

**ICANN  
Transcription  
GNSO Temp Spec gTLD RD EPDP  
Tuesday, 19 February 2019 at 14:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-19feb19-en.mp3>

AC Recording: <https://participate.icann.org/p3sgzxt3fww/>

Attendance is on wiki agenda page: <https://community.icann.org/x/EYU2Bg>

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

Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 46th GNSO EPDP Team meeting taking place on the 19th of February, 2019 at 1400 UTC.

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

During this period, the members will have only read-only rights and no access to conference calls. Their alternates will have posting rights and access to conference calls until the member's return date. As a reminder, the alternate assignment form must be formalized by the way a Google assignment form must be formalized by the way of the Google assignment link. The link is available in the agenda pod to your right as well as 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. There is an audiocast for nonmembers to follow the call so please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call. Thank you very much and I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks very much, Terri. And thanks, everyone, for another on-time start and good morning. I think when it's six o'clock in the morning you don't care what time it is for anybody else. So you have the agenda before you and the (unintelligible) that I wrote that kind of outlines how I think we should proceed. And we'll get to that in a minute.

The first thing I want to talk about that's on the agenda for those that didn't listen we provided an update, the support team and I, for the GNSO Council last week, so we presented a, you know, it was a conservative update; we presented an updated and detailed timeline for the final delivery of the report and then explained the purpose of the quiet period that we're going through now and that was used to identify mistakes and inconsistencies in the report and allow for a careful reading of it by each of the teams so nothing was missed in the content.

An issue came up during the Council meeting and it was requested or asked if we could extend the delivery date of the report. And that request was sort of denied during the meeting by the Chair of the GNSO Council, but afterwards we all took it back and examined the various timelines to see if there could be more time provided.

And, you know, there's two really critical paths here, one is the 40-day comment period requested by the ICANN Board before they would vote on anything forwarded to them. That could potentially be shortened but the other critical path is the consideration by the GAC that can only be done in a face to face meeting which is - which will occur in Kobe which is startlingly close. I'm sure that we - we're probably going to fracture the GAC imposed timelines for having material before the meeting to consider it but nonetheless we're compelled to get the report in front of them prior to Kobe, so there is really no wiggle room for extending our delivery in any way.

So I think that was pretty much it. We outlined, you know, the number of recommendations in the reports and just some statistics around that. If anyone has any other comments they want to make about the GNSO update that's fine with me. I'll pause for a second when we get to the end of this. So I'm just looking at different messages here, I'm sorry.

So, you know, we carefully read everybody's input and statements that was made at the end or after the end of the quiet period. And certainly I appreciate the thought and labor that went into that and you could tell by reading almost all of them that a considerable amount of work by a considerable number of people went into writing those reports and I appreciate it. I sincerely appreciate the people agreeing to things or willing to go along with things that they didn't really agree with and I think that's been a hallmark of this group so I think that's been good.

So for - in going through those I want to say a couple things to set up the discussion. So, you know, what items are we going to discuss? What's our takeaway from those statements or responses to consensus calls or comments on individual recommendations, how should we handle them since there were comments on a lot of them and we have, you know, two meetings to discuss them all. So the items I selected for the agenda and items to discuss fell into two camps really.

One is the - there's a couple I think open issues where we haven't got closure yet, we've gone back and forth, and these were the items we were discussing just before the closed period, so I wanted to put - get a spot for those on the agenda to see if we could get closure on those items, and I'm hopeful that we will.

And the second had to do with that family of comments where there were clarifications or errors corrected or, you know, where wording was either - I don't want to say poor but could be open to various understandings. And so I wanted to get those on the table for discussion. Where there was, you know, previous agreements made or recommendations that were essentially put on the shelf a while ago that were opened back up, you know, I, you know, we don't have the time or the wherewithal or intestinal fortitude to take those up again, so, you know, I just registered those as dissent from the recommendation.

I've seen a lot of emails around, in the last 10 minutes, you know, what - how to define consent or full consensus or consensus or strong support with opposition and how those are selected. So in my - so two things, one is so I read the emails carefully and I'll continue to read them. I think after this call but before tomorrow's call I'll review the consensus designations with the support team and see if there's any that we think should be chosen.

From my standpoint, you know, I just tried to be conservative in my assessment of consensus. I'd much rather have people arguing that I was - I or we were too conservative in that designation and there was really consensus in the room rather than saying, you know, there was this false call of consensus and there really wasn't consensus in the room. So that's why I maintained a conservative approach.

And, you know, especially after several months of being so intimate with you guys I value everybody's standpoint highly and so want to, you know, also attempt to pay respect to that. So with that have in hand your - have in hand

some list of recommendations so you know what the current state of the recommendations are, if you want to have the memo that went out in your other hand you can choose to do so. And what we're going to do is move to Item 3 in the agenda, which is to take some things up.

So I see Alan's hand up. I want to - so I'm going to pause here and if there's any comments about the GNSO Council meeting certainly ask if them here, if there's any items you wish to add to the agenda or detract or make a comment about the approach, now is the time to do so. So Alan, do you want to go ahead?

Alan Greenberg: Yes, I'd like to take an opportunity to comment on the recommendations you said there were no comments on. Is that the right time to do that now?

Kurt Pritz: Yes.

Alan Greenberg: Okay. You said there were no comments on 15. The ALAC in fact did make a comment on 15. We pointed out that the recommendation as written allows a registrar to delete the data on the day a TDRP is issued - is made in the extreme. If the registrant waits until the end of the period, the registrar essentially can delete the data in parallel with the request being made and a minor extension of let's say 15 months instead of 12 addresses that problem. I just wanted to note that. This group can ignore it if it chooses, but a minor change does address that conflict. Thank you.

Kurt Pritz: Thanks. Could you resurrect that and put that in writing and we'll see if we should talk about it tomorrow?

Alan Greenberg: Sure.

Kurt Pritz: You know, I - yes, sorry, just cut and paste or if it's in the ALAC report I have it handy.

Alan Greenberg: It is in the ALAC report.

((Crosstalk))

Alan Greenberg: It's not listed as a big issue but it is a registrant right issue and it's easy to fix.  
Thank you.

Kurt Pritz: All right. Thanks very much for that, Alan. You know, I had a - never mind.  
Any other questions about the approach or - okay there's a moment of  
silence here because I don't - I was going to start the meeting with a  
discussion of the recommendation formerly known as - you know, we don't  
have to - I don't know if we need to set the timer for these. I'm hoping to not  
get off task for - except for this one.

But, I don't see Ashley on the call. Ashley, are you dialed in or something like  
that?

Terri Agnew: Kurt, this is Terri. I do confirm Ashley is not on the Adobe Connect or  
telephone at this time but we'll go ahead and try to reach out to her to see if  
we can get her connected.

Kurt Pritz: All right, then it's going to take me a minute to adjust but let's go onto the -  
part of the agenda. I don't have that up in front of me, but so I think we're  
pretty well split on this issue of whether the city name should be redacted or  
not. I'm not sure but I know there's a difference of opinion. And I invite people  
from the legal team to fill in for me here. But we asked for legal advice on this  
issue and we received back from Bird & Bird a memo that said first that city  
names seemed to fall squarely in the field of personal data and as such it  
should not be published in say a public Whois.

But then the second part of our question was that the team identified certain  
benefits to publishing the city name that was I think highlighted by Alex, but  
I'm not sure, about, you know, helping to resolve jurisdictional issues, things

like that. And so would that - would that benefit rise to the level of creating a legal basis for publication? And Bird & Bird gave some preliminary thoughts about that but said more research is required.

So for us I think that we could rather than be divided on the issue I think that we could make a recommendation that the city name would be redacted until the - at least until the legal advice was received and then considered during Phase 2 of our work.

So I think right now we don't have a recommendation about city field, but we could agree around that. So does anybody got an opinion on that? Or if anybody from the legal team - go ahead, Alan.

Alan Greenberg: Thank you. Certainly if we omit the recommendation on city or the dialogue, we have to move it into the field where it's redacted or unredacted, otherwise we, you know, it's not clear to me that we have a rule saying if we don't say anything about it, the temporary spec is what we follow, at least what the implementation follows.

So I think we need to - since we have a line item in another - in a table for everything but city I think we have to put city somewhere. So either it reverts to the status quo and is redacted or we have a comment about it I would think, otherwise - given the discussion we then have an undefined thing and we need to avoid undefined things if we can avoid them. Sorry to the double avoid.

Kurt Pritz: But well put. Sarah, go ahead please.

Sarah Wyld: Yes, thank you. Good morning. This is Sarah Wyld. I just want to throw one comment in here for continuing the redaction. As we have previously discussed, there are a lot of good reasons to redact it. The city field can and often does reveal personal data especially in combination with other information. I think the legal advice that we have already (unintelligible) this

one up so we should continue to redact the city field and that should be the recommendation. Thank you.

Kurt Pritz: Thanks. But then the question is, Sarah, can we also say that we've invested in and because we - and because we thought it was important we sought legal advice on this question and the legal advice, recognizing it's somewhat of a complex question, is not here yet. And so should we revisit this in Phase 2 where we can discuss it further? So - and that would be a recommendation we could make that we could sit behind. I think we're at - in Alan Greenberg land right now where we have nothing to say about the city field. Diane.

Diane Plaut: Yes, Kurt, I think that your approach is the right one. I think that the legal opinion is that supports through different cases that were discussed that there are circumstances that a weighting balance determines existing field can be made available without redaction. So I think that your position is it's the right one at this juncture.

Kurt Pritz: Margie. Thanks, Diane.

Margie Milam: Hi, yes, thank you. Hi, it's Margie. Yes, pushing it to Phase 2 so we get the full legal advice makes sense to me. Thank you.

Kurt Pritz: Thanks, Margie. Sarah. I guess I was asking you the question.

Sarah Wyld: Thank you. Yes, I'm sorry, Kurt, I've lost track of the question you asked. But I think, yes, we can accept pushing this to Phase 2. I am interested to see what further legal advice will provide to us in this thread.

Kurt Pritz: Great. Thank you for that, Sarah. Alan.

Alan Greenberg: Thank you. I don't know when the Phase 2 report is going to come out and then go out for public comment and Board approval, but pushing it into Phase 2 in parallel with the implementation I think is problematic. So I think we need

at least an interim position pending a change in Phase 2. People are going to be implementing this stuff and we may well - Phase 2 may well go past the 29th of February, 2020.

Kurt Pritz: Right and well so my - and my pitch was that the - based on the half of the legal advice we have so far and the comments of others that the city name would be redacted until the legal advice was received, analyzed and then discussed again. So in the interim period our direction would be that the city name would be redacted.

Alan Greenberg: I can live with that as long as we're not adding another unknown into the implementation. Thank you.

Kurt Pritz: Thanks, Alan. Marika.

Marika Konings: Yes thanks, Kurt. So I'm just looking for clarification here from the perspective of the final report. So what I understand is that we add a note to the existing Recommendation 11 which is currently still in brackets that says, you know, this issue will be further considered once additional legal guidance has been received but indeed for now the recommendation stands that city field would be redacted.

That recommendation currently has a footnote associated with it that indicates that the BC, GAC and IPC object to the redaction of city field. Do I understand correctly that we can go ahead and remove that footnote as, you know, it's linked to further work and further consideration of this topic? So if I'm misunderstanding that, you know, please let me know because we'll be making those updates of course in the report.

Kurt Pritz: Well I'd suggest that the recommendation read that the city field will be redacted for the time being, and that's the wrong set of words to use, time being. The city field will be redacted and the EPDP team anticipates the completion of legal advice during Phase 2 and during Phase 2 we will take

that legal advice and discuss and conclude whether it changes the initial recommendation. So if you could write that up it'd be great.

Marika, was that clear enough?

Marika Konings: Yes, sorry, yes this is Marika. Yes, thanks, Kurt. So I'll go ahead and make those change and as well remove the footnote that indicated concern about it. The one question I still do have we originally had city field as a separate recommendation but I'm guessing now that it can go back into, you know, the full table that includes the redacted and not be redacted elements and we include that in the footnote, this notion of this being further considered in Phase 2. I hope that makes sense for everyone. It does mean another renumbering of recommendations but we'll provide another table for people to make sure that they know where everything is at.

Kurt Pritz: You know, then let's not do that. You know, I'm for - I'm for, you know, signaling that this is - this is being held separate as a sort of a special case. I think your way is sort of cleaner but given where we are in that there is a difference of opinion on this and that people are willing to compromise on it, let's signal it as an area of importance, so we don't have to renumber, we can just reword that recommendation and - but as you say in the table it can show redacted.

All right so - sorry for this but I have sort of a point of order and that is that I wanted to also pause at the outset and I think Alan, you distracted me from this, but, you know, the first part of the memo that went out listed the items where there was no comment and then items where there was comment but not an objection to the recommendation.

So with the exception of the issue that Alan raised, you know, the memorandum indicates that the consensus level will be retained as indicated there and so wanted to provide an opportunity to see if anybody objected to

that. And I missed out on giving that speech because Alan kind of beat me to it, so we've captured that one.

All right so let's go back to the top of the agenda - let's go back to the top of the agenda and talk about the thing formerly known as reasonable access. So prior - so for me I'd kind of like to get my way back machine and go back to just before the start of the quiet period. I don't know if we can possibly do that, but, you know, we were centered around changing, you know, changing wording around reasonable request for lawful access versus reasonable lawful access and the meaning between those.

And, you know, I took some time to talk to different parties and understand the concerns with each set of language and think I have an understanding of what those concerns are. And I don't think that our recommendations should hinge on, you know, taking out or adding prepositions that we all think markedly change the meaning of a recommendation. I think we should be more clear about it.

And, you know, my understanding of where this lawful disclosure recommendation sits is that first, you know, requests for access are reasonable if the form's filled out in the right way and submitted in the right way. And then once submitted then registrars will commit to acknowledging the request within a certain time and then responding to the request within a certain time. And that response is not - is not always "no" it depends on whether the - on whether the request is lawful or not or has a basis in GDPR for disclosure of the data.

So, you know, my takeaway of our discussion is that we all agreed on that. And then the differences in the wording seem to be around making sure we were assured of that. So, you know, we kind of went back and forth during a couple different meetings because, you know, in our original expansion of this and flushing out the detail that I think Alex led that Ashley was not available for that discussion because her employer wouldn't let her be.

And then - but Ashley came in and made some comments and then she was absent from the next meeting and then we went back on some wording. So I think this is an example where we're, you know, we're spiraling in on consensus opinion but we just ran out of time. So Ashley's raised her hand evidently indicating that I've talked too much about this. So I asked Ashley in the introduction to this topic to explain the positions of the parties in a possible resolution of where we might land on this.

And I'm really sorry for that introduction. Go ahead, Ashley.

Ashley Heineman: No, you did really well, Kurt. I just wanted to make sure you knew I was on the line because I was late and I apologize for that. And I also apologize for not having been available for the last iterations of these conversations. Yes, government shutdown and then my daughter having surgery all kind of kept me away but I've been doing my best to follow.

And I just wanted to perhaps kind of just rephrase my comments as I last left them. And, you know, if not made abundantly clear already, I think a lot of good things are in this recommendation and I think folks have been doing a lot of fancy footwork to get things to a place where we can all agree. And I think we are really close. It's just during all that fancy footwork, you know, changing of the heading and changing of the words in the document for the sake of consistency, also kind of took away some of the nuance and the original intent behind this section.

And it should be fairly easy to get things back to the original intent in a way that doesn't change the substance or where I think everybody is in agreement. And when I say "the original intent" it was that there, you know, be some reasonableness on behalf of the contracted parties and doing what they do with respect to when they receive requests. And I think a lot of the language in here provides a lot of clarity with respect to, you know, how they'll respond to requests and that sort of thing. But what we've lost is at

least some kind of, you know, baseline basic understanding that, you know, while the requests are going to reasonable, and there's a lot of detail around there, that we've lost is any expectation, even if it's just within the word that the contracted parties are going to be reasonable in what they do as well.

I think we all recognize that of course, you know, anything that happens or is done needs to be lawful and nobody expects that the contracted parties not behave lawfully, at least I don't. And so it's not so much that any text I propose is going to revert back to any kind of expectation that disclosure will be made, it's more of a there be a reasonable consideration and an attempt to disclose, not that it will be disclosed but just reasonableness in the consideration because you can be perfectly within, you know, the GDPR law and being lawful and just chucking any request into the trashcan.

I don't think anybody is doing that but I think if nothing else just to set the tone that there's reasonableness on both sides, nobody's - of course the law will be adhered to, etcetera.

So I don't want to steal anybody's thunder here. I noted the IPC and the BC have also provided some ideas with respect to how the language can be modified. I just want to throw out there at least from the GAC's perspective and my perspective, you know, something as simple as if you go down to the timeline and criteria for the registrar and registry operator responses, just simply adding a bullet at the top that indicates that registrars must reasonably consider and accommodate lawful requests for disclosure as described here on just so I have some kind of - some indication here that of course the contracted parties will be reasonably considering these.

So I'll stop there. I think that's probably overkill in terms of intros. But I'm happy to discuss further and clarify if need be. Thanks.

Kurt Pritz: Thanks, Ashley. So Alan Woods. How are you?

Alan Woods: Thank you so much, Kurt. Yes, I mean, what Ashley is saying absolutely seems reasonable. I understand where she's coming from. But, you know, there's a few statements in there that I'd just like to point out. So the first one is that, you know, you're saying that - and I know it's probably a throwaway but, you know, at this point, you know, we're kind of reeling from the, you know, the last few days.

So, you know, the first thing is you're saying that adherence to the law could mean folding it up and throwing it in the bin. And I just find that hilarious because, you know, we've always been the one that has been saying that, you know, you're calling for basically what you're saying to be as an extra compliance with the law which is something we've fought against this concept for months and months and months and months and now it's been re-bundled and thrown back at us.

I mean, we came to this table knowing that this was a legal requirement against a data controller and in order to maintain and to become compliant with that legal requirement which of course is the whole point of the EPDP is that of course we're going to have to act reasonably, and in fact we came to the table in order to be that reasonable.

And, you know, yes, I mean, adding that extra line and saying, you know, we just, you know, will treat each requirement reasonable is utterly tautological, I mean, again it's kind of this whole beat with the stick continuously that that's what we expected and that's what we all know. I mean, if this is a comfort level that you're requiring you need in-built into the process because you don't trust the contracted parties to do it properly, like we can take that back and discuss that, no problem.

With regards to this timeline, I mean, to be perfectly honest I think we have been reasonable to date. And given, you know, the accept this - this completely random timeline that has been thrown in in the last few days, you know, the ultimatum timeline of, you know, either accept this or, you know,

accept whatever, to be perfectly honest it adds nothing to the recommendation and we shouldn't really even be discussing it because it was never agreed and never discussed. And, you know, as you can tell there is a level of discomfort that which has been, you know, suggested in this.

So Ashley, I understand reasonableness, I'm sure we can come to an agreement on that. As to the timeline, I mean, I think we're barking up a very, very long and dangerous and silly tree on that one.

Kurt Pritz: So I think what Ashley - I think what Ashley was suggesting was that we - and if Ashley raises her hand she gets cuts in the line, but something to the effect of registrars must reasonably consider and accommodate reasonable - so lawful requests for disclosure or something like that.

((Crosstalk))

Alan Woods: Yes, and I've said, Kurt, I have no problem going back to the, you know, and talking to the registries and registrars on that one because it's not really controversial language, what she suggested there to the extent of in the spirit of where we came to the table in this one, fair enough. I think we might be able to come to an easy enough on that sort of an addition. I just draw exception that the continued picking away at the mountain of the timelines continues to go on even though we talked about this at length.

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

Margie Milam: Sure. Hi, everyone. It's Margie. I think you can see from the IPC and BC language that we were trying to approach the same issue that Ashley was trying - mention. And, you know, the language Ashley suggested is along the lines of what we quoted for the first bullet. On the timelines, I'm not sure why specifying a time period is objectionable now. The recommendation always had a timeline in it, x number of days.

So we were trying to really get at what was getting an understanding of where that line was drawn. And we feel that with the introduction of the SLA concept, in other words, that the timeline is not a hard fast thing that has to be met at every point, but that is met over, you know, a certain amount of time on average, gives us the comfort that these requests will be responded to within, you know, a reasonable timeframe. So that's the thinking behind that recommendation that we posted in our comments.

And then the last point obviously has to do with urgent requests where there is something that is, you know, requires a much quicker turnaround such as, you know, a DNS abuse, a malware, that sort of thing that there needs to be, if we're talking about 15 days, that's clearly too long for an urgent request. So that's the reason why we made the request for the third - in the third bullet. But essentially it's just trying to get more clarity in an area that's extremely important to our constituencies. Thank you.

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

Sarah Wyld: Yes hello. Thank you. This is Sarah Wyld. I want to start by echoing what Alan said regarding the reasonableness of the registrar or registry to consider the request. I'm certainly open to discussing that change with my constituency because it I think is already included within the intent of the recommendation. It aligns with our past team discussion.

These proposed timelines now from the IPC, BC, these are very aggressive timelines. I'm not comfortable committing to that even with this vague language about that it could be revisited in future, and I do want to point out that there's no indication at this time suggesting that requests are not being answered in a reasonable timeframe.

All that said, all that aside, this quiet period that we had was not intended to let people propose such substantive changes as this one. We have discussed

this recommendation for hours as a team. We came to what I thought was consensus. We should not make these proposed changes. Thank you.

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

Alan Greenberg: Thank you. I'll note that the recommendation in the report was highlighted as one that did not have consensus yet. I can understand why the timelines specified by the BC IPC might make people uncomfortable.

What makes me uncomfortable is that there's no intent during the implementation to have something comparable; that is I don't believe, and ALAC does not believe that simply having a time specified as the outer limit, you know, like three months in the GDPR for responding to data subject's requests is sufficient. There needs to be some metric, some - not standard but some, you know, typical or something which gives people a level of comfort of what to expect if this is not an abnormal request.

And that's asking specificity of what is an abnormal, but just saying that, you know, we expect that 90% of them will be handled within some time or something that compliance can use if necessary to deal with an outlying registrar who - or registry that is not complying, that waits until Day 90 as a matter of principle to answer anything.

So that's the level of comfort we'd like after the implementation to be able to feel that this is being handled reasonably. It's trying to put metrify - put a metric on reasonable. Thank you. Or reasonable response time. Thank you.

Kurt Pritz: I'm just reading the chat here. Thanks a lot, Alan. Mark, go ahead.

Mark Svancarek: Mark Svancarek. Thanks. Okay so it sounds like most people like the idea that we add the clause, you know, reasonably consider the request. Thank you very much for that. I got a sense that Alan and (unintelligible) were kind of offended that we felt the need to add that in. And I'm sorry about that. But,

you know, there is a current status quo where reasonable disclosure are not actually happening, it's been documented. I know that doesn't apply to everybody but it applies to enough people that it's considered a trend.

And also, you know, if you ask for something and it's rebuffed then that tells you oh well there is really is some sort of an issue there. And when we were discussing this on the list several days ago, you know, there was someone who asserted that this requirement had absolutely nothing to do with the disclosure at all, it's only about the requesting. And so with that sort of rhetoric makes you want to dig in a little further and say well, that about the disclosures? Do they have to be reasonable or not?

So, you know, that first line is justified and I'm sorry if that offended anybody. But really we really needed to get some clarity on that, so thank you for your support on that one.

Regarding the actual SLAs, I understand that committed to anything in particular, any (unintelligible) specific right now is always tricky. We're just simply trying to get some resolution on what x business days is before we commit ourselves to it. Thanks.

Kurt Pritz: Thanks, Mark. Go ahead, Milton. Welcome.

Milton Mueller: Hello, everybody. Milton Mueller, Non Commercial Stakeholder Group. So I think following up on what Mark just said, there doesn't seem to be any problem - what I heard Ashley requesting was a kind of a commitment to reasonableness clause in - somewhere in the recommendation which nobody really objects to. I think where the sticking point is when you start getting into specific procedural timelines.

And I have a problem with that for two reasons. One is I think we are sort of jumping the gun on what's supposed to be a Phase 2 process of determining the actual procedures and mechanisms for disclosure. And Number 2, there

are already this two day response timeline but I can understand very well the registrars' hesitancy to commit themselves to a particular timeline for resolution of issues. I think that's an unreasonable expectation. And with compliance looking over their shoulder at some point, I don't think that that's really necessary at this point particularly once we actually define a mechanism and procedure for disclosing through the RDDS.

So I think we can settle this very quickly by just including, you know, I wouldn't even mind renaming Recommendation 18 reasonable treatment of requests for lawful disclosure, but the point is if they want a reasonableness commitment in there they can easily get it. I think it's the attempt to over-specify and create timelines that's going to be an unacceptable step. That's it.

Kurt Pritz: Yes, I hate to be the grandpa in the room. I remember the first inter registrar transfer policy that said essentially that, you know, transfers have to be reasonably accommodated and all the work was really done in implementation where the timelines had to be figured out. And, you know, I wonder, you know, at a policy level, which is where we are that, you know, we put some policy sounding words around the timeline or the requirement for response.

Anyway, I'll stop talking because there's other people in the queue. Alex, please go ahead.

Alex Deacon: Yes thank you, Kurt. This is Alex. Yes just a few things real quick. You know, I think - where the language of Rec 18 ended up which I think, you know, is - as whole is good but where it ended up it was focused on the reasonableness of the request, which is fine without much statement of the reasonableness of the response.

And so while we understand and I think most people on this call understand that is assumed the responses will be reasonable, we believe it is reasonable

to be clear in the report and thus our suggested addition that specifies that. I notice Sarah mentioned something in the chat here so I appreciate that.

I think just to respond quickly to Milton, I think we have to remember that this Rec 18 isn't about the Phase 2 access discussion, right, it's about this concept of reasonable access that was introduced in the temp spec and we've carried for into our report today. So they are two different things, they're both important but they are separate and different. And again, finally, just regarding the timelines, I think as Mark put it, we wanted to kind of put a metric on these timelines and to understand kind of what a reasonable response time would be.

And, you know, I think this concept of an SLA is an important one and an interesting one. Again, the ability for all involved to kind of understand how this process is going to be implemented and used, how effective it could or can be and what the process will be like when we get to it, understanding in a little bit more detail now I think is important especially to those who need this data to be disclosed. Thanks.

Kurt Pritz: Thanks, Alex. I think - so I have two comments. One is whatever number is suggested now almost certainly has to be wrong, right? It's either too long or too short depending on how the actual situations eventually play out. You know, I also see that, you know, there's a clause in here about urgent requests and so, you know, I think we should start thinking about how we're after the same thing here that we're all after rooting out bad behavior when it occurs.

And in some cases, you know, 15 days is way too long because something serious is going on and in those cases, you know, a party will call a registrar and say, you know, something is going on here, we need to figure this out in a hurry. And my experience is the registrars respond right away and say yes, let's figure it out. And in other cases not so much.

And so, you know, I think what we should be after here is, you know, a cooperative aspect of working to achieve our mutual goals of creating the right kind of DNS. And I think, you know, discussion of 15 days or not 15 days or 95% is not the right wording for that because it almost certainly won't achieve those goals. Diane, please go ahead.

Diane Plaut: Sure. Kurt, I really think that what you said now is very apropos for this discussion and very real. We have to go forward in a cooperative and a practical framework and trying to specify timelines is - needs to be a business decision and a commitment to support legal reasonableness in line with a sound policy.

So teeing up timeframes that are able to address serious things going on in the community certainly there will be a cooperative spirit but urgent situations cannot be just done casually. We're here to put down real policy that works. So I think it's an important commitment to be made right now.

We had a full discussion regarding this but really not a full discussion. The proposal for this framework was put forward towards the end of our deliberations and there was no time for the specificity to be nailed down and it's an important commitment that needs to be reviewed at this juncture.

Also, you know, it needs to be recognized such as Alex put forth, this is very different from an access discussion in Phase 2, this is a reasonable disclosure discussion that needs to take place in the short term for when the temporary specification expires and there's no framework for people to follow.

Kurt Pritz: Thanks, Diane. Alan Greenberg.

Alan Greenberg: Yes, two things. Thank you. I just wanted, number one, reiterate that, you know, it's - whether it's 95% and 15 days or whatever it is, to have some level of metric to - so that we have some way of dealing with those registrars, and it's a small number, but nevertheless in terms of abuse an important set of

them are not necessarily inclined to be helpful. Let me remind people of why we're here to begin with, the interim report basically said do nothing until we have the access discussion in Phase 2.

I and a small number of other people suggested that we have a problem today that the words in the temporary spec do not seem to be working, at least for some people. And there was a general will to say, can we come up with something on an interim basis which can try to make sure that the interim process works until we have the new disclosure. And other people pointed out that for people who aren't certified, that this may go on forever but certainly on an interim basis we need something.

So we're trying to find a stop gap measure, we're not looking for something that is absolutely rock solid but something that gives people a better level of comfort. Thank you.

Kurt Pritz: Thanks, Alan. Beth, can you respond to Alan or did you have a different point?

Beth Bacon: Hi, Kurt. Thanks. This is Beth. I suppose I could do both. I just - I think it's important to note Sarah and Alan said it really well and I think Ashley also said it well is for a reasonableness standard is not unreasonable. I think that focusing on the fact that we have discussed this at length and at present it seems that folks are conflating two issues. There's a distinction between the reasonableness for a timeline of response and the reasonableness of disclosure.

You may get a response but you may not get the disclosure. But I think that as folks are talking about this, they're conflating those two issues and they're distinct actions. I think that's part of why it's so important that we move some of this to Phase 2 which is the disclosure and access.

I do think that considering a redline that is substantive at this point is kind of outside of what this group should be doing with the report going out in a few days. So I do think that we have a lot of voices noting an acceptance of coming back to our stakeholder groups and saying, you know, this is reasonable. We can respond, let's consider this standard. And considering a full redline that puts concrete additional requirements on a registrar or registry that are then tied to our contracts and tied to compliance just to get at the very few bad actors seems heavy.

So I think that we - I'm hearing a lot of agreement for a pared back version of this and I think that it's good to move towards what is something we can agree on as opposed to something that there's just solid disagreement on. So that's all I was going to weigh in. Thanks.

Kurt Pritz: Thanks very much, Beth. Margie, go ahead.

Margie Milam: Sure. And I mean, I can give some background on where we came up with the changes. We actually talked to a member of contracted parties just to see what would be reasonable when we came up with our language that we submitted over the weekend. And honestly, you know, we make many requests and the level of responses is very, very, very low. And so I think what that shows you is that, you know, while there are some, you know, contracted parties that are, you know, able to respond, there's a lot of them that aren't.

And so that's the reason we're asking for the specificity because of the fact that it's just you have to be able to bring up the entire industry not, you know, and not have a big gap between those that respond and those that don't. And that's the current situation today. So the reason we came up with the SLA was to try to come up with something that would be a benchmark, if you will, but not be a hard fast thing so that if there's a difficult request it's definitely something that, you know, that may not necessarily put a contracted party in breach and we were actually trying to accommodate that concern.

And so that's the reason we made the request. We think it's very important at this juncture to have this in the final report and hope that you guys can consider it. Thank you.

Kurt Pritz: Thanks, Margie. I noted Matt's - Matt Serlin's comment in the chat about a 30-day time period that I thought we had circled around also. And so I wonder if that could be inserted in some way or we have to come up with some different wording. Stephanie, welcome. Please go ahead.

Stephanie Perrin: Thanks very much. Can you hear me?

Kurt Pritz: Yes.

Stephanie Perrin: Stephanie Perrin for the record. Good. I'm going to echo what I said in the chat some time ago. This is premature, this discussion. We have a fulsome discussion to be had in Phase 2 on the terms and conditions of access. You cannot spec a response time before you have spec'd the criteria that the contracted party need to have established in the request first. And we haven't dealt with that.

So I think this is illogical and exposes our report to great risk because we are, it looks exactly like we are continuing the kind of demands set by outside third parties as opposed to respecting the privacy rights of individuals under the GDPR. So really let's push this to Phase 2, as Milton suggested a while go, and not get into implementation details when we haven't set the policy. Thank you.

Terri Agnew: Kurt, your line may still be muted.

Kurt Pritz: Thanks. Boy I said something really good then too. Thanks very much for that, Stephanie. Go ahead, Sarah.

Sarah Wyld: Thank you. Hi, this is Sarah Wyld. I can understand wanting SLA period that could give assurance to the requestor. But this is a significant burden on all the contracted parties which we would have to discuss within our constituency before we can come to an agreement. And as Stephanie mentioned, we don't have all the information that we need at this time to set an appropriate response timeframe.

And as we've also already said today, the time to make this kind of change has already passed. If this will be revisited in Phase 2, we should leave it here and come back to it then. But now is not the time to put a timeline on the response. And I want to also second what Beth said on that topic.

Also I think I heard someone mention that temp spec access is not working. I have to strongly disagree with that. I can say that we have received over 2000 requests for disclosure of nonpublic data as of last Friday and we are currently providing data when an appropriate legal basis to get it has been demonstrated within a reasonable timeframe. I have a blog post on that topic that was put up today and I will paste that link in chat. Thank you.

Kurt Pritz: Thanks, Sarah. Mark, please go ahead.

Mark Svancarek: Thanks. Mark Svancarek. Sarah, yes, I tried to recognize what you just said in my earlier intervention that we, you know, we have seen some parties, you know, making the investment now and making the effort now. That is a big change from earlier this year when, you know, effectively 85% of our requests we didn't even - not even get a response to let alone a disclosure from. So - and we do appreciate moving forward on that and recognize you for it.

It's not the standard of the industry at this point though so that's why we're still in this place where we're trying to get some brackets, some guardrails around this. And I just wanted to respectfully disagree with Stephanie that such a thing is not necessarily illogical, you know, things can be defined, we have this many resources, we have this much time, we have this many

features to implement things like that. So we can say this will be our SLA, and then we figure out how we go about achieving it even if not all the details are available at this time.

So I don't want to belabor that point, I'm just saying that it's certainly not outside the realm of possibility that is not just on the face of it an illogical proposition, it is something that could be done and has been done from time to time, perhaps not just in this setting so far. Thanks.

Kurt Pritz: Thanks, Mark. I'll note that Ashley's at the end of the queue so let's stop there. She'll be our alpha and omega. And Ben, welcome, please go ahead.

Ben Butler: Thanks, Kurt. I just - I'm speaking as someone who's run the abuse desk for a large registrar for about 15 years, not necessarily as an SSAC representative, just wanted to clarify that. But we've been brought up that what some folks are looking for is some comfort and some enforceability via contractual compliance. I would put forward we don't have to have an SLA, you know, 95% within 15 days or whatever, in the requirement in order to have it enforceable.

Section 3.1(a) regarding abuse of the RAA says, "Registrars shall take reasonable and prompt steps to investigate and respond appropriately to reports of abuse." And we get - we deal with contractual compliance on a regular basis, you know, multiple times a week and that is something that is actively being enforced without having a strict SLA put forward.

I think "reasonable and prompt steps" is enough that contractual compliance can make that evaluation. I just wanted to put that forward so that maybe we don't have to have, you know, an argument about numbers. Thanks.

Kurt Pritz: Thanks very much for that, Ben. Ashley.

Ashley Heineman: Thanks. And so I just wanted to note, well first of all I think - I appreciate folks willing to get some kind of recognition of reasonableness on behalf of the contracted parties in here. I think that's, at least from my perspective a huge step. But just in terms of maybe trying to thread the needle, and there's been discussion in the chat on this, and just to remind people that when we were going through over the course of the last couple of months, you know, conversation on reasonable access, nobody took issue with the 30 day request time.

That got lost simply because over the last couple of weeks folks were just trying to tidy up the language in this recommendation. It was never a substantive concern with 30 days. So I wonder, I mean, if it wasn't an issue for people as the temp spec, I mean, I haven't heard anybody take issue with it in that respect, yet I could be wrong, but 30 days, while it's not, you know, perfect for - I'm assuming for the IPC and the BC, it is not perfect I'm guessing for the contracted parties, at least it's something to shoot for and perhaps improve upon moving forward.

So I just want to leave it there in terms of, you know, we're getting some momentum on cooperating and coming to agreement on things perhaps that's one area we can do it too.

Kurt Pritz: So there's two - there's two sorts of paths here on the table. One is Ben's - that I think was very articulate and the other is the one that was articulated by Ashley but also she was channeling people on the chat to put 30 days in here. I wonder if, you know, I wonder - yes, and I'm - so I'm reading Margie's thing, the 30 days is too long for us. So I think that, you know, if we put 30 days into the recommendation that we're going to have disagreement from some parties on this is not adequate.

And so the solution I'd like to float here is that - and let me get my thoughts together a little bit, but one is I think that, you know, I'm agreeing with Stephanie and Ben and Margie all the same time that 30 days does not meet

the needs of those trying to get at some malfeasance in the short term. And in fact, we don't know what that number is because it's usually stacked against some reasonableness standard, you know, what's a reasonable in the situation so that's why I think a number in that case is not good because it's not going to meet the requirements of some or the abilities of some to meet.

Second, you know, I listened to Sarah and the work that Tucows is doing on this. And, you know, I work for a small TLD registry which means I don't have much of a dog in the fight in this whole discussion. But, you know, I look at Tucows, you know, with an in-house legal staff and the ability to make an investment in these things and process them and then I think about smaller registrars that are hit with requests with no in-house counsel and now they're required to, you know, retain outside counsel in order to determine whether or not a request is lawful or not.

You know, so Tucows took some time to move down the learning curve; for smaller registrars, that's even a - that's a tougher row to hoe. And so, you know, that's why I think the - some of the contracted parties on this call are saying, you know, we have to go back and work these SLAs out because they're hard to work.

The third point I want to make is, you know, as I said before, picking any sort of number at this stage will almost certainly be wrong and, you know, to a certain extent be guffawed at because we don't have the - we don't have the operating processes or the ability to make that sort of calculation to do that. And so I'm going to go back to where I think we were, where I think we should be, and that is, you know, behaving in a reasonable way that addresses bad behavior.

I'm going to - I would recommend that, and I need to go over here, I'm going to - I'm not reading the chat at all, although I see it flying by. So, you know,, "Response time for a response to the requestor will occur without undue

delay.” In any event, you know, in a time that can be determined during the implementation phase.” You know, it says a finalized timeframe to be set during implementation.

So, you know, I think we’ll insert - I’d ask staff to insert for review Ashley’s sentence that I took down as “Registrars must reasonably consider and accommodate lawful requests for disclosure.” I would - I think the xx days in the recommendation is a little bit awkward, but just modify that language that, you know, includes the undue delay and say that this will be discussed, you know, determined during the implementation phase.

And then, you know, I think yes, so I think that’s all I want to say about that. So we’ll, you know, we’ll put that wording into the recommendation. Those of you whose groups want to disagree with that, you know, go ahead and register that. And I think that's the best we can do with this recommendation.

So I want to commend the group on coming so far. This recommendation is so much further along than it was. And I think it represents a remarkable amount of collaboration and cooperation and consensus building, so thanks for your efforts there.

Marika, so what's the best path for this? So we've kind of made two calls so far, one on city names and then we have this language that’s not amenable to everybody but, you know, language for this. What's the next steps for going ahead with this? Oh, Margie, please go ahead, I didn't see you in the queue because I've been reading other stuff.

Margie Milam: Sure. Before we move on this, I mean, implementation means you're talking a year from now before we come up with a timeline and that is simply unacceptable. Is there any way to at least push this into Phase 2 so that the timelines get identified there? But implementation is, you know, we will be in an area - a gray area for however long that is, six months, eight months, you know, it depends on whenever we conclude that process. And this seems to

me to be an issue that should be identified in the consensus policy, not in the implementation phase.

Kurt Pritz: Boy, I don't know. I don't know where - I'm for getting it - having the discussion with a sense of urgency and in the way where there can be a finalization of the implementation of this policy. I'm not so sure that it's in Phase 2 but I'm happy to have the discussion anywhere. And I don't know what it seems to other people.

To me it seems like an implementation thing and we can - you know, the implementation discussion will take place in an ordered sort of way. And I don't see a bar to - I don't see a bar to, you know, dividing the, you know, prioritizing that discussion in a way that gets it done the fastest way. So anyway, that's kind of all I have to say about that but it seems like an operational kind of discussion to me rather than a policy level discussion. But I'm open to any of that.

I'm going to call on Mark first and then Marika.

Mark Svancarek: Mark Svancarek. Okay so just sort of summing up here, it appears that the first edit was found to be reasonable, so requires a registry or a - a registrar or registry operator to reasonably consider the request. It sounded like there was some incentive to look into 95% (unintelligible) the 15 day target was problematic. I don't think we ever got any conclusion on whether the words "a substantially shorter" (unintelligible) was acceptable as opposed to a separate timeline of less than.

And I don't think there was any objection to adding the suggested response time will be revisited if the volumes are excessive. Is that a correct summary of the discussion so far?

Kurt Pritz: Anybody in the chat disagree with that? Yes so I think that's right, Mark. Milton.

Milton Mueller: Yes, I don't think we've progressed farther beyond where we - pretty much where we started which was that Ashley wanted a reassurance of reasonableness that was forthcoming from everybody, was willing to change the language to offer that assurance, but the line was drawn when we start crossing the line into implementation details and timelines that are specific and could not be really committed to.

So just - you're just going to have to give that up. I mean, it's not going to get consensus and that's pretty obvious now. And we've - again have bent over backwards to accommodate 2/3 of one stakeholder group and SSAC, I guess, in this case also. But other than - I thought SSAC expressed satisfaction that with the compliance requirements under certain parts of the RAA that they would be happy with a more general reasonableness concern. So let's accept reality and that's the frontier of consensus, we're not going to get timelines, we're not going to get percentages, let's move on.

Kurt Pritz: Okay, Milton. Marika, your hand is up.

Marika Konings: Yes thanks, Kurt. This is Marika. I just wanted to respond to your earlier question on what is next. And I just want to confirm that what staff has taken away is an action item is to update the recommendation to include the dissent that Ashley put forward and I think as a heading of that section that talks about, you know, response times that would read something like, "Registrars must reasonably consider and accommodate lawful requests for disclosure."

No further changes would be made so the language that's currently in the final report would remain as-is. So I hope that aligns with what the group has considered. And then I'm assuming that then the next step on that would be for people to actually respond to the possible updated consensus designations that you will I think be sending out later today to be able to react to whether or not, you know, people agree with that.

And of course people could already indicate in the chat now whether, you know, that means their support for this recommendation has changed or not. So you can factor that into your designation. At least I think from a staff perspective that's what we would see as the next step on this one.

Kurt Pritz: So what if, boy we're going to really piss off the support team here by continuing this discussion and probably Milton too. But what if - so I'm reading the recommendation and I'm in the timeline and criteria for registrar and registry operations - operator responses. You know, it says, "A finalized timeframe to be set during implementation period. This discussion will be prioritized during the implementation phase."

I'd really want to hear from the contracted parties or - I'd like to hear anybody would be against that sentence if there's a lot of disagreement with that then - but it is a complicated subject and is likely to take some time. So I think you know, among many parallel discussions that will be happening during implementation this could be prioritized.

I can say it one more time but I don't make any guarantees. So the current recommendation says, "A finalized timeframe to be set during implementation." And I would add what I'd said before. So "A finalized timeframe to be set during implementation. A discussion of lawful disclosure will be prioritized during the implementation discussion."

Yes, I know, Matt, but I do understand that implementation can take a while. And although there's a timeframe set on it but I have kids, I know what "meh" means, just like you have students. Alan Woods.

Alan Woods: Thanks, Kurt. I'm trying to noodle over this, the implementation aspect. I mean, my biggest problem with this, just straight out, is that, you know, implementation again is in a way taking that out of the hands and it is just going to be set on - for, again, the entire point of this argument is that at this moment in time we do not know, because it is on a case by case basis as to

the nature of the request what we need to look. Do we need to take legal advice on any particular given one?

And, you know, number one, 15 days is far too short. I don't understand and I've said this in - many times over the months, and then recently in the chat, you know, that again the whole point of GDPR is to protect the privacy rights of the data subject, it is not to falsely elevate that of third parties. And that's one, you know, it would appear to be coming through. So implementation to me always gives this kind of a - you're taking the decision again out of our hands in this one.

We've been perfectly reasonable in saying 30 days, commensurate with that of the data subject request. And I'm sorry, something is going to give and I think at this particular point in time the people being utterly unreasonable here are the BC and the IPC. It's as simple as that.

Kurt Pritz: Everybody's trying to fulfill their own needs and the needs of their organization. So I don't think we're - the report is not going to reflect an arbitrary timeline, so you know, that'll have to be dealt with. So all I'm suggesting is that this conversation happens during implementation and that's prioritized I would hope that during the implementation discussion the sorts of things you mentioned that requests come in all different shapes and sizes and colors and, you know, senses of urgency can be addressed so that the needs of the parties can be addressed. And even 15 days is too long in some cases. And 30 days is fine in others.

So I don't want to talk about timeframes anymore; they're not included here. I kind of think we're done with this topic and we'll add a sentence to the end here that this discussion - the lawful access discussion - lawful disclosure discussion will be prioritized during the implementation phase and leave it at that and then each party can support or not support. Go ahead, Mark.

Mark Svancarek: Thanks. Mark Svancarek. I was going to make one comment, but first something Alan said intrigued me. If that number had been 30 days, would you have just accepted that? Did I misunderstand that? I mean, 30 days is such a long time, but if we could close this issue out that would be (unintelligible). So sorry if I misheard that. That would be very exciting if it didn't mishear it.

But also I just had to make the point that GDPR is actually a pretty nuanced thing and it has multiple goals, certainly standardizing privacy law is a big part of it and being respectful and protective of data subjects and their rights is part of it but there's also elements of balance as well, it's not just simply a one-sided thing and it's not inappropriate to, you know, try to find where that balance, you know, what is the fulcrum of that balance.

Forget it, I'm doing an analogy again and I'm terrible at them. But balance is part of it, it's not just a one-sided thing so that's what we're trying to find, we're trying to find is that balance point. Thanks.

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

Margie Milam: Sure. I was going to - this is Margie - address another issue. This notion that by dissenting we're unreasonable really is problematic. You know, the multistakeholder model is one that, you know, enables all of us to express our positions and advocate for what we need for our constituencies. And so, you know, I really object to that statement that somehow we're unreasonable because we don't go along with a process where frankly there hasn't been enough consideration of the IPC and the BC positions. And so, you know, we're doing our best to try to share our perspective and to try to convince our colleagues but simply, you know, by disagreeing with where this report goes doesn't mean that we're somehow unreasonable or, you know, anti-the multistakeholder model.

Kurt Pritz: Yes, so thanks for that, Margie. So staff, if you could - staff, I hate that word - but if the support team could like create the redlines of the city name recommendation and what I'm suggesting here that people can consider whether or not to support that's fine. And then let's take a 10 minute break, so it's 7:25 here, so it's 25 minutes after the hour, almost everywhere except like India and a couple other places. So let's meet back at 35 minutes after the hour and let's go clear our heads. Thanks, everyone.

Okay. One more minute, everyone. Is the recording started? Okay. Thanks for coming back, everyone, at least your name's still on the list. So with geographic basis, I mean, we see a wide variety of disparate comments. And where all these stakeholder groups with a small S, don't agree with the current assessment.

So where we are on this right now I think is that we really don't have a recommendation because I think, you know, maybe the contracted parties are behind it because they didn't comment but essentially everyone else is against it the way it's written. And so I don't - I almost don't think it can be in the final report in this form. And so that's point one.

Point two is we've heard that, you know, it's difficult to require contracted parties to differentiate registered name holders on a geographic basis because it's really difficult. But we don't know how difficult. And we've heard from others it can be done but we don't know how it can be done or if that applies to the world of gTLDs the way it applies to, say, ccTLDs or some other environment where these distinctions are being made.

And then we've also talked about, you know, other privacy regimes. So California has a new privacy law, maybe the United States will have one, other regimes are considering them. How do contracted parties wade through that?

So if we don't - so we can essentially just take this recommendation down because there's no agreement about it all. Or we can say, you know, this is a tough problem, we should, you know, the GNSO should say here, we should study it but we should figure out a way how in our really singular environment that - this is an area where, you know, the DNS really is different from other industries, that we should get to work figuring this out.

If we don't say it somebody else is going to take up the work anyway, but it's a way for us to (unintelligible) say it's a difficult problem and, you know, we should get to work trying to figure it out. So that's why I brought this up again. Alan Greenberg, go ahead.

Alan Greenberg: Yes thank you. I think you just suggested we omit the recommendation which says we'd be silent on it which I think has the exact same effect as what the recommendation says, which says, the registrars and registries may choose to try to accommodate geographic differentiation or not. So from that point of view, yes. But I think the comfort level that some people were looking for is that a commitment that we would look at it in more detail.

You know, the statement has been made here that it is difficult to do. Some of us have problems understanding that given that we do have a country and with perhaps exception of California, country is usual enough to differentiate or to identify what privacy law may apply to it. But, you know, we're past the stage where we're going to debate whether we should, you know, require that geographic differentiation be done here. But a commitment that it be done some time going forward whether it's in Phase 2 or some other well defined place is the level of comfort that some of us were looking for. Thank you.

Kurt Pritz: I wonder - thank you, Alan. I wonder how also we preserve the ability to consider the legal advice we're going to receive on this issue that poses a pretty complicated foundational question to start and from which other work would spring. Amr, welcome, please go ahead.

Alan Greenberg: Yes, Kurt, if I can get back in when you allow me to respond?

Kurt Pritz: No, go ahead, Alan. Amr, if you would let Alan follow up that'd be great?

Alan Greenberg: Yes, I was just going to say that we're living in a dream world if we think legal advice is going to give us some hard advice. They're going to weigh the pros and cons and then say we have to make a decision ourselves. You know, that's always what happens on a complex issue like that. So let's not pretend legal advice will suddenly make things completely clear. Thank you.

Kurt Pritz: Yes, and I agree with that and I thought I alluded to that in my (unintelligible) but maybe not so clearly. Amr, please go ahead. Welcome to the call.

Amr Elsadr: So thanks, Kurt. This is Amr. I hope you can hear me. My Internet connection is not great. I just wanted to maybe offer a, you know, a different position for the NCSG than the one that is on the screen now. We would prefer that, you know, the recommendations make sure that, you know, the policy is uniform across all contracted parties and the registered name holders, but we're willing to accept that, you know, for now pending receipt of legal advice from Bird & Bird that option remain with contracted parties to differentiate between registered name holders on a geographic basis.

I think it's fair to say that, you know, the legal advice we do receive will not be definitive in terms of, you know, giving us clear instructions on how to proceed. But it will, I'm at least hoping that it will, you know, be helpful towards getting us there. And this question specifically we asked very clearly, you know, for certain points that should be able to able make this determination and that's of course based on the guidance that the EDPB provided on the territorial scope of GDPR.

So if - I don't know if it makes a difference that we change our position now that we do accept the issue of, you know, the option being put to contracted parties or not but I do take Alan's point that, you know, having that option or

omitting the recommendation altogether would effectively lead to the same outcome. Thanks.

Kurt Pritz: Thanks, Amr. Farzaneh, welcome.

Farzaneh Badii: Hi, thanks, Kurt. So I don't have much to add to what Amr said just that I just wanted to kind of remind us what happened here on the geographic basis differentiation. Basically we were discussing it and it was I think it was on 25th of January and we discussed it. There was no support for doing (unintelligible) research as I think Alan's also now mentioning it. And you gave them some times. And Kristina came up with the language and we gave them - gave the group some time to reflect.

And there was no objection. Now I'm not saying that everything is set in stone. I wish it was and we have treated it like that until now. We have - NCSG has not reopened issues. However, I believe that if we go to - in Phase 2 the only thing that can be discussed is about - is about whether this is actually legally possible to give them the option to give the registries and registrars the option to geographic differentiate.

It's not about research whether it is possible because it is - ICANN does global policy if it does a global access policy, disclosure policy it will do also a global policy that has no geographical differentiation. So that's just what I wanted to point out about this recommendation. And we are okay with it being optional for the registries and registrars. Thanks.

Kurt Pritz: Thanks, Farzaneh. Hadia, how are you?

Hadia Elminiawi: (Unintelligible) so I think that deleting this recommendation is not actually an option because technically speaking, this recommendation is still open for discussion. And it is not possible to reach any conclusions with regard to this item today or tomorrow. We have - we are still seeking legal advice and we

don't have all the data available in front of us now. And it won't be soon until we have it. So I don't think that deleting the recommendation is an option.

The way forward is to (unintelligible) and refer to the (unintelligible) matter that we are still waiting for more data with regard to this subject so that we can discuss it further (unintelligible). So I would definitely (unintelligible) the recommendation open for discussion (unintelligible). Thank you.

Kurt Pritz: Thanks, Hadia. Milton, go ahead. How was I incorrect?

Milton Mueller: Yes, so if you look carefully at our comment you say it does not say that we dissent from this recommendation. What we said was that we preferred uniform applicability, and it's a point that we have made quite passionately and strongly throughout this process, that we want global governance of the DNS through ICANN and we think that fragmentation of the DNS rules and policies along geographic lines is precisely what ICANN was created to avoid.

So clearly we are in favor of requiring registries and registrars not to differentiate on a geographic basis; however we realize also that there are several stakeholder groups that would not accept that. And we thought that we had come to a pretty strong consensus on optional, giving registrars the option to make the geographic distinction. And we were simply adding as a comment that we would have preferred a uniformity - a global uniformity.

Now, I also want to take issue with something Alan said about the legal advice not giving us any guidance. I think there's a very clear piece of guidance that come out of the legal advice and that is whether the fact that ICANN has an establishment in the European Union means that its rules must require uniform treatment regardless of geographic location, uniform applicability of the GDPR regardless of application. I think that's an area in which the legal advisor can give us something that we can actually use; it's not going to be one of those well maybe it does and maybe it doesn't.

I mean, it could be that in principle but I think that's the kind of question that we could get a very clear yes or no from. And if it's yes then again this recommendation can, you know, there's no more debate. We will be required to not have geographic differentiation. So I really don't think that we can go into this saying oh there's no - there's no agreement on - insufficient agreement on this. At the very least we have three entire stakeholder groups, it's not clear to me where ALAC stands on this, but I think they support some form of differentiation.

But again if it's optional based on the registrar or registry then I'm not sure that they would object to that. So I think we're actually, at very least, strong support and I think that the IPC BC, who might be expected to support required geographic differentiation might also be willing to accept optionality because that may be the best that they're going to get out of the situation. So I think we're in a much better position to make this recommendation than you're presenting it. Thank you.

Kurt Pritz: Thanks, Milton. So gosh I could talk about this for a long time but I know we don't have time to do that. You know, part of my thinking is that registrars and registries are trying to wade through this for themselves. You know, they might be trying to penetrate two different markets with two different privacy regimes that are, to a certain extent, mutually exclusive. And so how, you know, what are the sets of rules?

You know, I think the industry, you know, we've already asked for legal advice so it's going to come sometime in the next couple weeks and then what are we going to do with it if this topic is not on the table? And, you know, even outside this recommendation, which could stay worded the way it is, why isn't it important for - isn't this a good thing for ICANN to do to spend some of its dough to help contracted parties wade through this morass?

know, some are European are very happy to be set, but, you know, some are astride different jurisdictions and would appreciate, you know, learning legal

developments and the laws that evolve and how it's being applied and those sorts of things. So anyway that's why I was for that. Margie, go ahead.

Margie Milam: Hi, Kurt. Thank you. It's Margie. I think that's the reason we made that recommendation that it be part of the study that's already going to be done for the natural legal persons. This is something that I think we can take some instruction from what the ccTLDs do and I think that you know, that getting that additional information along with the legal advice, because obviously that's a key piece of analysis that we need to undertake and understand, would put us in a better position for answering this in Phase 2.

I mean, what you see in the comments from SSAC and others shows that it's a very significant issue and simply saying that it should be a "may" right now isn't giving the issue full consideration. And so that's why we made the proposal to move it into Phase 2 taking into account, you know, what is feasible? Because we obviously want something feasible and looking at what the ccTLDs do I think is instructive for that can be done in the DNS space.

Kurt Pritz: Thanks, Margie. Alan Greenberg.

Alan Greenberg: Thank you. First of all we're conflating two different legal arguments in one. There's one that is ICANN because of its presence in the EU subject to GDPR universally and therefore we don't have a question about this, we must apply - we must treat everyone regardless of where they are the same because we have a presence in the EU.

There are certainly large contracted parties that have offices in the EU but have chosen to not think that all of their registrants are subject to GDPR. So even in our world there's some argument for saying we don't do processing in the EU and therefore our offices don't matter.

The legal advice we get may be very strong; it may not be. Ultimately it will probably rely on the Data Protection Board and courts to decide whether our

presence classifies as, you know, we're European or not. But then there's a second issue, if we are not required based on our presence in the EU, should we differentiate?

Milton and others have said we want a universal law or universal rule, but the universal rule might well be you must publish unless the law says you can't. And all of our policies are subject to local law. So you can have a universal rule and still honor GDPR. So it just depends which way you phrase the rules. So we're conflating two different things and I think we need to separate them. If ultimately the law says we're European, then the whole issue becomes moot. But we shouldn't prejudge that.

And I believe as Margie suggested, as the SSAC has suggested, that we should, and ALAC has taken a very clear position despite Milton's not being sure, that we should differentiate geographically and we believe that we should be putting efforts into trying to do that. Thank you.

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

Amr Elsadr: Thanks, Kurt. And, Alan, thank you for that explanation. It was helpful in terms of understanding where you're coming from with this. I wanted to point something else out which is one of the other positions that the NCSG has held from early discussions on this issue, even prior to the EDPB is guidance on territorial scope which was that, you know, part of the uniformity of ICANN's consensus policies and you know, the obligations they require contracted parties to be subject to was that we don't believe that ICANN consensus policies should create competitive advantages between different contracted parties.

It is my hope that, you know, the advice we are seeking from Bird & Bird on this not only answers the question of whether, you know, geo differentiation should be done for registered name holders but also whether GDPR

applicability will also, you know, impact contracted parties and whether their location - depending, I mean, irrespective of where their locations are.

And this is of course you know, based on the fact that ICANN as a controller with establishments in the EU, should that prove to be the case depending on the feedback we get, needs to be compliant with GDPR in all processing activities it requires of its data processors. So, you know, I would think it would be wise of us to not oblige any contracted parties at this point.

You know, in all due respect to the positions of SSAC and the IPC, the BC and ALAC, but until we know more about this at the time being I think, you know, it would be irresponsible of us to require contracted parties to perform any differentiation based on geographic, you know, location, whether it be the geographic location of registered name holders or the contracted parties themselves. But let's just wait and see what we hear from Bird & Bird before continuing this discussion.

You know, when we do hear from them, we might find out that, you know, no, it is not possible to perform geographic distinction at all. If we hear otherwise then, you know, there are these other issues we need to take into consideration as well. So like I said, for the time being, I think it would be irresponsible of us to recommend otherwise. Thank you.

Kurt Pritz: Yes. And so to be really clear, what - and maybe I should have made this clear at the outset of the discussion, so I am - my recommendation from my position was that we would not change the recommendation as written but that we would add that contingent upon the outcome of pending legal advice ICANN Organization with GNSO oversight will undertake a measured study with respect to geographic distinctions.

And then I provided - if you have that memo I provided a couple more things to kind of make sure the study was tailored because I remember some people were concerned about the expense and lack of output. So I'm trying to

reconcile why that's not acceptable given that we're waiting for legal advice, I want to talk about in a couple weeks.

Alan, are you at the top of the queue or is that an old hand? I went away from it and then came back. Yes thanks. Sarah, go ahead.

Sarah Wyld: Hi, thank you. This is Sarah. You know, this is another recommendation that we have discussed at length. And we already came to an agreement which is that the contracted party should determine if they will differentiate or not. ccTLD policy is limited to a specific jurisdiction. And we have here contracted parties who need to operate worldwide.

So I'm not particularly opposed to doing this study but I don't see the point. Each contracted party will need to determine how best to comply with applicable law. And ICANN is not going to indemnify the contracted parties for taking action based on some kind of rules determined by this possible study. So we should respect the work that this team has already done, keep the recommendation as written.

And Kurt, I appreciate hearing you confirm that we will do that. I think the study is not really necessary but I'm not really strongly opposed to conducting it. Thank you.

Kurt Pritz: So how would - so maybe the way to put this question is, say there's a registrar that, you know, has no servers, you know, just take an extreme case and say has no servers in the EEA, no registrants in the EEA, you know, it's the Antarctic registrar or something like that. And so clearly in some clear way doesn't have to comply with GDPR. Then, can it still decide to not publish data based on that? I think that's the question that those that are against the way the recommendation is written are saying.

Thomas, welcome. We're getting broad participation today which is exciting. Thomas, you're a little bit quieter than you'd want to be.

Terri Agnew: And, Thomas, this is Terri. We're unable to hear you right now.

Kurt Pritz: He has jumping connection on a train. So let's go to Beth and hope that Thomas comes out of the tunnel.

Beth Bacon: Hi, this is Beth. Sadly Thomas I'm sure would have put this better. But I think Kurt, I want to support wholeheartedly what Sarah said and she said it very well. The CCs, while offering an interesting perspective, are not analogous to a gTLD today by contracts with ICANN, a large (difference), be those that are multijurisdictional and are, you know, not governed by one specific jurisdictional law.

And I think I would like to draw attention to the granularity and kind of the edge case of your example which I think really just demonstrates the need for flexibility on the behalf of contracted parties. If you look at the list of comments the only folks that have not commented, other than to say yes, we support this, this provides the flexibility we need, are the folks who are actually going to have to implement this and that's the contracted parties.

At this point this is probably our cleanest recommendation and that it ties directly to an item in the temporary specification that during the temporary specification discussions we've discussed at length and (need) of flexibility was recognized. As Sarah said, I don't know that we're opposed to looking into this more and having a study, but I think at this point if we can have a recommendation that is clean and says you may do this, you are not required, and then we can look into it, but not necessarily kick it to Phase 2 because Phase 2 is now turning into - is Phase 1 Part Deux, is just going to be déjà vu.

And I don't think that's efficient, I don't think that's going to meet the needs of what is chartered for Phase 2, which is looking into access and disclosure which is an important thing for most of this group, if not all in this group. So I

just want to say I think that we are in a place where we can provide the flexibility to contracted parties and look into it further but not necessarily talk this to death at this point. Thanks.

Kurt Pritz: Thank you. Thomas, are you connected?

Thomas Rickert: ...hope that the connection works. So I'm on the train so I might be disconnected. I guess that the two parameters that we want to follow is to have a system that is as unified at the global level as possible and still provide flexibility to the contracted parties under certain circumstances.

And I guess that the way out there regardless of legal advice that we might be asking for, because that's actually a policy decision that our group can take, is that the general rule should be that all users should be benefitting from the same rights and that the same regimes should be applicable at the global level, but based on a waiver system contracted parties can ask for an exemption from that system.

So I guess at the very outset of our discussions we have identified multiple laws either having been established or in the making at the global level. And we thought that would be a good idea to use GDPR as the global standard for this because that would be sort of the highest common denominator that would make us safe for multiple jurisdictions and therefore, you know, that should be the groundwork.

At least at that, I think we also mentioned the example of an IDN TLD only serving a specific market outside the EU with really no touch points in the EU, and certainly for those - that circumstances an exemption should be possible. But, you know, let's just remember ICANN's one world one Internet and that I think requires us to think globally and not foster fragmentation. Thank you.

Kurt Pritz: Thanks, Thomas. We heard you. Margie, please go ahead.

Margie Milam: Sure. This is Margie. I think the reason why we raised the geographic distinction is because there's a possibility that there will be differing conflicting laws. And that's - so the fragmentation that everyone is talking about will happen if there are conflicting laws. We've already seen in the US some indications that there may be a bill introduced related to this so this issue might become even, you know, more likely quicker if there's any movement on that particular proposed legislation.

And so it's shortsighted of us to assume that with one standard that we'll somehow be able to anticipate every possible geographic rule in different localities. And that's why the recommendation is to really take a look at this in Phase 2, take a look to see what the options are out there and make an informed decision knowing that, you know, that we received significant pushback from the various stakeholders in the comments that we received to date. So that's - so I think it would be very shortsighted and taking, you know, a position that we're going to have to move away from if other laws come up with different ways of dealing with this issue.

Kurt Pritz: Yes. Go ahead, Milton. Thank you for taking up the quiet space.

Milton Mueller: Yes just responding to Margie, I think, you know, what she said was basically true in terms of, yes, the fragmentation that is imposed by different countries have different laws is I don't see why they wouldn't support allowing registrars to differentiate when they're doing so and not doing so when they don't. I don't understand that.

Now I, you know, again we (strong) for a uniform system that says you should not differentiate. That would be the optimal point. But if indeed a registrar feels as if it can differentiate legally and wants to do so, then you will have lots of data to play with and that should make you happier than having no data to play with. So what exactly is wrong with Recommendation 16 in your view?

Kurt Pritz: Hey, Margie, I don't want to channel you but if you want to answer that question, please go ahead.

Margie Milam: I'm sorry, I didn't understand the question.

Kurt Pritz: Oh what's wrong with the recommendation as written? If, you know, with the...

((Crosstalk))

Margie Milam: Yes, we're deciding right...

((Crosstalk))

Milton Mueller: If I can restate it then...

((Crosstalk))

Kurt Pritz: Go ahead, Margie.

Margie Milam: Okay, we are deciding right now an issue that hasn't been fully discussed. Okay, and that's - so saying now that the registrars - the recommendation that a registrar can differentiate? Well what happens if a registry has a different position? It all doesn't make sense; we need to think about it from a little more informed position which is why we're asking that it be pushed into Phase 2 and to take a look at what the possibilities are and to see what's feasible. And so that's all we're saying is let's not - this is a decision right now that there may be differentiation as opposed there will be differentiation.

And we might get to a different place in Phase 2 after we have the legal analysis and we have the ability to understand if there's a study to be done what's feasible.

Kurt Pritz: Thanks. So I think it's better answered in terms of - so what are the negative impacts if the recommendation stays as written? I think that's a better - or a different way, not a better way, but a different way of putting Milton's question. And, you know, to me I think the negative impact - go ahead, Alan.

Alan Greenberg: The negative impacts are that registrars or registries who have no legal need under GDPR to redact a lot of information will be doing so should they choose to and they will likely choose to because it's easier. And, you know, not everyone is forthright and is going to do things, you know, which are either honorable or correct. So and certainly registrars and registries have a right to do things the easiest possible way and that means redact everything because it's easy. That's the problem.

Kurt Pritz: Farzaneh.

Farzaneh Badii: Kurt, I just wanted to reframe Alan's - what Alan said. There are problems with this recommendation, those who have a problem and want it to be researched in that this recommendation could lead to better data (unintelligible) for domain name registrant that might not be in jurisdictions that have good data protection laws and hence they can have better access and data mines and so on. And this is despite the fact that we have agreed to all these other disclosure and access criteria. It is absolutely unacceptable.

Kurt Pritz: So I don't really know where to go with this. So, you know, we have one choice to take down the recommendation but there doesn't seem to be support for that. We can leave the recommendation as-is and, you know, ask the parties that have not opined after this meeting to opine and, you know, say whether you support this recommendation or that you can't live with it.

And then the third part of this would be to undertake some sort of study. And it might not - it doesn't have to be a Phase 2 study I don't think, I don't think it has been pointed as a rules engine, that wasn't advocated. So - but I'm not sensing support for that. So I think, you know, time's up. We'll leave the

recommendation as it is. I hope to hear from the parties that have not submitted a comment and then we'll send it off to the GNSO with the appropriate consensus designation.

So Alan, I think that - Alan Greenberg - I think there's wording in the existing - it's not in the recommendation but it's in the report that legal advice is coming and will be taken into account. Alan Greenberg.

Alan Greenberg: Yes, Kurt, other recommendations say this is pending legal advice and stuff. This one definitively just says, "Registrar and registries may make their own decision," that's the difference and that was the reason that, yes, the words are there but they don't really allow us to do anything other than if the legal advice comes back and says oh my God, you're, you know, you're European, we may have to change it to "you must redact." But other than that it doesn't seem to leave the door open. At least that's the way I read the words, I may be wrong. Thank you.

Kurt Pritz: Yes. Give me one minute here. So sorry, this is taking longer than I thought. So the final report will reflect the right amount of the proper - so I'm going to paste something into the chat here. So this is what I recommended. So the final report will have the recommendation as currently written. So here's what I recommended to add based on our history of discussion.

So this is a green light red light thing, so if you're for this wording that's about to disappear off the top of the chat, put a green sign up. And if you're against including that wording put a red sign up. And I think I'll just count by groups but everybody can vote.

Marika Konings: Kurt, this is Marika. Can you please clarify whether this is...

((Crosstalk))

Kurt Pritz: Yes. So this would be added to the recommendation.

((Crosstalk))

Thomas Rickert: ...Thomas. My line cut off while you were asking the question. Can you please repeat it?

Kurt Pritz: Yes, Thomas. Can you see the chat? If you can't see the chat, and it looks like you can because you're typing in it. Up above somewhere I typed in a sentence that could be added into the recommendation. So the recommendation would stay as worded and this text will be - would be added to it.

Milton Mueller: Go ahead. Yes, Kurt, I find the language to be a bit confusing, particularly the last part. So the feasibility and cost assessment is an assessment of the study or the assessment of geographic distinctions? And if it's found to be feasible, define a tailored economical - it sounds like the first phase is a feasibility and cost assessment of a study, not of geographic differentiation. Is that correct?

Kurt Pritz: Yes.

Milton Mueller: Okay so this is just all about whether we do a study or not?

Kurt Pritz: Yes.

Milton Mueller: Okay. So another question, so if the legal advice settles the issue then we won't do a study? Is that clear from this - is that your intent in this language?

Kurt Pritz: Yes. Alan Greenberg.

Alan Greenberg: Yes, I would prefer not to limit to an economic study. There are other issues as has been pointed out a number of times; there are risks associated and

implications associated with over-applying GDPR and extra redaction and I think those need to be considered as well as the financial costs.

Kurt Pritz: So, yes, so I in-artfully worded this, Alan. And it was - so one of the concerns with the study was that you know, we'd spend millions of dollars on something and where does that money come from? So it really - that economical part really goes to managing the costs of the study and not to the terms of reference or something like that. And I would expect the terms of reference to be...

((Crosstalk))

Alan Greenberg: Kurt, I didn't see the "al" on it so I agree with you. Sorry I raised the issue.

Kurt Pritz: That's all right. Thank you. So I know you guys might be chatting so that's fine with me. Thank you for doing that. Anybody else going to vote? That's too bad. Okay. So we could put both languages in the recommendation and then have it universally disagreed with; each party could disagree with one half of it, right?

So I think that what we'll do is - so I think what we'll do is in the final report we'll add some wording about that. So I'll say that we won't make this part of the recommendation, we'll make it part of the wording in the report that the team discuss the possibility of doing an economic study or not an economic study, sorry, Alan, a study regarding this. And, you know, I don't see how further work on this is avoided in any case but if we don't want to recommend that, we won't.

So I think we're going into, you know, I want to hear - so we're going to leave the recommendation the way it is. In the text we'll put in that, you know, we discussed this term and there was a sort of split of opinion on it. One yes, two yes, three - oh that's - yes, one yes, two yes, three yes. Hands are going down too late for me - and leave it at that. And then if I could hear from the

parties that did not leave a comment here in this about where they stand on this recommendation I can accurately reflect in the report the parties that are for it and against it. Okay we're done with this one.

All right, what's next on the hit parade? So I'm getting some pings from the support team. So I just want to make it clear on this geographic basis one, we have comments from SSAC, NCSG that they'd modified during this discussion, ALAC, SSAC and the IPC. We don't have recommendations from the other groups regarding this recommendation. And given the split we'll want to reflect the opinion.

If there's no comment made on the - it could be assumed that you are - your group is for the recommendation as written. So we'll need to hear from you on this one. And that'll be a specific staff or support team action to make sure we get input from the parties that haven't opined here.

Marika Konings: Kurt, this is Marika. If I can ask a clarifying question?

Kurt Pritz: Yes sure.

Marika Konings: Yes, as part of that action item, you know, if it's acceptable we will ask it more in a general way because as we've seen on the call some groups have, you know, changed their perspective or clarified their position on this so I think it would be helpful if groups could, you know, confirm on the mailing list if they cannot live with this recommendation being in the report noting as well that of course accompanying statements, you know, clarify further what, you know, what more people would have liked to have seen.

But I think we just want to make sure that, you know, if we record this agreement, you know, with this specific recommendation that we have it accurately recorded which groups are in that camp.

Kurt Pritz: Okay well we're doing that in every other because with the submitted statements, we're basing our consensus designations based on that input. But, you know, approaching the way where you're comfortable that we have complete input. Go ahead, Alan. Or Alan, if that's your former hand, go ahead, Marc.

Marc Anderson: Thanks, Kurt. This is Marc Anderson. So on - I think you were just speaking on Recommendation 16 and I wanted to just raise my hand and clarify that the Registry Stakeholder Group did comment on Recommendation 16. And our comment was that we supported the language as-is in the February 11 draft. So just, you know, just to clarify that. You said you hadn't heard from the Registries but wanted to clarify that, you know, we did have a position and we supported the February 11 draft language on that one.

Kurt Pritz: All right. Thanks very much for that, Marc. Okay, let's wrap up today with data elements collected by registrars. So I'm going to have to get my wits about me on this one as my voice slowly goes into the sunset. So this one is really about the technical contact, so the data to be collected by registrars there's a lot of work been done about this. And we're - so currently we have - I'm sorry I'm stuttering a little bit here.

So the way the recommendation is currently written is that this data set will be collected by registrars but there's a split on whether registrars should be required to offer the technical contact. I don't know if you've had a chance to read the legal advice on this. And so our discussion went to the Data Privacy Board input that stated that notice to a technical contact must be made before technical contact was provided.

We had quite a discussion about that and then requested legal advice on that. I hope you've had a chance to read that memo that described the risks of - the risks associated with that. So I think where we are, and - on this is that the way the report is currently written that the technical contact will be

optional for registrars to provide. You know, essentially right now we have no recommendation or advice on it.

I don't know exactly where I wanted to go on this but I just wanted to make it really clear that we have no specific recommendation on it. And we wanted to know if anybody's opinion had changed on this based on the legal advice.

Alan Greenberg, I think that's an old hand, right...

((Crosstalk))

Alan Greenberg: No, it's a new hand.

Kurt Pritz: Oh great. Thanks.

Alan Greenberg: Thank you. The legal advice says we cannot rely on the registrant to give permission for whoever the contact is, which applies for the email - for the contact information that the registrant gives about the registrant. But if - in terms of what we publish it's going to be anonymized, so I'm not sure why we need to get permission for the anonymized address. But even if we do, there's well known technology on how to get permission. You send them an email and say click here if you agree, that's what happens if you subscribe to any email list.

So we have technology. The legal advice just says, can we rely on the registrant and I'm happy to accept the answer "no" on that one. I don't see how this is different from any of the other types of things we're talking about and, you know, we don't say the registrar can decide whether to collect other optional information - must offer other optional information or not. We don't ask them, you know, say you have a right to not collect extension numbers or the other information that's optional.

So, you know, we're not saying that for the organization field in the long term they may not offer it; we're saying they give the registrant the option of putting

it in or not. I don't see why we decided this one in a way that's different from the other ones that are in the exact same category. Thank you.

Kurt Pritz: Thank you, Alan. Sarah, go ahead.

Sarah Wyld: Thank you. Yes, I shall continue to play the broken record. We have already discussed this to a great degree of detail. And like I think we're trying to wrap up here, I think don't think we need to make changes to this recommendation. We're not going to figure out what optional means in the next 25 minutes if we couldn't already come to agreement. I think it just needs to remain optional for everybody. Thank you.

Kurt Pritz: Alan, is that for a response that hand?

Alan Greenberg: Yes it is. We have a dozen other fields which are also optional and we know what it means; it means they are offered and the registrant has the option of filling them in or not. So I don't know why we need a different definition here.

Kurt Pritz: So, Sarah, I think you're right, we did - we have discussed this at length but I think we're still divided on it. And I think maybe we should talk a little bit about the problem with associated with - or the feasibility and the possibility associated with approaching it as Alan says, if it's an anonymized contact why can't it work. And I think we've talked about that too but I don't know if any of the contracted parties has a - yes, go ahead, Sarah. Thanks.

Sarah Wyld: Thank you. Yes, so indeed having it as an anonymized contact is helpful in terms of publicly displaying that information, it does resolve that concern. But there is still a set of data processing activities that would need to be handled and I don't think we have really a sense of how to accomplish that in a legally compliant manner with a contact point that the contracted party may not actually have a legal relationship with.

If a technical contact is provided is completely separate from the registrant, which as we also know is a rare case but in that case it's difficult for the contracted party to process that data in an appropriate way. So I think we just need to stop trying to change recommendations at this point. Thank you.

Kurt Pritz: I think one of the reasons why this discussion point is here is that from the comments and the statements made, it wasn't clear with everybody what the recommendation is. And reading the report it's not made perfectly clear to me that it's optional but that can be inferred but you have to kind of dig deep a little bit. So there's - I think there was some misunderstanding of the group based on the comments that were made where we were.

Ashley, please go ahead.

Ashley Heineman: Yes, I think just to kind of echo what you said, Kurt, I'm reading the report over and over and over again and it reads to me as if it's optional for the registrant to provide the information but it's still the responsibility of the registrar to request it. So I guess I'm just lost as to where things are and I apologize if I am totally missing the boat on this but I'm just - I'm struggling to understand what the concern is here.

Kurt Pritz: So I think the, you know, we need to look at the report carefully on this issue. I think the concern has been raised then as Sarah said it's been discussed in some detail about the potential liability of the registered name holder listing potentially personal data of a third party as the tech contact without the knowledge of the - or the - the knowledge of the third party that the name is being included and without the consent of the third party that that information might be disclosed. And so that's what we've got legal advice on.

Beth, go ahead.

Beth Bacon: Hi, folks. It's Beth. I want to support Sarah and then I also would like to - in that we have discussed this a length but I think that there's clearly some

confusion as to actually what this is asking for at this point. It may not - I'm going to - Sarah just typed the words, I don't know, it may not be just in the public Whois but there's processing that's done that could include disclosure.

So if the problem here is that the text of the recommendation is just unclear as to what we are actually recommending for whom to do what, I will draw attention to the fact that the Registries suggested some clarifying edits, not changing the substance of the recommendation but clarifying it so folks can understand it.

So if you're open to that, sure. But I also am 100% fine with saying we have discussed this at length so I don't think we should change the substance in any way just to confer again with Sarah. But we should - we could if it's helpful look at the language that the Registries provided just to make it clear as to what we're actually saying in this recommendation. Thanks. And I'm happy to cut and paste that if that's helpful.

Kurt Pritz: I think so. Marika, I know you and I - and I don't know if Caitlin was part of that too, we were going through the report to look for where this issue was made clear that the technical contact was optional. Oh you pasted that into the chat.

Marika Konings: Yes, Kurt, this is Marika. So that is in the accompanying text of the report where we've kind of explained the different positions on this issue and especially the last sentence is trying to convey, you know, the team could not come to agreement on this issue and as such no recommendation is included in this report in relation to whether optional also means optional or required for the registrar to offer.

And as I clarified below, our interpretation of that is, you know, as there was no agreement there's no recommendation to that end as such as there is no requirement in place that either, you know, clarifies that this is optional or

required which by default would make it optional at least from our understanding for the registrar to decide on this.

Kurt Pritz: So as disappointing or not, you know, that's disappointing to some and not to others. I just wanted to be clear that - yes so I think the way the final report has it now is clear about the divergence on this issue. Beth, are you newly in the queue?

Beth Bacon: Yes, Kurt, I was going to offer to just explain why we went with this language if folks would like. But it's pretty clear.

Kurt Pritz: Sarah, for blind people like me you need a different color font. Okay so I didn't expect to make much of a difference here but wanted to note that where in the final report that language is and make it clear to those that commented that there's a divergence on this issue. I'm just looking at the chat. Okay, you know what, I think the way the final report is written is fine. And I don't want to change recommendations now at this stage of the game.

So we'll leave the final report the way it is. We'll leave the annotation that there's a difference of opinion on the technical contact being required to be collected and so there's no recommendation on that field at this time. I think that's the right way to handle that.

So there's three more topics left and it's 15 minutes to the hour. So I think we'll quit. So for the Registries, and so I want to, you know, we got off to a good start today but then kind of logged in and it might be due to my chairmanship but I just want to indicate that we're discussing issues that where there is confusion or were flagged by some where something wasn't clear. So I did not expect or nor should we expect to change positions on these things. But I just want to make sure that we're clear about what's in the report.

And so the discussion topics that I have left have to do with contractual compliance where some clarification was offered by Mark I think to match up the recommendation with what's actually happening. The organizational field where there's still some ambiguity in that and the legal versus natural distinction. So we'll talk about that tomorrow.

So the Registries on the call, you know, this will be our last call and I know you have a Registry Stakeholder Group call. I'd really appreciate it if you guys could make this call. So we'll have our last session and then you can report on the session right after that. But we'll try to wrap this up as best - as fast as we can. But given that it's the last meeting I'd ask your indulgence on that.

So and if anyone has additional topics other than the one Alan brought up earlier, that they want to discuss, you know, you need to make that known in the interim. Alan, go ahead.

Alan Greenberg: Yes, sorry. I had to step away for a minute and I'm a little bit confused. In the chat there's a comment that Beth said - proposed of the EPDP recommends data elements represented - the aggregate data set below are listed below are required to be collected by registrars noting the collection of some data elements is optional. Was that suggested to apply to the technical contact as well or did I miss something?

Kurt Pritz: You missed something. So...

Alan Greenberg: Okay.

Kurt Pritz: ...I think - I'm just scrolling through the final report here. So I think we'll leave the final report the way it is and note the divergence of opinion on technical contact and that there's not a recommendation on that. Marika or Caitlin, can you go through the action items from the meeting?

Marika Konings: Sure, Kurt. This is Marika. So as a first action item for you to review the consensus designations in light of some of the input received on the list and see if any require modifications, any updates are to be shared with the EPDP team as soon as possible. In relation to Recommendation 18, reasonable access, staff support team to add the sentence that was agreed to Recommendation Number 18 both the clarifying sentence in relation to reasonably considered accommodate requests by registries and registrars as well as the notion that the discussion on the timeframe should be prioritized as part of the implementation discussion.

In relation to Recommendation 11, city field, staff support team is to update Recommendation 11 as agreed during the meeting and circulate that language to the list to make sure it aligns with what was discussed and agreed today.

In relation to geographic considerations, Recommendation 16, the EPDP team members are to confirm which groups cannot live with the inclusion of this recommendation recognizing the statements included in the report also indicate groups positions on this topic. Staff support team to ensure that the accompanying text refers to the possibility of a study that was considered but making clear as well that no agreement was reached on that.

And I think that's all I have. If I may add another one to potentially speed up conversations on tomorrow's call, I think for the items that are remaining the document that Kurt shared does include, you know, proposed next step so if people already have an opportunity to weigh in on that that may potentially reduce the time that needs to be used on those items tomorrow. And that's all I had on my list.

Kurt Pritz: Thanks for that advice, Marika. Anybody have any questions or comments? All right, I'll see you manana. Thanks very much, everyone.

END