

**ICANN Transcription
GNSO Temp Spec gTLD RD EPDP Call
Tuesday 21 August 2018 at 1300 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-21aug18-en.mp3>

Adobe Connect Recording: <https://participate.icann.org/p27r8mt24t5/>

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

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

Coordinator: The recording has started.

Terri Agnew: Thank you. Good morning, good afternoon, and good evening, and welcome to the sixth GNSO EPDP Team Meeting taking place on Tuesday, the 21st of August 2018 at 13:00 UTC scheduled for two hours. In the interest of time, there will be no roll call. Attendance will be taken by the Adobe Connect Room. If you are only on the audio bridge, could you please let yourselves be known now?

Hearing no one, we have listed apologies from Amr Elsadr, NCSG, and he has formally named Collin Kurre of NCSG as his alternate, and also, an apology from Esteban Lescano from ISPCP with no alternate named. The

alternates will be remaining for the days of the absence for the ISPCP -- I'm sorry, for the NCSG.

During this period, the members will have read only rights and no access to conference calls. Their alternates will have coaching rights and access to conference calls until the member's return date. As a reminder, alternate assignments must be formalized by way of the Google assignment form. The link is available in the agenda pod.

Statements of interest must be kept up to date. If anyone has any updates, please raise your hand or speak up now. Seeing or hearing none, 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 audio cast and view only Adobe Connect room for non-members to follow the call. 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, Terri. I wish I was sitting in the same room that you were. It sounds like a better time that it is over here. Thanks everyone for being here for a timely start on this Tuesday. It's our sixth meeting already. Holy smokes. And our goal is today to wrap up our discussion leading to the triage document. So I want to thank everybody again for all the work that went into completing the surveys, and the thoughtful comments.

And given the amount of work that's gone into it, I want to - we aim to capture that all and show the amount of work. And we think it will be a good springboard for the next steps.

So the agenda is here and it's the welcome and updates from me and I'll go through some items there. And then we'll go into the responses for the last survey and review all those. Then we'll discuss the triage report. I think I'm going to move that up in the agenda, because it's sort of administrative and I want to get that stuff out of the way first. So I think we'll flip down to that.

Then discussion of next steps. So what's our homework for next time. You're not off the hook yet. Then review of action items at the end, and a wrap, and planning for our next meeting, which is a mere 48 hours away. So with that, there's two items I want to discuss as part of the welcome and update section. One is the triage report as I alluded to, and the other is the face-to-face meeting.

So the face-to-face meeting is set for August 24th through August 26th in Los Angeles. Sadly, there's been quite a bit of discussion about how to do the dance in that meeting when we have need for alternates, either because a member cannot make it, or a member can make it but I know in one case, one member will miss a day and there are other cases where a member might miss a chunk of a meeting, so that's (unintelligible). So it makes sense for the alternate to step in.

So I wrote to you yesterday afternoon with what I regard to be the best option for us. And in fact, like I said, I did this like 1,400 word document outlining the different options and sending that to the GNSO Council. But then on reflection, I think in the interest of simplicity, and mutual trust and respect, I recommend that we work in accordance with the email that I sent out.

So I can read that to you or if you've already read it, I can just take comments. I know there's been one in email. So the idea is that if a member cannot attend or if he can't attend a part of a meeting then an alternate can attend the meeting and work in the meeting when the member cannot be there. So I can read that specifically for you if you want or not. So I just thought I'd get over this part of the meeting.

So are there any comments to the email or request to do a more detailed reading of the email? Go ahead, Alex.

Alex Deacon: Thanks, Kurt. If you could read it or summarize it, it would be helpful, as it came in late and it's early here. I haven't had a chance to review it. So I'm kind of in the dark at the moment. So a summary would be awesome. Thank you.

Kurt Pritz: You're in the dark. The sun hasn't come up here.

Alex Deacon: Yes, you're right.

Kurt Pritz: So here's the thought and I don't know if you can cut and paste this into the chat. But one, members are invited and will be provided travel support. Two, if a member cannot attend in person, an alternate can attend and be provided travel support. If this is the case, the alternate should be designated to the support team as soon as possible, so they can get the travel (unintelligible).

Three, an example two above, if the absent member wished to participate remotely for a portion of the meeting then she or he can do that and the alternate can only participate when the member is unavailable to participate.

Four, if an attending member is in good faith reasonably certain that she or he will be absent for a period of time where attendance by an alternate is desired, then the member and the alternate can attend the full meeting, but only one will be designated as a participant at any one time. And two, the alternate will not be given travel support.

So then, I provide some rationale for this choice that it provides travel support commensurate with membership. It allows alternates when needed to keep up with the proceedings. It's economical compared to other solutions. It will be easy to manage who participates and when and it will not immaterially

impact the meeting room size or requirements planned by the ICANN meetings team.

So then term insurance does on to say some other things but I'll stop talking. I hope I was coherent. I'm not the best reader. Milton?

Milton Mueller: Yes, I think that what you're proposing is fine except for this number three part, where you're saying we're going to be switching in and out the remote members with alternates at various points in the meeting. I think that's asking for trouble in terms of management and I don't think that will be easy to manage. I think either the alternate is there and is handling the responsibilities of the member or the member is there and it's pretty much and either/or situation.

We're very sensitive to this attempt to, like, get more people in there advocating your view than you're allowed in the membership. So we think that this raises all kinds of risks of that happening and the gain is pretty minor. I don't understand if a member says I can't go to this meeting, then they designate an alternate and the alternate handles the responsibility. They can communicate with the alternate. They can tell them what to say. But we can't, like, stop everything, have the alternate leave the room, and then have the member come in remotely, and then have the alternate come back in. And if we're not doing that then we are in effect giving one of the groups multiple representation, which they shouldn't have.

I really don't understand the whole point of this. I'm opposed to it pretty strongly.

Kurt Pritz: Okay. Thanks. So a scenario is that a member can attend two days of the meeting but not the third, or a scenario is that a member can attend two days but might miss a half a day or a few hours where they want the alternate to be able to participate. So I think there are several reasonable scenarios. There's a scenario where a member, one that we know, where a member

can't come to physically attend and so they'll be able to attend a portion by remote participation but not the entire thing.

So there are real scenarios where I think we have to address this and I agree with you that we don't want to stop the meeting and have people walking in and out, and I wouldn't ask people to travel across the United States or across the world and then have them walk in and out and not treated with mutual trust and respect. So I think, I agree with your points, but I don't agree with the balancing and I think the balancing goes to, given the objectives to keep the alternates up to speed and having an economically conducted meeting where the participants are fully up to speed with what happened recently.

I think this is a good compromise. An alternative proposal was to allow all the alternates to attend and for the reasons that you stated I thought that wasn't preferable to what I've suggested here. And as you probably read in the second part of my email, the way to kind of address your concern is just to make the meeting open and then have two sets of attendees, members and observers. So all the alternates that wanted to attend could just be observers and I think there's a lot of plusses to that scenario too.

So I saw this as coming most of the way to addressing your concerns and still maintaining the economics and the ability to allow alternates when they are participating to participate at full speed.

Ashley?

Ashley Heineman: Thanks, Kurt. I just want to say I'm very puzzled by the objections to this and even the second option. The basis is to treat people with trust and respect. I kind of feel like there's an undertone here that that's not actually there. In fact, we should all be treated as professional adults. We understand the rules. I don't think, at least from the GAC perspective, that we are seeking

any kind of situation in which more than the designated official members are going to be able to actually participate and speak.

We would like to have our alternates there who are able to come, at their own cost, be able to listen into the meeting that we can be able to go out to dinner afterwards and have a conversation perhaps. I don't see how this is upsetting the balance. In fact, I would like to say that I support the second option. There is a long track record at ICANN where meetings are open. They've proven to work. If there was examples of where this hasn't worked, I'm happy to hear them. But I think the rules have been clearly articulated in the charter. I think we all understand them and respect them.

I'd be surprised if anybody is trying to play a game to somehow disrupt this balance that people seem to think there is, even though some only have three representatives. So I really would like to see option two and I'm happy to hear what others have to say. Thank you.

Kurt Pritz: Thank you, Ashley. Alan. Thanks, Ashley. Alan?

Kavouss Arasteh: Hello?

Kurt Pritz: Hi, Alan.

Kavouss Arasteh: Can you hear me?

Kurt Pritz: Oh, Kavouss. We can hear you. Just a minute, we're going to hear...

Kavouss Arasteh: I was disconnected from the internet. Listen, please. If any attempt of anyone wants to exclude me to remote participation, I disagree with that. I cannot enter in that country but I want to be able to participate remotely and I don't want that any rules exclude me. I have been already excluded by that country not to enter the country. But I don't want to be excluded from the meeting. I want to participate remotely no matter who participates, whether

alternate participant or not, but I will be all three days listening from the beginning to the end of the meeting and comment where necessary.

So I don't want any rules exclude me for remote participation because that is very, very unique and specific and peculiar situation, must be properly addressed. Thank you.

Kurt Pritz: Thanks, Kavouss and if you can't see the room, there's support for making sure you're able to participate. Alan, you kind of dropped to the end of the line but if you want to go ahead, go ahead.

Terri Agnew: Do you see in chat where he said his line dropped. I do believe he's going to be reestablishing here in a moment.

Kurt Pritz: Great. James?

James Bladel: James speaking. So I think I'm agreeing with Ashley. We're spending way too much time on this and we're building complexity just for the sake of complexity. The question of balance really is I think was critical in establishing the group but is perhaps something that is not necessary in the conduct of our day-to-day meetings or our conversations.

We all know that we're not going to proceed with any type of decision or consensus call without adequate representation of the membership. So I think who attends these meetings and who participates is really, we should err towards the side of being as open and transparent as possible.

I think from the registrar's perspective, we have folks that are myself not going to be able to attend the entire meeting. We have one of our members, Emily, won't be able to attend at all, so we have an alternate coming and we're just kind of trusting that the team based approach is going to get us anywhere from two to three people full-time covering this event, and we're just kind of fine with that. And we're hoping that our colleagues from other

stakeholder groups and constituencies, and outside the GNSO are kind of approaching this the same way. This is a team based approach and that we bring those team perspectives to the larger group, and then we kind of work this out.

I really hope that we can kind of put this to bed and move on. We have certainly enough material and substantial things in front of us, and we spend way too much time on this administrative stuff. So sorry for the rant.

Kurt Pritz: You think you spend time on administrative stuff? Ayden?

Ayden Férdeline: Thanks, Kurt. Hi, everyone. This is Ayden. And sort of to James' point, I don't want to belabor this and so perhaps we can just continue this over on the list. The only reason I joined the queue to sort of briefly summarize the email that I sent to the list earlier this morning and also to lend my support to the comments that Milton made. It is very important that we maintain - the GNSO Council was deliberate in how it constructed the compositions of this EPDP group. And the distinction between a member, between an alternate, and an observer is an important one that the Council did discuss.

And so in the email that I sent this morning, I simply said that having both members and alternates in the room when the alternate is not sitting in on behalf of a member would disturb and disrupt this balance, and will be unacceptable to me.

I feel slightly more indifferent to this switching between members and alternates on a daily basis. If some (unintelligible) or part of the community feel that (unintelligible) I'm indifferent to that. I don't have any strong feelings there. But in the meeting room itself, the number of people sitting inside that room on behalf of part of the community must be in line with the balanced composition.

Thanks.

Kurt Pritz: Thanks, Ayden. That was really well put and you know I respect you a lot. I just have a problem with somebody flying in for the meeting and asking them to leave the room. I don't want to be glib here but certainly, it's not - consensus isn't by the weight or the number of people in the room. It's the speakers and in fact, we've sort of developed this methodology for speaking, methodology of speaking based on which group we're in.

So I understand what you're saying but I just think your concerns are overridden by the other goals that we have. Alan?

Alan Greenberg Yes, thank you very much. Sorry about my connectivity before. I'll preface this with saying I think there's zero chance that ALAC will have an alternate physically present in Los Angeles. So there's no personal benefit to this. The concept that someone sitting at the back of the room or along the wall is going to disrupt the meeting I find rather curious. I'm happy to say there will be a fixed number of chairs at the table. I'm happy to say you can't have someone consulting with you over your shoulder while you're at the table.

But if we're taking this long to solve this, we're never going to actually be able to come to agreement on substantive issues. And I really just don't understand why it is so disruptive to have someone. We're likely to have ICANN staff members in the room. And again, not at the table. Let's have a fixed number of placards so we know who's at the table representing who. But this kind of quibbling I think just doesn't bode well for us actually doing anything substantive. Thank you.

Kurt Pritz: Well, Alan, I'm counting on you to engender a more positive attitude and carry us across the line. So we can leave this - oh go ahead, Milton.

Milton Mueller: I just think it's not fair what's going on here in terms of this positive attitude and somebody is causing a delay. We're not the ones proposing a rule change here, are we? We had an established set of rules regarding the

participation of alternates. I was told that (unintelligible) attend the telephone meeting, I was cut off from the email list. I was not allowed to get into the meeting even though I could have attended 20 minutes of it. And now, people are proposing to change the rules in ways that are indeed wasting a lot of time.

And yes, of course it's going to make a difference if people have five - people who are supposed to have three representatives at the meeting have six representatives there shuffling back and forth. It's going to make a difference in the overall tenor, and balance, and they're going to go to dinner, and they're going to lobby.

So don't pretend like these concerns that we have are not real and stop putting the onus for this change on us. We didn't propose the rule change. You did. So if your proposed rule change is causing us to waste a lot of time, then own up to it. Withdraw your proposed rule change and let's get on with the business. But let's just stick to the existing rules, which is that if you can't attend, your alternate attends. End of story.

Kurt Pritz: Okay, anybody else? So Milton, I don't think we're proposing a rule change. I think we're matching the rules up to people's situation and trying to attend the meeting, which is where conflicts are going to happen no matter which dates we pick. So I think that we can discuss this on the email list slightly more. But I'm still for my - the option I put up, option one, and I think that it's my interpretation after several consultations of what's in the rule book. So I think that we need to, if we want to dispute this, we can set up some meeting with GNSO or something like that, however that works.

But I don't want to - I think the negatives of asking people to come and go from the meeting or not being able to attend are just too onerous. And Milton, I'm the one who decided to spend time on this issue. So I'm willing to spend time on it. I just wanted to Alan to be more - it was kind of a joke.

So yes, so I think that I'm still for option one. I heard support for making it an open meeting, which would increase - I think it would increase the cost of the meeting substantially because we'd have to move to bigger rooms in the hotel and things like that. So I'm not necessarily for that but others can advocate for an open meeting too.

I'm going to leave it at that. I'm going to follow-up this meeting with an email about what the plan is and then provide a path for those who want to take this upstairs to go ahead and do that.

All right. I'd much rather talk about this stuff. So I wanted to talk about the triage report. So I sent you a version of a complete triage report that you probably haven't had time to read yet. And so as you know, the triage report is our first deliverable and the table of contents are an executive summary, which outlines what we think were the overarching issues associated with the report. But then detailed the summary of all the input, so all the summary comments we made.

And then I'm attaching three appendices to it. It was a lot of work for just to do one, but for the support team. But I want all the comments to be in an easy readable form even though they're somewhat long. So I touched an appendix that listed all the comments by the group and we'll rejigger those to alphabetize the name of the groups.

But I wanted that and we'll furnish another appendix that has everybody's comment by the section in the GDPR report - not the GDPR report, the temporary specification, excuse me. And so then people can see the comments side by side. And third is we'll publish, you know, I remember our first very first meeting where people thoughtfully gave opening statements by the group. So I want those kind of up in bright lights.

So that's the triage report. I encourage - we'll have - we want some feedback by Friday. I really hope to have it sooner than that. I want to ship this puppy

off and we'll talk about homework for the next meeting, but I don't think there's too much homework for the next meeting. So I really hope you can take a look at the report and provide some comments.

I don't know if anybody wants to comment on the draft report the way it's put up now or it's too soon. So I'll just pause for about 30 seconds. Okay, time's up. So it would be nice to actually have this deliverable under our belt. To get to the substance of the meeting, here is the chart showing the summary of responses and as before, green doesn't necessarily mean in complete agreement and red doesn't necessarily mean in disagreement as pointed out before. So the green - those are green with different sections sometimes had comments for improvement and those listing red found general approval sometimes, but with changes.

So that's the heat map. I'm going to just pause for a second for Thomas. Hey, Thomas.

Thomas Rickert: Thanks very much, Kurt, and hi everyone. For the IFP-50, (unintelligible) was not showing the chart but I'm disclosing no secret if I say that everything was tagging (unintelligible). And I just wanted to take the floor for to explain that not each and every sentence in the section that we were to comment for today is wrong. In fact, there are a lot of very good sentences. These sentences are exact copies of what's in the GDPR and there are other sentences that are paraphrasing the language of the GDPR.

And then there are certain parts missing. So I think I'd just like to put on the record that I think that when it comes, for example, to information duty towards data subject, i.e. registrants, we can only put those together once we know what the processing activities are because we can't really predict now what we have to (unintelligible) about in the absence of having had a substantive discussion on that.

So I think in terms of approach, what I think we need to discuss as a team is whether it is good for a stratification such as this to more or less have it the text of the law but not being comprehensive in many aspects. Or whether we should just leave that aside and just tell folks or point folks to the respective articles of the GDPR and let them do their own assessment.

Yes, for the paths that are not just copying the GDPR, we should be comprehensive and explain all the information duties for example that need to be (unintelligible). So I think I should just put that on the record before we move on because this no is actually a no, but. Thank you.

Kurt Pritz: Thanks, Thomas. Yes and I apologize for the IPC's color-coded - I apologize for the absence of that but you'll see that we've captured your comments below and so we'll be able to talk to them and those points that you made as we go through. I - so I'm going to move on to - so we've got our now marked up, dog-eared, it's got circles on it from drink cans, copy of the temporary specification open to Section 8, which is the miscellaneous section. And I've also got the spreadsheet that now contains all the comments from everybody that have been made, so it's - you can see it's an impressive body of work and that's what we're going to put up in lights.

So for the miscellaneous section, there's really three sections to this and not much but some interesting issues that have been raised. So, you know, it's clear to everybody that modification to the temporary specification applied to the temp spec only, and so that they would naturally expire with regard to this. There's a question, though, whether no third party beneficiaries or the severability of this would expire. I don't think that's the - I'm not so sure that's the case, so I want to hear the position of parties that do this.

Regarding Section 8.2, there are a couple of comments. One was whether the (unintelligible) GAC or the GAC input from the San Juan Communique should be expanded all GAC input. You know, I think this is just the timing of this temporary specification and that the San Juan Communique hasn't been

-- I'm going to get rid of this thing that's distracting -- so the San Juan Communique hasn't been completely digested yet so that's what might cause changes to this temporary specification.

There's also a recommendation that GNSO processes might create some need for a change. I'd also like to hear, you know, maybe from, I don't know, yes, (Dan)'s on the call or somebody from ICANN staff or anyone. If there's a report about the Board in fact meeting on this and either approving or - approving or - approving the next 90 days of the temporary specification or whether changes are going to be recommended.

So I think, finally, in Point 5, I'm not doing too well here, but in Point 5, you know, is it possible that third party obligations would arise after the temporary specifications, because this is becoming a consensus policy? I don't know. So those are the issues associated with this section. So I'll take some questions on it. Kavouss?

Kavouss Arasteh: Yes, I'm sorry, with respect to the modification or amendment to the temporary specification. The issue was discussed in the (unintelligible), in the GAC and there was two points. One point one of the member of the small group referred to dynamic modification. I was not sure whether there is any room for dynamic modification, however one-time modification, they said it should be proposed by the team to the ICANN. I said that in my view, it is not the duty of the team to propose modification to temporary specification. They could send something to the GNSO, to the ICANN Board, is there a possibility to modify temporary (unintelligible)? If the answer is yes, then we go ahead to see what are the one-time modification but I don't think that the dynamic modification is practical (unintelligible) I think that because my alternate was not sure that whether I raised this question or not and I promised him that I would raise the question.

Please kindly clarify, one, is there any dynamic modification process possible? Second, is there any modification foreseen by the team to be

suggested to the ICANN Board and if yes, how ICANN would do that, if they do that. Would it be again, during the one year or the one year will be extended to have the modification to become (unintelligible) within the one year from the date of modification, which is not clear.

I raised this question in the public forum and unfortunately or fortunately, they said that no modification to the temporary specification is foreseen. So ICANN Board liaison must (unintelligible) reply to this question. Thank you.

Kurt Pritz: Thanks very much, Kavouss. I think Chris Disspain, ICANN Board Liaison to this group, mentioned that the Board is scheduled to meet later today. I've lost his comment, but, no, there it is. So and that no changes at this stage of the game are forecast. With regard to whether changes could be made in a dynamic fashion, you know, I invite you know, the Board liaisons or (Dan) to comment.

You know, for me, the Board really doesn't operate - don't take this the wrong way, anybody, the Board doesn't really operate in dynamic style, you know, it meets periodically and so changes can be only taken up then. So I don't think there could be dynamic changes and I think the changes would only occur, you know, on the quarter, if they were to occur.

I also think, as we get further along, the likelihood of changes would decrease for a couple reasons and third, I think, you know, and I - if anybody here wants - because I'm speaking where I'm not an expert, but I don't think the GNSO or this group would recommend changes to the temporary specification at this stage of the game because you know, we're on the job of amending it - amending it once, so do it once, do it right, never do it again.
Alan?

Alan Greenberg Thank you very much. I think we're mixing apples and orange or, I don't, something more radical than that. 8.2 is in the temporary spec. We can't change that. The Board could, should it choose over the next nine months,

make changes to it. That's within their right and we can't change that. It would certainly be preferable if they didn't, because us working to a moving target is not going to make our lives easier but that's completely out of our hands at this point.

Our job, I thought, was how do we convert the temporary spec into GNSO policy recommended to the board? Once we do that, it is policy and the only way to change is a further GNSO action. So I read 8.2 as completely specific to the temporary spec and does not need to be specified going forward. It just disappears because we already have established procedure for how the - how policy could change if it needs to change going forward. Thank you.

Kurt Pritz: Yes, I certainly agree. I think the issues here were what happens with 8.1 and 8.3 because there was some - some people raised the issue that they might not be required in the spec going forward, but I think they would be.

Alan Greenberg Yes, it's Alan. 8.1, I think, we don't have third party beneficiaries most places. If we wanted it here, we could certainly discuss it but in general, that is not how our contracts work and 8.3, I think, still makes sense but I'm not a legal expert.

Kurt Pritz: Okay. I'm just letting the chat play out here. So there's one other point I want to raise and that's, I think it has to do with a point that Alan and Thomas brought up and it's Point Number 2 and should the text be modified to reflect the relevant relationships during control or controller processor, et cetera? So are - you know, could one of you talk to that, because it's a theme that plays throughout this. So in each case where this and Appendix C later on talks about joint controller, is that something that you'd want to - you'd want to differentiate, pretty much, at every stage of the game? And Margie Milam, I saw your hand (unintelligible) call on you in a second, I'm sorry.

Margie Milam: Sure, this is Margie Milam. Actually, I was trying to talk about the prior issue. The other topic, I think, that we raised on our comments is that, you know, we

already have a Whols Conflicts of Law Procedure so I just want to, you know,, reemphasize that that's still a consensus policy and so changes to any future potential policy that comes out of this would need to follow, you know, that, or the GNSO policy and process generally, under the bylaws. I'm just agreeing with what Alan had said and also pointing in the importance of following the Whols Conflicts of Law procedure.

Kurt Pritz: Great. Thank you. Thanks for affirming that. (Emily)?

Emily Taylor: Hi. I just wanted to pitch in to try and address the question you just raised about (unintelligible). I think we are, in relation to the Appendices, for clarity, on Whols stated purposes and controllers and all the rest of it, it's quite a key point in GDPR terms, because different levels of responsibility (fall) to data controllers and processes. Although it's true that the GDPR does place greater responsibility than its predecessor on data processors, it's still a question of the buck stopping with the data controller. So it's normally quite a contested issue, who is controller. And you know, having - it may not be that satisfactory to go through because, you know, in different scenarios, different actors can assume different roles, unfortunately. But I think the general point, I think (unintelligible) which is that I believe that we're still lacking a general sense of applying the GDPR as a whole or GDPR analysis to the temporary specification because it's patchy in places.

I'm very well aware that, you know, people - that there's been extensive work, legal work done, on the application of GDPR and Whols through the ICANN processes. So it's not really a question of redoing that. I think a lot of that is extremely well done and so I hope that provides some clarity in answer to your question, Kurt. Thank you.

Kurt Pritz: Yes, I think so. Thanks, (Emily) and I think Thomas raises, you know, many of the same issues throughout this. Thomas.

Thomas Rickert: Thanks, Kurt. Yes, hi, Kurt. Thanks, thanks very much and I agree with everything that (Emily) said. I'd just like to add that I think it would be useful for us to sort out the different (unintelligible) between the parties up front, because they need different treatment. So in my view, and I think that ICANN has sort of acknowledged this with the table of responsibilities on, I think, Page 8 of the temporary specification, or a background document, that for data escrow for registrants, data escrow for registries and the (unintelligible), ICANN is the controller and the escrow agents and the (EBERO)s are the processor.

So that's something that needs to be governed by - the data processing is between those parties, and the contracted party don't really have a role to play in that. And then we have registration data flowing between registrants - the registrants, the registries, and ICANN, when it comes to compliance and that, in my view, would constitute a joint controller situation and that is different from the data processing relationship.

And according to the GDPR, you need two parts to this joint controller agreement. One is a quite light, public (unintelligible) and then you can have a more detailed agreement that needs - that doesn't need to be publicized. And the reason why I'm railing on this now is that we are going to discuss (unintelligible) of GDPR for registration data. Yes, when it comes to concluding such agreements, such an agreement, we need ICANN at the table and I think what we should ask ICANN, and there was some hesitancy in the past for ICANN to confirm that they are joint controllers.

Yet, we haven't really heard from ICANN, the organization, how they want to deal with this, and there are potential alternatives that are worthwhile discussing. So I think we need to reach out to ICANN and clarify whether ICANN will take whatever scenario we think it appropriate and commit to entering into the required agreements with the contracting parties or whether ICANN has a different view on that, in which case, I think we just need to know this up front in order to be able to shape the whole architecture

(unintelligible) accordingly or enter in the debate with ICANN. Does that make sense? I hope so.

Kurt Pritz: So what you're saying is that depending on whether the relationship is joint controllers or their data controllers trading data that you might - in the later case, you'd need a, you know, a formal agreement that governs the transfer of data but where it's a joint controller, you wouldn't require that agreement. You just require an acknowledgement of the parties and so, if any part of what I said is just correct, sure, it's a great segue to Appendix C and the chart in Appendix C.

So if you could turn your - beverage-soaked temporary specifications to Page 21, we'll start talking about that and Thomas and maybe (Emily) since you're both in the same kind of time zone, almost, maybe you know, we could sort of work together on putting together a kind of framework for the group to have this discussion because there are several comments about the chart on - in Appendix C and changes to it. I had a couple, myself, and you know, it seems that we want to try to have this discussion with some sort of framework like this chart. So I hope I did right by you, Thomas. So I'm leaving - I'm leaving Section 8 behind and moving to Appendix C where we'll talk first about the preamble and then take up the chart and the closing - the chart and the accompanying section.

So, you know, the preamble to the chart is just that, it introduces the chart, and you know, has some words about the complex environment, but also has some advice that you know, compliance with the requirements of GDPR and as captured below as required so it's - to me, it's sort of a hybrid statement about the rationale for what follows plus some direction about that the parties shall adhere to the responsibilities that they owe one another as defined below.

So I think, you know, as Thomas and maybe others that said -- do you want me to stop, Ashley? Go ahead.

Ashley Heineman: No, I'm sorry, I thought you were done with kind of the overarching. I can wait until you go through what people's comments were. I just don't see the GAC's comments reflected.

Kurt Pritz: Okay. Well, it's here in the (unintelligible) so let's see if we can find them. So you know, I think it was Thomas and maybe others that reflected on this language and Thomas did, in his preamble to our discussion here that the language in the - in this - limits the GDPR but it's not exactly the same so is much of this necessary, since it already agrees? And another comment that's been made earlier is should we refer to other general - that general data protection principles or other, maybe, data protection regimes, and not just the GDPR?

There's a comment here that is repeated below that I think is really interesting and should the language be examined using the domain lifecycle as reference? So as somebody registers a name and then pays for it within five days and then uses it and then renews or doesn't renew it, there's different parties and different reasons for the collection and disclosure, use and disclosure of data so maybe this should be - maybe the chart should be more detailed in its description of the domain name life cycle in order to capture all phases of it.

And then, gosh, I'm not - I'm flipping back and forth well, Ashley, but I think that GAC comment went to this, that should the language be modified as it currently only references some but not all of the basis for processing personal data and I think the GAC suggested some other basis that might be included here, so I didn't include those specific recommendations in the comment because they're, you know, the GAC suggested some and then I think there's more. We have a comment that should we replace such access - shall we add as applicable so such access will at all times comply with the requirements of the GDPR when applicable. So that, you know, I read that several times to get what it meant but then when I got it, I thought that that's a

clarification that sort of makes sense and then on this - my secret comment - but on this chart, it has (EBERO) as a processing activity and I think (EBERO) is one of these parties, I think that's what Thomas alluded to, so maybe the chart get rejiggered in a certain way. And then finally, one of the legal justifications, should we add performance of a contract here?

So that's - those are the comments in the preamble and I'm going to torture you just a bit and go on to Section 1 which is the principles for data processing because there, you know, these principles are sort of a preamble topic to me, too and we're all interested in getting through this by the end of the meeting. So you know, one is, you know, should, you know, right at the start, so should the reference to obligations to applicable laws and regulation be deleted, because we already have the Whols Conflict of Laws Policy as we talked about just before.

And should we recognize that this language, which captures, I think, Article 6 of the GDPR, it's not the only legal basis for processing data. And third is again, these are - it doesn't and the principles aren't very specific, they're just principles so you know, maybe the suggestion here was that it be deleted or finally, should it be - again, should this be modified to include other privacy regimes or other privacy principles. So, whew, thanks for getting through that but I think the preamble and the principles for processing are closely related. Ashley, do you want to speak first since you had your hand raised?

Ashley Heineman: Sure, thanks, Kurt and perhaps it's something that could be made clear, with respect to the preamble and the chart, is the intention to be inclusive of all the legal justifications or not? Because it looks like it was supposed to be inclusive, all-inclusive and if that's the case, I think the one thing that really jumped out at us at the GAC as critically important is that when it was referencing the public, the disclosure of the public RDDS Whols, that that's actually a contractual obligation. I just didn't want - we did, as the GAC, didn't want to give the impression that there were no contractual obligations to provide the public RDDS Whols. So I'll stop there, we touch upon that later in

the document, too, but if this chart is not intended to be all-inclusive, then perhaps there needs to be some reference that that is the case. Thanks.

Kurt Pritz: So is that essentially the same thing as adding, you know, contractual duty as one of the legal basis, you know, that's been suggested here too? You know, maybe somebody wants to comment on that, but did we capture that, that a contractual obligation is the - is a legal justification. (Emily), can you go ahead?

Emily Taylor: Thanks. I think I might have got confused, I think I put my hand up to just comment on the - on your slides about the first bits of Appendix C and just really to make two quick points. I think that there may not be as much dissent as it appears from the colored chart. I think that's a bit (unintelligible) to some extent here. The contracted parties clearly need to abide by the law and I think that the queries raised, certainly from our perspective, are well, one, this is very GDPR-specific and there are privacy laws in the works and in other countries that are - that will have legal impact.

And also it's always a little bit, I don't know, risky - too strong a word for it, but not ideal to quote a kind of summary of legal obligations where you could just refer to the law itself because the law is new, it's going to - there's going to be lots of interpretation and clarification that will come through the courts and possibly amendments and so I think rather than trying to sort of set out a great big swath of repeating or summarizing GDPR alone, I think it should just be a sort of more general obligation to comply with privacy laws that one is subject to. So I hope that explains where we were coming from in making our remarks. Thank you.

Kurt Pritz: Thanks very much, (Emily). I understand the - I don't know if need is too strong a word - but I understand the need to recognize other privacy regimes but also understand that the reason we're all here was the enforcement of GDPR, excuse me, that started last May. So I think that, you know, we certainly, in order to make determinations about disclosures of data later on

and providing access to the data when we have that discussion, I think we need to take the GDPR as the prime reference but I also understand the flexibility or that whenever we're done, we need to have that flexibility to recognize existing privacy practices or regimes and also anticipate new ones, like (Stephanie) just said. Alex?

Alex Deacon: Thanks, Kurt, it's Alex. Just wanted to touch upon this Whols Conflicts with National Law issue, you know, understanding that there are those in the chat who probably don't agree, but you know, first of all, I think it's a given that all obligations are subject to applicable laws. I think we could all agree with that, but the fact that there is existing consensus policy around Whols obligation and national data protection law is important. I'm concerned that the language in this section, you know, appears to allow for us to circumvent that policy and it creates uncertainty, which we need to avoid. So I think we just need to, when we go into the final report here, we need to make sure that this is worded in a way where that does not happen. I don't think it's within the scope for us to nullify that consensus policy, that should be done elsewhere. Thanks.

Kurt Pritz: Well, that's interesting. So I didn't see it as possibly circumventing that but anyway, let's go to Milton and see what he has to say.

Milton Mueller: Yes, you can't circumvent something that doesn't work, that is a no op. You - can anybody give me an instance of where this conflict of laws policy has actually been brought into play? If you can, I'd be surprised. And the reason this policy was essentially telling the registrars that if a data protection authority comes to them and tells them that they're - what they're doing is against the law then they can be released of certain ICANN contractual obligations. But in fact that's not how data protection authorities work. They do not give you that kind of information in advance.

So the essentially the conflict of laws policy was a fig leaf that ICANN tried to put over their clearly illegal WHOIS policy prior to the GDPR. And they knew

it really didn't do anything. So it's, kind of, irrelevant. I mean I think that if we come up with a consensus policy around the (temp spec) that would have to supersede or in some way moot the other conflict of laws policy and I don't think that's a problem. I think that's a feature of what we're doing. We have to do that.

Kurt Pritz: So Milton how - I'm thinking of the future. So we write this procedure in compliance with GDPR and, you know, with new laws in California or wherever else there's privacy laws. But then there's additional laws that might be privacy related or something else related. So we need some sort of effective conflict of laws policy going forward.

Milton Mueller: I think Marika made a very important point just here in the chat which is it's not really a policy. It's a procedure. So it's a process that you can go through. And yes, Rickert's comments in the chat are correct too. It's basically you ask ICANN for permission to comply with (unintelligible) laws. And I don't know, you know, I'm not a lawyer so I don't know the legal technicalities of how we mesh what we're doing with that particular procedure. But I think we really don't need to pay any attention that procedure.

We just straighten out what we're doing to comply with GDPR first and foremost. And we can, you know, I don't see any way it can conflict with the conflict of laws procedure, because the whole purpose of the procedure is to make sure that the registries and registrars are not forced to break laws in their local jurisdiction and that's exactly what we're trying to do here on a broader basis.

Kurt Pritz: Thanks Milton. Mark Svancarek from Microsoft.

Mark Svancarek: Thanks Kurt. Yes, I am informed that the process has been used a number of times. I can't vouch for that personally myself. And (Maggie) was forced to drop off and of course we're not allowed to bring our alternates onto the line whom answer this as well. But (unintelligible) I hear that there's, you know, I

hear the satisfaction with the thing. I think it's up to us to evaluate, you know, whether it remains applicable or not. And superseded if the case may be. But the point is, it is the books for what it's worth. And simply saying that it's, you know, not an effective thing doesn't make it go away. So I'm a little confused. I'm sorry Mark Svancarek for the record.

So if that's the argument, I'm a little confused by that. Oh, and (Maggie)'s back if you're really interested in any particular historical cases where it was used.

Kurt Pritz: (Maggie) why don't you think about that? James?

James Bladel: Thanks. Hi Kurt. James speaking and apologies that the conversation has moved on since I originally raised my hand. But just to note that I think you were, kind of, alluding to this earlier is could a more effective or modified or strengthened version of this procedure, kind of, act as a safety valve to get us out of any kind of conflicts in the future. And I think it's worth discussing, but I think we should also recognize the challenges that contracted parties have had in successfully invoking that process in situations where I think, you know, well I'm not a lawyer and certainly not a European lawyer. So but in situations where it's seemed on the surface that there may have been some validity to the idea that there was a conflict. I noted (Thomas)' various thing, astute note that, you know, this is essentially asking ICANN for permission to comply with the law. But I think it's more of noting to ICANN that its contract is perhaps voidable as it stands. And that they are asking for relief from certain provisions to preserve the contract is probably a better way to look at it.

But, you know, but from our perspective, I think there was even one question of a threshold of how to invoke this process. And in the past, it was, you know, you almost had to be in a position where you were already in violation of the law before ICANN would entertain a claim under this process. So I think all of those things need to be examined and addressed if we are going

to seriously consider or table the possibility that some version of this procedure is going to come in and save the day. And I'm trying to be open minded, but I am skeptical of giving our - give the history with this process. Thanks.

Kurt Pritz: Yes, I think that's the agreement. Diane Plaut? Hi Diane Plaut we can't hear you.

Terri Agnew: Diane Plaut this is Terri from staff. I don't see where you've joined on the telephone. You need to join on the telephone or activate your Adobe Connect mic. To activate your Adobe Connect mic, on the top toolbar select on the telephone icon and follow the prompt.

Kurt Pritz: We still have the microphone next to Diane Plaut's name indicates that she is. So let's fine Diane Plaut and Margie Milam do you have examples of when this procedure was used to have a different comment?

Margie Milam: Actually, this is Margie Milam, I don't have - I recall that it has been used so my suggestion is to ask staff to research it. They obviously know whether it's been used or not. And what were the issues associated with it? Because I do think that Milton's statement was a little too broad and that, in fact, had been used. But really, they're the ones that have the record on that. And so - and I also wanted to clarify that if this is something that is to be addressed then it needs to be included in the charter. And from my reading, it's not in the charter of this particular EPDP. So that's something that I'd like some clarification on as well.

Kurt Pritz: Okay, so I'm - yes and so I'm for, you know, what Milton said in that we need to focus on this. I think staff could if you guys don't mind, you know, look at the history of this But more for our back pocket rather than active discussion on this, because as Milton said, I think Margie Milam alluded to we should concentrate on compliance with the GDPR and other existing privacy regimes. And to the extent that a discussion about the conflict of laws actually

plays a role in this is TBD because it would only be discussed in terms of how we could implement this temporary specification. Diane Plaut are you I the game?

Diane Plaut: Yes, I am. Can you hear me now?

Kurt Pritz: Yes.

Diane Plaut: Okay, great. I wanted to go back to Milton's point and to the other points that were made about the conflicts of law procedure. From a legal perspective, truly the establishment of a conflict of law procedure in bylaws and by the board as adopted is clearly a procedure that is meant to be there to resolve issues such as this. The scope of this temporary specification and then the consensus policy that's going to be formulated is based upon the - has a very defined scope in the analysis of GDPR in relation to WHOIS information.

And the purpose of the severability clause is to be able to enable any kind of question that would be made by a data protection - by a DPA to be able to override whether the California law, whether it be German law should one provision of what ends up being the consensus policy need to be brought into question? Then the severability clause allows for that. And the conflict of law procedure would allow for there to be - this procedure that are already established by ICANN to be instituted.

So to Margie's point, I think that Milton really needs to rethink calling it an illegal or irrelevant procedure. It's there for a reason. It will be used when needed. The severability clause will be in effect and the scope of the consensus policy will be effective as is.

Kurt Pritz: Thanks Diane Plaut. That was really well put. I think - well I think what's already been raised here and - we're going to rely on staff to come back to us with some information as the effectiveness of that procedure in dealing with

future conflicts and they might come up. I missed Marika's hand, because she's up there in the clouds. Marika?

Marika Konings: Thanks Kurt. This is Marika. I just wanted to point out in relation to this conversation and I know in the chat, but it may have gone or lost or something. The GNSO Council has actually already agreed to form an implementation advisory group on the ICANN procedure for handling WHOIS conflicts with privacy law. This follows that a lengthy process that went before that. There's public comment that has been provided input on some of the issues that people have identified with the procedure and originally it was actually envisioned that that group would have already started by now.

But maybe ironically had the Council agreed to wait with launching that call for volunteers, noting the workload of the EDPD and the likely interest in that effort as well, I think they agreed on their last meeting to basically wait until an initial report on the temp spec of this group has been published to then consider whether the timing is right to start that effort.

So I just want you to know that is definitely on the cards for the Council to look at that procedure. Many have already made - provided input on some of the issues that have been identified. So as such, I think to Margie Milam's question, it's not specifically part of the charter or this group to deal with that. Of course that doesn't take away that the group could maybe suggest or recommend to the Council to prioritize that work, you know, as soon as possible if there is as indeed a clear link with this specific provision on ensuring that there is a safety valve I think as someone mentioned.

So I just wanted to provide you that guidance, and we'll follow up as well on the other question of, you know, whether the procedure has been used. And if so, what feedback was obtained as a result to that.

Kurt Pritz: Thanks Marika. Okay, I'm sitting up in my chair and getting some energy together and going on to Sections 2 and 3.1 of the Appendix C. Except I'm going to pause for Kavouss.

Terri Agnew: Kavouss this is -

Kurt Pritz: Who is - I saw Kavouss' hand go down. So unless, go ahead Terri. What were you going to say?

Terri Agnew: Oh, I was just going to say his telephone line is connected and unmuted. So I was just going to remind him to check the mute on his side.

Kurt Pritz: Okay, thanks Kavouss. I got your comment in the chat, perfect. So with regard to the next couple sections in data processing requirements, one is the lawfulness of processing which to me is a - well not to me, it's a restatement of the task earlier that legitimate interests of the control are overridden by interests or fundamental rights and freedoms of the data subject.

And then Section 3.1 which is implementing appropriate measures and really have to do with some direction about capabilities that data processors should have. And so the comments here really went to, you know, again, you know, there's a question about whether legitimate interest requires further clarity. And I think, you know, that's going to - if we don't talk about it sooner, we're necessarily going to talk about it when we get into access.

There's another comment where this test of legitimate interest overriding individual freedoms is necessary. I inserted the example that law enforcement might be the exception to that. But maybe I misstated the comment. So we'll want to test that.

And should this group consider submitted the - when we have an agreed upon set of legitimate interests submitting this to I think the privacy board. But

I'm not sure. So I'd like - I don't have the spreadsheet out, but I'm like - I'd like whoever made that comment to outline that procedure, so I came up to speed on it a little bit since reading this comment. But not since then.

Again, there's a comment that this section mentions some but not all of the basis for protecting personal data. And it makes this - I don't know why the - it calls out the data subject as a child. Because that seems to be a one-off to me and I think as the registrars pointed out, how the heck do we know if someone's a child? So I don't know there. And, you know, there's a comment too whether this whole section is necessary, right? A specification tells us how to do something not necessarily provide the rationale or why and maybe that should be captured in another document.

And then finally should the identity of the data controller for WHOIS be identified? So I'd like however made that comment to elaborate on it a bit and then finally, in Section 3.1 there's a question whether this covers all the necessary parties just not registries and registrars but also ICANN data escrow agents, (unintelligible) and the like. And you know, we see the previous item we discussed. Should we parse this out, right? And discuss what the - what appropriate measures are for the joint controller relationship and then controllers and processors? And break it down by the flow of data.

And then there's a question about how to do testing. And I - so I see this in some cases as being a best practice document. And again, maybe this should be simplified and say here are some best practices that need to be modified - need to be followed in a good way.

And again, the - a comment we see quite often as to whether we should address, you know, address privacy regimes other than GDPR. So I know we're an hour and twenty minutes in and now you can, kind of, set your clock by when people, sort of, lose energy. But I want to plow through this is we can. So, you know, can we at least we have some comments maybe a description about the Article 40 Code of Conduct Referral measure? Or, you

know, parsing by data controller, joint controller relationships, that sort of thing? No kidding. What is an Article 40 Code of Conduct Referral? Does anybody think we should delete this section because it doesn't require any actions on anybody's part? Alan Woods thank you.

Alan Woods: So Alan Woods from the registries. Just on the question of the Article 40 Referral just to state what that is, is that, you know, the peculiarity of say particular industries around the world such as would be the GNS industry. We can suggest what would be the basis for say our processing. So what basis would be (unintelligible) in certain data cores such as registrant data? In this case, you know, what would be our stated legitimate interest? What would be our reasoning behind it? What would be the legal basis for e-collection processing and even such as the discovery of that data. And then there is a process specific within the GDPR of referring that to the European Data Protection Board where upon they can then review. It would be a broad code of conduct in effect to say, you know, this is where we get our data. This is how we get our data. This is why we use the data. This is how it will be used and when will (unintelligible).

So the full spectrum, full data process, and they can give an indication that if that was applied in that manner as the code of conduct would suggest. That it would be tending to be in line with (unintelligible. It is not a rubber stamp saying yes, that is definitely in line, because of course, individual actors may apply it differently. And it would have to be a mechanism to test that and (unintelligible) with the code of conduct itself.

But again, it would - a stronger basis in order to identify such as what are legitimate interests in this area? I mean I understand at the moment the only way we can look at what a legitimate interest is, is something that is not contrary to the law. But being able to state it and getting an (unintelligible) by the EDPD, the European Data Protection Board should say would give us a tad more certainty. and that is definitely something else.

So hopefully that gives some clarity as to what that is just to help.

Kurt Pritz: Thanks Alan. So you know, when I read through all this, I thought a legitimate - I thought there were many legitimate interests and that legitimate interests that aren't overridden by privacy rights then were lawful. So there's absent the GDPR, there's many legitimate uses of data. But not all of them are lawful anymore because they are overridden by privacy rights.

So I saw it as, sort of, a two-step sort of process. So I'm concerned about the timing of what we're doing then. If we, you know, develop a set of legitimate interests and send that off to the privacy board or DPAs whether we get a timely response and so there's two ways to approach that. One is to have (Osca) ask ICANN to send the legitimate interests as currently enumerated in the temp spec for some sort of response. If we haven't got that already from letters from the privacy board.

The other is to fashion what we think is our desired outcome, consensus desired outcome for this. And then, you know, sort of, coincident with the publication of the initial reports. Send that to the privacy board and that would buy us some time to take their input into account. I'll wait 30 more seconds to see if there's another hand and go onto the next sections. Milton?

Milton Mueller: Yes, this is Milton Mueller. I - this whole discussion of legitimate interest I think is very much in danger of turning into a laundry list of how everybody wants or could use WHOIS data. And you can't talk about legitimate interest without also talking about what are the fundamental privacy rights. So isn't this a matter to be decided not by ICANN, but by law? That, you know, when law enforcement agency approaches a registrar within their jurisdiction and ask for access to the data. Is it the job of that country to decide whether the interest is legitimate and whether it crosses the threshold of the privacy interest? Why does ICANN even have to be doing that?

I think that's a question that we need to answer. And the other thing to keep in mind is the data protection authorities have already warned ICANN not to confuse the legitimate interest of third parties with its own purpose in collecting and processing the data. So the data that ICANN collects and what it redacts and what it publishes are determined by ICANN's purposes, not by other people's purposes. And we have to keep that in mind.

Kurt Pritz: Yes, I agree with all that. And I think it's something that registrars are dealing with right now, right? As they get law enforcement requests from different jurisdictions. And I think also it's, you know, what we're trying to discuss is what other data disclosures are not made illegal by GDPR? And the privacy rights listed in them? Mark Svancarek?

Mark Svancarek: Mark Svancarek for the record. So I'm not sure what you just agreed with Kurt is actually right. I'm not sure it was your position as chair to agree with it anyway. But anyway, I'm just not sure it's factually correct. So, you know, there are legitimate interests that are not based on law enforcement. You know, they're (unintelligible) requestors with legitimate needs. These things are determined at the time of processing by those involved, just on and on.

So I think the reason that ICANN has to be involved with this is that contracted parties are going to only do exactly what they are contracted to do. And if they are not, you know, bound by some contract to do something, they are going to, you know, choose a path of least resistance whether the least resistance is lowest technical implementation cost or lowest maintenance cost or lowest legal uncertain or whatever. It - which is their right as of corporation, if course. to do that. And that is very reasonable for them to do that.

But you can't expect them to take on addition tasks unless there is some sort of an obligation. And if we leave the whole thing just, sort of, wide open until such time as aa succession of people have brought things to court. Then we're really losing a great opportunity to manage this situation which I think is

a responsibility to manage. And so I think it's entirely appropriate for ICANN to be involved in this because that policy will influence ultimately what gets built. And one of the reasons we're in the situation right now is that what's been built historically, you know, didn't take into account a lot of security practices or privacy practices, etc.

So I'm not sure I really understand the argument for pushing ICANN out of this and just saying this is all about local law. I'm also not a lawyer, but it just doesn't make any sense to me.

Kurt Pritz: Thanks Mark Svancarek and I apologize for not being clear which is better. Diane Plaut?

Diane Plaut: Yes, I agree with Mark Svancarek. Milton's assessment is wrong and I could say as a lawyer that in fact the whole purpose of this exercise that we're doing here is because with the GDPR coming into effect, the EU commission and connection with the Article 29 Working Party is encouraging ICANN to take a stance and to formulate a framework because ICANN is in fact a - has within its bylaws and within its mission for public interest and business purposes, is have to act as a forum for third parties and for different stakeholder groups clearly. And needs to formulate a basis.

The DPAs and other regulatory bodies are not making legal determinations from the forefront about what information and legitimate interests are going to be acceptable and what aren't. It's ICANN's job to set up the framework and then should there be a discussion or a need for the DPA to step in, then it steps in. But ultimately the framework has to be there for the purposes of establishing who's the controller? Who's the processor? And on what basis is whether it's through a contractual basis or other legitimate interests, that is being prefaced. And that's what all businesses are doing.

Kurt Pritz: Thank you Diane Plaut. James?

James Bladel: Thanks Kurt. James speaking and I just want to caution or reiterate a caution that I made I think in one of our first or second call that I actually forget which one. That this discussion about legitimate purposes is the cliff that we continue to not be able to resist jumping over.

And my point at the time was that I don't know that is something that is going to be able to be resolved within the construct of ICANN. Whether this working group or another working group to be able to say that something is or isn't legitimate outside of I think some very specific law enforcement scenarios. And I think that we do need some external authority whether that's EP – E – the – whatever the thing is that Article 29 became or some of the court cases that are currently in process to be resolved to give us some further clarity on that, because I think having ICANN declare something to be legitimate or not legitimate doesn't really hold water. Thanks.

Kurt Pritz: Thanks James. Milton?

Milton Mueller: Oh okay. Yes.

Kurt Pritz: Oh I thought that was...

((Crosstalk))

Milton Mueller: So - yes I guess it is. So I'm happy to hear James basically agreeing with the point I made, which is that, you know, ICANN has its own purpose/its own – I think we have some very fundamental differences between Diane Plaut and her constituency and many others of us as to what that men and purpose of collecting data is and that is indeed going to be the sticking point.

I wouldn't call it a cliff we're jumping over because it's actually paralyzing us rather than making us fall. But this disagreement is going to have to be – we're going to have to find consensus on that, and people are going to have to be willing to compromise and not expect that they're going to get exactly

what they had in the good old days as open indiscriminate WHOIS access and I hope you're all aware of that.

But fundamentally I think – I don't see how you can argue with the point James makes. It – if ICANN decides, you know, ICANN in the past decided that all of this data was legitimate and anybody could have access to it, and now we've learned that that's illegal so that's what's going to happen if we make the wrong determination of legitimate interest.

Again people are going to sue registrars or registries or ICANN and the ultimate arbiter is going to be law, so I'm not sure why we need to decide what is a legitimate interest.

I think we need to decide what ICANN's purpose is in collecting the data and publishing it and we let the legal process decide when it has to release that information to third parties. Thank you.

Kurt Pritz: Thanks Milton. Collin?

Collin Kurre: Hi. Thanks. Can you hear me okay?

Kurt Pritz: Of course.

Collin Kurre: Great. This is Collin Kurre. I just wanted to follow-up on what James has said in support as well, and then add the consideration that if ICANN did begin to make determinations on what constitutes legitimate interest or not in my mind it would require the construction of certain tech shares to be able to escalate if people had a problem with that distinction, or to provide recourse to people who felt that their data had been improperly shared with an interest that was actually illegitimate.

So this kind of speaks to the benefit of going through court systems or kind of having – offloading that determination to other more established bodies that

have these kind of avenues for recourse, for remedy and for protection and balancing of rights. Thanks.

Kurt Pritz: I think that the compromise – so I hope I'm not speaking out of turn here and thanks Collin. I think the sort of compromise that Milton's talking about would include, you know, the preference of corporations that are dealing with this and businesses that are dealing with this not to – they don't want to win the lawsuit about disclosure of data.

They want to avoid the lawsuit so in, you know, in my years of business we always acted in a way that avoided the lawsuit because the real client, you know, most of the classes in engaging in that.

So we – I think we need to be sensitive to that. All right, so I'm going to - in an attempt to finish I'm going to go on to the next section. So we have two more slides.

One has to do with – the first has to do with the closeout of Appendix C where Sections 3.2 and 3.7 - again or a combination I think of requirements, the combination of the requirements and best practices, engaging only selected processors, designating a DPO, maintaining records, providing transparent information although it's not clear to exactly who, you know, providing clear privacy notices, facilitating the exercise of data rights and implementing data protection by design, which is – seems to be a term of art to me.

And so again the question was asked, "Does, you know, does this necessarily include ICANN data escrow agents/emergency backend providers?," which anybody's willing to comment on but I would assume so.

And then, you know, again should we parse this with a joint controller/controller processor, et cetera and then privacy by design – what the heck is that?

To me that's an engineering practice that is essentially a best practice. And then finally to wrap up Appendix C – there's more – there is essentially more of the same so implementing appropriate security measures and – where – and then follows a laundry list of what I would term to be best practices for that but maybe this is encoded into some protocol or something: procedures for breach notices, observing conditions for international data transfers, which we talked about at one time and having the right type of contracts governing them and cooperating with supervising authorities.

So here what's – the additional comments that were made here where we had to go to, you know, is this the province of the – of our PDP team to discuss requirements for security measures or have a statement that they need to fit the sensitivity of data?

You know, how should we either make that more detailed or less detailed? Section 3.8 refers to natural persons and there's a question of whether that should be changed to data subjects or not.

And again there was a question about 3.1 to 3.8. Are they – these meant – are they really not mandatory? Are they overly specific? What happens when they're outdated?

Should a more general reference to best practices be alluded to here? And then I think there might be a typo in Number 5. Is there a GDPR 72-hour notice?

I think, you know, do we need to detail out the roles of ICANN, the registry or registry, the EBRO/others involved here in that 72-hour notice? And then finally, you know, what does international organizations mean?

So less than that so are there any comments here regarding these? I would say – oh go ahead Ashley. Thanks.

Ashley Heineman: Sorry. And this is somewhat of a baseline question for the GAC. As not parties to these contracts it's not always clear to us what some of this language is intended for.

But with respect to Item 3.5 and the sub-bullets underneath could you just clarify that this is intended to just be the initial communication with the registrant and is not intended to be language that would require disclosure of law enforcement requests for information, because that's pretty much where we're hedged on figuring out where we stand on this particular point? Thank you.

Kurt Pritz: Can anybody speak to that question? Maybe Thomas or someone else?

Thomas Rickert: Kurt this is about disclosure to law enforcement?

Kurt Pritz: Yes this is about Section 3.5 and if that disclosure – it may be – I'm going to paraphrase Ashley and get it wrong because that's what I've been doing during this meeting but has to do with whether these notices and disclosures to data subjects includes law enforcement inquiries.

Thomas Rickert: If a disclosure is made by the contracted party while fulfilling a legal obligation to disclose data, that's nothing that needs to be included in the privacy notice and in the information to data subjects.

Ashley Heineman: Okay that...

((Crosstalk))

Ashley Heineman: ...answers my question perfectly. So instead with respect to the privacy notice and not like the day-to-day requests for information. Thank you.

Kurt Pritz: Benedict?

Benedict Addis: Again let's just remember that word legal, in this case law enforcement - Who's law enforcement/which jurisdiction are they recognized?

Kurt Pritz: That was a – I – so Benedict you're going to elaborate. I mean, we're running out of time but – so what point were you making and - because I'm asking, you know, constructively because I know there was something in there but I didn't get it?

Benedict Addis: Sorry. So obviously law enforcement's concerned about notifying data subjects. If there is a waiver under which they're not obliged to disclose based on a subpoena or a court order that's fine but that – that's only available to law enforcement officers and acting within jurisdiction.

I know that there is some article of GDPR that covers this. I can't remember off my head which one. Perhaps one of the lawyers could help me with that.

Kurt Pritz: Thomas?

Thomas Rickert: Yes. So I guess we should really pass this topic for the moment because specifying the information duties when it comes to disclosure requests from law enforcement here without having had substantive discussion – maybe it's just the cart before the horse.

We have clauses in the GDPR. That would be 6.1(c) where the contracted parties in this case could disclose data in the process of fulfilling legal duties, and that would be disclosures to law enforcement but that would only be disclosure to local law enforcement, right.

So we still have to discuss all the different scenarios there might be. That is local law enforcement at the local contracted party. That would be governed by 6.1(c) if the contracted parties are residing in the European Union.

Then we have neighboring countries and a non-person asking the contracted party in another EU country. That would be legally a different scenario. We have non-EU law enforcement asking a contracted party in the EU.

Then we have non-EU law enforcement asking non-EU contracted party, and then we have a final scenario of non-EU law enforcement asking another non-EU law – non-EU country's contracted party.

And, you know, all these have different legal implications and some – and the different – and the legal basis for such disclosure is different. So I think in the – when we're discussing access/when we're discussing disclosure we need to go through all these scenarios, write it up and then we can come back to this very part of the temp spec and update the information duties accordingly.

So sorry for being a little bit wordy on this but I guess we're make – we're oversimplifying things just talking about law enforcement. We need to be very precise and this is actually a part where we need to bend the letter of the law of the GDPR a little bit, and this is why it will also make an awful lot of sense to write up a code of conduct and present that for approval because that will bring legal certainty to the whole industry.

Kurt Pritz: So Ashley not quite the picture you envisioned, right. Thomas well put. To the ICANN support team – if we could capture that as best we can for right now but as a question that we're either parking or issue – we're putting also to ICANN but requiring further analysis that would be terrific.

So I want to spend a couple of minutes talking about the next meeting. So briefly there was another topic included in the survey so I didn't quite understand all the comments.

So I just want to give – like if you could – if the commenters could take one or two minutes. So the BC comment about inclusion of each of the issues identified in 1 through 7 – is that in the access portion and do you want to

take just one minute to describe your comment? Kavouss you're not in the BC.

Kavouss Arasteh: No.

Kurt Pritz: But I'll give – go ahead.

Kavouss Arasteh: So no. No after that please give me the term no. I'm not from BC. Sorry.

Kurt Pritz: That's okay. Do you want to go ahead since you have the mic?

Kavouss Arasteh: Yes I want to indicate that the – basically in the four parts of the survey there have been several questions, clarifications, comments and suggestions for the approve and I just would like to know in what way we address those because most of the time it is a answer.

There are some clarification and comments and so and so forward that this is qualified yes or conditional yes. So I hope that you would have time to sort them out and to see which one requires further actions. Thank you.

Kurt Pritz: Thanks Kavouss and I'm going to talk to that in just a minute. Margie?

Margie Milam: Sure. I guess I – I'm with the BC and we made that comment. I mean, if you glance through the issues so 1 through 7 there are, you know, important things that affect the entire temp spec like for example the distinction between the legal and natural persons to allow for access.

That sprinkles throughout the temporary spec. It's just called out in this Appendix and it's our position that that is a very important discussion that needs to be addressed.

Other things – as we mentioned the accreditation side of it is not what we're addressing at this point since that's dealt with through a separate track. But

the principles related to access – to reasonable access are indeed something that's very important given the fragmented and nature of access that exists today under the temporary spec.

Also the issue like the anonymized email and volume limitations – all of that is again topics that are sprinkled throughout the temporary spec and are very important to be addressed so that – that's the reason we raised it.

These are all seven independent issues that ICANN raised as part of the PDP – EPDP and we feel that we need to find time to talk about it.

Kurt Pritz: Thanks Margie for making that clear. Alex from IP/Intellectual Property?

Alex Deacon: Thanks Kurt. It's Alex. I think Margie said a lot of what I wanted to say but I just wanted to kind of talk once again about this concept of reasonable access, right.

I think it's important that we do discuss what that means in this EPDP. I mentioned this last week. I'll mention it again. You know, there needs to be policies surrounding the specificity and the promptness of what a contracted party response should be to requests of reasonable access.

I think we – I think that's important and then I also want to note that, you know, the concept of RDAP is also kind of an important part of the puzzle with regard to the – to access and so continue to – continuing to look at that and understand how that will work now and into the future to support the tiered access that we'll have is important. Thanks.

Kurt Pritz: Thanks and, you know, I don't – here's another place where I might be wrong but I think reasonable access is sort of a shortcut term and when we talk about it in the future I'd like to call it something else.

So is it access reasonably granted under a reasonable set of circumstances or is it access to a reasonable amount of data or gathered data? What – when we say reasonable access, you know, either at a phrase, you know, after that defining what it is or are we inventing the term? Are we defining the term a little bit? Ashley?

Ashley Heineman: Thanks Kurt. Yes just to very quickly touch upon that point I know that the GAC and perhaps others have already stated that reasonable access needs to be clearly defined.

But with respect to the appendix we did fully appreciate as the GAC that that was part of the question at the very end so we were – decided rather than comment here in the triage survey that we would focus on it in our early input.

But just to note that in case it's not immediately obvious that all these issues are very important to the GAC, and we support immediate addressing of these issues in the very, very near-term so I just want to make sure that was out there on the record but we look forward to commenting more specifically on this in our early input. Thank you.

Kurt Pritz: Thanks. Mark Svancarek?

Mark Svancarek: Thanks Kurt. This is Mark Svancarek. Yes I just wanted to hit on that one point again that you had touched on that a lot of things were done in the temp spec for expediency, including redaction of all users and we know that GDPR applies only to natural persons.

And so, you know, we want to develop policy that actually replace what the GDPR requires.

Kurt Pritz: Right. So we have like five minutes left and I – so I want to give some – a couple of minutes to Terri to recap as she's – but for the next meeting here's what I think.

So one is, you know, I'd like – we'd like to deliver the triage report so while this calls for input by 19:00 UTC Friday, you know, if you could move that up because there's not such a big homework assignment this time that would be great.

And please, you know, from – for me I don't want to – and I don't, you know, I want to be careful how I say this but I don't see anything in the triage report that prejudices our future discussion or anybody's future position.

So please read it with that eye but comments would be, you know, very gladly accepted especially in the Executive Summary portion where we tried to capture the big issues that were identified here.

If there's any others that you think need to be made that are easily put that would be fine. Second, to Kavouss' question a couple of comments ago about the use of all this work.

So host – we've spent six meetings or five meetings maybe talking about this, but what we've done is we've gone through the whole temporary specification.

We've outlined, you know, maybe not all the issues we had with it and there'll be a opportunity to bring up others, but certainly a great many of them with possible suggestions made.

So I think, you know, the issue summaries and the individual comments will be used as a guide for going forward and discussing each of these issues so we have that.

So I think the use – can be made of that. There's no way I'm going to be read – be able to read what's in the chat. As far as our next meeting I'll list out our homework but I want to just pause for Milton's brief.

Milton Mueller: Yes it will be brief. This is Milton Mueller for the record. You had said – we had a little bit of a interchange on the list about the data elements that were redacted.

At first we thought that nobody really disagreed with any of the redactions and we discovered at IPC - one of the email address. I still think that we could press for greater level of agreement if people would just be specific.

So if you think that there are certain data elements that should not be redacted tell us what they are, and then we can have a discussion and maybe there are, you know, nine out of ten of them we'll agree upon.

I think it would be important to try to get that into the temp spec or into the triage report so that we actually can show that we have made some progress.

Kurt Pritz: Thanks Milton. I'm just reading – trying to read the chat. Okay so I think that – yes so given what Milton said – so my ideas for the next meeting are this.

One is to read the triage document and comment on it. Two is, you know, the support team and the – and us who've been working on a draft process for going forward then – we're not ready to show for primetime because we're still discussing and it's somewhat complicated and we've been taken up with, you know, cutting and pasting so that's on a – it's a different report.

So while we do that there are a couple of things we could prepare for the next meeting if parties are amenable. So certainly we could take on, you know, the initial sections which are the scope and the definitions and cross those off.

There's a couple others. One – and here were my thoughts is that we could discuss the registrar and registry services, which are UDRP, URS and

transfers and given some of the discussion from the last meeting maybe we could talk about those in the next meeting.

And then finally, you know, I want to take up Milton's comments. So a third homework assignment would be to review the redacted data and if you feel comfortable saying, you know, "Here's what we're not comfortable with. Here's our opinion at this stage," I think that that would be good to capture so I encourage that.

So those are the three homework assignments and I will polish this up in an email to get out to you in a, you know, shortly after the call. But, you know, one would be to review the triage document.

Two would be for registries and registrars, maybe you know, SSAC or ever - what else wanted to get ready for that discussion to discuss URS, UDRP and transfers in the next meeting.

And third is to provide disagreement with any of the redacted data that's listed in the report or add to it. So with that Terri do – can you in a minute recap the issues for us here?

Marika Konings: Kurt this is Marika. I think that's my item.

Kurt Pritz: Oh okay. Another time then.

Marika Konings: So – that's okay. So for the action items and in addition to the three you just listed we have the – it's Action Item 1. You're supposed to follow-up with an email outlining the path forward for the face-to-face meeting.

Action Item 2, the EPDP team to review the triage report and provide any initial feedback by Friday, 24 August at 19:00 UTC at the latest. Action Item 3, staff to send to the mailing list information concerning the PDP that was the basis for the WHOIS conflicts with local law procedure.

And Action Item Number 4, Thomas and Emily to work on a framework that outlines the controller designations between ICANN and contracted parties for the EPDP team to review or consider.

And then we had as well a couple of questions for ICANN Org, the first one being can an update be provided on the status of the reconfirmation of the temporary specification by the ICANN Board?

And that was already responded to in the chat noting that there is a Board meeting planned for later today and no changes are being proposed. And there was a second question.

Has the WHOIS conflicts procedure with the local law been used to date? If so what are any specific issues identified with the use of the procedure? And I actually had asked you for a clarification because you at one point mentioned as well that there was another question you wanted ICANN Org to look into. But that wasn't exactly clear to me so maybe you can follow-up on that one.

Kurt Pritz: Yes perfect Marika. Thanks. Thanks Marika and I think that had to do with, you know, Ashley's question about disclosure of law enforcement inquiries to and disclosures to law enforcement to the data subject, so I'll attempt to put a little better sharper point on that. And Kavouss the last comments is yours.

Kavouss Arasteh: I think with the next meeting you run – we go back and review the situation. I hope that you are not discussing or opening for the second round of discussion.

We just pick up the points that you have currently already pick up or put it somewhere and discuss those, but not starting the second round of discussion and repeating what was said before. Thank you.

Kurt Pritz: Well thanks very much Kavouss and that's the - goal about. The promise was also not to prejudice the future discussion with this thinking people attempt to raise other issues, but certainly I appreciate the spirit of your comment.

If there are no more comments thanks very much for being on time. Thanks very much for staying late and thanks very much for the work that you've done going into this and I'll see you shortly. Bye-bye.

Terri Agnew: Thank you everyone. Once again the meeting has been adjourned. Operator (Bob) if you could please stop all recordings.

END