

**ICANN  
Transcription**

**GNSO Temp Spec gTLD RD EPDP Tuesday, 06 November 2018 at 14:00 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/gnsso/gnsso-epdp-temp-spec-gtld-registration-data-06nov18-en.mp3>

Adobe Connect recording: <https://participate.icann.org/p1qdyha6o2k/>

Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/qA68BQ>

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

Coordinator: Recordings are now started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 23rd GNSO EPDP Team meeting taking place on the 6th of November, 2018 at 1300 UTC.

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 bridge could you please let yourself be known now? Hearing no one, we have listed apologies from Emily Taylor of the RrSG; Georgios Tselentis of GAC; Kavouss Arasteh of GAC; Kristina Rosette, RySG; Alex Deacon of IPC and Esteban Lescano of ISPCP. They have formally assigned Lindsay Hamilton-Reid, Chris Lewis-Evans, (unintelligible) Beth Bacon and Brian King 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 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 your right and in the meeting invitation 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 statement of interest please email the GNSO Secretariat.

Seeing or hearing no one, all documents and information can be found on the EPDP wiki space and there is an audiocast for nonmembers to follow the call. So please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call. Thank you very much and I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks, Terri. And hi, everybody. Thanks for being here for an on-time start. The agenda's in front of you. It's not quite as action-packed from a substantive standpoint as I had hoped but, you know, we wrestled with the agenda quite a bit to make it as meaningful as possible and we think it's important to look at the entire list of outstanding items that we have to do for an initial report, which is I think straightforward but at the same time daunting and show our plans for getting to the finish line there.

So we'll do that and then we'll start ticking off a couple of the outstanding items that are in the initial report for our review so hopefully tick off a couple

of the easier ones. So let me start with the agenda items Number 2 – let me start with agenda item Number 2 in the – and the things listed there.

So I think Marika's going to put up the timeline that you've seen before for getting this done. And it's easier if you just look at the – I don't know if she wants to put in the link too but it's easier if you just look the doc, but I don't know, Marika or Caitlin, do you want to spend a minute and a half and take us through this?

Marika Konings: Sure, Kurt. This is Marika. So hello, everyone. This timeline was shared I believe sometime last week, and we've also created a dedicated wiki page where you can find this information as well as the link to the draft initial report with my numbers, that should hopefully facilitate identifying any issues or items you want the group to discuss.

So we had asked everyone to review the draft initial report by yesterday with the objective of flagging any charter questions or response to charter questions or preliminary recommendations that need to be further considered or discussed in addition to those that have already been flagged with the color code blue as items that need to be further considered.

You know, I know that everyone is very stretched and there's a, you know, a lot of information that we've been sharing and we're asking from you but really in order to be able to plan, you know, our remaining meetings and determine whether additional meetings are scheduled in order to try and hit that deadline of the 19th of November it's really important that, you know, the leadership team and staff have a complete list of items that people – list of items that people want to discuss further.

As we noted as well on the mailing list, that doesn't need to mean that you need to write five pages as to why you want to discuss something further, at this stage we just need to make sure that, you know, we haven't missed anything on the list of items that we've already collected and under Item 3 we'll go into more detail of what we currently have there and as said, you know, if there's still anything burning that is not covered in there we do need to know as soon as possible in order to plan accordingly.

So basically based on that list we'll be working on, you know, planning between now and the 16th of November and trying to align, you know, those outstanding issues with the time we have available. You know, the hope is that, you know, you can also start looking more concretely at, you know, items and think about, you know, what are some of the substantive comments or edits you would like to see be considered or discussed.

And I know some of you have already started sending some of those suggestions to the list. You know, we would like to encourage you to actually use the Google Doc because that will facilitate, you know, keeping everything together and also allow for having, you know, comments, edits relating to the same issue, you know, captured there together which will make it also easier for leadership and staff to kind of considered, you know, how some of those items might be reconciled

Again, we're working towards a target publication date of the 19th of November for which, you know, staff would then hopefully be able to publish a kind of final version of the initial report by Friday the 16th of November that would basically then capture all the things that we've hopefully addressed between today and that date so that will leave you then with a couple of days, you know, for, you know, minor issues or things that we may have missed.

Again, we know this is a very ambitious timeline that really depends on the willingness and commitment of all of you to work towards this deadline. I know several of you have asked for additional time and again, you know, I do want everyone to be clear as well, this is not some arbitrary deadlines or timeline that, you know, staff and leadership are putting forward here.

I think as you all know, this is really all predicated by the end goal of having, you know, new policy recommendations in place by the 25th of May, which basically means, you know, having calculated back, you know, we're, you know, getting quite close to, you know, needing to publish by the 19th of November because, again, any additional time that is taken here will mean that less time will be available for subsequent phases of the work such as, you know, review of public comments, you know, working on the final report and then of course as well there's work that both the Council and the ICANN Board will need to undertake, you know, to eventually adopt the recommendations and move those into implementation.

So I hope I've not spoken too long but that's basically what I wanted to put forward. And the link is also in the Adobe Connect room for those that want to review this in further detail. Back to you.

Kurt Pritz: Thanks, Marika. And just a point of – put a point on it, it's not, you know, we'll have less time for considering public comment and other things later, it's sort of – it's sort of a brick wall for getting to the May 25 deadline so I think the two points Marika made were – finish that review work as quickly as possible and while I'm really loathe to ask people to compromise on issues that are dear to them, remember, this initial report and the most important part of the initial report is to be in a form where we get the right amount of public comment to inform the rest of our deliberations, so to the extent something is acceptable for doing that we want to go ahead with the report.

And the face-to-face meeting, we meant to send out a notice two days ago and somehow we looked at each other and thought we had signed off – assigned it to one another. So the – verbally important announcement, so the face to face meeting will be scheduled for – unless something remarkable happens – January 16-18 so that's Wednesday through Friday. I know a couple of you checked that box with a yellow instead of a green and I sure hope – I sure hope you can make it but that was the winner by far. And we'll send out a notice after this. We've pinged the Meetings Team to investigate locations for that. And so – and really left it up to them but as soon as we have a location for that we'll let you know. So it's January 16-18.

We didn't put the, you know, there's been a lot of emails on the list about what we call Small Team 1 and 2 but has to do with the distinction between legal and natural persons and distinguishing registrants or data subjects on a geographic basis. And so, you know, I wrote – so I want to put this on the agenda for Thursday and I wrote kind of a long but in artful email about this. And then I read Amr's – Amr on the call? Yes, so hi Amr, thanks for your thoughtful response.

So, you know, I read Amr's response and I think that, you know, having read that I saw where I kind of miscommunicated in my email. But to me the choice is between, you know, putting up in the initial report that there's these differences or putting up in the initial report there's these differences and so we want some research done on this that can start now which was one of the suggestions that came out of one of the small teams.

And so in addition to my email there's also an email from Marika with proposed language for the initial report that at least for the legal and natural person distinction does that, it highlights the positions of the groups and, you

know, also somewhat softly requests that research be done. But, you know, to me I want to make that, you know, more strong and, you know, because, you know, we do an initial report and we want public comment but also we're understanding that we might want some more facts or opinions from a DPA. So that was my – that was my position there.

So please read the recommended language and, you know, maybe we can discuss this Thursday and come up with some language for the initial report. So I'm just looking at the...

Terri Agnew: Kurt, this is Terri. You seem to have dropped off of the audio.

Kurt Pritz: I know because I'm reading.

Terri Agnew: Oh sorry. Thank you.

Kurt Pritz: So we don't talk in these meetings, we just – we type. So, you know, I'm reading the comments and so I think the two choices are, you know, I see Thomas has tried to tease out consensus some more so I'm reading the email list and I'm wondering how much consensus can be teased out of this but I'm open to that.

And as far as, you know, just saying no, we don't want, you know, no, we don't want research, we don't want to be informed by any more information doesn't seem to be the right approach for me. So I'm for – I'm for representing the divergent viewpoints but I'm also concerned with having a policy released with kind of a blank there at the end of the day so I want to do everything we can to inform our discussion. So I don't really want to talk about it anymore or take up your time with that now, but put it on the agenda for next – the next meeting and I'll try to more artfully state my position.

Caitlin or Marika, do you want to go through the outstanding action items kind of quick and then I have a couple more updates.

Marika Konings: Yes thanks, Kurt. This is Marika. I'm just pulling up the action items from the wiki page. One outstanding item here is in relation to Purpose N. I see that Kristina is not on the call so we may need to follow up with her separately unless Amr or Milton know what the status. I think Kristina did send a message to the list on Friday noting that the revised language or proposed modifications for Purpose N were forthcoming but I don't think those went to the list but maybe I missed it and as said, staff will follow up with Kristina on that.

Then there are two item that I think we already covered to a certain extent, you know, there were a couple of items that we asked people to provide input on by the latest on last Monday and as well the Friday of last week in relation to the designations responsibilities for the different processing activities. And Kurt, I'm actually presuming that you may talk about that in your other updates.

And then of course there was as well the item to – for groups to review all the latest versions of the data element workbooks and flag any issues that need further consideration. I think we partly already captured that on the previous update. I think today we've only received input in relation to Purpose M so that has been added to the list. But again, it's really of key importance that anything else need to be flagged as soon as possible so it can be lined up for further conversation and discussion.

I think those are the most imminent items. I think there are some older items on the list that the group may want to have a look at and see whether those are

still relevant and pending or whether the group has moved on from that. I note there's still the, you know, proposed draft language for the research purpose. I know there have been some side conversations on that but again, if that is something that needs – that needs to be included in the initial report it probably should have been received two weeks ago. But anyway the group will need to decide how to deal with that and I think that's at a high level captures what's on the list and most urgent.

Kurt Pritz: Thanks very much. And there's just a couple other things I want to mention as part of this that perhaps maybe stick on the back of this agenda, but I read and appreciated Thomas's email about responsible parties and then Alan's follow up to that so I understand how we need to have a discussion about that. I responded to the email reflecting my understanding – expecting my understanding to be incorrect but that's why I put it in the email and wanted to get your feedback, but we have some time, you know, I'd like to start with Thomas and his description of what he said in his email about how we could better describe responsible parties and their relationships and then have Alan Woods participate, too.

And then finally I wanted to comment and, you know, give Marc some time now or in some other forum about his email about the initial report and, you know, we kicked off to the items in there but, you know, I saw this gestalt thing too about the initial report is kind of hard to read and comprehend as a whole. And I sympathize a lot with that and kind of shoehorned in with being asked, you know, many times since the inception to answer each of the charter questions.

But by answering those questions one by one it kind of takes away from, you know, our work and the policy, you know, as a whole, you know, the development of issues, the development of data sets, the processing of the

different data sets and so it kind of, you know, gets in the way of us painting this big picture.

So, you know, I want to talk some more about that and how we can issue a report that maybe does both those things. So, you know, if there's time in this meeting we'll do that or, you know, I want to appreciate and tease our Marc's letter some more.

So with that, you know, the next thing on the agenda is to kind of talk about what's left to do for the initial report, the things we could not have – we have not specifically reviewed yet. And those are highlighted in a document that Caitlin sent out just a few hours ago and lists the topics left. So the first thing I want to do is kind of go through that email and list those topics and then kind of talk about maybe with staff's help a methodology for discussing each one of those. But I don't have them up now so I'm looking at my email and I think you're essentially looking at the same thing.

So we kind of divided the session into the remaining issues into three sections; those that were sufficiently complex, where we probably need to talk about them. There's one where we've actually done nothing yet but I think we could take care of that if we had some people volunteer to do some work. There's a set of issues we think are a little bit simpler that we can just address via email although, you know, we'll get on the phone if necessary. And then there's some sort of admin things associated with the initial report that have to be taken care of. But I don't want us to look at those or spend five minutes of our time on that.

So I think – and I don't know exactly how much time I want to take up of yours and, you know, I certainly don't want to read this stuff to you. But with Purpose M we have to discuss the issue that was raised about disclosing data

before the UDRP is filed and how to go about that. And that maybe one of our directions needs to be to someone else to update the UDRP rules to reflect that one UDRP is filed that the data – the registrant data needs to be disclosed to the complainant.

Two and three we've already talked about some so geographic basis and legal versus natural persons, so I'm not going to talk about that. There's a fairly straightforward issue about disclosure of technical contact and anonymized email that I hope to discuss today and the redaction of registration data, we had quite a long discussion about that and we're still left with – I think these three data elements that were not decided about. So I want to take one more swing at that and see if we can come up with a position where we have an agreed upon redaction set or else we'll publish the initial report with questions about these three.

And then finally there's the issue of responsible parties and that's the issue that Thomas and Alan discussed on their emails. So that's the one set and so what we're going to do is slot each one of those into our calls. We might schedule, you know, schedule what I might call a small group or voluntary call, I don't know exactly how we'll run those but we want to create time to discuss each one of those here.

The next item is data processing terms, so this is I think where we took – remember Sections 5, 6 and 7 of the temporary specification that tell registrars, you know, it outlines either best practices or gives direction on how to operate in a secure manner and other operational aspects. And, you know, it was certainly averred by the contracted parties but I think agreed to by everyone that that's fairly – well, that's overly prescriptive and a more general description needs to be put into place that requires the contracted parties to be GDPR compliant.

So I would – you know, anybody who’s willing to take part in a drafting exercise but I’d ask the contracted parties if they could look at those sections in the temporary specification and rewrite them so they answer the questions especially L4 and M4 in the charter questions. So that’s an ask of contracted parties to volunteer to essentially rewrite those sections but answer the charter questions for the initial report.

And then issues to be addressed via email that we think are pretty straightforward are data escrow, data retention where we think we landed on one year based on the transfer dispute resolution policy being the tall pole in the tent and that in the small group discussions there was a recommendation that we had a policy recommendation about third party beneficiaries that – in this initial report. Nothing in this initial report changes that term in the Registry Agreement or Registrar Agreements.

And then we have some admin and policy issues that need to be drafted. I think staff’s already drafted especially under Number 3 staff has already addressed or drafted copy for that that you can review, but really given that time is of the essence I don’t want you spending your time on that although you’re welcome to spend your time on anything you want.

Caitlin had something to add and then might have some more material to go over.

Caitlin Tubergen: Thank you, Kurt. This is Caitlin for the transcript. I did want to note quickly that there is a table that was attached to this email and the table is designed as a tool to help you go through the outstanding issues. And Kurt did it going through of the outstanding issues in that email. The one thing I wanted to note is that all of those issues that are in these tables have been flagged in the initial

report so there's nothing new. Those issues have been flagged in either blue highlight which denotes items that are currently under discussion, such as the small team issue redaction, etcetera. And then the other issues that were highlighted in red are charter questions that we need a kind EPDP team volunteer to outline some principles to share with the group so that we can include some language in the final – or excuse me in the initial report.

But yes, I won't go over all of these because I think Kurt did a good job teeing up all of the outstanding issues but did want to note that you've seen all of these if you've read through the report, they're already highlighted items, and the table that you now see in the Adobe room shows you exactly on which page the highlighted issues appear. Back over to you, Kurt, thank you.

Kurt Pritz: So I'm reading the chat and I don't how constructive it is. Amr.

Amr Elsadr: Thanks, Kurt. This is Amr. I have a clarifying question on Number 4, the tech contact disclosure issue. And I'm asking this question because while discussing some of these issues amongst ourselves within our team, the NCSG, we noticed that a number of us have a different understanding of what's involved when we say, you know, something is optional like the question of a tech contact. Is the optional here referring to it's optional for the registered name holder to provide this information or is optional here meant to you know, say that it's optional for a registrar to seek collection of this information in the first place or possibly both?

I think you know, just moving forward it would be helpful to all of us if we have a common understanding of this. And this may apply to other purposes as well, you know, some of them are still in the works so yes, so it would be helpful to just know where we stand on this so we know how to direct our comments in the future. Thank you.

Kurt Pritz: Thanks, Amr. And that's a segue to the next thing on the agenda which is exactly this topic. So I'm happy to get right into that topic. Does anybody have any comments about the work that's laid out? I know we took the first half hour of the meeting talking about this but Brian, and then Amr, with your indulgence I've – we'll get to that question as the first part of our substantive discussion next. Brian. Hey, Brian, if you're talking we can't hear you.

Terri Agnew: Brian, this is Terri. I see where you've activated your Adobe Connect microphone and it is unmuted. Can you check on your side to see if it's unmuted on your side? Otherwise, Brian, we're more than happy to dial out to you via telephone as well if that would be helpful.

Brian King: Okay, can you hear me now?

Terri Agnew: Oh, we sure can.

Brian King: Great. Thank you. Sorry, I had the wrong microphone selected. So I have some language here that I've drafted that shows my thinking and I think the IPC's thinking on the Item 4 there in response to Amr's point. Should I drop that in the chat or what's the best way to circulate that to the group. I think it presents a pretty reasonable approach that I'm optimistic everyone can get behind.

Kurt Pritz: I'm sorry, Brian, and that's in response to Amr's question?

Brian King: Yes.

Kurt Pritz: Okay, hang on just a second. I'm assuming that there's no more questions about the list of outstanding items so let's get into that, let's get into that topic now and is there any language that we want to put up for this?

Brian King: I can put it in the chat or I can send it to...

Kurt Pritz: Right. So I think there's – I was just asking the staff. Gosh, this is (unintelligible) a little bit. So I was just asking the staff if there's anything document we want to put up or language we want to put up about the topic of technical contact redaction and then I can talk to Amr's question and then Brian can put up language.

Marika Konings: Yes thanks, Kurt. This is Marika. I can put up what we send yesterday to the group on this topic. But just to clarify, it goes more to the consent needed from a technical contact if provided less so the definition of optional, because actually from the staff perspective I thought that preliminary agreement was reached in relation to that in the context of I think the conversations that the group had in relation to Purpose C where again, staff can double check in our notes but the group had settled on that it would be optional for registrants to, you know, provide technical contact information. And I think we agreed on those I think three data fields that would need to be provided or could be provided in that regard. I think that would be required for registrars to ask this question.

((Crosstalk))

Kurt Pritz: And as part of that the other – right, as part of that the other contacts were not required to be made available to registrants. Go ahead, Brian, why don't you – you can just speak to it if you want or do whatever you want.

Brian King: Yes sure. The best way I can just drop it in the chat here. And maybe if it makes sense to blow it up on the screen and I can do that.

((Crosstalk))

Kurt Pritz: Oh there it is, okay.

Brian King: Being talked about in the chat. So the (bracketory) language there we acknowledge the EDPB's guidance on – in their letter to Göran, (unintelligible) legal persons and also the personal data identifying individual employees should not be published without consent. And so if the registered name holder elects, so there's the option to Amr's question, if the registered name holder wants to provide contact information for a tech contact, and here's where we differentiate if they want to give a tech contact that's different from the registered name holder, which I think we're going to deal with that separately, the registrar should obtain consent from the tech contact prior to publication.

And then we suggested a way forward to accomplish that and that is if the registrar is already doing the registrant verification and validation, whichever in this case, verification, then they just do it at that time too.

Kurt Pritz: Right, so I'm reading – I'm reading the comment. I'm not sure why – let's see. So does anybody want to talk instead of typing into the chat because I can't keep up with it? I think that's similar to the language that's up here. So first, in response to Amr's question, I agree with Marika that my recollection, and we can recover writings that – we can recover writings that indicate we decided that the registrars will continue to collect technical contact information and it'd be up to the registrant whether or not they wanted to put

something in that box. And then whatever is in that box could not be disclosed absent some legal basis. So I think that's what we have.

Brian King: Sure.

Kurt Pritz: You know, I'm not exactly sure why redacted was redacted because I think, you know, I kind of think that's a given but it could be put back in without too much harm.

((Crosstalk))

Marika Konings: Yes, Kurt, this is Marika. I can speak to that one. Per the other recommendations – and again of course, you know, things will need to be updated if that changes, I think the current recommendations are that the technical contact information would not be publicly published so it is already redacted basically. I think we're only talking here about any potential disclosures to, you know, third parties asking for this information. So that was the reason to remove the reference to redaction because that information is already redacted per the other recommendation so it's about disclosure as at least staff understands it.

Kurt Pritz: Okay so the redaction is redundant. Mark.

Mark Svancarek: Hey, can you hear me?

Kurt Pritz: Yes.

Mark Svancarek: Okay. So I want to remind everybody that this wording actually goes all the way back to a discussion and compromise that we made in LA. It didn't seem like much of a compromise at the time and I thought we had pretty good

consensus on it. The problem is that if someone wants to provide a technical contact we don't know that they actually have a relationship with the technical contact, right? So we know that there's a – there's biz value for some people to be able to appoint a technical contact other than the registered name holder but without consent we don't know that that person is actually you know, has actually agreed to have their email address and their contact information shared.

And the joke that I made is, you know, I sign up for a domain name and I use Alec Baldwin's – Lindsay – Alec Baldwin's email address and so you have to ask hey, you know, you have been appointed as a technical contact, do you agree or not? And I don't see how that's – there's really any risk at all, you ask, if you don't get the answer, then you don't ever publish that data and that's the end of the story.

So – oh, let's see, so okay so there's a question, "Why require the registrar to get consent?" You know, there has been some debate about whether or not we require the registrar to get consent or whether we just populate the registered name holder data into that field. I think it's – sorry, off center here. Hang on, hang on, let me – why require the registrar to get the consent – oh okay so, Milton, this is actually before – yes, this is the point I wanted to make is that this is before publication and disclosure; this is just simply is this valid data to be collecting in the first place? You should really collect the consent.

This is like a hygiene thing that I thought we had agreed on in the first place that if someone is just submitting, here's a bunch of contact data, you should go back and say, hey you've been put forward as somebody's contact, is this legit or not? And if you're a vertically integrated registrar and you provide multiple services then this is a trivial thing. If it's something like Microsoft's relationship with Mark Monitor, you know, it's straightforward to get that

consent as well. And in other places where it's ambiguous well, you know, you won't get the consent and you'll dispose of that data. So I hope that is a good explanation.

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

Alan Woods: Thank you. So I just – I think this is probably one of the things that's going through many, many threads that we are discussing at this particular moment, that there's some very, very disturbing throwaway comments such as should just get the consent, people. You know, or, you know, can't we just put extra language in things, I mean, to make it all go away, make it better? I'm sorry, this is coming down to a fundamental question of whether or not we should be even trying to attempt to create a policy that is creating an impossibility. And that is exactly what it is, it is an impossibility for the contracted parties at this particular moment in time.

What people are trying to suggest is create a brand new system and like a system that does not currently exist and a system that does not – is not envisaged by the temp spec as it exists. And they're trying to say well, we can create this system. I'm sorry, let's just have a reality check at this particular moment in time. There cannot be a system created like this in the next five, six months. This will take years of development, of technology, and of policy. It is not a job of the EPDP to turn around and say hey, let's create a new system in order to make the perfect world situation where consent is easy to get, consent is easy to monitor, consent is easy to be withdrawn.

It's like these are ridiculously difficult things. And I'm getting annoyed on behalf of my registrar friends because I know that it's impossible for the registrars. But if I was to take this to a registry level, it gets even more

complicated because how do you pass on the consent? How do you pass on the Article 17 responsibilities? There are so many questions.

But this is not throwaway you can just get consent. It is an entire system in one word that you're trying to put into a policy that will not be implementable. And I'm sorry, there's not much more we can do on this. I'm just – I'm just very, very, very taken aback by the consistent insistence on something that is not good policy. We cannot compromise with something that is not implementable. And I'm sorry; I'm just a little bit upset by this.

Kurt Pritz: Thanks, Alan. I want to think about that. Let's go onto James.

James Bladel: Hi, Kurt. James speaking. And I'll try and channel some of what Alan's concerns are as well and but without repeating. I just – I feel like this is, you know, similar to some of our discussions with Small Team 1 and Small Team 2, it's add-ons to an existing system, features and functionality that we're never there presently. And that may be a virtuous work to pursue by this community but that is not what we're supposed to be doing as an emergency expedited PDP which is we're essentially, you know, here to stop the bleeding and get us to a point where we can be compliant on firm ground by May 25 and that we can proceed from there to develop or even just research the possibility and viability of some of these additional features.

So I feel like we, you know, I think Alan is trying to say this as well, when we put these new flow charts that change the way the DNS operates, change the way we collect and treat these contacts, and also put the burden on contracted parties to educate the marketplace that hey, all of this is changing and to get it wrong, you know, you could – your data could be inadvertently published or inadvertently redacted or we could be on the hook or whatever, and I just – I feel like that's straying outside of the scope of what we're supposed to do.

So I'll stop there, it's not a frustration, it's just a can we set a boundary here and say, you know, that here are the things – here are the triage type work that we need to be doing and here's sort of the wouldn't it be nice if we could type features that maybe we could explore developing down the road? But I think trying to do those both on the same table is going to be a recipe for failure. I share a lot of what Alan's concerns are with the logistical challenges, you know, of collecting this information and collecting – verifying consent, transmitting consent to the registry and then of course building a process to undue all that if the data subject decides that they don't want – they want to withdraw their consent.

And I think in those situations a registrar should be free to say you can't send the technical contact if the information is different than the registrant. And then it gets back to why are collecting it then if it's going to be the same? So, you know, again I would caution us to, you know, keep on the fastest possible path towards our work and not this one. Thanks.

Kurt Pritz: And if I could jump in just before Thomas speaks, so how do I agree with your sentiment to create a policy in a way that lets us get to the finish line? So I thought and I guess it was in Los Angeles but I'm not sure, that our deliberation got us to that we were going to continue to collect the technical contact information and not the others so I think we agreed to that.

And then the second half of that is that can't be disclosed absent consent but that doesn't create a requirement or a timeline for how to do that but it does allow the registrar to contact the technical contact in the event of an urgent need. So there's some immediate benefit to continuing to collect the technical contact; that's the benefit I think we agreed to. And then, you know, when you say, you know, trying to add these, you know, bigger issues on the same table,

you know, maybe it's we're trying to add these bigger issues in the exact same sentence and maybe that's a problem and maybe we need to alter the wording of what we have.

But I certainly don't diminish and I certainly sympathize with the comments Alan and you've made. And you know, whenever I read that, you know, all of Alan's comments sort of register in my brain before he made them. So I think that – my take away from this language was that we were going to agree to continue to collect the technical contact information but we weren't requiring the development of a system to – or a timeline for obtaining consent as part of this. Thomas.

Thomas Rickert: Thanks very much, Kurt. And hi everyone. I think that when we discussed what data elements should be collected and when we had the discussion about whether we could potentially rename a specific data element, if I'm not mistaken I think it was Alan Greenberg at the time in LA who said that we would put ourselves into big trouble by trying to change the technical setup for this exercise, which is why on that discussion we haven't pursued that further.

And I – and that discussion that we had in LA sort of resembles, you know, what we're discussing here because I think it might even be more complex than what we heard from previous speakers. There's a lot of talk about obtaining the consent for publication of the data, but since we thought the Tech C data would be collected on an optional basis that makes the collection itself consent-based as well.

And on top of that, I guess only those registrants who avail themselves of the opportunity of designating an additional tech contact who don't want to respond to such queries themselves, which increases the probability that the

tech contact will be a third party. And that triggers the requirement of Article 14, Subsections 1 and 2(f) I think it is to properly inform the data subject if you collect the data from somebody other than the data subject.

And so I think we don't yet have the technical setup to support consent for the collection nor do we have the technical setup to adequately record and transport through the entire ecosystem the consent for publication of that data. But also I think we haven't had the discussion yet to the extent that we need to have it of what the benefits of being able to name an additional tech contact are.

When we discussed this inside the ISPCP, the point was made that if there are issues the ISP might also be contacted. So, you know, there are different avenues, registrant would be an avenue, the ISP would be an avenue, the registrar would be an avenue. And with corporate registrars in particular you have the option of naming technical contacts in the account holder information.

So I think based on the principle of data minimization, we have not yet had a full discussion of what the benefits of putting our group into – or putting the entire industry to the trouble of designing something new are at this stage. So I think that, you know, it's worthwhile discussing this further but when we're changing the technical setup entirely that's probably something for a separate PDP. Thank you.

Kurt Pritz: Thanks, Thomas. So I want to ask, you know, James, I don't want to put you on the spot or Lindsay or the registrars on the call, you know, what's currently being done now, the temp spec requires the collection of a technical contact, so how is that being handled now? Is that a fair question, or if it's an unfair question just tell me to be quiet and then – Lindsay, you raised your hand.

Lindsay Hamilton-Reid: Thanks, Kurt. Can you hear me?

Kurt Pritz: Yes.

Lindsay Hamilton-Reid: Lindsay Hamilton-Reid, RrSG. So currently I can only really answer for one on one, but we stopped collecting that data, the Admin C and Tech C, after 25th of May. We (unintelligible), we didn't need it so that's what we decided to do. The fields are still there I think to part of the registry, but it's just over the registrant contact details. We have no reason to ask for that data so we don't and nobody has come back to us and said, oh, we want this tech contact to fill in.

Yes, Ashley, it may well be, however, we'd rather comply with the law than the ICANN contract. And I have made that clear on a number of occasions. So yes, that's what we're doing. And I can't see that changing regardless of what comes out of this. Thanks.

Kurt Pritz: Anybody else in the contracted parties can talk to this? There's scads of registrations with technical contacts in them so how's that being handled now? So I'm reading Matt's comment.

James Bladel: Kurt, this is James.

Kurt Pritz: Great. Thanks, James.

James Bladel: Kurt, this is James. We haven't changed; we treat those equally but I think we've noted our concerns with that approach and that that is a vulnerability of the temp spec that needs to be addressed.

Kurt Pritz: Okay. Go ahead, Brian.

Brian King: Yes thanks. And sorry to be a little cheeky there in the chat. Yes, that's precisely what we're doing as well what James said, you know, it's something that we need to address under the temp spec. A number of our customers only want to give one set of contact data and use the same contact data for registrant admin and tech and we have customers who feel very strongly that they need and want to designate a different contact for admin and tech contact for a number of different reasons. And so we like to be able to honor that and we do. So we will duplicate the same contact, all three of our customers want, but there are very real, very important reasons that some registrants want to do a different contact there.

Kurt Pritz: All right go ahead, Mark.

Mark Svancarek: Yes this is Mark. So my apologies for not realizing that – I really felt like we had talked about this in LA and then again in Barcelona so sorry for being – for not getting it that suddenly today to be such a big drama. So my misunderstanding, sorry. I was really kind of taken aback by how strong the opposition to this is.

And, you know, I get it, it's additional systems and maybe you're right, maybe it's outside the scope of the EPDP. I just have to say that as Microsoft, we've had to revamp all of our systems top to bottom to deal with privacy laws and these are, in our opinion, very important straightforward required sort of activities that you have to do.

I think it is reasonable to assume that you'll be exposed to some of these sorts of decisions and technical issues going forward so I don't think you can

entirely hide from them but yes, I take your feedback that forcing it into this policy discussion right now is maybe not a great fit.

Kurt Pritz: Thanks for that, Mark. Go ahead, Milton.

Milton Mueller: Yes, I want to make two points. The first is that I think we've hit onto a very important principle here which could be generalized and applied going forward and could save us a lot of time and that is we should not be using the expedited PDP and fixing the temp spec as a reason to rewrite or redesign system – rewrite policies that are not absolutely necessary to get the temp spec fixed and underway.

So could we accept as a general principle the idea that any proposal that requires some kind of new capability that is not directly connected to GDPR compliance is simply not considered and is thrown off the table? That would be my first comment.

The second one is again, I agree with Mark from Microsoft that we agreed in Los Angeles our discussion of Purpose C to allow registrants to provide a technical contact, a separate technical contact as an option. And I think that almost logically if not technically leads us to the conclusion I think that Alan Woods floated which was that it should be optional at the registrar level too to have this field because it doesn't make lot of sense to say you must allow for collection of data that is not absolutely necessary for the purpose.

If registrars who exist in a competitive market want to offer their customers and option and others don't, and customers really want this, then they can use a registrar that offers this option and avoid ones that don't. But, I think it looks like we're agreed that the consent is an added capability and therefore cannot

be proposed at this time but that the optional nature of this should be extended to the registrars as well as the registered name holder. Thanks.

Kurt Pritz: Thanks, Milton. Go ahead, Margie.

Margie Milam: Hi, this is Margie. I just agree with the approach that Milton suggested. And I just want to – we're talking about here is really the policy issues and how they get implemented is a separate thing. And I think it's not feasible to assume that there will be no system changes.

Now granted, the policy process shouldn't specify step by step on how that has to happen, and that's, you know, that's probably where some of this discussion relates to. But the fact is that consent is a very valid part of the policy process; there's nothing wrong with suggesting consent. Yes, it sounds like this is a new discussion as it's kind of thought through some of the natural legal person distinction and also here in the technical contact area.

But it's not even new to the domain area; dotCat, for example, requires consent, the ccTLDs require consent so this isn't outside the scope of what's feasible or possible in the domain area and that's why the research at we proposed, you know, is so important because what we're trying to really do here is come up with a policy that can be implemented and if it takes more time then there's nothing wrong with a policy saying this part will take, you know, more time and as long as the policy framework is established the technical part can follow later.

So I think I'm, you know, disagree with some of the notions that oh this is impossible, can never be done, it is in fact done right now in the domain industry.

Kurt Pritz: Thanks, Margie. Lindsay, is that an old hand? Yes, Alan.

Alan Greenberg: Thank you. This is getting really tiresome reopening discussions that were closed. That notwithstanding, registrars and registries on the discussion of legal and natural persons have said it's virtually impossible to implement because there's no practical way to contact registrants and get their answers. Yet they are proposing that we not have technical or admin contacts. And I would really like to understand how they plan to eliminate contacts which may be unique for some of their registrants and do that without the kind of contact that we're talking about.

So if they're really proposing that we not have these fields, that we not collect them, which also implies someone who has an element in a unique field there cannot change them, I really want to understand the implementation because this seems to be in direct contrast with the statements they've made regarding natural and legal persons. Thank you.

Kurt Pritz: Thanks, Alan. So this is where I think we are, I think in our previous meetings we discussed the different types of contacts and we decided there was value, you know, in – significant value in maybe 10% of domain name registrations where the registrant wanted to specify a technical contact, which, you know, the number goes down in some cases but, you know, 5%, 10% of, you know, hundreds of millions is still a pretty big number. So we had decided there was real value to this and then we decided that that information could not be disclosed absent consent. I think we also decided that, you know, there wasn't a timeline put on the implementation of consent.

And I wonder, you know, I think the unanswered question for us, and the issue for us is what type of consent is required to collect, you know, to collect technical contact data, if somebody's put in that information on behalf of

someone else. But, you know, that seems to be sort of a rabbit hole question because when you're working with a company, you know, who decides who the registered name holder is and who's entering that information in? And if that person has consent of the other person you can just tie yourself into knots.

And, you know, I'm thinking in those cases – and this is where we need to get some help is that it's okay for registrars to collect technical contact data if the registrant so desires to put that in there and not disclose it absent consent and that that comes is what it I think all the baggage that Alan Woods says; I think you know, those that have implemented – well I don't want to get into that but I'm not going to trivialize that problem.

So I think you know, I want to keep the agreements we had that technical contact information is important and, you know, literally millions of cases that customers want that, so that we agreed that registrars would continue to offer technical contact to the – as an option to those who wanted it and but not disclose it but use it and provide either an anonymized email or some other mechanism for that. And that – but I think of the issues Thomas raised, the one where we need to get guidance is that, is that legal? And maybe that's being decided in court cases somewhere too.

So I'd want to talk about this for like five more minutes but, you know, I'd be for keeping the gist of the language in the initial report but highlighting this issue that we are not sure whether consent is required to collect this technical data and if it is then it's another ball of wax.

Benedict, how are you today?

Benedict Addis: Hi, Kurt. As a data point here and on the consent point, I've been looking at RIPE's legal statement, so RIPE is the – maintains the sort of Whois for

European networks. And they have a similar problem that you can submit other people's personal data and – in a record relating to an IP address and they – I've just read their blog (unintelligible) he says that they are relying on 6.1(a) consent and they have a removal process that's done either by – either through the person that put the details in there or RIPE will honor removal across the records in their database. So I think that's quite analogous.

And remember here they're relying on consent for publication as well just disclosure so publication in a public (unintelligible). And so they do – and they have done a fairly rigorous analysis of that; that does seem to be based on (unintelligible). And also I should note that they are relying on 6.1(f), legitimate interest for the publication of that database in the whole, they're just looking at 6.1(a), to manage the third party problem that you're discussing at the moment. Thank you.

Kurt Pritz: Go ahead, Milton. Thank you, Benedict, for that.

Milton Mueller: Yes, again, this is just a question for the lawyers in the room, it's my understanding that if I'm a registered name holder and I put a third party's personal identifiable information into my Whois record, and that gets disclosed, why would the registrar be responsible for that? Why wouldn't the registrant, the person who put the information in without anybody's consent, be responsible?

Kurt Pritz: I think James had a question similar to that when we were at some face to face meeting where he voiced a concern that, you know, an agent was registering a name on behalf of someone else and did they have the consent. So and then, you know, I kind of – well as a lawyer I kind of thought that, you know, they – in that little scenario they were the controllers and in that because the

registrar was just the processor, but that's what I thought. Marika has – Benedict, is that an old hand or a new hand? So go ahead, Marika.

Marika Konings: Yes, thanks Kurt. This is Marika. I just wanted to point to the EDPB letter the was received where, you know, they do state clearly that, you know, this shouldn't be required but registrants should be provided with the option of providing contact details for persons other than themselves if they wish to delegate these functions and facilitate direct communication with the persons concerned. And they do note as well in the footnote, or they refer to it should be ensured that the individual concerned is informed.

So possible path forward maybe here to actually, you know, ask a specific question in that regard to the EDPB noting that, you know, there is a desire or preliminary agreement or some, however we want to frame it in the initial report to collect a limited set of data for those registrants that want to in relation, you know, technical issues but basically ask them the question in your letter you're referring to, you know, the individuals involved needing to be informed of that; what does that mean?

What other, you know, requirements are there for the registrar in that regard and you know, what liability is associated with that? And maybe that is something that can help inform the group as it further considers this issue for the final report.

Kurt Pritz: So yes, so I would add – and we can draft this after this meeting, a sentence or a paragraph that follows this technical contact. And I would – anyway go ahead, Diane.

Diane Plaut: Hi, Kurt. Can you hear me?

Kurt Pritz: Yes I can.

Diane Plaut: Okay good. I wasn't sure if my speaker was working today. Just from a legal perspective, I agree with James in his question raised and what Marika said and following up on the legal question is that (unintelligible) in my – at least in my opinion in the research that I've done and in line with what Benedict and Marika have said, there's an agency relationship that's formed by the registrant either engaging a third party to be their technical contact whether that person works for them internally or through an external service, and therefore the registrant would be responsible for any information provided and whether they get it through consent or they have it through that agency relationship.

So perhaps the compromise position as Marika has said, and has been recognized, is that the registrant ensures that the technical contact entity or individual has been informed that their contact details are being provided and that should be the registrant responsibility in releasing that information.

Kurt Pritz: Thanks. Anybody else here? I'm just reading the chat.

Diane Plaut: Oh, Kurt, is it okay to continue speaking in response to Alan's point?

Kurt Pritz: Sure, since I'm not talking.

Diane Plaut: I know it's a lot to keep up with the chat as well. But it's – this should be part of the policy because in fact we have to (unintelligible) policy that's prescriptive because as we're all struggling with these issues, these are issues that all businesses struggle with, but the bottom line is, is that we have to be able to create a policy that also provides practical solutions. And I could say that in – from a legal standpoint all companies around the world are faced

with these challenges now as they're coming up with frameworks to be able to adapt to legal requirements such as GDPR and other data protection laws.

And so whether it be in the policies provide us with a vehicle to be able to create a framework that is legally up to date as well as provides practical solutions.

Kurt Pritz: Go ahead, Milton.

Milton Mueller: Okay, I'm just trying to nail down exactly what we have agreed on and what we have not agreed on here because it's getting confusing. So we have agreed that the registrars will not be required to obtain consent on behalf of a third party, I think. We have agreed that a registrant should have the option to name a technical contact. And I think we're debating now that would be holding us up from agreement is whether registrars have to require this field or whether they can simply choose not to collect this data.

Can other people address this issue? I think it's solves a lot of problems if we just say that let the registrar who don't want to collect this information don't collect it; let those who do, provide a field for that and it's up to the registrant if they name people who are, you know, they don't have consent from – that's their problem, not the registrars. Is that all correct? Basically we're just supposed to be coming to an agreement on whether the registrar has the option to collect this data or not.

Kurt Pritz: Go ahead, Alan.

Alan Woods: Thank you. So my point was just going back on Diane's (unintelligible). It was an interesting question that arose in my mind as she was speaking and that was practical solutions for whom? At his particular moment the only

practical solution is for those registrars or persons who wish, again going back to the access to that data. And so I mean, the practical solution here is make the ICANN basic policy that it is optional for the registrar to collect that.

And those registrars who have predominantly maybe the registrants who wish to have those contacts that they themselves then say, I'm not prevented by ICANN policy to collect these fields and I will take that voluntary function of risk which Stephanie has quite rightly pointed out in the chat there, that those individual registrars might voluntarily assume that risk to take the technical contact. And I have no problem with that.

But it's much easier – we should not be making it mandatory for all registrars to take something which most registrars on this call so far are saying they're not comfortable taking as it is not certain; there is no legal certainty. Just want to go to Milton's point as well there that so, Milton, it is not just on the registrants in those instances; it would be on the registrar who has to show that consent has been obtained and that a correct consent has been obtained. So if we knowingly take a consent and we have – we are not certain of that consent is actually for that data subject or we have no contact directly with that data subject, then we are failing in our obligations under the GDPR.

Now, Thomas already pointed out there are other elements where you can get consent from a person who's not the data subject, however, that would be the creation effectively of a different registry service or a different registrar service and ICANN themselves would probably require this to be created as a new service under a separate PDP. And I would just mirror what Thomas said, that is not for us at the moment, it is for another PDP. Thank you.

Kurt Pritz: Go ahead Alan Greenberg and then I'm going to close this off.

Alan Greenberg: Thank you. If you look back a little while ago, it's a long time ago in the chat now, Marika said that we have in the EPDP letter that if someone else is named as an individual they have to be informed and that goes along with Milton's comment of if the registrant put the information in, it's their responsibility. We seem to be ignoring that statement. And if people are saying it's wrong, the EPDP was – the – sorry, the EDP – Data Protection Board was wrong, then let's say so clearly because we're hearing different statements from different people. Thank you.

Kurt Pritz: Thanks. I was going to close this off Stephanie. Go ahead.

Stephanie Perrin: I'm not – it's Stephanie Perrin speaking. I'm not quite sure why we're chasing this one around. I think the GDPR and the advice about it is quite clear.  
(Unintelligible) another person...

Kurt Pritz: Stephanie, I can't – you're not quite as loud as you'd like to be, maybe you need to get closer to the mic or something?

Stephanie Perrin: Can you hear me now?

Kurt Pritz: Yes I can. Thanks.

Stephanie Perrin: Okay. Stephanie Perrin again. I don't understand why there's so much confusion about this; the GDPR is pretty clear, so is the advice that's been given. If you are going to release the personal information of one of your employees or of another individual, say an outsourced tech contact, then you have to – there is a burden on all sides to ensure that the consent was appropriately obtained, whether that's within your organization, or within a family of entity, as they call them in the language of the GDPR, or if it's an outsourced function.

And that obligation rests on the organization that's releasing the data, i.e. the company that is a registrant, and also on the registrar that collects it. And that I think is what many of the registrars have been saying. I don't understand why Alan keeps coming back on this; it's pretty clear. Thank you.

Kurt Pritz: So I think – so I'm going to try to close this off. So I think Alan keeps coming back on this because, you know, a plain reading of what the Data Protection Board says is that consent is not required, that inform is required. So I think you know, for a person that's not running a registrar business, that would seem to alleviate a large part of the legal risk; but to someone who is running a registrar business even if it alleviates a large part of legal risk it doesn't alleviate it all. And so I think where we are is that we have this advice from the Data Protection Board that I think is encouraging with regard to collecting technical data.

And we had a discussion about the value of the technical contact as opposed to the admin or billing contact and thought that was valuable. So I think – where we are is that I think the Data Protection Board advice alleviates a good portion but not all of the legal concern or legal risk and so we need to in some way address that issue and address that issue with some very pointed questions that we'll try to get answered. So those would be questions to the Data Protection Board. So I think that's where I am. I know that's where I am but I don't know where that sits with everybody.

So I see the queue is growing and I want to go onto the next thing, but go ahead, Margie.

Margie Milam: Yes, thank you...

Kurt Pritz: And then Ashley...

((Crosstalk))

Kurt Pritz: ...I want to hear from you too so you don't get to lower your hand.

Margie Milam: My question is it seems like there's a disconnect between whether the technical contact is a requirement to be collected at the registrant's option. And I just wanted to at least clarify that from my perspective it needs to be a requirement on the registrars to make it optional to the registrant and somehow it looks like there was different views on this and so I didn't hear an explanation on where we landed on that.

Kurt Pritz: So I think where we are is that we have this tentative language but we want to address the legal risk of registrars if we're going to require them to collect the data and we need to do that with clarifying questions to the – I'm reading some chat so it – the Data Protection Board or Article 29 Working Group. Ashley.

Ashley Heineman: Thanks. And since you're forcing me to comment now, I pretty much just wanted to ask the same question that Margie just asked because I think it is important. I think, you know, we're very quick to take things off the table without really thinking them through. This is, you know, this isn't something new that's being added in terms of having, you know, the requirement to collect this data and having it be optional for the registrant to provide it or not. I think that is a shift from, you know, the early days of the Whois policy.

And I just – I really caution against, you know, making a step of, you know, just removing it completely without really thinking about the ramifications here for those, I mean, if you want to look at it from the user perspective

solely, I mean, there are reasons in which this information is being provided and why they want it to be provided. So I think if we could just get the information that we need or some guidance from the DPAs that's great but I think if we could save ourselves a lot of time if we go back to what we agreed to in LA. Thanks.

Kurt Pritz: Thanks, Ashley.

Marika Konings: Kurt, this is Marika. Can I maybe suggest a path forward here?

Kurt Pritz: Yes.

Marika Konings: As, you know, I think everyone has expressed the different viewpoints with regards to, you know, should registrars be required to ask for this for the registrants optionally being able to provide this, or should it be optional for registrants to – registrars to ask for this information.

So maybe the path forward here is to just document which groups support which positions, include that in the initial report, also include the specific questions that the group will want to put forward to the EDPB in relation to the advice that they provided and, you know, if the understanding is indeed correct, you know, is it only information that needs to be provided to whoever is being put forward as the technical contact or is more required from a legal perspective and a liability perspective and know that that may then help inform the further conversations around that.

So maybe that's a path forward in which we can at least document where the group is at for the initial report. I think it also kind of demonstrates that, you know, based on the feedback that is received it may likely go to either one or

the other option and also again, allow for the community then to provide input on that.

Kurt Pritz: Right, and it's fine for the community to provide input but I think we need to – we also need to – and I think you said this – direct some work to address the – not the legal liability but I think the legal risk involved with this so we can understand it better. All right let's go onto the next topic which is data retention.

So our previous agreement that we want to confirm is that we looked at data retention requirements for various data processing purposes and, you know, in a pretty straightforward and simple way we decided that we would take the – essentially the tall pole in the tent for data retention which we identified as one year that's required for the transfer dispute resolution policy and make that the data retention period because the data elements are shared by so many processes that – and that most of the data elements are required for this policy that we'd retain the data for one year. And so I think we want to confirm that.

So silence is assent, right? I didn't – as – well I thought the last topic was not so controversial either but I think this one's fairly straightforward and we can memorialize this. Do we want to try to either a show of hands, so green is okay with this? Oh, Alan, go ahead please.

Alan Woods: I was just going to jump in and say, I mean, I think that what we have done in the retention period is actually something that has been asked for by the European Data Protection Board is now that we've gone through all the reasons as to why that data may be needed and we've found that one year seems to be the high water mark as to how long that may be needed after the end of the domain's life.

Therefore, I think as far as I'm concerned that is a good reasoning to set (unintelligible) a retention period because that goes beyond anything that was done prior to this because it was just, let's be honest, pretty random as, yes, two years. So I think we actually have an arguable and a defensible position on this one.

Kurt Pritz: Thanks for your comment. I guess I'd ask is anybody opposed to this? All right great, so Thomas.

Thomas Rickert: Thanks, Kurt. Just a quick point, I think what we need to do is harmonize the retention period throughout the entire initial report because it doesn't make sense, for example, to question the duration of the retention for the escrow agents and potentially making that shorter than what's required to – what's required from the registrars and the registries. So I would be in support of making it one year beyond the end of the registration throughout.

Kurt Pritz: So I didn't quite – it's probably me but I didn't quite understand your point so could you either just restate it exactly the same way or recommend a change?

Thomas Rickert: If you look at the data elements workbooks, I think it is in Workbook E where the retention period is still questioned and subject to further debate. I would need to look at the correct language. And my recommendation is that we make the recommendation – we make the retention period for all workbooks where retention needs to be touched upon one year beyond the end of the registration based on the rationale that we used linking the retention period to the limitations in the transfer dispute resolution policy.

Kurt Pritz: Thanks, Thomas. Okay, well let's memorialize that and then – go ahead, Benedict.

Benedict Addis: Hi, it seems to me that we can make collection and data processing consistent across all of the purpose workbooks and not just the retention period. But it strikes me that what we've done is done a slightly maximalist view by sort of breaking out all the purposes and specifying a collection for each one and – but we can probably condense those for the final product and not require a separate data collection for each purpose at a technical level even though that's what's happening for a purpose level.

So I just want to avoid putting registrars in a position where we've suddenly – where there's a few inconsistencies in the workbooks and that they'll turn into a system where they have to collect different sets of data for different purposes and I don't think that's required on a – in a current assessment. Apparently I'm a little quiet. Was that clear, guys?

Kurt Pritz: Yes, I heard it. I got this little button on my computer that lets me turn up the sound and I think, you know, without calling on the contracted parties I think they'd be sympathetic to that. All right, so taking Thomas's comment into account let's complete this item.

And then I just want to put, you know, bring up one of the agenda items I wanted to add to our discussion here and just to sort of set the stage for it, so Thomas Rickert wrote a thoughtful email about the initial report and how it described responsible parties and had some ideas for how to improve that, streamline it that I found attractive. And then Alan came in with some additional comments so we'd probably have to carefully take into account when we do that.

So I think what I'd like to do is if Thomas feels prepared is to sort of let him set the stage for the discussion, so maybe we can create an action item out of that for what actions to take about how this is described in the initial report or

at least set the stage for a discussion in a subsequent meeting. Thomas, do you feel comfortable bringing up the email you wrote about how responsible parties are described in the initial report and how that might be improved?

Thomas Rickert: I'm more than happy to do that, Kurt. And it's sort of interesting that after I had written my email the other email from Alan was submitted. And it looks like a conspiracy but actually it's a coincidence. And the starting point for my thought was that I'd gone through all the workbooks and the initial report and I thought that the one part that I thought was really ugly to read was the responsibilities part. And I think that probably we should all step back a little bit and look at the genesis of how we came to where we are in the workbooks.

So the original idea of making a distinction between what we now call ICANN's purposes and other purposes was that the European Data Protection Board has asked or urged ICANN not to conflate its own purposes/interests with third party/purposes. So that was the starting point. And that's the point where Benedict and I put some thought into trying to separate the purposes.

And I guess the – what makes the whole concept so confusing for some, and I guess that some of the points that Alan made in the memo that he shared might have its root in that point, and that is that we tried to work off the text of the temporary specification, which listed purposes that our group tried to clean up, right? So that's I guess our starting point. And we've never really revisited that notion but I think now that we have all the purposes and now that we've done quite some work on getting the rationales and the legal bases sorted and discussed at least to a huge extent I think we need to rethink our approach to this or our language, right?

So in my view we try to make a distinction between what we called ICANN purposes and the other purposes to determine what should be governed by

ICANN and what's not. So you will remember that we removed the invoicing or billing purpose from this list because we thought that's nothing that ICANN should govern, that's nothing that ICANN in its contract should enforce vis-à-vis the registrars for that. But that's a purpose for processing that's the sole responsibility of the registrar, right?

So now we're calling everything ICANN purpose but I think what we really mean is that we try to come up with a list of sufficiently narrow purposes that describe what ICANN should govern via the replacement of the temporary specification. Right? So maybe we should rethink that language.

And maybe we can move to the next slide please? And so I think what we should look at is what we have in the workbooks now, and we're using three different terms there. In some instances we describe the roles of the parties as controllers; in other instances we describe the roles of the parties as joint controllers; and then in yet other instances we have processors.

And if you look at the way the Article 29 group in its working paper 169 has described the roles, I think it's worthwhile remembering that they basically said that if you don't have legal or factual impact or influence under decision for what purposes and how you process personal data you can't be a controller.

They also said if you jointly with others determine the processes – the purposes for processing then you are always a controller. And the – I'm translating this back from German, this is why it's a little bit difficult for me. And processors are never those who are really determining the purposes and the means of processing, although the means to a certain extent they can process.

So if you look at that I think we need to rethink our approach. And we need to look at why we have Article 26 in the GDPR. And maybe it helps our group to understand this better if we make a distinction between the micro level and the macro level. I think we haven't done that yet. So what we've done so far is specifying roles and responsibilities for the individual processing activities. That's the micro level. So we've looked at every processing activity.

But then the macro level is something that Article 26 wanted to take care of and that's the view of the data subject. So what does this look like for the data subject? And the data subject wants to register a domain name, they go to a registrar, they insert certain data and then they hope that they get a domain name that resolves and all the benefits or rights associated with that. And for those instances Article 29 was invented – the Article 26 was invented because it was meant to save the data subject the hassle of going to the micro level and determine who's responsible for what and who can I approach if I have an issue or if I want to exercise a right?

And if you look at our workbooks, what you find is that, you know, we have joint controllership for the collection of certain data but then suddenly the transmission of data from the registrar to the registry shall be a controller processor arrangement. So you would have a joint controller agreement for certain things and then all of a sudden for this individual processing activity you would have the need for a data processing activity and I think that's just confusing.

And the question is whether that contravenes the spirit of Article 26 and whether if we keep it at the micro level whether that will pass muster from a legal point of view which is why I think we should try and understand a little better why there might be hesitations to go for a joint controller agreement.

And I think I'm not revealing any secrets if I tell you that I'm a fan of a joint controller situation in this case.

So if you take liability for example, I think most folks are shying away from joint controller scenarios because they see that the joint controllers are jointly and (unintelligible) liable and they are jointly and (unintelligible) liable because the data subject shall be able to go to each of the joint controllers to exercise their rights. Right?

But, what you can do is make a distinction, and the GDPR provides for that. You know, if you look at where can the liability issues be, that's being attacked from an agreed data subject. In that case the data subject can go to each of the joint controllers, they would be jointly and (unintelligible) liable, but you would have indemnification clauses based on the schedule of your responsibilities in the joint controller agreement, so that you balance, you know, who did what wrong internally subsequently and you can even back that up with financial securities or otherwise so that no party is damaged for other parties' wrongdoings.

I guess we all agree that GDPR with its severe sanctions, you know, the sanctions might be the biggest risk for the joint controllers. But in that case GDPR actually foresees that the authorities would go after the controller that's doing something wrong. So we shouldn't be afraid that the authorities will take somebody hostage for somebody else's wrongdoing. So I'm saying this in order to hopefully lower the resistance to think about a joint controller agreement for this entire scenario.

So let's move to the next and last slide and that is how can we move this forward? I think that we could – we should consider having a joint controller scenario for all the processing activities to make it more transparent to the

user, to make it easier for the industry to fulfill its information duties towards the user which is going to be a challenge anyway, and then have an internal schedule of responsibilities based on what we've done in the workbooks, so we can say that it, you know, since ICANN wants the escrow agents to do their work on top of the contingency planning and the data recovery planning that the contracted parties need to do anyway according to Article 32 of the GDPR, if ICANN wants that, then we can say, okay, ICANN is responsible for that area.

We can also say that ICANN gets the mandate to hire escrow agents to do that work, to hire EBEROs to do that work. And that ICANN will then indemnify the other parties in case there's something going wrong in that regard, right? So we can – we have all the flexibility to do that. I think it would make our document stronger, it would make it easier to convey to the community what we're trying to achieve here, it would make the document easier to read if we changed the language a little bit. And I'm sure that it will help the document pass the legal test that it might go through either by community members or even authorities if we try to come up with a more simplified approach.

And I hope that you take this as a suggestion, you know, to drive this to consensus more easily. So let's hopefully not get hung up on the individual items but let's reflect that in the proper joint controller agreement. Thank you, Kurt. Back over to you.

Kurt Pritz: Thanks for putting all that work and thought into that. So you're advocating for – in each place in the initial report where multiple controllers are indicated you are advocating for joint controller agreements, and so that's my first check. My second check, are you advocating for changing any of the processors to controllers in that or are – are you okay with that?

Thomas Rickert: So my suggestion would be to, number one, change the language describing ICANN purposes and find a better way to describe that these are purposes that – that these are purposes and processing activities that should be governed by ICANN via a consensus policy and enforceable by ICANN via a consensus policy. That's one change that I would make.

And the second point is that we determine once and for all for the entire document that the parties are joint controllers and that where we mentioned controllers and processors, we change that to reflect who's the responsible party and the responsible party will then be reflected as a responsible party in the joint controller agreement, yes to actually, you know, to take responsibility for that particular area.

And there might be area where the parties are all responsible and there might be areas where only one party is responsible for a certain processing and the example for one party being responsible would be EBERO and escrow in my view. So that's – I think it's just minute changes to the language but I think that they will help a great deal in making the document more legible and better understandable to the community.

Kurt Pritz: Thank you very much. That's helpful to me. Before I call on Hadia and Margie, you know, Alan responded with his own email and I see he's said this is very helpful. Do you – Alan, is there a way – probably not – but is there a way to briefly describe how you would perturb Thomas's work with the concerns you raised in your document?

Alan Woods: Yes, so thank you very much, Kurt. And thank you, Hadia and Margie, but I'll be brief. So the – it's great listening to Thomas without a shadow of a doubt because, you know, Thomas is – his background and his expertise in this, you know, shines clear in this, and this is something that has been in my brain for

a long time the way he's put this so I completely agree with everything that he's saying there. And from my point of view I think it is an excellent way forward.

And yes, this is exactly what's actually going – this was one of the two things that necessitated the contracted party document that we sent through because, you know, I apologize for – if this comes across as blunt, but this is probably the most time that we have spent substantively discussing the actual roles of the parties in this method and trying to discern a way forward. And that was half of the frustration that was borne out in that particular document.

We still have not had the substantive discussion that's actually saying, okay, why are we genuinely putting these – the parties into these specific roles? And I think Thomas has laid out a path forward on that and I really do welcome that. And again, thank you, Thomas for that. So I'm not going to say anymore on that particular aspect because I think Thomas has covered that.

What I will say is on this second part, it was more, you know, when I read the document and when we read the document it was a stop point where we went, no, what are we trying to say here, because the document did contradict itself. And that is if we are saying – and I know Thomas did talk about this and he's covered this but I just wanted to give a bit of background and our thought.

If we are saying that each one of these purposes is an ICANN purpose only, then we are saying that ICANN is the sole controller only. And then that document went onto say but in this instance it's a joint controller, this instance, as a processor. And that is on the faith that a prima facie contradiction in that document and we have to be so very careful because if this is going into an interim report that is going out to the public it will be ripped to shreds. And that was the point that we have to be so clear.

What we need to be focusing on, and I like Thomas's idea but, you know, to even distill it down, and I hope I'm not changing anything here, but to distill it down, what we should be always looking at is not just ICANN's purposes, our focus is on the shared purposes of ICANN and contracted parties in the registration of domain names and any secondary purposes that are related to that primary purpose. And I think that's again, covered by what Thomas has said. But it will definitely align with that so I'm so glad that Thomas actually said that and I'm so glad that he sent that email and he put this work into it and I genuinely urge people that we should be led by his expertise on this.

Kurt, I know you sent an email and I have an email that I was planning on forwarding in response to because it was substantial, but based on this, you know, I will still send it to you to give a bit more detail but just again, thank you, Thomas, it was great to hear that, it really was.

Kurt Pritz: Great. And thank you, Alan. So your description answered 80% of the questions I had about your email so if you want to send that fine, but if you don't want to I understand your point about being, you know, joint processors and have joint purposes, so that's clear to me now. Hadia and then Margie.

Hadia Elminiawi: So first I would like to thank Thomas for all this work. And I do find it very helpful and agree with it. However, I did have a question, if we (unintelligible) responsibilities of the controllers will be affected if (unintelligible) and the reason I'm asking that is because the article says the (unintelligible) responsibilities of the controllers are determined by union or members state law which the controllers are subject to. It's just if Thomas can provide some clarification in this regard?

Kurt Pritz: Thomas, did you catch that question? And can you respond to it?

Thomas Rickert: Kurt, this is Thomas. I just wrote in the chat, I could hardly understand what Hadia was saying for audio reasons, so I'm afraid I can't respond right now. Maybe, Hadia, you can write it in the chat?

Kurt Pritz: Yes, or in an email, Hadia? So, Hadia, I thought we fixed you up with a new microphone or something so you want to – we'll get somebody to help you with your issue but I think you need to – I appreciate the fact that you're asking for a clarification and so I want to make sure we capture it. So, Margie, go ahead.

Margie Milam: Sure. This is Margie. I think what Alan was saying is really important to clarify where, you know, the roles of the different parties and where there's a full controller versus a joint controller. So I take that as a really positive and important thing that we need to do. We don't want to allocate the – inappropriate categories to a contracted party if it just simply doesn't make sense. And so I agree with that.

The other thing I wanted to ask, and this is really a question for Dan, you know, a lot of what Thomas was talking about related to indemnification by ICANN, and I think that would help the entire group if we got an understanding of whether ICANN was willing to do that because, you know, as we work through all our issues we're trying to assess risk and certainly if we knew that ICANN was willing to indemnify then that changes the risk scenario for the contracted parties. So I'd like to ask ICANN, I mean, obviously if he can't answer right now that's fine, but is indemnification by ICANN an option? That's my question.

Kurt Pritz: Dan, do you not want to respond on the call? Hey, Margie, could you please put that in writing? I think sometimes a question is made during our meetings

and then we transcribe it and then somehow it gets lost so, you know, we'll put it in the action items that we'll create a question out of that, but if you wanted to put that in writing to make sure we have it – the wording correct that would be terrific. Mark.

Mark Svancarek: So to everyone and Margie in particular since she's putting this in writing, I think we need to be very specific about would ICANN take the responsibility for what specifically? I think the, you know, ICANN says general things like (unintelligible) ways where we can take on more of the risk or all of the risk or something like that but without the specificity of what specific risk and which specific use cases and things like that, what sort of exposure, you know, I think they can't give us a straight up yes or no question.

And I would have preferred they, you know, participate in this more fully and put forward sort of some parameters for us so that we could have provided that sort of guidance back to them so they could have given the certainty back to us. But, you know, now is an opportunity I think to do that so as you put that in writing, Margie, let's all work together and make sure that we're pretty clear on what we think the boundaries of this would be so they can give us a pretty clear answer back.

Kurt Pritz: Great. And I have the sense that this is sort of – and part of the access discussion that's coming later because when ICANN talks – when, you know, Göran spoke to us and talked about that he talked about seeing if as part of the access discussion ICANN could take on liability. I also think that the legal analysis that Thomas has done and Alan's done too sort of holds regardless of indemnification or anything like that, controller or joint controller is a joint controller based on how the data is processed, not who's willing to assume liability but I like Margie's question and your annotation of it.

I think, Thomas, Hadia had typed something into the chat so in the last – this will be the last minute here that we spend on this and then, you know, Hadia, “Would the responsibility of the controller be affected if one of the controllers do not belong to the union? In addition, as I understand some processors will likely also be changed to controllers.” So I don't know, you'd be better put to either answer that or defer it. Thomas.

Thomas Rickert: Thanks, Kurt. Hadia, I guess that what we're trying to do here is come up with a replacement for the temp spec which then will become a consensus policy that is contractually enforceable. And the joint controller agreement will be one aspect of operationalizing the policy that we're working on. And that means that it will be binding upon the contracted parties and therefore I think that the indemnification agreement that will be put in place will apply to all contracted parties throughout the world.

And maybe if I may add, we will have to answer the question of who's responsible for what anyway, whether we keep it at the micro level as we currently do, or whether we take it to the macro level, right?

But I think that we should be clear on who does what in order to ensure that one party is not – doesn't have to pay the bill for somebody else's wrong doing and then also who is asking for what to be done and the EBERO question, the escrow question was just an example to illustrate this. But there are areas where the contracted parties might need to indemnify the others based on their actions or if there are special eligibility requirements as Kristina outlined in the purpose that she was working on, then the registry would indemnify the others if something is going wrong there.

So I think what we're – what I'm suggesting is a hopefully simple plane language description of who's doing what and then to come to a fair

arrangement to make sure that those who are responsible for certain actions actually indemnify the others if something goes wrong there. Thank you.

Kurt Pritz: Thanks, Thomas, for spending time on that and your question, Hadia. Diane, you got about 30 seconds, can you do it?

Diane Plaut: Okay, I just wanted to commend Thomas on his work and say that this is the right thing at the right time. I think that basically we're to the juncture where we've done all this work, we put everything within the workbooks setting out the different responsibilities but now we're coming back to the same legal (unintelligible) that we've discussed in LA where we asked ICANN to provide clear information on what they were going to do from a contractual basis. And now properly assigning the roles under joint controllership creates the proper legal framework, answers the charter questions appropriately but then lays out the responsibilities in line with liability.

So further to Margie's point I think not only do we need to have precise answers based upon specific questions to ICANN but we could also take it a step further and have part of our legal recommendations a draft controller agreement that could be proposed so that these responsibilities are not only described within the policy but are set forth within the contractual recommendations that are going to be made and tied into a draft controller agreement that lays everything out because that's what these agreements do; they lay out the responsibilities in connection with the liabilities.

Kurt Pritz: Thanks. Thanks very much, Diane. So, Thomas, can you have a revised version of this section for Thursday's meeting? And do you want anybody's help?

Thomas Rickert: Yes and yes, so I'll try my best but I'd certainly appreciate volunteers to help with this. And I should say that it would be extremely beneficial to have somebody from ICANN, potentially Dan, exchange thoughts with me on that so that we can say with a certain degree of certainty that we're working in the same direction. Which I hope ICANN will accept since ICANN was floating the idea of being the sole controller for honoring disclosure requests, so ICANN should not be risk averse in that area. Thank you.

Kurt Pritz: Thanks, Thomas. And thank you very much for that work. So do we have action items, Caitlin or Marika?

Marika Konings: Yes, Kurt, this is Marika. I'll quickly run through the action items we took down. So the first action item is for the EPDP team to save the date for the next face to face meeting which is planned for January 16-18, 2019. Support team will also send out a save the date calendar to facilitate this save the date action. The EPDP team is requested to review the proposed language in relation to natural versus legal person for inclusion in the initial report that was circulated on the mailing list and come prepared to discuss this on Thursday's meeting.

The next action item I have is for the support team to draft proposed language for inclusion in the initial report in relation to the discussion that took place today in relation to technical contact. The next action item is for support team to mark language in relation to data retention as agreed in the initial report and harmonize the data retention periods across the data element workbooks. And then the last item, and it might be good to get a clarification on that, my understanding is that Thomas would work to translate his slides into language for inclusion in the initial report for EPDP team consideration hopefully during the upcoming meeting on Thursday.

And then I had the one question for ICANN Org and as noted in the chat, you know, modifications to that or clarifications are welcome, is indemnification provided by ICANN through a joint controller agreement an option?

Kurt Pritz: Thanks very much, Marika. Diane, I'm assuming that's a previous hand so with that and seeing no more comments I want to thank everyone for their constructive input in the meeting and you'll be getting feedback from it shortly. And we'll prepare for the next one so I'll be talking to you soon. Thanks very much again. Have a great day.

Terri Agnew: Thank you, everyone. And once again the meeting has been adjourned. Operator, if you could please stop all recordings? To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of your day.

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