Transcription ICANN Durban Meeting

THICK WHOIS Meeting

Wednesday 17 July 2013 at 12:30 local time

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Man: Good afternoon this is the GNSO Thick Whois PDP presentation of initial reports, ICANN 47 from Durban South Africa, meeting starting at 12:30 local time and (Tara)'s just arriving, we'll be getting starting shortly, thank you.

Mikey O'Connor: The recordings on, welcome all this is Mikey O'Connor the hapless chair of this working group who sat for half an hour in the wrong room, perfectly happy and so I apologize deeply for being late. We'll start this off...

Man: You got the thick part covered.

Mikey O'Connor: I'm totally thick - and you can tell how this working group worked, it's a very formal incredibly respectful of the chair every step of the way.

I think what I'm going to do is run very quickly through a really short presentation and then I want to ask you all a question - I'll tell you the question now, you can think about it for the big five minutes that I'm going to spend on this presentation and then I'll ask it and then we'll go from there. The question is this, are you here because you've read the report and you really know what's in there and you have questions that you want to ask and

feedback that you want to provide or are you here to get briefed on the report and sort of dragged through it in detail?

Because either way is fine and I'm prepared to do either one but I'd like to take a show hands in a minute and sort of see where we're at in terms of (a run). So Marika - by the way for those of you who don't know Marika, Marika is moonlighting right now, she only works at ICANN part-time. She's also a lead guitar player in a world-famous rock band and she does brain surgery but only on chiefs of state and their direct reports.

And then takes time off from raising several children and running the complete operation behind that to take care of us here at ICANN and so I deeply appreciate you being here and off we'll go.

Marika Konings: This is Marika, I actually have a question from (Armor) who's in the chat room, a member of the working group and he's actually asking if it's possible to just do a quick round of introductions so we actually I know who's in the room.

Mikey O'Connor: Oh that's great idea, Jonathan you want to start off?

Jonathan Zuck: Jonathan Zuck from the Association for Competitive Technology and member of the Thick Whois Working Group.

John Berard: John Berard, GNSO Counselor from the business constituency.

Don Blumenthal: Don Blumenthal Public Interest Registry and a member of the working group

(Mahalo Lumina): (Mahalo Lumina), Chair of NPOC and member of the working group.

Man: (Unintelligible) and member of the working group.

Woman: (Unintelligible) I am a (unintelligible).

Mikey O'Connor: Welcome and be prepared to experience heavy jargon, but that's all right, it's fine to be here.

Man: Could people speak closer to the microphone so we can (hear you speak).

Mikey O'Connor: Yes and do we have a roaming mic that we can run down the sides of this room? If somebody could dig that out that would be great. My name's Mikey O'Connor I'm with the Internet Service Provider Constituency and I'm the Chair of the working group (unintelligible).

Woman: (Unintelligible).

Mikey O'Connor: Oh I'm sorry.

My name is (Juan Clott) I'm a newcomer, I'm a (regulator) (unintelligible).

Rick Keller: Rick Keller from CIRA the .ca registry.

Alan Greenburg and At-Large Advisory Committee and member of the working group.

Mike Paradis: I'm Mike Paradis from the German ISP Trade Association.

(Klurkin Kleiman):   Hello I'm (Klurkin Kleiman) with Key Systems (unintelligible) Stakeholder Group and I'm a member of the working group.

Man: (Unintelligible).

(Stephen Neider):   (Stephen Neider) with Internet (unintelligible) Registrar.

Man: (Unintelligible).

Man: (Unintelligible) consult (unintelligible) project.

(Adam Subaseena):   (Adam Subaseena), Associate (unintelligible).

Woman: (Unintelligible).

Mary Wong: Mary Wong, ICANN staff.

(Josea Osua):   .ca Registry.

Woman: (Unintelligible).

Kevin Kreiser: Kevin Kreiser ICANN staff.

Man: (Unintelligible) Group.

Mikey O'Connor: I think that's it, we've got some folks in the Adobe Room, do you want to chime in and just raise your hand and I'll call on you in the queue, that will sort of get your queue muscles working. And, you know, I know (Armor)'s on there - (Armor) would you want to go ahead and chime in that way we can also test to see if we can hear you okay. We're not hearing the folks on the phone.

(Armor):   (Unintelligible).

Mikey O'Connor: Oops there's (unintelligible).

(Armor):   (Unintelligible).

Mikey O'Connor: Good deal.

(Armor):   Can you guys hear me.

Mikey O'Connor: Yes we heard you.

(Armor):   All right, thanks.

Mikey O'Connor: Thanks (Armor). (Ricardo)? Oh yes he may be just listening, okay so if anybody else is on the phone and wants to chime in this is your chance.

Okay off we go - Marika if you could push on the next slide - so we're a working group we've been at this for a while - we've just published our initial report which is the first of two reports, we'll come up with a final report in a bit but the first report was published back in June. We've got a public comment cycle going on right now, I just - the initial round just closed and there's a reply period that will end in August. And here we are at the workshop at this very moment that I showed up late for - sorry about that, next slide please.

Here's the - and we're going to probably swing back to this slide at the end of my spiel and I think what I'm going to do is take a minute to sort of set this up because I bet that many of you could use a little bit of a background (review). Oh do you - oh, a little bit sketchy, let me just do a little background here for you. Where this working group originated was in one of the IRTP, one of the Inter-Registrar Transfer Protocol Working Group.

And that working group found that in order to provide a secure mechanism for gaining registrars to obtain the contact information about a registrant, having thick Whois available for all registries in the gTLD space would be extremely helpful, that's what triggered this conversation. And I think I'm going to take just a minute to read sort of - or at least summarize a piece of the report that describes the difference between a thick and a thin registry. And Marika is there a way to get a link to the report in the schedule entry? I know we've got a link to these slides, how fast could we get the (report linked in)?

Marika Konings: (Unintelligible).

Mikey O'Connor: Is it, oh good.

Marika Konings: Well if you go to the schedule and you actually go to the agenda there's a link there that takes you to the wiki page where there is a description of the session as well is a link to the report and the public (comment) forum.

Mikey O'Connor: Oh perfect, okay.

Man: The link has also but just been added to the chat.

Mikey O'Connor: Perfect, oh (Morris Hoffman) by the way plays bass guitar in that same band and my understanding that his medical specialty is more esoteric than Marika, so - orthopedic surgeon, right, also deals only with the (big keys).

So a thin registry and the best examples of thin registries are .com, .net and .jobs - in fact that's the complete set of thin registries and I'm not working off the slides so you don't have to look at that right now. But a thin registry only stores and manages the information associated with the domain name, so that would be information like the data needed to identify a sponsoring registrar, the status of the registration, creation date etc., the last time the record was updated.

With thin registries the information about registrant's domain is stored at the registrar. So in the thin registry model data about a given domain name is stored in two places, in a thick registry all of that data is stored in one place - it's stored at the registry. So that's just a quick summary of why we are here and what we are discussing is the distinction between thick and thin registries.

Why is that important, because ICANN specifies those requirements through the respective agreements and actually we're repeating that same stuff that's very similar that I just said and covers also the advantages, (so there you go actually I read my own then slides), winging it thank you Marika. Marika is

always about four steps ahead of me on this, there's the background, okay see you can read all those.

I think one of the things I want to highlight off of that slide is that this was a working group that broke into sub-teams to tackle these topics and many of the leaders in participants in this sub-teams are here today and when we get into the really detailed discussion as you can tell by my general level of haplessness I'm going to attempt to throw the ball to the people who really know what they're doing.

We also went out to a community of experts that we drew from people who had gone through transitions from thin to thick before and we asked them questions. We also went out to the other ACs and SOs and got quite a lot input. We worked through that, that's all by the way of how we got here - I'm going to let you turn the slides and see what shows up next. Oh and here we go, links to the report that we've finished, that we're pretty proud of but we want to get your comments on and then the mechanism by which you can make your comments.

In addition to any comments you make here - yes go back to that one lists the topic, okay so now I'm going to go back to that question that I asked at the beginning which is are you here having read the report and armed with detailed feedback for us? Or are you here because you want to get stepped through the report sort of section by section? A little bit of a briefing which will take much more time and leave a lot less time for feedback but may meet your needs better.

So let me get a rate - a show of hands first, if you're here and you've read the report and you have detailed to the effect that you just want to give us right off the bat?

Alan Greenberg: Mikey, it's Alan.

Mikey O'Connor: Go ahead.

Alan Greenberg: Yes, you are merging two different things together. I've read the report but I have no feedback I want to give you so I'm not sure if I should put my hand up or not. I think you're trying to distinguish how many people need a briefing and how many don't...

Mikey O'Connor: Yes that's right.

Alan Greenberg: ...but let's separate issues

Mikey O'Connor: So how many people need a briefing hands up? In the back, a fair number of people need a briefing. Let me do it this way, let's start with people who have feedback, give them a chance to try it and then we'll do the briefing and see where that leads us because there's some people who raised their hands that have feedback ready to go and let's start with that and then grind through the briefing for those who don't - don't have that. Did you - I thought, no I thought I saw your hand up.

Man: I don't - I've read the report (we too are part of the working group) but I don't think we have any feedback.

Mikey O'Connor: Okay sounds like maybe briefing...

Man: (It's in the report).

Mikey O'Connor: Yes that's the trick to being a participant in the working group because hopefully the report reflects your views already.

Alright let me do it briefing and to do that can Marika can you do two things, I'll kind of give you a little minute to do this - can you get the report into the Adobe then I can drag people through it page-by-page or as (Lawrence) - (Lawrence) are you running the - yes okay. Well is there a way - no that's

right we have to sort of synchronize those, so it would be nice to have a report. Let's - yes if we can get it on the screen let's see how it looks - see how looks and the Adobe Room, I think it will look okay in there.

One option would be for people to login to the Adobe Room even though you are here. Welcome Steve join us at the table, Steve Metalitz from the Intellectual Property Constituency and sub-team leader just joined us - welcome. Okay let's - oh wait I'm waiting for the Adobe here, Marika are you also seeing (unintelligible). So what I'm thinking is if you could keep us in synch with the Adobe Room I'll run the report in the Adobe Room if you (promote me) and that way we'll have two sets of eyes on this thing.

What I'll do is synch - (do this with) - I think we're ready to roll. So I'm going to sort of drag us into the early part of the report first, go back to that background section (see what we have here). Here's the executive summary, there's the background that I was sort of summarizing, just the difference between a thick and a thin registry. The paragraph about IRTP was our Genesis and then I'm onto the page summarizing deliberations of the working which is where that list of topics we were basically charged with covering those eight or nine topics as dimensions of the problem.

And that's basically what you're going to get a briefing on here. And let me get to the preliminary recommendation which is on Section 1.3 of the report and the preliminary recommendation of the working group is that thick Whois should become a requirement for all gTLDs. So basically remember that there were - there was a funny advertisement at least in the United States of America that a famous efficiency expert (Damon) reported to the audience whether whatever they were going to do was a good idea and he got up and he said yes and he sat down again.

In a way that's the way you can summarize this report which is we've worked very on a very complicated issue and at least in this initial report the summary is yes this should happen. However there's nuance and I think it's the nuance

that people probably want to hear about. I think the paragraph that I want to focus on is the one that says, the working group expects numerous benefits as the result of requiring thick Whois for all gTLD registrants. Nevertheless the working group recognizes that a transition from the current thin registry would affect over 120 million domain name registrations and as such it should be carefully prepared and implemented.

In Section 7.2 we outline a number of implementation considerations and we'll get to those. And in the next section we also provide other observations that we want to highlight for you. So again this is a report that needs to be read, this is not one that you can just summarize in a heartbeat, but we'll give it a try. And I'll skip through to I think I'm going to go directly to the chunks of work, there's quite a bit of background that goes into quite a bit of detail on the difference between thick and thin registry so this - if you're new to ICANN and want a good background document to read this is not too bad.

It's written so that hopefully by the end you have a better at least understanding of the difference between the two - I think I'll skip the approach. Go into the deliberations, go to the first of our subtopics which we describe as response consistent. In that topic we're talking about is that in a thick registry, in other words the registry where all the data is in a single place, the labeling and display of that information is easy to parse and all registrars and clients would have to display it accordingly - I actually don't know quite what we meant by that.

This is - it's growing like crazy, oh this is - okay so we're on Page 19 and issue - and this is really what drove the IRTP, the Inter-Registrar Transfer Policy Working Group is that currently there are no labeling or display requirements for thin or thick registries, although this is a little bit outdated because the new RAA I think that has elements in it that point to that in the following paragraph. And we are pointing out that this set of problems may be made even worse as we get into internationalized data.

In a thick environment a registry could normalize all of that, they could make it consistent which would certainly address the issue that it Inter-Registrar Transfer Policy Working Group was interested when they recommended that we do this work. But it would also help other stakeholders, not just people trying to do inter-registrar transfers but for example people trying to find out information of other types about domains rapidly and in an automatic way. So this report is sort of filled with sections like this where it says we feel that it will improve response consistency, result in better access to Whois data to all users of the database.

But collecting and displaying that data may present some challenges when the data is being provided by registrants whose primary language uses a script that doesn't employee Latin characters and so on. And so some of the recommendations in this report were sort of - are making contentions on work by others and I think that's one of the things that's important to emphasize about this report.

Now one of the drawbacks is that by making everything the same one of the comments we got was that we may be shutting off opportunities for innovation and creativity because by making everything uniform we prevent people from trying different approaches to this - to solving the problem of display. And we concluded that the benefit of the consistency outweighed the loss this represents. So you'll see this throughout the report that there are trade-offs that need to be, you know, we tried very hard to describe those and describe the puzzles that they represent.

And so in many cases we will come to conclusions like this where we say that on balance we find that this would improve response consistency and contributes to our recommendation that this proceed. And I think what I'll do is I'll stop at this point and see if there are any questions or issues having to do with this topic. You know, I think I'll do a little briefing like this and then I'll watch your subtle cues or your non-verbal cues as you (get at) your

keyboards, I'll stop and that you talk for a while and then I'll go on to the next section.

So any thoughts about response consistency from those of you who weren't on the working group or just want to get more info? I'm getting nothing negative in that but if there's anything that drives you crazy by all means shout it out. And by all means if it really drives you crazy please put in a public comment on this initial report, that's the whole goal of this session is prime the pump for initiatives for public comment.

All right the next topic that we looked at was stability and we in many cases sort of had to invent our - and refine the definitions of what we meant by that. And so in the case of this working group what we meant is availability of Whois data in the case of a business or technical failure. And so you can think of all those scenarios, in the thin Whois model there are, you know, basically what this comes down to is the number of copies of data that are available in the event of that kind of failure.

And to summarize a fair number of words, what this boils down to is that in the case of thin where the data is split between the registry and registrar there are two sources of data and in the thick model there are at least two and could wind up being up to four where this data is stored. So there are more copies of the data in more places and we think that's an advantage. There are some downsides and, you know, this gets to one of the more subtle and certainly debated topics.

Some of the participants in the work group note that having personal data stored in multiple sites makes that data more susceptible to attack and misuse, then we highlight that. But come to the conclusion that because there fairly - well that particular issue we deal in the privacy data protection section, but there are also is the risk of inconsistencies between these multiple copies of data and that one we think is, you know, there are ways to mitigate that risk and would point off the some examples of ways that that can be done.

So in some cases the personal data and privacy issues showed up in several of the other places and we consolidated that discussion in the privacy and data section - privacy and data protection section of this report. And so again our conclusion is that moving from thin to thick would improve stability, thus that's a good thing. The next thing that we talked about - well I'll take a quick checkpoint, does anybody want to chime in on stability?

Okay the next section is about access to Whois data and whether this changes under the two models, whether one is more efficient and cost-effective or not. And where we wound up on this is that in a thin registry the Whois data is only really available - the Whois data about the registrant's of domains is only available at the registrar whereas the domain name data is available in both places. In thick both are in - at this stage of the game both are available from either place.

And we found a study that pointed to the fact that in thick registries data tends to be accessible on a higher percentage of time whereas in thin there was a reduction in that availability because of the lack of redundancy. The other thing that we found in the contractual compliance submission to our work was that only 94% of registrars were providing consistent access to Whois data in compliance with, you know, the part of the RAA that compliance is looking at.

And so again what we did is we took a look at that and concluded that well I guess there is some advantages here. So the working group likes the idea that the data is available in two places and we like the fact that, you know, we outlined a couple of scenarios where having the data at the registry would be helpful, one being the registrars in an outage and the other is that sometimes a registrar will implement strong or overly defensive ways to prevent large-scale automated access to the data and perhaps this would be an advantage in this environment.

And we, you know, we as with every section have the possibility of some bad news and some of those topics were it may be difficult, there's the problem of suppressing data if we change models in the future. And as with several other issues we concluded that this one was not one that we should tackle, this is one that should be tackled in the broader context of thick Whois management across all the gTLDs rather than the subset that we were looking at.

We got into some pretty inside (baseball) and data escrow - I'm going to skip that one and one of - and we also talked about the fact that network connectivity just failed (my watch just failed). (How's it looking now - oh there's that (unintelligible), I'm waiting for it to recover. (Part) of reading the report again and summarizing it in my head and some of these are very nuance things that I have to take a moment to read first.

One of the issues that we ran into is that right now there are substantially more registrars then there are registries, a relatively small number of registries in the future with the new gTLD program and that number is going to become much closer and equal. And there may be some issues in terms of accessing Whois data across many registries that we don't see today and can we concluded that there are other processes at work that may address that. I think I'm going to stop and take another breather sort of why I recover and see if there are any questions so far.

Again that's the trouble with this briefing is we sort of have two scales, we have old summarize and we have super detailed and the reason we don't have the middle layer is because as you can see this is a very nuanced report that was worked through very carefully by the working group and trying to summarize it is tricky. So, you know, the reason there isn't an easy digest middle layer is because producing that would be extremely difficult and I apologize for that but that's just the way it is.

So I'm going to move on to the privacy and data protection section and I'm going to go through this one fairly slowly and pretty carefully because clearly

this wasn't a topic that we spent a lot of time and energy on. We've got a lot of folks in that sub-team, I'm going to stumble through the summary, I'm counting on the sub-team to straighten me out. I stumbled through it even worse on the Saturday session of the GNSO and Sunday session, so pay attention to the words in the report not the words of the hapless chair in this.

But the fundamental question is whether a thick and a thin registry model present different risks respectively in data protection and privacy and the sub-team zeroed in on several subsets of that. One is what's the impact on data at risk, what's the impact on information held in registry databases versus data in motion, records being transferred from registrars to registries in a thick model.

We wanted to define risks to say what that included and we talked about unauthorized disclosures and issues related to information disclosure in violation of local law and regulation, two different kinds of things but both clearly very important. The other thing these risks also include the possibility that information could be deleted or altered either accidentally or deliberately which could be a more significant issue for those people who believe that Whois information is public and therefore cannot be disclosed as you will in an unauthorized manner.

We had to simplify this discussion in this report for purposes of clarity but the other thing is that a detailed risk analysis of this is really beyond the capacity of scope of this working group given the complexity of the issues. So for example we focused on the necessity for data to be transferred, we didn't discuss whether data may in fact move when a registrar in (an amendment) environment has redundant systems.

And we also explained that data at rest is stored information so for our simplified model - simplified version in this report it includes data in use to the term that really wasn't useful to what we were doing. Whereas data in motion is information that's being transferred ,so those were our two kinds of data at

risk (in motion). So we started by describing the data protection and privacy in a thin model, the current model for those registries that we're interested in.

We said that when data is at rest it's going to be protected to the extent that the registrar's security safeguards are in place - oops somebody's moving - somebody moved my screen, help me - there we go. And so data at rest is one, data in motion is another one of our dimensions and in a thin model the registrant data will not be transferred, so it's never in motion. And again the data - and in the third key issue, this is a sort of repetitive chunk of the report, the third piece of this is the data protection laws facet of this, Whois records must be made public under ICANN rules.

At first glance any applicable data protection laws will be the rules of the location of a registrar but is possible that a registrant's location might determine - might be determined where our registrars and a registrar are not in the same jurisdiction. You can see how nuance this gets and you can also see why I'm being pretty much the fellow who reads your (unintelligible). Come on up to the table if you want to make a comment and get one of the microphones. The regime that we do here is say your name just so we can get it into the transcript and off you go.

(Airis):   Okay first (Airis) (from Internet) - I have a question considering the data protection laws, under what circumstance has your group considered it to be determinative about the registrant not the registrar?

Mikey O'Connor: Oops you turned your mic off.

(Airis):   We couldn't really think about a situation where this could be possible, how did you come to the conclusion?

Mikey O'Connor: I'm going to throw the ball to the smart people on that, you know, stay there by the mic because Don may want to ask you a question about what you mean - I would ask that if I were (there).

Man: We didn't get into that level of detail, the purpose of this group I think was to identify the issues and where the potential issues were.

None of us - our - and part of the our conclusions were that these were issues that need to be examined by privacy experts by specifically ICANN General Counsel by attorneys for the different contracted parties. And I'm trying not to duck the question but I think that's fundamentally it, our role really was to raise the issues and make sure they're addressed by the people competent to do it.

(Airis):   Okay then the following question, who will be in the end driving the decision on what data protection law we have to go on because this is really topic that we have been thinking a lot, we are a registrar at the moment but we will be a registry so we really have to focus on where we are and what types of law do we have to look.

And from our point of view it can only be the registrar or the registry because first of all you never know in which jurisdiction your registrant might be living at the moment. And secondly like just I give the example of a bank, if I'm a German citizen and I go and make up a bank account in the US there will always be US law that the bank has to follow, they don't care where I come from and which data protection law might be mine as a German citizen because I open it up with a bank in the US.

So could you think of a different way of going to this topic that really putting the focus on the registrars position?

Man: Now I will give you a supremely attorney answer, it depends. I don't know enough about the laws of every country in the world and that's where we get into snags.

You know, I trust you know German law, I don't know that your answer is going to apply say with a registrant in the Philippines and that's why this needs - is going to need such comprehensive look. And I think as more data protection is seen, I mean most people focus for example on the Article 29 Working Party but as more and more countries around the world come up with data protection regimes QA is instituting some laws. There's the APAC regime, age-specific these questions just can get more convoluted over time.

(Airis):   Yes but wouldn't you also agree that me as a registrar or registry I cannot comply to every single data protection law so I can only be forced to really yes comply to the data protection law and my country where I operate because I have to know that, I have to to obey to that that. But could you really force me to respect data protection law all around the world which I can't even know about or very hardly?

Man: Well I think that's going to get into business decisions in some cases, some companies may be forced not to seek registrants from certain countries - Alan? I don't want to hog this.

Alan Greenberg: Yes I - as a company operating in a country you are bound by the laws of that country clearly, you are bound by the terms of the contract that you sign, that you choose to sign and your registrant is bound by the terms of the registration agreement which reflect those laws that you are bound by.

Anymore than that I don't think, you know, is out of - certainly out of our ability to predict so we're assuming that any registrar or registry follows their own laws. If ICANN rules are at odds with those as they are on occasion that's a business issue you need to resolve and you need to put terms in your agreement that make sure that the registrant is bound by whatever, you know, to fulfill whatever you have to fulfill. And I don't think we go any further than that.

Mikey O'Connor: This is Mikey I'm going to regain control of my queue just - I don't want to shut anybody off (Amor) typed a point into the chat that I wanted to inject.

(Amor) says the question - and I believe he's referring to your question, it makes sense but it will with require our legal expertise to answer it. I encourage the gentleman to submit a public comment on this. And this is precisely and exactly why we're here today is to begin this conversation and then absolutely to encourage you to just, you know, put that into a public comment because that's our next phase is to take this feedback from you all and work on it, try and figure something out.

Now I don't want to end this because, you know, I sort of jumped in the middle of the conversation but I did want to inject (Armor)'s thing, Alan did you have something to follow on there?

Alan Greenberg: Yes a follow-on to what you and (Armor) saying, there has been a lot of discussion and I'm tempted to say an infinite amount of discussion on privacy issues and a lot of the focus around I won't say theoretical but I'll say problems that people envision but really cannot point to the specifics, just a feeling of unease in the pit of the stomach that something is wrong.

So to the extent that you can in your comment site specific cases where this - where there may be something that's problematic as opposed to saying you too feel a bit uneasy to help us get down to the bottom line of are we causing a problem or fixing a problem in what we're recommending?

Mikey O'Connor: Okay this is Mikey again, Don did you have anything to add - oh Volker go ahead - is this on the same thing or is this just a new one?

Volker Greimann: This ties into this thing this - actually this entire discussion ties into an issue that a lot of us have raised for some time now and which is that ICANN should really try to get national data protection officials more involved in the ICANN process.

I mean we have the GAC - the GAC is doing a tremendous job but they cannot represent all the interest. They represent some of the interest but most of the GAC members I've talked to are not data protection - data protection officials or have detailed knowledge on the subject. Some of them have not even talked to their national data protection officials when asked about certain things and when giving statements about certain issues before for the GAC. Therefore it should be in the best interest of all participants within ICANN and ICANN itself to get into a dialogue with the data protection officials of all the nations. And I'm very pleased that the article to (deny) working party has taken the first couple of steps and come to ICANN and said this opposition, we are here, talk to us. And more data protection officials should do that and ICANN should be very much more welcoming to these positions.

Mikey O'Connor: Thanks Volker oh (Amy)'s next unless you - okay (Amy)'s been very patient so let me - and remember our routine, you know, say your name into the mic, go ahead.

(Amy Misuara):   Hi I'm (Amy Misuara), I'm with data protection and a data security lawyer with Ballard Spahr.

While I do welcome this conversation thick Whois is essentially contact information, there are companies I - personally my day-to-day business model is dealing with data security breaches and privacy compliance, global privacy compliance programs for far more than simply contact information. There are a large companies like Experian and multi-national retailers that have already dealt with these questions and have already developed global compliance programs.

So while this is an area of law that is subject to constant change, while this is a difficult database issue to implement and I do appreciate those concerned, this is an area where compliance with law is possible and this is an area

where we should not be talking about it in the abstract, we should be dealing with it in a practical fashion.

I'm an engineer as well as a lawyer, I understand that the way that we solve this problem is going back to the basics, doing the data mapping, what we have, contact information, where do we expect it, in what countries, doing the research and then appropriating the - those individual databases associated with each country's information in accordance with local law.

Mikey O'Connor: I got lots of questions on that one, so let me do my advertisement for public comment because, you know, there's no way that we can cover this with the rigor that we need to in this, so great comment, please give us, you know, a bit more in the public comment cycle and now I'll sort of run my - in the direction my eye traveled from Don to the fellow next to him to Volker, so Don - you first go ahead.

(Airis): Yes this is (Airis) again, I absolutely agree with my two colleagues and we've already also made up our mind and the only point I might disagree a little with Volker is that I don't think it's on ICANN to invite the data protection responsible for every country it should be the registrars and registries doing so.

So what we decided at least for the German-based registrars and registries we will all get together and talk to our data protection responsibles (sic) in Germany, try to get a letter from them really saying this is what we are allowed to do in the German jurisdiction and we need exceptions and all our contracts for the German-based registrars, registries so that we can fulfill this data law.

So it should be the registrars and registries going proactively to ICANN and saying, okay this is what we are allowed to do. ICANN cannot go to every 250 or 280 countries and try to get to this data protection law, it should be up to us to invest I guess.

Mikey O'Connor: Thanks, Don you're nodding over to Volker or do you want to go next?

Don Blumenthal: Go ahead if you want to respond to that.

Volker Greimann: It should be a - Volker Greimann speaking, it should be a two-way process. Of course it's most impor- incumbent upon the registrars and registries to find out what their country's laws are and act upon them but ICANN should be welcoming when such issues - such comments are forthcoming and they should reach out to at least a few of the data protection officials when certain issues are raised.

I think that's very important, many registries - the second point, many registries can probably learn a lot about what their data protection laws in their countries are by looking at their ccTLDs and how the ccTLDs have been handling it for years is probably a very good indication of how they should set up their Whois outfit as well being in compliance with their local law.

Mikey O'Connor: Microphone off - there you go, Don.

Don Blumenthal: Okay I want to respond to a comment a couple minutes ago - and by the way (Nuat) I was the chair of this privacy sub-team, I've taught privacy and enterprise security practice at the University of Michigan and was in law enforcement in both privacy and data protection meaning enforcing security breach laws.

The laws concerning what data may be gathered privacy and how laws - how data must be protected once it's gathered are two very different areas and that's one of the reasons that I think our group is called Data Protection and Privacy, they're not the same thing. Part of our mandate was to look or an example if a company must - if a thin registry winds up transferring data it's going to be in a - at a level in the registry/registrar business that's

unprecedented and a big part of that is going to be security measures, making sure that data is safe in transfer.

But that's a different question from what we addressed in day-to-day protection arena as to whether registrars or registries should be gathering this data in the first place. Should registrants be forced to provide it? So I just want to make sure that we focus on the difference in the two areas of law.

Mikey O'Connor: Thanks Don, I have Stephen in the queue and then you - anybody else that I have missed? Checking on the chat - no it looks like you're up next Steve.

Steve Metalitz: Thank you, this is Steve Metalitz a member of the working group, this is a fascinating conversation and I agree with Mikey that it's great to get public comments on these issues but I have to say that if public comments are on some of the topics that we just spent a few minutes talking about I'm not sure what the working group is going to do with them.

Our focus really is on whether the thick Whois should be required, these questions about which is the applicable law and, you know, and what this particular law requires a registrar operating in that jurisdiction to do they exist now and they will exist even if there was a move to thick Whois or if for all registries. So I hope when people make their comments they can try the hone in on how a transition to universal thick Whois in the gTLD world if you want to put it that way would affect these questions, pro or con.

Those would be the comments that would be most useful because the working group's job will be to take these comments and see if they change what the recommendation is and, you know, the rationale and if so how, thank you

Mikey O'Connor: This is Mikey just - I just want to amplify what Steve said, you know, the issue of data protection across all thick Whois is way outside of our (arena) and,

you know, to the extent that we can narrow that focus that would be very helpful, go ahead.

(Mark Protel): Yes my name is (Mark Protel) and I'm from the United States and in the United States there's two sets of laws, there's public law which has a Fourth Amendment, has strong privacy protection.

And then you have secret law and in the secret law with secret courts you have no privacy protection whatsoever and the government gathers out every piece of information they can possibly get which I would assume would include the Whois database. And when you come from a country like the United States that has two sets of laws how do we reconcile that with thick Whois?

Mikey O'Connor: You know, this is another one where your hapless chair is going to say great comment please give us, you know, a public comment on that, there's no way I'm going to take a swing at answering that one.

If anyone smarter than me wants to take a swing at answering that one - if anybody smarter than me wants to we look for C Chin Lee down the line that will be great but otherwise (we) look beseechingly down the line that would be great. But otherwise please send a longer comment - Marika go ahead.

Marika Konings: Yes I may be partly confused by the comment but the data that is thick Whois is already public so it's no different from what is already publicly known so I'm not really sure if I understand your...

(Mark Protel): I was wondering about the private data, you know, the stuff that is not in thick Whois.

Man: That's not in the system, so for example customer billing information, location information, any of that kind of thing does not appear in the Whois database, this is a publicly accessible database.

(Mark Protel):   Where's the private data stored then?

Man: At wherever it exists, generally at the registrars and it's not put into this system. This system is only for public Whois.

(Mark Protel):   Oh I see so what you're saying is the registrars take part of the data that's public and sends it to the thick Whois database.

Man: Right.

(Mark Protel):   Oh okay (sorry) - in that case my different comment is that I would like to make is that I would like to see more fields in the thick Whois database.

Specifically I'm in the spam filtering business and if there were an email contact for, you know, a field or a reporting problem so that if I see spam coming from a domain or somebody who's in charge of IP's for the domain that I can contact them and say, hey you have a problem to alert them on how to shut that down.

That would be extremely useful, especially if I could read that at high speed through - not through a regular Whois call that would burden the system, but through like a type of a DNS type call where I could look up, you know, an email address through DNS that would be so the thick Whois is presentable through a high-speed public interface.

Man: Thank you, those are great ideas but they're way outside of the remit of what we're doing.

Man: May I suggest you put these comments into the Expert Working Group, get involved in the WEIRDS process of looking at protocol and IDS, that's just - we have - that has nothing to do with what we're talking about.

Mikey O'Connor: Yes I was just going to say don't send that public comment and here send it into the Expert Working Group, their comments are due August 12 and they are looking at what should be the data elements for the successor protocol to Whois in the future.

And if you have a suggestion on the data element that is not there now and should be they're the ones to direct you to it and you should explain how you would use it because they're focusing on how particular data is used for various different purposes.

Man: So one of the really tricky things about this particular study is that it's really hard to describe the tiny little thing that we're actually working on and so by no means do I want you to leave with the impression that that was a bad idea or a stupid question.

It's mostly my fault for not doing a really good job of describing the incredibly narrow bounds of what we've been working on. I agree that the Expert Working Group is probably the right target for that and I apologize if we kind of came down on you on that but it is quite a bit outside of the scope of what we're working on.

(Mark Protel): And I understand some of this is hard to figure out who's doing what and what's the scope, I came in late and but, you know, I have a big mouth and I have to talk, you know, when I think of something.

Mikey O'Connor: We love people with big mouths and we hope that you stay - is there anybody else that wants to chime in on this, Rick go ahead.

Rick Keller: I'm not going to chime in on the data piece at all, I want to understand from the report recommendation for public comment there is a lot of shifting sand right now.

So this report ultimately will recommend sort of the adoption of the thick Whois, where do you see that fitting into the delegation of the gTLDs and into the conversation around potentially a centralized Whois repository? Like is your working group interacting with the gTLD deployment schedule, is it interacting with that piece of work?

Mikey O'Connor: This is Mikey again, let me give a sort of - and I'm making this up and it's not in the report so any, you know, if I make up something stupid I'll count on smart people to straighten me out.

But when the expert working group was announced we were already under way and I happen to be in a meeting with Steve Crocker who said, (which way) should we go, how do we fit? Steve said, well the Expert Working Group's stuff is further out into the future so I wouldn't wait for them was his first comment.

As we talked more I can't remember who came up with this idea, one of us did - one of the I think undocumented advantages of getting everybody unto the same model is that if there's a transition to a new model every body would be coming from the same place rather than having thin registries going to the new destination and thick registries going to the new destination, they would all be thick going to the new destination.

This presumes that the destination's some years out, predicting the number of years and (over/under invest). And then in terms of the new gTLD rollout all of the new gTLDs are specified to be thick in the applicant guidebook. So they're essentially these three thin registries that are sort of a legacy that we're trying to align with the architecture of everything else. And so the timing of this one is sort of independent of the gTLD rollout because it's the new gTLDs are all thick already - did I get to where you are headed or (did I not).

Rick Keller: It does, thank you. So one small follow-on question then is - so this report does get into specifications, is that consistent with what is being asked for the gTLDs from thick Whois?

Mikey O'Connor: Yes for the most part we were pointing at applicant guidebook sections when we did this.

Rick Keller: Okay so in a sense adoption of your recommendation will dovetail completely into the new gTLD (feed) program?

Mikey O'Connor: Oh absolutely and in fact if anybody find something that does not dovetail we sure want to hear about it.

Rick Keller: Okay thanks.

Mikey O'Connor: Don?

Don Blumenthal: Just to clarify the scope, this project was to look at whether registries - and don't anybody run screaming please, registries and any new round of new gTLD applications would also be thick as in the current round and whether the existing thin would move to thick. It doesn't have anything to do with the current applicant guidebook and (you're right) new gTLDs.

Mikey O'Connor: Yes, yes, better explanation than mine, (difficult). Anything else on this topic? We've actually covered quite a wide range of things, we just triggered it with this topic which is sort of not surprising, anyway go ahead Don.

Don Blumenthal: When we were drafting the privacy sub-team report I subtitled it and the draft went a long way before somebody pulled it out, it was reported the data - privacy and data protection underneath a.k.a. the rats nest. Yes and (want to talk about) the fifth draft before that disappeared.

Mikey O'Connor: Yes I decided that I couldn't go into the initial report but it certainly lived a long life before it got removed. Going once, going twice, let me just check the chat, it looks like we're square in the work here okay I'm going to chug along to the next piece which is now going to be repetitive.

Remember we had data at rest, data in motion and the laws, this is the description of the situation in a thick environment so this is the one where they're all together. And so data at rest hinges pretty much entirely on the extent that the security safeguards are in place in registrar or registry systems, you know, because we now have two places where that resides. Data in motion now there is a transfer - in the thin model there was not transfer and, so the security issue here is a bit different.

Here what we're saying is that this brings in the need for additional safeguards for the data that remains with the registrar and these regis- these safeguards are similar to those that must be in place for data at rest but they have the added complexity of the interception dimension protecting against interception and possibly reinserting or corrupting the data while it's in transit.

And then in the data protection laws section Whois records again, you know, this to a certain extent mirrors the other section, the records must be made public, this is public data under ICANN rules. Thick Whois models present additional challenges with respect to possible data protection conflicts because of the transport from Point A to Point B. And then we pose a question, do the rules governing registrars apply because registrant contracts are signed in their countries or does a registry's regime govern because the registry publishes the data?

How relevant is the location of the registrant? So that's exactly back to the point you were raising and so public comments on this would be really helpful. But again to the narrow scope, you know, not to the issue of all thick Whois but this transition from thin to thick, that's the one we're really zeroing in on. I'm seeing by people fleeing the room, I wonder if I bored people to the

point where - because we're getting pretty close to only members of the working group are left.

So I just want to take a process checkpoint, is this torture, shall I change the way we're doing this or is it the right way to do it?

Woman: No.

Mikey O'Connor: Is it getting close to the end? Okay well maybe I think maybe, you know, I think that the discussion we had around data protection and privacy is certainly the most rigorous and it's certainly the one that we're hunting for comments on.

So maybe what I'll do is I'll just screen through the rest. I think the one other topic that's really tasty - I'm going to go out of the data protection chunk for now and I'm going to screen ahead through some that are fairly noncontroversial. And again you can tell how much scrolling I did, there's quite a lot of text that we did not cover today, so for those of you who are new to this report please take a look at that.

I'm going to skip through cost implications, basically the cost of team said no it's a wash that's a - I can do that because I was a the chair of that sub-team. I'm going to skip the synchronization and migration one for the same reason. I want to get to the authoritativeness one and the reason I want to highlight this is because we worked pretty hard on this one and in fact Pat came from VeriSign to me last night Steve in the bar.

And I encouraged him, A, to read this section of the report very carefully because he's operating under some misimpression and I pointed him at you as the chair of this section as a resource in case he had questions. And I also really strongly encouraged public comment on that. And I think because he's really the only substantial thin registry it's really important that we hear from VeriSign on this (time around).

So this is mostly just inside baseball for the working group is that I think we've done a pretty good job and I think that this section addresses the concerns of the Pat Kane who is the - I don't know what he is - the CEO of the Registry Division of VeriSign or something like that had but just a heads up on that one. And if you see him you might buttonhole him and just work him through some of the stuff.

I'm not going to drag everybody through this one, but I will point it out to you that this is another tasty section of the report. And with that I might wrap it up, we're about 10 minutes from the top of hour. I think we sort of accomplished our mission but I do want to leave people the chance to, you know, if there's something on your mind that we haven't covered, you know, this is all about hearing from you and not me that's for sure - go ahead.

Man: Yes it's more of a general comment, I think the Expert Working Group reports (things out) sort of I can't stop thinking of a bigger picture and am struggling with the idea of why it is that we have to go through this whole process if within the near future we will have like a new model? So is it worth doing in, you know?

Mikey O'Connor: That's essentially the question I asked Steve Crocker, you want to chime in - go ahead.

                 Let me go a little bit off the ranch here and tell you the comment that I made in response to listening to the report of that working group. I think that they've done the easy stuff, I don't think they've done the hard stuff. I think that it's very unlikely that they've actually moved the needle much on these very difficult issues and so at the end of the comment I said, you know, if you leave it in this state I'm not going to join that working with because it's going to be the same tragedy that we've been through before.

So I'm strongly encouraging them to dig in hard on this stuff and at the same time sort of going back to Steve Crocker's point which is don't wait for them, it's worth it just to bring these things in alignment in advance . Because remember the reason we're doing this is not to be forgotten, the reason we're doing this is because until we get to this environment of key recommendation of IRTP and a key recommendation of IRTP cannot be implemented.

And so there are other things that are driving this bus and it's very much worth it in terms of the security and stability of the domain transfer process. So there's big benefits there.

(Mahalo Lumina): Sorry (Mahalo Lumina) of NPOC for the record, actually we met - we had an NPOC session and we met the Expert Working Group and I sort of introduced it and repeated your comments about that they didn't get to a certain level and I supported your comments and they pretty much agreed to it. Well actually they knows this and they said yes and I specifically said Mikey's coming.

Mikey O'Connor: Oh that Mikey he hates everything - Steve you got anything or shall we wrap up? Okay think we'll call - oh go ahead Volker.

Volker Greimann: Yes I would just like to support Mikey, what we have we have and I think this working group has worked very hard in the direction that we can say that we are all in support of thick Whois and there still remains some work to be done.

But if this working group comes up with a result that works as a reality then we have some - we have achieved something the Expert Working Group has produced something which is still very much contentious in some areas. Until - it still needs a lot of definition in other areas so I still think that we'll see a couple of years go by before anything - the Expert Working Group has recommended will become reality if ever.

Man: I would just like to add the support of the current working group that if the Expert Working Group is not far enough along for you to join the working group we'll stand in solidarity and not join the working group (either).

Oh dear I'm going to be in big trouble - well I won't go into a lot of detail on that, but I think they've got some work to do at least to chart a course, you know, they're the tips of the icebergs that came out in a lot of the comments yesterday. We need to at least have a sense of how we navigate that.

And I think one of the things that's sort of interesting and heartening is this conversation that's springing out of Article 29 Working Group and the notion that Volker put forward that we, you know, be more welcoming, dah, dah, dah, dah. I think there is a path in there but that needs a lot of fleshing out before I would want to join that definitely.

And I do have to get (Armor)'s comment, (Armor) said now wait a minute dang nab it - this is in the chart, not all of the support thick Whois. So in fairness to our honored co-conspirator I just wanted to get that on the record. I think with that (we're at) the top of the hour effectively, we'll give the next group a couple minutes to settle in and we'll call it a day. And I appreciate everybody who was here and on we go, thanks gang.

END