

**ICANN Transcription
GNSO Temp Spec gTLD RD EPDP call
Tuesday 28 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-28aug18-en.mp3>

Adobe Connect Recording: <https://participate.icann.org/p4u1ncx0k5b/>

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

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

Coordinator: Excuse me, recordings have started. You may now proceed.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the eighth GNSO EPDP Team meeting taking place on the 28th of August, 2018 at 1300 UTC for two hours.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the telephone bridge could you please let yourself be known now? Hearing no one, we have listed apologies from Emily Taylor of the RrSG and Kavouss Arasteh of GAC, as well as Chris Disspain, ICANN Board liaison. They have formally assigned Theo Geurts

and Raul Gosain as their alternates for this call and any remaining days of absence.

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

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Ayden, I see your hand is raised. Please go ahead.

Ayden Férdeline: Thanks, Terri. This is Ayden. I did update my statement of interest today just to note that I've joined the Mozilla Foundation as a Policy Fellow. That's the only change that I made. Thanks.

Terri Agnew: Thank you for this. Seeing or hearing no further, if you need assistance updating your statement of interest please email the GNSO Secretariat. All documents and information can be found on the EPDP wiki space and there is an audiocast and view-only Adobe Connect for nonmembers to follow the call. So please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the call. Thank you very much and I'll turn it back over to our chair, Kurt Pritz. Please begin. Kurt, this is Terri. I believe you still may be muted?

Kurt Pritz: Yes. Thank, Terri. Welcome, everyone. Thanks for joining the call. Last week the call was at 6:00 am and everybody was here on time and today the call is at 11:00 pm and everybody's here on time so you guys are great.

The agenda looks pretty but I think we can get to the main item on the agenda which is to start discussions about Section 4.4 at SEC, the lawfulness

and purpose of processing TLD registration data and the specific purposes for that that are listed in that section so that's the highlight of today's meeting.

Just as part of – well after the welcome we'll talk about input received on the triage report and next steps there. We've done work on a project plan to lay out discussion topics for the next several meetings and we'll do a quick touch base on the appendices having to do with the URS, UDRP and the transfer policy. And then we'll talk about the purposes of processing gTLD registration data as they're laid out in the temp spec and what they might become and then we'll confirm the action items and wrap up.

And so the only welcome item I have or initial item I have is the – is the request for training that was actually part of the charter. And actually I meant to talk about it last week but it slipped through the cracks and we have, you know, a request from the Registry Stakeholder Group and support from many other corners of this group. We have a specific recommendation from Ayden. I'm just going to just take that on board; everybody here on support side is fully committed to performing that training.

We think it'll be done in a session not during the Tuesday and Thursday meetings, but it's something I'll certainly attend. So if anyone wants to provide more additional advice in addition to what we received from Ayden or ideas for how to go about that you're welcome to send them in over the next day or so. And in the meantime the support staff will pull some options together for our discussion. And thank you Kristina for noting it's a joint request from the Contracted Party House. So I'm going to leave that, I'm going to pause for 10 seconds and then go on to the next item in the agenda. So again, thank you very much for that.

We've received input on the triage report from several of the participants in this meeting. Ashley, yes, so I think the training will be available for alternates too, going out on a limb here.

So really briefly on the triage report, you know, I categorized the comments into these six buckets. One is that so that we should reinforce the purpose of the report and reinforcement that the comments made and recorded in the report are not binding, limiting or prejudicial on any party. And, you know, that was put in several ways and they're not all covered in this bullet, but we're certainly happy to reinforce that point and just take on board exactly what was said in the comments.

Some of the comments – some important points that were made either during the survey or during the discussion were missed and should have been included so those will be taken on. There was – in some cases pointed out a correction of some statement of legal opinion or legal summarization of the GDPR or other documents and so one instance where I was kind of sloppy in the terminology so where that was pointed out we'll certainly take that on board.

You know, there was some rewording of the issues so I'll just talk about this for a second but comments were, you know, concerning the – in the survey were made to the effect of, you know, the temporary specification should be changed to say this. And we wrestled a little bit with it because we didn't want to say in the comments the temporary specification should be – should be changed. And we, you know, we might consider changing it to this and then I kind of went back to my law school days and said, well this is an issue summary and issues are in the form of a question so the question should be, you know, should the preliminary report be changed to this?

So there were some comments that, you know, looked at rewording those. And rather than putting the issue in the form of a yes or no question, which can be answered yes or no and is not prejudicial either way, you know, rather say, you know, some people say this should be done and other people say not this should be done or this should not be done.

So I'm kind of, you know, I'll listen to comments offline but I'm kind of predisposed to you know, not duplicate the issue by saying both sides of it but to leave the issue in the form of a question.

There was some advocacy I detected in some of the commentary and you know, I kind of think that should be discouraged. And then finally, you know, my use of the term, you know, successor specification and, you know, some people suggested that should be changed to – the document succeeds this is going to be a policy. So, you know, reviewing all of that the charter surely said that, you know, we're creating a, you know, a policy so that's for sure. On the other hand I'm really confused about, you know, this being a temporary specification and, you know, the Board choosing specification and not temporary policy. And, you know, what – in a sense what the heck does the GNSO do with that because the GNSO makes policies, not specifications.

So, you know, I've asked some Board members and some others to kind of look into that but, you know, that comment on Board that we're creating a policy here and accept that, so that sort of input, you know, will probably be accepted. But, you know, I want to get some background myself into the differentiation between a policy and a specification. So at the end of the day I really don't want this triage report to take up a lot of our time so my plan is to do a draft accepting, you know, the substantive points that were made and sent out for your review.

And you know, we can either then accept that or, you know, to get the – get past this, you know, just really shorten up the report and submit, you know, the bare bones of a triage report which would essentially be the color coded matrix with some explanation about, you know, why the colors are good or bad or something like that. So, you know, I'll carry this discussion online and try not to take up our time, you know, we'll go over the project plan in a second but you can see it's action packed. Margie.

Margie Milam: Yes, hi. Thanks, Kurt. This is Margie. I just (unintelligible)...

Kurt Pritz: Hey, Margie, you're not – you're not coming across quite as well as you'd like, maybe get closer to the mic or do something else?

Margie Milam: Okay, is this better?

Kurt Pritz: Yes.

Margie Milam: Oh okay great. Yes, I just wanted to clarify that consensus policies include specifications so I don't think it's correct for you to make the statement that the GNSO policy process can't affect specifications, it certainly can. So I just wanted to correct that misunderstanding.

Kurt Pritz: Yes, so that's not what I meant to say but I understand exactly what you're saying and I'm, you know, resigned to it being a policy but I still want to understand the differentiation between a policy and a specification but I certainly take on board that a policy can affect a specification. So I, you know, maybe I didn't say it quite as clearly as I'd like. Thanks for that. Milton.

Margie Milam: Thank you.

Milton Mueller: Yes, hello Kurt. This is Milton Mueller, NCSG. I guess I didn't make my intentions clear enough to you but I sent you this form about the data elements that are redacted in the temp spec. And I think my intention was that this is a simple matter of recording positions. It's not a matter of debating where we agree. And that it's critical for the triage report is to find out where we agree and where we disagree on redacted data elements, indeed I think that's like the most important thing about the temp spec and I think it's a very simple matter for people to specify which data elements they agree should be redacted and which ones they don't agree with.

And I would hope that we could get that into the report. And I sent you a form where people could record this and I was hoping that it would have been

posted so that people could respond to it several days ago, so I'm just a bit, you know, maybe I didn't make it clear that I was expecting that to be in the triage report.

Kurt Pritz: Thanks, Milton. So from my standpoint you didn't make it clear so my – you'll see a reference to it actually later in the project plan where we, you know, my intent is to use that form to inform the substantive discussion and specify a date in the very near future for posting that form to everyone. So if it's all right with you we'll you know, we'll let it go for the triage report and –but include it in the substantive discussion so I hope that's acceptable.

And I think there's a logic to it because as everyone – even though I agree with you completely that it's a straightforward exercise and something we should definitely do, on the other hand, you know, given the discussion over the last week that the discussion of data elements should come right behind the discussion of purposes, so I see it in, you know, time for that. So yes, I missed your intent and I apologize for that.

Hi, Marc, how are you today?

Milton Mueller: Well just...

Kurt Pritz: Oh sorry, go ahead, Milton.

Milton Mueller: Just to clarify, sorry, the reason I proposed it having the triage report is that my understanding of the triage report is that you were basically telling the Board where we have consensus and where we – in terms of the temp spec and it would be again critical to know how far apart we are on these data elements. But so I'm – anyway, I would still support it being in the triage report if we could get it in.

Kurt Pritz: All right. Thanks very much. And we've lost Marc. So should we just sort of whistle in place? So Diane, I see your comment about Margie's point and I

just want to reiterate that my comments were, you know, even though they were made before Margie's comments were not intended to disagree with them; I agree with them. All right so we'll stick a pin in this and wait for Marc and go onto the next thing.

So review of the project plan, so one tool we used to build the project plan was a categorization or a prioritization of each of the sections in the temporary specification, so you can see here we – I'm not going to be able to make out the font so I've got to get out my piece of paper. So you can see that we've divided them into four sections; one category where sections were we think directly affected by advice from the Privacy Board that came in after the writing of the temp spec so where we might have some good guidance on specific changes.

Two sections of the temporary specification where the team indicated pretty clear in the triage portion that you know, an amendment is desirable and that's really broke into two sections, one is the more important one where changes required to bring the section into compliance with the GDPR and others where the temporary specification is just kind of clumsily written and can be brought into – and not expected to impact compliance so not as quite as high as a priority.

And then finally there's items where we expect, you know, where there's already things in operation so we expect little or no change. And then there's some background rationale and justification so these categorizations were meant to inform about how long we would – we might spend on each item so, you know, some of the more complex or urgent items we set aside a couple or even three meetings discussion where others maybe we can do some of the work online or offline or however you want to put it and then come in for a conclusory statement at the end. And I'll talk some more about that so we're going to pause this and welcome Marc back. Go ahead, Marc.

Marc Anderson: Thanks, Kurt. Marc Anderson. Can you hear me okay?

Kurt Pritz: Sure, you're back.

Marc Anderson: Great. Apologies for that. So jumping back to the triage document, the Registry Stakeholder Group submitted, you know, fairly extensive comments on that. And I guess, you know, there's just a couple things I want to highlight here on the call and that's, you know, first, you know, we have concerns with the triage document, you know, as it's written and we've highlighted those in our feedback. But we also think it's important that we go onto the substantive discussions of, you know, of Phase 2. And so, you know, while we do think the triage report needs work before it's to the state that we're comfortable submitting it to the GNSO Council, we want to encourage this group to address those changes offline rather than take up valuable meeting time talking about that.

So there definitely needs to be a balance there between addressing the triage report and getting onto the substantive discussions in Phase 2, but, you know, it is, you know, I guess I encourage people to read the comments we submitted, you know, and note our concerns but also, you know, you – when you were giving your overview, you know, you suggested that maybe the, you know, maybe the report be updated to be more high level and be, you know, just a pure triage and quick chat with my colleagues suggest that, you know, Registries would be supportive of that approach and take a high – a more high level traditional triage look to the triage report. So thank you.

Kurt Pritz: Thanks for your comments, Marc and your spirit of getting the triage report done. So this is the issue categorization. And here's a project plan and Berry from our team has done several different versions of this. We've done Gant Charts and this kind of clumsy spreadsheet and some other forms.

So, you know, a wise man once told me you can't schedule inspiration but you can make inspirational schedules. And the high level approach here is to take up, you know, starting with today but really next meeting take up two

fairly substantive you know, topics each meeting, so that leaves about 45 minutes for each – for each topic. And, you know, I kind of wrestled with whether to just discuss one topic or two and I thought two would be better because if we sort of auger in on an issue or get stalled, you know, we have a backup.

And often, you know, if – say we allocate like 45 minutes to each discussion then, you know, you kind of have a sense whether you're heading toward a resolution or heading towards something where we need to do some work between meetings to sort of move the issue forward. So I thought, you know, I personally thought it was better to schedule two topics for each meeting and you can see that, you know, some of the topics stretch across three meetings, some stretch across two.

And then, you know, we have the LA meetings at the – in a few weeks, gosh, to – where we'll lay in, you know, these topics if they're not settled yet, and bring those to – attempt to bring those to closure at those meetings. And then another thing I want to point out here is that, you know, there was another column to this chart that talks about work we would do offline or not on the call. So one point is that in preparation for the data set – redacted data set discussions that's coming up in the next couple weeks we had planned to – I had planned, sorry, Milton, to release the redacted – I hear myself, somebody has to mute – so the redacted data set survey to be sent out a couple, you know, a week or so – a week and a half before that discussion.

And then, you know, there's also an idea to discuss some of the topics, you know, online or offline. One is the one Marc just talked about and I just talked about, the triage report, settling that. And then, you know, we asked and maybe we didn't ask too clearly or give you a good tool, but about the triage report – wow – so those were the appendices having to do with URS UDRP and transfers. So, you know, when we put out them in the triage report we – I'm just going to knock these things off right now rather than look at different slides.

So we thought those were areas where you know, they're already in operation, we thought there'd be little or no change to them. So I don't know if we need to, you know, sit and discuss it at a meeting or if there are changes that are desired, you know, especially by those guys that are executing on these things, you know, I'm not sure why they couldn't be submitted via email to this group or, you know, we'll create some sort of document either through Google Docs or the wiki or something like that where they can be amended.

So you know, we didn't get any response to our request for any comments or changes to these appendices so I'm going to reiterate that request and work with the support team to provide you an easier method for providing input on these.

So I'm just going to pause here and see if this sort of project plan is what people envisioned about how to go about this or if there are any comments. And, you know, certainly you've only seen this for a short period of time so I – you know, I'm an old project planner so you know, Berry who's done almost all the work on this and I would welcome discussing with any of you, you know, project planning techniques and how you might approach this.

And, while I'm waiting to see if anybody wants to comment, I'll just say that, you know, the first thing you notice about a project plan is things just like a battle, things turn to heck right away, right? So we'll have to be somewhat nimble in deciding you know, whether to extend the topic beyond the 45 minute schedule because it looks like we're zeroing in on consensus or if we don't get something done whether we just send it out to the face to face meeting or we create another session in the next meeting and push everything back, so, you know, you'll see this project plan probably changing in 24 hours time.

Hi, Thomas. How are you? Thanks for being here. Go ahead.

Thomas Rickert: Thanks, Kurt. Hi, everyone. Now, I think that we should definitely give this project plan a try. I'm just uncertain whether we can discuss purposes in isolation without actually knowing the broader (unintelligible) of data processing. I think we've discussed this a little bit earlier but we actually need to slice and dice the data processing; we need to look at all that data elements through the entire lifecycle. And there might be a different purpose for collecting the data by the registrar than there might be a purpose for the transfer from registrar (unintelligible) and there might be yet another purpose for retaining the data for a specific period of time.

So I'm not sure whether we are actually capable of keeping that level of abstraction when trying to discuss purposes. An alternative way would be to look at the lifecycle and start with the collection of data and then look at what is the data collected for and look at the different legal basis which would be 6.1b, 6.1f and 6.1a and then, you know, we could hopefully make some quick wins and agree on certain data subjects being required for certain purposes to fulfill vis-à-vis the registrant and, you know, take it from there and generate a list of lawful purposes as we go through the whole lifecycle of the various data elements.

So I hope this makes sense. I'm happy to elaborate more should there be any questions.

Kurt Pritz: Yes, so thanks, Thomas. And sadly for you all I have a number of slides to talk about an approach for purposes to access that. I can tell already doesn't you know, line up with what Thomas just proposed, so I recommend that we hit – that we hit those slides and go through them and then I think that would be a good time, Thomas, for you to elaborate. I appreciate Milton's comment about the project plan is never – conforms to reality, oh, it won't in a couple weeks.

Okay, so Milton.

Milton Mueller: Yes, if we are indeed moving on to discussion of purposes, I think there's a fundamental mistake in the way that's being conceptualized. Again, the understanding of the data protection law is that the purpose is the purpose of the person who is collecting the data and then there's purposes for distributing it or disclosing it. But the discussion of purpose fundamentally has to be rooted in ICANN's purpose for collecting it in the first place. So if we're just talking about purposes for access then we have illegitimately biased the discussion we're talking about essentially why people want it.

And as we know there's 600,000 reasons why someone might want to have access to the data. What we need to be discussing is how the collection and storage and disclosure of that data is related to ICANN's purposes. Can we agree on that?

Kurt Pritz: So let me – I don't know if I'm allowed to say I agree to anything, I've been upgraded for that. So let me go through these slides. I don't know if you've ahead a chance to look at them yet and are making the comments based on that you've already reviewed the slides and found them not to meet what you think. But let's do that and then – thank you, Benedict – and then see that comports with what you're saying.

So here's some background. And actually I'll say that these next few slides are shortened and staff did – the support team did quite a bit of work putting together some preliminary materials. And Marika and everyone, I'm thinking that, you know, since I edited some of this material out maybe we just create a one-pager out of the next few slides that includes the background material and Privacy Board advice and such that you included in more rich detail and we could distribute that as kind of, you know, or put it up on the wiki as kind of a background document.

But, you know, the background that you know is that registration data may be processed on the basis of legitimate interest, not overridden by fundamental rights and freedom of individuals and then the temporary spec goes onto

define registration data because somehow the GDPR didn't do that; that was sarcasm.

And then but the GDPR does define personal information as any identifiable natural person who can be identified by reference to an identifier such as a name, an identification number, location data, online identifier and so on. So that's background information for you.

So the policy Board advice that came in and this is an abbreviated version, sorry, excuse me, are, you know, as I think this might be related to what Milton said, but, you know, processing activities are determined by ICANN for which ICANN and the Registries and Registrars through contracts with ICANN require their own legal basis essentially performance of a contract and some other things. And then there are processing activities determined by third parties which require their own legal basis, so Privacy Board went on to say ICANN should take care not to conflate its own purposes with the interests of third parties.

And then it said that that – in a separate paragraph said of the letter said, “Data legitimately collected by ICANN registrars and registries doesn't exclude the subsequent disclosure of personal data to third parties for their own legitimate interests.” And of the most important points they made, the fourth one is that personal data can be disclosed for the purposes of legitimate interests of third parties provided those interests are not overridden by the interests or fundamental rights of data subjects.

So very briefly for your background, that was the gist or gravamen of the policy advice. So given all that I want to try to do sort of a build on how we should think about this and go forward. And so these next few slides are a build so when we get to that you don't need to stop of questions because we'll get to the last one then all the information will be on the same slide.

So data processing includes more steps than this but there's data collection, you know, you could say by ICANN but by registries through their contract with ICANN. And then that data is used by the registrars to administer to their registrants and make sure the contracted-for services are applied and also to comply with the ICANN contracts which include I think URS, UDRP, transfers and other things. So data is collected and then used by registrars for these purposes.

And then data is also disclosed to third parties for use – data is disclosed to others for use by third parties. So there's more to data processing than this, there's the eventual deletion of data and other steps. So I realize this is an oversimplification but I think those are the three processing steps we're concerned with with regard to purposes for processing data.

So well I shouldn't have talked so much. So you know, those first two bullets are processing activities determined by ICANN and requiring their own legal basis and then from the bullets above the disclosure to third parties are processing activities requiring their own legal basis such as having a legitimate interest that is not overcome by the rights of private individuals. So data collected by registrars should be limited to the data necessary to provide the services bargained for to make sure the domain names work and last a long time and stack neatly and you know, any of the services required by a contract; I think Margie brought that up in the last meeting that that should be included and it certainly is.

And then the registrar, you know, uses that information to provide those services and to comply with the contractual requirements or the policy requirements. So for me in the temporary specification since you have that out on your left hand side, unless you're left-handed, those are the temporary specs. And we'll get – you don't have to look it up right now but to me those are the temporary specification sections you know, 4.4.1.3.7, point 11 and point 12, and also the appendices having to do with URS, UDRP and transfers.

And then my slides get a little bit messy but I'll explain to you what I mean here. I was talking to Rafik before the meeting going through the slides and he pointed out this is a little awkward but, you know, for data to be disclosed to a – for use by a third party, first there has to be a legitimate purpose and then not overcome by individual rights. And, you know, this is a question I have for you guys, but a couple meetings ago we – well we didn't decide but it was brought up that GDPR provides that law enforcement can have access to and use data as a third party without doing that balancing of being overcome by individual rights. So that's why I have that branch off there in that Section 4.4.9 of the temporary spec.

And then where that balancing occurs that's called out in Section 4.4.8 of the temporary specification for consumer protection, investigation of cyber crime, DNS abuse, intellectual property protections, other things. And then, you know, another question I have for this group is does ICANN contractual compliance fit into this bucket as a third party or, you know, maybe it goes under the contractual, you know, performance of a contract.

So this is how I sort of laid this out. And then, you know, what we're going to talk about today is the purposes – the purposes for data. And so those are, you know, the 4.4.x sections of the temporary specification either uses to provide services that are bargained for or required by contracts, so services by contract, I think I'm correct here, but I'm not the expert, don't require that balancing because they're required by contract. And then where third parties use them, they have to be a legitimate interest and not overcome by individual rights.

So I want to – the next couple slides lay out those sections in more detail and kind of put them under these various headings and then, you know, for, you know, just to get the discussion started I have proposed way to think about this, but we can think about it any way you wish. So this is – I think I'll pause

because this is a, you know, sort of the close of the little pictorial and see if there are any comments about this as a way to display the uses of data.

Hi, Ashley, how are you?

Ashley Heineman: Good. How are you doing?

Kurt Pritz: Good.

Ashley Heineman: So – and I'm happy to go into greater detail later, but I think one overarching concern of the GAC is that there's only a reference to LEA when in reality it should be LEA and other public authorities; at least that's consistent with the GDPR because there's other government users besides LEA and that's noted in the GDPR. And also – and I think you touched on this to a certain extent, but there's actually like two avenues for LEA; there's – I'm sorry, and other public authorities, which is legitimate purpose for also and performing their task.

That's noted in the GDPR under the lawful purposes. So I'm happy to raise this again once we get to the text, but I just wanted to raise in the context of how it's presented here visually as well. Thank you.

Kurt Pritz: I see, Benedict, you're next, but can anybody – is there any discussion of those points especially – well either of those points? I'll – I'm going to get a drink of water and ask – so Ashley, those are good comments and taken on board. Benedict.

Benedict Addis: Yes, actually I was going to follow up with Ashley – on Ashley's points. We've used some language like courts of competent jurisdiction in some ICANN policies. And the reason to do that and not just blanket LEA is because it – it gives the registries and registrars some ability to push back on requests that they deem not compliant with human rights law, for example if somebody wanted to refuse a request from a state that bans freedom of speech in some

sense or seeks to seek information on its activists. So it's good to have some sort of gating and they're not broadly about LEA.

For the other thing I think we ought to consider here is jurisdiction of LEA and I think call out specifically that these refer to cross jurisdictional requests and – because as I think I said already, LEA has its own methods in jurisdiction so we should particularly call that out but controlled by the courts of competent jurisdiction language so there's some protections in there.

Kurt Pritz: It'd be great to hear from registrar about handling those. Alex. Thank you, Benedict.

Alex Deacon: Yes thanks. It's Alex. Yes, I just wanted to say I think this is a nice framework, I like how this is laid out and it makes sense to me. I think it also addresses the comments that Thomas made earlier that we need to kind of slice and dice this by you know, by collection by use, by disclosure and the like in addition. I think it addresses the issue that Milton raised also that this isn't just about access; it's about different types of processing.

The one comment I will make though is I think it does leave out some purposes, some of the purposes listed in Section – Article 6.1 of the GDPR, so I think we may want to ensure that those are covered and while I'm at it I think contract compliance should fall under the legitimate purpose column there underneath LEA. Thanks.

Kurt Pritz: Just take a note. Thanks, Alex. Diane, how are you? Diane, we're not hearing you.

Terri Agnew: Diane, this is Terri. I don't see where you've activated your microphone and I don't see where you've joined on the telephone, so to activate your microphone on the top toolbar select the telephone icon and follow the prompts.

Diane Plaut: Do you hear me now?

Kurt Pritz: So – yes we can. Perfect timing.

Diane Plaut: I was just wanting to raise the point that this slide is somewhat confusing in that the data processing section comes listing the registrar (unintelligible) data collection purposes prior to list – setting out the ICANN purposes. So in my opinion I think that it has to be somewhat almost switching around the columns because it's really set – it should be setting out ICANN's purpose for collecting the information which should include the specified purposes and then there should be the ability to set forth the purposes of the registries and registrars to be able to use those purposes, because the GDPR is very clear that a controller has the ability in identifying a specific purpose to do that on behalf and in connection with a third party interest including intellectual property protection, consumer protection, etcetera.

Kurt Pritz: Thanks, Diane. You know, Thomas and I chatted about, just for transparency, you know, I had some questions about GDPR and the interpretation of it. And so he might be able to better respond to that – your thoughtful comment better than I. And he's next in the queue too, so Thomas, I don't know if you want to respond to Diane's comment or have a separate comment?

Thomas Rickert: In fact I have an additional point to make. On the left hand side it says, "Limited to the data necessary to provide services (bargaining) required by contract." I think it's worthwhile specifying what we mean by a contract because in the discussion sometimes the RRA and the RA are also brought to the table. And when it comes to determining what's required to perform the contract this is just about the contract between the registrar and the registrant or the data subject.

Also, I think just in order to get the demarcation clear, it would be valuable to also mention that the registrars are collecting data on the account holder, because in the list of purposes to the temp spec, we have something like

invoicing purposes. And I think this – while this is correct, invoicing is done through the account holder and therefore I'm not sure whether it's appropriate for an ICANN policy to govern how registrars and by which means the registrars collect data points to invoice their account holders or customers because I think what this policy should be dealing with is totally the registration data as it is relevant for keeping up registrations in the gTLD world and all the players in the ICANN arena. Thank you.

Kurt Pritz: So, thank you, Thomas. So I have two – one question and one point, so, you know, you talked about the – one governing contract being between the registrar and registrant but I think you were alluding to other contracts, so would – is that the RA or the RRA or both of those or other contracts?

And my second – yes, so go ahead, because my other thing is...

((Crosstalk))

Thomas Rickert: Well I – yes. I heard references to both these documents and specifically when it came to what data needs to be publicized in the past, not in this group but in the past during the discussions the point was made that publication of data must be possible because it is required by the RAA and the RA to collect and make available certain data. And I think we just need to be very clear also when it comes to the purpose discussion and the legal basis, we have to look at the contractual relationship (subject) and the registrar or potentially the registry. But these can also include and govern third party interests so is possible if ICANN's interests are concerned or even third party's interests are concerned if this passes the 6.1f GDPR weighing exercise, right?

So I think the only point that I'm making at this point is that when we're talking about contracts we need to be very clear what contractual relationship we're discussing and then we can look at what data needs to be processed to fulfill that contract and what – and then what additional interests might there be

and can those be subsumed either under the contract or explained legally through 6.f. I hope this makes sense.

Kurt Pritz: Yes, thanks very much, Thomas. And the point I wanted to make about, you know, your differentiation of the account holder information is – and maybe we should wait – there's a couple more slides that kind of point to those kind of issues where you know, points made during the triage discussion were characterizations of some of these temporary specification sections were probably not well stated – not stated well enough and should be changed in some way.

And I don't have a recommendation for a change but I have recommendation that we talk about that very issue so as soon as we get through this set of comments we'll go onto the last couple slides and start that discussion in earnest. Hi, Alan, go ahead.

Alan Woods: Hi, can you hear me?

Kurt Pritz: Yes, perfectly.

Alan Woods: Perfect, great. So I have many thoughts on this but I'm going to try and limit myself to two ones that are particularly important to me from I think this conversation. The first one is specifically with regard to who are the parties here that we are trying to identify and trying to help basically in the processing of data? And you know, the consensus policy (unintelligible) of the actual temporary spec in which we are hopefully ultimately going to make into the consensus policy specifically limits that to the gTLD registry operators and the ICANN accredited registrars. So we are looking to the purposes of registries and the registrars and an awful lot of the conversation that we have are bringing it into the purposes that ICANN has.

Now we haven't had the discussion as to the joint controllership, the individual controllership, of these particular bases but we cannot conflate,

number one, ICANN's purposes and the registries and the registrars purposes for the processing of that information. That is a very important thing because our purposes are effectively quite different and that has a huge effect down the line. So for things such as, you know, I don't want to get into the conversation because this is not where the conversation is, this is where we will be at a point in the future, but ICANN's purposes are more so with regard to things such as the future – or sorry, with regard to the IPC and the BC and the intellectual property (unintelligible), sorry, somebody is beeping in the background.

((Crosstalk))

Kurt Pritz: I have that sound made anytime anybody's critical of my work.

Alan Woods: Oh yes? No, it's not that, it's just I just want to be clear...

Kurt Pritz: No, no, that was just a joke, you're – I'm like taking notes as fast as I can so keep going.

Alan Woods: That's fine. So when we're talking about – and I think it was Diane that said we need to bring in ICANN's purposes as to why they collect the data and, I mean, from my initial point, again, that was – I decided to put my hand at this early point is because ICANN are not collecting the data in this instance and ICANN's purposes are the purposes that are then passed through by the RA and the RRA to us and, you know, then we also have the purpose via that contract in order to follow through on ICANN's own purposes. But that is through the contract that we then have to follow the purposes that ICANN has specified that we are responsible for as joint controllers.

And this is a whole other area but that is unfortunately we have a picket fence issue there as far as I'm concerned. So that was kind of the one thing there. Also we keep talking about the legitimate purpose of the LEAs and that the LEA's legitimate purpose is not under the balancing act. Look, yes, under the

6f there is no – there is no balancing on that one, however, as I think as Ashley pointed out quite rightly, that there are other bases on which the LEA could have access and there are other legal requirements which LEAs and public authorities will have to go to. They have their other requirements that are not just limited to Article 8, privacy-wise, they're limited to the whole spectrum of human rights.

So it would be pointless to put every list of (unintelligible) text of something like the GDPR, they have their own things that they need to look after, but they would be using different things such as in the vital interest of the data subject or such as the public interest one under 6.1e where they would be able to link directly to European law, they'd be (unintelligible) directly linked to member state law and rely upon that. But it's not the legitimate purpose of the registry, it is their legitimate purpose of asking it from the registry and we have to be very clear again in this whole legitimate purpose conversation that they are separate concepts and we're conflating an awful lot of them.

And in fact we're doing exactly what the European Data Protection Board has said where we should not be conflating the purposes of ICANN registries, registrars and other third parties. I just think that we're kind of slipping down a very slippery slope there, and I just – I felt (unintelligible) to speak. So apologies that it's probably the wrong time to say it but I just needed to probably cut that off at this particular point or not cut it off but put in my two cents for that one. I think it's a valuable conversation, but it is something that we're going to have a lot of discussion on I would expect.

Kurt Pritz: So, Alan, so maybe I'm not understanding you. So in this slide where there's the legitimate purpose, you know, I guess I'm not understanding you because that legitimate purpose would be the legitimate purpose of law enforcement or, I forgot what Ashley said but I have to flip back a couple pages of notes but other authorities. And it's the legitimate purpose of the third parties, so that's very clear to me that that's different from the legitimate purpose of those collecting the data such as registrars or registries.

So I think I missed your point and I know people are kind of – I'm getting messages to move things along but thanks, Benedict, but so I think this takes your point into account but so I'm missing something somewhere.

Alan Woods: Yes, apologies. Again, this is the – a very in depth I suppose discussion with regards to what legitimate purpose specifically are. But generally speaking the legitimate purposes are not the legitimate purpose of a third party; the legitimate purpose of the controller. So in this instance, say, it would be the legitimate purpose of the registry. There are derogations where you can take into account separate legitimate purposes that maybe law enforcement agency would have in requesting that or indeed an IP organization would have in requesting that data. But the legitimate purpose for us as a registry must be related to the primary use and primary process reasoning for that data.

And, you know, calling a spade a spade, the primary purpose for the registry and the registrar to collect that data is the registration of domain names as far as I'm concerned, and the protection of our zone files. So yes, a legitimate purpose may be established by a third party and they may use that then to request it of the third party but it is a – of the registry or registrar, but it is a completely separate legitimate purpose we're talking about there.

I would probably encourage people to sort of read – there was a full on opinion paper I think it was – I can't remember the citation of it, 2014 and it refers to (unintelligible) directive but it's from the Article 29 Working Party and does specifically talk about legitimate interests and you can put that on maybe a homework reading list because it is very good and it goes to specifically, you know, this whole concept of what is a legitimate purpose and specifically why – where does it apply to third parties. And I think we could all benefit probably from having a good view of that.

Kurt Pritz: So I think what – the point you were making is what I was attempting to characterize in this slide, so, you know, I'll let you go and then try to rationalize that and maybe follow up in some other form and I see the agreements that – with the points Alan made and I think I agree with that. So I want to go onto the next couple slides so let's – Margie, can you make your comment and then we'll see if we need discussion on that and then we'll go ahead.

Margie Milam: Sure, Kurt. This is Margie. I disagree with Alan. I think his view of what the contract and registration process is, is extremely narrow so I wouldn't assume that the rest of the team agrees with that. But the actual reason I raised my hand was that I think this slide leaves out a lot of detail and makes assumptions that's not consistent with GDPR. So for example, there are other purposes that are not listed on this slide and so I just want to make sure we don't use this as the, you know, the bible, if you will, if what GDPR – how it applies to the situation.

You've missed out, for example, performance of contracts, consent of grounds, and the performance of contract comes into play in – with respect to whether or not there's this balancing test of whether the access for the legitimate purpose is overcome by the individual rights. And so for example, in 4.4.8 where you've got intellectual property down there, it would be my view that that balancing test doesn't apply for example to accessing data for the UDRP. The UDRP is a contract requirement in the registration agreement and all the way through all the contracts. And so if someone needs access for data for the UDRP, the balancing test would not apply.

So I urge staff to redo this slide or at least not make the impression that it is comprehensive of all the grounds that apply under GDPR.

Kurt Pritz: So once response I have, Margie, is that this slide attempts to be comprehensive in listing all the purposes that are in the temporary

specification but one of the – one of our acts is to determine if there's additional purposes, so it's not intended to be comprehensive from that point.

And two is just to ask from the group if there's a response to Margie and the fact that, you know, one of the reasons that registrars and registries collect data are to support URS, UDRP and transfers and then use that, you know, process that data. But I think that's included and I didn't take that up with Alan when he brought it up. Right, so I agree – I agree with Milton that that's what Margie's saying.

((Crosstalk))

Margie Milam: Yes, I mean, I guess I'm kind of...

Kurt Pritz: Go ahead.

Margie Milam: Yes, sorry. Yes, so the way I look at it is, you know, throughout the contractual framework that ICANN sets up, one of the, you know, critical things that need to be performed to enter this contract is the ability to resolve disputes under the UDRP. So that is a performance of contract, it's – and that's a separate ground apart from the balancing test that applies to the legitimate purposes. It's completely separate ground.

Kurt Pritz: Right. Thanks, Margie. And Milton, to answer your question, I don't think it's a matter of the data being different, I think it's a matter of – that the data can be disclosed as part of the way to facilitate UDRP or URS, you know, without going through a balancing, it's just the execution of a contract.

Margie Milam: Right, and the reason I bring it up is because the chart makes it seem like that has – that in order to provide the data for UDRP you have to do the balancing test and that is incorrect.

Kurt Pritz: I see what you're saying. I understand. Thanks, Margie. I see where that could be interpreted that way. All right so to make things a little more – Thomas, last comment on this slide.

Thomas Rickert: Yes, thanks very much, Kurt. And sorry for getting in the queue again on this point. But Margie made me want to get back into the queue. I think what we should do for each and every processing activity do the test of 6.1b first. Is the data required to perform the contract for it? In other words, what data processing is required to perform the contract? The beauty of 6.1b is that you neither need a balancing exercise nor do you need to use as consent, right? So that's the lowest burden legal requirement to be compliant with.

Then we should move to checking whether we can deploy 6.1f, you do have to do the balancing exercise but you don't need the registrant or the data subject to weigh in. And then, you know, once we've looked at what data processing we can legitimize with 6.1f, then finally we should go to 6.1a and see whether there's any processing required based on consent because that's what we need the user for, the data subject for. And then in rare occasions such as disclosure to law enforcement, we might need 6.1c. But, you know, as we move through all the various processing activities, my recommendation would be that we move from 6.1b to 6.1f to 6.1a. Thank you.

Margie Milam: And, Kurt, it's Margie. If I could reply? I think Thomas's approach makes sense actually; I think that makes a lot of – a good use of our time.

Kurt Pritz: Yes. Thanks, Thomas. Thanks, Margie. So we might come back to this slide because I'd rather have this on maybe the next slide. So I'm going to flip through I think the next four slides. So this is – this is a listing of each of the purposes that are enumerated in the temporary specification and purposes are kind of – purposes as pursued by either registrars, registries or ICANN or third parties. And where third parties are involved then, you know, the tiny, tiny font at the bottom indicates that balancing test, and I'll bring that up later.

So you'll notice that, you know, I have – there is under – that under 4.4.12 near the bottom, dispute resolution services that says, you know, pursued by, you know, the data is pursued by registrars, registries and ICANN but I take on board the points that data needs to be disclosed to others for those dispute resolution services to work. And so, you know, there's no balancing test indicated there because of the registry, registrar pursuit but the fact that it has to be disclosed to third parties given what Margie and then Thomas have said that there's probably not that balancing required for that.

So I took those – I parsed those between, you know, registrar, registry purposes and third party purposes. And I'm going to suggest you know, a way to pursue these on a very high level but, you know, I'm embracing – I'm embracing Thomas's categorization of these rather than registry registrar and third party purposes maybe, you know, we divide this up between 6 – I can believe I'm quoting the GDPR section (GF) but 6.1b, 6.1f and then maybe 6.1c, maybe divide them that way.

And so then for each of these, you know, we get back to the charter questions, right, are these purposes here valid and legitimate? And how do we answer that? So I think we go to Thomas's framework, but I have something else written here so I'll talk about that and then we can decide what to do and we can talk about the substance and do the purposes have a corresponding legal basis and, you know, should there be others so is this a comprehensive list or should it be added to and should any of these purposes be eliminated?

And so I just have a couple slides, one about the registry registrar contract purposes and one for the third party purposes. And, you know, this is where it kind of got – it's about 15 hours into the day but so here's some high level thinking on these. And so I want to, you know, talk about the, you know, a possible path forward for these registry registrar uses of data.

And so to, you know, maybe the way to look at these for, say, registrars, are, you know, are there any additional legitimate reasons why contracted parties collect data from registrants other than these? And then recalling our discussion in the triage portion of our work, you know, there were some issues raised with for example payment and invoicing and that not being totally appropriate area of our discussion and Thomas mentioned that earlier about the account holder information being somewhat separate and there's this alluding to zone file data.

So should – and this is where contracted parties' input I think would be primary importance, you know, should we regroup or in some better way capture the relevance of these data sets? You know, how you're – how I think like Alan said, how – these are primarily for supporting the registrant and the resolution of the domain name and then in addition to dispute resolution services that Margie brought up. But should we regroup or re-label these in some way that make them more germane to the actual purposes?

So, so long as we can create these purposes so that we can next in the next step identify which data are collected, then our definition of purposes I think meets our necessary requirement, so, you know, should these be regrouped in some way and reworded? And then once we have those purposes then go onto the next step of listing and consolidate, you know, listing the data required under each one and consolidating that into an additional list.

And, you know, I know that – I've been through some of the RDS Working Group work and I know quite a bit of work was already done on this where all that data was collected so I think we could just steal from them. So that's sort of my thinking there. And then, you know, for third party purposes and, you know, I've listed the third party purposes that are listed in the temporary specification, and so the questions to be answered, you know, are the purposes – are these purposes for, you know, in our discussion valid and legitimate and do they have a corresponding legal basis?

And that, you know, that kind of means, you know, does the party requesting the data have a legitimate interest provided that appropriate safeguards are in place and the disclosure is proportionate and limited to what's necessary and other GDPR requirements are met, which I think is the balancing test. So, you know, for us going forward on this, I think we, you know, in order to describe this as a legitimate purpose, we need to define or instances or identify instances where personal data can be made under these conditions.

So personal data might not be made under all instances for each one of these, but can be made for instances where the need for the data arises to the occasion of all of these items. And then – and then once agreed, then describe the data elements that are required for disclosure here. And so we'll have at the end of that we should have, you know, a list of purposes that are valid and legitimate and then the data elements for each and then that addresses I think how the preliminary or the temporary specification is laid out and then the exact methodology for how that's done in a consistent industry-wide way can be detailed out when we talk about the access discussion.

So I see we have a comment from the – from Alex and from Theo. And so, you know, I'll take these two – well so is it possible for us to like talk about, you know, the registrar or registry data collection first and then the third party purposes second and sort of allocate 15 or 20 minutes or so to each and see where we are? Is that – if that's possible I'll go back to the registrar one. Yes, I'm going to just say that. So I'll go back to the registrar or registry one and take comments on that or any other slid we've seen.

So Alex, do you want to comment on the registry or registrar one or do you want to wait for a few minutes and then talk about the other one or make an overall comment about the last four or dozen slides?

Alex Deacon: Right, well I had a question. This is Alex. I'm just curious as to why ICANN contractual compliance is a third party – is listed under third parties as ICANN

is a controller it would seem to me that they wouldn't be a third party so I was just hoping for some clarification as to why that ended up on the next slide and not on this slide?

Kurt Pritz: Yes, and I had them there in the chart too and then, you know, questioned myself when I went through the chart and so I'm, you know, and if this is a definitional issue that's very clear in a very clear in the GDPR and any other writings I'm happy to move them – somebody suggested they be moved under LEA because the balancing is not required and they have a legitimate interest and now you're suggesting that they be moved under the contractual requirements, so I'm not sure – I'm not disagreeing with what you're saying, I'd be fine with any characterization of where they are and I see Alan's agreed with you.

Alex Deacon: Yes, I think – this is Alex again, just to clarify. I think I was the one who arose that it should be moved in that previous slide but not under LEA or not associated with LEA but just in that general category that LEA was in. So I think...

Kurt Pritz: Right.

Alex Deacon: ...I think my comment is consistent here, I think as ICANN is a controller, just, you know, putting ICANN Compliance as a third party just doesn't make any sense to me at least. So I think it is better to place it on this slide here under registrar, registry, ICANN contract purposes. Thanks.

Kurt Pritz: Okay. Thank you, Alex. And I just want to pause for a second, Theo, and talk about Stephanie's comment for a second. So you know, I'm kind of of the same opinion but registrars, you know, ICANN – another part of ICANN's mission I think is to support the registry and registrar marketplace, so, you know, I don't know if ICANN should be listed under that or not. But I agree with that. Theo.

Theo Geurts: Thanks, Kurt. So looking at this possible path forward, it sort of, yes, I'm not sure if this is the way to go. It seems very complex what we are doing here. And it ties a little bit back on what Alex just mentioned when it comes to contractual compliance as a third party because we are already having a very difficult time determining the purposes here. And when I'm looking at this, at this little bit of an exercise, you know, what is the purpose of a domain name registration? I mean, that is your initial purpose for the registrant. The registrant wants to register a domain name. Does the registrar require data?

And that is the initial first purpose. Does the data need to go to the registry? Could be, we could make some purposes there, come up with a couple of purposes. But there needs to be a legitimate basis there so if we want to move data to a registry, we need to have a purpose there. If we want to get data to compliance because they have audit functions, okay, that's another purpose so.

So I can go on here with possibly 1000 purposes here, and we can possibly come up with legitimate purposes here and have a legal rationale to justify it all, but that is going to be a very long project and I think we need to go a little bit back to the core of why we're doing these domain name registrations, why it is the purpose for the registrant/data subject and then see if all these other purposes can be dealt in another fashion because if we are going to continue on this path I think it's going to be very, very complex and I'm not sure if we're going to be hitting our deadlines. Thanks.

Kurt Pritz: So thanks, Theo. So to me – so to me each of these items except for 4.4.12 have to do with the registration of a domain name and the maintenance of a domain name and, you know, making sure it works good and lasts a long time. And the 4.4.12 has to do with the ICANN consensus policies of UDRP and transfers and just to rub people the wrong way, the maybe de facto policy of URS but it's not a policy.

So to me that's what this list is and that all the other things you mentioned are to transfer data to make available data to third parties for their use which

requires one of the other GDPR sections that Thomas described. So I kind of think we're in lock step but I'm certainly sensitive to, you know, making this a very onerous task and in fact I'm trying to probably trying to oversimplify it and concerned with that. So with that, James.

James Bladel: Hi, it's James. Can you hear me?

Kurt Pritz: Yes.

James Bladel: Hello, it's James. Can you hear me? Okay great. Sorry, I'm at an airport and there's a lot of background noise so I apologize for that. So just a question here, and it's possible that I've lost the handle on this particular slide, but I think we might be making the same mistake that the RDS Working Group made on several occasions which is that we are kind of backing into legitimacy of purpose in that we have some things here we've outlined the contract outlined specific data fields that we collect for specific purposes.

But I think that includes this assumption that there is no other data or no other means for us to fulfill these needs without this data. And since this specification and this PDP is focused I think specifically on the RDS aspects of the temporary spec, I'm concerned that we're kind of trying to take on a little bit too much here when we talk about payments and invoicing and technical issues and commercial and technical changes because we have other means where we can perhaps look at facilitating those contractual purposes without diving into what we collect, what we share and what we display and I think that's my concern.

I don't know if this – maybe this is what Theo is getting at; I'm just concerned that we're taking on too much and that we should instead just focus on the, you know, the essential elements of the temp spec. Thanks.

Kurt Pritz: No, no so you can't go, James. So you – I was going to ask a different question but when you said focus on the essential elements of the temp spec,

what do you – what's your vision? What pops into your mind when you say that? James, are you still there? So maybe another contracted party can pick up the thread but I think that's what – so I think I grasped James's issue and what I was proposing was, you know, to the extent we want to, you know, blowing up these eight or so purposes and simplifying them into, you know, the data necessary to, you know, support the registry and execute on the agreement and then identify those data elements. So there's a whole another topic going on in chat that I don't want to take up on.

But, you know, how would registrars in the temporary specification characterize their purpose for collecting data? Theo? Because I agree this isn't, you know, if the registrars are saying isn't this the correct characterization because there's other ways of collecting the data and it's the contract that requires the publication or the collection of certain other data, I get that. So for the temporary specification you know, we want to collect the data necessary and list those purposes here. Go ahead, Theo, please.

Theo Geurts: Thanks, Kurt. So maybe we are making this – and again, I think we are making it a little bit too complex here and we are deviating from the original purpose what is required for domain name registration. If I lend you out my car, Kurt, we can put it in a contract and then you're allowed to drive my car around for say we agree two weeks because we want to have a time limit on how long you can rent it. But you can't rent it out to another person; you cannot rent out my car to another person without my consent. And I think that is basically what we are doing when we register a domain name. We use a set of data for a single purpose, domain name registrations.

Every other purpose we come up with needs either the data subject needs to be consenting to it, there needs to be a legitimate reason for it or it needs to be informed but there are several actions that are required to get to that point that we can reuse that data for another purpose. And I think that discussion is very complex and I think that is sort of what the RDS also had trouble with. We have a good sense of purposes which make sense, I mean, LEAs,

trademarks, etcetera, etcetera, there is no discussion about it. But to get to that point and to have that discussion crystal clear that is a very tough one and I'm afraid if we're going to conflate all these purposes here we do not meet the finish line here and that is May 29 – May 25, 2019. Thanks.

Kurt Pritz: So how – under the – in the temporary specification, it lists a number of contract purposes of contracted parties to collect data and so how would, for the purpose of the temporary specification, how would you reword those purposes in a simple way to – so that we can identify the data required – the data that must be collected? Right? We have this temporary specification.

It says this, now it's up for us to decide whether these purposes are legitimate you know, in performance of a contract or they should be characterized in some other way, so how do you get at that? We have to either say these purposes are good the way they're written or they should be rewritten to, you know, reflect the data that's – so that we can collect the data that's actually needed. Hi, Thomas.

Thomas Rickert: Hi, Kurt. I think what made – might make it easier for all of us to go through this is actually create a chart of the data elements like, you know, registrant name, address, organization, phone, fax, email and then we go through the purposes listed here and double check whether we think that those are needed by the registrar to perform the contract. Then we do the same thing for the admin C, for the tech C and for the billing C. And then we might get to points where there's divergence inside the group and then let's deal with that and write out the rationale for why we – why this is needed.

And I think if we go through the purposes listed here, and make sure that no purposes are forgotten, you know, everyone should say if there's anything missing, then I think we have, you know, we have a list of purposes and processing activities that can be checked against the legal grounds. Right? And then we should look at, you know, what's the legal basis and then who actually – starting with this is it the registrar's own interest, is it third party

interest and then we can populate a table and see what data can be collected and what data can be – can travel from registrar to registry and so on and so forth.

Kurt Pritz: So collect the data – so create a data list, thank you, Milton, create a data list that's in line with these purposes that are enumerated here.

Thomas Rickert: Exactly. I think for all processing steps we should, you know, just a suggestion, I think it would make sense to have an Excel sheet or another table with all the data elements and there are some more than are actually listed. And then we can say okay, does it need collected by the registrar? Then we look at the travel of that data from the registrar to the registry. And we can then determine what data needs to travel from the registrar to the registry to perform the contract, what can travel from the registrar to the registry to – based on the legitimate interest. And what can potentially travel based on consent. Right?

Because then, you know, I think we will probably have a subset of the data elements that have been registered – that have been collected by the registrar that remains to travel from the registrar to the registry. And then we can do the same exercise with escrow, (zero), ICANN Compliance and what have you.

Kurt Pritz: Yes. So I've got that and I, you know, I think we can – we've already collected information from the RDS PDP that highlights that so we can use that as our starting point. So my question is, and I'm going to go onto the next slide is for registrars and registries, are you happy for these one, two, three, four, five, six, seven, eight things, purposes, to be in the temporary specification or would you recommend a different – a different wording or parsing of the purposes? And so you know, for the next discussion on this, I'd look for the registrars and registries to say, you know, these purposes, the way they're written in the temporary specification are fine or we think they need to be changed.

I don't think that it's going to really change the data fields that are required, but I think it is important to have this properly worded. So I want to go onto the next – thanks, Berry – go onto the third party purposes of data. So I'll call on Margie and then we'll go onto the next thing and spend 15 minutes on those. Margie.

Margie Milam: Yes, thank you, Kurt. If you're asking whether this is a complete list such as the registry contract (unintelligible) then I would add an additional one that's not here and that's to comply with ICANN policies because as part of the overall contract for registration, there's an agreement that the registrars, registries will comply with ICANN policies that are created through the consensus policy framework. And so that is independent grounds (unintelligible).

Kurt Pritz: Margie, I didn't do that to you. Is Margie gone?

Margie Milam: Could you hear me? Sorry.

Kurt Pritz: Yes.

Margie Milam: Were you able to hear my point?

((Crosstalk))

Kurt Pritz: Yes. Yes, so and for me there – so for me there here, but you can tell me which ones are missing, so under 4.4.12 we have UDRP, which is a consensus policy and URS also. And then, you know, I thought in 4.4.1, the ability of the registered name holder to exercise her or his rights, that's where I put the, you know, one of the rights being the right to transfer a domain name. But I think..

((Crosstalk))

Margie Milam: Yes, I'm thinking it's not complete. You're right, some of it's addressed (unintelligible) but I mean, you know, and we could also ask ICANN staff to go through the policies, but I would suspect there are some that aren't expressly listed there, so that's why I would add it as a separate stand alone purpose.

Kurt Pritz: Okay. Thanks. So if the support staff could take that one that would be great. Hi, Stephanie, go ahead.

Stephanie Perrin: Hi, Stephanie Perrin for the record. I don't want to continue this circular argument again and again but Margie's point reminds me of it, so I'm going to. One of the principle purposes of data protection law is to reinforce the autonomy of the individual – in unequal power relationships, right?

And while the NCSG and the ALAC purport to represent the end user or individual in negotiations at ICANN, or otherwise known as the multistakeholder process, I can't say that we have been particularly successful because many of the policies that have emerged over the years (unintelligible) do not necessarily even include all the existing end user rights such as data protection law; it hasn't until now. And there are other rights as well.

So I think that unfortunately compliance with other policies cannot vitiate the rights of the user until we do a privacy impact assessment on them, a human rights impact assessment would be better, mind you, but at least for this exercise it should be a privacy impact assessment to see in how many instances we have policies that in fact have not balanced the end user's rights appropriately. So I'm not suggesting we're going to be able to do that in this process but I think it's kind of a marker I'd like to put down here. Thanks.

Kurt Pritz: Thanks, Stephanie. Well I have several – well a couple thoughts on that that I want to process more fully. All right so for third party purposes, you know, this

was a little bit harder for me to parse but, you know, I think the bottom line of what I'm proposing is that, you know, we have these third party purposes that are outlined in the specification and there could be additional ones.

And what we need I think what we need as a team to agree with in order to include these in this is that – what we need to do to include these is agree that there are instances where each one of these – where each one of these would a legitimate interest that is not overcome by the rights of individuals will occur, so it doesn't occur in every instance but there are instances where it will occur. And then once agreed and it's identified as a legitimate third party purpose then go on during the access discussion to determine under what conditions you know, that data disclosure can be made. So that's a little vague. I welcome comments. So go ahead, Milton.

Milton Mueller: Yes, this is Milton Mueller from the NCSG. So we will have to register the strongest dissent to 4.4.8 and 4.4.9 as we don't deny that those are in fact third party (unintelligible); the problem with the temp spec – and this is a problem that exists in 4.2 and 4.3 as well, is that ICANN is redefining its mission unilaterally and in complete violation of its own bylaws to include this all embracing law enforcement support functions.

And just to give you an idea as why we don't like this, if you really wanted to have a framework in domain name registration to address let's say consumer protection issues or law enforcement needs, then it would be perfectly legitimate for ICANN to ask people for their bank account information or their national identity card information when you're registering a domain name. I mean, there's no argument that that would in fact facilitate those purposes.

So these third party purposes are really an act of complete confusion; we're still confusing ICANN's purposes and mission with the needs and interests which may be indeed legitimate of third parties who might at some point want to use the data that ICANN collects in the process of fulfilling its mission. ICANN is a coordinator and policy maker for the domain name system. It

publishes, you know, through the root it puts people in touch with zone files that make domain names globally compatible. That's its basic mission.

It's not an overall regulator of the Internet and these 4.4.8 and 9 really get us into expansive territory that's completely outside of ICANN's mission and we just have to see those things go.

Kurt Pritz: Thanks, Milton. I think I won't comment, I'll let Alan comment.

Alan Greenberg: Thank you. I think Milton's just identified the main point of contention, or certainly a main point of contention within this group. I strongly believe that ICANN is responsible – has a responsibility to ensure that the domain name system not only exists and is populated with information but exists so that it can be used reliably. As a simple example, the technical contact information is necessary at times to identify who it is you need to speak to to make sure things can work if they are not working properly.

Without that the DNS is rather a useless piece of infrastructure if it can't be trusted, if it can't be made to work, if problems can't be fixed. So I believe that is one of the purposes that is not listed in the temporary specification and making sure that the DNS is kept operational, functional, trusted, I believe is part of ICANN's mission and should be included as one of the rationales and it's one of the rationales that justifies third party access. Thank you.

Kurt Pritz: Thanks, Alan. Diane. Hi, Diane. I think you're still on mute.

Diane Plaut: Can you hear me now?

Kurt Pritz: Yes, we can.

Diane Plaut: Great. I think that Milton continues to wrongfully identify the mission of ICANN as well as of GDP. The mission of ICANN is very clear in its bylaws and that includes to be a – to provide a framework as a controller of information for

domain name registration. And an application of the GDPR it's very, very clear that it says that in ICANN in identifying the specific purpose for the collection of data then the fulfillment of that purpose by registrars and registries is separate and apart. And under the contracts of these registrars and registries including the application of ICANN policies is what allows for the collection of that data, the fulfillment of the contract is one of the legal basis.

And the EPDP has been set forth a mission not to reconfigure or question the mission of ICANN or question its bylaws, but simply to apply the GDPR and the temporary specification clearly sets that out in Section 4.4 as well as in Appendix (D).

Kurt Pritz: Thanks, Diane. Benedict and then I have a comment – I have a question for Milton that'll demonstrate my ignorance, but Benedict, can you go ahead?

Benedict Addis: Hi, Kurt. Quite apart from ICANN's mission I would actually – and I would actually argue that this could even be considered to be a first party as well as a third party purpose if we look at the bylaws. It strikes me just pragmatically that law enforcement and cops are going to keep asking registries and registrars for such data; it's not going to go away and thus it makes sense to have a framework here, just that there's a standard way to ask and answer those questions. And that – and having a standard doesn't open the floodgates.

If you put terms like courts of competent jurisdiction in there, it gives registries and registrars permission to turn down egregious requests and not just answer them. If it's a free for all, in my experience, and I speak as a former cop, that's what us cops use and exploit to take advantage of sort of cracks in the system to get data, because we push, right, within the law but we push. So a system where – that facilitates registries and registrars saying ah-ha, no, here's what you get and we've been told this by ICANN, consensus policy, seems a good thing for privacy. Thank you.

Kurt Pritz: Thanks, Benedict. So my oversimplification, Milton, so this is really a question I want you to answer because it's something I don't understand. So if data is collected for the sole purpose of, you know, maintaining the registration and, you know, you know, include, you know, after an impact assessment decided to include compliance with ICANN policies, so if it's collected on those bases only then isn't a third party request for access to that data once it meets the legitimate purpose that is not overcome by the rights of others, doesn't that satisfy the limited (unintelligible) for which ICANN is collecting data?

Milton Mueller: I'll go ahead and answer since the question is directed to me. So somebody needs to mute their mic. So of course, I mean, that's the problem with – that's why people seem to be so confused about this distinction between third party purposes and ICANN's. Look at the language here; you have listed under third party purposes but then 4.4.8 says that it's ICANN's purpose to support a framework to address blah, blah, blah. Okay, you understand the distinction? If ICANN collects a bunch of data that is useful for law enforcement then – or for dispute resolution, which by the way, dispute resolution is part of ICANN's purpose, but let's suppose it's just law enforcement, and then law enforcement has a legal process for getting access to that data, I have no problem with that. You see, that's not what we're debating.

What we are freaked out about is this idea that it's ICANN's purpose to support consumer protection, investigation of cyber crime, DNS abuse and IP protection, which means that it could, based on the literal interpretation of that as a purpose, it would be able to collect your identity card or your credit card information or any information that might be supportive of law enforcement activities. What would stop it? You tell me. What would stop it from collecting your driver's license, a digital scan of your driver's license if 4.8 actually – and 4.4.9 actually describe its purpose in collecting data. What would stop it?

Terri Agnew: Kurt, this is Terri. If you're speaking it looks like you're still muted.

Kurt Pritz: Shrewd observation, Terri. So if the purpose of collecting the data is limited to that which is required by registrars and registries to administer and provide service and make the domain name resolvable and work well, and even if we include in that with consensus policy, then those purposes would limit the amount of data collected and the sorts of data you are concerned about would not be collected. So it's not – this is about, you know, I know you get this so that's why I'm certain I'm missing your point so this isn't about which data is collected, it's one's collected for purposes in line with registry and registrar requirements, then under what circumstances could it be shared with third parties?

So let's go onto – let's go onto Thomas because I'm taking too long with this. Go ahead, Thomas.

Thomas Rickert: Thanks very much, Kurt. And I think what we need to do is demystify what's behind 4.4.8. I think we really need to write up what the specific purposes are and how those purposes shall be operationalized. 4.4.8 is so broad of a statement, you know, we do not know what shall be processed how. We do not know whether the registrar is addressed to do something, whether data shall be revealed to third parties. You know, all this is unknown and I think that a lot of the anxieties in the discussion stem from the fact that we don't know what's behind it.

So let's (unintelligible), let's write up whether, you know, DNS abuse is, you know, or IP protection is limited to URS and UDRP or if not, what additional features we need, and then let's do the legal analysis as we've discussed earlier. And I think once we get to a greater level of granularity there will be a lot of points that we can agree on not least because many of those points are in ICANN's documents already and then let's discuss those where we might open the flood gates and put additional things required safeguards in place to avoid that things get out of control. Thank you.

Kurt Pritz: Thanks, Thomas. And, you know, with the – taking the risk of talking again and specifically to Milton, you know, something I didn't respond to earlier and I meant to is why we're not discussing the sections that precede 4.4 and I think that's because you know, I think we'd be comparing these 4.4 sections to against the GDPR and not against the ICANN role. So which of these are allowable through GDPR and then take that out of the debate of ICANN's purpose. Stephanie, please go ahead.

Stephanie Perrin: Thanks. Stephanie Perrin. I think a lot of the language here is possibly unnecessarily inflammatory and sets off alarm bells. I had fought the use of the word "framework" when we were coming up with the spec in the small group because supporting a framework to address consumer protection investigation and cyber crimes etcetera, that is extremely broad language; framework broadening it even further. What ICANN has a responsibility to do is to ensure that these goals are not thwarted. The purpose of ICANN is not to enable the collection of data to support the goals, not in any way suggesting that the goals of law enforcement and intellectual property protection are not worthy goals.

But we do not set up a quasi-regulatory system in order to benefit third parties. You know, exceptions to that are very, very limited in the regulatory world so why would it be different? And you have letters from the DPAs predating the GDPR discussion that are very explicit on those points. So I think that we need to seriously rework these sections because they are far too broad and I don't think we're going to stop overreacting to them so I agree with Milton. Thank you.

Kurt Pritz: Okay thanks. So I think I want to say – well go ahead, Alan, and because we're running out of time here so let's get all the comments out. I'll make some closing remarks and then we'll wrap the meeting. So please go ahead, Alan.

Alan Greenberg: Thank you. I'll be very brief. Stephanie hit on the exact point I was going to make. I'll say it in a slightly different way. I think one of the major problems with the temporary specification is the use of the term "framework." It's not defined and it is overly broad. A framework essentially says it's the infrastructure of a vehicle or of something; it's the part that supports it. We have a responsibility I believe to provide some of the data elements, the components of the infrastructure; the overall infrastructure for enabling law enforcement to do its work relating to the Internet is not our business.

I believe strongly it is our business to ensure that the law enforcement framework can work and that requires access to certain information. But saying it's our – we're responsible for the framework and the same is true for several of the other aspects, the, you know, the technical operation of the Internet, the – where else do we use the word "framework"? It's used in a bunch of places and I think it's overly broad and widens our scope far beyond what it actually is but I think that can be fixed by changing the wording, not the overall intent of those sections. Thank you.

Kurt Pritz: Thanks, Alan. So a few things. One is I read framework as being in the temporary specification in a way that conclusions we make during our discussions here and then in the access discussion which will follow the preliminary report on this temporary specification, could be accommodated. So I interpreted framework as being available and ready to support decisions that are made during this discussion and especially in the detailed access discussion where we lay out rules for the conditions under which access is granted. So I didn't see a problem with the word "framework" as it was not sort of a commandment to make data available but when the decision is made how data is made available then that could be made.

And then, you know, I think there's two things. In an email after this – and somehow we need to frame up the question that, you know, we do agree that data collected for the purposes of performance of the contract by registries and registrars, which includes, you know, supporting domain name

registrants, you know, that data once defined and described can be made available to third parties under certain conditions. So without expanding that data based on a definition of ICANN mission but just taking the data list that's developed by registrars to do their job both to support registrants and in compliance with consensus policy that that data can then be not expanded upon but shared with third parties.

So I take Thomas's comment onboard again and where – so in the previous section where we asked, you know, I asked registrars to suggest that they either agree with the purposes outlined as they're worded in the temporary specification for those sections, I would call on third parties that want to have access to data to flesh out for us at least 4.4.8 and some detail there so we can describe what data elements that might be which is our next step, and then possibly 4.4.9. So those would be the two kind of rapid homework assignments because the next – the next meeting is coming up.

Ashley, I saw your hand up, did you want to say something?

Ashley Heineman: I'll save it for the next call, thanks.

Kurt Pritz: Great. So, Marika, is someone ready to close on actions or questions?

Marika Konings: Yes, Kurt. This is Marika. I have those. So I took down I believe it's three action items, four action items from today's meeting. The first one being the team to share recommendations for whom or which organization should be considered by the leadership team to provide GDPR training to the EPDP team. And I take note of two suggestions that have already been made both by Ayden and by Theo in the chat.

Action Item 2, the EPDP team to provide input on the path forward for a triage report on the mailing list. There were different options outlined in the presentation today so everyone's encouraged to provide their feedback on that. Action Item 3, the team to review the issue categorization and the

proposed project plan and provide any feedback you may have. And Action Item 4 for staff to review whether any other policies would need to be called out in the purposes in addition to dispute resolution services. And no questions noted for ICANN Org.

Kurt Pritz: Okay thanks. And I just – Amr, so I'd rather evaluate 4.4.8 and 9 against the GDPR and not against the ICANN mission. So what are the, you know, what are the conditions under which, you know, under 4.4.9, law enforcement and under 4.4.8, others, can have access to data that's collected by registrars for the purpose of their contract. So, go ahead.

Amr Elsadr: Were you asking me a question, Kurt or...? This is Amr.

Kurt Pritz: I was kind of answering your question but since you have the mic, if you – you can signify that you understood it or maybe disagree but at least understood what I said or ask a question.

Amr Elsadr: Yes, I think my point really was that 4.4.8 particularly, and perhaps to a lesser extent 4.4.9 seemed to be a follow up to 4.2 and 4.3 particularly in terms of the bylaws reference in those two provisions in the temp spec because, you know, the issue of adequately addressing issues of competition, consumer protection, security, stability and resiliency, malicious abuse issues, sovereignty concerns, those are referenced in – the bylaws reference to those as provided in 4.2 and then sort of the temp spec sort of builds upon that to – in 4.4.8. So I do see a close association and I think it might be helpful to review them together.

Kurt Pritz: Okay, thanks, Amr. With that we'll be following up with notes and actions for next meeting. So again, thanks very much for your generous donation of time and listening to me and then participating energetically and constructively during this discussion. So wherever you are have a great rest of the day and thanks very much.

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

END