

**ICANN
Transcription
GNSO Temp Spec gTLD RD EPDP call
Thursday, 04 October 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-04oct18-en.mp3>

AC Recording: <https://participate.icann.org/p63f1t7bdy9/>

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

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page
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Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon, and good evening, and welcome to the 17th GNSO EPDP Team Meeting taking place on the 4th of October 2018 at 13:00 UTC. In the interest of time, there will 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 yourselves be known now?

Margie Milam: Margie Milam.

Terri Agnew: Thank you, Margie. Noted. Hearing no further, we have listed apologies from Kavouss Arasteh, GAC, Milton Mueller, NCSG, Benedict Addis, SSAC, and Farzaneh Badii, NCSG. They have formally assigned (Raul Gossman),

Collin Kurre, and Greg Aaron as their alternates for this call and any remaining days of absence.

During this period, the members will have read only rights and no access to conference calls. Their alternates will have coaching rights and access to conference calls until the member's return date. As a reminder, the alternate assignment form must be formalized by way of the Google assignment form. The link is available in the agenda pod to your right. It is also noted in the invitation email as well.

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 information can be found on the EPDP Wiki space. There is an audio cast and view only Adobe Connect room for non-members to follow this call. Please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call.

Thank you. I'll now turn it back over to our Chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks very much, Terri, and welcome everybody. We put up the agenda for today's call and we're going to rejigger it a little bit. So agenda item C we don't have all the materials we need yet to flesh out data escrow and in particular registry data escrow. So we're to demote that in the agenda to status if there's time left to talk about it.

I will note on that agenda item that we did receive a response from ICANN on data retention and so - which I found to be pretty interesting. So I invite you to read that and would invite the registrars but the registries are preparing the

next version of this data escrow for us to be informed by the ICANN input when filling out the data retention requirement.

Then Jennifer Scott from ICANN compliance is here, so she'll present the ICANN compliance purpose F and our goal, my goal here would be to accept that and fold that into our work. But to read that and can consider that and respond with questions and either decide to accept it, or because we just received it, we might have to take time to consider that. So that's my wish there. And then Kristina Rosette will present (Purpose N) and we'll go through the same round of questioning and hopefully accept that as a purpose. That would be the goal for that.

In addition to Jennifer, I want to welcome David Plumb who's on the call who will lead those discussion items. So I'm pretty darn pleased with that. So with that, there's two things I want to do in welcoming comments. One is we have a high interest session scheduled for the ICANN Barcelona meeting. I think it's an hour and a half, something like that. And I don't know if it merits its own high interest session, but there it is. So Rafik has been really leading the (unintelligible) support team on planning for that but I'd like to solicit from you ideas for how to present materials and our work in an interesting way for the audience.

So it's to me somewhat it's sort of a needless distraction but it's been promoted from needless to necessary because it's on the ICANN schedule. So ideas or thoughts you have about that. And certainly, I'd look for all of us in this room, that we select some of us to be presenters. So I don't want to discuss it on this call but I would appreciate any input you have and maybe we'll schedule a separate planning call for that if it's not too distracting from our important work.

And then Caitlin or someone, can you put up the action items? Let's just take less than five minutes to go through these. So this is a wide document. So what I do with this one when it comes up is use my full screen. So I won't be seeing the chat for a minute. The first action item is under Purpose C, where there is disclosure of technical contacts. That disclosure can be made to third parties and that was brought up by Alan, I think, and others during the last call. So that's an ICANN action item that's not done yet that needs to be added to the Purpose C workbook.

In the lawful bases discussion we had last week, I think staff has added - support team has added a processing step for disclosure of data to third parties in the case of dispute resolution processes. But the RySG is developing some additional data processing steps. So we look forward to that.

The whole team is reviewing the lawful bases memo and we're supposed to by yesterday cite any objections. We haven't heard any to that so the only real input we're looking for there I think is the RySG. But of course, the book is still open on that. We had a discussion in the last meeting about ICANN having direct contracts with registrants. So we've got to figure out the time, and place, and methodology for that discussion. On Purpose C, in that sanction item, Alan has just recently wrote to us on that issue. So let's read that and respond and see if - see where that goes.

And then there's a planning one and then on Purpose B, which is, I guess we made Purpose B (unintelligible) big. And the registries or registrars are combining on the first draft of the data elements work for that. And I know a lot of serious work is going on there. So we were hoping for it sooner but it's going to come a little later. But I think the right amount of attention is being paid on that.

And then Marc, I saw your email about you were slightly confused about Purpose C. So I'll respond to your email but we can take that offline and do that. And then Benedict is not on the call. He's proposed some early draft language for us for the research purpose and was going to flush that out. So we're looking forward to that. But of these, I'm really looking forward to input on the lawful bases memo, especially for the registries who had determined there were some extra processing steps and fleshing out Work Purpose B that's really important.

So that's all the action items, and I just want to highlight their importance to us. So let's go back to the meeting agenda. I'll pause for a second to see if there's any comments so far. Hi, Amr.

Amr Elsadr: Hi, Kurt. Thanks. This is Amr for the transcripts. I was just wondering when and why the action item on leadership developing and methodology develop to further consider ICANN of having direct contract with registrants, I mean why and when this became an action item. I don't recall seeing it on the email that went out after Tuesday's call. I might have missed it. Apologies if I did. Thanks.

Kurt Pritz: So I don't remember the mail that went out after Tuesday's meeting. I do remember an animated discussion about it and by animated I meant it was of significant interest to some parties. And so I feel or I think that it was a request that we made that we consider this and I don't think there can be a request that's just left without further consideration. So how that consideration is made and how it fits into this is the work to be done. But after the discussion on it in the last meeting, yes I think it was the last meeting, that we can't ignore the request to discuss it.

And anyway, I could talk a lot more about it. So with that, I want to move into the next step on the agenda, which is the ICANN compliance step. So I'm going to coincidentally introduce David into the conversation and Jennifer. And Jennifer, thanks so much for coming back and thanks for doing this work. There's a couple questions that I have about it, but I'm sure the group will lead first.

So if you don't mind, do you feel comfortable taking the lead in presenting this and then will let, if it's okay with David, he can then lead the discussion on it.

Jennifer Scott: Sure. Thanks, Kurt, and thanks to the group for having me. So we've filled out the worksheet here. I'll just go through the questions for those who haven't seen it yet, starting with number one. And if the purpose is based on ICANN contract, is this lawful, as tested against GDPR? Yes, Article 6.1 is squarely in the enforcement of the ICANN contracts? Is the purpose in violation if ICANN bylaws? No, again, the contractual marketplace function is within the ICANN bylaws.

Description of the processing activity and the responsible parties. So I think most people are familiar with the contractual compliance approach but for those who are not, for any complaint type that we receive from an outside third party, what we do is collect some personal data associated with that third party so we know we are talking to on that complaint. That might include their name, their email address, in some instances, their postal address, and organization information. We don't generally collect fax numbers and the main focus is name and email address.

And then depending on the nature of the issue and how much information that they've provided, and the complaint type and how it fits into the ICANN

contract, we might ask them for additional information that could contain personal data. So for instance, copies of email communications with the contracted parties or other entities who might be affiliated with the contracted parties, such as their resellers or back end providers. There might also be other ancillary personal data included within those communications that isn't necessarily something that we need to be able to process the complaint, but just happens to be included in that information.

So we are collecting and processing personal data from the complainants themselves. And then what we'll do with that information, depending on whether it's in scope of the contracts, is forwarded onto the contracted party for them to be able to address anything that is within scope of our authority and remit, in terms of enforcing their obligation under the ICANN contracts and policies.

And in doing so, we might also ask the contracted parties to provide us copies of communications and other evidence that could contain personal data either related to the complaint reporter or others, such as a registrant, if that's a different person than the complaint reporter. And so in the processing of these complaints, we'll also look at registration data to the extent that it's publicly available. If it's not publicly available, we might need to ask the contracted party to provide that to us. We generally don't share that information with anyone else, including the reporter of the complaint unless it's something that the contracted party has provided permission for us to share.

That's third party complaints. The other part of the contractual compliance function is proactive monitoring. That includes audits on a large scale. We usually conduct about two audits per year for both registrars and registries. In audits, we ask all kinds of questions related to the ICANN agreements and policies and again, personal data might be included in response to that, where

there's evidence coming from the contracted parties that are related to their customers and their dealings with registrants and others, such as their own vendors.

We also, as part of the audit, request data escrow files from data escrow agents. And we use that information to cross-reference information that's been reported elsewhere to make sure the reporting is consistent and accurate. So we might compare zone files with monthly reporting from registries with information in the data escrow. So we do rely on the data escrow agents to transfer data that might have personal data in it. So it would also be good for data escrow agents, as well as any of our audit vendors or other parties who are working on behalf of ICANN contractual compliance for purposes of a compliance function to be able to have access and process the personal data that's received.

So moving onto number four, is the processing necessary to achieve our (unintelligible)? Yes. Do the data elements require transfer to meet the purpose? Yes. Publication of data by regulator and registry required to meet the purpose? Here we said no. We don't think it needs to be made public in order for ICANN contractual compliance to do its work. However, we would need access to registration data upon request and this would extend as well to our vendors and those working on behalf of ICANN contractual compliance to fulfill the compliance function. As I just mentioned, like the data escrow agents and our audit vendors who are working with us.

Are there any picket fence considerations related to this purpose? No, everything is squarely within compliance agreements and policies. Eight, what are the data retention requirements to meet the purpose? So we limited this to registrar and registry data retention and so really, we're talking about how long is the data needed after expiration of a registration or a domain

name because we would expect for the data to be kept by registrars and registries during the active registration period.

So again, on this, it's something that we will enforce whatever is decided and if data is not available, because the retention period has expired, then that's the message that we will be providing to third party reporters and that's how we'll be acting in line with our proactive monitoring.

And lastly, additional information needed to adequately document the purpose. We don't have any requests at this time or additional information. So with that, I'll turn it back either to David or Kurt. Thanks.

David Plumb: Thanks, Jennifer. This is David. All right, folks, our job here is to take this on and see if this sheet as filled out by ICANN feels comfortable for you as a group. We've got a queue going on so let's jump in and then we'll try to make some order of the issues that come up. But let's just go into the queue for a while. Mark, you're first.

Mark Svancarek: Hi, this is Mark. I had a few questions. One, I think you said that you performed two audits a year of registries and registrars. Does that mean two per contracted party or two in total? That's the first question.

Jennifer Scott: Okay. So the contracts allow two audits per contracted party per year and what ends up happening in practice is usually not that we'll audit the same contracted party twice in the same year, unless they've had some sort of remediation that was ongoing after the first audit period closed. And if that happens, we would re-test them on a limited scope based on whatever issues were still outstanding during the second audit.

But typically, we won't audit the same entity twice in the same year unless there's something like that going on. Hopefully that answers the question.

Mark Svancarek: Yes, it does. Thank you. Second question, do you perform validation and verification during an audit?

Jennifer Scott: In the general sense, yes. If you're using the terms as they're defined, for example, in the WHOIS accuracy program specification that's an obligation for the registrars. So I'll pause there and maybe let you clarify.

Mark Svancarek: Okay. Well, we know that registrar - I believe I'm using the term correctly and I believe that implies that the registrar must verify one field, either an email field or a telephone field. And so you don't perform that function. So I guess my next question would be how do you clarify the inaccuracies if you don't perform any verification? And how has that changed since May 25?

Jennifer Scott: Okay. I'm with you now. So for those who might be unfamiliar, the 2013 RAA has a WHOIS accuracy program specification in it, which requires registrars to perform both what's called verification and validation of WHOIS contact information. Verification is something that comes from the registrants to ensure that either their email or through a code or a telephone, SMS, is responded to affirmatively. And validation is actually something the registrar conducts to ensure the format of the WHOIS information matches standards that are specific to the location where that information is associated with.

So for instance, does the postal address conform to the postal address standards for that location. So in our audits as well as our WHOIS inaccuracy complaint processing, we do ask registrars to provide evidence of both having obtained verification from the registered name holder as well as conducting validation on the format of the WHOIS information.

To do this, we - for verification, we ask for evidence of that affirmative response from the registered name holder. So that could take the form of an email communication, a system log where it shows the registrant was sent a link and clicked on it, and it came back with a response. So it really depends on how the registrar has implemented its verification system on what see in terms of evidence of getting that from the registrant.

In terms of validation of the format, we'll ask for evidence in terms of what standards was the information compared against, and we just take their word on it that it was done. If something looks out of sorts, we'll push further and ask how does the format conform to the standards that the registrar has told us they're using.

Mark Svancarek: Okay. Thank you. Last question.

David Plumb: Can I interrupt you just for a second, Mark, and can you hold that question? Let's move down the queue and then come jump back in. I'm just trying to limit two questions a person if you don't mind, Mark, just to keep things flowing. Thanks, Mark, I appreciate that. James, you're up. Everyone, as we're doing these questions let's really think about the implications of Jennifer's answers and your comments about how this document might change. James - thanks, Mark, for being patient for me.

James Bladel: Hi, thanks. James speaking. Thanks, Jennifer. Jennifer, if you could (unintelligible) one part of this worksheet under 3A, I thought perhaps I misheard but can you describe a little detail. Are you saying ICANN compliance as part of an audit will pull some segment of data escrow data and I guess this is the question, decrypt or otherwise make that available in plain

text so that it can be compared against public records like zone files and monthly reports?

I guess because I'm concerned that that might be an area where we would not be comfortable for the use of that particular data in terms of a compliance audit activity. But I want to make sure I understand correctly before I form any kind of an opinion on that. Thank you.

Jennifer Scott: Sure. Thanks, James, for the question. So this is limited to the registry audit space. So the request is only to the registry DEAs for a sample of domain names. And I have to get back to you on what we actually do once we get the file in terms of decryption. But I know primarily its use is to make sure the same domain names are contained within both the zone file and the - well, the reporting doesn't contain names but will match in terms of the number of names included across the escrow file and the zone file, as well as the BRDA or bulk registration data access file in terms of numbers.

I want to say I'm pretty sure, and this is the piece that I want to get back to you on, but I'm pretty sure we're not using it to make sure the registration data is matching between those files, that it's purely a numbers consistency look.

David Plumb: Thanks, James. Alex, you're up.

Alex Deacon: Thanks, David. This is Alex for the record. So I haven't had a chance to read this but appreciate Jennifer going through this document. I think the one area that I'm focused on is the (unintelligible) to question one, 61F. Let me just ask a question about that. So assuming it is 61F, who does the balancing test and when does it happen, right? Will there ever be a situation that a balancing test by a registrar, for example, fails, right? Would a registrar ever deny compliance access to data? And if that's the case, I'm just curious as to the

impact on how ICANN fulfills its contracts, what would be the impact to kind of ICANN bylaws and even the security and the stability and resiliency of the DNS if this data wasn't made available to compliance. Thanks.

Jennifer Scott: Hi, Alex. Yes, thanks for the question. A little bit of it I think has got to be a hypothetical at this point. Because I haven't encountered a situation where we've been tested in that regard. But I think in terms of if we were to get a response where a contracted party was challenging us based on the lawful purpose, we would have to review that on a case by case basis and collaborate with the contracted party to understand what their concerns were, and why, and how the balancing of those interests might conflict or prevent compliance from being able to verify or conduct its function.

There might be other information that could be asked or provided to ICANN to fulfill whatever it is that we're trying to achieve. So I think it's a case by case basis type of situation but yes this might also be a good question for our a more legal type of analysis rather than compliance function side of it.

David Plumb: Thanks (Jen). Alan Greenberg you're up.

Alan Greenberg: Thank you very much. This isn't a question on this document but on just like to be reminded, what are we doing about the suggestion I made that we look at access to other parts of ICANN other than compliance? There are other parts of ICANN the traditionally have looked at WHOIS data and I want to make sure we're not ignoring that in completing all of these forms so I'm not sure if staff or...

Kurt Pritz: Hi Alan. This is Kurt. I think that – oh, I'm sorry Alan. I thought you were done. Yes I think the ICANN responded to that question although I'm not sure I - you know, I just scanned through that one so I'm not sure it was – it, it

answered our basic questions so I'll just say that it's not going to be left on the cutting room floor. I think that's a valuable inquiry.

Alan Greenberg: Thank you I wasn't worried, just because I wasn't worried about the answer from ICANN. I'm presuming if this particular forum is only for compliance then we're going to need another form or forums for other parts of ICANN, just that reminder. Thank you.

David Plumb: Great, thanks Alan for bringing up that and thanks Kurt for helping out. I've got Marc Anderson next.

Marc Anderson: Thanks David, Marc Anderson and thank you Jennifer for talking to us again. This is, you know, I don't know if this question is specifically for compliance but maybe for the working group. You know, it's, you know, I guess around scope. And I think as I understood the explanation we got, you know, Jennifer talked about the data they collect from the reporter for the complainant in the case of compliance activity at least initially. And, you know, in my view, you know, that data is out of scope of our work. And I think our focus is registration data.

And so, you know, the data that compliance is collecting from a complainant, you know, while, you know, ICANN compliance has certain obligations on how they treat that data I don't view that as in our scope at all. And I think what I took away from what Jennifer said is, you know, there are sort of two areas or activities where we might be interested. And that's in following-up on a complaint, you know, where is ICANN compliance accessing registration data particularly personally identifiable data? And then the other activity is during an audit and again the same question applies where during an audit activity is ICANN compliance, you know, processing registration data or specifically personally identifiable registration data?

So, you know, I guess I want to make sure I'm on the same page as everybody else. You know, I think our focus here is on, you know, in this compliance task is looking at where compliance is accessing registration data and what policies do we need to put in place around that processing activity. So interested in other people's thoughts on that one and making sure, you know, my thinking is correct and that we're all on the same page as far as what the scope of our job is in what's in scope of our work. Thank you.

David Plumb: Thanks Marc. And (Jen) I don't know if you have an opinion. And this is David. (Jen) do you want to comment on that particular point?

Jennifer Scott: No I mean I could just reiterate that if we're not going to have access from a compliant standpoint publicly we would go ahead and ask the contracted parties to share that data.

David Plumb: Okay. Okay great. So just to be clear on the queue right now we're going to do Margie and then I'll go back to Mark Svancarek and then Alex and going down I see (Greg) as well. I will – I'm going to make a little request here guys. I see a lot of activity on the chat that's very substantive and I feel like it can get a little distracting to have serious substantive conversation on the chat while we're also trying to talk on the phone. So my strong recommendation let's keep the substantive stuff on the phone. If there's some small clarification on the chat let's do that all right folks? So Margie you're up next.

Margie Milam: Thank you. Thank you Jennifer for the information. My question relates to the work that compliance does with respect to following-up on inaccuracy that come through the WHOIS accuracy reporting system the reporting that gets done at ICANN. And I'd like to understand how ICANN compliance accesses registration data to do that follow-up accuracy work both before May 25 and

after May 25? And then I have the second comment when you – after that related to the discussion we just had.

Jennifer Scott: Sure, thanks Margie. So pre-May 25 the information was publicly available so we would just query a registrar's WHOIS server and get that information and compare that to the information that existed at the time that the WHOIS accuracy reporting system had done their testing to see if it still remained the same and if so ask the registrars to address whatever findings the reporting system testing had found.

Post 25th May, you know, if the data still exists and there are some registrars and some registrations that are still publicly available fully, you know, the same process would work. If the data is redacted we've changed our approach instead to use an inquiry rather than a notice. And if you're unfamiliar with the ICANN contractual compliance approach, an inquiry is something we use when we're still gathering information and have questions about the situation where the notice is something that is more strongly worded and will be used where we see there might – there actually is potential for that noncompliance.

So anyway we've changed the approach to use the - an inquiry because we know need to ask the registrar to provide us with confirmation about whether the data has changed since the time that the reporting system conducted its testing. And that data is provided to us through the complaint processing system that we have set up with the reporting system team. However because of the current concerns about whether having or processing that data is appropriate we've since put processing of those complaints on hold.

Margie Milam: Thank you, thank you. And with regard to the issue that Alex raised regarding the basis for the compliance work as it relates to the registration data this discussion of whether it's F or B is very important. And I actually find it very

troubling to think that it's possible the registrars or registries can tell ICANN that they will not provide the information because of GDPR. If that's actually the read of this working group then this is one of the reasons why we actually raised the issue about whether there should be a direct or contractual relationship considered between ICANN and the registrant. So we avoid that situation whether there is even the possibility that the information is not provided to compliance. And you can imagine that it would impact security and stability of a lot of, you know, the DNS if somehow ICANN is not able to access the information when it's necessary. So obviously that's not a question for you but that's a reaction to some of the discussion we've been having. Thank you.

David Plumb: Thanks Margie. Thanks Margie. Let's jump back to Mark Svancarek. And I do want to always emphasize here let's think about how all this could change the way this sheet looks right? That's really our task here more than sort of into what's going in compliance because we need to figure out how this sheet might be different than this - the version that's been proposed here. Mark Svancarek and then I'll jump to Alex and yes, keep going with the queue.

Mark Svancarek: In the interest of time I've pulled out my hand. My question has not been answered yet but I think I can follow up off-line. It's...

David Plumb: Thanks.

Mark Svancarek: ...(unintelligible) peripheral to this conversation. I don't want to waste anyone's time.

David Plumb: Great okay. Thanks Mark Svancarek. Alex you're up.

Alex Deacon: Yes thanks. So again this is Alex. And in thinking more about the lawful basis here and putting aside the issues of this new contract for now, I'm just, you know, I've just been reading the top of the lawful basis for processing doc when it talks about when is processing "necessary for a contract." I don't who wrote this. It looks like (Thomas)'s fingerprints are on this but the thing that I've been mulling over is in the second paragraph, you know, this processing must be necessary to deliver your side of the contract with this particular person. And it seems to me that this purpose protects the registrant by ensuring that the contract is in fact performed and performed correctly. So if this is the case then I guess I would argue or try to argue that the processing is necessary to deliver ICANN's ability to ensure the contract terms are being performed on behalf of the registrants which seems to be an important purpose especially from an ICANN point of view. So again I'm – it seems to indicate that a 61B here is more appropriate than a 61F. Thanks.

David Plumb: Thanks so much Alex. And (Heidi) if you can give me just a second, (Heidi) before I go to you, I want to just flag the some key issues are coming up and I don't want us to lose these issues as we go forward right? One of these issues is, is the purpose the right purpose and are there implications about having 61F and the fact that, and if F requires a balancing test right?

The other pieces that have been mentioned where it's not as clear if there's a change to this document we want to make, one is about the issues of validation verification. The other issue is about escrow right. And that actually happens where that escrow data, is that going to have any implication on this document, right? And there's questions about how ICANN manages the accuracy issues, unclear if that is an implications on this document. And this question about whether we want to mention specifically that actual data collected from the reporter or the complaint may likely be out of scope for this

working group. So the focus really should be on the registrant data and how the registrant data is being used on this.

So of those issues it sounds like the purpose issue certainly needs a little bit of work from all of us. And I think that may be of value in all of us having some comments around whether this is out of scope or not when we're talking about the complainant's data, the reporter's data as opposed to registrant data. Okay with that (Heidi) I'll turn it over. You may have a different issue to raise up but I feel like we'll circle around those issues and how they may affect this sheet.

Hadia El Miniawi: Okay so I want also to speak about the local basis of this (unintelligible) question. So as it stands now ICANN is taking crucial and responsibility over their (unintelligible) of the – for the compliance – for compliance purposes. ICANN is also responsible to demonstrate that it is in line with the expectations and we're going to have an unwarranted impact on them. And...

David Plumb: Hadia can I interrupt you for one second. Your microphone's a little muffled. I don't know if you're too close...

Hadia El Miniawi: Okay.

David Plumb: ...or if there's something else you might be able to do to un-muffle?

Hadia El Miniawi: Would you like me to repeat what I've said?

David Plumb: Yes please.

Hadia El Miniawi: Okay so I'm again speak until the local basis of this purpose. And as it stands now ICANN was taking control and responsibility over the protecting of the

data for compliance purposes. ICANN is also responsible to demonstrate that it is in line with people's expectations, the rather strong expectation and wouldn't have an unwarranted impact (unintelligible). And I assume that ICANN has already legally investigated that and got assurance that they're able to do that. So I think that it's (unintelligible) as it stands is a lawful basis.

We should also remember here that the local basis for presenting what we choose by the effects the routes of the register. So I think again (unintelligible) we picked this year as the response we don't have the right to raise or object but anyways this is another thing that I would like to (plan).

David Plumb: Thanks (Heidi). That's great. (Mark) is your comment to follow-up on some of these critical issues that have come up whether it's the question of legal basis or the question of what's really in scope here?

Mark Svancarek: Yes I want to follow-up on the legal basis and I also have one new point related to this worksheet. So I guess the new - I guess it's a question for (Jen). Question 8 talks about - or sorry yes Question Number 8 talks about what is the data retention requirements to meet the purpose? And this is, you know, going back to the scope of our work, you know, one of the things the working group needs to talk about is retention. And so I think maintaining the data over the life of the registration is a no-brainer. Obviously we can all agree to that one. But, you know, we have to answer the question of, you know, how long beyond the life of the registration it should be maintained? And so this worksheet just says for a certain time period which is a little ambiguous. So I guess anything more precise we can get to there would be helpful.

And then another – and then all the back into the lawfulness of processing question. And I think 61B and 61F are everybody's two favorites, you know, processing bases to discuss. And, you know, I think, you know, I think when

you talk about 61B you have, you talk about what is necessary from like the contract, you know, that's this, you know, what we're talking about, you know, when we're talking about performing the contract, we're talking about the activation and allocation of domain name, you're talking about like what is the service the registrant is purchasing and, you know, and is as processing necessary to achieve that? And when I think about that I think that, you know, as I'm a registrant I don't register a domain names that compliant, ICANN compliance can access their personal information. You know, that's just not the purpose or the reason that I as a registrant enter in that, into the contract when I register a domain name.

You know, I - but I think, you know, going back to what Alex said, certainly I, as a registrant I have a legitimate interest in making sure that registrars and registries are processing my information correctly. And so 61F I think makes much more sense from a compliance perspective right, because compliance is pursuing, you know, as a registrant compliance as processing my data to pursue my legitimate interests in making sure it's accurate and being processed, you know, in a manner in accordance with the contracts. So I think 61F, you know, I think just, you know, stands up more too, you know, a little bit better to the sniff test there. I just think that making the case that, you know, as a registrant I enter into this contract so that compliance can access my data just isn't going to hold up to scrutiny in front of a DPA. Thank you.

David Plumb: Great thanks. (Jen) could you comment just a little bit more on the data retention piece of that which was one of (Mark)'s questions? I mean can we be more precise here in this document both in terms of ICANN data retention and then the data retention you're looking for from registries and registrars that you had mentioned in your opening comment?

Jennifer Scott: Sure, thanks David and thanks (Mark) for the question. So we purposefully left this ambiguous or vague because our viewpoint of it was whatever retention period after expiration is decided is what we will enforce based on. So it might be in terms of how long contracted parties need to retain data a better question for contracted parties, you know. And we didn't add anything in here about retention for ICANN org because that seemed a bit outside of the scope but I can speak to that.

We oftentimes, you know, again just like the life of the registration we would definitely want to keep data during the life of any open and pending compliance matter related to that matter. So really we're talking about how long do we keep it after that after that matter is closed. And for instance in the audit we actually already get rid of or purged the data related to that audit once the audit is closed. So we're already doing that there so we're really only talking about the ticketing system and the complaints that are processed through the operational non-audit side in terms of the retention for ICANN org.

And, you know, that could vary like we were discussing at the face to face. We have some instances where tickets are reopened after additional evidence is provided by a reporter who might have been asleep at the wheel previously or something new has happened since the closure of their original complaint. But we don't have any good data to rely on to make a clear-cut, you know, one year, two year type of determination on how long we need that. So again I think, you know, whatever is decided is how we will conduct our function against. And if the data's not available then that's kind of a, that's what we'll convey to the reporters or the contracted parties as needed.

David Plumb: Great okay. Thanks (Jen), appreciate that. Let's do (Greg) and then Mark Svancarek and then we're going to take a pause and dive into some specific

issues and I'll try to get you all to focus in on some of these issues that are emerging, see if we can read some conclusion. (Greg) you have the floor.
(Greg) you might be on mute somehow. We don't hear you.

Terri Agnew: (Greg) this is Terri. I don't see where you have your microphone activated as of yet or were you've join on the telephone. To activate your microphone on the top toolbar select the telephone icon and follow the prompts or if you provide me telephone a number I can have the operator dial out to you.

Greg Aaron: Sorry about that. Can you hear me now? Can you hear me now?

David Plumb: Yes we've got you. If you can speak up. It's a little quite (Greg). Thanks.

Greg Aaron: This is (Greg). So regarding escrow my understanding is that escrow under the terms of the contract for stability reasons and to preserve and protect registrant rights the idea being that if there is some sort of a disaster or business failure we can restore that information and there still can be service to registrants. And then the only way that compliance department would be able to check if escrow is being collected properly would be to actually look at that information. So I think that process would need to be considered as we fill this offer as contractual obligation and it's a practical way to – and one would therefore have to do compliance about it. Thank you.

David Plumb: Thanks (Greg). Is there anything (Jen) you need to add to that?

Jennifer Scott: No (Greg), thank you. You know, you stated the issue accurately. You know, that is one of the concerns is the data that's being deposited correct. That I don't think is what the function of the registry audit request for the file from data escrow agents is all about. However we do have some ability in that space from the registrar data escrow agents in terms of confirming whether or

not the registrar data escrow matches what was in the public WHOIS at least pre-25 May. ICANN contractual compliance doesn't receive the contents of those registrar data escrow files and do that comparison. That's solely within the scope of the escrow agent. But that would be a reason that the escrow agent would need access or visibility to registration data that is not redacted. So in that sense they escrow agent is acting on behalf of ICANN contractual compliance to fulfill this enforcement function.

David Plumb: Okay. Thanks (Jen). And if we need to come back to that let's do that and as always I'm going to be saying -- this is David -- what does that mean for how we're thinking about our task in dealing with GDPR in this worksheet? Mark Svancarek let's grab and then let's do some check is on the specific issues to see if we can lead some closure. So Mark Svancarek.

Mark Svancarek: (Mark) (unintelligible) Marc A.'s intervention. Marc I think it -- I think we can consider that the registered name holder when they are acquiring a domain name is making an implicit assumption that they're a domain name within a regulated system where there will be no name collisions, where they have recourse if they're hijacked, where they have recourse if their registrar or registry goes belly up, you know, if you've built your business around Web sites or Web services that require a domain name you'd like to know that there will be continuity. So I don't know if that implicit assumption is sufficient for our purposes but I don't think I would phrase the question the way that you phrased it at (unintelligible) name holder is not requiring ICANN compliance. I don't think that they are aware of that level of detail but I do think they are implicitly assume that there is some level of oversight which is protecting their investment.

David Plumb: Okay (Mark) that's a great segue into let's spend five, ten minutes on this issue of legal basis. And I know, you know, there's been a small group that

was working the face to face and then afterwards and then (Caitlin) and Marika sent around some additional information particularly for the office about how they're viewing this 61B legal basis and how narrowly or not they're looking at it. And I would ask if those who have been most tightly looking at this issue of whether this sort of part of compliance with the contract or sorry making good on the contract the 61B basis could fit in the situation. Maybe folks can weigh in a little bit those who have been looking very closely and comparing for instance this purpose with other purposes that we've been doing because I know there's been some thinking on this and that small group and beyond. So I'm opening up the floor to those who have been doing the thinking about this and so that, you know, let's compare this for instance with other purposes.

I will say at the end of the day it's not the end of the world if this group doesn't fully agree on exactly which legal basis. If this group says there are at least two, you know, that's not the end of the world. It would be great if this group had a common set of criteria to understand why is, you know, certain - why does certain things fall into this legal basis 61B and why the other ones under 61F?

So I'm opening up the floor, you know, to those who were involved in the small group conversation and those that are really looking at this across the different purposes to weigh in to perhaps give us a little more guidance about the 61B, 61F. Mark Svancarek is that an old hand or a new head? Let's go with (Emily). (Emily) please weigh in.

(Emily): (Unintelligible) thank you David and thanks for the question. I haven't really been part of the small group so apologies to those who are a member of the small group. But I do think that it is appropriate to try and unpack differing views around 61B. The processing is necessary for the performance.

Operative word here is necessary so that's quite a high barrier, high bar and so that means it's going to be interpreted quite strictly. And putting something in a contract doesn't make it lawful so it may well protect a processor who is not really had anything to do with it. But if the provisions in that contract don't comply with GDPR, then it's going to be open to challenge and expose anybody following it to potential liability.

And I think that that's why it's been a bit of a sticking point and perhaps a point in division among - during (conversations). To my mind 6(1)(f) is perhaps the most appropriate heading for us, you know, beyond steps that are absolutely necessary for to just making a domain name work.

This really does seem to highlight a lot of the legitimate interest expressed by many stakeholders in relation to accessing or getting hold of WHOIS data. But I think I'd just highlight that proviso at the end which is except where such interests are overwritten by the interests or fundamental rights and freedoms of the beta subject, blah, blah, blah, and particularly children.

So you've got a balancing act already baked into 6(1)(f) that means that you can't just say well because this data is useful in certain circumstances. I don't think anybody involved in this space questions that the data is useful. It's about whether or not, you know, doing something like say publishing – and I think this is why we've ended up with redacted WHOIS for the purposes of GDPR implementation – because all of those fundamental rights of other people who are never going to come to the attention of law enforcement or anybody.

They're just going to be sitting there with their domain names. Their rights have to be balanced against the minority who come to the attention of the

authorities if you like. I hope that that provides a little bit of background David but I'm very happy to respond to questions as well.

David Plumb: Thanks (Emily). Great, okay. Marc Anderson, do you want to continue on this same vein?

Marc Anderson: Thanks David. Marc Anderson. Yes, I've already raised my hand on this one but, you know, I'll take another stab at this. You know, I think looking at chat, you know, there are a number of people that support 6(1)(f) as a reason and, you know, I think it's, you know, important to note that we're not debating whether this is a legitimate purpose.

We're just debating the legal basis under which this could be processed under GDPR. So, you know, I think that's a significant distinction to highlight. You know, I haven't heard anybody argue that this is not a legitimate purpose. So I think that's not nothing there.

But, you know, in addition to what (Emily) said – and, you know, well said, (Emily) – you know, I think also I can point out that ccTLDs do not – you know, do not have this ICANN compliance function in there. And so, you know, if - you know, again, I think, you know, we have to consider, you know, not, you know, not necessarily, you know...

I think we have to take into account how a (DPA) would view this when they're looking at the processing activities. And so I think, you know, a (DPA) evaluating this would look at this and consider okay with ccTLDs, you know, this is not required, not a function at all and not involved in the service.

So, you know, what is the reasoning? You know, how does it become necessary for the performance of the contract under - for gTLDs? And, you

know, I don't think - you know, I don't think it does. You know, it's - you know, I think it just doesn't raise the bar of being necessary for the performance of the contract.

But again, like I said previously I think it makes perfect sense under 6(1)(f) because they are saying, you know, ICANN in this compliance function is pursuing legitimate interests of - you know, of the data subject. And, you know, 6(1)(f), you know, seems perfectly logical here. But making the case for 6(1)(b) I think just isn't going to hold up in (DPA)s evaluating this.

David Plumb: Okay. Thanks Marc. And before I jump to Alex I just want to test something in the interest of time. And this is harder to do virtually than in the room. But if essentially everybody recognizes that 6(1)(f) is a legitimate legal basis, there is some debate whether you can bump it up and do 6(1)(b) as well, and a lot of concerns expressed that that probably wouldn't pass muster from a (unintelligible).

But that doesn't take away the concern that was expressed that in 6(1)(f) we do have this balancing question and what - you know, how could we address this concern that somehow, you know, in some weird circumstance ICANN wouldn't be able to get access to the data?

Is there anyone who can suggest a pathway forward there? Because that would allow us to say, you know what, 6(1)(f) is clearly a legal basis. Our concern is this. We seek to address the concern in this way, right?

So can anybody jump in there and say, "This is how we could address this concern that somehow with 6(1)(f) we're going to be somewhat vulnerable or ICANN can be vulnerable to not getting the data it needs"?

Alex can you help on that? Or can you just hold that question for a second and we can jump to Alan or (Hatia) who seem to jump to that question? Alex I'm just going to open it up. Do you want to go down that path or you're going to a different path?

Alan Woods: David I just have a very quick reaction to that and that is if ICANN must justify - and if you think that we're not going to be able to justify (unintelligible) based on the balancing test, well then there's clearly something wrong with the processing.

So I don't - I think we're looking at the wrong - not that we should justify, you know, why not. We should be justifying if or why. We should be justifying why not because we should be able to pass that balancing test because otherwise we have a problem I think.

David Plumb: Okay. So for you it's inherent that it should be able to do that given the nature of the interest, okay. And also the fact things are published and all that good stuff. Hang on one second (Hatia). Alex did you want to jump in on this question?

Alex Deacon: I think - this is Alex - I think you basically described the question that I wanted to raise which is, you know, I appreciate and understand the arguments for 6(1)(f). I don't disagree with that. But really my concern is what is the impact of the possibility of this data not making it to compliance or made available to compliance when that balancing test fails.

I think (Alan)'s suggestion I think is a good one that I - think what he's suggesting although he didn't say it is that for the most part the balancing test, you know, this data will be made available. There may be some times when it's not.

But I'm concerned what are the impacts of - we need to consider the impacts of ICANN and the role it plays and also the impacts on the (DNS SSR), the DNS also when we're talking about these issues. And so that's why I'm questioning - I'm not disagreeing with that but I'm questioning whether we should be thinking more about another basis here. So those are my concerns.

David Plumb: Thanks Alex. Yeah I think those things are in alignment with what we're saying here which is a concern with 6(1)(f) if there is a balancing test if, you know, in a situation we might be able - that we wouldn't pass that balancing test, okay. (Hatia), do you want to keep going on that same theme?

Hadia El Miniawi: Yes it's just a quick comment that I think that this question should be (opposed) to ICANN. Do they actually see a situation under which this can happen? So yeah, I think that they should be answering this instead of us trying to think about the solution for a situation that actually not happen.

David Plumb: Right. Thanks (Hadia). And, you know, not to put you on the spot (Jen) but I don't know if you've got - you have ever looked at this in your department about if you were forced to do a balancing test to access data for compliance. You know, if you have any questions about how that balancing test would play out. (Jen) do you have any comments on that?

Jennifer Scott: Just from what I said before I think, you know, that we're speaking in hypotheticals currently because we haven't come across this situation yet.

And it would be on a case-by-case basis that we would need to collaborate with the contracted party that was claiming that the interest (weighed) and not providing the information to ICANN and see if, you know, there was some other way we could get the data or meet their concerns with other ways. So

yeah. Sorry I can't provide more concrete details. We just haven't been in this situation yet.

David Plumb: Got it, yeah. Super clear. Let's take Alan and then (Diane) and then let's round up this issue and let's see if we can move on to something else. And I'll try to round it up. Alan go ahead please, Greenberg.

Alan Greenberg: Thank you. Alan Greenberg speaking. Unless we're going to automate this process of ICANN accessing information from contracted parties' databases so there's no discretion – and a unified model might give that sometime in the future.

But as long as we are leaving some level of discretion in that this judgment call is going to be made by the contracted party, there is no way to guarantee it will never happen. I mean, hopefully everyone understands the situation and it will work. But ultimately there's no way you can stop someone from deciding the judgment call in this particular case is no I won't give you the data.

So it's an interesting discussion to have. But I don't think there's any way that we can build in a guarantee since implicitly GDPR says that people who are holding the data have to exercise judgment. Thank you.

David Plumb: Thanks Alan. (Diane) please go ahead.

(Diane): Hi, how are you David? Thank you. I think that by providing both bases we're providing ICANN with what they're looking for us to do because ICANN by just going under 6(1)(f) is placing itself in an administrative and significant legal position that is a very difficult one. Having to make these

determinations on making a balancing determination is going to be a challenging one that makes them vulnerable legally.

But providing the second basis and at the same time making a recommendation as they've asked us to do to suggest that there either be either changes to the contractual framework or even just an update and amendment to the present contract to provide to be transparent to the registrants and to provide them with a disclosure which states that in compliance with GDPR we would like to present to you the opportunity to provide this information and get your consent or make you recognize that we're trying to provide you with the framework that is legally compliant and indeed will provide an accurate and up-to-date platform under ICANN and therefore also provide you and provide the registrant and the registrar with a system that works.

So I think that we need to certainly put down both bases and make recommendations as we've been asked to do. And it could be as simple as ICANN and the registrars and registries agree to some type of amended language that they need this in contract that makes clear that we understand the rights of the registrants and ask for them to provide this information for the purposes of a secure, (unintelligible), and up-to-date platform.

David Plumb: Okay. Thanks (Diane) for that. I wonder if we should just test something quickly because I feel like we're getting to the end of the road of how useful we can have this conversation on the phone like this.

I'm hearing the following, and maybe we can use the little lights. Understand in the A/C room there's ways to sort of move the greens and reds in the light. But here's what I'm hearing. I'm hearing that, you know, 6(1)(f) is clearly a legal basis here.

I'm hearing their concerns from some people that by having a balancing test which 6(1)(f) requires, there could be some unforeseen occasion now where ICANN may not be able to access data for compliance or may have a challenge to accessing that data, okay.

This group feels like, you know, it seems pretty obvious that we would pass that balancing test but it's very hard to foresee the future. And finally there's a group of folks who feel like 6(1)(b) might work and why not list it as well? Right, but that is certainly not a shared position among everybody in this group. In fact, a lot of people are saying it just doesn't work.

I think we're going to need to capture essentially that in the document for now. And if folks want to make progress on this in face-to-face or other ways through the small group, let's do it. But my suggestion is to capture that and so I don't have it written down.

But essentially what I'm saying is why don't we capture as far as you've gotten as far as 6(1)(f), clearly a legal basis, raises this question for some people. We don't know quite how to solve that question but you want to flag it. And this group itself can say we think that ICANN would pass that balancing test without any problem for compliance.

And finally the group of you who would like to also include 6(1)(b) although that is not a consensus view among everyone. That seems to be as far as we've gotten right now. And I just want to check if anybody wants to improve on that summary. And then let's just move on from that summary and then realize that we may need to revisit this in person if you guys want to. I see (Ashley) and Marc. (Ashley) please go ahead.

Ashley Heineman: Thank you. This is (Ashley) with the GAC. Just a question before we go into this poll. What would ICANN contract compliance do in a situation where they make a request for information to look into a compliance issue; it was determined by whatever contracted party that they did the balancing test and according to their judgment, which may or may not be good, decided to withhold that information?

What would ICANN do? Would it just simply say well okay that compliance issue is over; they didn't give us the information? Just to provide us with like a fuller, you know, understanding of what would happen in that hopefully very limited and very hypothetical question that's being posed here. Thanks.

Jennifer Scott: Hey (Ashley).

David Plumb: (Jen) you want to take a stab at that?

Jennifer Scott: Yes, sure. So again I think we would ask them probably for the thought process behind why they think the balance are weighed in favor of not providing the information and try to address any concerns that they have with that. For instance, if it's a concern about publication, you know, like I said we don't generally share the information that they're providing to ICANN contractual compliance to any other parties, including complainants.

You know, we would try to meet that. Again this is all hypothetical. We could ask for other data that might fulfill the same purpose in achieving compliance review. So it's just really going to depend on what basis they have for claiming that they think the interests are balanced in favor of not providing the information and how we can address that.

David Plumb: Thanks (Jen). Marc, one more word on this and then let's move on?

Marc Anderson: Thanks David. It's Marc. You know, I thought your summary was fair but I guess, you know, in listening to your summary I just had - it occurred to me that, you know, this issue's going to keep coming up.

You know, sort of the balancing act that 6(1)(f) contains, you know, means that, you know, if there's a determination that, you know, the interest and fundamental rights and freedoms of the data subject outweigh, you know, the legitimate interest for the processing activity.

You know, I guess my question is, you know, is this going to be a stumbling block for any processing activity that we determine 6(1)(f) is - you know, is appropriate for?

And so, you know, I guess I'm concerned that we're going to just keep having this debate over 6(1)(b) and 6(1)(f) and, you know, are there any circumstances where everybody will be comfortable with just 6(1)(f) as a - you know, as a legal basis for the processing activity?

David Plumb: Thanks Marc. And I think that's an interesting point and I think, you know, the small group that's been looking through it has been looking across the different purposes and thinking about this. And so, you know, I wonder if we need to let them go back and have another conversation.

I think we all need to spend some time really digging in GDPR and what the regulators are saying. In addition to our own concerns about the implications about choosing 6(1)(f) that doesn't mean that 6(1)(b) necessarily will be, you know, GDPR appropriate legal basis. We would need to solve the concerns in another way, right?

You have to be faithful to what the actual guidance is coming out from the regulators about how to use 6(1)(b).

So just to be able to move on, I don't know if it's helpful to use the little colored lights on this or not. This is - you know, we're not setting policy or anything. We're just taking the temperature of the room. But are we able to move on right now on this issue by saying, "Everybody agrees that 6(1)(f) is a legal basis for this.

Some people have concerns that opens up potential vulnerability in cases in which ICANN may not be able to get data because a registry/registrar determines that it doesn't pass the balancing test.

And some people – though certainly not everyone – thinks that that would be an appropriate reason then to try to use 6(1)(b) as a legal basis but there is no consensus in this group about that.”

So I don't know the mechanics of this, folks. This is the first time I'm doing this but can we just quick take the temperature of the room using those little lights to say can we live with that as a summary of your work to date, right, and then go on to other issues?

So let's take a quick second. Could we just do that, however you do that in your A/C room? There we go. I see somebody doing it. Thanks (Amy) for showing the way.

Again, I'll say it one more time. As a way of capturing where you are right now as a group, to say 6(1)(f) is an appropriate legal basis, there are concerns about implications if for some reason the balancing test goes awry and ICANN can't get information.

Some people – though not everyone – has suggested 6(1)(b) would be stronger and therefore we should explore that, but that is not a consensus position yet. Anybody else want to signal that? Great. Thanks folks. Let's do it real quick. Throw up a negative if you can't live with that as a way of capturing moving forward.

Great, I'm seeing a lot of greens. That's positive. I'm seeing a bunch of people not voting. That's okay too. Great, okay. Give you just one more minute to see if anything pops up. Okay.

So what I'm taking away from what I'm seeing in the chat room is that that's a way of moving forward from this issue. Let's bounce it back into that small group again. Let's everybody do our homework. Let's read stuff that got sent around like what (Caitlynn) sent around from the UK regulator, really get ourselves in a position where we're comfortable that we're interpreting things in ways that regulators would interpret it as well.

Okay so I'm conscious of the time but I do want to circle back on issues that were put out there but not particularly well resolved. One was the (retention). We've gone through this one or twice on the call right now but I'm not sure we actually have any firm anything to put in here.

What I heard from (Jen) was from ICANN standpoint they need registries and registrars to have some retention policy but they kind of - (Jen) threw the ball in the court of the contracted parties there. For ICANN org (unintelligible) registration – retention, excuse me – for audits they get rid of it right away and for the other they keep it for a little while. But honestly they're open to whatever you all as a group suggest and then they'll just go forward.

So does anybody want to put something on right now on the floor that's a little bit more specific about how to move forward there so this sheet can have something more specific? And that helps us answer the gating questions, the charter questions here. So anything more specific people can add.

Marc Anderson I see your hand up. And I'm not sure Greg if you're in the queue too. I can't really tell because I only see the green check. I don't see your hand. So Greg why don't you go first and then Marc Anderson. Greg's gone. Okay, Marc you're up.

Marc Anderson: Thanks. Marc Anderson. I guess on this question – since I was the one who raised it to Jennifer – I guess I took away a couple points from Jennifer. You know – and (Jen) - sorry, I don't know if you prefer (Jen) or Jennifer – but Jennifer if you - thank you for answering the question there.

But what I took away from your answer is a couple things. I think the - you know, no particular order. One, you know, you said that, you know, compliance will enforce whatever the retention requirement is, right. And so I think that was important point.

The other thing, you said you didn't have a specific retention requirement beyond the life of the registration. Except you get - you know, you get one caveat there. You said except in cases where there - except when there's an ongoing case. And so I thought that was an important point.

And so I guess based on that, I think we can say two things, one that compliance isn't - you know, the compliance activity isn't giving us a specific reason to maintain the data beyond the life of the registration.

Now I suspect for other processing activities we're going to be able to look a little more closely on maintaining the data, you know, beyond the life of the registration. I think some of the other processing activities will have legitimate reasons why we'll want to maintain the data for a period of time beyond the life of the registration.

But what I heard from Jennifer is that she doesn't have a specific reason for that except in cases where if there's ongoing compliance activity. And so I think that's probably the one takeaway we can pull from that is, you know, we can put some language around retaining data in cases where it relates to an ongoing compliance activity. You know, it can (unintelligible)...

David Plumb: Thanks Marc.

Marc Anderson: ...language but I think you get the general gist of that.

David Plumb: Thanks Marc. Before I go to Alan just quickly (Jen) is that what you're saying? Because I actually heard something a little different, so I want to double check.

(Jen) I heard you say actually that you do want some retention of data from registries and registrars, registrant data passed, but you're not saying how much. (Jen) can you clarify a little bit and make sure that that was captured correctly?

Jennifer Scott: Sure, yeah. So there's two things going on here. There's retention beyond the registration and then there's retention beyond an open or I guess concluded contractual compliance matter about that registration.

And I think what Marc was saying – and he can correct me if I’m wrong – is that there might be an interplay between those two things where the registration is actually expired but there’s a complaint open about that registration.

And so therefore there needs to be a retention period for some time after the registration. And David you correctly summarized that we don’t have a, you know, hard and fast rule about that and we’ll work with whatever is decided there.

And at the same time, you know, that will have to interplay with whatever is going on in the contractual compliance function if there’s an open matter beyond the expiration of that registration. So again we’ll work with whatever the retention period becomes based on that and what data is available.

David Plumb: Super. Thanks. Very helpful. Alan Woods, you got the floor.

Alan Woods: Thank you very much David. So again this - I would look a bit further down the line and say if ever a question was raised by (DPA) and they said, “We want to have a look at the retention periods for ICANN compliance,” they would ask the question well let’s look at the reasoning behind what those retention periods are.

And if they see that the reasoning was ICANN Compliance said two people who don’t see ICANN Compliance on a day-to-day basis and the running of their policies, their processes and the procedure; you set it and we’ll just do it. It makes no sense to me.

ICANN Compliance knows what they need when they need it and for how long they should need it. And it needs to not be up to us to set that. I mean,

frankly we can affirm what they're saying because they can convince us as to how long they might need that data. So it's not up to us to set arbitrary limits as to how long they need that data.

The only people who can answer that question I'm afraid is ICANN Compliance. So I would really implore them to literally go through their processes. Why do they need the data, for how long do they need the data. And then we can affirm that eventually. But we need to not (unintelligible).

And I don't mean this as a (unintelligible) or anything but it is kind of important. We can't set arbitrary limits for them.

David Plumb: Right, thanks. Alan Greenberg?

Alan Greenberg: Thank you very much. Alan Greenberg speaking. I put up my hand when the statement was made that we don't need the data past the registration and that I find just completely out of bounds. Now Jennifer gave some of the rationales for why it needs to be kept. I think there are others as well.

You know, if you take - consider a situation where a domain is hijacked and then immediately deleted, that would say we delete all the data, and clearly that's not the case. Even if a domain expires according to regular expiration, there are various grace periods by which it can be renewed or reclaimed.

There are obviously open compliance issues but in these cases the compliance issue might not be opened until quite a while later if the registrar doesn't honor the - the registrar or registry doesn't honor their requirements to honor the grace period. So there's a whole slew of things that can happen after a registration officially is over that is still relevant to compliance and the data has to be kept and has to be available to allow those to happen. Thank you.

David Plumb: Thanks, Alan. And before I jump to Stephanie, just to say I think we need to be super clear when we're talking about this, if we're talking about beyond the length of the registration or beyond the length of the completion of whatever compliance process or compliant process that happened. Let's just be super clear with our language there. Stephanie, the floor is yours.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. I - this is a clarifying series of questions, so bear with me please. We have just spent most of this meeting debating what I would consider to be a change in status, a change in the entire relationship of how ICANN collects, uses and discloses the data of the registrant basically in order to justify ICANN expanding its compliance function to include providing access and facilitate the use of 6.1b under the contract.

We also heard from Göran in L.A. that they were seeking some kind of recognition from European authorities that ICANN had the status or had some kind of status as the quasi-regulator. Now this strikes me as being very interesting in terms of ICANN's ultimate plans in becoming the more important data controller in the relationship with registrant data, but it's a whole transformation of the current ecosystem, which of course we would understand more fully had we done a DPIA and had we a decent data map to work with.

But we are tasked by the GNSO to answer the charter questions. So either we get a full explanation, which I'm asking for, from ICANN and the board working group as to what's going on or we get back to the charter question and continue with the ecosystem that exists at the moment rather than trying to expand the compliance function to justify a contractual basis with the registrant. Please, can I have an answer to that series of questions? Thank you.

David Plumb: Hey, Stephanie. I don't know who would want to answer that. I mean, (Jen), do you want to take a stab?

Jennifer Scott: Not really. I'm not sure I have a great answer to that, sorry. Stephanie, I followed you but, yes, I think that's outside of my scope. It's probably better directed towards the group and whether or not the order of operations here should follow one way or the other. I'll pause there but, David, after that I'd like to jump back in the queue, just maybe can provide some more information on the data retention.

David Plumb: Okay. Great. So actually that's a good segue for me, (Jen), to say, Stephanie, that's noted and, you know, we had just made this decision to move on from that point and capture it in a certain way, and so what we need to do then is to take that question, that might be a question that goes back to ICANN Org. So let's make sure that we wrote that down appropriately.

If we go back to the issue of retention for a moment now, (Jen), you wanted to add something in? And then I'll go to (Matt) in the queue. But, (Jen), you wanted to add something in on retention?

Jennifer Scott: Yes, just real quick. You know, thinking about Alan's comments and having something less arbitrary, I think that's one of our fears is, you know, drawing a hard line in the sand in terms of saying, you know, what a retention period looks like is that we're afraid it could be arbitrary. But having said that, the current contract requires registrars to keep data for at least two years after the registration and we've never had a problem with that. So we've never come across a situation where we were processing a complaint or within an audit where the registrar said, "Sorry, I don't have the data that you need because it's

been deleted. It's been more than two years." So that might be helpful in thinking about an actual timeline.

There's also some registrars that have gone through a data retention waiver which is something that allows them to reduce the amount of time from two years to something else. I think most of them are around one year. There might be some with like six months. For those registrars, we've also never had a problem with processing a complaint because the data had been deleted.

So we're looking at a range here probably from anywhere from six months to two years that would be appropriate and still work for contractual compliance purposes.

David Plumb: Okay. Thanks, (Jen). Helpful. (Matt), you want to continue on this line of retention?

(Matt): Yes, thanks, David. And (Jen) actually just touched a little bit on what I was going to say. First of all I just want to support what Alan said completely. I mean they are in a much better position to know what they need and how long they need it for.

What I was going to ask for, and (Jen) sort of touched on it there, was do they have any kind of statistics about how often or what percentage of compliance cases rely on data that dates back the life of a registration? And if they could produce some of that and just give us an idea of if that's, you know, 5% of cases, if it's 10%, whatever it is, and then, you know, (Jen) just touched on it, anywhere from six months to two years. It would just be good to see how often they have to go back and what the average length of time backwards they have to go. I think that would help inform the retention bit. Thanks.

David Plumb: Thanks, (Matt). (Jen), do you - can you do that?

Jennifer Scott: We don't have that type of data, and to go back and collect it would be a hugely manual effort so I'm not sure that's something we can commit to doing. But - yes. Like I said, anecdotally, we've never run into any problems with the majority of registrars who are required to keep it for two years.

David Plumb: Right. Okay. Okay. All right folks, is there anything else on retention we need to say? I mean it feels like what was said on this call could be captured in more - and put in this question eight and be a little more precise, particularly what (Jen) just said. They've never had a problem. They don't have any recorded problems not having data be available under the current policy, which are two years. And they feel that would probably anywhere from six months to two years would probably be something reasonable.

There has been a specific request on this call for ICANN to be more precise. So, (Jen), I don't know if you can take that back to your team and say, "Hey, there's a strong request from this group that we be a little bit more precise about or needs."

So if you want to do something better than my summary, (Jen), of we've never had a problem for the data so far where, you know, typically a two-year situation and your gut and you sense that anywhere from six months to two years would work, if you can do a better job than that, so much the better. And there's certainly a request from this group.

Alan, do you want to help me out on that? Alan Woods?

Alan Woods: Sorry. Just one point. What (Jen) said there is absolutely right. There is an awful lot of work in it and I think every single person on this call

(unintelligible) we know exactly how much work there is in this and we would really appreciate the help (unintelligible) of the expertise.

But something that I just want to also remind, when they are contemplating that the very fact there are certain registrars and certain European countries who have applied successfully for WHOIS data retention waiver, should be an indicator that the two-year period is probably considered to be a very, very over the top and not properly thought out data retention period.

I also I think if we looked at a DPA and they said, "Well, why did you grant one year for this people and two years for this people? You know, it's the same data for the same purposes. What's your justification?" I just - I would caution saying that there's a difference between different registries and registrars because that will be taken into account again and will be looked at by the DPA. So I completely agree, there is a lot of work in it and we would be very appreciative of that I would think.

David Plumb: Thanks, Alan. (Jen), any other further guidance you want to give in relation to things said on this call?

Jennifer Scott: No. You know, I can definitely commit to looking and seeing if there's something more that we can provide or do in this space and can get back to the group. But, like I said, I'm not sure how easily we'll be able to gather that type of data and how long it will take and if that will meet the needs of this group. So. But I will, you know, discuss it with the team and let you guys know.

David Plumb: Thanks, (Jen). Wonderful. Okay. Marc Anderson, can this be super brief? Can you make this real brief so we can close up?

Marc Anderson: Absolutely. This is Marc. Just a thought. Maybe, you know, we need to - you know, I feel for Jennifer's position. It's hard to, you know, it's hard to talk about what you don't know but maybe a - maybe what may be helpful to us is a use case where they have needed data beyond the life of the registration.

You know, that may help us understand, okay, this is, you know, if we had a real life use case that we could look at and use to provide justification for why the data needs to be provided beyond the life of the registration and could be justified to a DPA, I think that might be very helpful to the group. Just a thought. Thanks.

David Plumb: Super. Thanks, Marc. Okay. So let's take stock of where we are, folks. In terms of this purpose and this analysis that's on this sheet, the things we talked about right now are this retention issue, and we already have some language that make question eight a little stronger, and there's a request back to ICANN to provide some data and perhaps this use case, as Marc said, and that could give us even better inputs in order to do something that could be stronger in a GDPR context. So that's retention.

The other issue we talked about was legal basis and I summarized where you got to on the call. And then there was an additional question from Stephanie that - sort of a bigger picture question, but that's where we got to. Other issues were brought up but haven't transformed themselves into actual changes of this sheet, the question about validation verification we started with, questions about the way the escrow's been managed, and that's it I have on my sheet.

So it looks like the things that would create a change on this sheet would be the two on retention and legal basis, and if there's anything else that needs to change on this sheet, now is the moment to say, "Oh, no, we can't make a provisional closure of this sheet until I deal with this issue." So now's your

moment, folks. If there's anything else that needs to be changed on this sheet, the analysis, this is a great moment to do it while we're - we've got it fresh in our mind. Anything else? Okay. Great.

So let's move on from this purpose. We've got another 10, 15 minutes, and thank you all for, you know, really digging into this. I'm hopeful we could actually put ten minutes or so into looking at purpose N, right? That's our next one? And Kristina, if you're still on the call -- I'm just looking through, you are, great -- Kristina, if you could just give us a quick walkthrough of your logic here for data purpose N - excuse me, for purpose N in the data elements workbook.

Let's walk through it and let's take advantage of this time just to flag up the issues that people want to - would want to work on. We probably can't work on them this call, but let's flag up the issue and maybe Kristina and those people can do a little small group work on the back end of this. So, Kristina, if you'd be so kind, give us a quick walkthrough what you did on this sheet and the logic behind it.

Kristina Rosette: Sure. Can we - I don't. Okay. I don't - I guess I do. Do I have control? Anyway. So this is to follow up on the discussion that we had in L.A. during the face to face: the purpose enabling validation registered name holder satisfaction or fulfillment -- not wedded to that wording, that specific word, but we do need to settle on one -- of gTLD registration policy eligibility criteria.

Just without reading to everybody, I'll just highlight kind of the key points. First, the view within the Registry Stakeholder Group was that this was not an ICANN purpose. It was a registry operator purpose. After this initial draft was completed, we consulted with our Registrar Stakeholder Group colleagues and

they were of the view that this is not a registrar purpose, which is why it's title Registry Operator Purpose.

And, second, in the interest of clarity, we added gTLD before registration policy eligibility criteria simply to make clear that we are not talking about ccTLDs, many of which do have registration policy eligibility criteria.

Moving to the data element, I - basically, if I remember correctly, I really just tracked the data element from Purpose A. So if we make a decision as a working group that we want to change those we - in A, we would need to come back.

I do want to flag something at the bottom, and something kind of odd happened when I converted this from Word to PDF. Instead of having the comments out to the side, it kind of superimposed them. So if you look to the very bottom of the data elements column, you'll see other data, and I've provided there a representative sample of the types of data elements that would be collected and used by registry operators.

And to be clear, I - we're not saying at this point these would necessarily be included in the RDDS. There are a couple of registry operators that have amended their contracts with ICANN to include these elements in their WHOIS data displays. I've reached out to those to get a better understanding of why that is. But at this point, these would not necessarily be data elements.

Well, I should back up and say because of the broad definition of registration data within the temporary spec, they would be considered registration data but they would not be considered elements that would ordinarily be included in WHOIS/RDDS. And just to give you a sample of those, there are things like the registry that - for registry operators that have specification 13 or .brand

status, is the registrant the registry operator, the affiliate, or trademark licensee. And I use the example of .microsoft there.

For registries that have specification 12 in their contracts relating to community applications to indicate membership in a community, again that eco, an example of where the validation - the registration policy eligibility requirement goes to the RNHs, their licensing registration or appropriate permits in the examples of .pharmacy or .law, or place as a domicile in the case of .nyc, and then finally for business entity or activity, .bank or .bot.

Those are not necessarily all the - it is not the case that this purpose is only implicated where the registration policy eligibility requirement is part of the registry agreement. That is certainly a subset but it's not a one-for-one match. So let me just keep going very quickly and go back up to the is the purpose based on ICANN, is this lawful tested against GDPR and/or other laws?

Because we are still under the - going through the lawful basis discussion, I essentially, I left 6.1b and 6.1f both in here. I think my - the registry operator - the Registry Stakeholder Group view is that 6.1f is the stronger basis, but in the interest of just kind of leaving the placeholder for 6.1b depending upon how that discussion comes out, we wanted to keep it in there.

I will note that I bracketed the - where the registry operator has adopted specific registration policy eligibility requirements, primarily to indicate just to serve as an internal flag, and I think those could come out that these are not necessarily always going to be requirements that are in the registry agreement.

Is the purpose in violation of ICANN's bylaws? It's consistent with ICANN's vision of coordinating the development, implementation of policies concerning the registration of second level domain names in gTLDs and

principles for allocation of registered names in a TLD, which are contained in Annex G2 of the bylaws.

Under the processing activity, it's really collecting and using specific data in order to validate the satisfaction registration policy eligibility requirements to registry operators, the controller, the registrar as the processor, and we did not identify any third party interests. Yes, the registry agreement allows registry operators to establish, publish and adhere to clear registration policies, and I've given the three examples. And then also I provided the bylaws references, the specific bylaws references.

And then finally, noting that one of the primary motivations for ICANN to introduce new gTLDs was to introduce innovation and differentiation in the gTLD space and these type of registration policy eligibility requirements and the validation of them is consistent with furthering that intention. There is a requirement of data transfer from the registrar to the registry operator and, in some circumstances, as we heard from ICANN Compliance, from registry operator to ICANN Compliance.

And subset B is going to be applicable to, as I understood the compliance discussion we had in L.A., only in the case where the eligibility requirement is essentially already written into the registry agreement through Specifications 11, 12 or 13. Publication of data is not required to meet the purpose within the picket fence.

Data retention requirements we left as life of the registration, kind of being consistent with our broader discussion of that. If we decide that we are going to revisit that, for example for Purpose A, we're going to want to come back and check it. And at this point no additional information is needed to adequately document the purpose.

And I realize that I was talking much more quickly than I usually do, which is already quite fast, so happy to answer any questions.

David Plumb: Thanks, Kristina. That was great. Yes, so we actually don't have time for questions. What we have time for is the following: if there's something that you would like to revise or improve on this sheet, this is the moment to say, "I'd like to have a conversation with Kristina in a small group to discuss the following."

So that's as far as we can get on this call right now. So if you have something when you heard Kristina explain this sheet where it's, "Hmm, I'd like to actually follow up on that," what would that be? So let's open that for a moment and, yes, please start your comments by saying, "I'd like to have a small group conversation with Kristina about this issue." Amr, you've got the floor.

Amr Elsadr: Thanks, David, and thanks, Kristina, for the overview. Since I brought up a question on this purpose on Tuesday's call, I'll just try to follow that up in the, you know, in the way David put it. I believe this is a legitimate registry purpose but what I'd like to do is maybe have a discussion with Kristina, and maybe she can refer back to some of the registry operators who operate their gTLDs based on these specifications, to better understand why it might be desirable to include or to add a new data element to the RDDS to fulfill this purpose.

I do appreciate that this is considered registration data because you require a prospective registered name holder to submit certain data to, you know, to validate their eligibility to register a name under that TLD. I would assume that registry operators can perform that function and also meet their ICANN

obligations without - by collecting this data but without including it in the RDDS. So the conversation or the clarification I would seek here is why this is - why this purpose is being introduced as a new data element to be included in the RDDS. I hope that was clear. Thanks.

David Plumb: Super. Thanks, Amr. That was clear. Anybody else who would like to have a conversation about something on this sheet that they think needs to happen to improve it, to make it better, to correct something? Anything else? I see you guys are very active in the chat on the previous conversation but on this conversation is there anything that people would want to go through to improve this work from Kristina? Okay. Great.

And that coincides nicely with the top of the hour. So, Kristina, I guess back to you on this. Do you want to react just quickly to Amr? I just want to say let's take that offline and have that conversation. Does that work for you, Kristina?

Kristina Rosette: Yes, certainly. And as I indicated in some previous discussion that he and I had had offline, it is generally not - it is not my understanding that it would generally be the case that a registry operator will want to include these data elements in RDDS. But because we are as within the temp spec and have charged with covering more broadly the collection of registration data, it seemed appropriate to include it here.

But, yes, we can - and I have already reached out to the registry operators that do include these data elements in their RDDS and I haven't heard back. And obviously I can continue to chase but will only be able to have more information when I get. So, Amr, definitely let's talk offline about this.

David Plumb: Great. Thanks, Kristina. Okay.

So we've reached the end of our time. We did some great work on F. We've got N out there and only one pending issue to deal with. Kristina and Amr can deal with that. Kurt, I'm going to send it back to you to close us up and say anything else you want to say before we end our call -- or (Kaitlin)?

Kurt Pritz: Thanks very much. Yes I'm just going to let (Kaitlin) review the actions in two minutes and then say goodbye because we've kept people too long. So thanks, David, and go ahead, (Kaitlin).

Caitlin Tubergen: Thank you, Kurt. I captured the following actions. Regarding the high interest Barcelona, if any EPDP team members have suggestions for the high interest session, please provide them to the list. Action for ICANN Compliance to gather more information regarding how data escrow files are used in the course of an audit. For example, is the escrow file decrypted?

Another action item for ICANN Compliance to please provide more specificity regarding necessary retention periods, if possible. Providing a use case or registration data as needed after the registration expiration could be helpful for the EPDP team.

I also have three questions for ICANN Org. ICANN Org should have a retention policy. If so, can this be provided to the EPDP team? Secondly for ICANN Org is there a date limit for submitting a complaint or audit? And lastly, Stephanie's question which is we have spent most of this meeting exploring the role of compliance at ICANN in order to support a proposal that ICANN has an implicit contract with the registrars and that therefore 6.1b applies (unintelligible) processing.

This would also facilitate ICANN operating a uniform access model on behalf of those who want the data. It might also explain Göran's initiative in seeking some kind of recognition by EU authorities that ICANN has a kind of quasi-regulator status as the authority vested with the responsibility to manage the DNS.

Given that all of this is outside the current configuration of ICANN as data controller, which would be more clear had we done a data privacy impact assessment and had we adequate data to work with, can we either get back to our charter questions that we are mandated to address by the GNSO or get a full explanation of what is going on and why we continue to be focused on the access question?

Thank you, Kurt. Back over to you.

Kurt Pritz: Okay. Great. And I'm just going to let everybody drop off. Thank you. Thanks, David. Thanks, Kristina, for your presentation and I can convey our thanks to Jennifer for presenting too. Have a great day everyone.

Terri Agnew: And once again the meeting has been adjourned. Please remember to disconnect all remaining lines. Operator, may I ask if you could please stop our recording? And to everyone else, have a wonderful rest of your day.

END