

**ICANN Transcription
GNSO Temp Spec gTLD RD EPDP Call
Tuesday, 18 December 2018 at 1400 UTC**

Note: The following is the output of transcribing from an audio recording of the GNSO Temp Spec gTLD RD EPDP call on the Tuesday, 18 December 2018 at 14:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-18dec18-en.mp3>

Adobe Connect Recording: <https://participate.icann.org/p39bwklo2lc/?proto=true>

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

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

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

Coordinator: The recording has started.

Terri Agnew: Wonderful. Thank you. Good morning, good afternoon and good evening and welcome to the 35th GNSO EPDP Team meeting taking place on the 18th of December, 2018 at 1400 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the telephone bridge would you please let yourself be known now? And as a reminder we do have Hadia noted on audio-only. Anyone else in addition?

Marc Anderson: This is Marc. I'm on audio now but should be joining shortly.

Terri Agnew: Thank you, Marc. Hearing no one further, we have listed apologies from Diana Plaut – Diane Plaut, sorry, of IPC; Emily Taylor of the RrSG, Thomas Rickert of ISPCP and Marika Konings, staff. They have formally assigned Brian King and Sarah Wyld as their alternates for this call and any remaining days of absence.

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

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

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

Kurt Pritz: Thanks very much, Terri. Welcome, everyone, and thanks for the on time start. To go into the welcome and updates, I think we'll skip down and talk about the legal questions team. They're going to have their first meeting tomorrow right at this time. So that meeting will occur then. Berry, or someone from the team, can you put up the members of the team? And I'll – an agenda will go out later today but I think, and we can discuss this for a minute if you want, we should start with the list of questions that are extracted – that were extracted from the initial report where the initial report indicated we were going to get legal advice on these questions.

And I think, you know, the initial report actually says that we're going to solicit this information from the Data Protection Board but we've since decided we're going to go elsewhere with these questions. So with that in mind, the agenda I think will be for us to take those questions exactly as written in the initial report and consider them – consider how they can best be worded to solicit the right kind of legal advice.

So I think that's the – that'll be the agenda for the meeting. There'll be a process part of the meeting before where we reiterate the process through which this legal team go to receive questions, pound them into shape, get, you know, review the questions with the rest of the team before they go out and then get sent out for answer. So there'll be a process part of the meeting where we'll reiterate our process for how we're going to operate and then go onto some substantive portion.

So I think that's the agenda for the meeting. I'm kind of looking for – through the chat. Berry or someone from staff, if you could put up the list of members that'd be good. Kavouss, I see you're in the queue. How you doing, Kavouss?

Kavouss Arasteh: Thank you. Good morning, good afternoon and good evening. I have one question and one comment. The question that I raised already and I receive no answer is that who wrote this qualification and criteria for the legal team, that they must be attorney and they must have legal basis? Does it mean not every attorney could be the good legal advice? I know many but they don't know anything at all. But just got from the school and have some paper showing that they are attorney. So does it mean that other people that does not have that sort of certificate are not allowed to have any legal statement or legal qualifications or legal analysis or anything?

And who wrote this criteria? I would like to know. Who has written this criteria that – I have no problem with this people selected, although I don't agree with some of them, but I don't want to delay the situation. But I don't understand

that somebody writing qualification for a group. We are member and all of us eligible to participate voluntarily in the legal issues and legal group. I have been working in many legal area for years and years and I have written convention, constitutions, charter for many organizations, and I don't understand that why the people just refer to the attorney or to have legal experience. And who select these people? Thank you. This is the first question.

The comment, Kurt, we are group of people, we get together to solve a problem or suggest solutions on problem. We should remain friendly with each other and we should not use colored language in the communication with each other. I don't think that this is – should be continued. This is the second time that I see such colored language and we need to abandon that and try to be objective and productive and positive. Thank you.

Kurt Pritz: Thanks for your question and comment, Kavouss. I don't know, Berry or someone, if you could put the list up into the Adobe Connect room rather than pasting it into the chat where it is kind of confusing. To answer your question, Kavouss, so that methodology and membership selection criteria came from the earlier cross community effort I think on IANA transition or accountability or, you know, it all kind of blends together for me, not for you guys who participated. But, you know, after spending, you know, money on legal advice in its second iteration for that team, this method for getting sound legal advice but doing it an economically responsible way was developed.

And part of that historically was to require the team members to be attorneys. So I'll tell you that I largely agree with your sentiment, and in fact, you know, I don't know what the words on the slides were exactly but I know what my words were orally and that was that, you know, Rafik and I had decided prior to the last meeting that we would modify the criteria somewhat and express a preference for having an attorney or someone with significant legal experience be on the team. And but if one of the groups – and – but we also

thought every group should be represented if they wanted to be on this legal team.

And so if there wasn't a licensed attorney or a lawyer on the – in that group then they could have someone join that team with the best possible experience. So we, you know, I agree with you that all groups should be represented and that – and that legal experience or legal expertise or a legal certificate should be a very, very strong preference but not an absolute requirement. So I hope that answers your question.

So this is who's on the team so far. And we don't have anyone from the Non Commercial group – or who's the other group we don't have someone from? I have to look at my – someone from SSAC. So...

Alan Greenberg: SSAC.

Kurt Pritz: ...we're looking for – yes, right, so we're – thanks. So – thanks Alan. So we're – we – in an email we sent out we had a couple requests for people that might be represented there. So anyway so that's the agenda and that's the agenda for the meeting tomorrow roughly put. And I'll be put out in more detail shortly after this meeting. We've already had a discussion about it; we're just typing it up. And that's the membership. And if we get, you know, we've suggested in our email that went out we suggested members from both SSAC and – SSAC and Non Commercial Stakeholder Group, so (unintelligible) so if we could get those nominees they'll certainly be included in the meeting.

So that's all I have about that. Unless there are any other questions we'll go onto the next agenda item which I'd like to be about the comment period...

((Crosstalk))

Kavouss Arasteh: ...language used in the communication between the team. Thank you.

Kurt Pritz: Yes, thank you very much, Kavouss. So in receiving comments and interacting with the community, the support team has noticed some repetition in the questions so they undertook the initiative to put together this FAQ which I guess is seeing the light of day for the first time right now because it was worked on over the weekend.

And so Caitlin, do you want to talk to this?

Caitlin Tubergen: Yes, thank you, Kurt. This is Caitlin Tubergen for the transcript. And I wanted to thank everyone that has submitted questions about the Google form so far and this document that you now see on your screen will be distributed with the notes from today so that if you'd like to send the document to your constituency that would be helpful or if you happen to have members from your constituency that are contacting you, you can refer them to this form.

I'll go through the questions quickly. Some of you probably already know the answers since we've – we'd went through them during the webinar and some of you had already asked these questions. But I did want to emphasize that the EPDP leadership team did choose the Google form since it automatically sorts comments by questions and it will expedite the process for reviewing any comments submitted by the community.

Additionally, it will prevent human error of the EPDP support staff trying to guess what a commenter maybe commenting on if the comments are responded to with a specific question we wouldn't have to guess where the comments are trying – which section of the initial report the comments are in reference to.

For anyone that is unable to submit the comments using the Google form there is a Word version which is linked to in this document. The Word version is also helpful if you'd like to collaborate or work offline with your answers.

I believe Kristina asked this question, and I sent an answer to the list, but in case you didn't see it, you are not required to respond to every question in the Google form, in fact if you only want to comment on one topic such as the purposes for processing or the redaction of certain data elements you're welcome to only respond to those questions. There are, however, a few questions that are noted with a red asterisk and those questions must be responded to in order to continue within the form and so those questions are email address, name and affiliation.

As I had noted previously, submitting your email address only allows Google to send your completed form back to you, however your email address will not be published on the Google spreadsheet where the comments appear; all email addresses will be redacted.

Another common question we get is if you want to complete part of the form will your answers be published to the Google spreadsheet? And the answer is yes. So if you are concerned with having certain responses appear publicly before your constituency or you've had a chance to review, what we would recommend is working offline on the Google form and then submitting all of your responses at once.

Another issue that has come up is that if you choose to edit your responses you may encounter a word limit for questions – or for responses. The character limit does not apply when you're submitting answers for the first time, however, that is a glitch that we've encountered. The workaround would be you're welcome to email your completed Word document to the email address provided on this form and the EPDP support staff will be happy to assist you.

Also, if you happen to submit comments or a Google form in error, it will appear on the Google spreadsheet, the public Google spreadsheet, but if you would like it deleted please also send a message to one of the support staff

or the email address provided on this document and we can manually delete that response if you didn't mean to respond.

I think that is all of the commonly asked questions but we will submit – or we will send this document along with the notes from today so that everyone can have them on hand. Thank you. Back over to you, Kurt.

Kurt Pritz: Caitlin, what would be the process if, you know, these were questions harvested by us so what would be the process for having additional questions and answers included on this form should the team members send them to you or should the team members tell their groups who they're representing to send additional questions to – that should be included in this form on a certain address? Or will you just continue to monitor the questions you have and add them as we go along?

Caitlin Tubergen: Very good question. Thank you, Kurt. I'll paste the EPDP leadership email address down in the chat and that would be a good place to send any other questions that are not addressed on this form. And you're also welcome to email EPDP staff support directly which is what's been happening so far. But if we can gather all questions in the same place that would be preferred. So I think the best way of doing that is to use the EPDP leadership list.

Kurt Pritz: Great. Thanks, Caitlin, and thanks for going through the trouble to do that. Kavouss, do you have a question?

Kavouss Arasteh: Yes, I apologize. First of all you did not answer my comment regarding the behavior and ethics and incendiary manner that the whole team are obliged and required to implement rather than attacking each other in one way or other. This is very, very important and I don't think that we are member of the group to listen or to be subject to some sort of discolored language and we need to (unintelligible) or discipline to the people that people should not practice this sort of (unintelligible).

If you don't like a person, or don't like any comments from anybody, we just diplomatically and kindly and (unintelligible) to say that we don't agree with you but we do not insult them indirectly or directly – indirectly or directly. So this is something that we need to remind everybody. This is very, very important. Please kindly take that. I sent you a small message before the meeting and I hope you will take that into (unintelligible).

Now I am not sure about the questions. What are these questions? What is the source of these questions? These questions sometimes maybe misleading, may generate other questions or answers that we will not be able to reply. So we should have very clear idea what are these questions, who raised the question and what is the nature of the question and the purpose of the question. So I'm sorry, I have not followed that, I maybe missed something, but I would like to have some small clarification what we are talking about the question – additional question, (clean) questions, to whom the question is raised and what is the purpose of these questions. Thank you.

Kurt Pritz: Well these are – Kavouss, these are questions that the support team has been fielding from those who are filling out the comment form. And where there's been repeat questions the support team thought to – thought that others might have the same questions and so undertook with some initiative the publication of this brief frequently asked questions form.

To the extent that the questions or answers are vague, maybe but, you know, I just think communication is a good thing so if these questions – the answer to these questions raise other questions, then so be it, but at least we're communicating so I'm for that.

And, you know, Kavouss, I apologize for not answering your comment. You know, you said you had a question and a comment so I answered your question and didn't think your comment needed an answer. I agree with your assessment that we should treat each other with mutual trust and respect.

So, yes, so I think this – so this list might grow over the next several days. And so, Caitlin and the rest of the team, thanks for doing it. And let's especially since the next couple days are going to be critical to receiving comments I think we want to make sure everybody has the link to this and make sure everybody has the link to this and that it might be updated from time to time so thanks very much for that.

Do you want to go over action items or – you know, I'd just as soon dive into the substantive part of the agenda.

Caitlin Tubergen: Kurt, this is Caitlin for the transcript. I'll just note for the team that the action items for leadership were to send around draft language to capture the team's discussion on geographic differentiation as well as the policy impact assessment, we'll be sending around language for the team to review this week.

Kurt Pritz: Okay great. Yes so I'm not up top, (unintelligible) sending it. All right, so let's get into the agenda. And, you know, Kavouss comment and other emails have given rise to why these topics are on the agenda. And I'll just say that, you know, when we, the support staff, published the list of outstanding items after – to be discussed after the publication of the initial report, we solicited additional issues from the whole team and provided a deadline and say if you want to add these issues – any issues to the discussion please provide it by this deadline. So these are the ones that are submitted.

And in fact, you know, it reflects language in the temporary specification where we haven't had a discussion on them yet. So I think discussion is merited. So without ado, let's dive into that. And I think Margie or anyone else, but I think Margie's probably the best one to introduce these topics and the first one is about privacy proxy service and the language that's disclosed at a certain point. So, Margie, if you could provide some input?

And I just want to call attention to the fact that Mary Wong is on the call from ICANN staff today and she's leading the implementation on PPSAI which is the privacy proxy implementation – standard privacy proxy implementation, I forget what it's called. So Mary's either here to ask questions or answer them so I think that's helpful. And thanks a lot for attending, Mary.

Margie, are you prepared to talk?

Margie Milam: Sure. Sure, thanks, Kurt and everybody. What I – I think one of the reasons we raised this is as we took a look at the initial report we noticed that there wasn't – we hadn't actually talked about the language in the temporary spec related to how the privacy proxy services are affected by the policy that we're going to develop.

And so one of the things we want to make sure that we don't lose sight of is that that the temporary spec has the language that the – essentially that if there's a privacy proxy service the registrar must return a response to a query before Whois data including the existing privacy proxy pseudonymized email. So we just want to confirm that there's no issue with continuing with Section 2.6 which is in the Appendix A. So that's the first part of it. And I thought maybe we could talk about that first and then we could go into more detail on what else might need to be addressed with respect to privacy proxy services.

Is there any – Kurt, do you want me to continue or do you want to talk about that first?

Kurt Pritz: Let's talk about that first. You know, I'm mostly focused on the language in the temp spec and whether we agree with, you know, whether we want that language to remain or not. I see Alex has his hand up.

Alex Deacon: Yes thanks, Kurt. Good morning, everyone. This is Alex. Yes, I think it makes sense to add something similar to the text in Section 2.6 of the temp spec as a recommendation. I remember before the temp spec was being discussed,

you know, I was chatting to several registrars about this issue. If you think about kind of the practicality of doing this I think it makes sense not only for people asking for data to be disclosed but also for the registrar who has to actually do the disclosure and process disclosure under this reasonable access regime that the temp spec lays out.

The idea is it's – it would be a much better use of time to simply put that privacy proxy data into the Whois – into the public Whois because if you don't then what happens is that a, you know, the steps and the hoops that are required to jump through the disclosure requests have to be done by the requestor and then the, you know, the registrar has to do the analysis based on the request and in the end if what's returned is simply the privacy proxy data I think, you know, it's time not well spent for both the registrar and the requestor.

So I thought this was, again, a pragmatic recommendation in the temp spec to simply, you know, cut to the chase and provide that privacy proxy in the public Whois versus having to essentially waste that time to get to a point where oh, well, this is privacy proxy and then separate processes kick in so I just wanted to kind of give some color to why I think this is a good idea.
Thanks.

Kurt Pritz: I'm – go ahead, James. So, you know, I'm going to – my comment here will just demonstrate my total ignorance but I'm reading the temp spec language and I don't understand quite what it's requiring, "Registrar must return a response to any query for Whois data including existing privacy proxy anonymized email." I'm not sure exactly what that requirement is. Maybe James can explain that to me and then – and I'm sure you guys all understand it but then respond to Alex and Margie. Go ahead, James. How are you today?

James Bladel: Good morning. Thanks, Kurt. I'm well and I hope everybody is doing great. So my understanding is that this is essentially that to invert the requirement

that privacy proxy Whois data should not be redacted or nonpublic; that if you're already using a privacy proxy service that that should be part of a public response to any query.

My question here is, and I recognize we're starting to collide a little bit with the PPSAI work that's currently on pause pending, you know, the outcome of this PDP, but setting that aside for a minute, my concern is that this all makes sense if the privacy proxy service is either a service offered by the registrar or is somehow a separate organization affiliated with the registrar or record.

Where it gets messy is, and I want to, you know, emphasize this for the group, is that privacy and proxy services can be separate service providers, and in some cases they could be independent registrar that's managing the domain name. So it's one of those situations where in the edge case where the registrant has engaged a privacy proxy service that is not affiliated with the registrar and is unknown to the registrar, then how would the registrar, you know, just by default be aware that a privacy proxy service is being used, you know, if they didn't recognize the information that was being provided.

So I think that this all makes sense in the general case but I think that we need to maybe tighten up the language a little bit to ensure that in those situations where a registrar is not aware that a privacy proxy service is being used, they can't be held as noncompliant for redacting that data you know, if that's not brought to their attention. Thanks.

Kurt Pritz: Thanks for that, James. Go ahead, Alan.

Alan Greenberg: Thank you very much. James basically said most of what I was going to say. The registrar can only do that if they know it's a privacy proxy provider and I note that although it says "registrar" in the temporary spec, in the real world for a thick registry, the registry is the – in theory the authoritative source of information right now and they don't know unless they happen to recognize the name until we get the PPSAI actually implemented.

I will note, however, that if we were honoring legal persons requirements to display all of their information, I would presume virtually all privacy proxy services are indeed legal persons and not natural persons. Thank you.

Kurt Pritz: Thanks, Alan. Go ahead, Alex – Alex, is that a new hand?

Alex Deacon: Yes, new hand. This is Alex. So, yes, so James, I think we could definitely work on the wording. I think it's still – it still makes sense to solve for I guess the majority case instead of the edge case here. I mean, I understand, you know, I was part of the PPSAI PDP so, you know, I've seen it and done it. But just because there's edge cases exist I think it shouldn't mean that we not create a policy for again the majority case; I think it would – it still helps both sides if you will, the requestors and the registries and, well, the registrars in this case. Thank you.

Kurt Pritz: Thanks, Alex. Go ahead, Margie.

Margie Milam: Yes, I mean, I think I wanted to echo what Alex said. We can certainly come up with policy that addresses James's issue. And one of the things that – if you take a look at the way the RAA was drafted it has rules on privacy proxy services and if I'm not mistaken it (relates) to affiliates. But we could – so as well. So, you know, we can come up with the cases so that if it's unknown that there is a privacy proxy service that it wouldn't apply.

And we could even, you know, create a list I think at least with respect to privacy proxy services that relate to – that somehow are affiliated with registrars, you know, ICANN could ask them, "Do you have any privacy proxy services?" so at least there's some, you know, some central place where there's a list of the privacy proxy services, at least until the new policy is adopted.

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

James Bladel: Kurt, just a follow up to Alex and Margie's intervention. Perhaps I was unclear that I was not advocating for removal of this requirement but I was indicating that we need more specific language to capture that exception because I've heard now a couple folks saying that we shouldn't get rid of this. I agree, we shouldn't get rid of this; we need to tighten it up.

And I think we can do that with perhaps just a qualifier that the privacy service – privacy proxy service is affiliated with or known to the registrar or something along those lines. I hate drafting on the call but I think you get where I'm going with this, that I think that we can fix this. I'm not trying to throw any babies out with the bathwater; I'm just trying to make sure that the drain isn't too wide. Thanks.

Kurt Pritz: Good metaphor. You know, I register domain names for my kids so I don't know if that makes me a proxy service or not. And I know we don't want to draft on the call but I'm thinking that the idea that we say that in the case of a domain name registration with a natural – a domain name registration where a ICANN-accredited registrar provided privacy proxy service that's probably – I'm kind of checking with the – well anybody here – that's probably not good enough, right? Because the way the rules around privacy and proxy services are written it has to be a separate organization or something like that. So am I correct in thinking the language has to be a little more subtle than that?

So I hope you can hear me. So I'm thinking my proposed language there is not sufficient. So what's the way home for modifying this language in a way that James is suggesting? There's Dan's language. Go ahead, James.

James Bladel: Kurt, I think – James speaking. I think some version of Dan's language that he has there – it's blue for me, I don't know if it's blue for everybody else...

Kurt Pritz: Yes.

James Bladel: ...and then Margie added a phrase about “or known to the registrar” – “made available by registrar” – “made available by, or known to the registrar or its affiliates,” that probably fixes my concern. So I don't know if we're all aligned on at one and we can capture it and memorialize it and just kind of get moving on some of the other stuff but I think that was just – that's the gist of it. Thanks.

Kurt Pritz: Okay great. Go ahead, Margie.

Margie Milam: Sure. Okay, before we move on, I want to make sure we're clear on this one because I have additional issues to add relating to privacy proxy services.

Kurt Pritz: Okay. So Caitlin, if you could make those amendments to the language and we can either put them up in the chat room here or in the Adobe Connect room here or it's more appropriate email later and see if there's any comments to it; either way I think would be fine. Go ahead, Margie.

Margie Milam: Okay sure. And the second issue is a little more complicated and that's why I wanted to at least tee it up. So the concern we have is that the privacy proxy services implementation has been stalled because of the EPDP. And if we don't address that aspect, we're doing a disservice to ICANN and to the community. And what I'm thinking of is that I think collectively we've reached, you know, an understanding of how GDPR applies in the Whois world and I think that we can give direction to the implementation with regard to the things that we've already sorted out.

Like, for example, you know, the purposes for Whois. It makes sense to me that for a privacy proxy service if you're going to ask for a reveal you need to list the purposes that would be consistent with the purposes we've already identified or, you know, as part of our policy. That's an example of the kind of input that I think the EPDP team could give to the implementation.

So one of the things that I think we should think about as a group – and that's just, you know, thinking off the top of my head that's just one example of the kinds of things that we should try to identify and clarify. In my view it's something that we would probably kick off after we've done the rest of our work but I think if we just had a couple calls with, you know, with the team about – and think through the privacy proxy implementation rules and what should change because of GDPR, we would be able to make progress on moving that policy because it is a big gap if we don't have rules that apply to how the privacy proxy services work.

And I think we want a parallel approach based on what we come up with in, you know, in this EPDP. So that's the bigger issue I wanted to flag.

Kurt Pritz: Okay. So understanding, for example, that our conclusions to date – and the initial report hasn't been put through any sort of consensus test, ICANN could choose to rely on some of those conclusions with the understanding that they might change but it might be more efficient for the multistakeholder model and all of us if they adopted some of these conclusions even if there might be some breakage. So I certainly think that's a good idea.

So Margie or anybody else, and maybe even Mary Wong, so would the initial report kind of stand on its own in providing this sort of guidance or Margie or others, what sort of interaction or, yes, what sort of interaction do you see in addition to that that would be helpful for your cause?

Margie Milam: If I could answer that? I think initial report is still too early. I'm thinking, you know, I mean, what's our timeline for final report? You know, basically if we had a recommendation that, you know, and this recommendation could be that the group, you know, continues after the initial report to provide guidance to the implementation team or any subset of the team that's interested. And then because I think the for example, like the purposes would be much more clear once we finish the public comment period and we, you know, and we come up with the final report.

And so that's what I'm thinking. I think it's staged a little bit later but not, you know, not so much that the implementation gets further delayed for years because I think that would be a big problem.

Kurt Pritz: Go ahead, Alex.

Alex Deacon: It's Alex. Yes so I think it's important to – I wanted to just read from the note that – the letter that Cyrus has recently sent to the IPC about the delay of the PP IRT and, you know, one thing he says in that letter, which I think is important, he says, "Nonetheless, ICANN Org believes that the work of the EPDP will address topics that are central to privacy proxy accreditation programs requirements including," and then he says, "purposes for processing registration data such as collection, retention, transfer, allocation of controller process obligations for gTLD registration data."

And so it seems like there is an assumption that this team do some work here; it's not exactly clear to me which work – what work we need to do. But either way we need to make sure that there's not a disconnect between what ICANN Org is expecting us to do and what – and what we actually end up doing. It may be that the work that we've done so far and will do in the future will address most of these issues but we should I think as Margie suggests at some point, spend some time thinking about this to make sure we haven't – there aren't any gaps. Thanks.

Kurt Pritz: So does anybody see this as controversial and, Margie, how would you memorialize this in our work? Go ahead, Marc.

Marc Anderson: Thanks, Kurt. Marc Anderson. You know, I did not join Privacy Proxy and I'm not interested in doing their work. If their work requires, you know, something from us then that's fine but, you know, Margie's example – you know, if I understand it correctly she talked about us defining purposes – or the, you know, the purposes or the data that should be shared for reveal of privacy

and proxy and that to me I think is – I think that's not our work, that's the Privacy Proxy Working Group's job. So, you know, I think that there's a little bit of a line here I'm trying to draw.

You know, certainly if, you know, for instance the work they need to do is dependent or held up on something we need to do then let's make sure we're doing that. But I want to draw a line at making sure we're not doing their work. And so that's sort of the line I'm trying to draw there.

Kurt Pritz: Thanks. Good comment. So I think, you know, I'm reading Amr's comment too. So I don't know, I hope everybody's in my boat thinking that the task lacks some specificity although we're open to it and we certainly want to address the GDPR-related questions that this PPSAI group has. So I wonder, you know, I don't want to stick Mary with the question but I wonder how we, you know, I'm not familiar with the work of that group so I have trouble picking out certain aspects of our work that would be helpful to them or wouldn't be helpful to them and can't picture it.

So Margie and anybody, to the extent you want to understand those questions I think it's really good. And Mary, to the extent that you or ICANN Org, that working group or implementation group or whatever it is can, you know, ask questions with specificity or point to issue with specificity where they're waiting for some resolution I think that would be really helpful. But anyway I think that's...

((Crosstalk))

Kurt Pritz: Go ahead. Go ahead, Margie.

Margie Milam: Yes, sorry, I have to go offline. I'll still be on the call. What if we had a recommendation that the ICANN apply, you know, similar rules to those that are, you know, decided by this EPDP. In other words, you know, that they

take the guidance or the direction that comes out of the EPDP as the basis for further developing the implementation plan for privacy proxy services?

Kurt Pritz: You know, I don't want to spend too much more time on this one, and I think that's fine with me, but I don't – I think you have a concern that I don't understand. So you're trying to – you're doing this to head something off...

Margie Milam: Yes.

((Crosstalk))

Kurt Pritz: ...or prevent something or cause something to happen but I don't quite understand your underlying concern.

Margie Milam: Sure. If I could address that? Because the PPSAI is stalled right now and because they don't have the expertise that, you know, in this – in the area of GDPR applications, that they just don't have the, you know, support to take that policy implementation to, you know, to finally to get it launched. And so I think they would benefit from the selective knowledge that's come out of this and that's why I'm raising it now as something that could help direct the conclusion of that work.

Kurt Pritz: Okay. Alan, go ahead and then Marc.

Alan Woods: Thank you, Kurt. Alan Woods for the record there. I'm afraid I'm going to be universally rebuffed after what I have to say, so apologies to everybody in advance. But let's also remember that again, when we look at the definition of what personal data is, it is data that is capable of identifying the person either on its own or in connection with something else. And one of the big changes under GDPR is that that other source of data does not necessarily need to be available to a person, it just means that if it is put with something else it is capable of identifying that person.

So PPSAI – or privacy and proxy situations in some of them it's just, you know, privacy protected by privacy proxy. But in other ones I mean, I do (unintelligible) you've got privacy customer 12715 at – that is personal data. And also the email address is also privacy12715 at – that is also private data. And even if a person is identified by the actual SLD that they have or the domain that they have, so again, you know, complianceninja@privacy – or proxy dot whatever – again, it's technically it's a hashed – you know, it's an anonymized email, it's still private data or I'm sorry, personal data.

So again, you know, it is another layer that we can put into it. Yes, it would be of a less heinous breach if it was to be put out there. But again, this is something we need to consider and it needs to go on the record and we need to be really clear that this is not as simple as a wording change, this is, again, another type of privacy data protection impact assessment where we have to assess what is the data we're dealing with here. And, you know, we are still dealing with what is considered personal data under the definition. So again I just caution people to make that leap without, you know, really thinking about this as the quality of the data that we're working with. Sorry, all.

Kurt Pritz: Well thank you, Alan. Go ahead, Marc.

Marc Anderson: Thanks, Kurt. Marc Anderson again. You know, Matt Serkin put in chat, you know, that basically it seems like, you know, he said, "I'm not sure we specifically need to address anything we otherwise wouldn't." And I think that sort of gets to the – I think that's a good way of putting it. I'm not sure that privacy proxy needs anything from us that we weren't otherwise, you know, isn't otherwise already in our scope. And so, you know, I think, you know, I think we need to avoid doing their job so, you know, and we don't, you know, we don't need to make recommendations related to privacy proxy, there's – it's not in our scope or charter and there's already a group devote to doing that.

And we should also avoid trying to tell them how to do their job. You know, they can, you know, they can take our work and, you know, and pull what's applicable to them and leverage our work as they need to. But we should avoid doing their job or telling them how to do their job. And if they need something specific from us I think it's on them to ask that of us and not for us to decide what they need or want.

Kurt Pritz: Thanks. Thanks, Marc. Go ahead, Alex, and then Alan and then let's – and then Farzi and then let's go onto something else. I think we're to a point in this discussion where you know, maybe I and some others can work together on – I think what Margie's after is getting the work of the Privacy Proxy group restarted as quickly as possible and make sure we're not standing in the way and so we want to figure out a way to make sure that our work is done in a way that doesn't hold them up.

But, you know, I agree strongly with Marc's guideline. So I don't know how much more we can take on this. But if anybody has anything specific that they'd want to include in a proposal that's good, otherwise I think we'll take this as an aspirational goal that we'll continue to hone as we go through the rest of our process. Alex, go ahead.

Alex Deacon: Yes, I just wanted to say that – this is Alex. I just wanted to say that I agree with Marc, but let's just make sure – and I'm glad that Mary's on the call here because I just want to make sure that we're not making assumptions here in that the path that we're currently on, the discussions that we're currently having and the result that we all hope to get to will actually address the issues that the PP IRT need to commence their work. And I think again, given Mary's involvement here and her listening to this discussion and the letter that we received from Cyrus I think we should be able to ensure that we don't end up in a spot where we don't actually fulfill or answer the questions that they may have and that would put us in a bad spot, so thanks.

Kurt Pritz: Thanks. Go ahead, Alan.

Alan Greenberg: Thank you very much. I know I'm committing the sin of being pragmatic but like Alex I feel that if we can provide any guidance or if we can tell them where we're heading or if they can ask questions to us and we actually answer them to expedite the whole thing, without diverting us for weeks and weeks, then I think we have an obligation to do that.

We may make decisions which will make certain things impossible for them, and we – there needs to be some communication path between the two. They are not separated in terms of what we can do and although it's not part of our job to do their work, I think we have to make sure that we're not being obstreperous and getting in their way of allowing that work to be done at the same time. Thank you.

Kurt Pritz: Thanks, Alan. Farzi – Farzaneh.

Farzaneh Badii: Farzaneh Badii speaking. So I just wanted to make a very general point to the group. We need to discuss and agree on what topics are going to be on the agenda for the meetings and be topics of discussion because obviously privacy proxy is something that a certain probably minority wanted to be added to the agenda and we did not, as a group, we did not decide that this is within our remit. So we have been spending around 30 minutes discussing something whether it is within scope or not.

If you want to do that then I can just like come up with like various agenda items and just like send them off to you and to be discussed during our meetings. This is not really the way to go. I really believe that when we – we can't just add an agenda item because someone asks for it. Thank you.

Kurt Pritz: Kavouss.

Kavouss Arasteh: Hello?

Kurt Pritz: Yes.

Kavouss Arasteh: Yes, I think in the chat we should not discuss the issue based on minority or majority, we should discuss the issue based on the merit of this. We are not taking a prioritization or division or voting that majority or minority so we should be quite careful. Thank you.

Kurt Pritz: Okay thanks, Kavouss. So, Farzaneh, I'll just say that, you know, we asked for additional topics when we publish the list of outstanding items after the initial report and certainly the language that we discussed in the first part of the meeting was on here and, you know, I don't think it was out of bounds to discuss how we might interact with this PPSAI team. And now we've spent a few minutes on that. You know, we try to manage the things as best we can.

So, Margie, with your permission I'm going to leave this one behind and – but let's, you know, I'm happy to discuss it over email and see how we could create the right space for this, you know, using the balancing that both Marc and Alan Greenberg mentioned.

So if you're still with us, Margie, the next topic has to do with consent. You mind introducing that?

Margie Milam: Yes, sure. And I'm still on. When I catch my bus I might drop – as we go over the mountain so I might have to have one of my colleagues continue. So the next issue is the issue that we discussed I believe on email. And it relates to allowing for the registrant to consent to having their data published. I think this is an important not just from the legal and natural person distinction but that also I think there are probably registrants of all types that would like to have their information actually published.

So one of the things that we've been talking about is having a recommendation that the registrant be offered the ability to consent to having their Whois information public should they choose.

Kurt Pritz: Right. And this goes to, you know, where the temporary specification says, “As soon as commercially reasonable, the registrar must provide the opportunity for the registered name holder to provide its consent to publish additional contact information.” That’s additional contact information, not its information. So are you expanding on that one, Margie?

Margie Milam: We have – yes, the recommendations have two aspects. One is the registrant itself having its information published; and then the one we’ll talk about after that is whether there needs to be the ability to give consent for a registrant to have someone else be their technical contact. And so that's the second part of the analysis – but second discussion we can talk about later.

Kurt Pritz: Thanks, Margie. Go ahead, Brian, you want to pick up on this?

Brian King: Can you hear me?

Kurt Pritz: Yes.

Brian King: Excellent. So I can give a little color to that especially if we lose Margie in the mountains there. The concept here is that we think it’s important that registrars must allow this option and must allow registrants to make this decision. And I think we're skeptical of the proposition that registrars will allow this and will reflect the choices and the decisions that the registrant makes about having their data published; most registrars are good guys and will do what the registrants want since they're not required to – we think it’s a better system if registrars are required to provide that option than to honor the registrant’s choice.

Kurt Pritz: Alan Woods, go ahead.

Alan Woods: Thank you. Alan Woods for the record. Very simple question to ask our colleagues there, and that is how? So it’s all very well and good and making a

“must” there, but, you know, you're going into several layers of login consent, removal of consent, article 7(t), withdrawal of consent, right to be forgotten, you know, there's a lot more to this here. And again, I just have to keep bringing it back to the point; this is not our job. Our job is to say is this temporary specification as it's written, or with modification as necessary, good enough to allow the contracted parties and ICANN to be compliant with the GDPR?

And creation of a new system to somehow figure out how we can get consent is to going to be a “must.” But, again, the concession there is that we can use our secondary power as an EPDP team to say let's punt that to the GNSO saying this is something we really probably need to look into so can we create a PDP which will be able to put bones on the suggestion that we have? But creating a consensus policy now that says we must do that, is again creating an implementation impossibility at the moment because it's not going to happen before the expiration of this process.

So, you know, just saying that a registrant is able to consent and they must be allowed to consent is actually just poppycock, it's just ridiculous at this particular moment in time and we need to face realities and facts on this. It is a good point but let's put it where it should be and that's recommendation to the GNSO and nothing more.

Kurt Pritz: Thanks, Alan. Amr, go ahead.

Amr Elsadr: Thanks, Kurt. This is Amr. Not going to argue with Alan's point on the scope of what we need to do here but I wanted to offer a different sort of thought on this. I think for many reasons, you know, voiced in the past, the issue of consent is a little tricky. It's trickier than I believe we should want to, you know, to deal with as an issue. As an alternative I would propose that instead of a registered name holder, you know, having the option of providing consent, you know, I'm sure we're not – at this point we're not all talking about ticking a check box, but as an alternative, if there could be a process

where a registered name holder could actively request for their data to be published then that might be a more viable alternative.

And that would take us away from Article 8 and the issues of consent and move us towards the 6.1(b), which is, you know, performance of a contract among other things including, you know, at the request of the data subject. So generally the default would be redaction, and anything additional to that is an additional service provided by registrars that if a name holder or a data subject wishes for the data to be published then there are additional steps that need to be taken. I'm wondering what folks might think about something like that. Thank you.

Kurt Pritz: Thanks very much for that, Amr. Alan Greenberg.

Alan Greenberg: Thank you very much. In response to Amr, if the registrar can handle that what he's proposing, that is offer and extra service to allow giving permission, and perhaps charge for the permission of displaying their Whois data, then they can handle the – getting consent. It's the same – ends up being exactly same issue and I'm – my mind is just boggling at the fact that the whole concept of consent and some of the issues we're discussing related to the GDPR are deemed to be so difficult for the contracted parties yet other people around the world are implementing them. It's just really difficult.

Going forward I think we need to be able to do this. We do not necessarily need to come to a conclusion on this by May – by the end of May 2019, but we've already acknowledged there's lots of other stuff that we're working on that has to be done before we finish. And saying the concept of asking the GNSO to start a new PDP on the stuff that we're not going to do is pushing it so far down the road as to make it not viable at all. Thank you.

Kurt Pritz: Sarah, welcome to the team.

Sarah Wyld: Hi, Sarah Wyld. Yes, do you hear me?

Kurt Pritz: Yes, so for those of you that don't know, you know, Sarah's recently joined the team. And I know from personal experience that registrars, registries, the IPC, the BC, they all have big teams supporting the effort that the representatives here have so just because Sarah's new to the team doesn't mean she's new to the issues or new to our discussion. So anyway go ahead please.

Sarah Wyld: That's true. And thank you so much for the welcome, Kurt. I have been following the EPDP throughout your work and it's really exciting to be able to help as an alternate. So I just want to say a couple things from the registrar perspective about this idea of consent to publication. Amr, I know that you mentioned in the chat that perhaps contracts might be an appropriate legal basis for this. I think in this case because it's not necessary to perform the registration contract we can't rely on the contract to publish the information. I do think it would be consent-based, and I would be okay with that.

I think we can accept that the person requesting it – there are mechanisms in place to get the consent of the registrant. But I think it should be optional on both the registrant's part but also the registrar to even offer that service. I'm not sure that we need to make it a "must," I think it should be a "may." And, yes the consent legal basis. Thank you.

Kurt Pritz: Thank you, Sarah. Go ahead, Stephanie.

((Crosstalk))

Terri Agnew: ...Terri. I see your mic is unmuted. Could you check on your side? And now it seems your mic is muted again...

Stephanie Perrin: How about now?

((Crosstalk))

Terri Agnew: Oh, yes, we sure can. Please continue.

Stephanie Perrin: Always takes a trial run (unintelligible). Stephanie Perrin for the record.
Echoing what Sarah just said, this should not be mandatory; it could be voluntary, but I would just like to issue a word of caution that getting consent to publish sensitive data is not that easy. And Alan Greenberg just said that, you know, companies around the world are doing it. They aren't necessarily doing it well and they're certainly not necessarily publishing the data on the basis of consent and that's a whole other ball game.

People don't understand the risks, they don't understand the global reach here of putting out their cell phone. They're not expecting to get calls from around the world. So I really think we should leave this up to registrars. It doesn't need to form part of the policy if it's voluntary. Thank you.

Terri Agnew: And, Kurt...

((Crosstalk))

Kurt Pritz: Sorry, I was on mute. So yes, so thanks for that Stephanie. Go ahead, Brian.

Brian King: A couple points that I think might help clarify. So we are – we think that it should be required so we think it should be a “must” that registrars must make the option available to registrants and if they don't – if it's not mandatory for registrars to do it then many won't and a lot of registrants that aren't savvy enough to know that they could shop for a registrar that might allow them to publish more information especially if they're a domain investor or someone who wants to be contacted about the domain name or what's happening on their website. So that's important.

And I think that making it a “must” also helps protect the registrants who have made that election to publish more data or want to make that election in the

future but then the registrar has no reason to do that if they don't have to. And the other concept I would just make everyone aware of is that this isn't really a new concept so registrars have – as far back as I can remember have been required to tell registrants which data is required that the registrant provide and which data is voluntary.

And that's in the temp spec and that's in the 2013 RAA and so this isn't a new concept, we just want this to remain a “must” that registrars have to continue to make that – that option available to the registrant and then to reflect and respect the registrant's choice.

Margie Milam: Kurt, it's Margie. If I can be in the queue?

Kurt Pritz: Sure. Go ahead, Margie.

Margie Milam: Sure. And to follow up on what Brian said, the other thing you have to think about is the registries, how will the registries know if the – there needs to be some sort of ability to tell the registries that there is consent to publish the data, so that's why I think it makes more sense to make it a “must” rather than a “may” since the registries will have to have that type of information available to be able to publish the data.

Kurt Pritz: Amr, please go ahead.

Thomas Rickert: Kurt, it's Thomas, I just joined. Can I get in the queue please?

Kurt Pritz: Yes, you'll go right after Amr and you'll speak right after Amr speaks. And thanks very much for joining, Thomas. Go ahead, Amr.

Amr Elsadr: Thanks, Kurt. This is Amr again. Just to repeat some of what I said in the chat and some of the other issues that I'm seeing, on “may” versus “must” I agree with Matt. I think, you know, if a name holder knows enough about registration data and how it works and whether it's published or redacted it's

– I think it's fairly obvious that they would know that, you know, what it is they want; which choice they might seek in that scenario. And if their chosen registrar does not provide this service then they're free to go ahead and shop for another one that does. So as an issue of awareness, I don't think – I don't envision it being much of a problem.

But the other point I wanted to make on 6.1(b), because I referenced that article earlier, you know, performance of the contract is just part of that article on lawfulness of processing; the other part which follows the “or” in the article is in order to take steps at the request of the data subject prior to entering into a contract. So if a scenario or if a processing activity meets that criteria of a lawful basis for processing the data, I think it might work and to me it seems a lot more straightforward than, you know, trying to meddle with the issue of consent and requirements in Article 8. Thank you.

Kurt Pritz: Alan Greenberg.

Amr Elsadr: Sorry, if I could follow up real quick? This is Amr again.

Kurt Pritz: Go ahead.

Amr Elsadr: The distinction in the process here would be that, you know, like Collin said earlier, it's privacy by design. So the redaction would be the default setting and anything beyond that would be an additional service that a registrar chooses to provide and the registered name holder would have to actively seek this service one way or another. So I think this handles the issue of, you know, name holders who wish for their data to be published; they have an avenue to go ahead and do that. On the other hand I believe it also provides adequate protection from liability to contracted parties and other controllers involved in the processing activity. Thank you.

Kurt Pritz: Well, Amr, wouldn't consent be sort of a, you know, a paid-for service also? I'm trying to – I'm kind of with Alan and trying to make – Alan Greenberg and

trying to make the distinction that you're drawing on. I understand how it falls under a different category but in fact it would kind of operate the same, right, that a registrant could either provide, you know, check the box that say, please publish my information, I consent, or, you know, please publish my information in accordance with the registrant agreement we have that I can request this additional service. To me they're both services provided by the registrar, are they not?

Amr Elsadr: This is Amr, Kurt. I think the difference would be that in a scenario where consent is granted that, you know, the consent may be included within a consent form that covers other topics. And this is where it gets a little tricky I think and in Article 8 I think that, you know, Article 8 covers this somewhat and says, you know, it has to be very clearly distinguishable but, you know, the extent to which it is distinguishable could be subjective depending on the data subject you're dealing with. And a number of issues could come up.

But in the other scenario which where 6.1(b) would be the legal basis here, the name holder or the data subject would have to actively seek the service and sign up for it. So this an additional service provided for name holders who specifically want this service, it's not a default service included in a consent form amongst other things which most if not all name holders probably don't go over in too much detail.

Kurt Pritz: Thanks. Alan, I'm going to let – I already asked Thomas to speak so I'm going to let him cut in front of you if you don't mind, so Thomas Rickert, please go ahead.

Thomas Rickert: Thanks very much, Kurt, and hi everyone. Sorry for joining late. I think that James is perfectly right who said a couple days back and there is a need from part of the customers to have their data publicized so I think there is a need for that service for certain registered name holders. At the same time I think we need to be quite honest about the technical limitations that we might face at this stage. So either if we go for a consent-based solution or if we try

to define a different service that would make the publication sort of a service paid or unpaid to have registered name holders' data publicized in a global directory service I think we don't have the technical means to document what's required to be documented under GDPR.

We've been discussing this on a couple of occasions but if you're doing consent-based processing you need to be able to evidence that consent and what the content of that consent is all the way through. And those who are seeking consent-based solutions may be able to help with this. But I don't see any way in the registration data and the way it is passed on between the plethora of parties involved to allow for exactly that demonstration.

So I think that whilst there is a legitimate call for such functionality to be implemented, I would like to support what Alan Woods said a couple of minutes back, namely that this is a more cumbersome exercise than we might think. And I think it's too much on our plate for the limited time that we have in this EPDP. Thank you.

Kurt Pritz: Thanks, Thomas. Go ahead, Alan.

Alan Greenberg: I was asked in the chat to point out that Stephanie has been at the top of the queue for a while.

Kurt Pritz: Oh I thought that was an old hand. Stephanie, is that a new hand?

Alan Greenberg: She's muted though.

Kurt Pritz: I see. Alan, why don't you go ahead and we'll see if...

((Crosstalk))

Alan Greenberg: All right. For everyone on these calls registering a domain name may seem like a real simple thing and the concept of shopping around to see who has

what feature may be – may sound simple. For the typical registrant, it's not. It's a confusing world that they don't understand the rules, the number of complaints that contractual compliance gets simply because people don't understand issues, not because it's a real problem, is just unbelievable. And I don't think we can add something like this.

Now, if we want to add a requirement that every registrar must blindly – you know, clearly on their home page say which services they have chosen to offer and which services they do not offer, that's – maybe that would be fine but I don't think they're going to be willing to do that. So there's just no way we can say oh, well shop around for a feature you don't even know exists. Thank you.

Kurt Pritz: Thanks. Stephanie, are you in the queue? Is that a yes you're in the queue?

Stephanie Perrin: Hi, can I call you back? I'm on a call. Bye. Hello? Stephanie...

Kurt Pritz: Go, Stephanie.

Stephanie Perrin: Sorry about that. I raised my hand, I'd basically agree with what Thomas Rickert said. I think you're going to need the equivalent of the Apple agreement that we all click and say, "I agree" even though we haven't read in order to cover consent and the trouble is you're then going to be stuck with dealing with withdrawal of consent issues and all the rest of it, so I think we should absolutely park this one. It's too hard when you're talking about individuals that are entitled to protection under the GDPR.

If you are talking about large corporations who are – find it easy to decide and prove that they are legal persons I've suggested a number of times that we ought to be thinking in terms of their requirements and needs of how we could authenticate them based on something like corporation number, business registration numbers in each country, and allow them to authenticate themselves and provide tokens for registration of domain names

in their name; that would go a long way to solving some trademark and identity theft issues. Those are real security concerns. I just want to throw that on the table; it is not for this group to figure this out because we don't have time.

Kurt Pritz: I don't think it's for this group to figure out either but we should be saying in our policy what needs to be figured out and to what extent, so I don't think it's within our bailiwick to solve this problem; I think it's within our bailiwick to set the goals for the implementation now and at a later date. Alan, go ahead – Alan Woods.

Alan Woods: Thank you. Thank you. It's Alan Woods for the record. So I just wanted to just go back and one thing that Amr had said and I just want to be – just on the record as well because I said in the chat and I just want to be clear that 6.1(b) – it could be just a disagreement in the reading of the actual article itself, but, you know, the – at the request of the data subject prior to entering into a contract are those things that if in order to enter into a contract the data subject must request of the data controller to process their data to contact them, to discuss with them, that it's kind of a set – a stop gap measure.

If you're relying only on a contract you must be able to somehow process data before entering into that contract and that's what that's getting at, not that the data subject themselves can request an additional, you know, an additional matter that you must do. I mean, I just think that there was, in mind, it's get in reading of it but I would suggest it's probably a mistaken reading of it, sorry, Amr. And just as I was saying there, this – I think Ashley and Brian were saying in the chat there about this whole gun shy when it comes to GDPR, and again it makes me laugh because being gun shy to the GDPR, yes, let's put that by what it actually means and that is being risk-averse and trying to follow the law and make sure that, you know, it is up to an individual company to control their risk in the way that they see fit.

And again, it's not our place under – in the consent of policy to force a registry or a registrar into a position where they're forced to take a higher risk because it suits other people. At the end of the day we must be the masters of our own destiny in this and if it is compliant with the law we should be able to act compliant with the law, not be forced into a position which we maintain puts us in a less compliant with the law.

But again, you know, gun shy when it comes to GDPR is unnecessarily inflammatory when you put it that way; it's just a matter of whether or not certain businesses are in a position to take on that risk and we need to be mindful of that that we're catering to the entire spectrum of the Contracted Party House and ICANN here and not just big players who could just take that on the chin.

Kurt Pritz: So when I read – so I'll get back to the queue in a second. So let me pose this, that I hope is received constructively but, you know, when I think about these things I think about implementation details and their practicality. And I note that the temp spec uses the word "must" but it also uses the word "when commercially feasible." And, you know, an alternate reading might be – an alternate wording might be to take out "when commercially feasible" but add the word "may."

And the reason I say these is that, you know, requiring registrars or registries to offer services such as accepting consent or, you know, in Amr's alternate proposed publication service, there's several ways if required that can be implemented. So at a very base level a registrar could charge a lot of money for it and effectively make it not offered or a registrar could put it in a place on its webpage where it's not really findable or it's difficult to find or create a process that's so onerous that it's really difficult to take advantage of.

And, you know, it's sort of, you know, it's a sort of a little chess game for – so for each one of these things I mentioned I'm sure many of you said well, then, we can create this requirement then to make sure it's done this way but, you

know, it's a continual chess match that's, you know, I've never applied it to – thought about it with consent before but I've sure thought about it with regard to many other aspects of the, you know, the new gTLD program and registry and registrar agreements and those sorts of things.

So I'm wondering if, you know, we're – by using the word "must" we're creating something that really, really almost an impossible way to administrate if a registry or registrar doesn't want to offer that. And I wonder if we should recognize that impracticability when considering what wording to use in this.

And that some – and I think many and many of the largest registrar will want to be able to provide for consent and/or the publication of the data when their customers want that but for other ones that find it problematic at least in initial phases of this GDPR enforcement where everybody is trying to understand how it'll be enforced, I think it's difficult. So that's my speech about pragmatism that might be controversial. But go ahead, Brian, start back with the queue.

Brian King: Sure. Thanks, Kurt. And James and Alan, I hope you guys, and Sarah, I hope you understand that we're not trying to add risk to one party for the benefit of ourselves or other parties so just wanted to make that clear. And with that said, I think that we're not talking about a situation here that requires any kind of development or implementation costs or anything like that. I'm not even sure where that concept comes from because as I mentioned before, providing registrants with the – a clear explanation of which data is voluntary to provide that they're allowed to provide to be contacted and which is mandatory has always been the law of the land. And what we want is just for that to continue.

And I think it's really important under GDPR to be clear with registrants about what data they can provide. And this is really to kind of reframe the concept here, I think that we all agree that we need to contact registrants or have the

ability to contact registrants. And what we're really asking here is that registrars are required to tell the registrants about all the options at their disposal for that and whether that's having data published and which data they want published, that's really what we're asking for here to kind of frame it that way.

Kurt Pritz: Thanks, Brian. Ashley, how are you? Go ahead.

Ashley Heineman: Thank you. This is Ashley with the GAC. So first of all just to apologize if my use of being gun shy was taken in an offensive way; that certainly wasn't my intention. It was more of the trying to get to the point that there seems to be this assumption that everyone is working at the same level of knowledge and that everyone understands how this business works and what is available to them and what is, you know, a viable thing to achieve.

And that goes on both the assertions of that potential registrants out there understand what is available to them in terms of offerings as well as assuming that registrars – all the registrars out there – are as informed as you all on this EPDP and understand what they can and can't do under GDPR and what is, you know, feasible to do in the construct of their Whois requirements and being compliant with GDPR.

So it was more of a – I was actually making a comment in the spirit of compromise saying that perhaps we could consider, you know, if it's not going to be a "must" then at least have it reflected in the – in our report and recommendations that this is something a registrar could do and that they could do it in a way that is compliant with GDPR if they so choose to do so because it's not clear to me that all the registrars out there and are contracted by ICANN understand that it's even something that they could do for all the reasons that we've articulated particularly in the chat.

So that's all I was trying to get at and I realize that there's a lot of sensitivities around there. It wasn't intended as a dig, it was more of a just recognize that

a lot of people are sensitive about this issue and are definitely risk-averse but there are some areas that we can take that aversion away if possible and I think this could be one of them. Thanks.

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

James Bladel: Thanks, Kurt. James speaking. So I think a couple of folks referenced a message I posted to the list, I don't know, a while back that we are hearing from some significant segments, I wouldn't say a majority but let's say a noticeable minority of our customer base that has asked us for this function, for, you know, can I give you consent, can I be published in Whois, can you cancel the redaction even though legally I'm entitled to have my personal data protected?

And I will note that one thing that they all have in common is that they are making this request because it somehow benefits them; they're not making this request so that they can be more easily contacted by third parties, they are, you know, for let's say, you know, for legal and abuse issues, they are doing it as a form of advertising or marketing particularly for those who invest in domain names as a business.

So I think I'm kind of now coming down to the idea that this is a service because it benefits the registrant where applicable and they're not necessarily providing this consent for the benefit of other stakeholders except it's primarily for them. And so that's why I believe ultimately it should be optional because it is, you know, kind of an add on or a value added service that a registrar can provide. But I agree with Ashley, I think that there's a way to capture in such a way that registrars are not compelled to offer this function particularly those, you know, I think a general market registrar like my employer would probably choose to offer it and so would another – a number of other large registrars.

But there are plenty of small registrars that serve a specific market or a specific, you know, type of client or even maybe a single client that this would not be applicable to and would just add cost and complexity. So I agree and I think that I could kind of get behind Ashley's proposal that we kind of, you know, make this a disclosure requirement but not a requirement to carry. So thanks.

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

Margie Milam: Sure. And you might lose me because I'm going over the mountain. I think if it's a "may" on the registrar side I think it needs to be a "must" on the registry side because otherwise it may not be effectuated. In other words, you know, the registrant may expect that the registry would be publishing it and there's no way to basically (unintelligible) that. So I think that we might have to think about it the same way that we thought about the technical contact where the technical contact was optional to the registrant but the registries had to publish it if the, you know, if the registrant asked for it. So I think that part of it needs be treated the same way as we treated the technical contact.

Kurt Pritz: Thanks for that point, Margie. Benedict, how you doing?

Benedict Addis: Hi folks. One of the complaints of registrars sort of privately and publicly has often been that ICANN heaps regulation on the heads of the good guys and in order to regulate the bad guys who never show up to this kind of meeting and who don't comply with policy much anyway.

So whilst I'm okay with "may" in a sort of – particularly in an environment where everybody's sort of honest, in a situation like where we have got some registrars that don't comply, I'm just worried that this may allow bad registrars, of which a few exist, to give another layer of obfuscation to their bad customers because there's the kind of collusion between the two. So I'm tending towards "must" but if – I'd love to hear arguments against. Thank you.

Kurt Pritz: We're kind of towards the end of all the arguments but thanks for your comment, Benedict. Marc, go ahead please.

Marc Anderson: Thanks, Kurt. It's Marc Anderson. Just responding to Margie's comment, you know, transferring of consent from a registrar to a registry raises a whole host of other issues. And I think if we're talking about a "may" for a registrar to publish this then that's one set of challenges. And if registrars are willing to sign up for that, that's great. But putting an obligation for a registrar to obtain consent and pass – and pass that consent from a registrar to a registry and obligating the registry to publish that data that opens up a whole another can of worms that I'm not at all comfortable with or willing to sign up for.

So I think, you know, I think as envisioned by the temporary spec, I think this would be an obligation for registrars to publish that in their service but talking about passing consent from the registrar to the registry I don't think that's what this is intended and I don't think that's necessary for this to be accomplished. So I would not be comfortable or okay with putting that as a "must" on registries.

Kurt Pritz: Thanks, Marc. So Ashley, I'm – I apologize for doing this but in your discourse you alluded to alternate language and I've been sitting here trying to, you know, divine what that might be, do you have any ideas about that? And while you think about that I'll call on Alan.

Alan Greenberg: I guess it's a question for Marc. We have several, what, 1200, 1400 registries that are thick registries and the registry is the definitive authoritative source of Whois information. If consent is not transferred to the registry, aren't we defeating the purpose?

Marc Anderson: Sorry, Alan, this is Marc. You know, one, I'm not sure I agree with you that the registry is definitive, you know, I don't think that's the case in all situations but I'm also not sure exactly what you're asking. I think, you know, my point is that, you know, this is – you know, we've been talking about a service that

registrars may offer and that makes sense. But they can offer that independent of the registry and I don't see, you know, I don't see why transfer to the registry needs to happen in order to accomplish this service.

Alan Greenberg: Kurt, may I answer?

Kurt Pritz: Sure.

Alan Greenberg: If you look, for instance, at the ICANN Whois portal for thick registries, they don't go to the registry, they go to the registry because the registry is considered the source so saying you can disclose it but the main source of information that is provided does not show it I think defeats the purpose.

Kurt Pritz: Why do we think the language in the temp spec just goes to registrars, it does not mention registries? Was anybody in on that discussion? And does...

Alan Greenberg: Only ICANN Org can answer that question.

Kurt Pritz: And does this - and does become moot when RDAP's deployed?

Alan Greenberg: Kurt, under the current Registry Agreements for everything but Com, Net and Jobs the information must be transferred to the registry and ICANN has always taken the position that the registry is the authoritative source in those cases. But...

Kurt Pritz: Alan, go ahead.

Alan Greenberg: ...that's ICANN.

Kurt Pritz: The other Alan. Thank you, Alan Greenberg and please go ahead, Alan Woods.

Alan Woods: Yes, I mean, yes, the transfer is there and the registry should be an authoritative source of registrant information but that doesn't mean that we have to publish it like you're asking so I don't understand why the registry would be required to publish it. And you're saying that it speaks to purpose, what purpose does it defeat because the purpose is – what you're saying here is that, you know, a registrar may publish it if it is required and they offer that service. I mean, you know, I'm trying to think in my mind what are the reasons that a registrant would want that published? So things such as there might be a company requirement that they want to prove the ownership of a specific domain.

So that registrant would then know that their registrar has published that because that was their choice and they claim that and they use that specifically so they can get that public record. They don't need to go then to the registry and say just in case we don't agree with the registrar, so that one publication is what you're looking at. So I'm sorry, I don't get your point at all and I don't agree.

Kurt Pritz: Is the problem that the registry can obtain the consent of the – does the registry need to obtain the consent of the registrant in order to publish the information or is that taken care of when the registrar obtains the consent? I see that as a complexity and maybe that's why the temp spec is written the way it is.

Alan Woods: Just to jump in there again, it's Alan Woods again. Yes, I mean, that is one of the reasons that it would be very difficult because again you're not getting the consent from the registrant directly, so that's one of the issues. But there are multiple, as Stephanie gone through and Thomas has (not) mentioned as well but, yes, absolutely.

Kurt Pritz: Ashley, go ahead please.

Ashley Heineman: So I'm just going to raise a question that Georgios had put in the chat and, you know, we're not on the frontlines like registrars are, but it's not immediately clear why getting – offering the option of providing or publishing their details and getting their consent. What – why that is so difficult and why there's so much concern over risk associated with that. Happy to be educated, and I'm first to admit that I don't know what is involved with that, but it's from, you know, somebody looking in from the outside it sounds fairly straightforward, which I know is a scary assumption to be making.

That being said, also, I'm also not comfortable with people making assertions that the only reason why a registrant would want to publish this is to, you know, self-promote, etcetera, because I think it's way too soon to be kind of making those assertions. I think there's lots of reasons in which a registrant would want to have this information published and I think those reasons could change over time. So – and I also think that this could be something, you know, potentially very much in the interest of registrars to make this optionally available; I think there's a lot of commercial interest if this should ever, you know, come to be a situation where it's a pay-for service.

So again, I'm still squarely in the “must” camp which is why I'm a bit nervous about making any proposed language changes. I just wanted to throw out the idea of it being a “may” situation only because I would hate to see us come to the end of this conversation and have no recommendation. So that's it. Thank you.

Kurt Pritz: Thanks. Go ahead, Sarah.

Sarah Wyld: Thank you. This is Sara. To address the question of risks, I think the way I'm looking at it, the risk is of getting it wrong. And that's a very high risk because we don't want to publish personal data without there being an appropriate legal basis for doing so. So I do think that consent can be used as an appropriate legal basis but I think we have to be very careful that we're getting consent from the right party, that we're recording it, that we're tracking

it and that we make it optional to withdraw that consent just as easily as it's given. So the risk just comes back to getting it wrong.

And then the other point I wanted to make is regarding the difference or possible difference in Whois outputs between registry and registrar Whois outputs depending on if the registrant consented. I don't really see why that's such a problem. I could imagine a scenario where the registrar outputs real personal data at the request and consent of the registrant while the registry may not hold that real data. And so the registry would still output their placeholders or redacted information while the registry is publishing. And so – I'm sorry, I'm just hearing a lot of background music.

Kurt Pritz: That's to enhance your comment.

Sarah Wyld: I think I've said what I need to. Thank you.

Kurt Pritz: Margie, when you brought up this output discussion, were you recommending any changes to the wording in the temporary specification?

Margie Milam: I don't know if I have a – do you have the language? As soon as commercially reasonable must – no, I was suggesting that we continue – I think we need to have a little more clarity on what “as soon as commercially reasonable means.” But apart from that the remainder of it I thought should be the same.

Kurt Pritz: I'm not sure...

((Crosstalk))

Kurt Pritz: I'm not sure I have a way – go ahead.

Margie Milam: I'm sorry, I may be wrong. "Providers consent to publish the additional contact information outlined," I'm sorry, I don't remember what that was. I think it's...

((Crosstalk))

Margie Milam: Oh okay, yes. So in other words, as long as it's consent to having the full Whois contact data that's what I'm talking about.

Kurt Pritz: You know, I'm still kind of in a place where we're going to be requiring registrars to perform a service that's difficult for, say, a compliance regime to enforce because there's so many ways consent can be obtained. And in effect if a registrar wanted to it could avoid the requirement for offering the consent by making it expensive or difficult or some other way. And so I, you know, I'm just concerned about creating an obligation that is difficult to enforce. Thomas.

Thomas Rickert: Thanks, Kurt. Let me get back to my point of technical issues that I made earlier. Some of our team have established that the registries are the ultimate resource for confirming who a registered name holder is. So let's just assume that a registered name holder gives his or her consent to a given registrant, then this case happens where we need the registry to act as the ultimate resource of who the registered name holder is and the data surrounding it.

And how would the consent recorded by the registrar be transferred to the registry and be made available to another registrar who would then manage the domain name? How would we record the content of that consent? So it's a general question, maybe you have ideas on how this can be done technically? Also, if consent is given how would this consent be withdrawn? How would we get it out of the system? What is the technical vehicle for transporting that consent or a withdrawal through the entire system and remove it from the data that is escrowed, from that data that's with the registry and the data that's with the registrar?

I think we don't have the technical means yet; we don't have the technical language that is binding upon all the players, all the contracted parties. And so I genuinely think that this is something that the – that's, you know, that would need more work, more technical work, transfers and all that stuff have not yet been discussed either. So I think that, you know, getting back to Alan Woods's point, I think that this above and beyond what can be achieved during this EPDP. Thanks.

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

Alan Greenberg: Thank you very much. As I said before, maybe it doesn't need to be done by May 29 but it does need to be done within this EPDP, there's no other way. The answers to some of the technical questions are really easy; we're talking about changing the Whois fields, we're talking about withdrawing some fields, we're talking about, you know, deciding whether we are going to publish, you know, even optionally the information.

So there are elements that we're talking about; those could be transmitted through EPP just the way they are right now and the registry will respond – if the registrar says the registrant has withdrawn consent then they – and they transfer that information to the registry and the registry will honor that information.

In terms of how do we – can we be sure? There is a contract between each registry and registrar; it's the RRA. That contract can require that the registrar certify that it has and can produce on demand the information on consent; it puts the onus on the registrar to do it properly. And that can be transferred via that contract. If you can't transfer these things via contract, then how else can you do it? Are we talking about someone carrying the piece of paper with a signature on it? Other than that we're, you know, electronic commerce allows us to do things electronically and the contracts require us to do it and track it properly. I'm not sure I understand what the difficulty is. Thank you.

Kurt Pritz: Go ahead, Mark.

Mark Svancarek: Mark Sv for the record. Yes, similar to Alan's comment, I do think the technical implementation issue is probably a red herring. It seems there's multiple ways to do this; you could do this at the registration level or you could do this at the account level. I'm aware of somebody doing this at the account level where someone says at the purchase of – you know, at the time of purchase, I'd like to have all my records unredacted. That doesn't even involve touching Whois. So it seems there's multiple ways to do this. You could add another field to Whois, you could handle this somewhere else in your relationship. You know, it just seems like a distraction to argue about the implementation detail right now when it seems, as Alan says, so imminently doable within the state of the art.

Kurt Pritz: So I think it's doable by registrars. What if a registrant wanted their data published by their registrar in one country but not by the registry in another country or something like that? Would that be a requirement for registrars to notify the registrants that, you know, who will be publishing the data besides the registrar and does that need to be a menu choice? So I see geometric, you know, (complication) of issues associated with passing it onto the registry. Benedict, go ahead.

Benedict Addis: Yes, so Tucows gave this issue a huge amount of thought earlier this year that – the full disclosure – my backend I use their registrar management service. And they came up with a consent process basically where they asked the registrant what the registrant wants to do. And this was in place March. So basically the registrant gets sent an email saying – either at the time of registration or if it's an existing domain gets sent an email saying do you consent to share your data with the registry? So it's a sharing – it's about their consent to share their Whois data with the registry.

And if they don't do that then Tucows redacts the data sent to the registry so the registry publishes redacted. And if they give their consent the unredacted data shared up and published by both. So they quite neatly tied it to – the two issues together, that of sharing data up and the publication in a way that they feel is GDPR compliant.

And I'll post a quick link to their legal and technical interpretation. But, you know, this has been working for me; I've been using this for six months now so and they've, you know, their model seems to work quite efficiently. Yes it does require an extra click of a button but it's integrated into their registration process now so if a new domain it works well going forward.

Kurt Pritz: Thanks, Benedict. Go ahead, Marc.

Marc Anderson: Thanks, Kurt. It's Marc. You know, my comments are somewhat similar to yours. You know, I'm, you know, and I do agree with, you know, what Mark Sv said. You know, I'm not, you know, I'm not sure that the, you know, the technical issues are insurmountable here; there are challenges there, you know, particularly when it comes to withdrawing consent, you know, there are some, you know, there are some concerns I have around withdrawal of consent that are not straightforward at all especially when you're dealing with, you know, three different parties here that have to manage the withdrawal of consent.

So, you know, I think there are ways that this could be accomplished but, you know, I think my point is, you know, is why. I think, you know, to Kurt's point, you know, if there's a use case that there's somebody that wants to publish their data this can be accomplished by the registrar at the registrar level adding the additional complexity of transferring the data to the registry and requiring the registry to publish that data, you know, adds a level of complexity and risk that – and I'm not sure what value it provides.

You know, I don't think it provides any; I think it can be accomplished just fine at the registrar level. Somebody asked – I don't know if it was chat or on the call, you know, can this be accomplished, you know, can't this be solved with RDAP? And yes indeed, you know, RDAP can provide you know, a single interface that can provide that data across multiple sources such as registries and registrars but, you know, frankly that can be accomplished with Whois as well. If you go to ICANN's Whois page that's – their Whois page does exactly that, it provides Whois output across registries and registrars where applicable.

So I guess, you know, talking about, you know, the risk versus reward I think adding, you know, adding this as an obligation on registries I'm not sure the value it provides and it creates additional risk and complexity that, to me, just doesn't justify that.

Kurt Pritz: Thanks, Marc. So I don't know if anybody else has a comment or a recommendation. You know, I hear the registrars on this call saying they're – they're either already offering the service or probably intend to offer this service but are reluctant to agree to the language that we have in the current – the current temp spec. I don't know, among the registrars, does the phrase, “commercially reasonable,” does that temper your concern about making it a must? I think it's less eloquent worded this way but it provides a way for registrars to convince themselves that it's commercially reasonable.

And I want to – before it I turn it over to Sarah, I want to echo Margie's comment that if we included that, then we'd want to define that in some way. Go ahead, Sarah.

Sarah Wyld: Thank you. Have not had a chance to confer with my other stakeholder members who have left this call already but for myself I would say no. Having it – the soon as commercially reasonable language does not make it okay for that to be a “may.” I see those as being two separate things. I think it's important to have the commercially reasonable line in there because we do

need to remember small registrars, especially have probably some limitations of resources or the ability to do development work in a quick manner, but still I think it should be a “may” and I think that’s a separate thing. Thank you.

Kurt Pritz: So – okay. So I’m going to bring the meeting to a close. I think you know, our only action item coming out of, you know, I’ll try to make some sense out of this conversation and continue it as an email discussion and particularly focus on, you know, what happens if we continue to disagree on this point, what happens with the temp spec language and what happens going forward. I’m not sure.

So I’m reading what Brian said. So I think our only action out of this call is that we put up in the chat room earlier modification of the language in Appendix A 2.6 about privacy proxy services. So that is either already been sent out in email or will be shortly. And I want to get concurrence around that language because I think that was – seemed acceptable to most on this call. And maybe, you know, maybe a small team can work through it so we’ll think about that.

Caitlin, were there any other action items?

Caitlin Tubergen: Thanks. This is Caitlin for the transcript. And no, you captured all of them. Thank you.

Kurt Pritz: Okay, Benedict, I assume that’s an old hand? Yes, so thanks very much, everybody, for the constructive discussion. I’m sorry we didn’t get to a conclusion on it. And I’ll try to – I’ll start a discussion on email and try to lay out the issues the best I can to see if we can get to some sort of agreement of what the effect of having no agreement is on this. So thanks very much. Have a great rest of your day.

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

END