

**ICANN  
Transcription  
EPDP on the Temporary Specification for gTLD Registration Data  
F2F Meeting - Day 1  
Wednesday, 16 January 2019 at 13:30 UTC**

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Kurt Pritz: Welcome, everyone. I'm pleased that you're all here. I'm pleased to see you again. This room's kind of awkward for communication but I think the team did the best layout for the room they could have given the constraints so we'll have to work a little bit harder to overcome line of sight issues and, you know, curvature of the earth problems with seeing the other side of the table but I think we'll work with that.

Before we start the meeting which I think there's some feedback, is this a little too loud? So before we start the meeting I want to do some procedural things and then we'll start the meeting in earnest. So I'll give a very brief overview of the three days and the – at a gross level the topics we're going to discuss and why they're in that order, I'm going to take a minute to introduce Ruth Boardman from Bird & Bird who's seated to my right who's our esteemed outside counsel on legal issues so we're very pleased to have her, and I'll give her a few minutes to introduce herself, tell you about her qualifications and experiences but there'll be more opportunity to interact with her later.

I want to try to, at the start of the meeting, address some of the process and procedural questions that have been kicked around in email just at a – also at sort of a high level. I want to spend our time talking about substantive issues

and so we'll take some questions as I tick through these issues and some basic responses to them but really to the extent we can – to the extent we can let's save our meeting time for substantive issues and then if we need to we'll preserve some time at some point in the meeting to talk about specific issues that you want to discuss. So that's sort of all the introductory stuff.

And then we'll kick off the meeting in earnest with some opening – important opening comments about where we are and what our role is and what we need to get done and then dive into the substance right away. You'll recognize too that Gina and David are here with us again so I'm really, really – I'm really, really pleased about that.

So if that's okay with everyone, I'll just say a few words about the layout of the meeting and the three days. So we thought we would keep the momentum going that we got in those small group meetings last week. So if you think about it we had 10 hours worth of meetings last week. We didn't discuss the key or most critical issues but they all need to be discussed and I think we disposed of say 10 or so – 10 recommendations or purposes in those small team meetings. And but it's not for the small teams to decide that they're disposed of but rather for the plenary group.

And so we've broken them into three groups and a punishment, whoever you're seated next to, except for Gina, but it's really meant to – it's really meant to facilitate the communication among your group. So the first day is essentially that, although we hope to finish that, you know, around the time of the last break or something like that and so we'll dive into some of the purposes that we didn't get to discuss then. And then on Day 2 we'll discuss the issues you raised in the poll but of course they're the ones that we think are most critical too so all around Purpose 2 and the recommendations that support that and well, you can see them – I don't need to talk anymore – you can see them in the agenda.

So, you know, we chose those as – from the polling that we did in our own sense of what could be the most difficult discussions because in Day 3 then we do some cleanup, we wanted to leave some time in case those discussions needed to bleed over or we needed to sleep on some things. But then some of the sort of middling recommendations and purposes are left – or recommendations are left for the last day. So that's why we grouped the three days the way we did.

So I'll take a sip of tea and pause for a second and see if anybody has any comments.

So the very first thing that we want to do is, it's a joy for me to introduce Ruth Boardman so we're really pleased that ICANN reacted quickly to the request and secured Ruth and her firm's services. You've probably, like I did, you probably read up on Bird & Bird and the work they've done in the past and I'll let Ruth describe that some more. But, Ruth, if you wouldn't mind would you introduce yourself and some of your experiences in this field?

Ruth Boardman: Sure. So thank you for the invitation to be here and the introduction. So I'm Ruth Boardman. I'm a Partner at Bird & Bird, which is an international law firm. We have offices in Europe and also in Asia. At Bird & Bird I co-head the firm's international privacy and data protection practice and I've been advising in the area since the mid 90s.

And some of the work I've been involved in has involved working with clients who've been engaged with supervisory authorities, so data protection authorities in the EU and I've also had experience working with clients who often have somewhat complicated stakeholder arrangements, and maybe not quite as complicated as this but it's always good to have a challenge.

I have been reading – I have read a lot of materials very quickly over the past couple of weeks and the past couple of days and wanted to thank the team at ICANN and actually especially Erica who's not here, for putting together a lot

of great background material for me so that I could learn as much that was relevant as quickly as possible, so that was extremely helpful.

I thought it might also be useful just to share an observation which is when I read both the temp spec and the initial report what really struck me wasn't the number of detailed recommendations left to discuss but also the progress actually that has been made in clarifying the purposes and the legal basis for those purposes especially in the initial report. It really felt to me as though there had been a lot of work, very productive work, that has gone into that. And if I can help take that forward and assist you in taking those recommendations forward then it would be a pleasure to be able to help on that. Thank you.

Kurt Pritz: Perfect. That's terrific. One reason – I want to say two things – one reason we asked her to introduce herself at the very beginning is she has some conference calls so she's got to get going so we're pleased that she made some time to talk to us in the first place. And then the first real interaction will have with us, as I indicated when I delivered the agenda, was that we're going to have a Legal Team meeting at lunchtime so we'll break off for a separate lunch and have a meeting. We're trying not to interfere with the work of the plenary too much because the Legal Team's made up of nine key people in our group so we're going to do that. So anyway that was great. Thanks, Ruth, and we look forward to working with you here and afterward.

So there are a number of process issues that were raised in emails by Kristina I think, Marc, gosh, who else? Anyway and so I answered some of them in emails and others I started emails but they never got sent so I want to touch on them here and maybe not quite in the order in the agenda and say where we think we are and where we're able to plan and where we're not able to plan, you know, I'm happy to take some questions afterwards. The intent – the intent of this though, is to give the best answers I can or we can and then get on with the substance.

So with regard to the final report and creating a first addition of the final report, the support team has crafted, you know, the gravamen of the final report which is, you know, adjusting all the things in the initial report that have to make it final which is, you know, changing its destination, its audience, the degree of scrutiny that has to happen. But there's – for me there's no real “there” there yet; you know, what's – the substance that's there is the substance from the initial report. And so we're going to start to augment that as early as today as we come to some agreements on some of these issues and so we can start making amendments.

So I – so I don't think it's beneficial to deliver a version of the report now but my request is – so our action though is to generate a version of that shortly after this meeting and my request to you in the meantime is if you have recommendations for how the final report should depart or be different in content or formatting from the initial report I'd really appreciate that feedback.

I know I talked to some of you that when first seeing the initial report were kind of surprised at how it was laid out and so I want to create a report that delivers all our conclusions but delivers them in a way that's really clear for our intended audience, which is I think not just the GNSO but many readers, so it would be very – this is important – it'd be very helpful to me if either verbally or via email you communicated how you think the initial report should look.

You know, with regard to timeline and the delivery of the initial report, we haven't changed the due date or the expected date. February 1 is right around the corner; there's a lot of work to do and, you know, the date of the – the actual date of the initial report and if it followed February 1 by a certain amount is really hard to predict. I think it'll be easier to predict after this meeting and seeing where we are.

And so how we manage the steps between now and then is sadly sort of ad hoc, so as you know, and, you know, I don't know if an apology is due but the

agenda went out yesterday but almost necessarily we had to wait and see where we were after the first two weeks of meetings after breaks and see how much progress was made and see how we wanted to lay out the agenda. And so that's sort of the world in which we all live, right? We have meetings twice a week and the situation changes from week to week. So the exact steps for getting to the final report as we define them, we'll certainly let them go to you.

I just want to say a word then about Phase 2. I think Phase 2 would start and the discussion of access would start almost immediately after we deliver the final report. So there'd be a pause I think for staff to get some stuff together for some planning, but that would start almost immediately thereafter. You know, the charter calls for the gating questions to be answered and then passed on by the GNSO in some way, I think it says non-objection by the GNSO, but that doesn't mean as soon as we deliver the initial report we can't undertake some foundational work.

Regarding consensus calls and the timing of the consensus calls and how consensus calls work, I tried to lay that out the best I can as I see it. I saw there's been a lot of email about it. I think that – I think that determining levels of consensus is really fact-specific that it depends on the set of circumstances that are – are you typing in my document as I'm reading it? Okay.

((Crosstalk))

Kurt Pritz: I just finished. So let me think about this a little bit. So with regard to the timing of the consensus calls, I don't believe we'll have actual consensus calls at this meeting. I think we'll practice at especially with these initial recommendations we're going to discuss today, we will practice that, understanding that we have the full agreement of everybody in the room. And then in a process that Marika might be able to describe for us better, we'll follow up with an email written confirmation of that your group agrees with a

certain position and then my duty as Chair is to label that as consensus or one of the many – full consensus or one of the many other labels underneath that.

You know, for me, and the agreements we had in the initial report, you know, I sensed at the time that everybody in the room agreed with those conclusions. And I would strive for, you know, achieving full consensus on all the recommendations we make. To the extent we don't, I think the level of consensus or non-consensus that we identify is going to be very fact-specific. And so I don't think it would be helpful to make charts or tables about different conditions or how many groups would have to approve or not approve a certain recommendation in order to achieve a certain designation of consensus or non-consensus.

Some of you have asked about the gap between the policy creation and to the extent that we don't flesh out specifics in the temp spec, the gap between policy creation and implementation, so I understand that might take some time. I don't know exactly how that would be handled. It could be handled in a couple different ways. I don't think it's up to me, I don't think it's up to us to determine how that would be handled.

There's a school of thought that the temporary spec could be extended for a while if there was a known gap. I'm not sure that's got the approval of all of us or of the GNSO. There could be a sense of certainty that if there's an approved policy out there that, you know, contracted parties could kind of set their sights on that and not make radical changes in what they're doing right now or radical changes with regard to how they're behaving with respect to the temporary specification. So I understand there might be a gap between policy and implementation. I don't know exactly how it'll be handled and I'm not sure it's our job but I'd be happy to talk about it.

With regard to parking lot issues, the parking lot – so we looked at the photographs from the meeting in Los Angeles, you know, the parking lot

issues I've captured are the distinction between legal and natural persons; whether we have a Purpose O or not; agreements between ICANN and dispute resolution providers; and whether or not joint controller arrangements – agreements are arranged.

So for the parking lot issues I think they all have a home and I think they're all sort of naturally on the agenda here. So I think that they're out of the parking lot. To a certain extent, some of these can be bumped into Phase 2, so for example, the charter calls for, you know, ongoing discussion of the distinction between legal and natural persons as part of Phase 2, so I think there's a home for discussing all of those parking lot issues.

And then finally I just want to talk for a minute about the public comment and the set of questions we got from ICANN Org regarding the temp spec and how specific paragraphs were handled. Okay. So I suspect that you've seen that. The staff's put quite a bit of work into organizing a response to that and we're going to recommend that we have a small group get together and look at those responses to ICANN as part of our response and I think they would feed into how the final report addresses the temp spec with some specificity.

So I'd also like to hear from you how you think going back to the final report how it addresses specificity. So to me those were the topics that came up in email – the – how soon can we see a version of the final report, the timeline and the steps for getting home, how we're going to do consensus calls, how we're going to address the implementation gap, parking lot issues and then these ICANN Organization questions we received.

To a certain extent those answers are vague but they're sort of the best we can do right now so I'll just pause for a minute and see what questions you have and how we can better answer them. Oh, Emily.

Emily Taylor: Thank you very much, Kurt and also thank you to you and all the staff who've been working so hard to support the work of this team. I think often we jump



on the list to highlight things that are missing or haven't been done to top satisfaction but I think we don't say enough how much we appreciate the work of the staff and particularly over the holiday season you got a huge number of materials together which was incredibly impressive.

There were just two quick points I wanted to pick up on. You know, you asked, Kurt, about the format of the final report and I would hope that we could really aim for brevity and tightly couple it as much as possible, go – with the statement of work or the, you know, the tasks that we were asked by the community to go through that we had a very detailed document produced by the community which was the foundation for this group. And I think that this is now the point where we've got to kind of step back from the detail that we've been really in and go back to that, you know, that statement of work and see whether we can really concisely show that we have stepped through and answered all of the tasks and where there are gaps, which there are bound to be, that should be a priority for this group to fulfill.

I was really relieved from a personal level to hear that you think that there might be a gap after we produce the final report between, you know, Phase 1 and Phase 2 because I'm sure like many of us, I'm not the only person who's really struggling to keep up with the work pace and the workload generated by this group. And I also feel really torn between what the options are at that point. I think that it does provide a natural point to – for people to step away in a way with no kind of – it's not like a big resignation or a big deal; it's just like there is a natural break point in our work.

Of course there's also a lot to be said for how hard we've all worked to try to build an understanding of the issues and understanding of each other and we work I think quite well together as a team. So there's a lot to be said for consistency but I think that some of us are really struggling, particularly those who are not in, you know, we're in – I work for my own company, which is a bit mad for me to be on this, but so that was just a quick response to that. I

haven't really addressed the process issues that you raised but those are just initial responses on that. Thank you.

Kurt Pritz: Thanks, Emily. Marc was in the queue too, and, Marc if you could – and everybody if you could state your name and affiliation before speaking?

Marc Anderson: This is Marc Anderson for the transcript. Can you hear me okay? Great. I agree with what Emily said. I won't repeat what she just said; I'll just sort of try and complement a couple things she said. One of my, you know, that's great introduction, thank you, Kurt. And one of my first reactions to that is, you know, I want us here these next few days to be super-focused on getting to the final report. The timeline is two weeks from Friday; that's a super short amount of time.

You know, in Barcelona we did a lot and we accomplished a lot but at times I felt like we had our heads down focused on the task in front of us. We were looking a little bit too much at the trees and not the forest. And I put that down in my notes because I was reacting to what you were saying in this agenda – it's a great agenda, it focuses on, you know, the key issues in front of us. But there's, you know, there's very little in here talking about the final report. And what I fear is we're, you know, we're going to focus on these issues; we're going to talk about these issues.

I'm sure we're all going to deliberate and do our best jobs to come to consensus and agreement on these issues, but then we're going to walk away from here and staff is going to have the task of taking the things we talked about, our deliberations, discussions, you know, email interactions, and distilling that into a report and we're going to have very little time to review, react to and adjust that.

And so I would like to see an agenda or time on this agenda that spends a little bit more time looking at and focused on that actual report. You know, that, you know, that Phase 1 final report, that's why we're here is to produce

that deliverable. And to the extent that we, you know, as a team here, you know, here together in person can focus on that report not just the issues that will go to the creation of that report, will ultimately result in a better document. So I guess you know, I'm asking us, you know, while we're here let's focus on that more to the extent we can and keep that in mind as we're, you know, as we're meeting, as we're deliberating, you know, how does this help or not help in the producing of that Phase 1 final report?

And again, you know, I'm looking at my list and trying not to duplicate what Emily said. I want to react to one thing on, you know, you talked a little bit about consensus and, you know, you sent an email with your initial thoughts. And you know, there's been some email back and forth which, you know, is great; ultimately we're going to have to figure out how to do that. I guess just one thought I wanted to add, you know, it's, you know, when it comes to consensus it's not just how will consensus be determined, I think that's where we've been talking the most. I just want to remind you it's, you know, we also have to decide what we're going to determine consensus on.

You know, how, you know, how are we going to, you know, break out the final report, the recommendations in the final report, the portions of the final report and say, okay, these, you know, this section we're going to determine consensus on; this, you know, section, you know, this is just introduction; we're not going to determine consensus on the introduction or an appendix. You know, what, you know, it's not just how do we determine consensus, it's what are we determining consensus on?

And I think the sooner we can, you know, we as a group can wrap our heads around, you know, what are the parts of that final report we're going to determine consensus on, you know, I, you know, I haven't clearly laid out, you know, I don't think we're going to have a single yes or no consensus call on the entire report, right? It's going to be, you know, I assume – I don't think that's been said, you know, Kurt's nodding for the transcript, but I, you know, so let's not lose sight of the, you know, the what are we determining

consensus on in our discussions on how we're going to determine consensus. I think you know, I'll stop there; most of my other notes largely overlapped with what Emily said. Thank you.

Kurt Pritz: So before I get to James, Marc, I just have a question, when you talk about we should focus on the final report, I'm trying to understand whether you mean the formatting of it or how the – or how the policy recommendations are parsed from answers to the charter questions, so I don't – because we don't have any additional agreements beyond what we had for the initial report, so there's not any substantive change to make yet. So I want to know the kind of discussion you want to have so we can put together some documentation and get that on the agenda.

Marc Anderson: Fair enough. Marc Anderson again. So you know, I'm looking at this, you know, from my view, right, our Phase 1 final report is primarily, in my view, to replace the temporary specification. We need, you know, the temporary specification goes away in May, we need a replacement for it. And that's what this Phase 1 final report needs to accomplish, right? And so first and foremost you know, I think we should be looking at each of these things and saying, you know, is this necessary for Phase 1? You know, do we need to do this now or can we handle it in Phase 2?

I'm not always convinced that that's a shared view in the room, right? And so I think, you know, one of the first things we can do is, you know, make sure, you know, when we're going to through each of these topics, you know, as we tee each of this up, you know, have that question, you know, how does that impact the – how does this topic – how does this discussion we're about to have impact our ability to produce a Phase 1 final report?

You know, we all come at this from different angles and different viewpoints, and so, you know, having, you know, having a sort of a common goal of producing, you know, language for this final report I think can help, you know, get us to consensus, you know, help us come to agreement if we're all on the

same page on what we're trying to do, right? And so I think, you know, my intervention was to try and, you know, the point I was trying to make was okay, you know, let's make sure – let's not just pick up where we left off, you know, and go through topic by topic by topic.

You know, and I'm not, you know, I'm not saying that's, you know, not a good thing but let's make sure each of these topics that we're having we're framing in the context of, okay, how does this help us produce a final report for Phase 1? Is it necessary? What's our goal? What are we trying to accomplish here? So I'm trying to – so my intervention was to try and focus the conversation, remind us of the forest, which is this Phase 1 final report.

You mentioned the questions, you know, the charter questions, you know, it wasn't necessarily on top of my mind, you know, there was a, you know, we've never, you know, we never deliberately sat down and gone through the charter questions. I think your approach has been, you know, if we follow, you know, we follow this work plan in the end we'll have answered the charter questions. Right? And, you know, I have some thoughts on that; maybe we can take that offline. I've already probably spoken too long so...

((Crosstalk))

Kurt Pritz: No, that's really helpful. Thanks. James, go ahead.

James Bladel: Hi, James speaking. So Hadia actually raised her card before I raised my hand in Adobe Connect, so I would defer to her on the condition that we all agree that we're going to use one method or the other? Can we just establish that?

Gina Bartlett: Hi, this is Gina Bartlett, CBI. So we would like everyone to use their name cards in the room and we have any remote participants, Caitlin has agreed to monitor for the remote participants to feed them into the queue. And we have some more comments on why we want to do that – I can hold on that.

James Bladel: Okay.

Gina Bartlett: But essentially it's so that we have flexibility to help you problem-solve. If we have a visual in the room – we physically cannot be monitoring our Adobe Connect; we want to be able to have flexibility to hear from different people, to build agreements and we want to be able to thread on certain topics. I know this is really hard because everyone loves the Adobe Connect...

James Bladel: Kind of breaking our culture right now.

Gina Bartlett: I know. I know it's super tough. But we want to ask you to try and work with us on this and then we will check in at the end of the day but we really feel to help you be as successful, get you to the final report, build agreements, that's the best tool.

James Bladel: Okay, so I will lower my hand in Adobe and I will go behind Hadia in the card queue thingy.

Hadia Elminiawi: Hadia Elminiawi for the record. So I would like to agree with what Marc said that we should focus on the final report. And I guess we all agree that we are all into this together because we would like to see an implementable effective Whois registration data, that protects the rights of the users and allows them to have an online and secure – a secure experience online and complies with the GDPR.

And for those same reasons our team or our group was set to have a diverse structure. And our diversity is not only in our positions and interests, but it's also in our experiences and backgrounds. And I would argue that if we end up with a good product or a good final report, it would be because of our diversity and not only in our interests and positions but in our experiences as well.

And so what I would like to say here that we should not by any means try to compromise our diversity. And I'm saying that because of the conversation that was going on the emails about the – how positions of different groups will be assessed, yes. So I think that each group, each group's position should be taken into consideration and we should not try, by any means, to compromise this diversity. Our good work is because of our good collaboration and our diversity. And again, the final report is our ultimate goal. Thank you.

Kurt Pritz: Great. Thanks, Hadia. James, it's your turn.

James Bladel: Thanks, Kurt. So agreeing with everything that's been said previously, I won't rehash that. I just have two requests for this group, if you want to call it putting a marker down on some things.

The first one is this discussion about implementation and what happens in between, you know, that gap, we had some conversations about this amongst the contracted parties yesterday during the cocktail hour, and I just can't emphasize enough that, you know, from our perspective, looking at the calendar and looking at just how long these things take with ICANN staff, and that's not a slam on ICANN staff, they're working as hard as they can, but just the nature of things including just the background of the ICANN meeting calendar and everything else that's going on, we can't leave Toronto with that just kind of hanging out there; we really need an answer. And if it's not for this team to decide that's fine, we need to identify who decides because we need to start that work like yesterday.

So I just want – I can't emphasize enough. I know that's kind of a bit of mop-up work for a lot of folks that maybe don't have contracts with ICANN but for the rest of us that is, you know, that is a critical issue that we have to, you know, flag that.

And then the second thing is more to the formatting of the final report versus the content, can we maybe break with our usual approach to those reports

and really focus on what the reader of that report is? This is possibly going to be one of the most widely-read, shared, analyzed and distributed reports that the PDP has ever spit out and I think it's really important that we focus on, you know, let's do a – are you guys familiar with the TLDR, too long, didn't read, yet let's focus on the TLDR of this report.

You know, the recommendations, the policy recommendations, the level of consensus, the rationale and all that other stuff and all of our talks and years worth of deliberations, and we can move that to an appendix, we can move that to a supporting chapter or whatever, but let's really kind of put ourselves in the mindset of the folks who are coming at this casually and could for the first time, what are they going to want to see and what's the headline?

You know, if we borrow from journalism, you know, the inverted pyramid, let's start there. I think we – unfortunately we start with the meat and then, you know, we kind of, you know, we bury people in detail. So if I could just put that out there as a – I know that – I see maybe staff is maybe not sure what to do with that recommendation and I'm not sure really sure what to do with it but I just think if we can kind of maybe restructure what our normal report looks like and keep it focused on the reader's interests. Thanks.

Kurt Pritz: Thanks, James. And in response I wonder if we couple your first comment to what Marc said, you know, if we think about each recommendation and how it would affect the final report and all the other documents, that would enable us to do some sort of gap analysis, right, between, you know, what the final report is and what contracted parties need and that would help us, you know, not only forecast how long the gap is but how to manage it in a better way.

So I'm trying to think how to do that but, you know, let's talk about that and we'll maybe, you know, maybe Day 3 we can have a concentrated effort around that so we have some sort of tool. Anyway, just Margie or Alan, I didn't know who was next. Is it Margie?



Margie Milam: Yes, thank you. This is Margie. I agree with pretty much everything everyone said. Marc, I have a question for you because I understand what you're saying and – do you think the end product should be a redline of the temporary spec? Is that the easiest thing? Or do you think it's principles that go to staff that, you know, and then you have an implementation process that comes up with whatever the new document is?

I'm just trying to understand like what we think the end product is because I do agree, the initial report was really confusing for folks who didn't, you know, like the format of answering charter questions is completely foreign to someone who isn't familiar with our process and I think it really confused things. So, you know, in my sense you're almost writing a report from scratch; you're not taking the format from the initial report and it's a description of what the new Whois should look like.

And maybe the place to start is the temp spec with a redline. I don't know – I don't know the answer but I'm just trying to understand what we think is, you know, will give the contracted parties a little bit more clarity rather than these like vague recommendations that, you know, you guys won't know what to even do in the interim, but if it's a redline off of the temp spec you at least have already come up with some sort of process for analyzing that.

You know, and that's really a question to you guys, what works best for you? But I agree, clarity is better, implementation period is absolutely important and I think we should make that a high priority to consider in this meeting. And also really understand what the formatting is because I think that'll help drive the discussions in the next few days. Thank you.

Kurt Pritz: So if you want to respond you're welcome to and then – so I really want to move – let's take this and move it to an agenda item in the meeting because I think it's obviously a key issue. And then I want to get to the meeting proper as soon as we can. But Marc, please go ahead.

Marc Anderson: Great, thank you. Marc Anderson for the transcript. And I think that's a great question and I know we want to get to the meeting proper but I think this is important to cover. And, you know, you asked, you know, should we, you know, should we produce a redline of the temporary spec? And I think that's one thing we could do. I don't necessarily think that's the way to go but that is an option. And I want to back up for a second, you know, when there is – in the lead-up to ICANN producing the temporary specification there was a lot of talk about oh, we're going to need lots of time to implement.

And I don't know if, you know, looking back, we didn't take a lot of time to implement because ICANN produced a finished policy in the temporary specification. And the way the policy development process works, we don't typically produce a finished product; we produce recommendations, the Board approves those recommendations and then instructs staff to produce a policy based on those recommendations so there's you know, there's an implementation period that, you know, oftentimes, you know, much to Alan's dismay, takes longer than the development of the policy recommendations themselves, right?

And I think this touches on the points that James was making, you know, we've got, you know, there's this period of time where we're going to have, you know, figure out how to implement the recommendations we get to, right? And I think that's what we're talking about here; we're all sort of circling around that issue, right? And I think this is, you know, this is a great sidebar; I think this is, you know, this is probably not how you envisioned starting off the meeting, right, but I think these are important questions we're grappling with.

And because of the time constraints, right, I think what we want to get to is producing a Phase 1 final report that is as near implementation ready as we can get. Right? And I think, you know, one approach would be to take, you know, what, you know, what we've discussed, you know, what our recommendations are, our, you know, we could take the, you know, the

purposes that ICANN developed in the initial report and swap them out with the purposes we've done, right? We could do that.

I don't necessarily think we want to use ICANN's, you know, version as the starting point but I think you know, we could, you know, we could do a lot of good by drafting something that replaces the temporary specification that ICANN produced rather than just writing a bunch of recommendations that somebody's going to have to figure out how to implement later. So great question.

Kurt Pritz: Thanks for that. Marika, before I get to, Alan, Marika has a response to Margie's point too and maybe James.

Marika Konings: Yes, thank you very much, Kurt. This is Marika for the record. Yes, I think just to respond, I think, you know, Marc is absolutely right, you know, the objective of a PDP working group is to produce policy recommendations; implementation is done in the next phase and that usually indeed takes the form of, you know, policy recommendations that are interpreted. I would kind of caution to this group trying to do the implementation because of course there are, you know, there may be different forms in which that makes the most sense. You know, it may be the form of a specification, maybe it takes the form of, you know, new contractual provisions that are replaced.

I think as you all know, different policies have been implemented in different ways. You know, the transfer policy is a standalone policy. And again I don't know if this group is the – has the time and place to really consider that. But of course as being as specific as you can and I think that's some of the questions that ICANN Org has asked as well in relation to the temp spec, you do need to confirm if certain principles or certain aspects of the temp spec that are not covered currently in the initial report need to be maintained, need to be discarded or need to be treated differently. So I think that's the kind of implementation guidance that you know, Org would be looking for in order to be able to implement it in a timely manner.

To James's question, you know, the audience of the final report is really the GNSO Council. You know, I understand that there's a broader audience that will want to read it so you may want to consider producing kind of a separate document that explains in more laymen terms what this is about and what it's doing, that communicates the report. But the ultimate audience is the GNSO Council and subsequently the ICANN Board who will be looking at the recommendations and adopting them.

You know, staff is happy to discuss with everyone here as well how to better organize, make it more readable, you know, there are specific requirements of what needs to be in there but that doesn't preclude, for example, moving certain things to an annex or linking or something like that. But, you know, there are certain aspects of what needs to be in there. And, you know, it may also be helpful if anyone's interested that we share some links to previous final reports so you also can see, you know, what a typical final report looks like.

And again, that doesn't mean that you need to, you know, follow that exactly but it does give an idea of I think the expectation from a Council perspective what they expect to receive and what they can consider and then subsequently as well of course the ICANN Board. I hope that's helpful and address some of the questions and comments.

Kurt Pritz: Thanks, Marika. Alan, please go ahead.

Alan Greenberg: Thank you very much. First a brief comment on James's comment on breaking our culture, I work in some meetings where everyone uses cards and that's fine. There was a propensity certainly in Los Angeles to be blind to a half side of the room or something like that and ignore – so the nice part about Adobe Connect is it preserves the order in which you raised your hand. Now I understand as moderators you may want to change that deliberately, and that's fine, it would be nice to be telling us that, but accidentally ignoring

one side of the table because you're always focusing – physically looking at another side is really upsetting. So just to note that.

On the report, I strongly support making sure that the body of the report is focusing on the issues and not on the boilerplate and all the other things that are required and that includes the charter questions. It's really important that people not only read the executive summary list of recommendations but understand a little bit about it but the formatting has to allow that. If you have to pick and choose which paragraph to read out of a 190-page report it just doesn't make it. So and I'm saying that in the midst of finalizing another report for a group I'm chairing and it's a real dog's breakfast to try to make it useable without losing what we need to have. So I don't have the answer on how to do it.

One last comment on the redline of the temp spec, I think trying to do a redline saying how it is changing is going to be impossible. On the other hand, highlighting the sections and perhaps adding a comment to the parts that have changed I think would be really, really useful. Thank you.

Kurt Pritz: Thanks, Alan. And we'll collaborate during the break and talk about queue management. Stephanie, last comment.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record. I don't want to delay us any further but I just want to point out that if we are interested in having a readable, clear final report then we have to, difficult as it may be, agree on what we're actually doing here in this EPDP because I don't really agree that the temp spec was a policy; the temp spec was a contractual waiver as it were in order that the contracted parties could stop violating the GDPR and thus not expose themselves to liability so it certainly wasn't much of a policy.

And as I've pointed out probably tiresomely in the past, there are a whole lot of issues bound up in this. Where's the picket fence in all of this? What policy are we doing here? And what legal review are we doing? Because I would

argue, based on the work that we've done over the years, that we've never really had a proper legal review of the Whois documents, policies, procedures, etcetera, so we're kind of shifting, lurching from side to side of the boat here doing legal review, doing policy review, and doing temp spec contractual compliance review.

So we need that clarity because the outside reader who doesn't understand how this place has worked over the years, can't possibly figure it out and it doesn't look like we've done a good job unless we explain that. Thank you. I would also – and I know we only got the legal opinion on the controllership issue, but that stands at the very heart of any legal analysis under GDPR and if we don't know who's the blessed controller, we can't figure out the purposes properly. So that's an (attribution premodal) that we ought to be addressing. Thanks. Bye.

Kurt Pritz: Is that Canadian?

Stephanie Perrin: That's your touch of Canadian content here. Welcome to Toronto.

Kurt Pritz: Thanks very much, Stephanie. And thanks particularly thanks to you that made comments along the lines about our big goals for the meeting and our targets and what we want to do here – I really appreciate that. Thinking about that and some introductory remarks as we start our meeting proper, while I was unable to sleep last night I was reading all the New York newspapers and I read an article about – I read an article about, you know, the US government shutdown and Donald Trump and his negotiating approach and the article mentioned, you know, in Donald Trump's negotiating approach and maybe the other side's too, they approach it as, you know, there's winners and losers so I'm in a negotiation to win.

And of course the author of the article pointed out that's not what a negotiation is, right? It's to identify what you need and you want to get something out it but you also want to identify what the other parties to the

negotiation need too. So we want to – so that's our purpose here, our negotiation goals; the goals of our work here, you know, identifying our collective problem, all our problems, and how do we solve for it, you know, especially given our divergent interests. So it's not just what your problem is, you know, when you come to an issue but, you know, what are the other people's problems and how can I put together a package to solve our mutual problem so that there's wins for both sides?

You know, I was taken by Marc's comment about, you know, the forest and the trees too because we start to need to look at the forest and visualize what a final report is and visualize what a package of coincident compromises and accommodations are that get us to a final result that allows all of us to go take back not just some victories but what we need. We all have different needs so we need to come away with this from what we need.

Sometimes in a PDP lack of consensus can be determined to be victory, right, because it maintains the status quo and sometimes the status quo is a victory but that's not our – that's not our case, right? We don't got no status quo. So not only are we, you know, obligated to find, you know, the intersection in a Venn Diagram where our interests are addressed but, you know, need to do that in a way to address all our needs. So when you're talking and you're pitching something think about addressing your needs and think about the other guys' victory speech too.

You know, how many times have we said, you know, there's a lot at stake here? And I wonder what the, you know, sometimes I wonder what the heck that is, you know, it's, you know, time's of the essence, we're in uncharted waters and there's a lot at stake. And so I've been thinking about that and people saying, you know, this is a test of ICANN – whether ICANN's multistakeholder process works or not. And I'm not sure what that means too, so I've been trying to think about what this whole thing means to us and, you know, what success looks like but, you know, what lack of success looks like too.

And, you know, I think, you know, there's this short term problem that the contracted parties will all be offering different approaches to GDPR and it'll be a really messy environment for anybody to deal with, not just IP and the Business Constituency but registrants too; there'll be all sorts of different ways of approaching this on the market. I think the ICANN contracted parties contractual relationships will disintegrate a little bit, the active participation of some of you or other parties in the ICANN multistakeholder model, some parties might withdraw a little bit.

So I see, you know, and to the extent you think about this too, I see not just, you know, denigration to ICANN because we couldn't address GDPR in a uniform way but, you know, the whole reason we invest in being here kind of goes away too. So, you know, we need to think about the import of what we're doing beyond just solving for GDPR.

You know, something I usually don't talk about is, you know, the effect of what an intensive experience like this has on someone, so this has been a really intensive experience for me. And, you know, I think – and so intensive experiences usually result in something quite memorable. And there's something – I talk about in job interviews that's called the cocktail party effect. And when you're in a cocktail party and somebody asks, so what are you working on or what are you doing? You know, inside whether you're instantly proud of your job or whether you hate your job. Sorry.

And so we should, you know, to the extent our egos are a little bit tied up in this we want to think about too how, you know, how we'll talk about this at a later time and whether you know, we'll tell our fellow drinkers or our kids, oh, you know, we had this experience and, you know, some say we did the most important – one of the most important things in the last decade of ICANN. Or we'll say, oh we did this thing, you know, we worked 24/7 we failed, you know, so and so across the room he or she didn't, you know, what a screw-up. You know, that's a sad story.



So I think that, you know, for me personally, and what's invested in it and listening to Emily and, you know, extrapolating that to others, you know, I think we want to say that we established some sort of exemplar about how ICANN could work. You know, ICANN could work with the speed of the Internet as the mission statement said, and, you know, much more powerful than, you know, well we would have succeeded except for so and so.

I think that, you know, another thing – another point I want to make is I think we're a little bit too self-effacing about what we've done so far. I remember in the last ICANN meeting, I guess in Barcelona where we gave a presentation, I think the audience was kind of – well was impressed by the amount of work we're going to. I understand we got to go through this data analysis again and make sure it's right. But we you know, in the intensity of work we forgot what we were doing two or three months ago. And I think Ruth, you know, Ruth's statement I think really brought it home that she read the initial report and said, boy, you guys, you know, cured a lot of stuff that was in the temp specification so she read it approvingly.

And I'll admit, you know, I set her up to say that but I'll tell you how the original comment came about was we were meeting with her yesterday and Marika said, so, Ruth, do you see any red flags in the initial report? And she said it more bluntly, she said, well, the temp spec was okay but it was kind of a mess and the initial report fixed a lot of that. And so I went whoa. So I think that – so I think we don't – we should feel good about where we are and then that it is competent work and then take it to the next step.

And so, you know, for me for my goals for this meeting and our discussion about what the heck consensus is, you know, I'm for really trying to find full consensus on each of the recommendations we make, so that's my goal. And, you know, to bring it back to the very first point when we're having this discussion and whether or not we'll go along with a certain recommendation, you know, we want to be looking at the forest and not the trees and try to

combine certain packages of recommendations to see that we're getting what we need and the other parties are getting what they need.

And then so I think in that sort of discussion like you know, we've been at this not a long time in ICANN-speak, you know, five months or so but in the number of meetings and the number of hours, a lot. And so I think we're kind of past the time for convincing the other party of one way of thinking or another; I think all the arguments are made. So now is the time for understanding that we get what we need and the other parties get what they need.

So with that I'm going to turn it over to Gina and – Gina, who's going to tell us about – talk about the mechanics and processes for how we're going to run the meeting and start a substantive discussion before we take the first break.

Gina Bartlett: Okay. Hello everyone. This is Gina Bartlett for the record. Now I'm doing it as well. Thank you, Kurt and thanks to everyone for your comments. You know, this is the last meeting leading to the final report and we know that you all can work really constructively and so – and we've received a lot of thoughts about how to best structure your conversation here together.

So what David and I want to do is just take a few minutes and introduce some process suggestions that we think will help move you in that direction. I mean, to the point around diversity as a reason you're all here, you know, what we like to think about is how do we build on the different interests and the diversity of opinions to strengthen the outcomes and the agreements that you reach? It's tough work but ultimately you're a microcosm of the broader ICANN community and the reason that we're all here together is to try to have that representation of the different interests and build on that diversity so that whatever the agreements and outcomes are they're robust enough to be responsive to the broader community.

So we have taken to heart a lot of the comments that you all have made on the processes and sort of the practices for us to be here today and so what we're going to try to do is blend your feedback and with some best practices that we use and David's going to walk us through some of those. We will test for, you know, can everyone live with agreements across the group as we move through each element but we are driving toward the final report. And appreciate the suggestion of anchoring the conversations to how it will impact the final report. And we can very much do that.

So I think with that I'm going to pass it to David. I just want to say that on the process suggestions, just like we've done when CBI's been working with you previously, we ask that you work with us and each day we will check in at the end of the day to see how the, you know, the methods we're using are working for you and we can edit and adjust and refine for the subsequent day. Because we know that you all work constructively but it's easy to kind of go down a discussion on the process so what the leadership team we met all day yesterday to attempt to structure your three days of work together but also the elements David's going to speak to so that we can have a process we jump onto and we move through in order to get you where you want to go. So David. I can...

David Plumb: Hey, folks. I'm going to move around a little bit. I think I'm going to ask at lunch or at least tomorrow if we can change a little bit our – this is David Plumb, by the way, for the record – if we can change our set up here. I feel like we're unnecessarily stretched out in this room, right? I'd love to bring you guys up to here, you know, or maybe circle you around, get rid of this table, put the flip chart somewhere where we can actually see it. All those sound like good suggestions. So for practical purposes we'll see how we do that maybe over break or at least tonight.

Okay, I just want to mention right now a couple things about how we're going to have our conversations that build on a lot of the email traffic that we've seen from you all as well as our own experience in this. And I want to go for –

start out with what I'm calling three mantras for agreement-building. All right? And these three mantras are just sort of mental models that I want us to use as we are working forward in these three days, all right? This is not rocket science but it is helpful to have some shared mental models about what we're doing together. Right?

And those three are here, Gina's putting them up, they may be too far away to see, we'll figure out how to sort that out. But the first one is prioritize. Okay? We've got how many recommendations and policy and processing purposes, right? We've got how many answers to questions in the charter? There is vast amounts of information and ideas that we're working through.

If we go down the rabbit hole on every single idea, we're going to have a really hard time over these three days and getting to February 1, okay? So there's some internal reflection that you all need to do in your groups about what's really, really important for each of us? And let's stick to that, okay? And we'll have different priorities but we really need to know what our own priorities are so we don't have a mental exercise on every little turn of the phrase, every little way everything's put in this document, okay?

Our second piece is what Kurt said, we need to do joint problem solving. It's not enough to solve just for our own priorities and our own interests. That's really important because that's why you're here is to put those interests and priorities on the table, but it's insufficient for reaching agreement. ICANN and GNSO in its wisdom said, all of you belong here, right? You were all convened to be part of this conversation which means when we are looking for consensus recommendations that you need to be there and we need to be solving for the other person's problem in addition to our problem. Right? We'll keep asking that again and again as people start putting ideas on the table to solve.

And the final one is maybe a more fluffy loopy-goopy, I don't know, but we do need to be creative. We have been and when I was involved in Los Angeles

and what I understand happened in Barcelona, you came up with good ideas; we need to keep that going. This is just – this isn't just about cutting things in half and you get half and I get the other half; this is about building new things together that we don't even know right now standing here at the beginning of the three days. Okay. So those I want to suggest are mantras so we can keep coming back to and saying this is how we're going to be building agreement on a really tough messy issue that's befuddled ICANN not just in this period but for years. Okay?

The second thing I want to mention is about how we're actually working; our ground rules for dialogue; similar to our mantras, but a more sort of practical level. Right? And the first two you can imagine what they are, and you all have suggested them too, we need to share the floor; if it turns out we're giving a lot of monologues and we're spending – individuals are spending a lot of time talking, then I ask you to empower Gina and myself to help control that, share that floor. Okay? All right, are we empowered? Great.

So empower Gina and myself to help us all share the floor. And we'll do that too, okay? So after this initial spiel you're not going to hear as much from Gina and me, okay? The other is to be present. And this is the tricky part about working on complicated documents and having this like halfway in, halfway out with the chat room, okay. I understand that in Barcelona there was a lot of frustration because the chat was like fully shut down. We're not going to do that this time. The chat could actually be our friend as a way to push some stuff that doesn't need to eat up our air time, that doesn't actually effect the outcome of the policy recommendations or the purposes, but it needs to be said somewhere so use the chat, fine. Wonderful.

But if we're not here, if we're not talking to each other, if we're just behind screens and our eyes glued on those screens we're not going to actually make progress, all right? So we need to be present. At the same time, we give the flexibility to have the chat open, right? And the final one is about trying – and the reason we have the seating the way it is, as Kurt mentioned,

is we want to try to within your groups, all right, to start to build alignment in your group so it stops being a set of individuals sharing opinions and more groups that have done internal deliberation and are sharing priorities and trying to problem solve with everybody. Okay?

So we are specifically – you'll see right when we jump into this which is moments away – we're going to create time for groups to pull back from the table simultaneously, have a conversation amongst yourselves, what's our key priority here? What's most important? How can we solve for the other people's – the other groups' challenges? Right? So we're going to have that group conversation and we'd love to have you always pushing that. And we know you've been caucusing already and doing this work, and we want to encourage you to keep doing it. And we'll make space for it.

Okay, that's what we had talked about. And I'm not going to say anymore about it. I think, Gina, if you want to just set us up for what's coming next I think that would be great.

Gina Bartlett: Okay great. I just want to do one more add-on. The other thing in the agenda, what we've tried to do is be very concentrated on things where we have agreements out of the small teams where they're recommending, so we're going to try to move through that stuff relatively quickly. So we really ask you to think about the whole puzzle and prioritize where you want to spend the group time. And then we've tried to create more time for deeper deliberation on the tougher issues that, you know, we weren't able to grapple with in the small teams, that we really want to use group in person time to problem solve and go deeper on.

Because I just think if you can have that lens as you're looking through this – through these recommendations and thinking about how we use our air time and where we prioritize, I just think that's really key to be thinking about. So I need to – we're going to go into the first round. We're having Internet

problems so for folks online, do we have very many people online? We can't tell, okay.

But we assume that they can hear us – we assume they can hear us so if you're online, if you could pull up the agenda and the small team agreements, the summary of the small team agreements, that's what we're going to be using in order to get started. So if you go to your agenda we're going to get going with – we have broken out today's agenda out of the small teams starting with the purposes and we're going to try to get through as many of the purposes as we can but also the recommendations.

And we've broken it out by where we had agreements from the small teams, where we have finalized – we have recommendations from the small teams with no changes, then we have recommendations which have some updates to address the concerns of the public comments, and then we're going to move on into some of the other purposes and recommendations later in the afternoon, and we can carve out some time at the end of the day to talk a little bit more about what this means for the final report, okay? So that's kind of our structure for the day.

So the first round that we want to do is where we had purposes, where we had agreements from the small team. And so that is the top four up there, 3, 4, 5 and 6. So I just want to provide a few process reminders and then set this up how we're going to structure this. So the small teams reviewed the comments and in this case determined that there was not a need to change the purpose. In setting up the small teams we agreed to defer to the small groups so it's a high bar if you need to change this because you had representation and the small teams have responded to the comments.

And the question that we asked of the small teams are, were the concerns expressed in the comments sufficiently addressed; to consider the comments from the PCRT, the public comments and determine how it needed to change or did refinements need to be made to be responsive? We are going to ask

for no repeats. If something's been brought up before, discussed, you already, you know, had a lengthy conversation; we're not bringing it back in here. So the question really for you is there any group that thinks that the concerns expressed in the public comments were not sufficiently addressed on these purposes? So 3, 4, 5 and 6.

So what we want to do is give you 10 minutes to review the comments for Purpose 3 and then organize amongst yourselves within your group, is there anything that we need to raise and then we're going to try to move through 3 and then we'll give you some time what 4, 5 and 6, we'll do that individually per purpose, okay.

Now somebody asked what's the impact on the final report? And I talked with Marika. Marika, can you let people know what the impact is for purpose – for these four purposes on the final report?

Marika Konings: Yes thanks, Gina. This is Marika. So basically we would be updating the report in line with the proposed updated language so we would be doing that for you in redline so you can see the changes that are made that is of course for your review; once the final report gets published it would just have the kind of final language. Of course we are including a section in the final report that relates to the public comment period and that, you know, links back to all the conversations and all the documents that have been produced so people are able to see, you know, why these changes were made based on which comments. So there is a clear line for those interested in seeing that change. But the direct change would initially be redline change for you to review and then of course the final report would show your final agreed-upon language.

Gina Bartlett: So the question for you to consider is to review the Purpose 3 and the comments and is there any group that thinks that the concerns expressed in the public comments were not sufficiently addressed? Kavouss.



Kavouss Arasteh: Yes, good morning to you and to everybody. I think what you suggest is good but for some items we don't need to go to the group; we could do it here directly. For instance this one here. Is not complicated.

Gina Bartlett: Okay.

Kavouss Arasteh: Because it is further expanding the terms...

((Crosstalk))

Kavouss Arasteh: ...communication with includes notification to.

Gina Bartlett: Okay.

Kavouss Arasteh: When you communicate with somebody you notify (unintelligible), it is embedded. We don't need to go that far. The only thing here when we say that "or their designated delegates for" (pa-ta-tee pa-ta-ta), it is also embedded here. So I'm not...

Gina Bartlett: Okay.

((Crosstalk))

Kavouss Arasteh: ...suggesting this one but we could resolve this issue directly here; not going to the group.

Gina Bartlett: Okay, I'll check in with the full group – with the whole group to see. I'll do that next. Georgios.

Georgios Tselentis: Yes, hello. Georgios Tselentis for the record. I wanted to ask if you can bring back on the screen what was on Purpose 3 as rationale? I think it addresses the comments but not all of the comments, there were I think...

((Crosstalk))

Gina Bartlett: Okay that's the purpose of the groups, Georgios, is to have the time to reflect...

Georgios Tselentis: Yes.

Gina Bartlett: ...where you look at the comments and you review the small team rationale.

Georgios Tselentis: Yes, my point is that if we don't have a sort of feedback of what was exactly the rationale for keeping the Purpose 3 as it is as is suggested how can we do that? How can we...

Gina Bartlett: So you have – there's three ways to do that. So you have the summary document which we had printed, it was at your place; you can look at the small team meeting notes for Purpose 3; and then you can review the PCRT for Purpose 3, so those are the three pieces of information for you to review in this 5-10 minute period in order to understand the rationale of the small team.

Georgios Tselentis: Okay, it's a little bit difficult for me to pull these three things now, that's what I'm saying now.

((Crosstalk))

Gina Bartlett: Yes.

Georgios Tselentis: Is there any possibility that we can have them to item we discuss?

Gina Bartlett: Marika.

Marika Konings: Yes this is Marika. We can post the link to the Public Comment Review Tool where we also have...

((Crosstalk))

Marika Konings: Sorry? It's back – where there's also the discussion table that staff produced to aid the small teams...

Gina Bartlett: Oh that's right.

Marika Konings: ...in reviewing the concerns expressed, so we'll post that link now in Adobe Connect chat so you can go there and see that information.

David Plumb: I'm just going to do something very quick...

Gina Bartlett: You're on.

David Plumb: I'm on. And staff can help with this as well, my understanding is there are three key documents, folks, that we're going to be looking at for each of these issues, right?

Gina Bartlett: Yes.

David Plumb: There's the public comments, the link is coming right now from Marika; there's the discussion tables which summarize those comments in a little table format; and then there's the – what we were just looking at on the screen, which are the results of the small team work. Right? So we need to have those three at our disposal. Everybody's got a laptop in front of them and as long as the Internet's not failing us, we just need to make sure that we have those three documents for the things we're going to be talking about now at our fingertips. And if we don't maybe Marika or somebody could send out – resend those three documents for each of these issues, remember, public comments, summary table and results of the small group conversation. Okay?

What we're looking at on the screen right now is the results of the small group conversation, that's that third document. We all need to have them super-handly on our machines and if we don't let's take a second to pull all that together.

Gina Bartlett: And the rationale from the small team – the abbreviated rationale is right there. So what I'm going to do, Kavouss's point, I take that, I'm going to give you five minutes on Purpose 3 to check in. If you need another five minutes we'll give it to you, so we'll go up to 10, but at five minutes I'm going to check in and say, groups, are you ready to move this forward or do we need to discuss it? Or do you need more time? So timer's on, five minutes, consult with your colleagues, review the documents, the background information. The goal here is to answer, is there any group that feels that the public comments were not sufficiently addressed in this Purpose 3 agreement? Okay?

Alan Greenberg: The five minutes is for Purpose 3 only or all of them?

Gina Bartlett: For Purpose 3 only but you're welcome to move ahead to the next purpose. Okay, thank you.

David Plumb: If you're having trouble getting those three sets of documents, come talk to one of us right now and we'll get a link out from Marika or somebody, right, If you're having any trouble with getting those three documents. What we'd love to see is people pulling back from the table quickly in their groups, looking at those documents, having a quick conversation. All right?

Marika Konings: Yes, David, if I can just add something? Everyone also had a member on that small team so if you have questions on how they addressed it or why they didn't do certain things, please have your members speak up on that.

((Crosstalk))

Gina Bartlett: Okay. Five minutes, does anybody need more time in your group?

((Crosstalk))

Gina Bartlett: Five more minutes?

((Crosstalk))

Gina Bartlett: Okay great. You're ready to go, okay. I think we've got everybody, David. And I've got feedback that people don't need that much time.

((Crosstalk))

Gina Bartlett: Well some people do.

((Crosstalk))

David Plumb: Okay, we're back. Great. Okay. So here we are with Purpose 3. The question for all of us right now is, did the small group solution that you see on the screen sufficiently address the concerns brought up in the public comment? Or, do we need to further adjust the small group work? That's the question in front of us. So can anybody not – can any group, excuse me, not live with the solution that was proposed by the small group? Okay, Stephanie, you got the floor, and then Kavouss, yes.

Stephanie Perrin: Stephanie Perrin for the record. Simply a question here, in the light of my overriding concern about the different roles of processors, controllers and co-controllers, I wonder if we could specify which – whose purposes these are?

David Plumb: My understanding is all the purposes that we are – have written to date have been ICANN purposes. And at the risk of not being in Barcelona, I just want to step back from that and say, Marika, can you answer that question please?

Marika Konings: Yes, this is Marika. And I think that's even defined as well what we mean with an ICANN purpose. I think – I can pull up the language, I think it's in the annex – the data elements table, I think Thomas actually helped us define that. So I can post in the chat what the group at least in the initial report meant when it talks about these purposes as ICANN purposes.

David Plumb: Great, thanks. Alan – and just – this is the way it's going to be going, on this particular issue, I want to run with this issue for a second. Alan, is this on this issue? Okay, quickly.

Alan Woods: So Alan Woods for the record. Yes, I mean, ICANN purposes as it was – Thomas Rickert put into one of the footnotes, what you're effectively talking about here, however, is it has to be a shared purpose of the contracted parties and ICANN; it's not just an ICANN purpose so I think – but that is covered in one of the footnotes and you have to unfortunately look for it so we need to clarify that probably in the final.

David Plumb: Okay. And to run with that issue again, I want to always say, is there a change that needs to happen therefore of what we have on the screen? Okay. So on that issue – think about that for a second more, Kavouss, you had your thing up? Please go ahead.

Kavouss Arasteh: Yes, thank you very much. I think as I mentioned, many of this issue should be resolved directly here. Your question now would be, does anyone have any objections with the simplified version? If yes, propose concrete suggestions but not saying that legal issue should be there, so this is a philosophy.

David Plumb: Great.

Kavouss Arasteh: I don't agree with the philosophy. Leave concrete proposal words.

((Crosstalk))

Kavouss Arasteh: Agree or not agree, that's all, because we don't have time.

David Plumb: Thank you.

Gina Bartlett: So is there any group that can't live with this proposal and the response to the comments? Kristina.

Kristina Rosette: We can, but just following up on the point that Kavouss made, and I think we need to be very clear about this to minimize future challenges to what we're delivering here, I think we need for each purpose to state the answers to two questions, the first being, are there any issues from the public comment that remain outstanding? And are there any objections, and if so, proposed revisions, to the proposed revised purpose or perhaps you do it the other way around. But I think we need to specifically clearly answer both questions to just make sure that we're not dealing with allegations later from the community.

David Plumb: Okay. Let – if it's okay with you, let Gina and I figure out exactly the right question. But I think what I'm hearing is that it's important to name that when we say we can live with this it means that we have looked at all of the comment and we think there's an appropriate response to the comment. Okay. Given that, are we okay to move forward? Anyone propose a concrete change to this? Okay. Sorry, go ahead. Mic, yes. There you go.

Trang Nguyen: Thanks, David. This is Trang from ICANN Org for the record. We had a question that we wanted to ask, the simplified language refers to an able communication with the registered name holder, but we note that one of the other recommendations also – technical contact information would be an optional field that the registrant could provide. You know, how this revised language sort of aligned with that other recommendation.

James Bladel: ...is a little more of an overarching term to encompass a lot of what we saw in the comments. So I'm not saying it's perfect but I'm saying that we tried to kind of thread a lot of different needles simultaneously. Thanks.

Kurt Pritz: Great. Julf.

Julf Helsingius: Julf Helsingius for the record. We have a little bit of clarification we would like to make in this terminology there and I think we made the comment by email too but also I just want to raise it, that it talks about matters relating to the registered name, and I think it should be on matters relating to the registration of domain names. No? Okay.

David Plumb: Okay, all right. Everybody deep breath. Think about it for a sec. Okay. Hadia, again, we're in a zone of trying to make concrete changes or to say let's move onto the next thing. Hadia.

Hadia Elminiawi: Hadia Elminiawi for the record. So I agree with what James said, so I was on the small team B as well and we actually took the delegated agents of technical and administrative contacts out because – with the understanding that contacting the registered name holder would actually include contact with administrative and technical contacts in case they are provided. However, what I would like to say here if it's not quite clear from the proposed language, maybe we could put this as a footnote with an asterisk or something saying in case – in cases where delegated agents of technical and administrative contacts are provided they can be contacted too, something along those lines. Thank you.

David Plumb: Great. So we have a concrete suggestion about adding a footnote, making reference to admin and tech contacts. Okay. That's included in this simplified language, okay. Before we move on, can anybody not live with that proposal of adding a footnote, making reference to admin and tech contacts? Think about it for a sec, adding a footnote saying, admin tech contacts are included, you know, as part of this. Everybody can live with that?



((Crosstalk))

David Plumb: No? Marc, go ahead and then I'm going to grab Amr online.

Marc Anderson: So we're just, you know, racking just to that, I mean, I think that rolls back the edits a little bit and I, you know, just my quick brush is that that makes it less clear, not more clear. You know, so that talks about a use case; it doesn't talk about privacy proxy providers. I mean, that's, you know, we're trying to, you know, this proposed updated language tries to simplify things and be more of an all-encompassing umbrella. That footnote talks about a use case, that may or may not apply. You know, to me that adds confusion; that's just not necessary.

David Plumb: Okay. Great. So before I go to Amr online, because, Amr, give me one second. I just want to say, folks, this is what it's going to be like. People are going to throw out an idea and we're going to have to make some decisions in real time what we think, okay? So I want to test real quick before we move onto the next issue or idea, is it okay, Hadia, if we don't do that and we just keep it as-is? Is that still okay with you?

Hadia Elminiawi: So it was okay in the beginning...

David Plumb: Yes, great.

Hadia Elminiawi: But, you know, having heard that it could not be understood this way I see no harm from adding such a...

David Plumb: Great.

Hadia Elminiawi: ...a footnote. So and the original language that we agreed upon during the meeting is there so it's clear, it's visible and the – we did not take out the clarity with the footnote.

David Plumb: Great. Again, folks, listen up though because if some folks can't live with it let's just keep rolling forward and see if this language – this is our default language now, okay? So if we're throwing out ideas out in real time in the room and they're not flying, let's try to just keep rolling with what we have as our default language unless we can't do it. Let me grab Amr online. Amr, why don't you go ahead and then we'll come back into the queue in here.

Amr Elsadr: Thanks, David. This is Amr. I hope you can all hear me okay.

David Plumb: Thank you, Amr.

Amr Elsadr: This was – yes this was a concern that I raised on the small team actually but it didn't seem to make it to the, you know, the summary that the plenary is looking at. One of the differences between the initial report language and the proposed update language is that the language in the initial report sort of qualified what issues concerning domain names are covered by this purpose. So I'm not referring to the delegated part, that's not what I'm talking about; I'm talking about the technical and/or administrative issues with a registered name.

My concern was – and this has nothing to do with the public comments, this was a personal concern when going through the work, that if we just say matters relating to the registered name, and leave it at that, it's a bit too broad for my liking. This could include a number of issues that are for example content-related, I'm talking about Internet or Web content, that have nothing to do with issues specifically concerning the registered name but the registered name may relate to them in one way or another.

So I think it would be preferable to make this purpose more specific and to try to narrow it down. I don't care to, you know, to add anything referring to a delegated agent or a tech or an admin contact in any way, but I think we do need to somehow qualify what matters relating to a registered name are

covered by this purpose and make sure that it's really tight and consistent with ICANN's narrow scope and mission. Thank you.

David Plumb: Thank you. And I'm just going to pull right back to you, Amr, to say do you – can you just throw out there right now a phrase that you think would solve that problem that you're naming? What would that look like, the last bit of that proposed language on matters relating to – fill in the blank; what would be that blank for you, Amr?

Amr Elsadr: Well it could be specific such as technical and/or administrative issues with the registered name, or it could be a little broader if that's more to folks' liking, something that, you know, indicates, you know, matters relating to the registered name consistent with ICANN's mission and scope. Those are, you know, probably two ends of a spectrum that are – that, you know, are – one is possibly broad and not very specific but should be all right I guess and one is more prescriptive. Or we could meet somewhere in the middle between those if that's possible. So I'm also open to ideas but generally just not comfortable with the proposed updated language we're looking at right now. I hope that helps.

David Plumb: Okay. Okay, so I have Alan, I have Alex and I have Marc, all right? And who else? Okay, so let's do Alan, Alex, Marc and Margie. All right, Alan, we've got two things on the table just to keep in your mind right now; we've got this footnote idea and we have Amr's idea of adding some specificity at the end. Alan.

Alan Greenberg: Thank you. Alan Greenberg. On Amr's idea, we're back in the circular discussion of one person wants more detail and the other wants a more generalized statement; it goes on forever. We have to get off that merry-go round at one point. And I don't much care which it is. In terms of the footnote question for Marc, would it make you more comfortable if we added to Hadia's footnote if – and I don't remember the exact wording right now but essentially if those fields are available, does that identify it clearly as yes it is

a – it is referring to only special use cases if they're available it doesn't presume anything. Just a question if that makes it more comfortable.

David Plumb: Think about it, don't answer just yet, all right, think about that answer and don't answer just yet. Alex.

Alex Deacon: Thanks, hi. Alex for the record. IPC is fine with the proposed updated language. I don't agree with Amr's suggestion that we kind of narrow that definition, it's not even clear to me how you would kind of filter communications based on, I don't know, context or type. Oh that's right. And then I just wanted to confirm as I was not on small team B and something that James said earlier, was it the assumption that with this kind of more generic high level language, which I said we agree with, that it would still allow for communications with any other optional context that we may enable in the future? This doesn't deny or disallow communications with those optional contacts, does it?

David Plumb: Let me jump to Marc and then back to Margie and then we've got Stephanie. Marc, help us here.

Marc Anderson: Thanks. This is Marc Anderson for the transcript. So Purpose 3 is, you know, within the scope of our working group we have processing of registration data and we have display of registration data in a registration access solution like Whois. Now, Purpose 3 is one of the purposes for which you would provide registration data in a directory service. So I think this is important for a second, you know, one of the reasons why you would have a directory service is to enable communication with the registered name holder. You know, so I think that's, you know, so this is an important purpose and that, you know, it deals with the registration data directory services, not just the processing of data itself.

And, you know, Alex is touching on this a little bit, you know, when you put the data out there in a directory service, you know, public or otherwise, you

can't control how it's used at that point. Once it's out there it will be used however it will be used. And so, you know, I think, you know, I think Alex makes a good point, you know, we can put whatever language we want qualifying how it will be used, it's just you can't control that; you can't police it, there's no way to enforce it, right? So that's, you know, any kind of qualifiers there is a wasted effort.

You know, responding, you know, Alan, you asked me a question about, you know, the footnote, you know, I think the, you know, adding, you know, this language is more generic. I look at, you know, this slimmed down more generic language as an improvement over adding, you know, for, you know, adding qualifying language like admin, contact, privacy proxy, you know, I think one of the primary purposes why you would have a public directory, a registration data directory services is to enable communication, right?

I think keeping it at a high level is, you know, is better, you know, is a better outcome for us, trying to drill down, you know, I think nothing in this language precludes contact with an admin, technical, privacy proxy service provider, you know, I think, you know, this is more preferable language I think for all parties.

David Plumb: Marc, can I just quickly jump in here to say, would you be comfortable with a footnote that says exactly what you just said? Nothing in this language precludes contact with an admin, blah, blah, blah, or other, right? Because that gets at what Hadia is saying.

Marc Anderson: I guess...

David Plumb: Nothing in this language precludes...

Marc Anderson: So let me say another thing then.

David Plumb: Yes.

Marc Anderson: So we're editing on the fly?

David Plumb: Yes.

Marc Anderson: And you – and when we talked about this we said we're going to have a high bar...

David Plumb: Yes.

Marc Anderson: ...for changing what was decided in the small groups.

David Plumb: Correct.

Marc Anderson: And I think, you know, we threw that out the window in, you know, the first few minutes.

David Plumb: Yes. Yes.

Marc Anderson: So no, I wouldn't be okay with adding footnotes. I think this language is good. I was on the small team that helped develop it. I think this is language we should stick with and, you know, and I desperately plead us, you know, let's avoid edits on the fly.

David Plumb: Yes.

Marc Anderson: You know, we get ourselves into trouble when we do that.

David Plumb: Yes. So we've got Margie and Stephanie and Benedict. So I'm going to piggy-back on something that Marc just said which is I feel like our threshold for edits kind of dropped down too low, okay? And so I really think as we talked about, deference to what the small groups did is our first priority and second, if it's something that is absolutely – is going to kill me – this group

can't handle it, let's do some editing on the fly if we can, all right? But I really think, you know, we've been 20 minutes on this particular issue, all right.  
Margie.

Margie Milam: Thank you. This is Margie. I agree with what Marc said. I don't agree with the comments that Amr and others raised to try to change it and I think we should stick with it the way it's written, thank you.

David Plumb: Thanks. Stephanie, Benedict, back to Alan, I see Alan, yes. Yes.

Stephanie Perrin: Stephanie Perrin for the record. I'm attempting, having some Internet issues here because we're not all on the same medium, but I'm trying to get a view from our constituency – stakeholder group rather...

David Plumb: Yes.

Stephanie Perrin: ...as to how we feel about this. Personally I am in a dying in the ditch mode on this because I think "matters" is a very vague word and doesn't really give us any legal precision. And I think in this constant up and down between precision and a high general statement my position is almost always that the high general statements become meaningless legally and that we ought to nail it down. So that's my view. Thank you.

David Plumb: Okay. Benedict.

Benedict Addis: Hello. I put my sign up in a rage because I realized I'd completely misunderstood what this purpose meant. I'd thought this was – the idea of this purpose was to enable a sort of proxy communication via the web form or something like that; it didn't imply data. And when somebody else, I think it was Marc said, well he assumed this is just a fundamental purpose of providing data, I thought well I've got to say something about that. And then I reread the thing and I thought well, actually, the nice thing about generic language is it means we don't presume an outcome; we don't presume a

technical implementation, it's broad and general enough that we can work with it. So I wanted to say I'm happy. Thanks.

David Plumb: Great. Thanks. Alan and then Emily.

Alan Greenberg: Two things, Benedict just touched on one of them. We collect the data to enable communications, we present something to allow people to carry forth those communications; that doesn't mean we present the data. We may present in a web form or we may have an anonymized address, so it's really important when we talk about what we're – why we're collecting it to not presume that that's the exact character by character information we're presenting so they're two very different things.

David Plumb: Okay.

Alan Greenberg: In terms of should we be doing editing and stuff, we're presenting the small team thing here as a proposal, and one that we should very seriously consider. However, if the people on the small team have an understanding using the language that Marc gave that you asked him could we add that as a footnote, what it means, if the rest of the people who weren't on that small team read this statement completely differently, that is why we need to either make a change or come to an agreement because it's not acceptable to use these words which half the group thinks mean one thing and half the group means thinks something else. Thank you.

David Plumb: Great. Okay. Emily.

Emily Taylor: Thank you very much. It's Emily. So we all spent a lot of time in the small groups and we've had little coordination, the people who went through each, you know, who were in A or B have had an opportunity to explain their reasoning to colleagues who might have been doubtful. And I agree that we should be placing a high bar on changes. What seem to be happening is that we've completely lost context.



We're looking at Purpose 3 and we're all suggesting amendments that will give us comfort for all of our different worries about what maybe missed out in the report as a whole. Can we note the objections, and if at the end of the pass through the small group comments we still feel like hey, there's nothing in there that actually deals with this, it's really important, we return? But at the moment we're, as Marc said, we get ourselves into a complete tangle when we draft on the fly; we're not good at it, we don't – you know, we don't even know what's being proposed at sometimes. And, you know, this is the first of many of the outcomes...

David Plumb: Yes.

Emily Taylor: ...of the small teams on which we all devoted significant time last week. If that wasn't a total waste of time, and actually as some of us feared, we would all have to redo it again in real time in this group, then we can cancel the rest of the three days because we're not going to do anything else except go through this. Thank you.

David Plumb: Great. James.

James Bladel: Yes, so Emily – James speaking – so Emily kind of nailed it there at the end. I was a skeptic; I think I put something on the list, small teams are not going to work because what's going to happen is the small teams are going to fight like cats and dogs and come back with an outcome and then we're going to bring it back to the group and then we're going to do it all over again. I'm willing to admit I was wrong and that the small team approach did work, if we don't do exactly what we're doing right now.

David Plumb: Yes.

James Bladel: All of these things, all these objections and concerns that are being raised by folks on the table about, you know, we're not specific enough, these are too

broad, these are too generic, they open, you know, the barn door, yes, we spent hours on that. You know, this is not novel ground here. So I would remind folks this is a purpose, this is – we're not constructing contract language, we're not constructing the legal precision burden is maybe a little lessened when we just define these purposes and I would say, you know, let's take what we fought hard to get to and let's move forward with this here understanding that everybody gave something up that they absolutely wanted in that small group.

And if you look at the comments you can see there's a lot of things that people said were necessary ingredients that don't – that aren't reflected in this purpose, so there's lots of that. So again, I'm very concerned. This was supposed to be low-hanging fruit here. Thanks.

David Plumb: Yes, yes okay. Georgios and then we're going to do a quick pause. Yes.

Gina Bartlett: (Unintelligible).

David Plumb: Yes, we need – yes, we're going to do a pause after, yes.

Georgios Tselentis: Yes, so I'll be concise. I think the problem that I recognize here is that we had the discussion in the small group, we came with a revised language, there were additions now in the discussion that maybe can make this purpose more specific, but we forget that specificity in the purposes is required as a – is required as a compliance to the – compliance to the GDPR. So this is the problem that I see here not that we can pass our time in the word-smithing the purpose in order to encompass what this group believes should be in there.

The question for me would go more to the legal counsel. As it is now – we are happy as a group here with the GAC with a concise version, the question is, is it – does it pass to the level of specificity required by the GDPR or not?

David Plumb: So I want to do a pause here, everybody, because as folks have pointed out, we're going to be in a world of hurt if we go into this kind of conversation on all these issues that we have scheduled for today; they have been pretty extensively conversed. So my question to all of you is, in order to move forward on these things, are we willing to identify some – if there's still concern, are we willing to identify some action like let's live with this for now but let's check with counsel to make sure this is specific enough, for instance, right? That kind of solution gives us a pathway to ending this. Okay?

Now, I'm going to ask folks who said they absolutely may not be able to live with – I'm looking at Stephanie here a little bit, can we move forward essentially saying let's live with this and let's check with counsel to make sure this is specific enough for the GDPR type purpose? Okay. So with that in mind, Hadia, Stephanie, let's take your two comments and then we're going to stop and see where we are. Hadia first and then Stephanie.

Hadia Elminiawi: Hadia Elminiawi for the record. So I actually agree with keeping it as it is with the understanding – with a different understanding though after I've heard everyone else. So the realistic understanding here with keeping it as it is that we actually mean here communication with only with registered name holders because, you know, after hearing everybody here, after hearing some of the comments, you know, that's my intake that we would like to keep it as it is and not even, you know, refer to other types of contacts because realistically speaking we don't want that. And I'm fine with that as well.

David Plumb: Okay.

Gina Bartlett: Great thank you.

David Plumb: Great. Stephanie, last word and then we're going to figure out where we are.

Stephanie Perrin: Stephanie Perrin for the record. Amr is – was our rep on this group, he's prepared to not die in the ditch over it so, so am I.

David Plumb: Okay great. So I'm going to name then that let's move forward with this as written by the small group and let's flag it as a question mark that we may have similar questions for counsel, are we hitting the right notes in terms of specificity for GDPR? Right? So that can be something that Ruth might answer if I'm understanding Georgios' question. Okay, so let's say – note it right now amongst all of us we're going to move forward with Purpose 3 as written by the small group. We have a flag to say let's check with counsel to make sure we're hitting the right notes in terms of specificity. Okay? Great.

Gina Bartlett: We're going to go to Purpose 4. Okay, Purpose 4, I just want to – I listened to all the comments, let's just revisit a couple working agreements. We're deferring to the small group – small teams. You really have to like you know, I'm talking like upset stomach, we're deferring to the small teams. Consult with your rep from the team, Stephanie, that's a perfect example just said, "Amr was our rep, I consulted with him. He participated in the lengthy discussion." No repeats. If issues were addressed in the small team, we are taking, you know, we're building upon that, so new ideas, add-ons, not a repeat backtrack.

And then I think we might want to consider having a spokesperson per group, let's see, but if you come back and you have an objection or concern. And I think the clarification that we do have two questions, is there any group that thinks the concerns expressed in the public comments were not sufficiently addressed with the proposal? And then are there any objections to the proposed language? Okay. Remembering all the things I just said, you're deferring to the small group.

((Crosstalk))

Gina Bartlett: It's a high bar. Okay, so I think we should continue on purpose by purpose. I think it will be quicker in the long run, so five minutes on Purpose 4. Yes, Alan.

Alan Greenberg: Yes, the question is can the small – did the small team define the meaning of the square brackets, because that is not...

((Crosstalk))

Gina Bartlett: Good clarification. Can a rep from the small team define the brackets or, Caitlin?

Caitlin Tubergen: Thanks for the question, Alan. This is Caitlin Tubergen for the record. The brackets are the proposed changes from the small team and they just highlight them for ease of reference. So for example, in Purpose 4, the bracketed language is the addition from the small team, it just shows you the difference between the two purpose statements.

((Crosstalk))

Alan Greenberg: Often square brackets means optional and we have to decide. I wanted to clear around the table what it means.

Gina Bartlett: Thank you, Alan. Okay, five minutes in a caucus with your group and identify a spokesperson please. Five minutes.

((Crosstalk))

END