

**ICANN Transcription
GNSO Temp Spec gTLD RD EPDP
Thursday, 20 December 2018 at 1400 UTC**

Note: The following is the output of transcribing from an audio recording of the GNSO Temp Spec gTLD RD EPDP call on the Thursday, 20 December 2018 at 14:00 UTC. Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://gns0.icann.org/en/group-activities/calendar>

Adobe Connect Recording: <https://participate.icann.org/p774a1erueg/?proto=true>

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

<https://gns0.icann.org/en/group-activities/calendar>

Coordinator: Recordings have started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 36th GNSO EPDP Team meeting taking place on the 20th of December, 2018 at 1400 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the telephone bridge could you please let yourself be known now?

Margie Milam: Margie Milam.

Terri Agnew: Thank you, Margie. Noted. Hearing no one further, we have listed apologies from Diane Plaut of the IPC and she has formally assigned Brian King as her 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, the link is available in the agenda pod to the right as well as in the meeting invite email.

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

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

Kurt Pritz: Hi, everyone. Thanks for joining the call. I'm glad to see everybody in such a good mood in the chat. I'll be in a good mood in about two hours. So in today's – for today's meeting I thought or we thought we'd run language by you that we've derived from other conversations. I'm not saying that – at this stage that we all agree with this language but I thought we'd discuss each of these four issues briefly to see how close we are, so I thought we'd kind of wrap up with that so – wrap up the year with that.

And then so that's that as far as announcements go this morning we'll send – this morning here in the Western United States but for Rafik late in his day, we're sending a note to the GNSO Council finally saying that we're not going

to send a letter to the Data Protection Board right away because – well outlining the reasons we discussed and saying we can't, you know, you can't unring the bell, you can't unsend the letter and we can always send one later so that'll go out.

And then, you know, it's important to note that the public comment period is closing manana, tomorrow, at midnight UTC so wherever that is for you. So I think that's all the notes I have. Caitlin or Marika is supposed to be on vacation but she's on the call – are there any other action items you want to review?

Caitlin Tubergen: This is Caitlin. And I am happy to report there are not outstanding action items for the EPDP team other than of course I'm sure that many of you are busy preparing your public comments with your constituencies, so thank you.

Kurt Pritz: Okay great. Thanks very much, Caitlin. So no action items, I guess we're doing. So let's – go ahead, Kavouss.

Kavouss Arasteh: Yes, good morning, good afternoon, good evening. As I mentioned in the chat before the start of the meeting I have two comments with your permission. The first...

((Crosstalk))

Kurt Pritz: Sure, go ahead.

Kavouss Arasteh: ...due to the time constraint, you need to slightly modify the way that you lead and conduct the discussions. There are several repetitive interventions; I think at some point of time you may kindly need to conduct the meeting to go to some sort of wrap up of the situation but not repeating. As someone mentioned, which I agree with the sentiment, but I don't agree with the language, it seems that some people come in again and again and again and repeating something which has been already discussed and covered.

So please kindly, because of the time constraint, I'm not criticizing at all your very good way of conducting the meeting but time constraint allow – does not allow us to listen so many repetitions and so on, so you may need to kindly wrap up at some time and take the control of the discussion and try not to offer for further comments, particularly for the people that have already made several times comments. This is one point, just a matter of suggestion.

And the second, I am not quite sure about the way that this small group would work for the examinations of the public comments. I have real doubts in the previous examination. Here 29 people working very hard and come up with something, if one comment received and try to override all of what we have discussed and come up with that, I think we should be quite careful but not to be surrounded to that comment to see whether we have discussed that comment before and whether this has been agreed by us, otherwise I don't want to put in the basket what we have just discussed before several times.

So kindly I ask you to allow us to know what is the working method of the small group? How they treat the public comments? Is one public comment overriding the decision of the team or the public comments should have sufficient background, sufficient argument, justification that triggered we reexamine the matter. I'm not quite sure about that. Thank you.

Kurt Pritz: Thanks for your comments, Kavouss. I'm going to take them as questions also. You know, with regard to your first comment, I'm very sympathetic to people repeating the thing. However, we often don't know what people are going to say until they say it and then we can't go back. But I think everybody's of the sense that time is of the essence.

And regards to the comments, I don't think there is a small group here; there's going to be a small group of ICANN staff and the leadership team working through the holiday to organize the comments, but other than that the idea of the Comment Section – of this comment process is for us to provide

the availability to place the comments right in front of you. So for any particular issue you can read the comments germane to that topic so essentially there is no small group for that. And I wanted to make one more point about...

((Crosstalk))

Kavouss Arasteh: ...general comment.

Kurt Pritz: Well okay but I'm not quite done. So and – my thinking is anyway it's not the source of the comment, it's the comment itself that, you know, we read a comment, we'll go oh, we hadn't thought of that before, that's unique reasoning or that's important reasoning or that's sound reasoning and we should take that into account when we read the comments, so, you know, not so much that just one person can upset the thinking of the group but rather that one person who thinks of unique and important way of looking at a topic should be considered. Go ahead, Kavouss.

Kavouss Arasteh: Yes, I have a follow up action, follow up comment, yes, now I understand that is only secretariat reach (confirm) or establish small team. I hope that the secretariat take into account the experience ICANN already gained during the ICG, CWG, CCWG Accountability and CCWG Auction and try to organize the comments in a proper order and relating to the subject, the name of the commenter, (unintelligible) to the commenter and the nature of the comment and so on so forth.

So we need, I'm sorry to bother them, we need to have some structure that we have already used to that; it worked very well and I hope that would not be a new arrangement with the arrangement we had previously with some improvement. That is just I wanted to add that it is really a requirement that this should be arranged in order to facilitate that.

And now with respect that who examine the public comment, I understood from Milton that everyone is subject to that examination. I don't know whether during my two sessions that I was absent you have decided differently, you have assigned the work to another arrangement or every one of these 29 person is entitled to go to the public comment when it is gathered and made available to comment on that and then bring it to the team for further discussion and further actions as appropriate. Thank you.

Kurt Pritz: Thanks, Kavouss. And again, the idea behind this public comment forum is to provide you unfiltered and well organized comments without a lot of intervention. During the break we'll be looking at the volume of comments and figuring out the best way to present them so it can save everybody the most amount of time. Okay thanks.

So let's get into substance. So what we've done is taken three areas and created wording around where we think the conversation has taken us. And there is also one item left off the agenda from the last meeting that we included in this one which is the second consent to registrant to publish technical contact temp spec language. So with that, I think we'll get into each one.

And the first topic has to do with privacy and proxy service and how the registrar returns responses to queries. And so what you see here is the language that we developed pretty much – well the language that we developed during the last meeting and it was sort of my failing that having developed it I didn't go back to that and review it with some attention to the detail of the words.

So the language that you see before you for – that has to do with returning queries with regard to privacy proxy registrations was developed during the last meeting. And then the bracketed language was added after suggestions from James and Mark. So that's the language there. I know that Alan has suggested some additional wording about privacy proxy providers and he

might want to introduce that. And I think there might have been one other intervention.

So with that this was one of the more straightforward discussions we had, so to the extent you can, if you haven't already, it went out yesterday around noon time my time, I'd like you to look at this language and then see if we're at a point where there's general agreement about this language or if there's objections to it. Alan Greenberg, go ahead please.

Alan Greenberg: Thank you. My only comment was to make sure that whatever language we use would work if we finally get the Privacy Proxy PDP implemented. So, you know, making a reference to known privacy proxy providers will do that, a little bit awkward language, but nevertheless but if we make reference just to affiliated ones then that language will have to be revised when and if the PDP actually gets implemented. And we don't want to go back and have to have another PDP to change that minor language.

So whatever we do should work in today's world where we can only refer to known privacy – rather privacy proxy providers who are known to be such to the registrar and in the next world where there will be a certification project – certification process and we should be able to definitively find out any privacy proxy provider, so just make it resilient to the – to future-proofing it, that's all.

Kurt Pritz: Thanks very much for that, Alan. Go ahead, Alex.

Alex Deacon: Thanks, Kurt. And good morning. This is Alex. Yes, so I agree. I think it does make sense, I agree with Alan that we should add text to make sure it's future-proofed for privacy proxy. You know, I wasn't involved in the implementation of the PPSAI but I was involved in setting the policy. I just wanted to remind folks that one of the recommendation of that PDP is that, you know, to the extent feasible, I'll just read it from the final report, "To the extent feasible domain name registrations involving privacy proxy service providers should be clearly labeled as such in the Whois."

So I think we should keep that in mind when thinking about this topic. I agree with Marc Anderson that we shouldn't be doing their job here, but future-proofing this recommendation I think is important. Thanks.

Kurt Pritz: Yes, I wonder – well anyway let's go down – go ahead, Marc.

Marc Anderson: Thanks, Kurt. Marc Anderson. You know, I agree with what Alan and Alex said, and I think they're getting, you know, they're getting to the heart of one of the points I made in my email yesterday, you know, was that we need to make sure this recommendation doesn't, you know, step on the toes of what Privacy Proxy is trying to do. And Alex read off a good example of that and I think is also to the heart of what Alan was suggesting. So, you know, I don't, you know, I don't know that we can future-proof this, you know, but we can certainly tweak it to make sure that, you know, it doesn't step on the toes of privacy proxy and the work they're trying to accomplish.

So I was trying to be a little bit mindful of that in my email yesterday and look at, you know, how we can look at the words to take into account their work and make sure they're able to do what they need to do. You know, so setting that aside for a second, you know, the words that are there now I think are (unintelligible) don't take, you know, I think they don't take into account all the comments made and I think there's still some edits that can be made to improve what's there. So I guess you know, to answer your initial question, Kurt, you know, I think this is a step in the right direction but I don't think, you know, I don't think it's a point yet where I'm comfortable saying, you know, yes this is language I can agree to.

Kurt Pritz: Right. Thanks, Marc. We were reading the additional comments last night and this morning to see if this language can be adapted. You know, after listening to those three comments by Alex, Alan and Marc, you know, I – so I wanted to just spend a few minutes to see if their wording can be improved

here or if you'd rather have the support team take those comments off and try to reword them.

I think the comments, you know, in some cases were a little not direct enough for an undertaking of the language, so if anyone can make some specific suggestions for revised language I think that'd be good, because I think we're kind of close on this, you know, I'd almost dare to say it's good enough but I understand Alan's desire to make it continually useful in the future.

So we want to – I think we want to get to a point where recommendation addresses the GDPR with the understanding as things, you know, there's always going to be future policy developments and changes required, so I think we want to get to a state where, you know, it's good enough to address GDPR. That's not to diminish the comments that are made or their importance or the validity, just trying to get to an end.

Amr.

Amr Elsadr: Thanks, Kurt. This is Amr. And I don't want to be a downer, but I might be the only person who is slightly confused by this recommendation because when it was first presented I was under the impression that the intent was to deal with, you know, what's in the RDS concerning a privacy proxy service provider's data which would replace the redacted data of a registered name holder. But now it seems like the recommendation is inching towards dealing with the actual registered name holder data itself.

And if I understood Marc's email correctly on the intent of this recommendation, that there would possibly be a scenario where the registered name holder data would be published – actually published in the RDS following a Whois lookup or a query, and I'm not sure I see how or why that would be GDPR-compliant. There are a few reference made here to data and there's one where it says "registrar must return unredacted data" between brackets in response to RDDS queries but it doesn't specify

unredacted data for who, for the privacy proxy service provider or for the registered name holder?

Like I said, I might just be confused about this because of some of the emails that have been sent to the mailing list. So it would be helpful if this could be clarified both to me now on the call and in the language as well. Thank you.

Kurt Pritz: Thanks, Amr. I think your concern can be addressed and I'd ask somebody on the list to do that in their comments. Alan, thanks for coming back.

Alan Greenberg: Thank you. I can clear...

Kurt Pritz: Alan Greenberg.

Alan Greenberg: Thank you. It's Alan Greenberg speaking. I can clear that up. For a privacy proxy registration, the privacy proxy provider is the registrant of record, period. They may know who they're doing it for, that's their business, but they are the registrant of record. And what the intent of this proposal is, is that the registrant of record, i.e. the privacy proxy provider, have their information showing.

Right now, despite the temporary spec there are privacy proxy registrations where the details of the privacy proxy provider are redacted. And that's what this is trying to fix. So there's no question of the original person who registered the name being shown; the privacy proxy provider is the registrant of record. So I hope that clears it up.

The reason I raised my hand, however, was on the Privacy Proxy PDP, just to note the Privacy Proxy PDP is finished. It made recommendations, the Board has accepted the recommendations. It's an implementation group that is working now but they cannot change the recommendations. So the reason I'm saying "future-proof" is there's a moderate chance sometime in the next few months, perhaps before we even finish, maybe after we finish, the

privacy proxy accreditation will go into force. And at that time we want to make sure that whatever we're saying works with that otherwise a new PDP is going to have to be started, the Privacy Proxy one can't adjust things at that point. So that's just the comment I was making. Thank you.

Kurt Pritz: Thanks very much, Alan. And I'm reading the chat and I think while I understood your initial explanation also as it being that way that, you know, the reader of this report might now so I think I agree with Milton and others that we make it clear in this because well I think the – all three versions of this statement now are correct; I think we want to make it really clear to the reader.

Marc, please go ahead.

Marc Anderson: I think Alan Woods is in front of me.

Kurt Pritz: Oh I'm sorry. I saw Alan and I got confused. Alan Woods, please go ahead.

Alan Woods: Okay, it seems to always happen, myself and Alan always make come (unintelligible) so apologies. So Alan Woods for the record. Yes, I mean, and again all this conversation is good and to add the exact clarification from Alan G as well. But again, I just need to go on record and say, people, we are skipping and completely glossing over the fact that pseudonymized data is still personal data. That's clearly stated by many data protection commissioners, both the ICO and the Irish one.

We still need to treat it like it's personal data therefore we need to go through the motions, doing a data protection impact assessment of sorts and saying, is this data – is the publication of the data blanket across the way what we're saying here that all privacy proxy providers have to publish if it is under a known privacy – that does not take away from the fact that there are certain privacy proxy providers – too many Ps – out there who still provide not anonymized but pseudonymized data and that is a problem because again

the registrar will not be in a position to decide whether or not one is anonymized or pseudonymized under the text that we have there.

And we have to be exceptionally careful because again, you're backing – backing registrars into a corner where they must respond – they must – sorry – publish all of this data but it's pushing them into something that could very well be contrary to the GDPR's requirements because it is still personal data for that registrant. So again, I'm putting it on the record, I'm advising extreme caution with not oversimplifying this language which unfortunately seems to be happening.

Kurt Pritz: Thanks for that, Alan. Let's keep going down the queue but think about Alan's concern and if that can be addressed. Go ahead, Marc.

Marc Anderson: Thanks, Kurt. It's Marc Anderson. I think Alan and Alan made most of the points that I was trying to – or I raised my hand to make so I'm going to try not to repeat myself but just, you know, make the point, you know, I think, you know, I think there's general agreement on the principle of what we want to do with this recommendation but I think what we're hearing here on this call is that the – we need to get the words right for the recommendation and we may need to make sure we're not stepping on the toes of the privacy proxy implementation team.

And so I guess, you know, I guess, you know, to what you said earlier, you know, I don't, you know, the language isn't good enough right now; we need to spend a little bit more time on this making sure we have a, you know, making sure we have the language right and that we're, you know, we're drafting policy recommendations that are implementable and are not going to by this some point down the road. So, you know, I agree with the point that were made so far but let's, you know, let's make sure we get this thing right.

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

Kavouss Arasteh: Yes, I understand Marc's agreeing Alan and Alan and saying that we need to have the right words, but and then and what to do? I think that instead of going to the discussion and descriptions and philosophical argument if people are not happy the particular text, that one is that now edited by Kristina, I think they are expected to kindly propose a concrete text. I'm not saying that we have to consider that, when we have to consider that, how we should consider that, who we consider that. Do we have another meeting discussing the one hour again to discuss?

I think someone either give it to Marc or someone else to come with – consultation with Alan and Alan and others and bring a text in some way which is acceptable but saying that we have put the words in the right direction does not mean anything at all for me, just pushing the problem for future. So we need either to have a concrete proposal at this very meeting or give it to someone to work on that, come back at the end of the meeting or at the next meeting the language which is agreed by everybody through the email. Thank you.

Kurt Pritz: Yes, Kavouss, I tend to agree. I think it's important to get the language right and it seems that we're not going to get it right right now because we have to take care of the issues raised by Alan Woods and Marc. Alan Greenberg go ahead.

Alan Greenberg: Thank you. I'm going to raise another issue which is the reason that we can't do this right now. We've been talking about privacy proxy as if they're the same; they are not. It is not clear to me if there are even any privacy proxy – any privacy providers around. However, when I answered Amr, I was really only talking about proxy providers. The proxy provider is the registrant of record.

For a privacy – if they exist and we've been using the term but I don't actually know of any that exist out in the world – privacy registrations are under the name of the registrant, the contact information is replaced by the privacy

provider's contact information. So they are different, we can't talk about them in the same sentence and we need to be careful because the name of the registrant may well be personal information for a privacy provider, not a proxy. Hopefully there are no proxy providers that are natural persons; if they are I don't quite understand the concept. But for privacy registrations if they exist, it is a different situation and we need to cover it differently. Thank you.

Kurt Pritz: Okay, well I think they do exist. Benedict, go ahead.

Benedict Addis: Yes, this is actually a subset of the case of voluntary disclosure because if – we talked before about allowing organizations to voluntarily disclose their details. So I think we could fix this issue by just creating privacy proxy providers and exactly as Alan said, there is a spectrum between privacy and proxy, it's not absolutely clear binary either which is one of the things that makes them (unintelligible) to identify.

But if we allow these organizations to self-identify and publish their details and then that solves any future work that the PPSAI may come in requiring them to do so as part of their accreditation but I think the only work we need to do is to make sure it's possible for every registrar to allow organizations to voluntarily or essentially publish their details in Whois so that's a "must" not a "may" and then we get the privacy proxy providers for free in that and just sort of take future work by that group. Thanks so much.

Kurt Pritz: So are we a little bit hung up here where the registrar and its affiliates is the proxy provider those that unredacted information can be returned without concern? And are concern is about the case where the proxy provider is unaffiliated with the registrar, is that the issue? Or am I oversimplifying it? And I threw that question out there but I'm going to bring this discussion to a close. Go ahead, Kavouss.

Kavouss Arasteh: Sorry, it's an old hand. I'm sorry.

Kurt Pritz: I'd say a former hand. So with this, you know, we have a few different sets of language so I think we do want to take care with the issues and the complexities as raised by some on this session. So I think, you know, we have a couple choices here. One is to form a small group to discuss this and one is to try to get there on an email list. We haven't had a great deal of success in hammering out language on email lists but I think that – this might be the place for that.

So I'll ask the support team to be the moderator or hold the pen on an email list that discuss this and figure out how to take these different versions, all of which have their own sets of improvements on the original language and see if we can via email come up with appropriate language. So I'd ask – I'd certainly ask Alan Woods to contribute heavily but because – and Marc because they identified specific issues.

But let's see if we can – we're – all this language hovers around the same thing and I think we're close so let's try to finish this on email. Thanks very much, Alan Greenberg, for volunteering. Maybe Alan Greenberg with this volunteering can take the initial homogenization of all the different – all the different comments into – and take the best of those.

Kavouss, are you waving your arms at us or do you want to make a comment or are you done? We'll assume done.

So let's go onto the second item in the agenda, and this is one that was from the agenda last week. And it seeks to confirm the language in the temporary specification that the registrar may provide the opportunity for the admin, tech or other contacts to provide consent to publish additional contact information outlined in Section 2.4 of Appendix A, so 2.4 I think is the redacted data.

And so this is a – this is a topic raised by Margie. And Margie, you're welcome to introduce it. I think though that, you know, what we're seeking to

do is include this language in the temp spec among our recommendations.
So Margie, do you have anything that you'd want to add to that introduction?

Margie Milam: Thank you, Kurt. No, this is a – I just went through the exercise of looking at the temp spec and seeing what seemed to be missing in our recommendations. So I think it's pretty self explanatory, just whether, you know, we've confirmed the language that's already there.

Kurt Pritz: Thanks, Margie. Does – are there any – yes, so I don't know exactly how to start this except to solicit comments from the group. Is there, you know, go ahead, Marc, thanks.

Marc Anderson: Thanks, Kurt. Marc Anderson for the transcript. So this one I think is – this particular I guess is so consent by the registrant to publish or disclosed for technical contact, so this revolves around the question of whether a registrant can, you know, or I guess, you know, I'll try to put it, you know, in broad terms so around the logistics of a registrant providing consent for third party, not subject to the registration itself.

And I, you know, I thought this was maybe an excellent use case or maybe one of the first things we should consider for our outside legal counsel. I think there are a lot of questions around this one and I'm – I think probably there are a lot of different opinions across the working group around what can be done here, what is allowed, what isn't allowed, what, you know, what contractual arrangements need to be taken in order for this to be GDPR-compliant.

So, you know, I guess that's a long way of saying I'm not sure we can, you know, we can come to agreement on this one based on the information we have right now and that I think this is a really good, you know, test case maybe or something that our legal small team should consider for our outside legal counsel.

And maybe as an aside, Kurt, I understand the legal – the small team met yesterday, maybe a small update on that would be useful.

Kurt Pritz: Yes so we're – sort of (unintelligible) at the outset so I'll do that at the close of this portion of the discussion. Thanks, Marc. And thanks for kicking off the discussion. Alan Greenberg.

Terri Agnew: Alan, this is Terri. I see where you've joined on the telephone. Do you want to check the mute on your side? And Alan, we're still not hearing you. So Alan put in chat it seems his telephone is having some problems. Back over to you, Kurt.

Kurt Pritz: Go ahead, Amr, while we – and Alan, if you want to type into the – okay, go ahead, Amr.

Amr Elsadr: Thanks, Kurt. This is Amr. I raised the issue before of Article 14 on this topic and as a reminder Article 14 is concerning information that is provided where the personal data wasn't obtained from the data subject, be the case for a tech contact for example. And I agree with Marc that I think this might be something we might want to get input on from legal counsel especially that we haven't considered this article at all in the context of this discussion.

But to answer the question of – or to try to help answer the question of whether registrars should try to seek consent from a tech contact, I would pay attention to Article 14.2(d) which basically says that, you know, this sort of data subject does have the right to withdraw consent at any time and there are all articles where they say that the data subject has the right to access, rectify and erase the personal data as well. But specifically on 14.2(d), if the data subject here, which is the tech contact, has the right to withdraw consent that then that to me implies that that consent should be obtained first in order for it – for the ability to withdraw it to exist.

Again, we haven't really looked at this at all. I think we should and if it is helpful at all then I support Marc's proposal to get legal input on this issue.
Thank you.

Kurt Pritz: Thanks, Amr. Alan, are you back in the saddle?

Alan Greenberg: I am back. I was just going to make the point that the Data Protection Board's letter in July made it really clear that if a registrant is going to use someone else's information in a field such as tech contact or admin contact, they needed to inform – and that's the word they used – the person that that was being done. And presumably act on it if the person said no. But that is the wording they used in the letter.

Kurt Pritz: Thanks, Alan. So somebody tell me that I'm oversimplifying things here. So the letter – the words in the letter were really clear but we are seeking additional advice to whether that obviates the consent requirement we want to ascertain that and also whether that would then obviate the possible legal liability of the registrars. But what the – to me what this says is that the registrar may provide the opportunity for the tech contact to provide consent. So, you know, to me that – first of all it's optional for the registrar to undertake the steps necessary to satisfy the GDPR compliant requirements for consent in order to publish that information.

So in the – so in the first instance this is optional for registrars to do and second, what's not said explicitly but I think is implicit in this is that this be done in a GDPR-compliant way where consent can be withdrawn and all the trappings around that, so it does not impose new requirements on registrars but it allows them to undertake this. And I would say even to me, even absent this language a registrar could still, you know, offer this as a service, right, that we will publish this information if you want to provide us consent if a registrar thought that was a meaningful business model.

Amr, go ahead.

Amr Elsadr: Thanks, Kurt. This is Amr again. To Alan Greenberg's last point, that is the true, the EDPB in its letter did mention that, you know, that the data subject needs to be informed. I have expressed the opinion in the past that the EDPB advice on this point was severely lacking considering what's in the GDPR, which is another reason why I think getting further legal input on this would be helpful. There's a long list of things that the data controller is required to inform the data subject on when their data is being processed in this context, in the Article 14 context.

And consent is to me it seems – it appears to be one of these issues. So yes, there are a lot of things that the controller needs to inform the data subject about, you know, what data is being processed, how it's being processed, you know, how long it's going to be retained, who's going to have access to it, but that to me does not also take away from the need to obtain consent and for the data subject to have the right to withdraw this consent. Thank you.

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

Thomas Rickert: Hi, everyone. Thanks Kurt. Yes, the European Data Protection Board wrote something about information duties. However, at least it's my belief, and I know many of us think the same, that consent is required for such processing. So the reason why we need to seek advice is that the Data Protection Board letter may be unclear in that regard or potentially incomplete because there's nothing in the GDPR that suggests that the requirements of Article 7 are waived in cases where the data is not collected from the data subject directly.

And this is why I guess we need clarity if we come to the conclusion that even for consent-based processing just informing the data subject is good enough so be it; I would be very surprised if that were the case. But other than that I think we are dealing with a combination of the requirements of Article 7 for consent plus the information requirement for collecting data from parties other

than the data subject and that is something that would really need to be hammered out because that's a complexity when it comes to implementing this.

Kurt Pritz: So, Thomas, let me ask you this though. How does that and how does that Data Protection Board advice affect this temp spec language where consent is required? So maybe my question is, if this language was not in the temp spec, could not registrars still secure the consent of the tech contact and publish the information that are personal data if GDPR compliant consent was given? I mean, what would stop a registrar from offering that?

Thomas Rickert: I think we've discussed this two back. The issue is that you need to be able to evidence the consent and you need to be able to evidence what the content of the consent is. And so far I think there's nothing in the registration process and in the data exchanged between all the different players in the gTLD world that allows for the – for conveying such data. And Mark SV who has put himself into the queue but then took his hand back down, he said that this can be done by collecting consent at the registrar level, which may work. But that would not make the informational consent be attached to the registration data, which I think it would need to be.

And also we are dealing with the issue of the registrar or whoever collects the data not being in direct contact with the Tech C. You know, I think all the discussions that we had here were that the Tech C is a desirable option for those who want to delegate so it will likely be third parties. And therefore, you know, we are dealing with a situation where we – where the registrar can't obtain consent from the data subject directly.

And Kavouss is spot on. I should be offering concrete language, but I really do see an issue with how this can be done without tweaking the technical processes without having a data field that would contain the information on consent, which we don't have at the moment. And that's the reason why I

suggested yes, it's a desirable option; this can be done within the framework of this EPDP.

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

Mark Svancarek: Thomas, thanks for queuing me up, that's great. Yes, on Tuesday we talked about the idea of attaching consent at an account level because I know that some people are already doing that and the question was raised, you know, how does that apply to transfers or how would that apply to (unintelligible)? And, you know, my first response was to say, well, you know, if it's at a account level and then you do a transfer you just simply don't transfer the consent, wouldn't expect that the other details of my account would travel to another registrar like my credit card or things like that. So, I mean, that would be a simple brute force way of dealing with that.

However, I was speaking to CentralNic and they're already doing something like this apparently. And in the extensible provisioning protocol, the EPP, so that's RFC 57-33, if you look at Section 2.9 you can actually attach contact disclosure fields to each element, you know, you mark them as exceptional. And so this is already in place; most people are not using it but that implementation is already in place. So for transfers that's already covered.

It turns out that the format that's used for data escrow doesn't include the disclosure preferences but it's still EPP so that could easily be accommodated. So hopefully that's helpful. But it really points to the comments I've made in the past many times that when people assert that things are technically impossible usually they haven't done their research because that took me one hour to find out. Thanks.

Kurt Pritz: Okay. So if we took – so if we – I don't know. So we took this language out of the temp spec then registrars would still not be barred from securing consent as required in GDPR and publishing data, correct? So I think I'm agreeing with what Milton says here, you know, let the market decide. I want to –

could identify ways registrars can go about this and we can identify the difficulties they'll have with it but that's not our job at all; our job is to say, you know, can registrars have this? Is our opinion that we should prohibit registrars from doing that? Is that the idea?

I'm noting that some people are getting kicked out of Adobe Connect so I apologize for that and I think Thomas is kicking himself out.

So I guess, you know, we'll put this to the legal team. I don't know what the question for the legal team is, you know, should registrars be prohibited from obtaining consent to publish data? Or, you know, I'm not sure – go ahead, Brian.

Brian King: Thanks, Kurt. Can you hear me?

Kurt Pritz: Yes.

Brian King: Great. So I would put this to the legal team or ask for some legal advice about the whole consent concept here. I think having the registrants being able to contact the registrants we have listed as a 6.1(b) purpose, and I don't know if consent is the right context here. To me this is, you know, a registrant is entering into a contract with a registrar and they know that they'll need to be contacted or provide some contact information to be contacted for purposes about the domain name.

And to me this is just about providing the registrant with all the options that are available for mechanisms to be contacted. So to me this isn't an additional thing, it's like how do you want to be contacted? And I think it makes sense for a uniform registrant protection mechanism to have all the options available to all registrants at all registrars. That to me seems to be the simpler way to think about this and I'm not sure if consent is even the best way to think about it. In fact, I wouldn't assume that we're talking about consent here.

Kurt Pritz: Thanks, Brian. Okay, I think it would be for someone – I don't know if it's Amr or someone else who thinks that – who understands where we need – or Thomas – where we need some sort of legal clarification for – or some legal advice for this question to frame that question up in a way that we could get advice. Alan Greenberg.

Alan Greenberg: Yes, thank you. I appreciate the concern of the contracted parties and the registrars about making sure they have an iron-proof case that they can use specific contact information which may not be that of the registrant or the person who is claiming to be the registrant. But I think we have to look at this in a pragmatic point of view and I don't think we're doing that, and I suspect the Data Protection Board is.

If I sign up for anything, ignore domain registrations, and they ask me for an email address, I can provide my wife's email address and they'll accept it. They're not going to parse it to say it doesn't look like his name. You can use whatever you want in an email address and, you know, I can sign up for an email address you know, with kurtpritz, you know, 4973 and I say that's my email address and I use it then it is, even though it happens to have your name in it.

So we're living in a world where people are using email, you can arbitrarily set your email address and then you provide it to various people and the fact that you have provided it, you know, and perhaps, you know, responded to a confirmation email saying you're actually the owner of it is sufficient. And I don't think we're going to be able to go much farther than that and if we need legal advice or reiteration from the Data Protection Board I think we need to do that quickly because this is a core question and either it is simple and implementable or it's virtually not implementable but we need to decide. Thank you.

Kurt Pritz: I think my point is that the implementation issues for this can be decided later because it's not a requirement, you know, encumbered upon registrars to provide, it is the opportunity to provide. I also think that if this language wasn't here registrars could still provide the service. And the alternative to this would be to prohibit registrars from providing the service, which I don't think is reasonable either. Go ahead, Brian, and then we'll close this off.

Brian King: Sure. Thanks, Kurt. I think that's exactly what we're saying though is that registrars should have to provide this option.

Kurt Pritz: Well the language in the temp spec is that it may and Margie's...

((Crosstalk))

Kurt Pritz: Right. Margie's introduction of this topic was to confirm this requirement – this language in the – my understanding, Margie, is you wanted to confirm this language that's currently in the temp spec.

Margie Milam: Yes, so it would still include "may."

Kurt Pritz: Yes, so I'm not sure where to lead us on this; I thought it was straightforward. So for those of you – yes so that's what I've been trying to say. Do we want to take two more minutes and start over and see if there's an objection from the contracted parties to confirming this language with the option in it? Well then. I'm sorry I'm so unclear on presenting these things. Go ahead, Brian.

Brian King: Yes, I think just if we're going to move on from this I would just note that the IPC thinks that registrars should be required to make this option available for registrants and, you know, aside from the IPC perspective we think it's the best thing for registrants as well.

Kurt Pritz: Okay. All right, let's move on to something more challenging. Last – yesterday around noon our time, my time, we distributed the agenda with a

summary of the discussion on geographic differentiation and if the staff could put that up in the chat room that'd be great. So when you make it big like that it's not scrollable. Thanks.

So in this discussion when we last had it we understood the – I think we understood the complexity involved with trying to make distinctions on a geographic basis and we discussed – we discussed requesting – all right, where are we on the agenda? Are we in geographic or optional? Got a smoothly running machine here.

So we understood the complexity regarding making – distinguishing between registrants and applying GDPR based on geographic considerations. And so we talked about two things, one is in addition to the recent clarification from the Data Protection Board about this, we kind of understood that none of the examples really apply to our situation and didn't apply to our situation and that we could work with outside legal counsel or data protection authorities or others to – in an attempt to get additional clarity.

But, you know, there was also part of the discussion that said that even with this additional clarity we're still going to be left with, you know, a very complex situation to try to manage in order to try to parse registrants and our operations by geographic considerations. And so it was the postulated rules engine by the Expert Working Group was mentioned. And so we discussed whether or not research should be done to determine if such a rules engine should be built.

Many expressed skepticism at this. I'm kind of skeptical myself. So we thought we'd – the conversation went to – as I captured it – went to, you know, we should do some preliminary work to decide to understand how a rules engine might work or some preliminary study in order to understand whether we should take the – undertake a more full blown effort to try to develop such a rules engine.

So the – so language here says that we maintain a position where, you know, until we figure these things out understanding that there's, you know, a deadline looming and that the work that's required – the work that's required might take longer than the time we have, that we would maintain a status where the registry operator and the registrar may apply the geographic requirements as outlined in the temp spec.

Kristina Rosette: Kurt, this is Kristina. I'm sorry, I've had my hand up. But I want to raise a point of order. I am very troubled and disturbed by the fact that both for this geographical differentiation and for the previous topic about whether the registrar can seek consent from the tech contact, my recollection is that these are two very specific topics that are actually out for public comment as we speak. And I'm troubled by the idea that we're purporting to make decisions on those given that the public comment period is still open.

That to me I don't understand that and frankly I'm not entirely sure that's acceptable because we're basically saying to the community, you know, bravo to you for struggling your way through the Google form but we're going to ignore it and just move ahead. And I can't support that. Thanks.

Kurt Pritz: Okay, I don't think that's the case at all, Kristina. These were topics – and I'm – but I'm very sensitive to that issue so – and I'm not saying – so let me make the clear. But these were a list of topics that were left outstanding at the end of the initial report so we made a chart and we said here's all the issues we've still got to discuss now that we've published the initial report, so these are the issues we'll address in the interim while we are – while we're in this period where we're waiting for a comment. And I'm not asking for consensus call, I thought what we'd do is recap conversations, see where we are and see if there's – see if we can sort, you know, drive towards a position when we have agreement.

It in no way gets in the way or obviates our consideration of public comment or whether public comment might change any tentative decisions we made

here. So I don't mean to intimate that in any way and I've just been marching down the list of issues that were remaining after the initial report, so I don't – I certainly don't mean to disrespect the public comment or the weight that'll be given to it but I did want to continue the – I did want to continue the discussions and see where we stood on these issues. I think the alternative would be to not talk about much.

So I didn't mean to intimate that we were closing off discussion about this and not considering the initial report, but I think if we consider the initial report in the light of, you know, a position we've developed as we will with other things that where we've developed positions in the initial report I thought it'd be beneficial. So we can talk about this or not. You know, I'm going to go through the queue.

So what we heard was that we want to get additional clarification from – regarding the latest EDPB guiltiness and that we wanted to undertake some initial work with regard to a rules engine that might be able to be developed or might not be able to be developed. But in the meantime we would have the rules state that the registry operator and the registrar may apply the requirements in the temporary specification.

So Kavouss, go ahead.

Kavouss Arasteh: Yes, first of all this is very important point, this issue. Second, it is not a straightforward answer or solution for that. Thirdly, we have discussed that amply and there are divergence of views and all of them may be right, that does not get to any solutions. The question you raised is that we seek additional clarification. It is very critical, what the language of that clarification would be; who crafts that text to be sent to the European Data Protection Board?

I think we need to assign it to two people who are experts on both sides, pros and cons, and then try to (unintelligible) straightforward, because they have

provided EDPB provided already some comments so we have to express our concern whether we agree with those comments or not and really what are the additional clarifications that we seek? I have no problem to put aside for the time being but in the meantime we need to think how that language should be prepared to send to the Board – to the European Data Protection Board.

And what is the question? And what is the scope of the clarification needed? But having said that, I don't think that even the Board would be in a position to give a black and white answer. There are several circumstances, conditions and so on so forth and it would be treated on a case by case but there is no general solutions yes and no for this very important (atypical) questions. Thank you.

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

Alan Greenberg: Thank you. In support of Milton's comment to say let's not talk about this anymore now, and Kristina's for that matter, I think the answer to this one hinges to a very large extent on the previous discussion where we said we need external advice. If we can rely on the registrant to certify that any personal information they give is accurate and belongs to them and they have sought approval or consent to use it, then we should be able to rely on the country that the person says they are in and work from there.

Because if we know that none of the personal information that might be included does not have consent, if we presume it does have consent and appropriate process has been taken, then we should be able to rely on the country of residence or, you know, the country that the person says they're in and make the geographic distinction based on that. Now if my analysis is correct, we cannot have this discussion until we solve the first problem. Thank you.

Kurt Pritz: Go ahead, Marc. Marc, you're up.

Marc Anderson: Oh sorry. Marc Anderson for the transcript. You know, on this one I have to ask, you know, when we had this conversation, I forget when we first had this conversation but when the topic of the Expert Working Group's rules engine came up, following that call I got asked, you know, by a large number of people, "What the heck a rules engine is?" And I found that, you know, when I tried to explain it I gave a different answer – a slightly different answer every time which leads me to think that maybe I don't understand exactly what a rules engine is and that maybe not everybody on this working group has the same understanding of what a rules engine is either.

So maybe to help this conversation it might be useful if we had, you know, first had a conversation about what exactly we mean by rules engine. I mean, and I'll just use an example, you know, a rules engine can just be, you know, to some that could mean just a flow chart on a piece of paper, that could be your rules engine. To other people that could be a piece of code that could be, you know, physical you know, that could be, you know, software that makes decisions based on input it receives; that could be a rules engine.

So and those are wildly different things. And so I think before we go any further we need to have a common understanding of what we mean when we talk about a rules engine.

Kurt Pritz: Thanks, Marc. I don't know, maybe somebody on the support staff understands the – is knowledge of the EWG report and can pull their definition out for that. It may be one we adopt or don't adopt if we ever, you know, if we talk about this again. But I think that would be helpful. Amr, go ahead please.

Amr Elsadr: Thanks, Kurt. This is Amr. Yes, I just wanted to reiterate a previous and old point that, you know, the geographic location of the registered name holder is not the only issue that needs to be considered in a rules engine. To my knowledge, if I recall correctly, I think this was the only factor the EWG

actually considered but we know now there are far more considerations that need to be accounted for, you know, where the controller is located and the processor is located, you know, where the processing activities take place.

And now we have these additional guidelines from the EDPB and there may be additional factors that we don't understand and all of these would have a considerable impact on the complexity of the rules engine itself and, you know, the extent to which it might or might not be feasible. So in principle I think if we do explore this option, which I hope we don't, I think we do need to get legal clarity on all of the factors we can possibly account for before this is done. We don't want to start a whole like a large project where, you know, we try to figure out how the rules engine would work only to later discover that there were factors that we didn't take into account that we should have and then it's all for nothing. So, yes, I just wanted to offer this. Thank you.

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

Margie Milam: Sure, this is Margie. And to answer Marc's question, I know it's called a rules engine but I believe that it's more of a – essentially a flow chart concept of, you know, factoring in different elements that relates to the jurisdiction and then making a determination on what rules would apply. And as I look at it, I think it's something that – and I think we asked this question or someone asked this question on the – maybe the last call – that really should be done by ICANN, you know, in consultation with legal counsel.

And I agree with Alan that this is a question to ask legal counsel. I don't think it's impossible. Obviously a lot of global companies have to do something like this in order to comply with not just privacy laws but other laws and so, you know, this is not a unique problem to the domain industry; this is something that everyone is facing.

And in particular because we drafted our policy recommendations to address GDPR but we haven't looked at all privacy regimes, there may be things we

have to take into account like for example there may be privacy laws that talk about whether something is used for a commercial purpose or maybe they look at the legal natural person distinction differently.

And so I feel that if we don't at least try to explore the feasibility of it, first of all, and that's something that could be kicked off after this EPDP, but second of all, you know, asking legal counsel to weigh in on it then we're going to end up with a policy that works in one jurisdiction and may not work in other places and then we'll have to go back to the drawing board when there's some conflict between the privacy laws. So that's the reason for the recommendation.

Kurt Pritz: Thanks, Margie. I just want to make a couple points. One is Margie was part of the EWG so she speaks for some knowledge. Two is that, you know, given Amr's intervention that things have changed since the first postulation of that rules engine that I think considerable attention would have to be paid toward reforming whatever attempts are made at building it.

And third is I remember a comment from the last meeting that, you know, especially when Margie was talking about, you know, involving the legal team along with technical and operational teams in developing this, I remember the concern that, you know, we could – or ICANN could – which is, you know, as many as of that, so, you know, a ton of dough could be spent on this before realizing there were certain problems or difficulties and so we want to – we don't want to make a recommendation where we spend, you know, a lot of money needlessly and that's why – that's why I was (thought) to do some preliminary investigation before we're off and running.

So Milton, go ahead please and welcome back.

Milton Mueller: Thank you. This is Milton Mueller for the record. I just want to begin by saying that one of the reasons I was absent was not only the end of the semester rush of work but because I believed that the report – the initial report was out

for public comment and there aren't really any decisions or major changes or actually major contributions that we can make until we take into account the public comments.

And upon returning to this fray I find that that conviction has been borne out completely, that I think we are sort of digging up holes and filling them. We're not really accomplishing very much in these interim discussions. There are a few things that such as the European Data Protection Board letter that could be accomplished. But issues such as geographical differentiation and other things are really not appropriately resolved at this time; people are just repeating the decisions – the positions that they already have. And I really would caution us against trying to push any kind of a decision on (unintelligible) that we are actually asking the public for comment on. That's my first part of my comment.

My second – in this discussion of geographical differentiation, I'm really kind of shocked because this is supposed to be an ICANN meeting and the reason we have ICANN was to have a global policy and governance for the domain name system. And I hear people talking about instituting essentially making ICANN a way of differentiating between different national jurisdictions and may I remind everybody that there are 50 state level jurisdictions in the United States alone and each of them can be – does have for example different data protection – or data breach regulations and I can only imagine what happens when you start extending this into developing country provinces and regions.

The only solution to this issue is to have a global policy that sets the bar high enough that it's not in any risk of contravening the laws of any jurisdiction and it's actually not that hard to do the kind of data that is in the Whois is fairly basic and we have some very common threads as to how not to run afoul of basic concepts of privacy. So ICANN's job is to create a global mechanism for governance of the domain name system and this idea that we have to – first of all this false promise that we can somehow implement artificial

intelligence that automatically apply the proper jurisdiction to any of, you know, 300 million domain name registrations is just pointless.

And aside from the fact that we shouldn't be discussing it, you know, I'm just restating my position, like everybody else is doing here, which is that we really – we need to have a global approach to this, not a geographically differentiated one. Sorry for the long speech.

Kurt Pritz: No, it's okay. You're making up for lost time. Mark, go ahead.

Mark Svancarek: Mark Svancarek. You know, at this point, because I've been in the queue for a while so maybe this is moot. But, if there's any use in discussing, you know, what a rules engine is or might be, you know, I'd be happy to kick off a conversation on that. You know, as Marc says, it would start with a flow chart but just writing a bunch of if, then, else statements turns out to be pretty unwieldy and unmanageable as new situations arise. So the reason it's called an "engine" is that, you know, you know what the outputs are – is it redacted or is it not redacted – but there's a lot of inputs and the inputs can change over time. And so there are a few ways to implement such a thing which are practical.

I mostly agree with Milton, I mean, I certainly agree with him that we have things out for public comment and, you know, we're kind of beating a dead horse on some of these things because we haven't received any new input from the community yet. But regarding the geographic distinctions, I am worried that there are going to be laws that are not subsets of GDPR and that simply applying a single high bar is going to be appropriate in all cases. And you know, maybe history will bear out Milton on this and maybe history will bear me out on this.

I just think it's premature to count out in our global policy the possibility that there are going to be contradictions to this or exceptions carved out where

things like that and I think we need to keep ourselves open in our policy development to that possibility. Thanks.

Kurt Pritz: Thanks very much, Mark. So as unpopular as it is, what this language is intended to convey is that the language in the temp spec as written remains where it's at the discretion of the registrar where to apply geographical distinctions and where not until such time as it could be figured out that clarification from some authoritative body relieves the registrars from the risks associated with trying to do that or if some sort of rules engine can be built to relieve the registrars of the liability and complexity of doing that. And so I wanted to test the thought of that. Go ahead, Alan.

Alan Greenberg: Thank you very much, Kurt. Kurt, I think you trying to summarize it right now is going dangerously into the territory of saying we're not going to bother worrying about what people say in the public comment on this one. So I really think we need to avoid that. Rules engines and before that they were called table-driven algorithms have been used for a long time; some of them have a long history, some of us on this group have a long history with them. It is about as much of an implementation issue and an implementation issue central to the registrars and registries that I can imagine. There is nothing you can do in a rules engine or a table-driven algorithm that you can't do with raw code. It just means it's a lot more difficult to manage.

If you're dealing in a world where we have multiple jurisdictions, the rules may change over time, then a rules engine allows you to accommodate that without going to rewrite the code each time. It's an implementation issue, it's a completely sane thing to do based on the judgment of the technical people. I don't think it's our business because there's nothing that you can or cannot do one way or the other.

So I really think we should not be talking about a rules engine. I believe rules engines will ultimately be necessary because I don't believe that what Milton is describing will ever be possible. We may well have jurisdictions that say for

certain people or certain companies, you must publish certain information and that would be directly contradictory to the GDPR. There are lots of jurisdictions around most of the jurisdictions only are – only enact legislation and regulations that apply to those resident in those areas. Very few that I'm aware of do things like GDPR which saying someone far away must apply rules to the people in our area.

So it's not quite as complex as it might be. It is going to be complex. I think ultimately people will choose rules – sorry – rules engines, table-driven algorithms because of the complexity and varying set of rules they're dealing with but that's their problem, it's not ours. There's nothing that can be done that needs a rules engine to implement, it's a choice. So let's focus on our business, not someone else's. Thank you.

Kurt Pritz: Thanks, Alan. Go ahead, Stephanie. How are you today?

Terri Agnew: Stephanie, this is Terri...

Stephanie Perrin: Hi, can you hear me now?

Kurt Pritz: Yes we can.

Terri Agnew: We sure can.

Stephanie Perrin: How odd, I really have to punch that thing twice to get it to work. Stephanie Perrin for the record. I believe that what Alan Greenberg was just saying was that this is not within our scope, it's an implementation issue. And with that I totally agree. I raised my hand because I also was on the EWG. There were lots of things that one could disagree with in the EWG report, so little time, so much to do. The feasibility of a rules engine actually implementing and being run, although there were quite a few people on the EWG who were interested in building such an engine, nobody has followed up on that as yet either the GNSO Council or the Board. It is not our place to do research on it. It will be

the place of another IRT after we're done to figure out if there is any way to implement.

My argument at the time, the EWG was discussing this issue and it's a pity that the records are not public, was that what ICANN ought to do is come up with a set of binding corporate rules. Now BCRs still exist under the GDPR, which of course had been presented at the time but certainly not passed and the lobbying had only begun. But the concept of binding corporate rules would allow us to come up with a policy at a high level and the – it's easier to make exceptions to comply with local law where it applies, not ICANN's problem, that would be the problem of the actual contracted party, and operate from there.

The new standard is the GDPR; we should be coming up with a set of rules, policy in other words, that meets the GDPR. That's within scope; building it, not within scope. Figuring out what country people are in, not relevant. What's relevant is where the registrar is. So I recommend that we drop all of this discussion, it's an implementation issue and we have argued about geographic distinctions, I thought we'd dealt with that; I thought we'd agreed that it was not possible for the contracted parties to do that. Thank you.

Kurt Pritz: Thanks, Stephanie. Mark and then Hadia and then we'll draw a line under this.

Mark Svancarek: Yes, just one minor point about what Alan said, he said that's your problem. I just wanted to clarify that, you know, on these implementation sort of things we do all go off and work on them as a community, you know, EPP or RDAP, we do have a technical community that works on it so don't worry, it is not quote, unquote, your problem, it'll all be solved in one consistent way and that makes it slightly less scary, probably not less scary but, you know what I mean.

Kurt Pritz: Thanks, Mark. Go ahead, Hadia. How do you sound today?

Hadia Elminiawi: Good.

Kurt Pritz: Yes, you do.

Hadia Elminiawi: So, yes. Okay, so as Alan said, yes, rules engine it's an implementation thing that is out of our scope, however, the rules and policy that are actually going to be used to feed this algorithm or – are going to be used by the rules engine is definitely within our scope. So and I thought over time that that is what we were going to talk about, you know, what are the rules and policies that would direct how this algorithm will work. Thank you.

Kurt Pritz: Thanks, Hadia. And I think that's the point is that we don't know if such an algorithm is feasible or if it would work or how it would work and the determination of that sort of yes it would work or no it wouldn't work or yes it would work and be feasible will exceed our time limit and so we should think about in our future deliberations how we're going to address those type of issues where we're thinking about musts versus may's and what the requirements on registrars should be or should not be absent our ability to answer those questions or have the ability of an implementation team to answer those questions for some time.

So with that I'll leave that. And I think I will go to – close the meeting with Marc's request to briefly review the meeting of the legal team, the first meeting of the legal team that occurred yesterday.

So the team is staffed by myself and Rafik, from – by Leon ably as the Board liaison who has considerable experience with this sort of thing in a prior life, so we're grateful for his participation and same thing with Thomas as being part of the team and as being part of the previous legal committees. We've got Margie from the Business Constituency, Diane from the Intellectual Property Constituency, Tatiana from the Non Commercial Stakeholder Group,

Kristina from the Registry Stakeholder Group and Emily Taylor from the Registrar Stakeholder Group, Lauren from the GAC, Hadia from ALAC.

I think Benedict has one foot in and one foot out, he's got so many other commitments from SSAC but he's the sole person available, I think to us from the SSAC and Dan Halloran attends and Caitlin is our staff support in charge.

And we spent most of the meeting talking about our processes and how we would work and then made some assignments with regard to substance later on. I'm not really watching the chat so if you want to interject, shout or something. I'm kind of looking at meeting notes from the meeting so I can report more completely to you.

But among the procedural topics we discussed were, you know, how questions are raised to the legal team from our group right here, so what's the trigger for that and can there be some formal words in our deliberations where something is – an issue is passed up to the legal team so that mechanism. What's this team's role with regard to reforming questions, so our questions are often formed verbally and or orally I guess is the better term, and so therefore imprecisely and so that's probably – part of the problem we've had. And so I think a primary – we think a primary role of this group is putting the questions in language that will be – can be clearly written and get the sort of input that we require.

So then we talked about too, you know, so what's this group – group's responsibility for reporting back to the whole team? So we don't want to substantially change a question and then fire it off without reviewing it back with the whole team to make sure that's okay. So we haven't decided on a set of criteria for doing that but we want – we did note that we want to be careful in making sure that we have the group's buy-in, we have representatives from each of the group but still, you know, whether each member checks back with their constituency group on a question or whether

we should, you know, bring it back to the whole team in a meeting such as this was discussed.

And then we talked about, you know, working methods, you know, can we work in email, when is a meeting required, hopefully on substantive issues we can do quite a bit of work during email. We talked also about who could answer the questions, so having, you know, discussed and considered a question maybe there's expertise in the group itself that can answer a question or maybe ICANN's independent counsel has provided legal memoranda already that answers the question substantially.

And so we want to check and make sure – and we might task ICANN with, you know, looking through their legal memos or what they've received independently that they could furnish with us. So I don't want to task this legal committee with doing a lot of research but rather put resources at their disposal. So look at what works been done already before engaging with outside legal counsel.

And then, you know, then finally, you know, what's our role with the independent legal provider – services provider? We should probably compose some letter of introduction or something like that. So we discussed those – we discussed those issues. You know, it was a one-hour meeting so we didn't come up with a firm rule set but I think there was an understanding that, you know, to a certain extent how we react to each one of those questions is going to change on a case by case basis depending on the situation and the question itself.

And so it's more a matter of operating appropriately and doing the appropriate consultations back with this group and doing the right amount of due diligence before going outside for independent legal advice, you know, doing that appropriately in each case rather than trying to develop a rules engine for how we operate. But we wanted to raise those issues and, you know, proclaim our sensitivity to them. So we talked about that.

And then – excuse me – then, you know, so what's the substance, what are the questions we're starting with here? And those are – there were essentially questions raised or three question sets maybe raised in the initial report that we had originally planned to send to the Data Protection Board. We're not going to do that as we all know. And so what we want to undertake to do is take those three question sets and you know, see – go through that sort of particular machine that I just described.

And so, you know, our first idea, or maybe my first idea but we're trying it – to be efficient is that we've got these three questions and we've got, you know, there's bullets here, not numbers, but eight or nine members of this team. So we asked for volunteers so that we would have two or three people working on each of the questions. And each person will independently, you know, in a solo mode, read the question and pass on it or add detail or improve clarity or edit the question in some way so that it's clearer and it elicits the type of response we're hopeful to receive.

And having done that, you know, two or three times, we'll then do a mash up of those two or three attempts and take what's best out of each one and see if we can more quickly arrive at question sets that way. So at the end of the meeting and after the meeting I think most of the members either volunteered or were volunteered to address one of those questions and come back. And our next meeting is right after the first of the year, I think it's January 2 or something. And for that meeting we hope to be discussing those questions and arriving at some final wording and then decide, you know, whether we need to come back to the group to vet those or how we're going to vet those appropriately.

In the meantime ICANN is going through the process of procuring legal expertise for us. We're writing ICANN a brief letter that says beware of conflicts but also suggest some ways for how to go about this for possibly saving money or be most efficient. You know, do we want to piggyback with

some law firm that ICANN is already using or would that raise a conflict that's difficult to manage and stay away from that, we should find somebody completely independent, and what cases can we use work that's already been done.

So Thomas and Margie are helping draft that pretty brief letter to ICANN that provides some of our advice in doing this procurement and also urging them to get it done and get somebody on board coincident with the finalization of the questions that we do. So that's a recap of the meeting really briefly.

So we will – so I'm reading the chat now so if we find out the attendance at the January 2 meeting is not going to be good then we'll move that. So that's the end. If there are any questions or comments I'd be happy to answer them or maybe some members of the – maybe I misstated something that one of the members of the team would like to add or correct, add to or correct what I said. Somebody wants to talk or type that'd be okay. Okay, so go ahead, Dan.

Dan Halloran: Thanks, Kurt. Can you hear me?

Kurt Pritz: Yes.

Dan Halloran: Just one – you said one little thing that raised some concern, you said in the meantime ICANN is doing its procurement work but I was under the impression that the team hasn't decided on what sort of lawyer to hire yet, if it's going to be, you know, freshly new independent lawyer or one of the existing lawyers, we don't have the statement of work yet, we don't have the questions done yet so I think we're kind of at a standstill on procurement so far. Just wanted to clarify that as far as I understand we don't have any directions to start procuring anybody in particular right now, we're just kind of gearing up to start procuring somebody. Thanks.

Kurt Pritz: Okay thanks, Dan. So all right so I'll take that on and manage that. I had, you know, we have a draft SOW and in our discussions with ICANN it was made pretty clear that a different, you know, ICANN would author its own statement of work. And, you know, what kind of lawyer do we want, so we want a really good lawyer and, you know, I think conflicts have to be managed and I don't know whether, you know, this team or us will go through that conflicts analysis, you know, we just – we want to stamp our foot and say we want some competent legal advice.

And I, you know, we have suggestions for official ways to going about it but it has to be done in an appropriate way and I think ICANN's probably the right one to make those decisions. But anyway, I'll work over the next 24 hours to make that clear to the rest of the – to ICANN.

Is that a new hand, Dan?

Dan Halloran: Yes, thanks. Just trying to quickly respond to Kristina, but, I mean, the main specific question I have is do you want ICANN to go hire a new lawyer that we've never used before or it seemed like a lot of the team wasn't content to use a lawyer that we already have retained before such as some of the ones that have done some of that independent public advice to the community on previous work. Thanks.

Kurt Pritz: Okay, and I think yes, so I think that's fair and I think, Kristina, that question is good. And you know, I think some of the team thinks it would be beneficial so, you know, I don't want to – I think in doing this the most efficient way, you know, we want to lay out our requirements for what's needed and then, you know, I'm sure that, you know, Dan, the ICANN Legal department has – will provide some analysis for the best meeting the (status) is wrong word but most appropriate way to run all those relationships which I think is complex and not sure whether the EPDP team is the best place to have that discussion. All right so anyway I'll take it on board to manage that. Just watching the chat. Okay great, Kristina, thanks.

So everyone's GDPR-free for a couple weeks, except for those of us that'll be analyzing comments and, you know, I hope too much of a burden is not put on the support team but we'll see what we come up with. Thanks for working so hard on the comments in parallel with your work here. So I want to take the opportunity to wish everybody a great holiday and a great break and I'll see you on the other side. Thanks very much, everyone. Have a great day.

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

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