

**ICANN TRANSCRIPTION
THICK WHOIS Working Group
15 October 2013 at 14:00 UTC**

Note: The following is the output of transcribing from an audio recording of the Thick Whois meeting on Tuesday 15 October 2013 at 1400 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://audio.icann.org/gnso/gnso-thick-whois-20131015-en.mp3>

On page:<http://gnso.icann.org/calendar#oct>
(transcripts and recordings are found on the calendar page)

Attendees:

Amr Elsadr - NCSG
Steve Metalitz - IPC
Mikey O'Connor – ISPCP
Roy Balleste – NCUC
Chris George – IPC
Marc Anderson – RySG
Avri Doria – NCSG
Tim Ruiz - RrSG
Alan Greenberg – ALAC
Susan Prosser – RrSG
Don Blumenthal – RySG

Apology :

Carolyn Hoover – RySG
Marie-Laure Lemineur – NPOC
Frederic Guillemaut

ICANN staff:

Marika Konings
Lars Hoffmann
Berry Cobb
Nathalie Peregrine

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(Ricardo): Go ahead with the recording.

Nathalie Peregrine: Thank you very much (Ricardo). Good morning, good afternoon, good evening everybody. This is the Thick Whois Working Group call on the 15th of October 2013. On the call today we have Mikey O'Connor, Amr Elsadr, Don Blumenthal, Alan Greenberg, Marc Anderson, Avri Doria, Christopher George, Volker Greimann and Steve Metalitz. We have apologies from Marie-Laure Lemineur, Carolyn Hoover and Frederic Guillemaut.

From Staff we have Marika Konings, Berry Cobb and myself Nathalie Peregrine. My apologies and Lars Hoffmann. I would like to remind everybody to please state their names before speaking for transcription purposes. Thank you very much and over to you Mikey.

Mikey O'Connor: Thanks Nathalie and welcome all. We're still getting a few people trickling in. But I think we'll get under way. We've got sort of a short agenda, same as last time. Sort of keep working on this issue that we've been working on for a while now. But we'll pause and let people update their statements of interest and offer suggestions for the agenda.

All right. I don't see anything there. Thanks for everybody's comments on the list. I think we had a pretty vigorous discussion and I did an extreme slap (desk) job literally minutes before the call started because comments were coming in right till the end.

And so if I missed comment, by all means chime in. The easiest way for me to get it into the record today will be to paste it into the chat and then let me know that it's there and I'll copy and paste it out of there into this document.

And I have two versions of it. I have Word version and a Mind Map version, which I think are pretty close. And I'll just sort of play it by ear which one seems to be working better for us as we go.

And if anybody, you know, starts to have opinions and say, you know, starts to feel like the - I'm going to start with the Mind Map just because I'm more comfortable there but if you're uncomfortable with that and would like to go over to editing a Word version, there's one sitting right behind it. And by all means let me know.

Just to sort of replay the bidding, I'm going to just take a second and sort of - I pulled highlights out of the comments. I didn't pull the whole text out for anybody just because, you know, I'm trying to sort of zero in. So if I - again, if I missed the meat of what you were saying, also feel free to set me straight.

I'm going to start out - these aren't in any particular order. They're just sort of the order they came out of the email flow. But I think Alan sort of kicked this off. He said, "Look, you know, we want a high degree of comfort that ICANN and the registry involved and the registrars involved will not be in violation of privacy legislation."

So maybe one approach would be to have a sample of registrars and the larger registrants be involved in (unintelligible). And then - so I'm going to open and close these. I'm just sort of saying this to replay the bidding.

Then Volker came in and with the comments, you know, what are the terms? You know, he's already doing it for the most part the existing Ts and Cs, terms and conditions, cover this. And then what are the data protection requirements that the registry operator must mean.

So those were some questions that, you know, I think both of those are good in the - in responding with precision, which I was asking for. And so I applaud that.

Then Steve came in with a slightly different set of questions that said, you know, whether a registrant who's Whois data is currently made publicly available through a registrar in Country A should suffer any incremental legal harm or exposure if that same data were also made publicly available through a thick registry in the U.S. as is the case now with all registrations in U.S. based thick registries that are sponsored by non-U.S. registrars.

The other question that Steve posed was the review should also consider whether the current contractual framework can be used to ameliorate any harms found or whether it needs to be adjusted to accommodate this.

For example, if it's an implementation matter, it might - it could be useful for ICANN to provide guidance on how the longstanding contractual requirements that registrars give notice to and obtain consent from each registrant for uses of any personally identifiable data submitted by the registrant should apply to registrations involved in the transition. And then he refers to the (relegations) of the RAA.

Then I'm going to jump then to Marika's posed, which by the way I thought was very helpful. And it was helpful from my perspective for two reasons. You know, I thought this was a pretty big step forward but then I think it's - we're sort of in the interesting and I think useful territory here by encouraging a dialog between the working group and the organization that will have to implement the work of the working group to refine the language in ways that work for both. So I thought that was good.

So anyway, Marika says here's a couple of ideas with the first idea would be that the working group recommends that as part of the implementation process due consideration is given to potential privacy issues that may arise from the discussions on the transition from thin to thick Whois including for example guidance on how the longstanding contractual requirement that registrars give notice to and obtain consent from each registrant for uses of

any personally identifiable data submitted by the registrant should apply to the registrations involved in the transition.

Should any privacy issues emerge from these transition discussions that were not anticipated by the working group and which would require additional policy consideration, the Implementation Review Team is expected to notify the GNSO Council of these so that appropriate action can be taken.

And then a second idea was that - to suggest that the working group recommend that following the adoption of this report and recommendations by the GNSO Council the subsequent public comment forum prior to Board consideration as well as the notification by the ICANN Board to the GAC specifically requests input on any considerations related to the transition from thin to thick Whois that it would need to be taken into account as part of the implementation process.

And then a very - literally minutes before the call, Amr came in with a comment that said addressing the transfer of registration data instead of exposure covers both scenarios. I may not have captured enough of this Amr.

The (rights for) both existing and future registrants by legal privacy protections. I apologize. Yours came in so close to the call that I was literally juggling too many plates. So I didn't quite capture that. So we can circle back around on that one if you want.

Anyway, that sort of replays the bidding. I think at this stage of the game I'd like to just open up the queue and sort of find out where people are at. You know, I saw comments on the list. But Tim said that maybe Marika has gotten pretty close and I'd be curious to see if that's true. That would be good if we need to (unintelligible) or and then resolve this that that would be a step forward today.

My goal is to try and get this done today. But it's an artificial goal. We do we do. If we don't we don't. You know, I don't want to put artificial boundaries on the end of a consensus discussion. If we can get there that would be lovely. So with that, off we go. Alan, you're first.

Alan Greenberg: Thank you. I put my proposal together because what I saw was an impasse coming up in that the messages we're getting back from ICANN legal counsel is that they're not in a position to go do a vast survey of, you know, country by country and jurisdiction by jurisdiction or even in summary to verify that everything is going to be perfect. That's not their job Number 1. Number 2, you know, it's something that they're not prepared to tackle.

And in light of that I was trying to rephrase how the legal review could be done in such a way that we get the answers out and accepting the fact that they're not going to do the work themselves at the national and international level.

So it really comes down to having the experts who have a vested and a legal responsibility to have looked at it to get the answers from them. And I agree with Steve that, you know, this is not really ICANN's job to protect the registrars and registries but sort of collecting the information I thought could be construed to be their job.

I think Marika's suggestion does that - does the same end result in a different way by focusing on the privacy issues in the various comment forums and opportunities to comment before this is legislated including the reference to the GAC although I don't - I'm not sure the Board has an explicit requirement to consult the GAC as implied in Marika's terminology. But nevertheless the GAC has to be involved in this process.

That almost answers the - addresses the question at the same time using standard ICANN processes. So in lieu of the new super legal review just

make sure that all the parties give a tacit nod to this process or identify potential problems before it goes ahead and is implemented.

And so from that point of view I can strongly support what Marika's saying. I think it needs a couple of tweaks and words but I think it accomplishes the same end result as well as we are going to be able to accomplish it. That is a strong feeling of comfort that going forward will not cause any problems to suddenly rear their heads. So from that point of view I think I support it and it's probably a cleaner implementation than what I was suggesting. Thank you.

Mikey O'Connor: Thanks Alan. Tim, you're next.

Tim Ruiz: Me. Yeah, I guess I agree with Alan there regarding some of Marika's suggestions. I think they - together they address - it seems to me they address the concerns. Maybe not in whole and I, you know, again, I don't know if we get to the point where someone doesn't feel like they need to do a minority report. At this point I'm not sure, you know, we should spend a lot more time trying to avoid that.

But I think what Marika suggest because it's really close and I agree that, you know, while I supported the idea of the legal review, I think just given the response from the legal staff - ICANN legal staff, maybe that, you know, there's no point in trying to continue to go down that road specifically requesting a legal review.

But I think what Marika suggests here really covers the major issues. So I would support us accepting that - those two suggestions as our resolution to this issue here.

Mikey O'Connor: Thanks Tim. Let's see. Marika wrote in the chat. Says she's responding to Alan. Let me read that and then I'll carry back to Marc. Marika says Alan if there's a requirement for the Board to notify the GAC if they are considering

policy recommendations that may have an impact on public policy, which in practice means that they are notified of any policy recommendations that go through the Board has put GAC as responsible for making the determination of whether it impacts public policy.

And Steve is agreeing with Tim and Alan in supporting Marika's suggestion and with that, back to you Marc. Go ahead.

Marc Anderson: Hi. This is Marc. So Tim and Alan both referenced ICANN legal putting some boundaries on what they, you know, they were or were not willing or able to do it yet. Sorry, I must have, you know, missed that in all the flurry of activity. Could I get maybe Marika or somebody to summarize, you know, what ICANN legal, you know, is willing and/or able or not able to take on from a legal perspective? Thank you.

Mikey O'Connor: Marika, do you want to try that or you want me to stumble along in my usual vague and incorrect imprecise way he said?

Marika Konings: Yeah. This is Marika. I'm happy to try to respond to that question. And Marc, if you want some further details of a message I sent to the list on the 9th of October having some of - just some of my legal colleagues. I just wanted you to know I'll also make clear that this is not ICANN saying no, we're not going to do this.

It's basically what I tried to explain in that email if the request is specifically for the general counsel to undertake this work, it's basically saying that, you know, their main focus is actually on assuring that any policy recommendations do not conflict or contradict any existing ICANN policies or legal requirements that are applicable to ICANN.

They are not in a position to provide advice to individual parties in different jurisdictions or whether or not the proposed policy recommendations are a

potential violation of local laws. This is (making) responsibility of the parties affected or may require third party consultation or review.

So basically whatever I was trying to communicate is if the working group would request this kind of more broader legal review it's a (documenting) request that the working group can make but it's not necessarily something that general counsel's office would be able to carry out.

But that maybe need - but that may be something that would need to be outsourced and that of course we need to as well make a determination, you know, are the resources and budget available to do so and if so, in what timeframe.

So I think I was just trying to, you know, distinguish the two things here and saying this is what the general counsel can do and I think it's right closely aligned as well with the email that Steve sent to the list yesterday and some of the considerations that, you know, could be considered as part of implementation of late discussions.

But if we're more looking at a, you know, across the board, you know, review of national jurisdictions, I think then you're looking at, you know, a different kind of expertise and as well of course a price tag that is attached to that in carrying out such work.

So again, both of those are, you know, perfectly valid if the working group wants to go down that path. But I just wanted to make clear at the outset on what the different implications may be with respect to timing and the process that may need to be followed from an internal perspective to get to those end points.

Mikey O'Connor: Thanks Marika. I just pasted that little snippet in there and now I take it out now that you're done. Marc, is that sufficient? Do you want to come back before I hand up to Marika or Avri and the rest of the queue?

Marc Anderson: No, no. Yes, that was excellent. Thank you and I found your email so thank you Marika.

Mikey O'Connor: Okay. Avri.

Avri Doria: Thank you. I'm actually not able to support the recommendation that Marika's put up there. I think going to a legal review as opposed to requiring something like an issues report or a PDP on the issue right away was a compromise.

And now to see the compromise I understand was something we didn't have the competence to do. Now it's something that ICANN legal doesn't have a confidence - competence to do. That's fine. Then as Marika says, we need to recommend that it be done.

This isn't just about protecting registrars and registries and ICANN though of course that's important. This is about protecting registrants. So if it takes going outside for a legal review to provide the confidence on risk mitigation for registrants as well as registrars and registries, then the compromise is still in place.

Otherwise if having competent legal review of this issue is not included, then for me personally and obviously I haven't had a chance to talk to others of similar persuasion - and by the way, we're not acting as a group in this. We are acting individually. We are talking and we're going back to our group.

But, you know, this is a group of individuals. So that's why I'm - I mean a working group is a group of individuals. That's what I'm saying. Personally at the moment without the legal review, I think we've lost any sense of a compromise. Thanks.

Mikey O'Connor: Thanks Avri. See if...

((Crosstalk))

Avri Doria: ...for objections so that's why I put it in.

Mikey O'Connor: Yeah. And that's what I want. I was just going to give you a gold star for that. And I want you to check and see if I - I mean I type things fast so it's rough. But I want to make sure that I captured the objection well enough. And if I didn't, by all means just redraft it and paste it in the chat and let me know and I'll put it in there.

Let's see. I think I'll go through the queue. But if we can sort of stay on this part of the conversation, I think that would be helpful. It would be very helpful I think to flush out more objections so that we can then circle back to seeing if there are ways that we can address them. Don, go ahead.

Don Blumenthal: Okay. I didn't have time to go through all of Marika's message. If I can jump back and forth and do it now.

Mikey O'Connor: Don, are you still there? Am I still there? Can people hear me?

Marika Konings: This is Marika. Don dropped out of Adobe Connect.

Mikey O'Connor: (You are here). Oh, okay.

Marika Konings: So he is (unintelligible) with results.

Mikey O'Connor: Okay. Dang. Well, we'll watch for him in the queue and let him in. I think he might be traveling or some other on the (old thing). Anyway, oh Don, you're back or not. Don, can we hear you?

Alan Greenberg: I think he's working from ICANN D.C. So that might be the problem.

Mikey O'Connor: Ah.

Alan Greenberg: Just kidding.

Mikey O'Connor: Yeah. That could be. Okay. Well, we'll - I'm going to use my God like powers and see if I can - no I can't. Never mind. Well, we'll just keep an eye out for Don. Amr, go ahead.

Amr Elsadr: Thanks Mikey. This is Amr. I was just hoping someone could - maybe Marika or anyone else on the call could maybe just clarify to me exactly what the language Marika is using is suggesting. Because the way I see it is that this is a recommendation maybe apart from the final paragraphs on reaching out to the GAC.

But this is a recommendation to basically just proceed with implementation of a transition to thick Whois and can just kind of watch out to see if any problems come up without actually looking into it first and checking to see whether there will be any problems during the implementation.

Am I understanding this correctly or did I miss something? I read it a couple of times but I really honestly wasn't sure. So Marika's got her hand up. If she could clarify I'd be grateful. Thanks.

Mikey O'Connor: Take it away Marika.

Marika Konings: Yeah. This is Marika. I think as I tried to explain as well in the message I sent to Don that the idea behind, you know, proposing these recommendations that we try to move away from, you know, trying to look for a problem that we haven't been able to identify yet.

I think I gave some examples where, you know, we have a lot of experts on this group, parties that will be affected. There's thick Whois is already in operation for many years. We have new gTLDs that will operate under the

new system. We already had a transition. And at this stage we haven't been able to identify any issues, any privacy issues related to the transition from thick to - from think too thick.

Of course that doesn't mean that there aren't any issues. There may still be issues but we just haven't been able to identify them or write those down. So the idea behind this approach saying okay, let's instead of trying to focus all our resources in trying to find that problem or that issue, which may or may not exist, let's try to focus on how we can deal with any issues that may arise, that may still come up through our discussions talking about the transition.

So there is the first step in saying okay, maybe, you know, we - maybe we missed any experts in all the outreach we have done and, you know, one office - one is there maybe the GAC. If we're talking about there - would this conflict with national legislation in different jurisdictions, you know, the GAC is there to raise the flag when it comes to public policy interest.

So one way to call this out maybe indeed as part of the public forum that would follow GNSO Council adoption to call this out as an item for specific input as part of a GAC public comment forum as well as requesting the Board to do the same when they notify the GAC and basically saying look, this is a particular element where we would, you know, like to benefit from your expertise and, you know, local knowledge of these issues to provide us feedback on are there any issues that need to be taken into account when we're looking at the transition from thin to thick.

And through that mechanism if any of those issues do come up as part of that public comment forum in which they'll allow for that - taking that back to the GNSO Council or even the working group to address.

If that - if no one raises any issues at that stage or no problems are identified, you know, the Board can go ahead and consider it and then we'll move into implementation.

But nevertheless even as part of the implementation, the recommendation is written in such a way that, you know, there is an Implementation Review Team that the working group recommends be created that would consist of members of this working group that would work with staff on the implementation of those recommendations and as well with, you know, the affected parties.

So still if anything would come up at that stage, there is again this mechanism for the Implementation Review Team to go back to the GNSO Council and saying hey, you know, we didn't think it would happen but we still have found something that we didn't think of or wasn't raised. Can we have a look at that and now how are we going to tackle it.

In my email I also posted some language on the fact that there's also a mechanism for the GNSO Council to ask the Board to hold implementation of policy recommendations if they feel it goes contradictory to what they actually recommended. And, you know, as you know, in the report we spoke quite broadly about these issues and the need for consideration of those.

So I think that would be - it'd probably qualify on the (unintelligible) should those issues arise. So to try - kind of trying to have a step by step approach but instead of trying to focus all our effort on finding a problem that may or may not exist to actually try to focus on having mechanisms in place that would allow us to trigger an action or an approach in addressing issues as they may come up through the different steps as we move towards the implementation.

Mikey O'Connor: Thanks Marika. Arm, I saw your hand go back up. Is this a response to Marika in which case maybe I'll just hold you in front of the queue?

Amr Elsadr: Yeah. This is a - just a further clarification if I may.

Mikey O'Connor: Yeah, go ahead.

Amr Elsadr: I was wondering are - I suppose most of the folks on this call have a lot more experience than I do on working in ICANN - the ICANN community. My question is about the GAC. Are the GAC representatives of the governments, are they actually the right people to talk to when it comes to privacy concerns from your experience Marika and anyone else on the call?

Are they actually the right people to talk to because I never really got that impression that they were. I'm guessing there are other people who might be more specialized on these topics. So I'm thinking like data privacy commissioners. I'm thinking the Article 29 working party. I know that they've already sent a few letters to ICANN regarding privacy and Whois. Maybe not privacy but data retention I think the letter was about.

So wouldn't it be more constructive - and this is what I was hoping we would get from the legal review is that we identify these folks and during the implementation of the transition to thick Whois is to sort of get in touch with these people who should know what they're talking about and get their inputs as part of the implementation process. Thanks.

Mikey O'Connor: Let me finish typing. Don, I think you're next. Welcome back. Sorry you dropped. Go ahead.

Don Blumenthal: Thank you. Actually my biggest concern here about - and I'm trying to phrase this as mildly as I can. I think we need a broader view of the legal realm. And I'm talking about a survey. I'm not - nobody expected (PEC) to provide legal advice.

But there are a lot of solid people out there who I think could and would be going to provide guidance. I don't know how much they do it for free. Those obviously include folks like data commissioners. But on the other hand it also includes people who are in private practice or academics or people who to be

honest don't have a vested interest in suggesting that there are privacy problems.

These people have to be not only from Europe but from APAC and a number of other locations. And I really think that this broader view is necessary because to be honest I've never seen any particular interest in the general counsel's office in pursuing privacy issues in any - in pursuing privacy issues. I'll leave it at that. Except when pushed.

Mikey O'Connor: Okay. Hang on folks while I type. I kind of slide that one underneath Amr's follow up one if that's okay Don. There's a lot going on in the chat. Let me just roll back because - well, sorry. Alan, go ahead. I'll try and multitask.

Alan Greenberg: Thank you. I'm going to try and not let my frustration come through. We're talking about being asked to prove the non-existence of unspecified issues. I don't think you can do that. You know, we can put onto the agenda that we need to prove the Loch Ness Monster doesn't exist and we're not going to have definitive proof of that.

If we cannot come up with a concrete theory or hypothetical of what the issues are, what the potential dangers are I'm not sure going to more experts is going to help us any.

And I really don't understand how we can go forward looking for a guarantee and each time we can say but we didn't consult the right people.

If we can identify a handful of people who are willing to do it, then let's do that. But at this point we are continually talking about verifying that there is no problem, that there is no issue when we can't define exactly what kind of issue we're talking about, at least I haven't heard one that I understand and no matter what groups we talk about, you know, we're not sufficient.

The people within this group who care deeply about privacy have not been able to come up with the specifics. The companies who should worry about being sued have not found anything.

We're now talking about talking to the governments who have within their realm the privacy legislation that has to be protected and saying they're not going to be capable of identifying what the problems are. This looks like an unending task. Thank you.

Mikey O'Connor: Thanks Alan. There's an awful lot going on on the screen there. I miss some of it. Steve, go ahead.

Steve Metalitz: Yes I agree with what Tim was saying in the chat and that Marika's approach is probably the best way forward.

But if Avri is hung up on the term legal review is there a way to integrate that into Marika's text?

I don't know if you can go back to Marika's text, but it seemed to me when it was on the screen that you could say it recommends as part of the implementation process, a legal review be of - that implementation process include a legal review of potential privacy issues and then go on from there.

Is that -would that - I guess my question is would that be satisfactory to Avri?

Mikey O'Connor: Avri you want to - I'm jumping the queue same shamelessly. Avri's giving us a check mark.

Marika back to you as the surrogate for the General Counsel's Office. Do you want to react to...

Marika Konings: Yes, this is Marika. And to me the question then still is what does a working group mean with a legal review?

If it indeed is to draft a question that is given there as an example, I think already indicated that that will be something as part of the process.

We need to get - so we need to get some guidance on what this legal review, what question is it exactly expected to address? And what more is expected beyond that?

Do - you know, ICANN has the freedom I think as, you know, been along the lines of what Alan described in saying okay there is some confidence that we'll tackle that as we think appropriate whether that's through indeed talking through the parties that are affected or, you know, I already referred to as well in the chat the EWT legal memo which specifically has a section on transfer of data that I think, you know, should provide some good guidance as well, probably as part of the implementation discussion.

So I'm a little bit cautious by putting a term in here where everyone may have a different expectation. And, you know, at the end staff will be blamed by everyone for not having done what you asked to do because we weren't clear what you're asking this for.

So I think I'm still coming back to, you know, what is the actual question we're trying to answer or is supposed to be the subject of this legal review?

And what are we expected to do beyond what I've indicated to General Counsel's Office is able to commit to? And, you know, if there's anything else beyond that, I think people will need to accept as well that that may require then, you know, additional considerations from a budget and resource perspective if that would indeed result in a very big review.

Because I think everyone should be very conscious that those things are very expensive and it's not something that we can just easily, you know, take off the shelves and run with.

Mikey O'Connor: Okay. Steve is your hand up to respond to Marika?

Steve Metalitz: Yes.

Mikey O'Connor: Go ahead.

Steve Metalitz: Yes, I mean I have a lot of sympathy for what she's saying. And sometimes, you know, there are virtues in creative ambiguity. But it's harder to appreciate perhaps if you're the one that's expected to deal with it.

But I mean it just strikes me that if we want as part of the implementation process people think about potential privacy issues and how we can deal with those within our - if there are that we haven't discovered.

And I certainly sympathize with Alan's viewpoint that we've worked - looked hard for them over the past year, you know that there will be - then the rest of Marika's text takes over and it says, okay, here's a mechanism for addressing any such problems that are identified.

You could call that a legal review because privacy is a legal issue. I mean, the only thing we're concerned about here really is that, I think, is whether the legal rights or legal interests of registrants are compromised in some way that can't be ameliorated within the contractual or in a contractual framework.

So that's the only reason I suggest it as a possible way of bridging this gap.

Mikey O'Connor: Okay. Oh wait a minute. There's so much going on. I have to take a slightly sluggish chair pause. Sorry folks.

Okay. So I'm going to continue through the queue, but I am going to point out that we seem to be edging towards our way out of this where we insert some

carefully framed language describing our legal review whoops in Marika's draft.

I think Marika's got a valid point. And I think Steve agrees that we need to frame that carefully so that we don't ask for something that's impossible.

And we've got a tick mark out of Avri that if we could figure out a way to do that, that we might be on our trail toward success.

So I think what I would ask is that as you who are in the queue comment if you can figure out ways to build on what we're doing here that would be very helpful.

I mean, clearly, if you had something very important going another direction that's fine as well. But if we can focus on building this out that would be great. Marc, go ahead.

Marc Anderson: Thanks Mikey. It's Marc. So, you know, I did have a question in a slightly different direction, but I'll - I guess I'll hold onto that for now and sort of go back to the direction we're going.

And certainly I agree with what Marika said, you know, we need to provide, you know, specificity to ICANN legal for any kind of requests like this. Otherwise, you know, it simply unfair to them.

You know, and I think, you know, what I saw in email earlier I'm looking at, you know, thread from (Rich) and, you know, (Rich) and Volker and or (Rick) or Volker and Alan, you know, sort of provide some guidance in that.

(Rick) points out, you know, what he calls lunacy to look at. You know, if you look at every possibility of a registrar from one jurisdiction talking to a registrant, sorry, a registrant from one jurisdiction talking to a registrar and another jurisdiction who then talks to a registry in another jurisdiction, who

can then disseminate information from another jurisdiction to somebody in another jurisdiction all together, you know, I think, you know, there is this great lunacy there. You can't possibly cover all of that.

But then I think, you know, Alan, you know, later gives, you know, sort of a little bit of a blue point there, blueprint there.

He says, you know, Alan, you know, forgive me for, you know, paraphrasing you here but, you know, he says we you want a high degree of comfort from ICANN, you know that, you know, that there's not a violation of privacy legislation, transition on the transition from thin thick. You know and let say I'm skimming down, you know, he uses a high degree of comfort because, you know, we can't get to an ironclad guarantee. The privacy world is too complex.

You know, I think that's a good point. You know, so we need to, you know, he points out, you know, a sample, you know, of some of the areas such as looking at the EU countries, Canada and Asia Pacific related.

And I think, you know, and I think some of that is maybe the direction we could look at -- just some thoughts in that area. Thank you.

Mikey O'Connor: Thanks Marc. As always frantic typing. Feel free to correct me as I go. Volker go ahead.

Volker Griemann: Yes. I wanted to speak to two main topics that were discussed earlier. One is the qualification of the GAC people as the right people to talk to.

And from my private conversation with the GAC people that I've talked to is that none of them are - at least those that I've talked to them - talked to are not experts in privacy issues.

And we've seen that also during the RA negotiations when they first unilaterally accepted and supported the law enforcement, suggestions, and then afterwards came back and said but we also have these problems which needs to be taken care of.

So they're not the right people to talk to maybe to answer these questions directly. But they will be the right people to talk to to go to the right people within their governments and get the answers that you need.

So it - it's just a time-consuming process. So they - once you point them in the right direction they will - I - it's my in my experience find out what you need to know. It just can take some time in my - in our case, almost year for some of the questions that we asked them.

The second point and that is something that I agree with the direction that we're going right now is the scope of the legal review.

That's one of the problems that I had with the original proposal from Avri because the a general legal review with no limitations into privacy issues and Whois that's an open-ended process that we'll never finish.

So we need to have definite questions, tightly framed questions and define those within the next one or two weeks and issue those as an advisory for the legal review that we're recommending. And I think then we're done.

Mikey O'Connor: Thank you Volker. Again, let me type a bit.

Tim, go ahead.

Tim Ruiz: Thanks for - Tim Ruiz. The concern - well, you know, where we're heading now with the legal review in trying to, you know, get it focused, you know, or limited so that it's clear what we're asking, and I don't have a problem with going down that road.

But it just seems like we went down that road and we couldn't get there and then we, you know, like we're all of a sudden we're full circle back there again.

So my only concern with it is that we're just going to start another cycle where we're going to end up full circle and back here again.

So at some point, you know, we've got to keep, we've got to stop going around this circle and land on something.

So we can get there this time, great. I have some concerns about it. Because just say that this should be a legal review, you know, I'm okay with that too.

But the only concern I - the thing that I'd like to point out to Avri and (Amir) and others, including myself, because I had concerns as well that, like concerns that they've had is that, you know, if we're not careful with how we ask for this legal review what we might be doing is providing this mechanism to just kind of gloss over the concerns and then it doesn't ever get anywhere.

Whereas I think what Marika's suggesting it allows some windows of really good windows of opportunity for us to, you know, garner, support and get those in need to be aware of what's going on here and whatever to get input to show what those concerns are, to express that there are concerns and then get those things address.

So whatever we do with legal review I hope we don't soften the rest of what Marika's asking for. Because I think those things that she's suggesting are excellent and really give a lot of opportunity for the right issues to get raised and to be addressed, you know, to garner community support as needed, et cetera.

But just to say a legal review I think it's just a mechanism for everything to get glossed over and then it doesn't go anywhere.

So I don't think that's the only solution. But again I just hope that we can try to address this quickly. Volker's saying another two to three weeks. I think that, you know, after that if we're not somewhere where we can agree I think we need to try to, you know, just cut bait and run.

Mikey O'Connor: Thanks Tim. Avri go ahead.

Avri Doria: Yes, what an interesting conversation. I've been ready for you all to cut bait and run any time. I really do appreciate that we've been circling around and I think in ever smaller circles trying to find a point where, you know, as I say, but I've been ready for you to cut and, you know, cut bait and run a long time ago. So if that's really what you want to do, do it at any point at which you're comfortable.

I think that one of the problems we've run into here is that arguments keep falling into an absurdum. First of all science doesn't prove things. It fails to falsify things.

You know, we can argue over global warming if you like. And will find out that we don't all agree and it hasn't been proven. So the argument of we can't prove that we haven't even really done the inspection.

So what I'm - I very much like what Marika put forward. And I think that the notion I had was that it was suggested that, you know, and perhaps I've also partly suggested is adding the legal review to this.

Now it's obviously I thought that Alan before he became a privacy denier was, you know, alluding for a way that we could get something that did a proper sample.

I'm not asking that every - that the full matrix of every registry to every registrar, every possible, you know, relationship to be studied. That was never the point if you take a proper legal sample to be able to get proper legal advice on the risk to registrants, registers, registries over the scope of the sample.

And I think Alan got very close to describing it. I agree. We would need to write something, you know, fairly precise. And yet we may even do another circle well we were arguing about that wording. That's quite possible. But I don't think that's necessarily the case.

So now so basically, adding that content, having the implementation team and others having taken off the table the automatic requests for an issues report either from the board -- and we realized that there was a problem with that, or from the GNSO which was my next thought is that, you know, giving it to the implement implementation team as yet another compromise in this whole circling around the point, giving it to the implementation team as suggested by Marika and just including this proper sampled legal review of privacy issues involved in the transition and we can make the statement fairly tight, privacy, the difference of privacy regimes across borders is what's going to make the scope of the work bigger or smaller.

I understand that, you know, there's - because I've seen it in many different locations in ICANN from many different staffers is always under the mandate to say, wait a second, you know, be careful how you spend of the registrants' money.

And indeed, you know, I do look at that carefully and say yes we would be making a proposal to the board.

The staff would obviously have to attach a budget statement to it as part of the board's decision procedures say to to go outside and do this study would

cost and the board would have to approve that extraordinary and, you know, as they can, and do to do this.

So the budget is an issue, but it's a decidable issue. There is a process for deciding that.

And we are talking about ultimately sending registrants money to make sure that we're covering registrant's privacy rights.

So basically I'm finding myself very much in the position of thinking that what Marika putdown is great.

I just think that we need that legal international privacy legal thing. And I understand that the staff is not specialized in that. And so I kind of always thought it would need to go outside and kind of got stuck in this bubble for a moment of we can only do things inside.

But no, I mean there are professionals out there. We can go, we can get a properly framed study. We can bring it in. We can have the implementation team get it and with all the other stuff.

And to me personally I think putting all that together does make a reasonable solution to the very wide, you know, scope of views we had at the beginning.

So circling around the topic until you hit a compromise point seems to be normal and not problematic, but thanks.

Mikey O'Connor: Thanks. Marc you're next.

Marc Anderson: I - actually I think it might be - I'm guessing it might be appropriate to let Alan jump me in the queue here.

Mikey O'Connor: I'm sorry. Alan I haven't been playing close enough to the queue to know. So Alan if you want to go first that's fine.

Alan Greenberg: I wasn't in - I'm not next in the queue, but I'll go first. I have a very short one.

Mikey O'Connor: Okay.

Alan Greenberg: I do object to be calling - be called a privacy denier. I don't believe I have said that. I said, simply said I...

Avri Doria: Okay, I apologize. I'm a global warming denier. I'll freely confess that. So you're not a policy denier but I definitely deny global warming.

Alan Greenberg: On the other side you said my wording got closer, but I really don't know which wording you were talking about. And I'd like if you could get some clarity on that. Thank you.

Mikey O'Connor: I think it's this wording yes. And it's - excuse me.

Alan Greenberg: Okay. Is it what I put in the email yesterday or...

Mikey O'Connor: Yes.

Alan Greenberg: Okay.

Mikey O'Connor: And I think that.

Avri Doria: It was one, yes, with the degree of comfort that whole, yes. So that...

Mikey O'Connor: Yes, this...

Avri Doria: ...would be a great starting place for the wording.

Mikey O'Connor: Yes. So maybe I'll just pick that up and staple it in here. Oops (spazzed) out.

Alan Greenberg: All I was trying to say when we're - and I've been regularly asking for examples, theories, concepts is some direction in which we can go to do this investigation instead of giving people a completely blank piece of paper and saying is there anything wrong way that you can identify with what we're planning to do?

You know, otherwise I think we're asking people to prove negatives. And there's always going to be too much of a question left.

If we can give some concrete examples, and again, they don't have to have existed, they're just hypotheticals. At least we know what the beast is that we're trying to identify. Thank you. Now I'll go back to being quiet.

Mikey O'Connor: Okay. Oh I see what's going on. Marc is putting himself at the back of the queue. I look up and gracious it's all different. Avri go ahead.

Oh, by the way, I'm sorry to interrupt you...

Avri Doria: (Unintelligible) the finger spaz. I didn't mean to put myself back in the queue.

Mikey O'Connor: Okay. I do note that we're getting very close to the top the hour. So I'm going to draw a line under the queue at Marc. And then I want to take a snapshot of sort of where we're at and where we want to go from there. So Marc go ahead.

Marc Anderson: Thanks Mikey. I guess being cognizant of the time here. I'll say, you know, I do think, you know, we're circling closer to a target has been said a couple times.

It seems like we're moving closer to a, you know, a general consensus which is very encouraging considering, you know, where we started with this.

I guess my next question this doesn't necessarily have to be answered right now, you know, maybe we can take it to the, take it to email between now and the next meeting but my next question is around, you know, what happens next?

And let's just say, you know, we've come to a consensus position, we submit our paper, the board approves it. You know, what happens, you know, next?

And I think I'm more asking in terms of the implementation team and the implementation review team that Marika, you know, mentions.

I guess I'm just not all that familiar with the, you know, the process as far as you know, once the policy is recommended how the implementation would happen.

And, you know, also, say, you know, if there's, you know, if you - even if you could point me to some place I'd be happy to, you know, read or look up if it's documented somewhere. But I guess I'm just asking for more information on what comes next. Thank you.

Mikey O'Connor: Thanks Mark. I see that Marika's hand is up. I bet that she's volunteering to help you out with that. Marika, over to you.

Marika Konings: Yes, this is Marika and I'll try to be brief.

I mean implementation teams are a relatively new concept under the revised PDP that came into force I think like two years ago now.

And they see the idea is that, you know, when staff gets the recommendation from the board ask for adoption they start looking at it and they'll start working on an implementation plan.

But there have been instances where questions may arise or where they may need clarification.

So the implementation review team is intended to be kind of sound board for staff to work together on, you know, addressing any issues or items that may come up in certain cases that maybe staff may look at the recommendation and say well in order to implement that you may have approach A and B which to us sound fairly identical.

But there may be a preference from those people that actually developed the policy so let's check back with them to see what they think. And I think in this scenario I think it's also called out in a report.

But of course as we're looking at, you know, one party that will definitely be involved in this transition that they would have a seat at that table as well to really go through okay how are we actually going to do that and what kind of safeguards would need to be in place?

And I think the idea would be as well as the language I propose of course through such conversations issues may come up as well.

And I think that's in a general context what our policy recommendations through the implementation process issues may be identified.

And then again the Implementation Review Team would be a mechanism to take those back to the council and flag those and say hey, we actually came across something that we didn't anticipate. How should we go about that?

And just maybe one last note, the Implementation Review Team typically consists of members of the working group that were involved in developing the policy recommendations as the idea that, you know, it's really focused on the implementation and should be on, you know, opening issues that were already closed or going again in the policy discussions.

So it's really about focusing on how do we get the implementation plan together and how we can the Implementation Review Team serve as a kind of soundboard for staff to work through that implementation.

And, you know, that sort of speed the implementation plan that will come out at the end of the day and which normally is also posted for public comment and shared with some of the parties that will be affected thereby it.

Mikey O'Connor: Thanks Marika. It's 10 o'clock my time, top of the hour for the rest of you. And I think we'll end it here.

I think - Marika can I hand this giant set of notes to you and ask you to take a crack at a next draft of your proposed thing? I know it's not really fair.

Or would you rather have us carry on the list a bit and refine this? How would you like to proceed? I think we're at the point where we need another draft that people can connect to.

Marika Konings: Well this is Marika. I think Tim made a very concrete suggestion in the chat which I think, you know, indeed includes a legal review, makes very specific what it's about.

I think we had conversation as well that, you know, intent is ready to have it as a kind of narrow focused approach in line as well with all the other elements in there.

So I think some people said as I think I saw (Amir) and (Roy) saying I hope that was in relation to that that they seem to be as well supportive of that approach. So that may be a relatively simple tweak and that I would be able to push out to the list later today.

And maybe from that then people can say if anything else needs to be added to express, you know, their concerns that were put forward today.

Okay. I'm getting a checkmark from Avri. That's cool, getting some support from (Amir) and (Roy) in the list or in the chat. So let's go with that.

It's one right after, two minutes after the hour. And we really do have to wrap up. Tim is also agreeing. So I thank you all. I think we did pretty well today.

And I appreciate people's patience with your hapless chair. I'm trying to get us through this as fast as we can. But these tricky ones we just have to go at the speed they go.

So thanks again, and we'll...

Avri Doria: (Unintelligible).

Mikey O'Connor: Thanks Avri. And we'll see most of you on the list. It's too bad that Avri's going to be at the IGF. But yes, please do try and follow on the list...

Avri Doria: I will.

Mikey O'Connor: ...and we'll see you all soon.

Avri Doria: Bye-bye.

Mikey O'Connor: That's it for me.

Man: Thanks Mikey.

Mikey O'Connor: Thanks bye folks.

Woman: Thank you very much (unintelligible)...

((Crosstalk))

Woman: Bye.

Woman: ...recording.

Woman: Bye.

END