

ICANN Transcription
EPDP on the Temporary Specification for gTLD Registration Data
Thursday, 13 December 2018 at 1400 UTC

Note: The following is the output of transcribing from an audio recording of the EPDP on the Temporary Specification for gTLD Registration Data call on the Thursday, 13 December 2018 at 14:00 UTC.

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

<https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-13dec18-en.mp3>

Adobe Connect Recording: <https://participate.icann.org/p29j1sxckpa/?proto=true>

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

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

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

Coordinator: Recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 34th GNSO EPDP Team meeting taking place on the 13th of December, 2018 at 1400 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the telephone bridge could you please let yourself be known now? Hearing no one, we have listed apologies from Kavouss Arasteh of GAC, and Thomas Rickert of the ISPCP. They have formally assigned Rahul Gosain as their alternate for this call and any remaining days of absence.

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

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing or hearing no one, if you need assistance - oh, I apologize. One moment. Emily Taylor, please go ahead.

Emily Taylor: Hi, just a very quick update to my statement of interest, I wanted to let everyone know that (unintelligible) of the registrar that I'm a shareholder in has recently entered into an agreement to provide white label (unintelligible) representative is Benedict Addis who's also on this team. So I just wanted to highlight that connection. I wouldn't normally bring (unintelligible) but given that we're both on the EPDP I thought it was appropriate to mention. Thank you.

Terri Agnew: Thank you, Emily. If you do need assistance updating your statements of interest, please email the GNSO Secretariat. All documentation and information can be found on the EPDP wiki space and there is an audiocast for nonmembers to follow the call so please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call. Thank you and with this I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Hi. Thanks very much, Terri. And hello, everyone. I hope everybody's in good shape today. I'm going to re-jigger the agenda just a little bit. In today's meeting we want to talk about - we want to talk about the geographic basis and how geography has an effect on where GDPR applies on that. We've had discussions on that in the past. We have recently received Data

Protection Board guidelines that may or may not affect our discussion so we want to get into that.

There's a section of the initial and final reports that are a requirement, that's the policy change impact analysis so they were included in the initial report and we want to review them to determine if they're complete enough for that. And then there's some additional topics that were added to our topic list that we've appended to the end of the agenda so I hope we can get to them.

So but what I'd like to do is talk a little bit about our approach to securing legal - external legal counsel. And so if we - we have a slide deck to put up. Yesterday the TCST met, and I'm not even sure what that stands for, but it's the ICANN staff group that manages the budgets of the policy efforts. And so when we want to secure a budget for a particular effort we go to them. And so even though we have an approved budget to release that budget requires this processing so it's - I'll tell you it's run in a pretty good way. There's a small team that includes David Olive and Xavier and other Finance and Policy staff and our support team, and we make our pitches and it usually goes pretty well.

And this meeting went well too. And it's very much due to Berry Cobb's work in preparing slides and the arguments and discussions and framing it up, so we secure this - secure the resources. So in this case there's been - I'm going to shut off Skype. So in this case as you know, legal - securing outside legal counsel has a recent but rich history in ICANN where lots of money has been spent on this service. And so there's special attention paid on it being managed well.

So in getting approval for getting outside legal counsel we wanted to find that intersection of getting the help we need and managing it well, which we would do in any case. So, you know, my rule for running things is if you have - just because you have budget if you don't need to spend you shouldn't it, and if

you need to do something then you need to do it whether the budget's there or not so we only want to spend money when we absolutely have to.

So with that, I'm going to go through this slide deck kind of quickly but then you can have it. And this is the slide deck that was presented to this PCST so we wanted to - I wanted to present an abbreviated version but I thought it'd be better to - whoa, the slides are moving - so I thought it'd be better to show you everything.

So, you know, we're modeling this approach on the framework that was used for cross community group or something about accountability so - or the IANA transition. So who's scrolling the slides? So go back to the agenda. Yes, so we're going to talk about that a bit, the rationale we provided to the PCST, the composition of a team that will be the interface between us and the outside legal services, how it'll run, what kind of our principles are and then budget that we don't care about too much. So let's go onto the next slide. Thank you.

And so the slide's just a tiny bit too big. I don't know if you can make it perfect or not but if not this is good. So we want to use the same sort of framework that's been successfully used in the past. So we'll have what we'll call for lack of a better term, a legal committee that will pass the questions onto the outside legal counsel. And the role of this committee is, you know, to take our questions, and I think the key - I'll talk more about this in a second but the key part of this will be to make sure the questions are in the right shape and that is that they're clear, concise and so that we get - and configured in a way or composed in a way that we get an answer back that's helpful to us.

And I think for me that's sort of our biggest challenge is framing these - wording these questions up in a way that we get back a helpful and clear answer. And with our questions so far we've gone through a couple iterations of them and not achieved that yet. So I think that's where we're going to have the most of our effort.

And then what they will do in addition to that we're going to go through the process a little bit later so I'll describe that. And, you know, this legal committee will be composed of a chair, maybe somebody who's not on this call today, you know, include Rafik and I and the team. So this team should be - and what ICANN staff prefers, and I think what we prefer too is that it be staffed with attorneys or people with legal training or legal background.

So my composition for the - my preferred composition for the team would be not more than one person from each group and that person having legal training or a legal background, although there can be exceptions made to that especially if you don't have a lawyer in your group, I think that's the preferred composition.

And then we'll have policy support staff so some of those people listed in the policy support staff. So we'll want to form this legal committee pretty fast. And, you know, I also have ideas for who might be on it but if each group wants to think about which attorney like person they'd want to nominate that'd be great too.

The next slide. So this was what was presented to the PCS Team that, you know, we have, you know, we've developed questions that are legal, not policy that where there's uncertainty as to how GDPR applies and that they're on the critical path to us finishing the final report. We noted that the CCWG Work Stream 2 had an effective model for doing that, that we'd, you know, work, you know, manage the work in a way that it was economically efficient and that we would, you know, provide a process that manages well.

So the process as I see it is essentially this, and this is how I see it but this is Berry's work but I agree with it, and that, you know, us as a team have been formulating questions to pass on, we first thought to maybe the Data Protection Board but now it would be outside legal counsel. And so the committee would just make sure the question is in fact a legal question, that it's in good form and if it's not in good form and is reworded that we'd

probably have to go back to the full group unless it's just a tiny tweak and if there's full representation on the group then the group can make that judgment whether it needs to go back to the full group or not.

And then it will manage that. And the way it'll manage that - the questions is the way I see it is, you know, maybe this team will get together and look at the GDPR and look at, you know, advice such as the geographic advice we just got and say well, this - the answer to this question is pretty clear, we think we can answer it ourselves. They might go to ICANN and say, you know, has this question been answered yet? Is it in the Hamilton memo? And I don't want to task this group with a lot of - this legal committee with a lot of research to see if it's answered elsewhere but I think we could do a little, but we could employ ICANN too. We could say, hey, here's our question, has this been answered anywhere else?

The slides have grew and I've lost my place. And then, you know, absent being able to be easily answered in a very short period of time, then the group would send the question onto outside legal counsel. So it's a processing flow that I think has been used in the past but I think it'll be - it'll work really quickly in practice because you know, you get a group of eight or so people sitting around a table, six or eight people sitting around and table and the answers to those questions will become pretty clear or they can be passed onto ICANN where an answer would come across right away.

I ask that in the statement of work that, you know, ICANN will use this statement of work we created and beat it up a little bit probably. And I ask that we put in a timeframe for where we wanted questions answered, so many business days or something like that in order to expedite the process. And I also asked that in the case that there's an exchange of writing and the answer's still not clear and it - and we think that a conference call with the law firm would be helpful that that be included in the statement of work also as a way to balance costs but mostly to ensure we get answers as soon as possible.

So that's the process, pretty - I think it's pretty lightweight for us. So here's a set of guidelines, you know, the principles that manage the group. And I don't think, you know, I've already said quite a few of these things so I'll just let you look at this slide for a second, you know, this slide mainly concerns seeing if the question is already answered in some other place. And again, I would think we can rely on ICANN to do some of this research for us.

And then, I'm just letting you read these bullets here. Thanks, Berry. Good timing. And here's a budget slide. You can avert your eyes from this one if you want. At some point I think Berry should give a quick briefing to our group about where we stand in the budget, I think it'd be - I find it interesting and there's some surprises.

So that's it. So we're - this plan was approved by ICANN yesterday so I'm presuming they're energized and going about looking for the outside services. I don't remember during the call, and so I want to make sure that Kristina brought up the issue of conflicts in our last call. So Berry, remind me or make a note to the team that's procuring this that we take that into account. And so that's essentially it.

So I hope that this happens in fairly short order. If there's any suggestions or recommendations that we should be passing onto ICANN and making this procurement or if you have any questions about how this will run, you know, I think the way it - this runs is pretty clear but it'll become a lot clearer once we start doing it so not 100% of the questions will be answered.

Yes so some of us think Thomas might be the chair too. Emily.

Emily Taylor: Hi. I know I've missed the last few calls so might well have been discussed on the calls in relation to getting external legal advice. But I just did want to say that I have some reservations about whether we're going to really get as much value from this exercise as we think we are. And I know that so many

people on this group are very experienced in instructing lawyers and getting legal advice or being lawyers, so I don't want to tell you things that you already know, but it's so difficult for any lawyer to be instructed by a group that has divergent interests. Lawyers will normally tailor their advice to what they perceive to be their client's objectives and interests.

Where we have a group this diverse which is unable to agree almost on day of the week it is, let alone nuanced legal questions or the detail of GDPR, I really do question whether we are going to get value for money or anything that couldn't just be read out of a textbook because the lawyers will react by just (unintelligible) and repeating back what we ask does the GDPR say, there's not been very much guidance. So (unintelligible) a lot of legal analysis done in respect of Whois going back over the centuries it seems from the Article 29 group days back in the mid-2000s to the very detailed advice that informs the temporary specification.

So I just wanted to highlight this and I think that we could end up spending a huge amount of time, a huge amount of money and not necessarily being any of the wiser to it. Thank you.

Kurt Pritz: Thanks, Emily. So I think this, that we've marched down - I don't know exactly what order to say all this in. So we marched down this path where we were going to ask questions to the Data Protection Board and then we decided - or pretty much decided as a group to not do that for a few reasons. And so then - but we do have questions that are not policy but they're legal, and when I say "legal" I mean, you know, if we create a policy or a specification that says this, will that be GDPR-compliant?

And so we want to get some indication of that before issuing a final report. And so we've decided, and you guys correct me if I'm screwing this up, but we've decided to pursue this in two ways, one is to procure outside legal advice, and two is to contact perhaps DPAs directly and I think Stephanie suggested the one in Belgium with our questions. So we want to pursue

answers to those questions using those two avenues. And this is one of those avenues.

And I think you know, you may be right but I think we'll learn the value of it pretty fast. And if we find out it has no value then we'll stop, not for the money but also as you said, I don't want to waste our time.

The second point I want to make is I think you know, we've, in our discussions we've orally developed questions for the Data Protection Board or somebody that needs to be answered. And when trying to put those questions down on paper with some specificity we find ourselves sort of disagreeing about what the wording of the question is how it should be put. And I think for those questions where we do have uncertainty it's a very worthwhile and important exercise just to write the question down. I don't think - I think we all have an idea of what the questions are but we have different - we have different takes on them.

And so one of them - I think it's be a good consensus building too to actually write the questions down with the specificity required to give to someone to answer. I think that would be very instructive for us. So those are my two answers to you question. But, you know, we go into this with eyes opening and understanding all the warnings you've just given. James.

James Bladel: Hey Kurt. James speaking. And I think my comments are probably compatible or aligned with Emily. So this is certainly not the first time that work on Whois has sought some sort of legal expertise. I'm not opposed to (unintelligible) and undertaking this approach, I just want to be sure that we have like you said, eyes wide open, that we can get these groups to agree on which questions need to be asked and how they need to be formulated and to whom they should be, you know, to whom they should be asked and what experts qualify.

And but really what I want more than anything is some degree of assurance that whatever comes out of this process, if the legal expert says, you know, "You guys should be doing this," that this group actually takes it on board. I think my concern is that over the years of receiving legal advice of - on Whois and RDS really hasn't moved the needle in terms of where folks' positions are.

So but I agree with you, I think we need to kind of kick this off, it's probably overdue and certainly we don't want to be developing final recommendations in a vacuum and have some legal authority come in at the 11th hour and blow them all up. So I think that this is - it is important work but I just want us to be very mindful of the challenges that we have not been able to overcome in the past and hopefully have some fresh, you know, blank page approach this time around so this actually benefits our work. Thanks.

Kurt Pritz: Thanks, James. Well put. And yes, I just want to reiterate that I think the hardest, the most important part of this exercise is actually formulating the questions. Hi, Hadia. How are you today?

Hadia Elminiawi: Good thank you. So (unintelligible) a little bit of what James was saying, so my question actually is to Emily and to all of us. In case we receive (unintelligible) legal advice that guides to a certain path, are we willing as different stakeholder groups to accept the advice and follow it even if the advice is against the position of the stakeholder group (unintelligible) stakeholder group? Is this stakeholder group - will the stakeholder group that this position is against to accept the advice?

Kurt Pritz: Yes, so - oh James says, "I disagree." Yes, so to answer James and Hadia's question, I think you know, you can't - so I'm not sure you can make people agree with legal advice we receive or accept it. I think it makes it much harder for someone in a open and transparent environment such as ours to disagree with advice once received. And I think that you know, if we think the advice is competent then, you know, it makes it much harder for one to put up an

opinion on a final document or a public document that will most likely be discredited when published. So I think there's forces that - there's forces that will help us towards agreement on that.

But you know, it's really hard to predict the form of the answer we'll receive and whether that requires any interpretation. So I think it's really hard to make a rule that whatever answer we receive from legal counsel that will be binding. Yes, so Ashley said in one sentence what I said in four and she said it better. Alex, go ahead.

Alex Deacon: Yes thanks, Kurt. This is Alex for the record. Yes so I support this work, I think it's important especially if we're not comfortable in reaching out with the European Data Protection Board. It seems to me that instead of asking questions, I mean, we should be drafting detailed scenarios that kind of describe decisions or the decisions that we hope to make here in the EPDP Working Group.

You know, I think the questions that we need to ask, you know, legal counsel is each scenario compliant with the GDPR. I think if we were able to focus on detailing and explaining with as much content and context as possible the scenarios that would hopefully put us in a better position to get an answer - an answer back that is informed and that we would all accept. Thanks.

Kurt Pritz: Thanks. Thanks, Alex. Mark, you want to take us home on this one? Last comment.

Mark Svancarek: I would love to take you home on this comment. Alex's comment is one that I support. I had made a very similar comment during the small group meetings. I think that if we are very clear, here is a use case, here is a proposed - and sorry, showing my hand - but here is a use case, here is how we propose a solution to such a use case, is that solution to that use case valid? Is it acceptable? What are your concerns about it? I think you could get pretty focused and actionable advice if we do it that way.

The more general the questions are, the more useless the advice will be. I think the challenge will be, you know, having a comprehensive gamut of specific use cases and solutions to ask questions about I think to get the good coverage.

Kurt Pritz: Great, thanks. So thanks for all those constructive comments. A quick look at the chat. So Emily, I don't think so, I think they're supposed to inform our policy recommendations but, you know, what we're talking about here in our discussions are conditional policy recommendations and when I say "conditional" I mean conditional based on the legal opinion we receive so there could be all sorts of shades of gray about how far down the path we are to a specific policy recommendation before we seek advice.

But generally speaking, when we're - by the time we're seeking advice, I think you know, we've honed the issue fairly well and it hinges on some sort of decision hinges on what the legal interpretation of GDPR is. All right well thank you very much for that and thanks again to Berry for having the intestinal fortitude to take this to the PCST team and securing the budget for us.

The next topic on the agenda is geographic basis. And this is where, you know, living in this really complex environment of the domain name industry and the DNS that we turn to the temp spec that governs this - governs how entities and association with the EDA will determine whether it falls under the GDPR or not. And so fairly recently Amr brought to our attention the - the European Data Protection Board issued guidelines regarding how GDPR attaches given different geographic scenarios.

And I read with great interest each one of the scenarios hoping that this would be our scenario. And some of them came a little close, and some of them are kind of concerning especially about having to have a representative

in the European Union if you fall under GDPR. So but that's not really - that's not really our concern.

So I want to have a discussion about any clarity that this memo provides to our discussion as to whether or not - as to our discussion - as to under what conditions registrars and registries had to comply with GDPR given their business model, geographic places for processing data, location of their customers, etcetera.

And so at the very last moment I've asked Amr if he would start the discussion with sort of what his - since he brought the memo to our attention, the guidelines to our attention, what his take on it was and how if at all the scenarios in the memo or the rules outlined affected our discussion. So if you don't mind, Amr, I'll turn the microphone over to you and gratefully.

Amr Elsadr: Thanks, Kurt. This is Amr. And yes, as Kurt said, these guidelines were shared by the EDPB a few weeks ago. And my understanding is that they're kind of available for a sort of a public process right now, so they may change in the future, we don't know to what extent that may happen. But it's - I guess it's a good resource to take a look at right now.

And to be honest, I do have a few takeaways from these guidelines but I think to me they've raised more questions than added certainty. And I'll try to share some of my personal thoughts on those and would be grateful to hear thoughts of others of course.

As we all know, we started the discussion on the, you know, the distinction between registered names holders by contracted parties on a geographic basis back in early October. We formed a small team that held two calls on this issue. And a number of arguments you know, for requiring this distinction to take place and against the - against the requirement (unintelligible) take place were put forward and they were included in the - in the initial report that was published by this team.

To me I think several of these arguments, you know, really highlighted our perception of why it might be helpful or harmful to make this distinction. But I don't think any of us really addressed Article 3 in the GDPR directly. And that's kind of where these guidelines come in and I think they add a bit more meat to what's already in there. And like I said, it's left me with really more questions than anything else.

But okay in brief, the guidelines sort of - well I've learned a few things from them, let's put it that way, that I wasn't aware of before. So the guidelines - and I won't go through all of them but I want to focus now on two issues really. One is the application of the targeting criteria, which to my surprise when I was reading this I discovered that, you know, just because a data subject is located within the EU or the EA, doesn't necessarily mean that processing of, you know, processing activities concerning this data subject's data necessarily falls within the scope of GDPR but there are some provisions that need to be met in order to, you know, make this an actual requirement.

One of them is that individuals in the EU are actually targeted by either the controller or a processor. And another one would be that, you know, the behavior of the data subject in the EU or the EA is being monitored - actively monitored by a controller or a processor. And like Kurt said, there's a whole bunch of scenarios or examples of how that - those might take place. None of them are identical to what happens with ICANN but some of them do actually come really close, particularly in terms of services concerning information that are provided, you know, like online services such as the ones that are provided by contracted parties to registered name holders.

And so one of the interesting things - one of the things I thought might be applicable in our case in terms of monitoring behavior are some of the examples that were listed in the guidelines such as behavioral

advertisements or actually geo-localization activities. They specify that this might be particularly more relevant for marketing purposes.

But other examples include online tracking using things like cookies, you know, any sort of personalized targeting. I guess this is more relevant to targeting than it is monitoring the behavior but, you know, for example if a registrar is displaying its services in different - in a language that is used within the EU or listing prices in local currency. So these are few more examples of what might sort of trigger the applicability of GDPR under the targeting criteria whether it's by targeting the behavior or directing an activity, which is another way they've put it, or by monitoring the behavior.

Another thing that I found to be interesting in the guidelines is the application of the establishment criteria. So we all know that ICANN is not, I mean, its main establishment is not within the EU, it's in California. But main establishment is not the only factor that applies. And this is something that is - that is apparently, you know, already present in Article 3.

And there's a recital I think it's Recital 225 I think it was that sort of indicates that, you know, that if there's any exercise or activity through a stable arrangement - and here that's where the idea of what a stable establishment might be - if that takes place within the EU either by the controller or the processor then again GDPR becomes applicable.

And one of the interesting things in this context as well is that the actual processing activity does not need to take place within the EU. So if a stable establishment is within the EU is functioning on behalf of a controller or a processor, and the processing activity regardless of whether it takes place within the EU or not but has some sort of contextual relationship to the stable establishment, then again my understanding of these guidelines is that GDPR would become applicable.

Now I found this to be especially interesting in the ICANN context because of - well because the presence of the Brussels office and the extent to which for example ICANN - the Brussels office is in any way associated with development of ICANN policies that, you know, consensus policies that end up finding their way into contracts with accredited registrars and registries as well as, for example, remote staff.

So one of the examples in the guidelines is that, you know, you could just have a staff member who is performing, you know, who is providing - with a stable arrangement that is performing a function on behalf of a processor or a controller. So these are all things that I find interesting in the guidelines. I hope that as many of you as possible have gone through them.

I do not claim any expertise on this at all. I mean, I just saw this and I read it, I went through it and tried to get what I could out of it. But to me, you know, reading this, like I said, I left me with more questions and ideas than it did answers and conclusions. I think you know, in the exercise of developing questions for legal advice, I think we might want to consider some of what we see in the guidelines here and try to get more, you know, definitive, you know, opinions by experts on what this means.

So I guess what we might need or what I believe we might need is some guidelines on the guidelines just to figure out, you know, what are more specific to the case that we're dealing with here at ICANN. I don't know if there are any questions or comments, and maybe I should hand the queue back to Kurt. Thanks.

Kurt Pritz: That was great, Amr. Can I have - I have a couple pointed issues about this input and how it might affect us. But could I have a show of hands of people that have either read it or skimmed it? Yes so that's pretty good. So, you know, one of the questions - so to start a discussion about this and then, you know, I think I have some ideas about this.

You know, one question I had was about the targeting session of this. And, you know, whether registrars operating globally are targeting people inside the EU under the purpose of GDPR. And so to me that - I don't know what opinions people have about that. I see - I'm assuming there's - this is a queue here. So, Margie, if you want to go ahead that'd be great.

Margie Milam: Sure. This is Margie. And I also had a chance to take a look at this. I thought it was actually useful in that it identified a lot of areas where GDPR doesn't apply and it actually seems as though just like Amr said, kind of the crux of the analysis is whether there's, you know, activities targeting a registrant in the Union. And so I think that that, you know, helps us identify where the GDPR doesn't apply and might actually help us, you know, make the geographic distinction as we've been talking about in the past. It's not as difficult anymore with these guidelines.

I do see areas where it'd be interesting to get additional legal advice on, you know, as we talked about earlier. And I also think that in reading this that it's actually very important to get a solid understanding to the relationship about who is controller, who is a processor because the rules seem to be, you know, quite a bit different depending upon whether it's a, you know, we've been debating in the other, you know, calls whether it's a joint controller or an independent controller or controller processor relationship.

So it seems that that's actually more important now given the way that they've delineated the responsibilities that flow from those relationships. So I do think that we could use these guidelines to come up with scenarios of where it clearly doesn't apply and we could perhaps even create a chart and talk to, you know, counsel once we have the counsel set up to confirm that the chart accurately describes, you know, the applications.

Kurt Pritz: Thanks, Margie. Go ahead, Diane. How are you today?

Diane Plaut: Oh good. Thank you, Kurt. Agree with Margie and just want to take that point further because we've gone over this together. I think that this guidance is very helpful to us in two different ways. One is, is that it's clearly putting a responsibility on the controller and specifying that the processing activity is not the relevant controlling factor.

So in the scenario where ICANN is a joint or sole controller, particularly in relation to Whois information, they're able to have - if they're sitting perhaps in the US, based out of LA, even if a registrar or registry was located in the Union, the location of the processor wouldn't be as relevant. And I think that could really help within defining any liability concerns for the Contracted Party House.

Secondly, there is the - the guidance I think was really help - was meant to also give enlightenment on how to determine the proper location or specification of the data subject so that it's meant to show that really the goal of the GDPR is to really focus that the data subject is in the Union either residing there on a more permanent basis, not necessarily just solely focused on citizenship, so that when it comes to filling out a domain registration that if the address is provided with the city specification and it's in the EU then that data subject is in fact subject to the GDPR and otherwise not and so like if their citizenship - if they're a US citizen otherwise.

So it's really trying to hone in on the fact that it's meant to target data subjects that are in the EU whether it be on a permanent or even temporary basis that they should - that it's saying that at the time in which they're siphoning the goods or services an issue is the important juncture. So I think that it really provides us with some good guidance that's helpful to our cause.

Kurt Pritz: Thank you, Diane. James, please go ahead.

James Bladel: Thanks, Kurt. James speaking. And thanks, Amr, for finding this, walking us through it and posting it to the list. I, you know, skimmed through this

document when it first hit the list and I think like Amr, I came away with more questions than answers. I do agree with Margie and Diane that a lot of this guidance pivots on the definition of roles so I think that getting some, you know, the ability to lock that down with regard to ICANN contracted parties and the various purposes is essential for this to have any impact.

But my key takeaway from this memo was just the complexity that it introduces to operators, registrars and possibly registries, that are operating globally that have physical presences all over the world in and out of the EU, that have customers all over the globe and all of the different scenarios that are captured in this guidance and in fact a lot of the scenarios that aren't captured.

And that's just for GDPR. There are a number of others. We've continued to point out, this EPDP is driven by GDPR, that's the impetus for doing this work but, you know, that's not the only data protection regime that's either out there or has been adopted and will take effect here about, you know, 12 months from now. So I think my key takeaway is that this is helpful, is interesting. I think it emphasizes the need to pin down those roles of - between ICANN and the parties of who's the controller and who's the processor.

But I don't think that there is anything here that you could point to and say that, you know, contracted parties must do X or must not do Y, I think that clearly the complexity of the - this guidance showcases the complexity of this issue and I think trying to carve that into stone in a consensus policy or a contract means we'll be right back here in a matter of weeks or months revising it continuously as those rules change and new scenarios pop up. So that was my takeaway but I do thank Amr for flagging it. Thanks.

Kurt Pritz: Thank you, James. Amr, go ahead please.

Amr Elsadr: Thanks, Kurt. This is Amr. And, yes, I think I agree with a lot of what James said and I'm not sure what context we might discover that there are contracted parties out there that are not targeting residents of the EU. That would be interesting to find out if, you know, for example if there's a registrar out there or even a - probably more likely in the case of a gTLD registry, but it would be interesting to find out if there are registrars out there that, you know, are specifically not targeting or excluding residents of the EU in their, you know, in who they want to provide services to.

But again, the targeting criteria is not just about - it's not just about that, there's also the issue of monitoring the behavior and some of the examples that are in the guidelines, and I find those to be very interesting because you know, identifying a data subject's geographic location is one of them. And this is something that is done with every single domain name registration out there. You know, as we all know, you know, part of the registration data is the physical address of the registered name holder. And there are purposes why this data is collected, it is - and there are several purposes for which it is processed beyond the collection.

So this to me - to my reading - and again I'm - I claim no expertise on this at all, but to me this really identifies one of the issues here in terms of monitoring the behavior and so within the context of registering domain names a name holder's behavior is being actively monitored and the data being collected is being processed.

Also again, I really think that these are things we should seek more clarity on and I think you know, we need to be sure that when we are doing this we're not too selective in what little tidbits of the guidelines we want to ask about. We can't, you know, focus on one and ignore some of the others. And again, the establishment criteria I think is one that is very interesting and I'd like to - personally speaking I'd like to understand it a little better, get more clarity on it. Thank you.

Kurt Pritz: Thank you, Amr. Mark, go ahead.

Mark Svancarek: This strikes me as an area where we could get very targeted legal advice. I mean, this seems to be - you could have a very specific case where you'd just describe a company like VeriSign or describe a company like Go Daddy. Here is a company that conducts their business in such a way, they have - in such and such a place, do they have establishments or not? Are they perceived to be targeting or not?

It seems to me like this is the kind of legal advice we should be able to get pretty clearly because we have these very clear examples of multinational companies. You know, in a lot of cases it's going to be very, very clear without any question like we were talking about dotBerlin, for instance, okay, they have the establishment in Berlin, it doesn't matter whether all their customers are German or not, they're established so it applies to all the business they do.

So in a lot of cases it will be very, very straightforward and in the cases where it's ambiguous we have real world examples that we can use to craft the legal - the request for legal clarification.

Kurt Pritz: Thank you, Mark. Margie, go ahead.

Margie Milam: Yes, this is Margie. I was going to take it a little further like for example, you know, we've talked about the rules engine concept. You know, the chart that I was talking about could really delineate where, you know, it clearly applies and where it doesn't apply. And the answer - I think one of the observations that James made, even if you are targeting in the - in Europe, if you're an establishment outside of Europe like say Go Daddy, and let's just assume for the sake of argument that there's no processing activities in Europe, if you have European customers, that data would be subject to GDPR but your US-based customers would not or at least that's how I read the report or the guidelines.

And that's the kind of thing that we could ask legal clarity on, so that's - I think that's what made us very interested in these guidelines is that it does draw some lines and it helps really narrow what kind of questions we want to ask.

Kurt Pritz: Thanks, Margie. Emily, go ahead.

Emily Taylor: Yes I just wanted to pick up the question that Mark indirectly raised about, you know, asking the specific scenario-based questions to legal counsel. It may work but you probably just (unintelligible) to say it would be a question of facts in each case. And of course one of the difficulties that I think particularly - well registries and particularly registrars have is that if you're advertising your services on the website, regardless of any other targeting that you might do, the likelihood is that people will just come and find you, buy your services and that those people might well include EU residents.

And so this just adds a complexity in interpreting the application of the GDPR. And I think that this is one of the reasons why quite a conservative approach has been taken in respect of gTLD registration data because it's, you know, if you're advertising globally then you're very likely to attract EU residents as your customers. Okay thanks.

Kurt Pritz: Thanks. Thanks, Emily. Go ahead, James.

James Bladel: Thanks, Kurt. James speaking. So, you know, I'm just going back a couple of comments in the discussion I think to Margie's point. I think that, you know, if the guidance helps us to draw a box around those data subjects who are covered by GDPR or are not, and I think that honestly the guidance is pretty mushy on that point, but if it did I think that would helpful.

I think the problem is is that that's just one of the framework targets we're trying to hit and like for example the California privacy law that was recently passed but doesn't take effect until January 1 of next year, you know, even if

we weren't a global provider Go Daddy or a company like Go Daddy is not going to write 50 different privacy rule sets for its customers in all the different states, 51 if we throw DC in there.

So I think that's a good example where, you know, one geographic region, the strictest region in one territory has to be able to be applied outside of that just for operational practicalities. And I think that in some ways affects - applies to GDPR as well but it is just one star in a constellation of privacy laws that are all kind of coming down on all of our heads right now and so I think that the guidance here is helpful but not helpful but it at least demonstrates that this is a very complicated issue and it's very challenging for providers that are operating across borders because it really just throws that whole question into, you know, the question of digital versus political borders into sharp relief. So it is challenging. Thanks.

Kurt Pritz: Thank you, James. Hadia, go ahead please.

Hadia Elminiawi: So first I would like to agree with Mark S that this is definitely an area where we could ask precise questions and seek precise legal advice. I have a question to Amr, I don't understand how you related monitoring (unintelligible) I didn't get what you were saying. Monitoring behavior typically relates to trying to predict preferences, behaviors, attitudes. I didn't get what you said in this regard. Thank you.

Kurt Pritz: Go ahead, Amr, please go ahead and answer.

Amr Elsadr: Thanks, Kurt. And thanks for the question, Hadia. This is Amr. Well there are a few examples in the guidelines on monitoring the behavior. And one of them that stood out to me is geo-localized activities. So if for any reason within the processing activities of the controller or processor or in the case of these guidelines also, you know, a stable establishment acting on behalf of a processor or controller within the context of the services being offered then

geo-localization is one type of - one type of behavior being monitored that would be applicable here.

And the reason why I thought this was relevant to the ICANN context is because during the domain name registration process each name holder's geographic location has to be - the data on that needs to be collected, so you collect the physical address for each name holder whether it's a natural person or a legal person. So in that sense - and this data is processed further in many cases, you know, we've discussed cases on the EPDP where, you know, for example with certain RPMs where this data comes into play and there are other reasons - other examples of processing activities out there.

So since geo-localization is one of the elements in behavior being monitored that qualify for this, I believe this sort of provides some sort of, you know, blanket coverage for domain name registration - the domain name registration process. But again, I have to keep saying I'm not an expert on this and this is just my reading of the guidelines and I think we would so well to get further clarity on this. Thanks.

Kurt Pritz: Thanks, everyone, for that discussion. Let me tell you what my thinking is, and it sort of goes contrary to some of what's been said here so it's most likely off base, but just as a way to push the conversation a little bit further before we close it off. I'm not sure that procuring legal advice - I don't think we're facing a legal question here, I think we're facing a policy question. And my thinking is that this is a very complex area where, you know, some registrars, you know, registrars will have customers in the EU and outside it, some will have customers in California where there's a different privacy regime inside the United States and outside it, some, you know, registrars will have relationships where clearly GDPR does not apply and relationships where it clearly does and some where it's muddled.

And so I think this is the policy question for us is - and it's put well in the temp spec. So the way that I understand the temp spec is, is it sets out, you know,

three conditions, if you meet any one of these three conditions then with regard to your nexus with the EA then you fall under GDPR and then the temp spec goes onto say, you know, if this - to me the wording is, if this is very complicated and financially unacceptable to manage then you can apply, you know, GDPR across the board at your organization.

So I think regardless of the legal advice we get, we're going to be left with this question of whether we want to make a policy that says, you know, registrars and maybe registries are required to sort this difficult situation out and create some sort of compliance regime where that can actually be measured and enforced or - so that's one alternative.

Another alternative might be, you know, if we think there's a rules engine which is easy to postulate but difficult I think to design, but if we think we want to look into the creation of a rules engine that would alleviate the burden of registrars in trying to make this parsing we could do that.

Or the third option is to leave the temp spec as it is. And, you know, maybe one of our courses here is not to get legal advice but to get ICANN advice and say, you know, why did you write it this way? What was your thinking in devising it this way?

So I don't know - so, you know, just to sum up I think even if we get policy advice we're going to be left - even if we get legal advice we're going to be left with a - the same sort of policy question we're facing now where we're in disagreement about whether to leave the temp spec the way it's written or change it. James.

James Bladel: Hey, Kurt. James speaking. I just kind of wanted to plus one your last sentence there. I think this is - it looks like a legal question but this is really not a legal question because I think any legal advisor is going to be constrained by whatever, you know, context or jurisdiction they're licensed and trained and accredited in which they have some expertise. And this is

really a question of dealing with things that, you know, dealing with requirements that could kind of transcend jurisdictions.

And I think it's really - gets into some of the operational challenges that a lot of global technology firms are facing now whether it's a registry or a registrar, or whether it's, you know, a service that's trying to deal with local regulations on news but it's a news aggregator or social network or whether it's a, you know, a company like Skype that's trying to, you know, navigate the telecom regulations in two different areas.

So I think this is really just one of those types of things where we can get a legal expert to weigh in on Jurisdiction X or how it applies inside or outside of Jurisdiction X, but it doesn't address all of the possible permutations for a global provider. And so I think that's why this starts to look more like a practical question rather than just, you know, let's get some legal advice. So I guess I'm just trying to put an exclamation point on your last question, that this, on the surface, looks like a question that we just, you know, kick over to legal experts but I don't think that what we get back is going to really get us anywhere towards a solution. Anybody there?

Marika Konings: Kurt, you're on mute.

Kurt Pritz: Yes, I was - I must have clicked it twice. So, yes, so anyway I'm pleased that Diane and Margie raised their hand because I was going to encourage them to speak up and respond. So, Diane, go ahead please.

Diane Plaut: Sure. Thanks, Kurt. I think it is certainly a legal question but the issue as I've been trying to say all along, and I think we're all sort of saying and I hear it in James as well is that it is a legal issue but in fact these guidelines show that there's still interpretation being made by the different DPAs, by the different authorities and it leaves a lot of open questions. And this puts us in a very difficult position, so as I feel I've been trying to put forth to others is that it

causes businesses to have to come up with operational practicalities on how to handle it.

And I think you're saying that as well, Kurt, that we're going to have to come to a point where we land someplace trying to evaluate the law the best we can in as low risk a way for the Contracted Party House, for ICANN as possible, and set up a system that is, you know, can functionally be applied and work. And how we determine that is the best look like is what we're working on here, but I think that we certainly could try to work through the legal issues the best that we can whether we're ever going to get to a place on certain of these nuances is going to be challenging because there's a lot of complexities here.

So we have to just push forward. I think we should get more legal advice on this and certainly we could work on it in the legal committee, and then hopefully come to a consensus on what we think is the most reasonably low risk and practical application from a policy standpoint.

Kurt Pritz: Thanks, Diane. Margie, go ahead please.

Margie Milam: Sure. I have a little different perspective on this. I mean, I know we've been talking about costs to the contracted parties but we're also ignoring the cost to the third parties that access Whois. And there's a balance there as well, I mean, it's not surprise to anyone that the costs have gone dramatically up for anyone who's doing brand protection and trying to enforce their rights or doing cyber security investigations. So if you're talking about costs, it's not a one-way conversation, it's a two-way conversation. And I think that's something that's lost in this group sometimes.

The other perspective that I think I'd like to share is that, you know, we all know that there are different laws with different applications and that there are activities underway to introduce legislation that might even address this particular issue. Whether or not that happens I mean, obviously we don't

know what'll happen in the next cycle in the United States or other countries. But we have to be prepared to have a policy that accepts having a different standard depending upon geography because the reality is there will be different laws.

And so if we adopt one approach across the board we're just going to have to go back, you know, a year from now or two years from now when the law changes. So that's something that I think - that's one of the reasons why I've been advocating for the rules engine concepts because that is something that would be flexible enough to accommodate changes in law should that happen. And so I just wanted to flag both of those issues.

Kurt Pritz: What's your understanding of the rules engine, Margie? Who should be, you know, it was postulated some time ago, was there any effort or anybody on this list, was there any effort to pursue that or was there a team identified that should be pursuing it?

Margie Milam: Sure. And what happened was there was the Expert Working Group report that was commissioned by the ICANN Board and then what happened - once that - the Board received the report it initiated a policy development process that was the Next Generation Whois that was kicked off because of the EWG final report.

And then that got stalled when GDPR came into play. So unfortunately it was never fully acted on or investigated. But I do think that that's something that we should have a policy recommendation to see the feasibility of that because I mean, I can certainly talk about, you know, the business sector, businesses do apply different rules depending upon where their customers are, that's just the reality of doing business globally.

And so when I hear James say, oh we have to keep the costs down, you know, you have to keep in mind that if a company makes an affirmative decision to market in a particular region it's not just GDPR they have to

comply with, they have to comply with any other laws that apply to those services and that's just the cost of doing business and we should assume that the costs are going to vary depending upon what the business decides to target and the services that they offer. So that's why I just, you know, I just want to raise the cost issue as it being a much more complex issue than simply looking at what the contracted parties costs are.

Kurt Pritz: Thanks, Margie. And I wonder - you don't have to respond to this on, but I wonder too what extent we can actually quantify those costs, you know, the - I think - anyway on both sides I think it'd be meaningful. Alan, welcome to the meeting. Please go ahead.

Alan Greenberg: Thank you. Can you hear me? I'm using a new setup so I'm not sure how well it works.

Kurt Pritz: You sound better than you ever have.

Alan Greenberg: Marvelous. Working from an airline lounge I guess is a plus sometimes. Look, this is clearly a policy issue but I don't think any legal advice is going to help because ultimately we have to make decisions. I think on the long run when we start factoring in laws in other jurisdictions, and particularly laws which maybe more stringent than GDPR or less stringent or in fact require disclosure of certain information which GDPR may forbid, I think ultimately everyone will have to go to a rules based engine, a table-driven algorithm that is flexible enough to handle the multiple laws.

I don't think we should be looking at it now, we have a complex enough problem to get compliance with GDPR in a tight timeline, but I think ultimately that is where we're going to be moving. I don't think there's any choice. Right now we have a number of clear cases, organizations present in the EU have to apply GDPR, organizations present outside of the EU that target, and that's a well undefined term, those within the EU have to follow it. If you don't

target it you don't have to follow it - target customers in the EU, you don't have GDPR applying.

But on the other hand, there are other cases, we have registrars in their end, registries in various parts of the world that, you know, don't have any interfaces in languages that people in Europe tend to understand, certainly not European-based languages, and these people are clearly not targeting anyone, they're not present and the question is do we really want to allow them to redact everything ostensibly because of GDPR when there's not a hair of a connection between them and GDPR-applicable areas?

So I think ultimately we have to make the decisions. And I agree strongly with Margie that just looking at the cost of contracted parties I don't think gives you the whole picture. There are risks associated with not having information, we have talked about that in the past, and there are costs associated with it. We haven't gotten a clear answer from ICANN Compliance frankly, but I suspect it is taking them particularly more manpower to address every complaint they get in than it did before. Somehow we have to factor that in. I don't think it's going to be easy to quantify all that. Thank you.

Kurt Pritz: So I see - so I'll just take one more shot at this and then we'll leave it. But so I kind of see three pools of contracted parties, those that clearly fall into the three criteria in the temp spec that must apply GDPR, a set of registries and registrars that address local markets that do not have to apply GDPR, and maybe for those cases it would not be optional for them to apply it, and third, the - a set of contracted parties where there's sets of customers that where GDPR applies and maybe sets of customers where it doesn't and sets of customers where it's uncertain.

And so, you know, this is - so one approach might be to say, you know, that the temp spec be amended to say there's three pools and for that last pool where it's - where there's difficulties or confusion that, you know, the application of GDPR remains optional as described in the temp spec pending

research or - not just a feasibility study but much more - the design of a - some sort of machine that can make that parsing in an effective -effective and legally compliant way or some other legal determination that we learn as this evolves.

So is that sort of where we are? Alan. Amr? Alan? We'll go in alphabetical order. Alan.

Alan Greenberg: That's certainly a possibility and closer to where I believe we want to be but, you know, how do you avoid gaming in that? How do you avoid a registrar somewhere in Asia who, you know, puts up a website that looks like they're specifically targeting registrants in Germany just to be able to apply GDPR and have a, you know, a data-free registration service?

Kurt Pritz: You know, yes, so I don't know. So if that's what they want to do I guess that might be difficult to stop and I think one of the issues is not just, you know, creating our policies and then implementing them but implementing them in a way that they're enforceable, that the rules are clear and can be enforced, so I don't know. Amr.

Amr Elsadr: Thanks, Kurt. This is Amr. I would suggest that we need to do a bit more of work on before we recommend any sort of research into a potential rules engine or any sort of investments at all actually. I would be concerned that, you know, if resources are poured into something like this then that in itself might create some sort of perceived justification to implement it.

I think before we make a recommendation to even research a rules engine we need to be very sure that it would be a viable option from, you know, in terms of other - in terms of factors other than technical ones. So I just think we need to think this out a little more. Thank you.

Kurt Pritz: You think we need to do research in order to determine if we should do research, something like that? Go ahead, Alan.

Amr Elsadr: Yes, kind of. Yes.

Kurt Pritz: Yes, go ahead, Alan.

Alan Greenberg: Thank you. I agree with Amr but for different reasons. The problem we're talking about today could be addressed by a rules engine. It's a really, really simple rules engine, so I don't think there's going to be an awful lot of parameters in it. So yes it could technically be a rules engine but, you know, I don't think it deserves that name, that lofty name.

Ultimately I believe we will need a rules engine when we start addressing laws in multiple jurisdictions not just interpretations of one set of laws as we're looking at right here, and I think that's way out of our scope. I think it's a direction that we and ICANN and contracted parties have to aim in but it's not something that should be in our critical path. What we need is something simple enough that we don't need elaborate rules, you know, a rules engine with multiple dimensions. We're only looking at one dimension here, only looking at one (unintelligible). It just doesn't warrant it and I couldn't imagine putting that effort into it in our critical path.

Kurt Pritz: Well I don't think...

((Crosstalk))

Alan Greenberg: ...I'm going to have to leave the call now.

Kurt Pritz: Okay. Thanks very much for joining, Alan. You know, I don't see it as being on our critical path but I do see it as a difficult problem, sort of a multi-body - three-body problem. Margie, go ahead.

Margie Milam: Sure. I wanted to raise Amr's concern or address it, but I think it's okay to say, you know, if we're researching it that doesn't mean we're necessarily

going to go down that path because I do agree, if it's - in analyzing a rule engine it just becomes overly complicated and, you know, we may not go there from a policy perspective and that's okay to acknowledge that up front. But I think we're sort of talking about it in the dark if we haven't at least, you know, done some sort of analysis related to that.

And the other kind of thing I wanted to raise too is, you know, the - our policy recommendations don't have to be implemented right away. In other words, we could come up with some recommendations that perhaps kick off a separate process that relates to things like, you know, like we might say our policy, you know, immediately is this but we see merit in investigating and researching these elements and updating the policy later if, you know, depending upon the analysis.

So it's, you know, because what I worry about is otherwise we tend to go to the quickest simplest answer because we're looking at this timeline of, you know, having the report done in a month, right? So I just wanted to flag that we do have that ability to make recommendations that go in a different phase.

Kurt Pritz: Thanks, Margie. I think that's a - the right approach. So let me - let me - I think the best path from here is for us to make this - summarize this in some sort of brief writing for the group review and then maybe we can modify that wording as something that would go into the final report. So, you know, I heard that, you know, a rules engine, something that should be explored, that it's likely to take some time to develop and that research should be set up in a careful way so that - that it should be done in a careful way so not to set certain expectations or certain expected outcomes.

And that the, you know, and that we should look - examine the - in preparation for a final report we might - we'll do some study of the relative costs associated with the different costs on both sides. And then that paragraph would include, you know, the different types of contracted parties

and where GDPR would attach and where it would be optional and where it wouldn't attach. So I'll undertake to write that up with a team. Emily.

Emily Taylor: Thanks, Kurt. I'm really confused about how we suddenly got into discussing rules engine, it seems to be an implementation question. And I'm not even sure what policy we're discussing or we've agreed to. I think that making a draft recommendation on a rules engine at this stage seems a little bit like putting the cart before the horse at this stage. I might have completely misunderstood but I'm really confused about how we suddenly spent all this time discussing a rules engine and I don't understand where it fits in with the agenda or how it fits in with our discussions on the temporary specification. Thank you.

Kurt Pritz: I think that, you know, the more I talked to Margie I got myself into trouble. But, you know, I think that the comments by many on this call, almost everybody, indicated the level of complexity involved in trying to make this parsing for contracted parties that do business globally and the costs associated with that. Despite that, some of us would like to see that contracted parties do this parsing and comply with GDPR or not redact data depending on sets of circumstances associated with different registrations. Some people think that's tremendously costly or impossible.

So what I've heard on this call is that - is that the elements of the temp spec as written would remain essentially the same except for, you know, indicating that if clearly a contracted party fell outside the EA in all its business dealings GDPR wouldn't attach. But that further study into the creation of a rules engine or some mechanism that makes the parsing feasible on a registrant by registrant basis is - can be done. And we would - that would be the end of our work and then we'd hand that research - research into research work off to another party.

Not clear, huh? Right, so I'm reading James's response, and those are kind of the - those are the kind of the terms of reference of this research, right?

You know, should a rules engine be built to accommodate laws as they change so they can be added to the Pachinko machine? Will it be created at the expense of ICANN and made free to registrars? And will it be, you know, cheap and easy to implement and also reliable? So those are a number of the challenges for it. Alan.

Alan Woods: Thanks. So I think one of the biggest questions I would have with the way you just put it there, Kurt, is quite simply, you know, who are we to define this? I mean, why would we need to do the research for this? Wouldn't this be the job of another policy development process completely? We're stepping beyond the realms of what we should be doing here. I mean, again, sticking to our scope, our scope is to see whether or not a consensus policy can be confirmed for the terms of the temporary specification, and as we're saying, it can be at the moment, but, you know, it allows us to be compliant.

But again, I have nothing against saying however, you know, perhaps this could be done work done in the future policy development, full stop. I don't think we should be defining the terms of them by any stretch of the imagination as members of this EPDP. We just need to, I mean, there's nothing stopping us from saying it needs to be looked at in the future, but for this moment we can confirm the temporary specification as it allows us to be compliant, full stop.

We create so much more work for ourselves in this process by second guessing what might be done in the future and we really need to be focusing on how we are processing today and can we confirm the temporary specification as written. So I mean, I really think, you know, we've answered this question, we should be putting a full stop on it and moving forward.

Kurt Pritz: Thanks, Alan. And I'm very sympathetic to what you're saying especially about creating work for ourselves. I think I was trying to respond to Amr's concern that, you know, without some, you know, if this team were saying this should be looked into in the future to put some wording around that so it's

managed carefully. So I was trying to do that. But however we want to word it is fine with me. Margie, please go ahead.

Margie Milam: Sure. A couple things, I mean, I guess I don't look at our scope in the same way that Alan does because we're talking about having a policy that is not just GDPR-compliant but, you know, and that's the reason that the rules engine is important is that we're acknowledging that there would be different rules. So I don't think I would support waiting for some future process, I think a recommendation that the work begin immediately in light of the fact that, you know, there's recognition that this is a complex issue, you know, differing rules, that sort of thing. So that's just what I wanted to suggest, that it's important to keep - to have some more affirmative, if you will, policy recommendation because of the differing laws that might come up.

Kurt Pritz: Thanks, Margie. And I too want to be crystal clear that the recommendation would not be that a rules engine be created but that future research be conducted on the feasibility and after that that decisions and recommendations can be made.

Margie Milam: Oh sure. And I'm sorry, I had one other point. The other thing we haven't talked about in this group that we - if we get to the access discussion we might start talking about is the ICANN hub and spoke model, right? I mean, and we've - the uniform access model scenario, if that's, you know, to ever come to fruition, you could see that it'd be actually maybe very appropriate for ICANN to have this rules engine concept. And so I don't want to lose sight of the fact that this idea might, you know, addresses some of the issues that James suggested, you know, who develops it, who maintains it, you know, Kristina I think asked, you know, where would the money come from.

Those are all great questions and we should explore it, but that, you know, but I think that if we end up in a situation where the hub and spoke model is something that, you know, emerges then the rules engine fits in nicely and so I just want to make sure that it's something that we include our

recommendations but not necessarily with the immediate effect because that's not, I mean, I recognize that's a time - it'll take time to do and analysis as to whether it should be done at all to, you know, to have a policy that follows that approach.

Kurt Pritz: Thanks, Margie. So I'll do my best with the help of the support team will probably do most of it to write up a potential policy recommendation for us and we can renew our discussion. I'm following, you know, the chat and talking about money and the source of the money. And, you know, that all goes to how specific we want to be in our policy recommendations. Do we just want to do further research on the feasibility of it or do we want to write terms around, you know, cost and responsibilities? And I brought you Digital Archery, James.

So let's go onto the next topic. And I'm going to ask the ICANN staff to lead this. This is the policy change impact analysis and what's been included in the initial report. So could you guys pull that up and take us through that?

Marika Konings: Yes, Kurt. This is Marika. I'm just going to scroll to the relevant page in the document so I can take you there to the same section. So per the charter, and I think this is a general requirement for all PDP working groups, there's a need to include a policy impact analysis. Basically that impact analysis is expected to set out a set of metrics to measure the effectiveness of the policy change and including, you know, source or baseline data for that purpose.

You know, the main objective in that regard is to kind of measure - to be able to measure the impact of the policy recommendations, you know, did they achieve what the group set out to do and that of course then also allows, you know, over time to review and potentially, you know, course-correct or make modification if, you know, the objectives that were set out were not achieved.

So what is currently in there is fairly, you know, general language noting that, you know, this is probably something the group needs to further consider. But

again it is something that the group is expected to complete or provide information on for its final report. So we just wanted to flag this and maybe see if there are any ideas or suggestions around, you know, what should be captured here.

Maybe there are even volunteers that would be willing to, you know, write up some of the language for this section. And again, I think this is all you know, part of at least the GNSO's objective to have more data-driven policy development to be able to measure the impact of recommendations and to be able as well then to review over time whether recommendations have the desired impact.

So again, you know, this would allow then as well from an ICANN side, for example, to put certain measuring tools in place to measure the effect. But again, you know, some guidance is needed for further information is needed on the expectations of, you know, what information should be tracked, you know, what kind of results would demonstrate (unintelligible) of the (unintelligible). If anyone (unintelligible) suggestions on this, you know, or any volunteers that would like to work on this section in preparation for the final report.

Kurt, you may be on mute.

Kurt Pritz: I didn't know I was obligated to respond. I thought you were asking for volunteers.

Marika Konings: Yes but I don't see any hands so I don't know if that means no one is willing to work on this. I do note I think for the charter drafting effort I think Stephanie, who I don't see on the call today, you know, had a specific interest in this part and I think made a number of, you know, edits to this specific charter requirement. So, you know, I'm happy to reach out to her to see if she might be willing to put more meat on the bones or at least have some ideas on what should be captured here. So maybe that's a starting point if no one

else is willing to put up their hand or share any ideas or suggestions you may have.

Kurt Pritz: Thanks. Thanks, Diane. I think you're going to be - you might be over-taxed though with working on these relationships aspects and controller agreements and also the legal committee. What - so what's - maybe the way to look at this is what's in the initial report now and how - this is obviously an area where practically none of us have paid attention. So, you know, what's in the initial report now and what's the minimum requirement to satisfy - what's the minimum product to satisfy this requirement? I think the initial report identifies some of the policies, right, that are affected.

Marika Konings: Yes, Kurt. What you see on the screen is the language that's currently in the report. The bullet points actually come from the charter so those kind of set out what the group is expected to do.

Kurt Pritz: Right.

Marika Konings: So, you know, determine the policy goals, you know, identify, you know, determine a set of questions, you know, determine a set of metrics. And again it may be, you know, fairly straightforward, you know, one of the objectives obviously is GDPR compliance, you know, how can you measure that, you know, after implementation of this policy? Were any cases initiated with DPAs that noted that, you know, it wasn't in compliance?

So again I think there's certain things that may be fairly easy to kind of write up but it's still good, you know, and as well is there any specific metrics that you think should be followed, you know, anything that compliance should start tracking, for example? And again, it could be the number of complaints in relation to, you know, certain aspects of the policy recommendations as that may give insight to, you know, did the group solve an issue or create an issue? And as such, you know, what if anything could be done to kind of correct that?

Kurt Pritz: I just got my manager hat on here and trying to, you know, I'm sitting at my desk trying to figure out a place to put this task. And if people on this team can't undertake it, I kind of have sympathy for that, so then is this a task we, you know, could put to alternates? Is this - Marc, do you have any idea?

Marc Anderson: Hey, Kurt. This is Marc Anderson. Can you hear me okay?

Kurt Pritz: Yes, perfect.

Marc Anderson: Okay great. So a couple thoughts. So I guess first, when you teed up this conversation I thought this was going to be a conversation about where this policy has impacts on other policies. But that's not what I heard from Marika. What Marika has described is language on how this policy will be, you know, judged as effective and how, you know, compliance or, you know, or the GNSO Council, you know, might look at the implementation of this policy and determine if it's meeting its needs and goals.

And so I guess to be clear, I think both are important tasks that we have to undertake. But I guess I'm wondering if now is the right time to talk about how you would consider, you know, judging the effectiveness of this policy when we have a number of outstanding policy items that we're still considering.

My concern is that it might be a little premature to start talking about, you know, how we would, you know, how you would determine the effectiveness of the policy? Did the policy achieve its goals when, you know, considering where we are at this stage of the working group. So, you know, to be clear, I do think both are important activities that we have to undertake, I'm just not sure the right time, you know, and Marika is saying in the chat, "Per the charter, this is expected to be included in the final report."

Yes, no problem with that, it should be. But, you know, so are the final policy recommendations and I think we need to know what those final policy

recommendations are before we start having a conversation about measuring the effectiveness of those policy recommendations. That was my thinking as I listened to this. Thanks, Kurt.

Kurt Pritz: Go ahead, Marika.

Marika Konings: Yes, so this is Marika. So one suggestion I may make there then, because, you know, I understand that, you know, it's hard to do this when you haven't finalized your recommendations yet, but, you know, noting the time there's likely going to be very little time between, you know, agreeing to the policy recommendations and producing a final report. So, you know, one suggestion I can maybe make there as, you know, the policy impact analysis as such are not, you know, policy recommendations and as such they need to go through, you know, the Council approval or Board approval.

For the policy recommendations to take effect, you know, maybe you could put in language here that kind of explains the, you know, the situation the group was in and kind of take as an action item that following the final report this is something you work on and it's kind of delivered separately to the GNSO Council and, you know, ICANN Board if needed, you know, if there are specific requests that metrics that ICANN Org needs to implement it probably will also need to go to the Board, you know, to direct staff to do that.

So maybe that is a way to kind of address, you know, the concern that you don't have final recommendations but also note that, you know, there is a time crunch while still not forgetting that this is an important part of the work. So that may be a way of dealing with this section to kind of take it out of here and deal with it separately so that due consideration can be given to it once you've agreed to the policy recommendations.

Kurt Pritz: Thanks, Marika, for that. Emily, go ahead.

Emily Taylor: Thank you very much, Marika, for drawing this to the group's attention, that's completely appropriate. I do however share the views of Marc and I think Margie in the chat to say that, you know, at this stage it's slightly (difficult) to conduct such an analysis before we have anything close to recommendations and (unintelligible) to the issues. So I think it's something that we need to bear in mind is a task to be completed prior to the publication of the final report. And thank you very much for drawing it to our attention in that way. I don't think it's something that we can start to work on yet since it would be a (unintelligible) not a productive use of time at this stage. Thanks.

Kurt Pritz: Thanks. This is such a - well I don't want to say "odd" and I hate to keep saying how we're different from every other policy development group. But it's different in that - it's different in that we're not creating a new sort of policy for example, for how to transfer domain names from one registrar to another or something where there is some sort of measurable output but rather we're trying to bring ourselves into compliance with GDPR.

And so I wonder if - I don't know - I wonder if we could take each of the existing policy recommendations and see what metrics or measures there are, you know, pretty easily and attach those alongside for the group's review or something like that? So I'm sensitive, you know, I'm sensitive to the arguments people are making about timing, I'm more sensitive to the fact that we're tremendously busy trying to get done.

So I think what we'll do is leave this for now. I'll collaborate with staff to see if there's some independent resource that can kind of, you know, take a shot at this then and then work something up so we agree with it at the end of the day or something like that. You know, our last policy recommendation is to get somebody to fill out this last part of the charter.

Okay so let's let this go and then - so I think it's just about time to close the meeting. Is there any action items from the staff? Oh, Ashley, I'm sorry, did you have your hand up?

Ashley Heineman: I did but I don't want to prolong it. I guess I just - in wanting to avoid looking like nobody wants to do it, I'm happy to volunteer to work on this issue. I guess similar to everyone else I would just hate to dedicate time to something and then find out something changes as a result of getting input to the initial report. But that being said, you know, I'm happy to volunteer once we decide it's best to start looking at this conflicts with policy issue.

Kurt Pritz: Thanks, Ashley. Okay then let's leave this for now. So, Marika, do we have action items, or Caitlin?

Caitlin Tubergen: Hi, Kurt. This is Caitlin for the transcript. I did capture one action item which is for you and that is to summarize the geographic differentiation discussion and draft policy recommendation for the group to review and ultimately be included in the final report.

Kurt Pritz: Great. Okay, does anybody have any closing comments before we let everybody go? Great. Well thanks again, everyone, for being on the call, the constructive discussion and hanging in there. Thanks very much and have a great day.

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

END