

**ICANN
Transcription
GNSO Temp Spec gTLD RD EPDP
Tuesday, 07 August 2018 at 13:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-07aug18-en.mp3>

Adobe Connect recording: <https://participate.icann.org/p5xqvtfsh7/>

Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/kgtpBQ>

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

Coordinator: Excuse me, recording has started. You may now proceed.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the second GNSO EPDP Team meeting taking place on August the 7th, 2018 at 1300 UTC scheduled for two hours.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the audio bridge could you please let yourself be known now? Hearing no one, we show listed apologies from Farzaneh Badii, from NCSG; Georgia Tselentsis from GAC; and Thomas Rickert from the ISPCP. They formally assigned the alternates of Colin Kurre and Chris Lewis-Evans.

During this period, the members - the members' alternates will have read-only rights and no access to conference calls. Their alternates will have posting rights and access to conference calls until the members return. As a reminder, the alternate assignment must be formalized by the way of the Google Assignment Form link available in the agenda pod.

All documents and information can be found on the EPDP wiki space and there is an audio cast for nonmembers to follow the call. Please remember to

state your name before speaking and recordings will be circulated on the mailing list and posted on the public wiki space shortly after the call's end. Thank you very much and I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks very much and thanks to everybody for attending and being here for the on-time start. There's quite a lot to do. I just want to touch on a few administrative things before we get into the substance. First is a possible face to face meeting, so it's not confirmed yet but the most favorable dates for us would be September 24-28, that's a Monday through Wednesday, so the meeting would either be three days or 2.5 days.

And most likely to be located in Los Angeles because it is a short lead time notice for the Meetings Team and Los Angeles is the only one of the ICANN facilities that has sufficient space to house a group this big and also have room for breakout sessions and the like, so that's where we are. We are not able to confirm that so don't make travel arrangements yet but we're working towards that so in 2H pencil on your calendar mark those dates.

The second thing I wanted to mention is that requests for early information that we described in the last meeting were sent out to the leaders of each supporting organization and advisory committee and their sub-constituencies and stakeholder groups.

And as we discussed last thing, this early input is sort of redundant with the survey we're doing and the work that this group is doing in that we have just about everybody in the ICANN community represented so my advice is that the early input is not a last bite at the apple in any sense and that, you know, take advantage of providing any writing you want, but you're providing similar writings in this survey and by participating here. We're merely complying with the GNSO PDP process requirements.

Finally, in the last meeting we talked about the vice chair position. And emails from Alan Greenberg and others sort of opened a door, a path for us for resolving any issues with Rafik Dammak being named the vice chair and the chair of the GNSO Council has chimed in and agreed to help resolve issues with reporting conflict so I'm going to take one more meeting cycle, which is two days to put those - put those agreements in writing so everybody can see them and agree that Rafik would be suitable as chair. So - and resolve the remaining issues associated with that.

That's the administrative part of the meeting. Does anybody have any questions or comments?

Milton Mueller: My audio is working.

Kurt Pritz: See, this group is really moving along, Milton, we're improving all the time. Ashley - oh, Alan.

Alan Greenberg: Thank you. Just one other point, and I'm not sure what the right venue is to bring it up. We've got one alternate who has bad connectivity and I'd like to try to arrange dial-out capabilities for him on the audio channel or something, because otherwise his Internet connectivity is not sufficient to actually maintain the audio stream at times. So if we can talk offline on it and just discuss how we can perhaps try to fix that.

Kurt Pritz: Okay. And the alternate can listen to the audio stream because of the poor connectivity?

Alan Greenberg: That's correct.

Kurt Pritz: All right. So I think that can be accommodated so that's - that's fine with me.

Alan Greenberg: Thank you.

Kurt Pritz: Yes. Ashley, I was told you had your hand raised, did you?

Ashley Heineman: Yes, it was raised but my question was answered in the chat. Thank you.

Kurt Pritz: Okay, terrific. Thanks. Okay, so let's get into the substance of the matter and that is the initial feedback everybody's given on the first part of the survey. So first let me - I don't know, congratulate is kind of condescending, but thank you very much for the thought and consideration that went into your responses. I found the rationale to be in nearly all cases very helpful and will be a good tool to carry the conversation forward, so the work you did here will only apply to this triage stage, but will be very helpful later on.

So from about three o'clock yesterday afternoon until sometime last night, the ICANN (unintelligible) and to a certain extent me - and to a certain extent me and besides the task of collating all the data, we discussed how we could best display this information in a way that we could run this meeting in an efficient way and make things and issues very clear to you.

So we labored at that. I think we probably failed but so the meeting will be a little bit awkward because there's just so much information and little tiny screen so - and I don't have a couple screens up in front of me like I should. And if you don't, my advice is to, you know, have a print out of the temporary specification in one hand and there's the slides that will point out issues but what's really helpful too is if you can look at the spreadsheet that is the collation of all the comments and then sort of a summary - a summary comment to those because that is what we're going to - that's what we're going to discuss.

So that spreadsheet that was sent around last night is really the gist of our discussion today. That's - there's parts of that that are summarized at a high level in these slides and then from time to time you're going to want to point to the temporary specification. So I know that's a little bit tricky. Any suggestions you have going forward for how to run this discussion would be

greatly appreciated, so to the extent you can, bear with us and contribute and any ideas you have would be very welcome.

So I came away with six takeaways from this first exercise. First, as those of you who've looked at the slides and the information can tell, there's not consensus for supporting most of the sections of the temporary specification. I think there's - I think the rationale and reasoning provided in the comments provide a path for discussion but, you know, it's pretty clear right now there's that - there's not that consensus in most places; there's a lack of consensus in most places, if I said that the right way.

But I think the rationale you provided did point a way forward for us. And, you know, I'm embarrassed to say I can now quote the section numbers of the temporary specification without looking them up. But we seem to say leadership team's focus on these legitimate purposes for the use and disclosure of registration data, those 13 items that are listed, 4.4.1 through 4.4.13. Let's look at those first and then that'll help us in the discussion that, you know, what I call is the rationale, you know, that describes ICANN's role in this and the importance of this to Internet stability, while minimizing risk to the participants in this discussion. So those sections are 4.1, 4.2, 4.3 and 4.5.

And I think what I took away from the rationale is that if we solve the case of those legitimate purposes section first then a lot of the rationale issues fall away. And maybe, you know, to me I don't know, you know, maybe we don't even need the rationale, we just need the specification itself. And so this rationale will also provide a basis for after we're done with this triage to kick off the discussion.

And so the third takeaway was given the lack of consensus I think we should get over this triage section right away. I think I had a fond dream that there would be some minor differences on some points and we'd, you know, we'd discuss them, find a resolution so we tick another box where there's consensus but given - I don't think that's possible so I think it's important for

us to make a triage report to the GNSO and then get into the heavy lifting work right away.

So I think the, you know, as far as the triage report will go, you know, I think you guys are writing it so the writing you've done in this survey will you know, you can go back and amend it if you want but it's going to form the basis of the triage report to the GNSO Council. And so to me what's left then is to - for us to create some summary of the issues, so sort of a bridge, so here's the high level, you know, report on, you know, who's for sections and who is against sections, that one page colored page, and then all the detail that you've provided.

So what staff and I have done overnight is taken a first whack at creating sort of a description of, you know, a - sort of a winnowing down of the issue in each case that is intended to be neutral as I said in my email. So the purpose of this meeting is really going to be that, to discuss that - how do we describe the issue on each section for the GNSO Council and finish off this triage report and then get back to work?

And finally, you know, as we said in the last meeting, the schedule that we created was very ambitious and probably over-ambitious. And the amount of work that you put into this first go-around proved the point that so we're amending the schedule somewhat. So and, you know, of course I've read everybody's emails, although I miss them from time to time so if I don't respond to your email find some other way to reach me.

But so the next section will be due on Friday rather than Wednesday. But we still want to hold the final date of August 19 because we want to get this triage section over with. But the last section is very brief so we think that'll be okay. So those are my six realizations from the exercise. I think you know, I'm going to go through one more slide and then I'll pause for comments.

So here's the - my suggested path forward. So this triage was intended to be an abbreviated process that just indicates the degree of consensus on the separate sections of the temporary specification. And as we said, the initial indications at the consensus is low. But we don't want that fact to delay the triage report which will in turn delay the initial report that we have to do. So for the triage we intend to deliver the summary of responses, that should be responses, indicating the level of support of each group so that's in the slide deck and in the spreadsheet that you received.

Then we'll deliver each of the comments that's in the matrix so we'll put them in better form and then we want to have some issue summarization, some bridge between, you know, the summary of responses and the detail and the issue and that's I think that would be a good purpose for our meeting today. So we'll spend this meeting and the next couple meetings sharing comments, points of view on the various sections. And you know, hopefully is a really bad strategy, but, you know, I've suggested some neutral wording that certainly need to be wordsmithed because it was done kind of late that sort of describes the issue in each case.

And then that's - so that's what I think the triage report is going to be for us, those three things. And in our initial schedule we had allotted two weeks to put together the triage report. I hope if the last section is due on August 19, you know, we could finish as early as about 2.5 weeks from now. So I'm going to pause there and see if there's any questions or comments with that plan. So that's a really bad sign. Okay, so...

Kavouss Arasteh: Do you see my name on the Adobe?

Kurt Pritz: Kavouss, is that you?

((Crosstalk))

Kavouss Arasteh: Yes, I put my name, I raised my hand about some five minutes ago.

Kurt Pritz: I am so sorry, id on see it. But go ahead please.

Kavouss Arasteh: Yes, first of all the list of the attendants is not actually represented, I only see two persons, Kavouss Arasteh and Christopher Wilkinson, two only. And I don't see any slides on the page. And I think that you do not see my hand raised five minutes ago. So no problem. You said about the next meeting, are you talking of next meeting which was planned for Thursday, now it is Friday? Could you please confirm that? And then...

Kurt Pritz: Yes.

Kavouss Arasteh: ...the second question is that - yes, is Friday, right?

Kurt Pritz: No, keep going. What's your second question?

Kavouss Arasteh: So what is our next meeting - third meeting, on Thursday 9, or Friday 10?
Thank you.

Kurt Pritz: Thank you, Kavouss. And I don't see you in the room. I think you're on audio only so maybe - yes, if you're with Christopher Wilkinson you're probably in the wrong room. Can you send the link to Kavouss?

((Crosstalk))

Kurt Pritz: So in answer to your question - yes, so in answer to your question, the next meeting is Thursday, as scheduled at 1300 UTC. The date for the submission of the next round in the survey will be due Friday at the close of, you know, end of the day.

Kavouss Arasteh: Yes, thank you very much. That is really helpful because in the GAC small team we spent two hours and 40 minutes to coordinate our views in order to send you something which is already coordinating among the GAC members.

So we try to do the same thing but it takes a lot of time so thank you very much for keeping to Friday so give us a little bit more time. But please kindly consider that, I have not yet agreed with two times per week after 21st of August.

The schedule is just 21st of August. After that I have not yet confirmed that because it is too much, is really too much and is a lot of work. We have to put all our time for this EPDP, we have many other ICANN obligations, so we have to miss everything for that. So please kindly reconsider to come back to the schedule of the meeting after 21st of August. Thank you. And please show the list of participants, I don't see anyone except Christopher, yes and no more. That's all and then the slides is not shown on the screen, so please kindly tell the people to update the Adobe room. Thank you.

Kurt Pritz: Yes, Kavouss, would you please check your email and look for a link there and find the Adobe room where we're all hiding from you. And thanks for your comment and thanks for the - I've got to say this, thanks for the time the GAC members spend on the report. And, you know, I thought it was excellent, so I appreciate what was done.

All right so here's the summary of responses. I think so if - I don't have much to say about this. You know, reading the comments the RySG is read primarily because they thought some sort of reset was in order given the recent letters we received from the EDPD, is that how you say that? And so they didn't disagree with - on a point by point basis, but thought a reset was in order.

I've got to say to that, you know, in certain cases where only one party was against the - a certain topic I found that argument really persuasive, so, you know, it points up the need for our discussion and consensus building. But there's the chart and it's in your spreadsheet and also in your slide deck.

So here's what I'm thinking, and this - for those of you who have seen this slide before, who've opened them up, might have divined some inkling, but we - members of the ICANN support staff and I - read through each of the comments and then for each of the questions we tried to divine and - in an objective way what people were focused on or what the next step should be.

And admittedly this whole, you know, this was done in about three hours' time, this writing, so there's some holes in it. But I offer it for our consideration. So I don't know exactly how to go about this but here's my idea. So instead of taking it section by section, instead of taking it section by section, I sort of grouped them in groups of three or four because if we talked about each question we would be at this for, you know, through the Barcelona meeting.

So what I want to do is let you, you know, I hope you have our temporary specification out and you're looking at the spreadsheet with all the comments, and, you know, read the issue summary and then we want to kind of say this is what - this is what I want to stick on the front of your comments as the triage document. And it'll be a little bit better put, but this would be essentially it. And like I said, there might be mistakes in here.

So what I'd like to do is take them three or four at a time, in this case three, for, you know, Section 1, 2 and 3 of the temporary spec and this is how I've characterized the issue. So, you know, for example, the first one the clause that says, you know, if there's a conflict between the temporary spec and other portions of the agreement, the temporary spec will prevail and then it goes onto say, "Unless ICANN determines in its reasonable discretion that this temporary specification shall not control," is problematic. So many found that clause to be problematic.

And then, you know, the other realization we came to was that we didn't understand why that clause was there. You know, is it because there wasn't time to read through the contract carefully and discover if there were conflicts

or is it there because - is it there because there might be some eventuality where there's a development in the GDPR or how it's enforced that would change things? So I don't know.

So here's what I'd like to do, so that was the issue with Section 1 and Section 2, you know, there's a definition of the interim model and hopefully we won't have an interim model soon so maybe that should go away and the definition of registration data could be punched up a bit it was thought.

And then on the policy effective date, if we're working on the regular specification, then that's going to go away but that's not a big issue. So what I want to do is let you look at this for a minute and then we'll go around the virtual room as we decided we would and see if anybody has any comments on these. And let me say that, you know, given that we're all looking at this with five minutes' notice, we'll also use the time say between now and the next meeting or even the meeting after that to allow people to raise issues with how these summaries are written so this isn't your last bite at the apple, but I think this is the best use of our time.

So I'm going to call on James and then we'll see if he has a process comment or a substantive comment and then, you know, I'd like to hear from at least one person in each - well, yes, one person in each group. So, James, if you want to go - if you want to go ahead, go ahead.

James Bladel: Thanks, Kurt. James speaking for the record. And hopefully you can hear me. Just wanted to give your voice a break there for a minute. So I have a substantive question but I think it's an easy one in Section 3, one of my comments, and I think it was included with the Registrar comments is that the effective date of the temporary spec is the 25th of May but it was adopted by the Board on the 17th, and I would hope that in a perfect world those eight days won't make a difference. But I would just like some clarity from ICANN staff that the 25th is in fact the expiry date for the temporary spec and not the 17th of 2019. Thanks.

Kurt Pritz: Yes, so good news is we're blessed with the presence of Dan Halloran who's going to be our liaison from the ICANN Legal staff and Trang Nguyen from GDD is going to be our liaison from - well liaison from GDD. So thanks for the break. And, Dan, if you could take that on board and come back to us with an email that'd be terrific.

((Crosstalk))

Kurt Pritz: Thanks, Dan. Stephanie.

Stephanie Perrin: Thanks. Stephanie Perrin for the record. Just going back to the previous section on the matter of ICANN amending the spec, so that would be Section 1.1, there is a question about (unintelligible) in there, you know, does that mean unless the Board in its wisdom decides? And I realize there's detail in the temporary spec about changing it to a court decision, advice from data protection authorities and so on. But the precise process for that, you know, does it have to go through a GNSO process, etcetera, is unclear. So I think that'd be useful. Thank you.

Kurt Pritz: Thanks for that. And I don't know if this was exactly what you're saying or not, but in addition to that, you know, the first 90 days is about up and we might be seeing an amendment to the temporary spec. Does anybody - are people generally - these are the simplest of the issues, you know, we're starting with them, but I can call on people or you know, if anybody from the BC or IPC or ISPs or Registries want to speak on this? James.

James Bladel: Yes, thanks. Just to Stephanie's point about any amendments at the 90-day intervals, I think we should - because this group is underway and we're addressing this temporary spec directly, I think it would be wise for us to ask and to receive some assurances that if the Board were making amendments or considering any amendments to the temporary spec that we would be aware of that in advance.

Kurt Pritz: So I think that's a good point. And I think from a process perspective, Marika, I think we'll just capture these questions and then send them onto ICANN. I'd rather capture them in writing and then send them rather than just hand them off to Dan or Trang without some sort of writing so if we can capture that and make that part of our actions that'd be good.

Kavouss, you're in the room.

Kavouss Arasteh: Yes, I have a general comment about the GDPR. What we reply now is the existing or present or current GDPR. Any changes in future we do not engage in any future changes without having the possibility to comment. So it should not be taken for granted that every - or any comment we made covers the future changes of the GDPR. This is one point.

And the other point, which is major point at we discussed in our group is that GDPR is not the only data protection system or measures or whatever you want. There are others as well; we don't want to go to unlimited but at least one thing is important is the national data protection legislation of the country. We do not want that - that will be subordinated by the GDPR. We respect GDPR, and we do our best to align ourself with the GDPR. In fact, 10 days ago in our country we have now drafted the national data protection and now it is in the parliament, is based on the GDPR existing one, with some changes. But we do not want that our national legislation data protection system be subordinated by the GDPR. That is very important for us. Thank you.

Kurt Pritz: Yes, and I think that was in the gist of the statement that Ashley sent on that, you know, our work has to be cognizant of other privacy measures that are going on. Milton.

Milton Mueller: Yes, I just want to make a comment a about this clause, "unless ICANN determine at its reasonable discretion," it's true we don't know why ICANN

put that in there, and I guess we should hear that. But as I read the comments it sounds like we actually do have consensus on that, that nobody likes that clause. Am I incorrect? And if that's the case, and we could chalk that up as something that we have consensus on, which probably will make you happy, Kurt, could we not?

Kurt Pritz: No, you can't make me happy. Yes, so I think so. And I think we're at consensus but I think there's - I think some people didn't comment on it. So, you know, when we get to the discussion on the initial report this is going to be the very first issue discussed and, you know, the pin we'll put in the wall is that this would come out in the next version of this specification. So thanks for that, Milton, excellent. Margie.

Margie Milam: Hi, Kurt. This is Margie. Can you guys hear me okay?

Kurt Pritz: Perfect.

Margie Milam: Okay, great. On Section 3, the policy effective date, I just wanted to flag that - and you'll see it in some of the BC comments, that when we talk about when something needs to be done in the temporary spec, it's say, whatever, six months or whatever the date is from the temporary spec, but as we work on the new policy we have to keep in mind that whatever that effective date might be a date in the future or if we're agreeing that it's May 25, then my issue doesn't really arise. But I'm just cognizant that we don't want to keep adding onto the period for implementation on some of the things in the temporary spec, just because the date of the effectiveness moves from the 25th of May to some date in the future. So it's just kind of a general comment as we look through the rest of the things in the temporary spec.

Kurt Pritz: So I think I understand. Are you suggesting that the May 25 expiration might move out?

Margie Milam: No, I'm merely saying that in the temporary spec there's timelines, right, so it might say, you know, in 25 days or 30 days or 90 days, whatever the time period is. We have to pay attention to when that period starts so is it, you know...

Kurt Pritz: I see.

Margie Milam: ...six months from May 25 or is it six months from the date that this new policy gets adopted? As you can see, if the new policy gets adopted a year from now, it's now extended the implementation a year and a half. And so that's what I just want to make sure that we're not doing, that the implementation timelines are, you know, we're paying attention to that as we work through all the issues in the temporary spec.

Kurt Pritz: All right. Thank you, so noted. All right so I'm going to, you know, we've captured, you know, the need for the precise expiration date here and the questions we have, and I'll punch up the problematic laws and say that in fact we think there's consensus that this clause will go in the next round. And somehow we, Marika and team, we have to capture comments like Margie's so we have some sort of log of things to pay attention to.

So let's - so let's go onto the next part which is a bit harder. And this is the sections in 4, and 4.1, 4.2 and 4.3 to me are the rationale for undertaking the temporary specification and laying the groundwork for the scope of the temporary specification. And then in Section 4.4 we start to lay out the lawful - the lawful purposes of processing gTLD registration data themselves.

So what I got from Sections 4.1, 4.2 and even 4.3, there's quite a bit of difference in opinion regarding the authority granted to ICANN through the bylaws, even the bylaws themselves were questioned in some circumstances. And let's see, some point out - but then importantly in these two sections it was pointed out that, you know, it's best to go ahead with the discussion on the uses of - uses and disclosure of registration data itself

that's in the Sections 4.4 and on rather than debate the rationale that's in the temporary specifications.

And once we have a consensus on the appropriate uses and times of disclosure of registration data then it would be easier to go back and address the claims made in the rationale. You know, for me, so I can't help myself here, but, you know, the temporary specification to a certain extent is the thing you stick on the back of your contract that tells you what to do, and so once it's enforced, once the Board's approved it, you know, we don't really need this rationale. But in the specification but it should be captured somewhere.

So let's talk about just 4.1, 4.2 and 4.3, these sections that have to do with ICANN finding in its bylaws and narrow remit the authority past the temporary specification. And, you know, again, to a certain extent it's moot because here it is, the temporary specification is passed. And secondly, the idea that I say here that we want to let this go until we discuss these other sections first, so my proposal in this light blue and green box is that these are the issue summary so, James, can you go first?

James Bladel: Yes, thanks, Kurt. James speaking for the record. And first off I should just caution that I'm not trying to derail our work but I have a question because I know that these are very turbulent waters that we're wading into. And so my question is before we, you know, go into these areas, should we first identify or at least discuss which determinations of lawfulness and legitimacy we can determine on our own or which may be determined for us externally like for example with pending court cases and such?

And I'm only saying this because I think that there's a concern that we may be making some of these findings internally that might not be consistent with what's, you know, with what's happening out in the real world and I want to make sure that we're in sync before we invest a lot of work and sunk costs

into that. So I just - I want to put that out there, do we have an agreed upon approach to how we find whether or not something is lawful?

Kurt Pritz: So my answer would be no, we don't have an agreed upon approach. What I'm - and I think you're right and I think we need to do that because we want to put each one of those uses through some sort of sausage grinder and process them all the same way and make sure the right considerations are given to each, what are our opinions, what are the outside influences, what authority exists so far, those sorts of things. So at this stage, what I want to do is just capture that there's lack of consensus on the temporary specifications and the reason - and to summarize the reasons for - that have been cited for that lack of consensus and ship that off to the GNSO and have that be our triage statement.

So I think, you know, the best answer I have for you in parallel with that anybody is welcome to suggest the sort of process you describe. So that when we get into the substantive discussion, you know, 2.5 weeks from now, we'll have that process ready. And it was my intent to create that, but, you know, I might be the least well equipped of the group to do that. Is that - I just want to follow up with James to see if that was responsive.

James Bladel: Yes, Kurt. Thanks for the response. I think it's the best we can hope for at this point.

Kurt Pritz: Milton.

Milton Mueller: Yes, I'm also following up and building on James's comment, however I'm not sure whether you would agree with it entirely, Kurt. So when James says, you know, ultimately the arbiter of what is a legitimate purpose for access to the data is going to be determined by the law, by case law and by applications of the law. And that's why I think we have to deal with the rationale in Sections 4.1 and 4.2 and the other stuff really shouldn't be talking about at all; that's going to be decided by the courts and the law and not by ICANN.

And so what we really objected to, NCSG, in the rationale was that ICANN was defining as part of its purpose the facilitation and support for all kinds of third party interests and they've already been told that they're not supposed to do this by the data protection authorities. So, you know, even though in the more detailed sections, 4.4, we indicate our support for certain kinds of access to the data. You know, I think our filter is based on the idea is what is actually ICANN's purpose in collecting this data and that relates very narrowly to its role in coordinating and maintaining the security and stability of the DNS itself, not these third party interests.

Now I think there's a lot of confusion about this by some people in the middle who think, you know, if we say that supporting let's say security researchers is not part of ICANN's mission or purpose, and they think that security researchers will (unintelligible) access to that data, that may or may not be true. The access will be determined ultimately by what is legal. So, for example, if law enforcement demands access to certain kinds of data, it really doesn't matter what ICANN's purpose is, the registrar will have to turn it over to them legally and the courts will decide what's a legitimate purpose, not ICANN.

All if ICANN's discussion, purpose in other words, in our view should relate to ICANN's own purposes, ICANN's own mission determining what it collect and what it displays and then people who want to go beyond that are simply dealing with a legal question in their jurisdiction. Is that distinction clear to everybody?

Kurt Pritz: So I want to hear from others but yes it's clear to me. And so I'll say two things. One of them is clear in my mind and that is that's the reason why I think the NCSG but certainly others recommended that we talk about the sections that start with 4.4 first that are the actual uses of the data because that's where you apply the sort of analysis that James was talking about to say...

((Crosstalk))

Milton Mueller: No, no, Kurt, exactly the opposite of what I'm saying. What matters here is the actual purpose of ICANN, not us specifying other uses of third parties. That we have to get the rationale first and that the other stuff is really not going to be decided by ICANN; it really isn't. It doesn't really matter what we say in that if we have made it clear that our purpose is a limited one consistent with ICANN's mission.

Kurt Pritz: So then the second point I was going to make is less clear in my mind and that is that overlap between ICANN's mission, the creation of the registry registrar marketplace and the - and contractual obligations and the things that come from the multistakeholder model such as, you know, the use of registration data to do legitimate things like, you know, fight crime. So that's less - so that juxtaposition and how that works is less clear in my mind but I think it's a more blurred line than you draw.

So are you suggesting we eliminate - we go through 4.1 and 4.2 and then eliminate possibly line items in the 4.4? Is that what you're after? So I don't think that's it so that's what I'm trying to get at.

Milton Mueller: I'm saying that that's possible, if we reach consensus on the rationale in a way that permits us to eliminate specific things. But it doesn't hurt if the listing is sufficiently narrow to reflect the mission of ICANN, it doesn't hurt to list things. It's when you start confusing third party interests and purposes with ICANN's interests and purposes that I think (unintelligible).

Kurt Pritz: Okay, let's march through this queue. So, Kavouss.

Kavouss Arasteh: Yes, I put several question in the chat and I hope that you have time to look at that one. First of all I heard someone saying that security is not part of ICANN mission where it is mentioned in the bylaws that security is not part of

ICANN mission? Which security we are talking about? We are talking about network security or security of the network or security and stability and resiliency, so on so forth of the DNS, what security we are talking about that we are not part of the ICANN mission?

I think we are diverting the discussion, we are going too far and we are not inside the temporary specification, we are discussing many other things perhaps you may kindly limit the discussion, not to going outside that. My question is that what is legitimate purpose? Who determines that the purpose is legitimate or not legitimate? What is personal data? Is there anywhere that I can find somewhere in the ICANN activities or community the list of the personal data?

As I said, these are the personal data or not? So many things like this is unclear. I don't want to go through the whole list but I put in the general sentence in the GAC reply that the many adjectives or many definitions need to be clarified where we can find them. All of them are just subjective. There is no way - there is no criteria and there is no definition. Please kindly clarify this matter. Thank you.

Kurt Pritz: So can someone - so I don't have a good answer for Kavouss right now. Can someone capture that and the questions he's put into the chat so we can respond in writing or later in this meeting?

Okay, Stephanie in the spirit of calling on each stakeholder group or advisory committee one time you get to talk but with the idea that you're going to say something different so please go ahead.

Stephanie Perrin: Thanks. Stephanie Perrin for the record. And I believe that some of what I was going to raise has been brought up in the chat by Collin. I think that I'm pointing back to the RDS ill-fated PDP that failed to resolve these issues. And in my view we would be better off if we did a good post mortem on that exercise and understand how we went in circles for large periods of time.

Part of the problem is a reluctance to accept the input that we had at that point received from the data protection authorities. Since that time we have received quite a bit more input from the data protection authorities, and I presume that there has been input in the face to faces and the various lobbying efforts that ICANN has been making over the past year to get more input. But we do have the results of the Copenhagen questions and new statements and new letters from them. It would be nice if we could raise those issues, if we could consolidate those - the advice that we've received and cut short discussions of items where, for instance, we're conflating the issue.

And my colleague, Collin, pointed out one - actually Alan Woods pointed it out I beg your pardon, in the recent EDPD letter, just so that we could curtail this stuff because as James has pointed out, we want something that's going to stand up. None of us gain by continuing in this kind of - we used to call it in government, we'll risk manage that. It means we'll just take a chance and see if we get away with it. And I don't think - I think we're past that point now. We have to figure out how the data protection authorities have already opined on some of these things. Thanks.

Kurt Pritz: Thank you, Stephanie. Alan.

Alan Greenberg: Sorry, I thought Mark was next.

Kurt Pritz: Well Mark was next but I screwed up so go ahead, Alan.

Alan Greenberg: Okay. I essentially wanted to say what is in the chat, you know, I do believe security is within ICANN's remit and although we don't do it, and the real issue in my mind is unless data is collected and we are the ones that specify what is collected, it cannot be made available to other people. And my recollection is there are provisions in the GDPR for considering third party

needs and I think this is the crucial thing that we have to focus on and go forward on. Thank you.

Kurt Pritz: Thanks, Alan. I'm sorry I kind of waited there. Go ahead, please.

Mark Svancarek: That's okay. I forgive you, Kurt.

Kurt Pritz: Okay.

Mark Svancarek: Yes, I just wanted to make the comment, it's related to Alan, I think. Yes, Milton, I understand that if something is very clearly not supported by - well we would be foolish to try to jam it in and then, you know, later bring it to a court challenge, so I agree with the points you were making. But I also agree with Alan that you know, no court is ever going to add more purposes, right? So all they're going to do is chip away and certain purposes in certain jurisdictions and so if we don't make the effort right now to figure out the things that are likely (unintelligible) and likely to be conformant with the law then we're really missing an opportunity to manage the security and stability of the system.

Kurt Pritz: Thank you, Mark.

Kurt Pritz: Chris.

Chris Lewis-Evans: Thanks, Kurt. Yes, I just wanted to sort of give my view on some of Milton's points really. So (unintelligible) recently - I hate this acronym, EDPB advice is that told ICANN not to conflate with all the third party stuff and its own purposes. You know, in the temp spec there's a couple of places where it says, you know, collect data for its own mission and that of third parties. So I think what my reason of that is the EDPB is asking for ICANN to be very clear what are its purposes for collecting data and what are the purposes of third parties that require that data to be collected or the purposes for which it processing it.

So you know, I think as Mark just said from BC that, you know, there is availability to process data that's already collected and, you know, we could ask them to collect data on behalf of us as long as it fits in with our - the general process and legal basis. So yes, it's just really trying to get any statements that we've got in the temporary spec or anything going forward that we don't combine the third parties with ICANN's own needs. That's my real reading of the EPDB advice. Thank you.

Kurt Pritz: Thank you, Chris. I think one of the tables we could put together on the administrative side is sort of a categorization of data, so what data is necessary to register and manage a domain name, what data is necessary or requested by third parties, what data is required by ICANN, so I think - and see the differences there. I think that would be a helpful sort of graphic and determine our way forward. Kavouss, you've already talked. Benedict, do you want to go?

Benedict Addis: Hopefully you can hear me.

Kurt Pritz: Yes, I can hear you well.

Benedict Addis: Wonderful news. So SSAC, which I represent, hasn't made any comments on this, we've broadly agreed with Section 4. There's just a couple of responses we'd like to provide to some of the comments being made. First of all that I've just read Article 6 again of GDPR and when I woke up again I did spot that the legitimate interests points, which ICANN clearly is relying on very heavily in the temp spec, does allow the legitimate interests of the controller or a third party to be considered. So that is explicitly authorized within the GDPR.

And as long as those purposes are not conflated as we've been advised by the European data protection bodies, it is, in our view, acceptable to state those. My second point is that really in response to Milton, there's quite a sweeping statement been made by Milton, and if possible I'd like him to

respond to this if we have time, about what happens if ICANN doesn't or no longer has this mandate of collection and disclosure of data for law enforcement purposes? How does Milton envision that happening if ICANN is no longer in the picture? Thank you so much.

Kurt Pritz: Well I could - thank you very much for that comment. I could channel Milton but do you want to answer that, Milton, in a brief...

((Crosstalk))

Milton Mueller: ...me to - yes, I'll answer it. I think that question reveals the misunderstanding that is causing about - I'd say about 50% of the disagreement here. First of all you're always - to have a domain name registration, you're always going to be collecting a significant amount of personal information, you need to know who's registered to the name, who owns it, what their address is, what their, you know, where they live, how they be contacted. You will always be collecting that. ICANN is collecting it for purposes of maintaining a domain name registration and those related functions of registrars and registries.

And, you know, law enforcement will always be able to request that data under their law for legitimate purposes. There's no way that ICANN can just say, you know, ICANN can say we don't have the data you're requesting, for example, I assume none of us want ICANN to be collecting our social security numbers as Americans or our national identity cards in a number - or (ADHAR) number, if you're an Indian citizen. I think we'd all view that as kind of creepy, wouldn't we? I hope.

But that in fact would greatly facilitate law enforcement, if they did that, right? So it's a very simple line is ICANN will collect a bunch of data for its own purposes. Law enforcement will issue subpoenas or have some kind of access mechanism that when they have a legitimate purpose gives them access to it. But ICANN's purpose is not to be law enforcement on the internet; that's not the reason it collects the data it collects. To me this is very

obvious and simple and I don't think it should be construed as me or anyone saying that law enforcement will never have access to data that they need to solve crimes.

I mean, I have a privacy right in my home not to be searched but if the government gets a warrant because they have reason to think I'm a criminal, they can come into my home and search it. You know, so that's all I'm saying here.

Kurt Pritz: All right, thank you. So I want to draw the line under Ayden for just a second and take back control of the mic because I want to try to propose a couple of things to move forward. But, Kavouss, can you - since you've already spoke once could you keep your comment brief?

Kavouss Arasteh: Yes I keep my comment brief. In Paragraph 4.3 it is mentioned several cases which is considered (unintelligible) legitimate and proportionate and all of them there is no criteria what is legitimate, what is the proportionate. Under that people may ask any question and I have some difficulty to transfer to the third party without knowing that the purpose of that, each purpose is just subjective so we need to be - have the (unintelligible). Yes, thank you.

Kurt Pritz: Yes, there's the rub right, Kavouss? Ayden.

Ayden Férdeline: Thanks very much, Kurt. This is Ayden and hi everyone. So I just wanted to make a very brief comment drawing attention to one of the elements in our charter where it indicates that basic training and the pre-support of data protection law may be required. And I just wanted to flag this now based on some of the questions that have been raised on today's call around how for instance legitimate purpose is determined that I think it would be helpful if training could be made available for members of the EPDP very soon as I think we're not all on the same page with the definitions that exist in the GDPR and while, yes, some are a matter of interpretation, others are very well defined.

So this was something that the GNSO Council when there were discussions around initiating the EPDP, did talk about and there was a feeling that if it would be helpful then to have a basic baseline of knowledge and terminology then training may need to be provided. So just putting that out there.

And also I wanted to endorse the earlier comments by Milton and Stephanie and Collin in the chat and to sort to reemphasize what we were in our survey response, that is while yes, ICANN does have a responsibility as the coordinator of the domain name system to facilitate the actions, values, qualities of say delivering security, these are goals and not purpose of the processing. So just wanted to reemphasize that. And I'll leave my comments there. Thanks.

Kurt Pritz: Thanks. I have two comments. One is just putting ICANN aside for a minute, we're the multistakeholder model and we're the ones sitting in the room, you know, representing our different interests and when we leave from this room law enforcement will make requests from registrars for data and maybe registries, and, you know, businesses, trademark owners, will make the same claim. Those who do genuine statistical security studies will be requesting data too. So it's for us - so the purpose of us working together isn't to work under some validating empowerment of ICANN, but it's rather to work out mechanisms where these legitimate purposes that meet the threshold of not overcoming some individual's privacy right, that those are accommodated and they're accommodated in an economical standard expected transparent way.

So to me, you know, sort of regardless of where the temporary specification ICANN say they derive the power for creating this, you know, the temporary specification is here. And in the future there will be requests for data. And since we had this multistakeholder model, so I think it's for us to work out how we're going to manage that. So, you know, agreeing with Milton that it's governed by, you know, the existing law and our existing need and what real

purposes are and, you know, going back to James's very first comment that we need to find then a way to evaluate these different purposes and decide how we're going to accommodate them.

And that's why you know, that's why some of the comments that I included in this sort of high level summary of the comments say, let's work on those purposes and the mechanisms for which data is given and then, you know, the - then we'll find the, you know, debate about ICANN's role, which is to me, is sort of a side issue is - it becomes sort of moot.

And so and my second comment is to really focus us back on, you know, these first two issue summaries and my - 4.1, 4.2 and 4.3 and to go ahead with them tentatively as-is; everybody will get another bite at the apple or should we mark them up somehow. So I want to just kind of focus on that and then try to go onto one more section before we close for the night.

Alan.

Alan Greenberg: Thank you. I have a question, not a statement. ICANN has repeatedly been told by the data commissioners they have not made a sufficiently robust legal argument for why the data should be collected, never mind processed by us, but is ICANN and the Board - ICANN Org and the Board simply sitting back and hoping we're going to build that argument? Or is there an effort going on within ICANN to try to address that? If there is, I really think we should understand what's going on and what the timeframe is because that's absolutely crucial to our doing our work and presuming an EPDP is going to build the legal argument I think is a false hope. Thank you.

Kurt Pritz: So I don't - I'm thinking about the best way - we should probably make a request of ICANN to see if there is a roadmap for their planned ongoing discussions with privacy authorities and the like. Benedict.

Benedict Addis: Hey. My concern is a little bit - and this is speaking more as a former law enforcement officer, and a European one, so we have a balance of privacy and sort of law enforcement interests in speaking here. The conversation has very much unfolded so far along the lines of, well, it's kind of easy if ICANN doesn't, you know, if ICANN agrees that collection carries on but there's no access in general then law enforcement has due process to obtain this information. And that is absolutely true.

But the truth is that outside the US that due process, and I make no apologies for this, it's fundamentally broken. We rely on physical letters that are carried from a law enforcement officer to their central unit, put in a diplomatic bag, physically printed out, authenticated by a judge, taken to another country, often the US, viewed by a judge there and acted upon. That process can take in my experience anywhere upwards of 3, 6, 9 or even 12 months to take place.

Now I know our purpose here is not to replace Whois with an identical version, but please be careful when we are still trying to preserve the security and stability of the internet of sort of glibly saying, well there are other mechanisms because those mechanisms don't work terribly well. And that's possibly our fault, but nonetheless that's the case. Thank you.

Kurt Pritz: Thanks, Benedict. There's one question I want to address in the chat, it's Kavouss's that says, "What's the threshold I was talking about?" And you know, the temporary spec says in 4.4 and it says - it's said many times that, you know, the basis of a legitimate interest not - than the threshold is not overridden by fundamental rights and freedoms of individuals whose personal data is included in registration data. So I always saw this as sort of a two-step process, listing the legitimate purposes and then determining, you know, which ones were not overridden by the fundamental rights defined by the GDPR.

So I freely admit that I'm terrible at keeping up with the chat and trying to think at the same time. So there's been a couple questions in the chat for ICANN staff and Board members if anybody wants to raise their hand from there they can, and if not we'll capture the questions and pass them on.

So I'll just ask - so to me we're deep into the discussion that happens after this triage discussion. And to me I want to move onto the next couple sections and say for 4.1, 4.2 and 4.3 that slide that's up in front of you that these will be the preliminary issue summaries in a triage report that'll be sent to all of you, you know, for review and comment before it goes out.

All right in the next sections, 4.4.1 and 4.4.2, Kristina, do you want to talk?

Kristina Rosette: Yes. Kristina Rosette for the transcript. Just a clarifying question, if we do not believe - excuse me - if we do not believe that the issue summarization text is necessarily complete, what's the - how do you want us to address that? Do you all want redlines? Do you want us to just flag it now and note that there will be suggested changes coming? Because I think that's really what we're trying to determine at this point, right? That is the issue summarization that's in this chart and the consensus level percentages, are those sufficiently accurate that they can be provided to the Council?

Kurt Pritz: Right. So that's what we're trying to do. If you - admittedly this is very short notice so you may or may not have a specific view and/or suggestion now, and if you do that will be appreciated, and, you know, I'll leave it for, you know, Caitlin and Marika and Berry, but, you know, an email discussion or an email suggestion to the group about a markup I think would be the best way unless they have another tool. So if you want to follow up with a suggestion or a comment that would be fine.

Kristina Rosette: Okay, thank you.

Kurt Pritz: Do you have one, Kristina?

Kristina Rosette: Not off the top of my head and that I want to put forward without talking with my other RySG colleagues...

Kurt Pritz: Okay.

((Crosstalk))

Kristina Rosette: ...we will probably have some suggestions.

Kurt Pritz: Okay, and you know, I hope that in reading these it comes across that I'm just trying to identify issue where there's differences of opinion or where additional information is required or there's a request for additional information, that sort of thing. And it's not an advocative issue summary in any way.

So in the first two sections that specify actual use of data, 4.1 and 4.2, 4.4.1 and 4.4.2, there are suggestions that - I kind of missed the point I wanted to make but anyway, in those two sections, first there's been a suggestion that law enforcement needn't pass this balancing that data can be disclosed when - so the balancing or the threshold is a legitimate interest not overridden by fundamental rights. So there was a comment that LEA, law enforcement does not have to meet that standard according to Article 6 of the GDPR.

So I don't know if I want to debate that here but I wanted to flag it for the GNSO that this is an area where one of the groups differs from what's written in the spec. And there was a GAC concern and I think it was by others but, you know, that where 4.4 says that this - these purposes - this list of purposes are the only list or it's restricted. It says, "and only registration data and only for the following legitimate purposes," and the GAC and others have flagged that things could change and there could be other legitimate purposes. So we should change that.

And third is that the specification should also take into account that other privacy regimes are in place. And I think Kavouss brought that up before that we'll have to address other privacy regimes as we go on.

And then in 4.4.2 to me 4.4.2 is sort of a catch-all provision, it's anything that is a legitimate interest that is not outweighed by the fundamental rights of individuals. So in a way to me 4.4.2 addresses the GAC concern that this spec limits the number of legitimate purposes because 4.4.2 is this catch-all sort of - catch-all broad sort of thing that says if you meet this - if you meet this test then it's an allowable purpose. I think it's probably that - I think the GAC and the - and others who made the suggestion their suggestions were a little more eloquent that, you know, it be addressed in the preamble that there be other purposes rather than to put a catch-all.

Nonetheless, this is how the issues in these two sections have been addressed from reading your comments. And so to the extent we can just focus on whether that captures this or not would be appreciated. So what do you think, Alex?

Alex Deacon: Yes, thanks Kurt. It's Alex. As we commented on this I just wanted to chime in here really quick. I haven't had a chance to study the issue summarization but I think it's important just to - just to kind of reiterate what we - our concern of - on Section 4.4, the preamble to all of these which is essentially that this balancing test is important but there are some types of processing that fall outside the scope and are not subject to this balancing test, so I think it's important, especially law enforcement and the like, so when we talk about the need to do this balancing - this important balancing test we should make sure we understand that it's not always the case that it's required depending on the access and who's involved.

So I'll study the issue summarization and see if it addresses our concern but I just wanted to chime in real quick.

Kurt Pritz: Thanks. Thanks, Alex. Chris.

Chris Lewis-Evans: Thanks, Kurt. It's Chris Lewis-Evans for the record. Just to answer your question on whether we think 4.4.2 cures the only problem, personally I don't think it does but I've not had a chance to actually speak to everyone else, because obviously saw this an hour ago or so. But obviously a legitimate interest is just one of the legal bases under GDPR, you know, there's five others. And that's then tied to GDPR and obviously there are other data protection things that we are not gathering at the moment that we might have to think of in different national jurisdictions then, you know, that won't be covered by 4.4.1 to 13. Thanks.

Kurt Pritz: Yes, thank you, Chris .and I just want to say that I don't think we need to answer that question right away. I just want to flag it for the triage report and then, you know, when we write the initial report and reform this somewhat then you'll have had the time to decide how best that should be put to cure the problem that you've raised.

So if there's no more comments about this section I'm going to go onto the next one. But I want to pause and say as we're having this discussion and to the extent to which we're discussing these issue summaries and also dipping our toe in the water of the substantive discussion, I think that the best path forward is we can create what we think would be the triage report on these sections as we march through them on these sections that we've reviewed and so you can look and see what the triage report would look like and then, you know, I think it'd be easier to opine on whether the summaries are adequate or not.

Milton, do you want to take yourself off mute and go ahead?

Milton Mueller: Yes, thank you. So I think right in the lower right corner of the Adobe Connect file you have 4.4.1 and 4.4.2 right next to each other. And I think this is a good example of that our concerns are. So 4.4.1 is perfectly fine in our

opinion. We have to collect this data about the registrant in order to make sure that the registrant actually owns the domain and can exercise their rights in respect of the registered name. There's no way to do that without collecting the personal data.

4.2 is a really weird construct. This is saying essentially the purpose of ICANN's collection of this data is to provide access to it in an accurate, reliable and uniform registration data. And there's something tautological or circular about saying the purpose of collecting data is to provide access to it, that doesn't tell you what you need the data to do and the reason we greatly dislike 4.4.2 and anything like it is it seems to say that we're just opening the door to anybody who wants the data to get it as long as it's some kind of a legitimate interest not outweighed by the fundamental rights of relevant data subjects.

So essentially you're begging the entire question here. You're saying we'll provide access to anything and everything as long as it's legal but again, ICANN is in no position to determine what is legal; it's the GDPR and other privacy laws that determine what's legal. So why is this even in here?

Kurt Pritz: So my opinion, and it's only that, is to do the thing that, you know, the GAC and other suggested and that is rather in the preamble say there might be other - as rulings on the law evolve and the Internet evolves and the DNS evolves, there might be other legitimate uses for this data. And so we have to recognize that this list might change. And in my opinion, that's what this Number 2 provides for; it opens the door to say, you know, if you pass the GDPR test you can add a legitimate - you can add a use of data to this list. And I agree, I think I agree that there's a better way to do that but James said he disagreed so can I hear from James first on why he disagrees with Milton and then we'll go to Margie, or Margie, were you going to respond to Milton or say something independent?

Margie Milam: Yes, I was going to respond to Milton.

Kurt Pritz: All right, go ahead.

Margie Milam: I think what we're missing here is that the Whois system, or the registration directory system, serves a public interest that ICANN is essentially supporting in this process. And so I think it's a mistake to try to take out 4.4.2 if that's the intent of Milton's comment. And I think that throughout the temporary specification and the new policy we need to recognize that public interest served by the director.

Kurt Pritz: So what's the - what do you see as the purpose of that paragraph 4.4.2, Margie? I think you answered it but I didn't quite grasp it.

Margie Milam: Right. And I think it's not actually trying to spell out each and every legitimate interest that's consistent with GDPR. Although, you know, we could certainly do that. There's a lot of preambles, a lot of language in the GDPR that talks about different legitimate interests. But really as a whole when you step back we're talking about ICANN's role in the public interest as it creates the policy that supports this directory service.

Kurt Pritz: Okay. Thank you. Benedict.

Benedict Addis: I'm confused about some of the responses we're hearing here. My understanding of legitimate interest means that legitimate interests of the processor, that's what the law says and possibly third parties impacted. It does not mean as per some of the responses, the legitimate interest of those who seek to access the data. Is - have I made a mistake or is that everybody's understanding? So I think it's really important point to get right.

Kurt Pritz: We're getting lots of support in the chat room.

Benedict Addis: This looks like consensus.

Kurt Pritz: James.

James Bladel: Hi, Kurt. James speaking for the record. And I actually want to agree with Margie and I believe disagree with one part of Milton's comment where at the end - and if I heard him correct, and if I didn't please let me know, is that he said that we need to collect the RDS data in order to establish the rights of the registrant and the controls of the domain name. And I just want to point out again that collection of RDS data and the location of RDS data as to Margie's point is something that is done in the public interest and is not necessary for registrars to communicate with their customers.

We have other data that we collect, you know, billing and account level data, that may differ from the data that's collected for the purposes of RDS. And so I think my point was to Milton's comment is that it's not necessary for us in our view to establish those rights and that control. This data is collected over and above data we already have and it may be different and it may be extraneous. Thanks.

Kurt Pritz: Milton. Thanks, James.

Milton Mueller: Yes, James, I think you're kind of getting lost in the weeds here. You tell me how you establish rights of ownership or domain name registration without knowing the name or the address of the name holder? You're telling me that you don't need their credit card data to establish (unintelligible)? Clearly and thankfully we're not talking about putting the credit card data in the Whois record, but ultimately the directory is necessary to establish the registrant's rights and the domain names and that - in fact that's a public directory helps do that and that's a legitimate and unassailable reason for ICANN to be collecting that information or to be requiring that information to be collected by registrars and put into the Whois.

I really - I think you're kind of distracting us from the main point here which is that there are all kind of third party interests, as Benedict said, that are not

related to the domain name registration process. And then we have to clearly distinguish between what ICANN requires and what ICANN needs for its registrars and registries and what these third party interests are. That's all I'm saying.

Kurt Pritz: James, did you want to come back to that?

James Bladel: Sure. Kurt, you can actually move onto Alex here. Alan, or I'm sorry, Milton, I think we're talking past each other a little bit here. We're talking about collection of data for the purposes of publication in an RDS system or an online directory and that is, again, not something that we need in order to serve our customer, our registrant customers. That is something, as Margie indicated, is a public - is something that we do in the public interest.

And so you're saying that establishing who controls the domain name is in the public interest and therefore we're collecting it for that purpose? And I think we can have that conversation. But I think your statement was that it's necessary for us in order to establish that customer relation and I'm saying that no, it is actually it's not; we have our own internal communications with those customers.

Milton Mueller: Yes, I think we are talking past each other because there is no public interest definition in ICANN's maintenance of the directory service in its core mission and - as somebody who has 30 years of experience in telecommunications regulation under a public interest standard, I think you really got to move away from that claim as fast as you can. But we can take that offline.

Kurt Pritz: Alex.

Alex Deacon: Thanks, Kurt. I just wanted to - this is Alex. I just wanted to comment again on this concept of legitimate interests and that, you know, the lawfulness of processing is based on the legitimate interest of only the controller. I don't think that's the case unless I misunderstood the previous discussion and I

just wanted to reference, you know, GDPR Article 6 1F which says, "Processing is necessary for the purpose of the legitimate interest pursued by the controller or by a third party except where such interests are overridden by the interests of fundamental rights and freedoms of the data subject," etcetera. So I think it's important to note that third parties are considered in the GDPR specifically in that Article 6 1F. Thanks.

Kurt Pritz: Thanks, Alex. Does anyone have any more comments on these issue summaries the way they're written? I've already captured one comment that would amend this but just wanted to pause for a second and then I think I'll go on to the next ones but plan to end the call in the next 5 or 10 minutes or so with the idea that we'll finish this set in the next meeting and then go on from there.

So I have - Kavouss, do you want to speak?

Kavouss Arasteh: Yes, Kurt, I tried not to raise the hand, I put in many comments in the chat I hope, and I expect that everybody (unintelligible) the same, not frequently and (unintelligible) asking (unintelligible) raise the hand. Please kindly consider my earlier question I have problem with what is legitimate purpose, what is legitimate rights and so on so forth. I need some criteria definition for that. That is fundamental for (unintelligible). Thank you.

Kurt Pritz: Yes, I agree. And that's what we'll develop I think or have delivered to us for the substantive discussion that follows this triage report. Stephanie.

Stephanie Perrin: Thanks. Stephanie Perrin for the record. I think that my comment relates to the remark about how in the temp spec the registrars may also comply with other data protection law as - or other law as it suits a commercial purpose where commercially necessary or whatever. I thought I saw it on the slide which is why I'm raising it. It's sort of a fundamental question. How far can this exercise as an EPDP go? I can understand why in a temp spec ICANN made a decision to say yes, registrars, you can go ahead and attempt to

comply with other law, although we are only focused on the one that is going to cost money at the moment.

But it does seem nonsensical to allow that as a sort of where commercial feasible. It implies that we're only complying with laws where we're likely to have extensive enforcement, you know? It's a bit like speeding on country roads. Go ahead, kill yourself, 140, nobody's' going to catch you. Right? And this doesn't seem like something we would want to emit as a final policy so I'm just wondering what your proposal is for how we deal with that.

Kurt Pritz: Well, Stephanie, I'm looking anxiously at the chat to see if someone has a good proposal for that. You know, I understand your concern which is valid because you know, everybody here, well many here operate, you know, businesses that reach all areas - all countries of the globe and the environment is becoming more and more complex. So like Ayden said, I think that's a very good comment.

So...

Stephanie Perrin: Can I answer my own question, Kurt?

Kurt Pritz: Terrific.

Stephanie Perrin: I think that the situation could be remedied by changing this to - and I don't have language drafted, but basically to a statement that says since GDPR appears to be leading (unintelligible) in data protection as a model, contracted parties should comply with the GDPR in other jurisdictions as required. The "as required" would allow them to opt out in cases where there is no data protection law nor any sign of it coming because I realize we can't ask people to comply with a law that doesn't apply but it solves that problem because there's no doubt the GDPR is the world leader at the moment.
Thanks.

Kurt Pritz: Thank you, Stephanie. James.

James Bladel: Yes, thanks, Kurt. James speaking. And to Stephanie's last point, there are a number of national privacy laws either proposed or in the works or being adopted. I don't know that we can predict where the landscape is, I think there's even talk that maybe it might be come up in the US. So we're going to have to treat that I think as a known unknown and assume, as part of our work, that the future laws will either be mostly or entirely compatible with GDPR or that the service providers will have the ability to in our own discretion essentially say that the temporary spec and presumably GDPR are sufficiently different from their national applicable law that they need some sort of relief from that.

And I think we have an existing process at ICANN that would apply there. So I just want to highlight what Stephanie is saying, I'm concerned that there's this universe of new legislation that hasn't been - that hasn't dropped yet and that we have to kind of future-proof our work to account for that. But we can't know what those are going to look like at this time.

Kurt Pritz: Thanks, James. Yes, and in California there'll be a GDPR-like measure on our ballot where the Californians approve measures by ballot rather than by legislature and so that's one example of that.

Okay, just want to - here's what I'm going to do, I'm going to touch on these last four so you're exposed to them and then give a couple minutes for comment and then wrap the meeting. So among these purposes in 4.4.3 is an established - is to enable a reliable mechanism for identifying and contacting registered name holders for a variety of legitimate purposes more fully set out below. So it's kind of strange case 4.4.3 seems to be a header for the next four sections because they all have to do with registrants. And so 4.4.4 says, "Enabling a mechanism for the communication and notification of payment invoicing information and reminders by its chosen registrar."

So that's a section that you - strong support across most of the stakeholder groups but the Registrars raised their hand and said, you know, we really don't use registration data for this purpose at all; we use this other box where, you know, people put in their - the buyer puts in their address and credit card information and the like. So it's one of those instances where I think that we should look at the vote of one as maybe informing us a little better and that's what I put as the issue summary.

And then similarly in 4.5 it's "A mechanism for communication or notification to the registered name holder for technical issues or errors where the domain name or any content or resources associated with the name." So as is typical of the word "content was raised here," and so I flagged it as an issue. And then again, the Registrars may or may not use Whois data for some of these purposes.

Also say that content may be a reason why law enforcement comes in and decides to take action against a website so even though we're saying ICANN's not a content - we don't ICANN to be a content regulator, content could still be a reason for having to reach the domain holder.

And 4.4.6 "Enabling a mechanism for the registrar, operator or the chosen registrar to communicate with the registered name holder on commercial or technical changes," and you know, I would look for the registrars to explain to use the role of registration data versus the role of other data they collect in this role. And what's said on this page is the last one, "Enabling the publication of technical and administrative points of contact of the registered holder if they so desire," it's voluntary.

So these are, you know, these are how I captured the issues here. And what I'm going to give - we're going to have like three minutes for comment if anybody wants to comment on any of these but what - I'm feeling sure that the next step is to take the issue summaries on this page, all the work you've done in your commenting and the yes or no indications you've given and craft

that into the first draft of a triage report so we can see what that looks like while we march down the path.

Does anybody have any comments on these issue summaries? Emily, how are you?

Emily Taylor: Hello, can you hear me?

Kurt Pritz: Yes, perfectly.

Emily Taylor: Okay. Thank you. Just a very short point, it sort of picks up some of the issues raised in the chat by various people is that as a general point the temporary specification doesn't really adequately differentiate between collection, publication and access. And each of those processes need to be justified in compliance with GDPR. I think sometimes, you know, the - I think that that sort of blurriness is confusing a lot of us as we're trying to address the issue.

I think that that - it's hard to know what precise amendments to propose to the temporary specification because I think it's actually at the level of principles it doesn't seem to be quite reflected in the draft. Another very important point which I think is - speaks to the contracted parties is about necessity of data processing. We had a little chat about collection of registration data and that, you know, collection - there is (unintelligible) or it's necessary to collect registration data to fulfill the contract but it's not necessary to publish and it may not be necessary to grant access.

So that's just one illustration of how if you actually work through the GDPR steps on each of these processes you might come to different answers and a bit more than we currently have in the temporary specification. So I'll leave it at that. Thank you.

Kurt Pritz: Thanks, Emily, that was really good. And there's three categories you mentioned are collection, use and disclosure, were those the three?

Emily Taylor: Yes indeed, yes.

Kurt Pritz: Okay.

Emily Taylor: And I think that it's the sort of...

((Crosstalk))

Emily Taylor: ...each of the processing steps as with, you know, you take - you have to think through the entire sort of lifecycle in a way, retention, I think the point Stephanie was raising in the chat, retention is an issue, that's of course a very complex one in European case law because you have conflicting legal obligations and in fact the data (unintelligible) directive was really to be invalid several years ago. So I don't want to kind of throw up too much dust in everybody's eyes but it's just a suggestion that might help to clarify our thinking and maybe an exercise that we could undertake at some point. Thank you very much.

Kurt Pritz: Yes. Thanks, Emily. And earlier we talked about creating, you know, a list of the data so - and how it's used so what data is necessary for a domain name registration, you know, as opposed to what data, you know, might be necessary to others. And then it could be sort of a matrix, you know, as to whether, you know, how the collection, use and disclosure goes, then retention. So I think there's some sort of table that could inform our discussion there. Esteban. Esteban is on mute.

Esteban Lescano: ...the specifications in some ways is general (unintelligible) and that is why this (unintelligible) there is a lot of issues (unintelligible) talking before and starting before that needs (unintelligible). For example, one of...

Kurt Pritz: Esteban, can I interrupt you for a second? Because you were muted for some reason we missed the first part of what you said. So could you start over and also I think you're not quite as loud as you'd like to be so if you could get a little close to the microphone or talk more loudly, that would be great too.

Esteban Lescano: I am Esteban Lescano for the record. I was following the (unintelligible).

Kurt Pritz: So, Esteban, I'm really sorry to interrupt you. We're having - yes, there's a lot of background noise and also interference on the line so you might have to either call in or write up your comment.

Esteban Lescano: Okay, sorry.

Kurt Pritz: Oh wait, that's perfect.

((Crosstalk))

Kurt Pritz: Yes, there we go.

Esteban Lescano: Okay. I think that was a problem with the microphone.

Kurt Pritz: Okay.

Esteban Lescano: I was telling that from the ISPCP (unintelligible) comments and maybe the set to summarize is that many of the words and attempts used in the temporary specification are very wise and need more clarification and more precision. And as for example the issue about the - which is the legitimate interest that allows the data treatment. And with this, in the same line, we want to consider that for example in the 4.4.5 there is a reference to content that we have to be very careful because we know ICANN does not regulate content, and then well we are very worried because we understand that some of the words that are in the temporary specification needs more clarification just to not create,

for example, a responsibility that exceeds the ICANN mission or the ICANN process.

Kurt Pritz: Thanks, Esteban, I'm glad we took the time to capture that. So I think that might be a question - I don't know if we phrase these as legal questions or formation questions or what, but a question would be why did - knowing the term "content" always raises red flags. There must be some specific purpose or idea in mind when that term was included in the temporary specification. So Marika and Co, if we could capture that question as part of our list to send out I think it'd be good.

Okay, so we're wrapping up so, Kavouss, go ahead. Thanks, Esteban.

Kavouss Arasteh: My question is twofold. One, in 4.4.3 we are talking about the reliable mechanism, when we go to 4.4.4 and 4.4.5 and 4.4.6, we are talking of mechanisms but not mentioning reliable. Yesterday in our small group there was mention or suggestion to delete the word or the term "reliable." I did not agree with that, (unintelligible) that the view we have to define what we mean by reliable, who and how the reliability is defined, from what aspects, from (unintelligible), from what. I put in the chat my comment, please have a look at that and thank you.

Kurt Pritz: Okay. See that's the problem with using adjectives in these things; they're hard to define. So Kavouss, you said you are four retaining that word, "reliable" in there though, right?

Kavouss Arasteh: Yes, I wish to maintain the word "reliable" but I wonder why in the remaining...

Kurt Pritz: Yes.

((Crosstalk))

Kavouss Arasteh:....paragraph there is no reliable, they say “mechanism,” does not talk about reliability.

Kurt Pritz: Yes.

((Crosstalk))

Kurt Pritz: I understand.

Kavouss Arasteh: And then what is reliable? Thank you.

Kurt Pritz: Okay. Yes, I got it. Thank you very much. Benedict, last comment of the day.

Benedict Addis: Oh God. It was a...

Kurt Pritz: Better be good.

Benedict Addis: It was a small thing, I'll leave this British access ringing in your ears. SSAC feels that content should stay in 4.4.5, the reason for that is that it - and actually it's one of the oldest reasons for Whois information which is if your domain name has got infected you're a victim of crime, it might be spewing pollution out across the Internet classily a kind of compromised Wordpress installation or something like that, your domain name is spewing out spam, at the rate of millions of emails.

It's really great to be able to contact you with regards to that content. We're not talking about I think the intent was not to talk about offensive content or infringing content but the sort of content of a website that can be harmful to others. If that helps define that purpose?

Kurt Pritz: Yes, so I think that would be a good clarification for this section. So see, it was a really good comment. Let me wrap this up. So we just missed eight of those and then we'll finish. So I'd appreciate hearing from you either right

now but after the meeting how we can best conduct these in a way to, you know, get through this triage period where we, you know, sort of settle on the issue summarizations. If you want, we could sort of, you know, rely on me to do them and just plop them in front of you and you could review the document but I kind of think this discussion is a good capturing of the rationale and thinking behind each group. So you know, we want to - we're going to finish the rest of the surveys and then plug, you know, assemble that material and plug through a discussion of the rest unless I hear something - hear a better idea and better ideas might be easier to come by.

So to reiterate what we told Kavouss earlier, the next meeting is Thursday, August 8 and 1300 UTC, and Part 2 of the surveys are due Friday essentially at the close of business wherever you are. And unless there's any more comments I'm going to close the meeting and thank everybody again for the thoughtfulness and alacrity with which they prepared their surveys. I found the comments very insightful and they'll serve to create our triage report so we can dump that over the side and then go onto the next thing.

So thank you very much, everybody, have a great day and night.

Benedict Addis: Thanks, guys.

Terri Agnew: Thank you, everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines. Operator, (Tony), if you could please disconnect all recordings? To everyone else, please remember to have a wonderful rest of your day. Bye.

END