

**ICANN
Transcription
GNSO Temp Spec gTLD RD EPDP
Thursday, 31 January 2019 at 14:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-31jan19-en.mp3> [audio.icann.org]

Adobe Connect recording: <https://participate.icann.org/p9kwfdng74f/>

Attendance of the call is posted on agenda wiki page: <https://community.icann.org/x/h5oWBq>

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

Operator: Excuse me, recording has now started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 41st GNSO EPDP Team meeting taking place on the 31st of January, 2019 at 1400 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the telephone bridge would you please let yourself be known now? Hearing no one, we have listed apologies from Ben Butler, SSAC; Benedict Addis, SSAC; Julf Helsingius, NCSG; Trang Nguyen, ICANN Org liaison for GDD; and Ashley Heineman, GAC. They have formally assigned Greg Aaron, Tatiana Tropina and Laureen Kapin as their alternate for this call and any remaining days of absence.

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

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

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

Kurt Pritz: Hi, Terri. Thanks, and yes, I just had to reopen my window and get the mute button off so hi, everybody, welcome. And, you know, I neglected because I was out of town on Tuesday to celebrate our 40th conference call so if anybody has some birthday cake emojis that would be great.

So in today's meeting we're going to come to the end finally of our public comment review so we'll have a review of public comment on each of the issues raised. So that's a notable milestone I think in the planning in our timeframe, we needed to recognize just what a time consuming task that is, but very necessary that we signal to everyone and in fact review all the public comment which I think we've done a pretty good job of. And so you see on today's agenda Recommendation 11 about data retention is the last of those.

So I think you know, our – we have a number of items that we think we've closed off on where we have agreement and a number of items being discussed on email. I really appreciate the energy that's gone into this – those discussions.

Between today and tomorrow I and the team will get back to you with what we, you know, reading through all these comments on the many recommendations, what we think – what we think that is. So, you know, we're

going to discuss Recommendation 11 today about data retention but, you know, on Recommendation 10, 12, 13, 14 the – and the research purpose and some others, we'll come back with what we think is final language.

So what I'd like is for you to signal for your group whether you think we need to discuss that language further and then we'll slot it for a call. And based on that we'll schedule a call. So right now our next call will be Tuesday so we won't have a meeting Monday but that can be some quiet time for you to maybe finishing up responses to proposed wording via email. So we'll have a meeting on Tuesday.

In our work for the remainder of today, because I have a lot – I and the support team have a lot left of today and tomorrow we'll do the necessary homework and decide if we need to have a meeting on Wednesday or not to close off issues in a timely manner.

To help you gauge kind of where we are and our timing going forward, we will have another issue of the final report out to you tomorrow, so today and tomorrow we'll send emails about the recommendations that are being discussed via email on wording and then follow that immediately with a version of the final report as far as we currently have agreement. That will signal the – and that'll kind of signal for everybody what the open issues are and set our timeframes for that. Let me just see what I have.

I made a note for myself, you know, I've been going through all the work you've been doing and the comments and things like that and, you know, working with the support team to come up with some wording that we think meets – meet all the comments. I'll just mention that I hate adverbs and most adjectives so where they're added, you know, I might not add them or not. I think we just need to be objective. So that's that. That's the go-forward plan as I see it.

I've received a couple emails from you asking about the schedule after the publication of the initial report. So there's a couple things at play here. One is there's a considerable amount of planning that needs to go into the Phase 2 discussion and so I see, you know, I see at least two weeks of down time for us for you to reintroduce yourselves to your families and your coworkers and get some work done. So I'm not committing that's going to be the schedule but, you know, I do see some downtime after this.

While we'll be planning for the Phase 2 discussion, we're also kind of looking for a signal from the GNSO, I think on their meeting on the 24th of the month, their signal of non-objection which is the go-ahead to start the Phase 2 discussion. So to save time we'll do planning for Phase 2 but we'll be waiting for that. I'm just reading some notes here. Thanks very much.

And then as far as getting the final report out, you know, the schedule as I see it are – that I see it is that we'll publish the next version of the final report on Friday, tomorrow so that you – yes, Friday, so that you can take it back with your team. We'll continue the email discussion and list the outstanding issues for discussion in the meetings next week, so we can combine those two.

We're targeting a – also starting the first of next week we'll send out the consensus call paperwork and, you know, I've been going through this process with the team to learn more about what the standard practice is. So it's up for me to label, as I said in my memo, label each of the purposes for processing registration data and the recommendations with some level of consensus, whether we have consensus or diversion or, you know, strong agreement, strong support for an item. So I will do that on each of the purposes and recommendations and send that to you.

And as a group you're to respond whether you agree with my assessment or whether we need to discuss those further. It's my intention, and I need to word this carefully in an email to you, that I will send these assessments out

in some group so you can take them in chunks. So there are certain recommendations we have where I think the process is fairly straightforward and we have agreement and I want to like bite those off and send them in a group similarly with the purposes for processing registration data. You know, I see those as a group. And then there's a third or fourth group.

So rather than put them all in one big document that might be a little bit unwieldy or 20 or 30-some odd different emails and I see myself sending these assessments out in some groups. I think that'll help us get some of the consensus call discussion out of the way while we wrap up some of the final issues.

So that's the process I see of that. So I've been kind of sitting here with my eyes shut talking and not looking at the chat so I'm going to take a look at the chat and I see a lot of plus ones and I see – so I agree with – I agree with Kristina too, that's one of the reasons I don't like adjectives and adverbs.

Alan Greenberg, you're in the queue.

Alan Greenberg: Just for the question I asked in the chat, is there a definitive list of the issues that we still need to resolve because I'm...

((Crosstalk))

Alan Greenberg: ...getting somewhat confused.

Kurt Pritz: Yes, and I think that'll – I'll defer to Marika if she wants to raise her hand but that will become clear in the version of the final report that's published tomorrow.

Alan Greenberg: Okay thank you.

Kurt Pritz: Yes thanks, Alan. Good question. Margie, please go ahead.

Margie Milam: Yes, thank you. It's Margie. Regarding the consensus discussion, I guess I'm confused as to what we're doing because, you know, as we worked – we've worked through each of these recommendations, they're collectively a package. And I think this is the issue that Benedict raised on our last call that you can't vote or, you know, I think it's difficult to vote – and I know “vote” is not the right phrase for what we talk about for consensus – on the recommendation by recommendation basis because they're contingent on having an entire package together.

And so for example, if it turns out that there's no consensus for reasonable access, I'm just taking an example, then it really impacts the whole discussion. Or if the – in Recommendation 1 we find that that does not support through all of the different purposes, you know, eliminating one of them affects the collective view on whether the, you know, whether the report, you know, has collective consensus.

So I think we have to be much more strategic about how we do consensus. I think purpose by purpose may not be the right solution for this given the complexity of the issues we're addressing. And so I'd like to reserve some time before we actually have to go back to our teams to get the support to understand you know, the thinking behind how the consensus decision will be made. Thank you.

Kurt Pritz: Thanks, Margie. Yes, so those are all excellent points and I was trying to think strategically when thinking about how to do this in the timeframe we're involved with. So I think there are certain recommendations that can stand on their own and certain ones that have to be considered in concert with others. And you know, with the desire to get as much of it out of the way, you know, as soon as possible I thought that, you know, splitting up the task in some way so we could do some of this discussion ahead of others where we still have some issues to resolve was a reasonable way to do that.

I think you know, I'm still not deterred from that but I also understand your question. So, you know, one certainly is that at the very end there'll be an additional pause to make sure that we're in agreement on the whole package. But, you know, I agree with what you're saying that that does not totally, you know, satisfy your concern and I understand that.

And so, you know, I think two more things, in dividing up the sections, you know, that has to be done strategically and looking at what –where one might rely on the other. And two is that, you know, approval could be, you know, could be made contingent on something else so you might have to think about that.

So, you know, I'm fully taking on board your request and will talk with the support team to see how we can best manage the timeline and manage your concern at the same time.

Hi, Kavouss, go ahead please.

Kavouss Arasteh: Yes, good morning, good afternoon, good evening. I understand that everybody say “Kristina plus one.” That means absolutely crystal clear. I don't think that such objective should be achieved. Absolutely crystal clear means that we would avoid to have any qualified or consensus building text in order to satisfy these nine constituencies, stakeholder groups, advisory committee and so on so forth with different ideas, with different objectives. So we need sometimes to make some sort of tolerance and therefore absolute crystal clear is inconsistent with the consensus building.

We could say adequately but not absolutely crystal clear. It is impossible to do that. I have seen that we go back and forth in recommendation so many times and so on so forth, you introduce some words, you introduce some suggestion, to bring the idea, the people says no, there is no consensus so you have to deduce new wording which is a little bit far from absolute crystal

clear. So let us accept the reality and – but not be idealistic, not to be idealistic, chairman. Thank you.

Kurt Pritz: Yes and I'll channel Kristina in saying, you know, certain things are said for effect and, you know, I certainly took Kristina's comment, and I think so did everybody else, as an aspirational goal and that would be as, you know, we look at all the – I think it was a comment the support team and me that as we go through all the comments that we do make – do make the recommendations as clear as possible. But I understand your point exactly.

Marika, please go ahead.

Marika Konings: Yes thanks, Kurt. This is Marika. I just wanted to respond to your question on the status of recommendations and how people can review the status. As you know we do have on the wiki page our status review document in which we've aimed to track the different deadlines for input on the recommendations, I think all of which have passed by now. So as Kurt indicated the next step is for leadership to basically look at the comments that have been received and see if there's a path forward that can be proposed, you know, either through resolution on the mailing list or, you know, potentially for further discussion on the call next week.

What staff is planning to do is, you know, we've already started updating the final report and especially want to thank Kristina who already went through sections of the report with a detailed eye and has suggested many edits for clarification in some of the introductory sections, but we'll also start adding, you know, those recommendations where we have reached a closure either in the form of non-objection or where it's clear, you know, where objections have been made that we can document positions.

So we plan as well as updated language goes out to integrate that into the final report but clearly mark probably through color coding, you know, which items are still out on the list for discussion or where the group may need to

come back to those conversations but also clearly mark which ones are in principle considered closed off. So hopefully that at least will give you quite a good overview of what the final report, you know, may look like even noting that, you know, there are still some areas where of course we are discussing.

And that will hopefully then allow you as well to flag, you know, of course as soon as possible, which aspects you think, you know, do need further consideration or discussion. And of course, you know, the Google Doc is still open as well for those that want to flag, you know, more grammatical or clarification of sections or text in the document. So that's at least staff's plan at this moment and our plan is to, you know, release that updated version sometime tomorrow.

Kurt Pritz: Thanks very much for that, Marika. Greg, how are you?

Greg Aaron: Good morning, Kurt. How are you?

Kurt Pritz: Good.

((Crosstalk))

Kurt Pritz: Not good but go ahead.

Greg Aaron: So it sounds like we're going to have a moving target constantly updated draft of the final report where some recommendations are still being worked on, others are kind of closed. It'll be important for people to look at those over time but in the end what I think is going to be important is there's got to be a point where you put the pencils down and everybody has sufficient time to look at a final draft.

That's the point at which everybody is going to be able to see what the report says and they also can make sure that what their group thinks has been reflected accurately. So again the consensus measurement is correct, that

somebody has notes about divergent opinion, those need to be in there. So I'm just asking make sure that there's sufficient time where the target stops moving and everybody gets their last chance to review everything and that's important for everybody to make sure that their views have been reflected properly. Thanks.

Kurt Pritz: Thanks, Greg. And just a couple comments – so thanks very much for that. And, you know, as a manager for years and years and years I certainly understand the importance of sort of operational, you know, aspects that you laid out that are very important in managing any situation. So a couple comments, one is, you know, we're – I don't think, you know, to make it as easy as possible, given the situation, we won't be constantly updating the final report but we'll get the next version out tomorrow and then probably one more version after that. So it'll be a little more – a few more – a few quanta but not continuum.

And then as far as when the group reviews it, and this is always a difficult point for someone like me to make, but when the group reviews it obviously there's some differences in the comment and so at this stage of the game, you know, it's not – you know, I don't like the, you know, what are you willing to live with standard.

You know, I don't like that one so much but, you know, in the spirit of compromise is the current wording even, you know, not – all your comments not reflected in the final wording? You know, is this wording acceptable to you as far as going forward because, you know, at the end the variations in wording might not have so much effect even though they might be important to you.

So, when – the standard of review, and I'm not putting this artfully, but the standard of review and going through these recommendations is a little different and that is, you know, is this language acceptable to you as recognizing the importance of finishing our work in a timely manner. And just

to be really pragmatic, you know, understanding there's an implementation phase to this where operational details can be ironed out and also a Phase 2 where, you know, a Phase 2 where some of this can be revisited. So I hope that's helpful.

All right, so let's get into the substance of the meeting. We're going to – the first item on the agenda is the last item in public comments that we're going to discuss which is Recommendation 11, having to do with data retention. So we have the original wording, I think put up by Alan, so I don't know, Alan Woods, so I think maybe he might – he might start this off.

And so to give him some time to review and also I know there's some edits from the Registrar team so we might have them talk to them, and also finally there's some other comments. So with that warning, it's up to us to look at the public comments for a few minutes, so if you look at the agenda there's the link to the PCRT which is also has the summary document. So if we could take just a couple minutes and review the public comment for that, that would be great and I'll see you back here at, gosh, half past the hour.

Just another minute, everyone. Hi, welcome back. We have sort of a loud typist on the list so please mute your lines when not talking or don't type. Alan, would you Alan Woods, would you mind very much introducing this and in the discussion if there are public comments that influenced the – influenced your discussion here, public comments that rose to the level of needing to be included because they have not been discussed yet and represent important thinking, please bring them up. But, Alan you'd mind very much starting?

Alan Woods: Sure. Thanks very much. You can hear me okay, because I seemed to have an issue when I was trying to log in but I will continue on if that's fine. Yes, so somewhat self-serving in this, I think my comments, my edits, came mainly from I suppose a mixture of registries and registrars comments from the comment period.

And specifically I think although what we have achieved was much better than what had been previously there before in that was the blind application of a retention period, it, you know, we need to be very careful and clear in what we were suggesting with the language that was in the recommendation previously. And that was that a one-year retention period linked specifically to the transfer dispute resolution process was what was being recommended.

And, you know, we just need to be very clear on the consequence of us stating that. And that was if it is being retained for the purposes of the TDRP, then any data retained beyond the life of the domain, which is the minimum retention period anyway, would only be able to be capable of being used for the purposes for the TDRP.

So Number 1 there was specifically to say I doubt that was the intention to limit retention only to a singular use or a singular set of a policy. So we don't have, you know, the EPDP team, we don't have the time nor do we have the oversight in order to figure out exactly where this data is deemed necessary by ICANN in this.

So it was very clear to me that, you know, we need to put that call out there and saying look, obviously we might not get this before the final report but we need to get, from the people who day to day actually use this process, and this is something that I actually raised with ICANN Compliance way back when they presented it to us, that they are the ones that know their processes, they are the ones that know the (meaning) to a timeline, they are the ones that have this up to hand and they are the ones that should tell us, hey, we need the data for this amount of time after the domain has expired, the life of the domain, and then this amount of time based on this policy, this process, this expectation that we have.

So we really – so that was the point behind the changes in the first that we were saying, you know, ICANN, as soon as practicable, please review all the active processes and procedures to identify and document the instances

where personal data is requested beyond the period of the life of the registration. I think, you know, it's pretty self – it is punting to ICANN but I think that, you know, I think it's a reasonable (unintelligible) to be perfectly honest.

So the second one, this is more closely to where, you know, our original recommendation was. And because we have done the work and because we have identified the TDRP as being one of those reasons why it is necessary to retain the data, let's keep that in there and saying, you know, we did identify this particular one and it's also good as an indicator as to people who are – from the outside looking at us saying, well what are we doing in order to justify these retention periods? So absolutely, just made a few changes in that.

But again I also pointed out that at the end where you can see the line there, "Such retained data may only be used in relation to specific TDR complaint. Should the registrar use the retained data for any other purpose they would do so under their own controllership." So this is an additional kind of add-on I suppose to Number 1 saying that if retained data is, for any reason, used by a registrar for something other than the TDRP, then it is under their own controllership; it is their decision to use that retained data for something other than that which has been established by our work here.

So it needs to be very clear. It's not saying that they can't use it, it's just that they would need to have a legal basis (unintelligible) themselves and be it on their heads if they're using it incorrectly. Sorry, registrars, but it's true.

And then Number 3, I think this was – this is something that came specifically through conversations with registrars and registries. And again it's in the absence of having something that's in the actual recommendation. We want to be clear that this does not mean that a contracted party may – or maybe I'm jumping onto something else – yes, that you can't set your own retention periods as well.

So the retention period that we're setting in the recommendation is basic ICANN expected retention period and there is nothing in that language which states that nobody else – a contracted party cannot set their own retention period on top of that minimum period. But again in the understanding that if it is an additional retention period and that retention period is at their sole controllership because it was their decision, it is based on their local legal requirements, things such as that is up to them to justify it.

But, you know, ICANN can't take that into account, it is up to the individual registrar or registry to figure that out themselves. So again, just to be clear, in the recommendation, nothing in our recommendation will prevent the creation of additional retention periods, that's the sole controllership of the registry or registrar.

And then at the end there you can see, "In addition the waiver procedure should be reviewed to determine if it would be appropriate for (unintelligible) to join themselves to an existing waiver upon demonstration of being subject to the same law or other requirements that (ground) to the original waiver application.

I think this came from the Registries, it wasn't from my initial, I believe. But it makes sense to me that the current waiver procedure must be maintained because we might not be able to figure out all the laws at the same time. So this – we need to be – have a waiver procedure in place that a individual contracted party might say, hey, with regards to the requirements for me, this is not going to work for me, this minimum retention period is too long so I need to get it shorter and for this reason.

And they should be able to show, you know, again not at the old level of, you know, I'm being pursued in the courts because of this but that I have a strong legal opinion or I can show and point to where the law says that this is incompatible.

But also there's another layer in this where previously it was always that the individual contracted party had to individually make an application for a waiver procedure, which to be perfectly honest, is fine, but for every other contracted party who are subject to a similar law within the same jurisdiction, have to go and make an (unintelligible) from the beginning waiver process as well.

Which to me obviously is crazy because if ICANN has been provided with notice and they've accepted that, one contracted party subject to a particular law has been granted a waiver, it would just seem to reason, (unintelligible) reason that other contracted parties subject to a similar requirement or law would also be granted that waiver so why would they have to go through the full process.

So perhaps we can suggest here that there's maybe a fast track that a person who can demonstrate they have subject similar to ones in a waiver, that has been accepted already, that they have the same requirements that they can get a similar waiver. I mean, we can put it into the recommendation and work with it but I think it's a very pragmatic approach and also will reduce liability from ICANN as well from insisting upon a waiver period which has already been proven to be (incorrect). I'll take that as my – the music coming off from the after stage of this one. So that's the setup and if anybody wants to add into that please feel free to do it.

Kurt Pritz: Thanks very much for that, Alan. I'm going to have to learn how to get control over that play-off music a little better so I can use it more. Hadia, please, anyway thanks for that very cogent explanation. So let's go through the queue and see if we accept this language or want to discuss it further. Hadia, please go ahead.

Hadia Elminiawi: Yes so I have a very simple comment. I do agree that waiver procedures are necessary however I don't see how it only fits into this recommendation. I

think we don't need to put it in this recommendation because it applies to many other recommendations and statements and purposes mentioned in the report. I would say that we need a general disclaimer in the report that says local laws have precedence and – but to have it particularly here I don't really see the point because this might apply to other parts as well. Thank you.

Kurt Pritz: Thanks, Hadia. Let's go through the queue and think about that. Go ahead, Alan Greenberg.

Alan Greenberg: Thank you very much. Alan Greenberg speaking. I'm struck that this revision and analysis was looking only at the registrar registry and ICANN needs. There were strong comments made in the public comments about the needs for data retention to address cyber security issues from a good number of people within the cyber security community. And I don't think those were factored in at all. And I really think we need to look at those. Thank you.

Kurt Pritz: So, Alan, you know, I don't want to put you on the spot, is there a specific place where wording could be adjusted to – where, you know, we're talking about identifying other uses in the future and is there a specific part in the wording where we create that flexibility to, you know, have that ability to look at that and ensure that's, you know, GDPR-compliant use and then therefore could be used to affect data retention?

So maybe it's in there or, you know, in the numbers because I was sort of (figuring) of that or maybe there – you have a specific recommendation?

Alan Greenberg: Well I do because if you look at the very first sentence in Number 1, "The EPDP team recommends that ICANN, as soon as practicable, undertake a review of its active processes and procedures to identify instances where personal data are requested from a registrar." Now how ICANN knows what data – ICANN may know what data it requests from registrars, but it has no idea what other data is being used prior to the interim specification the data was just publicly available.

So ICANN is not in a position without involving others to have any clue what data is used or what the retention period is. And Alan said, there are strong comments saying that in some cases one year may not be sufficient because of the lag of how long it takes to discover security breaches and security incidents sometimes and the amount of time it takes to investigate them, you know, law enforcement has, you know, significant lead times very often.

Now, if they know the details they can request data and capture it but it's not always obvious that you can make the requests within that period of time. So I think we need to factor in all of those comments. I mean, the purpose of a public comment is to get input and we need to look at it and we're not factoring that in at all in this draft recommendation. Thank you.

Kurt Pritz: So let me just to tease this out a little bit, and I apologize to everybody, so and this is probably over simplistic of me, but when I read this, when I read "recommends that ICANN undertake a review of its active processes," you know, I view that as the big ICANN which is not ICANN Org and that, you know, that would include all the instances in its ecosystem. But...

Alan Greenberg: Yes, I guess I don't read that at all. When they talk about "its active processes and procedures" I don't see how one could read that to be including the procedures and practices of law enforcement or all of the independent cyber security people that do work or the corporate ones that investigate their own security breaches before going to law enforcement. So to say that's all within ICANN's remit to know that I don't think that is the case at all.

So at the very least, that initial paragraph, initial sentence, has to be widened significantly to make sure that all of the uses that are legitimate and will ultimately have to prove to be, you know, in support of the law are accommodated.

Kurt Pritz: Okay thank you, Alan. And I hope Alan Woods has his hand up in response to that but we'll march through the queue. So Margie, please go ahead.

Margie Milam: Sure. This is Margie. Yes, I'd like to echo a lot of the comments that Alan just mentioned. The public comments – they actually do focus on the length of time and we haven't discussed that in this group as to whether we should reconsider the one-year to a higher number. I see from two to six in the public comments so that's for the reasons of cyber security and other civil issues, it's not just cyber security.

And with regard to the language as proposed by Alan Woods, I honestly think it's too restrictive. Limiting the one-year to transfer policy, in my view, is far too restrictive because there's other uses for the data beyond the transfer policy. So I think the last sentence should be deleted. I think that's probably a little too much detail and it assumes, as it's written, that the only reason you'd be using the data is for a TDRP complaint, which is simply not the case. The public comments show that there'd be other reasons for it.

So I think we should think about the length of time and I think we could be less specific on the language that's proposed. Thank you.

Kurt Pritz: Thanks, Margie. And let's – well let's keep going. And maybe some of you that were on the small team that discussed this can capture for us or describe to us how the public comment was evaluated during your discussion. Marc, go ahead. Good morning.

Marc Anderson: Hey, Kurt. Good morning. It's Marc Anderson for the transcript. I kind of, you know, I've kind of been, you know, overcome by events for the reason I originally raised my hand. But, you know, I guess, you know, the conversation has gravitated a little bit towards the length of retaining the data and, you know, and people have, you know, a number of comments have talked about, you know, cyber security and the need to investigate things.

You know, I just, you know, I want to point out that, you know, we're retaining, you know, data is being retained for the life of the registration, to start with. And, you know, I'm not a cyber security researcher, that's not my primary business but, you know, I'm aware of quite a bit that goes on and the vast majority that I'm aware of deals with active domain registrations. And that's not to say there aren't issues with domain registrations, you know, after they delete or investigations that occur, you know, after they delete.

But, you know, I do want to point out that, you know, the vast majority of issues are with active registrations. And in fact, you know, once the domain deletes it's no longer an active domain, you know, the, you know, the profile shifts quite a bit on what goes on. And so, you know, we have, you know, we have a different type of investigation that can occur. And we've stated that, you know, we can retain the data for a year after the life of the registration, and we've, you know, as Alan articulated, you know, we've, you know, we've defined very, very good reason, you know, TDRS, you know, something that's pretty easily defensible as it's, you know, as it's there for the benefit of the registrant, the data subject.

Now, to make a case to retain past a year I think we all have to ask ourselves, you know, is the benefit of being able to chase down or investigate something that occurred on a domain registration that's been deleted, that is no longer active for more than a year, does that outweigh the risk of requiring the data subject's data to be retained longer than a year?

And there I think we, you know, we really, you know, we have to ask ourselves, you know, that question. We have to justify you know, the balancing that occurs there. And so, you know, to go past a year we have to be able to say, okay, you know, we are retaining, you know, the data subject's data for over a year and for XYZ reasons.

You know, and, you know, I don't think that we've articulated that so far, just saying it may be useful for investigating cybercrimes on a deleted domain,

isn't enough to justify retaining the data subject's personal data beyond a year, in my view. You know, if there is an argument I think we haven't laid it out in a solid enough fashion yet.

Kurt Pritz: Thanks for that, Marc. Please go ahead, Alan.

Alan Woods: Thank you. And thank you, Marc, as well. You took a few of my points and I'm glad to pass them over to you. So I just want to draw us back to something, like what was being said is, you know, fair enough, it's all a motive, it's wonderful. But let's be – let's figure out who we actually are trying to come up with a set of rules for, and that is for the data controllers here.

Third parties are not data controllers and the use of a third party is not something that we can have in our reasonable contemplation. What you're talking about is legal expectation. Marc put his absolute finger on the problem there when he said, you know, we cannot hold data because it might at some point in the future become necessary. And that is so key.

We're talking about setting a retention period for the registrars here specifically who purposes, because we've gone through the purposes, who are the registrars' purposes, not the ICANN purpose, is the registration of the domain, the contact of the registrant, the current registrant for resolution of issues with the domain name. None of these are going to give rise to retention periods that some third party security researcher might at some point in the future need it.

So we have to be very clear that we are limiting – this is for retention periods of the controller in this particular instance or, some people might say of the processor as well, but, you know, that's fine. So another very – I mean, leadership team's look at, you know, other similar type of retentions in the world out there. And for instance, the telecommunication retention directive in the EU, I mean, there was years of conversation about – they want a

telecommunications provide to hold, you know, telecommunications data. So when was a text message sent, from where was it sent?

And, I mean, and the EU has come from a period of six months at a minimum to in extreme cases, two years. We're nowhere near that sort of requirements. I mean, that's for the prosecution of murders and things like that, you know, the EU has already had a lot of discussion as to what is the necessity of law enforcement and ultimately it's in a directive specifically where they're calling out that, you know, a service provider who is not retaining the data for the prosecution of crimes, must retain data in order to help law enforcement.

So we're looking for – we're trying to create laws here. These laws don't exist. We're asking the question, what is there specifically for the – for the registrar to retain and for what reason are they going to retain it? And I'm sorry, it's just not simply good enough to say it might be necessary at some point in the future.

Now all that being said, I am – I think Kurt was absolutely right, let's point to Number 1 here, if there becomes a policy at some point in which it is necessary to retain for the purposes that have been outlined by several people, or as Tim Chen has pointed out, in the public comments because it's really useful, yes, it is useful I'm sure, then it's up to the community to come up with a policy, the policy that applies to the registrars and there is something that we can link it to in order to then retain for that period.

I would shy away from creating this concept that a future use is something that we can look to. But at the moment, I mean, it is – it is in the recommendation to say that, yes, potentially the – ICANN can say there is a strong reason for the retention of data for this particular reason. But I think Marc has already put that quite nicely to bed by saying, yes, well, this is usually for the current life of the domain and holding that data for the life of the domain is probably all you really need.

So I'm finding it very difficult to swallow some of the highfalutin, you know, world peace objectives that we have here. We are talking about creation – or collection of data for the registration of a domain and everything around that for a registrar, and retaining for those purposes. The rest of it is just completely out of our purview and I think we're wasting time going into that. So apologize to be blunt, but, you know, we need to move on here, people.

Kurt Pritz: Thanks, Alan. So the queue is long and I'd like to – if it's all right with you I'd like to try to focus our discussion on this that, you know, as far back as Los Angeles we settled on – I'm not going to say we settled on – but it was suggested that the one-year data retention period was the tall – the transfer DRP was the tall pole in the tent as far as data retention and as far as ICANN processes, procedures and policies, and that so it would settle on that one-year retention period.

What I heard in Alan's soliloquy right now is you know, about other industries and years of discussion, so I think there's, in my opinion, I think there's merit in the discussion around stability and security purposes for retaining data but I think in order to – I don't think we can more or less arbitrarily pick a number, two years, three years, six years, without something very specific in our recommendations or in our analysis. And I don't think we have that at this time.

And so for me I would think we'd want to leave the door open to that discussion and identifying those needs in connection with ICANN's mission. But I don't think we can do that now. It was, in my discussion with Alan Greenberg, you know, I had assumed it was in the numbers of the recommendation as written that this is – this was the effort that was going to take place as soon as practicable, but if there's language that can make that a little bit crystal clearer, you know, I would – I think we could consider that

So I'm going to go through the queue but I'd really like to focus on this unless you think that's an inappropriate path. Georgios.

Georgios Tselentis: Hello, everybody. Can you hear me?

Kurt Pritz: Yes we can.

Georgios Tselentis: Yes, sorry, I think (unintelligible) basic problems (unintelligible) right now but I will try to be very brief. I'm back to what the GAC recommended and I don't understand why we have problems with accepting this type of recommendation which was to consider extending the period but conditional to the (unintelligible) legitimate request and then case by case we could have the possibility to judge whether such request has the grounds, I mean, (unintelligible) that we actually need the retention period to be extended in order to serve the purpose as it is – for which (unintelligible) purpose for which they are going to be used.

So I think – I don't understand why we have, again, this discussion. I understand that we (unintelligible) extending this definitely we need to go for a (unintelligible) situation which can be (unintelligible) for the future. But I think that if we could agree to the principle that if we would think a request was legitimate that requires a longer extension period at the same time to have as a policy to keep the data for this extended period, which is from the requestor.

So that is the proposal that was (unintelligible) from the legitimate requestor (unintelligible) in the purpose. (Unintelligible) thank you very much.

Kurt Pritz: Right. So I'm going to channel Farzaneh – well I'm not going to channel Farzaneh for a minute, but, you know, certainly in order to respond to individual requests the data would already have been retained so I'm assuming your recommendation, Georgios, is that we remain open to requests to change the data retention period based on specific instances or,

you know, some certain requirements, which you know, again, I thought this opened the door too but I'm looking, you know, I'm looking for, you know, some, you know, small but meaningful change to the wording that would capture that.

Greg Aaron, please go ahead. Hey, Greg, you're still on mute.

Greg Aaron: Sorry, Kurt. So I'll speak as somebody who does a lot of investigations and understands a bit about what law enforcement does. So a lot of the laws that deal with the data retention periods tend to be nonspecific, they tend to provide guidelines and specific bylines, but I will say that retention periods under a year are highly problematic for investigations.

Marc mentioned that, you know, investigations tend to happen only with current live domains, so maybe a lot of them but that's not true because historical information is really important to a lot of investigations. You see this currently with some investigations Microsoft Digital Crime Unit is doing on election investigations, for example going back to 2016.

So one year is probably something that GDPR allows. As Alan says, we can't keep data forever on the chance that it might be needed at some point, but one of the problems here is actually to access. Law enforcement can make requests for the data but we also see that some registrars won't give it because – to anybody outside their jurisdiction. So the retention period problem is actually also related to the access problem being able to get the data for legitimate law enforcement purposes and investigatory purposes when you ask for it. Thanks.

Kurt Pritz: Thanks, Greg. And I think I'm going to point out in the chat that in cases where there's an ongoing investigation data would be – I think what Alan is saying is that data would be retained...

Greg Aaron: No, that's part of the problem because if I'm law enforcement in one country and I ask a registrar to retain data the registrar may or may not pay attention to that request (unintelligible) response to such requests.

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

Mark Svancarek: Yes, this is Mark Svancarek. I guess a clarification is in order and also a concession perhaps. I think there have been a lot of arguments made about why data might be retained for a period of time and why it might be (unintelligible). I'm not here to regurgitate those arguments. But the arguments have been made, it's just that the arguments have not been accepted as compel – or proportional by the group. So I think it's really unfair to say that the arguments have not been made.

Regarding the comments, don't save data just because it might be useful in the future, the arguments have been made that the data has proven useful in the past, it's just a question of how proportional is it to save all data and for how long given that some data was useful in the past. So I think those things need to be clarified for the record.

The argument has been made, some people found it compelling, it was made both by EPDP parties and people on the public comments and we're not trying to just collect all data because it might be useful, it's data that has proved useful in the past for certain types of investigations. Thank you.

Kurt Pritz: Thanks, Mark. So we've got James and Alan and I'm hoping for a suggestion that can help us get home here. Go ahead, James.

James Bladel: Hi, Kurt. Thanks. James speaking. Not sure I'm going to be much help in that regard. But just, you know, I think the conversation has moved on since I first entered the queue. I just wanted to reiterate and echo some of the sentiments raised, I believe by Marc Anderson and Alan Woods and note, you know, one of my comments in Toronto is two years is going to always be better than

one; five years is going to be better than two and forever is going to be better than five. We have to strike a balance here.

The idea that something may have a potential value at some future date does not necessarily outweigh the fact that it has a real and measurable harms to the rights of data subjects now. And so we need to balance that appropriately and I think we're heading in that direction. I think Greg Aaron's point about foreign law enforcement is sort of a nonstarter. You know, if jurisdiction X asks us to do something that's contrary to our local laws of course we're not going to obey that order.

You know, that's just the nature of the Internet and that's not ICANN's problem to solve.

So no one's questioning the value of having massive and potentially illegal databases retained forever. I think what we're trying to do is essentially draw a line and say what worked for us in the past may not work going forward and we all have to sort of acknowledge and recognize these new limitations and adjust accordingly. So but otherwise I think most of what I intended to intervene has already been said so I'll just drop out of the queue now.
Thanks, everyone.

Kurt Pritz: Thanks, James. Alan, I appreciate your comment in the chat and so please take – please go ahead.

Alan Greenberg: Thank you very much. Well I'll start to reiterating the comment in the chat, I am totally amazed that I made a suggestion that any future study consider all of the issues, not just the needs of registrars, registries and ICANN proper, and we have spent an inordinate amount of time and with several soliloquies, not only one, talking about the merits of what the retention period should be and who should be allowed access.

That's what we're – should be studying and then we will consider the results of the study. But to waste time on that now I just don't understand. And if there is strong objection to studying and considering the needs of one of the ICANN – which is under one of the ICANN purposes, then I'm equally amazed. So I don't understand why this isn't a matter of figuring out how to reword Item Number 1 to cover the issue as opposed to debating the merits of what the study should – what conclusion the study should come to. Thank you.

Kurt Pritz: So is it simple and, let me make sure I'm – okay, I'm not on mute. Is it as simple as taking the first sentence and say, "The EPDP team recommends that ICANN, as soon as practicable, undertake a review of all its active processes, procedures and," gosh I had a word and then I forgot it, but, you know...

Alan Greenberg: As well as other lawful needs...

((Crosstalk))

Kurt Pritz: ...requirements. What?

Alan Greenberg: As long as other – sorry – including other lawful needs.

Kurt Pritz: Thank you.

Alan Greenberg: That may not be optimal but let's use it as a placeholder.

Kurt Pritz: Thanks very much for that, Alan. So I propose we augment the statement for that. You know, listening to the conversation, you know, I certainly understand – well I understand the comment about the last sentence in Section 2 but I think it's – I think it makes our GDPR-compliant statement stronger because that's essentially what GDPR says, that if we're keeping the data for this purpose it should be used for that purpose.

But I think that also we need to undertake this review that's suggested in Number 1 so we capture all the reasons for retaining data in addition to the life of the domain name registration and perform that analysis and, you know, potentially identify specifics of the sorts of things that Greg Aaron was talking about to see if that – and then that study would test whether, you know, that meets the GDPR bar and would necessitate a longer comment period. So my recommendation for this team is that we make Alan's adjustment to the wording and other needs, if anybody has a different phrase I'm really happy to take that on, and go on.

You know, I see the comment that we're wasting valuable time but we need to get to the end and there's a difference of opinion so, you know, and Thomas, you know, that's an excellent comment you just made, nobody's come up with a rationale, a defensible rationale for more than one year. But as I think Alan Woods pointed out, sometimes the development of that rationale takes a lot longer than the time we have allotted to it, so I'm for Alan Greenberg's adjustment.

Greg, please go ahead. Or Greg, was that an old hand? I'm going with yes that's an old hand.

What about Amr, do you want to speak up why the NCSG would have a problem with that? Would other lawful needs be acceptable?

Amr Elsadr: Hey Kurt. This is Amr. Sorry, I'm – am I – had a little bit of trouble getting off mute. Can you hear me?

Kurt Pritz: Yes, I can hear you fine, thank you.

Amr Elsadr: Great. I'm not comfortable personally with mandating ICANN with coming – with conducting a study for third party interests and what their needs may be in retaining data beyond what is reasonably expected to provide services to

the data subject or the registrant here by the registrars. A study like this I think would be extremely one-sided and would be biased in favor of, you know, those third party interests and provide additional rationale which would be more difficult to deal with in terms of maintaining the data subject's rights.

I don't think we should be recommending this. I think if third parties have these needs they should come forward like they have during the public comments and express them themselves. I don't think we should be mandating ICANN with doing this and so this will basically be my recommendation to the NCSG in terms of our assessment of this recommendation if that is included. I hope that's helpful. Thanks.

Kurt Pritz: Thanks, Amr. So my reading of this, when I read the word "ICANN" I'm reading of us and so my reading of it is essentially what you said that it wouldn't be the ICANN organization sitting on its throne, you know, finding these third party needs and asserting them but rather it would come from this, you know, from this multistakeholder bottom up mechanism where, you know, stability and security would say, you know, we found this requirement where 18 months or two years of data retention would solve this big problem, with that specific and then have that discussion, you know, possibly in Phase 2 or, you know, at any time in – as long as this multistakeholder model lasts. So my reading of that wasn't ICANN Org so if we can make that clearer maybe we could.

Listen, this conversation has gone on a really long time and I apologize to everyone but I'd really rather not take it to an email list or append it for later, I'd rather try to settle it so I hope you understand that. Alan Greenberg.

Alan Greenberg: Thank you very much. We seem to be focusing on retention period, that's not the only issue here. One year may end up being the retention period that everyone decides on and is acceptable. As Alan Woods has pointed out, for the placeholder recommendation since TDRP is the only thing that we're

mentioning there, that's the only legitimate need other than with a registrar or registry may decide on their own.

What we're deciding here is not only the retention period but who may have access during the retention period. So the issue is relevant and we're not saying extend the period, that may end up being an outcome, it may not. We may shrink the retention period, but it's also a matter of who will have legitimate access to this data that is being retained and that is why we're doing – we're suggesting a study.

I would have assumed this is a classic example of something that ICANN would hire an outside agency to do a study including interviewing various other interested parties to try to gauge what are the real needs. Currently retained data is available from third party consolidators. We may find that offensive but that is the reality of the world we're living in today. And until the end of the temporary spec there will be data retained for a period of a year, so we have no history of requests being made to contracted parties or ICANN right now for data that is more than a year out of date.

So it's going to have to be looked at and considered and I believe that is what we have to do. And that was all I was proposing to do from the very beginning of this discussion. It's not just about what the retention period is, but who will have legitimate access to that data. And that's what I believe we need to study. Thank you.

Kurt Pritz: Right. And what I think is important is this is not for us to decide now, it's probably not – it will be an ongoing thing so for the life of ICANN if something happens, you know, there will have to be a reason that'll have to occur. Anyway, Emily, please go ahead, you've got a suggestion for us?

Emily Taylor: Hello. Yes, yes just a suggestion (unintelligible)...

((Crosstalk))

Kurt Pritz: Emily, you're not quite as – go ahead.

Emily Taylor: I'm sorry, can you hear me?

Kurt Pritz: Yes, I turned my sound up.

Emily Taylor: Okay. Sorry about that. Let me change my headset to try and improve the sound but obviously hasn't worked. Yes I guess my suggestion, you know, there's a lot to unpack in the area of data retention. We've got ICANN's needs on the table, we've got the conflicting obligations for contracted parties who (unintelligible) in the EU are subject to laws that, you know, that in recent memory voided requirements for data retention on a mass level.

It seems from Alan Greenberg's suggestions that, you know, there is a lot to explore around the issues about third party access to retained data. And this I think leads me to suggest that this is something for the second phase of our work. It's not something – we're not dealing with access issues for third parties outside of contractual relationships in this of our work, that was my understanding. So my suggestion is that this forms part of our discussions on access in the next phase. Thank you.

Kurt Pritz: Kavouss, go ahead. Thanks, Emily.

Kavouss Arasteh: Yes, Kurt, I think I have two (unintelligible). I propose closure of debate. We have discussed it sufficiently and I think it is time to go ahead and try to go to next item. Please kindly let us understand that we don't have (unintelligible) of further explanation and discussion. Everybody is right but I don't think that we can have more time to discuss issue. Please kindly go ahead with decide on something. Thank you.

Kurt Pritz: So I'll – so I want to give Amr one more chance and see if we develop some wording that made it clear, first of all, that this is not a task for ICANN

organization to understand the review that requests for longer data retention periods really need to come from those who are requesting them. And the data retention – any additional data retention period that's explored later on would have to be lawful, so using that, as much as I hate adjectives, that's a pretty good one, it would have to be lawful. Do you think that would address the NCSG concerns?

Amr Elsadr: Hi, Kurt. This is Amr. I'm a little confused because what you're describing is something that we would normally take into account during the next phase of this EPDP without the need to really include that in our recommendations. But what Alan Greenberg was describing really seemed to me to be more in line with ICANN contracting an outside, you know, an independent researcher to really look at this and possibly for ICANN to come up with the terms of reference for what's – this needs to – what needs to going to the research and what the outcomes should look like.

So I'm not exactly sure what we're discussing. If we're discussing what you proposed in your response to my last comment, then I'm not even sure we need to include it in our recommendation because we're going to do that anyway aren't we, when we get into the access issues in the next phase. But if we're going to recommend what Alan Greenberg had just described in his last intervention, I don't think the NCSG will agree with that. I'm not saying we won't but I'm just predicting that we won't at this time. Thank you.

Kurt Pritz: All right. And so I'll close this off, sadly, and say that, you know, it was my thinking when I first read this that the sorts of – Alan, is that a new hand?

Alan Greenberg: Yes, thank you. I just wanted to point out that, you know, this is a reasonable study for us to commission if we had budget. My understanding is we don't have the budget for that so, you know, saying it should be ICANN's job and letting ICANN figure out how to pay for it I think is quite reasonable. Thank you.

Kurt Pritz: Thanks, Alan. So my initial reading of this proposed recommendation and the wording, to me, already included the sorts of things we've been talking about for a very long time now at this meeting and – but I understand a valid compromise to add Alan's wording into that for other – and other issues. And but for me, I would add words about making sure they were lawful and making sure these issues came not from ICANN Org but rather from the community.

And to Alan Greenberg, I would say that it would be for those that are proponents of longer data periods to make their pitch to ICANN and say, you know, we've got these reasons for longer data retention periods and then once that pitch is made it's up to, you know, all of us, including ICANN Org to find out whether they are GDPR-compliant reasons and that might require further study, but the study I think should be in response to the specific request.

So I'm going to work with the staff and try to amend this wording of the first part of this slightly to see if we can come to wording that we all agree to. Thomas, please go ahead.

Thomas Rickert: Hi, Kurt. Hi, everyone. Just a little point of order, and I guess this goes for this topic and other topics that we have or will discuss. I think we need to remember what we're doing in this section. We're analyzing public comment, we have to check whether public comment received warrants (unintelligible) of the initial report and on this particular point I have not seen anything that would warrant the change of the language.

So I'm not sure whether it is actually warranted that further word-smithing is done on this. I think we're good to go by just taking stock and confirming that the language as we've seen in the chat is the language that can be used. Or maybe you do a really consensus call and ask for objections from those who are not inclined to accept that language.

I do understand that – and I actually sympathize with the requests for longer retention periods and rest assured I have done a lot of research previously talking to a lot of (unintelligible) as well as studying ICANN's policies and stuff like that. And no one could actually come up with a robust legal rationale that would allow us to keep the data for longer than what we have established here. So the TRDP – TDRP – excuse me – is the only book in ICANN's policies and contracts that we can use to base an ICANN required data retention on. And I think absent of any other solid rationale we just have to stick to what we have. Thank you.

Kurt Pritz: Thanks for that, Thomas. And just to repeat some of what you said and a quick comment that you're right that TDRP is the hook, the specific hook for one-year retention. I think we all agree to that. The small team, which is half of us with representatives from all, reviewed the comment and their conclusion was that the public comment did not rise to the level of making a change to this.

This team, and this discussion right here, public comment was brought up that requested longer retention period, that's the third point, so there was public comment referred to in this discussion. And the fourth is to get back to your very valid points, Thomas, that we have no other specific hooks upon which to hang our hat for a longer retention period at this point, and so this point Number 1 is just meant to leave the door open to considering future purposes, future reasons, reasons raised in the future for extending that retention period and considering them.

Alan, last comment.

Alan Greenberg: Thank you. I really wish we would stop talking about the retention period. The original comment said a one year retention period and left it at that, that was the proposal in the interim report. The ALAC supported that. We now have a proposal for a much more complex and convoluted and reasonable

replacement for it that Alan Woods provided. I just said we need to look at issues other than just ICANN's, and that was the whole point.

Yes, some public commenters said more than two years. You know, my guess is that they're not going to win. But their needs need to be considered but moreover, since what Alan Woods has provided is an interim – what I called the placeholder, he called an interim solution pending the study and I'm simply saying if the – who is going to be able to use the data, because he is very clearly focusing on who may use that retained data, if we are going to focus on that then we need to consider Purpose 2 as well, not just ICANN internally needs. Thank you.

Kurt Pritz: Thanks very much, Alan. I'm going to go ahead and propose some additional wording maybe at the end of this call or maybe afterwards and see if we can, you know, given the new writing of this see if we can get some agreement on it or agreement around that. I've been asked to conduct some sort of poll but I sense that we're split on this so I don't see the need in that.

So let's detox a bit, so let's take a break. I'll see everybody back here in 10 minutes. We're going to take up the issue of what's going to happen in the interim between the expiration of the temporary spec and the – finish of the implementation planning for this policy and then look at ICANN comments and then get out. So I'm going to conspire with staff during the 10 minutes and see what we can resurrect out of this discussion. So thanks very much and I'll talk to you soon.

Just another minute, everybody. Let's get started. Well thanks for starting the recording. Welcome back, everyone. The next item on the agenda is the implementation transition period. This is to address the anticipated gap between the completion of implementation work on this policy and the expiration date of the temporary spec.

So we discussed this in our face to face meeting about the creation that – the thought that this team, the EPDP team, can consider the adoption of a compliance bridge policy on gTLD registration data. We discussed whether that should be the temporary specification. And I had one other point but I think that's it. So oh that, you know, the leadership so Rafik and I and the support team did have a conversation with the GNSO Council leadership and they stated a preference for such a recommendation coming from this team rather than from some other quarter since we're working through all these issues.

So I think it's important for us to carefully consider and make a recommendation. I know that this started with – this started with – well James has his hand up. I was going to say this conversation started with James in our Toronto meeting and then we had a subsequent discussion. So I'll let James kick it off and he was the first to raise the issue and we can discuss the specifics of how we go about this and come to some sort of agreement around that. So James, could you please go ahead? Thanks for starting.

James Bladel: Hi, Kurt. Thanks. James speaking. And first off I should note that I fully expect that this topic is not as exciting outside of ICANN Org and contracted parties particularly compared to the last topic, but I did want to report on some of the discussions taken place since our meeting in Toronto. You know, we put this question – I mean, I think we identified this gap and the gap is between the, you know, the time that the temporary specification expires and the time that the new policy recommendations and contractual obligations resulting from this EPDP would take effect.

And I think, you know, I think first off it's a fair question to ask, why does there need to be a gap? Couldn't they just, you know, take effect, you know, as soon as the ink dries? And I think that is theoretically possible but logistically and practically registries and registrars and particularly those that have large systems distributed all over the world can't turn on a dime like that, we need

some time to have – give our engineers and production folks a window to make this shift.

And we certainly don't want ICANN Compliance, friendly as we may be with them, our frenemies, let's say, and ICANN Compliance to come and try to enforce something on us that is either already expired or hasn't taken effect yet during that window. So we need some clarity during that gap on what we should be doing and what ICANN Compliance should be actually enforcing against egregious type of nonconformity versus, you know, folks who are just doing their best to try and shift from one framework to another.

So that's the gap that we're trying to bridge. We put this question to the Registrar Stakeholder Group and I should, you know, in full disclosure, point out that we have not arrived at a consensus position; there are some mixed feelings. I think some folks have noted that maybe we can do this informally just negotiate a compliance framework with ICANN Org, just some sort of an MOU that says hey, you know, as long as we're making a best effort to implement the new, you know, the new obligations that, you know, you will cut us some slack in terms of compliance while we work that out for some period of time, for some window.

And other folks are asking for something a little more formal noting that sometimes ICANN Compliance can get a little creative in their interpretation of what we should and shouldn't be doing on a case by case basis. And so they've asked for something a little more formal and that's where this group would need to step up with a recommendation specifically for what it wants ICANN Org to – and registries and registrars to do during that implementation gap.

And so that's kind of the two options. I think that there's – I think you mentioned that the Council leadership is favoring something coming – and I think we heard this from Göran and from ICANN Org is that that would have to come from the community, it's not coming from the organization. And I was

with some folks on Council last week and I sense that there's some hesitation as well amongst registries and registrars that this sets a dangerous precedence that makes the walls of our contract very squishy and open to amendment on the fly the next time, you know, some sort of crisis rears its head which is bound to happen.

So those are the two kind of avenues that we have and certainly open to entertaining any new ideas as well. But I think the first one is an informal compliance enforcement framework that is agreed up by registries and registrars and ICANN Org versus something a little more formal coming out of this group as a recommendation.

I suppose if we wanted to split the baby we could say that this group could recommend that registries, registrars and ICANN, you know, adopt some informal compliance framework, I think that would strengthen up that informal process a little bit better if it had the weight of a policy recommendation coming from a PDP that passed through Council and Board. So that might be another approach.

But that's kind of where we sit today, you know, two weeks out of Toronto and I'd be happy to answer any questions but I think I pretty much gave you everything I know at this point so I'll drop my hand and we can start the discussion. Thanks.

Kurt Pritz: Great. Thanks for that introduction, James. Please go ahead, Kristina.

Kristina Rosette: Thanks. Kristina Rosette. The Registry Stakeholder Group has had very similar discussions to those that James has just described, have occurred within the Registrar Stakeholder Group including a very robust discussion during last week's stakeholder group meeting. I think at this point I just want to make everyone aware that there is not yet a consensus position – well I should say that there's not yet a consensus position within the stakeholder group as among the possible avenues forward.

So at this point we're a little constrained because, you know, we're not here in our individual capacities. So while we can certainly field the questions that folks might have about the various options, I don't think, you know, while I know we haven't received instructions from the Registry Stakeholder Group ExComm so we can't say definitively, you know, what the Registry Stakeholder Group view is. Thanks.

And it may, in light of that, I know that we have been pushing – I know that there has been effort to kind of really get that to decision. It may be more productive to perhaps defer this topic until next Tuesday. Thanks.

Kurt Pritz: Thanks, Kristina. And James, you know, one of the questions that comes to my mind is in the, you know, the compliance framework sort of solution. What would the timing of that negotiation be? And the process for approving it and, you know, and how would that fit within our existing timelines and the remit of this group? So that's my questions. Margie, go ahead.

Margie Milam: Thank you. It's Margie. I think it's a really interesting idea, James. Thank you for considering the compliance framework because, I mean, I totally get it, we've shifted some of the, you know, purposes and, you know, issues and so it doesn't make sense to enforce the old one given that we're moving to a different, you know, set of requirements that haven't been implemented yet. And so I think the framework needs to have input beyond the contracted parties but it also has to be flexible to note that, you know, certain things are shifting and that it doesn't make sense to enforce on the things that are shifting.

But from the, you know, from the BC perspective it would be problematic if there was zero enforcement on the temp spec and if say, just say hypothetically, you know, registrars or registries just simply stopped publishing Whois in the interim. So I think the compliance framework idea is an excellent one because then we can really highlight the things that would

be reasonable to, you know, be part of a compliance plan and stay away from the things that are shifting because of the policy.

Kurt Pritz: Thanks for that, Margie. Let's hope for a response to that. Tatiana, welcome.

Tatiana Tropina: Thank you. Hi, everyone. Tatiana Tropina for the record. As a GNSO councilor who attended the GNSO strategic planning meeting last week in Los Angeles, I would like to clarify a bit on what James just said. I sense that the general sentiment in the GNSO Council reaffirmed by Keith Drazek, is that the decision should lie within the EPDP itself. The ball right now concerning this gap, implementation gap, is at the EPDP court.

This shouldn't be something that GNSO Council would take over. And as far as understand in general, GNSO Council as a body which administered the policy process was not in favor in this contractual solution negotiated by contracted parties and ICANN.

So I was trying to raise the issue whether GNSO can send a clarifying letter or something to the EPDP requesting EPDP to come up with this interim solution. But, yes, well we didn't have enough time I believe and the issue is too controversial. But I wanted to affirm that the general sentiment or at least how it looked to me as to a councilor is that EPDP should come up with a decision concerning this, not GNSO, and not contracted parties. Thank you.

Kurt Pritz: Thanks, Tatiana. So, yes, it was my recollection that the Council view was that this team – the EPDP team – is empowered to make the decision here but if I understand your request you would like that to be made more formally. So if that's a correct assumption then you don't need to add anything but if I got that wrong then please raise your hand. Alan Greenberg.

Alan Greenberg: Thank you. Alan Greenberg speaking. You will recall that before we had the temporary spec there was a compliance model for – offered – not offered but proposed by ICANN and it was replaced by a temporary spec. And my

understanding, but I would welcome input from our Board liaisons, is that there was a strong feeling that the compliance model would work if everyone followed it but that it was not clear that it was something that was really enforceable.

If a registrar chose not to follow it then something which was sort of generally agreed upon by the Registrar Stakeholder Group was not necessarily something enforceable by law to those who didn't participate in the discussion. And therefore was the potential for having a compliance model which was really not enforceable.

And I think that would still be the case here. So I strongly favor the EPDP doing the kind of thing that James had suggested in Toronto and actually proposing that the temporary spec continue under a different name but continue as a policy recommended by us to the GNSO Council and the Council to the Board to be in place until the new EPDP longer term solution could be implemented.

The issue of a precedent, you know, if we say this is not a precedent and besides it's a precedent from an EPDP and there aren't going to likely to many of those in the future, I think that's a false worry. So I would strongly, you know, support a real policy as opposed to a compliance model which I think might not be something that is enforceable in the long term. Thank you.

Kurt Pritz: Thanks, Alan. That's a good comment. You know, it kind of goes to my timing question where if there is a negotiation between ICANN and contracted parties they – the contracted parties usually need to take time to go back to all their members so those negotiation become enforceable but that would be a question for the contracted parties. And I'm, you know, reading Chris's question in the chat.

And I think Alan's question was to, you know, what – to give some background around the discussion last time or before May 25 the compliance

framework was suggested but then was not taken advantage of and what were the reasons for that. James, go ahead please.

James Bladel: Hi Kurt. James speaking. And trying to respond or answer some of the questions that have come up the last four or five speakers so I'll probably get it wrong, so just bear with me. So first off, to your question of timing, I think, you know, if this group is planning to issue some recommendation that we pursue a compliance framework, that can be done in parallel with the work on the final report and so while this is being considered by Council and by Board, so I think there's some time to work on that concurrent with some of the final steps of necessary to approving this, you know, whatever comes out of this EPDP.

The second thing, and I think to Margie's point, I think she kind of nailed the dilemma of having something informal that we can move quickly. That is going to provide some relief for folks who are operating in good faith but does it open the window for folks to, you know, just deliberately stop complying with any framework, either the previous temp spec or the new framework? And certainly we would expect ICANN Org to go after anyone who was just kind of blatantly disregarding any obligations in this area as opposed to those folks who were just, you know, working through a transition process.

To Alan Greenberg's point about, you know, whether or not the previous compliance frameworks were enforceable; they weren't and mostly because I don't think they ever led to anything. I think that, you know, prior to the temporary spec being adopted, you know, minutes or hours before GDPR took effect we were really just kind of throwing around models and, you know, calzones and pizzas and all kinds of other stuff. So, you know, none of that was really meant to be binding. I think it was really just the community kind of hashing out what it could live with and what it believed to be compliant with GDPR.

So this – the risk of having something more formal as Alan pointed out, that goes through the Council, that says here's the temporary spec but we're calling it something new, we're calling it, you know, Fred Smith or something like that and put it through Council, we put it through the Board, the concern is is that that could be challenged by any given contracted party as a extension of the temporary spec into a fifth quarter, which, you know, is prohibited by the bylaws and probably would open up the question of whether the temporary spec was truly an SSR emergency as the temporary spec calls for in our contracts.

And so it could bring the whole kind of the whole house of cards tumbling down if we're not careful and we get one agitated contracted party that wants to push back on that approach. So I think, you know, I'm not advocating for or against either – there are pluses and minuses for each approach. And I'm hoping that maybe there are other ideas we haven't considered as well. So I'm just putting this all out on the table as things that are being considered. And I think to Kristina's point, registries haven't landed on a consensus position, neither have registrars. And so we are still kind of working through these issues and having these conversations on our lists. So thanks.

Kurt Pritz: Thank you very much, James. Kavouss, go ahead.

Kavouss Arasteh: Yes, thank you very much. I raise some question but I heard a different explanation. There we are talking of interim policy. I don't know what is interim policy. Then we are – heard also that this temporary specification will be replaced by the output of this group on a temporary measure or provisional measure until the time that the EPDP proposes solution. What (unintelligible) there are many open questions that we don't know yet what we are talking.

First of all I don't know the term of the interim policy, is something in a (unintelligible) that we can policy that or it's just policy? And also timeframe that if it goes to be a policy and should be adopted or approved by the ICANN

then should be taking some time and this time is connected with the 25 of May, 2019 – or 17th of May, 2019 but not beyond the May 2019. So there is a lot of timeframe to be discussed and to be clear. Thank you.

Kurt Pritz: Thanks, Kavouss. I think that's what we're debating right now. And it sounds to me like we're going to take in data and have some assignments to flesh some of these thoughts out and then continue the discussion. Matt, go ahead please.

Matt Serlin: Yes, thanks, Kurt. I just wanted to speak to what I put in the chat which was, you know, I know JJ came in and spoke to us in Toronto about this very issue. And I think like the rest of us, as James point out, are trying to sort of land on what the best path forward is. I think I actually ended up leaving as he was still talking so I don't know that we got to any firm conclusions. But I think it would be important for us to get some guidance from ICANN org about their preferred path forward.

I think to James's point, and I know Marika tried to answer some of those in the chat so thanks for that, Marika, but I think to James's point what we don't want to do is we don't want this issue, however we decide the path forward is, to include in the final report, we don't want that to be the thing that derails all of our hard work by getting it to Council and the Council has a problem with it or the Board has a problem with it.

So while, you know, in the grand scheme of everything that we're trying to tackle, you know, this is obviously a issue near and dear to the contracted parties' hearts, so it's very critical for us. But I do think we need to be really careful and ensure that whatever we include that final report is something that can ultimately end up being carried forward. Thanks.

Kurt Pritz: Thanks, Matt. So I think everybody said their piece. And I understand the two – I think we all understand the two options very clearly and I would, you know, first of all to the contracted parties I understand that you don't have

consensus among your group yet but, you know, as I think one or more of you said, it's time to get to that so we need that.

And secondly, in discussing the, you know, a negotiated compliance framework I think we'd need to flesh out the process for having that negotiation and the inputs ICANN might take in as part of that negotiation. And the process for, you know, the timelines for having the negotiation, the time it must complete, in order to, you know, as I think Alan said, be considered by the GNSO and approved by the Board.

So I think between now and Tuesday that would need to be fleshed out with some pretty good degree of specificity. I understand the risks that James and I think maybe somebody else mentioned in extending the temp spec and the vulnerability of that. But I also understand the chances that a negotiation might take longer than we have. So in a negotiated framework model I think we'd need to think about ensuring that we provide some solution in a timely manner which means by the necessary dates for approval by us or consideration by us and then follow on steps.

So I just wanted to take a look at the, you know, I see Thomas's comment, that's a good comment whether – and it's another part of the discussion whether the interim solution has a date certain or not, it's upon the implementation, so that's a consideration also.

So I'll just pause to see if anybody has more comments but my – you know, to the extent it's within my purview, you know, my charge to the contracted parties would be that to get to support around a model or two and then flesh it out with the sorts of things I talked about.

So to contracted parties, and first I want to, you know, were kind of focused on contracted parties here but everybody has a say on this. So what I was going to say next is really ask the contracted parties if everyone thinks it's

reasonable for some of writing on this rather than a verbal description so we can discuss some of the details that are being discussed in the chat here.

And second, you know, that's not to preclude anyone else from submitting, you know, a written thought with the rationale behind that too. James, please go ahead.

James Bladel: Hi Kurt. Thanks. James speaking. We got away with an action item as well as kind of putting a formal question in front of our stakeholder groups, Registries and Registrars, and getting a consistent position by our next call along with some written overview of what we expect to take a look, you know, if it were to be a compliance framework what that should look like at a high level. So we can take that away as an action item from this and not necessarily eat up more of our call time.

Kurt Pritz: Good. We could go back to retention periods. Does anybody else have any other comments on this? So I'd ask if the – I know we do meeting notes after each meeting but, you know, I'd ask the staff to like cut and paste some of the very specific questions that came up in the chat about the details of the transition framework or whatever we're going to do and so whoever wants to contribute a recommendation can take – maybe take those questions into account.

All right, the next agenda item is – has to do with the questions we received from ICANN Organization regarding areas in the temp spec that we have not addressed in our policy recommendations yet. And so, you know, I want to afford Dan or Trang to talk to these. My – so I don't know if you've read through this or not, I've read through it and have a sense that, you know, we haven't, in most of the cases here, we haven't included these elements in our recommendations for fairly good reasons.

And so maybe with some exceptions we – I think our – the breadth of our recommendations is fine. How I recommend going about this is there's six –

there's six questions posed by ICANN in this table and maybe a support team could just, to be helpful, paste – or the link is right there but paste it into the chat so people can click on it easily.

So my recommendation is to – let's read through the first three of these in five minutes and then come back. And we'll let, you know, I think the document stands on its own pretty well but we'll afford Dan or Trang a time to elaborate on them. And then, you know, it's sort of the same as public comment, right, so do any of these questions rise to the level where we need to discuss them and with a potential objective of including something in our final report to address the questions here?

So let's, if you don't mind, let's take a break. So there's – take the first three questions and if you look at the right hand column, the far right hand column you see the questions so keep reading until you've read the third question and then we'll come back in five minutes. I hope that's acceptable to everyone and I'll see you in a bit.

I hope that was a quick read for everyone. So thanks for coming back. The three – the first three questions had to do with the implementation of RDAP and SLAs that had to be completed by July 31 which I understand are still about 90% done but not completed. The second, that RDDS search capabilities must be done in a GDPR-compliant way. And the third is the – the amendment of registry registrar agreements and that be done where contracted parties be allowed to use model clauses from the GDPR.

So Dan, did you have any augmentation or any annotation you want to make to these first three issues?

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

Kurt Pritz: Yes. Thanks.

Dan Halloran: Thank you. And thanks for bringing this topic up. And I'm sorry Trang couldn't be here, she would do a better job than me walking through this. But as you've kind of laid out, this work comes from a big spreadsheet, Trang had emailed to the team before the holiday break where we had gone – we put the temp spec basically into the first column of the spreadsheet, and then in the column we tried to find where in the initial report the team had addressed each of the requirements in the temp spec.

And I think we found sort of dozens of places where the initial report seemed to be silent on something that was a requirement in the temp spec. And we know the team's job and its charter is to review the temp spec and determine if it should be policy, so we just wanted to highlight the items that we couldn't see where the, you know, where the team had come out and if they were intending to leave that aside or make policy on that or not.

And then the support staff kind of went through that and boiled down I think on – they proposed draft responses or the draft approaches which in most cases said something like well this could be addressed in implementation. I think it would be good for some people at least on the EPDP team to go through and make sure they're comfortable with all the responses. And then I think what we have here is a distillation of what was left and what the support team thought definitely should come up for full team discussion.

And the first three of these are requirements that were in the temp spec, you know, RDAP and then RDDS searchability and the amending RAA provisions. These are things that we put in the temp spec and they modified the existing obligations in the Registry Agreement and in the Registrar Accreditation Agreements. And so we need to hear from the team if these should continue to remain policy or if we should just delete them and go back to what's in the RA and RAA. Thank you, Kurt.

Kurt Pritz: Thanks, Dan. Marc. Thanks for starting.

Marc Anderson: Hey Kurt. Thanks. Marc Anderson for the transcript. You know, once again I want to thank ICANN Org for doing this work; I think it was, you know, useful, good to have this comparison document in place. You know, and I want to echo what you said at the top. You know, I think in some cases there's good reason why the delta exists, why there was language in the temp spec that didn't make it into the initial report.

You know, and – but I think it's – I think it's important that we, you know, we look at those and confirm that there's a good reason rather than just sort of, you know, back into, you know, sort of making a decision by not making a decision. So, you know, I sort of, you know, think we should make an affirmative decision that, you know, yes, it's the intent of this working group that we, you know, we, you know, in places where there isn't comparable language, you know, we should, you know, make an affirmative decision that, you know, that was our intent.

I do think there are some cases where, you know, some of those deltas we do need to address though. And I think in some cases, you know, we can defer that work to Phase 2 and in some cases though we may want to consider it here for Phase 1. But I have to note at this point, you know, I have not had a chance to read through the proposal from staff on how to do some of that and I apologize for that. You know, I know it was sent a while ago and I just haven't gotten a chance to get to a review of that. But, you know, again, you know, I think it's a really good point and something that, you know, we need to take the time to get through. You know, and maybe if there's an opportunity to do some of that on this call now I think that would probably be worth our time.

Kurt Pritz: Thanks, Marc. Yes, I think so I think what we have is the – when you say “ICANN staff” I'm going to make sure I have it straight. So we have, you know, recommendations from ICANN Org that we should look at these and decide whether or not they should be included too because there is that delta

that you mentioned. And the questions from the support team here really should we include these are not so not really a specific recommendation.

To – go ahead, Hadia.

Hadia Elminiawi: I have a question to the contracted parties and maybe to ICANN as well. So if we decide not to include for example the statements or the phrases that speak about RDAP will (unintelligible) third parties still implement the RDAP? I actually don't know. This is just a question. If we remain silent here, what will happen in this regard?

Kurt Pritz: That is a good question especially with some of those dates passed and so the effectiveness of that particular call in the temporary specification can be brought into question. Dan, before I get to you I think Marika wants to make a clarification.

Marika Konings: Yes thanks, Kurt. This is Marika. I just want to clarify indeed that the Excel document that we sent out and where you have an additional column that says kind of draft assessment, that is indeed the staff support attempt to kind of go through the different questions and look at them and kind of identifying, you know, where the group either has already addressed the issue or where it's still being discussed.

And the list of items that are currently on the agenda are there where, you know, we felt indeed there was a need, you know, to ask specifically the question that Hadia just asked, you know, what does it mean if the group doesn't opine on this issue and as such, you know, is it something that the group needs to speak up on or by not speaking up on it it's consciously saying that, you know, this is no longer required or necessary.

But as we said as well in the email that we sent out, you know, there may be other topics on that list that you believe need to be further discussed and, you know, we actually asked people to identify that before this meeting but, you

know, we know there's a lot on everyone's plate. So, you know, if this is not the full list of items that require further consideration, you know, you are requested to point that out as soon as possible so that that discussion on other topics can be teed up.

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

Alan Greenberg: Thank you very much. I guess I presumed but there would need to be words in the report saying that, that anything we are silent on we are reiterating from the temporary spec. If that's not what we're doing then I guess we either need to rubber stamp these quickly or decide that for some reason or other we need to debate them and modify them. I don't think we can ignore them. Thank you.

Kurt Pritz: Thanks, Alan. Dan, did you have – okay, go ahead, I'm sorry I missed you before.

Dan Halloran: Thanks, Kurt. Yes I think to Alan's point, that was basically the question we were asking is there are certain places in the initial report where it says such and such requirement in the temp specification is confirmed and shall be policy. And so, I mean, when you include one thing and say this part of the temp spec is confirmed that sort of raises the question well what about the other parts you're not mentioning and singling out and confirming? That's why we asked a lot of these questions.

And Hadia asked about – you know, what would be the effect if these temp spec provisions disappear? Then it would go back to whatever is in the Registrar Accreditation Agreement or the Registry Agreement. On RDAP specifically, that requirement is in the RAA and in most Registry Agreements but it's not in all Registry Agreements so those registries and legacies that don't have an RDAP requirement they wouldn't have any obligation to implement RDAP.

And we won't go into all the details about RDAP and its advantages and how it, you know, it's good for security and good for internationalization and, you know, it will be crucial whatever the community comes up with in terms of access requirements.

So we basically – we go back to where we were in the RAA and the Registry Agreements. And we went into this a little bit in the document saying there are discussions underway and it could be handled through contract negotiations. We wanted to check with you if that's what the team has in mind or if you wanted to confirm this as the policy recommendations. Thank you.

Kurt Pritz: Thanks, Dan. Marc, go ahead.

Margie Milam: Kurt, it's Margie. If I cool be in the queue? Sorry, I'm not in Adobe Connect.

Kurt Pritz: Sure thing, Margie, right after Marc.

Marc Anderson: Thanks, Kurt. Marc Anderson for the transcript. I wanted to run to two things, first I think Alan Greenberg just said that, you know, his assumption is that on things that we're silent on we're just then we're – then they should be, you know, approved or carried forward. And I'm not sure if that's what – exactly what he said or what he meant. But I just want to clarify that that's the opposite of my understanding.

And so just to say, you know, we had, you know, our first deliverable was the triage exercise, you know, the first thing we were asked to do as a working group was to do a triage and to confirm which portions of the temporary specification should be approved as policy without modification. And as part of that effort, we decided that no sections of the temporary specification should be approved without modification.

And, you know, so that was our first work product. And, you know, and so I just wanted to make that point that, you know, I think we're not, you know,

we're not keeping any portions of the temporary specification as-is per our first work product. And, you know, and then Dan talked about sort of – I think what I see as a problem with some of the – some squishy language in some of our recommendations where we refer to, you know, portions of the temporary specification and say, you know, this language should be confirmed. And I think that's problematic in the way we're wording some of those.

And you know, I think we saw that, you know, recently in the discussion around, you know, both the geographic you know, the, you know, the discussion around, you know, geographic differentiation as well as the discussion on how to deal with the org field where we refer, you know, just sort of generally to the temp spec. And I think that's a dangerous practice that we need to avoid.

You know, we need to be very explicit in what our policy recommendation is and we shouldn't be referring to portions of the temporary spec. I think that leads to, you know, that leads – that leaves room for interpretation. And I think, you know, Kristina, you know, recently made this point on one of the recommendations we're discussing, you know, rather than refer to a portion of the temporary specification, you know, we should be very explicit in what our policy recommendation is.

You know, I think if we don't we're going to have problems in the implementation and, you know, later when we get to enforcement of the contract. So sorry if I got long-winded there but I think that's, you know, an important point we need to avoid, you know, squishy references to the temporary specification.

Kurt Pritz: I think that's good guidance for our other recommendations and so we'll take that on board. I think, you know, there's – there is two different presumptions going on there. But I would think that a reader of our final report would make the assumption that if we were silent on something that's in the temporary

specification we intended that it not be included in our report. And so, you know, I want to try to get specific here and ask what – and so I think that's the path we've gone down.

And so I'd ask this group of these first three, having to do with RDAP implementation, search and the process for amending the RA, if any of those should be included in our report with specificity? I think that – my dog's barking at the thunder. So anyway, so let's get on that – with that quickly if we can. Greg, go ahead.

Margie Milam: Margie was in the queue sorry.

Kurt Pritz: Oh geez, you know, it's a senior thing. So Margie, can you please go ahead?

Margie Milam: Yes, I think I agree with a lot of what Marc is saying. And the difference between the temp spec and what we're doing is we're creating policy and the temp spec was a contract, right, it was basically a contract provision. And so I think it's okay that we don't address everything in the temp spec as long as the things that we're not addressing are things that are traditional contract terms versus, you know, concepts and things that need to be policy.

And so that's why I think it's a really good idea to go through the things that are missing and if it's like really something that should be policy like say RDAP, then, you know, we need to say something about it. But, you know, the rest of the temp spec, a lot of its contract terms with an implementation thing and we don't have to get into that much detail. And so that's what I would propose.

Kurt Pritz: Thanks very much. I'm pleased I remembered to call on you, Margie. Greg, go ahead.

Greg Aaron: So whatever we end up with, the final report is going to be – need to be really clear for its readers of what exactly we're recommending and where that

language goes and how it differs from the temp spec. So ultimately the GNSO Council and the Board have to know exactly what they're looking at and what they're voting on. So somewhere in this report – you can't have kind of the atomic scattered bits of recommendations ultimately we've got to have a place where everything is really clear and people can read it and understand it and then adopt it.

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

Marc Anderson: Thanks, Kurt. I think, you know, I agree with what Margie and Greg said but you asked that we get to the specifics of some of these. So we've got up on the screen, you know, RDAP, SLAs, you know, registry monthly reports, you know, Appendix A, registration data director services, and RDS search capabilities. You know, and noting, you know, I want to, you know, note what Dan said that, you know, there's some differences in contracts and so, you know, when the temp spec goes away, you know, there's sort of not uniformity – sorry for the mangling of that word – in how this would be dealt with.

But that said, you know, I think there's an existing, you know, SSAC 051, you know, recommends that, you know, the creation of a new protocol to replace Whois, that's RDAP, and that ICANN you know, pursue going down the path of, you know, replacing Whois with this protocol. And we're on that path, you know, with or without the language in the temp spec.

You know, I think the language you know, the language on RDAP and the temporary specification is well intended. I think it's, you know, it's well recognized that RDAP is the successor protocol to Whois. And that RDAP has many tools, you know, that improve on Whois and maybe useful in enabling or helping compliance with local laws such as GDPR. And, you know, I myself am very involved in RDAP and, you know, and am a proponent of it.

But if we boil down, you know, boil down what's in the temp spec here, I don't think that any of this language is necessary for GDPR compliance. And if we look at, you know, what we have to accomplish, you know, what, you know, what we need to do as a working group, you know, I don't think these are sections that we need to include certainly not in our Phase 1 initial report.

And so from my perspective, you know, I think it's okay that we didn't include any of these things in our Phase 1 initial report and I think it's okay that we don't include them in the final report as well. You know, I'll also note, you know, one of the sections, the Appendix A 1.2, RDS search capabilities, you know, this is going way back but in the registry comments on – during the triage effort, you know, we pointed out that, you know, where search capabilities exist in the contracts, and this was – this is a requirement on some new gTLD operators, you know, our comments during that triage effort were that the existing, you know, we see – we saw the existing contract language as already having protections in there suitable for GDPR.

And that the language in the temporary specification, while probably well intended, you know, we saw that as weakening the language that was already existing in the contracts. You know, and so I'll say, you know, at least from my perspective, if the language in Appendix A 1.2 of the temporary specification goes away and we revert back to existing contract language that would be an improvement on that particular point. And so, that's, you know, I guess you know, my take on this, you know, these first couple around RDAP is I don't see a need for us to include anything in our Phase 1 report on any of these items.

Kurt Pritz: Thanks for that level of specificity. Does anyone disagree with Marc on any of these? I'm of a – I'm of a similar mind but I don't really get a vote. Hadia, please go ahead.

Hadia Elminiawi: Well it's not that I'm disagreeing, it's just I don't get it; I don't understand. So Marc is saying, you know, that RDAP – the adoption of RDAP and the

implementation of RDAP is something that is widely agreed upon and that is going to eventually happen.

And no one said that we need to actually adopt the language as-is as what we have currently in the temp spec. But I was wondering so if it widely agreed upon and eventually is going to happen, why don't we put a few lines that mention RDAP and actually contracted parties could draft a few lines or a sentence that refers to that and could draft it in a way that they feel comfortable with. So I still don't understand why should we just not mention it at all?

Kurt Pritz: Marc, please go ahead.

Marc Anderson: Thanks, Kurt. Marc Anderson. Just to respond to Hadia, you know, I think the fact that we are, you know, I don't know what are we, eight months after May and the passing of the temporary specification, you know, or however long we are, and RDAP has not been implemented, tells you that this is simply not necessary for GDPR compliance. You know, the, you know, if it was necessary this would have happened already. And so, you know, to answer your question, Hadia, what problem are you trying to solve by putting language in here?

We are trying to get to GDPR compliance, do, you know, we're trying to make changes, you know, making policy, making changes necessary for GDPR compliance. And it's not here. You know, and as I said, I'm a proponent of RDAP, you know, I look forward to the day where we'll turn off Whois and we can have RDAP in its place, you know, it's a better tool, it has better functionality. But that's something we're already working towards outside of this working group, outside of this GDPR compliance framework that we're in now.

And so, you know, so outside of a specific need or a specific problem we're trying to solve I just – I don't see the need for having any additional language here in our policy recommendations.

Kurt Pritz: Hadia, is that a new hand?

Hadia Elminiawi: Yes, so if understand correctly, technically currently we don't need RDAP, we're doing the redaction. But later when we – when (unintelligible) is implemented, definitely RDAP will be required. And since this is now not a requirement we don't need to tackle it. I'm fine with that. But we need at least to mention that it's going to be (unintelligible) later or maybe Marc is saying that they are already working on this with other groups, then maybe we could refer to that, or maybe not since it's not actually required now and be required later.

Kurt Pritz: Thanks, Hadia. I hope you guys don't mind me taking the liberty of saying that, you know, when I read through these I was of a mind that, you know, our role here is to make our current processes GDPR-compliant. And so for the three of these, you know, the first says, you know, the first one talks about the implementation of RDAP, which is not necessarily required to comply with GDPR. The second that if we use any search capability it has to be done in a GDPR compliant way but I think that sort of applies to everything.

And third had to do with RA amendments and there's probably better experts in the room than I about the RA but that seems in line with the current RA amendment process so I didn't see any – you know, I thought we didn't include these things sort of on purpose. Margie, go ahead.

Margie Milam: Hi, this is Margie. I'm on the business. Hopefully you can hear me and I won't get dropped.

Kurt Pritz: Yes.

Margie Milam: I agree with Hadia that we do need to have an RDAP mentioned in the policy because I think without it, and maybe staff can correct me, then there is no obligation and it – yes, people are working towards it but I think we've got to get to a place where RDAP is the standard and it was through the contract, so that's what I'm a little worried about is by not mentioning it, that there's this ambiguity and what does it mean for Port 43 as an example.

But if staff tells us that we can still proceed, you know, with requiring the contracted parties to move to RDAP when, you know, whenever it's appropriate as we've been working towards, then I think that changes the analysis. But I think we have to have it here or the obligation may go away.

Kurt Pritz: Go ahead.

Alan Greenberg: Sorry, did you call upon me?

Kurt Pritz: Yes I did.

Alan Greenberg: Okay sorry. Didn't hear my name. In my mind it's clear that we need something somewhere because otherwise, yes, the big players are working as hard as they can but small player may not be. And ultimately we need to have it – a force of contract. But my recollection was all of the current contracts already have a clause in them saying RDAP must be implemented when ICANN decides, you know, that it is the protocol. I don't remember the exact words.

So if that is indeed in all contracts then we don't need to re-specify it here, but if it's not there, and it's not there in all of the contracts, then clearly I think we do have to do something because otherwise outliers may never get around to doing it. Thank you.

Kurt Pritz: Thanks. So I'd like – I don't know if anybody from the contracted parties or Dan can answer Alan's specific question. Farzaneh.

Farzaneh Badii: Thank you, Kurt. Farzaneh Badii speaking. So I think that this point has been raised and repeated for the past 10 minutes, however, I just want to reiterate that RDAP has a lot of issues and policy aspects surrounding the features. We are here to talk about policy. And the issues that we address if those issues can be better addressed by RDAP, our implementation of RDAP, then great. Or if the contracted parties can address those issues and implement those policies with other technical protocols then that's fine too. I don't think that we have to obligate them to implement this unless there are these policy requirements that we are going to come up with later on that can only be implemented by RDAP.

So I don't think there's a need to mention it, and if the contracted parties believe that they can better address these issues via RDAP, then they can just implement it.

Kurt Pritz: So if we develop requirements in our later discussions that would – that could only be accomplished through RDAP then that would be the time to make that recommendation, is what I hear you saying. Marc, go ahead, and then Dan and then we'll close this out.

Marc Anderson: Thanks, Kurt. Marc Anderson again. And apologize for keep jumping in here. But, you know, I think Farzaneh is essentially right. There is, you know, RDAP by itself doesn't do or solve anything and, you know, it's, you know, it's just a tool. And, you know, or just a protocol I should say. And there's nothing in our policy that requires RDAP. RDAP is desirable. You know, and again I like RDAP, you know, I don't want to sound like I'm anti-RDAP, I'm pro-RDAP, but there's nothing in our policy recommendations or anything that we've done so far that necessitates the need for RDAP.

You know, I think I'm, you know, hopefully I'm heading off what, you know, beating Dan to the punch but I'll say, you know, most but not all contracts include language for RDAP. You know, one example is the dotNet contract

does not have that contract language requiring RDAP. You know, that said, you know, it's, you know, there are other ways, you know, registries and registrars have been working with ICANN staff on the RDAP protocol and working to get it implemented for a long time.

Now there's a pilot in place. That pilot includes dotNet. And so, you know, I mentioned the SSAC 051 report, you know, SSAC 051 report was what led to the development of RDAP and, you know, the Board approved SSAC 051 and instructed staff to work on implementing the recommendations in 051. And that's what, you know, we as a community have been working on and working towards, you know, that effort is underway, you know, and continues to be underway and there's nothing, you know, there's nothing in our recommendations that necessitates us doing, you know, anything else to, you know, muddy that work.

Kurt Pritz: Thanks, Marc. Dan, please go and then I'll wrap us up.

Dan Halloran: Yes thanks, Kurt. Yes, I think Marc actually covered my point. And I'm not – I don't want to opine on dotNet specifically but it's – I'll say it's in the new RAA, the RDAP requirement, the 2013 RAA and it's in the new gTLD Registry Agreement and it's in some but not all of the legacy agreements. And we could come back with specific details later. I'm sorry, I don't have it at hand.

And one issue though is the requirement is the one general that says registries have to implement RDAP or registrars have to implement RDAP without a lot of detail about what that means and how exactly it should be implemented with what elements, with what responses. All those details need to be worked out in, you know, what's called the RDAP profile which is what the ICANN and the contracted parties have been working on.

And if you don't have this language then you just have what's in the contracts, which doesn't specify a profile, and we've had disagreements in the past about whether ICANN can require a profile. We're trying to work that out in

the discussions with the registries as said in the temp spec, and so it's possible that these things could be dealt with through negotiations and we add that to the RDAP EPDP team if you want us to handle this through contract negotiations or if this is something on which the team wants to make policy. And we can answer more questions offline. And sorry, this is kind of a detailed topic and we're at the end of our time slot here. Thanks.

Kurt Pritz: Thanks, Dan. No need to apologize, either you or Marc. Alan Greenberg.

Alan Greenberg: Thank you. Just a quick intervention that, you know, RDAP is not required for what we're doing now; it may well be required with some details for Phase 2, I don't think we have a risk at this point. Thank you.

Kurt Pritz: Thanks very much. So I'm of a similar mind that it's in our work to make our current processes GDPR-compliant it seems like a little bit of a non sequitur to require some new tool where that's all still being developed. So to me RDAP is still kind of an acronym with some fleshing out needed. So at this point I'm sensing that of these three items we won't – we will not include them in the – in our work.

I'll leave it for the support team to think about whether or not we need to say anything to that extent in our final report. And if anybody does have wording they'd like to include in the final report for any of these I'd ask them to suggest those to the email list. And then, you know, I was going to take the last five minutes to let you read these last three as homework assignments, but just to review them and to ask if any input is desired. We'll put as an action item to react to these.

But the last three questions, one has to do with – and you might have the document open in front of you – one has to do with section 7, which are how notices to registered name holders are made.

And if you'll remember this was sort of a, well we thought during the triage process to go back to that again, was overly prescriptive set of conditions. And that different contracted parties had different ways of going about this.

So on this one, you know, my charge to the contracted parties in particular would be to see if there's less prescriptive wording that might be included in the final report that indicates that notices to registered name holders need to be done in a GDPR-compliant way but maybe not this way with the 15 points.

The second had to do with consent and that if consent is – consent process is made available it be done in a GDPR-compliant way. And again, that's the question for us, do we want to go to that level of detail in the initial report? And then the final is in Appendix F having to do with bulk registration data access to ICANN and I'm embarrassed to say I don't fully understand this one. But amongst your other things, I'd like to know if any of these could be – you could raise an email if any of these rise to the level where we think we need to address them in the final report.

You know, it'd be my request that the contracted parties think about this Section 7 and if that can be reworded in some way that is meaningful but less prescriptive. So having gone through that I'll get back to the chat and see if there's comments or questions. Dan, could you go ahead please?

Dan Halloran: Yes thank you, Kurt. Just since we've got a couple minutes left I think we didn't really discuss that the third one just before, you know, the first set about the RA amendments, and the idea of that one it changes the normal rule that any RA amendment has to go through a review process that involves sending it to the registrars and waiting 30 days. And if hundreds of registries had to make amendments to their RAs just, you know, say implement – be under contractual clauses it was really to not burden registries and then registrars with having to go through that normal process but instead we worked out a standard template. So if that goes away we'd be left again with I guess whatever the standard RA amendment process.

I think this – and part of the other one I agree with you would be really good for the contracted parties a couple of representatives said, you know, they were still going through these and so it'd probably be good to go through offline because they are probably mostly of interest to contracted parties. Others may have interest but it sort of directly affects contracted parties.

If you want I could talk to the other three just to give a hint or are you out of time? No, I went over time.

Kurt Pritz: No, in fact – first that was really valuable intervention so thank you. And yes, please do take a couple minutes and so Dan will take a couple minutes and then Marika or Caitlin will wrap up and we'll get out of here in a few minutes. Thanks, everyone.

Dan Halloran: All right I see we only have two minutes left, I'll try to go fast. On the notices to registered name holders, that provision is changing specific requirements in the RAA that say exactly what notice you have to give to registered name holders and it updates it and adds elements that are required by GDPR. If we eliminate that it would be back left with what's in the RAA and registrars I guess would have to figure out on their own how to implement GDPR and how to make that consistent with what's in the RAA so contracted parties might like that.

The consent provision, 7.2, modifies what's in the RAA. This – if you look at the RAA today it says if you want a domain name you have to consent that your data is published in the public Whois. And, you know, it was recognized that was good anymore under GDPR so this language modified that and put in important restrictions on consent that it has to be freely given, it can be withdrawn, etcetera.

Bulk registration data, under the current Registry Agreement, registries are allowed to basically send their entire data escrow file to ICANN including all

the registrant contact details in order to satisfy the requirement for bulk registration data to ICANN. We said we don't want all that data anymore, please stop sending it to us and so we changed it to say you must just send us the thin technical data, please stop sending us the full thick data. And so if we got rid of that we might again be confronted with the registries sending us data that we don't want and it's unclear, you know, if there are issues with possible cross border transfers. So these are, you know, issues hopefully the contracted parties can go through and if anyone else has an interest and we can discuss it more next week or via email is fine too. Thank you.

Kurt Pritz: Thanks, Dan, that was really good. Marc.

Marc Anderson: Thanks, Kurt. I'm cognizant that we're out of time, so I'll try and go quick but just sort of a quick brush through this on the RAA amendments, this is probably something we need to go back to our stakeholder group on to get direction. But my sense is this was intended to be a one time you know, a onetime expedited process to facilitate discussions post temporary specification. So I think this will be maybe a discussion as to whether this is still needed.

On the 7.1 section, you know, I agree with your assessment, Kurt, that this language is overly prescriptive. You know, I think, you know, I think maybe it's fine where GDPR applies but, you know, there's a number of registrations that occur where GDPR does not apply. But this language sort of, you know, requires it in all cases. And so I think it's, you know, I think its overly prescriptive and perhaps not needed but that's something we can take back and look at now.

The consent one I think Dan raises some good points. I think we'll maybe have to take that back as well and consider those points. And then on the bulk registration data access, I think this is a – this is one, you know, this is a case where we maybe do want to keep this language. You know, I think it's

probably a good clarification here and so this is one we maybe want to consider, you know, keeping or carrying forward in our initial report.

But, you know, that's maybe a quick triage and I can take this back and try to respond to these on the email list in general. So thank you.

Kurt Pritz: Thanks very much, Marc. With that I'll close us. Caitlin, or Marika, could you give us a – some closure here and we'll get on with our lives .

Caitlin Tubergen: Hi, Kurt. This is Caitlin. I've captured a couple of action items. The first is that based on today's discussion about Recommendation 11 or the data retention recommendation, the leadership (unintelligible) updated language and they'll circulate it to the list. Secondly, the contracted parties are going to put the formal question in front of their stakeholder groups and come framework with a proposal in advance of Tuesday's meeting.

Lastly, the EPDP team is asked to review the additional ICANN Org questions and indicate on the list of any of these need to be addressed in the final report. And as discussed at the beginning of the call, leadership and the support team will shortly be circulating an updated version of the final report for the team's review. Thanks, Kurt. Back over to you.

Kurt Pritz: Thanks, Caitlin. And, Dan, I'm assuming that an old hand, no a former hand .so again, thanks very much for your – whoa, thanks very much for your intestinal fortitude and I'll be talking to you all soon. Bye-bye.

Terri Agnew: Thank you, everyone. Operator, if you could please stop all recordings? To everyone else, please remember to disconnect all remaining lines and have a wonderful rest of your day.

END