

**ICANN
Transcription
GNSO Next-Gen RDS PDP Working Group Teleconference
Wednesday, 20 September 2017 at 05:00 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: <http://audio.icann.org/gnso/gnso-nextgen-rds-pdp-20sep17-en.mp3>
Adobe Connect recording: <https://participate.icann.org/p1uztwksanb/> Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/ZGfwAw>
The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page <http://gnso.icann.org/en/group-activities/calendar>

Chuck Gomes: Let's go ahead and put the results up and...

((Crosstalk))

Chuck Gomes: ...Adobe Connect. Go ahead.

Michelle DeSmyter: Okay. Thanks so much. Well good morning, good afternoon and good evening to all and welcome to the GNSO Next Generation Registration Directory Services Policy Development Process Working Group call on the 20th of September, 2017.

In the interest of time today there will be no roll call; attendance will be taken via the Adobe Connect room so if you're only on the audio bridge today would you please let yourself be known now? All right thank you. Hearing no names, I would like to remind all participants please state your name before speaking for transcription purposes and to please keep your phones and microphones on mute when not speaking to avoid background noise.

With this I will hand the meeting back over to Chuck Gomes.

Chuck Gomes: Thank you very much, Michelle, and welcome everyone, to our meeting this week. Does anyone have a statement of interest update; just raise your hand in Adobe in if you do. Okay, not seeing anyone, I'm assuming there are none.

Let me give a slight little warning, I'm in an area with not very good coverage. I think my coverage is going to be okay, but just in case I have any glitches I'll ask Susan if she would jump in and take over for me just in case that happens again. Hopefully that won't happen, but just in case.

So you can see the agenda in the upper right. And we're going to start by just very quick look really not much of a look but a quick look at the results of the poll from last week. As most of you know, the two questions we asked had what appeared to be strong support for the 30 some people on the call last week. There were no objections to the temporary agreements that we agreed to last week. And there was at least 80%, and I see that it doesn't look like we have scrolling capability yet, Michelle or whoever is controlling the scrolling capability if you give everybody that capability I would appreciate it or at least I don't. So maybe the rest of you do.

Lisa Phifer: Chuck, you should have it.

Chuck Gomes: Okay, well again it may be my poor connectivity. Anyway I'll – I don't right now so that may just be my problem, which isn't too surprising. So let's – so anyway the results were at least 80% in support of both the conclusions and because we're going to move off of the data elements for now except for our allowing a quick description of the original registration date, we're going to add the two statements in the poll from last week to our ongoing working document as tentative conclusions for the working group.

Note that there were – not everybody agreed, I think there were five or six people on the address and a few less on the – on the one for telephone. So anyway we're going to just move onto there. The comments were good and may become useful later. I don't want to minimize the comments but rather

than take time on that today we're going to move right on as a result of what we talked about last week, and there seemed to be pretty good agreement and support from a lot of people that we need to move back onto the purposes, which has to do with Question 1 of our charter.

So moving on from there, we have then the next agenda item, and so we can take the results off the screen. I don't think we have anything to put on the screen for agenda item 3. And I think that Andrew from the small drafting team may be the only one on the call. If I'm wrong on that somebody let me know. And Andrew, I understand – I saw your message in chat so we're okay if you're not totally coherent. I'm not usually anyway so it'll fit right in.

So, Andrew, are you able to give a quick overview? And I'm incorrect, we do have a – the documents on the screen. And this will – this is available and I think has already been distributed to the working group, if not it will be, and I will – so that we – I'm going to ask Andrew if he can give a quick overview. You don't have to give all – spend too much time on the background and action item and so forth as everyone hopefully recalls, we asked this team to go – to take a look at the original registration date that was proposed by the EWG. We had pretty good discussion on it, I don't know, three or four weeks ago. And come back with some suggestions for the working group to consider.

And so what I'm going to ask Andrew to do if he's willing to go over what the group decided and what they presented to the full working group. And then we can have discussion on that on the list this coming week. Andrew, is it possible for you to give us a quick overview of what the group is recommending to the working group?

Andrew Sullivan: Yes, sure. Thanks. This is Andrew Sullivan. So the concern that we had about the original registration date is that there is a small problem in it because of the – because this isn't data that has been collected. And because of that, it seems likely that it's going to get worse over time; that it

would start to yield a sort of false positive picture of the date. So you can imagine that there could be a name that was registered many, many years ago and it was deleted at some point in the past. And, you know, some of these registries are more than 20 years old.

So if that data hasn't been collected, then you don't know whether the name has been deleted before or not. So that's not a problem now, but then as time goes forward, you know, suppose the name gets deleted again and then gets reregistered. What will happen is that the date that will end up in that field will inevitably be the one that was the date, you know, the date of the creation of the one that happens to exist in the registry when this feature is turned on.

And so our concern was that this was data that was automatically going to become misleading over time. And I think I argued pretty strongly but I think there were other members of the team who agreed that you should never create a data element that you know is going to be wrong in at least some circumstances because that's, you know, that's just a way of polluting the registry.

So we thought about what it is that people are trying to do with this data element. We had a look at the, you know, discussion about this in the EWG report and, you know, things that people have said and so on. And really the idea here is that it's valuable to know if a name that exists in the registry, a name object, it's valuable to know if there's evidence that the same name was the name of a previously occurring name object, right. So they've got different registry object identifiers or repository identifiers but they have the same domain name. It's valuable to know if that has happened, if you have positive evidence to that effect.

And so instead of creating a date which provides a sort of false positive or potential for false positive evidence, what we're suggesting is a counter that says known previous occurrences; you know how often or how many times in the past this name has been – has been previously registered and deleted.

And it's not the same name object obviously because the name object, you know, is unique, but it's the – how many other domain name objects there were that had the same domain name as far as you know.

And we have specified that this can never be zero because we're – that just leads to the same false positive problem as the dates do. So it can only be unknown or greater than zero. And most of these on the first day in existing registry most of these are just going to be unknown and then you will count up from there.

Some people thought maybe the counter is too onerous, you could just have a, you know, an indicator that is yes or unknown. You can't have no for the same reason you can't have zero. But it doesn't seem like any more work to do a counter than to have this two bit field. So we're recommending this counter instead, which gives I think a very similar sort of kind of data, that is it allows you to detect that there are issues going on and that, you know, something is being deleted and created and so on without creating the possibility for people to misinterpret the positive data.

One advantage in favor of the counter as opposed to just the yes, unknown indicator, and advantage of that is that if it's rising rapidly you know that something is going on and that, you know, that could also be a useful clue to anti-abuse people and so on. And in fact, that's a clue that you couldn't get from the original date because the original date of course would get overwritten time but whereas this is a counter so it would continue to rise. So that actually would be something that this produces additional data.

Now of course, some people in the working group have been a little bit resistant to cases where you're creating additional data but there's nevertheless, you know, this anti abuse factor, and that was part of the justification for this in the first place, that's sort of the approach that we've taken.

There was a suggestion that maybe we need similar sort of counters for transfers. And there are two kinds of transfers, right, one is a so called internal transfer or a change of the registrant object associated with a domain name; and similarly, there was the possibility of the change of the registrar, which often actually turns out to require change of registrant data as well. So those were some other counters that were proposed that we weren't able to come to agreement on that. And I can see some potential issue there in that there is, you know, a possible combinatorial problem if you start trying to count all of these, right?

Do you worry about the registrant changes across the history of a previous object identifier that has the same name? Probably not but we would have to work all of that out. So I think what we're suggesting for the time being is just the domain object exists and a previous domain object existed and it had the same name and we count those things when we know about them. And if we don't know about them we just have unknown.

And there's no promise, of course, that this number will be a complete answer for the entire history because it says just known previous occurrences, not that it is all the previous occurrences. So I hope that's enough of an overview along with the text that's already been circulated and I'm happy to answer any questions if people have them.

Chuck Gomes: Thank you very much, Andrew. This is Chuck speaking. A real good overview of that. Now, today we're not going to discuss the pros and cons of the recommendation, we will get back to that when we resume our discussion on data elements again and in particular get to this one. And there'll be lots of opportunity. But certainly feel free to respond to the posting of this summary on the list and discuss pros and cons there. But if anybody has a – just a clarifying question on what's being proposed, please raise your hand and we'll give you a chance to ask that question.

Okay, not seeing anybody. Again, we're – we want to thank the small team who did this. I was able to monitor most of their email transmissions and I was quite impressed with the lively – and constructive discussion that occurred and they had different points of view. It was encouraging to me because I think this is an approach we can take on other issues going forward where we form a small drafting team with people having different points of view who will work together in two or three weeks and come back with a recommendation for the whole group.

So I was very encouraged by what I saw going on and the results that they produced. And so hopefully we'll be able to use this technique again to help the working group move forward on areas where it may be difficult with the full working group to make enough progress when we're all working on it together. But always it will come back to the full working group. So thank you very much to the team. And this information is going to be captured and used in the future when we get back to this particular data element.

Okay, the next agenda on our item is to go back to where we were several months ago and resume deliberation on purposes for gTLD registration data. And if we could have the handout put up now, that would be good. And I'm probably going to need your help on the handout because I cannot scroll for some reason, and it's probably just because my connectivity is kind of weak. So the Adobe isn't responding real well to me, so I'll probably need to ask staff to move the slides for me when they bring up that handout. In fact I can even see the update in the handout so.

Lisa Phifer: Chuck, the handout is on screen now.

Chuck Gomes: Okay it's not on mine so here's where I'm going to need some help. I apologize, I don't know – I think it's just my connectivity problem, just to give people a little bit understanding, I'm on the Oregon Coast within walking distance of the Pacific Ocean in my car at a point where I've had a little bit better connectivity but obviously not good enough for Adobe to work

effectively. So maybe rather than me struggling through the slides, I can impose on someone else from the leadership team, in fact I just lost my connectivity in Adobe, it wasn't very good anyway. So I'll try to get back into Adobe.

But let me see, Susan, would you be willing to pick – take the leadership over – sorry to do this to you – but the last time I saw Adobe you were one of the vice chairs that was on, and I'm pretty sure Michele could not make it. I didn't see David the last time I looked and I have a blank screen right now. So Susan, would you be willing to take over the chair role? I will be on and I'll help wherever I can, and in the meantime I'll try to get back in Adobe.

Susan Kawaguchi: Sure, Chuck. And I apologize, I'm a little sleepy so but just like some of the rest of you so you can bear with me. So it looks like we have a slide here and I do have scroll capability so I'm assuming everybody else does. Purposes for registration data, and so we're going back to thinking about what the legitimate purposes are and should gTLD registration data elements be collected.

Just get this whole screen – whole slide on my screen. So for what specific legitimate purposes should gTLD registration data be – elements be collected. And we've obviously come up with a lot of agreements on purposes for collection of data in the minimum public data set. And then we want to confirm the updates to previous agreements and consider agreements on purposes for collection of data beyond the multiple – minimum public data set – MPDS. Somehow I just don't like that acronym.

And then we need to also approach for deliberating on purpose for – purposes for access to data beyond the MPDS. I may have said that twice. And just to make sure nobody has their hand up. So – and thank you, Lisa, for the reminder that the minimum public data set is the thin Whois.

So, Chuck, would you like me to go through each of these or should we skip to...

Chuck Gomes: Susan, I think what we wanted to do was to kind of go through them quickly as a whole. And again I'm sorry I can't see the slide that you're looking at right now but I think I remember it. And so just to refresh people's memory of the purposes that we had agreed to previously for the minimum public data set for collection of those elements. Again, just the minimum data set. And then we need to go a little bit beyond that and talk about access.

Susan Kawaguchi: Okay. So...

Chuck Gomes: And I can help when we get to that. I just can't see the slides, okay.

Susan Kawaguchi: That's fine. And somehow, you know, Monday's call seems so far away so – and just oops, did I – I'm not sure I have – does everybody have scroll capability, Lisa? I'm assuming...

Lisa Phifer: Yes you do, Susan. Briefly, took sync off but you should have it now.

Susan Kawaguchi: Oh okay. So when I'm moving this like phasing – other people aren't seeing my – being scrolled up and down. Okay so just really quick, we agreed on purpose – one of the purpose – on domain name control that it was domain name maintenance transfer, deletion, DNS changes, renewals and those are our use cases, the purposes, technical issue resolution is a legitimate purpose for the MPDS. And so technical issue resolution, technical issue resolution with specific examples, domain name certification so certificate authority would need use.

Business domain name purchase or sale, so this would include bankruptcy, asset purchase, mergers and acquisitions, business intelligence, academic public interest in DNS research as a purpose. We didn't develop any ourselves but the EWG example cases include the domain name registration

history, domains for specified contact and survey domain name registrant or contact, regulatory and contractual enforcement, those are services required by the Registry Agreement; criminal investigation and DNS abuse mitigation, so we're investigating abuse of domain, find domains registered by miscreants.

Reputation services, law enforcement and Whois queries for compliance purposes, legal actions, fraudulent contact information obtained domain holder detail for legal action and trademark infringement, and then individual Internet user is real world contact. So all of those we agreed upon in the minimum public data set to – that those were all purposes for collection.

And then after, if you'll see on Slide 6, we agreed on access to the minimum public data set. So we agreed – the question – go ahead, Chuck, if you have...

Chuck Gomes: Yes, just to help...

((Crosstalk))

Chuck Gomes: ...out a little bit there. So we focused primarily on collection when we first did this, but everyone will recall that we had agreed that the minimum public data set would be – would be public by the term itself, you can tell. So we have essentially agreed that not only on collection of the minimum public data set for these purposes but that because the public would have access to them, we have in essence then agreed on not only collection but access to these minimum data elements. We just wanted to bring that up and remind people of that. And certainly if there's any discussion on that I'll let Susan lead it. But hopefully that made sense. Thanks. Go ahead, Susan.

Susan Kawaguchi: Sure, I was just looking – it looks like Stephanie Perrin has her hand up. Go ahead, Stephanie.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. I know we had very long discussions over this and possibly I'm the only one objecting to this statement that we are collecting all of these purposes. I do understand we're talking about the minimum data set, but ICANN does not have the authority to collect data for the purposes of criminal investigation. I'm just picking that as an example. We may disclose information that we collect in order to make a domain name work, we may disclose it for those purposes but we do not collect it initially for those purposes. Those are purposes for third party access.

Now I don't want to fight this one all over again because clearly we appear to have consensus agreement on this statement of working group agreements. How do I register my dissent from these? Because in my view it does not map to data protection understanding of the purpose of collection. Thanks.

Chuck Gomes: Stephanie, this is Chuck. So certainly when we get our independent analysis of the data protection expert questions that we had asked of them earlier in the year, which will be shortly, we – I think we can evaluate whether your statement is correct or not. And I'm not making a judgment one way or the other. But I think we'll have more information to deal with once we get our independent analysis. But your disagreement, so you're not disagreeing that we could provide access, if I understand you correctly, but you're disagreeing whether or not ICANN could collect these elements for these purposes.

Now, let me seek a little bit of clarification from you if that's okay. And Susan, you'll have to help me if there's other hands in the Adobe. Adobe is trying to load but it looks very unsuccessfully for me so it's not responding. But so Stephanie, if I understood you correctly, you're saying these purposes would be valid for providing access to certain parties, but not reasons for collecting it. So am I understanding you to be saying that okay, we could collect the minimum public data elements for example, the primary purpose of domain name registrations, but we couldn't collect them, for example, for law

enforcement purposes? But we can display them for law enforcement purposes, is that what you're saying?

Stephanie Perrin: Yes, Chuck, that's basically what I'm saying. The purpose of collection should map to ICANN's limited remit and mandate. It should not describe the purposes for which third parties may come to ICANN and say please give us the data. We do not collect data for the purposes of academic public interest research; that is not the purpose of our data collection. We collect data to register domain names and run the DNS.

If they as third parties want to come to us and ask for it, we may release it, that's a legitimate release but it's not a legitimate collection because once you say that you're collecting for all of these purposes, then what's to stop you from collecting more data for those purposes? Nothing.

Chuck Gomes: Okay so Stephanie, then, are we dealing with – and I kind of don't want to say a semantics issue but I'll say that anyway because I can't think of anything better right now. So if we word this better, in other words, if we don't say that we're collecting them for all of these purposes, we're collecting them for valid reasons, okay. Then we might get past this problem that you're raising, is that right?

Stephanie Perrin: It's the way you're describing – I'm really sorry to just keep repeating this but there are many stakeholders in ICANN, some of them are third parties. If you're looking at – if you're gathering data for trademark enforcement, that is a third party request, need, etcetera. We do not collect data for the purposes of some of these things that you've listed here. They're legitimate disclosure.

So Andrew has said in the chat that it's subtle; there's nothing subtle about it in data protection thinking. It's core, it's critical, it's, you know, it's just fundamental that the different – the difference between why you're gathering data and why you're disclosing it and to whom that's just really, really a

fundamental principle. So what – what is happening here is we're aligning the concept.

Chuck Gomes: Okay so...

((Crosstalk))

Chuck Gomes: ...fixable.

Stephanie Perrin: They're fixable as long as we don't say that we've agreed that these are purposes for collection. I mean...

((Crosstalk))

Chuck Gomes: That's what I'm saying...

Stephanie Perrin: ...over and over again. Yes.

Chuck Gomes: So I'm...

Stephanie Perrin: These are purposes for disclosure.

Chuck Gomes: Okay so the fix to the problem is to not say that we're collecting them for these purposes, but rather that they would be publicly disclosed, would you support that?

Stephanie Perrin: If we're talking about the minimum data set, yes.

Chuck Gomes: Okay, that's what I'm asking, that's all we're talking about right now.

((Crosstalk))

Stephanie Perrin: Well, not the same as purposes of collection, though, you got to make that distinction.

Chuck Gomes: I got that. Okay. I've said that several times. So to me, and others please jump in, and again I can't see hands or anything, but Susan help me out there or Lisa, but it sounds like it's – your concern can be addressed and we can move forward. Am I missing something there?

Lisa Phifer: So – so, Chuck, there's a couple comments in the chat. So Chen is expressing its mission and value talk all about stable and secure operation of DNS to preserve and enhance the operational stability, reliability, security and global interoperability of the Internet. Fabricio states, "The purpose limitation principle states that personal data collected for one purpose should not be used for a new incompatible purpose."

So we need to include the purpose what the data will be used for later. I do understand Stephanie's point to a certain extent but I do think also if, you know, as Tim Chen has pointed out that all of these data elements can be used to, you know, preserve the stability, reliability, security of the Internet. So although they may be – this specific data set may be collected – and we also had a discussion about some of these are just generated and not really I guess collection in the – I guess we are collecting them in the fact that we keep track of them, but so these data elements all relate back to stability and security also.

So, you know, what I don't want to do, Chuck, is have to go back through all of the minimum public data set and analyze each element, but we might able to come to terms with a, you know, a softer agreement on the collection.

Chuck Gomes: And...

((Crosstalk))

Chuck Gomes: I was – I think that’s all I was suggesting is I don’t know that it’s necessary we say we’re going to collect the minimum data elements for these purposes that you guys have in front of you, I presume. The – so that doesn’t seem to be a critical thing we have to do. I think we have valid reasons already – valid purposes other than some of these for the data. And as Stephanie said, once we – if we collect it for valid reasons, we would display it for these purposes, not necessarily collect it for these purposes.

Now, once we get the independent analysis we’ll have to critique that and make sure we’re not missing something else there but again I’m not seeing Stephanie’s concern as one that needs to hold up our progress. I think...

Susan Kawaguchi: No, I don’t either.

Chuck Gomes: Yes. Okay.

Susan Kawaguchi: And so Lisa is asking, you know, in the chat too, “Does anyone disagree with the listed purposes as legitimate purpose for access?” Lisa’s got her hand up too.

Lisa Phifer: Yes, thanks, Susan. Lisa Phifer for the record. I think where we ended up when we first went through this list of purposes is after we agreed to them as purposes for collection we had this very same conversation. And we had decided at that time to come back and think about whether these were all purposes for access, whether there were just some of these purposes for collection and the relationship between data collected for one purpose and then made accessible for another, which I think was Fabricio Vayra’s point that those purposes need to be compatible.

So maybe one way to move forward would be to consider whether there’s any problem with this set of purposes as legitimate purposes for access to the minimum public data set only. And if that in fact was what we agreed to

previously our next step would be to think about which of these purposes are the purposes for collection of the minimum public data set.

Chuck Gomes: That's a good approach. I'll let you take it from there, Susan.

Susan Kawaguchi: So there's a couple more comments in the chat. Stephanie is saying we had two precise versions of the purpose of Whois in a previous Whois exercise. I can find them. Do you – Stephanie are you referring to a different PDP or a different discussion group? Or are you saying that there's a – that this working group provided those? And Fabricio is one plus Lisa.

((Crosstalk))

Susan Kawaguchi: Was there somebody else – was that you, Stephanie, that was answering that question?

Stephanie Perrin: I just can't – I guess it's late and I'm tired, I can't remember the date. But it was during the Whois force exercises and there was a (SAW) from the GNSO with the NCSG and the Registrars and the Registries favoring one definition of the purpose of Whois and the Commercial house favoring a different definition of the purpose of Whois, one being of course broader than the other.

And I think we were a hung jury at that point and there was a determination made that we would go with a narrow version. We got quite a lot of positive feedback back from the data commissioners when we made that choice. I think Chuck was around for that but I wouldn't blame it for not recalling. But I can find those too if that helps because I think those are the core – really the core purposes. And that'll help us decide.

Chuck Gomes: I think I was around for that. I don't have it in front of me. I don't have anything in front of me right at the moment, I'm rebooting. But so I mean, we can certainly – whether we can do it on this call or not, we can certainly

capture those things and look at the purposes. Let's decide whether we can (unintelligible) staff to come back and complete that exercise.

I'm assuming there's general agreement and correct me if I'm wrong, there's general agreement that there are legitimate purposes, we have to capture those, for collecting the minimum data elements. If we can do it on this call, great, if we can't that's something we can follow up with and do. But I think Lisa's approach seemed to make sense. And to get past the hurdle we're at right now we may need to do that. But again I'll let Susan take care of the queue and let others speak if there are other hands in the queue.

Susan Kawaguchi: Yes, right now there's no other hands in queue – in the queue. The chat is pretty live right now. But one suggestion we might have to go back to Lisa's suggestion was – is to get agreement or see if we have agreement on the – does anybody – does everyone agree that this list of purposes is for access to the data elements in the MPDS? So if you could put your green check up and then we can get an idea of how many people agree that these purposes are at the minimum represent, you know, they agree with the access to data elements.

And so Marc Anderson is saying "no." Stephanie is saying "yes," or a green. So and just to give you an idea of what's going on in the chat, Fabricio is saying, "Personal data may only," it's from the GDPR I think, "Personal data may only be collected for a specified explicit and legitimate purposes and must not be further processed in a manner that is incompatible with those purposes.

So I fear that if we limit to just to registry a domain we can't later on provide access for these legitimate purposes that we've all agreed are legitimate. And then Rod – I'm not sure – "What does incompatible mean? In this case this seems pretty key to me. For example, is enforcing IP rights to a trade name incompatible with establishing ownership control of a domain sounds like a legal opinion needed there." And Fabricio is agreeing.

David, "I very much agree with Stephanie's point that purpose for access are not necessarily purposes for collection. I would prefer to deal with these issues sooner than later. I do feel this issue needs to be resolved in Phase 1." Alex agrees with Fab's comments. "If we don't specify the purpose for collection up front we may not be able to access the data for these legit purposes later on. It's concerning."

Kenny, "You want to give an example of use of legitimately collected data that was found to be incompatible." And then Lisa again is saying, "Green check if you agree those are purposes for access to MPDS." So right now, Chuck, we've only got a few green purposes – or a few agrees. Marc Anderson is disagreeing. Stephanie...

Chuck Gomes: Let's find out why Marc is disagreeing.

Susan Kawaguchi: Okay. Marc, you're up. It looks like he's typing. Several people are typing.

Chuck Gomes: I'm in the same time zone as you, Susan, I think.

Susan Kawaguchi: Yes. Sorry, that was a yawn.

Chuck Gomes: So I got it and I understand.

Susan Kawaguchi: Marc says he doesn't have voice, "But I'm putting disagree because I'm not sure it's that simple. I think we need to consider who has access for these purposes and under – it just moved – I'm having my own Adobe problems here.

Chuck Gomes: While you're trying to figure that out I'll just make a comment, let's keep in mind – and this isn't to you, Susan, this is for the whole working group, but on the call anyway, let's keep in mind we're talking about the minimum public

data set right now, okay, so it'd be backtracking in terms of the progress. And I'm concerned about that. So we're talking about the minimum public data set, so let's not make this more difficult than we have to.

Susan Kawaguchi: Yes. Just trying to keep – so back to Marc, I think we need to consider who has access for these purposes and under what circumstances. I don't think all these purposes would apply to unlimited public access.

Chuck Gomes: Oh and I think he's right on that. We know that.

Susan Kawaguchi: Yes.

Chuck Gomes: But we're not there yet. We're going to get there, hopefully not too far into the future, we're not – but we have already agreed as a working group, most of us anyway, that the – this minimum set of data elements would be publicly available and that each one of them has at least one legitimate purpose for being publicly available. So I mean, are we backtracking on what we've agreed to before? I'm confused.

Susan Kawaguchi: So Lisa's hand is up. Lisa, before we go to you though I mean, just on Stephanie's point, she has been vocal so I don't think Stephanie is backtracking.

Chuck Gomes: No.

Susan Kawaguchi: I think she's been very vocal and has, you know, this has been her stance from the day one. She also found a long description of Whois or a definition. I'm not going to read that out. But we can – it's in the chat, we can look at that later. So...

((Crosstalk))

Chuck Gomes: Now let me jump in just a second. Sorry. But I wasn't suggesting that Stephanie was backtracking because I think now that I understand Stephanie's point, I think she's fairly consistent with the progress we've made so far. We just have to word it carefully. And so I wasn't suggesting that. But when – I guess I'm concerned about Marc's position more than I am Stephanie's, but again, maybe I'm misunderstanding Marc. Go ahead, Susan, I'm sorry to interrupt but...

Susan Kawaguchi: No, it's your call too. Lisa's got her hand up.

Lisa Phifer: Thanks, Susan. Lisa Phifer for the record. And I actually wanted to respond to Marc. Marc, you know, observed that he didn't think that all these purposes would apply to unlimited public access, what I think he means is the minimum public data set. Actually, as we worked through the data elements in the minimum public data set we did actually map all of those data elements to each one of these purposes. So we did – not that every single data element in the minimum public data set was relevant to every single purpose, but each one of these purposes had some use for some of the elements in the minimum public data set.

And I think we also agreed that the minimum public data set would be publicly accessible to anyone without authentication, without requiring a statement of purpose – explicit statement of purpose, that was Agreement 20 on the Slide 6 if you're interested. So I think we were there before but where we stopped on the list of purposes was when people started to question whether they in fact were agreeing to them as purposes for collection or whether they were agreeing to them as purposes for access.

Chuck Gomes: And if I heard – if what Susan led the group in a little bit ago, did anybody – is Marc the only that objected to these purposes being applicable for access – public access? Again, emphasizing what Lisa just said, it doesn't mean that all of them are purposes for every data element. But as a whole, these data elements access could be provided, we're supporting access, I'm seeing – I

thought we were at this point, we're supporting public access to these data elements for some or all of the purposes that re in front of us. Did I say that right, Lisa?

Lisa Phifer: Yes, Chuck.

Chuck Gomes: Okay, I wanted to make sure. And Marc, if you could respond in the chat; I can't see it but they'll tell me, if it makes sense, would you agree with the statement that these minimum data elements would be – could be displayed because they meet one or more of the purposes that we're focusing on today.

Susan Kawaguchi: Marc has – there's several people typing so he may got...

Chuck Gomes: Okay.

Susan Kawaguchi: ...he may be – and there's quite a discussion in the chat. And also only five people responded to our poll so. Okay so Tim Chen has asked if I could repeat the question. So do you agree that this list of purposes is, let me see how Lisa did it. Where is your question, Lisa? That these lists of purposes are reasons for access to data elements in the MPDS, we're not talking about collection, just access. Does anybody agree that these – or disagree – with – that this list of purposes is for access for the data elements in the minimum public data set?

So green check. And then Slide 2 lists the purposes. Andrew, go ahead.

Andrew Sullivan: Hi, it's Andrew Sullivan. Thanks. For the reason I don't seem able to decide how to weigh in on this, is because there are elements here that I never understood why we thought that they were okay for public disclosure. This is public data set as I guess has been pointed out already. And so these are things that don't actually have any restriction on whether they're going to be disclosed.

And I'm not actually convinced that all of these cases are okay for that kind of access. For instance, the example of legal action – I'm sort of – I sort of don't understand how that works without you know, the registrant data and so on. And I don't think that that should be in the public data set, and therefore I have to oppose this. But in general, you know, I think these are okay. So I think that may be part of the reason that we're having some difficulty coming to a quick conclusion on this.

Chuck Gomes: Andrew, and this is Chuck, let me ask a clarifying question. What data elements in the minimum public data set that we've defined, okay, the thin data, do you think should not be publicly displayed?

Andrew Sullivan: I don't think any of them should not be publicly displayed, but then I don't understand how the description of legal actions...

Chuck Gomes: Oh okay.

((Crosstalk))

Andrew Sullivan: ...on Slide 4 or 5 whatever it is here...

((Crosstalk))

Andrew Sullivan: But, right, like I don't understand the way they fit together.

Chuck Gomes: Yes, okay. So you're really talking about the purposes, not the elements themselves and how the purposes fit into this, is that right?

Andrew Sullivan: Correct, I thought that's what we were...

Chuck Gomes: Okay.

Andrew Sullivan:...being asked about.

Chuck Gomes: Yes, the way you worded it confused me and maybe it's because of my limitations on this side, okay. But I understand now what you're getting at. So what you're concerned about in the question, okay, you're okay with the elements that we've decided would be publicly displayed, at least to this point in time. But how the purposes on the screen relate to those is I think where your concern is. Correct me if I stated that incorrectly.

Andrew Sullivan: Yes, so maybe to make this slightly more pointed, when I supported every one of these things as elements of the minimum public data set, I could support them because I could see a purpose for which you need them. And as soon as I can see one, and I know it's a public data set, it doesn't matter what the purpose is. But if I have to now go on the record and say oh yes, and I think that that's a legitimate purpose, you know, I don't. I think that what that is is a misuse of the data under those circumstances, but there's nothing we can do about it because we need the data to be public.

And I don't think it's sufficiently sensitive that that matters. So it's almost like it's a three dimensional matrix that we're working on and we're trying to represent it in two dimensions here. Maybe that's really where my difficulty is.

Chuck Gomes: Yes, no, no, thanks, appreciate. This is Chuck. I appreciate the careful explanation. And I think – and this is kind of directed at like the vice chairs and the staff on the leadership team, I think we probably need to – and this may address Marc's concern too because now I'm I think appreciating that a little bit more, we need to re-look at how we're wording the question because that – that's causing our problem. I suspect that we're not as far off from one another as it may seem.

But we're not – our approach to asking the question isn't working and I don't have a quick solution. If somebody does, on the call, that's great. Maybe coming up with a way to formulate the question that works, if not I think that's

an action item that we'll have to take as a leadership team to try and re-look at this because the way we're looking at it now I think is not effective.

Susan Kawaguchi: So, Chuck, Kal has his hand up.

Chuck Gomes: Go ahead, Kal. And, Susan, you can go ahead and call on people; You don't need to wait for my okay.

Susan Kawaguchi: Okay.

Chuck Gomes: Okay.

Susan Kawaguchi: Okay.

Kal Feher: Thanks. This is Kal for the record. So I think I've got a very similar concern to Andrew and Marc in that the – for me I'm a little bit confused about the purpose of the purpose in particular for public data set. If we've agreed that data should be public, and I think as Andrew – if one – if there is one good reason for making that data public, then that's fine. Trying to enumerate all possible reasons for accessing public data doesn't seem useful for me, and I think might actually be misused in the future.

I can understand why you might want to have specific purposes for non public data, because that might – you could use that to judge access or levels of access and so on. But I don't think you can use this purpose for anything useful especially when it comes to public data. So I'm more than happy to agree that this is public data, and we move on from there. Why you're accessing it even if it's for malicious reasons is mostly irrelevant because ultimately we've agreed that it's public and we're not going to sit over someone's shoulder to ask them why they're accessing it.

There might be volume-based reasons and – but I think that's something that we would consider, you know, different discussion outside of a truly public

data set because in my opinion volume-based queries might be – they wouldn't be entirely public, you might have some kind of requirement for non-free access.

Chuck Gomes: So this is Chuck. And Kal may have given us a way forward in the sense that maybe even – maybe we're trying to look at purposes for this public data set and that's our problem; maybe where – maybe he's right – and I'm throwing this out for people to challenge and disagree with if I'm stating it incorrectly. But maybe where we – maybe he's right that where we need to be looking – making sure we have purposes is when we get to non public data.

But again there are people on the call that are a lot more expert in terms of data protection law and so forth. So but let's follow up on what Kal said. And, Susan, go ahead and take it from there. Maybe he's onto something that will help us move forward.

Susan Kawaguchi: So actually in the chat – and Andrew it could be really helpful if you put your thoughts, you know, if you could verbalize these. But Andrew was suggesting...

Andrew Sullivan: I can do that, sure.

Susan Kawaguchi: Okay thanks.

Andrew Sullivan: So I think this is sort of in line with what Kal just said and maybe what Marc was saying earlier that all we really need is agreement that at least one of the purposes on the list is the reason or a reason for collecting or disclosing or both, a data element as the public element. And once we've got agreement on that, we don't have to worry about the rest of them, and this may have been the point that Stephanie was making also, that you don't have to enumerate everything.

Once we got some reason why something has to be a public element, then it's a public element. And after that, the reasons to collect it are – the other reasons to collect it are completely irrelevant because you already got one and it's a public element, anybody can do whatever they want with it just as a practical matter.

So, you know, if we think of the canonical example of this, right, the name server data associated with a domain name is necessarily public data; there is no possible way you can hide that because if you do the domain name doesn't work anymore. So after that there's no possible abuse; it wouldn't matter like any reasons that you would have to hide it. The fact is you have to do it, that's a minimum requirement that this be public data and after that all of the other purposes are silly to try to enumerate. And I think that that would get us past this discussion of all of the other possible reasons.

Oh and I'm sorry, I didn't say for the record, that was Andrew Sullivan.

Susan Kawaguchi: Thank you. So there is some sentiment in the chat, Chuck, that, you know, this – if this is – we just declare this as all public and move forward. There is disagreement it's still personal information. And so we are going I mean, we definitely have had this same discussion before. Lisa.

Lisa Phifer: Thank you, Susan. Lisa Phifer for the record. And I just wanted to point out that there are some comments here, Fabricio Vayra notes that he does not believe the privacy law applies in the first place to elements of the minimum public data set and therefore a purpose requirement doesn't apply either. And Stephanie argues that it's still personal information that she thinks that Joe C, I can't remember how to say his last name, in Copenhagen confirmed that it could be personal information. So we have a point of disagreement about whether purposes apply because it's personally identifiable information or it's not.

Chuck Gomes: (Unintelligible).

Susan Kawaguchi: Okay, Stephanie, you have your hand up.

Stephanie Perrin: I just want to repeat a point that I had probably made annoyingly often when we were having this fight months ago, just because it's personal information doesn't mean you don't disclose it; it's only personal information if it's associated with an individual domain name registration. So if in order to make a domain name registration work you have to disclose certain personal information, then so be it, you have to disclose it.

There is a distinction between personal information and personally identifiable information that has clouded the waters. But anyway in any case it's still PII, or rather PI and you have to disclose it in order to make your domain work. It's easy. Thanks.

Susan Kawaguchi: So is there...

Chuck Gomes: Thanks, Stephanie.

Susan Kawaguchi: Go ahead, Chuck.

Chuck Gomes: Sorry, yes, I'm back in but you can still continue, Susan, that's fine.

Susan Kawaguchi: I just was wondering if there was a definition there somewhere, you know, that we could all agree on that, you know, and I think we sort of did at some point but maybe if we word this a little differently that this is all – all of this – the minimum public data set is collected and should be publicly available because it's either not personally identifiable information or it – or it is necessary for making, you know, allowing a domain name to resolve. So Stephanie, you still have your hand up, is that old or new? And Fabricio is not agreeing that – you're making a good point, Fabricio. So Chuck, you have your hand up.

Chuck Gomes: I do. I like that. So...

Susan Kawaguchi: Are you in Adobe then?

Chuck Gomes: I am. Finally got in, I don't know what was going on before and I can scroll and everything. So okay now that the meeting – I don't know what is it, half over or it's even – it's 2/3 over...

Susan Kawaguchi: We got 20 minutes.

Chuck Gomes: Yes, I see that in my clock on my screen. But can we – let's first of all clear all the checks and Xs in the Adobe please. Are we – so that I'm doing another little poll real quick here, see if it helps. So Hunan, you still have a check in there; if you can clear that, you know, otherwise it's going to count for something different. So are in agreement that the – well let me go back to Lisa first.

So, Lisa, am I correct in concluding that we've already agreed on the minimum public data set and that there are purposes for that being publicly displayed or as someone said, maybe we don't even need to have purposes for those, but like Stephanie said, maybe some of them we do. But haven't we already agreed, Lisa, that there is at least one purpose for every one of those elements and in some cases there's probably more. Is that true, Lisa?

Lisa Phifer: Yes, Chuck, that's true. We agreed – it's actually on Slide 2 of this deck – that every data element in the minimum public data set should have at least one legitimate purpose; Number 3, that every existing data element in the minimum public data set does have at least one legitimate purpose for collection. And we've further agreed that RDS policy must state purposes for public access to the minimum public data set. That was agreement Number 23.

Chuck Gomes: So my next – thanks, that’s very helpful. So my next question is this, do we then even need to talk about purposes any further for the minimum public data set? That’s that we’ve been trying to do in this meeting and seem to be getting nowhere. Do we even need to do that? And if not, the question I have for the whole group is this, is there anybody that objects to the statement that – and I don't know if we’ve captured this in any of our agreements, that’s why I’m bringing it up – that should we put in writing an agreement that says the minimum public data set will be public or have we already done that by calling it a public data set?

I’m not hearing anybody disagreeing with that so I think we’re trying to do something that’s already been done or that everybody is in agreement with, and that’s what I’m trying to confirm right now. Anybody disagrees with that, if I made any sense at all, put a red X in the Adobe. And then be prepared to help us understand. I don't think I did a very good job of expressing myself, but let’s let Lisa jump in.

Lisa Phifer: I just wanted to answer your question. The agreement that we have that states that the minimum public data set is public, is Agreement 20, and that is that gTLD registration data in the minimum public data set must be accessible without requestor identification, authentication or stated purpose. So in other words, that defines what it means to be public.

Chuck Gomes: So we’ve been trying to do something that’s already done? Is that correct? Or am I missing something?

Lisa Phifer: Well I think in this call we’ve been trying to tie purposes to the fact that the – that we’ve defined a minimum data set and public data set, and that there has been previously agreement that that would be publicly accessible. I think what we’ve been trying to do here is to see if we can tie that back to the purposes that we previously defined for collection of the minimum public data set.

Chuck Gomes: But we're getting some pushback on some of those purposes for the minimum public data set and are we gaining anything by trying to map the purposes and that we've been focusing on like academic and academic research and law enforcement and so forth? Do we even need to do that? Is there any value in doing that? I'm starting to think that there's not. And if not, then maybe what we should be doing is moving beyond the minimum public data set and start looking at elements that aren't in that. Is – anybody help me out there. Are we ready to move on beyond? Go ahead, Lisa – is that Lisa?

Lisa Phifer: Yes, this is Lisa again, sorry to jump in. Just pointing out that we actually did have an agreement that policy must state the purposes for public access to the minimum public data set. So what I hear you saying is you disagree with that previous agreement that we must state the purposes for public access to the minimum public data set.

Chuck Gomes: Well and it's not so much me, that's kind of what I'm hearing in people's comments today. Maybe we do need to revisit that. Now we've already covered – we've already established purposes for the minimum public data set, do we need to take that any further? I just lost my connection again so, maybe it'll come back so we'll see.

Lisa Phifer: So, Chuck, if I could jump in again? This is Lisa again. What I see people saying in chat is that we've been misconstruing purposes for access to public data as purposes for collection. And that maybe we only need one purpose for collection of the public data set and that purpose has to be strong enough to justify that it be public but then that's enough.

Chuck Gomes: Okay. Is there – now...

((Crosstalk))

Lisa Phifer: Hopefully I haven't misconstrued what people said in chat.

Chuck Gomes: No, but I appreciate you doing that because I lost connectivity so I have a blank Adobe screen again. So sorry. My apologies for my problems. But so maybe we have a conclusion right there in what you just said, Lisa, a possible – is there agreement. Is there – anybody disagree with what Lisa said?

And I'll ask her to repeat that because that might help us close this part and move on if there's no disagreement. Now I'm not saying you shouldn't disagree; if you disagree, but we need to hear it. Okay? Lisa, would you restate what you just said? And then I would like – then Susan, if you can poll the group on that statement to see if anybody disagrees with that or would modify it in any way. So, Lisa.

Lisa Phifer: Just focusing on the purpose for collection that we must have at least one purpose for collection of the minimum public data set and that purpose has to justify making that data public.

Chuck Gomes: Is there any disagreement with that statement? And again, I'm going to let Susan and Lisa watch the Adobe, I probably don't have time to get back in again, it took me quite a while last time. By the way, I'm...

((Crosstalk))

Susan Kawaguchi: Can we put that – can we put that into the chat? Some people are starting to agree. But I think if we can put that wording into the chat I think that would be helpful.

Chuck Gomes: I'm sure Lisa will do that.

Susan Kawaguchi: Yes. So far we have four green agree. So Lisa put into the chat, "There must be at least one purpose for collecting the MPDS and that purpose must include justification for making MPDS public."

Chuck Gomes: Any disagreement?

Susan Kawaguchi: No disagreement.

Chuck Gomes: Is this a possible agreement then that we can poll on? Obviously we have a lower turnout this week which usually happens still, you know, not bad for an off time. But is this a good poll question? I'm now back in; I did get back in. Okay, no disagreement but several agree. Any objections to putting this into a poll for this week? Okay, so let's talk about – and this doesn't exactly follow the agenda, but we didn't anticipate it going the way it has. At the same time I think what has happened needed to happen in this call. And so I'm not complaining or criticizing.

So assuming then, in a poll, that there's strong support for the statement that Lisa made, are we ready then – and I'm just asking for people's thoughts on this – are we ready then to move beyond the minimum public data set and start talking about purposes with regard to those other elements? Certainly agree with the stuff I'm seeing in the chat, Andrew and Marc and Stephanie agreed. And, Andrew, what are you saying, you're not ready to move on to what yet?

Andrew Sullivan: Sorry, I said I am so ready to move onto that, yes.

Chuck Gomes: Oh okay.

Andrew Sullivan: Yes, let's move onto...

Chuck Gomes: Thank you. That clarifies what – that answers my question, thanks. Okay, all right, I'm not seeing any. So okay so the sense is to move on. Now I don't think – well we definitely don't have time to move on to that now, but that at least gives the leadership team a sense of at least those on this call in terms of next steps. Lisa, go ahead.

Lisa Phifer: Thanks, Chuck. I just wanted to call your attention to there were two friendly amendments to the statement that pretty much got some support here. One was that it should be – that there must be at least one purpose for each data element in the MPDS. The idea being that the purpose might be different for different elements in the MPDS.

The other comment in chat was that I think the way I phrased it was that the purpose had to have some justification for a data element being – the MPDS being published. And someone suggested that the purpose must be sufficient for the MPDS to be published or public.

Chuck Gomes: Okay. Unless there's any objections by anyone we can make the adjustments to the wording for the item in the poll. And I'm, again, raise your hand if you object to those adjustments or have another possible edit. Andrew, go ahead.

Andrew Sullivan: Hi. It's Andrew Sullivan again. I don't object. I'm not trying to be churlish or difficult here but I just want to be perfectly clear, that the point I think that several of us are making is we've got this set of reasons and we've got a candidate set of elements. And the basic point here is that for each one of those elements, if you dump in through – if for each, you know, participant in this working group, if you run it through that set of reasons, and it hits on any one of them and that one of them is a reason that the element needs to be public, then that's sufficient reason to be part of the minimum public data set.

And we don't need to – we don't need to come to more granular agreement than that. And I think you know, in the chat Lisa was saying well we hung up on this in the past and I think that was because we were trying to get everybody to agree on which reason. But we don't need to get everybody to agree on which reason; all we need to do is get people to agree this element falls within these reasons, and it spits out the requirement that the thing be public and now we've got our public data set.

Chuck Gomes: And, Andrew, do you think that...

((Crosstalk))

Chuck Gomes: ...we need to modify the poll question further to make sure that's understood or is it – do you think it's sufficiently understood the way it's worded now with the edits that people have proposed?

Andrew Sullivan: I think it's sufficiently understood but I can't tell if other people think it's sufficiently understood. But that could be because my brain is a little addled.

Chuck Gomes: Yes. Okay. But thanks. No, that's good. Anyone else want to comment on this? Okay, well thanks. And let me thank Susan for letting me put her on the spot, which she hadn't been warned about. Thank you very much, Susan. And, you know, again, we didn't cover very much of our agenda but I do believe that what we did tonight should help us going forward and help us move on.

So I hope all of you are okay with a little bit of maybe confusion and that probably was caused by the way we – way we asked – the leadership team asked the question and so forth, but I do think that what has happened tonight or tonight for me – you know, should help us move ahead going forward.

So the action items, Amr, you want to go over the action items?

Amr Elsadr: Sure. Thanks, Chuck. This is Amr from staff. We had an action item earlier on the call for staff to include the two – the conclusions from the 12 September polls as two tentative conclusions in the working group working document. And the second action item is for staff to include the question we were just addressing in this week's poll which is there must be at least one purpose for collecting each data element in the minimum public data set and that purpose must be sufficient for making the minimum public data set public.

Chuck Gomes: And...

((Crosstalk))

Amr Elsadr: I don't think there was...

Chuck Gomes: And did we go further than that?

Amr Elsadr: Go ahead.

Chuck Gomes: Did we – those on the call basically agree that we've met that, those two conditions for the minimum public data set, or am I jumping too far ahead?

Amr Elsadr: We did have an informal show of hands a little earlier and we had the seven out of 19 of the working group members on this call indicate that they do agree with that and there were no disagreements declared.

Chuck Gomes: So maybe we ought to include that as a second poll question. The first one as you described and then a poll question that there were no objections to the statement that we have achieved that and we're ready to move on beyond the minimum public data set. We can work on the wording of that offline. Anything else, Amr, on action items?

Amr Elsadr: No, I don't believe there are any unless I missed things.

Chuck Gomes: Okay. So our meeting next week is at our regular time. Thanks for those of you who joined in this meeting at terrible times, appreciate that. Keep in mind just to keep it in balance we only have to do it once a month; there are some people that have to do it three times out of the month so it's only right that we share the burden a little bit, there. Benny, go ahead. Benny, are you on – okay the hand went down, okay. Is there anything else we need to cover on this call before I adjourn?

Okay, Stephanie, go ahead.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. I don't suppose anyone in the leadership team could explain to us what the heck is going on with the GDPR issues that are surfacing? We hear there's going to be a meeting in Brussels first week in October. There's all kinds of strings in motion here and it's a little discouraging because we're still plugging away on this group but we don't know what's going on in terms of meeting the data commissioners.

Chuck Gomes: Stephanie, I'll certainly let – this is Chuck – I'll certainly let others speak. I don't think we can speak for what ICANN is doing with regard to the data protection commissioners. I've heard some of the things too. But I'm not the right one to talk to that. I think you know, I updated some of the Board members a week or two ago on a call in terms of where we're at and so forth. And they know that they need to coordinate with us and so forth. But I can't add too much more.

I will say that we're expecting, and I think this has already been communicated – we're expecting the final report from the legal firm that's doing the independent analysis of the 19 questions that we asked the data protection commissioners to answer, not later than this coming Monday. So as soon as we get that the plan is to distribute it to the full working group at least for first read and the leadership team is busily preparing for (unintelligible) to use the advisors to check to make sure what we've done is right and accurate in terms of the final report as well as in the expert (unintelligible).

So that, you know, we're getting very close so within a week the whole working group should see what was produced in terms of that final report. But in terms of what ICANN (unintelligible) commissioners, and I did hear Göran say that they are meeting with them, they're talking so forth and I believe they will, to the extent that it influences what we're doing that they will, you know,

involve us. But other than that I can't speak to that. Can anybody else speak further to Stephanie's question?

Okay, all right, anything else before we adjourn? Okay, well thanks, everybody. And I thought we were going to end a couple minutes early; we're a couple minutes late but I'll adjourn and the recording...

Michelle DeSmyter: All right. Thank you, Chuck. The meeting has been adjourned. Everyone, have a great day. Operator, please stop the recordings and disconnect all remaining lines. Thank you, everyone.

END