

**ICANN  
Transcription  
GNSO Temp Spec gTLD RD EPDP  
Thursday, 15 November 2018 at 14:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gns-epdp-gtld-registration-data-specs-15nov18-en.mp3>

Adobe Connect recording: <https://participate.icann.org/p680y04ux08/>  
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Recording: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 26th GNSO EPDP Team Meeting taking place on the 15th of November 2018 at 1400 UTC. In the interest of time there will be no roll call -- attendance will be taken by the Adobe Connect Room. If you're only on the telephone bridge, could you please let yourself be known now.

(Ayden Ferdeline): Hi, this is (Ayden Ferdeline) I'm on the audio bridge today.

Terri Agnew: Thank you Ayden. Hearing no one else -- we have apologies from Kavouss Arasteh, GAC, James Bladel of RRSg, Farzaneh Badii of NCSG and Leon Sanchez, the ICANN board liaison. They have formally assigned (Rahul Gosain) and (Lindsey Hamilton-Reid) as their alternates for this call and any remaining days of absence.

During this period, the members will have read-only rights and no access to conference calls. Their alternates will have posting rights and access to conference calls until the members return date.

As a reminder, the alternate assignment form must be formalized as the way the Google assignment form. The link is available in the agenda to the 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 secretariats. All documentation and information can be found on the EPDP wiki space.

There is an audio cast in view-only Adobe Connect for nonmembers to follow the call -- so please remember to state your name before speaking.

Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call. Thank you -- I will now turn it back over to our chair Kurt Pritz -- please begin.

Kurt Pritz: Thanks Terri and thanks everyone for being here for the extended version of the meeting -- I think we will go ahead and have this extended version and have intermission about 90 minutes in.

My initial comments to start off the meeting are - one on the face to face meeting (unintelligible) on a location there is a meeting with the ICANN Committee that's in charge of the budgets this afternoon -- and so I think that decision will be made there and we will push it out right away. So that's that.

Secondly, we are working on our revised format for submitting comments to the initial report. So we want to try to compartmentalize the comments as they come in so one, they are easier for people to read -- but two, easier for us all to sort and analyze so that we can line comments up against one another.

I'm getting a demo of that - based on that and I think it involved Google forms which is a tool I haven't used before Friday -- and then we will demo it for you guys right after that.

So I hope this is a helpful way to collect and analyze comments for us -- I think that is a really important tool for being able to manage administratively what happens once an initial report is established.

There is a couple subset of work items I want to touch on - one is, we ask for volunteers - I don't know how to - so what I have on my notes is questions K, L and M but, they really have to do with knowing responsibility of parties processing data and they go back to the temporary specifications sections 5, 6 and 7 where contracted parties especially noted that these sections were written in an overly prescriptive style and they could be reworded in sort of a simplified or a straightforward manner that requires compliance with GDPR.

I think this would be a meaningful addition to the initial report -- I don't think it's controversial and I would like we ask for volunteers that are staring at the contracted parties when I say this so that you guys could go back to your support teams take a look at those sections. The questions really were L and M and I forgot (unintelligible).

But, if you could go back to your ER teams and see if there is a way to, you know, not overly costly but rewrite those sections in a way that makes it clear that registries, registrants have definite new responsibilities starting May 28 for the processing of data in a way that guides but does not restrict you -- that would be really good so please take that on.

You know, there is also a charter questions - charter question K about ICANN responsibility in processing data. So (Trang) this might be for you to look at that charter question.

I don't really think it's taken up in the temporary spec but it is a charter question, so, you know, we might also look at sections 5, 6 and 7 of the temporary spec and see what ICANN will say about its responsibilities in processing data there. (Marika), do you have a correction to what I said?

(Marika): No, thanks Kurt. I just wanted to flag that (Caitlin) actually sent some language to the list for those charter questions to start a conversation -- so it's at the moment a very general language in response to those three questions. So if people maybe can look at that and see what they would like to see added or changed that maybe helpful.

We just tried to provide a starting point as no one indeed had come forward so far as a volunteer to write up something for that -- so as I said, there is some language on the list but of course feel free to take the pen and modify as needed.

Kurt Pritz: Yes, thanks (Marika) and thank you for doing that (Caitlin) and again, for the registries and registrars you know you have own industry associations where you want to be advising your members on what they have to do -- so this work that you might do would serve that dual purpose. And then finally- Oh, go ahead (Thomas).

(Thomas): Thanks very much Kurt and hi everyone. I saw the document on K, L, M for ICANN's responsibilities, registrars' responsibilities and registries' responsibilities. And I think that part of the answer to those questions will be in the recommendation that we are going to discuss in a little bit on the controller/joint-controller/processor discussion.

I think that if we make the recommendation for contracted parties and ICANN to enter into a joint-controller agreement, that agreement will specify the responsibilities. And in broader terms, the temporary specifications did have a catalogue of things that the data subjects should be informed about.

And as we mentioned during our input and preparations for the triage report, those requirements were more or less copied and pasted from the GDPR.

So I think that maybe the legally most solid way to responding to this would be to leave the schedule of responsibilities to the joint-controller agreement -- to leave the exact way data subjects need to be informed about the data that is processed. You know, the information duties that is coming from I think 12 to 14 or so of the GDPR will be left to implementation because that's legal craftsmanship.

I think we only make mistakes if we try to do last-minute collaborative grafting of the notes that need to go out to the data subject when it comes to fulfilling information duties.

So that would be my hopefully, pragmatic suggestion for information to be put in our report on this.

Kurt Pritz: Thanks for that (Thomas) -- that was really well-put. And, you know, I hope we are agreeing and you are making part of my point for me that, some of the catalogue of duties in the temporary specification are too specific. And since we are writing a policy, we want those sorts of words that require registries and registrars to comply with GDPR and vote those.

There is a question about security steps that should be taken and that language should be made with policy-level language and not that specific language that you just mentioned because there are mistakes likely to be made -- and there is requirements in this temporary specification that are probably not met by all even though the GDPRs complied with.

So (Thomas') intervention was good but to me, that would not let the contracted parties off-hook in contributing some language here. So Marc or (Thomas) did you want to reply to what I said?

(Thomas): Sorry, let's go to Marc.

Kurt Pritz: Yes, let's go to Marc.

Marc Anderson: Thanks Kurt - Marc Anderson, I just wanted to respond to something you said and I, you know, I think I'm splitting hairs over the way you said something.

But I just want to clarify, we don't need consensus policy language to require contracted parties to comply with GDPR -- the law requires us to comply with the law -- that's the sort of why I asked.

What we need is to create policy that addresses areas where the contracts that exist with contracted parties conflict with that law. So, you know, I don't think - I think I'm splitting hairs Kurt but I think that's probably what you meant -- but I just wanted to react a little bit to what I heard and remind everyone, we don't need to put a policy language that says, contracted parties will comply with the GDPR.

You know, the law makes it so we have to comply with GDPR - we need to address areas where there is inconsistencies between our contract language in that law.

Kurt Pritz: Thanks Marc. I was channeling the comment of the registries and the registrars during the triage portion of our discussion where, you know, we all noted and I think we pretty much agreed that that language in those sections of the temporary specification were overly prescriptive and required some rewrite. So I think what I'm asking is for registry and registrar's input into how those sections would be rewritten.

I'm not sure blank is the appropriate answer because, you know, for the reason that, well, the law is the law and we are going have to comply with it -- I think some nerd needs to be made in the policy document about the issues that those three sections in the temporary specification sought to address.

So I would ask the contracted parties to look at those sections and say, you know, in this policy document that we are creating that's replacing the temporary specification, what wording would be appropriate? And so again to reiterate, I don't think that's just a blank -- although (Thomas)'s comments are sort of clicking in for me and making more sense on how to handle that. (Diane)?

Diana Arredondo: Yeah, Kurt, I think I'm about to say the same thing in that I agree with Marc and (Thomas) and you really in piecing it all together that certainly, the policy shouldn't be telling what the law is and what the requirements are and its specificity upfront and out what they should be doing is its perhaps overly assessing.

But it could be that we are tying together and we are saying that we are making this policy recommendation and because of that there is either a hole or a gap between what the contract doesn't really support and what it should. That we are somewhat then making a recommendation let's say that this is the possible note - a recommendation is where we have to fill that gap with a proposed change.

So I think that that's the route we want to go because ultimately we want this as a policy to be implementable and we want to be able to have it work -- so I think we are all on the same page with that note.

Kurt Pritz: All right. Thanks. I'm sorry that discussion took so long -- I was probably a little sloppy in how I introduced it. The last topic I want to raise in the initial comments is that, we had a brief discussion as brief as it we could be regarding legal versus natural person's distinction and Amr's recommendation that we focus on personal data in that discussion.

So Amr has amended the initial report language and I would like you to - there has been no comments which is something (unintelligible) so I would like you to take a look at that.

I wonder if staff or (Caitlin) can you relook at that document and highlight for everybody Amr's contribution.

I know we don't have to put it up here but we - you know, the document saves when it saves changes it anonymizes the contributor. So if we could highlight in some color what Amr's changes are, I think that would be instructive for us. (Hadia), how are you sounding today? Yes, go ahead (Hadia).

(Hadia): Okay. So, this is a quick one, I don't know if you and (Thomas) want to start but anyway, there was a suggestion and I was actually going through slide 2 and I'm going to send out the email in just a couple of minutes.

(Isaiah Benedict) to actually require registrants to indicate whether they are natural or legal persons. And the suggestion (unintelligible) actually only players know that we require the registers to make the registrants make a declaration -- and it does not say that we require the registrars or the registries or anyone to process the data according to this declaration.

And actually, this declaration is a right to the registrant because registrars should not refuse any extra data that is in line with the general data protection regulation that could help the registrants in exercising the rights. And collection of this data is what other rights the registrants are entitled to -- we are not saying that the registrars are going to process the data accordingly.

We are just saying, you know, just let the registrants make the declaration - just collect the data whether that says whether they are legal or natural -- that's it, full stop.

So there is no liability here, there are no risks associated with it, there are no risks of data breach associated also with the proposal. It's only an extra piece of data that is now required because the GDPR does make this distinction and we are trying to bring the texts back in compliance with the GDPR.

And I have seen some information saying that this falls under a new PDP -- no, this is just an extra piece of data that will be required -- it's just collecting the data that says if they are natural or legal persons.

And another thing, when registrants in the - during the collection of the data the information that we are going to give the data subject is what will govern how the data will be processed. And registrars will need to - at the time of the collection of the data will need to provide lots of details to the registrants probably in some form of a privacy notice or something.

Although the data will include a controller details - details of the processing processes, legitimate interests, right to request modifications or rectification to their data.

So what's the problem to all these, you know, details that the registers are going to give to the registrants anyway? Our clause that say or explain what is the natural person and what is the legal person that could actually aid them in making this declaration or in this declaration.

So let's put it now as, like, let's collect the data that indicates whether they are natural or legal -- if the registrant is right let's not act upon it. Thank you.

Kurt Pritz: Thanks very much (Hadia). You know, I don't - I want to address your long comment with something too brief because I don't want to be disrespectful. I think kind of where we are is that - is to go back to the DPAs or the data protection board and verify whether such an action would completely be without liability to registries and registrars and that's what we want to ascertain.

So this is not a deep topic on the agenda -- I just want to collect input on (Amr)'s very specific intervention and we can do that over email but I will give Marc the right to respond.

Marc Anderson: Thanks Kurt. Marc Anderson for the transcript. I will just respond very briefly to (Hadia) on this one. Let me just say, the CPH position is that, this is not necessary for GDPR compliance.

The focus of phase one and especially considering where we are from a timing perspective, the focus on phase one must necessarily be on that which is necessary for GDPR compliance. This is not necessary for GDPR compliance and there for necessarily must not be a conversation to be had at this time.

So speaking on behalf of the CPH here, let's please be in cognoscente of where we are from a timeline perspective, take conversations that are not necessary for GDPR compliance and save them for later.

Kurt Pritz: Got you guys. So Alan and Margie if you can take 20 seconds each.

Alan Woods: I don't know if I can take 20 seconds but it won't be very long. What Marc has just said - number one, is nothing that has being said until now.

We have had declarations saying, it will be impossible and the contracted parties will never agree to making the differentiation. Marc is now saying differed pass made May 2019 -- that's a different statement completely than anything we have heard to date -- that's number one.

Number two, doing that takes all the pressure off and at that point they are going to be in a position to basically just stonewall and not do anything. So the question is, how do we resolve this issue equitably understanding the

deadline we have? But not essentially just giving it away because we are deferring it. Thank you.

Kurt Pritz: Margie?

Margie Milam: This is Margie, I agree 100% with what Alan said and honestly this is a surprise that all of a sudden this is how we interpreting what we need to do during this EPDP. The reason why it's important to include it now is to get public comment on it.

I mean, if we wait until later, we will not get any public comment on it so contracted parties don't have to agree -- there is a lot in this report that we don't agree with. And the whole point of the report is not to identify consensus but to get public comments position so that we can craft our discussions after the public comment period.

So I feel that it's very important to include Benedict's recommendations in the report noting that people don't agree with it which is fine and that's where the rest of the report is as well. Thank you.

Kurt Pritz: Marc?

Marc: Thanks. I guess I have to first define and say, I believe what Alan and Margie are mischaracterizing what I said and that's disappointing but I don't want to pick a fight over this. I'm trying to think of, you know, how we can move this forward.

You know, there is a phase one conversation and there is a phase two conversation and Alan and Margie seem to think that, you know, you have to have to it in phase one and now that it's not in phase one there won't be an opportunity to have it later -- and I don't think I agree with that -- I think there is an opportunity for us to talk about it later.

And I'm not saying have the conversation after May 25 either. Once we develop a report we can roll right into the second phase of the liberations -- and I think that's exactly what the charter says in fact. It does not say anything about waiting until May 25.

And I guess I'm a little concerned by Margie's characterization that this initial report does not have to have consensus -- because if we are producing an initial report that's not based on consensus then, we have an awful a lot of work ahead of us in this phase one. Because just to remind everybody, our job here is to produce consensus policy -- and so if we are not producing consensus policy, we are not producing anything.

And so I realize there are areas where we have disagreement but our job is to come to consensus on items that will be policy that's binding on contracting parties.

So I guess fundamentally, if we are not moving towards consensus and that we don't feel like we are producing an initial report that shows consensus -- then I think we have to have a heart conversation with ourselves about where we are and where we are going with this working group.

Kurt Pritz: Thanks Marc. Just to close this off, I want to say that in our comments that are in the draft initial report so far, we are talking about doing things like going to the European Data Protection Board or going out for public comments to see what other comments we are going to solicit.

To me that sounds a lot like what we originally postulated or originally colorless around in doing research around on topic which was going to start not at the end of our final report but the research was going to start right away.

I think that a lot of the comment on this issue is not backed up by data -- even detailed comments about how difficult such implementations aren't really quantified although the issues are clearly raised.

And I will try to write this more eloquently than I'm saying it now but, right at the start of this conversation we had a pretty good position about, this is a hard problem that we need to figure out while either side is saying, you know - is arriving at conclusions.

We haven't done the fact-based, the data-driven analysis that's supposed to feed into our policy discussions on this topic because it is so difficult -- though I will try to write that position up and get back to that.

So let's get into the agenda itself and we will start with (Thomas)'s record and he did a very nice job in presenting materials here and (Diane) developed and were reviewed and reviewed favorably by the rest of us in the meeting with ICANN -- sadly I was only there for half of it and kind of left (Thomas) sat there a little bit but did a very nice job.

And as a result of the meeting we have some concerns about where ICANN will come out on the issue of joint-controllers and given the timing of things what we should put in the initial report. And there has been some conversations since then and (Thomas) wants to present some of his and other people's thinking - the thinking of other people who have been contributing to this discussion.

(Thomas Richard): Thanks very much Kurt, this is (Thomas Richard) again for the ISCCP. I think that...

Kurt Pritz: Can interrupt you - (Thomas) can I interrupt you for just a minute? Alan has his hand up and I want to see whether it's still a point of order or there is some other issues. So I hope - I know you just got your juices flowing and you are going but Alan, go ahead.

Alan Woods: I was just going to point out that we have had a discussion on (Amr)'s comments but we didn't have a discussion on this message that Benedict sent out -- and I think if we are going to discuss the issues we need to discuss all of the ones presented not just some. I don't know whether that's a point of order or not -- it doesn't have to be done right now but I think it should be done. Thank you.

Kurt Pritz: Yes, I think that's a point of order and I think (())'s comment is separable from the bigger issue, it's more of a language issue -- but we are certainly not done discussing the legal versus natural issue. So (Thomas), if you can restart with the same enthusiasm that would be great.

(Thomas Richard): I will surely do my best, thanks very much Kurt and hi everyone its (Thomas Richard) for the record. What you see in front of you in the Adobe room is a Google Doc which now combines the language that you already saw that was circulated on the list for the few amendments that I made based on the discussions that we had over the last couple of days.

So first of all, I think what we need to do is confirm the outcome of the meeting that we had two days back and I just want to make absolutely sure that this entire team is aligned and if it isn't that we take good note of any dissenting opinions or objections there might be.

So I guess the first question that we asked (unintelligible) was whether our group thinks it has the authority to speak to the little determination of what concept is applicable -- and in our case I think there was an emerging consensus that a joint-controller scenario is applicable.

So again, I think those who think that we can't speak to that legal question should put their concern on the record. And should there be any and I think in the last call global warming response from this team was that it is well within

the scope of our work and within our power to make a legal determination that we can put into our interim report.

So should you have any doubts or issues with that I think you should probably put that into the chart so that staff can take good note of that. But absent any objections on that point, the second question is what language we put into our reports to adequately reflect our current state of deliberation.

And as you know, we had quite some discussion about ICANN's input, the vast majority of those who spoke up during the last meeting said, no, we are not going to wait for ICANN's input but we are going to move forward and try to publish our report as planned.

But nonetheless, we are open to the suggestions that ICANN might have and we will carefully analyze the input that ICANN will offer probably today. And then either discuss this before the publication or while our report is out for public comment and try to reflect that situation in a slightly amended introductory paragraph to be included in our report.

So what you see here and I know that this is a last minute intervention or last minute submission but it's only a few lines that are new which I'm going to read out to you so that everyone is on the same page. But what I would like to do before I read that for you is go to Marc, (Ruphus) and (Grace) -- Marc please.

(Marc Anderson): Thanks (Thomas). I'm (Marc Anderson) for the transcript. Sorry, I was just trying to multitask and read through the language you are proposing here. So I think my main question is around what the final form of the language you are recommending get added to the initial report.

So I want to commend you, you have done a lot of good work and laid out some good background information on this. What was not immediately clear to me and I see now that you are producing a recommended or suggested

preliminary recommendation here and so I guess I have to go back and relook at that.

But I guess it wasn't clear on how you are proposing moving your recommendation to policy language and I think that's important and impactful -- so I guess I want to go back and take a hard look at that and we will gladly provide comments.

But I also want to note and I think this is something we talked about going way back during the triage report when we talked about Appendix C and the language in there.

And when we were talking about Appendix C we talked about the fact that contracted parties, registries, registrars, ICANN needed to have proper GDPR compliant agreements in place -- whether that be article 26 compliant or using processor controller language.

Ultimately, I think we all agreed that the contracted parties, ICANN, registries, registrars need to have GDPR compliant contracts in place. And so along that principle I think there is agreement but I guess I would like to look at the exact language and we will hopefully provide comments and feedback to that.  
Thank you.

Kurt Pritz: Hey (Thomas), are you there?

(Thomas): Sorry, I was entertaining a muted microphone -- I apologize for that. So Marc, I'm not sure what your expectations are with respect to policy language -- but in a nutshell what this text suggests and I think that's the policy part, the other part is the rational.

The policy part would be to recommend that ICANN registries and registrars negotiate and enter into a joint-controller agreement -- then comes the rational explaining why our group currently thinks that it is a joint-controller

situation. And then follow at the table with ICANN purposes or the purposes of processing which are to be governed by ICANN -- including a broad brush allocation or responsibilities which should then be reflected in the joint-controller agreement.

And the rest of that - the exact terms of the joint-controller agreement and the exact implementation, operationalization of who is going to do what will be left to implementation i.e. the negotiation between the contracted parties and ICANN.

So that's the rough thinking -- let me cross go to Margie then I suggest that we don't take more comments at this stage but just go through the language in order to get that mapped out. Margie, please.

Margie Milam: Sure (Thomas), this is Margie. I had a chance to listen to the recording on the legal issue yesterday and it struck me that I think what (Jay Jay) was saying - and maybe I'm wrong and (Thomas) please clarify. Is that he is not - at least from their perspective, they are not comfortable with the joint-controller - referencing it as a joint-controller at this point.

Or am I misunderstanding what was the core concern -- and the reason I say that and assuming my assumption is correct, I think would not want to have this language say, enter into a joint-controller agreement until we have made that analysis and made the decision.

In other words, I would like to leave it vague for now. I agree with a concept of an agreement that identifies all the, you know, all the responsibilities and all that -- I don't have a problem with that part of the recommendation.

And I'm not saying that I disagree either about the joint-controller concept (unintelligible) ICANN's ability to at least share the information and then have us think it through and maybe it will change pour collective assessment of the relationship once we take a look at that.

So that's my suggestion is to perhaps not push it as a joint-controller at this point and I'm not saying that we wouldn't get there later.

(Thomas): Thanks very much Margie. A couple of points in response, I think that (Jay Jay)'s feedback has not been substantiated enough to be characterized as a refusal to enter into a joint-controller agreement.

He rather mentions that ICANN does have concerns based on the fact that, before you have discussed the individual processing activities and who shall be responsible for what, you can't really say whether ICANN will be happy with the allocation of responsibilities.

So I guess that's what the main argument is if I characterize this correctly but others that are present can chime in if I misrepresent what was being said.

I guess where we are now as a group is that, this EPDP team or at least a number of participants have said, the day before yesterday that regardless of what ICANN's concerns might be, if we as a group are convinced and I think that we are increasingly convinced that a joint-controller situation is present -- then we should come up with a recommendation along these lines and then analyze ICANN's input subsequently and take that into the equation.

But I would also like to point out that I guess that some of the conditions at least on my part to hear that ICANN has an issue with accepting a joint-controller situation exists.

The worksheet that we have been working on which now has been translated into our draft initial report, this contains the joint-controller scenario. So it's not new -- it's in the worksheet, it's been discussed on multiple occasions during our EPDP calls, it's been in the Hamilton memo, it's been in the (unintelligible) letter.

And also and I didn't really dig for this but I had been present when the ICANN board met with the CFG in Barcelona and let me just read from the transcript what (Becky Burke) said.

"I want to first start out by saying that ICANN has acknowledged the roll of a joint-controller -- that ICANN in fact entered into a joint-controller agreement as part of the (unintelligible)."

So I can paste the link to that transcript to the chart in a moment -- but, I thought this was a clear confirmation on the side of ICANN that a joint-controller scenario would be accepted, applicable and operationalized -- and I think I should leave it there.

And my suggestion or at least I do hope that we can get agreements in this group as far as the initial report is concerned that we try to reach consensus at this stage - or at least a rough consensus that a joint-controller situation is present -- that we agree on the allocation of responsibilities in the table that we are going to discuss in a couple of minutes.

And then analyze ICANN's input as we were other community input during the public comment period -- that's sort of the marching order that I took away from previous discussions inside the EPDP.

So Marc, last intervention before we move to the text language of the initial report please.

Marc Anderson: Thanks (Thomas) - Marc Anderson. I want to say, I agree with what Margie said, you know, I was on the call and I don't think I would characterize (John)'s response as being for or against a joint-controller. I agree with what Margie said, his response is more that, the full analysis hadn't necessarily been done.

And that's certainly for something joint-controller arrangement seems to be the case but that's not necessarily true for all the processing activities that exist.

And so I guess what Margie suggested is that, the necessary piece here is that the contracted parties enter into negotiations -- but the exact form and the exact paper if you will that those negotiations occur on should be left as much as possible to the contracted parties.

You know, we have talked about how under GDPR this is a fact based analysis and so I think the ICANN lawyers and the registry and registrar lawyers can do that fact based analysis and enter into proper GDPR compliant arrangements.

And so really I think the key recommendation in my mind is for those negotiations to occur. And I want to caution us against being too prescriptive in exactly the form and substance of those negotiations. Different contracted parties have different business models, have different obligations under their contracts, have different jurisdictions that may or may not be applicable to them.

And so to the extent possible, I think it's important to give the contracted parties lawyers the flexibility to make their own determination on what the proper arrangement is legally.

Kurt Pritz: So I guess Marc just a thought - I'm not trying to convince the rest of this team or the wider community how exactly this should be done. My interest is a bit pragmatic and getting something into the report that will help us get clarity on what the solution will look like and also to advance our past odds compliance in the entire gTLD system.

Having said that, I think that we need to discuss this at two levels. One is, the principle question of whether the joint-controller scenario is applicable or not.

I guess at least I cannot think of another solution that would be as sound and holistically waterproof as a joint-controller situation.

So if it looks like a joint-controller situation from the outside - if this is meant to be a joint-controller situation, then I think our group is not stepping over if it actually suggests that it is a joint-controller situation -- and that a joint-controller agreement shall be negotiated and presented. So I think that's where we are within the scope of our work.

And I do hope -- and maybe (Seff) can take note of this first point -- I guess that's what we need to get clarity on from this group to hear objections.

As it regards to the second point, I guess there is no appetite at least on my side to come and draft a joint-controller agreement and take away that part of the work from the contracted parties, their lawyer and ICANN. And there are also a lot of legal and operational details that will need to be specified in a joint-controller agreement and we shouldn't go near that.

However, what we should probably be doing and this is what I have reflected in the updated language here is, come up with a broad brush of allocation of responsibilities to illustrate this. If we look at Data Escrow and (Ebiro), those are tasks that are being carried out because ICANN prescribes it. Those go beyond the ordinary data security measures and contingency planning that a contracted party might otherwise think.

And therefore I think it - for us to propose and for the community to comment on whether they think we got it right -- and then that allocation of responsibilities plus this data security (Ebiro), Escrow agents would be our policy recommendation. How that is faired with life, again, will be left to contractor arrangement or process M I think it is for (unintelligible) purpose.

If a registry wants data to be collected and processed to check eligibility criteria should be responsible for and therefore I think that's something that

we should put in our reports. And I think if we keep it at that level and say you need to do a JCA, it needs to be two-parted - one is a private part and the other is a public part where you sort out all the details.

But we want you take care of some basic parameters and allocation of responsibilities -- I think that's fair and well within the scope of what we are doing. So Margie over to you and then I'm really going to be forceful - I'm not taking more comments that actually don't see the language of the draft report. Margie please.

Margie Milam: Sure. I think Marc actually addressed a lot of the concerns that I had that in some situations it may be joint and in others it may not be and he said the same thing. For example, the extra fields that a registry might ask for. So anyway I don't need to go into details but Marc actually captured my point and what I was really trying to get at is, I'm not saying that we would be vague at the very end of our process.

At the time we get to our final report I think we would be clear on this -- I was merely suggesting, at this stage let's leave it a little more vague and have the discussion in the report for sure, get the input to ICANN staff and then make the determination later to be more specific -- so I agree with what Marc had said.

Kurt Pritz: So I think I'm clear on the exact proposal -- so you want to leave out the entire legal rationale for why we think it's a joint-controller situation and be silent on that?

Margie Milam: No, I'm sorry I didn't mean that.

Kurt Pritz: (Unintelligible).

Margie Milam: No. No, I'm really saying - I'm focusing on the recommendation itself -- we can put our analysis in there, I don't have an issue with that. I'm really saying

because we recommend that we enter into a joint-controller agreement with a contracted party to have to say something, like, you know, enters into an agreement with the parties that relate to the roles or responsibilities as defined below -- and just not call it a joint-controller agreement at this point. In our final report we may actually do that and continue with the analysis -- so it's not a big change.

(Thomas): Thanks Margie. I think actually it's a quite substantial change because it would put the entire concept upside down if you have other written agreements than a joint-controller agreement -- the only solution that would be left would be a convolution of data processing agreements that might be different for different processing activities.

And I think that if we leave that open the community will likely not understand what the accountability concept that we are suggesting behind our compliance work is.

So I think that's a valid effecter and then potential the recommendations that we come up with would be inaccurately describing what we are doing -- because if ICANN were let's say the full controller for all this as someone said earlier, then ICANN would be the governing body prescribing exactly what is don and how.

And for that to be present, we don't have the level of granularity of how prescriptive ICANN is and also I think the contracted parties would likely not be happy with the characterization that they are only fulfilling the ICANN's orders -- and then it would be merely a matter of compliance and I think then we could stop our policy work on this.

So I guess that the flexibility that we exercise with our policy work is only reflected in a joint-controller situation adequately. But again, this is not for me, let others chime in -- we can always tweak the language of the report. But I think it is fair to the reader of the initial report to specify which route we

think it will be -- because there would be financial implications, there would operational implications. And I guess the community should be able to comment on a quite specific proposal that we are making. (Amr)?

(Amr): Thanks (Thomas), this is (Amr). I know that you extended the queue even though you said that you wouldn't so thank you for that. Yes, I just want to agree with you in the sense that, you know, we did a lot of work as a team to get the worksheets on the proposal and that is really the one area I believe that we made a great deal of progress in terms of achieving consensus as an EPDP team.

And all the work that we did do is leading us towards a joint-controller agreement at least in specific areas as Marc mentioned and Margie later followed up that there are some areas that that may not be the case -- but in most of them that is where our work has lead us.

So I think it wouldn't be fair to us as a team to not properly represent the results of this work in our initial reports. But also noting there has been concern expressed from ICANN Org and we are going to take this into consideration when it become available.

So just sort of it wouldn't be too difficult to throw that in there to especially let the readers of the initial report know that this is going to come in. But yes, I think we do need to follow up on the work that we have done and specific especially because that's part of the work we actually do agree on. Thank you.

(Thomas): Thanks very much and I think I'm the weakest chair of today's trust because of another controversy on my own queue management but now we are where we are. Let's go to (Diane), to Kristina and then I'm going to be strict and end of line and go to the text of the recommendation.

Diana Arredondo: Hi (Thomas), I want to be able to take (Amr)'s point further -- I agree with it completely. But I wanted to also repeat the fact that we are going with it -- this is the factual analysis so from a legal perspective, the determination on joint-controllership is actual analysis.

We have done all the work to support that and where I think the disconnect is between what (Jay Jay) is expressing and what Margie has expressed. Is that, just because we are making the factual determination that there is a joint-controller relationship doesn't mean that for every single purpose and in every single scenario as identified in our work that there is a joint-relationship on every single data elements and how all the processes and activities happen -- and that there is also a joint and several liability on all of those roles and responsibilities.

As we have set out the roles and responsibilities in relationship to the purposes in our workbook, will be 100% reflected and part of the joint-controllership agreement. So the joint-controller agreement doesn't mean total joint and several liability and that there is joint controllership of every single purpose.

It basically means that as a factual analysis there is a joint controllership relationship and then it breaks down just as we have done -- there is different roles and responsibilities in relationship with data and proportionately assigns the liability according to those different processing activities.

So then I think that what the missing piece in the memo is the fact that it explain that because the language you have written out puts forth the language from a very academic standpoint that is confusing men to the process of classification of what happens in a joint-controller agreement.

There is a paragraph that was just added to say that, the joint-controllership of relationship will reflect the work that we have done in the workbook and will proportionately assign the roles and responsibilities separately according to

the different processing activities we have outlines. And will thereafter proportionately assign liability and this can then make this recommendation which will then be followed with legal implementation by the different parties involved.

And then we could get that and also note that we accept it ICANN will just be reviewing this analysis that is our recommendation in line with the factual that we have done.

(Thomas): Thanks (Diane). Kristina?

Kristina Rosette: Hi Kristina Rosette, for the registries for the transcript. I just wanted to flag that I had put in the chart a potential revision to the end of the first sentence of the recommendation.

And I think it addresses the concern that Margie and Marc have raised while simultaneously making what I think is an extraordinarily important recommendation.

And that revision would basically change the recommendation to the EPDP team recommends that I can negotiate and enter into an appropriate data processing agreement which may be a joint-controller agreement with a contracted parties.

And if folks feel like that is language that addresses their concerns all the way around, then I think we could tweak the second part of the recommendation accordingly. Thanks.

(Thomas): Thanks Kristina and thanks for what I think is a very constructive discussion around the issue. I think we are working hard and we are wrecking our brains to find a way forward to get sufficient flexibility but have to be strong enough to give the community some direction on where we are going.

I would suggest that we go back to the exact language or comments that have been suggested a little bit later and I will go through the text that many of you would likely not have been able to read because it's just been submitted a little bit before the call.

So I would suggest that I read the language for you - I just need to find the document in a slightly bigger font size because my eyes are not that good anymore. Based on the information and the deliberation, the EPDP team had on this topic and pending further input and legal advice -- the EPDP team recommends that ICANN negotiates and enters into a joint-controller agreement with the contracted party.

You will see that other than in the email that I sent a couple days back, I have now incorporated further input that we might receive to give us the flexibility that we might need in order to alter the recommendation.

Next paragraph, in addition to the legally required components of such agreement, the joint-controller agreement shall specify the responsibilities of the respective parties for the processing activities as described below. Indemnification clauses that shall ensure that the risk for certain processing activities is born by either one or multiple parties that have the primary interest in the processing.

So that's the introductory part, then comes the rationale and the background -- that's exactly what you saw from the memo that has been shared by (Merika). That's the memo that I originally shared with the edits that (Diane) did.

And then comes a lot of scrolling down -- I'm not sure whether I have scrolled for everyone or whether all of you have scrolling power. But if you see what I see then you should see the table including the purposes. If you don't have - if I can't scroll for you, please scroll down to page number 7 and go to the purposes section.

And what I did there is defined the term ICANN purpose - in terms of drafting that can certainly be done otherwise but what we didn't like or concluded not to like a couple of calls ago was the term ICANN purpose -- because it suggests that these purposes are only pursued by ICANN which is why I included the definition.

The term ICANN purpose is used to describe purposes for processing personal data that should be governed by ICANN Org via a consensus policy. Note there are additional purposes for processing personal data which the contracted parties might pursue such as billing customers but, these are outside of what ICANN and its community should develop policies on or contractually enfold.

It does not necessarily mean that such purpose is solely pursued by ICANN Org because some of these purposes are actually pursued by the ICANN and one or two more parties -- so that's one.

And then what I did subsequently and maybe we can run through that together briefly. Where we had description of who the responsible party is, registries, registrars and ICANN in the older version there was a description of who is the joint-controller, a controller or a processor -- now it just mentions the responsible party.

And that means that, for certain processing activities we have ICANN registrars and registries being responsible -- that doesn't necessarily mean that all the three have to do it - do the processing. Because for purpose A - the collection is done by the registrar, right?

So the responsible party is not the party actually doing it -- but the responsible party is the party that actually takes responsibility for the legality of the processing activity.

And I have tried to adjust this language for all the purposes and then this would need to be mirrored and that's outside of what we are doing -- this would need to be mirrored by indemnification clauses.

So where let's say the registry is the responsible party for processing data for validation purposes, it might not be the party actually doing that because the registrars are passing on that data to the registry -- but yet, the responsibility lies with the registry and happens then to indemnified as an operational matter that should be discussed between the registries and registrars.

So I hope that this approach or I hope that this methodology makes sense to you guys and I'm trying to get out of full screen view and check whether there is any instant feedback to this. And then I suggest we should go through the allocation of responsibilities purpose by purpose. (Diane), I'm not sure whether that's old hand or new hand? (Diane)? Oh, she is gone out so let's go to Benedict now...

Diana Arredondo: (Unintelligible).

Benedicto Fonseca Filho: Hello, I had two questions - first one, are indemnification clauses normal in JCIs? I hope that someone genuinely doesn't know. And second question, just a times question, she says the language on the page says a singular JCI as the intended that would be one single agreement with all contracted parties. Thanks.

(Thomas): Thank Benedict. Benedict, there are no boiler plate joint-controller agreements that have to be used. The GDPR just spells out some basic requirements for joint-controller agreements as I believe required ingredients.

So we have done joint-controller agreements with indemnification clauses, we have done some without indemnification clauses -- so if you have group companies that are joint-controllers for certain processing activities, those

might not need an indemnification clause amongst or between group companies.

But where you have basically parties jointly controlling data at arm's length on commercial parameter, those will typically have indemnification clauses in there because if you are in a joint-controller with somebody and some of the processing activities are solely being carried out in the interest of your partner, then you want your partner to be responsible for the legality of that processing. (Hadia), please.

Benedicto Fonseca Filho: Second question please -- sorry.

(Thomas): Oh, refresh my memory please Benedict -- I'm sorry.

Benedicto Fonseca Filho: Sorry (Hadia), I didn't mean to jump in ahead of you. Just try to pin this question before it disappears at the top of the chart which is, you have written JCI in the singular -- so (Frank)'s question is, does this envision one single JCI between ICANN registries and registrars?

(Thomas): Thanks Benedict for reminding me of that question and thank (Frank) for asking it in the first place. I guess that's the question for us to decide as a team. If I were to propose an approach, I would recommend that certain basic parameters need to be in other joint-controller agreements and ideally that would be attempted to be used.

But certainly, there is the possibility to reflect special situations for a special scenario. So for registries that don't have special eligibility requirements, they might not need clauses on validation, right?

So I think the starting point should be an industry wide JCI -- but there should be the flexibility by way of bilateral or trilateral if that's word negotiation to have additional stipulations regulated. But that's just my personal opinion. (Hadia), please.

(Hadia): I have a very minor comment with regard to the ICANN purposes and defining it -- I think it's very important to define it. However, I think putting in an example like billing is wrong because we all know that (unintelligible) has their own billing system and that it has its own requirements just as per your comment.

And then following up on Benedict's comments -- so basically you were saying that you are recommending one single JCI for the industry and then what? Because we are sure, like, one single JCI won't work.

(Thomas): So you mentioned two points. I may have not made this sufficiently clear in the definition of ICANN purposes -- but the billing example was an example that would fall outside the ICANN purposes -- because as you rightfully said, billing is something that registrars do for their own business purposes. Some registrars such as Benedict registrar of last resort they don't bill (unintelligible).

So it shouldn't be for ICANN to require data processing for billing purposes because that's a processing activity that's outside ICANN's governing powers if you wish.

The second point on the joint-controller agreement of one-size-fits-all for everyone and then what. I guess that we should go as far as we feel comfortable in specifying the details of what should be in the joint-controller agreement.

And yes, I think it would be both pragmatic as well as appropriate for ICANN to come up with in collaboration with registries and registrars stakeholders which we would probably be in a good position to do this on behalf of the contracted parties to come up with a template.

But this template should contain basic parameters on who is responsible for what and how to indemnify -- but then there might be specialties of contacted parties that would need to be reflected at the operational level that would require a type letter or agenda or amendment to the standard template.

But maybe we can hear from those who are in the ICANN contractual department or from contract lawyers with the contracted parties on how this is best being done and then we can add a note and an implementation guideline for this specific point. (Emily)?

(Emily): Thanks a lot (Thomas) and thanks for taking us through this document and your reasoning which is always very clear and crisp. I have not need able to make the last few calls so I might well be behind on the rest of the concerns.

I was a little surprised to read the analysis from ICANN with the joint-controller issue -- I mean, to me it seems straightforward and certainly with regard to the publication of data which is the most legal issue and potentially misty area.

From the perspective of registrars I can't see that registrars would take a step in publishing any data if were they not required to do so by return of that on (unintelligible).

And so to me, really, to support your point that a joint-controller or at least some sort of agreement where the roles and responsibilities are properly hammered out through negotiations and seems a constructive way forward. Thank you.

(Thomas): Thanks very much (Emily). Alan?

Alan Woods: Thank you (Thomas). Just (unintelligible) I just want to say that just going back to the original suggestion of your language about a potential recommendation on that -- I just wanted to be clear that that is something that

I completely agree as a stakeholder group especially the registries -- we need to have a bit more conversation about those.

I personally find myself much more aligned with your pragmatic approach on this therefore I just want to put it on the record that I would like to take it back to the stakeholder group and say your original language needs to be more in line.

So regardless of if compromising wasn't enough, I think we need to take a slide back because as we honestly know that this process moves ridiculously fast. I mean, we just want to make sure that we take everything into account to make sure that we are fully representing those who are supposed to be. Thank you.

(Thomas): Thanks very much Alan. And here comes the next Alan - Alan G., please.

Alan Greenburg: Thank you very much. We are now back much closer to what I thought the original intent was of these things in the language you now have as the ICANN purpose.

I think you have a red herring in there talking about billing information -- we have already been told multiple times that although on some occasions the whose information may coincide with billing information - that's not the information registrars use. Yes, they collect billing information but it's completely unrelated to our discussion on EPDP on who is.

So my question is, if we use this information and we remove the red herring of billing information which I don't think is generally accepted in be whose information, what's left? Pretty much everything we are talking to is governed by the ICANN consensus policy with the exception of the data elements that registries may require for validation which is in a small number of cases -- and the information that goes into the zone file where one could readily construe.

I think that registries have a need for that and they can't do their business without it. So how did we end up saying that the bulk of the whose data we are talking about is there solely for ICANN's purposes?

And does that imply - I thought I knew when I started but now I'm not sure. Does that imply that for those elements other than the registries specific ones and the zone file that ICANN is in fact the sole controller of those if it's purely for our purposes?

(Thomas): Thanks very much Alan for the question and I'm sorry to hear that we managed to confuse you overtime -- and in fact it's not an easy thought process to go through and let me try to help shed some light on this.

First of all, the example of billing, I'm more than glad to take out. Let me tell you why I put it in there. The reason for that is that we had a purpose in the original or in the currently binding temporary specification that data will be processed for the purpose of billing.

And I wanted to illustrate that and maybe I should have made this clearer that this purpose was removed because it's not within ICANN's purview. And you are certainly correct that we have two layers of complexity - number one, is not within ICANN's purview to govern - and number two, the data is not used for billing purposes in the first place but it's the account holder data.

So my suggestion is, let's try to remove that issue by just removing the example that I probably shouldn't have included in the definition in the first place -- so let's remove that.

And then on the question of whether ICANN is the sole controller or not -- I think when we go through the responsibilities of the parties or the various purposes, you will find that, for some purposes you only have ICANN as the responsible party. You know that would be (Ebiro) and (Escrow).

I think some of the contracted parties even think that - not only think but they view that (Escrow) and (Ebiro) is also in their interest and therefore it's the purpose that they pursue.

But even more so, the starting point is not that much of who has an interest in what or who has access to what data -- but the question is when we do the determination of controller processor arrangements or joint-controller arrangements is the law.

And the law has introduced adequate 26 for complex scenarios in which the data subject should not seek for the party to exercise their rights -- nor should the data protection authority be forced to find the right party to go after in such convoluted processing worlds.

And therefore, it's not a matter of who is interested in what and then let's allocate responsibilities and then let's use the government contract of our choice -- but it's a matter of, what does it look like from the outside? How would the processing activities been shaped if one or the other party wouldn't be present?

And if the processing would look different in the absence of one of the parties, that would suggest at least according to the legal literature that as soon as the parties - if the processing would change if one party would be missing that then this party has exceeded the threshold of relevance to be called a joint-controller.

I mean, certainly the legal determination is quite complex and I think with this five or six page rational we have only scratched the surface. But I think that if our rule comes to the conclusion that the joint-controller situation is the situation to go for then we should say so.

And I think strongly that the data processing agreement where ICANN is the sole controller and all the others are just processing data on ICANN's behalf would not be appropriate.

Typically controller processor scenarios are those scenarios where one party doesn't want to do certain processing on its own and outsources that to another party -- ICANN can't do that. ICANN can't perform the role of the registry or a registrar itself.

We have this three-tier GTLD world with the respective roles because the community - all the parties involved developed at that solely -- and I think it's not for this PDP I believe to throw that overboard.

So, let's see what we have more comments on this. Alan, is that an old hand or a new hand?

Alan Greenberg: No, just one small clarification. I understand the concept of how it looks from the outside. And although ICANN is just making the rules, the registrar is the sole visible party in most cases. I'm not sure why that implies the registry is a joint controller because they're basically invisible from the outside. Thank you. I'm not sure you'd need to answer it now. I just wanted to make it clear that it's still not crystal clear in my mind. Thank you.

(Thomas): That's fine, Alan. And it's not easy. And if you look at the article 29 group working paper on joint controllers -- when I read it, I was none the wiser because these examples that I've given didn't really enlighten me. But that might just be me and my limited capabilities of comprehending complex legal matter.

But I think if you, if you look at the, at the scenario, at the setup in its entirety, if you look at how registries require registrars to collect some data on their behalf, if you look at how registrars deal with the consumers or with the registered name owners and do certain things.

If you look at how ICANN influences the way the data is processed opposite to, let's say the ccTLD was, you have entirely different governing concepts. If you look at how our community comes up with consensus policy including the strong voice of the registries and the registrar.

If you look at the way the RAs and the RRAs are being negotiated between the contracted parties and how data processing is operationalized. I think there isn't really a way to possibly explain to the outside world that this is the sole controller and processor arrangement.

Maybe it can be done, but I think that absent a written robust alternative scenario, what we see in front of us is probably the best written rationale that we have. And let's put it out to the community for testing and that would prove me wrong. It wouldn't be the first time in ICANN's history that recommendations are changed after the initial report. Diana.

Diana Arredondo: Hi (Thomas). Just to follow up on what you're saying -- and to put it maybe in a synthesize and simpler framework -- is the fact that this, even though certain purposes are laid out, where could be deemed that in fact ICANN perhaps is the sole controller as you lead under GDPR under the definitions you laid out, that that's not possible, because in fact, you have to look at the time that the information was taken in and in fact the registries and the registers are collecting that information, transferring that information.

Those are all practicing activities by definition. So, then as you go on to explain -- within the memo -- that the joint controllership relationship changes the dynamic -- and even if the purpose for which ICANN is using the information is solely by ICANN -- it's still within a joint controller confinement because the data was processed along the way by both parties. And basically, then practicing activities, if it's, let's say, is, is no longer just going under the direction of what the controller is saying, but is jointly involved in effectuating what happens with the data. And that's what's

happening in the construct of what you just explained in relation to who is and the framework in which it now exists and sits and is collected, transferred, moved and then ultimately processed by ICANN.

So, that's just - that's why we've come to this factual determination based upon the processing activities that it is actually a joint controllership relationship.

(Thomas): Thanks very much Diana. Much appreciated. And I also saw (Omar)'s suggestion in the chat that we might want to have a webinar to explain those things. And I think that's an excellent idea. We've done that a couple of times during the CCWG accountability. And I think that the other CCWG has also done that. If we had the time and the budget, I think it would also be helpful to engage – explain for example – the guys that do these excellent visualizations and illustrations of complex processes to explain to the community what we're doing here.

Okay. So, I don't know exactly how much time (Kurt) had allocated located to this very topic, but what I would really like to do is present to this group the tentative allocation of responsibilities for the individual campuses and do a sanity check whether there's something that jumps to mind that, the protocol, the participants that begs alteration of the language of the interim report.

And once we've done that, I think we should try to take stock and move forward and confirm the results of our meeting today and tomorrow's calls. So, Benedict.

Benedicto Fonseca Filho: Hi, sorry, we had to reconnect. Yes, exactly. Yes. How do you envision going into this joint control agreement, please?

(Thomas): Resellers are slightly neglected in ICANN'S words. I think in the context of partnership should primarily speak to that, but my, my view on this is that the resellers would be processors on behalf of the joint controllers and we would

authorize the registrars to find processes – i.e. to contract with resellers. And they would need to take responsibility for the choice and operations of their reseller.

We have a couple of points that need to be reflected for escrow and the bureau. Those would be processes as well as dispute resolution provided. Those would be processes. And instead of forcing the drawn controllers to jointly identify adequate processors as contractors. You can have stipulations in the joint control as we do in the operational level, which I think they shouldn't be touched, that authorizes ICANN to contract with and to identify and contract with the bureaus and escrows and dispute resolution providers.

And the same would go for registrars that will get the flexibility to contract with resellers. It would enable registries and registrars to outsource the technical operations, right, so, that we would leave all of those operational aspects more or less untouched, but who would just embed them in a compliant (unintelligible) if you wish. (Unintelligible) raise your hands, please go ahead.

Kurt Pritz: Yes. So, I don't have anything substantive. I just wanted to mention that we do want to take a short break and get into the next topics. But I don't want to leave this conversation short. So, for the rest of the information you want to present, if you could scroll through the document and point to what you want people to read and consider, then I'll try to tie this up and give everybody the appropriate homework assignments.

(Thomas): Okay. So, we can, we can make this very short. Maybe folks can just – so I would not read this to the entire group, but please do read through the allocation of responsibilities for the various purposes. I think it's a two-minute read for you and it will likely be quick because most of the points will be uncontroversial. And then after the break maybe we can take five minutes to solicit initial feedback whether we – whether I -- got something plain wrong in the allocation of responsibilities -- and shouldn't there be any objections today

-- then let's give people 24 hours until our call tomorrow. And absent objection, we will then confirm consensus -- if any -- on the allocation. Right?

And again -- if you go through that -- the responsible party is not the party that actually does the things necessarily, but it's the party that we want to be tagged as the responsible party for certain processing activities and for the delivering on certain processing purposes. And that will likely be mirrored in the indemnification. So, that the parties that are responsible will be required to indemnify the other parties for the legality of that data processing.

Again, if it comes to being sanctioned by the authorities, the authorities would be looking at the wrong door and the first place. So, this is more of the overarching concept of who wants what and who's responsible for what. So, (unintelligible). And my last word -- last two sentences before we break for a short pause -- I guess I would tend to recommend to our group not to come up with alternative suggestions to the community.

If we tell the community it can be this or it can be that, I think it will be more challenging for the community to appropriately comment on that. I think we should be brave and say we think it's this. Do you agree with us? We can add a sense that we can toy with other scenarios -- describe those -- but I think we should settle on one solution, put that out for public comment and only revise if needed legal analysis by (unintelligible) or whomever or public comment suggest for us to readjust the report.

That's my five cents. Back over to you. Thank you for your patience with me. I took I guess longer than you expected.

Kurt Pritz: No, I would say it was a very refreshing conversation. I just want to make sure where we're going to take up a different topic on the other side of the break. I don't want to give people homework during the break. So, with that in mind, you know, my comments to this would be, to (Thomas) and us all in

reading through this, you know, I think in the introductory materials we want to make the factual analysis that was performed a little more clear.

So, my reading of it is, you know, the legal basis for making these determinations and then the conclusions. But I really like (Thomas) and others discussion in the chat about, you know, the sorts of analysis that went to, you know, if one party is missing from this deal, then the whole thing falls apart and other indicia of jointed controllership that (Thomas) alluded to. So, I think I would want out there.

Somewhere we should indicate whether we're seeking any indicate -- any verification of our analysis. So, do we intend to consult with any authorities on the conclusions -- the temporary conclusions -- presented here? So, think about whether we're going to consult with any BPAs or the data production board on this issue. And then, you know, I would -- if everybody thinks it's a good idea -- say, you know, we want to put on perhaps jointly with ICANN, a webinar on this issue during the comment period or something like that.

And so then, you know, maybe headings, you know, that include factual analysis and then, you know, our (unintelligible) that, you know, the parties should enter into the GDPR appropriate agreements with the sort of language that Kristina said. So, I think that's where we're going on this and I think that - - unless you have any closing comments, (Thomas) to, to my comments or whether you want to point to any specific information in purposes themselves as an example to read -- we'll close this off. So, (Thomas), I'm just waiting for a nod or a comment from you.

(Thomas): Yes, I think just that we should probably settle on the set of language for the recommendation. I had suggested to go for one option, I amended a of a joint controller situation. You now made reference to Kristina 's language. I'm not sure whether I'm the only one in the team was now confused as to what the solution should be. And I think, you know, if we want to really close this topic

tomorrow, I think we need to give team members the opportunity to think about a concrete solution.

And my recommendation would be -- after everything that we've discussed today -- and let's assume that the language as proposed standards and maybe Kristina and Marc and others (unintelligible), who thought that there should be alternative language then chime in so that we can (unintelligible) that is, to then determine tomorrow whether we have (unintelligible) matter.

But maybe the solution that's (now) on the table would be the solution as in the text. And that's not because I want to get my way, but I just think we just need to give clarity to the group as to what our interim (unintelligible) today is.

Kurt Pritz: Okay, thanks very much, (Thomas). And I know in the chat that Kristina is going to discuss this with her teams. So, let's start with your language and we won't take any Kristina or the other intervention with that. But so, come back in 24 hours with recommendations. Marc.

Marc Anderson: Hey Kurt, this is Marc Anderson and, you know, I guess I'll just, you know, to what Kristina and Alan are saying, you know, we're happy to take this back and comment. You know, this is a complicated issue. And, you know, I think (unintelligible) work in that. I -- we'll take it back, provide comments, you know, I don't want to say, you know, I think I would be foolish to disregard the work and advice of (Thomas) and I'm certainly I'm not suggesting that.

I do find some of the arguments and rationale a little confusing. I'm not sure I agree with everything (Thomas) is putting. You know, one of the things that bothers me is I think some of the arguments (Thomas) makes would also, you know, if they were true, would also mean that backend registry providers are also, joint controllers.

And, I think that's the case where a backend registry is clearly a processor. And so, I think, you know, you know, and it, it may be just my lack of

understanding, But, you know, I think there are, you know, I think there is, this is not as clear – it's not a clear item. It's not – it's a very complicated relationship.

You know, the ICANN ecosystem is not clear and does not easily map to any one scenario. So, I do think we need to proceed with caution and make sure we're not backing ourselves into a corner here. But, you know, I do value what (Thomas) said – the work he's done here and I appreciate that and I'm happy to take it back.

But then, you know, I just want to, you know, go on record. I do have some concerns with the language that is here. And we'll provide feedback.

Kurt Pritz: Well put, Marc. Let's, so let's start exactly at five minutes to the hour. So, I'm going to get a bowl of cereal, some of you might get lunch, something else. So, if we could clear our heads and come back a few minutes before five minutes before the hour, so we're ready to start right then, that would be terrific. When we come back, we're going to look at the matrix of issues that have been raised in comments to the initial report. So, we're going to start with that then. So, thanks very much for hanging in there and I'll talk to you shortly.

Coordinator: And all recordings have resumed.

Benedicto Fonseca Filho: Hey, while it's just a few of us, it's Benedicto here. Breaching protocol completely to say I've got to drop off because I've got a transnational organized crime case to plan for in a couple of weeks, which I think many people may be involved with, out with this call. Thanks very much. And if anybody would like to chat legal natural – my proposal – with me, an email would be wonderful. Thank you very much.

Kurt Pritz: Thank you. Alan. So, in this part of the meeting, what we've done is capture -- the support team has captured -- comments made to the initial report. There

are several categories of comments and so, they've been categorized here. There's one set that's a straightforward that, you know, if you think about the simplest level that are the most straightforward, such as punctuation and grammatical changes and very simplistic changes that do not affect the substance or the meaning of the report.

And so, those comments have been already adopted and included into the latest version of the initial report that you can read. But if there was uncertainty, even uncertainty as to whether the substance was changed, those comments have been included here for discussion. Some -- many of them -- I hope we can wrap up quickly. Others raise somewhat complex issues. So, I hope we can have discussions about and up and identify a path for going forward on the initial report.

I think the best way to run this discussion is to have the suggester explain the change that's asked. Some of these first ones are new issues. So, maybe among the most complex. And so, they might take a little more time but they might be a little more complex to describe. So, I would ask the proposer and we just have the proposer here by stakeholder group, but I'm hoping that someone from the stakeholder group listed in the table can describe the change. And through that description, we'll kind of get an indication of where the discussion should go from there and I'll do the best to facilitate that. Before we start, Marc, do you have a question?

Marc Anderson: I don't know if it's a question or comment, but, yes, this is Marc Anderson for the transcript. And Kurt, let me just sort of like raise the elephant in the room and you know, and ask is it still our intention to publish the initial report on nineteen November? I guess I'll -- let me just ask that question to start with.

Kurt Pritz: So, the answer is yes. I recognize the challenge and I want to gauge the difficulty of what lies before us by going through this process. So, by embarking on this, that'll provide a great deal of certainty for us, I think.

Marc Anderson: Okay, thank you. And then just to follow up, I guess, you know, I, I appreciate that, but I just want to, I just want to point out, you know, we were talking about substantive edits and decisions and discussion still to be had with a very short time between now and then in the 19th, which includes a weekend.

And so, I guess I'm very concerned and I want to -- I want us to be very clear on what the process will be for the working group to agree on what does and does not get included in this report. What rigor will be involved, what are the processes, procedures. I guess I'm asking what's the working group methodology to take the remaining items we're going to discuss between now and the 19th, and decide how they do or do not get included in that initial report. So, I guess that's my question there, Kurt.

Kurt Pritz: Yes, could take some time. My goal is that where there is agreement on a topic that will be, you know, I guess we're not supposed to use that consensus word -- I'm not sure -- but there will be agreement on the policy recommendation that is written there. Where there's not agreement, I think each group -- to a great extent, if not a complete extent -- holds the pen on what that group's comment to a particular comment might be.

And when I say maybe not (us) have to be or have an attempt at being succinct. And so there may be negotiations between support staff in each group about tailoring their comment to the major points that need to be made so that the report doesn't become big. I understand that's not a complete answer to your question. And I'm somewhat, I share the same uncertainties you do obviously.

So, we're both on the same side here. But I know I know of no other path but to embark on this and discuss these issues. I was hopeful that there wouldn't be this many topic raised for the initial report, but here they are. So, we can't let them be undiscussed.

Marc Anderson: Thanks Kurt. I just want to (unintelligible). Ashley just got in. I'm hearing from my registry colleagues, Kristina and Alan either got dropped from the call or are having to reconnect. So, I fear some, some working group members may have missed the start of the call. So, I'll just point that out as a point of order, I guess.

Kurt Pritz: Thanks Marc. So, the first proposed change here. So, let's dive in and see where we are. So, the first proposed change here is raised by the registrar stakeholder group. And without me reading this, without me reading this, I hope -- I wonder if someone from the registrar group can describe the recommended change here for the elaboration about further discussion required. Thanks (Matt).

(Matt): Hi Kurt, it's (Matt). So, I think I'll just speak to general terms about our comments in this chart. I think the comments were observations and questions that we had in reviewing the initial report. I'm not entirely sure to be honest. We didn't discuss it in the light of whether or not these were issues that we felt needed to be changed in the initial report before it would be published.

So, I think we will need to -- as a group, the registrar group that is -- have a discussion amongst ourselves as to whether or not the comments that we made need to be addressed again, cognizant of the tight timeline that we're working on. And I wouldn't be able to speak to right now whether or not we'd be comfortable with the report being published without these comments being addressed or these might frankly be comments that the stakeholder group would submit as part of our public comments.

So, I don't know if that makes this exercise any simpler. My goal is that it would.

Kurt Pritz: Yes. So, I'm reading the – so your comment is that this language – you want to have a conversation among your group -- this language might be okay for the initial report, but I need to confirm that. Is that what you just said?

(Matt): Yes, I mean that's what I think the best thing for us is. I don't (unintelligible) it wasn't one thing that I think I personally made. So, I don't know that I can speak to it. But just been looking at all of them in totality, I think our comments need to be, again, given the timeframe we're dealing with, I don't know if going through each of these comments as a group -- to try to move forward to get a report published in a week -- is the best use of our time.

It might again be something that we just included in ours in our submitted public comments.

Kurt Pritz: Okay. Thank you. Let's go onto the next comment.

Kristina Rosette: Kurt, it's Kristina Rosette. Can I just read the point of order?

Kurt Pritz: I saw hand, I registered in my mind and then, well, it's my mind, so, go ahead please.

Kristina Rosette: All right, thanks. Kristina Rosette for the transcript. I just wanted to flag kind of a broader issue and a more specific one. I had put in on behalf of the registries or requests, last Friday, that the staff (unintelligible) at the meeting in which a particular recommendation was agreed upon because we were having difficulty kind of tracking what was in the report versus our notes. And the response was that it was a significant amount of work and why did we want it. And I think current recommendation seven kind of highlight why we want it.

This is a recommendation with regard to, I believe, a transfer of data to (Eva Rose) and the emergency registrar, and I apologize, I'm forgetting what it's called off the top of my head. But I had indicated in comments -- I put in

yesterday -- that that was not a recommendation -- the registries at this point we're comfortable agreeing to go in the report -- because there's been no plenary discussion of it.

And so, the effort I had to go through to figure out where it came from, I think really highlights why you think it's important that there be a mapping of the recommendation. So, in meeting number 22, when Marc presented the data worksheet, he did note that in LA, the discussion group had noted that the jurisdiction could have some implications.

There was an action item taken from staff to put together a recommendation which would have been fine, except the recommendation takes a step beyond what was discussed and then was put out onto the list, with I think the apparent attention that the only discussion was going to be on the list. And so, kind of doing all this in terms of mapping what the meeting was and then going through all the intermediary email and then finding it and trying to figure out how we got, you know, two plus two to be five, that took like an hour.

And so, I think it's going to be really helpful if we have a broader decision as a group as to what approach we're going to take about recommendations -- about recommendations for which there was no specific discussion. And I would like to repeat my request that that staff map the recommendations to the specific meeting. And I think, and again, to be clear, I think the issue is, is that what is in our notes and our recollections doesn't match the words. And so, to the extent that for example, text was added, I think that's helpful to note. Thanks.

Kurt Pritz: So, what's the happy medium here? If there's specific recommendations where you want that, is it possible, but like maybe you've already done this, list the specific recommendations where you want the link to the meeting back. So, it's not done across the board. Is that a --

Kristina Rosette: I actually feel strongly, Kurt, that it be done across the board? There's enough where, you know, among the three of us, we're not able to pinpoint the source of the recommendation, that I think we would feel more comfortable having that information.

You know, to be clear, it's something that we feel strongly enough about that someone or some groups have someone from the registries are going to do it during the public comment period, but it's not an efficient use of our time. And quite frankly, the fact that we're even raising it as an issue I think is troubling more broadly. Thanks.

Kurt Pritz: Right. And I agree that I don't want, I'd rather you not be spending your time on this, but, in the interest of – my point is – and maybe I'm missing the point – in the interest identifying, you know, getting you the information you need in order go through your thought process, is there a way to highlight which, you know, which recommendations where you want the information. So, we could prioritize and do that first.

Kristina Rosette: At this point, Kurt, I'm not in a position to do that. It really is all of them. Thanks.

Kurt Pritz: Okay, thank you. Marika has her hand up. Go ahead, Marika, thank you.

Marika Konings: Thank you very much, Kurt. (Unintelligible). So, this comment actually comes up in (unintelligible) on the list. And we already provided kind of a breakdown of all the -- where are the different recommendations are derived from, because in many cases I'm not necessarily, you know, one meeting and that resulted in that recommendation and many, the majority of the recommendations as we noted, are kind of direct derivatives of the data elements, workbooks which of course took place over which we discussed over a broad range of meetings.

So, it will be very difficult to pin them down. And there's a number of recommendations specifically related to the small team efforts and those again have been specifically marked as well on the Wiki page that the calls that you place in that regard and then the force or abrupt planner conversations in relations to that. And I think that was one that came out of a small group discussion in LA.

And then there are a number that we kind of get through the different discussions and Kristina just refer to recommendation number seven as one that was in that we, I think already provided actually in the report itself, the reference to the meeting and during your firm where that's the meeting that recommendation derive is specific action item for south as that deal that was put in as proposed language. Their staff thought it captured the conversation. But I think the whole point of going through this list now is to address any issues that are with those recommendations, so that those can be addressed and fixed the accordingly.

And you know, course we're happy to start compiling and you know, a less than trying to track each recommendation to specific meetings. It's been much more helpful to understand what the concerns are with the recommendations and then you know it's possible. And to track back to know where that came from it and why it ended up. It ended up and instead of trying to capture everything, because I said many of the recommendations are derived from the work on the data element workbooks, which I think we started discussing basically from La on until, until now.

Kurt Pritz: So, I would recommend embarking on Kristina 's request and creating that sort of map. I don't know the best way to do that, but I also understand that it might take some time. But while we go through this (unintelligible) and get to specific questions. And so, and pinpoint the need for additional information and additional references, we can jump on that. But I think in order to understand and how easy or hard it is, we should start on that cross-reference document now. Marc.

Marc Anderson: Thanks, Kurt. Marc Anderson. I echo Kristina 's concern and let's take it a little bit further. And, you know, I'm not sure recommendation number seven specifically. I do remember bringing it up and talking about it. But I don't recall at any point, the working group, you know, agreeing that this should be a recommendation.

And I guess, you know, I guess it had to be corrected. If anybody on the call would like to say yes, we discussed this and we agreed to this recommendation. I don't feel like we – as a working group – agreed to this as an EDPB consensus policy recommendation language, which is what this is.

And going back to this specific instance, my recollection actually was that this would be something that we would follow up on. I forget who, but I thought somebody on the call pointed out that ICANN, you know, does have a procedure for determining who gets who gets assigned to – I think the conversation talked about the registrar and the registrar failure – how a registrar is (unintelligible) in the event of registrar failure and a new registrar is identified and there may be procedures that are already in place to take into account the different geography.

But I guess, you know, so my recollection is that this was not a settled issue that we had not as a group agreed to consensus policy language, you know, making a recommendation here. But, you know, if, I'm wrong, if I'm forgetting something or you know, if somebody else wants to correct me and say, no, Marc, we have agreed to this, I, that'd be happy to be corrected here.

Man: Well and I think that this table does a pretty good job of that, that says this isn't a consensus recommendation and there hasn't been plenary discussion. And so, it's – it was raised by you or someone in your group in the comments. And I think it's fair game to discuss it here. And if we decide, you know, to leave this on the cutting room floor, that's fine.

And if we decide that there's a way home from here where we can close this issue off, I think that's good too. And I think that's the spirit of this document was to -- in the initial report -- capture the discussion and then provide this review and make those decisions like that.

So, and we can decide as we come to these issues. Yes, this is worth talking about because we could finish off the discussion here and if not then leave it. But, you know, I think this is a necessary part of the process to put up in a draft report, the discussions that we're having, so it can be decided whether to include that or not. I hope that didn't come across as defensive. Margie.

Margie Milam: Yes, this is Margie. I agree with Marc and Kristina. Some of these recommendations, when I read them in the report, I feel like they came out of nowhere. And not to say that in the end we wouldn't agree with some recommendation on the topic, but it felt like we didn't have enough discussion about it to even include it as a recommendation in the report.

And I feel like what if we're going to try to meet the November 19 deadline, then I guess a report needs to, you know, not just leap into areas that we haven't had adequate discussion on and note that, you know, there's discussion to be had in the future on this. Rather than jump, you know, to some sort of recommendation without having thought it through. I agree with them.

I probably have different recommendations where I have the same reaction, but the concepts that they've raised as it being new for the first time. If it's new -- and we're talking about it now today as we talked about it -- then in my view, it's way too premature to throw it into a recommendation category.

Kurt Pritz: Okay, thanks. So, you know, I'm very sympathetic to that and I don't know of any other way to like hack through that, other than to, to go through these, the comments that are listed in this matrix. And the conversations might be short or longer. You know, I think a little bit, it's a byproduct of trying to

answer 53 questions in a few weeks and capturing the conversation and putting that, you know, translating what was heard into this document, which we're reviewing now. So, I'm on the same side as everybody. Marika, is that a new hand?

Marika Konings: Yes, thanks Kurt. This Marika. I just wanted to note – and I put into the chat as well -- it would be really helpful if it can be specific and because we're hearing are very general, you know, reference to recommendations. But as you said, the only way to discuss this is to have those items on the list so the group can talk through it, decide indeed whether it belongs there. If it doesn't, you know, take it out. It can either be noted as an item to be discussed or that was discussion started, but the group hasn't completed on it yet or just completely taken out.

But again, I think we're really trying to find a way of just working through the items and issues that people have identified in a systematic way so we can all be on the same page about the path forward is and now I do recognize that (unintelligible) there's a lot of things that are coming at everyone.

But I think that the only way in which you're to do this is actually just as you said, just start with this, see where we end, hopefully by the end of today, we can flag any other issues that are not on the list yet that they want to discuss so that we can add those to the list for the discussion that we have and that we've already lined up a tomorrow.

And then we may need to see how far we get and maybe add additional time Monday morning that allows for the finalization of some of these issues that we're so committed on trying to meet that timeline.

Kurt Pritz: So, let's take as an example, the next one on the list and see if we can get anywhere or not. So, the next one on the list has to do with the outcome of a small -- very small group discussion that occurred when we were talking about the identification of data controllers and processors and the possible

identification of joint controllers and the possible inclusion of third parties as controllers or processors.

And at that time, it was -- there were concerns about this issue about no third-party beneficiary clauses being raised in an ICANN contract. So, Margie, can you -- so this is a good segue for you, Margie, to take your general issue, which I accept, and make it more specific.

Margie Milam: And this is an example of one where I don't even remember talking about this and in line with what we were talking about earlier this morning with (Thomas)'s language. I think we just leave -- this is one of those clauses that are very specific to an agreement, and leave it to that whatever negotiations come out of that, what did we call that -- not the second folder -- but appropriate GDPR-related agreement rather than included in the recommendations. But yes, I don't even remember talking about this one.

Woman: Kurt, you may be on mute.

Kurt Pritz: Thanks. Does anybody have any objection to taking this out of the initial report? I think it's -- it's part of a conversation about this. I think it was a vestige of our approach to issues before (Thomas) is working on, in a lot of areas. Go ahead, Marc.

Marc Anderson: Thanks Kurt. You know, I guess, you know, I remember discussing this one, my initial review of the draft, and I thought it was oddly worded, but, you know, and so, I guess, you know, I didn't love the way the language was worded, but I think, you know, the language there does those serve a purpose. You know, it was in the temporary specification, you know, and, think it does serve some useful purposes for you know, in the contract.

So, you know, I guess, you know, I guess without, you know, doing some further analysis, I'm not okay with just removing that language, but I do recall from my analysis that I thought it was poorly worded. So, maybe, you know, I

would view this one is an item that we maybe need to revisit and see if we can clean up the language. You know, I do think there are some legal ramifications. So, we can maybe take a look at this one. But not okay with just removing a (whole cell).

Kurt Pritz: Margie, would you be interested to see how a Marc might reword it?

Margie Milam: No. There's a lot of issues with this. So, this is one of those areas where if we're going to have a recommendation on it, we need to have a (wholesome) discussion. And I don't believe that it's appropriate to have third party beneficiary restrictions in consensus policies. So, you know, I think that's a problem. Again, there's no point in debating it right now. I think it's one of those items we'll talk about later.

Kurt Pritz: Right. So, I'm just processing. I hate to get to a position where we say, okay, we'll capture those as a point for later discussion the report and highlight the issue. But we can either ask staff to come up with wording around that for your review. I think that's the best way to go about it for this issue.

So, I'm looking at the next issue that's raised here about -- that's just not a recommendation, but a comment that the EDPB team also took note of the fact that -- sorry I was losing my voice a little bit. You can read it here.

Kristina, were you going to address the previous topic or this upcoming one that was made by the (unintelligible)?

Kristina Rosette: I can do both. I actually raised my hand about the previous one, but I can also cover this one since this is my comment. On the previous point, I think we do need to make a distinction between recommendations that were discussed in small groups versus recommendations that haven't been discussed at all.

And I think, you know, there is merit where the recommendation was discussed within a small group, perhaps not in plenary to kind of keeping some -- keeping it in in some way, but noting -- but also noting the actual

status of it, which is a long way of saying that I would not support -- if it is in fact the case that this recommendation 18 was discussed in a small group, then I do think it needs to somehow stay in the report, although again, not necessarily as a recommendation.

I'm open to how we phrase that. But I do think it would need to stay in, you know, subject of if folks have specific wording changes, then that's a different issue. But I do think that's different from, for example, recommendation seven, which we just haven't really discussed in its current form at all. To go to the point that I'd made about item number C in the chart, I just didn't recall that we took note of that and that the RPM PDP working group was expected to factor in any changes resulted from GDPR requirements.

So, I was the one who was asking whether or not that was the case. And I think the staff has confirmed that they are expected to do that. And I guess what I'm not sure of his staff asking us whether we want to provide specific guidance or not. I'm not clear on what the return action item might be there. Thanks.

Kurt Pritz: Thanks Kristina, for both those comments. Marika, do you have an answer?

Marika Konings: Yes, thanks, Kurt, this is Marika. So, we checked in with our colleagues that are supporting the RPM working group and although in many respects are still in the preliminary stages of some of the conversations. They haven't of course started yet on the UDRP review. They did confirm that it is one of the considerations that the group is expected to factor in.

And however, the suggestion that we made here is that if there are specific items. And again, I don't that's something that you'll need to do for the initial report, but if there are specific considerations that this group had or certain revelations, and in going through the detailed data processing activities, it may be helpful to share that with the RPM group to help inform their

conversations (unintelligible), instead of them having to kind of get there themselves.

That was the only suggestion I think that the staff was making here. I don't think that's anything that needs to be specifically called out an initial report. It may just be something you want to think about. And that could be as well in the form of a conversation with that working group at some stage just so they can learn from, you know, the work that this group has done and how that may inform their continued work on review of the (unintelligible) EDRP. Are you on mute?

Kurt Pritz: Hi, sorry everybody. My microphone got disconnected. Thanks for that answer. And I'm reading that's a good answer. So, thanks very much. I'm having a bit of trouble reading the next one from the IPC. Okay. So, this comment is from the IPC that proposed this rewarding, can you ask somebody from IP go through this? And I'm not looking at the hand raising thing. Hang on.

Marika Konings: Yes, this is (Marika). If I can just describe briefly, and I don't want to speak to this, but just to know that, you know, this was added after we made our first round of changes and at least although this to us it looks like more of a reorganization -- and not necessarily a substantive change -- we didn't feel comfortable by just kind of putting that in as we kind of did already the first fix of items. So that's why it actually got added here. But Diana may be able to speak further to this.

Kurt Pritz: Thanks Diana.

Diana Arredondo: Sure. It's very much just a clarity change. It's not changing the intents or the meaning at all of the proposed language. It's just simply clarifying, making clear to the reader on how (unintelligible). So, anyone that has an issue with it, please let me know. But I think that it clearly just supports the same exact concept and intent.

Woman: Kurt, you may be on mute again.

Kurt Pritz: Yes, so I was asking Diana if she could continue on because the comment below was of the same vein.

Diana Arredondo: Okay. Well the comment below was simply about the footnote, as I understand it. And the request was to keep that foot note out because the footnote basically it seems that it wasn't fully vetted and discussed and provide legal advice. And so much to what we've been discussing could be adding a footnote that says that we discussed whether there's an implication on whether it's efficient for the registered name holder to inform the individual, etcetera, etcetera.

It ends up providing legal advice. And furthermore, it isn't – it's something that wasn't fully discussed within the group. So, I think much to what we've been saying here today, you shouldn't include things that weren't fully vetted.

Kurt Pritz: Alan, go ahead, please.

Alan Woods: Thank you. I'm just going to go back to D very quickly there. My apologies, but (unintelligible) everything on the (unintelligible) when I read this. I actually must agree with Diana. I think that there's a point that was in the original wording is completely missed in the second wording. And that is in the original working, the point is that (unintelligible) NCSG express the view that we should not be obliged to ask for – to provide to the option, whereas your wording saying that we should still be obliged, but it's just optional for them to give it or not.

I think that was the fundamental misunderstanding and discussion that we have. But the registrar should not be obliged to provide it in the contract. But and I do think and people, correct me if I'm wrong, but I'm reading that as not

being the case in the proposed rewording. If that is the case, I would not be accepting of them, I'm afraid.

Kurt Pritz: Alan Greenberg, go ahead, I'm sorry.

Alan Greenberg: Thank you very much. On the issue of informed consent of informing versus getting permission, the word inform – if I remember – came out of a data protection board letter that said if people are going to include an individual's name in a field that is published, they should be informed. So, I thought that's where the word came out of and didn't need a reverification again with the data protection board.

Kurt Pritz: Okay. Diana, I assume that's a (former) hand?

Diana Arredondo: Yes. When it comes down to this revision, it's not -- if there's any concern that in fact the intents have changed, then we won't make the revision. The revision was not intended to change the meaning of this at all. So certainly, we can certainly stick with the original language. That's not an issue.

Kurt Pritz: All right. I think at this point, that would be great and is the best approach. Ashley.

Ashley Heineman: Yes. Sorry to throw a wrench into this, but actually, the way it was revised by the IPC was in keeping – at least was my understanding of how things were left in LA -- which was that it was abasically stick to what the current requirements are, which is that the contractor parties are required or obliged to ask if they want to provide it. It was only optional for the registrants, as to whether or not they provide it. So, they don't have to provide a technical or admin or rather a technical contact. But they should have the opportunity to provide so if they wish.

Kurt Pritz: Thanks Ashley. Marika, could you make some comments? You know, I need to apologize to the group. I got distracted in the last two minutes and the

distraction only lasted 30 seconds, but I missed an important part of this. So, Marika, could you comment to this and tell us where you think we are?

Marika Konings: Yes, thanks Kurt. I think part of the challenge is here that actually indeed that there was an original approach preliminary agreed on, discussed in LA meeting. But we had subsequent conversations, and I don't remember exactly which meeting on this concept. And I think in the end it was clear that there's actually (unintelligible) within the group what the optional mean. And I think everyone agrees that it's optional for the registered name holder to provide, but there's no agreement or whether it's also optional for the registrar to request this information.

I think as such, it has been captured in the report and that is that linked to indeed this you know, the clarifying question in relation to what is that exactly meant with informing a third party that their data is being used. Does that mean that it's fully the responsibility of the registered name holder to do so and there's no liability involved and for the registrar in a relation to getting any kind of concerns or agreements from that third party?

So, I think where the group left that wasn't d to get clarification or hopefully get some clarification on this issue so the group could then discuss further just this concept of optional as well as what the impact is of, and you know, having data being provided by a party with which, you know, the registrar doesn't have a direct contractual relationship. And I think that is what the language was aiming to reflect. Kurt, you may be on mute.

Kurt Pritz: Thanks, Marika. Diana or Alan Greenberg, are you – you are both in the queue. Diana first, then Alan.

Diana Arredondo: Thanks Kurt. I appreciate the differential here and as Ashely has stated, the point of the rewrite was to try to bring this home for us. There is still that outstanding issue though, that I understand and that position. So, we do stand behind our position is in fact the rewrite causes there to be

discrepancies between what was agreed on and what wasn't. And we can certainly (unintelligible) that further network.

Kurt Pritz: Thanks Diana. Alan.

Alan Greenberg: Thank you. I think the issue of the rewrite brings to a head the fact that there was no formal agreement with everyone agreeing. One of the issues that was never addressed was for registrar that no longer -- that chooses to no longer collect. They have an option to collect the data. What happens for the data in their existing records where that data is there, do they just delete it? You know, that's an issue of registering rights.

So, I don't think we can ignore that if we decide that a registrar has the option of no longer collecting. Thank you.

Kurt Pritz: Right. And I think it's important that we, this comment is just intended to reflect the difference that exists now and are reflect it clearly. So, if we think that the old comment captures that difference clearly, then I think that's what we should stick with. So, thanks very much for that discussion. The IPC comment that follows, that you touched briefly on, is actually more substantive rather than clarity.

So, we think, you know, we think this accurately captures the, extent of the position. But Diana, can I put you back on the spot with this (unintelligible) the letter E and your question about whether that's accurate and whether we left the question open to only getting board input or did we propose getting legal input additionally?

Diana Arredondo: Sure. It says that in a footnote that if contact details for persons other than the name holder provided, it should ensure that the individual concern does inform EDPB discussed whether this note implies that it's efficient to inform it has designated as a technical contact or whether there may be additional legal obligations. The only thing that I'm concerned with is we had discussed

on whether we've then gone on to further discussions about this point in relation to the language that Benedict has suggested in other forms.

And so, I'm just wondering if in fact we really left this open for board input or whether we are getting legal input on our (unintelligible) whether ICANN (unintelligible) was supposed to be weighing in on this, whether we're actually going to get guidance, provide educational guidance in the form of additional language.

So, I thought that this was something that was not clear. If in fact there's a consensus that it provides enough guidance to leaders, then that's fine. But I thought that it was important to have this discussion on whether this in fact provides clarity or whether it should just be temporarily removed until we have more time to revisit the issues that are concerning the additional legal obligations.

Kurt Pritz: When you say board input, do you mean a data protection board input?

Diana Arredondo: Yes, that's what the footnote said. I mean, certainly we're going to – we will also be looking for ICANN legal input.

Kurt Pritz: Marika, do you ever come back to this question?

Marika Konings: Kurt, this is Marika. My recollection is that on that call it was really discussed to get clarification from the EDPB on this point. But of course, the group can decide to undertake additional action. That is that I think the question is, is that something that needs to be spelled out in the initial report or is that something that you can just continue know discussing and seeing what else may be needed in relation to addressing this issue once feedback is received.

Kurt Pritz: So, I think Diana, you know, it's real, it's kind of hard to answer this question unless you're proposing something additional.

Diana Arredondo: I wasn't proposing something additional. I was proposing that the fact to be removed until we – it isn't confusing to the readers. Is it presenting an issue that hasn't been properly vetted. And in all reality looking for data protection for input, but we don't even have that as a solidified course of action to be able to say that we're definitely going to get it.

So, we're sort of providing somewhat of a fall unsubstantiated input there. So, I think it's better to provide full information or at least just not include in the footnote at this time. I know certainly if people think there's value in it, but that's fine, too.

Kurt Pritz: Alan.

Alan Woods: Sorry, just going back and Diana and these points and apologize. Just as you are explaining, Diana, and now reading through it as well. I mean, I think what you're pointing at is there is a lot of complexity in this issue. And perhaps this goes back to something Kristina was saying earlier about whether or not we should be putting in these elements of where an agreement has not been reached.

And I think as a footnote it shows that look this isn't just a black and white issue, it's a very, one of those exceptionally difficult issues which again lead me to discuss and hash out more. And I think it might – to the casual reader – give a better understanding that we have had to put a lot of thought into an awful lot of micro issues in this. So, I mean, I'm not necessarily against taking it out, but I do see the merits of keeping in the sort of difficulty that we as a team has faced. Not to put it mildly, we've had some tough discussions on it and perhaps should be reflected.

Diana Arredondo: You know what, Alan, I think that I always appreciate your viewpoint and I think that's a good one. I mean, I think that that is my point, based on what Kristina said and what you're saying is that there are certain issues just as this one that has great legal complexity. We're not supposed to be giving

legal advice as we've all repeated to say. But if in fact there is a consensus that leaving it as a footnote presented as an issue that needs to be addressed -- and has to be addressed eventually -- and that we are setting it up to be addressed. Then I see value in that and I agree with you.

Kurt Pritz: So, do we want to – I don't think we need to point out to the reader that this is an issue of greater complexity, of great complexity. Although the reason I'm saying this is I feel this urge to do so, to make it perfectly clear. So, what I'm getting to is, an agreement that we'll leave this as is, that it's an important point to make.

All right. The last issue I want discuss during this meeting and then everyone can take the rest of the day off with pay, has to do with recommendation seven. So, we've talked about this. And so, the recommendation by (OSG) is to (lead) the recommendation. Of course, we have not discussed it. So, I think the question is whether we just delete it or refer to an issue that must be discussed about the geography of whether the registrars need the geography and location of gaining registries or registrars need to be anticipated.

So, I think -- so, I have a couple thoughts. One is to leave the first sentence in there as a recommendation. And the second is to take out the whole recommendation. Marc.

Marc Anderson: Thanks Kurt, it's Marc. I'll bite, I guess. I think the concern that we raised is that, you know, we've discussed this but you know, but, we're not sure this has risen to the level of a working group consensus policy recommendation. So, I think maybe the compromise here would be to reword this not as an EDPB team recommendation, but rather document the issues we discussed.

Talk about how, you know, the EDPB team discussed the fact that, the geography of gaining or, you know, of the bureau provider may be impactful when it comes to privacy regulations and the rights of the data subject and that there may need to be additional considerations in this area.

But I, I think at this point I don't think that our discussions have risen to the level of a consensus policy recommendation. So, I have no issues with us, you know, capturing what we discussed and having the language in the report. I just, you know, I just don't think that, you know, at this point uncomfortable with it being a policy recommendation. So, I guess that would be up top of my head what I would suggest as a go forward path between now and Monday when this we're planning to send out this report.

Kurt Pritz: Thanks very much for that, Marc. Marika, you have your hand up. I was going to ask you – is this recommendation respond to a specific charter question?

Marika Konings: This is Marika. No, that (unintelligible) question in relation to whether the processing or mapping their processing – that's in relation to (unintelligible). I think that charter question is addressed. But I think this was an issue that came up in the conversation and on that specific call that, you know from a staff side, we have no specific view on whether this should be a recommendation or should it just be described.

But I just wanted to note because it's a comment that actually comes back in later aspects of the table as well. And this kind of triggered with mark referring to this as a consensus policy recommendation. But I just want to make clear as well that the group is not limited to making recommendations only that half their contractual requirements associated with them. If you look at the list and the EDPB manuals, it's very clear on that.

So, there's a wide variety of types of recommendations that the group can make. And in this specific case, it is a recommendation or advice basically that the group I think is providing to ICANN and it's definitely not something that the group is precluded from doing that.

But having said that, staff is happy to kind of translated this into, you know, reflecting the discussion and noting that the group will further consider

whether or not our recommendation is appropriate and in disregard. But I just wanted to already lined up the other issue because I know it comes back and in some of the other comments that were made on some of the other recommendations.

Kurt Pritz: Thanks, Marika. I will note that – well let me gab for a second here, Alan. Certainly, we should adjust the language to say this was an issue that was discussed and, you know, we can seek input on it during the comment period. But that we haven't really explored the issue other than identifying it as an issue. But I want to get, I was going to ask if any other contracted parties had a point of view on Marc's comment. And so, gratefully Alan has raised his hand.

Alan Woods: Thank you. I don't know if you're going to be grateful (unintelligible). And the reason why this was one of those ones that sticks in my mind as well because as I read it, I'm like, my gut reaction is if I had discussed this, I would have had the point of -- I don't even know why that would even be a recommendation for us because it doesn't seem to be completely right anyway, just purely because if ICANN is choosing (Amber), it doesn't matter what (Amber) really is, just because it's going to be (unintelligible) anyway because more than likely going to be European (unintelligible) involved with what's about to (transfer).

So, I mean, this is something that ICANN would need to consider as a legal obligation as opposed to us because we have recommended it for them. So, I mean, I'm not explaining myself very well here on that, but again, it's just my thought on this. If we had had some (substantive) discussion, I don't see how it would have made it in the end, if you know what I mean. So, again, I'm sure you're not thanking me and (unintelligible) on that one, but that's my gut reaction on that one.

Kurt Pritz: So, what would you be okay with sort of a comment that Marc made that the issue was raised in discussion or would you rather see no reference to it?

Alan Woods: Again, it's one of those things where I'm like, what would people say if looking at this and understood what we were actually trying to get up here. They would be like (unintelligible) was the recommendation the first place. I mean, you could have it down as being for discussion. I agree with Marc on that one. I just think that, you know, ultimately it might be one of those ones that we might say bye-bye to. Again, it's not a huge point, but again, it goes to the point of I just don't remember the discussion.

Kurt Pritz: Yes. So, I'm sort of -- to the extent I'm allowed to say this -- I'm sort of the view and all the complexity we're dealing with here that this one might just leave behind because we have enough for people to think about. Certainly, this is a -- this issue was raised in a sort of way in the workbooks where we talk about the transfer or disclosure of data to third parties to fulfill his purpose.

But, you know, I think it's captured in the workbook and that mind and we could take this issue off of the initial report. So, I'm getting some agreement there. So, that's a great note on which to end the meeting. Thanks very much. Three hours later that, we're still civil and talking to one another. I want to -- I'm going to take the last 30 seconds to reiterate that I, you know, the support team and of course we take very, very seriously the comments about, you know, how the heck do we get to Monday and what's it going to look like and, and, and is that possible?

So, that's, you know, the things that keep me up at night, that's certainly among them. And also, you know, I want to make it very clear that in and trying to get to that date, the support team and I have gone through the discussions and comments and try to call out from the discussions, agreements or agreements that can be proposed in the initial report for our reviews.

So, to the extent that it seems that we and the support team were driving in some direction in order to get some false sense of closure, that's certainly not the case. And so, I hope we can continue to work constructively and you know, to a certain extent you find fault with the wording here, that's great. And so, you know, Alan Woods, all of your comments are always welcome.

So, with that, unless anybody has anything, I'll see you on the next call, which is amazingly soon I think.

Man: Thanks Kurt.

Kurt Pritz: Thanks everyone.

Coordinator: Thank you all. (We're going to) end the meeting. Once again, the meeting has been adjourned. Thank you very much for joining. Please remember to disconnect all remaining lines and have wonderful rest of your day. Operator, if you could please stop all recordings.

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