ICANN
Transcription
GNSO Temp Spec gTLD RD EPDP Team
Friday, 16 November 2018 at 14:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-16nov18-en.mp3
Adobe Connect recording: https://participate.icann.org/p12a7q93n35/

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Terri Agnew: Good morning, good afternoon and good evening and welcome to the 27th GNSO EPDP Team meeting taking place on the 16th of November, 2018 at 1400 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the telephone bridge could you please let yourself be known now? Hearing no one, we have listed apologies from Kavouss Arasteh of GAC, James Bladel of RrSG, Rahul Gosain of GAC, Alan Woods, RySG, Ashley Heineman, GAC and Kristina Rosette, RySG. They have formally assigned Rahul Gosain – oh I apologize, I had Rahul up in the apologies but he is also an apology for today for Kavouss, I apologize about that – Lindsay Hamilton-Reid, Beth Bacon, Chris Lewis-Evans and Sebastien Ducos as their alternates for this call and any remaining days of absence.

During this meeting, the members will have only read-only rights and no access to conference calls. Their alternates will have posting rights and access to conference calls until the member's return date. As a reminder, the alternate assignment form must be formalized by the way a Google

assignment form and the link is available in the agenda pod to the right and the meeting invite email.

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing or hearing no one, if you need assistance updating your statement of interest please email the GNSO Secretariat.

All documentation and information can be found on the EPDP wiki space and there is an audiocast and view-only Adobe Connect room for nonmembers to follow the call. So please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call. Thank you. I now turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks, Terri. And hi, everybody. Thanks for making this supplemental meeting of the EPDP and thanks for the really good attendance. To go through the agenda and to adjust it slightly, we're going to continue going through the proposed changes to the initial report that's listed in this matrix. We haven't seen any other suggested changes in recent history so we'll go ahead with what we have here.

The two additional items on the agenda, one is on the agenda is that we'll give Thomas the floor for a while to discuss any input he's received on his responsibilities memo and also discuss briefly the memo we got from ICANN last night that I found to be thoughtful and get some initial reactions to that and how we should handle it in our initial report. And also if we have any questions back for ICANN, and realizing that we just got the memo, we might not have any questions yet, but at least have a preliminary discussion on it. Also the long-lost Purpose L has been redelivered by Benedict with some amendments and I want to save some time for that.

So without further ado, are there any questions or additions or deletions anybody wants to make to the agenda, any issues anybody wants to bring up in particular? Cool, so I'll be – let me go through some – let me go through some preliminary announcements. So the budget committee, the PCST, met with – met yesterday. Rafik and I are members of that, Berry Cobb runs the thing very ably. And there were some conclusions reached. One is that the face to face meeting will occur in Toronto Canada on those dates I think are January 16-18 so you'll get an email about that so you have a written copy of that.

Two is that ICANN's restarted the discussion to get CBI back on board, I think that should happen pretty fast because there have been emails and discussions going by in the background in the time leading up to this so that that's going to occur. They'll surely be in place for the face to face meeting but I've also requested that they help us out on these phone calls as need be as far as – as far as practicable, is not the right word, but efficient. So, you know, to the extent you want to provide thoughts about now that we have experience with them how they can best be used in an economical but very effective way I think that'd be good.

So I think that's all the initial announcements I have. Let's go onto the – I'm going to check my Skype to see where I missed but let's go onto the document. So I think you have – does everybody have the latest version of the document? I didn't even check. I assume it went out with the agenda. And so the – what we're going to do here is scroll down through this document and we're going to – by request of the Registrars, who are – have been caucusing on their comments yesterday and they're going to continue that caucus today, we're going to essentially skip over the Registrar comments.

And, you know, I just want to – I'm looking at the Registrar Stakeholder Group but (unintelligible) the Registrar Stakeholder Group but I'm looking at Matt Serlin and want to verify that that was him. If Matt and other Registrars, as we look at this list, or as you scan through it, if there are any issues here

that you do want to bring up, and I think I want to bring up one, please let me know. And I'm flipping back and forth between the document and the chat so I might not be the most effective at following the chat, although I never am.

So if we look at the – I have the document open on my laptop and so I'm going to scroll down to Section 3. And in this version of the document you can see where the support team has greened out the – many of the issues we discussed yesterday and left some of the ones blank. And so if we scroll down to Section 3, the first comment that is not a Registrar comment is under the letter K.

And so I'm looking at the Registry Constituency group here, which made the comment that this is not a policy recommendation. And I think Marika wrote an email back yesterday that said, you know, there's a wide range of policy recommendations. But I'm kind of sympathetic to the idea that we're telling/asking the GNSO Council to instruct these other guys to look at their work as far as it intersects with ours. So maybe someone from the Registry group could comment on, you know, what should be the form of capturing this and making this part of our recommendations and asking this question?

So Beth, are you the only – oh no, Marc Anderson's here, Beth is here and Matt and Matt's a Registrar, oh and Sebastien is here, hey Sebastien. So I don't know if one of you guys could recommend a form in which we should preserve this material but ask the question.

Marika Konings: Kurt, this is Marika. As there are some new folks on the call compared to yesterday, is it worth that I just repeat what I shared yesterday on how, you know, recommendations are typically captured and the scope under the PDP manual?

Kurt Pritz: That'd be great.

Marika Konings: Okay thanks. And then the others can think about what they want to say and raise their hands as well. So this is Marika. So staff yesterday shared is that based on the PDP manual there's actually a wide variety of types of recommendations that a working group can make. They do not need to be restricted to pure, you know, consensus policy recommendations or, you know, aspects that will require or will create new contractual obligations for contracted parties.

So in that regard, you know, typically initial report and, of course people are welcome to review other initial reports that have been produced in the GNSO context, they contain a wide variety of issues. There are sometimes recommendations to the GNSO Council on what the working group recommendations the GNSO Council should be doing; it may be recommendations to ICANN Org asking ICANN Org to do certain things; it may be recommendations in relation to future work. And of course, you know, always of course any new contractual requirements, those are also captured in policy – in the form of policy recommendations.

As such, you know, there is really no limitation or restriction with regards to, you know, what the group puts in there as long, you know, it usually captures something that the group wants to happen by someone at some stage. And that's why it's important to capture them in a certain way.

What usually happens then as well when once these recommendations are adopted at the implementation phase, these are then kind of, you know, segregated into categories to determine, you know, who needs to take care of these and what are pure, you know, consensus policy recommendations that need to be written up in contractual language, what are other types of recommendations that either, you know, need to be carried out by ICANN Org, or where staff may have additional work and which are things that the GNSO Council is asked to do and as such, you know, the GNSO Council will need to consider how to take those further.

So that was a bit the feedback we provided yesterday, and as such from staff perspective, again, looking at the PDP manual as well as, you know, previous initial reports there is no at least procedural concern about, you know, writing recommendations up in the form of policy recommendations even if they do not concern the pure consensus policy category of, you know, new obligations for contracted parties.

Kurt Pritz: Thanks for the reintroduction to the material. So I think Marc might be best to answer this question but if any other members of the RySG want to, you know, if they wrote this comment, you know, what the question is, okay, Beth great.

Beth Bacon: Hey, Kurt. Hi, everyone. I apologize for slipping in here as an alternate, I'm tapping in for Alan. I was trying to reach out to Marc, I think we may be just missing each other a little bit, I think he's on the phone but maybe not quite ready to speak. I was not involved in drafting this particular recommendation. I do wonder, you know, Marika said that it's probably fine to make a recommendation, oh, I'm just getting a little note from Marc. Sorry, this is Kristina's particular brain diamond.

So if there's no problem with making a recommendation asking the GNSO to do something, so I'm not perhaps understanding the concern with this particular text. I mean, I understand it's not a policy recommendation, but if we are asking them to review things because they are impacted by the recommendation that we are making, how is that out of line?

((Crosstalk))

Kurt Pritz: Thanks very much, Beth. I think that's right. And I think the issue is whether or not it's not really an ICANN policy that, you know, it's not our policy going forward that the RPM group will examine this, it's some other form of recommendation and that's the parsing that occurs so, you know, maybe we need to make that distinction somehow in the report. And I think we can just –

unless Marc or Sebastian has something to add, or anybody else for that matter, I think we could leave it until Kristina comes up for air and can give – gives us some clarification. You know, as Marika says, it's just a recommendation to provide a vehicle for the Council to act.

So whether we want to try to parse between policy recommendations and vehicles for the Council to act we'll have to think about that and we'll take Kristina's thoughts on board. I don't think it's a, at the end of the day, a substantive change, so.

Beth Bacon: Kurt, if I could just have two seconds, is that okay?

Kurt Pritz: Sure. Yes.

Beth Bacon: I think it's okay and I would appreciate us having the opportunity to go back to Kristina because, again, this is – sometimes it is – we're trying to split up this work and sometimes one person works on it so I would like to hear Kristina's thoughts on it and I'm happy to flag that for her. I do think that we spoke very early on in the team's deliberations that there are several different types of recommendations. I don't think there's a – and we did also discuss the fact that we are going – this policy is going to inevitably – our recommendations and consensus policy will inevitably impact other policies be they from a GNSO or not.

So I think that it's important that we highlight those issues and that we aren't just willy-nilly taking a hatchet to things. I think it's the conscientious thing to do so maybe there is a way to parse that out in the report and highlight those particular items. Thanks.

Kurt Pritz: So if I scroll down to what's indicated by the Letter M where the – where the recommendation or the writing in the initial report currently says that, "The EPDP team noted that as part of the team's deliberations no significant issues have been reported in relation to the functioning and operation of the

URS and UDRP following the adoption of the temporary specification." So the Registry Stakeholder Group disagreed with (unintelligible) and broad and the Business Constituency rewrote the language probably because it was vague and overly broad. So can someone from the BC go over the change and describe what you were trying to do here?

Margie Milam: I'm sorry, which section are we on? This is Margie.

Kurt Pritz: Sorry, this isn't easy is it? So the best way to label it is we're in the big Section 3 and it's Letter M as in Mary.

Margie Milam: Sure, I mean, okay I can address this. This is Margie. This is the issue we've been talking about on the list. And I believe also the IPC has weighed in on this. And it just relates to the functioning of the URS and the UDRP. We see problems with the way it's functioning today because of the fact that we're no longer able to get access to the Whois information before filing a complaint. So we just wanted to make sure that that difficulty is mentioned and addressed in the report. Kurt, I think you're on mute.

Kurt Pritz: Yes, I'm reading – yes…

Margie Milam: Okay.

Kurt Pritz: No, I'm reading your – I'm reading through the comment. Does anybody want to get in the queue here about this proposed change?

Alan Greenberg: Marika has her hand up.

Kurt Pritz: Oh good. Hi, Marika. Thanks, Alan.

Marika Konings: Yes, thanks Kurt. And I think actually this language – or to a certain extent has also been discussed on the list and there were some comments there. So staff has, you know, put wording in this regard in the initial report and if it's

helpful it may come up as a lot of text in the pod. There is some language currently in the report that aims to, you know, reflect the position that was expressed, and hopefully sufficiently explained the issue. But also making clear that, you know, there currently is no consensus around whether, you know, this should be a recommendation or not, so the hope is that this satisfies everyone's points of view.

Kurt Pritz: So what's the best way to go about this then? Do you want to send out a side by side of the BC's proposed language and that proposed language so that the team can see the two proposals or is it okay if, Margie, if you read what's in the initial report and then come back with the recommended change? You know, it's not a difficult comparison, I'm just trying to figure out the fastest way to do it. Would it make sense to put the language up in the lower right hand box of this thing?

Marika Konings: Kurt, just to note that this was actually an issue that I think previously wasn't reflected and actually the version I think we sent out had already language in line with this point. But as, you know, the Registries noted that they thought this was vague and overly broad, we added it to the list here to see if there, you know, further concerns about this. And as said, you know, this is captured as something that was discussed it's not captured as a recommendation of any kind, so again, it really tries to reflect the conversation that was had and the positions that were expressed, so if anything in that regard is not clear I think groups are encouraged then to provide clarifying language.

But as said, you know, if not, if people are able to, you know, find back in here what was discussed and, you know, noting, you know, there was no agreement on this, you know, it could be maybe left at this. As said, it was already in there I think on the version on Monday but of course if it's still not sufficiently clear people are welcome to provide further clarifications.

Kurt Pritz: Okay so the RySG is commenting on language that's not in the above paragraph, right? They're commenting on other language. And then the BC is commenting on the language above where they want to add this paragraph that's already been added.

Marika Konings: No, I think – again and the Registries can correct me if I'm wrong. I think the Registry comment was in response to the proposed addition by the BC…

Kurt Pritz: Right.

Marika Konings: …which we did incorporate but we added some language there to kind of reflect that, you know, this was discussed but there was no agreement and further kind of explaining the issue so kind of the question is as it's currently worded, you know, do the Registries and others feel comfortable with the language that it reflects the different perspectives around this conversation or is there anything further that needs to be added?

Kurt Pritz: Okay so let's send out a side by side comparison of what's there and what Margie has here. Let me just read what – right, so "Our concern is that the…" Right and then what the BC is raising is this is a problem for them but we want to characterize it as a BC issue. Margie, are you back in the queue?

Margie Milam: Yes, sure. As I looked at it, I don't think it's complete enough. There's a couple other aspects I'd like addressed in there, at least from our perspective; one being that obviously we do have to address the concern about, you know, unlimited access and we I think have talked about some, you know, perhaps ways to ensure that that doesn't happen and I'd like that to be explored. And the other concept I think Brian may have mentioned in his email, relates to the fact that even though there's a mention that what happens with privacy and proxy services in our view the privacy and proxy services are different because they're actually something that the registrants or, you know, the customers engage in contracts with the registrars and pay for that service.

And so in my view there should be a difference between a privacy proxy service and a regular registration. Someone who has a regular registration might not want to give up the, you know, the rights that they have and allow the privacy proxy to stand in their shoes. So those are two separate things and I'd like that identified in the report as an explanation so people can comment.

Kurt Pritz: Yes, so if you could – if you can put that into writing again, please, Margie, and then we'll attempt to deal with it via email and if we don't we'll deal with it on a call. That'd be great. Is that okay, Margie? I'm not in the chat room.

Margie Milam: Yes, yes, I'll do that. Sorry.

Kurt Pritz: Okay. And if you could do that today because of the sense of urgency, it'd be great.

Margie Milam: Yes.

Kurt Pritz: Thanks. So I missed one, so I'm not doing a good job here, but if you could scroll up to the very top of Section 3 there's letter J. And since I skipped it, that means I didn't do my – it wasn't included in my pre-meeting rehearsal of the issues so this was a comment by the Registries. "Is the bulleted text intended to propose an amendment to the temp spec? If so, what meeting was this discussed?" Okay, more importantly need to identify the actor that will clarify the language, eliminate the passive voice.

So, you know, I'm sorry I'm not really (unintelligible) that issue. Is anybody from the Registry team that's on the call have a hand in this one? Hey Marc, welcome.

Marc Anderson: Hey, Kurt. It's Marc. So I'm afraid – so I'm looking for a little help, Kurt, because I'm having a lot of trouble following along where we are and what

we're discussing. So I've got – so I guess I'm not prepared to answer your question but I'm just – I'm looking for some help so we're – I gather we're at Section 3, I'm looking at the PDF – we're in Section 3 proposed change J. But could somebody point me to where in the current draft of the temporary – of the policy recommendations we're talking about? I think I'm having trouble getting to the context of what we're trying to discuss here.

Kurt Pritz: Go ahead, Marika.

Marika Konings: Yes thanks, Kurt. I don't exactly have at number immediately at hand but it's in the – I think the UDRP URS section of the report. And I'll get there shortly to find the exact reference. But I just wanted to provide a little bit of context of the question of the Registries, this was actually something that was discussed, you know, very early on in the context of the triage report and the temporary specification currently refers to something as in another mechanism.

The group discussed that and I think some questions were raised what that actually meant and I think there was some confusion around whether that meant that, you know, ICANN Org would just go and create a new mechanism and that would be, you know, the new thing or whether something else was intended. And actually we clarified that with our colleagues that the real idea behind that was, you know, the other mechanism would refer to if this group would come up with something else that would need to be put in place, or is still working on that.

So I think this is just to reflect if that same language would be repeated in, you know, the implementation of the policy recommendations just to make sure that that is clear that, you know, that language is not repeated in that way but it's very specific about, you know, what an other mechanism would mean, so that is what it's trying to convey. And as said, that was discussed I think it was probably Meeting Number 5, very early on in the context of the triage report.

And again, more specifically referring to the temp spec so if that language is being reused for whatever reason that, you know, further clarity is added with regard to what another mechanism means.

Kurt Pritz: And another mechanism to accomplish what, Marika?

Marika Konings: I think -- this is Marika -- I think that was in relation to how URS and UDRP information would be obtained. I think the temporary specification currently kind of explains, you know, how that needs to happen. And I think it's, you know, for providers to go to registries and registrars and they're obligated to provide that. And I think this is the other mechanism referring to in the future as a result of this work there may be another mechanism developed by which that information would be obtained.

And again, that's my interpretation. I'm guessing it's referring to future work in relation to access. So it's just to make clear that this is not talking about something that is happening in some other venue but it's clear that any other mechanism would be developed in the context of this PDP or a future PDP but not as a kind of standalone access.

Kurt Pritz: And then the (unintelligible) in this section we switched from recommendation numbers to line item numbers in the initial report. So Beth – Marc, did you want to follow up or should I call on Beth?

Marc Anderson: This is Marc. I'm hoping Beth has some clarity and can help because, I'm sorry, I'm still having trouble figuring out like where we are in relation to the draft policy recommendations to sort of get the context for this recommendation, so hopefully Beth can bail me out here.

Kurt Pritz: Go ahead, Beth.

Beth Bacon: Okay thanks, Kurt. So I just – Marika, thank you very much for that. It's helpful and clear as always and much appreciated. But I do have a concern, I mean, we did speak at length about, you know, the future work and especially as (unintelligible) developing some sort of standard access framework. But I am concerned with the fact that, you know, yes, we're saying that we will do this work and there's discussions we will discuss, you know, how to standardize some access. I don't know why we're calling out, you know, another mechanism by which full registration data is expected to be made available by the registry operator. That seems incredibly specific with regard to future work that hasn't happened and hasn't been scoped quite yet.

So I just – I'm wondering why this is there. I don't – I think I have to agree that I don't know that that's exactly what was said. I would be more comfortable if we could take another look at this and maybe phrase it differently. And we're happy to take that on and maybe give some text.

Kurt Pritz: You know, alternatively this was – this paragraph was meant to address a section in the temporary specification that will – because we were concerned that ICANN might develop or impose another mechanism. And so in addressing that concern we went back to ICANN and then came to the conclusion that this wasn't the case so we wanted to clarify that the only other mechanisms that could be specified would be by us.

But since the temporary specification is vanishing, right, into the nothingness I'm not even sure we need this; I mean, we can just be silent on this topic and then the subject of another mechanism goes away. I mean, there's always the chance that we could develop another mechanism for anything here, right, so why call it out in this instance? So, you know, if we can think through this issue and deal with it right here I would recommend that we could just delete this. But go ahead, Marc.

Marc Anderson: Thanks, Kurt. It's Marc. Apologies for being slow this morning. I'm looking at a different version of the policy recommendations with the – where the line

numbers do line up. And I think I agree with what you just said; I don't see the value that this bullet point provides. You know, so maybe, you know, the quick answer here would be to just remove that bullet point. Yes, I mean, that's maybe my, you know, my knee jerk reaction I think is to agree with you that removing it would make sense.

Kurt Pritz: Anyone else? I saw Alan Greenberg raise his hand but then go down so unless there's – I'll pause for a second, but we'll take silence as ascent and unless somebody sees a purpose for answering this issue that's in the temporary spec that's going to go away anyway, we can take that off. Great. Alan.

Alan Greenberg: Yes, I just wanted to make it really clear; I think our only choice is to be silent on it or point out that there is this line in the temporary spec, we plan to ignore it. You know, that perhaps is more clear for someone who thinks it had some meaning but I don't think there's any other choice.

Kurt Pritz: Thank you, Alan. And Marika, you could just look at the charter questions and we could answer the charter question without making a recommendation; we could answer the charter question in the way Alan stated. If there's no charter question on it then we don't care. Thanks, everybody, that was good.

((Crosstalk))

Marika Konings: Kurt, this is Marika. Just…

Kurt Pritz: Yes.

Marika Konings: If I can just make a comment on that because the charter question does ask about, "Should temporary specification language be confirmed or additional adjustments needed?" You know, of course the group has kind of a taken, you know, a different approach and kind of more said, you know, the concept of what is in the temporary spec no changes need to be made. So again, on

the one hand the charter question is specifically asking about the language in the temp spec and in that context of course this other mechanism is mentioned.

You know, as we said, it may not add anything so I'm happy to delete it but I just wanted to make clear that, you know, in principle the charter questions are asking about the existing language so it would relate, you know, that comment would relate to that but of course in the actual recommendations, you know, we've kind of moved away from sticking to the existing language but more focusing on, you know, existing requirements in a more general sense.

Kurt Pritz: Thanks. So since it doesn't ask about the language and other mechanisms specifically I think we can just delete it and move on. For those of you trying to keep up with me I'm going to – yes, go ahead.

Beth Bacon: Thanks, sorry. I know you're not in the Adobe room so I didn't want to…

((Crosstalk))

Beth Bacon: …saw my hand. So, Marika, that's helpful. I think that what we could just say is that, you know, that this – we understand as you say, it's a comment, this is in the – we understand it's in the temp spec, but the scoping of the EPDP already says that we will (unintelligible) separately after we do this work. So I think that it's easily noted as, you know, this is being addressed but it's already got its own venue so if we can tie it back that way I think it makes sense with both how the charter questions are drafted as well as how the temp spec is worded or the PDP charter is worded. Thanks.

Kurt Pritz: Thanks. I think that'd be fine too. For those of you that are trying to follow me and I haven't been doing a very good job – I've scrolled down to Preliminary Recommendation Number 24 which calls – it's letter N as in Nancy. "The EPDP Team recommends the GNSO as a result of transfer policy specifically

requests the review of implications." So this is very similar to the one above where I think this was Kristina's input.

So unless somebody from the – Beth or Marc or Sebastien, unless you have some insight on this one we'll handle this one the same way we're handling M and give Kristina a chance to opine specifically on what form or format or clarification or wording we would wrap around this to identify it as not a policy recommendation but a, you know, a vehicle for direction to the GNSO.

Beth Bacon: Kurt, I think that's fine. And again I'm just hopping in because I know you can't read the chat.

Kurt Pritz: I can. I can do two things at once.

Beth Bacon: Sorry. I thought you weren't in the room. Thanks.

Kurt Pritz: So and the next one on my list is U which is under Section 5. And having to do with Whois accuracy where there's actually two sections here where there's a comment on Recommendation 3, which is T by the Registrars who asked, you know, that said that we could skip over their recommendations. But since it is a – it is attacking the same recommendation as the BC that I think we should discuss them both. So then I hope we can.

I think the recommendations on both these cases are pretty clear. I guess I'll give the BC just a minute to describe their change and then I know Matt's on the call, or one of the other Registrars, if you want to introduce your change and then we can have a conversation about this. It's – and remember we're talking about under Section 5, letters U and V as in Victor.

Marc Anderson: Kurt, this is Marc. Sorry, can I interrupt? I want to go back to…

Kurt Pritz: Yes.

Marc Anderson: …N.

Kurt Pritz: Okay, great.

Marc Anderson: So sorry to jump in on this one but just I want to make sure we're all on the same page because I'm feeling very not on the same page today. But we – so we just discussed N, a proposed change preliminary recommendation Number 24, and I think I'm looking at what I think is the latest draft of the initial report. And in that draft preliminary recommendation Number 24 is removed. And so I think you know, so I guess I'm trying to point out for everybody like from what I can tell a decision has been made to remove preliminary recommendation Number 24 and that's where we are currently.

And I want to make sure like that's what we agreed to and everybody understands that that's where we are. So, you know, unless, you know, I'm looking at what I think is the 12 November draft of the temporary specification – or sorry, of the initial report which doesn't have 24.

Kurt Pritz: Thanks. Marika or Caitlin, could you – to that please?

Marika Konings: Yes this is Marika. And that is of course the result of working on multiple versions and the comments being on earlier ones. This is actually now Recommendation Number 21 because in between the original version where people made comments, you know, certain recommendations were deleted as, you know, requested or suggested.

So that is why it's easier if you search basically on the exact language and staff can, you know, update this accordingly but this is basically in the section in relation to the transfer policy, so in the – if you go to, I mean, I can as well post you the link of the original draft that many commented on, but of course other things are missing in there so that's a bit the nature of the conversation we're currently in. But the recommendation is currently numbered as 21 as a result of recent changes but nothing has changed to the language itself.

Marc Anderson: Okay thank you. This is Marc again. So that's helpful. And I'm looking at now Recommendation 21, but then this, you know, this brings up the obvious point here is, you know, we're talking about edits to edits and trying to hit a moving target. And so I have to ask, you know, can we please move, you know, very deliberately here and make sure everybody's clear on exactly you know, what section we're discussing and what the current state of that is?

You know, and I, you know, I don't know, I'm going to blame it on Friday-itis or something but I'm having a particularly hard time sort of following along this, you know, reconciling the section of the table that we're discussing with the section in the context of the initial report. And so, you know, so apologize if it's just me being slow today but I am having trouble following along.

Kurt Pritz: I'm not so sure it's your fault, Marc. So I think you know, maybe for introducing each one of these, you know, I'll introduce it but if any – Marika, if any clarifications need to be made or, you know, if people need to reference back to either the temporary spec or the germane section of the initial report we can provide that as part of the introduction to each one of these topics because in some cases the language just in the table isn't sufficient enough to make a recommendation.

But with – so Marc, if you're caught up and you're – well actually I appreciate you keeping up because your comments are probably – would be echoed by others. So for – this Recommendation N as in Nancy, our conclusion is that the language is fine, most likely fine but fine the way it's written. We're concerned that this is not a policy recommendation but rather a direction – a vehicle for direction to the Council and we will give Kristina the opportunity to clarify our thinking if it's incorrect and offer, you know, her suggestions on a way this might be presented as a recommendation to differentiate between what are policy recommendations and directions to the Council to take some action.

And so we're kind of in a little conundrum because the observers are saying they're having difficulty following along because they cannot scroll the document. And so I don't know the best way to handle that, whether we should just scroll – I think maybe staff could take possession of the document and scroll to the section we're discussing and that would make it easier, yes, Marika can scroll for all. So I think that's the best way to go about this. Go ahead, Marc, please.

Marc Anderson: Hey Kurt. This is Marc. Thanks for humoring me today. And so I'm looking at now 21 here in light of the comments Marika made and thinking about this, I mean, this is – it's a fairly general comment. And I also think it's particularly noteworthy like on the 14th, you know, ICANN, you know, ICANN initiated a, you know, or published a status comment on the IRTP policy. And so this is sort of timely and topical.

You know, this is, you know, Recommendation 21 as it's written right now is very, you know, is very, you know, kind of broad and, you know, I guess it's a, you know, I guess any, you know, any review of any policy that ICANN undertakes, you know, sort of going forward you know, should probably look at the implications related to GDPR. You know, I don't know how in the weeds we want to get but, you know, I think, you know, what I would want us to know is like is there something specific, you know, I mean, if we could make a general, you know, general recommendation, hey when reviewing a policy consider the impacts of GDPR, you know, that's fine and good.

But, you know, in our deliberations have we identified any specific issues, implications or considerations that we would want to recommend? You know, I guess that's something we should be putting in here. You know, otherwise, you know, I guess if we want to put a general boilerplate, you know, recommendation hey, consider GDPR, you know, that's fine and prudent but I'm not sure how ultimately helpful that is. But, you know, otherwise, you know, looking at this I don't, you know, I don't know how much substance is here and how much that'll move the needle one way or the other.

Kurt Pritz: You know, you make me think that you know, if there should be notice to that policy group or other policy groups, you know, should we wait until we have this preliminary recommendation in here and then wait until May or whenever the final report is, you know, the final policy is approved to actually bring that to fruition or is there a way for – there's two things, you know, is there a way that we can tell the GNSO that, you know, they ought to do that now given you know, given that that group just did publish a report. And I wonder if there's a way to, you know, we identified this issue, let's not wait six months to make the – that recommendation formal; there should be some thought to given this now.

And then, you know, as far as specificity, maybe the solution for that is, you know, to direct some other team or some other effort to either, you know, write a paper that gets into the weeds in a sufficient amount or, you know, maybe provide a briefing, so have a cross group sort of discussion about, you know, what we've gone through in assessing the effects of GDPR on other aspects of our ecosystem, and, you know, creating some sort of interactive session for that.

So that's – that would be two suggestions I have. Is there a way to move this recommendation up in time – and we've talked about this for other things, so that the GNSO can act on this now? And two is, you know, I think more detail is required but maybe we can defer that, you know, defer that detail. Margie.

Margie Milam: Yes hi. It's Margie. I agree with Marc and I think your suggestions are also useful. It strikes me that this is – when we were talking yesterday about the fact that some of these recommendations feel like they came out of, you know, like didn't come out of discussions from the group, this is one of them also that kind of raises that ire. And I agree that I don't see any value in the recommendation as it's written right now. But, Kurt, your suggestion of maybe like, you know, we've done small teams on geographic scope, we've done

small teams on, you know, natural, legal, maybe this is one where, you know, we get a few of us together and come up with something.

But, you know, obviously I don't know that that's going to happen before this report is issued. And so, you know, maybe the report, you know, notes that we're going to focus on it and asks for input from the community on, you know, what might be an appropriate recommendation as it relates to the temporary spec and kick off after the, you know, after the initial report a small team to kind of think about it because I don't see the – I have trouble with making a recommendation that a policy group do this in May, you know, because it's like deferring a resolution to the issue for, you know, quite a long time. And anything that we can do as, you know, to get a more specific recommendation I think would be helpful.

Kurt Pritz: Thanks, Margie. Georgios, how are you today?

Georgios Tselentis: Thank you. Can you hear me?

Kurt Pritz: Yes I can. Thank you. Yes.

Georgios Tselentis: Yes, I think that we would (unintelligible) because I was (unintelligible) in LA worried that we defer this issue further and further down the road and we will not actually have anything concrete to suggest. And I find what is actually written (unintelligible) somehow addresses the concerns that I expressed on several occasions regarding activity. My fear again, and I will say this for the Nth time is that we cannot (unintelligible) some of the purposes if we don't have accurate data and therefore we have something – we need to say how we are to address this problem at least not defer it for indefinitely if I can say at all because this is my fear that we continue pushing this further down the road.

So I'm currently – I can see that there is no time now to address it before the publication of the initial report but I would be happy to have any solution that

we (unintelligible) time wise to have something in the report regarding this issue. Thank you.

Kurt Pritz: Thanks, Georgios. Alan Greenberg.

Alan Greenberg: Thank you. Alan Greenberg speaking. Again I seem to be rather confused. Under Question 21 in the draft report, there is a question and it says, "Are there any other changes that are relevant in relation to transfer policy that are – that have not already been identified?" Now I'll comment that I think we really need a pointer in a footnote or to another section of the report saying what have we identified, but I think that question does exactly what we're doing saying in the final report we need more specificity so let's make sure that we are asking for input if there is any. So short – other than we really should point people to what we have identified so they're not replicating it, I think this recommendation which gives us a place to hang the question is quite appropriate.

Kurt Pritz: Thanks, Alan. Go ahead, Margie.

Margie Milam: Actually my question is kind of a point of order. We're almost at the top of the hour and I feel like we're – a lot of us are struggling on even keeping track of where we are and I'd really like to talk about the memo and get reactions from the group on the ICANN memo on the controller issue. So my suggestion is, is it possible to move to that before we go back to further questions on this list – on this document?

Kurt Pritz: Well we have two – yes we have – so let's close this off. I'm going to go with Alan's recommendation and if – and Marika, if we can add any specificity around issues it'd be great to share that with the group and then we'll make that part of our question in the initial report. There's one more - there's one more topic to discuss here and that is under Heading 5 and it's Sections U and V where the Registrars and also the BC have appended comments to Recommendation 3, which has to do with -- I'm just scrolling down myself --

I'm sorry, it's T and U, sorry, Sections T and U where that the current ICANN contracts and consensus policies regarding accuracy of registration data will not be affected by this party.

So Margie, I'll give you a minute and then someone from the Registrars a minute to go through theirs and, you know, we'll have a short discussion about this. I don't know if we'll get to a resolution.

Margie Milam: I'm sorry, this is Margie. Yes, I think the reason why I was – I raised the issue or we raised the issue is because it made it sound like there would be no changes. So I think coming out of the meeting in Los Angeles we essentially agreed that we weren't trying to diminish the accuracy obligations but we didn't have agreement yet on, you know, on accuracy and it's a parking lot issue that we were going to talk about.

And so the reason why I suggested the language was because it made it sound like it was definitive that that's all there is and there's no further discussion about accuracy. And we have that as a parking lot issue and just wanted to flag that, you know, and we understand that it's a, you know, a later discussion in this EPDP because we got the other things to worry about right now. So that was the context of the comments.

Kurt Pritz: Thanks, Margie. Does someone from the Registrars want to comment to their recommendation here?

Emily Taylor: Kurt, it's Emily. I have my hand up in the queue and I can take this one if you'd like.

((Crosstalk))

Emily Taylor: Yes, I think our proposal is a very minor language change but, you know, noting that this is coming back to the group because this is changing the wording of previous compromise language. We don't really feel that our small

change really affects it, you know, the meaning one way or the other so we're really comfortable to keep the compromised language and in that spirit would oppose the additional text proposed by the BC because that really does change the meaning of the previous compromise language.

Data accuracy, as you know, is a major component of GDPR and other, you know, and other privacy laws. I don't think that the BC language is needed but, you know, let's stick with the compromise language please.

Kurt Pritz: So go back to the compromise language?

Emily Taylor: That would be my proposal, yes please.

Kurt Pritz: Okay. So let's motor through the queue, see where we are at the end of that and then go onto the other report. Stephanie. How are you today?

Stephanie Perrin: Good thanks. Stephanie Perrin for the record. This probably isn't a popular proposal but I do think given the extent of change that are going to be required as we comply with GDPR, all attempt to ensure accuracy have to be costed and weighed with all the new costs. And I note that the legal memo brings up the issue of cost as well. So we don't seem to have any language in here recognizing the cost impact of some of these things. This would be a good place to put it as a caution against any fulsome attack on verification of data. Thanks.

Kurt Pritz: Thanks, Stephanie. Benedict.

Benedict Addis: We never quite settled the idea of whether accuracy is – accuracy as reflecting what the registrant has told the registrar, or some external idea of accuracy. Are we intentionally leaving that vague or is – I couldn't see any other language about that.

Kurt Pritz: So from my point of view there's an accuracy requirement or duty that's called out in the contract between say the registrars and ICANN. And so, you know, for me Whois – the Whois accuracy requirement is defined by the contractual requirement. I don't know if that's helpful and if you have a follow up, Benedict.

Benedict Addis: I'm good – I think it'd be good if we could describe it so that we don't get people in the public comments confusing the two. There's like accuracy in GDPR mostly means taking these steps to represent in your database is what the data subject that told you. And I think maybe we could – if we're talking about that and we're not trying to shoehorn anything else in there then perhaps we should say that, that we (unintelligible) any sort of external verification because that word's been a bit – has been a bit bandied around.

Kurt Pritz: Yes. Alan.

Alan Greenberg: Yes thank you very much. Alan Greenberg. On the issue Benedict just raised, my understanding is that the accuracy provision there says that the data subject must be able to correct data. However, the GDPR makes it reasonably clear I think that if the controller has – believes that there are inaccuracies, whether told by the original data holder you know, data subject or somewhere else, they have an obligation to try to fix them.

                 So, you know, although it may have been written for – to protect the subject, once it's there I believe we have a requirement to make sure the data is accurate if we find out for some reason or another that it is not. So that's certainly how I believe it should be written but I think it does warrant discussion because I've heard different positions taken by different members of the EPDP.

                 I was raising my hand originally about T, that is the proposed change, I think what has now been said by Emily is they are withdrawing the request to change Recommendation 3 by adding the reference to sufficient, and are

going back to the correct – the original language, is that your understanding as well, Kurt?

Kurt Pritz: Yes, that was my understanding in return for – yes, just going back to the original language.

((Crosstalk))

Alan Greenberg: Since I was going to object strenuously to adding the word "sufficient" I support that. Thank you.

Kurt Pritz: Margie.

Margie Milam: Sure. What I wanted to point out from the language is that it's a parking lot issue and there's no need to discuss it right now; it's one that we're going to talk about later. I think you know, it'll be a longer conversation and so as long as the report mentions that this is, you know, being discussed and will be discussed in the group then I think we've got it; there's no need to really go into further detail than that. And so that was my thoughts.

Kurt Pritz: Marika, do you think you could capture that and find the appropriate place to say that in the report?

Marika Konings: This is Marika. So it's just a note that, you know, this will be considered further, right? Okay.

Kurt Pritz: Yes, that the issue of Whois accuracy was put in the parking lot but we'll use more professional words than "parking lot." Hadia, how's your microphone today?

Hadia Elminiawi: Not sure, is it okay?

Kurt Pritz: It's not as good as it's been in the past but go ahead, I'll turn my volume down some.

Hadia Elminiawi: Okay. So it's just to Margie's point what I understand and Alan said that as well, that Emily (unintelligible) something that accuracy would be for this, Kurt. (Unintelligible) actually accuracy also does relate to the purpose for which the data was processed. So and accuracy in the GDPR means that the data should be accurate in that for the purposes for which it is being (unintelligible). So I don't know if you would like to (unintelligible) that's how I understand the GDPR talks about that.

Kurt Pritz: So I think, Hadia, that's what we want to – that's a longer discussion so that's what we want to capture in the comment that we're going to have that discussion later. But given Emily's offer and Margie's offer I don't want to perturb the language in the current version of the initial report. So with that – okay thanks, Hadia. And with that I'll close this out. And actually there's one more tiny topic, and let's see if this is – this was by the RySG.

                     And I know you want to talk about this other stuff but I want to get through these issues too and, you know, it's important stuff. And this is the last one, so this has to do – it's letter V, which is right below that and it's preliminary recommendation Number 11 that the EPDP team recommends that registrars are required to retain specified data elements for a period of time, retention period for the specific (unintelligible) transfer dispute resolution policy, blah, blah, blah, and it says gets to one year.

                     And then the registries recommend creating a footnote and after TDRP and move other relevant party sentences into the footnote text. So is there anybody from the Registries that want to put a point on that? It seems pretty specific and understandable to me. But if anybody from the Registries wants to give the reasoning behind that, just to provide some clarity. Marc.

Marc Anderson: Thanks, Kurt. It's Marc. I'll jump in on this one. You know, it's, you know, we talked a lot about retention and as far as, you know, the retention for registrars, you know, the – which is encompassed I guess in the first two sentences here, you know, I think this is, you know, this is a good example where we, you know, we did our job, we deliberated the issue, you know, came up with a recommendation and a reason for that recommendation. And then that third sentence just sort of tacks on this other relevant party sentence that is sort of ambiguous, not supported and I don't know how I would implement that. And so I think, you know, that's sort of the essence of this comment.

Kurt Pritz: Any comments to that? I have one. So I think that's a good change; that provides clarity and also the – I think a footnote is the appropriate place for that. It, you know, is a punctuation device; it gives the right amount of pause between the recommendation and a rationale piece for that. So without – I'm going to pause for five or so seconds to see if there's a comment or objection to this recommended change and if not we'll go ahead with that.

                So that brings to a close this section of our work. We're looking forward to the Registrar's work that's going to occur later in the day and determine how best to respond to the changes they have there so it's important that that happen. So Alan's typing and I don't know whether to wait to see what he has to say or not.

Alan Greenberg: Don't wait.

Kurt Pritz: I'm for going onto the next topic which will be what people are interested to talk about and that is I think the memo received last night from ICANN. And any further thoughts from Thomas on his memo based on input he had over the last 24 hours. So with that I don't know exactly the best way to go about that. I think, you know, I'd really, you know, take it easy on myself and turn the mic over to Thomas if he's willing to take it.

Thomas Rickert: Thanks very much, Kurt. And hi, everyone. This is Thomas Rickert representing the ISPCP…

Kurt Pritz: So, Thomas…

((Crosstalk))

Kurt Pritz: …once again I'm going to interrupt your start because Marc raised his hand so déjà vu all over again. Go ahead, Marc, I'm sorry.

Marc Anderson: Apologies, you know, I didn't mean to cut anyone off midstream there. But I was going to, you know, since we started off with the memo from ICANN I was just going to ask if Dan or Trang would be able to sort of tee this up for us and maybe introduce the topic? That might be useful for everybody on the call.

Kurt Pritz: Do you mind if we do that, Thomas?

Thomas Rickert: Not at all. It would be great.

Kurt Pritz: Great. Thanks for that suggestion, Marc. So Trang, thanks very much, you only got one thank you email but a lot of people thought thank you when they got the memo last night. So either Trang or Dan, do you have introductory comments you want to make either with regard to the process of putting the memo together, the intent of it or the substance of it?

Trang Nguyen: Thanks, Kurt. This is Trang. And I'll start off but Dan, please jump in. So, you know, this document was put together really as contribution – ICANN Org contribution to the memo that Thomas circulated on November 7. I think there were some – prior to the circulation of the memo there were some requests from the EPDP team to have ICANN Org participate in this discussion. But unfortunately as you know, because of the tight timing the memo was

circulated, you know, without our ability to have a conversation with Thomas first. And so this is sort of our contribution to that memo.

And instead of redlining and providing in-line comment to the memo we thought it would be easier to read if we provided our comments and feedback in a separate document. So our point of view in creating this document is, you know, of course there is the EPDP team currently has on the table for discussion, you know, a recommendation around controllership that is different from what's currently in the temporary specification, which is fine.

And so from our perspective, as ICANN Org liaisons, what our role is, is to provide sort of additional points for consideration as well as raise any implementation related issues or concerns to inform the EPDP continued discussion on this topic. So that's sort of what this document highlights. As you can see in Section 4 and 5 of the document, we provided several implementation-related, you know, questions for the group to consider. We don't view it as, you know, our role to decide whether or not joint controllership, you know, should or should to be the policy recommendation; that's obviously the role of the EPDP team, that is not ICANN Org's role.

Our role is to provide information and implementation related you know, issues and concerns, bring those to the EPDP team for consideration as it discuss, you know, what the policy recommendations should be. So I'll stop there. I don't know, Dan, if you have anything else to add?

Dan Halloran: Thank you, Trang, that was I think a really good introduction and thanks also to Thomas and Diane and the others who participated in that small group. And I think we probably just share some of your frustration that we've had to do this kind of in slow motion and across time zones and back and forth by email because really this is the kind of thing that would be great if we could sit down face to face because just like in reading Thomas's email from this morning I think, you know, we probably agree on 89% of the stuff and it's just

a matter of, you know, sitting down together, talking it through, getting to the right conclusion.

And like Thomas said, we don't have any, you know, personal – or, you know, we want the team and ICANN to get this right, you guys are making recommendations to ICANN on how to address it. And it's not a matter of our preferences or your preferences, we're all just trying to, you know, understand – I think we all have a good understanding of the current data processing that goes on between ICANN, registries, registrars and we're trying to map that onto GDPR and as like Alan and others have pointed out, you know, GDPR is kind of a high level set of principles and it's difficult to apply to a complicated situation like we have.

And DNS is one of the world's great, you know, complicated, complex, distributed databases and it, you know, I think all the people on this call all have a piece on it, and it's, you know, we have hundreds of millions of names all across the globe and across jurisdictions, across different players with different parts and we've got ICANN and the root zone and registries and registrars and the resellers and backend providers, registrar backend providers, escrow agents, EBEROs, like it's just difficult to apply the, you know, the well-meaning concepts behind GDPR, which I think we all agree with and we want to apply it and we want to do it right.

So, you know, we've been doing our best to follow along with conversation and to contribute gets a little bit – I don't want to say frustrating for me and Trang because we also like you guys all, you know, we don't know it perfectly, we're trying to understand it and apply it and you guys get to like put in your opinions on each topic that comes up and we kind of I think Alan said hold the cards closer, we're not trying to play games, just we don't want to interfere with or disrupt the policy discussions in any way. You know, we're here to support you, provide information and help you. Our only, you know, goal is that you guys succeed, we're here to support you and in no way trying to frustrate that.

So apologies for any frustration anyone's feeling. I know like even in Thomas's note he discussed some frustration like he wants to – also I think it looks like, you know, sit down and talk this out. Trang and I are here to talk this out and to listen. There could be issues where we'll have to like take it on notice and go back because we also, you know, I think ICANN Org is 400 people, we have to go back and there's experts internally and there's a big team there, there's the GAC executives and we'll have to consult maybe if there are any tricky questions.

But like Trang said, bottom line, this is our attempt to help make sure the team's doing the job of analyzing the situation. It just struck us that, you know, from very early on this, you know, there's been, you know, this discussion about roles and responsibilities. We've tried, again, with the kind of constraints we have to not try to interfere, to flag in a few key places that, hey there's, you know, you're going somewhere with roles and responsibilities that's different than what's in the temp spec, and might require further discussion.

I take on Amr's you know, very, you know, constructive feedback from I think yesterday or a couple days ago about, you know, wishing that we had spoken up earlier. And so we'll take that on and try to, you know, do the best we can to, you know, raise our hand and intervene at the appropriate time. It has been mostly a, you know, like I think Margie or others have said, like a passive role. Like I think we've answered, you know, 30 plus questions, you know, with as much detail as we can, written questions from the (unintelligible) the team.

But again we're here to help out in any way we can and thanks to everybody for your time and patience. And when you look at this, and just, you know, on the substance of the memo hopefully you'll take that, you know, it's not a criticism of the work that Thomas has done or – and Thomas also said it, this was a team effort, it's really just trying to get to let's make sure that the team

has carefully looked at the possibilities, and I think you know, we've agreed there are multiple controllers in this situation or the team seems to be agreeing on that and that was agreed in the temp spec and earlier, and the question is are they joint controllers, does Article 26 apply? Or are they independent controllers?

And deciding, you know, if there's – who's the controller in any situation you have to look at both the purposes for the processing and the means of processing, who's controlling how that processing is actually being done, the actual technical operational implementation. I think – and we're kind of – I don't know if anyone's following it closely, there's a couple of examples going back and forth from an older Article 29 memo with the travel agency and the hotel chain and the airline.

And there's just two ways to look at it, and the Article 29 Working Party kind of gave two similar examples and came to two different conclusions. In one case they were independent controllers and in the other case they were joint controllers. The examples I'm seeing where there's joint controllers tend to be things where there's like a shared platform, like a joint venture between companies where they get together and make one website, one platform where they all have equal hands on the data, on the means of processing the data, they can all see the data.

And the question is, is that what this situation is like with ICANN and the registries and registrars? And I think just the team has to look at it more, we've been looking at it more. We still have a lot of like implementation questions. If that is the way we go I think it's important to look ahead like I think it was Tuesday's call, Thursday's, I'm losing track of days, where we started to – Trang asked I think Thomas, you know, the recommendation text that we were looking at said there, you know, the team recommends that there is joint controllership and ICANN shall enter a joint controller agreement with the parties.

Well that's ambiguous, it could be read to say that ICANN should enter a contract literally with all the parties which would be having a document with 2500 or whatever signatories, every registry, every registrar and ICANN all signing on the same agreement. It could mean that ICANN should enter a joint controller agreement with each and every registry and registrar separately. And that to me kind of raises the question, well is that a joint controller agreement, if it's just a series of bilateral agreements?

And then a huge implementation issue is, is that going to be negotiated individually with each and every entity or is that going to be one size fits all template? And in that case if you're saying it's a one size fits all template, is that really going to work? You know, is ICANN going to go enter this negotiation with the company in China, with the company in India? Brazil? Mexico? Canada? United States? Are we going to have to negotiate individually?

What if one of these companies says no, we don't want to sign that. Or no, we want to sign that but here's these, you know, some crazy list of demands? Does that kind of undercut the whole joint controllership? Does that blow it up? Or is it, you know, in order to continue this whole endeavor, do we need to – is it literally a requirement in the GDPR that we have this joint controller agreement with each and every one? There's more questions. I don't want to go into it in detail.

And again, sorry to kind of drag the whole group through this because this probably is something better that, you know, we try to set up the small group to bash this out a week or two ago. So anyway I'll stop monopolizing the conversation and go back into our listening and providing information mode. Thank you again, Kurt, and Thomas and everyone else who's been working on this. And back to you. Thank you, Kurt.

Kurt Pritz: No, don't go back into that hole yet, Dan. So that was very well put. Thanks to both of you. Yes and in the middle somewhere, were you proposing a way of

working together on this going forward? Were you proposing additional either small group meetings or some type of sessions, you know, to bash this out?

Dan Halloran: I think – yes, thanks Kurt. This is Dan again. My hesitation on this is the unfortunate collision with the time deadline initial report. I want to repeat what John Jeffery said on that small group call which again, apologies, both Trang and I had that day off, it was a holiday and my kids were off that day and happened to be my birthday so I was very happy John covered that call for me.

But it would be great if we could have more calls like that. None of us though want to delay or interfere with finalization of the initial report. So I'll leave it to you guys how you want to handle that. We're available anytime to have calls, discussions, time depending, I mean, ideally even we could sit down together again. I know that might not be for a long time but we could look at maybe schedules where maybe if a small group of a small group could sit down together.

I'll be in Brussels actually in a couple weeks. Maybe Thomas and I could get together and bash this out. So we're at your service and at your disposal, however we can help finalize this and figure out how to address it in the initial report too. I guess the only thing would be to, you know, anyway I'll leave it to Thomas to speak too, how to address this initial report and, you know, thanks.

Kurt Pritz: Thanks very much, Dan. Yes, I think I would hope everybody in the group would agree that it's really important to get this right regardless of the timing. And I also think there's ways to furnish an initial report and address the timing of this issue simultaneously in some way. So, you know, I'd ask you of course and Thomas and those that are working on this issue to go about this in the right way to get this correct, because it is very important and will result in significant work and affect all the parties regardless of which way we go.

And then our administrative arm can figure out how to address the initial report so I don't want this work to be hobbled by timing and I don't want the initial report to be hobbled by this work. And I'm sure that can work out. So I echo Dan's – I echo Alan Greenberg's comment here in the bottom of the chat. And so Thomas, if you could pick up from that it would be terrific.

Thomas Rickert: Thanks very much, Kurt. And hi everyone again. Let me thank Trang and Dan for their kind introductory remarks and to echo the sentiment that, you know, this is not for anyone to get their will; we need to get to a solution that is defendable and that we can put out in our initial report. So I also hope that you won't go back into listening mode. I think that you need to speak up if you have ideas to share and to offer. And I'm more than happy to jump on calls or meet face to face.

But I guess the immediate question for us is, what impact will the memo have on the publication of our initial report? And I guess that's the topic that we need to focus on. And I'd really like to make this not an exercise of me trying to react thoroughly to the memo but I hope that we as a group can get feedback on the memo and take out of the memo those things that should probably be added to the report. So let's try to focus on what if any changes need to be made to the report.

I see that Marc's hand is raised so I'd like to go to Marc. But if I may suggest because yesterday or during the last call whenever that was, we had more and more folks adding themselves to the queue and we didn't really work on the text of the draft initial report. I would like to avoid that today in the essence of time so after we've heard Marc I'd really like to share some initial reactions to the memo and the impact that these reactions might have on the drafting of our initial report. Marc, please.

Mark Svancarek: This is Mark. Dan, I'm going to try to be as polite but also candid as possible. I think there's a risk based on history that having major comments and issued this memo, you will now go back into listening mode and we will continue to

work in these meetings and you will continue to make no comments on what we do unless we just push and push and push and push very, very specifically. And I think at this point unless you're really an active participant in this process, there's no way we can make progress.

What happened was a memo was issued to you guys in order to force an issue that we had been asking about for months. You eventually came back with a memo, although you didn't tell us you were developing a memo. And now I feel like you know, everything has been reset a little bit and now there's a lot more uncertainty and we're not really sure which of our basic assumptions we can really count on.

So now you've given your little explanation. But seriously, if you just go back into listening mode and are not in active participation in this process, it's really, really going to hurt us. And I know I'm not the only person who feels this way. And I'm sorry if this seems you know, blunt, but really, you guys got to step it up. This is terrible.

Secondly, I know that there are still some outstanding questions from the EPDP on these topics that I don't think have been directly addressed in the memo. And I hope you can maybe give us a timeline on when you can get back to us on that. Thanks.

Thomas Rickert: Thanks very much. I see that Benedict and Emily have added themselves to the queue. Nonetheless I will now be firm in my announcement and you can keep your hands up, I will go to you immediately after I made a couple of initial points and set the scene because I'm sure that not all of you had the opportunity to read the memo or read my email to the list.

So I think that, you know, I would like to go on the record reiterating my request to learn about who the authors of the memo were so that we can make direct contact with those who held the pen when the memo was written.

I guess that will facilitate hugely the process of getting clarity and get to resolution on a couple of points that have been mentioned in the memo.

So then also I think this memo should not and by just raising concerns and asking an awful lot of operational and legal questions, which, you know, if we just shared this with the wider comment. I think native speakers use the word "fought for it" feel and uncertainty and doubt, that's what it's going to create. And I think that we should give guidance to the community; we should offer concrete proposals to the community so that the community can comment and let us know whether they share our thinking.

But just putting out alternatives or putting out questions I think will not make the best use of the community's time in responding to our report. So if this is not an ICANN Org or a Board position, what position does the Board and the Org take? So we've learned from the memo that despite the feedback from the Article 29 group that suggests or hints at a joint controller scenario, despite the Hamilton memo pointing into the direction of the joint controller scenario, ICANN Org chose with its cookbook to go for independent controllers, yet ICANN has not explicitly pursued that in the temp spec.

The temp spec does not mention the word "independent" or "independent controller" I should specify, so it may suggest or take forward the idea of independent controllers, but it does not put that in writing. So if ICANN does not see the memo has a position paper, then what is ICANN's position? And if it is that the parties are to be seen as independent controllers, we need to understand why ICANN came to the conclusion that an independent controller situation is present.

And the memo suggests that more analysis, more work on the details of the individual processing activities is required in order to determine that the joint controller situation is present. But if that logic is correct, then how can ICANN come to the conclusion that the joint controller situation is not present and that instead an independent controller situation is present? We have not seen

any legal explanation, any legal assessment to that effect. If it's not present then I think we can't really rely on that as a basis of us changing the recommendation in our initial report. And if an analysis is somewhere lurking on ICANN's hard drive, please do share it so that we can learn from it.

But so far, what I've read in the memo did not convince me to change my view on the presence of a joint controller situation. And I guess that, you know, I'm not going to read that out for you but unfortunately the memo only makes reference to example Number 7 from the Article 29 group's WP's 169 paper, the very next example that the Article 29 group mentions is also for the travel industry where folks are deploying a joint database. And I guess that's far closer to what we have here. And in that case the Article 29 group suggests that a joint controller situation is present.

So I think it's a little bit misleading, I'm not saying intentionally misleading, but it would have been good of the memo to also mention the second example referring to the same industry that suggests the joint controller situation is present. And although Dan, you mentioned in your introductory remarks that in the case – in the second case of the travel industry example all parties had access to the joint database, legal literature is unambiguously clear in that joint controllers don't all need to get access to the data so there can be different levels of access, there can be different levels of involvement in the data processing.

And I mentioned two calls ago I translated for you a paragraph from a legal commentary speaking to that which basically defines that the level of relevance for qualifying as joint controllers in terms of jointly determining the means and the purposes of processing is present once the data processing would look different if one of the parties weren't there. And if you apply that simple test then certainly registries and registrars would deal with data differently if ICANN weren't there. Registrars would do things differently if ICANN and the others weren't there.

So, you know, it's the combination of those three parties that manifest what's currently being done in multiple ways. We have PDPs where registries, registrars and ultimately ICANN chime in on how data shall be processed. We have the negotiations of the RA and the RRA – and the RAAs where the contracted parties and ICANN come together to discuss exactly what needs to be done and to say that there is no role of all three in shaping the means and the purposes for processing I think is just lacking reality.

So I think, you know, looking at the outside, and this is maybe something that we should point out more clearly, ICANN memo I think has one primary driver and that is that there is a fear that we move to certain constructions without knowing to the full extent what the liability implications might be. So ICANN wants to analyze in great detail what the responsibilities are and then make this determination. But that's not the way it works for deciding on Article 26 or not. Article 26 was established exactly for scenarios where the data subject is confronted with complex data processing activities carried out by multiple parties.

And if you look at Article 82 Subsection 4, that determines that data processors and even controllers would be jointly liable or can be approached individually by aggrieved data subjects. So the – I've also mentioned in my email a reference to the genesis of Article 26 where there has been back and forth between the Commission, the Parliament and so on so forth where they said if there is uncertainty in terms of who is responsible for what, parties shall be jointly and severally liable. So that's the length to which we need to take a look at this. And fail to see how this can be anything else than a joint controller scenario.

So I think – and I don't want to talk for too much longer. You can go and read my written intervention. I think that just going through my documents briefly. You know, on - I think that yes, we do need to look at the micro level in order to write up a joint controller agreement. But we've decided as a group that we wouldn't be doing that.

And opposite to what the memo said, the roles and responsibilities document does not just look at the macro level but it uses the macro level to determine that Article 26 is applicable. But then certainly when you draft the joint controller agreement you need to go to all the details that are required to assess who's responsible for what and how and the indemnification needs to take place. And that is what will provide transparency to the end user in terms of the roles and responsibilities.

So with respect to the operational questions that have been raised – I'm not going to go through one by one – but just very clearly indemnification will likely work both ways. It will not just be shoveling liabilities towards ICANN but also the other way around. I think that one needs to have one boilerplate joint controller agreement between ICANN registries and registrars for every TLD, right, so they form a group for every TLD and there wouldn't be one agreement for the entire industry basically.

I know that there are operational challenges with that but we can't get away without documentation anyway. So while there is no specific demand for doing things in writing from the law, for independent controllers, other than in Article 28 for data processing agreements and also for the joint controller agreements, we need to put things in writing anyway. So if we think we can be off the hook with documentation and coming to agreement if we try to avoid a joint controller situation, that's just not realistic.

So I think what we should probably be doing in terms of moving forward, setup a dedicated group working on these things, hammering out the details. And I think that needs to be in the presence of the contracted parties so that we basically come up with a road map of things that need to be reflected in the negotiations for a joint controller agreement.

Yes, we're going to plow forward with our initial report. And what we can do is add a couple of sentences to the initial report language and say there are a

couple of questions that still need to be resolved. We can say that we are currently thinking there is a joint controller situation but that all the data processing activities need to be analyzed at a greater level of detail.

So we can also speak to the fact that, you know, we might need or we will need one joint controller agreement per TLD and the registrars however, we're going to set that up ultimately to speak to the operational concerns. But I think that other than that we can make available ICANN's memo to the community but the I would recommend that we add a little response to that to, you know, allow for some reactions to the memo which I think in part does not accurately reflect the contents of the roles and responsibilities memo.

So that is my suggested way forward, you know, and not past the – with the publication of the initial report maybe just add some clarifying notes on the details and stuff like that, but other than that move forward. So there is a queue that has formed while I spoke, and even before, so let's go to that queue. Benedict is first, please.

Benedict Addis: Wow. One comment and I'd like – but I think assuming that Diane is happy, I'd like to hear Diane's response to your epic (quotation). Just a quick laymen's response that I don't see the alternatives as being joint controllership or independent controllership; I see the alternatives as being joint controllership or ICANN as sole controller at least for the purposes of registration data because with almost every purpose we've considered, they are ICANN's purposes. And with that Diane said it's okay to go to Dan so I'll pass over to him. Thank you.

((Crosstalk))

Dan Halloran: …just making sure – I guess I could spend – yes, I want to make sure Diane's next in queue if she's okay with skipping?

Thomas Rickert: I will go to Diane and then to Marc. So, Diane, please go ahead.

Diane Plaut: Yes, Dan, if you'd like to proceed to a draft, Thomas, I just want to support Thomas's points and just to clarify somewhat a little further and just pointing out that we have in fact done significant factual analysis so when it comes down to the ability to assess joint controllership we have done factual analysis that supports that which there was question about in your memo. And also just to clarify a really important definition, there was a lack of clarity about the ability for multiple controllers as joint controllers that there is the – involves the direction and the overlap of handling the data if you look in the definition and jointly determining the purposes of that data.

So in fact that's why this is a joint controllership because as the data moves through the process, whether it is then within each individual purpose separately handled or processed it is jointly controlled. And there is also a misunderstanding about liability. Just because in fact there is the definition – if you look carefully it says, "effectively jointly and liable," but that doesn't mean that as stated in your memo that ICANN alone would be liable.

As Thomas has tried to express, there is the material factual analysis that comes with the purposes of the proportional liability segmentation within the joint controller arrangement so that in fact each party is liable for the processing activities specifically that they're involved in. So I hope that that provides a better clarity and we look forward to your response now. Thank you.

Dan Halloran: And this is Dan. Thank you very much, Diane. And thanks, Thomas and Mark and those who spoke up. Going back first to Mark, just responding again, I'll say again, you know, thanks for the feedback on how Trang and I can participate. Respectfully we're here only to support you and it's a little bit difficult to play that role, I don't think – you said something like you've been asking for months, I just, you know, like I think the way we've been responding is through the written questions, every time there's a call the support team carefully writes down what the questions are for ICANN Org.

Trang and I take them back, try to come up with the best answers and we have to consult internally and come back with the written responses.

I don't think we've had any questions, you know, in that style to us up until maybe a week or two ago when this first started and we responded to those questions about specifically the roles and responsibilities which we flagged a few times. But I totally understand. It's – so I hear your frustration, you know, we can try and do better. It's also, you know, just personally frustrating for us, like, you know, Trang and I will be sitting there and let's say Margie and Milton are going back and forth on some point, we might have a view on that but it's almost inevitable, we don't want to get in the middle of it, we don't want to take sides. If I were to raise my hand and just say what I think, you know, there'd be questions about ICANN's position and are you not going to let the Board vote on that or something? We don't want to get into that and we don't want to take sides on this. So we kind of keep our mouth shut.

We do need to find though when we see like an implementation issue, which we've raised I think significant ones about how this particular implementation would have been recommended, so that's I think – and then finally once we got Thomas's and Diane's – anyway I'm not going to try to attribute it to Thomas personally but the small group memo on roles and responsibilities, we immediately went to work and tried to come up with a written response. I think we got it within a week. And so anyway again, I hear you, Mark, and others, and I saw others in the chat were also sympathetic to the view that you'd like to hear more from us. I guess I can kind of take that as a little bit of a compliment or something that you want to hear from me.

We also heard though, loud and clear, I think from many people many times, you guys don't want ICANN Legal's analysis, you want, (unintelligible) independent analysis so that's another reason why we tend to, you know, not be intervening or try and give our personal opinions or, you know, our on the fly interpretations of these things.

Anyway, back to the substance, and thanks to Thomas again for the memo and again for the written comments. And I'm sure we'll have plenty more chances to talk about this. You know, I hear you, I'm not a fan of (unintelligible), I assure you this is not an attempt to sow fear, uncertainty and doubt except maybe for the – I'll take the uncertainty part, and maybe that is the intent of this was just to insert a little bit of uncertainty because it just seemed like there was kind of a steamroller towards this and, you know, Thomas had said there's broad consensus that there's joint controllers.

And so to an extent we were just trying to maybe slow that down a little bit and I'll take that, raise it a little bit of uncertainty about exactly what recommendation was and making sure that the team has done the analysis to support it because we do think it's important to identify both if it is a joint controllership how exactly have the parties jointly controlled the means? Like how does ICANN control the means of registrar data processing?

And again, this is – it's not a final position, it's a set of questions that we think need to be asked and then, you know, walked through by the team. So nothing (unintelligible) the concern about liability, I don't think that's (unintelligible) looking beyond what's in the memo and, you know, I think it's raised the point of liability and it was raised earlier several weeks ago I think in a memo that staff did to – support staff circulated just, you know, kind of asking the team to make sure that that's what's intended is all the parties come together with joint and several liability and there are implications to that. That's not the primary driver for ICANN. I think I agree with Thomas that the chips will fall as they fall there on liability.

And thanks for kind of confirming at least the people who've spoken up, the understanding that it'd be mutual indemnification and not just basically dumping all of this risk and liability into ICANN Org's lap. Which again, ICANN Org is really just an instrument of the community so if that's what the community decides we'll take it on.

And even, you know, Göran and ICANN Org has been pushing the idea that maybe ICANN should have greater responsibility on the things where the community has decided that there's like let's say access to the data should be handled in a certain way, based on a certain policy decided by the community, that maybe shouldn't be the liability of the registry or registrar giving up that data under that policy, maybe that should be ICANN's liability so we have been actively looking for ways to reduce liability to contracted parties, you know, maybe centralize that and take responsibility for implementing the community policies at ICANN in the appropriate way. We've been working kind of hard on that trying to make that work. I know that's not the team's current focus now.

And sorry to go on, there was just a lot of points raised. I think Thomas gave some helpful clarification that his understanding is it wouldn't be one big joint controller agreement with the entire – with the entire industry. But it sounds like this idea would be each TLD would have its own joint controller arrangement and that maybe there would be a negotiation between all the registrars in that TLD and that registry and ICANN somehow and that maybe all of the parties to that one TLD would then sign a joint controller agreement. I think that's probably, you know, more implementable than the one big one or the 3000 bilateral agreements. I think there are also still important questions, like what if that registrars think that TLD is being unreasonable? What if any of those parties can't get together?

One thing just to throw out, and this requires further exploration, is the – at least my understanding of the GDPR, it doesn't exactly say you need a joint controller agreement, if I remember right, it says something like you need an arrangement. And we should probably explore the idea that we already have an arrangement that describes the roles and responsibilities in the parties and it already addresses indemnification. It might need to be supplemented but those arrangements are the Registry Agreement, the Registry Registrar Agreement, the Registry Accreditation Agreement.

And then just to segue into Thomas mentioned that we have the established mechanism for the RAA and the Registry Agreement negotiations and that could maybe be a template for negotiating joint controller agreements. I think that -- again I'm just not trying to raise fear and doubt, just a little uncertainty -- those have defined provisions for negotiation and defined provisions for deciding how they get approved and then that becomes a binding template on all parties. So the RAA once the Board approves it, and a certain number of registrars approve it, then that's the RAA that all registrars have to sign up to. Similarly with the base agreement for new gTLDs, there's a defined mechanism; the registries as a group and ICANN can sit together and if there's approval on both sides by, you know, like it's like 2/3 vote then that becomes binding on everybody.

I think if you throw all these parties into just a separate outside of the registry and registrar agreements into negotiation over a joint controller agreement, sounds like each party would have a veto and could just sit on the sidelines and make demands and there wouldn't be any way to kind of force a template or consistency. There are also, I don't remember if we went into this in the memo but if you get in a situation where say there are 1000 now – one for each gTLD joint controller agreements and they're different, that means ICANN Contractual Compliance is going to have enforce 1000 different agreements which also raises implementation issues.

Just kind of going through my notes, Thomas also raised I think a couple times he's brought up a helpful thing, I'd like to learn more about it, the test he's articulated about it's a joint controller agreement if you got multiple parties and the processing would be different but for one of the parties that's joint controller I think that Thomas has said that's in a commentary which I haven't seen; I'd be happy to look into more. You know, Thomas can share that link.

And then, in responding to Diane, thanks to you and thanks again, Diane, for your very instructive participation in that small group to the extent we've able

to do it and for your – I'd agree that she's done a lot of work on the factual analysis about the purposes, you know, all the workbooks; there's been a lot of work there. I think it's – the request will be that we do almost an equal amount of work or just, you know, a separate look at the means again, the controllership requires that you determine the purposes and the means of processing and I guess that would be the thing I'd ask that we go back and look at.

I think that's the bottom line. Thanks again for letting me speak on this. Back to you, Thomas, I guess.

Thomas Rickert: Thanks very much, Dan. I suggest I don't respond for the sake of time but let's go through the queue and then I will offer some concluding remarks. Stephanie, please.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. I typed my questions just because I wasn't sure we had enough time. I really wonder – I regard this as a (unintelligible), it is something that should have been sorted out back in 2017 when the registries raised the issue of their own, the ability and put pressure on ICANN to come up with something since the RDS was already failing at that point.

So while this memo is very welcome indeed, thank you, I wonder how we can release this report unless we have a balanced discussion of the controllership issues. And I'm happy with Thomas's report to go out with it but if ICANN clearly has issues with it, then what will ICANN add to counter that? And how do we include it in the report? Because to put out a report without discussing the very first question you asked when you're analyzing a data protection situation, namely the controllership, who controls what, is in my view nonsense. Now that is my personal opinion; it is not an NCSG position. But I would suggest that the report needs to be delayed until there's clarity here. Thank you.

Thomas Rickert: Thanks very much, Stephanie. Let's move to Emily now.

Emily Taylor: Thank you very much. And also thank you, Dan, for taking the mic and for –
                  to you and Trang for producing this memo. I think the frustration that's
                  probably coming (unintelligible) EPDP team is not directed at either of you
                  personally; we value your participation very highly. The frustration is because
                  it's sort of – it's coming so late in the day and that while we may not have
                  directed a written question if that's the case, at you, until fairly recently, you
                  sitting in at the meetings, have been very aware as Diane was saying, of all
                  of the work and all of the thinking that's gone on about, you know, Stephanie
                  made the point, the first question that you go to in your analysis of how the
                  GDPR is to apply to any situation, is to identify the controllers and the
                  processors in each situation.

                  The – it's great to have your voice in these discussions. And I hope that this
                  isn't a one-off because these are clearly issues we need to wrestle with. As
                  Stephanie says, it would have been great of course if we were wrestling with
                  these issues ages ago but here we are. The concern that I have, and I'm sure
                  many others have who've been around the block doing volunteer work within
                  ICANN for years, is to have some sense of reassurance that if we do manage
                  somehow to get past the finish line on this very demanding project, which is
                  taking so many hours, so many hundreds and thousands of hours of each of
                  our time as volunteers, that this isn't suddenly going to, in a way, be
                  frustrated by an ICANN Org determination, that our analysis does not meet
                  with yours.

                  And therefore, it's really important that we reach a conclusion that we all
                  participate in including the voice of ICANN Org on the identity of the
                  controllers or not. And the implementation issues that you outlined are very
                  interesting and obviously complex. I think that, you know, putting the cart and
                  horse in the right order we should be certainly trying to do the analysis of the
                  legal issues first and go to implementation down the line. It's useful to flag
                  implementation issues and as contracted parties we have a lot of sympathy

for that perspective. But it's really to try to encourage you and the ICANN Org to continue this conversation.

You mentioned the idea of trying to get to Brussels and sit down around the table and thresh out the issues, I think that would be a very constructive use of time. And I really hope that you will be encouraged to continuing the participation. It's really important that we get this issue sorted. None of us want to have a situation where we eventually release our report and then find that it's not possible to move forward because of major issues identified by the organization. Thank you.

Thomas Rickert: Thanks very much, Emily. I need to check with Kurt, Kurt, can we go into overtime for a couple of minutes? If so, for how long? Maybe you can type that into…

((Crosstalk))

Kurt Pritz: So let's go through the queue and wrap – I have a couple comments myself, you won't be surprised to know, so please give everybody…

Thomas Rickert: Okay.

Kurt Pritz: …a chance to talk and then…

Thomas Rickert: Let's do that. Okay Marc, please.

Marc Anderson: Thanks. This is Marc. And, you know, I have – in listening to all that, you know, thank you, you know, Dan, Thomas, everybody that contributed there. You know, I thought this was a great discussion. There is a lot of issues and – that, you know, that aren't settled. There are some issues that are settled I think. And I think where everybody is agreeing, at least I've not heard anybody disagree, is that, you know, contracted parties, you know, ICANN,

registries and registrars, all need to sit down and work on a GDPR-compliant arrangement.

You know, there's some devil in the details around, you know, the form and substance of that. And anybody that's been a part of, you know, contract negotiations, you know, knows that this is, you know, that this is sort of typical preliminary negotiations. I'm struck by how much this reminds me of how when you sit down in a contract negotiations, the first thing you discuss is whose paper do you use? And so this reminds me of that.

But I'm very cognizant, you know, I'm cognizant of time, where we are not just on today's call but in relation to trying to get to a final report. And so, you know, I think what we can all agree on is that there needs to be GDPR compliant language between the contracted parties. And that they – that this is not something that happens immediately, you know, this is – it's a negotiation. There's going to need to be, you know, some back and forth, there's going to be a mapping of all the roles and responsibilities, liabilities, and get this language where the contracted parties can be comfortable with it.

And so I think the one place where we've all agreed is that that process should be kicked off, those negotiations should be started. And I think you know, maybe we should be trying to streamline what goes into this initial report to get, you know, to focus on getting that conversation jumpstarted as soon as possible because I think we need to have those GDPR-compliant contractual arrangements in place as soon as possible and maybe that's where we should be focused, at least as this initial report.

And others have suggested, you know, that having additional conversations, having, you know, the meeting we had last week again with, you know, Thomas and John Jeffrey I think was very helpful. More conversations like that can help us continue to move the ball forward and get to a place where we can all agree at least be comfortable with the recommendations and outcome. But like I said, from, you know, I have so many things I'd like to

comment on but I think, you know, where we are, you know, considering where we are, I think that's the area where we have agreement and should maybe focus on at this point.

Thomas Rickert: Thanks very much, Marc. Marc S.

Mark Svancarek: Mark Sv.

Thomas Rickert: Sv, I apologize. Mark S…

((Crosstalk))

Mark Svancarek: Yes, that's no problem. Long standing joke. Dan, thank you for your comments and clarifications. My feedback would be, you know, often I have to work with a new attorney or an attorney who is only peripherally aware and up to speed of my topics and so I have to go off and do a lot of preparation work and create very specific questions and provide documents of context and the like. And it's good insofar as it makes me focus very much on what needs to be asked and what kind of feedback I need to receive. It's also very, very inefficient. And in general I prefer to have a long-standing relationship an attorney who is at least partially committed to my project so that we don't have to be doing a context reset every single time I have a small question.

And ICANN Org has been in these meetings all along. You have been in these meetings all along. I believe you have had all the context all along. And so as we are at this stage of the process, I hope that you can be a more active participant and perhaps give us some feedback when you see something that is concerning based on the ICANN perspective; when you see something that we're going off a cliff or headed towards a redline, you are giving us some sort of an indication rather than waiting for us to create this list of specific questions that you then reactively respond to. If you could give us some sort of proactive or in the moment feedback, I think that would be very helpful.

I am hoping that you as the Data Protection Officer and Deputy General Counsel are empowered to actually do that within this forum. I assume that you are. And so that is the kind of feedback that I would be hoping to get from you going forward. I know that there is some past history where people say, you know, we don't want ICANN interjecting themselves. I don't know what that historical context is. And I just can't imagine that that is really applicable to what we're asking you for right now. Thanks.

Thomas Rickert: Thanks, Mark. Margie.

Margie Milam: Thank you. This is Margie. And I actually just had a follow up question for Dan and ICANN. When you say "independent controller" do you – are you guys comfortable with the idea of sole controller instead because as I can tell, I don't believe people are – see what independent controller means and in particular under GDPR, that's not a term that I'm aware of. And so that's my question to you, maybe you can't answer it now but I think it would help us in our discussions if we understood where ICANN was on whether they – whether you could replace where it says sole -- I'm sorry -- independent controller with sole controller.

Thomas Rickert: Thanks, Margie. Dan, do you want to respond now?

Dan Halloran: Yes thanks. And maybe just in the interest of time I'll tell you it's not a matter of what we're comfortable with, it's what is the correct analysis – the correct application of GDPR. I'm not convinced at all that that's correct. I think we'd have to discuss it a lot more. And maybe just in the interest of time we'll save that for the next time we get to talk about this, if that's sufficient for now, Thomas? Thanks, Margie.

Thomas Rickert: Thanks, Dan. Again, if there's anything that ICANN has written when the cookbook was done or when the temp spec was prepared that led ICANN to suggest that the parties are independent controllers please do share that with

us. And probably you can share it with us before the end of this week or over the weekend because if we want to stick to our timeline and publish on Monday, I think we would need to know it – we are thinking, you know, almost, you know, now.

Before I use the microphone and hand it back over to Kurt, let me reiterate my suggestion for a way forward. When we adjourned during the last call we said that we would wait for comments on both the text of the interim report as well as responses to the allocation of responsibilities in the table in that very document on roles and responsibilities. Apart from ICANN's memo, I have not seen any suggestion for change, so that would suggest that according to the working methods that we've agreed on that this part of the report, i.e. the memo on roles and responsibilities would stand.

Now, given the points and there are probably more that I mentioned from ICANN's memo, where, you know, some more clarity or maybe one or two explanatory sentences are warranted to explain to the community things like indemnification can go both ways, things like there's not going to be one contract with a couple thousand contractors, things like yes, we came to the conclusion on joint controllership based on the macro level but more discussion and analysis will be required on the micro level for all the individual processing activities. That's something that I can happily volunteer for and do so that we can review it on Monday. But other than that I have not seen any compelling reason for us to divert from the path of suggesting a joint controller situation in our initial report and put that out for public comment.

And then I would suggest that we encourage, you know, groups represented in this EPDP team as well as ICANN to put their thinking into writing and submit that – those as reports. But that way we can actually get the ball rolling, don't hold up the train for the publication of our report and we can then work in parallel with ICANN on the specifics of how to operationalize the negotiations for joint controller agreements but that can then go in parallel.

That's my suggestion. I hope that you perceived this as a positive note so that we can constructively move forward and get our report finalized. Back over to you, Kurt.

Kurt Pritz: That was a really great discussion I think. And, you know, I echo everybody's comment, I wished it had happened earlier but I don't think we need to say that anymore. But the way forward I find is very encouraging, the timing is awkward. So my comments are these, that, you know, as one of non-experts in the group, you know, I think – I understand that the implementation might be extremely difficult, but first comes the determination based on a legal – or factual first and then legal basis that whether or not a joint controller situation exists. And, you know, if it does exist as defined by the GDPR then it's inescapable and so we have to figure out the implementation of that.

So you know, thinking that way we should focus on the parts of the ICANN memo that says it might not exist. And I'm going to refer to Mark's comments a couple times in this little intervention, but, you know, taking Mark's comments, you know, list all the places where we agree to narrow down where there's disagreement between those two conclusions and see if they can be ameliorated in some way. You know, I have my own opinion of whether a joint controller situation exists or not but it's probably not appropriate for me to say that.

So then I'm heartened by Dan's comment that we should meet maybe in Brussels so I don't know if that comes true, but this is a very difficult conversation to have, first orally, without, you know, without being able to markup documents on a table and line things out and trade things back and forth and see what you think. So I'll work with the ICANN staff and others on both these teams to see if we can in fact set that up.

I agree with Thomas's – as far as the initial report goes, you know, I agree with Thomas's characterization how to – that we should persevere in this

direction of what we're going to do content-wise in issuing the initial report. I think we should make reference to the possible conflict raised by the ICANN memo and state to the community what's being done to pursue that in parallel with the other work that's going on.

I think the, you know, to Thomas and Diane particularly and the ICANN support team, I think the – hopefully we can put the initial report and any issues or controversies here in pretty stark terms so that it's clear that something is going to be decided one way or the other so that commenters can, you know, know exactly what they're commenting on and won't feel like they've missed an opportunity to opine on this issue.

And then finally I want to channel Mark's comment again about, you know, in the midst of defining whether this is a joint controller relationship or not, you know, we need to – we'll be needing to re-fashion our agreements and working relationships in a way that is GDPR-compliant. And so part of, you know, and when we have these meetings we should, you know, we should probably balance the discussion a little bit between, you know, making that determination of whether a joint controllership relation exists or not and, you know, how the heck do we operate together because that will probably inform the decision on joint controller so I appreciate that pragmatic comment.

So those are my comments. And – but what I'm missing and maybe somebody can help me, either Thomas or Marika, is so what is the next steps for this section of the report that Thomas has amended about roles and responsibilities? Are we still on the hook to provide Thomas with some feedback or what's the next steps for that either Thomas or Marika or Caitlin?

Thomas Rickert: It's Thomas. I can volunteer to add a couple of sentences to our report to reflect some of the concerns that ICANN mentioned. I can do that on Sunday probably and share it on the list. I will be speaking at an event on Monday so I'm not sure whether I can attend all of the ICANN meeting but I can provide

input if that's helpful. But I saw that Marika had raised her hand as well, I'm sorry, so Marika please.

Marika Konings: Yes thanks, Thomas. And this is Marika. I was just typing in the chat, and that would be really helpful. But what we'll do then for now is add in the language that you sent to the list yesterday or day before and just make a note in that section of the initial report that an addition will be made to that to reflect, you know, today's conversation so at least the group can report – can review, you know, the report in its entirety but we're clear that there's still a part missing that hopefully we'll be able to share then on Sunday.

Kurt Pritz: Okay great. And I hope Thomas, you might continue to, you know, this has given people pause to think so I hope you can still accommodate further comments to your report. All right so that's great. So we – do we want to take two minutes to define action items or can we just do that through email, Marika? We've kept people over 15 minutes already.

While Marika is thinking about that, I've just been reminded that we did not bring up Purpose O, which is Benedict's and others creation. So, you know, I have a couple questions and comments to that and others might too so if we could let's discuss that today and over the weekend on email and just, you know, there's two questions, right, one is should it be included in the initial report given that it's sort of late-breaking news; and two is, if so, what amendments or questions do people have about it? I'm predisposed to try to include it because that's the only way to get comment on it.

All right and there's so comments to all of us in the…

Alan Greenberg: Benedict has his hand up…

((Crosstalk))

Kurt Pritz: …Marc has a comment to the support team, Diane has a comment to all of us and so thanks very much for that. Let's see what Marika's closing comment is. Thanks very much, Matt, and thanks, everybody for staying late on the meeting.

Marika Konings: Yes thanks, Kurt. And this is Marika. I was just going to respond to Marc in the chat, yes staff can definitely do that as long as then the group, if you have any further comments or issues you want to flag, and I think at this stage we're probably at a stage where to really should focus on anything where you want to, you know, where language needs to be clarified whether it's either incorrect, and again it's really important I think that the group looks at it from this perspective, you know, what needs to be added to make sure that, you know, broader community that will read this report understands the different positions. And, you know, several people have noted that, you know, everyone should be able to kind of write up their positions and but we really I think want to try to avoid that those become kind of position papers instead of focusing on, you know, getting the issue across in a clear and crisp manner so people are able to respond to that.

                  So again, you know, we'll post both versions but as you read the report and identify any further issues, errors, grammatical things that you think need correction, you know, please make sure as well when you put that in the Google Doc that you refer to the line numbers and make clear which version you're looking at. You know, we're happy to provide a redline and clean about in order then to kind of make it easier for people as well to see and as well for staff of course then to make any updates as a result of that it would be helpful if you clarify that.

                  We did have a couple of action items; Margie is to suggest language in relation to the UDRP URS paragraph by EOB today. If we get that on time we can of course include that in the latest version. There were a couple of course changes or updates as a result of going through the memo that we'll make

and I think then another item is for Thomas to provide language to capture today's conversations in relation to the responsibilities section.

Our action item is to get the kind of almost final version hopefully to the group later today that should at least capture, you know, everything that has been discussed to date. You know, as noted there's still of course still a couple of open items, you know, what to do for Purpose A and how to fit that into the initial report so again it would be really helpful if people can focus their conversation on that, you know, if that needs to reflect that how should it be reflected and, you know, how it needs – does it need to be captured. And as said, there's still a couple of other items where we're waiting for text that we'll need to update.

This updated version will also include the data element workbooks, the integrated versions. I think Berry posted those to the list – I don't even know if it was this week or the week before, in which we kind of identified the updates that were made in relation to the conversation that we had around it. I don't think we received any further comments on those so staff will go ahead and integrate that and make sure again that there's, you know, consistency between the different aspects of work. So again, you should hopefully get a kind of integrated package later today for your review.

Kurt Pritz: Well thank you very much, Marika. Go ahead, Alan.

Alan Greenberg: Thank you. I was just typing it but I'll say it. Can I make a request that when we get this integrated package it includes all of the current documents and pointers to all of the current Google Docs just so we have everything in one place and we're not working on the wrong copy of something. Thank you.

Kurt Pritz: Good point. Thank you, Alan. All right, everybody, thank you so much for today's discussion. I think we've got quite a bit done and I learned quite a bit too. So thanks. Have a great day. Talk to you soon.

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