

**ICANN
Transcription
GNSO Temp Spec gTLD RD EPDP
Thursday, 30 August 2018 at 13:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-30aug18-en.mp3>

AC Recording: <https://participate.icann.org/p7roeo6r513/>

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

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

Coordinator: Excuse me. Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the ninth GNSO EPDP Team meeting taking place on August the 30, 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 Julf Helsingius of the NCSG and Emily Taylor of the Registrar Stakeholder Group. And they have formally assigned David Cake and Theo Geurts 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 the Google assignment form and the link is available in the agenda.

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now.

Leon Sanchez: This is Leon Sanchez. I'm only on the phone bridge but I will join the AC room momentarily.

Terri Agnew: Thank you for that, Leo. We'll make that note. Hearing or seeing no one, we'd like to remind you, statements of interest – pardon me. 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 end of the call. With this I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks very much, Terri. And welcome, everyone. I'm holed up in a hotel room in Melbourne Australia at 11 o'clock at night and there's a show of funny home videos playing in the background so if – I don't know how it got on the TV but if I laugh now and then that's why.

I'll just – let's go through the agenda and then I'll come back to the welcome and updates. We want to discuss as, you know, we're still on the project plan so we want to discuss two sections of the temporary specification today. One is a continuation of the discussion of 4.4. And we went through it in quite some detail last time and, you know, gave out some homework assignments that were sort of rushed at the end and that was a mere 46 hours ago so I – there wasn't, you know, there was no work delivered by anyone and that's not surprising the way the assignment was handed out or the time given to do it.

So I think we want to have high level discussion about next steps. We can get into details but I'm seeing that as a very important discussion but maybe a

brief discussion of the meeting sort of to set a big direction and then set our sights for some concrete discussion on the next meeting. And then we'll begin discussion about Appendix C which is data processing requirements and I'll start with those are the different sections in the agenda of that and I will – and I'll set a way of going about the review of this section that we can agree with and then get into the detail and then we'll wrap the meeting with actions and any questions we have going forward.

So I just want to in the welcome touch on the triage report. So I took board fully the comments from the last meeting but my 46 hours were the same as yours since the last meeting and spent all the time on substance, so we will have, you know, we're planning to put this behind us so create a updated truncated version of the triage report that can be accompanied by a side report to the GNSO with more detail, but we'll keep that short.

And I – gosh, I had one other item I wanted to talk about during this part of the meeting but I forgot what it was. But, you know, as a third topic I hope you all have are more – are making travel arrangements to the face to face meeting in Los Angeles. Everybody should be hooked into – hooked into their ICANN travel buddy and getting that underway.

And then one other – I thought of that second thing, but another thing I thought of was, you know, I've had some feedback about how we're conducting ourselves in the chat and even I noticed during the last meeting I'd be in the middle of some substantive discussion and see the chat off on a tangent, so, you know, I just want to say a word about – I think the – I think the chat's important. I think the most meaningful stuff is said, and I encourage you to say it; I understand the chat can be a time saver, but I also want to pay full respect to whoever the speaker is and have us focused on him instead of the chat.

So that's it for the – unless there's comments on the agenda. Kavouss, I see you're in the queue, go ahead. I think you must have a point of order or something.

Kavouss Arasteh: Yes, do you hear me please?

Kurt Pritz: Yes I do, Kavouss.

Kavouss Arasteh: Oh okay, thank you very much. Good morning, good afternoon, good evening. With respect to my removed participation that already agreed after some internal discussion with GAC small team, I made arrangement for the time sharing. And I send a message to those people and to Manal and also send a – not a copy – similar text to you indicating that I intend to remotely participate on the time sharing with Rahul, which is alternate in such a way that at no instance more than three GAC members would attend. If I attend in the morning, Rahul would not be in the morning access to the Adobe connection and so on so forth, or vice versa in the afternoon.

So I hope that will be – that is enable him to travel and that is enable he also benefit of the face to face meeting and so on. That's just some gesture that I made although I wanted to attend totally the whole time but I made this arrangement to half of the time myself and half of the time Rahul and we make arrangement and inform the secretariat and yourself accordingly. Thank you.

Kurt Pritz: Thanks, Kavouss. That's a very gracious of you to put it that way. With no other comments in the agenda or with no other comments in the agenda, let's move on to the substance. So in 4.4 I want to talk about three topics. One is a, you know, I went through – between the meetings I went through all the comments that everybody made to see and match that up against our discussion to see if the discussion we led covered the issues that were raised during the triage. And I saw one that I thought was – rose to the level of

importance to raise here about a wording issue that was raised. And so I want to bring that up.

And then, you know, during the meeting in the slides and in a follow up email I made, you know, we showed – we indicated how we had bifurcated the discussion of the different purposes for data processing and how to discuss each one of those tranches separately. And so I want to review that and ensure everybody understands what I'm trying to do and agrees with that approach. I think it's a easier way for us to get to you know, the next version of the specification or the policy that refers to the specification, so I'm going to review those two things.

So with regard to the first issue, it was brought up in the – and this is where you might want to have your temporary specification out but at the end of the preamble to Section 4.4 it says that, “personal data included in registration data may be processed on the basis of a legitimate interest, not overridden by fundamental rights whose property and personal data is included in the registration data and only for the following legitimate purposes.”

And it was raised by I think at least two parties that this seemed restrictive for two reasons. One is that there'll be new privacy regimes in the future and two – more importantly, you know, this GDPR will be interpreted through cases and advice from the Policy Board and advice from DPAs. So it was suggested that only for the following legitimate purposes made this not a document that could live into the future.

So, you know, I have two suggestions here. One is, you know, I noticed that in – we all noticed that Section 4.4.2 is sort of a, you know, I don't want to call it a catch all but it provides for other instances of data disclosure that it can be disclosed, you know, for the general test and the GDPR section that Rick – Thomas Rickert and others can recite to you but that providing access to data can be made as long as it's a legitimate interest not outweighed by fundamental rights, or we could fold that into the – it might be more elegant to

fold that into the top so take out “only for the following legitimate purposes” and put in that – “and for legitimate interests not outweighed by fundamental rights.”

So we could do that either way. I’m going to pause here for comments on this and sort of a sense of where we should go on this because it was raised by a couple parties. If there's no comments on this we'll just assume that we can leave the wording in the temporary specification the way it is in the policy that we're developing. So are there any comments? Alex from IPC.

Alex Deacon: Yes, good morning, Kurt. This is Alex. Yes, I think the point of our comment here is that, you know, when you use the – when you focus on only legitimate interests for example in your second version here you say, “maybe processed,” dot, dot, dot “and for legitimate interests not outweighed by the fundamental rights,” blah, blah, blah. I think the point is is that we're leaving out other lawful processing described in article 6.1, right, we talked about these on Tuesday, things like 6.1B which is the performance of the contract and 6.1A, which is when consent has been given and etcetera.

So I, you know, not seeing a redline here, it's not clear to me that these updates would address the concerns because they still seem to leave out the possibility of lawful processing, well other forms of lawful processing above and beyond legitimate interests, which is one of – what is that, 6.1F. So unless it's early and my coffee hasn't kicked in I'm not too sure if this is actually going to address the concern that the IPC raised. Thanks.

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

Kurt Pritz: That's because it was still muted. So Alex, you sort of alluded to a proposed wording, do you have that? And, you know, it's late here so I don't know if my coffee's kicked in.

Alex Deacon: No, I don't have it now. I could take an action to after the call propose something; I'm happy to do that.

Kurt Pritz: That would be terrific. And I think, you know, Thomas gave us a big hint in the chat. Milton.

Milton Mueller: Yes, so again I think we are very much going down a rate hole here that is completely unnecessary. The problem that we have with 4.4.2 as well as 8 and 9 is that it's really an access issue; it's not an ICANN purpose issue. So the problem we have with these so-called legitimate interest lists is that they are trying to incorporate those external third party legitimate interests into a definition of the purpose of ICANN's collection and display of the data which is just a mistake.

If we could separate those two things very clearly we could come to an agreement. If you think you're going to accommodate access concerns by defining third party interests as part of ICANN's purpose then we, you know, our stakeholder group is never going to accept that because it is, you know, making the confusion that the data protection authorities told us not to do very explicitly, very clearly and repeatedly that the third party interests, even if they're legitimate and even if they would eventually produce access to the data, should not be confused with ICANN's purpose. And this is what we are persistently doing and that's our main concern with the many items in Section 4 of the temp spec.

Kurt Pritz: So...

Milton Mueller: Go ahead.

Kurt Pritz: Go ahead, I'm sorry, Milton.

Milton Mueller: Well I was just going to say...

Kurt Pritz: Oh yes, so...

Milton Mueller: We're opening the door to...

((Crosstalk))

Milton Mueller: ...that we just have to make a distinction. We're not saying you can never get access to this data unless we have a specific item here that says it's a legitimate interest. I think that's a – that's a losing proposition. We just have to have some general statement that when we start dealing with access that people with legitimate interests can get access. But let's not define that as part of ICANN's purpose.

Kurt Pritz: So where would we have that either in this specification or the policy? Where - would it be a new section or...

Milton Mueller: It would be in the access...

((Crosstalk))

Kurt Pritz: Under the heading of disclosure? Okay.

Milton Mueller: Yes, it would be in access.

Kurt Pritz: So there's not – yes, right. And so we're going to talk about – so this is – I think this is worth spending a few minutes on because you brought up the other sections in 4.4 also. And so currently there's not an access section in the temporary specification, it's pointed out until later. And maybe that's let's say by calling it, you know, when disclosure is made, but somewhere in this temporary specification if we take it –if we take this one out of there it has to be somewhere else I would think.

Let's go to Marc.

Marc Anderson: Hey, Kurt, this is Marc. Can you hear me okay?

Kurt Pritz: Sure.

Marc Anderson: I guess I should clarify it's Marc Anderson, not to be confused with the other Mark. But I guess I want to ask sort of a, you know, a clarifying question on where we are in the meeting. You know, so we transitioned, you know, out of sort of the welcome and introduction and into the substantive discussions. And so you started us off here on a wording issue. And I take it you've done some review of the comments you – that have been submitted via the triage report for Section 4.4 and are proposing redlines to accommodate the comments that have been received to date.

And so I guess I just want to make sure I'm clear on what our objective right now is, so are we trying to produce a, you know, an updated, you know, a new version of 4.4 and 4.4.2, you know, or are we, you know, is that our goal and objective right now in this part of our discussion?

Kurt Pritz: Yes, if it's easy. So in preparing the – so I stared at this little piece of the agenda and wondered if I would include it or not or leave it until later. And if it takes too long we can leave it until later. But I noted that in the preparation for the last meeting we went through the comments to identify issues with the section to help direct the discussion. And I noticed this point as being missed so I thought to include it this time.

And so, you know, if, you know, we have many issues to knock off and if someone can propose wording that addresses this issue I think that's fine. I also think that Milton raises an issue pertinent to here but pertinent to other places that I think is important. And so maybe we can restrict our – there's a couple ways of going about this but you know, we can restrict our comments to this one wording issue for now and take up Milton's bigger issue for later or discuss that now; I don't, you know, I'm sorry I'm not providing really good

direction. But it was my intent, yes, to see if somebody had suggested wording so we can knock this off. Ashley.

Ashley Heineman: Thanks, Kurt. So I'm going to cautiously agree with Milton, at least in part. I think what may have led us astray here is kind of comingling purpose and interest and so I don't have precise wording at this point but I agree with at least exploring the idea of at least separating out these concepts and exploring perhaps, you know, having them addressed elsewhere, perhaps Appendix A, Section 4. But I'm starting to understand the arguments here and I think fundamentally it's because we're confusing two concepts that are quite different. So I'll stop there but thank you for the opportunity to provide that input.

Kurt Pritz: Yes, thank you very much, Ashley. Alan.

Alan Greenberg: Thank you. A couple of quick points. I have no problem separating things out and making it clear but remember that we can't provide access later unless we have the data to start with so I – whether we even collect data it's implied because we're talking about processing, not just access. And I would really appreciate lowering the rhetoric to some extent. You know, essentially throwing down the gauntlet and saying we will never agree to something – no stakeholder group, no group within the EPDP or the GNSO has absolute veto rights. So let's try to reach closure and not make threats. Thank you.

Kurt Pritz: Thanks, Alan. I think – and the – and the collection of data is implied and it's – it was difficult to talk about data collection first or purposes for data processing first, but one has to do to undertake one of those with some faith that the other one will be understood. Farzi, how are you?

Farzaneh Badii: Hi, Kurt. Thank you. I'm fine. I hope you're well. So Farzaneh speaking. I just wanted to say that when we talk about data processing and (data) processing for – to consider legitimate interests, first of all we don't have to like the details of the legitimate interest and have like a laundry list of what a

legitimate interest is. I don't think that is our job. And for the data processing it has some data processing, data collection and we have discussed this a lot. We need to come up with what we mean by data processing at each stage.

Now if we are talking about data collection and we want to consider legitimate interests of the third party when we are talking about data collection, that has to be very narrowly defined and interpreted and this is like a principle that they do; it can be like all the third party in the world, anyone can have like some kind of an interest. But – and so and it has to be narrowly and it has to be based on ICANN's – ICANN purpose and mission. And then afterwards we can discuss as to the data collection it has to be based on the ICANN mission and purpose and we can consider all the interests, all the third party interests that could happen in the future.

Kurt Pritz: Thanks, Farzi. Hadia. Hadia, I think you're on mute. We'll have to call you Kurt.

Terri Agnew: And this is Terri. Just for a quick update, we did have Hadia on the telephone as well but her line dropped so we're quickly getting her back on the telephone. And I believe, Hadia, you're back on the telephone now?

Hadia Elminiawi: Yes, yes.

((Crosstalk))

Terri Agnew: And, Hadia, go ahead and try talking again.

Hadia Elminiawi: Okay. Okay thanks.

Terri Agnew: And we can hear you now, Hadia. Please continue.

Hadia Elminiawi: Okay, so...

Terri Agnew: And, Hadia, it's Terri. I do believe we're getting some background noise from your computer. Are you able to turn down your speakers?

Hadia Elminiawi: Yes, I did. And I muted my speakers. And can I speak now?

Terri Agnew: Yes, all is clear. Please continue.

Hadia Elminiawi: Okay. So quickly I have – I want to mention this, I am (with) rewording or – the whole – I have a quick remark with regard to 4.4.8 where Thomas, you know, who was talking about slicing and dicing and then he said that payment then – that one would think that payment information and other similar information is required by 4.4.8. And the way I read it now, when reading it (unintelligible) investigators might need payment information in addition to other information that we may or may not be aware of. However, we are not part of this investigation and what is required from ICANN is the basic information.

There are definitely other paths to obtain more information for any investigation, and we must remember that payment information is collected for the benefit – not for the benefit of a third party but it's collected as a requirement because it's required by the registry or the registrar. So this is my quick remark. And maybe I could be posting something about the rewording of the – so thank you.

Kurt Pritz: Thanks very much, Hadia. And thanks for working through all the communications difficulties, but we understood you at the end. Kavouss.

Kavouss Arasteh: Yes, I understand from the discussions, please don't repeat this three times. Hello? Can I talk?

Kurt Pritz: Yes, certainly.

Kavouss Arasteh: Hello? Yes, sorry.

Kurt Pritz: Yes, we can hear you.

((Crosstalk))

Kavouss Arasteh: Milton raised this question two times; this is the third time that we have to make distinction between the access to the data and we have to make it separate. I have no difficulty, no problem to treat them separately. But there are data; first we have collection of data, then we have processing of data, then we have access to the data. These are the sequence of actions. Whether you have a separate chapter, separate section or separate part for the access to the data, I have no problem.

Whether you want to treat this later, you have decided all was already to treat the access at the later stage, one or gating question (unintelligible), no difficulty. I hope you don't come back to that. And now to concentrate on the data itself, collection of the data and processing of the data and put access for the time being aside to probably appear in a separate section but will be collected to each other at the end. Thank you.

Kurt Pritz: Yes, thanks very much, Kavouss. Amr.

Amr Elsadr: Thanks, Kurt. This is Amr. Yes, I just wanted to agree with some of what has already been said by Farzi, Milton and also a lot of what Thomas has been saying in the chat. I think 4.4.2 might benefit from a few qualifiers there so, you know, not just basing access to the data simply on legitimate interests, not outweighed by the fundamental rights according to GDPR. But also, you know, being based on both these legitimate interests and ICANN having a legal basis in processing this data. So if we could fit that somewhere in there as a sort of a qualifier to help clean that up I think that might be a good idea.

At the end of the last call I had mentioned that, you know, I think this is closely associated with 4.2 and the reason that is is because that's really

where the reference to the bylaw that sort of supports this – if I recall correctly the bylaw was introduced in there as a reference, as an example actually of a bylaw that provides this reference of, you know, of providing, you know, addressing issues of additional consumer protection, security and stability and abuse issues.

I just wanted to point out that this – the bylaw referenced there which is Bylaw Article 4.6D, that's a bylaw for a specific review, which is the CCT review and so if it is going to be used as a reference in the temp spec or in the absence of any other references in the bylaws, I think we need to take a good look at that bylaw and take a good look at what comes out of – came out of the CCT Review Team because those are actually what sort of – they help us narrow down third party access issues.

And to my knowledge or to my recollection at least I don't recall there being too much in there about third party access, in fact I think there was – I think the CCT Review Team's preliminary report that actually stressed that the GDPR is coming into play and registrant privacy needs to be taken – needs to, you know, be considered. So I think when we're looking at bylaw references in the temp spec and any successor to it we need to take a good look at what the bylaws says and what it actually means to the work that we're doing. Thanks.

Kurt Pritz: Thanks very much. I think, you know, and I think that's why we – well that's why we decided to undertake the examination of 4.4 first and match it against law rather than against, you know, the GDPR law rather than the ICANN powers or mission so that we could, you know, match what we're doing to the law and then, you know, then the reference to the, you know, if we have a solution then, you know, reference to ICANN Bylaws and mission becomes less important and can be included or not as however the group wants. Alan. And I think we'll just – I think after Alan's comment we'll have a good segue for going forward.

Alan Woods: Great, thank you. I just wanted to say very quickly, if we hold reviewing it in such a manner and (unintelligible) extra words there, I mean, I genuinely think that this entire section was hastily written and it misses an awful lot of the nuance with regards to collecting data, not necessarily just on the GDPR but across data protection and data privacy legislation (unintelligible). So I would suggest that, you know, this is something that we should probably rewrite from scratch and not try to polish up something which is potentially started from a very bad point.

So, I mean, we can provide text for that; we can come to you with text – I'm not sure that trying to polish up individual sections in this way is getting us – is getting us very far again, reading all the comments from people such as Thomas in the chat. Completely agree, it's cutting off an awful lot of other aspects and I think it just needs a rewrite as opposed to a polish.

Kurt Pritz: Thanks very much, Alan. That's a good segue to finally leaving this slide. So I think where we are is that in the previous meeting and here we're, you know, bifurcating the sections of the – bifurcating the sections in 4.4 etcet, and creating, you know, created this first list of data processing related to registry registrar operation of domain names, the business of, you know, selling and maintaining and making sure domain names work, and so Alan, if I could just come back to you? When I read through the triage comments registrars, you know, most frequently objected to these ones based on sort, you know, I'm going to say this the wrong way but there's, you know, a set of data – registration data that's collected for the purpose of dealing with the registrant. And so I'm already messing up where I want to go. But the registrar comments alluded to this was not the right classification of issues for data processing.

And so what I heard you say is rather than edit each one of these things, it'd be better to sort of rewrite the gist of data processing for issues regarding the registry registrar operation of their businesses and registry registrar ICANN contract purposes. And so we – in line with that we asked, you know, I asked

in a probably incomplete way for registrars to undertake with registry participation undertake for the rest of the class here's review a better way of looking at this set of data. And so is that what you're saying?

Alan Woods: Yes, I suppose from my point of view I think it would be very helpful to get clarity, gain clarity in this is that's an excellent starting point in this is to literally say to the registries and registrars who day in day out have to deal with this and who at the end of the day are going to have the legal liability on this of the data and the processing of the data. So what you do – what are your purposes for this data and start from there.

So yes, get us to perhaps put the pen to this, provide us with the clarity and it would be a very good starting point I think for the discussion and an in depth review both on a legal aspect, on a processing basis in order to set the baseline. So I agree, yes.

Kurt Pritz: Thanks, Alan. So with that idea, can anybody from the registrars speak to this and sort of signal an agreement that that might be the way to go about this? Or Marc?

Marc Anderson: Kurt, this is Marc. I guess if a registrar wants to jump in I'll wait.

Kurt Pritz: Well heck no, go ahead.

Marc Anderson: All right, thank you. You know, I just wanted to expand a little bit on what you and Alan said. You know, Alan made the point about, you know, I think this temporary specification, you know, I think we all realize was written very much as a reaction to GDPR. You know, and I, you know, I don't think from a read of it, you know, it's written with the idea of being, you know, policy recommendations, you know, it's a little bit apples and oranges.

And, you know, even if you look at, you know, looking through Section 4, you know, 4.4, you know, which should be your list of purposes for processing,

you know, starts off with a preamble, “however such processing must be in a manner that complies with GDPR.”

You know, so, you know, so I think, you know, the drafting of this, you know, there was an intent to, you know, the intent here was to, you know, to sort of, you know, bolt on some GDPR compliance to the existing system. You know, and so just sort of taking what's there and redlining it isn't going to – isn't going to be a successful endeavor.

And so sort of, you know, going back to, you know, sort of expanding a little bit on what Alan suggested, you know, I think the starting point is, you know, Alan suggested, you know, the processing the registries and registrars to, you know, and I think, you know, even going up a level higher and, you know, and make sure you know, this entire group has a, you know, has a common understanding of what it means to deliver the service, deliver the service of a domain name registration because I think that's the starting point for our purposes.

And that's not to say there aren't other legitimate purposes that can be involved but sort of the, you know, the, you know, the first purpose is the delivery of the service and so there we're talking about what it takes to deliver, you know, a domain name registration to a registrant. So I think that's a good starting point and from there we can develop, you know, our purposes and grow from there.

Terri Agnew: Kurt, this is Terri. You may still be muted.

Kurt Pritz: I know and I was – first it was really funny and second of all, it was really insightful. So I was just noting that there was, you know, good pertinent comments in the chat and, you know, especially I'll point to James who say the registrars on this call agree. And, you know, this isn't pointed at James, but going forward – and especially in Los Angeles, I'm looking towards all of

you for having the authority of your stakeholder group to act in their best interest.

So with that – so but let me go back to James or any other registrars, so what clarification or direction would you look for from us about this approach other than what's already been said in this meeting? Is that sufficient for you to, you know, have a conversation with your stakeholder group but embark on a writing and go ahead? James, thanks very much for raising your hand.

James Bladel: Yes, Kurt, I'm going to go ahead and pretend to speak with the authority and confidence of my stakeholder group now and say that, yes, I think we can take this and put pen to paper and circulate that not only amongst registrars which I'm sure you and others are aware like – is like herding feral cats sometimes, but if we can get that synchronized I think we should also share that with the registries and ensure that we are aligned with them as much as possible and then we bring something back to the group, I think that's a path forward that we can get on board with that.

Kurt Pritz: Okay great. Thank you. I'll pause for a few seconds and read through the chat. And then oh, Marc, is that a new hand?

Marc Anderson: Hey, Kurt. It's Marc again. Sorry for being wordy here. But I just wanted to respond to what Amr put in chat there because I want to, you know, Amr correctly notes that, you know, the RDS PDP you know, spent a considerable amount of time working on purpose statements. And I'm, you know, and I'm sort of sensitive to not, you know, not getting stuck in the same traps of the RDS PDP.

And so what I'm suggesting as a starting point is a little bit different, not starting actually with purposes but starting with sort of a common understanding of what it means to deliver the service. You know, and so, you know, that's a little bit different than starting with the purpose statement on

RDS. And so I just wanted to make sure that was clear with what my, you know, what my suggestion was.

Kurt Pritz: Thanks, Alan. Farzi.

Farzaneh Badii: Hi. Farzaneh speaking. So no one is paying attention to the great things I say in chat so I just thought I was repeat myself, I don't know if it's – if it's a point but we keep saying ICANN – or ICANN contractual compliance, we know there should be certain data that should be processed. And I have read the temporary spec but I cannot remember we are being like very specific about what ICANN contractual compliance means and what sort of activities they need. So I think if the group agrees this might be something we might want to go through, I don't know, and maybe the registrars want to go through and, you know, be specific about it because well, we don't later on to be added to the laundry list of ICANN Compliance acts.

Kurt Pritz: Yes, so let me say what the plan might be in another way and see if I've captured your comments. So originally, last meeting, it seems so long ago, that I had listed ICANN contractual compliance as a third party where, you know, they would just like any other third party, they would have a legitimate interests. And I think you know, it's probably properly corrected that that's not how they should be listed; that they should be listed under a more – a heading more intimate to the registry registrar operations.

But in the end the data collected by the registries and – or the registrars more precisely in most all cases – would, you know, be that set of data that they need to run their business, so ICANN access would be limited to that. And then from that data just like, you know, I'm going to say this in-artfully too but, you know, like a third party they'd have to demonstrate some sort of legal basis for having that information, you know, the information they need to perform their job and not more than that. Alan.

Alan Woods: Thank you, Kurt. I may likely disagree with you on that one straight away. I think this is definitely one of those elements of the temporary spec where I always used to scratch my head or continue to. ICANN, of course, is a data controller and ICANN – we collect the data and the (contracted) on the, you know, basis of the Registry Agreement and the Registrar Accreditation Agreement. It is also, which is in the realms of ICANN to use; they just need to go about vetting out their legitimate purposes and their – the reason – their legal basis for doing it.

I don't think that's something we can do. It's not as if ICANN will have to apply for access to Whois because ICANN should technically have access to Whois if it was properly established as to why they need it and what their legal basis. So I – there's a lot of discussion that needs to go on around that but, you know, they, as far as I'm concerned, have very solid purposes, I just think they need to be very clear in how they state that.

Kurt Pritz: And I think – so I think that would address Farzi's comments. Margie.

Margie Milam: Hi, Kurt.

Kurt Pritz: Thanks, Alan, for the – and I just want to thank Alan for his tutelage. Go ahead, Margie.

Margie Milam: Sure, I just wanted repeat some of the stuff that we talked about last call that ICANN in a sense, as the controller, and actually the, you know, the party to the contract, has a performance of contract purpose that is a separate grounds under GDPR. And the role of ICANN Compliance is extremely important. I don't understand this objection to giving ICANN access to the data to do the information and the activities that they need to do like audit the registrars, respond to Whois accuracy complaints. It's even written in the bylaws that Marc posted in the chat if you take a look that that's one of the commitments that ICANN made during the transition.

So I feel very strongly that there's no place to limit what the scope of ICANN Compliance for the purposes of doing its job under the contract and so I just don't, you know, I just want to caution the group that it's inappropriate to be limiting the scope of what ICANN can get access to for the purposes of enforcing the contracts.

Kurt Pritz: And there's nothing I disagree with in what you said, and Alan believes that too. And, Alan, are you done? Are you done with me?

Alan Woods: Yes, old hand. Apologies.

Kurt Pritz: Yes. So let's – so then let's go onto the – Margie, did you just raise your hand again or...

((Crosstalk))

Margie Milam: ...to mention one thing. We talked about whether ICANN has access to the data and please correct me if I'm wrong but I believe the temp spec took away the access for thick Whois and that they're getting thin Whois, is that correct? I don't know if I could ask staff to look at the temp spec. But my – my understanding is that currently ICANN does not have in the temp spec full access to the data.

Alan Wood: If I can jump in, Kurt, I might be able to add some light to that. The temp spec specifically changed transfer of the (RDA) data, the registration data stating that there was only a very limited amount of data which is essentially thin data up to that point; a registry could have transferred what was thick data to ICANN.

So they did technically remove that from themselves, but again it sounds more like a knee jerk reaction to, you know, get rid of the data, get rid of the data. But I think that's something that, you know, depending on how this all goes and perhaps there may be a necessity for them to actually hold that

data for other purposes that is part and parcel of our discussions I would expect.

Kurt Pritz: Thanks, Alan. To go onto – excuse me, I hope I didn't hurt anybody's ear. So go onto third party – Alan.

Alan Greenberg: I just wanted to confirm, I'm putting on my hat as chair of the RDS Review Team, and we were told that ICANN no longer has access specifically for their accuracy reporting project; they no longer have access to that data. Thank you.

Kurt Pritz: Thanks, Alan. I'm not good at multitasking. So to get onto data processing for what was termed in the slides here as third party purposes, which includes the 4.4.2 that we described before, so what we've talked about earlier is – what we talked about earlier – what we talked about in the last meeting is that there was a request for some greater clarity on 4.4.8, you know, as others have – I don't – and I don't know what collaborations took place between ICANN and different sections of the community in writing this and don't know the negotiations that took place, if any, in the writing this and whether certain words were chosen very purposefully and there's often reasons for that that are not apparent to the innocent reader such as me.

But it was asked that maybe 4.4.8 could be fleshed out a little bit. So how, you know, maybe, you know, these are my words that might be in artful but describe how the data would be used to address the enumerated purposes in that section, i.e., you know, consumer protection, investigation of cyber crime, DNS abuse, IP protections. So that was one request at the – during – close to the close of the last meeting.

And then during this meeting we've kind of – we've kind of hit on the idea that this – these – this sort of data disclosures don't belong under the purposes for data processing but belong in some section that could or could not be labeled access or conditions for data disclosure or something like that. And

so just to blurt out where I think we might be, you know, I don't think we want to delete these sections without providing the – their existence in some other part of this, you know, specification, you know, right away.

And, you know, thinking about it, that other place in the specification or in the policy we're developing, you know, could be, you know, understanding that this is going to live far beyond us if we get it done, is that it would, you know, it would create the, you know, the purpose for disclosure of data but also, you know, provide for flexibility and change as case law and DPA opinions shape what is determined to be a legal basis and then, you know, sort of provide the hook in the policy upon which the access model when it's developed enters into the policy.

So, you know, it would incorporate by reference the access model that's developed after this. So that's my thinking for that. So the – oh gosh, this is rough for me. So the two questions I have really are, should we and could we undertake a rewriting of some of these sections, somebody's already called out 4.4.2, to include other aspects of legal basis that are included in GDPR; and two is, you know, elaborating on the purposes listed in 4.4.8 to provide a firmer basis for identifying the data necessary to address those needs so they can be addressed.

So that's sort of one question and the second question is, you know, where in our policy should this go where we can, you know, preserve this right away so our work does not drop these important points for any period of time? So it's be great if somebody raised their hand. Thank you, Ashley.

Ashley Heineman: Yes, without committing on this call as to where it should move to reiterate something I said earlier, I think it would be helpful to consider perhaps Appendix A Section 4 as a potential place for this language. But I do think there is some value to talk through whether this is the best place where it is now and potential other areas, so that would be my initial kind of knee jerk reaction as to a potential home. Thanks.

Kurt Pritz: Thanks, Ashley. Kavouss.

Kavouss Arasteh: Yes, Kurt, I think we are talking of so many things at the same time. Are we only talking of 4.4.2 or are we talking the entire Section 4 or (unintelligible) Appendix A or what we are talking? There are various threads, comments on many things people are talking about information, they're talking about information technology, they (unintelligible) others, no one has right to ask clarification, I don't know. So the channels of the discussion should be more confined to the topics.

I suggest that each of these four sections, 4.4.1, don't take it one by one and see whether there is any precise suggestions to amend either now or after, but not jumping from one to the other from generality of the information technology, from processing, from access, too many things are now mixed up. I'm very sorry. Thank you very much.

Kurt Pritz: Thanks, Kavouss. Let's see if I can – let's take the next comment while I think about that and try to make the discussion more clear.

Alex Deacon: Thanks, Kurt. It's Alex. I assume you're referring to my hand?

Kurt Pritz: Yes, thanks Alex.

Alex Deacon: No that's all right. And maybe I'll just raise this topic up a level. I think thinking about the comments earlier from Marc Anderson and from Alan and from others, you know, and I'm also having kind of flashbacks to the RDS Working Group where we tried to have debates and discussions and tried to make forward progress without actually having anything concrete to look at and to review and to comment on. Let me start with a blank slate.

We tend to spin our wheels. So I think we should consider using a tool such as Thomas's spreadsheet or some concrete input from the registries or

registrars, I forget who suggested that earlier, and, you know, clearly I think those of us on the IPC would be happy to assist in drafting something so that when we come together the next time we are – we're focused on specifics and that we're focused – we have a good understanding kind of what we're trying to do and we have a framework in this document to complete the work that we need to do and make forward progress.

I think the question is, is how do we get from where we are now to that point? And I would suggest that it needs to be done by those of us in the group or a subset of us in the group or perhaps the staff's assistance so we could actually have a chance to review the input and have a conversation on the next call that actually is focused and allows us to move forward. So I think that's the missing piece here is the ability for us to actually make forward progress based on something concrete, which I know we're not all going to agree on but at least it's a starting point and we can move forward from there. So just some thoughts on that.

Kurt Pritz: Don't go away. So I like Thomas's spreadsheet too. And actually as I put in my email, the team – the support team had created a similar spreadsheet based on the work of RDS. So first, I just want to take a couple small steps. So that spreadsheet has to do with the data elements that support each one of the purposes. So the spreadsheet is – the meat of the spreadsheet is the data elements, that's correct, right?

Alex Deacon: Yes, on Thomas's, yes.

Kurt Pritz: And, right, and so my thought on the path forward was to, you know, to flesh out the purposes of data processing, first, you know, in the previous slide the registrar or registry, ICANN purposes for data processing and in this slide – and then in this slide identify the purposes to which data would be put by third parties. But then once – once we're done with purposes then we move into the data required to fulfill those purposes. I, you know, from the school of sneaky management, I think the data – the data set that registries and

registrars are going to provide, you know, are going to be very similar or the same to what was derived in RDS and what would be derived for the current list.

Alex Deacon: Right.

Kurt Pritz: So I think – so I'm just kind of reading the chat. So that's what I see is the path forward. And if we can get, you know, the Registrar Stakeholder Group in an amazingly short period of time to furnish the writing we discussed earlier, and also either improve the writing in 4.4.2 which was I think – I think you agreed to do that. And then, you know, 4.4.8 then we're kind of done with that and turn our attention to that spreadsheet right away.

And in fact, the staff support work has fleshed out many of the data elements that we could – so fleshed out the guts of the spreadsheet Thomas – of a spreadsheet similar to the one Thomas provided. So we could probably hit the ground running on that fairly soon. And Berry could probably tell us where in the schedule we had planned to talk about that but maybe we can move that. So that's my response but it's sort of obvious to me so that kind of indicates to me I might be oversimplifying or misunderstanding your question.

Alex Deacon: Well it wasn't – this is Alex again – it wasn't a question, it was a suggestion on how to move forward. And I think what Thomas is suggesting in the chat, if I could just read what he says, is that we need to flesh out – we need to look at the processing and the bases for processing before we flesh out the purposes, and I think the spreadsheet will allow us to do that and then just also for just to clarify I think I took an action to clarify 4.4, so...

Kurt Pritz: Yes. Okay. Thank you. Okay. Marc.

Marc Anderson: Thanks, Kurt. Marc again. You know, I, you know, I find myself, you know, nodding my head to what's been said. You know, I think you know, I've had a little bit of difficult time following, you know, following through the discussion

today as, you know, I think it's jumped around a little bit. And the discussions have been excellent. I think, you know, the interventions by the members of the group have been very good.

But, you know, I've been sitting here as we've gone through the last couple slides trying to understand like what is the outcome of the discussions and how is that going to get us to a final product, which is our policy recommendations to the GNSO Council. And, you know, I think, you know, we always have to keep that in the back of our head is, you know, our end goal is policy recommendations.

And, you know, and I think, you know, I think Thomas and, you know, and Alex, you know, make good points. You know, we need something concrete to start with and, you know, and I don't think that the, you know, the way the conversation is flowing right now where we're sort of jumping around different sections of the temporary specification and just sort of debating them ad hoc is moving us towards done. You know, and given how short a timeframe we have, you know, I think we need to focus that up a little more. And so, you know, I support what Alex and Thomas are suggesting.

Terri Agnew: And, Kurt, this is Terri. Please check your mute. Actually, Kurt, it looks like perhaps your audio's dropped from the Adobe Connect site?

Kurt Pritz: Yes, can you hear me now?

Terri Agnew: We sure can.

Kurt Pritz: Okay. Yes, I dropped – I think my Internet connectivity dropped out for a minute but I think I got to the end of your comment, Marc. So, you know, I'm going to have to think a bit. So in my mind what we're – we are – you know, today in accordance with the plan we're talking about Section 4.4 today because we decided that we should talk about the purposes for data processing first and then we would talk about the data themselves. And I

thought that we had to flesh out the purposes for data processing before we could have that discussion.

But I'm fully on board with taking Thomas's spreadsheet or a very similar spreadsheet and using that as a tool to have a concrete discussion about the data that are collected and then the uses of those data and to whom they're disclosed. So, you know, I agree with exactly what you're saying; I thought we were doing some necessary preliminary work to do that. So to close this out I want to have – I want to talk about two things because we're I think close to the end of this discussion.

But one is this third party uses of data that are listed here, does anyone think that they need to be adjusted? And Alex, you know, Alex volunteered to undertake a rewriting of 4.4.2. I don't think anybody's talked about recommendations for the other sections. So I want to test that and then I have one more question and then for the next meeting we can move on. And I think Thomas talked about 4.4.8 but with Kavouss's comment in mind, let's limit our discussion to just the possible rewording of those. Ashley.

Ashley Heineman: Yes, for 4.4.9, the GAC would be happy to work on revisions to that language.

Kurt Pritz: Okay terrific. Alan.

Alan Greenberg: Thank you. I believe 4.4.8 tries to conflate too many things and the wording therefore becomes completely untenable. ICANN does have a framework for supporting IP protection within the domain space, at least some aspects of the domain space. We do not have a framework for investigation of cyber crime. I believe we do have an obligation to support a framework or whatever the right word is, because I don't think that anyone has formally defined a framework, but there certainly is processes that happens, and I think we have an obligation to support it but certainly it's not our framework and I think,

we're rather overreaching in the – in some aspects of 4.4.8. I think it needs to be separate out and the right wording used. Thank you.

Kurt Pritz: And, Alan, how should we get that done?

Alan Greenberg: If you're asking me am I willing to draft something? No, not at this point. But I believe one of the – the ultimate aim – remember we did have a discussion earlier today saying this whole section – we're shouldn't be trying to polish it; we need to be rewriting it, and I support that. I think this was written hastily and I don't believe we can fix it with minor tweaks to each section.

Kurt Pritz: Let me just read what Thomas has written here. So gosh Thomas can't talk. When you say we need to collect what folks think should fall under 4.4.8, are you saying collect what data or purposes? And then for – so while Thomas types, the second, you know, the second issue I brought up with this set was to evidently in-artfully but echo what Milton said that was supported by others that these sorts of disclosures and uses of – don't belong under purposes but then they should be in another section of our policy.

So unless somebody wants to make a recommendation here I'll ask the support team to provide some options for us about how we can retain the idea that this data can be access for appropriate purposes and where that might be someone suggested an appendix of the specification that exists. So we'll do that.

And then for the next meeting we will – because we have so many days – we will – I'm going to adapt Thomas's spreadsheet in whatever way and flesh out some of the details so we can have a discussion that was suggested by Marc and others. Let me get a drink of water.

Okay, so despite what Marc said, we'll move on to another section of the temporary specification that, as we review it, and, you know, one question I'd ask you to put in the back of your minds as we think about writing this policy

is, you know, this Appendix C, data processing requirements, what role does the appendix play in the policy we are developing? So is this appendix part of the policy or is it incorporated somehow or something like this? So as we move from specification to policy I become confused about the differences between those two things and would ask you to think about those.

So this Appendix C in the temporary specification, remember it starts with a chart that describes the different parties and the different actions for processing data. And so the appendix is made up of these sections, there's a preamble that describes what it is; it has that chart that lists the gTLD processing activities and the role that registrars play, registries play and ICANN plays in that. And then there's principles of lawfulness for processing and specific controller processing requirements.

So, you know, we set aside a few meetings for this. And I think considering amend or approve this part of the temporary specification, you know, the – we would start with the discussion guided by the – that were created in the triage so, you know, those are all captured and then sort of get a rough consensus on changes that need to be made in this appendix and then redrafting, you know, and given that idea that this needs to be changed, do kind of the same thing that we just did that we would redraft these either individuals or a couple people could get these redrafts done. So that would be a process for how to do this going forward.

Kavouss.

Kavouss Arasteh: Yes, I understand now that we are on Appendix C, am I right?

Kurt Pritz: Yes.

Kavouss Arasteh: Yes, I think I suggest, (unintelligible) you take the preamble and ask whether there is any need to amend the preamble; then you take the table, whether there is any amendment to the table in a precise and constructive way but not

generally speaking. And take this go to the next page and the remaining part of that until you arrive at Point 1, principle for processing. So we have to take this in this manner, preamble, whether this wording is correct, sufficient, to modify, change and so on so forth, then go to the table to see whether any need for any part of the table could be changed. This is my suggestion.
Thank you.

Kurt Pritz: Thanks, Kavouss. So with regard to the preamble, there were two comments. One was – and I think Thomas made this one in one of our first meeting, but the language is based on but not exactly the GDPR article. So, you know, why does it – why does it differ from the GDPR's? What purpose, I'm so sorry, what purpose does sort of restatement of the GDPR article serve in the temporary spec?

And so for me – from the comment I took, you know, whether we should amend it to match the GDPR language or, you know, how should the preamble be amended or should it exist, or, you know, sharply shortened. So should the language be amended to broadly refer to the General Data Protection principles instead of specific references to the GDPR that would make it a maybe a longer lived document?

And then I think the IP group suggested this change and wording where, you know, where it says “personal data may be accessed, such access will at all times comply with the requirements of GDPR with personal data may be accessed; such access will comply with requirements of the GDPR as applicable.” So we – so, you know, I keep harkening back to Alan's comments, and it stops my brain every now and then but this is still necessary work. So while we prepare for the discussion that Marc and others have suggested, be great if we could turn our attention to this. Kavouss.

Kavouss Arasteh: Yes, I understand please correct me if I'm wrong, that this preamble has been prepared by ICANN? If we (unintelligible) change, please ask the liaison of the ICANN why it is different. If the clarifications provided is convincing you

can take it; if it not convincing then it is subject to change. Then maybe people agree to assign it to one or two specialists among all those to look at that one and to find out what changes are required to bring it to the GDPR specifications or to amend that to clarify or to support what is expected and intended GDPR.

So the first question is ICANN, why it is different, if it is different. And if it's not convincing then we start to modify that. And to modify that which it should be assigned to one or two or three persons to look at that one between now and the next meeting, and then bring a text for discussion. This is only a suggestion. Thank you.

Kurt Pritz: Thanks, Kavouss. So, you know, hopefully ICANN staff captured that. We could go to ICANN for a – some sort of justification as to why it's different. Does anyone else have comments on the preamble? Alan.

Alan Woods: Thanks, Kurt. It's kind of generally on I suppose Appendix C, generally. I think this was another one of those parts of the temporary specification that when I read and it seemed like a creature of necessity again because what Appendix C is trying to do is trying to establish in a very odd way elements that should have been within a data processing agreement or a joint data controller agreement. It was stating the difference between – or the connection between the parties and was setting out, you know, what are the goalposts here for your liability and your job.

And I – again and I'm sorry if a person said this, I'm not – I think we need to have a much more of a fundamental discussion with this as whether or not this is more relevant or more appropriate to be put into the discussion between ICANN and the contracted parties because at the end of the day there still is no specific data processing agreement really in place between the – between ICANN and the contracted parties. This was its stop gap measure.

So, I mean, in my mind one of the potential outcomes, and obviously this is subject to discussion of the entire group, but one of the potential outcomes is that something such as Appendix C should be taken out of the policy and put right back into the hands of ICANN Legal because it is a very necessary piece that needs to be pushed through. So it's very – it's a difficult one. I just wanted to point that out, it's conceptual difference in my head between why it should be in here or should be somewhere else, but I just wanted to flag it at this point and then we can talk about it more (unintelligible).

Kurt Pritz: I think that was extremely helpful. Does anybody disagree with what Alan said or provide a alternate perspective? Margie.

Margie Milam: Yes, this is Margie. I think where it crosses over into areas that affect, for example, the purposes and the access, so if you look at the table one of the rows relates to disclosure of nonpublic RDS, Whois, to third parties. That's an area where I think we feel that it's important to be able to provide input and ensure that it doesn't undercut what the temporary spec will be providing once, you know, we get through this process.

Kurt Pritz: Thanks, Margie, that's a – actually on a subsequent slide, that's one of the very few rows that were flagged by this group earlier, and maybe we can get to that. So we'll leave the preamble behind with Kavouss's plan in mind and ask ICANN that specific question. But let's think about this as we go through with Alan's proposal in mind plus it would shorten things up for us. But then modified by that – but modified by Margie's comment about preserving those elements that need to be retained in the policy.

And so, you know, just for staff that, well we can do this after the call but Kavouss's question is really that one of the things we noted was that the language in the preamble was very similar to but different from the GDPR article and, you know, how come? Why does it differ and what was the thinking in providing it that way? And that would – that reasoning would enable us to evaluate it better.

So in the chart, you know, it was noted that the chart references some but not all of the basis of processing personal data. So is this chart really an exemplar or a checklist? So you know, given Alan's comment, you know, that, you know, it's really a checklist but that checklist to the extent that it's missing elements I think needs to be fleshed out, and so that fleshing out might be best accomplished by, you know, sending the chart back to ICANN, as Alan recommends, and having that married with the other discussions about, you know, what are the processing activities that need to take place.

But I want to get to one of the comments Thomas made in the – in the chart. And I guess if we're going to push it back to ICANN for a different kind of discussion it's not so germane but should this – should this be examine with the domain name lifecycle as a reference? So there's not enough detail in this chart. When I thought about Thomas's question about, you know, reviewing these processing activities against the domain name lifecycle, I kind of came up with this idea where, you know, that this box on the left is the gTLD processing activity. Gosh, did I do that line break?

And then, you know, the element right below it is the collection of registration data from the registered name holder. So I you know, I don't know if Thomas can see this, probably not, but, you know, does that, you know, I was thinking that gets blown out into the collection of registration data, you know, during each one of these phases of attracting a customer, capturing a customer and, you know, the domain name lifecycle. So I wonder if the – if the processing activity chart gets augmented with these. Kavouss.

Kavouss Arasteh: I think the way you proceed is quite right. The only thing I add to that one, when you put a point on the discussion and debates, those who comment on that there are people that are more interested or they're more knowledgeable, or they are more confident at least because they have spoken. So you ask these people to put their thought together and ask them whether someone among those could kindly take leave and put the pen on the paper and

makes modifications either to the preamble or to the chart. This is – this has been proved to be a positive way and constructive way rather than we are talking with all of us are maybe right, but at least start to work. That is the way.

Those who comment they have some ideas, they put their ideas together and one of them or two of them take the lead and produce something but not put everything on your shoulder. Thank you.

Kurt Pritz: Thanks, Kavouss. And support team, you know, we had a interesting conversation – well now it wasn't really interesting, but a conversation about this between these two meetings about, you know, in closing the meetings providing a little bit of a better online form for people to submit written comments to these things, so thanks very much.

Under the sections about principles and lawfulness, I think that – so the following questions were raised with regard to principles for processing and that was that should the reference to obligations to applicable laws and regulations be deleted in deference to providing certainty and already existing Whois conflicts with local laws policy? So I don't really – after this I don't really want to get into that.

But we – it was also wondered whether Section 1 of principles for processing, which, you know, by looking at your copy of the spec might include principles from GDPR other than 6.6, so other than the ones that typically cited. So I think they might be made broader. And then also accommodate future changes in the GDPR and to reference data principles more broadly.

So I think that – and then in the lawfulness of processing, which is Section 2, it was mentioned in several places that there be an LEA carve out from the requirement of that balancing test that was specified for others. And then, you know, there were additional questions about should we go back, you know, once we have a set of agreed upon legitimate interests should we go back

and ask for an article 40 code of conduct referral, so this is getting tougher for me as we get to the end of the – as we get into the fourth quarter here.

And then also in lawfulness, there's a question about should the language be modified since it only references some but not all of the basis of processing personal data. And, you know, there's a specific comment about – that's called out where the data subject is a child. So the registrars at one point wondered how we would know that a registrant was a child or not.

So that was you know, really kind of slow by me, and so I wonder if anybody in the group has a section about how to move this sort of thing forward. And, you know, I was going to channel Kavouss and say we can post these questions online and ask for responses and these not being really frontline issues; I think the chart was more frontline issues pushed this more to the back of the bus and ask somebody, you know, everybody for a comment in the longer period of time. Kavouss.

Kavouss Arasteh: Yes, I have comment – concrete comment on the leading paragraph. Each controller will observe. You used the deterministic word, “will” which doesn't seem to be correct. Each controller shall observe. This is not will observe. You have no guarantee that they observe but you should make it mandatory for them to observe the following principles. So you cannot from now think that they will observe this principle. They shall observe this principle but not will. So that is why at least the minimum data suggests the following principles.

And the second question that no matter what you put on these principles, how do you check that this principle are observed? So what is the mechanism? What is the tools? What is the vehicle that you control and check whether this principle are observed or where observed? This is something that we should be very careful and very cautious about that. You can put as many principles as you want and you can say they shall be

observed, but if there is no way to control that or monitor that, they will have – they serve no purposes. Thank you.

Kurt Pritz: Thanks, Kavouss. So support team I hope we captured that. I know it'll be on the transcript. Alex.

Alex Deacon: Thanks, Kurt. It's Alex. On Section C2, you know, I think the issue I had with – well actually no, the issue that we had with this section is similar to the issue I described in Section 4.4 earlier, which is it seems to focus on a single lawful process, i.e. legitimate interests and ignores the rest of them that are listed in Section 6.1, sorry, well GDPR Section 6.1. And so I think if we clarify this section similarly that'll address at least the concern that I have and also will address this Point 1 here which is where we don't need to have LEA carve out because it will be included by kind of expanding the...

Kurt Pritz: That's right.

Alex Deacon: ...the lawful processes.

Kurt Pritz: Yes. Are you up for doing that or can we – maybe we could ask Thomas to do that but it's hard for him to say no.

Alex Deacon: I'm happy to do it unless Thomas is jumping at the bit.

Kurt Pritz: Yes, perfect, thank you. Alan.

Alan Greenberg: Yes thank you.

Kurt Pritz: Alan Greenberg.

Alan Greenberg: Can you hear me?

Kurt Pritz: Yes, I can.

Alan Greenberg: Okay. I think at some point we have to have a discussion, I don't think we're at a drafting stage right now, but we have to have a discussion on the really critical part that we have been told by data commissioners we should not concern ourselves with the needs of others. Article 6.1F says we are allowed to consider the needs of others if we have a justification. And I believe we need to confront this because this is going to come up time and time again unless we can get closure or general agreement on whether we are allowed to look at needs of others in Whois, Whois RDS, or not. Thank you.

Kurt Pritz: Thanks. And actually in one of my, not one of my – I had a conversation with Thomas to learn some things and he brought that up also so thanks for making that point, Alan. And yes, thanks. The other Alan – Woods – Alan Woods.

Alan Woods: Thank you. Apologies, I may be somewhat (unintelligible) again but my point about this entire section I think probably is more illustrative in the fact that there's an awful lot of this which is copy and paste of Article 28 of the GDPR. A lot of the discussion that we're having about potentially rewriting this, my point was is that this is something that needs to be attached to the (RA), it doesn't need to in the GNSO. I think sorry, in the policy.

I think this is something that needs to be a suggestion to the GNSO that this should be put towards something for the contract and that is it's not something that should be in here. I understand the concerns that Margie made and as Alex was saying but – Alex, sorry, was saying, however, there are other places within this document where that fits in better such as, you know, when we talk about things like access.

But at the moment this entire appendix, Appendix C, as I said, it was trying to fill a gap where there was no data processing agreement or that joint data controller agreement between the contracted parties and ICANN. And I just don't see the merit, I'm sorry, of debating this in a line by line because it is

ultimately something that I don't think should be in a policy; it is a contract, it is a contract matter. So sorry, I know I'm repeating myself but I just want to be clear on that one. Sorry.

Kurt Pritz: Yes, well there's no need to apologize. And I think you know, Kavouss's comment kind of went to that because he's struggling with, you know, these are principles so how do you enforce a principle? And you can't so that sort of indicative of the problem that you raised. Mark.

Mark Svancarek: Mark for the record. I just wanted to clarify other Alan's comments regarding other people. The feedback was not that we must not consider them; the feedback was that we must not conflate them. I think this is a recurring misinterpretation (unintelligible) that was given and since there have been interests in creating some new language that demonstrates how they can be de-conflated, I think that it is appropriate for us to do some drafting right now.

Kurt Pritz: Mark, say that again. I'm really sorry.

Mark Svancarek: Oh. Sorry. The feedback was not that we must not consider other parties; the feedback was that we must not conflate their purposes. I think it's a recurring misinterpretation that the request to (unintelligible) is an indication that they must not be considered. And because there is interest in the call today and on the list for people to create some alternate language that clarifies how these things can be de-conflated, I think that it would be appropriate for us to do some drafting at this time.

Kurt Pritz: Okay thanks, Mark. And would that drafting be on this appendix or it would be as Alan suggested, somewhere else?

Mark Svancarek: I suspect it is in both places. The only reason I bring it up, the – sorry – the people volunteering was at an earlier stage but I do think that when they're de-conflated it will probably wind up in multiple places. The only reason I bring it up right now is in response to a previous intervention.

Kurt Pritz: Great, okay. Thank you. You know, I'm really attracted to the idea that this appendix is – will not be necessary once the agreement that's being negotiated is in place between the contracted parties tempered by Margie's comment that some elements of it would be necessary. I find that – because anyway. Milton.

Milton Mueller: Yes, I raised my hand I guess for the same reason that Mark just did which was to make the point again that it was not that we cannot consider any other third party interests, it's that they should not be confused with (unintelligible) interests. And since that's fundamentally what almost all of Section 4 does I think we have some very important area of agreement here that's evolving in that those things need to be de-conflated.

Just to specify more clearly, the fact that we take legitimate interests of third parties in the data into consideration doesn't mean that we collect data based on those considerations; it means that what data ICANN does collect in connection with its own purposes might be made available to them given a legitimate interest and a legal basis.

So I agree, you know, I think it's important that you're finding me and Ashley and Mark of the BC agreeing that we need to do this and the question is I'm still a bit foggy on how we're doing this. We are redrafting Section 4.4 if I understand it properly, just not clear to me whose doing that. It seems like six different people have volunteered to do that. Can we clarify the – just the implementation or (unintelligible) of this?

Kurt Pritz: So I think that – and, yes, I'm glad you asked because I was going to restate it at the end of the meeting which is I think one slide away. So I think for those data processing purposes that fall under the heading of – in the chat that was registrar or registry ICANN contract-related, that the registrars are going to rewrite those purposes.

And for the purposes that are – for data processing – that are third parties that are currently in 4.4, those would be taken out from under purposes but, you know, retained in the policy for – under a different heading that's to be determined and that Alex volunteered to – of those sections, Alex volunteered to rewrite Section 4.4.2 and we have no purpose, I mean, no person yet or no goal other than a general, I think a general agreement that editing or rewrite is necessary for Section 4.4.8.

But those sections need to be – would be taken out of the purposes heading under the purposes heading for the reasons that you stated where everybody agrees but are included in the policy under another heading that is labeled, you know, you know, access or – either access to the data that's collected by the registrars under the purposes or some other heading. So I think, you know, right now we have no person in horseracing terminology, no boy for rewriting 4.4.8. We have – Ashley has volunteered to rewrite 4.4.9. And we'll retain those under another section. And you know, before all is done that 4.4.8 will be written by someone but it doesn't have to be done I don't think today.

So Milton, did I answer your...

((Crosstalk))

Milton Mueller: Okay, Kurt. Can you – yes, I was going to say, can you put that into like one sentence like a bullet list because your answer went on so long I kind of got lost and I have no idea whose doing what anymore.

Kurt Pritz: Really? So the sections under registry, registrar and contract, the registrars are rewriting that. The sections under third party access or it's currently called third party purposes, will be removed from the purposes section and placed in another section that is either access or data disclosure or something like that. Of those 4.4.2 is being rewritten by Alex. Section 4.4.8 is being rewritten by

no one at this time but it's recognize that it needs to be done. And Section 4.4.9 is being rewritten by Ashley. Is that clearer?

Alex Deacon: Hey, Kurt. It's Alex. Can I just jump in real quick to clarify a point you made?

Kurt Pritz: Yes.

Alex Deacon: So I volunteered to rewrite the text that – the text of 4.4, not all the sub bullets but the text of 4.4. You keep on saying 4.2 but I think you're confusing me with someone else or maybe just misheard. So I took an action to update the text of 4.4 and I also did volunteer to assist with Section 4.4.8 as a third party.

Kurt Pritz: Okay great. So that leaves a gap in 4.4.2 but I think that can be addressed.

Milton Mueller: But, Kurt, there were multiple people who wanted to write 4.4.8, so as I said in the chat, maybe we can have competing drafts or alternate drafts and we can see which ones we like. But I'm not comfortable with a stakeholder group proposing to rewrite all of it and being given that mandate unless, you know, we all have a chance to provide our take on it.

Kurt Pritz: Okay. All right, I don't have an immediate solution for how to manage that but I'll figure it out. And, you know, to me drafts are just drafts and they can be agreed to or not agreed to. But I understand your point. And but mostly I was getting at, if you understood the plan, which we could write a, you know, write up after the meeting. And I'm getting pinged from the support team to not have competing drafts so let's think about how to combine efforts.

So what we'll do is I'm going to – so I'm not going to keep up the chat but we'll (unintelligible) the chat and see who's willing to work on 4.4.8 and see if we can make it either, you know, some sort of integrated effort. Kavouss.

Kavouss Arasteh: Yes, yes, Kurt, I am doing these sort of activity for decades, not for this particular subject but for other subjects. It is not appropriate that you assign a

particular or a given text, not text, a given topic to multiple people unless this multiple people work together. It is not...

((Crosstalk))

Kurt Pritz: Thank you, Kavouss.

Kavouss Arasteh: ...you will receive...

((Crosstalk))

Kavouss Arasteh: So you have to take into account. And moreover, if somebody writing only on one, we should look into the entire chapter – section for to see whether there is any other impact of other points on the point that you he or she is dealing with. There might be some.

Kurt Pritz: Yes.

Kavouss Arasteh: Some impacts, so you should identify that for the others doing that. This is the way. And lastly, third, I think I understand that everything is on the shoulder, I suggest once again one and a half hour is sufficient. People getting tired in particular you that you have to listen to everybody, you have to conduct the meeting positively as you have done, but it would be not really as helpful to continue for a year or six months or five months, having that one. Once again, please kindly consider to have the meetings finish after 90 minutes. There has been no meeting two hours without any pause at all anywhere in the world. Thank you.

Kurt Pritz: Thank you, Kavouss. Alex.

Alex Deacon: Sorry, old hand.

Kurt Pritz: Diane.

Diane Plaut: Yes, hi. Can you hear me?

Kurt Pritz: Yes perfectly.

Diane Plaut: Cooperation is the key here because ultimately our goal is to be able to move forward with the EPDP and come to a consensus policy. So we should be working together to not do competing drafts but working on the drafts together to be able to nail down the issues that different groups have and then I think in doing that with 4.4.8 in conjunction with Appendix C, because there's a lot of overlap that that would be very constructive and Thomas has provided a very good starting point to extend out Appendix C in a way that I think could address a lot of these different outstanding issues.

Kurt Pritz: Thanks very much, Diane. Marika.

Marika Konings: Thanks, Kurt. This is Marika. If I can make one suggestion, and I know a lot of people commented on, you know, some of the failures of the RDS, but I think one of the things that did work well is where the group did go into kind of smaller teams. They actually had a lead, someone that was kind of, you know, holding the pen and responsible for kind of moving forward the conversation but others, and especially kind of reflecting the different viewpoints, would be encouraged to kind of join that little drafting team to have that conversation and then come back with a proposed draft that would then factor in all those different perspectives. So that may be a, you know, a proposed way forward.

And as you noted, you know, we have taken note of the different people that commented in the chat being willing to work on certain items and some, you know, people specifically saying that they were willing to kind of lead the effort. So what we can maybe do is capture in the action items where we've noted that, you know, people were willing to take the lead, also note down those that indicated that they were interested in working on it and then

basically get that back to the list so if there's anyone else that feels, you know, their perspective may not be represented in that small drafting team they can also sign up and then staff can maybe support that as a kind of coordination in a coordinating role if a call is needed, if a Google Doc needs to be created or anything like that and we can of course be there to assist.

One thing I would like to ask as well, you know, for these small drafting teams could we have as well deadlines? You know, what is expected timeframe by which these groups can and will be able to come back because it's something that we will need to build into the project plan to have a very clear idea of, you know, when we can discuss this next and, you know, how that then fits into some of the other areas that need to be covered and that are likely linked.

Kurt Pritz: So I think that's the right thing to do. And so we can convene that group, those people that want to meet, in a email solicitation after this meeting. Milton.

Milton Mueller: Yes, I think my mention of competing drafts is being somewhat misinterpreted. In effect, I'm proposing something that's not that different from what Marika proposed except it's just more realistic. And the fact of the matter is that different groups are going to have different ideas about (unintelligible) and they're going to work that out. And most of them are going to be working from either implicitly or explicitly an idea version to them of what the draft is going to look like.

And one way to handle that is just to say, produce your draft and let's throw it onto the list and we can all look at it and compare them. Another way is to throw them into a working group where not everybody can see what they're doing and what the differences are and have them work it out in the working group.

I think my main, you know, as long as we recognize that that's what's happening I don't care which path you take. What I do care about is the time

constraints on this process because once you break people down into these groups you have all kinds of coordination issues and transactions costs associated with it so you're really going to slow things down. And if you don't recognize that then you're going to have all kinds of things happening that people don't really have time to review properly and discuss properly. So what exactly is the timeframe are you talking about for these drafts?

Kurt Pritz: So let me make two comments. One is about scope and, you know, we're rewording a three-line item in the temporary specification. Admittedly we want to flesh that out more so that we can identify the data necessary to fulfill those – to fulfill those needs, but it's not a – it's not the access discussion, it's just identifying the purposes for the – for using – for being able to be disclosed or access the data and using that data. So I hope we can appropriately scope this drafting to make the task manageable.

Secondly, I think with – armed with the principles that we've developed about how the – how this access is identified in the specification or the policy going forward, and that it's in the right section of the specification, I think there's some time to, you know, to develop what this is going to be. I mean, we have to do in front of the data needs but I think, you know, once this is done the data needs will fall out pretty fast.

So, you know, and so I think – so I think that's it, I think it's the right scoping to limit the task and then just permitting enough time to identify the purposes and then identify the data that's necessary to fulfill them and get that done in time for the delivery of the initial report. So, Milton, so, yes, I don't know the exact timing but we can build a little schedule that says this has to be done by this date and then the data that will fulfill that needs to be done by this date in order to be done so that would be, you know, part of the initial kick off of the group.

So we're coming to the end and there's nobody in the queue so I'm going to ask staff to reiterate any actions or questions.

Caitlin Tubergen: Thanks, Kurt. This is Caitlin from ICANN Org. So the action item that I've captured, first registrars are to attempt to rewrite Section 4.4 in an attempt to align the text with actual business practices and then to circulate to the group. I have Alex as a lead to propose language to clarify Section 4.4; Amr as a lead to rewrite Section 4.4.2 and 4.4.8 noting that several others in the chat also are interested in assisting with Section 4.4.8; I have GAC representative to rewrite Section 4.4.9; Alex also to rewrite Appendix C Section 2.

The support team is to provide options of how to reframe how data can be access for appropriate purposes. I have Kurt to adapt Thomas's spreadsheet to help aid in future discussions of data elements.

Kurt Pritz: That's my name but I'm not going to do the work.

Caitlin Tubergen: ICANN support staff to help adapt Thomas's spreadsheet. And then last I did note one question for ICANN Org and that is language in the preamble is similar but not an exact match of the GDPR, what was the intent in writing it this way? And that's all for me, Kurt.

Kurt Pritz: Yes, so I'd like to kind of capture Alan's proposal about what to do with Appendix C. So I don't know if Alan, you could write up what you said about sending that back and having this be a preliminary conclusion of the group that, you know, that we'd revisit and, you know, see if there's agreement but that would be terrific.

So thank you, Kavouss and everybody else for staying late and have a great rest of your day. Thanks, everybody.

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

END