple choice feedback form for registrars, so that they can ICANN what happened as a result of the report, okay. I don't know, and I'm – I hope that we can get this information, so what happens to that information, you've got a gold mine of information here, where it looks like a

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very well designed form here, you should be getting all of the information that you need to know about what the registrar did with the data, problem, report.

But I was struggling to find how does data accuracy improve as a result of this entire system. So apart from termination, what other compliance steps have been taken as a result of this system. These are my questions.

So okay, this is the nearly identical but different policy. Registrars have to send a notice every year to every registrant, and so James, how many notices is that for go daddy?

James Bladel: Per registrant, or per registration? Millions.

Emily Taylor: Millions.

James Bladel: Billions.

Emily Taylor: Millions, and you do this for –

James Bladel: Enough to get on a number of black lists.

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[background conversation]

Emily Taylor: Okay. So there's a cost, would you say?

James Bladel: A significant cost.

Emily Taylor: A significant cost both in – you know just doing it, and what – and grief. So the 2009 reports – I think there were six annual reports on this compliance, 93% of registrars participate, and 99% of those of that data set do it right, that's good isn't it? Okay, so that means that 93% of registrars send annual notices to their registrants reminding them of their duties to keep their data up to date and accurate, okay. And most of them do that, right? But unfortunately 83% of those who responded said that they could not track the changes resulting from these notices, so we have no idea, whether or not this is effective in improving data accuracy. No one is measuring that.

Peter Nettlefold: I also have a question. This is obviously a consensus ICANN policy, so there will be a requirement in the RAA for compliance with this; 7% of registrars aren't doing it, like 93% -- 7% aren't doing it. I'm interested to know what happens as a result of them not doing it.

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James Bladel: They may not have active registrations.

Peter Nettlefold: But they're not sending out reminder notices at all? Is that –

James Bladel: If they don't have active registrations.

Peter Nettlefold: Oh, they don't have registrations?

James Bladel: I don't know, I'm speculating that's one possibility –

Peter Nettlefold: Oh, I see.

James Bladel: -- or they could be a single entity registrar that is managing for just you know under a portfolio holder that you mentioned earlier.

Peter Nettlefold: Okay.

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James Bladel: I mean there are possibilities, but I would leave it to compliance to figure out you know –

Peter Nettlefold: It would be an interesting question.

James Bladel: Yes, it would be. Because you know we sure jump through that hoop.

Olof Nordling: I just had a quick question about the percentage. How much, how many of the domain names to those 83 respondents actually represent.

Emily Taylor: Well, you could have 83% of responding registrars said they couldn't track the changes, but if those 83% actually manage 5% of the entire domain, then really it doesn't matter as long as you're getting most people.

Lynn Goodendorf: Yeah, I have the similar question about the 7% that didn't participate, how many you know – what's the count that that represents?

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Bill Smith: I guess I just wanted to make a comment which was, there appears to be a lot of work going on. There is a lot data, there are a lot of statistics, and we don't seem to know much as a result.

Emily Taylor: I think that the – that's what struck me going through this, was that there's a significant investment in this WDRP going on, on many actors' point – on many actors' parts, but at the end of the day, if we cannot tell what happened as a result, that's a problem.

Bill Smith: The other thing, I wanted to compliment Emily on being able to get the acronyms for these two things correct, as best I can tell. I spent the better part of an hour, seriously on the ICANN website, trying to figure out which was which, and what it meant. I actually think that should be a gap, that we list these policies are too confusing, the names of them.

Emily Taylor: I think this is the section where that sort of brings to an end what we managed to find or what I managed to find out about the compliance activities. I'm sure there's more. We have of course the – I went through the Compliance Team's presentation to us in January to make sure that I was picking up the things that they were highlighting. So I hope I haven't missed things. Bill, please.



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Bill Smith: I want to be clear. I was being facetious a bit, but there is an incredible amount of work being done, okay. And then sadly, I don't think we're getting much for it. That's my impression, I don't know if there's data to back that up, but I haven't detected a significant improvement in WHOIS accuracy over time, yet we're doing more and more to supposedly address the problem.

Peter Nettlefold: Yes, look I just wanted to agree with Bill. I mean this presentation has really highlighted that. We don't have to do it now, I think all the placeholders are there in our gap analysis, because we've got sort of brief references to accuracy and so on, but I think we can sharpen some of those up when we revisit. I mean a lot of this, like we – there seems to be a theme here that as Bill has highlighted like there's a lot of – potentially a lot of work going on, there's registrars mailing out millions of emails and you know doing a lot of work. We're not sure what it means and there is still a high level of inaccuracy. So in terms of our gap analysis, I think this will be really, really helpful.

Emily Taylor: I think that's right, and so that's the kind of information or bit about activities that I could pick up, and then we're talked to a number of people. We had a very good session in London with the Compliance Team, and they were very open with us, we've also had informal chats with them and also talked about compliance with a number of the stakeholders that we've spoken to most

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recently the IPC, I thought that was an extremely helpful conversation. So this is just trying to summarize the feedback that we've had so far.

Thank you. The big message I got from the Compliance Team I think was resources, filling open positions, and this is taken from the presentation that they gave us, making the necessary and operational and structural changes that they see as you know a prerequisite of being effective. And also you know how on earth do you effectively manage a thousand relationships with five full-time equivalents and one temp? Now, obviously some of those relationships are going to be more labor intensive than others. There's a long tail in ICANN as there is in any domain name registration, kind of world, but James did you want to –

James Bladel:

I would just point out that not all of those registrar entities or credited registrars are active. And in fact, there may be less than a couple of hundred active registrars.

Bill Smith:

Then why do we maintain them? Why does ICANN maintain if they are inactive?

James Bladel:

They're you know, they're registrars in good standing, they just are not actively registering or managing domain names.

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Bill Smith: But I'm just – but why, if I'm ICANN, a corporation, why do I want to maintain a relationship with people who aren't bringing any business? That's the question I'm asking.

James Bladel: Because they pay their fees, they meet the requirements, they haven't broken any rules, they're just not doing anything.

Emily Taylor: They're like your ideal customer, aren't they? They pay their dues and don't demand any resources.

[background conversation]

Bill Smith: Why would – okay, if I am inactive registrar, why would I – I don't know what the fees are to be – to maintain myself as a registrar, but why would I pay these fees?

Emily Taylor: Maybe we can – maybe we can just chat about that later I think, just in the interest of time. It's a good point.

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Bill Smith: Okay, I'm happy to take it off line. I do want to, in addition to this, all right the last, I think it's the WDRPS, but I'm not sure, it's the one where you can say I found – I think there's a problem with the data, so I want to submit it to ICANN who is then going to forward it onto I believe a registrar. The report – latest report I could find on that was showing data on the order of 3,000 hits a month, okay.

And if the Compliance Team and it's my understanding the Compliance Team is responsible for those as well, in addition to have a thousand registrars, 17 registries, they also have 3,000 or 36,000 roughly per year data problems or data reporting problems, whatever it is coming in. I just don't know how they can you know – how they possibly can do – can maintain a reasonable level of quality on that.

Emily Taylor: So I've got Sarmad and James, or do you want to just come in on that?

James Bladel: My original point in bringing up the thousand, is please don't necessarily fall for the – there's only five of us and we have thousands of registrars to watch. There's only a few hundred that are active number one. And number two, the answer is automation, and we live in a (audio distortion) easily 3,000, almost 4,000 employees manage millions and millions of registrations and customers, and the answer is automation.

Emily Taylor: Yes, I would agree.

Sarmad Hussain: I have a question which is how does ICANN or registrars verify the correctness of this data if its reported as being faulty; and the second thing is just looking ahead, you know there's a disaster looming concerning that there's going to be IDN data coming into this which already highly inaccurate system, and verification process for the IDN data is going to be even more complex?

Emily Taylor: My answer to your question, Sarmad, is I don't know how – and one of the things that I think was – as far as I can see, one of the things that was highlighted by this study on data problem reporting, is that there is no – no sort of follow up that the people are comfortable is accurate, if you see what I mean. So that while the registrars are asked, very, very good questions, like the questions that you would think, yeah, that's exactly what we want to know about what they did, including nothing, the registrars are saying we don't know what happened as a result.

Sarmad Hussain: So I think what I'm leading to is should the WHOIS data verification process be part of a policy?

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Peter Nettlefold: I'm just wondering what is meant by verification there, I know this is a contentious – potentially contentious and difficult issue which is being dealt with in a couple of forums. I'm just wondering what's meant by verification there.

Sarmad Hussain: Let me just explain that a bit more. So what I'm saying is that the contract says between ICANN and the registrar that you are going to maintain accurate data and if the data is not accurate, you can cancel or you should cancel the registration. How does – but it doesn't really specify how to actually gauge the correctness of the data. So is that left to the interpretation of the registrar, or what's the criteria for correctness.

Peter Nettlefold: That's a very good question. James may have some more insights even than maybe – this is an issue that I believe that is under discussion between registrars and law enforcement.

James Bladel: It's a much larger question. I think that – that's weird, I'm very electric apparently. The verification – okay, I'm going to step back for just a bit here.

The RAA doesn't necessarily say that. Okay, what it says is effectively is that the registrant is responsible for making their – the keeping their data accurate. And I think that you know the previous policies that we've gone through here make that very

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clear, that the burden of accuracy is on the registrant. Now, it does say that the registrar must take action when something is brought to their attention, and that they have reason to believe that the information is incomplete, inaccurate, et cetera. And that's why we have the problem reporting system.

Now, how do we do that? That's an excellent question and there is fuzzy logic involved. We do have some automated systems that will check. I don't want to go too deeply now into our internal processes, but we have some automated systems that run some checks, and then we have systems that will flag human review as well. But there are certainly some areas of this planet, where Bob's house is a legitimate address, you know, small islands for example will say, you know or very small communities or rural areas. So you know you have to use some judgment.

We try to give the benefit of the doubt to an individual who looks like they are making an attempt to give contactable or serviceable address or contact information, you know we try to err on the side of caution. I know that there are some who want to say you know, especially and I should mention domain investors, who will use this system to try to shake the trees, and see if they can get someone to cough up a valuable name by not responding. They want to see ST period as an inaccurate representation for a street.

Okay, so I mean and everything in between. This is a very – this is not a – this a very challenging subject. And I think that we are very cautious to not take away the names for someone that we believe is trying to use the WHOIS system in good faith.

Emily Taylor:

Just as we've got five more minutes left, and I think there's still several slides. Should we just whip through the rest of the slides and then take some questions, because we've got the rest of our meetings this week to cover as well.

So ICANN told us of the challenges that they're facing are about closing the loop to create effective action and I think that that's some of the stuff that we've been highlighting to each other you know, there's a problem, then there's having a system to deal with it. And then there's actually making some sort of impact or being able to know that you've made some impact, if things got better, and be able to say you know that was because of us.

I got very clearly from the Compliance Team that they see the silver bullet as being data authentication on the way in, and that they felt that the community didn't understand their role, scope of registrar's obligations and communications adequately which brings us down to communication once again.

So it sort of – you can't really manage expectations until they're communicated and they're realistic and people really understand what can and can't be done by ICANN and by the other people in the supply chain.

Okay, the IPC gave us a lot of feedback. But the one thing that I took, and more than one person said, if you read the contracts in isolation, they ought to work, but in practice it doesn't happen. And so that really highlights the gap that I think that we've been



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hovering around saying well the policy kind of more or less there, or if you live with the policy, it should be delivering a different reality to what we have.

There seems to be an understanding from the IPC that there's a genuine need or a legitimate need for proxy and privacy services in some cases, and that with good players there's a process for getting the data out, which kind of works, you want it to be there right away, but if you can get, well, that's fine. But that there are some registrars, the people – we've talked about bad actors meaning not that they're evil, but that they are people who are not in compliance on a particular point, that they never respond and there seems to be a sense, as a result unfairly that nobody is enforcing the contracts, because clearly there are people enforcing the contracts.

And we can see from other areas that they do enforce in some areas, but it's kind of the damage that's done to reputation, because of you know big problems that are perceived not to be dealt with. And the frustration to perceive lack of resources which may or may not be accurate, but we can certainly say that the frustration is there.

They also seem to be supportive of progressive remedies, encouraging good practices, thinking about incentives, the compliance end of the spectrum rather than the enforcement end of the spectrum, and recognizing that sometimes it's not evil, it's just inexperience or you know not being – you know, not having your

business quite sorted out, that's the primary reason for noncompliance.

And next slide. So registries and registrars, we're going to meet with this week. That's primarily sort of a working meeting for the implementation sub-team, but those who are interested would be very welcome to join. We've developed some questions, which we've circulated to the whole Review Team. And obviously we'll be feeding back to you on Wednesday and beyond.

And then I think that might be it. Yes. There we go. Whistle stop. Any questions that we haven't already picked up? Comments? What's next? Thank you. So I think that just gives us a starting point. I'm obviously looking forward to following up with the Compliance Team and making sure that we have actually captured what they're doing fairly. That's based on their presentation to us, what we could find on the website, and other stuff, but obviously we'll be going to back to the meeting with them today, as well after this meeting.

So are we tired? Do we have – now, I'm nervous about saying a five minute break, because then we all wander in half an hour later. So should we just push through until quarter to five or so, or are people desperate for a break?

Male:

Well, what's next on the agenda?

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Emily Taylor: Next on the agenda is thinking about this week, and our schedule of meetings with stakeholders, and perhaps we can just do it by taking each one in turn, trying to remember what they told us last time, if we met then, what we want out of them, and relevant points from our discussion paper that we should be taking them to.

Raring to go? Come on.

Female: Bearing in mind we agreed for our purposes to evaluate the effects of the current policy, and this morning we look at clear, it's going to be clear, enforced and communicated, and then we've identified quite an extensive list of stakeholders. Have all of our questionnaires and our engagement covered that whole list of stakeholders or if there are any that haven't been in the list, do we need to – an action plan around that.

Emily Taylor: Well, just to – what we've done is within the ICANN world, you've got pretty much all of the stakeholders roughly represented here, that doesn't mean that by talking to them, you've talked to everybody; but we've made efforts to reach out to all of the ICANN communities and both here and in San Francisco we got around to quite a few of them.

The other aspect of this goes to the consumer study that we want to do. So the two big gaps are law enforcement, which isn't – you know it doesn't big spoke unit within ICANN to – and that's why

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we're doing what we're doing through you and through the GAC with Peter. And also consumer – some consumer research, because we've recognized that there's a large number of stakeholders who may well rely on this information but might not be aware or certainly don't participate in ICANN, and so that's the reasoning behind that.

Okay, so does anybody need a quick, crash course in what these communities do? Sharon, okay, and actually we've got representatives from some of these communities here, so if I stumble then please help me out.

On Tuesday, we have got no less than five meetings. The first is with the Security and Stability Advisory Committee, SSAC. Sarmad you're their representative here, aren't you? So they're more looking at stability and security. They were talking to us very much at the protocol level and just making a distinction between the WHOIS service, which is I think what we're often talking about, and the protocols that underlie it.

But Sarmad, can you – can you also talk about what we would like from this time, and what you think they told us last time.

Sarmad Hussain:

Yes, so just to summarize what they were talking about last time was that there was just one concrete feedback on that in our report and in our proceedings we should consistently use correct terminology, and not just correct but unambiguous terminology.

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And we need to differentiate between WHOIS data, WHOIS service, and WHOIS protocol, yes, thank you.

And not refer to these things as generically as WHOIS, we should be careful and be very specific whenever we use WHOIS to specify which particular aspect of WHOIS we're referring to. So I think that was probably the only single comment last time around with interaction.

Emily Taylor: I'm thinking about the paper that we've just published. What particular aspects do you think the SSAC will be – you know what would we want their input on and what do you think they'll want to give us input on? If the answer is nothing then that can be the answer.

Sarmad Hussain: Can I request to come back to you on that? Yes.

Emily Taylor: The next constituency is the Non-Commercial Users constituency. Now my recollection is that this is part of the GNSO, help. The NCUC is part of the GNSO, is it?

Female: Yes.

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Emily Taylor: It is. Anyone from the Non-Commercial Users constituency?

Michael Yakushev: We'll all wear funny hats, and we'll be happy. No, I mean it's just as the name says, it represents the non-commercial group within ICANN, and I think they're probably going to have input on everything, but our main issues might be stakeholders and the definition of consumer trust.

Emily Taylor: Business Constituency, Susan. It's the Commercial Stakeholder Group too.

Susan Kawaguchi: Sorry Lynn, I just jumped in. So that would be the IPC and the BC, the difference there, there's not a whole lot of difference, in my opinion, the business constituency is more business oriented, the intellectual property constituency is pretty much intellectual property attorneys, but it's the same issues that they are concerned with. And also it should include ISPC and actually don't have much exposure to that group. Do you Lynn, at all?

[background conversation]

Sharon Lemon [?]: That's distinct from registrars, is it?

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Lynn Goodendorf: Oh, yeah.

Susan Kawaguchi: Hosting companies.

Lynn Goodendorf: Large internet service providers, hosting companies, a rather small constituency in terms of who is actually involved in that.

Emily Taylor: So Lynn, is – sorry, Susan, if you’re thinking about what feedback they would be giving us, now remember we had the call with the IPC recently, what particular aspects of the issues paper do you think that people in that group will be wanting to give us feedback on and what would we be looking for from them?

Susan Kawaguchi: I think – I think it will be similar information or you know concerns as the IPC call, and though in the BC, there is definitely a contingent that is not necessarily so intellectually – intellectual property focused and definitely do not want to see that taken too far, let’s put it that way.

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Emily Taylor: So do you think that they'll be looking at our compliance questions more or our policy questions more, do you think or just every – you think they'll want to talk about everything.

Susan Kawaguchi: Probably everything, I would imagine.

Lynn Goodendorf: Although I'm not their representative, I'm a member of that constituency and one of the points that they may bring up, because I've heard discussion on it, is that while we generally think of proxy services for individuals, in the Business Community, proxy services are used you know when they're planning to introduce a new product or in mergers and acquisitions, and you have like a name, a new company name or something that you're not ready to announce publicly.

So typically proxy services are not used to keep something confidential indefinitely, but you know for a period of time. So I would expect them to possibly make that point, and similar to intellectual property, you know domain abuse is a big concern and there are some members of the Business constituency particularly Verizon, AT&T, and Susan you may know some of the other companies, but I know they've had just extensive work with domain abuse.

So how that might prompt them to respond to our discussion paper, I mean there could be a variety of things. There I think the – the



dispute process is something they're all very familiar with. So everybody in that constituency understands how that works.

On the Non-commercial, if I could jump back for a minute, is that different from this new group that's being formed, the non-profit, I think it's called NPOC, you know forgive me, but what's the difference?

Emily Taylor: I think Denise knows.

Denise Michel: So the GNSO restructured a year or so ago, and organized into a couple broad stakeholder groups and intended to be umbrella groups for more specific focused constituencies. So the commercial stakeholder group includes the ISPs, intellectual property interests and the business interests. There is also a non-commercial stakeholder group intended to be an umbrella group for more focused constituencies like a non-commercial organizational constituency. There is a proposal for a consumer organization constituency, and a proposal for a nonprofit organization constituency. So does that make sense? We've got – and you're meeting with one of the constituencies within the umbrella group.

Lynn Goodendorf: So I think the Red Cross is in the new one?

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Lynn Goodendorf: Is it Barbara Hughes.

Emily Taylor: It's Deborah Hughes.

Lynn Goodendorf: Deborah Hughes with the Red Cross, okay.

Denise Michel: So I believe you're meeting with one constituency within the stakeholder group.

Emily Taylor: The next one is registries, that's Kathy's constituency. I would expect – I mean I'm not – I don't know, James, would you want to speculate to what they might want to talk about with us?

James Bladel: No. I think registries and registrars are – you know they collectively are the contracted parties house, and they are as you might imagine, they're commercial entities that are sensitive to changes in their contracts, but want to make sure that the playing field, the competitive playing field is fairly – is fair and policed properly and equitably. So I think that that's probably a generic enough statement for both sides of the contract party house.

Emily Taylor: Bill?

Bill Smith: Yeah, I was, when I first saw the calendar invites, I was somewhat confused, because we are meeting it appears separately with the registries group and then jointly with the registries and the registrars group. And I'm trying to understand why we're doing both. Why –

Emily Taylor: I think I can help with that. We met with the registrars group in San Francisco and we were actually going to meet with the registries then as an entire Review Team to talk about the whole study. The registries and registrars mixed group is a small group intended for the implementation sub-team, but obviously you know come along if you'd like to. So that's more of a – that's part of the implementation sub-teams research into that very specific question of compliance.

So the one on Tuesday is much more at the high level looking at the entire issues paper, and the one on Wednesday will be a bit more kind of a working workshop type of session. I hope that we'll get a bit more into the detail on compliance itself.

ALAC, does anybody want to take the At-Large Committee is it Advisory Committee, okay, At-Large anyone.

Carlton Samuels:

As it happens, my name is Carlton Samuels and I'm on the At-Large. I'm from the At-Large and on ALAC. The ALAC, as you probably know is the conduit for the At-Large community to the ICANN Board.

Essentially, it's an advisory committee. It's there – it's role is to provide advice to the Board and it's really set as a kind of a consolidator or a funnel for the At-Large voice, that is the individual internet user, and that's what we intend to define our constituency as individual internet users.

You might know with respect to the WHOIS, and we had a policy meeting this morning, and the first several strands of WHOIS is of interest to the At-Large, they are some of our members who are very much concerned about the WHOIS and as it bumps up against the privacy issue.

There are members who are concerned about WHOIS with respect to security and of course the security of transactions on the internet, and how that might impact individual users. And there are others who are then again interested in seeing the WHOIS measures ICANN's performance with respect to its – the way it handles WHOIS matters in terms of registry/registrar agreements, and it's interaction with registry constituency.

The At-Large does have a standing working group for WHOIS, and we are trying to reach out at that working group as we speak, and because some of us believe that the Charter as it now exists is

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way too narrow in terms of the diverse interests of the members of the At-Large in the matter of WHOIS.

You may have seen our – ALAC’s response to the WHOIS Review Team, and it gives you some framework for what our interest is in this group, and just to reiterate we think it’s important to have this review. We also think it’s important to address the question of whether or not the WHOIS as it was originally constructed is still relevant to need and if it is relevant, in what areas; if it’s not relevant, to which areas is it weak and what would the Review Team recommend.

And of course you are very keen to see the issues that are embraced in \*At-Large become a part of your – well, it becomes a part of your working environment, which is to say the most important ones, this issue of the transaction security on the internet, and the issue of privacy as that impacts individual internet users. Thank you.

Emily Taylor:

Thank you very much Carlton for that head’s up and the description of what the ALAC does and its interest in WHOIS being privacy, security of transactions; and also the measures that ICANN is taking with respect to the performance of WHOIS. I think for those of us who are also interested in establishing consumer trust, that might be an areas to explore with the ALAC because here you are with individual internet users which is going to be an opportunity to take that perspective.

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We then have the GAC on Wednesday. Peter, do you want to say anything about what the GAC's expectations are, what they're like to be interested in talking to us about, etc.?

Peter Nettlefold:

I can't speak definitively, but I expect that the GAC will be interested to talk about ICANN's compliance activities. Certainly the GAC has had an interest in the New gTLD Program with making some strong comments about ICANN's compliance activities being appropriately staffed, having adequate resources and so on. So I expect that that interest will extend to this.

There was obviously a GAC submission on applicable laws ensuring that we cast our net wide enough to cover all applicable laws. Governments are obviously interested in all their laws as they go to the trouble to make them. I think it will be... I'm not sure what else will come up to be perfectly honest.

Emily Taylor:

It might be that the GAC WHOIS principles will also come up.

Peter Nettlefold:

The GAC WHOIS principles could come up. I mean I think we asked questions about them last... Yes, that's right, I believe so. Some GAC members may want to redraw the Review Team's attention back to the principles. I note that Kathy, one of the comments Kathy had – I'm not sure if it was just to me or to the whole Review Team – but the Review Team may want to ask the

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GAC if there are a number of potential tensions in the GAC WHOIS principles which are alluded to but go no further. The Review Team could usefully, potentially ask the GAC if it has any insights into how those tensions may play out in national legal frameworks. I mean the one thing which we keep talking about in the Review Team is there is a potential conflict between WHOIS requirements and privacy law; GAC members may wish to weigh in there. Yeah.

Emily Taylor: So that's a description of the different groups we're meeting this time and some indication of their likely areas of interest. Do you have anything from the SSAC? No, okay.

Sarmad Hussain: I'm actually going to consult with them and then get back to you.

Emily Taylor: I think that one thing I'd like to ask us is, first of all I don't think I'll run through it but we've prepared a slide deck that basically has the questions, that's it – just who we are and the questions, so I don't think we need to labor through those. You wanted to come back?

Bill Smith: Yeah, the last group that we have is interaction with the community. I think that one may actually, depending on how

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many people show up and what questions are or whatever, we may want to just be prepared. In essence, from a PR perspective what are the messages we as a Team want to give and how do we stay on message?

Emily Taylor:

And also I think out of courtesy we've got a summary of the public comments from last time. I think out of courtesy we should all individually remind ourselves of who submitted comments and what they said so that when those people take the floor we're aware of it. I think that that's probably a good thing to do.

But this kind of takes us on to what we're going to be discussing. Okay, imagine now we're at our internal debriefing, it's Wednesday afternoon/evening – how are we doing to capture what those individual groups said to us in a way that's useful and what are we going to do next? These are the two things that I want us to talk about. Sarmad?

Sarmad Hussain:

So may I suggest that the relevant liaisons in this committee take notes and submit a summary to this group from each of the meetings?

Emily Taylor:

How does that sound? I think that sounds like a very sensible thing. We're missing a few because we don't have anyone from registries here and we don't have anyone from ALAC here or the



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NCUC, but I think if we can say Peter, Susan, James? Could you do the registries and registrars for us? You can do SSAC for us, and Susan... Okay, Sarmad's suggestion is that the liaisons from the different teams write up notes and prepare notes of the session, obviously in consultation with the groups themselves to share with us so that there's a record. Yes, or before, no – after obviously.

But I think this is something that we failed to do last time really. I think that it would be...

Sarmad Hussain:

Could I take it one step further and suggest that once those notes are discussed and if there is any response from WHOIS, those are again communicated back to those constituencies through the liaisons as well?

Emily Taylor:

And I think that we should recognize in doing that that that's a piece of work, that's something that we have to give time for in our calls, is to actually think about our response and make that response. So that's one follow-up. The people from the constituencies are going to take notes and communicate them. What are we going to do about the gaps where we don't have anybody from the constituency? Any volunteers to take notes?

[background conversation]

Emily Taylor:                   What we did last time was in fact, in reality a lot of people went to a lot of them, but Kathy and I undertook to go to all of them. Obviously I don't have Kathy here so I would-

[End of Transcript]