

## ICANN Transcription

### **GNSO Temp Spec gTLD RD EPDP Thursday, 08 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/gnso/gnso-epdp-temp-spec-gtld-registration-data-08nov18-en.mp3>

Adobe Connect recording: <https://participate.icann.org/p1il7tmebma/>

Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/gg68BQ>

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

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 24th GNSO EPDP Team meeting taking place on the 8th of November, 2018 at 1400 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 would you please let yourself be known now? Hearing no one, we have listed apologies from Emily Taylor of the RrSG, Kavouss Arasteh of GAC, and Ashley Heineman of GAC. They have formally assigned Lindsay Hamilton-Reid, Rahul Gosain and Lauren Kapin as their alternates for this call and any remaining days of absence.

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

and the link is available in the agenda pod to your right and the meeting invite email.

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 documentation and information can be found on the EPDP wiki space and there is an audiocast and view-only Adobe Connect for nonmembers to follow the call. So please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call. Thank you and I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks very much, Terri, and hello everybody. So we have quite a bit to talk about on the agenda today so we should get to it pretty soon. So I'll just take a minute for the introductions. If you guys would load up the outstanding action items just touch on that. We've been to the - we've been with the Meetings team on the proposed face to face meeting that I, you know, I'm not even going to say the dates because I tend to screw them up but whatever dates I announced during the last meeting and they're getting back to us with proposed locations so that should wrap up pretty quickly. We're looking for locations of course that are I'll call easy access, easy access locations or countries with respect to visa, so that's that.

We see a comment rolling in on parts of the initial report. Please pay attention, and I think Kristina and maybe others have been adding suggested edits to the Google Doc so please pay attention to that and maybe staff could link to that in below so everybody has a reminder, everybody can copy and paste that into

someplace if you don't already have it bookmarked, I think that'd be good.

And I think that's all the updates I have except for Marika or Caitlin will take us through the outstanding action items.

Caitlin Tubergen: Thanks, Kurt. This is Caitlin. On the screen you can find the action items from the last call and all of them have been marked as green because they have been completed so I won't go through all of them in detail. I just wanted to say thank you to everyone for providing timely feedback on all of these issues.

And I did want to flag that in addition to being mindful of the Google Doc where EPDP team members can submit comment or concerns about the draft initial report, I wanted to flag that staff will be populating information for those items marked as less controversial or more administrative items so that the team can review those. And we will be sending out an email shortly flagging some of those issues so that you can provide feedback with the proposed deadline of next Tuesday, so please be on the lookout for that. Thanks. Back over to you, Kurt.

Kurt Pritz: Thanks, Marika. So the - to get into the substance of the meeting, the first item on the agenda is to review Thomas's document that he provided and Diane provided some edits to. But I don't see Thomas on so I wonder if Thomas is on the phone? So Thomas is just joining now so I think to get the meeting off to a good start I'd like to just pause and wait for him so he's just joining the call now. So smoke them if you got them.

Marc Anderson: Hey, Kurt. This is Marc. Can I jump in for a sec?

Kurt Pritz: Yes.

Marc Anderson: Sorry, just a clarifying question, I didn't quite catch what Caitlin said around Tuesday so sorry, can I just ask Caitlin to repeat, what was the item for Tuesday or what was happening by Tuesday?

Caitlin Tubergen: Thanks, Marc. This is Caitlin Tubergen for the transcript. I will be sending an email out after this call that will detail what is due on Tuesday or what's proposed to be due on Tuesday. But essentially in the document that we sent out on Tuesday prior to the last EPDP team meeting, there was a list of outstanding items in the draft initial report and those reports are the items highlighted in blue and red. Some of those items were marked as "administrative" and those were the last group of items. And I'll be sending out an email after this meeting that details those administrative items for review by next Tuesday if possible. Does that answer your question?

Marc Anderson: Yes. Thank you. Appreciate the clarification.

Kurt Pritz: Hey, Thomas. How are you today? Are you prepared to talk?

Thomas Rickert: Hi, Kurt. I just had to connect my audio. Is this okay or shall I better switch to the phone line?

Kurt Pritz: Well it's okay for me so go ahead.

Thomas Rickert: Okay great. So first of all I have to apologize to Dan, Trang and Diane and in particular because they have offered to help with this exercise and due to time constraints I have not been able to make this a cooperative exercise. So what you saw on the mailing list is the email that was brought up in the Adobe right now. So I had explained to this group during the last call that in my view we need to make some revisions to the document to our draft initial report so that

it's better understandable, you know, and basically the proposal on how to operationalize this can be found in this email.

So we would have a quick introductory part that would replace the language starting in (900) of the draft initial report so my suggestion would be to frame the following recommendation, which would be Recommendation Number 17, "The EPDP team recommends that ICANN enters into a joint controller agreement, JCA, with the contracted parties. In addition to the legally required components of such agreements, the JCA shall specify the responsibilities of the respected parties for the processing activities as described below. Indemnification clauses shall ensure that the risk for certain data processing is borne by either one or multiple parties that have the primary interest in the process."

So we can certainly do some more word-smithing on that but the main idea is that we, at this point, firm up or make more robust our requests for ICANN Org and the contracted parties to enter into a written agreement to reflect the responsibilities for the data processing. What then would follow is the rationale and background and the text for the rationale and background I have added in an attachment so the attachment I'm not going to go through now because I think that's something that everyone will need to read.

It's basically an excerpt from the playbook, I wanted to save me some time drafting things but it's an overview of the definitions of processors, controllers, co-controllers and joint controllers so that's - and an explanation as to why a joint controller situation is present in this case, the text the micro/macro level which I have outlined briefly when I spoke to you the last call so I'm not going to repeat that. And also speaks to the basic component and - of a joint controller agreement and the liability and I guess that's important also for the wider community to understand that even if we have a

joint controller agreement that does not mean that per se all the parties will be jointly and separately liable.

But again, we need to make a distinction between the two layers, one where agreed data subjects try to enforce their rights vis-à-vis the joint controller; and the second level would be issued by the authorities. And so I was late for this call because I had a call with Diane who thankfully reviewed the document while I was sleeping during the nighttime in Europe and she made some great edits for clarification overnight. So based on the feedback that we get today Diane and I will send an updated version of this document for potential inclusion in the initial report.

And then the third thing that we need to do is adjust and review the tables that can be found in the initial report starting with line 988, if I'm not mistaken. And that's the table that currently describes the ICANN purposes, so we would need to rework that to reflect that those are the purposes that ICANN should govern or be responsible for so that's more or less a cosmetic thing. And then whenever this table mentions parties as joint controllers, processors or controllers in this table, we need to adjust the table and just mention the responsible party.

And I think what we should do even during this call or as homework or action items for all members of this EPDP is for everyone to take a second look at the responsibilities that we've developed and the framework of drafting of the workbooks, check whether that works for everyone and then confirm this as the schedule of responsibility for a joint controller agreement.

So before I pause to take questions, let me just briefly speak to the things that I think we need to discuss and do. One would be to confirm the text that I've just outlined that has been circulated; the second thing would be confirm the

current allocation of responsibilities; the third point would be hopefully to get permission from this group to liaise with Dan, Trang and potentially ICANN Legal to test the waters whether there would be any issues with this recommendation for ICANN to enter into such an agreement with the contracted parties. So far we heard Chris Disspain saying that he doesn't see any issues with that but I think it would be better for our group to get that confirmed.

And the fourth point would be to check with this group in particular whether the drafting of the joint controller agreement is something that we should try to pull off in the framework of this EPDP. So when I spoke to Diane a couple of minutes back she said well it would be great if we could actually get the agreement drafted. And she will be able to speak to that; she actually some support to offer in that regard. I think it would be great to have that as an appendix to our recommendation.

However, I do see issues in terms of resources, can we pull it off time-wise? But then also the question is whether the contracted parties and ICANN would feel comfortable if this policy group took a step at drafting an agreement which would only include the policy recommendation of who's responsible for what but which will also need to speak to operational niceties such as how is the indemnification done in practice? How are the parties going to inform themselves and work together in order to defend against third party claims? And those would be commercial and contractual parameters that I think we need to have a discussion about whether that's appropriate for this group to take care of.

So I think that's pretty much what I wanted to say. Diane, if you want to add to that please put yourself in the queue. Otherwise, back over to you, Kurt.

Kurt Pritz: Thank you very much, Thomas. Diane, do you have any comments? And then I'll put myself in the queue first. Go ahead, Diane.

Diane Plaut: Hi. Hi, Kurt. Thank you. Thanks, Thomas, for that great explanation. Thomas and I were just talking about the fact that we wanted everyone to feel comfortable to understand that in fact this joint controllership definitional - to add it to our work stream is important for the purpose of getting ICANN to move forward with the needed change in the construct of the responsibility from the data protection standpoint as well as a liability standpoint.

And that people shouldn't feel concerned at all that the purpose work that we've done and the workbooks that we've created in relation to the ICANN purposes and registrar and registry purposes is at all going to be affected, that that work is going to be able to be (clubbed) into this work and it's just the assignment of those responsibilities that need to be further nailed down and clarified.

And the desire to be able to set forth a joint - a draft or at least the draft of the joint controller agreement as part of our legal recommendations in this work stream is to be able to push ICANN forward and to take our policy work to a level that is actually applied and not just, you know, pushed aside or put off for a later date. It's to provide a framework in which we could push ICANN to actually be able to sign a joint controllership agreement, put it into place and to actually find the practical solution here for everyone and have our policy work really mean something.

And certainly the commercial considerations could be left for further caucus thereafter, but if we put together a joint controllership agreement what it would do is it - within the agreement what these agreements do is it lays out the different roles and responsibilities of the parties and then it also specifies



the different GDPR articles that are relevant and the roles and responsibilities tied into each article as well as it then (clauses) the different purposes and the different responsibilities in relation to those purposes and the legal basis. So it really takes everything and ties it nicely together and then sort of confirms from a legal and contractual standpoint that the different joint controllers have to agree to those responsibilities.

So even if the commercial considerations will then need to be solidified I think it takes us forward in a really important and positive direction to make our policy work have that much more, you know, definite action in the end. So that's really the goal of the whole thing. So I have a draft agreement already that I'm working on and I'm happy to continue to work on that with Thomas and even with some outside objective - outside privacy counsel to make sure that everybody feels comfortable that it's done in an objective fashion and happy to send those resources to this working group.

Kurt Pritz: Terrific, Diane. And thanks very much, Thomas, for all this work. And Diane, I was privileged one that saw some of your proposed edits so I think that's terrific too. I really - I guess this is targeted at Dan but it's targeted at the whole ICANN organization, I'd really welcome the organization's participation in this discussion. My perception of where this is moving to is that this is a document that states out the - states the criteria for determining whether joint controllers exist and whether - and whether in fact that our relationships and processing data meet those criteria.

So I'm thinking - and this is something I wanted to test with the group too - I'm thinking where this is going is that at the end we're stating not just that these criteria are met but this is a policy recommendation so as a matter of ICANN Policy, with a capital P, that these - this processing of data is done in - where we are joint processors and so that's - it's not just a testify from time to

time whether that definition is met but this is our policy that we're joint processors. So that's why I think it's really important for ICANN to participate in the discussion in the event that the analysis that's being done needs to be augmented in some way to test it.

So you know, and then absent ICANN participation I see us rolling towards a policy recommendation that in fact, you know, after discussion by the group and if the group, you know, agrees then it's our policy that we're joint processors. And then finally to Diane and Thomas's last comments, you know, if it's a contract it has to be - and as the contracted parties will tell you, if it's an agreement then the agreement needs to be negotiated by the two parties involved, so that would necessitate ICANN participation at that point because we always stick up for that principle that the parties to an agreement, and only the parties to agreement negotiate that.

So that's my two cents but thank you very much for this draft and excellent work. Marc, please go ahead and then Berry has his hand up for some reason, I don't have that visible. Go ahead, Marc, please.

Marc Anderson: Thanks, Kurt. It's Marc Anderson for the transcript. You know, and thank you, Thomas, for the work on this and bringing it up. You know, I think, you know, we've talked about the need for, you know, joint controller agreement and making sure, you know, the contractual arrangements between the parties are, you know, are properly in place under GDPR. I do have, you know, some concerns with the approach we seem to be highlighting though. You know, first, you know, in a joint controller agreement, you know, one of the primary purposes of that, maybe the primary purpose of that is apportioning of liability.

You know, and so let's recognize the fact that, you know, we're talking about apportioning liability that's potentially millions of dollars' worth of liability. So let's take a step back here and be very careful and deliberate about what we're talking about and what we're recommending. And I'm not sure that this working group should be recommending a legal contract between registries and registrars and ICANN. You know, recommending that they enter into negotiations and establish a joint controller agreement, that certainly makes sense and I think it's something that's consistent with the positions we've been saying all along.

But for the members of this group to actually negotiate the language that goes into that agreement I'm not sure that - I'm not sure that's a wise course of action and I don't think that's necessarily appropriate. So I guess, you know, I guess I'm asking us to be very careful about what we're saying and what we're recommending in the policy recommendations here. You know, are we recommending that, you know, ICANN and contracted parties enter into negotiations to determine you know, to create a joint controller agreement?

You know, that I'm okay with? But are we saying this working group should draft a joint controller agreement and create a policy that says, you know, ICANN and contracted parties should agree to this language, you know, that's not appropriate. And remember, you know, Kurt, I want to correct something you said there, you know, under GDPR, you know, determining who the controller and processor is, is meant to be a fact-based analysis based on the language in the GDPR.

And so, you know, it's, you know, it's meant to be, you know, factual based, based on, you know, who, you know, based on the language in the GDPR that, you know, defines, you know, who is a processor, you know, what a processor means, who the controller is, what a controller means. And so that's, you

know, if we instruct contracted parties and ICANN to enter into a joint controller agreement, that's something that, you know, that their lawyers should be able to do and determine based on a factual analysis of the processing activities that occur.

So I guess you know, I'll leave it there and just, you know, I appreciate the work that Thomas has done and sort of, you know, pointing us down a path but I need, you know, but, you know, I think I need to caution us on exactly what our recommendations are and maybe what the balance and scope of what our recommendations should cover.

Kurt Pritz: Thanks, Marc. That was very thoughtful. Alan. Oh wait, Berry was next in the queue. I'm sorry, Alan.

Berry Cobb: Kurt, I lowered my hand. I'll defer until later.

Kurt Pritz: Okay great. Go ahead, Alan Greenberg.

Alan Greenberg: Thank you very much. I'm reasonably sure that at least parts of any such agreement are out of scope for a PDP, that is they're not within the picket fence. Certainly parts of it might well be but other parts are contractual terms that are not something that we can recommend to the Board to simply do. However, negotiations, multiparty negotiations often take a long time and to the extent that we can provide language that will be the starting point for that and certainly parts that may address things that are within our scope I think would be a good thing, otherwise we're serializing events that don't have to be serialized completely.

So I would strongly advocate that we do provide a sample agreement that we feel comfortable with subject to of course getting our lawyers involved, all of

the appropriate lawyers involved and real negotiations as appropriate. We just don't have the time and the luxury to serialize everything and defer this completely until after our work is done. Thank you.

Kurt Pritz: Thanks, Alan. Amr.

Amr Elsadr: Yes hi, this is Amr.

((Crosstalk))

Amr Elsadr: ...yes it took me a minute to get off mute. I was just going to ask a question, and maybe Marc can help me out with this. So I agree that, you know, we don't necessarily need to negotiate - or draw up the language of an agreement on an EPDP or any PDP, that to my understanding is usually left to an implementation phase or, you know, the contracted parties take this up with ICANN. But of course it is based on policy recommendations that come out of the GNSO and are later adopted by the Board.

But I was wondering if what we could do possibly, if we do recommend a joint controller agreement that maybe we need to also specify what its objectives should be and, you know, the sort of like the guiding principles of what would be involved. So in your opinion, is this something that we can or should do that would be helpful to us moving forward I think to understand.  
Thank you.

Kurt Pritz: And, Amr, when you say is it your opinion about what we should do, who is "your"? Is "your" this team, our collective opinion?

Amr Elsadr: Yes, no I'm sorry, that question was directed to Marc since he raised the concern. But sure, if anybody else wants to weigh in I'm not going to, you know, say no. Thanks.

Kurt Pritz: I'm sorry. Yes, I'm sorry, I missed that. Go ahead, Marc.

Marc Anderson: Thanks, Amr, Kurt. This is Marc Anderson. Sorry, Amr, I'm not sure exactly that your question is but, you know, I'll try and respond and also, you know, I'm looking at what Diane said in chat and what Alan Greenberg said. You know, Diane, we should only provide a draft of the joint controller agreement to provide a guide forward for the basis of the policy work. And, you know, and Alan, I heard you say something similar that, you know, we, you know, we should provide a draft. You know, and I have to disagree with that. You know, we shouldn't be negotiating contract language, we should be focusing on the policy on our charter.

You know, we're having a hard enough time answering all the charter questions, and our focus should be on that. You know, if we want to negotiate contract language I'm not sure what in our experience suggests that we're going to, you know, we as a working group are going to be able to agree to, you know, contract terms, you know, recommendations for contract terms that set, you know, that apportion liability for millions of dollars. And so, you know, we should - our focus really should be on, you know, answering the charter questions and, you know, and not, you know, putting together a draft joint controller agreement. I think that's best left to contract negotiations between lawyers.

And I think getting back to what Amr said, you know, I think Amr suggested that, you know, what maybe more appropriately in scope is, you know,

providing guidelines and recommendations for what we think should be in that joint controller agreement and that makes, you know, perfect sense.

You know, and, you know, I think what we've said all along is, you know, is that there needs to be proper contractual arrangements in place and that, you know, recommending or putting recommendations in place that, you know, the contracted parties, you know, ICANN, registries and registrars enter into those contract negotiations and make sure the appropriate, you know, legal frameworks are in place.

You know, that's prudent and certainly things that should be done. But, you know, I'm very concerned about suggestions that, you know, this group should be negotiating or, you know, even putting together a draft joint controller agreement, you know, that seems outside of our remit and really, you know, you know, maybe overly optimistic to think that, you know, based on our experience so far coming to agreement on other items, you know, I think maybe it's not really realistic that we as a group can agree to terms in a joint controller agreement that we could reach consensus on and recommend.

Kurt Pritz: Go ahead, Berry. Thank you very much, Marc.

Berry Cobb: Thank you, Kurt. Berry Cobb for the record. So, you know, based on the discussion and what I'm hearing, at least from Thomas's perspective, if I understand correctly is that should this group agree that this is an appropriate path forward, I would understand that the assignment of a role joint controller processor, etcetera, would eventually or be elevated out of our workbooks into the body of the initial report where it's defined and perhaps that there can be some guidelines about what may go into a joint controller agreement or not.

So my question or I guess my comment is of a selfish nature in that I'm responsible for keeping the workbooks as consistent to ready them for our initial report. I do think we need to make a decision one way or the other how we're going to approach this. If we, you know, the first path is to take the Thomas approach; or the secondary path is if we do leave these role assignments at the processing activity level within our workbooks, as Marika put in the chat the link to the Google Doc, you'll see that they're very inconsistent.

So the group needs to take one of two approaches here; again, the Thomas one or we need to spend time creating or defining consistency across these role assignments within the various workbooks. Thank you.

Kurt Pritz: Thanks, Berry. And that's a good point. And I think I'm just being repetitive here by saying that's the, you know, Thomas was seeking to address those inconsistencies and Marc had written - Marc or Alan - had written a memo about the same thing and the need to address that so that's what this seeks to do. So with that, you know, I certainly take on board the need for contract negotiations to take place between the contracting parties and - or the one party can certainly plop a version on the table.

I think from the start we'd rather have both parties at the table. I have a certain amount of experience with coprocessor agreements myself and I know they're - there's a lot of boilerplate in them that's consistent but then, you know, the rest of the contract requires careful considerations. I would - you know, I would like to see the - these two recommendations as next steps that - as Berry said have to happen pretty quickly. One is that Diane and Thomas and ICANN can collaborate on the next version of this memo that would be included in the initial report. So that would be the first step.



And the second step, I think, you know, my suggestion for this report would be to, you know, add a conclusion, add the policy recommendation for that. And maybe it's sort of a mentor style memo where the, you know, our recommendation comes first and this memo seems to be the rationale for that recommendation. So that's my input into that.

So I think those two are the first steps and then, you know, I personally I agree with a lot of what Marc said here about contractual negotiations. Diane, go ahead.

Diane Plaut: Hi. Hi, Kurt. Thanks. I also appreciate what Marc's saying. I do want to just clarify that joint controllership, I know that Alan thinks it's not correct, but in fact joint controller agreements are similar to (unintelligible) agreements. Certainly we would, you know, only provide a draft which would lay out the roles and responsibilities and the legal bases and the processing activities in relation to the purposes.

But certainly, you know, it's an ambitious goal and I appreciate that. It's certainly just a - something that can be a step to take us forward in the right direction so that we're helping provide a framework to enable ICANN to be able to step into the roles that they've already accepted as a joint controller and be able to take our policy work and actually apply it and put the Contracted Party House in a better place for ICANN taking on the role it needs to take on.

But in appreciation of Thomas's work he has basically - is looking to do, and I am looking to support him in that in any way possible, exactly what Berry had said and what Kurt has now said in making clear, nailing down roles and responsibilities with clarity and wrapping up any inconsistencies and applying it and then I think Kurt's recommendation is really excellent and then making

the legal recommendation on having this joint controller identification memo as part of our legal recommendation.

So certainly I'm happy to provide a draft controllership framework that everybody could share and look at it at the end of our policy work to be able to supplement what we put forward.

Kurt Pritz: So I'm reading - thank you very much, Diane. I'm reading what Thomas has said in the chat so I'm going to ask him to speak after - well after Marc and maybe after me.

Marc Anderson: Thanks, Kurt. Marc Anderson. I'm trying to think through what Diane said here and, you know, certainly defining roles and responsibilities is squarely, you know, within the scope of our charter. You know, I think that's specifically one of the charter questions that we've been asked to answer. And so answering that is certainly something we should be doing. And the answer to that would certainly help inform the drafting of a joint controller agreement.

You know, Diana, or Diane, you know, want onto say, you know, the word you used, Diane, was - or you said was "provide legal recommendation." And that, you know, that choice of words makes me a little bit nervous, you know, because I, you know, I'm a little concerned about this working group creating policy recommendations, you know, policy recommendations and legal recommendations are, you know, are two different things. And, you know, your word "legal recommendation" seems, you know, frighteningly close to legal advice to me. And that is certainly not something we are capable of providing.

You know, and again I'm, you know, I'm completely okay with this group, you know, providing direction to how we think a joint controller agreement should be put in place and, you know, I do think, you know, that needs to be in place for GDPR compliance. But I think, you know, I think we need to, you know, be very careful about what the, you know, what is in scope and what are the limits of, you know, of what this working group can reasonably produce and recommend.

And so, you know, where we draw the line on, you know, what is, you know, what is our analysis of, you know, of the roles and responsibilities versus, you know, what language do we think should go into a joint controller agreement, I think may be a fine line but one that we have to be very careful about. You know, I think we have to be careful about, you know, not producing something that can be construed as legal advice; that's certainly beyond the scope of what we can be expected to do.

Kurt Pritz: I think so that's - I think that's good advice, Marc, and, you know, something I think we all struggle with in this PDP is that some of the charter questions seem to be asking for that and we're trying to work around that issue pretty consistently. So I just want to check in with Thomas. And so - and ask the group a specific question, so is the group for Thomas and Diane and ICANN fleshing out this memo to - in a way that's clear, you know, in a way that's clear, specific and leads to a policy recommendation?

And then I would draw a line under that, Thomas, because we want to - and I'm not going to - I'm not going to ask the group and I'm not sure we'd have the support for going onto - at this stage of the game to discuss you know, formulation of a contract or contract terms or any of that but rather, you know, I've already forgotten your list of four things, but, you know, do some of those four things first. And I would call those four things taking the next step with

this memo. You know, we've only heard your discussion 48 hours ago and then you've done this amount of work. I know Diane has some input on it and ICANN's agreed to work on it with you.

So I want to check with the group or if the group agrees, does that - with those steps does that remove your reticence for moving forward? Thomas, I'm glad to see you in the queue.

Thomas Rickert: Thanks very much, Kurt. I think we actually need to have another discussion about this. I mentioned earlier, and this is why I've asked the question that there are issues with our group collectively drafting the contract that should be entered into by third parties. So what I hear is a lot of resistance or concern about drafting something. So maybe we - we put the drafting on the back burner at least for the moment.

I think the question that we need to answer first and foremost is how far does the question on responsibilities that we're supposed to respond to, according to our charter, go? Does this end with just stating who shall be responsible for what? Or shall it include a little bit more color and a little bit more detail? And I thought that it would be helpful for both the EPDP team as well as the wider community that shall comment on our report to understand the responsibilities/liability concept that GDPR offered to be able to comment on this.

And I think we are understanding from the discussion that we're having that everyone really needs to take a look at the responsibilities as currently laid out in the worksheets that make their way into the draft initial report. And I think that that's essentially by explaining things better we can probably bridge the gap. So if the registrars say that they are only collecting data because they

follow the specifications issued by registries and ICANN, then we might need to delete the registrars from the list of responsible parties for Purpose A, right?

So I think we need to understand where the concerns lie and then do a fact check, a reality check of whether we got the responsibilities right and then take it from there. So I would suggest that Diane who has made some language related edits to the memo primarily that we send that to the group so that everyone can read an updated version of that and that we then continue the conversation once everybody has a chance to digest this more.

And let me offer for those who have questions on this please do reach out on the mailing list or privately and if I can I will answer the questions that you might have.

Kurt Pritz: Thank you very much, Thomas. Alan.

Alan Greenberg: Thank you very much. Alan Greenberg. I support what Thomas is saying. I think we really - we have a real problem if we end up having mismatches between the worksheets and where we think we're going. But I put my hand up, Kurt, at one point I think you said we need to decide whether we include the joint controller agreement as part of our policy recommendations. And I think regardless of to what extent we finalize drafting it, it's not a policy recommendation because it will include terms that are not within the picket fence and are not subject to our policy.

So at best it's going to be a document to aid in the final negotiation of the terms. And I think we want to be careful not to use the term "policy" in conjunction with this document going forward. But I do support continuing to work on it and trying to make sure that we all have the same understanding of

who is acting as the controller and what ways and make sure that our working sheets are all consistent. Thank you.

Kurt Pritz: Thanks, Alan. And I'm sorry if I misspoke myself. I meant to say that the policy would state that we are in a joint controller relationship but not mention an agreement or contract. Marc.

Alan Greenberg: I may have misheard.

Kurt Pritz: If I were a betting man I'd bet I misspoke. So Marc.

Marc Anderson: Thanks. Marc Anderson. And, you know, I raised my hand before Thomas spoke but, you know, I just, you know, wanted to say, you know, what, you know, I agree with what he said that was, Thomas, it was very well put and I support that. I also want to just remind everybody, you know, our, you know, our charter questions, you know, Part 3, you know, what we're talking about here is Part 3 of the charter. You know, questions, you know, K, L and M are about ICANN's responsibilities, registrars' responsibilities and registries' responsibilities in processing the data.

So just to, you know, we're discussing you know, very, you know, very specifically, you know, Part 3 of our charter which is, you know, which is a good thing. You know, unfortunately, you know, this is, you know, this is coming, you know, very late in the process and so we have a lot to do in a short amount of time.

But I think, you know, I guess I'd encourage everybody to re-familiarize yourself with those three charter questions or, you know, there's subsections for each of those but, you know, those parts of the charter, you know, we should be, you know, reading those and making sure we're answering them,

you know, doing that analysis and answering them in our report. And I think, you know, Thomas has given us a, you know, sort of a very, you know, logical and reasonable step forward to try and do that.

What I originally raised my hand for was just, you know, to point out, you know, Kurt, so you suggested a next step would be for, you know, Thomas, Diane and ICANN Legal to break out and work on this a little more and come back with recommendations. And that was what I originally, you know, raised my hand on. You know, I just want to point out, you know, I'm cognizant of the fact that I've been doing a lot of the talking here and hopefully I'm, you know, I'm not unreasonably representing Contracted Party House views here but just to point out that you've suggested a, you know, a small group go look at this that does not include any registries or registrars.

You know, and hopefully a, you know, hopefully we could expand that to include somebody from a registry or registrar, preferably one with legal background, which I do not have, so I'm suggesting somebody else maybe want to volunteer to join that small group if that is indeed what we're doing for a path forward. And just noting that I've shamed Alan into raising his hand.

Kurt Pritz: I was going to ask if it would be somebody with an Irish accent. Go ahead, Alan.

Alan Woods: Oh, I didn't actually expect to talk but what I will say, and sorry, I just want to kind of go back to this overarching concept for just one very small minute and that is that I do think what Thomas has said here is probably the most practical way forward for everybody because - and I will leave it (unintelligible) because what we are working with here is not something that necessarily fits into the ecosystem of what the GDPR has contemplated, therefore, you know,

he is breaking new ground on this and I think it's probably the most prudent way forward that we can do this.

It's different and we will need DPA input at the end but I genuinely think that this will work into something that is beyond the EPDP and that is the code of conduct ultimately. And I think thank you so much, again, Thomas, for saying this. I mean, we'll work out the kinks, we will get through this but I do think this is a very, very important step forward so thank you.

Kurt Pritz: Thomas, how can we help you coordinate a meeting of this small group that thus far includes Alan, Diane, yourself and I think Berry - if you don't mind Berry - I'm saying I hope you don't mind to the group and to Berry, Berry Cobb should be part of this as the drafter of these forms and understanding how they interact. So Thomas, how can we help you pull this together? And then we'll go onto the next thing.

Thomas Rickert: Kurt. Thanks very much. What I suggest is that those who want to help with this, and I think it shouldn't be too many, but I think that maybe another pair of eyes from the contracted parties would be great, shoot an email to me and then maybe we can set up a call with this group and staff and ICANN reps to test the waters on this. I guess that would be my initial reaction. Thank you.

Kurt Pritz: Okay. All right, let's do that then. Great. Great working initiative, Thomas, and, Marc, you did talk the most but I think you were very helpful so thank you for that.

Let's go onto the next agenda item and which is the proposed updates to the initial report section on natural versus legal persons. So I just want to introduce this section with the thought that the staff team has been rapidly updating this section as comments come in. And I want to take a step back and



reorganize this a bit and to, you know, put out the recommendations for public comment and then the rationale from each - and I'll just blatantly say each side of this discussion.

And I really want to rely more on the quotes of the - of each of the contributors to this rather than staff rewording or interpretation or even cut and paste without quotes. And then I'd like - so I want to do a slight reorganization of this because we've been updating it up to even the past the start of the meeting. And then, you know, everybody who has a quote in here can take a look at it and see if that's how they want to be represented to the reading audience.

Alex, go ahead.

Alex Deacon: Thanks, Kurt. It's Alex for the record. Just on that last point I just wanted to state, you know, those of us on the West Coast, it's really a challenge to say at least, to respond to the proposals that come in late in the evening or even shortly before the call. So I've only had a chance to kind of skim the updates that Marika has made here. No in his email yesterday Milton asked that the views of the contracted parties and his NCSG group be included in the initial report.

And then he went on to ask that views of other constituencies be deleted. And I found that to be kind of odd on logic. That his reasoning was that just based on his views of what the consensus would be, but if I'm not mistaken we haven't had a consensus call yet so I'm not too sure it's relevant at this point. I think it's important to remind everyone that the request for research was agreed amongst the small team members and it simply asked for some data to be collected and for further discussion to take place once we had that data.

As far as I remember, it didn't suggest any requirements or legal obligations on contracted parties or any contract updates for that matter. So, you know, I think people are kind of over thinking this a little bit. But anyway I think, you know, hopefully the final text can ensure that all views are accurately stated and included in the final report. And, you know, given I haven't had a chance to read this text in any detail yet I'll take a closer look at Marika's updates well now and then after the call. So thanks.

**Kurt Pritz:** Right so I think - and your comments to be edited, this will be fine. Gosh, I'm having a hard time finding my (unintelligible). Go ahead, Milton.

**Milton Mueller:** Yes I just wanted to clarify that it's not so much that I'm declaring what the consensus is, it's that it's pretty clear that certain positions are never going to obtain consensus and that would be I think leading to the public comment period on the interim report to present something as an option which really isn't an option; indeed I believe that the interim report has to do as much as it can to narrow the options that we're considering so that people know where we're going and we're not just sending out a general hey, everybody, what's your opinion about Whois, you know, that's not going to get us anywhere.

Now, I of course believe that minority opinions should be represented in the discussion as a position that was advanced but it should be very clear that certain positions did not obtain consensus and are unlikely to ever obtain consensus, that's mainly what I'm saying. And I think on natural legal this distinction, you know, it's just such a can of worms to try to do that. It raises so many problems from our point of view, we're concerned about the privacy problems, it's clear that the contracted parties are concerned about the costs of implementation, and the legal risks that they would incur. So I just think we have to give up on that. It's not going to happen.

This is not saying that the report can't reflect the views of some that this distinction should somehow be implemented but I think we have to face reality and declare that the EPDP is unlikely to settle on any such requirement.

Kurt Pritz: So maybe we shouldn't be soliciting public comment on this at all since our minds are made up. Amr.

Amr Elsadr: Thanks, Kurt. This is Amr. And just to possibly reiterate what Alex and Milton were saying, because Alex had mentioned that, you know, all views should be presented in the final report; and I don't disagree so I agree with that. But we also, I mean, to kind of I guess add to what Milton said, we should be very clear in the final report as to the initial report and we need to be very clear on what are consensus recommendations and what are not and ensure the level of consensus for each one, you know, whether - and I'm guessing from where we stand now that there will be a number where we have divergence but those should be pointed out.

And yes, I think public comment period is an important step to go through but in order to achieve, you know, in order to get the best possible responses from a public comment period, the views currently held on the EPDP team need to be reflective of what the different stakeholder groups are saying, the different SOs and ACs of course and constituencies so yes, just wanted to be clear on that. And I think it's also important that we make a distinction between the objective of the initial report and the final report.

Yes we haven't had a formal consensus call yet but we don't need to have one before the initial report is published, but then the objective of this report is to really illustrate to the general public what the different views are and the rationale supporting them especially if there is a disagreement on them. But the final report, like I said, needs to be very clear on what are consensus

recommendations and what are not irrespective of including the different views expressed. Thank you.

Kurt Pritz: Thanks, Amr. Hadia.

Hadia Elminiawi: So I actually want to (unintelligible).

Terri Agnew: Hadia, this is Terri. I see that you're connected on the telephone and with your Adobe Connect mic.

((Crosstalk))

Terri Agnew: There you are.

Hadia Elminiawi: So I will only talk through the Adobe Connect, okay or do you want it to be vice versa? Okay so I wanted to just quickly say that we (unintelligible) more information in relation to the issues being raised. It does not mean that we need to (unintelligible) any decisions or that we are going to reach conclusions. The output of the research could lead us to put some recommendations for future work or put no recommendations at all. So actually I don't see it as Milton that if we go for the research that that means that we are going actually to (unintelligible) actually to (unintelligible) any views that are not - that are not - that are totally refused now by some parties.

Another thing I'll say that I wanted to comment on is the statement that says that specifically contracted parties supported by the Non Commercial Stakeholder Group oppose and reject any recommendations for new contractual requirements. And honestly I think that - and I think that this is out of scope. It does not respond to the question that was put forth here under HF and honestly (unintelligible) put conditions or (unintelligible) on the group

and the place to attach a statement would have been the charter. And (unintelligible) here. So I strongly oppose this statement.

Of course the changes or the recommendations that this group will come up with will definitely or will lead to some changes in the contract. We cannot (unintelligible) just from the beginning that we oppose any changes that are new; we don't know if they're new or not and so we (unintelligible). Thank you.

Kurt Pritz: Thanks, Hadia. I just want to reiterate that what I think our plan to do next is to reorganize this section of the proposed initial report so the positions are clearer and the attributions are very clear so that everybody can look at their own language and determine that that's what they want to - the public to see. And so, you know, I'm happy to go through the queue but I don't know - we have - I don't know how going through the queue is going to change what's written here. But I'm happy to listen to everybody, so go ahead, Margie.

Margie Milam: Thank you, Kurt. This is Margie. A couple things, I do agree with what Hadia said about the statement regarding consensus, or that there will never be consensus. I think it's inappropriate at this time to make those kinds of statements. And if you look at the input we received from the group, it's actually not a minority position to look at the natural legal person distinction. We have support from the IPC, from the BC, from the GAC and ALAC. And in my view that's a pretty strong position. So I'd caution any assumptions that there's no consensus on this.

And in respect to the language that was proposed on the list this morning, I had the same issue Alex had about not being able to look at it very quickly, but a couple observations. It's clearly in the scope of the EPDP, it's listed in our charter on Page 4, so I do object to having that included in the description

because in our charter, unless people can point to where it's not in our charter, it's certainly there on Page 4.

Same with the picket fence; the picket fence, and we've already agreed that the whole Whois issue is within the picket fence and if there's an issue about that, then I'd like staff's opinion on that because I don't believe there's merit to making the statement at it's outside the picket fence. So if - so that's the reason I'm raising those issues. If we're going to break it up into different categories where it's contracted parties say one thing and the, you know, BC says the other or the - I would then, you know, want to have my comments reflected with regard to the scope of the EPDP and the picket fence if that language is still included. Thank you.

Kurt Pritz: Thanks, Margie. And can you just make more pointed your question to ICANN staff so we can capture that?

Margie Milam: Sure, yes. The question is, is making the natural legal distinction in the context of the Whois within the picket fence?

Kurt Pritz: Thank you. Go ahead, Alan.

Alan Greenberg: Thank you very much. I'll try not to repeat what was said and I'll be very clear. It's obvious that when this goes to the GNSO the two contracted parties together have an effective veto so we are not going to make any recommendation that ultimately will be vetoed by the GNSO and come back to us to redo. That being said, us making a statement saying "and will remain opposed to these recommendations as we move forward to the final recommendations," I believe is completely inappropriate.

I for one believe that we may well be able to demonstrate that there is not - that there is not a great risk nor a great amount of complexity to make the distinction. We may fail but I don't believe we should rule it out and I don't believe any party here should say, you know, I'm putting my fingers in my ears and refuse to listen to anything because I won't make - I won't change my mind; I think that shows just the wrong attitude going forward in this. Thank you.

Kurt Pritz: Thanks, Alan. Marc. Laureen, do you want to go ahead and we'll come back to Marc if he can fix his mic problem?

Laureen Kapin: Sure, and I'll keep this brief. And basically this builds on one of Milton's prior comments which is that we're certainly aware of the concerns that the Contracted Party House has with liability concerns and cost of implementation, which is why I think one of the areas that I'm still hopeful we can come to consensus on is trying to research those very areas.

Those seem to me to be very logical steps to take to try and get more information particularly from the European Data Protection Board on the issue of whether the liability diminishes, disappears, shifts if someone self-selects to be identified as a legal person and assuming there could be some better communications about what that is and what the ramifications is. So that's my plea for perhaps we can reach consensus on what I think are very modest proposals for further research.

Kurt Pritz: Thanks, Laureen. I was going to draw the line under James but now I'm drawing a pretty sharp line under Alan because I want to get to the next agenda item. Go ahead, James.

James Bladel: Thanks, Kurt. James speaking. And as the author of the sentence that seems to be drawing so much ire, I will maybe just point out that I think Alan mentioned this more correctly is that we don't want this body of recommendations to go to GNSO and then be voted down because I don't think we have time to follow the process for rework through the PDP. I think we'll run out of clock and calendar if that path is taken.

And I think that this is, you know, there's a different approach here which is that creating obligations that registries and registrars believe or have been advised creates a legal risk means that the provisions that are requiring them in our contracts become unenforceable, which puts the entirety of our contracts at risk.

So I think that, you know, it's very easy and perhaps tempting to say, well contracted parties are just being unreasonable here. It's maybe a little more nuanced to say contracted parties are defending a very large and complex ecosystem of contracts to ensure that this one, you know, element, Whois, or this one element of an element, which is the legal versus natural persons distinction, doesn't kind of become the thread that unravels the whole sweater.

And I think that's one of the reasons why you see some definitive statements is that we can't go down certain roads that we believe could put the entirety of our contracts in jeopardy. So that's - but I think Alan Greenberg probably explained it a little bit and if folks would rather latch onto his assessment of the practicalities and realities that we face then I would recommend that they do that. Thanks.

Kurt Pritz: And I think - so the issue we're - what's going to go into the initial report is that there's a difference between - there's a difference of opinions between



whether we should do the sort of research to - that Laureen mentioned to flesh out our understanding of those legal risks and costs or not. Alan.

Alan Woods: Thanks, Kurt. I'm really not going belabor this point, I think it's been hashed back and forth and I mean, I made some statements on the list this morning specifically about what the purpose behind the contracted party statement really probably was and that was that we do not want to accept a basic policy recommendation that will send us backwards and that's exactly what this will do; it will send us backwards to the point where we are not in a position to properly or accurately vindicate the rights of the data subject. And that is ultimately what it is.

And I make no apologies, I know I'm not a white knight in this, I'm representing a registry, but ultimately we are aligned in the sense of us vindicating the rights of the data subject to prevent us from, you know, getting sued and the liability issue. But what has been suggested, and this is, you know, I think - was it Alan who said that we put our fingers in our ears and just not listen, I'm sorry but that's the pot calling the kettle black in that one because absolutely the same could be said; we are telling you that we do not have the ability or the means to do this and you keep saying to us no, but you must.

So ultimately what I want to do is just let's ask the question, why? We are telling you that it is not possible for us to vindicate the rights of the data subject and therefore to save ourselves from liability. Why do you think that this is necessary for us to be compliant? We are saying that we have a level of compliance and comfort which is currently within the temporary specification as it is written, it's not the best written but it is written that way, and we can confirm that today and say this is specifically going to allow us to be in line with the GDPR by giving us the option of whether or not we wish to delineate.

And I just want to know why - so why can you not accept that? If you want to recommend that there needs to be a new policy development that will look into the creation of this brand new system, then recommend that. But that's not what we are here to do today. It's out of scope and should be shut down straight away. The temp spec, as it's currently worded, allows us to be compliant. And I don't want to hear anything about this over-compliance concept. No, we are telling you that as contracted parties this is what we need to do to be compliant and I still don't understand why it's being pushed constantly that we are the people who have to take this liability and risk on ourselves.

We are trying to do something to continue the DNS, the ability to register names, and I just - I'm surprised especially by some of the parties who are pushing this as to why they're doing it. And that's, you know, that's a simple ask.

Kurt Pritz: Thanks, Alan. So I think that - so, Lindsay, I really wanted to draw a line under that so I'll give you 30 seconds. And I thought Alan was quite eloquent.

Lindsay Hamilton-Reid: Yes, so Lindsay Hamilton-Reid for the record. Yes, I just want to agree with Alan (unintelligible) around and around and around...

Terri Agnew: Lindsay, this is Terri.

((Crosstalk))

Terri Agnew: It's very difficult to hear you. Are you able to speak a little close to the mic?

Lindsay Hamilton-Reid: Yes, sure. Can you hear me now?

Kurt Pritz: Yes we can.

Lindsay Hamilton-Reid: Oh okay. I completely agree with Alan. We've been talking about (unintelligible) around and around and around (unintelligible) and it seems to be ignored (unintelligible) enough is enough. Thank you.

Kurt Pritz: I think we want to put a deadline on any additional comments to this by, you know, say tomorrow. And I don't know - so I want to ask staff to reorganize this so we'll talk about that after the call and include only quotes from each side so that the meaning and positions are really clear. All right, I'm not going to talk about it.

So let's go onto the next issue which is the review of the consolidated data elements matrix. And here's a big matrix but - and Berry presented this once before and gave - or in our discussion of this Berry gave quite an eloquent description of the issues at hand. But it was somewhat complex and I think it was Emily Taylor that asked him to put that information or the issues in writing, which is what Berry's taken quite a bit of time to do.

So with this data elements matrix there's a clash of some clashes that occur as we sum the whole thing so we wanted to identify those and try to settle those issues. So Berry, can you take the helm here?

Berry Cobb: Hi, Kurt. Berry Cobb for the record. Thank you. So yesterday evening I sent out two attachments to the mailing list, one is what you see in the Adobe Connect room. I recommend that you pull that up on your computer to view that because we will be looking at the issues text within the Adobe Connect room, but I just wanted to tee up the matrix document.

So there are three pages that with the intent of extracting all of the like processing activities across all of our purpose workbooks. And in doing that, there were similarities to what you're seeing now. So Page 1 is a compilation of all the processing activities where the registrar is being requested to collect certain data elements. Page 2 is a different processing activity which is the transfer of that data from the registrar to the registry; and Page 3, which I don't think we'll get to today but is kind of a first snapshot of what the processing activity of disclosure would be to Internet users.

And the idea there is to get a, you know, kind of a visual of what would be presented on a public-facing RDS and alongside that are those data elements that would be redacted depending on what this group ultimately agrees with. So the idea of what you're seeing here is what is currently denoted within our workbooks and in particular when you pull up this matrix PDF on your own machine, we're going to mostly be referring to Page 2 which is, again, the transfer of this data from the registrar to the registry.

The last thing that I'll point out about this is over on the far right before you see columns of kind of check sum numbers, there is a column listed as Transmission Logic, and it's basically just a highlight of green, yellow or red. And what is happening here is it's analyzing all of the columns to the left. If it detects that a data element is signified as optional it will only remain yellow; if any one of the columns contains a 1, which is essentially that it's required, then it'll turn green. And of course all of the data elements where there's neither a 1 or an optional 1 and there's just a dash that'll mean that it's red.

So unfortunately Emily isn't on the call today but last Thursday when we were reviewing through the Purpose E, Registry Escrow workbook, the group had tentatively agreed that any kind of escrow activity for registries is ultimately a compilation of what data would be transferred to them. And so the idea I was

trying to explain during last week's call is that the output of this transmission logic, all of the fields that are green or yellow would essentially be the input to the Registry Escrow workbook of what fields would need to be escrowed.

And I'll still write that kind of logic aspect up in an email, especially since Emily isn't on, but that was what I was trying to point to last Thursday. So again, have the matrix up on your own machine and now we're going to move to the actual primary issue summaries that we identified in this process.

So at the very top there's essentially an introduction, which is what I basically just talked to. And so we'll move down to the middle of Page 1 which is specifically - we're targeting in on Purpose M, which is dispute resolution. And of course there's kind of two - well there's really four RPMs that are included in this purpose. The first two are UDRP, URS and the other two are the PDDRP and RDDRP.

So when you look at Page 2 of the data matrix, we start to see kind of an anomaly when we're looking at what data is being transferred from a registrar to a registry. And what you'll currently see is that Purpose M, the RPMs, are suggesting that all of the fields at the top section of the document, domain name, registrar Whois server, the reseller, etcetera, as well as the registrant fields, are requesting that for the purpose of RPMs, is requiring that this data be transferred from the registrar to the registry.

And so when we think about this purpose in the macro sense of what data is really shifting around, it brings up essentially three questions. And staff's understanding about, you know, what Purpose M is about draws into question as to whether this data should actually or is required to be transferred from a registrar to a registry.

So essentially there's three questions for the team to consider; as a first, you know, post-GDPR, is the Compliance team's assessment correct? And you'll recall that back in LA Contractual Compliance had presented to this group once in face to face and then I think we had a follow up call on the phone, but essentially they were under the understanding that data required for the purposes of UDRP URS at least, did not require that that data be transferred to the registry. So the first question is to understand is that assessment correct?

Secondarily, in looking at the reality or at least the current environment today by which the UDRP and URS works, at any point when a UDRP or URS provider needs to have the registration data revealed in all cases both UDRP or URS, they are contacting the registrar to acquire that data. And if that is in fact true, then that doesn't necessarily warrant that the data be transferred from the registrar to the registry.

And then the last question is looking at the other two RPMs, the PDDRP and RDDRP and honestly I'm not very familiar with these RPMs, but there's - where the Purpose M workbook is in position today that both of those RPMs should be included because a variety of complaints that could be filed under these RPMs could involve the revealing or disclosure of registration data depending on the type of complaint. And I think as of today, thanks Amr, sorry about that. That as of today there have been very few if none of these RPMs being used.

But the point being the future if one of these RPMs were invoked does it still require that data needs to be transferred from the registrar to the registry? And so that's kind of what we're being faced with. The possible proposed approach to address this issue, if in fact that those three questions can be answered in the yes, is that we would remove the processing activity of

transfer of data from the registrar to the registry within the Purpose M workbook.

So I'll stop there and open up the mic for any questions. Alan - Alan Woods, please go ahead.

Alan Woods: Thank you, Berry. And thank you for that as well. So I just wanted to add specifically in regards to transfer point, so the registry is the active party in the URS; the registrar does do nothing - that's really my grammar - but you get what I mean. The registrar does nothing. They are just the notification in this. So under the current policies, now this is not without saying that there's an assessment or not as to whether it is good or bad, but there is a reason for the transfer of registrant data to the registry for the purpose of the URS. And also under the temporary specification, of course that we are to release the data to the URS provider because it's now currently redacted.

So from my belief I think we can probably get to the point where it is a justified transfer for the purposes of the URS, that would just be my take on that.

Kurt Pritz: And this is Kurt. Alan, that's a post-May 2018 procedure still, right?

Alan Woods: Yes, that's correct. So...

((Crosstalk))

Alan Woods: Sorry, go on.

Kurt Pritz: Alan, go ahead and finish your sentence.

Alan Woods: Sorry, no I was just saying yes, previously yes, so in order to give rise to the URS provider's continued RPM, we must provide them with the registrant data post-May 25. That was in Appendix E I think, I can't remember, E or D, so yes.

Berry Cobb: Thank you, Alan. And just one other question to this, because I went and reviewed through the URS procedures and rules, and to my discredit I didn't go back and reference the temporary specification. But when I look at the URS rules and procedures, the only thing that it mentions in regards to URS is that the registry is contacted to lock the domain at the beginning of the complaint and then depending on the outcome either unlock the domain if the respondent prevails, otherwise then the registry is unstructured to suspend and change the name servers to the suspension page of the URS provider.

Nowhere in there it mentions that the registry actually provides that contact data and thus I was under the assumption that even for new gTLDs although that they're thick, that the providers were actually still going to the registrar to obtain that registration data.

Alan Woods: So I can jump in there and say no, that is not correct. They would have just gotten it from the Whois as would have everybody else. And had that been a privacy protection they would have then constituted proceedings under privacy protect so it would never have gone to the registrar for that particular data, they just would have gotten because we had that lovely public directory out there. So that's why it had the change in the temp spec.

Berry Cobb: And just one more follow up and then I'll go to Marc, so but even pre-GDPR if we were dealing with a complaint that had privacy proxy only the privacy proxy information transferred up to the registry so you would never know who the underlying registrant data was, isn't that correct? And therefore the



provider would have to come back to the registrar to actually unmask the registration data?

Alan Woods: So technically yes, and I would defer to my registrar friends on that. Of course in many situations the registrar and the privacy provider are separate entities therefore I suppose technically you're right where, you know, you would contact the registrar in that instance. But, you know, not really. I have seen many the URS that was constituted continuously through to the very end in the name of the privacy protect data.

So and again, it's because the, you know, we started putting in the redactions that this has become an issue. So obviously it's something that we as a team would probably have to flag with the RPMs or whomsoever and saying, you know, there is an incompatibility here with the original process. The temp spec tried to fix this; to what affect we don't really know but it should be looked at.

Berry Cobb: All right. Thank you, Alan Woods. Marc Anderson, please go ahead.

Marc Anderson: Thanks, Berry. Marc Anderson for the transcript. You know, first, you know, Berry, thank you for the excellent analysis and summary. You know, I think you point out - you make some really good points here. I think there are some inconsistencies and, you know, and holes here and I think you did a great job, you know, highlighting them, providing some recommendations so very appreciative of that work.

I do want to, you know, I guess taking this a slightly different, you know, or pulling on a slightly different thread here, you know, while the spreadsheet provided, you know, was really useful for analysis in going through the, you know, the deliberations, you know, I don't think it translates well into the

initial report. You know, and so I would, you know, I would like to see, you know, more of a, you know, a sort of a more concise summary of what, you know, what the final recommendation is going into the report. You know, this could obviously be provided as a summary.

And I think on the third page, you know, the disclosure, you actually do that. If I point to, you know, Page 18, Recommendation Number 8, the table in there is really just sort of a clear easy to read summary of what's, you know, of the results of Page, you know, Page 3 of this worksheet you've provided. You know, whereas for the first two pages of this, you know, sort of the worksheet is provided and, you know, it's difficult to read and understand particularly for somebody that's not been a part of the working group.

So I guess, you know, sort of tack onto the points you've already made I guess my request would be to present sort of the final outcome of these worksheets in a more easily readable manner. Similarly, you know, I think you've already done that for the third one in Recommendation Number 8, I guess I'd ask for, you know, something similar for the first two recommendations there. You know, thank you for your work and, you know, I think you did, you know, you raised some good points there.

Kurt Pritz: Thank you very much for that comment, Marc. Berry, could you briefly recap what you know, given the two comments, what changes you would make to the proposed approach here and then go onto the next one?

Berry Cobb: Thank you, Kurt. And first, to respond back to Marc, I think the intent of these consolidated tables are not necessarily to generate proposed recommendations, if for anything they're there to report recommendations that have been made although, you know, I guess there's some subtle nuances when it comes to Page 3 about the disclosure. The main intent of these charts

is to test our logic of what we're populating into the workbooks and to take care of any issues or anomalies that we're seeing.

And so if these four issues could be addressed here then a lot of this goes away but I do recognize that if these are included we need to put some more context around how these are generated because as you said, if they're not a part of the EPDP it's going to be hard to translate this into something meaningful for them.

So secondarily, in terms of the actions out of Purpose M for this one, what I'm hearing is that in a post-GDPR world there are cases where the providers are requesting registration data from registries and not necessarily registrars. And that perhaps a draft recommendation can be for either the RPM Working Group or another PDP is to streamline that process; kind of the question is if there needs to be a disclosure of registration data as it relates to UDRP, URS that that occurs at the registrars only and not necessarily the registries.

So until that is kind of resolved, I don't think that it - the proposed approach that we have listed here is not accurate and that we would still keep the processing activity for the transfer of data from a registrar to a registry. And I see Alan - I probably misspoke, so Alan Woods raised his hand. Please go ahead just to clarify. Thank you.

Alan Woods: Thank you. No, not all, you didn't misspoke. I just wanted to clarify that I mean, if we are asking them to put this as a registrar responsibility you're creating a second layer in the URS. For the UDRP it's outside really of the registry remit, only if something goes wrong somewhere, that the registry would ever be involved and I can put my hand on my heart and say I've never been involved in any UDRP as a registry.

But from a URS it is focused at the registry operator and as that, again I'm speaking from the thick point of view, it is focused on the registry operator so I just, again, standing up for my registrar colleagues here that I don't think that it would be - make sense to do a dual layer where all the actions are taken by the registry but that the registrar has to be involved to supply the data when, you know, again, this is a justifiable, you know, legitimate purpose type of a transfer and I don't think we should be telling them to make the process more complicated than that. I think, you know, we can just get them to tidy it up more to the point.

Berry Cobb: Great. Thank you, Alan - Alan Woods. Alan Greenberg, please go ahead and then we'll move onto the next issue.

Alan Greenberg: Thank you. Just to point out the - UDRP was never updated when the concept of thick registries were created. So the UDRP still refers to contacting the registrar to do anything that requires some level of action. I think it's quite reasonable given that it was never updated pre-GDPR, now post-GDPR it certainly needs to be updated and I think we should include a recommendation that the GDPR be updated, you know, to factor in the current realities. I don't think we need to be specific in our case of going through all of the details and clearly the implementation will be subject to public comment when it's proposed by staff. So I think we should be, you know, recommending that it be updated, not be specific and move on. Thank you.

Berry Cobb: Thank you, Alan Greenberg. All right so again staff is taking notes on this and we'll revise this based on the output for the Issue Number 1. So let's move onto Issue Number 2, we've got about 17 minutes left. Hopefully these next should be a little bit quicker to move through.

So when I started this conversation the Purpose E about registry escrow and again, we're still referencing the second page of the matrix which talks about the transfer of data from the registrar to the registry and so I'm going to share with you in the Adobe Connect room just a quick snapshot of how the - Page 2 would actually change if we had agreed that the transfer of data for Purpose M did not require transfer from a registrar to a registry.

And you'll see what happens in the Adobe Connect room, and I'll unsync it for you, but under Purpose M if that transfer processing activity disappear, you would see how the transmission logic on the right, the far right, automatically changes to red. And that what we're missing is a justification from our other purposes, especially either A, B or C, that don't really show that this - that the registration data should be transferred from the registry to the registry and hence why we're going to be talking through Purpose - or through Issue Number 2 back on the issue document here.

So in summary, for Issue Number 2, is talking about registry escrow as kind of teeing this up. And as I mentioned, you know, there was previous agreement about the transfer of data that a registry escrow deposit would be dependent on what data they received from the registrars. So again, isolating out Purpose M for the moment we do have still kind of a logic issue here and that under Purpose A all that we're showing of data that would be transferred from the registrar to the registry is only the domain name data element as well as the name server element because those two fields or those two data elements are the minimal required to activate and allocate the domain name.

But you'll also see in the Purpose A workbook for the transfer of this data, and I should remind you that those first two data elements were labeled as a 6.1(b) lawful basis as a part of the contract for which it's between the registrar and the registrant, but there's also additional language that should any of the

other data elements need to be transferred from the registrar to the registry that that is listed as a 6.1(f).

However, the workbook doesn't list these other data elements as being transferred and so then the question becomes, you know, what data elements if any are needed to be escrowed in addition to those data elements that are already more or less publicly available? And so I'm hopeful - I'm probably not doing the best job of explaining but I'm hopeful that you'll see that we need to beef up our first three workbooks so that it more accurately reflects or justifies why the data is being transferred from the registrar to the registry.

So Benedict, please go ahead.

Benedict Addis: Hey, Berry, thanks that was really clear and I agree there's got to be more consistency there. Just about something you said, you said that the minimal set of data for registration to take place is domain name and name servers. Now, and that's a 6.1(b) purpose. And I just want to make clear that that - we shouldn't automatically assume that. So DNS SEC and the name server IP address glue can also be transferred optionally. So that's optionally at the request of the registrant to be clear.

If we start to assume that that's not a 6.1(b) purpose because it's not required for the domain to function, I think we go down a dangerous path there. So I want to be clear that there is optional data like DNS SEC keys that can be passed on, that are still 6.1(b). Have I made that clearly?

Berry Cobb: Thank you, Benedict. You know, I would say that DNS SEC and glue records and some of those activities are kind of beyond my experience or understanding. But what does seem that needs to be is that we need to pay closer attention to what we have marked down in the workbooks for Purpose

A. And I'll just note that the next two issues are kind of in line with the same thing in terms of some inconsistencies that we're seeing from the workbooks.

Marc Anderson, please go ahead.

Marc Anderson: Thanks, Berry. Marc Anderson. You know, again, you know, thank you for pointing these things out. I think, you know, you've raised some issues we need to address. And I, you know, I think some of these things, you know, we're not going to be able to solve all of this on this call obviously so I think you know, my takeaway is that we have some homework, we need to review and provide, you know, and address some of these gaps that you've raised.

And sort of on top of that, you know, Berry, you've talked a lot about transfer from registry to registrar and I think you know, everybody's aware of this but I just sort of want to just remind everybody, you know, some of the data, you know, isn't strictly speaking, you know, transferred from registry to registry, things like, you know, updated create date, registry expiry date, you know, these are sort of artifacts that are created as a result of the transaction that occurs.

You know, I don't know that that materially changes the points you're making, you know, I think your points are all still valid, to just sort of remind everybody that there's some nuance there. And then talking about some of the other things, you know, registrar abuse contact email, registrar abuse contact phone, these are not actually domain registration attributes. So those, you know, those are not provided by the registrant and are not attributes of the domain registration themselves. These are things that the - that the - these are registrar attributes so these are specific to a registrar so they fall into maybe a separate category altogether.

You know, and so, you know, again a little bit of a nuance there. And I'm not sure that that materially changes the point you're making, Berry, you know, we have some gaps in the report that we need to address and, you know, I think your points are well made and we can take that as homework to review and provide recommendations but just pointing out some of the nuances of the data we're being asked to evaluate, provide recommendations on. So again thank you for the analysis and the summary here.

Berry Cobb: Thank you, Marc. Duly noted. And that really kind of tees up these last two issues. And I'll just breeze through these. So ICANN, our GDD colleagues had also raised this issue - I move to Issue Number 4 real quick because it's perfectly aligns to this. And another aspect that you'll see from the consolidated workbooks or data elements matrix really kind of goes back to the first page, the collection of data by the registrar.

And what you would see consistently across all three pages fields like registry domain ID or registry registrant ID are all flagging as red. And we want to make sure that that doesn't suggest that these data elements are going to be discarded and have no future - that they aren't fit for purpose when in fact they are.

So as an example, the registry registrant ID is heavily used and relied on from the IDN's perspective. And so we just wanted to flag that, you know, there is this notion that the data elements that we're looking at some are actually collected from the data subject via the registrar and some are generated either by the EPP server at the registrar or by the EPP server at the registry.

And I don't think we need to get into the details of which ones are generated versus collected other than to make this, you know, that we're acknowledging that that is the case. And that ultimately some of these fields that are marked



in red may not necessarily die on the vine, so to speak, because they are used for other policies or workings of the domain name system.

So staff has wrote up some more details about this collected versus generated. Again, the - I think the - how we approach this issue is that we just - or thoroughly document the notion of collection versus generated in our workbook so that it makes sense. And like I said, I'll provide additional rationale that staff had wrote up to kind of put some context around that.

And then lastly, so Issue Number 3, the optional data elements, there's really only a couple of very small inconsistencies but one that I would draw your attention to is again looking on Page 1 of the collection of data by the registrar, you'll notice for Purposes B and C, bravo and Charlie respectively, for now the group has put together their - for the tech fields that there are potentially three optional type fields that may be collected. And I know that we're still working through this notion of optional but for the purposes of just what we have documented now you'll notice that under Purpose B the tech email is not marked as optional.

And so I was hoping to get kind of an acknowledgement from the group that we can make that small change to convert it to optional just to help increase the consistency of what we're seeing across the workbooks. So I hope that was clear. I don't think that that's probably a huge issue. So I will turn it back over to Kurt to handle the queue if there are any other last questions or comments regarding this and if not then we can move onto the rest of the agenda. Thank you.

Kurt Pritz: Thanks, Berry, for all the thought that went into this. So I think the next step for this would be to ask Berry to, in a one-pager summarize the changes he's going to make to the data elements matrices based on the input we received

here and what's described here. And, you know, and what we want to do I think - some of these changes are pretty minor but we're naturally very careful that once something is written that we don't change it without reviewing it with the group. So for us we want to give Berry the license to do that because he, you know, finished the work, recognized the inconsistencies, has some questions to check back with you and then we'll go ahead and make those changes.

So I was just looking at the chat. So, Berry, could you - so I'm of two minds, one is you could write up a one-pager to describe the changes you're making to the workbooks in line with the analysis you presented, plus the feedback you have. And two is, you know, could we have some sign from the group, some thumbs up or green lights or something like that that says, you know, essentially we're going to, unless somebody objects, we're going to accept what Berry indicates in his write up as these changes to the data matrices that make them all copacetic with one another.

So nobody can go until you signal ascent or decent and then you go for the rest of the day. All right so I see Marc's thing, so comment so, Berry will write it up and return it to the group for review.

Does one of the staff want to review any action items, Caitlin or Marika? I always lose track of whose day it is.

Caitlin Tubergen: Hi, Kurt. It's Caitlin today. I've captured three action items from today's call. The first is that any EPDP team members wishing to work with Thomas and the small group on the responsible parties and joint controller should reach out to Thomas today. The second action item is for support staff to send the reworked language regarding natural and legal persons to the list after this call so that the EPDP team members can make their attributions clear. And then

others can add if they believe their views are not accurately or sufficiently represented. Please propose any edits by tomorrow, Friday, November 9.

Last action item as Kurt just recapped, is for Berry to summarize the changes - excuse me, for Berry to summarize changes made to the workbooks and data elements matrix as a result of today's discussion. And I've also captured one question to ICANN Org and that is, "Is making natural versus legal person distinction within Whois within the picket fence?" Thanks, Kurt. Back over to you.

Kurt Pritz: Great, thanks. Does anybody have any comments or additions or changes to those actions? All right terrific, so Berry, thanks so much for that work and Thomas and Diane and others that are doing the other work, terrific. Milton, you want to say something to bring us home?

Milton Mueller: Well I just said you said did anybody have any comments on the action items and I just wanted to say the action item 2 if you're proposing changes in the write up the natural legal persons please don't propose to change the statements that have been put in by other stakeholder group representing their views. You might want to add something representing your views but don't meddle with the things that are satisfying and acceptable to the existing groups.

Kurt Pritz: All right again, thanks to those guys that worked so hard on this other material. Have a great day and I'll be sure I'll be seeing you on email before I talk to you on Tuesday. Thanks very much and have a great day.

Terri Agnew: Thank you, everyone. Operator, if you could please stop all recordings?

END