
ICANN79 | CF – GAC Discussion: WHOIS and Data Protection Policy and Accuracy
Tuesday, March 5, 2024 – 10:30 to 12:00 SJU

GULTEN TEPE:

Hello and welcome to the GAC discussion on WHOIS and data protection policy, including accuracy session, on Tuesday, 5 March at 1430 UTC. Please note that this session is being recorded and is governed by the ICANN expected standards of behavior.

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With that, I will hand the floor over to GAC Chair, Nicolas Caballero.

NICOLAS CABALLERO:

Thank you very much, Gulden. Welcome, everyone, again. I hope you enjoyed Puerto Rican coffee and tea as usual during our coffee breaks. Welcome to the GAC discussions on WHOIS in data protection session. This session will be running for 90 minutes (that is till noon) and then we'll have lunch.

So let me welcome Gabriel Andrews from the US Federal Bureau of Investigation, Laureen Kapin from the US Federal Trade Commission,

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Ken Merrill from the US Department of Commerce, NTIA, Melina Stroungi ... I don't see Melina here. I assume she's going to be online. She's online, as a matter of fact. And then we'll have some guest speakers: Patrick Flaherty from Verizon and Sarah Wyld from the Registrar Stakeholder Group. Let me make sure I'm not forgetting everybody. Kenneth, Sarah ... Sarah, you're here. Okay, perfect. Welcome everyone.

The session, as I said before, will be running for 90 minutes. In order to keep a reasonable pace, we're going to stop at the end of maybe some of the presentations and open the floor for questions and then continue. I just want to make sure we allocate enough time for each one of the presentations. So welcome again.

Having said that, let me give the floor to Gabe. Or is it you, Laureen? I'm sorry, Laureen, please go ahead.

LAUREEN KAPIN:

Hi folks. I just want to welcome you and take you through a preview of our agenda. My name is Laureen Kapin, and I'm speaking in my capacity as one of the co -hairs of the Public Safety Working Group, a working group of the GAC.

Here's what we're going to be doing today. We're going to give you a little bit of background on what WHOIS and why it's important and data protection concerns. We're going to really spend most of our time on the registration data request service, which has just launched, including the impact of privacy-proxy services responses. And there we will have different perspectives from our business community, from law

enforcement registrars, and time for you to ask questions. And I think it's great that we're getting this multiplicity of perspectives. It gives us a much more holistic view. We'll give you some updates in the last part of the session, and then finally we'll take some time to have your views on what should be in the communique.

And with that, I am going to pass it over to Melina from the European Commission and she is joining us online. So Melina, take it away.

MELINA STROUNGIS:

Thank you, Laureen. Hi everyone. I hope you can hear me well. So I'm going to start with a background. So this slide is an all-times classic, but it is useful refresher on why WHOIS data domain name registration data are important. And since this whole presentation is going to focus on WHOIS-related matters and also the RDRS, it's important to have in mind why we're discussing this data.

So the WHOIS system, which is otherwise known as the phone book of the Internet, gives you information on who is behind a domain name. As per the GAC principles regarding gTLD WHOIS services, WHOIS data have a lot of legitimate uses and benefits, so they help law enforcement authorities to identify bad guys on the Internet. They can even help to identify victims, especially when it is needed to quickly convert a domain name or an IP address to track down an actual person. Also, WHOIS data help cybersecurity professionals at all sort of businesses and organizations to combat the fraud and abuse. They help intellectual property owners to protect against misuse of their rights. And overall, WHOIS data have boosted people's confidence in the Internet and reliability as well, because it helps them to know with

whom they're interacting online. And obviously, these objectives of security and reliability of the domain name system are also in line with ICANN bylaws.

Now, as we all know by now (and we have repeated many times), certain things about the WHOIS system have changed in light of developments in privacy law, such as, for instance, with the entry into force of the GDPR, the General Data Protection Regulation. Due to privacy concerns, a lot of data that were previously publicly available in WHOIS was redacted. Now, the GDPR protects personal data of natural persons, but a lot of data redacted were data also relating to illegal persons so the WHOIS went black. And it's important to find ways, with all these work streams now, as we keep discussing all these years, to the extent possible, to keep WHOIS quickly accessible for security and stability purposes, to make sure that it remains a useful tool for the public for legitimate purposes such as combating fraud or protecting ourselves against criminal activity.

Next slide please. So this timeline shows the path to a new registration data policy framework, which would include requirements which are consistent with applicable data protection law, as well as a final access system to non-public registration data for lawful and legitimate purposes.

Since May 2018 and the adoption of a temporary specification, the ICANN community, including the GAC, has been actively involved in a policy work in a succession of interrelated phases.

So the bubbles that you see in green on your screen show work that has been completed. This work concerns mostly policy development work.

So you see EPDP Phase 1, Phase 2 and Phase 2A have all been completed. Then you have EPDP Phase 1 implementation which just delivered the registration data consensus policy on 21 of February and which will become effective on August 2025.

The bubbles that you see in red show work that it is ongoing or that it has not been completed. There we have the RDRS, which is a pilot to inform on a possible future on the SSAD, and we will have extensive presentations on the today. And then we have the Data Accuracy Scoping Team for possible future policy development on accuracy.

Then in yellow, it shows work that is expected and also it has dotted lines to indicate that sometimes the timeline is uncertain or that it has not been defined. So for instance, on the resuming of Data Accuracy Scoping Team, it is not certain yet when it's going to restart. As a reminder, it has been ["post"] already three times for six months each time, so it's important that it resumes.

Then the RDRS is meant to feed the consideration of EPDP Phase 2 asset policy recommendations. But again, it's not exactly certain and clear when and how this will play out.

And then also the RDRS has heightened concerns with the use and impact of privacy-proxy services in registration data. So this is now leading to talks of resuming the implementation of the privacy-proxy services accreditation policy recommendation, which had been adopted back in 2015.

And then we have the urgent request. Lauren is going also to give a more detailed presentation on that front later. But urgent request for

disclosure of registration data has also emerged as a matter of further consideration following a determination by GAC, the SSAC, and the ICANN Board that the way it was planned to be addressed in the registration data consensus policy was not fit for purpose. And on that front I'm going to give a short update as well.

Next slide please. So the registration data consensus policy. So fresh news from the oven. It's now published, finally, just yesterday, I believe. Contracted parties may implement this policy beginning of 21 of August of 2024 and must implement it, finalize the implementation, no later than 21 August of 2025.

So, as you may recall, this was a policy laying down requirements concerning the collection, transfer, and publication of gTLD registration data. It was drafted back in August of 2022 in implementation of the EPDP Phase 1 recommendations. This consensus policy will become part of ICANN's contractual requirements for registries and registers within 18 months of its adoption and will replace the interim registration data policy for utilities. The GAC has provided input at several stages of the development which led to the adoption of this policy. There was a public consultation. Input was received by 14 different community groups.

And very briefly, the issue of urgent request was left out from the publication of the drug registration policy. As a reminder, an urgent request for disclosure of registration data are in circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure, or child exploitation. So it was why it was excluded by the publication of the policy, because it was difficult to attain an

agreement on what is an appropriate timeline to respond to such urgent requests, and it was important for the policy to go ahead. But it is equally important to address this issue in a timely manner. So, if I may say, we need to deal urgently with the issues of urgent requests as their name calls their urgent case for life threatening situations. So we didn't have a lot of news on that front.

Most recently, in February 2024, the ICANN Board communicated that a consultation with the GNSO council is required, and the SSAC has also recommended that the policy should be substantially reconsidered to become fit for purpose, and that in the meantime ICANN gather sincere data about urgent requests. But as I said, more details will be provided.

I don't know if there are any questions at this point before passing the floor to the next speaker.

NICOLAS CABALLERO:

Thank you very much for that, Melina. Let me see if we have questions in the room or online. I have Iran. Before I give the floor to Iran, let me also concur with you in terms of dealing urgently on the issue of urgent requests—play on words made on purpose. So I have Iran. Please go ahead.

KAVOUSS ARASTEH:

Yes, thank you very much. This urgent request, I would say, has a long history. Many, many times we started that for some issues: “we need this urgent request.” And now the final thing that I see in the last bullet is saying that they have to have that ICANN should have consultation with the GNSO Council. We have no problem with that. But the result of

consultation should also be shared with the GAC and we should be in a position of, if the consultation does not meet our requirement, that we should take action on that. This is something that should not be unilateral between GNSO and between the ICANN. This is the first point.

Second point. The last bullet about the SSAC, 1.2. I have not read that. I don't know what the impact is of that SSAC 1.2.2. on the urgent request. Is it supporting our ideas or does it have some other things? and so on. So we need to have this if possible. Melina could comment if possible. Thank you.

MELINA STROUNGIS:

Yes, many thanks for your comments. Fully agree. And indeed, the SSAC has similar views to us. Actually, it was even stricter in their approach. And they stressed a lot of times that especially when you deal with life-threatening situations, the response should come in a matter of even minutes, not hours or days. So definitely this is a matter for priority for the GAC. And we are willing to keep pushing on that front. Thank you for your observation.

NICOLAS CABALLERO:

Thank you for that, Melina. Thank you, Iran, for your question. So if we don't have any other comments or questions at this point, let me give the floor to Mr. Kenneth Merrill from the US. Please go ahead, Ken. Sorry. Gabe?

PATRICK FLAHERTY:

Patrick Flaherty.

NICOLAS CABALLERO: Patrick Flaherty. I'm sorry. Patrick?

PATRICK FLAHERTY: Hi, everybody. It's great to be here today with you. I am going to share my screen. Hopefully this works. So I wanted to give some insight into RDRS, and in particular to give you some insight into our use of RDRS and the types of responses that we're seeing in response to the request.

So we started using the system at the beginning of the year in January, and to date, we have tried to submit approximately 300 requests. And off that, we have 48 in the system corresponding with participating registrars. And the responses that we've seen in connection with those requests, in terms of approvals, is kind of hit-or-miss.

And what you'll see here is that out of the 48 requests that are in the system here for us, you'll see that we primarily go after infringement that we see either uses the Verizon brand in its entirety, in a domain name, or where there is a misspelling of the domain name. And of the 48 that we've submitted, we've received 14 approvals. And that includes two partially approved domain names. And you'll see with these approved requests, again, they relate to either misspellings of Verizon or domain names that incorporate Verizon in its entirety with another word.

And usually what happens when you get an approval, you receive a notification by email telling you that it's been approved, and it tells you via a link to see the approval in the system.

And then this response below is consistent with all of the other approvals that we have received to date. So this one here relates to verizonfraudsupport.com. Thank you to Tucows for disclosing this contact information relating to the underlying registrant.

These partially approved ones are a little different, and in particular, the responses that we see for partially approved, from my perspective, don't really match up with an approval. And as you'll see here, this one is being partially approved, but the reason for the partial approval is the contracted party cannot disclose the data due to applicable law. So we see this exact same reason given in response to denials.

UNIDENTIFIED MALE:

Slow down just a little.

PATRICK FLAHERTY:

I'm talking too fast. So I would really categorize this more as a denial as opposed to a partially approved request.

One other example of a partially approved request relates to this one for verzon.shop. And in this instance, the reason given is "other." And the explanation you'll see here primarily tells us to try to contact the owner of the domain name directly using other resources available provided by the registrar.

So it's a category that I guess is open to interpretation. And so it's one that I advise people just to watch out for. I think, on partially approved requests that say they're not providing the information due to applicable law, I don't really see those in the spirit of the RDRS. I think

they would be more accurately described as a denial and I would use that category going forward.

So looking at denied requests, again, what you see here is domain names that either incorporate Verizon the brand in its entirety, or domain names that consist of misspellings of the Verizon brand. And the denials here are different across the board depending upon the underlying registrar.

And what's important to note here is that within RDRS there is the capability of using a template, which is really helpful when it comes to being able to submit a lot of requests. And our template we all the time for each of the requests that you see submitted here. So it's interesting to see the responses that we're getting back in response to that template and what the template says, because again, to my point, we're using it consistently each and every time we submit a request.

So for misspelled domain names, an example of a denial is other “corrective action is required before request can be processed,” but there isn't any other additional information to explain what that corrective action might be. And when you see it being returned again and again and again, it really creates the opportunity to at some point reach out to that underlying registrar to understand maybe what is it that they need that's different compared to other registrars that would approve a similar type of request for a misspelled domain name, or again a domain name that incorporates our brand with some other generic term.

And outside of RDRS, outside of our account (the account for our vendor submitting requests on our behalf), to give you an example of a

response in connection with a denial for a misspelling of a domain name for Vrnizon.com, the registrar Namecheap said, “We have reviewed your request for registrant information and applied the legitimate interest balancing test, one element of which requires that the information be necessary. We have determined after careful consideration that we cannot voluntarily disclose.” And again, this relates to a misspelling and a denial for that request where in other instances we've seen, in the case of misspellings, other registrars have granted approval. So you see this inconsistency across the board or hit-and-miss experiences.

So I just wanted to show you really quickly how to submit a request. So again, you have the ability to use the template function within RDRS. You can create as many templates as you like and you can call them whatever you like. It's a really neat feature. And then once you decide you want to use the template, it will automatically prompt you to enter a domain name.

And I'll show you an example here. So it will tell you whether or not the domain name is registered and then it will identify the underlying registrar. And if the registrar is participating in RDRS, they let you continue with the submission process.

UNIDENTIFIED FEMALE: Say the name just so [inaudible].

PATRICK FLAHERTY: Oh, so this domain name, sorry, is Verizon-iPhone-deals.today. The register for record is GoDaddy and we're using our template. So you see

it has a lot of my information already populated here, including my name, email address. There is a button here for “next” to move forward through the system. You get to pick either a standard request or an expedited request. So we've primarily picked standard.

You also on top of this have the request category. There's various options to choose from here. There is an option for IP holder, which is very popular. You get to select the elements for the underlying data that you want to request. You can select all and then unselect anything that you do not want or select them individually. Here we're primarily focused on collecting registry information and registrant information. It asks you to identify the country you're coming from. There is a summary section to give you an opportunity to explain what your concern is here, what you identify in terms of a violation. And you have 1000 characters to use within this description box. Now it might sound like a lot, but you'd be surprised how quickly you can run through 1000 characters even after you've just identified yourself as a trademark holder and tried to identify registrations that you might own.

There are some questions about whether or not you're coming from law enforcement. There are questions asking about your representation on behalf of the requester. So we're requesting on behalf of the trademark holding company. I'm submitting it in- house and so I'm stating that I am authorized to act on behalf of the trademark holding company. You'll have to attach a proof of authorization here in order to move forward in the system. It does ask some legal basis arguments or questions here about how you're submitting the request. And in particular there is a reference to GDPR, the General Data Protection

Regulation. There is an optional box to allow you to attach any other additional materials you might want to attach.

So I'm going to attach proof here. So I'm attaching a certification from our corporate secretary stating that I'm authorized to submit the request. There's a review section here that again allows for you to finally review all of your contact information, the request information, your summary about the issue description. And then at the end of this review, you have to check off some certification boxes. There's an affirmation you have to agree to and then you get to submit your request. And then when you go back into the system you'll see that there should be one pending once the system gets updated.

And these requests usually get turned around really quickly. You're contacted a lot via email, so you don't always have to be looking inside of RDRS, looking for updates. You'll see a lot of contacts coming into your inbox and follow-on actions from ICANN, including a survey where they look to gather additional feedback from people's experiences, which I would recommend if you have the time to try and complete. It's a great way to, in response to receiving some type of either approval or denial or other category that's designated once a request is processed, again give that feedback to ICANN.

And I think I'll stop there.

NICOLAS CABALLERO:

Thank you very much for this, Patrick. We have a question from the Russian Federation for Patrick. The question from Russia is, have there

been requests from other jurisdictions and have such requests been approved? Thank you Russia, for the question. Patrick?

LAUREEN KAPIN:

I'm going to chime in. I think that that question would be best directed to folks from ICANN Org, who are collecting metrics on the requesters, and I'm not quite sure what information they are publishing in terms of granularity that way—i.e., I'm not sure that they are telling folks from what jurisdiction requests come from.

I do know, however, that the metrics do indicate the type of requests and indicates the number of law enforcement requests, consumer protection requests, IP requests, et cetera, et cetera. But I think that's best directed to our friends at ICANN Org.

NICOLAS CABALLERO:

Thank you very much, Russia, for the question. Thank you, Lauren, for the answer.

So at this point, let me give the floor to Gabe. Gabe, go ahead.

GABRIEL ANDREWS:

Hello everyone. My name is Gabriel Andrews and I am going to be speaking to you today in my capacity as a member of the Public Safety Working Group. And this is because as part of the PSWG, we've really been trying hard to raise awareness amongst our partner public safety agencies and law enforcement partners about the RDRS, to encourage them to use it and to provide constructive feedback back to us so that

we can incorporate that feedback and bring it back to ICANN staff and the standing committee that we work with.

I have to say that just at the start, ICANN staff have been very receptive to having these conversations with us, to talk to us about our experiences, and I really just wanted to praise them for that at the start of this. Thank you.

If we can go to the next slide, some of you in Hamburg might remember seeing this flyer around. This was a flyer about the upcoming, at the time RDRS launch, and we found it to be very helpful. I've used this myself in outreach to law enforcement partners. I think it had noble intentions and it set a good tone about what the aspirations of RDRS were: to have a free, global, one-stop shop to submit registration data requests to participating registrars and to help the end user as in, instead of having to fill out multiple forms, maybe just have one place to put the necessary information.

Next slide, please. I'm going to pause and take a very quick tangent because I'm talking about that flyer being outreach. I noticed in yesterday's conversations, and if my eyes were better, maybe I could pick out Lebanon. Lebanon mentioned an anecdote about talking to their own police agencies, and they weren't aware that RDRS existed. I found that to be the case, too, even after trying very hard in my own organization to raise awareness. I talked to other investigators at the ground level. They've never heard of it, despite my best efforts.

If we really, really wanted to raise awareness of RDRS, the single best place to put a link to it is in the WHOIS data itself, because that's where we've been trained as investigators and users of WHOIS data for

decades to look for this information. That's where we're seeing that it's redacted. And if you had a link there to the RDRS, that's where you're going to get the most engagement, to actually bring users from WHOIS to RDRS.

In this screenshot, it's just an example. The redaction that you see here for ICANN.org is what it looks like in the WHOIS as it is now. And I'm suggesting in the red text you could insert a field saying, “To request this data, visit RDRS.ICANN.org. It's something that GAC has previously suggested in our commentary in November of 2022 to the RDAP contractual amendments. Didn't go anywhere at the time. Maybe it would be something worth having conversations about again in other contexts.

Please continue. Great. Patrick to my right just showed you what it looks like to start a new request. When we do this for the very first time ... He went by this really quickly, but you see there's a button highlighted in red to create the new request.

Go ahead to the next slide. The very first thing that you see as a user is this pop-up message that tells you, “Before you get started, please go somewhere else and use a different lookup tool first and judge for yourself if proxy information is in place, and only then maybe consider proceeding with this.” I think many of us here in the ICANN community understand why proxy information might be treated differently. But from the end user perspective that I'm hearing from my law enforcement partners, there's a feeling that this is an immediate disconnect from the notion of there being a one-stop shop, that if there

actually is all of this information already on ICANN's site, why are you asking me to go elsewhere at the very beginning?

Next slide, please. When you move on to inputting the ccTLDs, again, those of us here in this room know perfectly well that it's outside of the scope of RDRS to tell ccTLD operators to even receive, much less respond to, RDRS requests. But from what we're seeing in the RDRS usage reports, many users are trying to use it for just that. And some of the feedback that I'm receiving from the law enforcement users is that it would be much more useful if it could route ccTLD domains to those participating registrars when they are there and allow them to make their own decisions, informed by their own relationships with the ccTLD operators on whether or not to make disclosure.

Next slide. I'm going to ask your forgiveness. This one is a little bit technical, but when you try to input a domain into the field, you can see that the language there first says that the data entered must be a fully qualified domain name. It's a strange set of words, but it more or less means you can enter a subdomain, the part that's blacked out there that comes before the next domain. But then they tell you "Match the format of ICANN.org," which is not a fully qualified domain name. But that's not the point. The point is sometimes those subdomains really matter. Sometimes the accredited registrars only know who the end user is based off that subdomain. And it would be really useful in these occasions if we actually can pass that along. And we would like to suggest that the form allow you to be able to do that.

Next. Great. This point. When you identify yourself as law enforcement, you have this option to request the confidentiality of your request,

right? In practical terms, what you're saying to the registrar is, "Hey, please don't go around and tell your customer immediately that I'm asking for this data because this is an ongoing investigation and maybe they're going to do something bad as a result." Maybe they're going to destroy evidence, maybe they're going to threaten witnesses or what have you. You don't want that road to be followed. So you can make the request: "Please don't disclose."

What we anticipated and what we're actually seeing is a little different. We anticipated that this would be an opportunity for the registrars to come back and maybe talk to us and get clarification and then proceed within RDRS. Functionally, what seems to be happening, according to the anecdotal reporting I've been given, is that registrars are immediately denying the RDRS request and suggesting to the requester, "Please come to our own internal system to follow through with this," taking it outside of RDRS, outside of RDRS, metric-gathering, et cetera.

And there might be good reasons for that. I don't understand them yet. I think it's an opportunity for the Public Safety Working Group and the registrar community to really dig into why it is that their own tools can serve this purpose better than RDRS and maybe improve RDRS to the point where it can do it too, thereby enabling better collection of data.

Next one. We've talked a little bit about the cludginess, the clunkiness, or the way that it feels as a user to use the RDRS. There's two questions in particular that we felt could be rephrased and/or taken away here. I'll explain which is which. There's a risk when you fill this out, that you might see the question about has law enforcement given a subpoena or

a court order or a warrant about this already? And if you see that, there's a risk that you might erroneously think, "Oh, do I have to do that? If I didn't do that, can I even proceed?"

Further, in this specific context, we've asked a number of law enforcement agencies if they ever actually would use RDRS to submit compulsory legal process. And what we're hearing is no. By the time you get that far, you have to have already identified exactly where this process is going to be sent (to which organization, what their street address is), before you can even get that process. And so it's quite unlikely that you would then turn around and put it into a voluntary system where you aren't even sure if they're going to feel compelled to respond to you. You're just going to give it to them directly.

And so what the feedback here is that we think that this question could probably be eliminated for our use for law enforcement purposes. I don't know if there's other constituencies that this was intended to, but at the bare minimum, we hope it's rephrased that it doesn't seem like it could be mandatory.

And similarly, with the GDPR "are you asserting a legal basis" question, there are some lawyers that might feel very qualified to answer this. I would suggest to you that it might be a little bit unfair to expect a local police officer to know, if they're in Australia or Japan, what their GDPR legal basis is to make a request. And perhaps we could make sure to phrase this in a way to articulate that it's optional and that it's the circumstances that you're providing that articulate whether or not the basis is there. It's not whether or not you know GDPR and can point to exactly what section.

Please continue. Great. For this part, if you don't like it, you can throw the tomatoes directly at me. The final piece of feedback that we have here is in the metric reporting that ICANN staff has been providing ... And they've issued two reports now for the months of December and January. This is data from January. I think that it would be really helpful to maintain a big-picture perspective of how many requests are being made and what is happening along the path towards the final conclusion, whatever that may be. And without passing judgment at all about how many are approved versus not approved or what have you, I think what we really would like to see is metrics more high level. And I propose that this is one such that could be done. If there are any transcription errors, it's my fault because I kind of was by hand copying data from ICANN's report and then trying to make this. But I think this is the kind of big-picture information that we should be discussing.

And I suggested this to ICANN staff and I'm going to show it here again because I think it's of interest to you. This is the big picture of the January data that we got showing just over 2000 initial lookups. As you saw, that's when you first put the domain in. We see that the registrar not participating is between 600 and 700. Successful lookups: over 700. It's great that that's the largest category. And then from there, various final conclusions. But I think that this is exactly what informs us best, especially if we're considering whether or not to reach out to our ccTLD operators and ask if they want to participate. If that number was five, well, then no, why bother? But we can see 349 or so users were hoping to use it for that purpose. So anyway, I offer this as a useful piece of additional work.

And with that, I'm going to end and pass it over to Sarah Wyld.

NICOLAS CABALLERO: Before we pass it on, we have ... I mean, let me open the floor for questions. And thank you for your very detailed presentation, Gabe. So do we have any questions for Mr. Andrews? And I see Iran and Japan. Iran, you go first, please.

KAVOUSS ARASTEH: Yes. Thank you very much for the presentation. I have one question and one comment. The question is that this WHOIS service was much before the GDPR, and now after GDPR, what has been the impact of that? Did it make it more complex? Did it make it more simple? Did they help more or not? So that is one question.

My comment is that I think you said that you synthesized the law enforcement entities and so on and so forth. Yes. But I think the most practical way would be that under the capacity development or capacity building, we should organize a practical workshop (I said “practical”) with someone like you or others knowing the whole things sitting with a group of five or six people and asking them to start a process on, I would say, something as a trial to see whether they could follow the entire process properly. I have been faced with similar things but not in ICANN but in other organizations. We have given a lot of seminars and explanation, and the meeting was ended and people went away. But when you found that implementation of those explanation was quite difficult and complex, then we organized in that other organization some practical workshop. And after the one week of workshop, we found that all of the participants become almost quasi-experts on how to launch the process.

This is my request to be considered in the capacity development or capacity building: a practical workshop on these things in order that people be acquainted with that. It is beneficial for the present people and also beneficial for the people [online]. This is a suggestion to the Chair of the GAC and to the people. Thank you.

NICOLAS CABALLERO: Thank you very much for that, Iran. Could you repeat what your suggestion exactly was? Because I got kind of lost. And my apologies for that. Could you repeat what your suggestion exactly is?

KAVOUSS ARASTEH: I suggest that in the capacity-building or capacity-development workshop that we dedicate or devote special sessions on how to process or how to proceed with these things. And we ask the GAC interested parties either present at the meeting or remote to take the finger, put it on the computer and think, “Okay, now start to make a request,” whether you succeed up to the end to do it properly or not. And the people (extractor or whoever are there or whatever the names are) can correct if some incorrect action be taken in the process. At the end of that, people will be more familiar on how to do that. Otherwise, all of these verbal explanations is very good and very thankful, but when the people want to start, they face problems and difficulty and they will be stuck in the middle of nowhere. I hope this time I am more clear. Thank you.

NICOLAS CABALLERO: Thank you for that, Iran. Well noted. Karel from Tobago, please take note. We're going to take that into account. Thank you for the suggestion.

I have Japan and then I have to close the queue because we need to go on with the presentation. So Japan, please go ahead.

SANAE KATAYANAGI: Thank you, Chair. I would like to share my experience trying the RDRS. It was very frustrating. It requires too much information to make a request. I made three requests for the registrant information that were reported running inappropriate websites. On my request, the system sent me a very long message and politely recommended to contact other bodies such as hosting providers or law enforcement agencies, as if they were not responsible.

Secondly, following the ICANN78 GAC communique mic, [I must say] Japan promoted the RDRS in our community. The team to combat manga piracy websites in Japan sent a request on several malicious registrants, but only received one answer, and the answer was not satisfactory.

I would say current RDRS is disappointing and does not meet the user's expectation at all.

Finally, I agree with Gabe's point on creating a new request dialog box. I would understand a need to prevent a kind of RDRS abuse, but this dialog box acts as a barrier from making requests. Thank you.

NICOLAS CABALLERO: Thank you for that, Japan. Would you like to answer that, Gabe? Or would you like to go back to Iran's question? Please go ahead.

GABRIEL ANDREWS: At the start of Kavouss' comment, he did ask a very brief question. I'll give a very brief response. He asked, what was the impact basically between the difference of WHOIS services before GDPR and after? And really it's a matter of speed of getting the data from the law enforcement point of view because I want to make clear I could still go out and get compulsory legal process and serve it to other registrars in my country, right? And that would take me a matter of weeks. That is far slower than a ten-second WHOIS check that existed beforehand. Sometimes that's very impactful and sometimes it's not. It's very situationally dependent not just to identify the bad guys, but to notify victims.

One of the most important use cases that I think was impacted was being able to notify victims of ransomware. We sometimes got information that a particular IP address or domain associated with the victim was newly seen communicating with bad-guy ransomware infrastructure. And we have maybe 24 hours to 48 hours to turn that into a phone call—not an email, because you can't trust the email at that point, but a phone call. And that's the kind of use case that I think is sacrificed, which isn't to say we can't still get the data when it's within the borders [for] a week. If it's international to ...My colleague from Papua New Guinea was pulling up this example. It turns into a mutual legal assistance treaty request when we now make compulsory legal

cross process across international borders. That's now six months to a year on average. Those are the implications.

NICOLAS CABALLERO: Thank you very much for that. Thank you, Japan, for your questions and comments. At this point I need to close the floor for questions and let me turn it over to you, Sarah. Sarah, please go ahead.

SARAH WYLD: Thank you. Hi everyone, I'm Sarah Wyld. I work for Tucows in Toronto. We are a member of the Registrar Stakeholder Group, and I am the registrar's representative on the RDRS Small Team. Thank you so much for the opportunity to be here today.

Next slide, please. Okay, I have very brief slides. We had a great session yesterday going through the background of what this RDRS pilot project is for, so I won't repeat all that today. I'm sure you are all there, but just a note: I did include a few slides with backgrounds and metrics at the end of this deck for reference (different slides from yesterday), and I think that the deck has been shared or will be, so I hope that that will be useful to you.

Thinking about our experiences as registrars, it's been pretty good overall. As with any new system, there are some bumps in the road, both relating to the system functionality and interface and also relating to the actual requests that we receive. But that's okay. There is always a learning curve, especially with a pilot project.

Overall, just to be really real here, I will say that the RDRS does represent more work for registrars, but we are committed to doing that work and to supporting this part of the multistakeholder process because we believe that it's a worthwhile investment of our resources.

Next slide, please. So, getting into the details, I will start with what might be the easier side: the user interface, which we saw presented earlier today. This slide was originally quite negative, a list of things we cannot do, but instead I've got a list here of the updates that we are hoping to see. I grouped them a little bit conceptually.

So the first one, a pending input status, is at the top of the list because this one will affect the metrics that ICANN is tracking and reporting. When a request comes into a registrar, we do typically need to interact with the requester and gather more information in order to fully consider the request, but there's no way to indicate that “waiting for information” status in the RDRS. It just looks like the request is sitting there doing nothing. So although the RDRS does not exist to track how long it takes to respond to a request, we would like the system to be a bit more granular so that the true status can be understood and reported out to the community in those monthly updates.

Beyond that, we are hoping to see some improvements that will streamline the ease of use for registrars, giving us more information in that main view and allowing us to more easily port the requests out to our own ticketing systems or data disclosure platforms as needed, which would make it faster and easier for us to process these requests.

Next slide. Thank you. Then we have what is perhaps the more complicated side of things, which is the information that we get from

requesters. One thing the RDRS does not do, which a potential future bigger system (an SSAD) might do or would is validate who the requester is. At this point, when a request comes in, if it's sent from the email gabe@FBI.gov, we are fairly certain that it's from Gabe in the FBI. But not every requester is a law enforcement agency, and even not all law enforcement agencies use a clearly marked contact point. So it becomes complicated and takes work to be certain about who is asking for the data.

We do also see that we're getting requests in the wrong category. At my own registrar, we found about half the requests were miscategorized. The one that is perhaps the most important to watch out for, of course, is requests in the law enforcement agency LEA category but which may actually pertain to other types of issues. This might be something that we can address with better explanatory information within the user interface, and I know Gabe has already made some suggestions along those lines as well. I truly do not think that this is a case of anyone purposely trying to misrepresent themselves. I think there are a lot of categories, and it's confusing for the user to figure out what is the most appropriate thing for them to choose. But within the RDRS, there is no way for a registrar to adjust the category once it has been selected, so the reporting that we see will not always match the reality of the request type.

Finally, there is some concern about requests marked as expedited, but which are not for circumstances that truly warrant it. There is not really yet enough volume to draw conclusions, but this is worth watching as we move forward. The current data shows only eight expedited requests so far. Of the ones that my registrar received, none of them

represented an emergency situation within the expectation of how expedited should be used here.

All of this together leads me to think about something that I know many of us have heard me talk about in the past: the importance of human review. Data disclosure requests require that a person sit down and balance the rights of both parties. Do we really know who is asking for this data and for what purpose and what the urgency of that need is? Or is there more information that we need before we can make a fully informed disclosure decision in order to appropriately balance the data subject rights against the data requesters rights?

We continue to discuss this as a stakeholder group and share our feedback with the small team, and I am honored that we can assist the Board by providing the data that they need to make a decision about how to move forward with a potential broader disclosure request platform. Thank you.

NICOLAS CABALLERO:

Thank you so much for that. Sarah. Let me open the floor for questions at this point. Questions or comments in the room or online? And I see there's some action in the chat room, lots of comments, which I'm glad to see. I don't see any hand up. I don't see any requests for the floor, which basically means that I'll turn it over to you, Ken?

KEN MERRILL:

I believe it's to Lauren.

NICOLAS CABALLERO: I'm sorry. To Laureen. Laureen, back to you.

LAUREEN KAPIN: Thank you. If we can go back to the slides, that takes us to updates. I'll preview the updates while we're getting back to the slides. We're going to have updates again. We're still on the registration data request service.

So a little bit before the ICANN Hamburg meeting—

NICOLAS CABALLERO: Laureen, may I interrupt you? Sorry for interrupting, but we had the UK, before you start your presentation.

LAUREEN KAPIN: Oh, I'm sorry. Sure. Please.

NICOLAS CABALLERO: UK, I'm sorry, I didn't see your hand. Please go ahead.

NIGEL HICKSON: No, not at all, Mr. Chairman. Thank you. And I do apologize. I didn't want to interrupt you in any sense at all. And thank you for the previous presentations. Incredibly useful.

Can I just check something for my own understanding? And I think this reflects something that was said before. And I like their description. If the policeman on the street, so to speak, has an urgent need for some information to counter a possible crime or an incident or whatever, they

wouldn't necessarily know whether that particular information pertained to a country code or a generic top-level domain, and if the request was made and it went to the registrar, although I understand that, of course, country code domains are not within the scheme, within the trial, and it's purely a matter of relationship and cooperation, as I understand it, as part of the RDRS, [on] the registrar, if they deemed that they could give that information, and if the request was about something which was clearly important, could the information still be given concerning that country code domain? It wouldn't be an automatic rejection. Could I just confirm that point? Thank you so much.

SARAH WYLD:

Thank you. Good question. Thank you. So if the request is for a ccTLD, it cannot be submitted through the RDRS. The platform does not allow that. That said, it can still be submitted directly to the registrar, and the registrar would consider the request and respond appropriately.

In all cases, the disclosure of data does not occur within the RDRS platform. The RDRS is a way to submit requests which are transferred to the registrar. The registrar interacts with the requester outside the platform for any information that they may need and to complete the disclosure if appropriate. But within the RDRS, the registrar documents the outcome.

So if it's for a gTLD, the request can come through RDRS. If it's for a ccTLD, the request must go directly to the registrar, not through RDRS. But in both cases, if the data is disclosed, that happens outside the RDRS. Thank you.

NICOLAS CABALLERO: Thank you for that. Back to you, Laureen, and sorry for the interruption. Please go on.

LAUREEN KAPIN: No worries. And I did just want to give a big thank you to Patrick, Sarah, and Gabe for their very practical lens of providing this information to all of us. I think it's enormously helpful to hear these perspectives and then also see how people are navigating the system.

So, back to the RDRS. I want to give a little context for this update. This deals with urgent requests, but in the context of the RDRS. But in order to understand that, I'll just remind you that, as you know, the Phase 1 implementation has been published, except for the topic of urgent request, which, as a result of the GAC's urging in part about taking another look about whether the proposal was fit for purpose, the Board decided to put on hold so that further analysis could be given to how that system is going to work holistically, both in terms of timing and also in terms of can we be sure that the person who's making the urgent requests are who they purport to be?

So as a sort of parallel to that, there had been a box you could check for urgent requests in the RDRS, but that had been at the action of the Board requests. That request was changed from an urgent request to what's called an expedited review request.

And then there's some disclaimers that basically say (and here I'm paraphrasing), "If you have something that's really urgent (and that's the sort of danger to life, limb, children or critical infrastructure) don't

use RDRS. Try and go straight to the folks responsible. Don't rely on this system. It's not a substitute for direct communications in emergency situations.”

So there is functionality now to say, “I would like this information back really quickly,” and then to justify that, but it's not the same thing as making an urgent request. So that is an update.

Next slide please. Just while we're on that topic, I will report to you that based on the metrics that ICANN Org has provided, there have been eight requests thus far that have checked that box for wanting an expedited response.

So other updates. There is functionality for law enforcement to request confidentiality. And again, law enforcement doesn't necessarily always check that confidentiality box. It's there so that law enforcement can check it when it's needed—i.e., there's a concern that if the person who you're seeking information about as a law enforcement requester were to know that you're investigating them, that might have a negative impact on the investigation. So that functionality was added.

We already talked about the expedited category replacing urgent.

And then finally (and this is a really important topic): registrar onboarding. The system is only going to be as useful as the number of registrars who are able to actually respond to the request asked. So the more registrars who participate, the more robust the system is going to be.

And we do have some information on that back from October. But instead what I'm going to direct you to look at are the reports that

ICANN Org has put out that gives us some data from both January and February. So in those metrics that we see ... And I'm sure there's a great link to this, which I don't have at the ready, but probably our great staff does. In the metrics from January for the month of January, the number of registrars that got requests during that period was five. And in the total period (that's going to be January and February), it was 75. And then the number of requests total to the system is over 2000. But the number of requests to non-participating registrars has been 274 total. So it's a significant amount.

I also wanted to say, just for your information: for request type, the number-one category of requesters is IP holders, followed by consumer protection entities and law enforcement agencies. And the requester marks this. There's no verification. It's marked by the requester.

So the bottom line in terms of registrar onboarding is that it's great that we have the participation we have already, but there's still work to be done because a significant number of requests are going to non-participating registrars. So that's on a to do list.

Next slide, please. Here, I'm going to pass the baton over to Gabe once more to talk about the impact of privacy-proxy services.

GABRIEL ANDREW:

Right. Just an update on where we stand. And very quickly, recycling two slides from the last ICANN, just as a refresher, this is what registration data looks like when it's the real data. No privacy, no proxy, in place.

Next slide, please. And this is what proxy information looks like. It's when the proxy service inserts its own information instead of that end customer. Just as a refresh.

Next slide. Where we stand policy-wise is that we're still on pause from the privacy-proxy service accreditation issues that were discussed in 2018. It's been on pause since then, but just like I advised in Hamburg, I'm going to reiterate now that there has been a reconvening of the people involved in the 2018 policy discussions to start talking again about whether we can return energy and effort and discussion to discussing this issue, especially in light of how important it is when discussing other issues like RDRS and the big impact it has on those efforts.

And so the most recent update is that just last night, ICANN staff have released a working draft analysis of the policy recommendations from that PPSAI report and an assessment of what they would suggest are the relative levels of effort for each of those. And it's going to be a great starting point for us to come back to these discussions and see what we can agree is or maybe is still workable or maybe is overcome by events.

And the last slide just shows their ... Next slide. Please excuse me. This is just a very quick screen cap of the introduction to the work they've done. It's so new that none of us have had time to read this yet, other than the ICANN staff that wrote it. But we look forward to, and it's good news that we're able to discuss this again with our counterparts in the community.

NICOLAS CABALLERO: Thank you so much for that, Laureen and Gabe. Let me open the floor again for questions. I have the European Council. Please go ahead.

PATRICK PENNINCKZ: Thank you so much for these updates. Very important for the Council of Europe, quite frankly. I think it all now depends on what the ambition of the RDRS is going to be. Basically, that is to which extent it is sufficient to be a register or whether it should be also a useful tool (and I'm more speaking for law enforcement in this case) and to which extent law enforcement will in future be using this system, or will they continue to use other more efficient direct tools available, like the MLAs or direct requests. And also what we're trying to do with our second additional protocol to the Budapest convention basically is to ensure that we have a much more rapid response, because that is the request from law enforcement.

Also from what Sarah was presenting, it may become a bit confusing for the many law enforcement interlocutors that you have. It may be perfectly clear for you, Sarah, where to direct and orient oneself, whether it's on gTLDs or ccTLDs, et cetera, et cetera. If we want to create a sort of one-stop shop, I think, which would be efficient and effective, then we need to rethink it. As I said, it depends on the ambition that you may have with the RDRS.

And I think ... And that's what we tried to do in our Octopus Conference last December in Bucharest. That is to connect. And we had a presentation on the RDRS there to connect directly with the law enforcement community. And I think it is important to be able to connect up (maybe Gabe can be a link there) with that law enforcement

community and the existing networks that we have. I mean, just as an example, the Cybercrime Convention of the Council of Europe has capacity-building activities in over 130 countries around the world, which may be an interesting way into the existing networks of the law enforcement community to help and improve the system. Thank you.

NICOLAS CABALLERO: Thank you so much for the comments, Council of Europe. You have a specific question?

PATRICK PENNINKX: I like to make remarks. Sorry.

NICOLAS CABALLERO: No, it's okay. Thank you for that. I see Brazil and then Papua New Guinea. Brazil, please go ahead.

LUCIANO MAZZA: Thank you, Nico. Just echoing a little bit what other comments that were made in this regard. I think that's really an added value in this for jurisdictions outside the United States, for obvious reasons, because, of course, I think, when it comes to, say, a US agency or authority, they will have other tools to act in a situation where that's necessary, when authorities outside the US probably will have to resort to cooperation agreements and instruments that are available that probably will take longer to make them effective.

So I think if that's somehow possible, a suggestion would be to find ways for the system to collect this information from where those requests are coming from, because I think that would be useful to understand.

Another point was in the templates. The template has a field that says category of requests. And it seems to me that at the same time is a list of the category of requesters as well, in a sense or not . [There's] a category of requests in [sales]. And I was curious because one of them is IP holder, because I can have a request that is about IP but is made by an authority and not an IP holder. I just don't understand: why IP holder is a category by itself? I don't remember the history of this. No, because my understanding was that the system was basically for authorities if the private party is an IP holder, but could be any other private party that is interested in getting information that is not an IP holder. Just something that I want to have a better understanding on.

NICOLAS CABALLERO: Thank you, Brazil. So no specific question either.

LUCIANO MAZZA: Yes, if somebody has some background on this topic of the IP holder, I would be interested in knowing. Thanks.

GABE ANDREWS: Yeah, I don't either. But I do think in terms of those two categories, consumer protection and IP holder, I have used both because a lot of

the enforcement work that we do is to protect consumers. We're trying to prevent likelihood of confusion, but I'm always doing it on behalf of an IP holder. So those two categories I go over and back in terms of deciding which one to use because I think they're both applicable in terms of conducting trademark enforcement work when you see infringement online like this.

NICOLAS CABALLERO: Thank you, Patrick. Thank you, Brazil, for the question. I have Papua New guinea.

RUSSELL WORUBA: Thank you, Chair. I wish to acknowledge the comment made by our esteemed colleague from the Council of Europe. Papua New Guinea is here to [accede] to the Budapest convention. That's one of our main goals in the coming year.

While that is the case, there are other smaller economies within the Pacific that have taken on, and we have formed what's called a Pacific Cyber Security Operation Network, which is PaCSON for short, and it tries to address the operational challenges that are being faced by small island nation states. Instead of using the hard end of the mutual legal assistance, we invite, for instance, the FBI, Gabe, and the others, to be part of that group. So it allows a quicker response and turnaround to these kind of issues. And we'd be very interested if our current initiatives can be sort of taken down to that grassroots level. And we'd be happy to have that conversation after as well. Thank you.

NICOLAS CABALLERO: Thank you so much for that, Papua New Guinea. So I'm closing the queue now in order to make sure that Ken from the US will be able to give his presentation. Over to you, Ken.

KEN MERRILL: Thank you, Chair. I have to drag this closer. So next slide, please. Great. So, my name is Kenneth Merrill from the United States and I'm one of the GACs co-representatives to the Accuracy Scoping Team. I'm going to provide an overview of the community's work on registration data accuracy and expected next steps for the GNSO's Accuracy Scoping Team. And please, Chair, if I start to talk too fast, just let me know.

So, registration data accuracy is an important topic for many reasons and for many different stakeholders. Accurate registration data is also key for effective domain name registration management purposes. So to advance the discussion on accuracy, we need meaningful data to answer some basic questions. These include what do we mean when we talk about accuracy? How widespread a problem is the inaccuracy of registration data, and how useful in practice is accurate registration data for mitigating some of the harms that we as governments are concerned about? It turns out that these questions are not very easy to answer. So in part, this was one of the goals of the Accuracy Scoping Team. And as I'm discussing the scoping team's work, the slides here provide some context, and I won't read them, but they're there for your reference, and I urge you to go back through the slides. They'll be made available to acquaint yourself with some of the background here.

So the Accuracy Scoping Team was started in 2021, and it began by outlining the current contract requirements for registrars regarding

accuracy of registration data and how those requirements are enforced by ICANN. In November of last year, the GNSO Council adopted a motion to pause the work of the scoping team and to defer consideration of the scoping team's preliminary recommendations until a data protection specification. They're also sometimes referred to as data protection agreements, and my friends from the contracted parties thankfully have corrected me that the technical term on this is data protection specification, or DPS. These negotiations between the contracted parties and ICANN Org ... The GNSO paused the work until that specification is completed.

The GNSO also noted an assessment that ICANN Org produced on the various scenarios that the Accuracy Scoping Team discussed on measuring accuracy, and this report found that until there is an agreed-upon definition of accuracy, attempting to measure it is very difficult.

However, this report also offered some alternative approaches to continue the work on looking at accuracy, and this included that ICANN Org would be able to provide some more granular data on previous audits that could shed light on accuracy.

To bring us forward, more recently, the GNSO extended the deferral of the Accuracy Scoping Team, again awaiting finalization of the data protection specification. But in its most recent motion to pause the work, there were a couple little additions that I think are notable here.

One is that the GNSO noted that it would be willing to restart the Accuracy Scoping Team earlier than this new six-month pause—oh, thank you.

Please, next slide. Okay, thank you. So it noted that it would be willing to restart the Accuracy Scoping Team earlier when the data protection specification is complete and also noted a couple other items that could help inform the discussion on accuracy. One of these is that OCTO is working on a publication with the very lengthy acronym of INFERMAL. And for the purposes of time I won't spell out the entire acronym, but basically this report aims to analyze the preferences of cyber attackers to mitigate malicious activities across top-level domains. And so the thinking here is that this report could shed some light on accuracy as well. And so I think that, once this publication is completed, this is something that those in the Accuracy Scoping Team are going to be very keen to read, digest, and see to what extent it can be used to bring this work forward.

I know we're running short on time and I want to leave time for questions, so I'll just provide a quick update on what the proposed next steps are here and what the GAC's position on this sort of could be. There's clearly an appetite to continue to look at the issue of accuracy. And with ICANN's assessment of the scenarios and some proposed ways forward, combined with this INFERMAL study, I think that we will very shortly have some meaningful empirical evidence ...

Go to the next up to the next slide, please. So here are some previous GAC communique text on the topic of accuracy. Our most recent communique text on this was from ICANN 77 in the Issues of Importance section.

Next slide, please. Yes, next slide, please. Okay, so I'll just close on accuracy by saying that I think once the new study is published from

OCTO, it's encouraging that there is more data coming down the line that the Accuracy Scoping Team could use and that the GNSO is aware of this as well. And there seems to be some momentum towards that end.

So with that, I'll stop. I believe it's on me as well, for the next point in our agenda, and we are running out of time. So I'll just briefly say that in terms of the communique for ICANN 79, among those of us on the EPDP Small Team, these are some of the areas that we could look into for communique text.

And so with that, I will stop and hand it back over to our chair. Thank you.

NICOLAS CABALLERO:

Thank you so very much for that. Thank you for being brief, concise, and straight to the point. We have exactly three minutes for questions, so if you have any quick question or comment, this is the moment. Iran, please make sure you're straight to the point. The floor is yours.

KAVOUSS ARASTEH:

Yes, straight to the point. Where are we on the percentage of inaccuracy in the Phase 1 of the PDP for GDPR[?]. A delegate of the ALAC mentioned 14%. [Is that] where we are now[?] Thank you.

KEN MERRILL:

Thank you, Iran. So the accuracy reporting system was also paused several years ago. And so that's something that there would be more data made available on inaccuracy rates down the line once the ARS is

restarted. But at the moment, I am not aware of up-to-date statistics on that measure. Thank you.

NICOLAS CABALLERO:

Thank you, Iran, for the question. Thank you, Ken, for the answer. Any other comment or question in the room or online? I don't see any hand up. I don't see any hand in the chat room.

So let's wrap up the session. Thank you so very much, Kenneth, Sarah, Patrick, Laureen, Gabriel, Melina and everybody in the team. Thank you so very much. Very good information, very detailed, very nuanced reports. We really appreciate it. Thank you again. And time to enjoy our lunch. We'll reconvene at 1:15.

Let me just give you a quick overview of the afternoon. We'll be starting the GAC communique drafting from 1:15 to 2:30, then a short break, and then we'll have the meeting with the ICANN Board from three to four (actually, that session is running for 60 minutes), then a short coffee break, and we'll continue with the GAC communique.

So with that, please be back at 1:15. Enjoy your lunch. Thank you so much.

[END OF TRANSCRIPTION]