

**ICANN Transcription  
EPDP on the Temporary Specification for gTLD Registration Data  
Tuesday 13 November 2018 at 1400 UTC**

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

<https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-13nov18-en.mp3>

Adobe Connect Recording: <https://participate.icann.org/p8im8q14ab7/?proto=true>

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

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

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 25th GNSO EPDP Team meeting taking place on the 13th of November, 2018 at 1400 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the telephone bridge would you please let yourself be known now? Hearing no one, we have listed apologies from Kavouss Arasteh of GAC, James Bladel of RrSG, Emily Taylor of RrSG, Ayden Férdeline of NCSG, Farzaneh Badii of NCSG and Alex Deacon of IPC. They have formally assigned Rahul Gosain, Lindsay Hamilton-Reid, Volker Greimann and Brian King as their alternates for this call and any remaining days of absence.

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

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

All documentation and information can be found on the EPDP wiki space and there is an audiocast 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. I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks, Terri. Hi, everyone. Thanks for being here for an on-time start. I think you've had a chance to go through the agenda. I want to make one amendment to it and that is with regard to Thomas Rickert's email yesterday. And Thomas isn't on the call but I hope he's on soon. So he led a – what I call a small group call with some members – that included some members of ICANN staff, notably John Jeffery, to discuss the issue of the relationships and processing data, and in particular his and – his paper supported by many of us that was contributed to by Diane, that proposed that ICANN and contracted parties were really joint processors of data and that they should enter into JPAs, joint processing agreements.

So you've read Thomas's email on that and I think we should reserve some time in this call for Thomas to report on that. And Thomas has to leave after 90 minutes of the call, as we'd all like to, so I propose we go through this agenda for about an hour. I'd like to get through the welcome and update

section and also the data redaction session and then propose turning it over to Thomas for a report on this meeting at the top of the hour, either at the end of those two sections or if we're not through them yet turn it over to him at the top of the hour. So that's the updated agenda.

To go through the updates at the top of the meeting, the support staff sent many documents, one is an updated draft of the initial report so that – in an effort to keep you continually updated with changes that are made so it's sort of a balancing whether to save all the changes and plop them all over the fence at once or keep you updated with drafts from time to time.

And so this draft covers the changes that have been made in our discussions in the previous few meetings since the initial report draft was first published, and then also there's been many comments made on the Google Doc and the vast majority of those have been captured for discussion but some were clearly corrections or administrative changes or something to make the document congruous, so – with itself, so some of those changes have been made and incorporated into the draft so please look at that.

You might – but particularly look at new language on the EBERO and how that's folded under data escrow and the new language there and also we've included a proposal in the – from the Business Constituency with regard to dispute resolution processes and their request to perhaps receive information on registrants prior to the filing of a UDRP so that position is captured in the document so if you would look at that updated draft of the initial report that would be great.

With regard to the natural versus legal persons and geographic status, you also have what we hope is the final version of what's going to go into the initial report, the you know, I'll just say the originally proposed five-line interjections now a book, but for the purpose of the initial report I think it's important that we capture all the comments that were made. And I think that's done and I want to close that off and say we're going to publish that in the

initial report so you'll want to review that. But if there's no recommendations made that's fine.

I just want to indicate one issue that's been raised by the GAC that had a recommendation for a comment that – the GAC made a comment, Lauren Kapin made a comment to a previous version of that document that we think her comment or the GAC's comment is captured in the IP – you know, the Intellectual Property – Business Constituency comment. So the GAC could – you guys in the GAC could either read that and say yes, we agree with that or make an edit to it and that'd be fine.

And then we've also made reference I believe to Amr's intervention on the email list – oh wait, that's – that's a different issue, that's about data redaction but I saw Amr's name come up so I got confused. So that's the status with regard to legal versus natural persons and the geographic basis for differentiating registrants. Amr.

Amr Elsadr: Hi, Kurt. Thanks. This is Amr. Hello, everyone. And I actually wanted to, you know, I'm just as keen to wrap these two issues up as soon as we can but I'm – I would like to offer another – or propose another change to the natural versus legal issue that I hope will be considered the – a friendly amendment of sorts. And that's just to, you know, whenever reference is made to differentiation between natural and legal persons that his be replaced with differentiating between personal information of natural versus legal. I believe this would more accurately capture what's in the GDPR and what we've heard from the EDPB because that's actually I think that's where the nuance of the issue is as far as GDPR is concerned.

There is a part of a letter from the EDPB in the report currently and they do make that clarification – or they don't clarify it but they frame it in that sense. And if you look at Recital 14 of the GDPR they also refer to it as, you know, the personal information of legal persons and natural persons or personal data so it's not actually a distinction between the person, whether it's legal or

natural, it's the distinction between the personal data concerning the legal person or the personal data concerning the natural person. So I hope this is acceptable and not too controversial. I don't think it's that big a deal but I think it would be more accurate. Thanks.

Kurt Pritz: Thanks, Amr. That was really clear. Alan.

Alan Greenberg: I don't think we can unilaterally make that distinction. Yes, we have to be concerned about personal information that might be included in a legal person's entry but the GDPR is very clear that it's talking about differentiation of legal persons versus natural persons. And I think we have to maintain that consideration and I believe it's also part of our charter. Thank you.

Kurt Pritz: And, Alan – and, Alan, so what's your concern there about – this is for my understanding so I hope, Amr, I'm channeling some of the group. So what's your concern there about – if that change is made what might be lost or what issue might be left on the cutting room floor?

Alan Greenberg: We've had the discussion a number of times and there have been people who have voiced the position that if a legal person includes personal data in their entry, that is their responsibility and it is presumed that they have gotten appropriate authorization. That's been said by people from NCSG, it's been said by people from contracted parties. So I think we need to understand whose responsibility is it and can the registrar judge whether something is personal or not?

Now, you know, I can come up with an email that sounds like a generic one and it's someone's name. People have all sorts of unusual names. So I agree with the position that it made that it may be difficult, but the distinction we're talking about is whether we are dealing with a registrant who is a legal person or a natural person and I don't see how we can unilaterally change that. Thank you.

Kurt Pritz: So Amr's in the chat quoting Recital 14. So go ahead, Milton.

Milton Mueller: Yes, I think that was kind of the point I was going to make that this distinction that Amr is trying to introduce is simply based on a direct, clear reading of the GDPR and it's the data, not the entity that the GDPR addresses. So I don't see why this is controversial; I agree with Alan that we don't want to get into a game where we argue for argument's sake. It's just a more accurate statement of what the GDPR says so let's get on with it.

Kurt Pritz: Margie.

Margie Milam: Yes I'd like time to think about it. I just want to read other parts of GDPR (unintelligible) remember that the policy is not limited to GDPR, we're trying to make one that's broader than that. So I just think if we could just table it for the next Thursday's discussion at least we'll have some time to think about it.

Kurt Pritz: Yes it'd be great I think if Amr could bolster his, you know, his statement and his text in here with some writing because certainly we're trying to protect data here. Hadia, is this crossed? Go ahead, Hadia.

Hadia Elminiawi: I just wanted to make a (unintelligible) regard to distinction between natural and legal persons. I would like to say that the issue is not as ambiguous as some of us try to make it seem. So (unintelligible) 2018 the European Commission answered a written request by an Indian Parliament member which (unintelligible) who asked a question in this regard. And I would like to read to you the EU Commission reply, which is of course – you can find it online where an email (unintelligible) identifiers of an individual and he gave an example, (unintelligible)@gmail.com it is personal data falling within the GDPR. It goes on saying the Recital 14 and then it gives some examples about what is considered legal and what is not considered – and what is considered personal – natural person.

So it says, “However personal data of employees – of the legal person including their professional email addresses would fall within the scope of the regulation.” And it gives an example, Johnsmith@ikea.sk, the (unintelligible) company by a company of an email address such as flower234@gmail, this falls under the GDPR. But it gives other examples, for example, that do not fall under the GDPR so it says, “an email address of a legal person such as ikeacontact@ikea.com, would not fall within the scope of the regulation.”

So actually we have a response from the European – a written response from the European Commission in this regard and in order to always be tackling this issue as a gray area or an area that we don't know how to tackle, actually we have clear responses in this regard. The argument or the debate would be how to implement this or how to make sure it's implemented in this manner. So that's just a quick note, thank you.

Kurt Pritz: Thanks very much, Hadia. And thanks for the work you've done to make your audio clear, it makes your points a lot better. So I think I like Margie's suggestion and Amr's gracious acceptance of that. And so I think he's making a – he's making a point here that's, you know, it's definitely valid in some ways so determining whether it rises to that – the level of making a change to the initial report is what we have to decide. So Amr's writing on this will be anticipated. And thanks very much for bringing it up.

So with regard to – I'm marching down the agenda here. So with regard to review of outstanding action items, I got to stop reading the chat, I've got good news and I've got bad news. So the good news is, you know, we don't really have any outstanding action items except for, you know, all the work required to produce the initial report and that includes the matrix of issues that you were sent yesterday that we are likely to begin discussion on today plus the outstanding issues that were left that were indicated, so quite a bit.

And the result of that will no doubt require the laying in of additional meetings that could occur as early as tomorrow but I want to take the temperature of

the group. So look at your calendars and at the end of this call, maybe I'll let Marika give some options as to when we can get together outside this and then we'll firm that up with some sort of poll or something like that to see when people are available. But that's the news there.

So I don't have any other action items and so let's go onto the next section of the report which is data redaction. And this is what's being put up here is the proposed language in the initial report in really small font. So if – I don't know if you can put in the link to the doc or you guys can download it from email so you can read it more easily. And I think – and so I think the issues here for you to look at are relatively few but we have left unsettled whether, you know, whether organization is personally identifiable – contains personally identifiable information or not. It seemed to me anyway that the majority of our team thought that this information could be published.

There's intervention by Amr that's referred to here and captured here that in support of redacting that data. There's also the remaining issue of city or province in combination, whether that's personally identifiable information and then finally there's email and in the list of the – in the list of the data we tried to make that really clear and so want to get sign up to that but we have two emails, one is the email provided by the registered name holder which we identify as personally identifiable information and will be redacted and then the anonymized email address for contacting the registered name holder that will not be redacted so we captured that under two line items.

So I hope that you've had a chance to look at this and rather than tick off any one of the – any one of the open issues I'd appreciate comments first having to do with this document and making it part of the initial report and then second if we have time on the issues overall. Ashley, please go ahead.

Ashley Heineman: Thanks. I don't know if this is the appropriate time but I had a couple of small edits to make to this document if possible. The first of which being if you scroll to kind of like the – just past the middle part of the page starting with



the EPDP in italics, if you go to the second bullet there's in Track Changes a sentence that's been added to the end that says, "There was some disagreement as to whether the following element should be redacted for they contain personally identifiable information."

If there's any way we could add in here, "As they could contain personally identifiable information," because it's not a given that organization provides PII. Thanks.

Kurt Pritz: Thanks, Ashley. I'm sure that can be accommodated. Are there any comments to Ashley's edit or any other comments on this document? Go ahead, Milton.

Milton Mueller: Yes, I think she's – her rewording is correct is they could involve personally identifiable information. I think the point is also that with the organization name, even if the name itself is not personally identifiable information it could be used to identify a party and that's what some of us are concerned about.

Kurt Pritz: Right. Alan.

Alan Greenberg: Thank you. I'm not sure why postal code is there. It was mentioned but it was pointed out that postal code in many jurisdictions might be as little as one house; where I live it's one side of one block. And I don't think there's anyone at the end who was suggesting that postal code be published so I think it's a red herring to include it there.

Kurt Pritz: Thanks, Alan. That's what I recall the agreement of the group was that there's areas where a single house has its own postal code. Any other comments? Ashley, do you want to come back to Alan or...?

Ashley Heineman: No, no, I agree assuming what Alan was talking about is I think we all agree that postal code has problems in terms of being able to identify a person. The only other thing – and again, I'm sorry for making what probably sounds like

nitpick edits but we had some conversation within the GAC on another thing I'd like to note, and I'm just trying to identify in the document. Bear with me two seconds.

There's a reference to there is no consistency in terms of how the organizations feel the thing is and – I'm trying to find it in the document. Essentially all we wanted to change was from no consistency to that there is a lack of consistency because while this might sound kind of pedantic it's just to note that – actually it's in that last bullet on Page – under that – the same header that I was talking about and the last major bullet in the – “In the contact of the organization field the EPDP team noted that there is currently a lack of,” I'm sorry, it's already been changed. My bad. I'll shut up. Thank you.

Kurt Pritz: So we've been here on Skype waiting for you to get to that.

Ashley Heineman: Sometimes it takes longer than other days.

Kurt Pritz: Are there any other comments about this? I want to say that, you know, we're closed on this. And I think it raises the right issues with the right amount of specificity for public comment and so we can take the public comment and feel comfortable getting to, you know, finality on these few remaining issues on redaction. You guys can talk instead of type. Thanks, Milton, go ahead.

Milton Mueller: Just want to make sure we have that highlighted area, “add others as appropriate,” I saw Thomas say that you can add the ISPs and I'm not sure if anybody else was in there as well on the organization field.

Kurt Pritz: Want to be in on that Thomas? Go ahead, Mark.

Mark Svancarek: I think we need to be clear about distinctions of personal data versus personally identifiable information because I think personal data is the controlling term, you know, the legal thing and PII is not. So it's okay for us to have (unintelligible) about things that are personally identifiable information,

but we need to make a distinction as to the legal impact of one versus the other.

Kurt Pritz: And so are you saying in every case we should remove references to personally identifiable information and replace that with personal data or are you correcting my...

((Crosstalk))

Mark Svancarek: I think the actual term, so I got scolded by my lawyers on this, is personal data of an identifiable – of an identifiable person. I think that's what it was. So, yes, there is some sort of a distinction and we should, you know, if the comment is about some people are worried about this being personally identifiable, I mean, that is a reasonable thing to put in because people are interested about, you know, worried about things being personally identifiable, but in other cases if we're being specific I mean, if we're talking about the legality of something we have to use the correct language which I believe, and the lawyers can fix me, is personal data.

Kurt Pritz: Go ahead, Benedict. Thank you, Mark.

Benedict Addis: PII is an American term; personal data is the European term. And with this there's discussion on the chat about further redacting of the Org field. And I think we should be just cautious to not confuse ourselves between stuff that – collecting of personal data and a field where there's bad data quality, so personal data may have crept in but there's no intent to collect personal data there. So I wouldn't support redaction for that reason.

Kurt Pritz: Yes I think that's clear. Alan.

Alan Woods: Thanks very much. Just very quickly, on Benedict's point there, it's intent for that which guided us in this (unintelligible) much easier, the fact of the matter is that until we fix the system to not allow that to occur where there may be

some sort of a possibility and that we're not strong enough in the system to prevent that from occurring, well then we must look at that at an appropriate level of risk. So intent is probably not the word that we should be throwing in here because the intention is probably not within our control I'm afraid.

Kurt Pritz: So not within our control but I think the question we have – so I agree with that, Alan, but I think the question we have is you know, does that give rise to liability and that's one of the questions that we seek answers to. Benedict.

Benedict Addis: Yes, I'm not really into this idea of just considering risk on the side of the contracted parties. I think that there is a systemic risk that arises from not having this data published and that – I don't think that side has been articulated clearly enough here because it's in no one's specific interest to make sure that the systemic risk to the system is not having this data available is captured. Thanks very much.

Secondly, I also – I'm kind of surprised at NCSG and I was going to write a long-rant email about this but actually I guess I felt that NCSG would be sort of aligned with the idea of not helping enshrine corporate personhood, the idea that companies shouldn't get treated like normal people. And I'm really surprised that I haven't been hearing that from you guys, so maybe you could – one of you could talk to that, why we're treating the sort of falling into a de facto treating companies the same as people for this legal and natural persons debate. Thanks.

Kurt Pritz: Yes, Milton.

Milton Mueller: Hello, Benedict. This is Milton. So is this a reference to the Supreme Court decision in the US about free speech and legal personhood? I'm not sure how seriously to take that. But anyway, the reason is not that we are equating organizations with people, it's just that in many instances there are in effect small public interest groups or entities that are in some sense organizations but in another sense they're so closely associated with an individual that to

publish the organizational information – or the organizational name would effectively identify them.

I know that the – for many years the Whois entry for internetgovernance.org of our Internet Governance project had my own home address and name in it for example. So that's what we're concerned about. I hope that explains it.

Kurt Pritz: Margie.

Margie Milam: Hi. It's Margie. I wanted to agree with Benedict. I think that it's important to include the other perspective in this language regarding the systemic risk to the system by not having this data available. And I'd also suggest in the bullet point that talks about where the EPDP team discuss the data elements and then it says, "There was some disagreement as to whether the following elements could be redacted." The whole thing reads as though there's no support on this team for having that be available.

And I think that, you know, while we've heard the NCSG I think there's broader support among others on this EPDP for having that data published. And so I just want to make sure that the language is nuanced so that it reflects that view as well because it reads like the EPDP thinks that it shouldn't be publicly accessible and that it should be redacted and I don't think that's what all of us believe.

Kurt Pritz: So Margie, could you add one sentence that indicates the groups that are – if it's not – that indicates the groups who support the publication of this field? And Benedict, could you write one sentence that states your concern about systemic issues and a second sentence that sort of – that describes that and we can add those. And Hadia, Alan and Stephanie, if that – if you have something else let's go through the queue. So Hadia.

Hadia Elminiawi: I have just a quick comment in response to Milton. I want to remind us all that the GDPR ensures the balance of the rights of individuals against other rights

including public interests. So we should trust that those who make the law got the balance correct. And for us what we need to do actually is make sure we comply with GDPR. If we do that – this, we are sure that we got the balance correct. We don't need to worry that rights of certain individuals might not be met. Thank you.

Kurt Pritz: Thanks, Hadia. You know, to me at this stage of our inquiry we're trying to determine whether these data fields contain personal data or not and if they do they should be redacted and if they don't they should not be redacted, and then we go onto the next thing which is under what conditions are those disclosed that require a legal basis and that's where I think that sort of balancing takes place. Alan, go ahead please.

Alan Greenberg: Thank you. The problem is it might contain personal data and that's where the balancing comes in and I think Benedict is right, we cannot simply reduce one party's risk and not consider the other risks associated with redaction. However, I put my hand up on another issue, Milton's example is exactly the kind of discussion that we're having here which completely detracts and takes away from the real issues.

He pointed out that the Internet Governance Project registration had his home address; we're not talking about the address field here, we're talking about the organization field. What was in the address field is completely irrelevant and will be redacted, you know, depending on how we go ahead and treat it but simply saying that we should redact the organization field because there's an address which might be considered personal, is simply mixing apples and oranges. Thank you.

Kurt Pritz: Thanks, Alan. And I think this is why we've got this language in here that points up the – this balancing that's taking place on this one data field and we'll see if we get any information in the public comment that sways anyone. I personally doubt we will but we'll have to get to a conclusion at some point but probably not today. Stephanie.

Stephanie Perrin: Stephanie Perrin for the record. I hope you can hear me. I just wanted to add to Milton's explanation about the NCSG position. It seems to keep getting left off but I'm going to keep bringing up again, one of the issues with small organizations is that they have charter rights that are protected under the European charter of rights, I haven't got the title correct there, but the one on which this data protection regulation is based so entirely relevant. And that is that identifying the organization may put individuals at risk.

Alan is correct, if we're redacting the address and the postal code and the names of the relevant officers, then obviously we're doing the correct thing. But I don't want anybody to lose sight of the fact that protected organizations such as religious institutions, political speakers, etcetera, transgender groups, for instance, are put at risk by publishing their data, so thanks.

Kurt Pritz: Thanks very much. Alan Woods.

Alan Woods: Thank you. Just as I stare into the edge of a particular rabbit hole and I'll just say one more thing, and just a gentle reminder that, you know, the scope of what we're trying to do here and the scope is, is the temporary specification as written enough to allow the contracted parties to maintain compliance with the GDPR? At the moment we're saying that as the system as it currently is, is there a chance that there could be a breach by the inadvertent completion of the organization field. And (unintelligible) going to change and to re-haul the entire system we're saying that there is a high risk, in fact, of a breach.

So I don't understand where the systemic issue is. The systemic issue here, as far as I'm concerned is, you know, continuous breaches of the GDPR. And also it's not just (unintelligible) risk, again, I do not claim to be the white knight in this, but again we're thinking about the data rights of the individual as well and somebody's personal data is breached due to our inadvertent, well then that is still a breach. And yes it will affect the risk of contracted parties as well. We are on the same page on that one.

So I just wanted to point out again just bringing it right back to scope, what are we trying to achieve here? And as far as I'm concerned there is support there for the current redaction of the organization field, and again, recommendation if we want to, to say the system needs to be changed so that we can make this not an issue in the future.

Kurt Pritz: Thank you, Alan. Go ahead, Mark.

Mark Svancarek: Similar to Alan's just last comment, when we get to Recommendation Number 3 this is one of those areas where the anonymization of this field is meaningful for natural people and less meaningful for legal people. And so this is another place where we would want to include that comment that system...

Kurt Pritz: Right. And I hope the comment that Benedict is writing about systemic issue also includes, you know, another sentence about what the, you know, what the affects, the benefits or costs of that are so we can do that balancing later on. Brian, go ahead.

((Crosstalk))

Brian King: Yes, thanks. Can you hear me?

Kurt Pritz: Sure.

Brian King: Great. So I would just note that Recommendation 3, speaking of which, is not the IPC's recommendation. We've been pretty clear at the web form not sufficient for a number of purposes and so I don't think it's fair to represent this as the preliminary recommendation of the EPDP team because I think the web form is not sufficient and it's better in cases where if we can make that legal versus natural persons distinction but it's important to note that we think that the email address is important.



Kurt Pritz: For what reasons?

Brian King: For what reasons what? Do we think that the web form is not sufficient?

Kurt Pritz: Yes, or yes or the email is important.

Brian King: Okay well I think we've been pretty clear about that, but we're not able to identify trends in registrations across multiple registrars. If a registrar is anonymizing the email address differently than the other registrar that the bad guy is using, you can't do that with even anonymized email address. Web form does not allow for the presumption of the – at least argument that the contact was made with the registrant if you're trying to prove notice in some court case, you don't have the same presumption of delivery of postal mail or evidence that an email was sent with no bounce back received. There's a lot of reasons why it's not good enough.

Kurt Pritz: All right. Thanks, Brian. So we're going to – so we're going to have this discussion again. I asked for some – to the extent it's amenable to everyone I asked for Margie and Benedict to make those contributions. I think we've captured Amr's intervention sufficiently from earlier so I think we've preserved that in a – the arguments in a way that can be put in the initial report that if there's any new information that will help our deliberations it will come from that. So I think that's done there.

I might, you know, we might also ask ICANN why – their rationale why the organization field is not redacted in the temporary specification so I'd ask the support team to capture that question. And what the thinking was to see if they've gone through the same process as us or it was cursory or just different. So I'm going to close this off. Thanks very much for your comments, we'll capture those, look forward to a couple more contributions and then button this up.

So, Marika, do you have something you want to add?

Marika Konings: Yes thanks, Kurt. I don't know if we're already wrapping up the conversation on this whole item or just redaction part because there's still an aspect of both the questions in relation to this issue as well as the preliminary recommendation that you can find on I think Page 2 or 3, sorry, that we haven't really discussed yet. This is what is the group willing or planning to put forward in relation to email contacts. There are two specific questions I think in the charter questions that relate to that, the first one is, "Should standardized requirements on registrant contact mechanisms be developed? And under what circumstances should third parties be permitted to contact the registrant and how should contact be facilitated in those circumstances?"

That currently has been translated into a preliminary recommendation that basically has bracketed language for what is being recommended. You know, on the one hand the – I guess unobvious option is to follow current requirements of temp spec but then of course, you know, other options are, you know, variations thereof or something completely different. So would be helpful to have some guidance here what the group's thinking is specifically with regards to what should be going into the initial report on that topic.

Kurt, are you still there?

Kurt Pritz: Yes so I'm just thinking and waiting to see if anybody raised their hand but I don't see that. So – and I'm reading the email list. So is there a position that an email address is not personal data? Is that the position that's being put forward? I'm just reading Mark's comment here. Go ahead, Milton.

Milton Mueller: What I heard was not an argument that the email address is not personal information, what I heard was that they wanted to use it to do searches, generalized searches of the Whois database that would allow them to detect patterns in registration.

Kurt Pritz: Okay, Alan. Thanks, Milton, for the clarification.

Alan Greenberg: Thank you. The EDP – I never get this right, European Data Protection Board has made it clear that we should counsel registrants who are legal persons to not put personal information in email addresses, and advise them that there are ways of making sure they do not have personal information. That's one of the few clear rulings we got from them and I think we should pay attention to it. Thank you. We seem to have lost Kurt.

Kurt Pritz: No, I'm here, I'm just thinking about where to take this conversation next. Stephanie.

Stephanie Perrin: Sorry for the delay there. Stephanie Perrin for the record. I would just like to put that counsel from the European Data Protection Board in some kind of context. There's a very long history of them telling ICANN that they were not paying enough attention to registrant rights, including giving them any kind of advice about where the heck their data was going and how it was being managed. So you have to take that in context. ICANN gives almost no information to the registrants about how to manage their domain name registration, how not to put their personal information into their website name, how not to provide data because it's going to be scraped up by data brokers from the Whois.

So I really think that to say that that is a concrete piece of advice, they're counseling ICANN to fulfill their responsibilities. That doesn't mean that you can rely totally on educating the public and transfer the responsibility onto them. Thank you.

Kurt Pritz: Okay. Thanks, Stephanie. I'm going to take the comments of the group and move on. And, you know, so we have – so that we have is – I'm a little bit loathe to let it go – so we have Recommendation 3 that includes essentially the language of the temp spec but also bracketed language or lack of language from the IP and BC that need some discussion. So we can move on

and leave this for the initial report or an email discussion I think. That was sort of incoherent by me. I'm just reading it. All right so we'll just note –let's note Brian's comment in this section and then we'll move on.

((Crosstalk))

Marika Konings: Kurt, this is Marika, if I can then...

Kurt Pritz: Yes, go ahead.

Marika Konings: ...just ask one question so does that mean that, you know, those that have not spoken up on this issue are comfortable for the purpose of the initial report to recommend that current requirements remain in place noting that I think the BC and IPC have indicated that they do not support that and we can note that in the report, or is that a reasonable assumption of the silence or is there something else that staff should be doing in relation to Recommendation 3? I'm just trying to get some direction here.

Kurt Pritz: Okay let's follow the – we're going to make a notation with Brian's comment and then include that and let's move on. So, Thomas, yesterday I said in the introduction of this meeting Thomas gracefully led a discussion that included John Jeffrey about the processing of data and the parties involved and who were controllers and who were potentially joint controllers and it was kicked off with the memo written by Thomas and contributed to by Diane and the comments of others.

And so I'd like Thomas to take over here, which will be a relief for you. And, you know, review the topic of the meeting and the issues that emanated from that. So, Thomas, please go ahead.

Thomas Rickert: Thanks very much, Kurt and hi, everyone. And Amr is spot on in the chat, before we discuss this, let us as an EPDP team put our birthday wishes on

the record for Dan, who was excused for yesterday's call because he was celebrating his birthday so all the best to you, Dan.

In fact, yesterday we had the small team meeting on roles and responsibilities and we had hoped to more or less come to consensus in the small team on the recommendation to make to the EPDP plenary to basically nail down the concept based on which we're going to frame our initial report. And I think that based on the discussion that we had so far there was an emerging consensus that based on the parameters that we've already discussed in this group, the majority of stakeholders represented on this EPDP team views the gTLD world as a world of joint controllers.

So we tried to basically summarize what the roles offered by the GDPR are so that we're fully aligned on what a processor is, what a controller is, what a joint controller is or what co-controllers are and why this is no co-controller scenario, and then basically looked at the rationale for a joint controllership to finalize the language that I have suggested with the support from Diane.

Then, John Jeffery who thankfully joined our call chimed in and said that a legal memo is in the making, a 10-page memo that is currently being prepared in which ICANN Org summarizes its concerns and its feedback on the draft language that we're currently discussing for inclusion in our initial report. And while we don't know about too many specifics, I guess – and I do hope that the other participants of yesterday's call will do sanity checks on what I'm saying so that I'm actually reflecting the contents of this meeting accurately.

JJ more or less said that there are concerns inside ICANN Org that we are putting the cart before the horse by concluding that we do have a joint controller scenario, that we should first look at all the individual processing activities and then determine what the responsibilities of the various parties are to then subsequently make a decision on whether a joint controller situation or another situation is present.

There was also some discussion on how our group, if at all, can make such legal determination and whether that could be binding because you always find lawyers that see things differently. So we had a discussion on this, we had a little bit of back and forth on our team, and unfortunately my AC connection is patchy so I can't see whether any hands are raised so let me disconnect and dial back in and then while I'm doing that, Kurt will need to help me manage the queue.

But the – I guess the main point is that we tried to convey to JJ that whether or not a joint controller situation is present is not too much at the discretion of the parties involved, in other words, it's not for the parties to a potential joint controller agreement to look at what their liability risk is and then (unintelligible) a legal solution that suits them best.

But if you look at the rationale for Article 26 and the GDPR in the first place, to help data subjects to have an easier way to approach responsible parties in complex worlds of data processing so that the data subjects are not forced to identify which party is responsible for what processing activity and whom to approach to exercise his or her rights, if you look at the rationale that the data protection authorities want to have an easy time approaching the right person for questions of the compliance, if you look at the micro versus macro level of data processing scenarios, i.e. what would a user see. You know, the user provides data to a provider, (untechnically) spoken and hopes that subsequently a domain name will be registered and resolve in the DNS.

You know, they can't understand what the parties involved are. And therefore the most likely (unintelligible) scenario would be one of joint controllership. Having said that, even in a joint controller scenario you can and you should lay down who is responsible for what, who is taking care of what actions, who is responding to user request for rectification or eraser of data, who is responsible for informing data subjects about what data is collected and the like. And then you can back that up with indemnification as you see fit.

So I think that all our explanations did not really help convince JJ that a joint controller scenario is the path to pursue but there are concerns. And I guess that the questions that we will now need to answer are what I summarized in my brief summary to the group mainly, if ICANN Org – and Kurt has chimed in on that point that it's difficult for a policy making body such as ours to do a legal assessment.

If the authority of the EPDP team and the EPDP mechanism to speak to legal questions is questioned then I think we need to answer for ourselves, do we want to respond to that charter question? And if we can't respond to that chartering question, then we need to go back to the GNSO Council and flag that.

So I think that the first question that we need to ask ourselves and find an answer to is, are we willing to take that job? And if so, I think we need to plow forward and make a determination to the best of our abilities and put that answer out to the community for comment.

The second question that we need to answer is how are we going to deal with the question time-wise because we were not given a delivery date when the legal memo is going to be shared with our group. And I for one am really concerned that if we put out an initial report where the stakeholder groups and constituencies could not digest the concerns, the potentially valid concerns that ICANN Org has, it is premature for them to form a view because they might have a different opinion on the legal scenario if they put ICANN's thinking into the equation.

So that's the second question we need to ask ourselves, are we willing to submit a report in the absence of having read, having digested, having discussed inside our stakeholder groups and constituencies and inside the EPDP group what the impact of ICANN's view on this is? And I will also add – and then I'd really like to get a discussion going – I'd like to add that it is most

unfortunate in my view that we have Board liaisons, that we have ICANN staff representatives on our team but yet we had to find out in the 11th hour that ICANN has been proceeding to draft or help draft a legal memo that questions the outcome of our work.

You will remember that Chris Disspain said when we asked him in LA, "Will ICANN sign such document? Will ICANN actually do that?" He said, "I have no reason to doubt that." And so there was complete silence from staffers as well as from the Board liaisons when we asked what legal advice has ICANN sought, if there is any intelligence that we can build our work on; there was nothing and then only we found out yesterday.

And I guess that's something that we maybe need to flag as we move on because it, you know, it's really embarrassing for this EPDP group, it questions the legitimacy of our processes if we are being bypassed and it's such information that's important to our decision making is withheld from us. So I think I should stop here and hand it back over to Kurt to manage our discussion.

Kurt Pritz: Thanks very much, Thomas. So from – I just want to make clear from my naïve standpoint that – and/or maybe ignorant standpoint and maybe to start the discussion, so we as a group could not determine as a matter of policy that there should be agreements that are similar to joint controllership agreements signed between ICANN and the contracted parties, is that incorrect? So this is purely a matter of law where some independent body will make that determination. And if so, you know, how does that work?

Man: So I guess Kurt it's - I guess it's perfectly okay for our group to look at the GDPR, look at legal literature and come to its own conclusion on what this is. So I think it's not too brave for our group to come up with a solution (table) and looking at all of this from a 10,000 feet perspective.



This really looks like a joint controller situation. Put that out to the community for comment. And probably the European Data Protection Board will also comment on that.

And they can tell us if we're far off. But I think what will not work is look at the responsibility and then try to find a situation that's best for the parties involved because that's not the idea behind the GDPR.

Kurt Pritz: Right.

Man: The idea behind Article 26 is to make it as convenient as possible for (Greek) data subjects and the authorities.

Kurt Pritz: Go ahead (Diane).

Diane Plaut: In supporting promises, sentiments how we described yesterday's conversation and how Stephanie and Milton also see it, this is a factual analysis that we're making in line with our work.

And so for us to be able to - to be able to answer the charter questions appropriately, we have to be making these determinations. So it's a factual analysis and a legal analysis.

And we also need to get to I think the point is Point Number 1, which Thomas - the difference between a legal assessment and policy work is that it is a fine line.

And if you look at our charter questions, the charter questions ask us to apply or to analyze application of the GDPR. So even though we could say that rightfully our group can't make - give legal advice, we are intuitively providing legal analysis on how to apply the GDPR.

And so I don't think that we should step aside and let (AJ) or anyone else be able to explain (in effect) it's not our position to be able to provide these factual and legal conclusions in place of what we're doing.

I think it's a necessary part of it and that we have to push forward to making ICANN give us the answers and not all of a sudden put forward a legal memo that's going to curtail the conclusions that we need to make.

I also just want to point out that (AJ) is very concerned about the distinction of not wanting to assign joint controllership here (unintelligible) it's a liability concern of ICANN having to take on too great of a risk.

And that ultimately if Thomas and I have discussed the possibility of putting forth a legal memo to be able to support or even (unintelligible) a memo in general to be able to support our position on how ICANN has to answer addressing the joint controllership role right now because I think we also - we need to put forth the fact that the joint controllership agreement is something that - is something that is different from a DPA in that the controller is not beholden to a third party in the same way as a (processor) is.

And that they're limited to only act on the instructions of the third party so that the joint controller agreements sets out different roles but it doesn't need to cover the same Article 28 requirement by the GDPR for processing agreements so that the joint controller agreement provides a lot more flexibility in being able to proportionately assign liability, which in fact protects both the Contracted Party House and ICANN.

So this is to a benefit of everyone to be able to define these roles and to put forward the application of joint controllership.

Kurt Pritz: Is that - so thank you very much (Diane). That was very well put. And maybe for the rest of the group, you know, is that factual and legal analysis for us to

do or for us to commission and/or maybe split for us to do the factual analysis and someone else to do the legal analysis. (Benedict).

Benedict Addis: Hi. Thank you very much (Diane). And what I heard (Chris) say in Los Angeles is that unless we came up with a completely crazy recommendation, the Board would sort of make that happen.

So whilst I think I hear Thomas's recommendation, I think - and perhaps I'm misunderstanding but I don't see why this would fundamentally affect the nature of our work if we say we have proceeded on the assumption that there will be a joint controller agreement because that seems to logically flow.

However, we're not lawyers. We'll do the - as Kurt has mentioned, we do the data flow analysis and we make a recommendation that the legal analysis be done by a qualified lawyer, which we are not for the purposes of this group. Or am I over simplifying?

Kurt Pritz: I think Benedict that Thomas yesterday went to a higher level than I did in the discussion and recognized that even if the Board were to, you know, adopt what we say, if it contradicted a (position) of ICANN staff, that's still not good for the big ICANN end. So it's better for us to understand what their position is fully and take that into account the best we can.

That's not to say at the end of the day we can disagree with it but it's better for all of us if we take that into account. So that's, anyway Thomas is next in the queue so he'll put it better than I.

Thomas Rickert: Thanks very much Kurt. A couple of points that I'd like to make. First of all, I guess that our group or I see a lot of comments in this discussion and I think we need to try to take stock of this (unintelligible).

I think that no one who says we should not make a determination on this. Right. So if there's anyone on this team who thinks it's out of scope or

beyond our authority to speak to the charter in question of responsibility, they should now make themselves heard.

In the absence of such objection, I think we should take note that we think that it's within scope for our group to make a determination on the question of responsibilities.

The other question is how can we advance our decision making on joint controllership versus potentially other governance and governing models? And while I've heard a lot of support for joint controllership - (Heidi) for example said that she has concerns. And maybe we need to hammer that out a little more.

What are the options for us? I think that given how interwoven the work of registries, registrars and ICANN is, it's more or less a sort of thing that they are just co-controllers throwing data over the fence and everyone does with them what they think is appropriate.

So there is an organizational structure behind that. What can that be? Can it be a controller processor situation? I think that would be going too far because typically you have controller processor situations where a party doesn't want to do processing itself. So it's a typical outsourcing scenario.

But if you look at ICANN registries and registrars, neither of the parties can do the other party's jobs because in this ecosystem everyone has their distinct roles. So I think they are not acting purely on the - based on orders of another party, right. So it's (perfect) data controller processor relationships are out of the question.

That leaves us with the option of joint controllership. And I think it's important to remember that in joint controller situations, not all controllers need to have the same job.

In fact not all controllers need to have access to the data. There aren't (innuendos) in various places. The Article 29 group has written that there is potentially joint controller situation. The (unintelligible) has specified that there might be a joint controller situation. So we're not taking this out of the blue.

Then you find something in Article 26 itself in legal commentary. If you look at the Facebook (fan) page European Court of Justice decision or in the Jehovah's Witnesses decision you'll find clues on, you know, if there is an organizational structure that's been followed where everyone has their roles. That's innuendo for joint controllership.

So I could offer numerous hints why this should be joint controllership. So I think that those who question the joint controllership should ask their questions in writing. And then I think we as a group need to discuss this. But I guess that's what every scenario we come up with we need to put in a recommendation and then wrap it up for our report.

Lastly, very quick point. Why is it important in my view at least to not publish a report absent having seen ICANN's feedback? I understand what (Chris) said. I understand what others have said. That we should, you know, not be afraid of making our recommendations.

The ICANN org view should not stand in the way of our policy work. I guess that's what (JJ) said (verbatim) on our call yesterday. Yet I'm afraid that we see history repeating in the CCWG Accountability.

We had consensus and the report out on an organization corporate structure for the post-transition ICANN environment. And ICANN org then pulled the global public interest card and said we're not going to buy this. We're going to put this to a halt. Right.

And that happened twice in the CCWG Accountability, which I happened to co-Chair. And I'm just very cautious that it will be an embarrassment for the community, for ICANN on world stage if we come up with recommendation to which ICANN then responds that's all fine but we're not going to sit at the table and negotiate a joint controller agreement. Right.

And I think ICANN might have good reasons for alternative suggestions but I don't want to prejudge that what they say might not be valid. But I think it would be very dangerous for us to put something out not knowing what ICANN's concerns are and properly discuss that.

And then we can make an informed decision. Either we can find a way to be aligned with ICANN org and move forward, which would be great because ultimately the contracted parties and ICANN need to sit at the table and hammer this out or if there are issues, we need to find a way to get across those issues.

So I think I should pause here. I guess that would be my attempt to offer a way forward in a constructed fashion and I hope that you take it as such and not as trying to disrupt a way towards publishing an initial report, which I think needs to be delayed a little bit.

Kurt Pritz: So let me capture Thomas' thoughts a little bit and hopefully your comment targeted at these. So the first point Thomas made was that, you know, it was it's our job to answer this charter question. Is this our undertaking? And he wants to hear from anybody who says it is not. So we're going to assume that it is our job unless somebody says it is not.

And then second, your comment might go to (Diane)'s assertion that we should undertake this for its factual review and then legal review. And maybe we go no, which spits it out. We might outsource. But do we want to take that on?

The third is should we wait for the ICANN memo on this topic before - not - I don't think we should stop work on this but before reaching any conclusions. And I think the answer to that is yes but I think we should get some answer from ICANN when that would be ready. So that's the third thing. What's our strategy with respect to the ICANN memo?

And then finally, you know, what do we do about the initial report? And how do we handle that if this - waiting for this memo would in fact delay the initial report. What do we do there? And so I have some ideas there. But those are the types of comments I'd like to see from the group. Go ahead Alan.

Alan Greenberg: Thank you very much. I tend to agree with the analysis of joint controller. And I don't - I'm not privy to ICANN's internal thinking and it may well have to do with their attempt to try to assume all of the liabilities instead of the - sharing them with the contracted parties.

But I'm not at all convinced that our decisions on what items to redact, what to publish, what to anonymize and all of the things related to what the temporary spec currently says and we're supposed to be analyzing. I'm not sure how that's going to be impacted by the decision.

So although it would be nice if we agreed, if we don't agree I'm not sure that our substantive decisions on how to replace the temporary spec are going to be impacted. In other words, which items will re redact or not redact because we have a different controller relationship?

And therefore I think the substantive work we're doing has to proceed. We have a charter question to answer. We have to answer it. And I'm not at all worried about embarrassment of if the controller issue changes unless we believe it will substantively affect how we make the other decisions. I just don't see that we need to delay the report because of it. Thank you.

Kurt Pritz: Thanks Alan. Milton.

Milton Mueller: Yes. This is Milton, NCSG. I'm happy to agree with Alan that there's no reason to delay the reports. I think we're approaching this fear of an ICANN intervention with an attitude that was maybe appropriate (three years) but is no longer appropriate.

The accountability mechanisms have been redefined. We make the policy. We have to as part of our charter answer the question in some way regarding who is the controller and who is the processor, et cetera.

Whether ICANN likes that or not is, you know, is worth hearing what their views are. They've had every opportunity over the past six months to tell us what those views are. They haven't made very good use of them.

But it's - I think we have to completely shut out of our minds the idea that ICANN's opinion about whether it wants to be a joint controller or not is somehow determinative or limiting or constraining on what we can decide or what the law dictates. That's just an absurd notion.

If under the law and under the structure of the GDPR ICANN is deemed a controller or a joint controller is - that's a matter of legal fact. It's not something that ICANN, you know, like in the old days when ICANN decided it didn't want for example a membership model during the accountability process. Well they were still in the position where they could say we're just not going to accept this.

This is not the case now. It is simply and factually not the case. They - whether they are a controller or not is a matter of law. And we have been, you know, asked to sort of premise our discussions on that.

So I think Alan is right. If there's some way that this determination affects what we redact or how we modify the temp spec, then it can have some vary on results. But the idea that ICANN's legal department or staff or



organization may not accept what we do because they don't like the liability that's just out of the picture. That should be given no credibility whatsoever.

So please let's not delay the interim report. I mean what would be the purpose of that? I don't understand what that would accomplish. We should go ahead with the report. The report will give us all including ICANN a discussion - an ability to discuss and answer the questions it opposes and then we'll be moving forward. Thank you.

Kurt Pritz: Thanks Milton. Please go ahead Amr.

Amr Elsadr: Thanks Kurt. This is Amr. Kurt, I think you mentioned the two key considerations - two key issues that we need to consider. And, you know, our decision of whether to postpone publication of the initial report or not. One being what would a delay mean to us and the entire process in terms of meeting our already delayed deadlines?

And the second would be, you know, when are we actually going to get a copy of the memo so we can start factoring in what ICANN legal has to say to us?

But in principle I agree with both Alan and Milton. I don't think it would be a good idea to delay the initial report. I'm not sure what constructive purpose that would serve at this point.

I think we will have more time, not maybe perhaps not as much as we need but we will have more time during the public comment period to review the memo and we could treat it as that, as another public comment but that's of course under the assumption that we get it as soon as possible.

And also we do have that three day face-to-face in January. You know, we could possibly do a lot of work on that if we still need to at that (place). So I think it would be a good idea for us to proceed as planned and, you know,

and just wait for that memo to come in and address it when we have the opportunity to do so. Thanks.

Kurt Pritz: Thanks Amr. (Benedict).

Benedict Addis: Hi guys. Another data point on this one. I'm kind concerned that (JJ)'s risk aversion or ICANN legal's risk of aversion is causing them to kind of stick their heads in the sand and should la-la-la-la-la-la thinking that that will stop their - the GDPR monster from eating them.

As we know on this group this is not a good way to proceed here. I've asked him - I actually met with him the beginning of October and asked him to clarify and so - how ICANN org handles registration data internally or was proposing to handle registration data internally.

And that's the things like compliance like we've already talked about but also this internal research that's (unintelligible) and the security folks do. And emailed him on the 4th of October. Still haven't had a response.

So I think - I'm tending towards the idea that we shouldn't hold our breath for legal memo. And if we are prepared to give ICANN org and ICANN legal the chance to do that, I would suggest that we (bound) it very tightly with a deadline.

So if they want to - I think we invite them to help inform these discussions with any legal thinking that they've had but by no means let, you know, and give an offer maybe seven day deadline to provide that data. Otherwise it won't be included in our sort of determinations. Thanks.

Kurt Pritz: Yes. And seven days is even far way. Thanks very much. I want to interrupt the queue because I think Thomas needs to go soon. And so my question Thomas is absent this issue that - with ICANN, how would you proceed with creating a section for the initial report on this topic?

And just to get to the reason I'm asking is probably - I think we probably want to stare at that and then make judgments about whether and how to include it, how to caveat it, et cetera. So I hope you think that's a reasonable question Thomas.

Thomas Rickert: I do Kurt. And I thank you for bypassing the queue. But I think that probably a way forward would be to give EPDP members 24 hours to ask questions with respect to the joint controller set up. You know, the concerns they might have, the questions they might have.

And I will try to respond to those together with (Diane) if she is willing to help with this as well so that hopefully we can get aligned on Thursday's call and narrow down the language of our report.

And then keep it probably at a quite high level broad brush recommendation that, you know, Number 1 we think a joint controller scenario is applicable and Number 2 that we recommend that ICANN and the contracted parties negotiate such agreement.

So I guess that could be a way forward and help us conclude the drafting of the initial report. And I should probably clarify because this all got quite a negative spin.

I think that my primary driver for waiting for ICANN's input prior to the publication of the report is because I'm curious what they have to say because I think that what they might have to say is valid and might impact the drafting of our report. So thanks. I hope this is a (legal) way forward.

Kurt Pritz: And when we're doing that - while we're making comments Thomas, we should look at the paper that you did that to which (Diane) added comments.

Thomas Rickert: Correct Kurt.

Kurt Pritz: All right. Thanks very much. So Thomas has a couple minutes left. And I think we want to wrap this up while he's still on. So I don't if we go through the queue in short order. Stephanie.

Stephanie Perrin: Thank you. Stephanie Perrin. I'm going to respectfully disagree with my colleague. I think we should delay the initial report until we at least have framed questions around this very, very fundamental problem.

The question of who is the controller and who is in a co-controller relationship and who is merely a processor influences purposes. And you have to read into the 18 years of the DPAs asking what the purposes were. That has to fall out of that because these are not new concepts.

So the fact that we are about to remit a preliminary report where this is up in the air troubles me greatly. I'm afraid that we will get input back that then has to be analyzed in the context of a new forthcoming framework. It makes a big difference who the controller is. Not to pick apart and take away any unique controllership arrangements that the businesses and the contracted parties might have. Thank you.

So I would suggest that we get a move on, get that memo and then release the report. I don't think a week is going to make a difference. But framing of those questions is very important for our analysis. Thank you.

Kurt Pritz: Thanks Stephanie. (Diane).

Diane Plaut: Kurt, I just have a question with regard to process. I'm not familiar to know. Is there a way for us to be able to delay as Stephanie said with an official letter to ICANN org and legal saying that we are waiting for this memo and that as specified within the charter questions that we have made a full factual analysis in line with our work and to be able to properly complete our work and publish the initial report for full and legitimate comments by the comment

that we need the legal memo and the full input of (the guarding) rules from ICANN? Is that something that's doable? I mean what is the timing restrictions that we're under?

Kurt Pritz: I think the answer to that - well Thomas could answer it better but just to get through this a little bit quicker is to look at the report as its written now and see if we feel comfortable where it stands or if we want to add language like you said (Diane) that we need additional - that their team - this is our initial assessment the team's undertaking that additional effort. Alan.

Alan Greenberg: Thank you. If we got a legal memo that said ICANN is the sole controller and we believe that it will be acceptable to the Data Protection Board, that would subsequently change our work because that would change the liability issue on contracted parties on which a fair number of our decisions have been made.

But even if we get the legal memo tomorrow, we are not going to have certification that it's going to be acceptable to the data commissioners. And without that, I don't think we should change our work.

And if we get that a month from now, then yes we're going to have to do a lot of work over again and so be it. Thank you.

Kurt Pritz: Thanks Alan. Amr.

Amr Elsadr: Thanks Kurt. This is Amr. I just wanted to add two points that John Jeffrey mentioned yesterday with which I agree. He said that, you know, that our reports should not be delayed in any way because of hard legal. That there (will never be) (unintelligible) of those and that (would be slowing) of publication of our reports because of those legal questions and we're never going to publish anything.

The other issue - the other thing he brought up was that, you know, (Kevin) can provide input to the (unintelligible) but it should not in any way become a barrier to the (EPDP team) reaching consensus on those recommendations or publishing its reports. So I agree with both those points. And I think we should proceed as scheduled. Thanks.

Kurt Pritz: Thanks very much Amr. Margie.

Margie Milam: Yes. This is Margie. I guess my question is do we have to publish right now the controller analysis. I mean we have so much work in the report as it is.

We'll certainly get benefit from, you know, from hearing public input on all the other things. And then just make a note that we're still working on the controller and role issues. I don't know. Just a suggestion because I feel like there's a lot of good to come out of publishing the report but at the same time I hear the concerns about maybe making the premature call if there's something in them to change our analysis.

Kurt Pritz: Thanks Margie. I'm starting to vote with Stephanie that this is a key issue that should be addressed. And I - but so I think what we put in the report should be tempered with a sort of things you're discussing, so I think we need to have that issue clear and in front of people so we can get feedback on it. Where are we? Hadia.

Hadia Elminiawi: I just want to refer us back to Appendix C of the original temp spec where there was a table at the very beginning of this section that identifies the roles and responsibilities with regard to each of the processing activities.

And looking back at this table, ICANN has identified itself as a controller for all of the processing activities. So with regard with the collection of the data, we have the registrars, the registry and ICANN as the controller. With regard to the transfer of registration data, we have the registrar processors, the registry controller and ICANN controller. So it goes on.

So but the one thing in common between all activities - processing activities whether it is collection, transfer, publication, disclosure, data retention, all the activities; the one common thing that ICANN is a controller.

And then the differences come where the registries and the registrars are controllers as well in relation to the activity or not. So I don't know if this would be helpful. Thank you.

Kurt Pritz: Okay. Thanks very much Hadia. I just want to note to everybody that Thomas is gone, so. But I think the input here is good and can be reported back. (Benedict), maybe take us home on this one.

Benedict Addis: I think it's - and I hear what Hadia says. And Appendix C does say in every column, every line that ICANN is represented that it is a controller. What would be really interesting would be a statement on whether ICANN believes that means joint controller or not. I think there's been some disagreements about that.

And it strikes me that whatever we get in this memo I feel we're now in a position of expertise. And as I said already, I've spoken to several members within ICANN staff and (JJ) himself. I feel that whatever we receive is going to actually - in the memo probably won't necessarily be that helpful and will probably cause more questions than answers.

I don't get the impression that it will be a - it will be a straight statement or yes we acknowledge that we are joint controlling this role. I think that's what we're all hoping for but I would suggest that's not going to happen.

So my - after listening to all of you and that the weighing up, I think we're really talking in a good way here and really discussing this in a very productive way. My suggestion would be proceed - we proceed as (Matt) has suggested in the chat with a note that the memo exists and that we are

awaiting it with interest but do not change our publishing schedule. Thank you very much.

Marika Konings: Kurt, you may be on mute.

Kurt Pritz: I was. So I just wanted to build on (Benedict)'s comment where he said that we're in a position of expertise and taking that as meaning in fact we are the ones that are suitable to do this work. And so that building off comment, I'd ask you to all read his report. I have some comments on it too if I'm allowed to make a comment.

And, you know, he can take that to - (Bill's vote) should go into the initial report on our behalf. And so we'll take that from there. So I'm going to - Stephanie, I think that's a former hand, right? Do you have a comment for us?

Stephanie Perrin: Sorry. Old hand.

Kurt Pritz: Yes. Well, former hand. Not old. So thanks very much. So I'm going to turn this over to staff for action items and then, you know, some important discussion about how we're going to get this matter work done in the time we have allotted. Marika, do you have a list of actions?

Marika Konings: Yes. Thank you Kurt. This is Marika. So the action items we have from today's meeting is first of all for staff to circulate a clean version of the draft initial report to the EPDP team.

Second one is the EPDP team to consider whether the change of referring to personal information of natural persons, legal persons, that of natural versus legal be appropriate, necessary and provide feedback ahead of Thursday's meeting.



An action item for the GAC team to clarify or confirm that added information to the natural versus legal document. Scrolling down. We have an action item for Margie to provide language in relation to support for not redacting certain fields in relation to data redaction section and for (Benedict) to provide language to capture a risk of not publishing our organization fields info.

An action item for staff to update language to reflect that the BC, IPC and ALAC do not support a preliminary recommendation. And Number 3 I just not there - I think that Alan indicated that the ALAC may provide further rationale in that regard.

We have then the action items coming out of this conversation. EPDP teams ask any questions within 24 hours in relation to the documentation that Thomas provided.

Then an action item for I think Thomas and I guess he may be looking for (Diane) on that to provide pros language for inclusion in the initial report in time for Thursday's meeting factoring in the EPDP team's discussion today.

And also noted one question for ICANN org in relation to data redaction and which is what is the rationale for not redacting organization field in the temporary specification. I think that's all I had on my list.

Kurt Pritz: That's quite a bit. Also a couple more comments that are important. One is I understand I'm about to get information on possible locations or the location for our face-to-face meeting but I don't have it yet. And as soon as it's beat into some sort of shape, I'll share within minutes.

And so second as the support team has pointed out to me early and often, we need to somehow extend our discussions. So this is dismaying to me and more dismaying to you. The options I see or the options that have been given to me but I agree it's either to make these meetings longer with an intermission or meet on Wednesday and/or Friday.

So if you could, gird your loins. And Marika, do you think in the next half hour or hour or so you could put out a doodle poll and we could (see), you know, who's available tomorrow, who's available Friday, who's available for an extra hour on Thursday.

And, you know, depending on what the response to that is, we'll schedule meetings or not and we'll tailor agendas as best we can to who can participate.

And, you know, I understand that there's a risk here without full plenary participation. So I just want you to know I'm very sensitive to that. And we'll resist having a meeting if I think that the attendance would obviate the ability to sufficiently discuss issues. So I think that's the best way to go about that. Is that okay with you Marika?

Marika Konings: Yes. Thanks Kurt. Yes. We can definitely put a doodle poll together and everybody set it as soon as possible. Would hope that indeed people, you know, do block out some time if they still have for a potential meeting tomorrow. And I think the other option is indeed extending on Thursday. And, you know, I think that the third option you gave is an additional meeting on Friday.

I just want you know that the main objective of that additional call would be to go through the list of comments that were circulated with the agenda yesterday. So those are comments that were made where staff doesn't really feel in a position to either make those changes because either day (they seem) more substantive than mere small fixes.

Either we're not clear on for what is actually being suggested or asked for or, you know, there may be other ways in which the comment has already been addressed and I think we've reflected that.

So, you know, for those that may not be able to make additional time available, you know, please do look at that document and otherwise, you know, respond on email or share with your groups or your colleagues what your positions are in relation to that so that at least, you know, even if not everyone from all groups are available and you're' able to talk to those items because I think those are at least from a staff perspective some of the main things we do want to get some direction on to be able to finalize the initial report.

Kurt Pritz: Thanks Marika. Are there any comments to anything? Thanks (Diane). And particularly even those absent I want to thank - have it on the record to thank Thomas, you know, for again (good) effort to support us and make us look good to the outside. So I'm glad I could put that on the record and thank Thomas. And thanks everybody for a constructive call today. Thanks very much. Have a great day.

Woman: Thank you everyone. Once again, the meeting has been adjourned. Operator if you could please stop all recordings. Everyone else please remember to disconnect all remaining lines and have a wonderful rest of your day.

END