

**ICANN Transcription  
GNSO Temp Spec gTLD RD EPDP call  
Thursday 06 September 2018 at 1300 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-06sep18-en.mp3>

Adobe Connect Recording: <https://participate.icann.org/p5518kreyof/>

Attendance is on the wiki page: <https://community.icann.org/x/1AONBQ>

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

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

Coordinator: Recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 11th GNSO EPDP Team meeting taking place on the 6th of September, 2018 at 1300 UTC for two hours.

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

((Crosstalk))

Kristina Rosette: Hi, it's Kristina Rosette. I'm currently only on the bridge but in the process of restarting my computer to get into the Adobe room. Thank you.

Terri Agnew: Thank you, Kristina, we have that noted. And, Ayden, we have you noted as well also knowing that you'll be joining shortly on the Adobe Connect. Hearing no one else, I would also like to remind you we have listed apologies from Emily Taylor of the RrSG and Esteban Lescano of the ISPCP as well as Leon Sanchez, the ICANN Board liaison. Emily has formally assigned Theo Geurts as her alternate for this call and any remaining days of absence; Esteban has not assigned an alternate.

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

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

All documents and information can be found on the EPDP wiki space. There is an audiocast for nonmembers to follow the call. Please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the call. With this I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks very much and welcome everyone, and thanks for the timely start. Just go onto the agenda, the agenda is that I'll make some remarks on administrative matters. We included an action item list as part of the – as part of the reporting this time so we'll go through that. And then just real quick we're going to review the inputs we received on especially section – the

elements of Section 4.4, the lawfulness and purposes data processing, so gratefully by me, that conversation will be led by members – started by members of the RrSG and then with many others to comment as I can see from the mailing list and also the inputs from Amr and Ashley that were well done, so thanks for those.

I hope to get, but I'm not sure we will, to the data discussion and Thomas Rickert is going to help me with that discussion and we sent some emails out about it. Before I get into the administrative matters, I just want to mention that I sent out an email a half hour before the show today and my thinking in reviewing the – especially the Registrar input but the others is that I essentially want to go around this virtual room by group. When you talk, when you raise your hand to talk to comment on the Registrar report or the Registrar recommendations, I'd like you to you know, go through the whole report and touch on each element that – where you have an issue.

You can voice support but, you know, it's important to hear where we differ. And then the idea is not just one person would speak for each group but, you know, once one group starts then we can check with other members of the group to see if they have any other points, so nobody will be precluded from talking, but really raise the issues that you have or the support you have for that report and then you know, having captured all those maybe we can focus the discussion in more quick on the issue so that's my idea. So if you would think about that while I talk more mundane stuff, please let me know.

Hi, Alex, I see you have your hand raised.

Alex Deacon: Yes, Kurt, this is Alex. Just on that point, I just want to mention that, you know, a lot of these inputs were sent maybe less than 12 hours before the start of the call. And so given Pacific Coast time, the 6:00 am start, I've basically had zero opportunity to consult with my team. So while I think your suggestion is a good one and I'll do my best to represent, you know, the views of my group, I just hope that we'll be given more time to give input and

thoughts on the list and expressions moving forward. I think a little more time for these important topics, a little more time to review and to consult with our team for these important topics would be required. So I just wanted to mention that. Thanks.

Kurt Pritz: Yes and that's well taken so I could say more in support of what you just said but I agree completely. With that, opening comments are the triage report, so I sent that – I sent the more abbreviated version of it around. I'm not taking silence as consent; there's been no comments to it but as the triage report, you know, to me does not constrain us in any way in our future deliberations. I'm going to go ahead and (send) this to the GNSO Council tomorrow so if you have comments on them, please send them in.

That's uno. Then is – there's some more agenda stuff. So travel funding for Barcelona, we're already a little bit late in requesting that as travel requests are generally due 90 days before I've learned. So we want to be the travel funder of last resort so if you're eligible in – eligible in any – for any other travel funding that should be the default travel funding.

And if you receive partial funding then accept that and that partial funding would be – the remainder could be made up to this project. But and then importantly, the idea is that if there's enough members and alternates already attending the ICANN meeting, got the full complement, then that would be accepted so I'm saying too much already today.

And then finally, you know, if your company or organization generally – customarily funds you we'd ask that that continue absent some change in your company and organization. So there is a document that I sent along with the slide that rules and application procedures for securing travel funding. If you want to apply for travel funding from this – we're creating 100-page form for you. But in the document I inserted the date, please apply by September 14, which is a week from Friday. You know, we'd really appreciate it if you could apply by September 13 so that all the decisions and – can be made

and forwarded to the Meetings Team by Friday and getting that going since we're so far behind the eight-ball.

So there's a – Farzi has a question about visa for Barcelona. Most of us, not all of us, have the privilege of not needing a visa, so right. So can anybody help Farzi with her question? Is that – is the visa information already on the meeting site? Would any other information that would be required? Alan.

Alan Greenberg: Thank you. It's not a travel issue but related to Barcelona. Can we have formal confirmation that this is a completely open meeting? My understanding is the meeting request was submitted as a open meeting, no restrictions who can be in the room. Can we have formal confirmation please?

Kurt Pritz: Can somebody from staff answer that? I think I know the answer but I've screwed up before.

Marika Konings: Yes, this is Marika. So indeed...

((Crosstalk))

Kurt Pritz: Yes, go ahead, Marika.

Marika Konings: The request has been made for indeed open meeting on the schedule, open for people to attend, but our assumption is – but again it will probably eventually depend on the focus of the meetings and the topics that are being discussed but the assumption is that it will be run similar to how, for example, the drafting team meetings for the charter were run and also how we run our meetings here is that it's open to observers but the members or those who are replacing members are at the table and those are the only ones that are speaking and intervening as it's really intended to be a working session.

As of course we have various meetings throughout the week the group may want to consider or discuss as well, you know, whether any of those meetings

need to be more of a kind of consultation type, you know, are there any questions that need to be discussed with the broader community? But of course there is already the high interest topic session that is scheduled for Monday.

So I think in short, yes, they're scheduled as open sessions but the group will need to consider whether those are going to be used as, you know, real working sessions so just for the team with others being able to observe or whether there's a need to have it more open or certain parts more open for community engagement in addition to the high interest topic session that's already planned.

Alan Greenberg: Yes, Kurt, if I may have a follow on? The rest of the ACs and SOs...

Kurt Pritz: Sure.

Alan Greenberg: ...are in the process of planning their meetings. If we are going to be having closed meetings that are not open to anyone else to participate, we really need to know that soon so that the ACs and SOs can act accordingly. Otherwise, we're keeping slots open and then we'll find out that, you know, people aren't allowed in the room, so we need to have closure on that really soon like this week. Thank you.

Kurt Pritz: Yes, you know, Alan, I'm with you but I just don't know if it's possible given the deadlines we have and the state of the current discussion and how the situation is evolving. But for me, you know, I'd vote for just meetings open. Kavouss.

Kavouss Arasteh: Yes, I have no – sorry, good morning, good afternoon and good evening. I have no problem open or close but I don't believe that we need to establish something different from what we had before; we had ICG, we had CCWG first work stream, and CCWG Accountability second. And the rule of those meeting shall continue to apply. We are not going to establish a new rule and

try to discuss it because views may be different. Why we need to have different approach than those three meeting which was if not more important, not less important as this.

And also for traveling procedure, we had something in place already. Why we need to start from scratch? Thank you.

Kurt Pritz: Well, I don't think we are; I think we are planning to have open meetings and I think we're planning to have participated by just the members, so getting the controversy. Ashley.

Ashley Heineman: Thank you. And I don't want to belabor this issue any further. But while we're on the subject, if there are going to be meetings throughout the week as well as Saturday, I know for – at least using the GAC as an example, our three EPDP primary members are also the primary members within the GAC, so if there could be some kind of flexibility in terms of being able to appoint our alternates through the week if things happen to conflict with our need to be in the GAC room, that would be also helpful. Thank you.

Kurt Pritz: I think that'd be fine. Okay, that's Barcelona. GDPR training, so the ICANN support team solicited from I think three different areas and they can provide more details if we provide details on other bidders. We decided to take like a two-prong approach to this in order to roll it out as quickly as possible. One is – so the first step will be this self-paced module provided by IT Governance and Theo Geurts of the team here turned us onto them.

And this training can be, you know, this training is online so it can be done at your convenience and can be made not quite immediately but more or less immediately available. And if Berry – Berry or Caitlin can talk to that date now that'll be fine or else we'll (unintelligible). And then we can – we will follow on those sessions with, you know, specific training into areas where people are interested, so we're attempting to arrange with Becky Burr at her earliest convenience when she can give us a briefing.

And a member or two of the team here, and listing other experts in the area to give sessions so that online training will – if we're not ready to talk to – its date of availability today we'll get something out about it right away, as soon as the ICANN administrative work is done to get thing paid for and passwords and credentials sent out to everybody. Okay, so thanks, Berry.

We put together, I don't know, Caitlin, if you can drive or not but we put together an action item list for things we've – items we've assigned. Caitlin, can you take a very short period of time and go through this?

Caitlin Tubergen: Yes, certainly Kurt. This is Caitlin for the transcript. Excuse me. I'll quickly note that these action items are a direct copy and paste from the wiki site and includes the action items. And all the cells on this slide that are currently highlighted in pink are outstanding items. We'll quickly run through those.

As Kurt mentioned earlier, any input on the triage report is due today. Kurt would like to send that to the Council tomorrow. I believe we are still waiting for the redraft of Section 4.4, introductory paragraph from Alex and Thomas but that may have come in during the meeting if I'm not mistaken. Additionally, we have an action item for the team to provide comments on Kurt's email with proposals of relocating Section 4.4.2, 4.4.8 and 4.4.9 and that feedback is due today.

We also have an action item for Thomas to provide a joint controller agreement for the team to look at and that's due today I believe as well as Margie has an action item with respect to Appendix C. The next slide shows the action items that were completed and that includes the rewrite of Section 4.4 by the Registrars as well as Amr's rewrite of Section 4.4.2. As noted in the email from Alex and Amr, I believe the small group is still discussing the proposed rewrite for Section 4.4.8.



And we also received Ashley's rewrite of Section 4.4.9 and that is on today's agenda. And I'll quickly note that there are some other more long-term action items that are also on the wiki page but in the interest of timing we just included the action items that are relevant for today's meeting and/or were noted at our last meeting on Tuesday.

((Crosstalk))

Kurt Pritz: Okay, thanks Caitlin. Amr.

Amr Elsadr: Thanks, Kurt. And thanks, Caitlin. This is Amr. I was just wondering on the outstanding action item for the team working on 4.4.8, we've already seen some input from the Registrars and on this section. They proposed the rewrite to it within their, you know, overall proposal to rewrite 4.4. I'm just wondering, is there any additional direction for the volunteer team working on this section in light of this or is this something we might want to touch upon after reviewing the Registrar's input? Any additional direction would be helpful to us, I think. Thank you.

Kurt Pritz: Hi, Amr. Don't go away. Are you suggesting that we just start from the Registrar starting point and then take up the discussion from there since, you know, the same points might be made in a writing that we can just make in the discussions so that we should let that other writing slip by? Or are you suggesting that the group writing it take some different tact? So Amr, if you could respond then we'll go to Alex.

Amr Elsadr: Thanks, Kurt. This is Amr again. No, I'm not suggesting anything specific, I'm asking if there are suggestions on how we should proceed in light of other input being provided. I do recall that, you know, when we had discussed having small teams of volunteers working on different sections, one of the purposes of doing this was to not propose competing – not have competing proposals put forward.

And I don't want to say that, you know, there are any that are competing, in fact, but I'm just wondering whether the group now feels that there is – there are any, you know, constructive suggestions for us moving forward since we do have an outstanding action item on working out 4.4.8 or whether we should just go ahead and proceed as we were planning on proceeding before? So nothing specific, I'm just wondering if anybody does actually have a specific proposal for this? Thank you.

Kurt Pritz: Okay, great. Thanks very much, Amr. Alex.

Alex Deacon: Yes thanks, Kurt. It's Alex. Yes I think just kind of referencing the point I made at the top of the call, given I haven't had a lot of time to review the input from James, I wouldn't want to suggest that we start with that or use that as a baseline quite yet; it may be a possibility but I think you know, clearly at some point all of these comments and changes and updates whether they're changes that Thomas and I and Diane are working on for the top of 4.4 or the changes to 4.2, changes to 4.8 and the suggestions that Ashley has made to other sections, they all have to come together at some point.

And how we do that is not clear to me whether it's a Google Doc or something else but I still think I need a little bit more time to review the various inputs that have come in in the last 12 hours before we kind of make a solid plan to move forward. Thanks.

Kurt Pritz: Yes thanks, Alex. Good points, suggesting that. And any of the proposed documents be a baseline for a final writing but rather just the kickoff discussion I think from the mailing list it's clear that there's a lot of competing views. And so the question is, you know, whether that's a sufficient kickoff for the discussion or not. And I have another thought but let's go through the list. Hadia.

Hadia Elminiawi: So I add my voice to Alex and I say also that I haven't had the – enough time to review or what has been posted by James. I did take a quick look and from

this quick look I can say that well we actually do have (unintelligible) document and to answer the question how do we proceed and (unintelligible) can try or we should try incorporating what James put in the document that exists now on Google Doc. So that's it for me. Thank you.

Kurt Pritz: Thanks. Thanks, Hadia. Benedict.

Terri Agnew: And, Benedict, this is Terri. I don't see where you have your mic activated or joined on the telephone. As a reminder...

((Crosstalk))

Benedict Addis: Hello there. Can you hear me okay?

Terri Agnew: Oh, there you are. Welcome. We can hear you.

Benedict Addis: Oh hello. Sorry. So my understanding, again excuse my slowness and stupidity but I thought we'd sort of divvied up the sections of 4.4 to look at and Amr had been given the job of looking at 4.4.8. So I think I'm going to say slightly stronger than he has, I'm not entirely sure why there's been an alternate draft proposed when we'd agreed to sort of divide and conquer this section.

One thing that sort of in this discussions with SSAC colleagues, luckily enough I'm physically close to at the moment, is that what our proposal for 4.4.8 is that essentially we leave for later the discussion of who gets access, I think as we discussed at length before, with the idea that perhaps there be – that people be able to petition the ICANN community, so that would seem a set of access requirements.

The other important consideration we'd like to discuss, I don't think we talked about this yet, is to look at whether purpose can be tied in some way to level of access. And I'd be really interested in a GDPR expert view on this, in other

words, can we say as an IP lawyer you may ask for such and such data and if that's your purpose you're therefore limited to perhaps just contactability. You may email registrants or registrants and receive responses. If you're perhaps a cyber security person, you're more interested in looking at correlating data, so you might be interested in bulk caches or something like that.

So wonder whether – and perhaps this is a question to Thomas – whether GDPR provides a sophisticated mechanism to tie access to purpose in that way? Thank you.

Kurt Pritz: Thanks, Benedict. Alan.

Alan Greenberg: Thank you. I must admit I'm somewhat confused. Milton had suggested that we put together, you know, drafting teams, I think anyway, I think what he said is to not have competing individual positions suggested. I've heard that we have assigned or asked specific people to try redrafting. I haven't heard about any actual multi-group, multi-person teams being put together to try to find a consensus drafting which Amr sort of implied when in his intervention, and we are clearly getting competing proposals here.

So I'd like some clarity on how are we supposed to move forward? We seem to be doing – going in three different directions at once and I'm not sure that's really helpful. Thank you.

Kurt Pritz: Thanks, Alan. Kavouss. And I'll speak to that when we get to the queue.

Kavouss Arasteh: Yes, partly or maybe generally support what Alan Greenberg said. I think any drafting team or group should have sufficient guidance from the main team what to do. They are not going to go and put on paper what they believe individually because that will have contradiction with the others. I have seen 4.8 has been redrafted, I looked in one of the proposals to the team that totally contradicts to what has been deleted here.

So I don't think that we will have a good result, we have to have a better mechanism that first of all those people who get together must have an agreement or consensus what they're presenting to the team and second, I put in my email to you and others, they need to take into account of the discussions being sent, that are being held and document being sent. There are document from every group has (unintelligible) indicating their views on the particular paragraph and also discussion. It seems that people they are going and just supporting or advocating or re-initiating their own ideas; they are totally contradicting with the others. I'm not saying that who is right, who is wrong. But the way I see there are contradictions in the outputs. Thank you.

Kurt Pritz: Thanks, Kavouss. Milton.

Milton Mueller: Yes. This is Milton Mueller. Good morning, good evening and afternoon everybody. Trying to sound as cheerful as Terri but probably not pulling it off. So I don't think this situation is as bad as people are making it out to be. We have a draft in front of us for Section 4.4 from the Registrars. We had some kind of a working group associated with Alex and Amr, which frankly didn't result in any interaction. And we have a suggestion from Amr about 4.4.2 which is fully consistent with what the Registrars did, and we have a suggestion for 4.4.9 from Ashley, which is not consistent with what the Registrars proposed.

So now we have a solid basis for a discussion of the differences and similarities of this Section 4.4 and I suggest we just get on with discussing it. To answer Hadia's question in the draft, "How can we ignore the current Google Doc?" We – I put comments into that and it was ignored by everybody else so if that draft was never submitted by Alex, then it's not on the table. We do have something on the table; it provides a good basis for discussion so let's have the discussion.

Kurt Pritz: Thanks, Milton. So here's where I am and my take away from that is that the Registrars did a nice job but they did comment on all the sections rather than the ones that are registrar-related so with regard to what's considered by a team and what's not, you know, it was my thinking that the Registrars should draft the comments on the sections that pertain to the use that they make up the data.

And then Ashley volunteered for Section 4.4.9, which has to do with law enforcement so I thought that was appropriate. Amr and Alex volunteered for 4.4.8 and I thought, you know, that was appropriate. And we also had some recommendation on 4.4.2. So I think there's a consistency and theme to this and I think where we are is similar to what Milton said, that we have inputs from the Registrars, we have alternate language from Ashley on 4.4.9 and she also commented on another section, which I think is fine; I think it's fine that people submit drafts rather than comment on a draft, submit alternative language so I think that's fine.

And I also think that we need to carry on with the discussion so we should take what we have, eagerly anticipate the work that Alex and Amr are doing and others are doing on 4.4.8 and we'll receive that gratefully when it comes. But we won't tarry the discussion on the other sections and in fact start talking about 4.4.8 if we get to that. So I think you know, I can write that up but I think it's coherent and properly meted out. So that's that.

So let's see if there – I don't know if these are all old hands or not? But if anybody has a not old hand up, go ahead and speak up. All right so the first set of modifications to these sections are the proposals from the Registrar team. And as I said, I propose that they present their findings. We go – we go in the virtual room. And I have fully taken on board Alex's thoughtful comments made twice that these are comments of first impression but might help us to identify some of the key issues, so we'll pursue the conversation that way.

The – we'll ask one or more of the Registrars to present the approach, have a brief discussion and, you know, close out Tuesday September 11. So I have two comments on that, one is – two is, you know, we're sort of, you know, - we're not sort of – we're behind where we need to be if we're going to deliver a report so we should proceed with alacrity, and I'll have more to say about that probably in the next meeting.

Before we start, I just want to let you know that what I have in this slide here is the clean version of what the Registrars presented as the new Section 4.4 and you should have your redline section in your left hand along with the temporary specification as the Registrars take us through their thinking. Kavouss.

Kavouss Arasteh: Yes, Kurt. I don't mind whether we are in a good position or a bad position, I have no problem to start with the beginning no matter where it come from and we start from 4.4 and discuss that paragraph by paragraph. Thank you.

Kurt Pritz: All right great. Thanks, Kavouss. Hi, James.

James Bladel: Hi, Kurt. Good morning. I was putting my hand up because I've been volunteered to coordinate the Registrar section, of course I'll be leaning on Matt and Theo for support as well.

Kurt Pritz: Sounds like my personal life.

((Crosstalk))

Kurt Pritz: Okay, go ahead please.

James Bladel: Okay. Thank you. And this is James speaking. And I'll walk us through the clean version, but as Kurt noted, it'd be helpful I think if everyone had the redline handy and I'm going to do my best to flip back and forth without getting lost.

I just want to set the stage briefly by noting that this was developed by the Registrar members and alternates of the EPDP under supervision of our ExComm so I feel like it's a pretty solid effort. It was certainly a little bit trickier and more involved than we maybe initially expected and so I apologize, that doesn't excuse the delay but just wanted to let everyone know where we were coming from. And also finally we have a couple of items that may not enjoy unanimity amongst the Registrar members because of the diverse positions and opinions in our stakeholder group and so we'll talk about those when we get there.

But actually I'm encouraged at the degree of cohesion that we were able to reach in this document and to Alex's point, you know, we – in the chat we don't want this to necessarily presume that some version of Section 4.4 is going to end up in our future contract but it is – we think the value at this point is to have something to look at, that's kind of why we wanted to get this going.

So we've got the clean version up here which is the slide that walks us through 4.4. And let me just start with some of the changes and of course I'll try to keep an eye on the queue as well but, Kurt, if I just ramble on, you know, kick me under the digital table here and take control and go to the queue.

But starting with Section 4.4, we took out the specific reference to GDPR because we note that there are just a number of equivalent or compatible regulations and data protection frameworks being adopted all over the world and so we tried to genericize that to data protection laws. And that's just going to be a challenge that underlies all of our efforts here.

We struck some sentence here and inserted instead “for the purpose of domain name registration in compliance with applicable data protection laws.” And again, this is – this replaces some perhaps overly broad language about



fundamental rights and freedoms that are not overridden by legitimate interests and so forth, so I think we're again we're trying to narrow this down into something that's a little more enforceable.

Okay, I see that that's switched so that's helpful. Then – do I have scroll control? Is that what's going on here or does everyone?

((Crosstalk))

Kurt Pritz: Everyone does.

Terri Agnew: James, this is – yes.

James Bladel: Okay. Thanks, Terri and Kurt. Then, you know, so that kind of summarizes the changes to 4.4. 4.4.1 was introductory and generally not changed. 4.4.2, however we are proposing be removed entirely. And for this reason we're noting that this is vaguely worded and it kind of belongs elsewhere in the document in terms of wherever an access model is defined. I think that is part and parcel of access and disclosure and I think that's a recurring theme in our edits as well.

I see there's a queue. You want me to run through these now, Kurt, or...?  
Okay. 4.4.3 we hear – we note that identification and contacting, we just limited that to contact because I think that identification might be a broader footprint of personal information whereas a lot of the discussions around contactability.

Section 4.4.4 we proposed to remove because this is not one of the purposes that registrars collect Whois data for; we have other means of contacting, communicating and facilitating payment with our customers. And Section 4.5 we are noting that there were just some changes to the language regarding technical issues and anything relating to content or resources associated.

Section 4.6 we also proposed to be removed because again, this is something that we believe be covered by other facilities, in particular the, you know, the facilities that we have to technically operate the domain name.  
And...

Terri Agnew: James, this is Terri.

((Crosstalk))

Terri Agnew: I apologize for interrupting. We are getting a couple requests if you could speak up or speak closer to the mic?

James Bladel: How about this? Is this any better? Anyone?

Terri Agnew: Yes it is. Thank you.

James Bladel: Okay, I'm actually holding the microphone cord in front of my face so as long as no one can see me I'll proceed this way. Section 4.7 is where I think we left off and we're again, eliminating some of the other – what we believe to be fairly redundant points of contact and not noting that their purposes are all that distinct from the purposes of collecting the registrant contact information. We made some changes to Section 4.8 which is regarding law enforcement, I think cyber crime, we kind of folded that into law enforcement, DNS abuse.

And then this is the one of the areas where – and I may ask Matt Serlin as some others to weigh in, but this is one of the areas where Registrars had some divergent opinions on how to properly capture the bit there about intellectual property interests and I take on board the comments on the list about changing it to intellectual property rights.

I think the key here is that we wanted to ensure that sufficient data was collected for the purposes of registries and registrars to fulfill their roles under defined rights protection mechanisms like the URS and the UDRP without

kind of opening this up to the sort of a generic intellectual property interest and rights where they might not be directly associated with the registrar within purposes for collecting the data.

So we're trying to, in effect, find out where we need to draw that line and we had some trouble with this. And I don't know if, Matt, if you want to jump in on this but it is an area where we're struggling with it and I think we'd love to put that discussion out to the broader group of how we can craft some language that captures the registrar purposes for collecting that data to fulfill those roles under those rights protection mechanisms. So maybe we'll just put a pin in that one and for future conversations.

Section 4.4.9, we propose to be removed because we believe that it belongs in – elsewhere in an access discussion and also noting that law enforcement is included in 4.4.8. And I say that just as a side note, I don't think that the language that Ashley and the GAC sent to the list overnight is entirely incompatible with what we're saying so maybe we need to flush that out a little bit further but I think that we can probably nuance those two together and find a compatible merger of those two languages.

Section 4.4.10, facilitate the publication of a zone file, we don't know frankly what the registrar purpose is for publishing a zone file and we don't have one. So that – there may be a registry purpose, there may be purposes for third parties, but we removed it from our particular list of purposes.

Section 4.4.11, I think we've noted on a number of occasions that business or technical failure should be addressed by registrar data escrow and therefore while there is significant overlap in the data that's collected for Whois RDS or data that's included in the registrar escrow deposits, they're not the same and we do consider them to be separate and distinct and therefore we don't consider this to be a purpose for registrars in collecting the data.

Section 4.4.12, again refers to specific disputes and rights protection mechanisms, URS and UDRP. And Section 4.4.13, as you can note, that we talked a little bit about contractual compliance efforts from ICANN but we also included this provision here which I think is an important principle and it's the linking between the obligations and sanctions under data protection laws like GDPR versus the ability to invoke contractual mechanisms to address obligations that are in conflict with those – with those regulations.

And we've talked in previous calls we've raised the idea that we maybe need to revisit the Whois conflicts process procedure and certainly that's fair game as well. But I think that what we'd like to see is some formal path established in any future contract that allows an escalation to arbitration or mediation whenever a contractual obligation appears to be in conflict with data protection laws.

I know that's something that might sound a little controversial but I think it's inseparable from the idea of we're the ones with our necks on the chopping block so to speak and so we have to have some both business and regulatory certainty that we can continue to operate under our contracts, you know, and those frameworks simultaneously. So that's the principle we put out here.

And then there's a few notes that were included as well. I don't know if you want me to run through those, Kurt, but that last section is captured in the two bullet points at the bottom. And again, I would note that we have some differing views on 4.4.8 and we'd look to discuss that a little bit more broadly with this group. I think we can probably go back and revisit 4.4.9 if we can get some clarity on Ashley's language that she posted to the list. And otherwise I think that is a quick and dirty run through of our changes and I appreciate everyone's patience as they waited for registrars to put that together. So with that I'll turn it back over to Kurt. Thanks.

Kurt Pritz: Thanks very much, James. And, yes, we could have – I think you could have easily spent an hour going through that so that's a tough balancing because there's nuance here and there's things to explain so we'll – I think you know, we should consider what you said carefully. So Kavouss, I see your – I think let's see, so it's – I think it's kind of hard to do now that I think about it.

You know, Kavouss, you're the first one up and what I'd like to discuss are all of these topics so bring up your points on all of them except I'd like to omit 4.4.2 because there's a couple different alternate proposals for that one from Amr, who said he was going to do that work and an unsolicited one from Ashley that also brings up some of the points James said about positioning. So I don't want to have that discussion without them presenting their viewpoints. So I'd like to – for those reasons I'd like to skip 4.4.2 and 4.4.9 because Ashley has done some considerable work on that one.

But with regard to the rest, so let's try this and see how it goes. So, Kavouss, if you could – and go through and do the best we can, a bunch of us, and try to list all the issues associated with these and see what we can do about creating a preliminary issue list and just keep reiterating Alex's comment that we understand these are issues of first impression. So if you prepared to take that on, Kavouss? If you want to comment on the sections you want to and then, you know, I'll let the other GAC members opine on those too. So comment on the ones you want to except for 4.4.2 and 4.4.9. Go ahead.

Kavouss Arasteh: Yes, now I withdraw for the time being, I allow the 4.4.2 – and 4.9 for 4.4.2 we have two versions; 4.9 we have one version to be discussed, then I come later. Thank you. Provided that other do the same thing, thank you.

Kurt Pritz: Okay and you don't have – do you have comments on any of the other points made in this document?

Kavouss Arasteh: I have a general comment but...

((Crosstalk))

Kavouss Arasteh: ...wait until the other people explain and then I come. So I just withdraw.

Kurt Pritz: All right. Hadia.

Terri Agnew: Hadia, this is Terri.

Kurt Pritz: Hey, Hadia...

((Crosstalk))

Kurt Pritz: ...take yourself off mute if you don't mind?

Hadia Elminiawi: So I would like to note that the (unintelligible) of the section is lawfulness and purposes and it's not the – not purpose of the registrars. So though I do believe that some of the items that are listed – I do think that the whole section was written only from the point of view of the registrars. It took into consideration only the purposes of the registrars, (unintelligible) any other purposes – legitimate purposes. And I would quote – I would (unintelligible) say to ICANN purposes. Thank you.

Terri Agnew: And, Kurt, if you're speaking I believe you're muted as well.

Kurt Pritz: Yes, I'm so sorry. Alan, did you want to follow up and flesh out any ALAC comments at this stage?

Alan Greenberg: I certainly could. I sent brief ones to the list although some of them were not worded as clearly as they could have been given the time and my level of awake-ness at the time. It'll take me a second to get that focus. I wasn't realizing you were going to call on me. 4.4.4, sorry, sorry, Kurt, can you come back to me? I'm trying to get this organized here and I'm not quite ready to talk.

Kurt Pritz: It's an experiment on my part. Let's see, who's next? I saw Alex had a comment but let's just go down the list. Milton.

Milton Mueller: Yes, so NCSG has – believes that these edits are real progress and most of them are quite acceptable to us and that they are toward the debate. Let me just begin with the idea that these are ICANN purposes, that's exactly what they're supposed to be in this section; these are not third party legitimate interests. And I thought we had agreed two meetings ago that we were going to clearly separate the purposes of ICANN from the purposes or rather the legitimate interests of third parties.

ICANN is not supposed to be collecting data for third parties based on their purposes, as we have said repeatedly. Particularly let me address 4.4.2...

((Crosstalk))

Kurt Pritz: And, go ahead, I'm sorry, Milton.

Milton Mueller: Okay. That was interesting. So 4.4.2 is – I think that, Kurt, you said something about how Amr has a different idea. I think Amr also gave a very articulate explanation for why that doesn't belong there, that it has nothing to do with purposes. And it's a description of the data and not a description of a purpose, so we support that. We support the idea of eliminating identifying the registered name holder, that is not part of ICANN's purpose. We certainly want the registered name holder to be contactable; that has been a long standing principle underlying the directory services that ICANN uses or develops.

The registrars are correct that, you know, 4.4.4 and any other thing that assumes that Whois is needed for the registrar to contact the registrant is simply wrong and needs to be eliminated. When we get to 4.4.8, I have a question for the Registrars. I've already raised some questions about what

they mean by “tailored mechanisms.” And I’m wondering if, based on James’s description, you know, they’re talking about, yes we want a framework to address these issues and that means that it’s not necessarily an ICANN purpose.

So this is the door through which legitimate interests can enter the process, however those legitimate interests need to be specified later. But it does indicate what they are and what they are not so consumer protection is out, that’s correct; law enforcement and investigation has been generalized, which is correct; DNS abuse is included which is correct.

Now in intellectual property, it sounded like what James was describing is already covered under 4.4.12, those are the tailored mechanisms, so why do we need this reference to intellectual property rights in 4.4.8? It seems like they’re – a framework is already covered in 4.4.12.

I have similar comments about 4.4.9. I think Ashley has given a broad definition of how law enforcement interests might use the data but that’s an access issue, that’s not an ICANN purpose and it’s a very bad mistake to put those law enforcement concerns into ICANN's purposes because this will definitely get you into trouble with the data protection authorities. And it’s not necessary anyway. It’s already covered by the reference in 4.4.8. So I would – and I’m sure NCSG as a whole would agree with deleting that section. I think that’s all I have to say. Thanks.

Kurt Pritz: So Milton, when you said these things are right in 4.4.8, can you say why?

Milton Mueller: Like I say, for law enforcement for example, law enforcement needs to investigate Whois sometimes to deal with all kinds of crime, not necessarily cyber crime. DNS abuse was already in there so I guess I don’t need to address that. And consumer protection, again, ICANN is not a consumer protection agency, there are consumer protection agencies in every government around the world. It’s their job to do that. ICANN does have



some kind of accreditation process which, you know, they can use to de-accredit registrars who are fraudulent or do bad things, registries also.

But those are very carefully defined contractual obligations and we don't need to create a generalized consumer protection mandate for ICANN in this section so we very much supportive of that as being keeping this whole process within ICANN's narrow mission. Does that answer your question?

Kurt Pritz: Yes, thanks. Thanks very much. Amr or anyone else from NCUC want to talk? Julf?

Amr Elsadr: Kurt, this is Amr. If I could have a – just a really quick go?

Kurt Pritz: Sure.

Amr Elsadr: Thanks. This is Amr. Yes just to add to what Milton said about some of the third party interests here especially regarding Section 4.4.8, yes, I just wanted to reiterate that I don't believe that, you know, processing of gTLD registration data for the purposes of law enforcement investigations should actually be an ICANN purpose. That would sort of – we're creating a precedent here that makes ICANN sort of a party to law enforcement globally as far as the DNS is concerned and that is not an ICANN purpose at all.

And I think we need to very clearly differentiate between purposes of processing gTLD data in – in a general form and what that means in terms of ICANN processes, because again, that implies both collection – implies collection, use and disclosure of the data. So to frame that here in this manner implies that ICANN collects registration data – or requires contracted parties to collect registration data for the purpose of law enforcement investigation, which simply isn't true.

When we get to discussing third parties that may have access to registration data or to whom registration data may be disclosed, sure, there's a

discussion to be had for law enforcement at that point but that's different than what we're doing now. And I do note that, you know, the GDPR has very clear instructions on how to deal with competent authorities which is what they use I believe to refer to law enforcement, and to the extent to which GDPR applies or actually doesn't apply to requests from these competent authorities as well as other parties affiliated with them. But putting it here, I think as a purpose for ICANN is a really big mistake. Thank you.

Kurt Pritz: Thanks, Amr. I'm going to close out NCSG, Farzi, did you have anything or Julf? Ayden? Okay, so Alex, you're next.

Alex Deacon: Thanks, Kurt. So I think my first comment is a higher level comment. We talked about, you know, whether these are registry or registrar purposes or ICANN purposes. I read this as being a set of purposes that are specific to registries and to registrars. And my kind of initial reaction was that there are several ICANN purposes missing from this so I think there's some holes here that we'll need to address and there may be some additions required.

The second high level comment is, is that I wanted to – I wanted to just remind people that this is a list of purposes for processing, right, for all definitions of processing, and I think when we decide that some of these access mechanisms will be discussed or should be discussed at a later time, I think that's a mistake. We need to make sure that we have purposes for all processing actions, including access; without that then any future discussions we have on mechanisms for access I think are – stand on shaky ground. So I would be concerned that if we – if we don't have any purposes that touch upon required access then, you know, I'd have a concern with that.

On 4.4.8, I think it needs some work. I don't agree with Milton, although I do agree with his question regarding what tailored access means. If tailored access is in fact simply a reference to 4.4.12, then I think that is a very narrow definition of intellectual property interests or rights and we'll need to address that.

And I think for now, again, based on a very quick read, late last night and this morning, I'll leave it there. But as I mentioned, I still – we still need more time to digest a lot of this. Thanks.

Kurt Pritz: Alex, when you're thinking about several ICANN purposes are missing, what's on that list, you know, given that you've had 15 minutes to consider this other than 4.4.8 and 4.4.9?

Alex Deacon: Yes, I think within ICANN's bylaws and mission, you know, the – there are a lot of requirements and obligations there that actually define the need to collect, use and process data above and beyond what's currently listed in this great doc from James. And so that's where I think the holes are, and it does involve things like cyber security and law enforcement, intellectual property interests and the like.

Kurt Pritz: Okay, thanks Alex. I'm going to go onto Diane who's also in the IPC to add items to what Alex discussed.

Diane Plaut: Sure, Kurt. I'm pleased to do that. And in fact I want to further enhance this point and add some additional points. Alex and I both feel that certain purposes are missing here, that the purposes due to the fact that ICANN has as part of its mission in Section 1.2A, the preservation and enhancement of the DNS and operability including security on and on and as everyone knows what that section says to accountability, including IP right holders, legitimate interests, etcetera.

And so because of that, the – to include these full purposes here is very important because if we're talking about the collection of data, which then moves onto the holding of that data and any access considerations. So it's important to have those purposes included here so that we can make the proper GDPR determination of legal bases and go onto then the legitimate interests.

Starting from 4.4, we're just talking about the changeover for moving out of GDPR specific legal language and making it broader to applicable data protection laws, I think that this is too vague. The purpose of this EPDP is the implementation of the GDPR pushed this to happen. And the GDPR is in fact the leading law on consensus for privacy right now in the world. We need to use that framework appropriately so I think that it should be taken into account to – we don't have to specifically name GDPR sections every single time within this temporary specification and ultimately in the consensus policy, but I think it should be referred to GDPR and any applicable present or future data protection laws.

With regard to 4.4.2, which I know we're not discussing but just to note that I think that the deletion of that is a mistake because it is an important basis of GDPR in fact and any data protection laws and within the ICANN mission to – and within the contracts – contractual clauses of registries and registrars to provide accurate, reliable and uniform information which in fact is an important purpose for all parties.

And ultimately going onto 4.4.8, if you could not be surprised, we don't support these amendments because in fact it's within ICANN's mission to include IP protections and certainly to limit this within 4.4.8 would not provide the basis for us to go on. And to Milton's suggestion, 4.4.12 and dispute resolution is not – is way too broad. Dispute resolution could be used for anything from contractual issues etcetera and doesn't provide the adequate basis to support the important ICANN mission of the protection of intellectual property, cyber crime and consumer protection.

And lastly, 4.4.13 to – I understand James's point and I understand the need to improve the mechanism under which to resolve whether it be arbitration or mediation, but we need to have a more solid due process and clarity provided here so that we have adequate procedures in place. That's it.

Kurt Pritz: So when – so thanks, Diane. When you say 4.4.8 is not – so 4.4 point – I just want to get clarity because I’m note-taking here as well as other people, so 4.4.8 calls out intellectual property interests and I know Milton suggested something else, but what specifically do you disagree with in the change to 4.4.8?

Diane Plaut: Well first of all it’s not clear what “tailored mechanisms” mean as Alex pointed out. Furthermore, I’m opposed to the fact that I think that consumer protection is an important and broader concept within ICANN's mission that touches upon many different legal areas whether it be intellectual property or other related areas to protect consumers. And I think that ultimately it’s within ICANN's mission to have that flexibility and collect data on a broader level to be able to allow capabilities for consumer protection.

When it comes to intellectual property specifically, intellectual property interests standing in and of itself is not clear enough; it doesn’t include the fact that – and tie with the fact that intellectual property protection per se is what we’re looking to do here. Is interest, yes, but also protection and protection can include trademark, it can include copyrights and it could include and tie with the necessary enforcement needs.

Kurt Pritz: ...point 4.13, so you agree in principle that there should be some mechanisms such as the registrars suggest but that needs to be detailed more before it’s agreed to or were you saying something else?

Diane Plaut: No, I mean, I think that there’s just not enough information to – I think that’s something that’s really important avenue that we have to go down with careful consideration because to make it nonbinding arbitration and other procedures is just so vague, so there needs to be a lot more clarity around that. I mean, we have to think long-term, to have nonbinding arbitration I think that even registries and registrars need to think about where that’s going to put them; is that going to give them what they need to resolve matters? Is it

going to give third parties what they need? So I think that there needs to be a lot more discussion about that so we have a due process solution.

Kurt Pritz: Okay, thanks very much, Diane. Margie.

Margie Milam: Did you call me? This is Margie.

Kurt Pritz: Yes I did.

Margie Milam: Oh okay, sorry I didn't hear. So as Alex mentioned, we probably need more time (unintelligible). I heard some background noise there. We probably need more time to really understand this and make changes or suggestions because it's hard to absorb it the night before we have this meeting. But in looking at it, it seems that the redlines make the purposes far too narrow from what the ICANN purposes should be. Even things like in the introduction, purpose of domain name registrations, it makes it sound like the only reason that this data is accessed for is just simply for putting the information in the registry and that ignores the role of ICANN and the consensus policies that are built by the multistakeholder model because that has to be factored in there. So if a consensus policy requires data to be collected because it fulfills some of the mission that ICANN has in the area of DNS abuse or security and stability of the DNS, that has to be factored in there and at the moment it isn't. And so that's kind of my comment on the introduction.

And so as you work through each of the elements some of the factors are far too narrow like for example, taking out identifying the registered name holder in 4.4.3, that is necessary in order to identify who's the bad actor behind the cyber security incident if we're talking about a cyber security event; if you're talking about intellectual property infringement, you need to know who to sue so it's not enough to just contact them, you have to have identification.

And as you think about the intellectual property issues we were talking about earlier, it's not just the UDRP and the URS that we're worried about; we are

also trying to exercise our remedies under the anti-cyber squatting consumer protection act so we've made (unintelligible) on some of these issues and need to be able to identify the registrant in order to create the complaint for our intellectual property purposes. So that's just an example of in 4.4.3 why it doesn't work.

And then – looking through the rest of them, I mean, I know we'll have more comments but off the top of my head. And then in 4.4.8, you know, GDPR requires specificity on the purposes so actually taking out consumer protection, and law enforcement and that language actually goes against what the GDPR is asking for because in order to inform the registrant what, you know, why this information is being collected they need to know what it'll be used for. So that's why in this case we need to be more specific.

And then regarding the compliance, 4.4.13 it's actually – needs to be broader than just monitoring contractual compliance requests. ICANN has a role in ensuring that its contracts are enforced and as a result, it's much more, you know, the information that is needed is much broader than just to monitor contractual compliance requests. So we need to add a specific purpose that relates to ICANN's purpose.

And if you think about what ICANN is doing, ICANN gets the information for contractual, you know, enforcement purposes and then it also uses the information, when you think about some of the departments at ICANN that access the data, they use it in the security department to help you know, the community with regards to cyber security events. And so, you know, that whole purpose is not even mentioned here.

And I don't think there's any viewpoint that security department in ICANN shouldn't be doing what they're doing; they provide a very important role here and that's not addressed. So that's why things like cyber crime and the things that are talked about in these points need to be continued and included in the

language. And I think I'll pause for now, like I said, we'll have more comments on the next call.

Terri Agnew: And, Kurt, it's Terri. Please check your mute.

Kurt Pritz: Thanks, Terri. Mark, can you continue for the Business Constituency for me please?

Mark Svancarek: Yes, this is Mark. Sorry for piling on with complaints about us having to review the last document submitted last night as the first document to review this morning, but I just have to pile on. I really think his conversation has been pretty ineffective because of misunderstandings and disagreements about what was actually submitted and that's simply because we've had so little time to look at it.

The more I look at this submission it really feels to me like it's kind of just a reiteration of inputs that were given during the triage document process because it's just so very narrowly registrar-focused. I just wanted to go back to my previous suggestion, I don't know that it's actually been accepted by anybody but I'm just going to keep putting it out there that we should look at things from a joint controller perspective as opposed to just a narrow role perspective.

So a lot of the comments that have come up this morning about this morning about, hey, where are ICANN's purposes in this? So yes, it's true, we have to break out ICANN's purposes to avoid conflation of ICANN's purposes with others, but if you look through the lens of these are people who are joint controllers of entities that are joint controllers executing contracts together, then it addresses some of the feedback that you're hearing right now about, you know, where ICANN's purposes come in. And that's not a factor of conflation; that's just the reality of how, you know, the joint controller is going to work.



So please keep that in mind going forward, please give us more time, also think about things, you know, from a joint controller perspective while continuing to non-conflate ICANN and other parties. Thanks.

Kurt Pritz: Thanks, Mark. And so we're not – I guess I'm so easily confused, so we're not – we're not addressing that by saying let's not discuss 4.4.9 and 4.4.8, 4.4.2 and those – those being the topics that are outside the registrar purposes and for which we have other inputs and then, you know, and then after that Thomas is going to remind us, Thomas Rickert is going to remind us that there could be other purposes too that satisfy the tests of that are laid out in Article 6. So am I wrong in thinking that sort of order, that will address the things you're talking about or am I missing a point about, you know, joint controllership versus individual purposes? I think that's where I'm having trouble wrapping my brain around it.

Mark Svancarek: So could you rephrase that? I had trouble parsing.

Kurt Pritz: Yes, sorry. So I felt we were addressing your concern by taking out of this discussion Sections 4.4.2, 4.4.8 and 4.4.9 because those are the sections in this current version that are outside the individual requirements of the registrars and so the controllership issues that you're discussing will be brought up later when we discuss those sections and possible new sections.

Mark Svancarek: Well okay so maybe I'm confused about what the purpose of this submission was in the first place. And I would go back to please give me more time to review things, percolate, you know, marinate in them and discuss them with my friends and pals. But the way I'm reading it, it just – I guess I was not expecting to see something that was so very in my mind narrowly focused on just the registrars.

And, you know, just, in isolation it seems so very narrow. This is just about the registrars but we know that the registrars don't exist in a vacuum; they're part of a chain of contracts and interactions that serve a variety of purposes.

And so when I first read this I thought the assertion was yes, let's not talk about any of this other stuff at all, not – let's not talk about it in the context of registrars, but like at all.

And then working back through this meeting, listening to the discussions, hearing people argue about it, you know, and trying to say well what happens to the ICANN purposes and things like that, then I started to realize oh yes, the purpose of this was this very specific narrow set of feedback but I thought that that feedback had already been given during the triage process. So again, I just – maybe I misunderstood what the purpose of this exercise was. If I'm wasting everybody's time I apologize, maybe if I had seen this earlier and had a chance to discuss with people earlier I wouldn't be so confused.

Kurt Pritz: All right. All right I'm just reading through the chat. Kavouss, can you take us through your comments?

Kavouss Arasteh: Yes, I was in the queue at the beginning. You asked me to wait and I went to the end of the queue and you want to ask me again to wait, I will wait because I don't know in what way the discussion is proceeding. It seems that you go to particular group and ask of all members of the group to give the views on the matter; I have no problem with that. But still I don't know whether in this Section 4 we are discussing the registrar or we're discussing the purpose – not purpose, we are discussing the lawfulness purposes of processing of gTLD registration data.

It seems that everybody concentrate on the registrar and so on so forth and it seems that we're jumping from one item to the other item. We could have discussion, I don't know how long you want to continue, maybe this meeting, another meeting, and then we have to come and look into paragraph by paragraph and decide on that, and not deciding forehand that such and such paragraph should be deleted or should go elsewhere. I am not in favor of this sort of action, this is not the one.

Number two, I don't understand what is the ICANN purpose. There is nothing named ICANN purpose. Article 1 of the bylaws says mission, commitment and core value, not any reference to ICANN purpose. And second, this group has no mandate to interpret the ICANN mission, ICANN commitment, ICANN core value saying there is or is not inside the mission or commitment or core value. I don't understand this sort of discussion.

People they want to start interpreting the bylaws; at the end of the day this output will go to the ICANN Board and ICANN Board, if it is not consistent with the bylaw will not accept that. It will accept that there are other constituencies in the ICANN they could object to that under their advice saying that what you have done is not in line with the bylaws. So, Chairman, please kindly give another thought how to deal with this thing. The discussion is various spread, people jumping from one to the other and that may not be helpful. However, if you want to continue to have a general discussion I have no problem. So at this stage I withdraw, thank you.

Kurt Pritz: Thanks, Kavouss. Ashley, do you have a comment on behalf of the GAC?

Ashley Heineman: Yes, thanks. First of all I just wanted to say that I appreciate the edits that were put forward by the Registrars and that it was clear that they did make an attempt to be constructive and inclusive so for what it's worth at least I recognize that. That being said, without, you know, getting too far into the weeds of what I propose, I just want to say that, you know, 4.4.8 while it's not perfect perhaps it could be, after a lot of discussion, a potential basis to build upon.

So one question I do have though is – and something I need to talk about with my GAC colleagues, is whether or not there's problems in putting law enforcement together with other – these other issues. I'm not sure that there is since we're talking about ICANN and the contracted parties purposes here, but just logging that as a potential issue.

And just to touch upon a couple of the other points, I think at least from the GAC perspective we agree that this section should not be talking about the interests of third parties and what they need specifically for access that will be discussed at a later date and access specific discussion or a model discussion for access. But what we do think is appropriate here is, you know, how it pertains to the purposes of ICANN and the contracted parties, to do what they need to do which does pertain to the collection of data and to the disclosure of data. It's not to say how that disclosure is going to be made, but just recognizing that disclosure is a part of processing and that there needs to be purposes articulated here.

And as I noted in my email last night, we do see that within ICANN's – clearly within ICANN's bylaws. And I had provided some text there along those lines to more clearly articulate it, I'm trying to pull it up now, but there's clear references to law enforcement, there's clear references to security and stability so I just think that if we can't get past this hurdle of recognizing that it is within ICANN's mission to have it as a purpose I think we're at a fundamental loss at this point.

That being said, I think that there's room to build off of here and just one last point, I wanted to agree with Margie that – the intro text on 4.4 is a bit too narrow and there might be some I think quick (community) fixes to address that but I just wanted to flag it. Thanks.

Kurt Pritz: Just taking notes. Thanks very much, Ashley. Alan.

Alan Greenberg: Yes, thank you very much. Alan Greenberg speaking. I have to say I find this whole thing surreal. We're discussing this as if these are definitive changes and should we accept them or not but James has said these were largely drafted from registrar point of view ignoring other ICANN needs, so I'm not quite sure why we're doing this but I'll continue.

I agree with Margie on many of her points. I think the introduction really needs to say why we're doing this. I think it needs to make it clear that we're doing this to address the various needs and events that happen over the lifecycle of a domain name existing. And I think that context has to be there. ICANN's responsibility is to build – is to put in place the policies which allow the DNS to exist for gTLDs, but it has to be a reliable trustworthy DNS and there's many aspects of that. And a DNS that does not meet those criteria I do not believe fulfills ICANN's mission. And we need to get some clarity on that.

In terms of specific edits, 4.4.2, I have no problem if we make the kind of caveats in the introduction that we made, and that point it is just repeating what GDPR says or other privacy legislation, I don't think it adds anything. 4.4.3, again, I think Margie is correct that identification in some of the uses of Whois and the intellectual property ones are among them, probably does need to be there.

4.4.5 I think generally okay, but we need to have more clarity on the content. I don't understand why ICANN put the reference to content in there and I would really like to understand that before passing judgment and saying it's not needed. I understand our – ICANN's general un-involvement in content but it was put there and I'd like to understand the rationale for it.

4.4.6, I completely agree that registrars don't need it – in the footnote of 4.4 point – footnote Number 2 says this, registrars don't need this but registries – 4.4.6 also referenced registries and I don't believe registries have any proprietary private access to the registrant unless they can get a registrar to give them that information privately so I think the reference to registry there is still relevant.

4.4.7, I don't think the reason should be publication of but never – but contact I believe is important. We've already addressed technical contacts in a point above but we don't address administrative contacts. And since we are –

ICANN has removed the distinction between natural persons and legal persons until we put that back I think we still need the concept of administrative contacts in large organizations, they may be very different from technical or the owner of record so to speak.

4.4.8, lots to discuss. I believe consumer protection is within ICANN's mandate, not to do it but to facilitate it and to provide information so it can be done. That comes back to a trusted DNS that if we're going to meet the stability and reliability requirements we can't ignore those things. We can't ignore addressing cyber security issues; I think they need to be explicitly called out. So there's lots to be done there. Ashley's comments and rewrite there I generally support but I won't go into details.

4.9, we do not provide a framework for law enforcement needs but we need to support it so I agree, we do not provide it. Eleven on escrow, assuming we're covering it somewhere else I agree it doesn't need to be there. Intellectual property issues I believe need to be generalized for the reasons Margie said. We cannot restrict it to just those two. And on 13, I support the edit the registrars did but I think it should be separated into a separate clause and not conflated with the use of the – with the use of the data by Compliance. Thank you.

Kurt Pritz: Thanks, Alan. Good, I wonder if we can ask – I don't know if we can just ask Dan Halloran directly about 4.4.5 and the inclusion of content in that clause and the meaning of that because I've read that a couple different ways too. One way, you know, it could stay on; one way, you know, it shouldn't be in. So if the support team could formulate a specific question for Dan or if Dan could take that on board, that's great. And I hope – I hope the registries can – when they talk can respond to your comment about 4.4.6, Alan. Kristine.

Kristina Rosette: Hi. Kristina Rosette.

Kurt Pritz: Oh wait, who else – wait. All right go ahead.

Kristina Rosette: Sure. Kristina Rosette on behalf of the Registries. We were planning to be much more general but I'll also address Alan's comment. The Registry Stakeholder Group believes that the proposed 4.4 is definitely an improvement but can't be too much more specific at this time. We'd like to have the opportunity to consult with the broader Registry Stakeholder Group membership to ensure that we don't exclude any current registry purposes and to be clear, we certainly understand that the assignment for the registrars was to revise 4.4 from the registrar purpose perspective. So, you know, there are no surprises here.

Although we would note that for 4.4.6, that there is definitely you know, that is definitely a registry purpose and in fact there are – so we – when we come back with more specific comments we anticipate that we would likely include some variant of that to account for that. Thanks.

Kurt Pritz: Thanks, Kristine. Alan Woods, did you have anything to add?

Alan Woods: No, not at this point, thank you.

Kurt Pritz: All right thanks, Alan. Thomas, I apologize for missing you at the top of the queue, I don't know what happened.

Thomas Rickert: No worries, Kurt. And hi, everyone. So I'm struggling with this entire discussion and I think that if we ask whether this group – what people think we're trying to achieve here we will probably get as many answers as we have participants on the call. And I think that whatever we're discussing now is just the starting point for further assessment of all the purposes. I think we should not see this as carving in stone a list of purposes and keep that forever; this is a living document, and I think we need to get back to the list of purposes as we move on.

So I think we must not be afraid of leaving certain words in here because they need further vetting. And let's not forget we – ICANN get advice from the European Data Protection Board that they should not conflate ICANN's purposes with third party purposes. So when we're going to discuss the introductory part that Alex Deacon and I have been working on, you will see that, you know, although we have not come up with a final suggestion for language, we basically suggesting headings for bullet point lists of purposes making a distinction between ICANN's purposes and the third party purposes.

And there we can make the distinction between registrar and registry and get third party purposes, just to get clarity on who things – who wants to get what in this entire game or battle about data. But just for the sake of clarity, I think we should remind ourselves that one processing activity just as an example, say the collection of data may have different purposes pursued by different parties. There's nothing bad about that, right?

So we need to understand who wants what. And of those purposes each purposes need to be supported by the legal basis from the catalog of 6.1 GDPR and the purpose (unintelligible) needs to be specific and narrow enough. And so far we haven't done any of these exercises, but just so you know, one processing activity can have a different purpose and a different legal basis for the registrar (opposing) to what – for ICANN.

So this may well be that the registrar processes certain data elements to perform the contract and based on 6.B and it would be a processing based on 6.1F from ICANN's perspective, right? So let's just be clear that while we're trying to do a collaborative word-smithing exercise here that we need to get back to each and every point and check whether it's specific enough and whether it can be supported by a legal basis.

And under the draft that we have in front of us, the only comment that I would make is that the opening clauses like “amongst others” or “including but not limited to” those need to go away. And they need to go away because of 5



GDPR but also since Article 29 Working Party has written its letter of April 11 that those opening clauses can't be – are not acceptable or would contravene GDPR. So my suggestion is let's remove those opening clauses and those who think that we need to cover additional items that would be otherwise included need to specifically state what they shall be.

And if there's nothing coming from this group then the point we mention explicit are it, right? And there will be no additional points that could be added, right? And that makes it more specific. That's one.

The other point is on the use of references to GDPR and that's something that we will also get back to when we discuss the opening paragraph that we've been working on. I am all for inclusivity at the global level and I'm all for not trying to be relating to GDPR exclusively. But let's remember, we're going through this exercise in response to GDPR and I think if we're trying to camouflage language in the GDPR and if we're trying to circumscribe what's in the GDPR we will not only confuse our group but the entire community.

So at least as a starting point let's make explicit reference to which clauses of the GDPR we are referring to to make – to make it easier for everyone to understand what we're doing and why we're doing it and then at the end of the day we can ask staff to work on a more general and not GDPR specific version of the text. But I think we're going to get nowhere and rather increase our chances of failure if we're trying to weave our way through the GDPR which we know more or less well and not even use references to GDPR.

But other than that I'm perfectly okay with the language that we see in front of us. And I think what we might need to add maybe here or elsewhere is that maybe the overarching purpose of making available domain registrations, maintaining domain registrations, making domain – or making domain names work in the DNS and those are purposes that (unintelligible) fall in the bucket of registrars, registries plus ICANN.

Kurt Pritz: Thanks, Thomas. So I just have one question, so were you suggesting in your last or penultimate comment that each one of these purposes should refer to the GDPR section in Article 6 that authorizes that purpose, that legitimizes that purpose?

Thomas Rickert: I was thinking – I was trying to make a general point because we discussed during the last meeting that we want to make the text less GDPR-centric. And with respect to this very text in front of us I was referring to the opening segment where the registrars have generalized the language to applicable data protection laws. And I think we should state GDPR explicitly so that's the point that I was referring to.

Kurt Pritz: Okay thanks. Benedict.

Benedict Addis: Hello. Benedict Addis. Thomas, such a brilliant summary and looking at the chat, you've found consensus across a large number of people. Also knowingly you slightly taken the words out of my mouth. All I was going, to what you said, is that I think part of the pickle that we got into in – and particularly in conflating purposes, take as an example the UDRP and the URS discussions, is if ICANN's purpose is, oh I thought it was the registrar's purpose. It's because we haven't been explicit about whose purpose this is, probably by mistake.

So my proposal was simply to divide 4.4, and this is an impartial person, not a contracted party, into three sections. And the first one explicitly recognizes ICANN acting as a sole controller, ICANN specific sole purposes and they will refer no doubt to its bylaws. The second section will be where ICANN acts as a joint controller, and so there we will say things that – we would just talk about data that's collected by registries and registrars acting jointly with ICANN under contracts with ICANN. So this isn't where ICANN is collecting data but it's where they're acting jointly.

And in the third part, which I think we've already partly done splitting those sections off, we should talk about ICANN facilitating or enabling third party interests, defining a standard framework for those things, not doing them, not collecting, not processing, but simply defining a standard process so that we all know where we are. Does that sound like a sensible proposal?

Kurt Pritz: Let's – thanks very much, Benedict. So what's an example of an ICANN-specific purpose then? Is – are those the consensus policies? Is that what you were saying?

Benedict Addis: I'd argue that UDRP is ICANN acting as a sole controller. I'd argue that some of the consensus policies are.

Kurt Pritz: Okay thanks.

Terri Agnew: Kurt, it's Terri. If you're speaking we're unable to hear you.

Kavouss Arasteh: Yes, I am waiting...

((Crosstalk))

Kurt Pritz: Yes, I was thinking...

Kavouss Arasteh: Yes.

Kurt Pritz: Right, I just wanted to see if I had another – go ahead, Kavouss.

Kavouss Arasteh: Yes, I do not agree with those people mention that we have to refer to the articles of the GDPR or Article 6. The purpose of this group working two times per week plus other additional meetings inside the special groups and so on forth is not to confirm or paraphrase the GDPR, is to see the validity of that, implement-ability of that and application of that. So I don't agree with that we just refer to those articles. Sometimes you may quote part of that but we have

to see to what extent they are applicable, to what extent they are implementable and to what extent they are within the mission and mandate and core values and commitment of ICANN. That is the situation.

But still, Kurt, I'm waiting how you want to proceed after this meeting. Still we are discussing on generalities, we are not yet involved or get involved to specific proposals. Everybody talks about generalities, it should be like this, it should be like that, but we need to have concrete proposal for each. Some of them like you said we have given, some other have not, I don't know whether we expect to receive various competing proposal or we want to put a group to get together and look at those different proposals and try to come up with some sort of let's just say agreed from that group or not, so I'm still waiting how we would like to proceed. Thank you.

Kurt Pritz: Thanks, Kavouss. I think that's a good segue to what's – what are going to be my closing comments for the meeting. And, you know, first of all I take on board, you know, the apparent confusion that you mentioned on the part of some and where we're going and so I certainly lay that at my feet. And, you know, but I also – if you could mute that would be great – you know, I also found in this discussion several – with regard to the registrar-related purposes that are listed in 4.4 as people went through them they made several concrete suggestions where they agree with those registrar-related purposes.

And then so finally, you know, marrying those two things, I think you know, maybe it was God's little finger flicked Thomas to the end of the – at the end of the queue and maybe I'd ask him and Benedict to work on, you know, dividing 4.4.4 into these sections because then I think it would be – you know, just to me it would be clearer if, you know, we knew that this discussion was, you know, 4.4.2, you know, ICANN joint controller, data collected jointly with (registrar) because I think that's the job we gave to the registrars to evaluate. And, you know, I can (unintelligible) ways about specific purposes of ICANN but then ICANN facilitating third party interests I think that's where we could

have a discussion about, you know, the ICANN Bylaws and mission and what will – that should play or to what extent that role should play in fashioning our purposes.

So I babbled on a little bit there so – but I would ask Thomas and Benedict to divide up 4.4 into these sections. And also to me Thomas's suggestion of labeling the different purposes with the sections I think is a good one and either the registrars could take that on for their sections or the other. So just to make a suggestion to Thomas and Benedict, I don't think that division would take a very long time but I think you could turn it around in time for the weekend or something like that? Not that you've said yes yet, but I give you a deadline at the same time as asking you if you'd do it.

Benedict Addis: I'm happy to do that. Perhaps over the weekend if that's – if Thomas, or if Thomas is up for that but could aim for Monday morning. But let's chat, Thomas, offline.

Kurt Pritz: I think so Thomas's silence, I look for his assent. But I think that would be fine because I think you know, the next sections we're going to discuss, 4.4.2, 4.4.8 and 4.4.9 fall into one of those other sections. So I don't think, you know, having that input come in would collide with that. And then also Thomas elaborating on the introduction to 4.4 and what I would call the generalization of that and the ability to take on work so, you know, I think those would – those would help make our discussion clearer going forward.

So not hearing from Thomas I will follow up with him.

Thomas Rickert: Sorry, Kurt.

((Crosstalk))

Thomas Rickert: Sorry, I wasn't quick enough to unmute. I had sent the language that Alex, Diane and I have been working on to the list so (unintelligible) if you want to – want us to present it now. It's a matter of one minute.

Kurt Pritz: Well Kavouss will be really angry but go ahead and take one minute.

Thomas Rickert: So I'm not sure whether Marika has the – or other staff members have the document there. So we have been struggling with generalization of the language versus making specific reference to GDPR. But one thing – and as a result of that we have not been able to agree on a set list of sentences. But what you see here is that, you know, as a general introduction we said such processing must be in a manner that complies with the GDPR in particular the principles set down in Article 5, GDPR must be abided by e.g. there must be a specific, explicit and legitimate purpose additionally a legal basis from the catalog of – in 6.1 GDPR must be given.

These are – so then we have the catalog so that everyone who reads the updated document understands what legal basis is we can pick from. And then in the other parts of the document we will choose one of those in each instances. And then further down you find basically a structure where we demarked – where we have a demarcation between ICANN's purposes and the purposes pursued by third parties and that's actually going to be the list that Benedict and I are going to work on.

So that's it in a nutshell. I'll leave the floor to Alex to add to that if he wishes, but that's basically what we did in the meantime. That's it. I hope it hasn't been longer than a minute. Thank you.

Kurt Pritz: I think it was a minute 10 but it's okay. All right so we'll – this put at our next meeting the sections 4.4.2, 8 and 9 and also division of 4.4 into sections. So let me just – oh shoot, we're out of time. So I'm going to take this to the last so I want to – I want to – I just want to make sure I – so I think Benedict's suggestion at three tranches does not collide with the different GDPR

legitimate reasons for establishing purposes. So I think that's the discussion for the next meeting will be this introductory section, the division of 4.4 into three tranches and those other three sections.

Can staff review any...

Caitlin Tubergen: Hi, Kurt. This is Caitlin. And I noted three action items and one follow up question for ICANN Org. The first action item is any EPDP team members that would like to provide any last feedback on the triage survey please do so today. For any PDP team members that would like to apply for travel support for ICANN 63 please fill out those forms by Thursday, September 13. And as was discussed, Thomas and Benedict are going to work together on dividing Section 4.4 into three sections where ICANN acts as a sole controller, where ICANN acts as a joint controller and where ICANN facilitates or enables a third party framework and that is due Monday, September 10.

And then I have one outstanding question for ICANN Org, and I believe that question was from Alan Greenberg and the question is why did ICANN include the term "content" within Section 4.4.5?

((Crosstalk))

Kurt Pritz: Yes, thanks, Caitlin. And great, thanks, Caitlin. And I think one action for us, so I've taken, you know, a few pages of notes here and you've got notes that you took in the chat room and so, you know, (unintelligible) there were many, many, many good comments that were made in a really short period of time. And I just don't want to, you know, hit copy and paste on those but organize them in some way that takes the best advantage of the thought that went into – that would be my input there or action item for that.

And could you, Caitlin, would you mind, you know, Theo just published a link to the group and also earlier in the notes, gosh I forgot who put up the dotNL purposes and I think those would be – make sure those are in the top of the

notes because I think those are useful for people to read and somebody's saying it was Benedict who did that so thanks, Benedict.

All right so I'm going to close. Thanks very much everybody for your constructive input and reacting to these documents on short notice and the thought that went into those comments, so thanks very much and have a good rest of your day.

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

END