

ICANN Transcription
EPDP on the Temporary Specification for gTLD Registration Data
Wednesday 06, February 2019 at 1400 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://gns0.icann.org/en/group-activities/calendar - feb>

Adobe Connect Recording: <https://participate.icann.org/p30xdzbirui/>

Attendance is on the wiki page: <https://community.icann.org/x/gYA2Bg>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:

<https://gns0.icann.org/en/group-activities/calendar>

Coordinator: Recordings have now been started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 43th GNSO EPDP Team Meeting taking place on the 6th of February 2019 at 14:00 UTC.

In the interest of time there'll be no roll call. Attendance will be taken by the Adobe Connect room. If you are only on the telephone bridge, could you please let yourself be known now?

Stephanie Perrin: Hi this is Stephanie Perrin. I'm on the bridge. Thank you.

Terri Agnew: Thank you, Stephanie. Noted.

Hearing no one further. We have listed apologies from Alan Greenberg of ALAC, Georgios Tselentis; GAC; Esteban Lescano, ISPCP; and Emily Taylor, RRSB; James Blade, RRSB; and Berry Cobb, staff. They have formally

assigned Seun Ojedeji, Chris Lewis-Evans, Fiona Assonga, Sarah Wyld and Theo Geurts as their alternates for this call and the remaining days of absence.

During this period members will have read-only rights and no access to conference calls. Their alternates will have rights and access to conference calls until the member's return date.

As a reminder, the alternate assignment form must be formalized by the way of link. The link is available in the agenda pod to the right, as well as the meeting invite email.

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

All documentation and the information can be found on the EPDP wiki space. There's an audio cast and view-only Adobe Connect for non-members to follow the call. So please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call.

With this I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks, Terri, and hi everybody. Welcome. We missed the American Groundhog Day celebration but somehow seems more like the cinematic Groundhog Day.

So today is an extra meeting so I really appreciate everybody a ton for getting on. I know there's an RYSG call so we're going to target this meeting to end in an hour and fifteen minutes and, you know, I'm sure the RYSG meeting agenda's been attuned so that the participants here can get off and then

participate in their meeting, especially with regard to this agenda item that will be on their meeting. So thanks very much for those that are juggling those two things.

I just have a couple updates and then I want to get right into the substance of the meeting. So we sent out another set of legal questions to (Bert) and (Bird). These had to do with - so I wanted to let you know. The legal team surely knows. So. They had to do with the city field and redaction or not redaction of the city field. And, you know, the questions are shared of course with the legal team who helped compose them so we'll send the - share the questions with the whole group.

But the questions had to do with the redaction or not redaction of the city name, the meaning of accuracy with regard to the GDPR and how that might impact any of our requirements in complying with GDPR, and then an additional question regarding geographic implications that was raised by the legal team that had to do with the fact that, you know, if ICANN as a controller does in fact have -- I forget the legal term -- but significant operations in the EEA and we make that presumption in our question but we ask we're not certain that it does in fact have that sort of establishment there. You know, what effect does that have on the requirements since ICANN's a data controller to comply with GDPR amongst each contracted party. So that's sort of an interesting question.

Stable establishment. Thanks very much, Amr. And I hope didn't mangle the description of that question too much. I'm talking too fast here. So - yes, so I'll - we'll distribute those questions to the rest of the team so that you can see them.

I just want to mention - and I think these questions will go to Trang and Dan at ICANN Org but just want to call out a couple things that are going on on the mailing list with recommendation 13 and the parties involved, there's a discussion going back and forth whether to use the word agreement and

arrangement. And so the latest request is - the latest assertion by I think the RYSG or the contracted parties is that arrangements is okay but, you know, seek some clarification or assurance from ICANN that the right sort of arrangements, i.e. agreements, will be developed.

So I think that whole thing's kind of clunky with the RYSG asking for the clarification that can be included in the report and the footnotes. So my thinking right now is, you know, Trang and Dan, if you could kind of respond to that in the next 24 hours with a sort of writing that's requested, that'd be great. We can probably include that. Otherwise I think, you know, my sense is -- and we'll sort out in email -- my sense is - my feeling is the sense of the team is that the word agreements is fine and we want to go on with that. So thanks very much, Chris, for that thing.

And then, you know, also in the compliance recommendation, James Bladel sent an email asking ICANN to explain why there's an expansion on the use of those two terms that have been not distributed for a while. So if you could pay particular attention to that, you know, that would give the team something to grab ahold of and try to respond to those two data elements. So that's sort of vague but if you could look at James Bladel's email about the compliance recommendation, that'd be good.

So that's all I have with regard to updates and I want to get right into the substance because I want to get people off the call. Kavouss, please go ahead.

Terri Agnew: Kavouss, this is Terri. I see that your line is open.

Kavouss Arasteh: Yes, my line is open. Thank you very much. Good morning, good afternoon, good evening. I think - Kurt, thank you very much for the really substantive work you are doing, your devotion and so on and so forth. You raised a question about city name. You had a question about the national versus legal, is it legal to question relating to the geographic position of location but

you did not refer to the organization. Have you resolved the matter? This is point one.

Point two, there is big difference between agreement and arrangement. Arrangement has a certain operational connotation. Agreement has contractual connotations. They are not similar. They are not replaceable. I don't mind if everybody agreed with the replacement of agreement by arrangement but they're two different things.

Last but most important point, we very much appreciate any legal view but I think it's up to us to agree or not to agree to any view given from legal. We are not looking for what is the prevailing law in California that the legal people say that this is that and we agree (unintelligible) something that relates to all of us.

So we thank very much the BMB but it is up to us at the end to see whether we agree with that legal view or not, with respect to the city, with respect to geographic with respect to the other natural versus legal and also organization but I don't know what happens with organization, so on and so forth. So with all of these, thank you very much. I'll turn it back to you. Thank you.

Kurt Pritz: Thanks for that, Kavouss. On organization we did reach an agreement principle on a phase in process to, you know, remain GDPR-compliant, protect registered name holders that have disclosed personal data through their organization field already and in the past and how to manage that in a go-forward manner. And that agreement and principles put into pretty specific recommendation.

The BC I think raised some questions about that. So before it's completely closed off, if the registrars or the contracted parties could respond, I think that'd be great. If not, well, you know, we'll see if we can find some sort of

common language ourselves, but it would be great if the registrars could signal if they agree with that or not.

And then, Kavouss, I think there's a lot of sympathy for your position that on this whole team that agreements and arrangements are not the same thing and that's why there's some dismay at the recommended change, but we'll wait to hear back from ICANN on that.

Kavouss Arasteh: Yes. I have no problem with - if we reach agreement I don't want to be open, provided that this issuing organization would not be reopened again. That is my position at this very late hour, so on and so forth. This should not come back. With respect to three (unintelligible) legal view but it's up to us and the group community to have an agreement that and have a consensus and so on and forth. I have no problem. But please can we be (unintelligible) legal view. The decision is by us but not by others. Thank you.

Kurt Pritz: Right. I think everybody agrees with that too. Okay, I'm just pausing for a second to - right. So there's a question from Thomas on this agreement versus arrangement. So I think we'll wait till, you know, we have a specific request on the part of the RYSG, and I think the contracted parties, both sets and ICANN Org's going to get back to us on that.

So let's go to - so the agenda is recommendation five, the transmission of registration data from registrar to registry. So I think we have an updated language to discuss from the RYSG. Then there's the ICANN questions that we boiled down to like six areas. Now I think we have them down to four areas, so I hope we can dispose of that quickly. And then finally I want to talk about reasonable access. We talked about that yesterday and made some pretty darn good progress I think but it's a significantly important issue so I don't want to leave the closure of that email. So I'd like to discuss it here.

Again, this agenda if you add up all the time adds up to more than an hour and a half but I'm committed to getting everybody out of here in about an

hour from now. So. We have the amended language proposal that was delivered from Kristina. So thank you for that. Staff, I think the support team just emailed out the same version of that and again there's some comments. Oh I guess that's because of the red line, so.

There's the original language, but I think, you know, we should just focus on the new language and see if that's acceptable to us. So what I'd like you to do is I'll take a couple minutes and read - if you can find that email that was recently sent. You know, it's a three-pager. One is the original language. The second page is the new language for the report and the third are some notes that the RYSG had appended to the wording. But if we - if you want to shortcut that I think we can sort of discuss the second page, which is the updated language.

So I'm going to just chill here for three or four minutes and then I'll get back to you. So if you can take time to read that, I think it'd be great. Okay, welcome back everyone. I think that was kind of a short read. Margie, I see your hand's raised. I don't if Kristina or Alan want to make some introductory comments. Margie, would you mind me ceding the floor to Alan since he was one of the authors here?

Margie Milam: Oh, no. Go ahead. I'll wait.

Kurt Pritz: Okay. Thanks, Margie. Give us a brief intro, Alan.

Alan Woods: Sure. Thanks, Kurt. Thanks all. So with regards to recommendation five, I think there's kind of a two kind pronged approach that we took when we were reviewing this. Specifically the first one was we wanted to make sure that we, because (unintelligible) during Toronto and I think we have all come to an agreement on this, and please obviously correct me if I'm wrong, that the concept of the workbooks, although vital to providing the context and the detail of the decisions and the recommendations, that they are specifically, you know, they are to be included in an annex as work that was done to

come to the conclusion and not necessary as part of the recommendation itself.

So that's why we changed it to illustration as opposed to just to say this is what the workbooks are. They're administration of in effect what the recommendations should be. So that was just the first kind of work on this one.

The most important part is really in bullet two. And again, bullet two specifically - we believe that it came from the conversations that we had in specific - specifically with regards to purpose 1B and that was trying to highlight the fact that what made purpose 1B so difficult to come up with was the fact that depending on the individual registry, the business plan, the contract that they have with ICANN and indeed the individual controllership that are necessary of the registry itself that they might not necessarily need the transfer of the registrant data to fulfill what they believe is required. And that is a perfectly okay stance for them.

So what we're looking at then specifically was the proposed rewrite of the second bullet and we felt that it was - we could put it in perhaps in a slightly more clear aspects. And there's two elements to that. So the first and the most obvious clear aspect of it was explaining this concept -- and I apologize to everybody because this is my addition to it -- and that is lean data set.

And that is coming and springing from this concept that every single purpose that we as a team have come up with, each one of those has its own minimum data set. And, you know, that's not to say that we have to specifically collect separate tranches of data and put them in separate areas. You know, the collection can be unique or can be a single collection but it is for each one of the purposes.

So when we're considering say for instance purpose 1B, even though we're collecting that data in a single place, we are collecting that data in its own

specific data processing set. So there's a collection for purpose 1B, there's a use for purpose 1B and there's, you know, retention for purpose 1B, et cetera.

So when it comes down to it, we need to say, okay, if we were to consider the entirety of the data across all of the purposes and figure out what is the common data that would be collected for this purpose, well then we can call it, you know, to use a mathematic term, it's the mean data set. It's not the minimum data set, it is the common data set across the purposes. Just - it's a term to help us probably try and understand it a little bit better.

So in this purpose we're talking about the transfer of the data. So that's why we say this set of data elements constitutes a mean data set. That is the aggregate minimum data set of all identified purposes that registrars will be required to transfer to registries. So hopefully that makes it a bit clearer why I'm calling the mean data set. Again it's to take into this account that it's across all purposes. It's, as I said, a term of art.

Now specifically we thought we would just - there's an awful lot of trying to get into the detail in the previous point about it and we thought that by clearing - just cleaning up that last line, and that is the mean data set also includes those data elements that may not be transferred from a registrar to the registry for such a registry does not require such a transfer with regard to that registry's terms, conditions and policies.

So it's effectively saying the minimum data set is the data set, for instance for 1B, that we are specifically saying this is justified, we have a business purpose, we have a business - a legal basis for the transfer. However, there are instances where a registry might say I do not require that because of my terms and conditions, my policies and my specifics and therefore I'm going to decline to that transferred to me. And it is up to that registry then to point out I do not want that.

So we're just allowing within this recommendation that there is a leeway and a perfectly acceptable leeway because we don't want to push registries into a position where they have to take data where they genuinely don't agree or believe that they need that data. So it's an acceptance that the minimum data set we have set is fine, we have accepted that the minimum data set is justified, however, there can be a departure from that minimum data set as well, which should be equally as supported by ICANN as well. So I - that was kind of an important aspect of that.

The second thing that I will say is we took out the specific reference to recommendation 22 as well, and I know that that might cause consternation by people. However, the fact of the matter is recommendation 22 still serves its purpose and its purpose is saying that there will be policies, and we can point out specifically within recommendation 22 that the Whois or the thick Whois policies, one of those specifically that we think will be affected by this.

I don't think we need to complicate here in recommendation five by saying, oh also recommendation 22 will talk about the thick Whois policy. Recommendation 22 should stick as the last recommendation where we say because of the work and because of the data that we have identified as minimum data set or even the mean data set and there will be a necessity to review certain policies, and I don't think that changes it by taking it out of recommendation five.

I think it would just be confusing to leave it in here because it's bringing in a concept of mixing thick Whois with this new concept of minimum data set and I think for the reader for the person who's not party to the 43 meetings that we have had, it is just a far easier thing to digest and understand if we just lay out the recommendation and then when we get to recommendation 22 they can to, "Ah, yes. I see that there's going to be an effect on this particular policy and other policies and that will need to be looked at by the GNSO as well."

So again, our edits are based on clarity, trying to get to the core of the issue and not I suppose mystifying it somewhat by bringing things which are going to be covered elsewhere. I hope that has - oh sorry, Kavouss is asking what's the meaning of aggregate. I don't know if I can include - I mean aggregate is aggregate. I'm sorry, Kavouss. I don't know how to actually answer that.

In aggregate means it is the collection of all the purposes together, so all the data sets, the collection of the data sets. Sorry, I'm probably failing English 101 in this but I don't know if I can define that better. I would say the aggregate minimum data set, to your point, Amr. Yes, I mean I'm open to that as well. Again we were just trying to get this idea that it is the collection of all the common data elements across all the purposes for the purpose of transfer. So it's a new concept and hopefully it is one that sticks. It makes it cleaner in my mind. So I'm going to stop there and give it over to people.

Kurt Pritz: Thanks for that explanation. Margie, go ahead.

Margie Milam: Hi everyone it's Margie. Yes, thank you for that explanation, Alan. I don't see how we can make this recommendation because this is a consensus policy that we spent many, many years developing and I understand we are chartered to take a look at the recommendations, the current consensus policies and tweak them but this is an altogether deletion of the policy.

And so I think there needs to be a lot more analysis as to what's the implications of that and I really feel like that this is a question that needs to go back to Legal rather than a recommendation at this point because of the uncertainty. So that's kind of the first kind of procedural point. But even setting that aside, if you think about what the recommendation says, it actually - it's problematic from a number of fronts because if a registrar feels that they don't think the registry needs the data but the registry feels that it needs the data, then what happens, you know?

There could be a wholesale, you know, basically feasting of transferring data from the registrar to the registry even if the registry's business model was one where it absolutely needed the data. And I think that that's an untenable situation for the industry and for ICANN. I think that we have to think really hard about how that would even work, and this is the reason why I'm saying, you know, to get rid of an entire policy in my view is premature and there hasn't been enough analysis in order to support that kind of outcome and to really see what the impact would be of the recommendations we're making.

And so, you know, really if you think about what the recommendation is it actually removes ICANN's role in this decision and so there's nothing to enforce if a registrar decides for whatever reason that it doesn't feel like sending information to the registry. And so I just think the whole thing doesn't work from that perspective and think that it probably should be left either for phase two or a question to the council as to what to do about it.

Kurt Pritz: Thanks for that, Margie. You know, I have some similar questions but I, you know, spent some time in the past several days trying to answer them myself so I have comments but let's go through the queue. Hadia?

Hadia Elminiawi: So I actually don't understand this mean data set. So what actually Alan said the mean data set is the common data set between all purposes, right? And that means that some other data sets that are not common will not be transferred, if I correctly understand what Alan said.

And - so my question is, you know, what about those other data sets and why is it - what is the logic behind it and why is it only good to transfer this data set, the common, but the other data that is left out? And if the logic behind this is the principle of minimization, again, I don't see that applying here.

And then my second point -- and I might have understood Alan wrongly, I don't know -- and my second point is with regard to the second bullet. And again, where he says the registry - where such a registry does not require

such a transfer, well this will mainly depend on the agreements between the registry and ICANN and maybe the registries and the registrars and also whether this is a thin or thick registry. I'm not sure that we need to put that here because it will depend on other agreements between the different parties. Thank you.

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

Alan Woods: Thank you. I think it's probably easiest to deal with Hadia's intervention first. Unfortunately I think she's, to be delicate about it, completely missed the point on this. With regards to the - oh, sorry. That went through my head, whatever that was.

Yes, so with regards to the mean data set, no, again it's very specific that the mean data set - I think you're missing the context that each and every purpose of it has to have its own data set. Each purpose has a minimum data set which you collect, process and go through the entire lifecycle of that data. However, in this recommendation, we're trying to figure out what data for all the purposes needs to be transferred to the registrar.

So what we're saying that there is a mean data set with regards to all the purposes which is common - which is the common element between all the purposes that would be transferred to the registrar and is required by the purposes.

So instead of us pointing out the data specifically under purpose 1, 2, 3, 3 to 7, we're saying that this is the mean data set where we've identified -- and this is part of the working small team as well -- we've identified that data which is to be transferred for - to the registry for all the purposes together. It's just - it's an easier way of looking at it. It's a less confusing way.

So I think you kind of missed the point there. It's not saying that other data won't be transferred and if other data isn't transferred then obviously the

agreements of the PDP is to say well obviously it's not required. And I don't think it's about data minimization or not, it's just that we do not justify such a transfer in those elements. So I'm assuming it's probably going to go back into consideration of admins and whatnot, but that's not what we're talking about here. We're talking about the agreed transfer and, you know, as will be agreed and brought to the plenary by the small team as well on the data workbook.

So I'm sorry, Hadia. I just don't agree with you on that. Now to go very quickly back to Margie's point, so Margie, again I disagree with you on that. Our mandate here is to say where there is an issue with the current way data isn't being processed within the DNS or within the system that is incompatible with that of the GDPR, we are to point out how we believe we can make that compatible so that we can continue on processing that data.

I'm not saying and we're not saying that we think that we should destroy the thick Whois policy. We're saying that in recommendation 2 it is clear that we are going to have an effect on this policy, specifically this policy, and that we're handing it off the GNSO to reopen it and have a look and see can they make a better job it. We are again, we're doing a sticking blocks here to ensure compliance.

I think you're probably overstating what we're trying to achieve here and overwhelmingly I'm looking at the comments from the people. They're saying that this makes sense. Yes, it's a big change but it is that which is necessary to enable us to move on. Also the - if the registrars - the registrars have been on the record several times already saying that if the registries can prove as to why they need it and they have a legal basis, then they probably won't have an issue with it.

We're just putting that into our recommendation saying if you do to have a problem with it -- and this is the EPDP team by the way that's saying this -- we're saying there is a justification for this transfer as a basic ICANN policy,

then the transfer may occur. And we're going to (unintelligible) into the process this justification, which should hopefully have an issue with the - or not have an issue with the registrar. And, you know, if the registrars do have an issue, well then that is a discussion between the parties, which we can have. I just - so I don't get your point on that either. I think this is something that is possibly quite necessary.

Kurt Pritz: Thanks. I think - all right. Everybody - I'll let Kavouss go and then I have a couple comments. Go ahead, Kavouss.

Kavouss Arasteh: Yes, hi. I raised a question. I asked what do you mean by in aggregate? In aggregate of what? The sentence (unintelligible) specifically identified data. Somebody should identify data in a specific matter but not all data. Is specifically or data which has been specified. That data (unintelligible) in aggregation. What does it mean in aggregation, altogether in one slot? What do you mean - why do we need the word in aggregation? What does it mean in aggregation? Thank you.

Kurt Pritz: I think the term aggregation means is that we have seven purposes, or eight if you count number one as two, for processing registration data and in many of those, or some of those, instances that those purposes require the transfer of some of those data elements to registries from the registrars. And what this recommendation is saying is saying take the data elements from each of those purposes that have to be transferred from registrar to registry, add them all up, aggregate them and that's the data set that will be transferred from registrar to registry. So that's - I think that's the aggregation step. I'll check to see if - and then...

Kavouss Arasteh: Okay. So I understood what you said but the recommendation does not say that. The recommendation does not say (unintelligible). You said whatever is in purpose one, purpose two, put them together in aggregation or (unintelligible) or submission. Send it from to the other. But this does not say that. The aggregation does not mean that aggregation coming from the

different purposes and so on and so forth. So we have to really clarify the method. We are not writing for ourselves. Thank you.

Kurt Pritz: Thanks. So let me make a couple points to help us maybe to get close or maybe recognize that we're not going to. So first to one of Margie's specific questions in the chat. I don't know if it was answered, but so URS is part of this and so if you were to look at the work the data elements team has done and, you know, that data to effectuate or carry out the obligation under URS requires the transfer of data from registrar to registry. So that is part of the data set that's being transferred currently.

So I, you know, I have three points to make to this. One is looking at the current state of that data table that essentially many of the data elements that are under thick Whois are currently being transferred to the registry, primarily for URS and maybe for other reasons too. So, you know, in the - you know, even in the worst case, in the short term anyway, the transfer of many of those data elements are continuing.

The second point is that we were looking at, you know, we're looking back at the work of the thick Whois policy team and the balancing they did in weighing the cost and benefits of thick Whois and it was a fairly careful balancing. And so what has to happen is that the balancing now needs to take place again with the introduction of GDPR and other privacy regimes that are occurring.

So I don't think, you know, I don't think we're the ones that are best suited or able to carry out that careful balancing. So that has to be done somewhere else. And we're telling the GNSO in our recommendation 22 that, you know, this needs to be done somewhere else and - because we're not - we weren't formed to do that balancing and haven't trained our self to be able to do that balancing.

So I really the removal of the reference to thick Whois in this recommendation and preserving recommendation 22 really serves the purpose of having that debate that the detailed analysis that Margie indicated, that's the best place for that to take place.

And the third thing that I understand that others can help me with here is my understanding of the RDAP implementation is going to cure the problem caused - the potential problem caused by, you know, the debate over thick Whois and how it's affected so that RDAP solves the same problem of having redundant databases in different places that thick Whois was meant to address.

So I think that one is in the short term we have data elements that are essentially the same. Two is, you know, we need the right body to carry out this debate and it's a debate that will take some time. And three is, you know, this is likely, all likely to be taken over by events of RDAP. You know, finally I think the way the, you know, I - my impression is the way the recommendation is rewritten really preserves our ability to do that better than the previous recommendation.

So sorry for that. Hadia, please go ahead.

Hadia Elminiawi: So this is an old hand but anyway I could go back and say quickly that I see using the term mean data set does not say what Alan just explained and is trying to say. I would suggest to omit it or maybe he could provide examples where such a term is used and would mean the aggregate data set. Thank you.

Woman: Kurt, are you on mute?

Kurt Pritz: Thanks, Hadia. Yes, I was on mute. So I was just going to say, to me minimum is kind of the right term because it establishes the baseline of data, so all this data in a minimum data set must be transferred. So I kind of thing

minimum is a better word but aggregate's fine for me too. That's up to you guys.

So I think Margie's next in the queue.

Margie Milam: Yes this is Margie. I don't think Alan's response really addressed the - my concern about the case-by-case nature of what the recommendation says. If the recommendation is that the GNSO needs to further examine this then I think this whole discussion and report doesn't have to go into the level of details that we'll suppose, and in particular the notion that it is up to the registrars as the data controller to decide whether the purpose is sufficient.

To me that's just, you know, not necessary, problematic and I think that that part in particular needs to be really thought out because I feel that it breaks the contractual nature of, you know, the way that the registration process, you know, works. And so I feel that we could have a recommendation that doesn't go into that level detail given the fact that the - we're saying that it needs to go back to the GNSO for further consideration.

Kurt Pritz: So again what I think this says is, you know, given all the data element work that we did that these data elements have to have to be transferred from registrar to registry and that others can be considered, which considers discussion on thick Whois.

Alan, please go ahead.

Alan Woods: Sorry. It took a while to get off mute. I'm not going to say much more on this because let's be honest. We were just providing the much needed debate opener on this one. I think Ayden has just suggested in the chat "aggregate minimum data set." Yes, if that works, that works. I'm just pointing out the fact and I've been very clear that, you know, the reason why we can't just say the minimum data set is because we're talking about the minimum data set

across all purposes, each one of which has its own minimum data set. So as long as that's taken care, fine.

I don't think Margie and myself are going to agree on this. I think - I personally think that Margie is missing the point as well but, you know, this necessary to meet compliance but if she wants to end up with us coming to a point where we're not compliant, that's whole other different conversation. I think this is an elephant in the room situation and to be perfectly honest it goes to the core of what we're trying to achieve here. It's just a shame we're doing it so close to the bone because we could have a suggestion on this and I think we could come to an agreement on this and I, you know, but this is what it is and we just need to deal with it.

Kurt Pritz: Marc, please go ahead. Good morning.

Marc Anderson: Good morning. Thanks for - it's Marc Anderson for the transcript. Yes, I think, you know, Alan's correct in that there's an elephant in the room around this one. There's probably a couple elephants in the room actually. You know. And one of them is that I don't think in ICANN's history there's been a situation where the work in one PDP conflicts with the work of a previous PDP.

There's not been a whole lot of PDPs. And so we're dealing with a situation that's a little bit uncharted territory. But of course, you know, just about everything for our group is uncharted territory. So I guess the - that's not new for us. But the fact that we have a PDP that, you know, is really conflicting with the work of previous PDPs and the elephant there is of course the thick Whois PDP.

Much of that work was in 2012 and 2013, far predating, you know, the current privacy and data protection landscape that we're forced - or faced with right now. And so we're having to react to that and figure out how best to proceed. The plain, you know, fact of the matter is our recommendations are, you

know, are not compatible with the recommendations of that previous thick Whois policy recommendation. There's no way to reconcile the two.

They're - you know, they conflict with each other. You know, that work, you know, Kurt, you mentioned the balancing act that was done. That balancing act did not encompass the GDPR. You know, there is that, you know, full disclosure I was on that working group and part of those discussions and, you know, it's - it was just simply not something we, you know, we felt we were equipped to deal with was consider privacy regulations and the, you know, the potential, you know, impacts they would have.

And that led to one of the recommendations coming out of that group that a legal analysis be done before the implementation of that policy, you know, recognizing that there were ramifications but we weren't equipped to deal with them in that PDP.

But like I said, you know, the elephant in the room here is, you know, is really that we have, you know, we have policy recommendations that are conflicting and we need to come up with a way to reconcile the two and move them forward. And I think, you know, we're taking a crack at trying to do this here as part of recommendation five and then, you know, again in recommendation 22. And so, you know, we're trying to recognize that and figure out how to proceed with that.

Kurt Pritz: Thanks, Marc. Margie, go ahead.

Margie Milam: I lost my train of thought. Yes I mean I think it's going to be hard to reach agreement on this one. Really I think the approach should be much more high level. I think that there's disagreement on what the data minimization requirement is. Oh, I remember what I was going to say.

And I think the thing about the language that's proposed it also says "provided there's a legal basis." Hasn't that been what we've been working on

the whole time? I mean we spent at the very beginning since Los Angeles identifying the legal basis.

And so to me it seems like all the work we've done is basically ignored and it just creates, the recommendation five creates a very, very uncertain situation because it doesn't, you know, there's no assurance that the data set will be transferred. You know, there's two caveats here, appropriate legal basis, which I thought we'd already addressed elsewhere, and data processing agreement in place, and again that's also addressed somewhere else. So that entire addition to me doesn't make sense and I would propose deleting that because it's already covered elsewhere.

Kurt Pritz: So one point Margie just raised is that in the recommended red line where it says, you know, provided an appropriate legal basis exists, is that - isn't that what was considered when we built this - when we built the data set when we went through all the purposes and the data mapping that we identified that an appropriate legal basis existed? And so I thought that might be already in place.

Marc, go ahead.

Marc Anderson: Thanks, Kurt. Yes I'm listening to what Margie said. I guess I'm taking away that there's an opportunity to be a little clearer in what we're trying to say. You know, and I'm trying to think through, you know, I guess let me take another stab at this. And I think this goes back a little - a lot I guess to the discussions we had in the Registry Stakeholder Group around purpose one that led to us splitting it out into 1A and 1B.

And, you know, Kurt, you were, you know, you mentioned, you know, we talked about, you know, what we've done in this group is, you know, focus primarily on defining, you know, what the processing activities are and identifying legal basis for those and, you know, that's really where we spent the bulk of our work.

But what we came to is that, you know, not all registries have a purpose for all the data that that we're talking about. And, you know, some of that data can reside solely at the registrar and, you know, the DNS and the, you know, the domain registration ecosystem can work fine and can function fine.

On the other hand, some registries have a need for that data, you know, for their use cases, for how they implement their contracts and how they operate their TLDs. Some registries need additional data at the registry level, and that requires a transfer of that data, you know, additional data from the registrar to the registry. And so what we've tried to come up with is a policy language and recommendations that is flexible enough to account for that.

And ultimately what we're trying to do is, you know, reconcile the fact that we have contracts that, you know, contracted parties feel don't enable them to comply with GDPR and we're trying to address that. And, you know, ultimately if we're requiring registrars to transfer personally identifiable information to a registry that doesn't need it and doesn't feel they have a legitimate purpose for processing that data, then we're going to be back where we started.

And so we're trying to address that through this language. If we didn't get there, if we weren't as clear as we need to be then, you know, let's look at how we can treat the language, but that's really the issue we're trying to solve for here.

Kurt Pritz: Thanks, Marc. Go ahead, Theo, and then I'll wrap this up.

Theo Geurts: Thanks, Kurt. And this is Theo for the record. So I agree with Marc here but I have a little bit of a somewhat bigger question. I mean we've been at this for months. It says right there in the text that the EPDP team has determined that there is not always a legitimate purpose so it is for me a one plus one situation which has a logical result that we need to address it.

And what I'm hearing now by certain participants is that we are basically invalidating our own work which we've been working for months on. I mean maybe I'm missing a couple of things here but it sounds like a little bit of surrealistic situation, so to speak, which I do not completely comprehend. Thanks.

Kurt Pritz: Thanks. So I think it's important for us in our recommendations to say that we've gone through the purposes we've identified for processing registration data and mapped out the different data flows and the legal basis for each of the processing steps. And in that work we've identified for those purposes that we have identified the sets that in order to comply with ICANN agreements or some other policies that - with ICANN agreements and other purposes that need to be transferred from the registrar to the registry. So that's what we have and I think it's really important that we say that somewhere in this report.

I think that, you know, the - so that's one point. The second point is I find Ayden's rewording more clear, more clear to the casual reader, which I think is really important, so I like that wording. But. So I - and I don't think we can do the analysis here that says that a thick Whois policy meets the, you know, has the required legal bases, and I think that's a, even as, you know, several people have said, that's a complex analysis. So.

I think, you know, where we are is, you know, sort of with Ayden's language as a starter and then, Margie, I don't know, you know, if you could take this back and think for a while, maybe there's - I want to preserve your arguments and sense of urgency about the clash between this and the thick Whois policy and how that can best resolved in what we say. So I don't know if I can kind of stick you and your colleagues with that sort of assignment to see if there's some wording.

You know, I think it's a place other than recommendation five, but I think that's what recommendation 22 is for and that's why we pended that out to the end. But either, you know, somewhere in this final report that we addressed this because, as Marc said, you know, it is an elephant in the room so we can't be silent on it. I don't know if you can take that on or not or we need to move on with some disagreement.

Marc, bring us home and then we've got a couple minutes to go.

Marc Anderson: Thanks, Kurt. Marc again. You know, following up on what you just said, I mean, you know, maybe recommendation 22 might be the place for that but, you know, I just want to reiterate, you know, we can't pretend we're not impacting, you know, thick Whois and that policy. You know, our recommendations, you know, are, you know, amount to a fundamental change to how registration data is processed.

And, you know, in our preliminary, you know, recommendation 22 language, you know, it's, you know, I'm quoting here from the Sunday draft I think. For example a number of the policies refer to the administrative and/or technical contact, which will no longer be required data elements.

You know, these are traditionally required as part of a thick registry and, you know, our recommendations are to remove the administrative contact and change, you know, or limit the amount of data that's required for the technical contact. You know, this is - it's a fundamental departure from what's been done in the past and, you know, we can't pretend that there aren't impacts to that.

Kurt Pritz: Thanks, Marc. Margie, bring us home.

Margie Milam: Well I don't know if I'll bring us home. I'm sorry. I'm not trying to be difficult here. But I really feel that, you know, if you think about what we've been doing, we've been, you know, working tirelessly to address the issue so we

are GDPR-compliant and I think that, you know, by eliminating the administrative contact, by redacting data. So a lot of the things that made perhaps thick Whois, you know, problematic before we got - before we started this process has been dealt with.

And so this is - I think that's why I'm having such difficulty with the recommendation itself because I don't think there's actually a legal argument for this and I feel that this is something we should pose to (Ruth) and have that inform the recommendation rather than say that oh it's too much, we can't do it, you know, because you have to look at the transfer and the data in light of, you know, the updated purposes and the, you know, and the notion that the, you know, the information isn't going to be freely available but it's going to be available on, you know, under purpose two once we flesh out the reasonable access and, you know, the step in phase two.

So it's a different analysis because we've refined the policy to address the GDPR issues. And so to me this is - goes far beyond our mandate of, you know, ensuring that we, you know, address the GDPR-related issues. And so my recommendation here is to pose the question to (Ruth) about this and if there is a legal basis, which in my view there is because we have the - we've already identified as a 61B, you know, the performance of contract, then it's not a GDPR issue anymore, it's addressed and we have purposes that we've identified.

So anyways, like I said, I think it's, you know, in order to be able to have a recommendation like this, I think we need to get the legal info from (Ruth) and if she tells us there's a problem with the thick Whois policy from a GDPR perspective, then that's a separate issue, you know. Then we have to come back and really, you know, take a hard look at this.

So, you know, perhaps that's a path forward is to ask for legal advice from (Ruth) and move it to phase two and then we can refine our recommendations in phase two, and maybe we can even pose the question

to the GNSO Council in our phase one report about, you know, what would be the process for potentially, you know, gutting the thick Whois policy if that, you know, is where the team decides to go.

Kurt Pritz: Okay. I'd ask you to help pose that question to (Ruth) because I think the benefits of thick Whois needs to be carefully crafted. I don't even - I don't think it's in the thick Whois final policy is that it's well stated so that she can make a decision. So I'll just close on this by saying I think it's important that we've identified which data elements are to be transferred from the registrar to the registry based on the purposes we have.

So we've identified that and we've identified, you know, we don't like the word minimum but those are the data elements that have to be transferred to the registry in order to comply with their existing contractual requirements, and so by minimum, that's the floor. And when you look at the tables you'll see, you know, with the exception of that admin and tech contact data, you know, that it's remarkably similar to thick. So I think our report has to say that.

You know, Margie, let's collaborate on what we might do during phase two to have the discussion analysis you discussed.

Marc is that an old hand or a new hand?

Marc Anderson: I'm sorry Kurt, I know you're trying to close this but it's a new hand. I just want to clarify, you say the data sets remarkably similar to Thick and I just want to clarify, I disagree with that. You know I don't think that we've identified a purpose for why contact data must be transferred to the registry in all cases. If you know and in purpose 1B to be clear we've identified that some registries need that data but not all registries.

So to be perfectly clear here, my interpretation of the work we've done so far is that the transfer of contact data, registrant contact data from the registrar to the registry is not a required processing activity.

Kurt Pritz: Thanks for that clarification.

I want to spend five minutes or so on the ICANN questions and there's a couple in particular I'd like to talk about.

This is the first one, let's see, right so in our last meeting we got some good clarification from (Dan) on this. And that is, and I'm just reminded that this is not scrollable because we need to look at. So this changes the agreements, the contract and party agreements for making RRA amendments. And the purpose of it is that, or the reason for it, I hate that word purpose. The reason for it is that while the registries are amending their RRA's to be GDPR compliant and so each registrar you know can be expected to receive 1200 amendment, you know amendments. And there's a lot of flying around. And then all of those amendments have to be approved by ICANN.

And so what ICANN was seeking here was to streamline that whole process for registries and registrars to amend their RRA's. And so I would like to hear from the contracted parties that this would be beneficial to put into our policy. It's a little bit too prescriptive maybe for a policy, nonetheless it's clear and I think helpful. So I'd be for including this or something remarkably similar to this for our policy work.

Kristina, hi.

Kristina Rosette: Hi, Kristina Rosette for the Registry Stakeholder Group. With the caveat that I will, I'm open to being corrected by my registry colleagues because we haven't had a chance to discuss this in any detail. I think the hesitation that I have in making it a policy recommendation is that if we do that it's much more difficult to change it if it turns out that there is some more efficient, more effective way to do this in the future.

I think that, I mean it's my understanding and I think (Dan) and (Trang) have a better sense of this that virtually all registries have gone through this process you know with regard to the temp spec changes. And obviously to the extent it's necessary to do so as a result of our recommendations. There's no reason why we couldn't use the process but I think we're better off having it as an implementation point rather than a specific policy recommendation. Thanks.

Kurt Pritz: Marc? Thanks Kristina.

Marc Anderson: Thanks Kurt and apologize for everybody who's getting sick of hearing my voice today. I agree with Kristina. I think this, I don't think this language is needed in our, you know consensus policy recommendations. This you know I think this is a fairly you know one time activity to address sort of the urgency of the, you know the GDPR effective date in May. You know I don't think we want to carry this forward and you know I don't think it's anything that needs to be in our policy recommendations. So I agree with Kristina.

Kurt Pritz: Should it be at or you know, being part of the temp spec it was sort of in your agreement. Is there are some changes that need to be made to the agreements specifically because the temp spec is going away? Should we make a general recommendation that the policy should include a predictable and transparent process for RRA amendments to comply with GDPR? So I think your comment, Kristina's comment was spot on. And so I'm wondering what we should do. Is this all about (unintelligible) so we don't have to do anything? Marc, Kristina or anybody?

((Crosstalk))

Marc Anderson: Kurt thanks. So there is an existing policy. Or there is an existing mechanism for changing RRA amendments. You know this was you know this was intended to you know to be you know a one-time mechanism for streamlining that process. You know that's been done. Everybody that was going to take

advantage of that streamline process has taken advantage of that streamline process. There isn't you know a new problem or a new deadline that we're trying to address or solve.

You know I think there's no need for this to have a life beyond you know beyond what its existence in the temporary specification. It accomplished its purpose, it's done, that purpose no longer exists.

Kurt Pritz: Okay so we have some agreement in the chat that we can have a general policy but we also have Marc's intervention that you know one year is for this. And when the temp spec sunsets this can sunset with it.

I'm going to ask (Marico) to circulate language on the general proposal but you know I think we need to be completely open that this was an aspect of the temp spec that had a one year lifetime and it's over. And then we can agree or disagree on email.

Can we go down to the next section? So this is a notice that registrars should present to registered name holders regarding data processing. And I think the status of this one was that we thought while this largely copied language out of GDPR, we thought this language was too prescriptive. Again, from, I think this is primarily a contracted party issue but from anyone, is there a recommendation how to modify or adopt this one? Go ahead Theo.

Theo Geurts: Thanks Kurt and I'm doing this on the fly and from a recollection a long, long time ago. But I thought we, as a registrar, the group said this was indeed two perspectives and we shouldn't be doing this because the basic lowdown on this was because this is already specified by the GDPR in a much better fashion. And that also includes the fact that this is very specific towards a registrar where the data collectors could also be resellers.

And so my recollection is that we sort of went like let's just stick with the GDPR which is sort of policy technology neutral and deals with it in a better

fashion. But I'll let my registrar or registry colleagues correct me on the spot and kick me under the table here. Thanks.

Kurt Pritz: Okay thanks Theo. Go ahead Margie.

Margie Milam: I believe the other parts, and I can't remember which, where we talk about providing proper notices to the registrar. Maybe it's related to the consent discussion. So I think that this is something that we work with, we work through in implementation. It's - this is probably too specific and it's not to say that some of this wouldn't be covered. But I feel like it's not necessary that we do it here. It's just something that you know perhaps gets dealt with you know along with the other informed consent concepts that we talked about in our recommendations.

Kurt Pritz: Thanks Margie that sounds right. Was (Alan) or Marc in the queue? Marc go ahead.

Marc Anderson: Thanks Kurt, I lowered by hand because essentially I agreed with what Theo said. You know this is you know we don't need policy language that duplicates you know legal obligations. And you know this is overly you know this is overly prescriptive you know and it doesn't apply to all registrations, just where that registration is subject to GDPR. So it's you know it's you know overly prescriptive and really redundant with you know what our, you know legal obligations. So I don't see this as being a needed policy recommended or you know recommendation language.

Kurt Pritz: Right, so I'm sensing we're going to leave this on the cutting room floor. Can we go onto the bulk transfer which is at the backend? So as I recall and again I defer to (Dan) but the data that was being transferred from many registries to ICANN consisted of included personal data. And even with the event of GDPR evidently some registries are still doing that. And so as I recall (Dan)'s intervention you know this, in this sort of detail needed to be made clear to registry operators.

I'm wondering, I don't know if this rises up to a recommendation level or maybe it's one of those action things where we're going to send an action I think to the RPM team or something like that. So is this an action we could just ask ICANN to take to notify registries? Or is this a contract amendment that should be put in the next rounds of the registry agreements? What's the best way to handle this part of the temporary specification? Marc is that a former hand?

Marc Anderson: It's a new hand Kurt. And apologies, you all must really be getting sick of my voice at this point. But you know I think you know you make a good point here. You know this, you know this language in the temp spec I think was good but you know it's really you know it's really a band-aid for something that would be better addressed as part of a contract amendment. I really you know it's, you know I guess I you know I wonder what (Dan)'s thoughts on this one you know is there, you know does ICANN think maybe we need you know we need language in the policy recommendations to maybe bridge the gap until contract amendments could be done. If we have a bridging mechanism in our policy recommendations, would that be enough until we can get contract language updated.

You know I, you know Kurt I think you made a real good point there that this is really something best left to ICANN and contracted parties to work out. But would love to get (Dan)'s thoughts on this one.

Kurt Pritz: And (Dan) raises his hand, hi (Dan).

Daniel Halloran: Hello Kurt can you hear me?

Kurt Pritz: Yes I can, thanks.

Daniel Halloran: Thanks. I think the, I agree that this is a sort of in the weeds thing and maybe a little more detailed than usually shows up in a you know a (unintelligible)

policy recommendation. But today the registry agreement says registry operators may send a full (escrow) deposit with all the contact details and that's a permitted (setting). Like operators can almost say they have the right to send a full deposit and it's going to be work for them. It has been working to instead of sending a full (escrow) deposit with all the contact detail, now they have to strip it down and just send technical data. It's definitely something that ICANN wants. We don't want the full (escrow) deposit that would you know create implication for GDPR that would analyze again.

But for the past year that's been patched with the temp spec and so I think it really is important for the team to decide what should the rule be the day the temp spec disappears and are registry operators allowed to go back to sending a full deposit in which case we're going to have to do some thinking on that. Or can this provision be continued and you know take away this provision that says registry operators may send us in and let's stick with what it says in the temp spec which is they must only send the same data. Thanks.

(Crosstalk)

Kurt Pritz: Yes please do.

Marc Anderson: Thanks this is Marc again. Thanks (Dan) that was helpful. Yes and I think you make a good point because if you know if you know if registry starts sending you the Thick data then you know then this is a processing activity that we have to take account for in our you know in our work. If they're not sending Thick data as part of this which the temp spec specifies, then you know then it's a processing activity we don't have to account for I guess as far as you know our GDPR compliance efforts.

So I think you make a fair point here. You know I think there's probably you know I don't know maybe (Dan) and I, maybe we can just take this offline maybe. You know I'd be willing to work with (Dan) and maybe propose you know language that accomplishes what we're trying to do.

Kurt Pritz: That would be great, so let's do that. So on this issue we have on the very first issue we discussed which I already forgot. (Marico) has created a more generalized policy recommendation that's been beat up a little bit and on this one you know (Marico) we could come up with another generalized recommendation and have that in our back pocket. But have (Dan) and Marc work offline for a solution to this that would be great.

Alright I just want to, I'll talk about recommendation, the recommendation having to do with reasonable access. So again I thought we made some great progress in the last meeting. We have a suggested amendment from (unintelligible) so, and I think (Aiden)'s responded to that but if others could respond too we'll try to get some closure on that before tomorrow's meeting. So we can close that off, I'm really hopeful about that because you know I think we've come farther than I had hoped and that's a significant recommendation for us to get us through to our future work.

And then I just, just to close on the first, the first topic of our discussion today and the transfer of data from registrar to registry, I want to try to make it clear where we go from here. So I think that one we should reword the recommendation along the lines of what (Aiden) recommended because I think that makes it clearer to the casual reader that we're not talking about the minimum possible set but really an aggregated set of data across all purposes. That should be - that's to be transferred. So that's the first. So I want to have that queued up for inclusion in the report.

Two is, and I'd ask Margie and whoever else wants to help, help me with framing up a legal question that we'll put through the legal committee. For (Ruth) on Thick WHOIS and then language for our final report that identifies Thick WHOIS as a big issue and not using those words of course. And stating that you know this analysis has to take place and you know Margie and others it's kind of up to you to what extent you want to try to resolve this in phase two which I think might be good because we've got an RDAP

discussion going on in there and also the access model. And to what extent this needs to be formed out to others. So I'm fine with either conclusion.

So I think those are the two steps. One is to recognize the work that we've done in the data elements analysis that we have done you know since, been working on since LA and even before then. And saying okay we've identified you know just not what data's transferred from registrar to registry but all the data transfers that occur. This is just one part of that. So I think that has to be memorialized in our report.

But also recognize the clash and how we're going to best address that in our future analysis. And again you know Margie was the lead on this so you know to the extent I'd appreciate your help.

So that's all I have. We're losing the registries although I'll guarantee to you that GDPR won't be discussed in the registry call until you get there. Staff do you have some wrap-up things?

Marika Konings: Sure Kurt, this is (Monica). So I have a couple of action items that I noted. First action item for (unintelligible) circulate the set of legal questions that have been sent to (unintelligible) for the EPDP team's information. Action item two, request or to respond to the questions posed by the registry stakeholder group information to recommendation number 13 as well as questions in relation to compliant input on (rec six) and (rec seven) as soon as possible. And action item for the registrar team is encouraged to review the (BC) input recommendation and number nine the (org) and who provides feedback on the remaining list.

The next action item is for the staff support team to update recommendation number five in line with the added step suggested by (Aiden) during the meeting. And for the EPDP team to further review and consider this issue rec five and put forward proposed language for the final of the forward (directory) in today's discussion. And knowing that this could also be in relation to a

recommendation at 22. And for the leadership to work with the legal committee on a possible question in relation to (unintelligible).

Another action item is for staff support team to circulate proposed language to address process for amendments to registry and registrar agreements. And then next action item is for the registry reps to work with ICANN (org) on a proposed path forward in relation to bulk registration data access to ICANN.

And then the last action item is for the EPDP team to continue discussion on the (unintelligible) in relation to recommendation number 12 and for you who have come into agreement at the latest by tomorrow's meeting.

And that's all I had.

Kurt Pritz: Quite a bit. Thanks for attending this extraordinary session of the EPDP. I'll talk to you guys again tomorrow, thanks very much for participating and have a great day.

Woman: Thank you everyone. 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