

**ICANN  
Transcription  
Open house meeting with CBI and the EPDP team  
Monday, 17 September 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-open-house-cbi-epdp-17sep18-en.mp3>

Adobe Connect recording: <https://participate.icann.org/p37k3ftlqp7/>

Attendance is on wiki agenda page: <https://community.icann.org/x/zwGrBQ>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Terri Agnew: Good morning, good afternoon and good evening. And welcome to the Open House Meeting with CBI and the EPDP Team held on the 17th of September 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 audio bridge would you please let yourself be known now?

Hearing no one, we have listed apologies from Ayden Férdeline of the NCSG, Amr Elsadr of the NCSG and Leon Sanchez, the ICANN Board liaison. They have formally announced Tatiana Tropina of the NCSG as the alternate for this call and any remaining days of absence. During this period, the members will have read-only rights and no access to conference calls; their alternates will have posting rights and access to conference calls until any remaining day of the member.

As a reminder, the alternate assignment form must be formalized by the way of the Google assignment; the link is available on the agenda pod to your right. Also, please remember to keep up your statement of interest. All

documentation and information can be found on the EPDP wiki space. There is an audio cast and view-only Adobe Connect room for nonmembers to follow this 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. With this I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Hi, everyone, and thanks for joining this extra call. I know you spend a large chunk of your life here. This is an opportunity for first and foremost for the participants from CBI, if you haven't looked at their website yet, it's CBI.org to meet with you and start the process of being on-boarded, understanding what the issues are and also, you know, understanding the issues substantively but also getting your advice for process and the best way to go about helping us conduct our meetings.

So as you can tell from the agenda, I've essentially broken it into four parts. The first part where the participants from CBI introduce themselves very briefly, and then second, and in a kind of open ended part of the agenda, to the extent anyone is willing to speak up and describe either advice or paint a scenario for the upcoming face to face meeting and the way these go, you know, with the idea that, you know, we're engaging CBI for facilitation but also for the employing mediation techniques and what that involves, so there's some complexity there.

Anyway, to the extent anybody is willing to speak up and provide some advice at the outset or paint a verbal picture of face to face meetings for them, that would be good. And then, you know, I'll ask the participants from CBI to, you know, describe the help they want to give us from the sorts of techniques they might employ during the meeting or how they generally – how they generally go about things in a multistakeholder setting, maybe perturbed a little bit by what they've learned so far from me or other members of the support team or from you.

And then in the fourth part, sort of a question and answer period, so that's the agenda I see. And I've already taken up more time than I want. I want to introduce the participants from CBI that are here, David Plumb, who's worked with ICANN before; Toby Berkman, who I've had the pleasure of talking to on several occasions; and we're also being supported by Gina Bartlett but I don't see that she's on this call. So if you – CBI guys – can speak up and just give a brief introduction to your company and you, that would be terrific.

David Plumb: Thanks, Kurt. This is David Plumb speaking. Let me know if you can't hear me well. I'm sitting here next to Gina Bartlett and Toby. We're very happy to not only be here on this call but also be supporting you and working with you on this. Let me just say a few words about CBI and then I'd love to go to what you said, Kurt, which is around of people's reflections about what makes in-person meetings work, particularly on the complicated issues you're dealing with.

But just a few words about CBI, we are an organization that helps groups of people work through tough issues, to negotiate, to resolve conflicts and just to collaborate. We do our work around the world. We're based – our main office is here in Cambridge, Massachusetts where we are right now, part of our heritage comes from the program and negotiation here at MIT and Harvard and Tufts.

I'm a Senior Mediator here at CBI. I also happen to run our work in Latin America and happen to colead our work, of what we call corporate community engagement. I'll let Gina and Toby introduce themselves and I'll say a few more words about CBI. Toby, go.

Toby Berkman: Sure, so hi. This is Toby Berkman. I am Senior Associate at CBI. And as Kurt mentioned, I've had the pleasure of chatting with him on a number of occasions beginning much earlier in this process about the potential for CBI to help you all out. So I do a wide variety of work, a good amount of work in the Internet space, currently working on a project with the Internet Society.

I'm a lawyer by training, I actually have a background in copyright law as a former litigator but really my passion is this facilitation and mediation work and what we're – we're certainly looking forward to getting more on-boarded onto this process and doing our best to help facilitate a smooth meeting.

Gina Bartlett: Great. Good morning, good afternoon and good evening everyone. My name is Gina Bartlett and I'm a Senior Mediator with CBI. And I'm based in San Francisco and lead our practice in the American West. And I've been a mediator for more than 20 years and I think the most relevant work is that I spend quite a bit of time working in intense complex policy issues like this that are either based on technical issues or scientific challenges.

And we're really looking forward to, you know, using your time as well as we possibly can at the LA meeting and looking forward to hearing your insights today to talk more about that so we can structure the meeting accordingly.

David Plumb: Great. Thanks. So this is David again. And so just a few more words about CBI before we open it up and think collectively about how to make our meeting work and your meeting work really well next week in LA. We are, you know, we work on a variety of different subject matter issues from environmental issues to, you know, technical issues, to medicine to all kinds of things.

You know, one of the things we've learned is how to try to not slow people down knowing that we're not the technical experts here on your issue. And we are doing our very best in these days to get up to speed so that we don't slow you down, but our job here is not to provide sort of consulting advice about how to solve certain issues technically, we're here to help you work more constructively together knowing that you know much more than we do and you're the ones who have the ability to find some interesting and creative solutions for – to these difficult challenges.

So our view on this is we want to help you work constructively together and we don't pretend to think that we're going to have some technical advice for you that's going to be useful, we're going to just try not to slow you down and we're going to do our best to get up to speed on the issues ahead of our meeting next week.

I'm not going to say much more right now about the way CBI works; I'm happy to do that later. But I'll mention the ICANN work that we've done, me personally, I've worked with LACRALO and I know Alan Greenberg's part of your group, I see you on the call, Alan, has seen us work trying to help, you know, At Large and in particular LACRALO be more constructive, so I have a flavor for the issues. However, what you all are working on is a much more specific technical issue and so, you know, it's another learning curve for all of us on that.

Okay, so as Kurt suggested, I think what would be great to do is in the spirit of being humble on our end, we'd love to hear from you about how your experience with in-person meetings of this nature, maybe even with your – the same folks who are going to be there next week, how that informs the way you think about that makes these kinds of in-person meetings particularly constructive and particularly useful.

And so I'd open up the floor and I'm happy to have Kurt or somebody else manage that conversation. I'll follow you all leads. I've noticed you guys are incredibly professional at making conference calls work and that's wonderful. So, Kurt, what is your recommendation on how to have this conversation asking people, you know, what's going to make this work and what does your experience tell you about what makes these kinds of in-person meetings work really well? Kurt.

Kurt Pritz: So maybe – this is Kurt – so maybe in trying to think of a, you know, way to point this up and a question for the group, so maybe for the group in addition to those sorts of open ended questions, you know, some voiced immediate

support for this, and so it'd be good, you know, why is involving CBI or a similar firm, or similar expertise, a good idea or how can that be helpful?

Or, what concerns do you have involving a firm like this going forward to the meeting? So if you want to say something positive about, you know, the use of mediation in our meeting and then say why – why we think this is a good that'd be great. And then – but if you have a concern about how it might work or some of the pitfalls, that would be great too, so let's put it up that way. Kavouss, thanks for going first.

Kavouss Arasteh: Yes, good morning, good afternoon and good evening everybody. Thank you very much for CBI ladies and gentlemen for attending this meeting and trying to introduce yourself to us. I speak for myself, I'm not speaking for the others, I am not quite sure that we have been as adequately briefed on the need of mediations. If something is good, and always happens, in every court, in every arrangement there are some mediation before going to the final stage, before escalating the situation, is a good practice.

But still we don't know in this process the circumstances under which mediation are required. We don't know either the criteria under which the mediation should be requested. We don't know whether we need one single mediator throughout the whole work, or we need different mediators for different circumstances, or (unintelligible) in a case in a country ex in Asia Pacific with another country in Europe, whether we need an American mediator or whether we need other mediator who are more accustomed and more acquainted with the so local or regional situation and so on so forth.

And there are some other things that we are not still clear, we are not – I am not opposing at all to this very good suggestion coming from Kurt, our chairman, but still perhaps we need more information. It good to have introduction from you and so on so forth but we would like to have more information, as I mentioned. I don't want to take the time of the others and go

to detail but just give one simple very simple example which is similarity but not identical issue.

The mediation is maybe the preliminary steps of some sort of the independent review of the case. You are independent as a mediator, there is no doubt about that. And you must be independent, you must be neutral and you must be impartial. However, review also is something – you will do the review the case to see what is the situation and so on so forth, and finally, instead of judging who is right, who is wrong, you give advice how the people resolve their problems. You are more or less similar to the process that we have in ICANN bylaw, independent review process, very narrowly similar to that.

For that there are many, many conditions and so on so forth. I have been involved in the preparation of that for previous three years. I have now been member of the implementation oversight team on that situation. So I would very much appreciate if you – or Kurt – explain this more clarity on the need for that, criteria for that, condition for that, timing for that, costs for that, and so on so forth and last but not least, whether any particular case could be excluded from the mediation saying that you are (unintelligible) circumstance, a registrant in Iran, which is under the sanction of United States, could ask some mediation with another party in Turkey, for instance, and this is, sorry, we cannot provide you a service because you are under the sanctions. So these are the small things that I want to mention.

I'm sorry to start and I am fully listening to your kind description, explanations and clarification. Thank you.

Kurt Pritz: Thanks very much, Kavouss. I think that – well I'll leave it for the CBI guys to comment. Certainly the next part of this agenda will be for them to go into some of the detail that you're requesting. Thomas.

Thomas Rickert: Thanks very much, Kurt. And good morning, good afternoon and good evening everyone. And a special welcome to the CBI team, certainly we can do with every help that we can get. I have a question for you with respect to your approach to helping with our meeting and maybe you can let us know what we can do in order to prepare best for the exercises that you're going to go through as – with us.

((Crosstalk))

Thomas Rickert: So, okay let me try to be brief. Typically when you have a dispute between parties that – and the mediator gets involved, then...

((Crosstalk))

Thomas Rickert: ...one party wants this, the other party wants that and you find a compromise somewhere in the middle.

Kurt Pritz: Do you want a call out? Go ahead, Stephanie.

Stephanie Perrin: Thanks. I was just – Stephanie Perrin for the record. I was just tarrying to answer part of Kavouss's question because I was one of the people in the GNSO Council that argued early and often for bringing in dispute resolution services because quite frankly, we lost a lot of time in the RDS Working Group with people basically taking lines such as, well, we're not doing RDAP or what can we do to get this law repealed, referring to the GDPR. And quite frankly, it was a waste of everybody's time dealing with people who were not prepared to accept the task that we were there to do.

So frankly I haven't seen – I would say any of that behavior in this working group. That's not to say we should say goodbye to mediation services. The grounds for failing to reach consensus here are deeper but at least they're civil, we don't have people shouting at each other and calling in the ombudsman every other day. So I just thought for those who were not



involved in RDS prior to this event, that might be a little bit of background. We had Herb, the ombudsman, on all the calls and regularly intervening when people were rude to one another. Thank you.

Kurt Pritz: Thank you, Stephanie. Matt, welcome.

Matt Serlin: Yes thanks, Kurt. Just to echo what I heard Thomas say, before he cut out, was that, you know, I think we're all eager to get all the help that we can get to move this forward, but I'm curious, maybe the CBI folks can speak to this, I'm curious to what extent they have a familiarity with the specific issues that we're addressing, you know, do they have – have they gone through GDPR in detail? Are they familiar with the work that we're doing and the status of things and just maybe they could give some overview as to what their view is going into next week in terms of the specificity of the issues at hand. Thanks.

Kurt Pritz: Go ahead, David, or Toby.

David Plumb: Great. Yes, sorry this is David. I was just seeing if other hands came up. Yes, so this is David, CBI. Thanks, everyone, for your comments. And indeed I think sometimes the name, "mediation" conjures up that somehow we have, you know, two competing parties sitting in the room and we need to hammer out a deal. And, you know, our...

((Crosstalk))

David Plumb: Yes, hi.

Kurt Pritz: I'm sorry, hi, this is Kurt. I'm sorry to interrupt you. Could you answer Matt's question specifically about, you know, the work you've undertaken thus far, to understand the issues or read the law or what other steps you might have taken? So could you answer Matt's question specifically before – and then I'll check one more time to see if there's any other comments before we go onto your description.

David Plumb: Right. Great, thanks. So thanks, Matt. I think the answer is we are coming up to speed and this is something that we've been talking with ICANN about for several months and so we've had a little bit of time to start to get up to speed. We are also doing some of the same things you're doing which is that GDPR training, and going through all of your documents and having several in depth conversations with staff and Kurt to make sure that we are not slowing you down.

We are not subject matter experts on this area; we want to be super clear about that. We are generally quick studies and we've put time into this and we'll be putting additional time in to make sure that we won't try to slow you down on this. In terms of helping you through technical substance, that won't be the best role for us. We will help you have the conversation about that technical substance and that's sort of where I wanted to answer some of the other questions was sort of, you know, why mediation right now because you all are having some very constructive conversations on the phone. We've been listening to your calls in observer mode. And you're able to work very constructively together.

What we're going to be doing with you is helping to use your time very constructively in your in-person sessions. We will be leading those sessions with the chair and your leadership team. And we'll be helping to design a set of conversations in the room that help move things forward as quickly as possible and get at the rub of the key issues that you need to get at. And that's going to involve some structure of the conversations, making sure we are structuring those correctly, make sure that we are interacting in different ways than just sitting around the table together, the 30 of us, and so having some ways to talk to each other in smaller groups to make some progress on key issues.

And it's going to involve having to address some of the most complicated issues in constructive ways and making sure we're not hiding the ball about

the really big issue that's making our – or big issues that are creating some problems in us moving forward. So that's sort of the way we're seeing our role. And in terms of the initial comments about criteria...

((Crosstalk))

David Plumb: Yes, go ahead, Kurt.

Kurt Pritz: Yes, David, since Thomas is back on the line can we call on him and get his initial comment and then a possible follow up from Kavouss and then you can carry on?

David Plumb: Great, yes.

Kurt Pritz: Go ahead, Thomas.

Thomas Rickert: Thanks very much, Kurt. And again, good morning, good afternoon and good evening everyone. Sorry for the bad connection and sound quality. And in case it wasn't sufficiently heard, a warm welcome to the CBI team and I'm really looking forward to working with you. I think we can do with every help that we can get.

My question is, how we can best prepare for the meeting in order to best support your service to our group. And let me share with you one of the biggest difficulties that I see in this project. You mentioned while I – after I spoke that it's not all about cutting a deal between two parties but typically even in the ICANN world, where we craft policy, the community actually has a lot of discretion to formulate its policy and to take decisions. This project is quite different because we have, as I would call it, a two-layered approach.

There are the must-haves in order to be compliant with GDPR, so that nothing that the community can argue away. So we need to preserve a minimum threshold of legal requirements in order for the whole ecosystem to

be able to work in a compliant fashion. And only, you know, once we've met that then there is an additional level – an additional layer where the community has more flexibility to shape how things should work at its will. And I'm wondering whether you have any thoughts on how we can best move forward establishing the bare minimum of what we need to do in order not to be open to sanctions by the regulators, and number two, to divorce this discussion, if all required, from the other discussion where the community can actually shape things according to its wishes.

So this is I guess, you know, what set this project apart from any other project and I'd really welcome your views on that. And, you know, let me say in closing that, you know, what is the minimum requirements is not even clear. Not only do we have different levels of expertise inside the group, but it's a legal topic and as you know if you have two lawyers in the room you typically have at least three different opinions, you know, so even – on that first layer there is probably little that we can really rely on. So thanks for much for listening and I'm looking forward to your response.

Kurt Pritz: Okay thanks very much for that, Thomas. David, I'd ask you to – I'm sure you took note during that so I'd ask you to address Thomas's comments during your remarks. Kavouss, you want to take us home on this part of the agenda?

Kavouss Arasteh: If you allow me just one more comment is that the gentleman, in his introductory statement, said that they are not experts on the matter, they listen our conversation and so on so forth. On the other hand, he said that they want to help on the most complicated issues. So if someone is not very specialist or expert in an issue, perhaps to dealing with the most complicated may be a little bit a challenge. This is something.

And then my question is that who identified the need for mediations? Whom you help? The one who requests mediations or the one who does not request but is party to the process? And if one of the parties expert, the other party is non expert, how you mediate? And to what extent this mediation could be

totally neutral and could be totally impartial and so on. So my question is that, but I come to the last point sometimes and that is the most important one is the cost, the cost of all of these things, no doubt the criteria has not been explained; we need to go through criteria, we need to go through many other things, but at least, these are the important issues. Thank you.

Kurt Pritz: So, Kavouss, let me just talk for 30 seconds and then I'll turn it over to David. So it was part of my – when I made a pitch to be chair of this group it was included in my pitch that I thought that ICANN might employ mediation techniques in its policy building especially where there's contentious issues that especially me as the chair did not have all the – by far all the necessary skill and talent that would be required to pull us all together and needed other people at the table that were in the position of neutral guider of the discussion.

So it wasn't one party or the other in this discussion that thought mediation might be helpful to us, it was really me. And I asked that this be built into the budget. So what we'll, you know, we'll release budget status in some anonymized way so – because I have to check on what the confidentiality requirements are, but we'll report on finances. But I wanted to let you know that, you know, sort of my big idea to have this be part of our discussion from the start.

So with that I'm going to turn it – oh, Alan Greenberg, I'm going to turn it over to Alan Greenberg.

Alan Greenberg: Thank you very much. I'll be brief. I don't have the most experience in ICANN of the people around this – in this group around the table, but I've got 12 years of it. And one of the things that I've learned is as proud as we are of the multistakeholder model, when issues are really contentious, and they're contentious either philosophically or financially, they are – it is really, really difficult to get people to compromise and to find middle ground.

And you can either end up with a completely weak outcome or a stalemate. We're dealing here with a subject which is both financially important to some parties and philosophically important to others. And plus there all sorts of reasons mixed into things, so I think it fits the example model of where the multistakeholder model can sometimes not come to reasonable conclusions. And I'm delighted that we have people helping us with it. Thank you.

David Plumb: Great. So, Kurt, this is David. We're happy to come in now and answer some of these doubts that were expressed. Maybe, Gina, you want to say a few things?

Gina Bartlett: Yes, I just – this is Gina Bartlett. I wanted to speak on a couple issues that were raised and I – because I'm just getting to know you all, I'm not going to (unintelligible). But I wanted to talk about impartiality first off. So we really are able to come into any situation and be able to remain impartial with regards to the outcome and the substance of the outcome. But we are going to work in close partnership with all of you and the chair and the ICANN staff to establish the priorities or the issues that you want to work through so.

So, you know, in a few minutes I'd like to hear from all of you, you know, how would you best like to structure the LA meeting, what elements of your detailed discussions merit group in-person time? Because our goal is to help facilitate your conversation and build off all the productive work that you've had to move you toward the outcomes that you see as important to you.

And with regards to the complex nature of the (unintelligible) issues that you're grappling with, we have been doing our homework. I have an acronym list next to me right now. But we've read the temporary specification, we've been listening to your calls, we've been reading through all of the triage documents and the different issues that you've identified with the issues. And what we typically do is we are regularly in these kind of new situations with complex information with long histories, with people that care strongly about the issues and they're vital to their livelihoods and vital to their organizations.

And we form a partnership in a sense with the stakeholders and the conveners, in this case ICANN staff and the chair, to focus our time – we try to – we sort of help facilitate the process and allow you to focus on the substance.

So it's a partnership between us with the process and with all of you just being able to kind of sit back and relax and engage in the conversation and the technical issues so that you don't have to worry so much about how the process – what corners to turn. And I think that's the last piece I wanted to just emphasize, and I think Alan maybe just spoke to this to a certain extent. But – and somebody raised a question about how do we prioritize the time and how do we think about that?

So what we want to hear from you today is kind of what your priorities are, but our sense is that it is the sections affected by the EDPD, Section 4.4, the Appendix A, Section 2 and 4, and then the sections where the team indicated that the amendments to the temporary specification is desirable. That's what we're sort of thinking about as some of our preliminary thoughts that that might be the focus of our efforts but we also understand that all of these issues are really interlocking and interwoven and so part of what we have to think about as a stakeholder community and with our involvement is, you know, how do we develop some proposals and manage the issues that interlock with those while – so you can still make progress?

And I think that's where we really have a strategic sense and we're able to draw from our work elsewhere in partnership in thinking about you as the experts on this particular policy topic. Thanks.

David Plumb: So thanks, Gina. And this is David Plumb speaking yes, so we're happy to peak a little bit more about you know, how we're thinking, how we're thinking about the three days together. But before we do that I just want to double check and see if there's any other bigger pictures issues about what is this thing mediation and why it's been, you know, why has Kurt brought this into

this process at this point. So if there's any other bigger picture issues we want to deal with right now before Toby and Gina and I say a little bit more about our thinking about what we could be doing together next week. Any other concerns or questions there?

Kurt Pritz: Yes, so this is Kurt. I think for me and what I haven't been able to visualize quite yet, and I think you would be able to talk to it is how mediation works in a multistakeholder setting. So, you know, I've – and many of us have been involved in mediation before that's bilateral, I understand how that works but not in this sort of setting. So as – if your explanation includes that, that'd be great. And then if anybody else has a hand to raise that'd be terrific, too.

David Plumb: Okay. So I'm not seeing any other hands. This is David speaking. Let me just say a few things about working together, and I'm going to try to make it as specific as possible about what might be best for next week, right? So when you have multiple parties and they have different interests and different key needs walking into a conversation, the piece that can make that work the best is if all of us understand what is the problem we're trying to solve here. Right?

And so that requires preparation of framing things up correctly, like what are we trying to do in 4.4, for instance? What are we trying to do in 4.4.1, for instance? And so we're going to spend quite a bit of time I think making sure we're understanding the problems we're solving in these different pieces of the temporary specification and how you're responding to that and how you're trying to make sure it's compliant with e-regulations, etcetera.

So getting those shared sense of – we understand this collective problem we have among the different constituency groups, if we're going to try to solve for that, we get what the problem is, right? And we understand what the other person's concern is as well and we can make a joint problem statement around that and then we can dive into trying to fix that issue, right? One of the things that we find that can sap a lot of energy out of these kinds of



conversations is when there's a lot of sort of word-smithing or ideas thrown around and nobody's really clear what it is they're trying to solve for. Right?

The other thing that I believe Thomas mentioned earlier was there is a fundamental overriding issue here which is ICANN needs to be compliant with the new regulation. And so that is the guiding light here. So we need to have that present in all of our conversations that are about compliance type issues, right? Everything that's trying to focus on, you know, bringing all this into compliance for the e-regulation, we need to have that e-regulation and have the comments and have all that top of mind and physically present with us through that conversation so we don't lose ourselves in the conversation.

And then we can understand where there's other areas that second tier that Thomas laid out which was super helpful, to say there's a second tier of issues where we have greater discretion as a stakeholder body, and we can be more creative and we can – we don't need to have this sort of thing hanging over us, which is compliance with this regulation.

So we see our biggest value hopefully next week, and if helpful next week and beyond, is helping you structure a set of conversations, knowing what the issues are that you are the priority issues you want to be dealing with in the in-person setting, helping you put those conversations together in a way that makes sense, that you're tying together the issues that need to be tied together and you're having the resources right there with you that you need whether it's the e-regs or the letter or everything that helps you understand whether you're having a constructive conversation that helps you address the problem you're trying to solve.

So we can imagine that over the three days we've created an agenda of key issues we're working through, that are related when they need to be and they're pulled apart when they can be pulled part, we're working in different formats during the three days, right, sometimes in parallel conversations in smaller groups around things that are most compelling to some people, and

we're pulling that back into the full group and overnight we're feeding it back to you with draft documents and draft language that helps capture this – the key ideas that were, you know, brought up during that day.

We see our job in the next five days is to make sure we've identified with ICANN staff and Kurt and you that we understand what are the issues we want to be spending time on in the in-person meeting, how can we structure those most constructively, how do we have the things at our fingertips we need in order to make sure that conversation is grounded and the actual problem that we're trying to solve?

I'm going to pause right now. And I've had a hard time tracking the texting while I've been talking. I'm sure there's some very good comments there. I'm just looking at it right now. I see some hands that went up and so, Kurt, maybe I'll put it back to you if you want to manage the hands and some back and forth.

Kurt Pritz: Oh okay. Thanks for that, David. Go ahead, Kavouss.

Kavouss Arasteh: Hello?

Kurt Pritz: Hi.

Kavouss Arasteh: Can I talk?

Kurt Pritz: Yes please.

Kavouss Arasteh: Whom you have given the floor? Me or someone else? Sorry, I didn't understand that. Could I talk?

Kurt Pritz: Yes, Kavouss, go ahead please.

Kavouss Arasteh: Yes, now sorry, I'm very sorry, I misunderstood at the beginning the purpose of this mediation. It means this mediation is only for the preparation of the specification, just during this preparation of response. And I understand from the gentleman that they're preparing themselves to come in California in Los Angeles to mediate for instance between Registry and IPC, with Registrar and BC, between Registry and GAC and so on so forth, and guide us how we should constructively arrange our conversation, give us an advice, supervise what our thinking and (by) us all way of thinking and so on so forth. I do not understand that. I don't know why some people they need such instructions of the conversation from outside.

Each of these people accept some of them like me which are not experts, they don't need such guidance that how to – or instruct or construct the conversation. The conversation there are constructed by themselves. I don't know how we need to outside activities. You should construct your conversation in this way or you should not (unintelligible) still I'm not sure the purpose that we need that only be three days will be devoted to the constructions of the conversation among various parties to talk about how to deal with this policy Section 4.4 of the temporary specification.

Still maybe I misunderstood. Is it the purpose of this meeting? Somebody from outside coming and tell us how you should speak, how we should argue? Do we need that instruction? Thank you.

Kurt Pritz: Thanks, Kavouss. Emily, you want to go?

Emily Taylor: Hi. Sure.

Kurt Pritz: Hi, Emily.

Emily Taylor: Thanks for giving me the microphone. Hi. I just wanted to intervene to suggest a possible way forward in the mediation session with CBI. First of all, can I just – I'd like to just check that my assumptions about mediation are

correct in that it's usually a confidential procedure which is nonbinding on the parties and is without prejudice. And so in a way it's creating a safe space where people know that they're not going to be quoted, they're not going to be held to account, if you like, but there is a sort of safe space in which to explore compromise.

And I think that one of the areas where we could potentially free ourselves is that we have been doing a very close textual analysis of the temporary specification which is very useful in getting people really familiar with the subject matter and highlighting areas of differences and so on. But it is essentially taking the same framework and saying this – we'll be redlining this. Where I think mediation could really help all of the parties and help ICANN over an issue which has been a sort of running sore for about 20 years, is to think about this new environment with the GDPR which imposes very heavy financial penalties for the contracted parties. That's why Whois has essentially flipped and gone dark in the last few months.

So is there a way that we could have a bit more of a free discussion about areas where we are in agreement, areas where we are divergent and see if we can find possibly pathways forward which don't end up imposing liability on the contracted parties? Thank you.

Kurt Pritz: Thanks very much, Emily, that I think we should think about that very seriously. Alan.

Alan Greenberg: Thank you very much. I'd like to call to everyone's attention two things that Thomas said that I think are crucial and I think have not received enough focus in this group. And I don't know whether next week's meeting is the right place for it or not but I think it's important to note it. Thomas pointed out that we have an outcome where we must be compliant. He then pointed out that what compliance is, is subject to interpretation.

And I think that is crucial to some of the discussions we've been having but we side step in. In other words, compliance means we have legal grounds for something but having legal grounds for something means you have to formulate an argument for why this will pass muster with the data commissioners, of why it is in fact something that is necessary to do as opposed to something that is optional to do. And it's the formulation of those legal justifications that will cross us over on any given subject from being compliant to not compliant. And somehow at some point we have to start talking about that and as I said, I don't know if next week is the right time but I think we have to recognize that compliance is not an absolute thing; it's an interpretation thing and we're the ones writing the words which are going to be interpreted. Thank you. Kurt, you're muted I think.

Kurt Pritz: Yes, yes. Yes, thanks very much, Alan. Gina or David, can you – can you carry on the conversation or respond to this?

David Plumb: Sure. Hi, this is David. So, you know, I just want to name what we're hearing, right? We're hearing doubts from some folks that it would be helpful to have people helping you structure the conversation. We're seeing in the chat and we're seeing other comments that indeed it would be helpful to help reframe and get folks working constructively together. So...

((Crosstalk))

David Plumb: Yes, more constructively together. I think we've been impressed as we've been listening in on the calls of how effectively you work even in a very difficult situation which is on a conference call on a technical issue. So, you know, we're walking into a situation like this thinking you all are a very effective team right now as we've observed, and you're dealing with some very tricky issues that, in our experience, can be helped by folks working with you and doing some very constructive conversations in person. So I just want to name that we're hearing the doubts and I don't want to ignore those.

In terms of, you know, the comment about, you know, helping you all having that sort of more confidential conversation, you know, we'd be very happy to do that. I know that you all have some pretty strict sort of sunshine aspects or laws that are operating here where I think you're streaming everything and so I'm not quite sure of the practicalities of doing something like that. But I will mention that the spirit in which we want to have everybody working together in the spirit in which you're willing to test ideas and play with ideas and even not commit to things while you're testing and being creative and playing with things and then as you get further along and you are able to sit with ideas for a while, feeling more comfortable committing to things, right? And whether that's a confidential conversation that we can have altogether where we can have that, I'm not sure. I'll have Kurt speak to that.

One thing we are offering, and Kurt sent around this morning, is ahead of this meeting we are eager to have a conversation with anyone who's like to have a conversation with us. And there's a signup sheet to grab 30 minutes with one of us and just we'd love to talk about how you think this can be made the most constructive conversation possible next week, right? How we cannot get in your way, right, how we can provide some value in intervening in certain ways.

And so we are very eager to have those conversations with anyone who'd like to have that with us. There's a signup sheet, like a Google Doc, you just put your name and how to contact you and one of us would be happy to have that conversation ahead of time. Let me do a quick pause there. Kurt, do you want to say anything about how you see next week happening?

Kurt Pritz: Well I just – I think I want to touch on Colin's point in the chat. And I was trying to respond to it and couldn't come up with the right words. But I understand the – I don't know quite the right word, but the sort of division between principles of mediation and providing safe spaces where compromise can be explored and the transparency required by the ICANN model. And, you know, I think that – I'm not sure but I think there's a way to

do that where, you know, these safe spaces that Emily was talking about is really, you know, not a intergroup policy discussion but maybe where, you know, one group gets the time to go off by itself and talk about, you know, possible areas of compromise and collaborate on that before coming back to the group.

And so I think that, you know, that's why I think we might be able to like move the, you know, policy development process forward a little bit is if we can develop some of these ways of, you know, pausing where we're all sitting around the big table having a discussion where it's really difficult to collaborate with members on your team and develop a, you know, some sort of compromise position and instead use some of these techniques to be able to pause and be able to do that. So I think you know, when Collin wrote the comment, you know, that was some of the thoughts I had, you know, when I started thinking about this. So I think that's sort of a key to this.

And then, you know, the bigger issue for us is the agenda for the meeting, and that is, you know, going into this, you know, we've had some really intensive discussion about all the purposes for the processing of registration data and, you know, and those sections of the temporary specification that are the GDPR compliance ones, you know, the sections starting with 4.4 and the Appendix A, which has to do with data redaction.

So do we want to talk about those specifically? Or do we want to talk about, you know, bringing our, you know, writing what we need to write to bring ourselves into GDPR compliance even at this late date, we can still fashion an agenda that, you know, we can re-fashion an agenda that maybe gets us further along. So those are my two comments, one to respond to Collin's point and one to talk about the agenda for next week.

Kavouss, did you have a comment?

Kavouss Arasteh: Yes, I just want to still understand the situation. Could the gentleman please tell us an example, (unintelligible) there are three or four type of proposal, one totally delete that; second, retain that as it is; third, modify that and four, take (top) of that and so on so forth. So how the mediation will be, mediation will be middle two extremes, and those who want to delete totally that and don't want to retain that or those who want to delete that and those who want to modify that an so on so forth.

And they said that one to one or one or two mediation during that three day meeting should we have several small group between those different people have different views on the different section of 4.4. How it practically works?  
Thank you.

David Plumb: This is David. I'm happy to – David from CBI. I'm happy to speak to that. And thanks for the question, Kavouss. Yes, the way we want to help you work is to – before you start putting a whole bunch of options on the table is make sure you understand what you're trying to solve for. That may open up some more creative options that allow you to not have to choose between what you have right now on the table and you could come up with something else that actually helps you solve for the different and legitimate concerns of the different parties in the room.

So we're going to – you know, our suggestion here is to help you get some clarity around that and then that will make your own decision making as a group easier. One thing we don't do is to say well, it really seems like Option 4 is the right option for you guys; that's not the way we'll be working with you. We'll be trying to say, what is it you're trying to solve for? How does Option 4 do that? How does Option 2? Could you do some hybrid and actually solve a variety of concerns in the room?

So that's sort of the way we look at our role here is not to arbitrate between you know, different options and figure out who's right. We really want to help you all look closely at what you're trying to solve for in terms of the different



interests and concerns that are in the room from the different stakeholder groups. So let me pause there for a second. Are there other thoughts or concerns? Maybe I need to catch up on the chat just for a second.

Well, I really feel like I mean, what I'm hearing, and I think Gina and Toby as well, we're hearing that a couple things. One, there's some good questions about how we can insert ourselves constructively into this process. And I hope we've been working through those concerns on the call.

We feel like there's a real opportunity to help you work very constructively in person and we're going to be working with Kurt and ICANN staff and any of you that want to reach out to us this week in designing an agenda and a series of conversations in a way of working together next week so that you can feel like you've made tremendous progress next week on the core issues that help you get to Barcelona and help you get to that place where you can say you know what?

As a working group we have made tremendous progress here. And whatever those questions are you're trying to answer whether it's the, you know, we've talked to Kurt a little bit about this and the staff, like is it, you know, as long as we can walk into here and feel like we get the purposes right, for instance, right, if that's your big question then let's work with you and make sure we get that. If it's purposes and XY and Z, fine, right?

But so I think our job over the coming days it to make sure we have clarity that you all feel like you know how to prepare for those conversations in addition to all the hard work you're doing on the calls and that when we show up we can all feel like, wow, this is actually productive conversation, CBI is giving us the right level of interaction that we need and no more. So I'm conscious of the time. Kurt, let me pass it back to you and say are there anything – other things you would want to mention before we wrap up here?

Kavouss Arasteh: Yes, one follow up question please?

((Crosstalk))

Kurt Pritz: Oh, go ahead Kavouss.

Kavouss Arasteh: One follow up question, yes. Yes, the gentleman continue to say to help us. Do we need help? The gentleman continue to say that to help us to have constructive discussion that we don't have constructive discussion at this stage. The gentleman continue to say that to find out where we are looking for, that means we don't know where we are looking for. I don't understand this sort of advice. I really don't understand.

Not me, that are not experts, I am the most easiest person in the group, but I don't understand you should say that we don't understand how to have the discussion, we don't understand how to launch our arguments, we don't understand how to have a constructive discussions and how to achieve what we want. And we don't know what you want to achieve, and you want to help us, I have doubt about that. Thank you.

Kurt Pritz: Thanks. Thanks, Kavouss. So I think that – I think we have – I think as a group, and as I think David pointed out at the top of the call that – and I want to – so we've got to save a couple minutes because I have a question for the end. But you know, David himself pointed out that we have very constructive discussions and run calls very well. My concern or desire is, though, to bring more resources in that will help us not just have constructive discussions but will get us to some conclusions or area of agreement.

So we've had, you know, we've had many discussions and we've had few areas of developing consensus and so this is kind of not recognized, you know, attempting to recognize a shortcoming in any of the participants as not expert or knowledgeable in the subject matter. And I'll be frank, it has to do maybe more with me or maybe any chair that's really on the inside of the ICANN community in being able to narrow down issues and drive us towards

some mutually agreed conclusion. So it's not the constructive discussions that we're not having, it's bringing more resources to the table to help us get to the end game.

So – and so that's not – so that's sort of – that was my call, not CBI's, I just called on CBI and others to see if they could help. Thomas, I want to just call on you to clarify your comment hearing CBI's read the temp spec and heard about our concerns would CBI agree we probably need to rethink our approach and work more of the two spreadsheets, the purpose document and the data matrix, and not that much about the existing document. So could you clarify that and see – and then see if – not CBI so much but if the other team members on the call agree with that.

Thomas Rickert: Sure. Thanks, Kurt. And well this is certainly just my personal opinion, but I said this a couple of times before, I think that the temporary specification is a challenging document to work on. I think, you know, had I had the task to write it I would have structured it completely differently and I would put different contents into it for most of the parts. So that means that we are trying to fix a document that in my view can hardly be fixed. And I think that some of the discussions that we had are – we had because this document might not serve as the best possible basis for our group to make progress.

That is not to say that the document can't be used, in fact I think many parts in the document that can be supported but I think that this group needs to find a way to understand what data can be collected, how it can be transferred between registries and registrars, how it can be transferred to escrow agents and the EBERO, how it can be made available to third parties under that conditions, what the responsibilities of all these process activities are and ultimately when we know all this, how the users need to be informed about the processing activities.

And I think that once we have clarity on that we will be able to fix the temp spec. But I think that we may need to take a legal methodological approach to

this in order – as I mentioned in one of my previous emails, I think we really need to slice and dice it and I think that the current structure of the temp spec doesn't really support this.

So I think that the two documents, if you interweave them, and I'm currently thinking hard about how we can best do this, I think will help us understand what we can do, who's responsible for doing it, what the legal basis is and then, you know, I think all things will fall into their respective places. And therefore I think that the, you know, this is probably something that the facilitators or mediators can help us with and let me say again that I think it's a great idea to have you there and if the group agrees then maybe we can take a slightly different approach to our work.

Kurt Pritz: Thanks, Thomas. Alex and Mark, to the extent – do you have a response or a reply to Thomas's thoughts? Alex.

Alex Deacon: Yes, it's Alex. Yes, I agree with Thomas. And I put this in the chat but I'll just repeat it here is that I think if we set a goal for ourselves to – well I think if we came away at the end of our face to face meeting with a clearer understanding or an agreement on the purposes, right, the current Section 4.4, I think that would be time well spent. And in order to do that, preparing ourselves with a version of the spreadsheet that Thomas has put together and we've discussed or perhaps a single combined version I think would be very helpful. If we got to the point by the end of the face to face where we had closer – we had some type of agreement around those purposes I think we'd be in a good spot to move quickly on to the other tasks that we have on our plate.

Kurt Pritz: Okay, Alex, thank you. And without being presumptuous, because I don't want to be that, you know, this section and these spreadsheets are on the agenda for tomorrow so I think that might be a good springboard for that. Marl, where'd you go?

Mark Svancarek: At this I thought that I would (unintelligible) I did want to say that I generally agree with Thomas that structure of the temp spec that – apparently it's hard to hear me. Can you hear me?

Kurt Pritz: I've turned up my sound so I'm okay. But do the best you can.

Mark Svancarek: Okay, thanks. That by trying to work with the structure of the temp spec, which is, you know, a lot of us think that it was a broken document, it leads to broken conversations, so I agree with that. I also think that there are some other structural challenges that we have, for instance, Stephanie was talking in the chat about how we manage access to law enforcement and how do we hold them accountable. And I feel like those are actually access discussions, you know, how do we make sure that we don't give them carte blanche all the time and make sure that there's logging so that they can be audited and held accountable? But that's an access problem, and we've already decided that that's off limits for now and that's another sort of thing where we're kind of constrained because we're having discussions about what can be collected without being able to talk about how it can be accessed which means there's got to be a lot of trust in the conversation about what can be collected because we don't know how it's going to be shared out. Right?

So that is another challenge that I think have to face. And I'll let you go with that.

Kurt Pritz: Thanks very much, Mark. All right so David, Gina and Toby, thank you very much for coming. I think here especially in the last 20 minutes we've made – we have some good understandings about the agenda and where we're driving to. And I know we have a follow up phone call to discuss that. And again, the CBI guys have invited those who want to engage with them to engage with them – so I just want to make it really clear that the ICANN support team and I, you know, I and Rafik won't be on those calls so they're not substantive in any way, they're just so the mediator can get a better understanding of the opportunities and the risks.

So I'm going to pause for 30 more seconds to see if there's any more comments or closing comment from CBI?

David Plumb: Thanks, Kurt. This is David and Gina and Toby here. No, we're great. And we would really, you know, enjoy the chance to check in with folks who'd want to check in with us ahead of the meeting. Like you said, the purpose of those conversations is not particularly substantive, it's about how do we structure our time together while Kavouss in particular, I want to address your concerns and let's see if there's a chance for us to talk ahead of the meeting. I'd welcome a chance to walk through some of those real concerns you expressed. That's it from us. Thanks so much, everyone, we really appreciate your time.

Kurt Pritz: Yes, thanks very much, everybody. I'll see you guys tomorrow. So long.

Terri Agnew: And once again the meeting has been adjourned. Operator, if you could please stop all recordings? To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of your day.

END