

**ICANN Transcription  
GNSO Temp Spec gTLD RD EPDP call  
Tuesday 04 September 2018 at 1300 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-04sep18-en.mp3>

Adobe Connect Recording: <https://participate.icann.org/p6f45qzo5jq/>

Attendance is on the wiki page: <https://community.icann.org/x/0gONBQ>

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

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

Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 10th GNSO EPDP Team meeting taking place on 4th of September, 2018 at 1300 UTC for two hours.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the telephone could you please identify yourself now? Hearing no one, we have listed apologies from Emily Taylor of the RrSG and she has formally assigned Theo Geurts as her alternate for this call and any remaining days of absence.

During this period, the members will have only read-only rights and no access to conference calls. Their alternates will have posting rights and access to

conference calls until the member's return date. As a reminder, the alternate assignment form must be formalized by the way a Google assignment form and the link is available in the agenda pod to the right hand side.

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 statement of interest please email the GNSO Secretariat.

All documents and information can be found on the EPDP wiki space and there is an audiocast and view-only Adobe Connect for nonmembers to follow the call. So please remember to state your name before speaking and to utilize mute when not 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 very much and I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks very much, Terri, and thanks, everyone, for the timely start. So I'm on Australia which means I'll be jet lagged the day before I go and so I fell asleep last night at about 7:30 and woke up after a full night's sleep at 2:00 am and in that in between sleep and wakefulness I had this dream where I was on a conference call and I could feel the ear buds in my ear and I could hear clear as a bell Thomas Rickert explaining to me the nuances of GDPR in his kind and professional way but I knew deep in my soul he was embarrassed that I knew so little about it.

So the agenda for today's meeting is extensive and because we didn't know how long we would spend on each agenda item we tacked some things on the end that would be – might be introductory but we wanted to make sure we made use of the time. So I'll provide some updates first and then we'll talk about proposed modifications to these sections that Alex worked on and then go onto the proposed modification of Appendix C and that proposal by Alan Woods would recommend actually removing it from the temp spec, so maybe

we can get agreement on – the goal is to get agreement on those two things today I'd hope. And then I see James so, do you want to speak now?

James Bladel: Yes, Kurt, thank you. James Bladel speaking for the record. And I just want to point out and perhaps eat more than my share of some well deserved crow, the Registrars I think are a little behind in preparing our modifications for Section 4.4, you know, I'd love to put the blame on the holiday weekend and so forth but really I think it's just a matter of coordination on our side. And I note that that's front and center here on our agenda so whether that puts us behind for the day or for the week or just we move that maybe towards the end and give other elements of the agenda a little bit more of a spotlight I think that would probably be a good use of our time and apologies for the rest of the group for this delay. Thanks.

Kurt Pritz: Thank you, James. Yes, in fact we moved it to after the sections where we do have input but thanks for that comment. Mark.

Mark Svancarek: Mark for the record. Hi, good morning, everybody. I just wanted to point out an email that I sent a couple of days ago. I know nobody's gotten around to reading it, but the suggestion was that as we were rewriting these sections that we consider how they apply (unintelligible) in the execution of the contract versus other parties with their legitimate purposes with consent and with their own dealings with contracts.

And so we may find that as we create the alternate language here that actually it winds up always being in two chunks in many cases, you know, language for controllers in their contract, language for other people doing their other things. So I just wanted to keep in mind as we go ahead.

Kurt Pritz: Right. And, you know, I certainly read your email, and I'm sure others did too, so I'd ask you to do exactly that as to when your – the issues you raised become pertinent, insert them into the discussion. So the agenda is actually a couple pages long today so after – so we moved the Registrar Registry

ICANN processing of data down to below Number 4 and then after that we have a status update on modifications to Section 4 which are third party legitimate interests, those three sections right there. And actually I don't have much slide material on them but I do have some suggestions about them, so I think even though we lack input we can have a concrete discussion.

Then we'll get into the data elements, the data that will be collected and, you know, we have the chart that Thomas made, also the support team created a matrix that is the summary of the RDS work so we can consider those both together and if there's any time we'll introduce our – we'll start our discussion on Appendix A, but about that time I hope Kavouss will make his speech that time is up and we need to get off the call and I know the Registrars only have 90 minutes today so we'll aspire to that.

So that's the agenda, and I think that we've already had comments on it as we went through. So just to provide you with a few updates on administrative matters, I sent around a much simplified version of the triage report where I took out – or we took out all the issue summaries so just left some high level statements that were modified by your comments and then the comments of everybody without the summaries, so rather than get into the negotiation of those things we simplified the report.

I want to kind of count to 30 right now and send it out but we'll – I'll wait for comments and we'll want to send it out not later than the end of this week. Also with regard to early input, we've received input from the SSAC, the NCSG, ALAC and the Business Constituency. That – those comments are not – it's not remarkable that they're aligned with the triage comment and all the other input.

You'll find that these – that early update materials is included in the data summary indexes, the DSI, that the support team has furnished for each section – or is furnishing for each section of the temporary specification. So, you know, DSIs are really handy summaries for each section that include the

comments you made during the triage section, the early input and relevant temporary specification text, so it's sort of all in one.

And then finally I just want to say that we'll publish after this meeting some guidelines for applying for travel support to the Barcelona meeting which, you know, (unintelligible) a certain extent will be eye-dropped out so the – I think the point of view is that if you have funding from another source you're going to use that and we'll be – this project will be the funding of last resort. But we'll make that really specific on the email that's forthcoming.

Mark, is that a former hand or is that a current hand? Okay thanks. So unless there's – that's the end of my updates and the agenda. If there's no more we'll just get into the substance of the meeting. Kavouss, how are you tonight or today?

Kavouss Arasteh: Yes, good morning, good afternoon and good evening, everybody. Do you hear me please?

Kurt Pritz: Yes, I hear you perfectly.

Kavouss Arasteh: Okay. Thank you very much. Just I have a very general comment with respect to the modifications which include changes, deletion, addition to the Section 4 various parts of that. And I have seen one that modifying the text by cross referencing to Article 2, Article 6 and any other article, I have a general comment on that; at appropriate time please kindly allow me to express before you going through the table of any of those modifications. Thank you.

Kurt Pritz: So why don't we, Kavouss, if it's okay with you, we'll have Alex describe the redlines he proposes and then I think it would be a great time for you to make that comment because I think that's where that language is.

Kavouss Arasteh: Yes, that's fine.

((Crosstalk))

Kavouss Arasteh: Yes.

Kurt Pritz: Okay, terrific. So, you know, well you know me I want to dive right in and explain why these redlines are necessary but I think I'll leave that to Alex Deacon and ask him to present, you know, why these edits are required, although I think many of us could and have a brief discussion today and then we'll see how far we get in our discussion. And perhaps this one can be closed out on email by the next meeting, we'll see. But, Alex, if it's all right with you I'll put up the next slide that shows your blue lines here and you can describe why – you could describe why they're necessary and then what your approach was, is that okay?

Alex Deacon: Yes, of course. Thanks, Kurt.

Kurt Pritz: Terrific. Thank you.

Alex Deacon: So one of the comments we submitted was that we felt that several sections in the temp spec kind of limited the basis for processing to a single one; the one of a legitimate interest, which as we know has a requirement that it be balanced with the fundamental rights and freedoms of individuals. And because we thought this was too limiting we kind of went through and proposed these updates, so all of the lawful purposes, as described in Section 6.1 can be included or can be used as a lawful basis for processing of data.

And what we also did was clarify that GDPR is scoped per Article 2. And so for each of these sections, Section 4.4, Section C.2 and then also we updated Section (A).4.1 as it's similarly worded, to basically broaden the purposes for processing. And I won't read any of this; I don't think I need to. There's not a lot of changes here but we basically replace the specific

processing instance of legitimate interest to one that's scoped by Article 2 and enumerated in GDPR Section 6.1. So that's it. Thanks.

Terri Agnew: And, Kurt, it's Terri. You may still be muted.

Kurt Pritz: Great, I was just going to beg Milton's indulgence and – because I have a feeling Kavouss is in the queue. Is this the time you wanted to make your comment, Kavouss?

Kavouss Arasteh: Yes.

Kurt Pritz: Go ahead.

Kavouss Arasteh: ...first of all I thank Alex for the suggestion which seems to simplify the matter. However, there are some consequences of that. It is easy to replace many terms, many things by cross reference to Article 2 or cross reference to Article 6 but when we go to Article 6 and Article 6 we see many many terms which are quite ambiguous or sometimes referring to something which that is not regulation, it is directive of the EU which has no nature that informative or are used for the Union's peoples and so on so forth so that would be quite difficult, first of all, for one aspect that people need to have ready-made available Article 2, then we go to that one. People – I sent a message to everyone including Alex talking my difficulties with reference to Article 2; many unclear definitions, many unclear references and many ambiguous terms and conditions.

So I think instead of having a self-sufficient, self-contained, technical – or sorry, specification, we would have cross reference, so the way would be that we don't need to discuss anything, we just whenever we have problems to understand we just say deleting all of those and in accordance with Article X or Article Y of the GDPR. I don't believe that is the purpose and aim of that to make it self-sufficient and self-contained for the (visitor) and those who want to apply that.

Moreover, I raise the point about the directive of the EU. This directive does not have any nature more than having a directive; that's all, they are not regulations, they are not rules. And finally, the GDPR which could be used or intended to be used globally or universally have some difficulty to refer back to something which has no nature than a simple directive.

So that is the problem, so I suggest – I commented that perhaps maybe we debate that to see why we have to simplify that by just cross referencing other than trying to remove problems, difficulties, and ambiguities from the terms used by ICANN or the people who drafted this. This is simply I explained that in the email, I explained to Alex and everybody, I don't want to take your patience time and that is my general comments. Thank you.

Kurt Pritz: Thanks, Kavouss. So I had kind of a similar – as to whether we should refer to sections in – or articles in GDPR rather than call out these specific – the specific language in the GDPR or create the document in a way that if the GDPR changes the document sort of lives with it. So, you know, sort of interpreting Kavouss concern, Alex, and we'll let everybody else go first but, you know, is it right to refer to a broad article or should we call out specific, you know, call out the language? So the language that's in the temporary specification is one legal basis or one test and as you pointed out there are others.

What happened to Milton? And Mark? What happened to Mark? So just like ticking them off. James.

James Bladel: Hi, Kurt. James speaking. And I was actually going to lower my hand probably for the reason that everyone else's dropping because to express some of the same concerns that Kavouss has raised and that you pointed out is that just to caution against tying this language too closely to a law or regulation, understanding that GDPR is the current elephant in the room but there's a whole herd of elephants trying to break down the door right now and



that we're going to have to future-proof this as much as possible against changes to this specific law but also other equivalent laws that are being passed.

And I suspect that's kind of where everybody was going so I'll lower my hand. Thank you.

Kurt Pritz: But so what's a recommendation for – and you don't have to answer or we'll go down the queue but, you know, how can we cure that? Because in fact we identified that the temporary specification was wrong and just I think, singling out this one legal basis and while there's others in the GDPR that can be used. Alan.

Alan Greenberg: Thank you very much. I certainly support the intent of what Mark has done in terms of not – as you just pointed out, not having it simply wrong in restricting the, you know, the reference to some of the clauses but not all. I'm troubled however, by a reference to GDPR partly because of the, you know, the future-proofing.

Now I don't think we're going to be able to, in this group, write a policy which will apply to all future privacy laws. We're just not going to be able to be specific enough. But I don't feel comfortable in a specific reference to GDPR here so I believe we need to define what we are talking about, essentially extract the words that we're referring to, put them in one place and then refer to those instead of trying to replicate them in each place. Thank you.

Kurt Pritz: So we could – so we could take the specific language – and I'm not even sure I'm saying this correctly so please correct me – but there are different legal bases for data processing and put them in one place, say in an appendix that can change as GDPR changes or other privacy regimes are implemented...

Alan Greenberg: Exactly.

Kurt Pritz: ...and then refer to that maybe. Alan.

Alan Woods: Can you hear me okay?

Kurt Pritz:. yes I can.

Alan Woods: Oh great, sorry. Thank you. Okay, so I'm probably going to add very little to the conversation as it has been covered, but, yes, I do think we should be removing very much specific references to the GDPR. Now the Registry Stakeholder Group will have, you know, comments to give and output, we just haven't had the time to fully come together on that so we'll send that to the list.

But what I wanted to say as well, and I suspect that other people are thinking this as well, is that what we should really be aiming to do is looking at the GDPR as being, you know, the lowest common denominator, the bar in which we are trying to aim for. And without you know, reviewing specifically the aspects of the GDPR we need to test the policy that we come up with against that (unintelligible) minimum principles again as Alan was just saying there.

So I would suggest that, you know, we use it in a way when we're doing our, you know, impact assessment that if we were to be tested under, say, the GDPR as being the most relevant piece of legislation out there at the moment or the most pressing, shall we say, maybe not most relevant, you know, would it pass muster the suggestions and the policies that we're coming up, would it pass muster against that and then set our policy on a more general term that would meet that. Because we're never going to be able to say in this process, hey, this is going to meet the GDPR. We are saying that these are the policies we believe, if tested, would meet the GDPR.

So again we can use it as a test and as part of our impact assessment but we should not be referencing specifically the GDPR in the policy is my belief. But

we can reference it as being such as the GDPR or, you know, at a minimum the GDPR, so that would be my two cents in that.

Kurt Pritz: Thank you, Alan. Milton.

Milton Mueller: Yes, this is Milton Mueller, Non Commercial Stakeholder Group. We are not at all supportive of the rewrite here that has eliminated the reference to fundamental rights and freedoms of individuals and we're harking back to our discussion on who does these drafts and whether there are competing drafts. This is kind of what I expected to happen. So we have here a rewrite done by a member of the IPC, which has a particular interest and stake, nothing wrong with that, that needs to be represented. But when you have one stakeholder group rewriting a draft, what a surprise that the draft reflects the views of that one stakeholder group.

So are we going to be essentially putting forward consensus rewrites, things that are acceptable or try to be acceptable to most of us here or are we just going to be putting out drafts reflecting one view and then debating them? Either way is acceptable but let's be clear about what we're doing here.

Kurt Pritz: Right so I think to your first point or your point about process, I think it's probably faster for one person or – regardless of who he or she represents, to put forth some proposed text and have us debate it rather than have a small group debate it and then have the large group debate it. So, you know, for me that's six of one, half dozen of the other.

With regard to substance, you know, I think it – I think it's an objective statement that says, and, you know, Amr has a good question in here that, you know, why did we remove not over (unintelligible) fundamental rights and freedoms of individuals, etcetera. And I thought that was because that was one of the legal basis, and we wanted to capture all of the legal bases. And so we – that one was removed in this draft and replaced with reference to the GDPR that has all the legal bases.

And so what I'm hearing on this call is there's support for putting that language back in and the – and adding the other legal bases, you know, specific language not a reference to a GDPR article or subsection that includes the different legal bases. So the sentiment I'm getting from the group is that should go back in and then the other legal bases could be added, which I think, you know, effectively are incorporated by reference here but as Kavouss and others have pointed out, not as clearly as could be. Stephanie.

Stephanie Perrin: Thank you. Stephanie Perrin for the record. I hope you can hear me. I want to put in a plug again for my parking lot because I think that we need a parking lot for issues that require much further discussion and amplification, probably in a preamble that recognizes that there are differences in how laws have dealt with this issue of processing on a legal basis.

I'm not comfortable dropping the terminology but I'm also not comfortable not mentioning it because the GDPR takes a particular way, and European law, takes a particular way of balancing the rights of – the fundamental rights of the individual. They have a charter, you know? And the GDPR has to be read in the context of that charter. And there is a separate instrument to deal with police processing of data.

All of those checks and balances that secure the fundamental rights of the individuals, may or may not be present in that format in other countries. So my second point is, please let's not talk about how we just discovered that there is data protection law when there's 126 laws, many of which are being updated to respond to the GDPR, which is the de facto leader.

So, you know, I understand that we need to reference all the other laws on the one that keeps raising their hand to point it out, but let's acknowledge in a preamble that we have taken the assumption that the GDPR is the lead document for this issue and that, you know, blah, blah, blah, all the rest of the

other – on the other hand we have to do this, on the other hand, the registries have to keep up with that. Okay?

But I think we need that parking lot because otherwise we're just going to go over and over the same grounds; whatever we take out of here has to be put somewhere else. Thank you.

Kurt Pritz: Thanks, Stephanie. You know, okay thanks, Stephanie. Hadia.

Hadia Elminiawi: Okay so first I would like to say that I support the proposed draft. And secondly (unintelligible) to the GDPR, I'm actually fine with referring to the GDPR because (unintelligible) and the GDPR is not (unintelligible) data protection laws (unintelligible) to the GDPR.

Kurt Pritz: Thanks, Hadia. Thomas.

Thomas Rickert: Yes, hi everyone. It's Thomas. And Hadia, it would be great if you could probably summarize your statement in the chat for some in the group it was inaudible what you were saying unfortunately. Now, I want to make one point with respect to the edit that we see in front of us. There is a reference to Article 2, which is the scope of GDPR, i.e. it's territorial and substantive applicability.

And if this language stands then that might potentially render the option for contracted parties to deal with all their customers in a unified way at the global level irrelevant because Article 2 might non-EU based contracted parties to make distinction between EU data subjects and non-EU data subjects. And I think that's not what the intention of the temp spec was.

So Alex clarified in the chat that it was just to say what's in and what's outside the scope of GDPR so I think that (unintelligible) is an okay argument but we need to make sure that we do not make it difficult for contracted parties to deal with their customers' in one unique way. So the other point that I wanted

to make is with respect to all these three edits that we see – and Milton has said that he's missing the fundamental rights and in fact the fundamental rights balancing exercise is required for 6.1 as GDPR and actually processing can be based on the entire catalog of Article 6.

So if you take that then basically all these clauses just say that everything has to be GDPR compliant. And then the question is if we just make that statement do we need to make it three times in various places of the policy? So that's just food for thought because that's not the only place in the policy where we are basically repeating basic principles of GDPR and its applicability.

But let me also make one other suggestion and that is we reference to purposes relating to the disclosure of data and while I understand that this is something that we need to tackle, we can only discuss disclosure of data for data that has been lawfully collected in the first place.

So I think – and this is, I guess in line with what Stephanie said, probably also given the time constraints that we have, probably it's better for our group and more efficient for our group to focus on the correction part and on the internal transfer from registry to registrar first to see what data the registrar can lawfully collect and what data can lawfully be obtained by the registry to then obtain – to then discuss the lawful data (unintelligible) for any disclosure after these initial questions, because I think that we are at the risk of discussing things out of sequence and cause more problems for this discussion. Thanks for taking so long but I, you know, I really again make a pledge for discussing everything related to disclosure after we have discussed what can be collected. Thank you.

Kurt Pritz: So Thomas, you're not quite off the hook so, you know, notwithstanding your last comment which – with which I agree, are you advocating that one, we only make this reference once and two, more – are you advocating we make this even more – this writing more general; that we just say GDPR compliant

because my take away from the comments of several people here was, you know, collect in one place as you said, the different tests for processing data, not just 6.1F I think it is, but the other tests too and make it more specific? So what would your recommendation be for amending these in order to say address the concerns Milton has that the – that the protection – the test that was originally in here is now seemingly gone.

Thomas Rickert: Yes, I think we can – if I may? I think yes, we should only have one short paragraph describing that all data processing under this temporary specification must be compliant with the – with GDPR. And then we can say that for – that scope is relevant, that – that Article 5 is relevant, lawful processing, and that the catalog of Article 6.1 is relevant. And I think it's all about words. We can quote the most relevant clauses of 6.1, mainly A, B and F, and if we quote those then we have the language of fundamental rights in there as well so that it's not forgotten. And maybe by that we can remove some of the redundant language in the temporary specification as it stands.

Kurt Pritz: Thanks, Thomas. So we need to get onto the next thing so I'm going to provide some recommendations for moving forward after we hear from Diane and Ashley.

Thomas Rickert: And sorry, Kurt, but you also made reference to the second point that I made so maybe you can test the waters with this group whether there is alignment in the group that we're – that we discuss the questions relating to disclosure once we have discussed the questions about collection and the internal processing activities. This is not to take this off the table but I think that we're well advised to follow a meaningful sequence of questions that were answered in order to be most efficient with the limited time we have.

Kurt Pritz: Right, so I agree with that. And I think, you know, these sections even though they're under Access to Nonpublic Registration Data, and Lawfulness of Processing, really has to do with all three steps of processing and it's the –

and so, you know, it's – I think we can, you know, close this discussion and get onto data which is on the agenda for today.

I think this was just a clarification where we saw an error in the temporary specification singling out one part of the GDPR where there are several that you pointed out should be included. So we're – but I agree that we should get onto the processing of data or the data to be collected before we talk about disclosure because you can't disclose something you don't have. Diane.

Diane Plaut: Hi. Hi, Kurt. I'm thinking of a – somewhat of a combination of a number of different things that were said modifying what Alex has written and taking into account Thomas's approach as well as understanding Stephanie's points. The suggestion would be a preamble which states that this document is created in line with the implementation of GDPR and taking GDPR into account but also taking into account other global data protection laws and in the future that the document will be amended as needed to account for advances and updates in the law.

Then in Section 4.4 to modify the language that the legal bases, instead of as scope in GDPR Article 2 and pointing out a specific article, legal bases as under GDPR and in line with other enumerated (unintelligible) listed in whether it be a further appendix like you had suggested in combination with the approach that Thomas has suggested.

Kurt Pritz: Thanks, Diane. Ashley.

Ashley Heineman: Thanks. And I won't belabor this any further, but just to make it abundantly clear if it's not already, and I think you articulate it quite well, Kurt, which is that, you know, there are, you know, sections in this text that deal specifically with disclosure.

And as long as we recognize that what's listed right now, which is legitimate interest as the only lawful basis, needs to be corrected at some point and



how best to do that even if it's just articulating everything that's in GDPR but I'm also cognizant of the concerns of, you know, making this, you know, so GDPR-centric that it's hard to make it future proof. But just to note again, that the way it's currently written in these different areas needs to be fixed whether we fix it now or in the future. Thanks.

Kurt Pritz: Thank you, Ashley. Farzi.

Farzaneh Badii: Thank you, Kurt. I just said in chat that I'm confused about why – what this Section 4.4 is for. Is it for the purposes of data collection for the – so that the third parties can later on access? Or are we talking about solely ICANN purpose for processing? So I think we have to be clear because if we want to process – if we want to collect data for third party purposes, then we have to go through like a very long process of understanding the legitimate interest.

But if the third parties now do not like the data that is being collected at the moment, if the third party does not want to have access beyond that data, then why are we talking about third party purposes and some like public interest? What ICANN requires registries, registrars to collect later on then they can be disclosed to the third party based on their legitimate interest, which we can discuss in access.

And also if you look at the guidelines of the European word of data protection, they specifically say that if you collect data, if you process and collect data based on ICANN purposes, this does not categorically later on prohibit the third parties to have access to this data (unintelligible) should access to GDPR compliant. So why are we – why are we getting so confused about it, I don't know, maybe I'm confused. But I think that Section 4.4 has to be clear that these are like for the legitimate purposes of ICANN and then later on we can discuss access for legitimate interests of third parties. Thank you.

Kurt Pritz: Thank you, Farzi. So yes, so that's – boy, so that leads me to think that, you know, the language in 4.4 you probably don't want that balancing test, right,

that legitimate interest not outweighed by the rights of others because it's for collecting whereas the others which to me kind of makes the reference to GDPR generally more clear. But anyway, let's – so I have some direction for how to move forward and I want to close this off. Kavouss, want to – you want to be the penultimate speaker?

Kavouss Arasteh: Yes, thank you very much. Many good ideas expressed, but I think if (unintelligible) working on the work was at the beginning of the meeting is that if somebody look at Article 4 – Article 2 see many references which are not clear for the others (unintelligible) Chapter 2 of Title 5 of the (TEU) and so on so forth, and many other things and the talking about other unions (unintelligible) we don't know what are the other unions legal acts do we have other than, so what I suggest that a general reference to GDPR it seems to be okay, in particular cases we could pick up quote, certain part – put in a quotation and use them and the remaining part we try to have a self-sufficient rather than saying something that – and other union legal acts or other articles or so many articles or in particular directives is mentioned in Article 12 and the theme of that directive considerable amount of elements that people they should – they need to read to understand that.

And it may not be (get) out of that so we are – we are not – we are not writing for our self; we are writing for the people who have to implement that. So what I suggest that making something more understandable and less dangerous for some which is unclear, ambiguous and again with some sort of thing that not clear where we're talking about general reference. We try to be specific. This is my suggestion but I am at disposal of others if people have other views to find out but not cross referencing Article 2 in total or Article 6. Thank you.

Kurt Pritz: Thank you, Kavouss. Amr, last comment.

Amr Elsadr: Thanks, Kurt. This is Amr. I just wanted to add a little to what Farzi just said and your response to her. And I hope what I say also sort of – I'm not sure it

does but I hope it also sort of reinforces a bit of what Kavouss was just saying. Yes, at first glance, I mean, at a glance Section 4.4, the rewrite here I think is generally a good one.

It expands the requirements needed to process data from simply being based on legitimate interests to also having lawful bases; expanded the references in Article 6.1 of the GDPR from 6.1F to the entirety of 6.1 and that's all good. And as implied by others, as said by Thomas, by yourself, Kurt, that this does cover, you know, legitimate interests should not override the fundamental rights and freedoms of individuals who have their data in the RDS.

But again, and this is the third time I bring this up, the ambiguity here, the lack of clarity I believe is attributable to earlier sections that this sort of builds upon. And again, I'm going to go back to Section 4.2 and 4.3, I think – I'm personally having a lot of trouble with these two sections and how they – and how they have an impact on that's in 4.4.

Section 4.2 discuss, you know, lays out sort of the – how RDDS services are provided based on the legitimate interests; Section 4.3 describes ICANN's mission in facilitating third party processing for legitimate or proportionate purposes and then 4.4 builds on that. But unless we have a clear understanding of what 4.2 and 4.3 mean exactly and what they are based on in terms of ICANN's bylaws and ICANN's mission, again I think we really need to narrow those down.

Then, you know, discussing these issues on 4.4 won't really be helpful. We really need to settle the issues we have with 4.2 and 4.3 first and once we do I think we can have a much more constructive and meaningful conversation on 4.4. So again I think you know, the preamble to Section 4.4 that Alex is providing I think it's an improvement, but I think you know, it's kind of – it's not very useful unless you clear up some of the ambiguities that have been described by at least I believe by Kavouss. Thank you.

Kurt Pritz: Thanks, Amr. So if I were the manager of this I would – Alex, I would ask you to go back to the drawing board and take on board these comments. And when I say “take on board these comments” I’d ask the support team, you know, and I’m willing to help out to summarize, you know, in the next 24 hours what’s been – the gist of what’s been recommended here, which I view as creating an appropriate preamble for this section.

And then creating some specific language that – some – not creating specific language referring to specific language in the GDPR that we view as a baseline for the legal basis for processing data. And when I say “baseline” I mean, you know, the GDPR is the lowest common denominator.

And I would also recommend that Alex collaborate with Thomas even though I think you're in way different time zones, and maybe Thomas can provide a writing to Alex along the lines that he described about the specific section that he would call out. So that’s the approach I’d like to take to this and see if we can write this in a way that kind of complies with the – I think what most of us said here. Alex.

Alex Deacon: Yes, hi Kurt. Yes, I’m happy to do that. I’ll take an action to come up with some alternative text based on discussion we had today. Thanks.

Kurt Pritz: And I don't want to – I just want to not – I don't want to take time to discuss Farzi and Amr's comments that took us in sort of a different direction at the end but they're meaningful comments and maybe I can address an approach to that in writing or something like that.

All right, with that I want to go onto the proposal that Appendix C be removed from the temporary specification and addressed in current Contracted Party House ICANN negotiations. And again, I could – I could talk about this but I’d like to call on Alan to present the – his proposal. And so this slide said Approach to Edits but they're not edits, I understand, but – it's (unintelligible) then have a discussion today and then go forward from there.

So I'm going to – I want to give the floor to Alan, is that all right with Kavouss and Alan Greenberg or is there sort of a point of order thing here?

Kavouss Arasteh: Is not point of order, give it to whoever you think is appropriate. Thank you.

Kurt Pritz: All right thank you, Kavouss. So, Alan if you wouldn't mind describing your proposal and these are bullets that, you know, I took from the – from Alan's proposal but you have his email and have it in front of you.

Alan Woods: Thank you very much. It's Alan Woods here for the record. And so thank you all and apologies if we sent a 14-page document but we just wanted to make sure that, you know, the point was as fully fleshed out as possible on this. So as I referred to last week, and as it popped into my mind as we were going through the elements of Appendix C, that, you know, especially it does seem to us that the elements contained in Appendix C are essentially mirroring those elements that are required either under Article 26 of the GDPR or Article 28 of the GDPR which are the requirements for written agreements with processor or with – between joint controllers.

Apologies, sorry, something happened in my screen there. Okay so basically what we looked at then is when it was being created in the temporary specification it was in the background to a lot of calls for the contracted parties to have put in place with ICANN these formal agreements and of which the elements as listed within currently Appendix C and Article 26 and 28 are there.

So what reading Appendix C and the way it made it into the temporary specification was that it was a placeholder, and using the term here like an emergency substitute for the GDPR mandated data protection agreement. So, you know, it is effectively a (unintelligible) list of provisions that you would find within the GDPR itself. So, you know, that's what we did in the appendix to the document we sent through where we went through each particular

section of Appendix C and we pointed out where, you know, A, it's referenced as an inclusion under Article 28, but also where it is specifically called up in the GDPR as again, being a statement of the principle as opposed to anything else.

So you know, it should be relatively straightforward. I do want to I suppose note specifically that, you know, once it goes into the rub of something that should be attached to the Registry Agreement or the Registrar Accreditation Agreement, you know, this is where we're getting to a realm of should that be within the scope of the EPDP, and the contention simply for us is that it should not be.

I also, and in responding to – Kavouss made some comments this morning on the email, and I was very happy to respond to them so apologies that it only came through in the last 20 minutes or so, but basically it also followed through on the advisory of the ICANN Board itself when they were releasing the temporary specification where they called out specifically the data processing aspects which are in Appendix C, they specifically call it out and say that this is something that needs to be in future put into the Registry or Registrar agreements, sorry, not the Registry Registrar, pardon me, the Registry Agreement and the Registrar Accreditation Agreements.

Now, a very important thing on this is that it's not taking away from any of the discussions that can be had about any of the other elements. So we're not talking about, you know, removing the discussions which is basically us creating the ground rules, the policy that needs to be implemented that will then fuel the discussions between ICANN and the contracted parties.

We still as an EPDP need to discuss things such as purposes, we still need to talk about things such as legal basis, we need to talk about things like, you know, disclosure of (unintelligible) and including access by third parties in that we will need to talk about them, we're just saying that specifically Appendix C

is not something that necessarily needs to be replicated within the actual temporary – or sorry the GNSO policy that comes from this.

There are still much more specific parts of the discussions that we will need to have and it's – Appendix C is something that I think we can just literally pull from it and at the same time state quite clearly as a recommendation to ICANN that it is a recommendation that this is taken to the negotiation aspect, that we need to talk about that ICANN needs to enter into an agreement with the registry and the registrars, they need to meet the legal requirements of the GDPR specifically in this because again, even though it is only one of the laws that we may have to follow it is specifically a requirement under the GDPR that we do have to follow.

And that is under Article 28.3 specifically, just pointed that, that it needs to be a written agreement and again, that is repeated within Article 26 if it is a joint controller agreement, which by the way is something that we need to discuss as an EPDP, but it also states that it must be an agreement between the parties and a written agreement between the parties as been interpreted specifically from speaking of my home – at my home jurisdiction of Ireland where it's put into our, you know, Data Protection Act of 2018 says it has to be specifically a written agreement.

So there's a lot of elements within Appendix C which we do not need to discuss because they are part and parcel a replication of what is already in the GDPR. And I don't think we need to spend time on this because they are all discussions that are best had in other elements in other areas.

I went through that exceptionally fast so apologies but, you know, as I said, there is that document we sent through and the extra email I sent you this morning, and in the interest of time I'll park it back to Kurt, but what I would suggest is, you know, this is something we need to definitely rehash throughout the list as well and I'm more than happy to have more discussions on that as well.

Terri Agnew: And this is Terri. Kurt, if you're speaking your line may still be muted.

Kurt Pritz: Heck no it isn't. Thank you very much, Alan, that was really well put. So let's march through the queue. Kavouss.

Kavouss Arasteh: Yes, thanks, Alan Woods for his comprehensive presentations of the issue. No matter what data we collect, what nature of data would be and from whom the data is collected, the processing of the data is important element in the IP technologies. And I think for that we need to clearly know the role of any of the entities or role players. If we take this out from the temporary specification together we're taking out from the transfer of the data, together we're taking out totally or discussing in separation from the temporary specification the access. So what remains?

I understand the position of Alan Woods, that clearly represents the entity that he is working for. But I don't think that from the general point of view I am not convinced that that should be taken and should be treated separately. And I have difficulty how we collect all of these things that view of somebody taking out from here like access differently or like transfer from the security point of view or from the data position.

But I have serious difficulty to take out the data processing and leave it to be treated separately without being part of the temporary specification because here you mentioned role of everybody, role of registry, role of registrar, role of the ICANN, legal justifications and that is important element. So I think we need more debate and discussions to really understand why it is taken out and how will be treated and how it will be collected again back in one way or other to the temporary specification or to the different specification. So currently presently I am not convinced to take that path. Thank you.

Kurt Pritz: Okay thanks, Kavouss. I've had a – the way I was thinking about this is one was that Alan's assertion that the GDPR requires the negotiation of these



agreements, and so the first thing we would have to do is agree with that. And I don't think that's a bridge too far but we'd have to agree to that. And then we'd have to say so if ICANN and registrars say negotiated these agreements or registries and ICANN negotiated these agreements, then what would be left – what would be not covered by them that is still in Appendix C? And if there's something there then we would still need part of it. But if there's nothing there then it would kind of be replaced.

So I think those are the two questions, you know, does the GDPR require the negotiation of all these joint controller agreements? And second, once negotiated does that cover Appendix C? And I'll – well Margie's going to talk next. I was going to bring – or next after Alan I was going to bring up her concern from last time but I think she will and maybe address whether Alan's proposal and justification covers it. But first we'll go to Alan Greenberg.

Alan Greenberg: Thank you very much. Alan Greenberg speaking. Kurt, in your last intervention you said the GDPR requires the negotiation of contracts. GDPR does not require negotiation of contracts; GDPR requires contracts. How the contracts come into being is not specified in the regulations.

All consensus policy by definition is – are decisions that are made by a working group, recommended to the Board, approved by the Board and go into contracts. So it is not a given that because it – something ends up in a contract it is subject to negotiation; that's why we have consensus policy.

I don't believe, I'm giving a personal opinion here, that we need to write contract language here but the basic principles that are going to go into the contract that govern what Appendix C is trying to do right now, I believe need to be specified by this group. It may simply be a reference to GDPR, it may be something different, but I believe the core has to come into this and is not necessarily a negotiated deal between – which is negotiated in private between the contracted parties and ICANN. I believe it's quite fitting that this group specify the core contents of those sections. Thank you.

Kurt Pritz: Thanks, Alan. Margie.

Margie Milam: Hi. This is Margie. Yes, I was going to raise the point that we talked about last time which is that the chart actually does talk about third parties disclosure. And so with regard to that part of the chart, these provisions are necessary and appropriate. And I can just give you an example of what's happening in the – right now. If you make a request for Whois data some registrars will ask, you know, how are you going to handle the data? How are you processing it? And so those kinds of concepts so far haven't been addressed.

It seems that we need a standard that apply across the board so if you're accessing the data but the nonpublic data because you have one of these purposes that are, you know, legitimate or the other bases you were talking about, I assume this group would think that there needs to be some description of what can be done with that data, how it needs to be handled, that sort of thing.

So those things are part of the Appendix C, and so I think it's important to keep it with respect to the third party disclosures. But I also, you know, understand what Alan is saying, if we're going through these issues for third party access it seems that we should at least set a standard for what should be in the contracts once, you know, once the policy is adopted.

Kurt Pritz: So at the – so at the end are you accepting of Alan's explanation that that's – that that third party disclosure is memorialized in other places in the temporary specification? Or are you saying there should be some other accommodation of it such as is made in Specification C? And if we did go down Alan's path then, what would you have, you know, what would you recommend being left in Specification C to note that – note the concern you have?

Margie Milam: Yes, I guess I'd have to look at it but I do not think it's addressed elsewhere. So the principle for processing as it relates to third party disclosure and access is the part that probably needs to be standardized is my suggestion. So that's why we'd probably have to go through it.

Kurt Pritz: Thanks. James, where'd you go?

James Bladel: Hi, Kurt. James speaking. I lowered my hand because I think in the interest of time I didn't want to go too much further down this path. I think that this is a somewhat of a cul-de-sac. Thanks.

Kurt Pritz: Okay, Diane.

Dian Plaut: Hi, Kurt. I think that Appendix C serves a really important purpose and to take forward Alan's comments just a few minutes ago, and Margie's comments, I think that it's important for us to have this bridge which lays out the different bases for each different party. We've really discussed here the fact that we need to understand why the bases of collection, the basis of processing and the basis of access. And this appendix helps us do that clearly. If it needs to be improved and expanded that's one thing. But I think it's an important part of the document, part of the temporary specification and I think that it's important to keep in place.

The GDPR did not explicitly require the execution or negotiation of certain contracts. Data processing agreements are entered into whether it be between the registrars and registrants or whether there is going to be one in place between ICANN and the registries and registrars as a matter of course if needed, if the parties agree that it's needed and necessary. But these are not explicitly required or explicitly negotiated.

Kurt Pritz: Thanks, Diane. Marc.

Marc Anderson: Thanks, Kurt. This is Marc Anderson for the transcript. I want to actually go back to the comments Alan Greenberg made and, you know, Alan, if you don't mind me putting you on the spot for a second? Listening to your comments, you know, I thought your comments were largely in agreement with what Alan Woods said about his reason for removal of Appendix C. But based on the way you were making your comments, I got the impression you were disagreeing with Alan Woods's recommendation.

So I guess, you know, I guess I want to ask Alan Greenberg, sorry, making sure I'm referring to the right Alan here, is he supportive or opposed of Alan Woods's recommendations? And I ask that, you know, and I guess if he's not supportive then I think maybe Alan Woods and the Registries in general need to go back to the drawing board and do a better job explaining our recommendation, because, you know, based on Alan Greenberg's comments I think we're actually in alignment. So, you know, so I see Alan has his hand up. I'll leave it there.

Kurt Pritz: Okay. Thanks very much. Go ahead, Alan.

Alan Greenberg: Yes, thank you. No, I'm not in agreement and what specifically what I'm not in agreement with is that because it has to be – there has to be contractual terms it should not be discussed by this group. I believe this group should be outlining essentially what it says and is not left to private negotiations outside of our domain. So I'm not quite sure if that's agreeing or disagreeing, but I read Alan Woods's statement certainly at the beginning saying it should be completely removed because it has to be negotiated and I'm disagreeing with that.

Marc Anderson: Thanks, Alan. Marc again. I mean, I might ask Alan Woods to jump in to better explain that but, I mean, I think Alan would agree with you, you know, I think Alan tried to explain that, you know, sort of the what is in scope or the – sort of the what question is certainly in scope of this EPDP we certainly should be discussing and agreeing to those. You know, I think his point is the

actual contract language itself that sort of defines the how is best left to, you know, to contracted parties to negotiate.

So I don't know if, Alan, I can – Alan Wood, I can put you on the spot to either correct me or support, but, you know, I think we're actually in agreement on this.

Kurt Pritz: Thanks. Go ahead, Thomas.

((Crosstalk))

Kurt Pritz: Oh, did somebody – go ahead, Alan.

Alan Woods: No, let Thomas go ahead, it's fine.

Thomas Rickert: Okay. Thanks very much both Kurt and Alan. Now, I think we have – the question to answer what is for this group and what is not for this group to do. And according to Article 28 Subsection 9, a data processing agreement needs to be done in writing for the – so that would be at least shoot for the data processing agreements that need to be put in place between ICANN and the EBERO and ICANN and the escrow agent.

And I think, you know, while we as a group need to put a request into our report that ICANN needs to enter into such agreements with those third parties for the whole concept for the entire gTLD operations to be compliant, it's not appropriate for this group to do a collaborative drafting exercise and write the data processing agreement.

Comparable is the situation for the joint controller situation that we have in front of us and that also Appendix C is related to. And my take on it is – and I very much support what Alan has said – let's take this out of our discussions to the extent that it deal with negotiating the terms between ICANN and the contracted parties.

So for example, how exactly the parties wish to indemnify themselves for one party's wrongdoing, there's nothing for us to determine. Also, how a consumer or data subject queries are being responded to, which of the parties is going to do that. I think that's something that is at the operational level and should be dealt with between the contracted parties and ICANN.

However, if you look at the joint controller article in the GDPR it says that those parties are joint controllers who jointly determine the purposes and the means of processing, then certainly it's for our group to determine what processing activities are involved. And I think that's really what those who are objecting to taking this out of the temporary specification are concerned about; they don't want to lose control over discussing the purposes and the legal bases and the rationale and all that we should do. Right? We just should not do the drafting exercise on behalf of the contracted parties with ICANN.

So my recommendation would be let's remove these appendices, let's make it a requirement for ICANN Org to enter into joint controller agreements and data processing agreements where required but let's reserve the right or make it task for us to inject the purposes and the rationale to those contracts for ICANN. So thank you.

Kurt Pritz: And so how do we do that, Thomas? Do we lead in some sort of Appendix C that points to that? You know, points the contracted parties to those purposes or what's the best way of ensuring, you know, Alan's concerns are memorialized in the specification or policy in some way?

Thomas Rickert: Well, I guess, you know, it is a little – it's not an easy task to determine whether parties are actually joint controllers. And as I mentioned, they are joint controllers if they jointly determine the purpose and the means of processing. So let's not do the part where we come up with the purposes, make it a requirement for ICANN to accept those or to discuss those with this

group and then make it an action item and the requirements for ICANN to enter into the required agreements with those third parties.

And, you know, I think all this is quite abstract because I'm not sure how many in this room have seen joint controller agreements already. And in fact in the text book you don't find drafts, right? So I'm – I can happily share a draft that we produced for other purposes so that probably we can shed some light on what we are removing from this discussion and what we basically leave for the discussion between contracted parties and ICANN. And whilst, you know, we don't need to go through an entire straw man of the document, I can come up with some parameters at would need to go into a joint controller agreement so that we get a better understanding of what we're talking about.

Kurt Pritz: Thanks, Thomas. Alan.

Alan Greenberg: Thank you very much. It's Alan Greenberg speaking. You may recall at the beginning – by the way I support largely what Thomas just said. You may recall we had this discussion I think it was in this group of why this was called a specification and not a policy. We write – working groups create and the GNSO creates policy which is approved by the Board and then is implemented by adjusting contract by adding clauses to the contracts. The Board was in a rather unique position, they actually had to draft contract law – contract terms so it could be directly applied to the registrars and registries. We're not doing that, we're writing policy.

So the concept of should there be an Appendix C really does not, you know, to use the expression, does not compute. It doesn't make a lot of sense because Appendix C – the phrase "appendix" or a specification replies to the contract itself, which will come out the other end of the pipe but we are not creating. So I think we need like any policy development process we need to specify the core contents of what our intent is, that will get translated into contracts. And as Thomas points out, you know, if there is an indemnification

clause you know, that has to be – that may well have to be negotiated but it's not something that is our concern.

So I think we need to have the core contents of it, the relevant parts that are relevant to GDPR, the parts that are relevant to the business relationship between ICANN and the contracted parties will be part of the contract and probably will be negotiated, but it's not what we're writing. But we still need to write the core part that will work its way into the contract to govern the substance of the agreement. Thank you.

Kurt Pritz: Thanks, Alan. Kavouss.

Terri Agnew: Kavouss, this is Terri. I do see where you're connected on the telephone still. It is unmuted on our side. If you could please check the mute on your side?

Kavouss Arasteh: Yes, it is not muted. Now is not muted.

((Crosstalk))

Terri Agnew: You're good to go.

Kavouss Arasteh: ...two seconds ago. Two seconds ago was muted and now I'm waiting for green light of Kurt whether he allows me to talk or not. I have de-muted...

((Crosstalk))

Kurt Pritz: Oh so go ahead, Kavouss. I'm sorry, I thought I...

Kavouss Arasteh: Yes. Yes. My point is that...

Kurt Pritz: Go ahead, Kavouss.

((Crosstalk))



Kavouss Arasteh: ....in its argument in favor of what we should put from Appendix C in the temporary specification or the (unintelligible) specification. I think there is a middle ground. The middle ground is that those elements which are part of the contract or agreement between ICANN registry and registries could be done without any need to the temporary specification could be left out. But the core part, the remaining part which has connection with the GDPR is a connection with the whole process must be remain in and then we refer to the agreement within the registry and registrar base on those elements that will be taken out of Appendix C in the appendix.

So in summary, part of the elements contained of Appendix C remain, maybe major or overwhelming part of that will be taken out. But I think we have to maintain the reference to the core value or the essence of the Appendix C in the temporary specification. So it could be worked out in that sense, not black and not white, not totally deleted, not totally go through everything which may not be required. So I propose that for consideration of distinguished parties. Thank you.

Kurt Pritz: Oh go ahead, Alan. Thank goodness, I was about to call on you. Where do you think we are in the next (unintelligible) and then, you know, I'll have some thoughts too if necessary.

Alan Woods: So forgive me but I'm somewhat confused by some of the reaction just because I think – and just to go back to what I was saying, I actually do think Alan, other, and Alan myself, are somewhat on the same page, we're just coming at it from different angles I don't think meet. I'm not suggesting that the policy is not to be decided by us; the policy of course is to be decided by us. The who's and the how's and the where's and the, you know, who is the data controller, who is the data subject, what are the processing, what are the purposes, these are all exceptionally important things that need to be put into the policy at the end of the day.

And as contracted parties they are things that will go into the policy at the end of the day and we will accept that. But my point is that Appendix C actually – and I know people disagree with this and we can hash this out on the list and whatever – but Appendix C actually doesn't add anything, it is the product of a hasty response by ICANN at the end of the day to squeeze in these elements that, you know, are listed specifically within the GDPR.

So it's literally, as I said, it's a shopping list of you need to make sure you have this and you have security and you need this. These are all just of course come down to being a policy question. I'm talking about as – and thankfully, you know, Thomas Rickert, as always is very clear in his explanation of it, it's the whole I'm taking at the contract like of it, the policy and what goes into it and what shapes that contract and what shapes the elements of that contract are indeed going to be policy but I'm talking about, you know, for the – in the interest of expediency and time, the entire (unintelligible) of Appendix C is technically not necessary within the actual document.

The whole what should be in the contract will be teased out by the entirety of the rest of the work of the EPDP. I mean, I was trying – it took me that long to kind of come up with some sort of an idea on that. I mean, I think that, you know, you possibly said something, Kurt, that was – makes sense, you know, when we take out those elements, what's left in Appendix C? And maybe that's something that we need to look at.

But this is – this was in the interest of why are we going through line by line of Appendix C when Appendix C specifically is, A, stating lines of the GDPR, which are going to have to be put into the policy and we can discuss that as part of the policy. The other thing I would look at as well of course is the list of the data controllers. And I know that's giving comfort to some people because it looks at the relationship of the parties. But again that's not necessarily an Appendix C type insertion; that is something that needs to be discussed after the purposes, that's a preliminary concept, that's something we need to look

at at the beginning saying, what are the parties in this? Who are the parties? What do they represent? And then what are the purposes of those parties? I mean, that's something that would be part and parcel of the policy itself and it does not need to be called out specifically in Appendix C. Appendix C was an artificial construct due to time and due to the lack of the fact that there was this written contract.

And you know, I will just throw in at the end, I mean, having dealt with, you know, EU law for many year, I mean, when they specifically say something in EU law with regards to it must be in writing, you know, they will look at it very, very, very specifically and I don't think they take kindly to our interpretation of just attach it on. If the parties haven't specifically agreed to as and in the temp spec, I'm sure that the data protection authorities would be like well, yes, no, that's not really what we envisaged.

And we'd need to look and ask that question. But again, just to restate, I do genuinely think that the policy and the nuts and bolts of what should go into the document are to be discussed by this team and to be agreed by this team, but again, taking the actual creation of the contract, which was the purported necessity of Appendix C and as I said, that was confirmed by the Board themselves in their advisory. They said this has to, by the way, go into the contract, they didn't say it quite that way, but they called it out specifically and said this has to go into the contract.

So again, I think we're on the same page; I think we're just looking at it from different silos and I think that's something we need to probably just get across. And I'm sure we can do that on the list and we can – let's hammer it out, it's a good argument I think.

Kurt Pritz: Thanks, Alan. So this is where I think we are. First I finally agree with Stephanie that we have a true parking lot item so I think we should discuss some aspects of this on the list but I think that, you know, getting through the rest of this and finally getting to the data discussion that Thomas wants, you

know, if at the end of the day we see Appendix C need some sort of rewriting we can do that. But absent that, you know, I wouldn't spend time on it. I don't know if I would – if it's my role to agree with Alan's characterization is this was a – is Appendix C was hurriedly put together to address the lack of these contracts but it rings true to me.

And so I think this is a parking lot item. I appreciate and gratefully accept Thomas's offer to – whatever the heck we said about providing some examples or prepare something to illustrate this, I'll be easier to understand so Thomas, if you could do that in the next pretty recent future and, you know, use Alan's proposal as that email list that would be greatly appreciated.

And then finally, Margie, if you could articulate your concern about third party access and where something might slip between the crack, you know, do that review and then if you find something that requires some sort of specific mention that is the sort of thing that's in the current Appendix C if you could do that? So I think those three things, you know, pending this discussion out on Appendix C, letting it sit to see how the rest of it comes out, Thomas providing an example and Margie doing that review and analysis I think that'd be the best approach.

I'm just looking at the chat as I do every 20 minutes or so. Great, thank you very much, Thomas. Thanks, Margie. And then so I'm going to leave this agenda item. And I'm just going to – well I note James is on his way out here but he commented at the beginning about having some materials ready for these modifications to these sections. I don't know if any of the registrars want to speak and tell us the state of affairs or when we can expect some writing? Go ahead, Matt.

Matt Serlin: Thanks, Kurt. Can you hear me?

Kurt Pritz: Yes, sir, I can.

Matt Serlin: Great. Yes, just to pick up on James's comments at the start of the call, I think we were a victim of the US Labor Day holiday yesterday so we're a little behind. I think our goal is to have everything wrapped up and sent out to the list by the end of the day today so that hopefully we can discuss on the call on Thursday. Thanks.

Kurt Pritz: All right great. All right then, you know, I just want to talk for a couple minutes about the modifications to these sections which are either put in terms of disclosure, third party legitimate interests, third party access. So I've been doing some thinking on these issues that is always sort of dangerous, but at the end of the last call we were looking for some possible revision to these sections, 4.4.2, which is sort of a general purpose for processing data; 4.4.8, which has to do with disclosing data for purposes of IP protection and abuses and consumer protection and other things; and Section 4.4.9 which has to do with disclosure to law enforcement.

So I want to take – I want to say a few things. One is I wrote a email that addressed part of this issue earlier today where we had agreed I believe last time to take these sections out of data processing purposes and put them in a separate section of the temporary specification that had to do with either disclosure or duties of registries, registrars or otherwise. So I want to – I've seen some comments in the chat regarding – well we still call it Section 4.4 point something and I want to make it clear that that's only for references sake.

And so here's my – for what it's worth here's my big advice on these things. You know, Amr, if you're considering amendments to 4.4.2, what is now, you might refer to the comments that the NCSG made in the triage portion of this and also I think the – some of the other groups did that too. And you might also look for language that the NCSG suggested for 4.4.8, it might be good to fit. If you're still considering – and I hope you are – suggesting alternate language to this group for that, you know, I would look to those sections.

And then with regard – I'm sorry, I'm losing my voice here, I'm hitting the Kavouss 90-minute barrier. For Section 4.4.8, part of the objection – there was one objection – the objections to this section as written were I think were to – there were two objections to this. One was that this purpose did not belong in the purposes; it was not a legitimate purpose, third party access. So we agreed to take it out. So to a certain extent the objections to this section have melted away. I would look at, you know, the comments that the Registrar Stakeholder Group made to this and maybe consider maybe this language is okay in its form as long as it's not a purpose for processing data.

And second, I think gosh I forgot who made the comment, you might look, but the question is, you know, why is this information required? So maybe the rewording of this section really has to do with explaining why the – what the – well just – why this information is required. So for both of those I would look at the big matrix that Berry did with everybody's comment in it for the end of the draft triage report for examples of writings that you guys have already made to address these issues.

So that's all the comments I have to make to that and just looking at the chat, I'm going to stop and take some questions. So Alex.

Alex Deacon: Yes, hi Kurt. It's Alex for the record. I think regarding 4.4.8 Amr and I have been chatting offline and I think we're going to attempt to tackle it based on the suggestion that Mark made at the beginning of the call that we separate these things into two buckets so we don't conflate ICANN's reasons for – purposes for processing and those of third parties. What I found when specifically trying to make an update to Section 4.4.8 it was kind of hard to do without, you know, more context, and a better understanding of how the whole Section 4.4 would kind of end up.

So I think given Mark's suggestion and a little bit more context based on the call today and plus the updates that we discussed to my redlines earlier we

may get a little father between now and the next meeting with regard to update of 4.4.8. Thanks.

Kurt Pritz: Thanks, that was very constructive. Farzi.

Farzaneh Badii: Farzaneh speaking. Thank you, Kurt. I just wanted to say that Section 4.4.2 as we've been saying is not a purpose and it's about access. But my – but I agree with Mark that we need to make the separation between legitimate interest of third parties and ICANN purpose. However, I would like to know whether the legitimate interest of third party is it only about data disclosure or do they want more data elements to be collected because as I said, and I'm repeating myself, but I don't see the comments being either the, you know, disregarded and say you're wrong or have an answer, because we considered legitimate interests of the third party in very narrow circumstances, and we have to say for what reason.

And we can't do – we can't just go and say we are going to consider legitimate interests of third parties for data processing in general because if the third party wants more data elements, yes, sure. But if not, then we're just talking about ICANN purpose and legitimate interest won't be discussed in this section.

Kurt Pritz: So maybe that's a segue to – let me get back into the room here. Maybe that's a segue to Thomas's request. And, you know, the next topic on the agenda which we might leave for the first item on Thursday's agenda is the data matrix that Thomas provide and that the support staff supplied so we can, you know, make certain that the data collected is for the purposes that are legitimate and that – just struggling through to the end here, and so we get to those issues you're talking about. So I would vote for, you know, discuss that specifically at the start of the next meeting.

Ashley.

Ashley Heineman: Thanks, Kurt. Just an update as to where we are. So I've been working with Laureen Kapin, who's my colleague as well as an alternate to this group looking at Section 4.4.9 and we're hoping to have something to share with the GAC small group soon so we can deliberate as the GAC on that. But in looking at it is my colleague, Laureen, in particular, is looking at, you know, the idea of perhaps articulating better here if not overall somewhere else which is what Alex and I believe Thomas are now working on, but a better articulation or at least a recognition of the lawfulness associated with these legitimate interests and just to respond to something Farzaneh said, it's not our expectation to seek the collection of any additional data, this is just our ability to have access to the existing data that's collected. Thanks.

Kurt Pritz: Thanks, that's very helpful. Kristina, how are you?

Kristina Rosette: I'm good, thanks. How are you? Kristina Rosette for the transcript. Just wanting to follow up something that my colleague, Alan Woods had put in chat, namely to ask if before we close the call we could get a status update from staff on the GDPR training? Thanks very much.

Kurt Pritz: Thanks, Kristina. Kavouss.

Kavouss Arasteh: Yes, Kurt, I am not in favor – not agreeing with those people saying that the 4.4.2 is not a purpose. You collect that data, you process the data, what to do with that? Are you make it available to have access or you transfer that. But what does it mean is not a purpose? What is it if it is not a purpose? So I don't agree with this insistence of some distinguished colleagues saying it is not a purpose, (unintelligible) have a discussion on anything of access or anything on transfer and saying that it is not a purpose, and then what is it if it not a purpose? So difficult to understand that idea. Thank you.

Kurt Pritz: Thanks, Kavouss. And I think I'll – I think I'll leave it to others to write – explain that or I can put it into writing maybe my understanding of it as a test. Alan.



Alan Woods: Sorry, I might be jumping in a bit early in this one but well possible wrapping up, just about the email I sent regarding the URS agreement I just wanted to flag that, that that is something we potentially should just keep our eye on because it would be very helpful I think in a deliberation in the passage of Appendix C and we quickly want to get to that but I just ask for that, okay?

Kurt Pritz: Yes. Thanks, Alan.

Terri Agnew: Kurt, this is Terri. If you're speaking...

((Crosstalk))

Kurt Pritz: So I just want to...

((Crosstalk))

Kurt Pritz: Yes, so I'm sorry, I'm thinking. Yes, so I was thinking and wasting everybody's time, I'm sorry. So, you know, Caitlin, you know, the reason that she had responded to the request about training in the chat, I think you know, there's some more detail required and that is that, you know, just like this is a procurement so you have to find the source and contract with it. And so with Caitlin's comment doesn't quite indicate how far down the path ICANN is and that they found a couple parties with whom ICANN is in discussion to turn on.

With – in addition to that, I'm free to take on – take other people's advice for who can do the training. Milton, go ahead.

Milton Mueller: Hello, yes. So I think for the avoidance of confusion, which seems to be cropping up now and again regarding these sections 4.4.2, 8 and 9, can we stop calling them – or 2, 8, 9 and call them the legitimate interest section? And we – and that way we codify our agreement that this is no longer going to be in the ICANN purposes section, it's going to be separated. And may we

also codify what I understood Ashley to say which is that nobody in particular is pushing for collecting more information fundamentally the legitimate interests is about access to data which again the specific mechanisms it something that we have to deal with in the second stage of the process. It's a very simple request.

Kurt Pritz: Yes, and after – you know, last meeting, Milton, you asked me like a yes or no question and I went on for 15 minutes so I'm really happy to say yes. Alan.

Alan Greenberg: Thank you. I'm not sure it's that simple a question. So you can say yes but some of us may disagree.

Kurt Pritz: Okay. Margie.

Margie Milam: Yes, this is Margie. I agree with Alan. I think it's something we probably need to talk about and raising it at the last minute right before the call is going to end seems like not the appropriate place or time. Maybe we talk about it on the next call.

Kurt Pritz: Okay. I think what – so, Margie, what are we agreeing with, the fact that we're creating a new section for these particular sections that are – were defined as purposes? Or that the characterization that the data is not limited to the purposes of the ones collecting the data which point – which ones of those do you not agree with?

Margie Milam: I think we're talking about the 4.4.2 issue.

Kurt Pritz: Okay. Benedict.

Benedict Addis: We've been having a little chat in the background on this. There's a bunch of times that security and stability are mentioned in ICANN's bylaws and so we're not entirely comfortable with pushing the stuff or some of the security purposes out to the third party section. And I think one thing that's come up

it'd be worth discussing perhaps over the next couple of days is that ICANN is a little bit funky in this respect, because of course we're not talking about ICANN mandating collection for ICANN purposes.

We're talking about something slightly different, which is ICANN mandating collection of ICANN's contracted parties, registries and registrars, for ICANN's purposes. That's what we're talking about when we say third party here. And I think those do fulfill third party requirements to talk about security and stability there and not all of those are third party requirements. Thank you.

Kurt Pritz: So I think you know, this is a case where Thomas's advice is well taken and that if we have this discussion with regard to the specific data being collected we might find that there's a- the Venn Diagram, the intersection of data being collected and data that is requested is pretty much one on top of the other. And so then see if there's an area of disagreement. Milton.

Milton Mueller: Yes thank you, Kurt. You said half of what I want to say which is that again, this debate will probably never end unless we get specific about what data we're talking about. And in that regard to respond to Benedict, you know, you can – and wave the security and stability flag all you like but unless you're talking about mandating the collection of data that is currently not collected by ICANN, then we don't have a disagreement. So our opinion is that ICANN's purpose in collecting data is to coordinate the domain name system; it is not the security and stability of the entire Internet, which is a overly expansive and even somewhat ridiculous burden to place upon ICANN.

And that the data that ICANN collects can indeed be helpful to various third parties of pursuing the security, opposing criminality and so on, but that the data that ICANN collects is fundamentally needed and is very limited set of pretty much what it's already collecting, and the question of, you know, how that is disclosed is fundamentally what you – most of us seem to be concerned about.

We could just reach an agreement on what ICANN's purposes are and avoid, you know, trying to manipulate or expand that purpose because you think it's going to give you greater access to data that you think you might want, we can actually make progress. If we keep trying to load things onto ICANN's purpose which are, you know, not actually its purpose then we will never reach an agreement.

Kurt Pritz: Benedict, do you have a response? Thanks, Milton. Benedict, do you have a response?

Benedict Addis: Thanks, Milton. Could I just ask when you say "ICANN is collecting" do you mean ICANN is asking registries and registrars to collect or do you mean something else? Because we are definitely not...

Milton Mueller: Yes, yes, I mean...

((Crosstalk))

Milton Mueller: ...they're asking registries and registrars to collect information which they are contractually obligated to collect and disclose under certain circumstances.

Benedict Addis: Okay so we're definitely – we're in agreement, we're definitely not saying that ICANN should ask for any more information, no blood type, no driving licenses. Thank you.

Kurt Pritz: Thank you. Stephanie, you got two minutes and two seconds.

Stephanie Perrin: Stephanie Perrin for the record. I just wanted to raise the point that a lot of our difficulties in disentangling what are legitimate purposes for ICANN to collect data in my view stem from the fact that it is a public policy function as a multistakeholder organization as opposed to being a government for instance. And the reasons for that are inherently – they're fictional and

international and the need for the Internet to work globally, but that does not stop people from bringing expectations that it will act in a way that a government might.

And I really think that we need to stop for a minute and define what ICANN's purposes in narrow terms because we really haven't done that and people keep adding to it. We went through this dance on the RDS, and it, in my view, was a key reason for us failing to produce results. Certain parties brought in all kinds of legitimate purposes for processing, which are no way legitimate purposes for collection. My favorite example being scholarly research; if you collected for the purposes of scholarly research in order that you could disclose data for scholarly research, your list of data would never end because every university would arrive with a wish list.

This is not dissimilar and therefore narrowly scoping ICANN's purpose seems to me paramount. Thank you. I realize this is out of order but, you know, we haven't solved it. Thank you.

Kurt Pritz: Well, you're never out of order, Stephanie. Alan, can you take us home?

Alan Greenberg: I can try but I probably won't. Let me give an example of the data element that I use to justify this kind of discussion and that's technical contact. ICANN has absolutely no use for that data. It is not necessary for ICANN, it is not necessary for its registrars and registries. But it is necessary if we want a maintainable, supportable Internet to know who to contact if something is broken. So that's a piece of data that I believe ICANN has a requirement that it must collect.

It may be the same as some other data but it must have a technical contact that someone else can use, a third party, if they need to fix or get a problem fixed. ICANN has no use for it but it's something that I believe we must continue to collect. That's the kind of thing that I'm talking about. We're not adding new data. Thank you.

Kurt Pritz: Okay. I think some registrants want – if the registrar has a technical question they want to point the registrar at a certain person in their organization so anyway so that's for discussion. So the next thing that we're not going to talk about is the data itself which is the next thing on the agenda. And I was going to ask Thomas for his opinions on certain things regarding the spreadsheet that the support team put together versus his.

So what I want to do, Thomas, is maybe you and I could talk tomorrow about that so we present this in the right way. And if anybody on this list wants to join on the discussion send me an email and we'll get on but mostly – you know, it's essentially for coordinating our discussion so we present the information in a way that really facilitates the data elements.

So that's that. So I'm going to turn it over to the support team with actions. I know I've been lacking some timelines so I'll speak up when they come up but who's going to – from the support team who's going to talk to the actions and questions?

Marika Konings: Kurt, that will be me. This is Marika. So I have taken note of eight action items during this call. The first one being the EPDP team to review the latest version of the triage report as you circulated to the mailing list and I put a date here to provide input before the Friday the 7th of September as my understanding was that your intention is to send it out by the end of the week to the Council; if that's incorrect do let me know.

Action item 2, the leadership team will circulate guidelines for members to be able to apply for travel support for ICANN 63 shortly after this meeting. Action Item Number 3, the Registrar team is to circulate the proposed modifications for Section 4.4, Registrar Registry ICANN contract purposes to the mailing list by the end of today. Action Item Number 4, Alex and Thomas are to collaborate on redrafting 4.4, the introductory paragraph and Appendix C2 factoring in today's conversation.

Action Item Number 5 is the proposed revisions for 4.4.2, 4.4.8 and 4.4.9 are due by Wednesday the 5th of September at 22 UTC. Action Item Number 6, Thomas to illustrate to the group what needs to go into a joint controller agreement. It may be helpful if Thomas can indicate what would be a realistic deadline for that. Similarly, Margie agreed for Action Item Number 7 to review Appendix C and indicate what aspects may need specific mention in the policy recommendation. And again, a realistic deadline for that would be helpful.

And then I had as a last action item the one you just noted that you will confer with Thomas to prepare the discussion on data elements for Thursday's meeting and anyone that's interested to join that conversation should indicate that to you offline.

Kurt Pritz: So we'll be writing that down. Thank you very much, Marika. Any comments, closing comments? Amr.

Amr Elsadr: Thanks, Kurt. This is Amr. Just again to bring up what I mentioned earlier about possible paths forward regarding 4.2 and 4.3. Kurt, you had – you said that you would try to sort of formulate suggestions on how to handle those, if that would be captured as an action item or how there would be follow up on that. Thanks.

Kurt Pritz: Thanks, Amr. Could you include that please, Marika? And I – I made that offer and I had some decision in my mind for how to go about that and I have to recapture that. Anyone else? All right great, thanks very much, everyone, for your time and your constructive participation and I'll talk to you guys soon. Have a great day.

Terri Agnew: Thank you, everyone. Operator, (Mark), if you could please stop all recordings? To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of your day.

END