

**WHOIS Working Group C "nature of
the registrant" Teleconference
TRANSCRIPTION
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Note: The following is the output of transcribing from an audio recording of the WHOIS Working Group C "nature of the registrant" teleconference on May 2, 2007, at 12:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<http://gnso-audio.icann.org/whois-wg-subgroups-c-20070502.mp3>

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

Attendance:

Jon Bing - wg chair

Philip Sheppard - WHOIS wg chair

Ross Rader registrar c

Avri Doria - NomCom Council

Bertrand de la Chapelle -observer

Christopher Gibson - observer

Lynn Goodendorf - observer

Neil Schwartzman- observer

ICANN Staff:

Denise Michel - Vice President Policy

Maria Farrell - GNSO Policy Officer
Glen de Saint G ry - GNSO Secretariat

Jon: Five past.

(Ross Rader): I'm going to mute my line. But if anybody needs me, just summon me.

Jon: Yup.

Woman: Thanks (Ross).

Man: (Doug) suggests that we start at then we ask the recording to be initiated please.

Woman: Right away, Sir. Thank you. One moment.

Jon: Welcome everybody. As you know, at least I have tried to make that perhaps overly clear on the (extremities) of this. Therefore, it's (bound) to make many mistakes and probably oversees many issues that for you all – you are clear that for me slightly clouded. So I rely upon that being guided and I listen carefully. And I will not be offended even if you are overly clear.

And this December, is looking at the distinction between – that should be made distinction. And in the brief they suggested a couple of possible ways of making such distinction prior to this meeting. But (unintelligible) called me yesterday.

Coordinator: Excuse me. Avri Doria now joins the call.

Jon: Hello. I released a small paper discussing some of it. And some of you may have – being able to grab to that paper. But I thought perhaps it might be appropriate at the start to look into or summarize some of the points based in that paper.

Perhaps that first of all should make sure that our brief is to discuss the distinction should be made between registration contract information based on the nature of the registrant.

Name or the use of the domain name is obviously is part of a much larger issue. I mean maybe difficult to find a – to draw the line, you know, discussions, especially as the question led to a distinction should be made.

Obviously relies on why a distinction should be made which policies are served and these interests are served by making a certain distinction. And the discussion that at least they might be lowered the why rather than keeping it to the (letter) as they are so even if they're related.

Any comments at this time?

Philip Sheppard: Jon, Philip here. Just one, I think I had a wording from the work plan from the charter is determined whether on how distinction could be made. So I think we're probably just looking at the ability to make a distinction and then if the answer presumably is no, no further work.

If the answer is yes, then we need to decide what practical use we can make to the distinction. So that's how I'd view our task.

Jon: You may, in the delight, so I copied the (said) from the document passed by the council. But the charter may have been amended compared to that decision. So I – you may be very well be right.

Philip Sheppard: Okay.

Jon: At least we are looking into the operational part of it not the – into the more political issue (so with) looking vendor distinction should be made.

Any further comments.

Although I said, I'll try to walk you through this brief paper. It's indeed very brief. It has only six points for it. The first point is the nature of personal data. Personal data is the term data is used rather than informational with that being...

(Ross Rader): Excuse me. (Ross Rader) now joins the call.

Jon: Hello. As I said, that both data is used rather than information without being too much aware the intention behind that variation in terminology. And I have cited that perhaps the definition we passed (somewhat) provide us acceptance which is found in the European State of Protection that exist which says that the personal data shall mean any information relating to an identified or identifiable natural person. And such person is known as the data subject.

And then it goes on trying to explain what is an identifiable person that is one who can be identified directly or indirectly in particular by

reference to identification number or to one or more factors specifically to his physical, physiological, mental, economic, culture or social identity. And this is a definition that opens for a lot of discussion.

A discussion which I myself have contributed to and which I'll refrain from doing because the main point here is the limitation of the person to natural person.

And I make the small point that said person doesn't exist are usually not seen as a natural person. So this is (trouble myself). And that the identified element usually is name or an identification number or then other factors. But that you're not, I think concern us overly as it will be the name which will be the major identifiable element in our context.

(Other) problem is of course that's a false name. It's an identifiable or it is a personal paper.

Second, having done with natural person, I look at legal persons or the notes look at legal persons and try to describe legal persons which will be specific to the – it will be specific to the jurisdiction concerned.

And the reasons for creating that legal person are mainly found in the desire to separate the liability of a business from the liability of the persons taking part in that business.

And then there are certainly a great deal of variety and the – and until that's used in creating different forms of legal persons within the different jurisdictions. But again, it doesn't seem to be too difficult to make the distinctions in principle.

And then in the third section, I look at the principle in practice. And point out that for small and medium sized businesses, they're optimism is identification between the business and the legal persons and the person who operates the business. And that is the fourth point.

But – yeah, and on that page, uncertainty and - may make it difficult in practice to maintain distinction in principle. But it is done in most jurisdictions.

As I said, I jumped across from point that is the point which has made with some force by the role that a legal person cannot agitate the protection rights. Data protection may be the reason for one to make a distinction between natural person and bigger person.

Some maintain that to say a legal person having privacy right is a contradiction in terms as privacy is something related to the basic human rights.

But if you look at the more mundane version of privacy which often is described as data protection, you'll find that for instance the US Credit Reporting Act equals both individuals and legal persons.

Then I briefly tried to look at the distinction between commercial among commercial purpose. And some of you maybe willing to complement or supplement this discussion. But it seems to me that it is an extremely difficult distinction to make.

And in my experience, it's drawn differently within different areas or role, even within one jurisdiction. And the personal care meaning it may be that it's acting in competition in a competitive market.

It may be that it is acting with the objective of making a profit. And there may be other ideas behind the face commercial purposes.

It certainly is used in several contexts for instance, in the fair use discussion (unintelligible) doctrine is not (unintelligible) and certainly not over the jurisdiction. But it seems to be that it's extremely difficult to use this as a distinction on which to base an operative and international provision. But I may be wrong.

And then, I probably mentioned that a possible distinction between public and private organizations if one should want to look at that. And one probably won't because that also is a difficult distinction especially in a situation where public agency is to a large extent outsource functions and blurring the distinction between the private and the public sector which (accident) development going on for decades though.

And therefore making that less attractive and it hasn't. It is my own – I've just put it in there because it tends to be something that should be discussed. But there is no indication in the document that this is an alternative that should be further (explored).

But in summing up, I am – I find that it is distinction that in natural person from one hand and bigger persons on the other hand that seems to be most operative and which also seems to have – can be based (unintelligible). And that there is a reason for making that distinction - this reason than being data protection.

That is perhaps not to so brief but that is my summing up. And I let you speak as you like, please.

Philip Sheppard: Jon, Philip here. I think that sum up was excellent and very clear.

Thank you for that. It's – and I think your tentative conclusion that distinction between legal and natural is the more achievable one to make.

It's also one that I've heard else where. And it may be an interesting question to know if anybody on the call has a different opinion to that.

I see the second question will come to later what we do with distinction. But first, we're just looking at the practicality of making a distinction.

Jon: Let me perhaps add only the – say that to this – several has made that conclusion. But that doesn't lead to minute they adjust it, did not make that conclusion in drafting the first Data Protection Act.

That they are so difficult to make this distinction, that I refrain from doing it on extended data protection to legal persons. That has later been amended but it certainly makes it in my mind clear that both arguments can be defended.

Philip Sheppard: Okay. Thank you.

Bertrand de la Chapelle: Jon, this is Bertrand de la Chapelle here.

Jon: Hello Bertrand de la Chapelle.

Bertrand de la Chapelle: Just a few comments, thanks for the summary. That actually highlights the benefits of the distinction between the legal entities and

the individuals. One element of answer to the question whether distinctions could be made, apart from the technical aspect.

I just want to give the example that I checked in France, the registration in the national ccTLD that at far makes a distinction between the legal entities and the individuals.

And it makes the distinction not only in the way the data is accessed but also in the type of data that is collected. Like for instance, if you registered domain name.

And that at far as an entity -- commercial or non -- you have to indicate your number of registration whereas if you are a private person, you will enter your private address.

So, the distinction can be made or is actually made in certain cases. The key question is, is there a distinction only in the way data is accessed or is there a distinction as well in the nature of the data that is collected.

And the other point I wanted to raise is that I remember in discussions with the Canadian GAC representative that apparently from what I understood, they were making a distinction that was more based on the commercial/non-commercial activity. But this is just hearsay and I'm not sure that I understood well, so anybody who could provide other clarifications as well?

Jon: You're coming and going in my area. But I got the last thing about the Canadian example of commercial and non-commercial. And if you of course - or within your jurisdiction and there is a form for a legal

persons which are for instance, for a non-commercial purpose. That should be enough (unintelligible) a criterion. And it could be used. But I find it difficult to use at a across jurisdiction.

(Neil Schwartzman): It's (Neil Schwartzman) here, sitting in Canada. I can say that there is a distinction made between the use of data by individuals and commercial entities. And certainly, that seems to be the operative pointing of...

Jon: Uh hmm.

(Neil Schwartzman): ...by which we can launch investigations by way of the office of the Privacy Commissioner. But I do – I did want to make another point which is as I think was quite clear on the main discussion list some time ago.

Representing the coalition against non-solicited commercial email, my primary concern is for the ability of spam investigators and security investigators to be able to use who is as continually as a resource to which we can track, you know, network abuse back to specific...

Jon: Uh hmm.

(Neil Schwartzman): ...(mis-screened).

And this discussion raises the question what would stop somebody with mal-intent from simply declaring themselves as an individual as opposed to a commercial entity so that they could further limit access to their data.

Avri Doria: This Avri, can I comment on that.

Jon: Yes please.

Avri Doria: I mean one of the things is that would fall into the accuracy and verification of information. If someone was making such claims, and such a claim – the claim of being a private person and such a claim was not sustainable just like in inaccurate address, there would have to be a process as part of the accuracy process for determining that this was not true.

And that would be the way of determining whether your alleged mis-screened was indeed not a private – a natural person entitled to the protection of privacy/data protection. That's part of the accuracy requirement.

Man: Yes.

(Neil Shwartzman): And to date, we have seen little or no application of the accuracy requirement unfortunately.

Man: I think that's inaccurate Neil. Actually, I believe if you should read the reports of – like history of the application of the accuracy policies. But I'm not sure what the relevance this has to the work of this particular (sub-group).

Philip Sheppard: Well again, if somebody decided that they wanted to register themselves as an individual, we need to find a mechanism to verify that at the point of registration not after they've done damage.

Jon: Okay. Philip, this (unintelligible). I mean we are making a leap forward moving potentially out of scope in terms of where what is sub-group is. I think first question is kind of the distinction we made. And then if yes, what would you do with that distinction and how is that distinction made?

Okay, now I think you're question was presupposing that there would be a self-declaration. And then you're – second part of that was another supposition what do you do in the case of a false self-declaration.

Philip Sheppard: Yup. So that's already a set of levels away perhaps where – from where we are. So I think we need to put structure our dialogue because I think once you get into either verification or challenge of data to my mind would probably coming back more to the work of our sub-group 4-A which is – what is the designated contact to all about and what is their responsibilities.

And my proposition is one of those responsibilities is going to be, to do the verification of data. So we - it's probably helpful if we – where we see pointers to go back into the same sort of process if we make those as we go along rather than try to answer my self.

Man: Philip, fair enough. I just wanted to raise a red flag early on, or a yellow flag, as yellow card as it were. So that we are aware of potential pitfalls as we move forward.

Philip Sheppard: Sure. Yeah.

Chris Gibson: This is Chris.

Philip Sheppard: I think that's also reason it is an important note because even if we make the distinction between legal persons and individuals. The next to have the question what if their data in the individual is inaccurate, for instance, false.

That has both with courses for or consequences for that the data then remains private, or - and for the verification process. And it all based – part of a general issue that is difficult as I initially said to separate them because you have to talk about the course and listen to what the effects on the certainty (unintelligible).

Chris Gibson: This is Chris Gibson. I agree and I think it's – it will be important as we lay out possible alternatives, to also, perhaps when they reported to report them with the red flag that might attached.

As a question or as a proposal for how to proceed in this group, I would suggest that we have two - we setup up two sort of a wish list. One for focusing on the first distinction, and that's the one we talked about here today, legal versus natural persons. And focusing on whether and how a distinction can be made on that basis.

And then, second wish was - which is one that would focus on the distinction based on used of the domain name, for example, commercial versus non-commercial.

And then again asked members of the group to provide perhaps proposals where the – a distinction on that basis along perhaps with the red flag that come with those possible distinctions.

But I see it as there's two different distinctions that are requested to be focused on, and we can make a sort of a list of alternatives for following under each which also would then, obviously be accompanied for example by the red flag that we just talked about.

But there's essentially two levels and they implicate different things. You can imagine a process in which you capture information at the outset of a registration whether the entity is a legal versus a natural person.

Or also you can ask the question about intended use at the outset of the registration. Is this a commercial versus a non-commercial use? And both of those would be self declarations.

But, again I think we should have those two tracks and ask for members to perhaps put in proposals based in response to each of those two. And then from that we can have a further discussion. I found the background paper by Jon to be very helpful because it thus show in the gray areas how difficult these things can be.

(Ross Rader): This is (Ross) here folks.

Man: Yeah.

(Ross Rader): Before we proceed with that suggestions or considering the suggestions, I'd first like to continue with the – continue running an (unintelligible) in discussing whether or not distinctions can be made on along this one.

I think the policy basis for making a distinction between legal and natural registered name owners, is relatively straightforward, so to speak. I think certainly giving all the caveats' to Jon is laid out or extremely feel impertinent.

But I'm not sure that the policy basis for making such a distinction along a commercial and non-commercial used of the domain name is as straightforward. So (they can) understand that set of questions better before we go down the road of creating wish list that would help us impose those restrictions.

Chris Gibson: On the second one, let me make a quick comment. This is Chris. I do have great concerns on the distinction on the second one. Particularly given the dynamic nature, websites and what can be commercial one day, is non – I mean what can be non-commercial one day is commercial the next. My experience as an analyst in dispute, and in both UDRP and (dominant) dispute is that, often you find that things changed very quickly.

Man: Uh hmm.

Chris Gibson: And so, you know that is a real concern as to the second distinction, you know, something that can change so quickly and dynamically as the content of a website.

Man: Uh hmm.

Jon: Yes, Philip. I think I'm speaking personally. I think my instinct is I tend to agree because what is the distinction between a legal and a natural person is essentially a given distinction, and the entity is either one or

the other. Commercial versus non-commercial related to use, and thus strike me to be a potentially moving target.

Man: (Multi-dimensional)?

Jon: And – exactly, yes. So I think as always in business one's instinct is to go for the definable and the simple.

Man: Yeah.

Jon: So that would be certainly my comment.

Bertrand de la Chapelle): Hi. This is Bertrand That point, it's not only the definable. It's probably also the verifiable. The distinction between natural and legal is something that really a needle.

Or the commercial, non-commercial is more blurry, and it's again led to a lot of nuances. So in any case, the first one is verifiable, where is the second one and be verified but not as clearly as the first one probably.

Philip Sheppard: Could I ask a question to you? Those of you who are much more experience than me. I do think it is possible to argue that the distinct with commercial and non-commercial is both blurred and multi-dimensional and dynamic, and so on.

On the other hand, it might be perhaps some purpose or some interest for some organizations to qualify itself as commercial. At prompt saying, "I am a commercial organization".

Does that have an advantages and would there be any disadvantages in a commercial sort of something or organization, something has commercial but really not being it. I mean would that be part of our discussion or is that something which doesn't say they have any use in real life.

Chris Gibson: Well this is Chris. If someone were to self - or identify themselves as a natural person at the outset and yet at another level they indicate that they're involved in commercial operations even if...

Philip Sheppard: Indeed.

Chris Gibson: ...they self declaration that may carry a consequence.

Philip Sheppard: Certainly well done and we could at least. And as I mentioned, for those jurisdictions which are small or which are many, there is a, perhaps not so such an obvious difference between our company and the person operating that company.

Jon: Actually Philip, I suspect the difference may come across is when we move to the next stage of discussion, and deciding, "Okay. What are you going to do with that information?"

Philip Sheppard: Yup.

Jon: And if the distinction is going to lead to a change in either the amount of data available openly or differences in access to the data, then the distinctions may start come into play.

Because, if you're looking at legal entities which are non-commercial, I think we'll find that some voices who will be looking for no differences in the protection of their data to that of an individual depending on the nature of that non-commercial organization. And there we start to fall into more challenging ground.

Philip Sheppard: I do agree. If he takes the first - we have now two examples. One example is a natural person who's un-disputable and natural person that says that "I am against the commercial activity. And therefore my data is to be treated according to the rules of those engaged in commercial activity.

That would have no problem in data and protection, because it would be the choice of the individual in question. So if you want to include such provision that would seemed to me not to have much problems related to it.

The second is so then it would be an organization who wants to be treated according to the more restrictive rules, guarding or guarding data on individuals. And I find that a general distinction between commercial/non-commercial is insufficient to be in a pumped.

But perhaps there is a (sub set), is there a more narrowed definition which we could use. For instance, relying up on the non-com, an obvious but in sufficient example would be the non-government organization accredited to (YPO) or something like that.

Man: Okay, from the practical side...

Philip Sheppard: Uh hmm.

Man: ...how would a (unintelligible) two tier test of self declaration works, do you think?

Philip Sheppard: A two tier test?

Man: As Jon was describing that you might, first of all self-declare. I mean the - an individual or legal person. And then you would declare use, say for purposes of discussion commercial and non-commercial, and that might have different outcomes in terms of subsequent access to data.

Man: Uh hmm. Hmm, that's interesting. I don't know. What I'm thinking - what I was thinking of which is why your question caught me off-guard was, I was trying to categorize myself and my use of my domain name as commercial or non-commercial.

So I was thinking through some of the things that I use my domain name for which include everything from the web log that I publish which is a mixture of kind of policy observations, some of it, commercial, some of it non-commercially motivated.

I publish my photograph at my website, about of those things. But then we will get into other use of the domain like email for instance. I have personal email running on my domain. I also have a large amount of business mail ready to (unintelligible).

Jon: Yeah.

Man: So I would have a hard time, and also solicit charitable donations through email and through my website, et cetera. So I'm not sure will that would fit in, which thinking it from - through from a user experience perspective.

I would be hard pressed to say that the - that making that distinction would be straightforward for your average natural person or an individual user. But it would likely be very straight forward for a legal user.

You know, a corporation is, a definition of commercial interest. If use of that domain name will be commercial no matter what it's doing. When we may want to make an argument that non - some non profit usage might be non-commercial but, you know, that would tend to say that there would be more of a boundary case than anything else.

So I, you know, when I think through some the edge of the network to the center, I really don't know how such a distinction could be made from a practical perspective. And well, I could think of how it could be made, I'm just trying to consult with the practical value of that would be.

Jon: There's a very valuable contribution in what you're saying or you might think of some, (on why not is that a) nest itself is saying changing the nature, or what is the public and private.

And that this blurred situation or this situation we stays at certain (lateness) about it. They become more common. And that you are using your website both for personal and commercial or business like uses...

Man: Uh hmm.

Jon: ...such are quite to.

Philip Sheppard: Just one, comment on the commercial, non-commercial. It's true for instance that there is a difficulty in qualifying, for instance a personal blog that uses a lot of Google AdWords for instance. And if the revenue from those ads become significant, is that considered as a commercial activity or not?

Man: Sure.

Philip Sheppard: And other points in terms of methodology, provided that there is an agreement – say that there is at the moment agreement on the distinction between personal and legal, as well as whether there is an agreement on commercial, non-commercial. In any case, it would probably be interesting to analyze what kind of differences it could make in terms of three different layers.

One is the type of data that is collected. The second one is the type of data that is available publicly. And three, the type of data where the conditions in which some data that is not accessible publicly is accessible in a non-public manner throughout a procedure.

I think the three layers are different. The example I was giving for friends, is that the type of data is different for the legal and the personal. The way this displayed is somehow different.

And for instance even if you have a legal entity, what people are recommended to do is to give the contact points in generic emails, like

contact@company so and so which allows for more flexibility and protection of the individuals that are concerned.

And the third layer is that if for instance law enforcement agencies are requesting some kind of data, I suppose that it is different or it could be different when it is from a legal entity or for an individual, for instance. But I think the three layers are important.

Jon: I have noted them down, it maybe helpful. And it is helpful but I think if they tried to find different aspects and turn this around so you can perhaps come up with some solutions that are up based on a simple distinction that's on a combination to tie. Is there something like that or combination between a data and procedures?

Philip Sheppard: Uh hmm.

Jon: Yes, should be briefly reflects on how to proceed from here. There's been the suggestion that we should try to, perhaps (unintelligible) correct reason that – try to just come up with an example.

That's how to make operational or find the operation criteria for distinguishing between individual and legal person, and between – and the commercial use.

If you, made (personal) on the less (unintelligible) of course take it to myself, to try to organize them in such a way that they could use them for the next call.

(Maria): And Jon, it's (Maria) here. Could I suggest that maybe I could start (bring) together a cable that we could fill in as we go along with them

either with those two such as criteria and what maybe a number of factors that we could consider in relation to them.

So, you know, perhaps in terms of the distinction between legal and natural person and what the distinction is based on, some of it, summarizing your paper. And on that, how distinction could be made in terms of such criteria. And are we going back to the wish list idea that I think...

Jon: Yup.

(Maria): ...Neil suggested.

Jon: That sounds excellent. Also I think we should perhaps have some sort of maximum data feed, you know, what are we talking about exactly. I have told that the data available for - from several used data bases.

But I'm not quite sure whether we - I have -- due to my lack of experience -- have a clear understanding on what is the maximum data that we expect to find available for such a data base.

Chris Gibson: This is Chris. One thing that might me helpful, I looked at the – here was the background note that was published by the staff the other day. And that indicated as an example what is currently possible to look at in a who is...

Jon: Yeah.

Chris Gibson: ...the complete who-is record. And, you know, it's right there on the page as an example. And then there was a different example under the (Okyo-C) approach.

So I mean you can look at just that data, everything that's possible by looking at that background or I think as an example of the whole list of things that could be collected. And then, you know...

Jon: Yeah.

Chris Gibson: ...from there.

Jon: Perhaps this is – tried also to float another - other idea based in some jurisdictions that is the denotional trivial data and - trivial personal data which are not to be subject to any restrictions. And then – which is a more type of course but they could say important things like name and others.

Will it be useful to have a sort of a, qualifier, set of this data trivial let them have the rest of the data and then, from sensitive data that probably (doctor) care at all or only, (unintelligible) in the radio station?

Woman: And -

Avri Doria: This is Avri, can I ask a question? Is that definition of trivial data a global definition of...

Jon: Nope.

Avri Doria: ...trivial data or is this sort of an ad-hoc local thing?

Jon: It is not an ad-hoc thing. But it is a local thing.

Avri Doria: Okay.

Jon: It's a systematic local thing. There is no – the notion of trivial data is not, you know, that's the – or globally accepted.

Avri Doria: Okay, then I would probably add that it's probably problematic or included.

Jon: Yeah. And so it's certainly couldn't be included the (reference) to some sort of consensus. If this be included as based on our policies that seems some people think is a good idea. And if you don't think it is a good idea, there is no reason to personally (unintelligible).

Philip Sheppard: It's an interesting question. But it does lead us to just to think about if we are going to make distinctions based on the nature of registered – then what does that mean in terms of the data that appears there. So it's – or the terminology may be local. I think the concept would have global applicability.

I mean for me, I was just trying to draw a little matrix in which I was looking at the four options that come out of the different combinations between legal and natural, and commercial, and non-commercial.

And assuming you had a registrant who would make a self-declaration, and that's just look at the meaning of that self-declaration of hers.

And there, I supposed you characterize result of the self-declaration as being either open in terms of somehow more open as data or closed in terms of more closed.

And I was just about for the OPAC proposal. Then to my mind, if you'll either legal or natural, but also declaring commercial, then you would fall into the open category.

If you are natural person, and declaring also non-commercial, then you would fall into the closed category.

Jon: Indeed.

Philip Sheppard: And that leads us with the fourth possibility which is to my mind a great area that you're a legal person and declaring non-commercial.

Jon: Yeah.

Philip Sheppard: And somewhat does that mean.

Jon: Yeah. And that will be - there will be a category where you cannot just do the same mistake and see there would be other categories based on self-form – self declaration. Somebody has to take – there has to be some additional either criteria or procedures to determine who can belong to that category.

Philip Sheppard: Well, we can - by self-declaration. But would then – first determine what you want to do with the declaration. And then, I think to my - as to the second point or is it comes – so is there verification of that or challenge mechanism in terms of the (unintelligible) of that...

Jon: Indeed.

Philip Sheppard: ... second stage.

Jon: That is matter is resides, I think was quite helpful to them. And it's a done also with that table that (Maria) suggested.

(Maria): And it's Maria again. Actually matrix is the word that I was trying to follow along what Philip has suggested. There may be develop some more into a criteria within that structure.

Philip Sheppard: Yeah, there may be sub-serial criteria or alternative criteria as well.

Bertrand de la Chapelle: This is Bertrand de la Chapelle. I think the - there might be a difficulty here in using too often the open and close metaphor as if it were only one either or regime. For instance, the modalities to access a given set of data bring a completely different type of protection of privacy.

Like for instance, I can be willing to see whether a given domain name is owned by somebody that I suspect has requested this as registered this domain name because this person has already registered a lot of others that are infringing upon my rights, for instance.

You could very well have the way to address the data base that allows you to search everything and you can ask the name of who registered this domain name or have something that allows you to say, "Is Mr. So and so, the registrant for this domain name."

These are two different modalities of access that give answer to the same question. But in one case the data base can be mined in a completely open manner.

And in the other one, it's a per request question. So I think we should keep in mind in the whole discussion that not only the type of data that is collected but the technical modalities for access of very, very – and that there are many possibilities beyond the simple public or non-public.

Philip Sheppard: Yeah.

Bertrand de la Chapelle: Even what is public can be accessed in many different ways.

Philip Sheppard: That is a primary reminder and perhaps we also should – we have occasionally pressed upon the role of law enforcement agencies. I talked (unintelligible) pursuing that very far.

But there are of course also other organizations that might grant access beyond what occasional or user would require organizations that have a strong interest in maintaining certain or pursuing certain objective.

For instance, (white collar) organizations which certainly would be a controversial example but illustrates my point.

Bertrand de la Chapelle: Which organization? I'm not sure I understood the last...

Philip Sheppard: What type of organization?

Bertrand de la Chapelle: The - what? Sorry. (Right) there's organizations like the organizations for the movie industry for instance. But as I said, this is a controversial example. But – you might have different rules for private investigator and a trade organization seeking the same information. If not necessary a good idea, so don't let yourself to be distracted by it.

Chris Gibson: This is Chris. My - these are all, you know, useful and interesting points. My concern is that if you go with anything that starts to be too finely tuned on an international basis, I think the perfect will be the enemy of the good.

Philip Sheppard: The deep.

Chris Gibson: And you have to stay with basic distinctions. My concern is that if this system has evolved over the last, you know, five to ten years who is in its role as recognized by the GAC. It's also evolved and as you come a fundamental element.

And what creating even the basic distinction of natural person versus legal person could, for example, create huge incentive for those who would think they might benefit by declaring themselves as natural persons at the time of registration because if they think that that will provide a more evasive way for them to conduct, you know, fraudulent or other harmful activities.

And they see that this set of rules and they'd say, "Okay, I'm just now going to self-declare as a natural person because I immediately see it's going to make, you know, life more difficult for all those who would want to try to pursue me and stop my spam, my fraudulent fishing and anything else."

So, you know, I – even though we can talk about all of the finely tuned approaches on an international basis. Scaling that is going to be very difficult.

Philip Sheppard: Yup.

Chris Gibson: So we have to think – I think that the basic matrix that has started to be discussed is the one that we should focus on as possibly workable. But even then, as I said there is huge concern as to the incentives. It would create, for those that might want to perpetrate malicious activity.

Philip Sheppard: Yes thank you. We have – that I think was point well taken. And thank you for that. And I think that as we try to have one more goal at the emerging matrix and see what we can do with that.

Yup, with the help of all of the user (unintelligible) and (Maria's) kind assistance, I'm sure we'll have something better to discuss next time.

Jon: Good. Yes.

Chris Gibson: Will the - this is just a question of process. Will the same call in numbers be used for each teleconference?

Glen de Saint Gery: Normally, yes.

Philip Sheppard: Right. That clear low condition dancer, yes.

Glen de Saint Gery: And also the...

Philip Sheppard: That Glen will give us ample of the advance notice if there's a change, right?

Chris Gibson: I know there were also some concerns for those on the West Coast. For example, the United States, who's on the time, was pretty down early in the morning. But I'm not sure that there's anything that can be done about that given this (stat) nature of the call.

Philip Sheppard: We're all goes trying to factor in times in right across the world from Asia through to Australia, et cetera. So, I'll ask was there going to anybody who suffers.

Man: No.

Man: Yeah.

Jon: Ladies and gentlemen, are there any more issues we would like to table?

Bertrand de la Chapelle: This is Bertrand de la Chapelle. It's not really an issue. I found the exchange interesting. And especially the not trying to fine tuned the regime too much as a valid argument.

One thing I wanted to raise and maybe a way to formulate the question. As I understand - and once again I'm coming rather late in the process and so, apologies for the questions that are sometimes a bit naïve but as far as I understand, the OPAC proposal is switching the cursor of the privacy protection in a completely opposite direction somehow than what the previous with regime was.

In a nut shell, in the previous and existing with a lot is visible and a lot is accessible. And in the OPAC proposal, relatively a little is really visible and there are conditions for (access) through the operating point of contact and potentially other (unintelligible).

So, the question that we're facing, if I understand well after this discussion, is somehow boils down to one question. Given the protection that is now given in the context of the OPAC proposal, is there a need for additional protection for individuals?

Man: Yes. That's (unintelligible).

Bertrand de la Chapelle: Is that the right way to put the question?

Philip Sheppard: Yeah. That's certainly say it's a question that has to be answered. I think it's one question but it's – it also opens up the possibility of - are the folk (whirling) back?

Some of the either open publication or different means of access to the data, you have those two streams that might apply in certain circumstances. If we failed that the purpose of your concerns are going to be as well accommodated by change there, as it would be with the role OPAC proposals you have it today.

Bertrand de la Chapelle: Uh hmm.

Man: Yeah, I missed half of what you were saying. So – because I was unmuting my line. I'm sorry if - you've said this already but I think we're trying another way of asking that same question is does the OPAC proposal go too far in forwarding broad anonymity to commercial

enterprises? You know, and is that something that we need to adjust through this process? I think, you know...

Philip Sheppard: Yeah.

Man: ...certainly my conversations in Lisbon, everybody was very, very edgy about the broadness of the privacy protections in the OPAC proposal.

And I think it was clear that they need to be down back a bit. So, I'm not so sure that the focusing on the needs of the individual. I think we've gone far enough there but perhaps too far in other area.

Philip Sheppard: Well, actually thanks for the comment. This is exactly the point I was making. The feeling I had in Lisbon is that somehow the OPAC proposal has gone in a certain direction in the protection of privacy. And I'm assuming that some actors were wondering whether they're balanced was not somewhere in the middle...

Man: Uh hmm.

Philip Sheppard: ...where the distinction might be operational. And this is why I was trying to refrain from (my own) and (unintelligible) this discussion.

Jon: Better. Philip, I think that's right. And that's why we're having this discussion. I'm trying to my mind in this work group to see what it is that's required to make the OPAC proposal universally, sort of, as changed for the better.

Philip Sheppard: Yup. And certainly, your matrix is one way of a set in that direction because it always or it's not focused on only one thing but as of these two foci.

Jon: Yes. Any other business? We're approaching – (Mike) - my works, I should say. It's approaching 3 o'clock. I think that I learned. I thank you very much for easing this over easily into a road for change, as we think. And this has been a new experience for me. I hope that you can make it next week. Thank you.

((Crosstalk))

Philip Sheppard: Okay. Thank you, gentlemen.

Man: Thank you.

Avri Doria: Thank you, Jon.

Man: Thank you very much.

Man: Thank you.

Avri Doria: Now, we can stay online if we're going into the next one. Is that the case?

Man: Only if you find it pretty good, Avri.

Philip Sheppard: (Unintelligible).

Avri Doria: Huh?

Philip Sheppard: Because the whole file...

Man: Only if you found us to be good.

Avri Doria: I was good this time. Wasn't I?

Jon: So, there was a half hour gap there, I think?

Avri Doria: Yup.

Man: Yeah, there's a half hour gap.

((Crosstalk))

Avri Doria: Oh, there's a half hour gap. Okay. Then I guess we won't stay on.

Glen de Saint Gery: Yes, because I left overlap times.

Avri Doria: Oh, I hadn't quite realized that. Okay, then I'll hang up and call back.
Okay.

Woman: (Unintelligible), bye?

Man: Bye.

Man: Bye.

Man: Thank you everyone.

Glen de Saint Gery: (Maria)? (Maria)?

(Justin): (Justin) is here but...

Glen de Saint Gery: Oh, hi (Justin), (unintelligible). No, I was just asking (Maria) if she would tell me who was on the call. Because you thought it was yourself, Philip (unintelligible)?

Philip Sheppard: Oh yes. Did I forget? They're all gone.

Glen de Saint Gery: No, no, no, no. it's just – it's fine. I'll do it. Was (Lynn) good enough on the call?

Man: (Lynn), gotten off first on the call. Yes.

Glen de Saint Gery: Yes?

Jon: We had a Chris somebody?

Glen de Saint Gery: And Chris – you had Chris Gibson.

Man: Christopher Gibson.

Man: Uh hmm.

Glen de Saint Gery: And (Rudy Vansnick)?

Avri Doria: It doesn't say so here.

Glen de Saint Gery: All right.

Jon: Let me think – Philip, of course (Ross). But under that (trapel), Maria, Christopher Gibson, then (Michelle), Avri, Neil Schwartzman and (Lynn).

Glen de Saint Gery: Neil Schwartzman. And who was the last one?

Jon: (Lynn). (Lynn)...

Glen de Saint Gery: (LynnGoodendorf). Okay.

Jon: LynnGoodendorf)

Glen de Saint Gery: Okay. Thanks so much. Okay, that's fine. Thanks.

Jon: Okay, thanks. Bye.

Glen de Saint Gery: Okay. Bye.

Jon: Okay. Is there any other (unintelligible) you want me to do, Glen?

Glen de Saint Gery: No, that's fine. Thanks Jon, nothing at all just next week, same time.

Jon: Uh hmm.

Man: Goodbye.

Man: Thank you.

Glen de Saint Gery: Thanks, bye.

Man: Okay.

END