ICANN
Transcription
GNSO Next-Gen RDS PDP Working Group
Wednesday, 22 February at 06:00 UTC

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Attendance is on wiki agenda page: https://community.icann.org/x/BZ-RAw

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page http://gnso.icann.org/en/group-activities/calendar

Coordinator: The recordings have started, Nathalie, you may now begin.

Nathalie Peregrine: Thank you very much, (Jamie). Good morning, good afternoon and good evening everybody, and welcome to the Next Gen RDS PDP Working Group call on Wednesday 22 February, 2017.

In the interest of time there will be no roll call today and we will be taking attendance from the Adobe Connect room only. Therefore if you are connected via the telephone and not able to join the Adobe Connect room, could you please let yourselves be known now?

Lawrence Olawale-Roberts: Lawrence Olawale-Roberts.

Nathalie Peregrine: Thank you very much, Lawrence, this will be noted. Anyone else on the telephone line only?

Chuck Gomes: I'm sorry, who was that that's on audio only?

Lawrence Olawale-Roberts: Lawrence…

((Crosstalk))

Nathalie Peregrine: …Chuck. Is anyone else besides Lawrence, on the phone line only? Thank you very much. I'd like to remind you all to please remember to state your names before speaking so they appear correctly on the transcription. Thank you ever so much and over to you, Chuck.

Chuck Gomes: Thank you, and welcome to all of you. Does anyone have an update to your statement of interest? Okay, not hearing or seeing anyone, let's move right on it for agenda. Welcome to all of you for joining us on this call at our alternate time, appreciate that very much. And glad we can accommodate those that have a quite undesirable time every week just about so thanks for bearing with us on that.

So a pretty good group for our alternate time. We've got 20 people in Adobe right now plus one not in Adobe, Lawrence, so let's get going. First thing we want to do is finalize the small group to develop questions to discuss with data commissioners in Copenhagen.

Now I'm happy to say that Susan has - Susan Kawaguchi has agreed to go ahead and coordinate this group, facilitate it in the next few days. And just for the sake of everyone, Susan, would you be willing to describe for the group – I know you're going to send a message out to the group, which is great because some of them aren't on the call right now, but would you describe what the purpose of the group is so that everyone that is aware and in particular those who may not have been on the call last week?

Susan Kawaguchi: Sure, Chuck. And I wasn't on the call last week but, between you and Lisa and Marika, you all filled me in a little bit. So it's a small group of people that had volunteered to create questions for the data commissioners' cross community panel in Copenhagen. And we are just - we are looking for 10-15

questions to explore and clarify understanding the data protection laws in Europe that relate to the issues that we are discussing in the working group.

And I went ahead and sent that email out a little bit earlier this evening, so I think there's seven, one, two, three, four, yes, seven volunteers. And if there's others that want to volunteer let us know. And hopefully we will finish our work this Saturday and provide the leadership team with a draft list of questions on Sunday. It's a little bit of a short timeframe but I think it's doable.

Chuck Gomes: Thanks, Susan. And this is Chuck again. In the working group call next week then, the working group as a whole will review the questions, which will be sent out in advance, that's why we want to cut off on Saturday and so that on Monday then the questions, the draft questions can be proposed. And then the working group will be able to discuss those and add to them or modify them or consolidate them, whatever works best.

And it doesn't mean we have to close it off at that point if we discover as a working group a really good question after that, we can of course add it. But we want to get this done in advance. In fact, we will actually have another week after that that probably we can refine it if we need to.

Stephanie, I see that you have a question or comment.

Stephanie Perrin: Yes, Stephanie Perrin for the record. I'm just a little curious about what we are going to do with these questions. I think it's unlikely that the data commissioners are going to be willing to give what amounts to a legal opinion on matters related to the RDS or at least anything beyond what they've already sent in their various communications to ICANN in the past. And we do have that list.

So are we going to give them the questions and say hey, we'd like answers to these or what's the plan?

Chuck Gomes: I would like to give them to them in advance so absolutely. Now, I don't think we can expect them to give official legal opinions without giving them enough time to go back to their legal counsel and do that. But I certainly would hope that they can at least share their opinions even if it's not official legal opinions. They can always follow up with official legal statements afterwards. But hopefully, because of their expertise, they can give us a pretty good idea to increase our understanding and so that would be the objective.

Now, what are we going to do with the questions besides giving to them in advance and hopefully having opportunity to ask them face to face? Now, I don't have any control over what the cross community session on Monday is going to be, and that's a 90-minute session. I'm hoping that we will be able to give the questions to Becky Burr in advance. And my understanding is that Becky will be facilitating or moderating the panel. And I think there are six or seven people on the panel including three data commissioners from Europe.

So we will certainly – I would love that the questions are asked in that community session, that would be great. I can guarantee that because I don't have any control over that, but we will give them. Now, we have a follow-up session on Wednesday, a working group session on Wednesday. Now keep in mind, we have a working group session on Saturday, which will probably have more of a normal agenda like we do on these calls, that's what I mean by normal continuing our deliberation on the key concepts.

On Wednesday, I mean, on Monday then there will be the cross community session where hopefully some of these questions will get asked. And on Wednesday the plan would be to ask any questions we didn't - were unable to get into the panel discussion on Monday as a working group. So Monday would be a session, for the working group, with the data commissioners who are able to stay over until Wednesday.

So far I think I've only heard of one that can do that but we will take advantage of that one. And I think there's the possibility that we won't have

another expert from Europe, I think if I remember right it's from Interpol, that works in the data protection person with Interpol, so if that person is able to come and be there we will certainly take advantage of that as well and hopefully be able to ask any questions that didn't get asked on Monday or get clarification on those. I hope that answers your question, Stephanie.

So the next thing I want to share are the people who volunteered, and we have a pretty good mix of volunteers, Tjabbe Bos is with the GAC and the Public Safety Working Group; Victoria Scheckler from the IPC; Nathalie Coupet as an individual; Brian Scarpelli from the IPC; Stephanie Perrin from the NCUC; Stefania Mila from the NCUC; and then Theo Geurts from the Registrar Stakeholder Group. So we have both houses, including the two stakeholder groups noncommercial house represented. So that's a pretty good balance.

Now, if there is someone else that wants to join, please let us know right now, okay. I asked for volunteers last week and had a pretty good response later in the week. So there's been just about a week for people to volunteer. But we can add one or two more if somebody really wants to do that. But I would rather not have anyone else from the IPC or the NCUC since we have two each of there. And it's not that those two groups aren't really important, so that we can keep the group small, because it is a very short timeframe, and manageable any other – others from the IPC or the NCUC if you could provide your input to one of those four individuals, that would be much appreciated.

And of course anybody in the working group that wants to suggest a question, and you're not part of one of these groups that have people on there, feel free to send that, and feel free to send it to Susan, okay, or one of the others if you know them well, whatever works for you, just so - but do it early enough in the next few days so that the group can consider them and consolidate them, etcetera. Any questions on that group?

So Chuck continuing here, and Susan, as she said, has already sent out an email to those people. Is there anyone else that wants to volunteer for that please let us know right now. Okay, thank you very much for that.

The – so let's go to the next agenda item which is kind of a continuation of where we left off last week, deliberation on the privacy charter question. Now if you – and hopefully staff is bringing that up in Adobe right now. Question 4.1 that we deliberated on last week, and we will get to the specific questions there. It's okay to bring up the full results that were up there.

Okay, so let's look at Question 4.1 real quick here. And you can see that we didn't really talk about the second question in 4.1 and so we're going to do that a little bit today depending on how much people want to discuss it. But last week we focused on the first question for thin data only, "Do existing gTLD RDS policies sufficiently address compliance with applicable data protection, privacy and free speech laws about purpose? If not," – the second question then, we didn't really talk about last week, "if not, what requirements might those laws place on RDS policies regarding purposes associated with thin data?"

So we're going to - after we look at the poll results, because the poll really focused on the first question, and a couple conclusions that we came to in a meeting last week, so we will focus on that second question after we look at the poll results and see if there is some discussion on that.

Now you can see that the poll results are up there. We have a small turnout, and there's probably several reasons for that. Number one, there was a three-day holiday weekend in the US; there were other events going on in Iceland with the Non Contracted Party House and the other things as well. So hopefully we'll get stronger poll participation in the future.

But, I was not too concerned about the small results in this case because we had a really strong turnout in the working group last week. And there were no

objections to the conclusions on the call itself. Now it's possible that one or two of the no votes we got were from people that were on the call and that's okay.

But I think we had a pretty good sampling from the meeting last week in the poll that we did end of last week to come conclusions that we can record at least on an interim basis. You can see, and we are not going to go through the individuals that participated, you can see them there if you scroll down to the second slide, you'll see the results for the first question.

So the – and it was strong results with a yes answer agreeing with the conclusions. And the conclusion was, "Do you agree or disagree with the statement as a working group we need to agree upon a purpose statement for the RDS?" okay. And this is in follow up to the previous two weeks where we had Peter and Stephanie share their views of the European data protection requirements, not that it's restricted to Europe but certainly they've been pretty well expressed there and that's why we're following up in Copenhagen with regard to those to make sure we have a good understanding there.

So the results were pretty strong in terms of that first conclusion, that we need to agree on a statement of purpose, which you'll recall several weeks ago we started working on. Didn't totally finish it but we started on that.

And so there were 13 yes votes and 1 no vote, but I think in this one, let me go back and look, I think in this one, yes, there was one person that ended up being recorded in the poll twice so there were really only 13 total responses with 12 yes and one no.

Now if you look there at the comments, we are not going to talk about three of the comments because they're kind of just reinforcing the conclusion that we were polling. But I do want to look at the third one.

It says - it's the person who voted no, and if – the – notice the comment, because this working group cannot possibly anticipate every possible use case for registration data and defining it ends up being exclusionary. For example, if not contained within the purpose we define it, it is explicitly not a legitimate purpose.

Well, let me share my personal thoughts and then I will let others jump in as well. I agree that it's not possible to define every use case. That's one of the problems of having a very explicit list is you're bound to leave some out. Now, we've said this before, and I'll repeat it again, we can add purposes if we miss some, okay. And I think this comment is true if that's what we end up with is a very explicit list of authorized purposes.

But if our purposes are a little more broad, and general, that's probably not as big a problem. Now we'll find out when we get into doing it, and we can pursue this further as we actually continue to refine our purpose statement. So that's my assessment of that – of Comment Number 3 there. Let me open it up to see if anybody else wants to share any thoughts on any of the comments, including Number 3.

And okay not seen any hands. And I agree with those in the chapter are saying we've got to be clear. So when I said that we can be a little more general that's true but we still have to be clear, so totally agree with that.

So we will then capture this as a rough consensus conclusion that we do need to develop a statement of purpose for the RDS in our - in the document. You can see that in their agenda item - let me look myself, see which agenda item was that, so that's in 3b, you'll see capture confirmed agreements in the working draft, so that will happen after this meeting.

Let's go down then, so if you scroll down to the last page you'll see a question there, "Do you agree or disagree with this statement: The existing gTLD RDS

policies do not sufficiently address compliance with applicable data protection and privacy and free speech laws about purpose?"

So notice that this is - this question is right out of -- one of the things we had to answer in the charter. And the responses again were quite strong, not quite as strong as the previous one. There were two disagrees, okay, and 12 agrees in this one. And I think we had the one duplicate again so if we have 13 responses it's 11 to 2. So still I think strong enough to, for now at least, to assume that we have rough consensus on that, keeping in mind that this is not a vote. We will have to do more formal voting when we get to making final conclusions. But for now this is a rough protection conclusion.

Now, in this particular case there were a couple comments that I think are probably worthwhile commenting on and the others are probably just kind of reinforcing the conclusion itself. The – Comment Number 3 the person said, "I disagree with this statement. ICANN policy should take a hands-off approach on these issues in general so saying that gTLD policies are insufficient implies that ICANN needs to take a more proactive approach."

Well, the way I – and again I'm sharing my personal thoughts here. The – if ICANN takes a hands-off approach with things that are legally required in some jurisdiction, I'm not sure that's appropriate. I understand that in a lot of cases, especially when he gets into content and so forth, that they really should because of the restrictions of ICANN's mission.

But, I don't think they can take a hands-off approach when there's laws involved. Now it's our responsibility as a working group to understand those laws in various jurisdictions, as we deliberate on the requirements that we are going to develop. So let me stop with that one and see if anyone else wants to add to that or disagree with me, that's fine.

Holly, go ahead, please.

Holly Raiche: Thank you, Chuck. I absolutely agree with you. The problem with Statement Number 3, you've got a contract that has in it requirements that are enforceable that are contrary to national laws. So in fact taking a hands-off approach means that people bound by the contract are potentially in violation of international law so I don't think we can take a hands-off approach. Thank you.

Chuck Gomes: Well said, Holly. This is Chuck again. That's true. And of course just to remind everybody, at the end of this working group, after we get at least – and we give recommendations for policy, any consensus policy that we recommend and the Board approves, the Council first and then the Board, of course would cause changes to those contracts. So I think everybody's aware of that pretty well but I just want to reemphasize that. Thanks, Holly. Stephanie.

Stephanie Perrin: Thanks very much. Stephanie for the record. I agree with Holly and I'd just like to say that part of the problem is that ICANN has ignored the fact that it's a data controller by setting the terms of data collection, retention, use and disclosure in the (day) and just basically ignored data protection law. It has taken a hands-off approach with the result that the registrars are stuck in the crosshairs of any enforcement action.

So I do think it's time for change. I've said that umpteen times. But the Whois conflicts of law, IRT, that we were on, many of us thought were a couple of years ago in which promises to recommence in October, or at least before October, if we don't get a change in policy I swear I'll go stark raving mad if we do the same thing we did two years ago. So what really is bizarre; we do have to face our responsibilities here as ICANN, as the body of ICANN as it were.

Chuck Gomes: Thanks, Stephanie. This is Chuck again. I guess we should let a registrar speak now so I will let Michele. Michele…

((Crosstalk))

Michele Neylon: No, that's fine. Thanks, Chuck. I mean, both the ladies have pretty much covered everything that I could possibly want to say. It is worth repeating. Just because, I mean, just because something has been a policy for a long time doesn't mean that it hasn't been in conflict with local law.

In conversations I've had unofficially off the record, and they won't actually put it in writing, the Irish data protection commissioners have essentially said okay, we're not going to come after you personally or your company because we know you are stuck in between, but what ICANN is forcing you to do is hugely problematic and isn't compatible.

So, yes, the Irish data protection commissioners at least were conscious of it, the problem of course being that they are not in a position to provide legal advice. So, you know, as from the perspective of improving and fixing the policies so that they are more aligned with reality, that would be greatly helpful.

Chuck Gomes: Thanks, Michele. So again I believe that this - that we have strong enough results between the people that were on the call last week and this poll to accept this as at least an interim rough consensus conclusion that will help us as we go forward. And so we're going to accept the fact that we need to - that the existing Whois does not sufficiently address compliance with applicable data protection, privacy and free speech laws about purpose, and that's why we're going to proceed to work further on our purpose statement and try and make it better. Andrew, go ahead.

Andrew Sullivan: So can you hear me? And is this too noise of a background?

Chuck Gomes: No, it sounds pretty good.

Andrew Sullivan: Right, good. So I tried to say this in the list earlier today, and again in the chat this evening, but, part of the problem we keep running into is this mention of the existing Whois, which is only data access and it's not actually data collection, right? And I think that the confusion here keeps biting us. We either need to stick to a data collection, which is entirely like what are the registry policy rules about what stuff goes into the registry, or what are the data publication rules for what must come out of registry, or what are the publication rules about what must be in the Whois? And those are three different questions.

And I think, you, Chuck, have been admirable in drawing this line previously and I've tried very hard to respect it despite my, you know, impatience to get to the access part. And yet, you know, we're back into that same confusion today I think with this discussion.

Chuck Gomes: And of course you're correct. And by the way, I thought your comments that you shared today, and I think I responded to them that you may have identified another purpose when we get back to that statement, we will start tonight, tonight for me anyway. And so we will do that.

Now and, Andrew, part of what you're saying is why I've kind of been focusing on the collection part a little let specifically the last two meetings because I fully respect the issue there. And once we spend some time responding to purpose, we're going to get into access of thin data first and then we'll access for thick data as well.

Okay, not seeing any other hands, so this second conclusion will be entered into the record as a part of Agenda Item 3b, not that we have to do anything here but staff will take care of that for us, and so we're getting a good little collection of some conclusions as we continue progressing.

Agenda Item 3c, we want to talk about some of the requirements that laws might place on RDS policy, so we're really going back to that Question 4.1,

the second question there, "What requirements might those laws place on RDS policies regarding purposes associated with thin data?"

And so, if we can bring up the two slides that were prepared by Lisa and Peter? It actually comes from information that peters shared with us the last couple weeks, and unfortunately he couldn't -- it looks like he could not join us tonight. He didn't think he could. So we are going to impose only son to go over these two slides and then discussed together that second question, "What requirements might the European data privacy laws, and other regions that have similar requirements, why do those requirements placed on RDS policies as we move forward?"

So, Lisa, I'm going to turn it over to you.

Lisa Phifer: Thanks, Chuck. This is Lisa Phifer for the record. So what you see in front of you is actually the slide that Peter began when during our last working group called where he recaps the key concepts related to purpose that he had introduced the previous week.

So you see here on the slide four different points. I'm going to go to Slide 2, which actually speaks to each of these four points. In preparing for this meeting I asked Peter if he would be available to summarize those key concepts, again for us, to kick off this discussion.

And because he wasn't sure he was going to be able to participate at this time, we went ahead and drafted this text that you see in front of you. And Peter reviewed and confirmed that it reflected his view on what he had presented previously. So I'll go over these one by one.

The first purpose, excuse me, the first key concept that we may wish to keep in mind as we look at drafting or re-look at drafting a purpose specification for an RDS is that data processing must be proportionate in relation to the legitimate purpose pursued.

The second key concepts that we need to - we need to keep in mind is that data processing must strike a balance, a fair balance, between both the interests that are concerned and the data subjects rights and freedoms that are at stake.

The third point that Peter had brought up, and all this was drawn from that Treat 108 that he was referring to, the third point is that each party shall provide data processing - provide that data processing can be carried out on the basis of three specific, informed and unambiguous consent, and absent that some other legal basis, legitimate legal basis.

The fourth point that Peter raised to us is that personal data undergoing processing shall be processed always in a lawful manner as well as in a fair and transparent manner.

The fifth point that Peter brought up to us from Treaty 108 is composed of four points. And all four points relate to how personal data might undergo processing. The first point, 5a, is that personal data is collected -- shall be collected for explicit, specific and legitimate purposes.

The second point is that it shouldn't be processed in a way that's incompatible with those specific, explicit and legitimate purposes. The third point is that that data, personal data that may be collected for those purposes, may be further processed but only if there is a legitimate need for further processing and that all legal requirements for further processing are in fact met.

And then the last point was that, that data processing -- personal data processing, the data that's being processed should be adequate, relevant and not excessive in relation to the purposes that were defined.

So again this is a recap of the principles that Peter had gone over, gave us some examples last weekend introduced the previous week. And the point of bringing this up again now is to keep these fresh in mind as we take a look at further drafting a purpose specification for an RDS.

Chuck Gomes: Thank you, Lisa. I see that Alex has his hand up. Go ahead Alex. Are you on mute, Alex, because we're not hearing you. Looks like you're on mute now according – okay. So your hand went away so I'm…

Cheryl Langdon-Orr: He's in the chat.

Chuck Gomes: Okay so you're going to follow up later. Okay, good enough. That's fine. And I hope you will follow up later. Anybody else have a question about these concepts with regard to data processing? While you're thinking about that, let me repeat something I said last week.

The last couple weeks and this week and going into Copenhagen, we're focusing a lot on data privacy, which is one of the things that's part of our charter. But for those of you who are concerned about your needs that sometimes may conflict with data privacy, we're going to get there. So please don't assume the we're making any – we want to fully understand the data privacy issues and make sure that whatever requirements we come up with address the requirements in various jurisdiction for data privacy – data protection and privacy but we're going to get to the point where we're going to look at things.

And like I pointed out last week in the document that Stephanie summarized for us a long time ago, there are rooms for exceptions, those have to be carefully designed, but one of the exceptions that I pointed out was, you know, rights. And this, if you look at Number 2 here, there has to be a balance between the privacy interests as well as rights and freedoms at stake.

So we have to cover all of those to do our job diligently and thoroughly. So please don't assume that we're just going to focus on data privacy. Data protection and privacy are very important and we have to do that but we also have to look at rights. So bear with us, we are going to get there.

And that's why I hope those of you who are concerned about protecting rights, such as IP rights or law enforcement access and so forth, I hope you will help us generate good questions for dealing with those when we meet with the data commissioners. So, Alex, let's try it again.

Alex Deacon: Hi Chuck, can you hear me now?

Chuck Gomes: Yes, that's great.

Alex Deacon: Thanks. Yes, this is Alex. We may have moved past this a little bit, but the question posed was, you know, what requirement data privacy laws place on RDS policies, but it occurs to me, unless I'm not quite understanding that until we have a defined purpose we can't really have a useful conversation or debate of that specific question, right? Concepts of proportionality and consent seem to depend on a defined purpose, which, you know, we've discussed in the past but haven't agreed to.

So I'm just wondering, are we putting the cart before the horse here or are we just kind of in the beginning of a process where we will be able to answer this question once we have a purpose? Thank you.

Chuck Gomes: Thank you, Alex. Chuck again. And I think you're right, we are going to have to come back to that probably more than one time, and probably even come back to these concepts here once we get further along in terms of a statement of purpose and then again as we look at particular data elements and what kind of access or if there should be access to them in the future. So, yes, no disagreement with what you're saying.

That particular question happens to be with 4.1, and the first part of 4.1 is probably closer to where were out right now than the second part, but we thought because they go together we wanted to at least address it. We're not going to finish the second question in the near term, we're going to have to look at it again as we go forward. Good point.

Anybody else? Yes, Lisa.

Lisa Phifer: Chuck, I'm going to continue playing Peter here just for a moment. I think that the point that Peter was trying to get across to all of us was that these key concepts or principles related to how one specifies purpose should be understood and taken into consideration when you define a purpose statement.

So while of course you then have to step back and look at the purpose statement you come up with and see whether it meets those tests, knowing that this is what you're trying to achieve, for example that you're trying to achieve a purpose statement that is explicit and proportionate and addresses the issue of consent, and addresses the issue of compatibility will help you craft a purpose specification that in the end might pass muster with these requirements.

Chuck Gomes: Thank you, Peter. Much appreciated. And you did a good job, Lisa, thanks. Maxim.

Maxim Alzoba: Maxim Alzoba for the record. Actually I see that we are talking about collection and access. I suggest we add storage to the items because it might be regulated too. And depending on the regulation of storage, we will see quite different, I'd say, designs of the system. I understand that it's – might be item for later discussion, but we shouldn't forget about it. Thanks.

Chuck Gomes: Thank you, Maxim. And, yes, we're going to need to keep that in mind, absolutely. It's really, you know, on the one hand we don't want to get ahead

of ourselves on these things; on the other hand, you almost have to at least brings things up like you just did to look at the bigger picture even though we won't talk about storage right now in detail, but thanks for bringing that up.

Okay, all right let then if there are no more comments on this, and Lisa and Marika and Michele, who were all on our leadership call with me yesterday, I'm blank on Agenda Item 3d. Is there something - have we are you done that or is there something else we need to do one 3d, which is to test any possible agreements on this in a poll or is that just a step as we move forward? Lisa, go ahead.

Lisa Phifer: Chuck, I think what we had in mind was if the working group agrees that these are key concepts that should be considered as we move forward with the purpose specification then we would test that agreement in a poll. I'm not sure we're at that point but that was the thinking of 3d.

Chuck Gomes: Oh yes, thank you. That helps me. So I'm not sure we're ready for a poll on this but what do others think? Does somebody think we need to do a poll on this? I think later on as we get into more specifics and purpose and even in data elements and so forth and we may have some very specific things to poll. This is pretty broad and covers a lot of territory right now so I don't think it lends itself to a – some easy poll questions for people to respond to. And we're trying to keep the polls relatively short so it doesn't take very much time for people to do them.

And I – thanks for your comment, Alex. And I see Lisa is – certainly if somebody thinks that there's a poll question we could ask about this that would be useful and easy for people to respond to I'm not opposed to that. But I don't think we're there yet on this issue. Okay, a couple people typing. I'll just pause for a few seconds and see what comes up. I'm not seeing anything real quickly.

So I think I'll go ahead and move to Agenda Item 4. Let me see, Maxim, you're saying – are you suggesting that we add a response? I did not understand the question to the polls. If so, we could do that. I think probably that could be handled in the comments without adding a third option. So certainly feel free to put that in the comments that you didn't understand the question.

I hope people that are on the calls, before we do a poll, have a pretty good understanding of it because we always give room for objections and questions and so forth. And I hope that those that aren't on the calls that led to a poll would listen to the recording and look at the transcripts and so forth to get that. And also, please, feel free to ask on the list, if you don't understand the question please ask on the list so that some of us can respond to that.

Okay, Item 4, we're going to return to our deliberation. It's been probably a couple of months, I don't know the exact time frame because I didn't go back and look it up, since we were talking about it overarching purpose for collecting, maintaining and providing access to registration thin data. And we didn't really focus so much on access for a while, but more on collection realizing that you're probably not going to collect them unless you're going to do something with it unless it's going to be used.

So let's, you can see on the screen now is our meeting handout for today that was distributed in the last couple days, I guess yesterday, to the whole working group or at least that was on the Website.

So you have it in front of you, now this is a pretty wordy document and covers several pages. So we're not going to go through it in full detail. You certainly can do that on your own and some of you probably already have.

But what I wanted to do first of all is just take a look at, and keep in mind this is something we put together quite a few weeks ago now when we started

talking about the purpose of an RDS. And you can see the goals that -- we came up with this list, consistency with ICANN's mission, consistency with other consensus policies that pertain to generic top level domains, to provide a framework that enables compliance with applicable laws to help articulate a rationale for a potential RDS, to communicate purposes of the RDS to registrants and others and to establish sufficient relationship between the purposes and the uses of the RDS.

Some of these we spent quite a bit of time word-smithing several weeks ago. But those were the goals that we came up with. And then we actually listed some specific purposes for registration data and registration directory services. Again, in this case there are a total of, let's see, were there six? Just five, just five okay.

A purpose of gTLD registration data is to provide information about the lifecycle of a domain name. And as some of you will recall, we talked about that lifecycle of a domain name for quite a while ago.

Second one, a purpose of RDS is to provide an authoritative source of information about, for example, domain contacts, domain names, and name servers for gTLDs. And we added the parenthetical based on approved policy so that people understand that we will eventually take some policy recommendations, and so we're not just saying that everybody is going to get access to those things, but based on approved policy it would be an authoritative source of information.

Three, a purpose of RDS is to identify domain contacts and facilitate communication with domain contacts associated with generic top level domains, and again based on approved policy, which of course we haven't even made any recommendations there yet.

Four, a purpose of gTLD registration data is to provide a record of domain name registrations. Five, a purpose of RDS policy is to promote the accuracy

of gTLD registration data. So those are the things we came up with keeping in mind that we didn't finalize any of this yet. Now we may come up with some poll questions for these in the coming weeks, but we will see how the ongoing discussion of this goes today.

What we're going to do next, but before we do that I'll certainly entertain questions or comments on the goals and purposes, although we don't want to redo the exercise we went through to come up with these before, and then we will have Lisa highlights some things in the rest of the document that are particularly relevant to our task of continuing to refine the purpose statement. Anybody have a comment or question at this stage?

I didn't comment -- I realize I didn't comment on the fourth comment on the second question in our poll that the RAA, the Registry Registration Agreement with ICANN, that it requires them to state a purpose, the purposes of the data that they are going to use the data for. And that is true if you go back and look at the RAA.

But it's not really a purpose for the RDS; it's a purpose that registrars state, as I understand it, for the data that they collect from registrants. So where as that comment was true, it isn't really true with regard to a purpose for an RDS. There's not one common purpose for an RDS if in fact we have one. And let me turn it over to Stephanie. Are you on mute, Stephanie? We're not hearing anything. Okay, not sure what's going on there because we heard Stephanie fine earlier in the call. So is Stephanie being muted? I see in the chat it looks like you're muted now. Try…

Stephanie Perrin: Hello?

Chuck Gomes: There we go.

Stephanie Perrin: Can you hear me now?

Chuck Gomes: Yes. Wonderful, thank you. Okay, Stephanie parent for the record. Now if I could remember what I was going to say. I just wanted to sort of even made a note of caution that when we look at statements for the Your ID for the Whois lookup facility, that is a pretty, I would say, harsh statement based on the current configuration of how we do Whois.

And if we are actually thinking of purposes, it's at a meta level, and we should not pollute it when we're trying to think of what our purposes with the existing tools that we have because we already know that the Whois – current Whois lookup facility is broken. So for instance, it says here that a person has to agree to certain personal information being available in the directory. Well, that may not actually be the case with the new system.

Chuck Gomes: Where does it say that, Stephanie?

Stephanie Perrin: …just wanted to point that out. It says, "By going – when a domain name is registered the information relating to the," blah, blah, blah, blah, "Whois database in compliance with the rules set out below. The information collected and the person," here we are. "When registering a domain name registrant is required to accept the Registry terms and conditions which authorizes the Registry to make some personal data accessible on its website."

Chuck Gomes: So you're going ahead in the document, probably one of the annexes, is that where you are?

Stephanie Perrin: I am in the one, two, three, fourth paragraph of Section 2.1.

Chuck Gomes: Okay just a second.

Stephanie Perrin: And I just think it's a bit misleading.

Chuck Gomes: Well…

Stephanie Perrin: I'm on Page 6 of 7 here.

Chuck Gomes: Okay let me get over there. Six of seven, oh okay. Oh so that's the…

Stephanie Perrin: The Whois lookup facility.

Chuck Gomes: Okay well let's hold off on that because the only reason I'm saying that because we're going to have Lisa go over some things here that she is highlighted in yellow in the sections. And they're largely, and correct me if I'm saying this wrong, Lisa, but they're largely background information in terms of as you can see ICANN's mission and some RAA requirements now and Registry Agreement requirements now.

And they're elements that relate to our discussion. It does not mean that we are going to establish them as requirements in our recommendations or policies in our recommendations. So this is more background information than it is suggesting that these things continue the way they are. Okay?

So why don't we just go then to Lisa and let her kind of just share some things that she highlighted in yellow because they relate to what we're talking about. And Lisa, you may be able to describe the purpose of showing these things better than I just did, so please go ahead, Lisa.

Lisa Phifer: Thanks, Chuck. And this is Lisa Phifer for the record. So as we started thinking about the draft statement of purpose that Chuck just read through here on Page 2 of the handout, and the working groups need to take a look at this draft statement of purpose and think about how it does or doesn't apply the key concepts that Peter introduced.

One of the things that struck us first was underneath the goals for each RDS purpose, the first item is consistency with ICANN's mission. So that led us to

think well, we should put in front of you what is ICANN's mission. And many of you are all too familiar with this, but some of you are not.

So starting here, any purpose specification should at least be consistent with the organization's mission and derived from it. This is ICANN's mission as amended last October. And note that the mission is still of course overall to ensure the stable and secure operation of the Internet's unique identifier systems, that includes the DNS.

So that aspect of the mission hasn't necessarily changed in the update from last October. However, if we go to the third paragraph here that talks about policies in the areas described in annexes G.1 and the G.2 so we will drill into those. But those are policies for which uniform or coordinated resolution is reasonably necessary to facilitate the openness, interoperability, resilience, security and/or stability of the DNS.

So that's the scope, if you will, for the mission that the purpose of the RDS should be designed to support. More specifically, if we look at Annexes G.1 and G.2 they have some striking similarity and that's because G.1 pertains to registrars, that is topics, issues, policies, processes that apply to registrars. And Annex G.2 does the same thing, covers topics, issues, policies and processes that apply to registries.

But in both cases you see that a pertains to issues for which that uniform or coordinated resolution is reasonably necessary to facilitate interoperability, security and/or stability of the Internet, registrar services, registry services or the DNS. So again that derives from the top-level mission statement.

And if you see, as an example, towards the bottom of Page 3 here, top of Page 4, there is an example that talks about reserving registered names in the TLD that may either be registered initially or renewed but are not renewed in order to avoid confusion among or misleading of users, intellectual property

where the technical management of the DNS or the Internet. So that gives us another hint about what might be considered in scope for the mission.

Also here is maintenance of and access to accurate and up-to-date information concerning registered names and name servers. And so this pertains directly to registration data that we've been talking about and potentially the purpose of the RDS.

An example under Annex G.2 is, again, avoiding the confusion among or misleading of users, intellectual property and the technical management of the DNS or the Internet as well as maintenance of and access to accurate and up-to-date information concerning, in this case, domain name registrations.

So any purpose specification that this working group might come up with and that should derive from ICANN's mission should in fact at least be consistent with the statements that are in the much longer mission statement that we've pulled out here.

Chuck Gomes: And let me add a little qualification there, Lisa. It happens sometimes that policy recommendations from PDP working groups that are approved by the Board require changes to ICANN's bylaws. Now that's not our goal going in. But if that happens that is a possibility. And I'm not saying that these should be changed, I just want to point out to people that when policies are approved that conflict with ICANN's mission as stated in the bylaws, then that would be noted by the working group with their recommendations so that any possible changes to ICANN's mission would be considered and worked on.

In fact, all of us know that happened with regard to the IANA transition recommendations. There were significant changes made in the bylaws. Now usually with GNSO PDP working groups, they're not that significant. But that is a possibility. I just want to – I'm not saying that should happen or that it will happen or won't happen, but keep in mind that that is a possibility.

Holly, go ahead.

Holly Raiche: Yes, just a question for Lisa. First of all, thank you for pointing this out. There's a lot of useful phraseology there which in a sense broadens the concept of management of the DNS, which is the mission statement. Could you explain why intellectual property is a component of that? I'm not sure why, is that about cyber squatting? Is it about, I mean, why is intellectual property an element in managing of the DNS? Thank you.

Lisa Phifer: This is Lisa, I'll respond to you, Holly. That is an example listed there and pertains to reservation of registered names, names that may not be registered initially or might not be renewed because of reasons of intellectual property protection. So what specifically related to avoiding I think cyber squatting or registering potentially confusing names, if you also see the part of the example there refers to that.

Holly Raiche: Thank you.

Chuck Gomes: Any other questions of Lisa on what – the portions of these sections that she shared? Okay, and then I better check my agenda to make sure I do this right. The next thing in this document on Page 7, in fact, let's take a look at that. Now this is an example of – this is an example from the dotEU ccTLD in terms of their purpose statement. Now includes more than just their purpose statement, but let's take a look at that.

And, Marika, I think you are the one that identified this one. Do you want to highlight -- just go over the purpose statement here for us?

Marika Konings: Sure. This is Marika. So I think you've – you saw in recent meetings where we've actually looked at a couple of examples that we drew from ccTLDs noting of course that they're subject to European data legislation, so we felt

there might be some value in looking at how they've dealt with this question of defining purpose.

So the one you see on the screen, as it is available for the dotEU registry, which basically says that the purpose of the Whois database, as set forth in the first paragraph of Article 16 of the Commission regulation, is to provide reasonable, accurate and up-to-date information about the technical and administrative point of contact administering the domain names.

If the registry is holding full, incorrect or outdated information, the registrant will not be contactable and may lose the name. By deliberating submitting inaccurate information the registrant would also be in breach of the terms and conditions which could also lead to loss of the domain name.

Chuck Gomes: Thanks, Marika. And the second paragraph is less of a – definition of the purpose as it is consequences that may happen for registrants, but that first paragraph is, I think, essentially – and somebody from that – that works with dotEU more directly than I do can certainly jump in on this – but that's their purpose statement.

Now we're not putting this forth as an example that is a good one or a bad one or whatever. We thought it would be helpful, like Marika said, to look at some examples of ccTLDs from Europe. And we looked at others too, some of them are more explicit than others, some of them are kind of vague. It's not for us, I guess, to tell whether they're good or not. They still exist so I guess they haven't been challenged or at least not to the extent that they've been changed. But it's an example in today's world of a purpose statement.

And so we wanted to share that just to give something concrete of a purpose statement. Now, will ours be that short? I doubt it. We've already got more than that, although we haven't finalized it in terms of, you know, at least rough consensus of the working group. Any questions or comments on this example?

Okay, so let's go back - this is still Chuck speaking - let's go back to that first page where I went over the - excuse me, it's not the first page of this document, it's Page 2, okay, where we looked at the goals of each RDS purpose and the specific purposes for registration data and registration directory services.

Are there any of those goals, and this is kind of repeating a little bit we did long time ago but let's bring it up to date. Are there any of the goals that anyone questions as being valid goals for the purposes that we come up with? And let me start with Number 1, anybody disagree that the goals for our purposes should be consistent with ICANN's mission? That's probably really easy one.

So we probably could have a, whether we do separate poll questions on these depends on how they come out. What about Number 2? Consistency with other consensus policies that pertain to gTLDs? Anybody disagree with that goal? Okay. I better look at the chat too so. Okay that's about the EU statement, okay.

Number 3, to provide a framework that enables compliance with applicable laws. Is that a legitimate purpose? Oh Stephanie, I see an X, was out for Number 2?

Stephanie Perrin: Yes, that was for Number 2. Depends on how you define a consensus policy. Sorry this is Stephanie Perrin for the record. I'm just concerned that some of the PICs that are developing within some of the new gTLDs, we wouldn't necessarily want to agree with them. Thanks.

Chuck Gomes: So, Stephanie, let me try and help out there. The PICs, and anyone is welcome to correct me if you think I'm wrong on this. The PICs were not consensus policy. Consensus policy…

((Crosstalk))

Stephanie Perrin: No, the problem is…

Chuck Gomes: Go ahead.

Stephanie Perrin: The problem is that the PICs appear to be morphing into best practices that are being replicated in other areas, almost a replacement for consensus policy. That's what I'm concerned about.

((Crosstalk))

Chuck Gomes: Yes, and that's a legitimate concern.

Stephanie Perrin: Yes.

((Crosstalk))

Chuck Gomes: But this says consensus policy. This says consensus policies, which means policies that, for gTLDs, they are policies that are developed using our bottom-up process in the GNSO and are recommended by a PP working group and approved by the GNSO Council, sent to the Board and approved by the Board. So without understanding, would you disagree with this purpose? So that's okay, as long as we have that understanding, okay thank you, Stephanie. Michele, jump in please.

Michele Neylon: Okay actually you covered it.

Chuck Gomes: Okay thanks. Okay. And it's – Stephanie, your question is really important because you're absolutely right that some things that are implemented, implementing policy in the case of the new gTLD policy from the first round, you know, they're confused with actual consensus policies. Now the overall recommendations of the New gTLD PDP Working Group back in, what was it,

2006, 2007, whenever that happened, was a consensus policy, but it didn't have a lot of detail. There were a lot of things left for implementation. And so that's where we get that point of confusion.

Okay, Michele, did you want to add something else?

Michele Neylon: Just very, very briefly. Michele for the record. I think one of the things that it might be helpful to kind of remind people about at some point would be to kind of go back to the basics and explain the difference between contractual agreements, consensus policy, how consensus policy gets – is binding on contracted parties and then these kind of weird sidebar type beings that aren't really either but yet end up being kind of binding, which I think some of us are still having problems wrapping their heads around. Thanks.

Chuck Gomes: Thanks, Michele. This is Chuck again. And it is easy, there is a lot of confusion there. Note though, and follow up to kind of what Michele is saying, and then I'll go to Marika, that we don't have a goal that is consistent with existing contracts. That wouldn't work would it, because some of our recommendations may change the elements of contracts. So okay, Marika, go ahead please.

Marika Konings: Yes, this is Marika. I just wanted to point out the suggestion made in the chat to avoid any confusion, you know, as pointed out by Stephanie, maybe it's helpful to either put quotation marks around consensus policies, or - and even add to it as defined in the agreements that ICANN has with gTLD registries and ICANN accredited registrars to really make sure that people understand that this is a defined term and not necessarily, you know, a policy that may have obtained consensus from the community, which is a different thing.

Chuck Gomes: Yes, let's make that change. We don't have to do it right now but let's make that in any conclusions we - that come out of this. And you can put it in caps

too, capital C and capital P, but whatever way we do it that's a good suggestion. Alex, go ahead please.

Alex Deacon: Thanks, Chuck. Yes, just on the topic of PICs, you know, for those of us who followed closely, you know, the transition and the accountability discussions and debate that happened, I just wanted to remind people that the PICs are explicitly grandfathered in the scope and mission of ICANN. So I think it's important to keep that in mind too as we have these discussions.

Chuck Gomes: Yes, and that's fine, that still doesn't make them consensus policies which is what we're talking about here, but good point.

Alex Deacon: Agreed.

Chuck Gomes: Okay thanks, Alex. Marc.

Marc Anderson: Thanks, Chuck. This is Marc for the record. So I guess I'm looking, giving this another look and, you know, a goal for each RDS purpose, consistency with other consensus policies that pertain to generic top level domains. So do I take that correctly to mean, you know, if we agree that that's a goal, then revisiting or changing any previous consensus policies is off limits? You know, in other words, you know, we can, you know, we can change contracts but we can't change previous consensus policies. Do I have that correct?

Chuck Gomes: I don't think we can take it that far, Marc. It's a really good point that you raise, but consensus policies to be changed obviously need, because it was done through a PDP and so forth, it wouldn't be probably as easy as changing a contractual term, that we shouldn't think that consensus policies can't change because they can. In fact, they're typically supposed to be reviewed every so often because we discover things that we missed or that we - or maybe circumstances have changed and so forth.

So I wouldn't go that far to say - by being consistent the goal is for them to be consistent but if we find something in a PDP that doesn't apply anymore or that we need to make a recommendation that would change that, that can happen; it can still happen. But our goal is to be consistent with those to the extent feasible. Does that make sense, Marc?

Marc Anderson: Well your explanation does, absolutely. And I agree with what you just said. It I guess I'm just not getting that from the bullet point…

((Crosstalk))

Chuck Gomes: So how would you change the wording? Sorry to put you on the spot.

Marc Anderson: Yes, yes, sorry, I'm not that nimble on my…

((Crosstalk))

Chuck Gomes: You can think about that and if you come up with a better wording - I think we kind of have to assume that kind of thing, I mean, literally as possible eventually for ICANN's mission to change in some respects. I'm not saying it will or it should but if we as a community agreed, and the Board supported some modification to the mission, it could change. But to the extent that it doesn't change we want to be consistent with that.

So I think what you're getting at, you know, we don't need to be so dogmatic that nothing - we have to be so consistent that it locks us in because we're in a very dynamic environment. Michele.

Michele Neylon: Thanks, Chuck. Michele for the record. I think the problem here is with this thing about other consensus policies. I mean, you – we're kind of getting into real kind of pure ICANN-esque weeds here. Like okay, so you can't change a consensus policy unilaterally but I suppose the thing is that what I think we

need to be clear about is that we aren't - we aren't restricted by the existing policy. They're two different things.

So you can't go along and unilaterally say okay, well that policy that was - came out of a consensus process, we're going to completely change it and ignore it; but at the same time if we restrict ourselves to being compliant or restricted by or within the parameters of existing policy, that we might as well all just go home.

Chuck Gomes: Yes, thanks. And you said in a different way what I was trying to communicate so I appreciate that. Thank you, Michele. Stephanie.

Stephanie Perrin: Stephanie Perrin for the record. I can't really match Michele's eloquence there. That was my conclusion that if we're not here to change some policies, then we might as well go home. And we do seem to be in a continuous loop, because the policy that is behind the conflicts with law IRT has been punted to us. And quite frankly, I get the feeling that maybe the thick Whois has been punted over because if it's not in compliance with data protection law, we have a rather large problem on our hands.

So I don't know how you word this so that it doesn't sound like on the one hand, on the other hand, you know, and we go in circles. That's a challenge. Thank you.

Chuck Gomes: Yes, it is. And people are bringing up good points. I'm not sure we will ever get the wording perfect but if people have suggestions for better wording on any of these please provide them, they're very welcome. You don't have to do it right now but on our list if you come up with some ways to make it better that would be great.

Now were coming up to the end of our time, and I think we've covered the first three goals. There didn't seem to be any objections to those except for Stephanie's and I think we've clarified that. Keeping in mind that we're going

to have time to come back to a lot of these things later so things aren't in concrete in the decisions we're making now.

But it seems to me that we have good agreement on this call on the first three goals, realizing that the wording may not be perfect, okay, but hopefully we've at least clarified that in our discussion.

So is there anybody that disagrees with the fact that - a statement of the first three goals for each RDS purpose? Just put a red X, and if you want to talk to it you are of course welcome to talk to it too. Okay.

All right, not seeing any objection so I think we have -- it's probably better to keep them simple and straightforward is to do three poll questions to confirm that -- those conclusions for the first three goals and also to give people who are not on this call a chance to weigh in. Now hopefully they will listen to our discussion because this is a case where I think our discussion is going to be really important for those. Still we will really encourage people to listen to the discussion and certainly the last part of our meeting when we talk about these.

So those will be the poll questions. Again, all of you, even though you're on a call, are encouraged to respond to the poll. It should be really easy and fast for you, so don't think just because you're on a call that you shouldn't respond. We would really like you to. And of course we want people to respond that aren't on the call so we give them a chance to provide input as well.

All right so the action items then, we'll do a poll. Hopefully that'll come out later today for those that are still – are already in Wednesday, which is most of you. There are a half dozen of us or so who are still on Tuesday. So that'll be an action item.

And then there's an action item for the small group. Thanks for the volunteers, some of you aren't on the call, but Susan will be getting you all going. And keep in mind that if you want to provide possible questions you don't have to be on the group. Send them to the group so that they can massage them and combine them if they're similar and things like that to make it easier than next week when we try and work towards finalizing the list of questions for the data protection commissioners in Copenhagen. So please, that's an action item for everybody, if you have questions.

And again, we've got a group of I think it was seven people plus Susan, but everybody is willing to contribute to that. And we will all have the ability to contribute to that in our call next week and in the days following, a few days following that.

Let's see, I think we've covered - are there any other action items that I missed capturing or reviewing? Our next meeting date will be Tuesday the 28, which will be our normal time, 1700 UTC. And then we will have one more meeting I think after that before we get to Copenhagen, so I think on the 7th – March 7 is our last meeting before Copenhagen.

Any questions, comments, is there anything I've missed? Okay, a little more progress. Thanks everybody. Have a good rest of the day regardless of what day it is for you. Some of us only have about a half hour left of our day. And hopefully we can get some sleep. So thanks everybody. Good meeting. Oh, and one more thing, I see Jim's good-bye. Jim Galvin, am I correct that you're on the panel for the cross community session with the commissioners?

Jim Galvin: So thanks, Chuck…

((Crosstalk))

Jim Galvin: This is Jim Galvin for the record. I think so, Chuck. You know, I was asked, I presented a position and frankly I'm not sure that I'm feeling like there was an acknowledgment and commitment. But I think so.

Chuck Gomes: Well, the reason I bring it up, Jim, and I should've done it earlier, but I just want to give you a warning, we will probably ask you to try and get some of our questions if that needs to be done to ensure a representative of the GNSO on that panel. Anyway, feel free to talk to me about that. I'm obviously not leading that, don't have any direct influence in that.

                But just a warning, that would be nice if you can represent us as a working group to get some of those questions in if they're not put in otherwise. So just nothing we need to do right now, I just wanted to confirm that you're aware of that like I have been made aware.

                So thanks everybody, sorry for going just a little bit over. Oh Stephanie, go ahead.

Stephanie Perrin: Thanks. And I'm sorry to bring us even further over. Stephanie Perrin for the record. I just wanted to point out that if we are planning on asking the data commissioners detailed questions, they will be able to help us much unless we provide a detailed briefing note on ICANN. None of them have staff that follow ICANN, so somebody has to brief them on what's going on.

                And I've talked to enough of them that know that they are not familiar with, for instance, the whole thick Whois migration. That's the kind of thing, don't expect answers to (field) testing questions if we don't brief them on the stuff first.

Chuck Gomes: And I think, Stephanie, that - and it's a good suggestion. But I think if we are careful in how we word the questions too they may be less dependent and understanding ICANN and more dependent on their expertise. But let's keep that in mind not only to try and do it to the extent that we think it's helpful, but

to be careful how we word the questions so they don't rely so much on understanding ICANN as them understanding the data protection requirements in Europe. And so but good point. We need to keep that in mind. Thank you.

And again, sorry for going over. Let's go ahead, and noticed Marika's comment in terms of briefings, we probably want to call attention to some of those briefings to the data commissioners, that's one way we can attempt to accomplish what Stephanie's suggestion. So, thanks everybody. Meeting adjourned. The recording can stop.

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