

**ICANN
Transcription
EPDP on the Temporary Specification for gTLD Registration Data
F2F Meeting - Day 1
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(Gina): So I just want to make a really quick - I want those guys to come in. I'm just spread out. Okay I just want to provide a gentle reminder to all of us that before the break I noticed that folks were starting to editorialize. And by that I mean rather than just sharing your idea, commenting on others, like, what they think, how they think about it, whether it's good or bad. I want to just ask everyone to have a gentle reminder that we are - we're not here to editorialize on each other's why people have their points of view. Please just express your own idea and share your concrete suggestion, what your concern is. And we'll just exercise that restraint.

You know, what I always say if somebody said something that about drove you crazy, maybe take a deep breath or let somebody else talk first which is not a problem in this - you know, we all like to talk. And then go the next time, okay? So just a gentle reminder on that.

So we are going to pick up Recommendation 17. The small team recommendation is to not have this as a policy recommendation and rather include it in the body of the final report. We're asking each group to have a spokesperson to the degree you can. It's very helpful. And we're framing up two questions.

The first is, is there any group that thinks that the concerns expressed in the public comments are not sufficiently addressed by this proposal to move this to the body of the report? It's an action item. Any groups that need to speak to that, Kavouss?

Kavouss Arasteh: Yes, as I discussed with you, I fully agree with the substance of the proposals of the small team. But I don't agree with the form. What is appearing now in the rationale should be a text of proposed update. Deleting the recommendation but indicating that what is done in the rationale as a proposed update. Saying that having taken careful - therefore this recommendation will not appear, but this text appear. So it is not way, good way presenting how we propose deletion of that. We should clearly mention that. So the approach is correct, but the form is to be reviewed.

And there is another problem saying that the language in the rationale. I don't know what we mean by the language. Which language? Because this article the language you have to have a specific language. Which language we are talking about? Thank you.

(Gina): Marc, did you want to respond? Oh, I thought you had your card up. Or you have your card up for another concern?

Caitlin Tubergen: I don't, yes Caitlin Tubergen with staff. The reference to the language is the entire recommendation would be removed as a recommendation, a policy recommendation. The language would be included in the report but not as official policy recommendation.

(Gina): Okay, Marc the registries have a concern?

Marc Anderson: Thanks, this is Marc Anderson for the transcript. I don't want to label it as a concern. So we'll just start that off. So I'm - I was on Group B, but I have to say I don't remember this conversation for the life of me.

Woman: (Unintelligible).

Marc Anderson: Okay, then Alan has some things he would like to say to all of you. All right, going to have a conversation with Alan later. But I'll go ahead and ask the question I have. I guess it makes sense, you know, I agree with the same. Like it's not a policy recommendation, so taking it out of the policy - as a policy recommendation, that makes sense.

And of course, you know, I think we all agree that, you know, phase two we're going to have the access discussion. All good there. Where I get a little fuzzy is I don't understand, you know, sort of at the end of the proposed updated language. There's - it's somehow tying this to the URS and UDRP concept.

And I'm - I guess I'm just fuzzy on what this is trying to accomplish and why. So I guess my - this is a question for somebody in Group A apparently, if you could sort of explain what's - what we're trying to accomplish by putting it in with the URS and UDRP language?

(Gina): Okay, (Alan) I just wanted to check. Do you have your card up?

(Alan): I didn't actually realize I did, but I see. I will speak very briefly. My speak is, I was on Team A. I vaguely remember this discussion. So I think just the notation of what team it is, is wrong. But I honestly don't remember it well enough to explain why it says what it says.

(Gina): I think - (Alex) were you going to try to respond? Anyone want to respond to Marc briefly? Okay, I guess we'll come back to you Marc. (Alex) let's hear from here. And it sounds like folks are comfortable with this understanding there might need to be some clarification. But I'm not really hearing any group that can't live with this. So (Alex)?

(Alex): Yes, so up front we could live with this. I just wanted to point out that two providers (Web Co) and (Forum) in the comment suggested that it may

provide productive if URS and UDRP providers were also consulted to provide an update on proposed URS and UDRP changes. I was not part of A so I don't know if that was discussed and rejected. But I just wanted to make a note of that.

(Gina): It looks like Alan has a response and then I see you Kavouss.

Alan Woods: Alan Woods for the record. The haze is lifting at the moment on Team A. Yes, so I believe this was related to the request that perhaps we look at being able to make requests for data prior to the making of URS. That was an (ask) consideration prior to the making of that, and therefore whether or not that would impact the URS or the UDRP, any recommendation that would be made would impact that. Therefore should we discuss that with the (ORPM) working group? I think it's easier to do that than to bring somebody in.

But at the end of the day we said this was a - it wasn't a recommendation, but it was an action point. And that was it. I mean very hazy, but it seemed very straightforward at the time that it was an access issue and therefore we wanted to fix the access conversation.

(Gina): Okay, I just want to check in. We're about an hour behind schedule. We have, it's 10:00 right now. But we have the high bar and we also ask you to prioritize. Stay focused on what's important to you. If this is important to you, absolutely let's talk about it. But we're trying to stay focused and we have a long list of things to go through today. I just would provide that gentle reminder.

Okay, so let me just check in? Can I just check in and see where we're at? Is there any group that cannot live with this proposal? Given the public comments received, given the rationale that you've heard, is there any group that can't live with this proposal to move this to an action item? And articulate this in the final report? I'm going to go to Kavouss because he's waiting and them back to you Alan. Kavouss?

Kavouss Arasteh: As I mentioned, I have no problem to remove that because it is an action item, not recommendation. However, the way we express our intention is different from what is proposed here. We could say that we remove this recommendation because it's an action item.

(Gina): Great.

Kavouss Arasteh: However, we raise it as a flag in the final report.

(Gina): Yes, and we'll have to characterize that correctly in the final report. Thank you for that reminder. Can I go to Alan? He was waiting, yes, go ahead Alan Greenberg.

Alan Greenberg: Yes, my haze is slightly lifting as well. And we - I think you or someone asked the question. Did we consider the comment from the URS provider saying they should be present also? My recollection is we said they should be present at the deliberations. Here all we were asking for was a briefing. So we presume they will be present in the PDP, but we didn't think we needed to invite them to tell us the status of the PDP.

(Gina): Okay, so that could be captured in the response to comments, okay. Alan Woods and then I think we're about ready to move on.

Alan Woods: Alan Woods for the record. I am just wondering in the proposed updated language, was - is that typo as well. That is shouldn't be in the very last line include in the body of the final report on a recommendation. But should be in the body of the final report under action items related to. Because we're saying it's not a recommendation. Then we say we should put it in as a recommendation. I - just doesn't make sense in my head.

Woman 2: Yes, it won't be included as an official recommendation.

(Gina): Okay, I'm going to move on. Thank you all for those clarifying comments and we really appreciate that.

So now we're going to Recommendation 18. Recommendation 18 which essentially has the team has recommended striking the last clause and they did ask that the full team review this. Is there any group that thinks the concerns expressed in the public comments were not sufficiently addressed?

Is there any group that can't live with the proposed proposal given the public comments received? Is there any group that can't live with the proposed updated language given the comments? (James)?

(James): So I don't want to characterize this as can't live with it, but we did have just one possible addition that hopefully is an improvement is to include the work appropriate in front of data processing agreements or something like that. Because I think that there's a concern that we get into, specifically into a GDPR mindset and we don't think about other types of data processing agreements. And I hope that's not controversial or takes away from what we're trying to recommend.

(Gina): Okay so the suggested edit is the EDP, the team recommends that ICANN.org must enter into an appropriate - into appropriate data processing agreements would dispute resolution providers in which amongst other times, the data retention period is specifically addressed. Is there any group that can't live with that edit? Kavouss and then Trang.

Kavouss Arasteh: I have no problem with this text, but we should look that we do not contradict what we said or what we will say about the data retention period. I remember somewhere either we said, or we will say one year minimum and so on. So this are connected to that. They should be cross referenced because we clearly mention that.

If you address that, I have no problem with the proposal. But there is a link between this one and the other recommendation dealing with the minimum one year period which we later on updated. So there is a link between the two. Thank you.

(Gina): Thank you. Trang?

Trang Nguyen: Thanks (Gina). This is Trang from ICANN Org. So Recommendation 18 is somewhat similar in nature to Recommendation 21 which we discussed earlier. And Recommendation 21 refers to - requires ICANN to enter into the proper data protection agreement with third party processors.

You know, (Ebera) or data escrow agents and then this one is relating to ICANN entering into data protection agreements with dispute resolution service providers.

So they're similar in nature, but I think that the approach that was taken in Recommendation 21 provides a little bit more flexibility in implementation by referencing data protection agreements rather than data processing agreement which is the language that's in Recommendation 18.

So I was just going to ask whether or not there's a reason a specific reason as to why the same approach couldn't be taken for both Recommendation 21 and 18? You know and making a referenced just to data protection agreement rather than data processing agreement.

And I guess the nuance there is that I think data processing agreement refers to a specific controller processor relationship whereas data protection agreement leaves open the flexibility of what type of arrangement, you know, could be done during implementation. So just wondering if there's like a specific reason why there's a different in approach taken for Recommendation 18 versus 21. Thank you.

(Gina): So Trang your proposal is to consider changing data processing agreement to data protection agreement. Okay, I think Margie was going to reply.

Margie Milam: This is Margie. I don't know that we talked specifically about it, but when I looked at these two recommendations, I think the difference between the UDRP providers is that I understand ICANN doesn't have an agreement with them right now.

So it's probably a broader agreement than just what you would do in 21 which is, you know, you've got your registry agreements, you've got your registrar agreements, now you're doing just the specific data protection stuff. And I think what we're talking about for the UDRP is a real contract not just for the processing, but I don't know if others agree with that perspective.

Trang Nguyen: And Margie just a quick clarification, I think 21 was with regard to the third party providers like (Ebaros) and data escrow agents and not, you know, contracted parties like registries and registrar agreements.

Margie Milam: Exactly, but ICANN has agreements with the (Ebaro) providers, right and the escrow providers already in this? Or am I misunderstanding? But there is no actual agreement with the UDRP providers at this point.

Trang Nguyen: With regard to data escrow that in the three-way agreement ...

Margie Milam: The three-way agreement.

Trang Nguyen: ... that ICANN is a beneficiary but not a direct party to the agreement. Although there's a template that ICANN approves and yes.

(Gina): So does that change anything for you?

Trang Nguyen: No, I think the question still remains whether or there's a specific reason why it needs to be data processing as opposed to data protection.

(Gina): Okay, I've got (James) and Stephanie that can help us out with this.

(James): So my question was that, sorry trying, that it was data processing. Doesn't that - data processing is more narrow than data protection. Is that correct? Is that your assessment? So wouldn't processing be the more prescriptive recommendation? And should we - instead of changing 18 to match 21, should we change 21 to match 18?

Stephanie Perrin: Stephanie Perrin for the record. Yes, and I don't want to go off on one of these tangents or rat holes or whatever you want to call it. But the fact is as far as I'm concerned, the relationship between ICANN as data controller in the setting of policy and the accepting of, in other words the accrediting of UDRP providers, that has to be rebuilt into a data processing agreement with ICANN the controller and these guys as processors.

Because otherwise the ecosystem doesn't hang together. You have a bunch of independent UDRP providers that are acting totally outside and yet they depend on the RDS data.

So they are then going to have to come in as third or fourth party applicants for the release of data. So if you want to control this in a way that is continuous to the other relationships, you have to call them a processor. You're going to have to revamp the relationship which involves contracts. And that's so far out of our remit as the EPDP, I think I got that right, that we shouldn't go there.

(Gina): Okay (Thomas) and then I see Kavouss and (Thomas) anything you can do to help bring us to closure.

(Thomas): Hello everyone. I missed this so much. I'm so glad to be here. I think that your point (unintelligible) is a good one. And I think it's so general in nature

that I think we should try to reach agreement on how we approach these things. For this recommendation it's for 21 as well.

Certainly we need to ensure that the appropriate paperwork is done regardless of what third parties are involved. But when it comes to who's the controller? Who's the processor? I think we, as a team, need to determine what it shall be. Whether we want ICANN to controlling what the UDRP and URS providers are going to do with the data and dictate that. And make sure that everything's compliant.

And my understanding was that when we came up with the draft recommendation or the preliminary recommendation, that we wanted to do exactly that. That we wanted to narrow things down so that this is actually not a good 28 data processing agreement that needs to be entered into.

If we want to move away from that, that's fine. But that's - it's not only words. This has severe implications on what we want to offer as community guidance for how ICANN is going to deal with third parties.

And, you know, when we're discussing a bureau, escrow agents. That was the question just a minute ago whether, you know, there's something in place or not. And ICANN has entered into agreements with some of them, but they, to my knowledge, are not covering data protection.

So, you know, even where escrow agents or bureaus are contracted, there is nothing close to Article 28. And I think that, you know, I think we shouldn't be sidetracked too much, but I guess that the escrow agent and the bureau situation are the ones that are very much depending on ICANN's direction.

ICANN says explicitly what data shall be escrowed, to whom it shall be revealed. So I think that's the - that and the bureau stuff is closest to 28. I think with UDRP and URS providers, you know, you can discuss whether, you know, it's a discussion among independent controllers. I think we're

closer to a data processing scenario and Article 28 there too because ICANN has set out all the policies for how (unintelligible) of them to handle what data is being collected, what stage. To whom it is revealed at what stage.

So my suggestion would be to stick to the original language. I think that public comment has not given us new insights that should navigate this group away from requiring a data processing agreement. And keep it then.

(Gina): Okay, thank you. Kavouss and then I'm going to check back in with Trang.

Kavouss Arasteh: Let me repeat what I said. If you read the second line of this proposed update Recommendation 18, it said among other items, the data retention period is specifically addressed. This is addressed. We will check to that in Recommendation 11. Therefore we should cross reference that recommendation. Thank you.

(Gina): Okay. Marika's going to respond to that and then I'm going to come to you Trang.

Marika Konings: Yes, thanks. This is Marika. Kavouss, just to clarify that the recommendation you're referring to, that is a data retention period for contracted parties. This specifically talks about working out with DRPs with the retention period should be. So they're two separate items even though they both talk about data retention.

(Gina): So Trang, I'm coming back to you. It sounds like from the committee, the team that they're recommending that it stay with the data processing agreements. So I don't know.

Trang Nguyen: So and I think we've said ICANN org has said this many time in the past that, you know, on topics like these, it's a matter of law that determines what kind of an arrangement it is. It's not really a preference. So I think from our perspective what we want to do is have the appropriate time dedicated to

doing that sort of, you know, necessary analysis to determine what is the right legal conclusion and what is then determine the appropriate arrangement to enter into. And I think having the language of data protection agreements in here allows us the ability to do that during implementation.

I don't disagree with you (Thomas) that ultimate what we need to get to is, you know, a definition of the roles and responsibilities. Who does what? You know, we need to get to that level of specificity. But I think that's where we can get to during implementation and we just need to have the flexibility in the policy recommendations in order for us to do that kind of analysis during the implementation period. Thank you.

Man: So I heard (Thomas) when you spoke, I heard you say, you know, we're closer to Article 28 or 26 or vice versa, one or the other. But I think - so listening to Trang, you know, I think our role is to get the right - make sure ICANN gets the right sort of agreement in place. So I'd be for leaving that choice open to analysis.

But I also heard you say that we want to make sure that the UDRP process is adequately controlled and not let for providers to be totally independent. So if there's an intersection between, you know, independent controllers and the right amount of control then we should - if we think that exists, then we should provide that choice, I think, in that recommendation.

That they, and use the language from Recommendation 21, that provides some of the choice of data controller, data processor. But I could be misunderstanding.

Alan Greenberg: I'm going to suggest something. Alan Greenberg speaking. I'm going to suggest something radical. I would suggest that regardless of whether we use the term protection or processing in this recommendation an implementation review team, an implementation team is going to accept the concept that ICANN should actually analyze this.

And if it comes out with a recommendation. ICANN says we really believe it should be a X agreement instead of the exact word is in the recommendation, no one will feel they are in gross violation. If there's an analysis and a recommendation.

So I would say it is not worthy of our time to debate which of the words it's going to be. If we believe what will happen is ICANN is going to, from a legal perspective, in consultation with various authorities decide which is the right one. Do we really need to worry about it at this level? And perhaps (Thomas) thinks we should.

(Gina): Stephanie, and then (Thomas) and then we'll check in and see if we can wrap this up.

Stephanie Perrin: Stephanie Perrin for the record. I certainly think we should. Data protection agreement doesn't have any meaning under the GDPR. So it's another one of these generic terms that don't help us reach compliance. And in fact, introduces more confusion. I and it doesn't help us sort out the accountability which is one of the fundamental things we're trying to sort out in this. Thanks.

(Gina): Okay (Thomas) do you want to hear from (Ruth) real quick on this?
(Thomas) and then I'll go to (Ruth).

(Thomas): Let me just try and explain why I think it does make a difference whether we change the language or not. I think that our group came to the conclusion that we want to have the language data processing agreement which is Article 28 in there for a reason. Because you know, looking at this. Looking at the level of detail in which ICANN prescribes how data is being handled, given that ICANN has a couple of registries for example. They are having their own dispute resolution procedures that they run themselves.

So ICANN could, in theory, do this themselves. So they're basically outsourcing a dispute resolution function. And that would be a typical processing controller processing scenario. And if we keep that open, if we don't express that we want ICANN to enter into a written agreement with those third parties, then there might not be a written agreement. And if you fail to have something in writing with the process, that's subject to fines.

So I think that, you know, we're going to have implementation oversight for this whole thing. So should we actually find out that there's a different way of doing things then the implementation oversight team can take a look at it. But, you know, the question before us today is whether public comment requires us to change the recommendations that we put into our initial report.

And so far I haven't heard anything that would make us change that. Because I think that, you know, we've done this exactly the way we framed it. I'm happy with the change - with the suggested shortening of the recommendation. That's fine. But I wouldn't walk away from the data processing agreement, because that can have legal impact, i.e. sanctions if we don't get that right.

(Gina): Okay, (Ruth). And if could say your name please before you make your comment, please.

(Ruth Bordman): Sure thing. (Ruth Bordman). As she said data processing agreement has a particular connotation under GDPR. And whether a party is a processor or not is a question of fact and law. So my question is has the policy team done the analysis to be certain that the provider is a processor or not? Because if the analysis has been done, then that's the right agreement. If it hasn't then we're requiring something to be put in place that may be not correct.

Hadia Eliminiawi: Hadia Eliminiawi for the record. So actually what (Ruth) just said is actually my comment because I think the problem here that this team has not yet identified the roles and responsibilities of each party.

And that I think was in the initial report. There was an Appendix C which had a table with roles and responsibilities. I'm not saying that this table should be maintained as is, but I'm just saying that we didn't do that work yet.

So I think we have two options. Either we attempt to as a team to define the roles and responsibilities of each party. Or we keep the language open for whatever type of appropriate agreement would fit for any of the purposes. So I think that here we either say appropriate data protection agreements or we as a team decide to define the roles and responsibilities and based on that we can use where it's like processor agreements or joint controller agreements or independent controller, whatever. Thank you.

(Gina): I'm not really sure where to go with this. Any ideas (David)?

(David): So it feels to me that you have some legal advice saying if you haven't done the homework, then it's hard to be so prescriptive. That's what your legal advice is saying. At the same time, you all are saying you want to give some signals that ICANN has a big role to play. And ICANN is a controller here.

So I don't know. I feel like you guys, you honestly have done the homework, right? So it seems to me your legal advice might be helpful in this situation. And you should leave it open and maybe give any signal you want to give about level of control. Stephanie does that make sense to you?

Stephanie Perrin: Yes, but the unfortunate corollary to that is we would have to strike all reference to the UDRPs. I mean we haven't done any data mapping here. So we don't have the entire lifecycle of the data. We haven't done policy mapping and ICANN has not done a legal review of all of the policies which it has set in place to govern this - the DNS over all the years. So therefore there's a whole lot of holes, right? So you've got to strike it, you know. If that's the advice.

- (Gina): So I'm going to go to (Chris) because he, we haven't heard from yet. And then I'll come back. I see (Thomas) and Alan G.
- (Thomas): Just wondering whether we can't simply build on (Ruth)'s input and simply say in the event that the legal advice it is, then do this. Can we not just put that caveat in? Make the recommendation subject to advice. I mean it enables you to move forward with, unless I misunderstood. I'm happy to accept if I have. Enables you to move forward with the recommendation and to instruct and basically say get the advice down. And if it says you need to do it, do it. Is that, I mean is that completely off pace?
- (Gina): So you're saying, say appropriate data processing agreements subject to legal advice?
- (Thomas): Well I'm not quite sure what the right words are at this stage, but if you - what (Ruth), if I understood (Ruth) correctly, what she says is it's a fact. So either they are processes or they're not. And you can get advice to that effect, so why not say if they are deemed to be processes and advice, do the following?
- (Gina): Okay. Let's see, I have (Thomas) Alan, Margie. Margie took her down.
- Alan Greenberg: Thanks, I'd just like to go on the record and say that, you know, we will have no one - not one point in our report where there's not going to be at least one party that says we haven't done enough work or not deliberated enough. So to say that we have done nothing on this is I think inaccurate. You know, maybe we haven't had as much group discussion. Maybe we haven't written as much as we should have.
- But many on this team have done extensive work on this previously. And we just didn't take the idea of making this a controller process or calling it a controller processing scenario out of the blue. You know, so that there has been a lot of thought going into that. I just wanted to flag this because I think that, you know, it's not an accurate statement to me made and sit here that

we've done - we haven't done anything in this regard to make the determine that we did in our initial report.

(Gina): Okay, so I'm looking for concrete suggestions to bring us to closure. Concrete suggestions, we heard from (Chris) the suggestion that we just add in the subject to level review or legal advice to have a caveat to finish out the processing activity and mapping and determine if that's the appropriate. Alan can you help me bring this to closure and make concrete suggestions, please?

Alan Greenberg: Thank you. I would suggest we remove the term data processing and replace it with appropriate and punt it to people who will actually do the work. That we enter into appropriate agreements with dispute resolution providers.

(Gina): Okay, appropriate agreements, thank you for the concrete suggestion. I have Margie. Did you take your card down? Okay, I have (Emily). Did you take your card down? You like that proposal? Milton, I've got Milton, Kristina, (Diane) and I'll come back to Stephanie.

Milton Mueller: Yes, unfortunately my proposal is, kind of, diametrically opposed to Alan's. I think that we are talking about data processing. And we should say so. And I would just support leaving data processing agreements in both 18 and 21. At least it has a legal basis and I agree with (Thomas) that we have thought through this. Who was a processor and who's doing what?

(Gina): Okay, I'm looking for specific, concrete suggestions and trying to marry the proposals on the table. Kristina.

Kristina Rosette: Perhaps not as concrete as you would like, but I would suggest if after we get through the queue we're not at agreement, that perhaps we just plan to come back to this on Friday morning. And just move on because I think people are, yes.

(Gina): (Diane).

(Diane): I was going to simply suggest a little more specificity since we all know that these - we don't leave it to just appropriate agreements, might be too vague. We know that there are data protection agreements in some form. So we could say appropriate agreements and then much to (Chris)'s point, say subject to further legal analysis which determines the need for data processing agreements.

Stephanie Perrin: I actually think I could agree with what (Diane) just suggested as long as the words data processing agreements are in there. I would appreciate it if somebody could explain to me what a data protection agreement, what they're envisaging, if it isn't a data processing agreement, because I can't.

(Gina): (Emily).

(Emily): I was, you know, I'm very comfortable with what (Diane)'s proposed. I was only going to suggest that, you know, this is actually sheep eating what (James) suggested earlier which is that we say ICANN org must enter into data process agreements comma if appropriate or as appropriate comma with dispute resolution providers. And that way we get - we recognize Milton's point that this is about data - this is about data processing. It gets the, you know, we don't really know whether or not it's appropriate. And it just, sort of, puts the mark down and so that's...

((Crosstalk))

(Emily): ...comfortable.

Man: I'm okay with subject to further advice or something like that.

(David): Let's try to just nail what we're saying here folks. We're saying essentially putting - leaving somewhere in this data processing agreement and putting in here subject to advice or subject to some legal advice.

So essentially we are taking this and adding a clause in there to say subject to legal advice. Okay? So we are taking this same phrase and we are inserting in that phrase subject to legal advice. Okay, take a good look at it. Yes?

Man: (Unintelligible).

Man: All right, bring it on.

(Ruth): I thought the suggestion was that you said and to data processing agreements comma if appropriate comma with dispute resolution providers.

(Gina): That's the other option on the table.

(David): Okay, so let's do that.

(Gina): (Unintelligible) or if appropriate.

(David): Enter into data processing agreements comma if appropriate, yes? It doesn't need subject to legal advice at that point. That's the if appropriate, okay? Okay, can anybody not live with this language adding in if appropriate after that word agreements, okay? Can we put this to bed with that? Great. As appropriate, great. Should we take a break? I feel like we need some air, yes.

(Gina): Then we're going to come back and tackle Purpose 1 and then, oh I'm sorry. I forgot. Then we're going to - let's take a 10-minute break and then come back and then we're tackling Purpose 1 which I was assured while we take five minutes. And then that was a good joke. And then we'll go to the Purpose 7

and then we'll just keep plugging. I think if we can get through five and seven, we'll see how it goes.

(Thomas): Can I just apologize on behalf of (Leon) and myself that we now need to leave to go to a board meeting, but we will see you at dinner. But we can't stick around for the next couple hours, because there are other, believe it not, there are other things happen at ICANN apart from this. I know, hard to believe.

(David): Take a 10 minute break, folks. Take a break. There may be some food still out there. Drinks, no food, okay. Let's take some air. Move around a little bit and we'll get back into it.

Okay - whoa that is hot. Okay, so a little powerful, you can back it off. Thanks, better. All right guys, we're going to get going, so if you're outside, come on in. Okay, here we go. We're going to dive into Purpose 1 right now. And before we do actually a five minute pause to just read the comments. Read the PCRT before we do that five minute pause.

Because we really need to go back into the actual comments here to help shape this up. Kurt you wanted to frame up the two issues. Because what we want to do is Kurt's going to say just a couple words. We're going to pause for five minutes and read those comments again. And then someone's been working on Purpose 1. I think the registry/registrars, right? You've guys have been thinking about this, right?

And so I think it's important for you to bring up your thinking and how far have you gotten, okay. But Kurt why don't you take it away and lay out these two issues? You ready to do that?

Kurt Pritz: Yes, thanks.

(David): Okay, cool.

Kurt Pritz: And actually, you know, I think I'll do a little more. So there were two recommended changes to Recommendation 1. One had to do with the addition of the world obligation. So not only serving the rights of the registered name holder, but also their obligations

And the second was the suggestion by the RYSG that we break it into two purposes essentially. One is for the registration of a name. And second, you know, I don't know if the right word is provisioning or maintenance, but the operation of the name.

So as I recall, they broke that into two purposes. So you know, I thought about both of those. And so here are my thought exercises going in. When you look at Purpose 1, if you want to add the word obligations for the registered name holder and test whether that is meaningful, I would take out the word rights. So data's collected, you know, only for the - to ensure the obligation of the name holder. You know, does that make sense here? Or does it make sense somewhere else?

And my second point goes to the RYSG recommendation to divide it into two. You know, even if we kept it as one, there's still two data maps or two data processing workbooks that - two data processing activities. So I wonder if it can be addressed equally well in that way. I don't know. I think it would work either way but and it's up to you guys to recommend the path.

So with those two suggestions, I'll send you guys off and we'll see you in five minutes.

(David): Yes, so let's go ahead and take five minutes. If you feel like you've already read thoroughly the comments on this, use those five minutes to discuss among your stakeholder groups. If you haven't actually read the comments, now is a really good time to read them, okay? But let's take five minutes and do that and then come back and then we'll hear from, so the contracted

parties that have been wrestling with particularly the issue of splitting it in two. Okay? So let's take five minutes.

Please read through the public comments if you haven't on this. Make sure everybody's read them. And if you have time, then talk amongst your groups and let's try to come back again with a single voice from the groups. Okay, five minutes please.

(Gina): One group has requested three minutes. So we're going to give them three minutes and then we'll come back and pick up Purpose 1, the public comments submitted and articulate the issues that folks are struggling with there.

Okay, yes we're waiting. Do you want to do this?

Woman: Sure.

Woman; Who is providing those? Okay.

(David): All right folks. Okay, so we had a chance to look at this. We've heard about the two big issues. Kurt tried to lay them out. We've read through here. And now there's some efforts to make progress on this, right? Contracted parties have been wrestling with this, right? To figure out particularly the issues of whether this thing needs to be split in two, right? I don't know if you've been looking at the obligations pieces as well.

But could you give us a quick update about where you're at in your heads on the whether this needs to be split in two?

Marc Anderson: Thanks, this is Marc Anderson for the transcript. So first just a quick question This is - this came from registries, not the full contracted party house. So in fact we were, you know, trying to bring registrars up to speed on this. So this is a registry position.

And I think, you know, in the registry comments for Purpose 1, we proposed splitting out the purpose into two different purposes; a 1A and a 1B. And when we came back from break and first started sort of deliberating on the public comments, we were - the registries were asked to provide a little more justification or rationale for why we made that proposal.

And so we went back to do that. We were also tasked to update the worksheets because that would be impacted by our proposal to just put it out to two. So we have been working on that. We actually have a draft of the rationale as well as a draft of the worksheets and I think we're, you know, we're pretty much there. We're ready to share it with the group.

I do want to try and tee it up a little bit like where, you know, what led to this proposal a little bit? And I think it probably started when it was identified. The Purpose 1 as written in the temporary spec did not include the transfer of data from the registries to the registries. And that was, you know, that was an issue for some registries. When we started to grapple with was the fact that registries have in some cases very different business models. And you know, and we were trying to come up with a way to take into account eth different business models and different needs. And in some cases some registries require the transfer of that data in order for them to fulfill their obligations as a registry operator. And in some cases, they don't.

And so we started looking at how to propose updates to take that into account. And this gets to, I think, Kurt's point. You know, can it be one per, you know, can it be accomplished with one purpose? And we originally went down that path of trying to account for the different business models as one purpose. And it got, you know, it got ugly. Could we do it as one purpose? Sure. But we found sort of internally leading up to our public comments it was a little bit easier for us to break it out.

If you look at how we broke it out, we broke it out along the lines of, you know, sort of the pure technical activation allocation functions. It's a pretty straightforward. Sort of the, you know, the mechanics I guess if you will whereas the other piece that varies from registry to registrar and business case to business case we put in a different - in the other purpose and it was a little bit easier for us to grapple with it sort of internally leading up to this proposal. Once we separated out along those lines.

So I don't know, helpfully that sort of tees up, you know, what we were thinking and why we came up with that proposal to split out. And sort of identifying, you know, the activation allocation aspects and then, sort of, these other aspects or in some cases who have specific obligations that require the transfer of that data and, you know,

Alan saying Spec 11 for example in cases where, you know, the registry in order to fill their Spec 11 obligations requires that data. Then they have a means and mechanism to require that.

(David): Fantastic, okay. That's super helpful, Marc. Thanks so much. And I think knowing that this is - we're not looking at final language. So it's hard to really say yeah or nay. But do people want to react quickly so that as Marc and his colleagues are putting this together, they have some input that anticipates how you all going to react? (Emily) you had your card up first and then I'll jump to Milton.

(Emily): Just to say that's the idea is separating the, kind of, very technical, mechanical function of what's needed to just get the registration done. And separate that out from the idea of the, you know, the Clause 1. However that's finally worded. I think that's a really helpful intervention and thanks a lot to registry (unintelligible) for putting forward the rationale.

I've also got some suggestions on the obligations point (David) that you mentioned, but maybe we'll come back to that?

(David): Can you hold on to those for just a sec? And then we'll stay with the split and then we'll come back to the obligations piece. Milton.

Milton Mueller: Yes, I think this does, in fact, make it a little bit more precise. I'm and I certainly don't think it does any harm to the things that we care about. And my only question is can Marc identify any data elements that would be different? And if we had a clearer condition of that, it would be I think ahead with this.

(David): Super, any other reactions to this splitting in half? What have I got here? (Barry) and then (Alex). Thanks, great.

(Barry Cobb): So a couple of things that I picked up on what Marc was stating and I have no opinion on whether we should split it or keep it together. I guess I lean towards keeping it together just for ease and less work. But that's not always the right way or the right thing to do. So first and foremost, I mean I do understand the difference between allocation versus activation. There are different things going on behind the scenes. I am still curious thought that in terms of identifying the actual data elements if that still can occur at the processing activity level for the workbook. Because when you look at the processing activities on the row in the third section, it's definite the lawful basis for it.

But then those rows become columns and our data workbooks individual columns whereby we can perhaps define individual processing activity for allocation, individual activity for activation. And if there are different elements that are being collected or transferred we then move that down into the data elements workbook and identify those actual data elements.

Secondarily, you also mentioned that it was Spec 11 that made prompt a certain business model to have that information transferred to a registry where a different model might not require that. And it thought that was, kind

of, what Purpose 7 was about in terms of additional data elements that aren't normally collected. Because I recall pick or I'm sorry Spec 11 being mentioned there as well. So, just get some clarity in that regard. Thank you.

(David): Okay, thanks. (Alex) you are up.

(Alex): Yes, hi. It's (Alex) for the records. I think we support the split. I like it, it's kind of resonated with me when I read the comments. And it seems to be this is essentially, you know, the primary purpose, right? It's the mother purpose and this is the way this is split out makes a lot of sense, so we would support it. Thanks.

(David): Super. I see some hands over there. Let me start with (James) and then I'll go to Hadia.

(James): Thanks (James) speaking. So I think that we also support the split and the thinking behind the split that as it was explained to us. I think that actually kind of, toyed around with the idea in Barcelona. But we couldn't make it work. But this is working.

I just want to point out that both the registrar stakeholder group comment and the go daddy specific commented, noted that our support for the language in Recommendation 1 contained - was contingent on this phrase about subject to the terms and conditions of the agreement. And if we split that language has to appear in both halves of the split, okay? I think that's my primary concern is that right now it - as your comment reads, it's sort of does. It does in one and it sort of does in the other. I think we'd be more comfortable if it, kind of, was consistent across both aisles But otherwise, I support the split.

(David): Great, super. Hadia?

Hadia Eliminiawi: Hadia Eliminiawi for the record. So we also support the split. We have no objection to that. And I agree also to what (James) just said. That he wants

to put subject to the agreement in both our statements and we are fine with that as well. So our concern -- only concern -- here would be with regard to the data elements. So our approval is subject to the data elements.

So and so I don't know if there are any changes in this regard. Or how the (unintelligible) will look like, but yes, so we do agree but we need to see the data elements.

(David): Wonderful, before I just to Kristina and Alan, I just want to say is it possible to have those available by tomorrow? Yes.

Man: (Unintelligible).

(David): No, because what we will do is we will schedule time tomorrow afternoon or Friday morning to look at it and then make sure we're all good with it. Okay? So Kristina and then Alan. Yes, we need to start talking about obligations, yes.

Kristina Rosette: I was actually, Kristina Rosette. I just wanted to respond to (Barry)'s comment. We just talked about the first one with regard to the worksheets. In terms of the second one, Spec 11 covers a lot of stuff. The portion of Spec 11 that we've talked about in the context of Purpose 7 relates to public interest commitments and the like. But the portion here that we're referring to here and I'm going to say it's 11-3B.

Man: Yes.

Kristina Rosette: Yes, which has to deal with registry abuse related obligations.

(David): Okay, great.

Kristina Rosette: ...for D2, so it's...

(David): Different.

Kristina Rosette: ...different provisions.

((Crosstalk))

Kristina Rosette: Right.

(David): Great. Alan, and then Milton, is that new? Okay great.

Alan Woods: Alan Woods for the record. Really quick. I just think once we got into this, I think it was like (unintelligible) reference. It was like an onion. It kept different layers and different layers.

And they are still appearing. Every time we look at it something new occurs. So we have to be so careful. This is again a timing issue that if we had all the time in the world we can make this really good but at the moment we have to be realistic that – and that's why it's taken so long.

So apologies for the group but it is the most fundamental as (Alex) said. We just need to get this one very right. So apologies for the delay on this.

(David): Okay. We will deal with it in this meeting which requires having text to review and everything. Okay, I want to switch gears into the obligations piece. Is that what you want to talk about?

Man 1: Sure.

(David): With a microphone please.

Man 1: Just respond to (James). Since the first part of the split purpose does not mention rights of the registered name holder, I don't understand why you

would insist on the subject to contract terms, conditions and so on so maybe we can eliminate a possibly unnecessary modification.

(David): Okay, so I think (James) and the registry folks can sit down and take a look at that. Let's keep that in mind when we look at it. Okay, now someone – I think (Emily) said you had something to say about the obligations, the other piece? Why don't you go ahead (Emily) with that and then we'll see how far we get.

(Emily): Yes, it's just a proposal in the language and so if we're going with the idea of splitting the recommendation which seems to be where we're going we sort of do the second part of that or something like ensuring that registered name holders may exercise their benefit and responsibilities in response to the domain name.

And the rationale for proposing benefits and responsibilities is I hope it gets to the idea that good things also come, you know – you've got to do stuff as well which I think was the thrust of a lot of the comment in the public comments.

So it acknowledges that and also goes to language which is quite well established in the ICANN environment contractually. So that's my proposal to sort of recognize the concerns of colleagues but also put it in terms of language that is, if not completely understood at least it is familiar from the ICANN environment.

It's reflected in the contract. It's reflected in the thing that has to go out to every registered name holder, the statement of benefits and responsibilities.

(David): Thanks (Emily). That's really helpful. So folks, specific proposal on the table that we start using the language that's in contracts today which is benefits and responsibilities.

I'm seeing Milton shake your head. Go ahead Milton. What's going on there?

Milton Mueller: Completely unacceptable to us. We cannot live with that. The whole – the obligation stuff is really – doesn't make any sense in the context of this particular purpose.

Basically people who are advocating the insertion of obligations are fundamentally concerned with third party interests – legitimate interests presumably.

And those are addressed in another purpose. You know, you're talking about obligations. Obligations to who? Responsibilities to who, (Emily)? Who are those people?

It's not the registrar or the registry because those are covered by the other part of the purpose so who are they? Well they're third parties, okay. So we have a purpose that deals with third party legitimate interests or possibly not but we have an access mechanism that would be equally justified in terms of third party interests.

So, you know, I think people are kind of trying to play a kind of rhetorical game here. They're saying ah ha, yes, you've got obligations as well as rights but what is the actual purpose of collecting this data in this case? It is to establish the legitimate decision-making authority of a registered name holder over a domain.

That is the purpose we're talking about here.

(David): Thanks Milton. So Milton makes an argument that if you look at the actual purpose behind the processing and activity that's going to go on, it's fundamentally about rights. And obligations are something different, right?

So I want to check with folks, is that – oh, I've got all kinds of stuff going on over here.

(Gina): (Unintelligible).

(David): Okay. But just before you guys all go, because I put this timer on for 15 minutes to finish this thing, right, does Milton make a convincing enough argument that we should just put this to bed and say, you know what, let's keep the language with rights.

Let's not introduce this new thing around obligations or benefits and obligations. Let's just keep it the way it is. I don't know who is first here because I wasn't watching but let me just go down the roll then. (Diane) why don't you start and then we'll go. And then Kavouss, yes.

But again, look at my timer. I'm like up against the wall here.

(Diane): Sure. If the purpose is not just to speak about the rights but in fact it says subject to terms and conditions then as in any contractual context it would be either rights or responsibilities or rights and obligations or benefits and responsibilities but it's a two-way relationship that we're talking about here.

And the terms and conditions align with also conditions and so it's very explicit. And they're talking about also an attestation into the truth of the information provided which is part of the entire process.

((Crosstalk))

(David): That's relevant for data processing.

(Diane): Yes.

(David): The data that you're, the activity that's happening.

(Diane): Right.

(David): That purpose includes those things you're mentioning.

(Diane): Yes. That's right. So ...

(David): Okay.

(Diane): ... it's part of the context.

(David): Right. Thanks (Diane). That's helpful. Margie.

Margie Milam: Sure, this is Margie. Along the lines of what (Diane) was saying, this is really a registrar rights issue because a registrant can lose its domain name if it doesn't fulfill its obligations.

And so part of those obligations include processing the data that relates to registration directory services. So you make an attestation that the information's correct.

Under GDPR you have, you know, the right to have your information corrected if it's inaccurate. And so that's what this section goes to, the registrants rights and ensuring it does its part of the obligations in order to maintain the registration as it goes forward.

So we would be – that's why we're strongly supporting the obligations. The benefits and responsibilities are also another way of doing it but that's – it's the same concept.

(David): Okay. (Thomas) and then I'll head over to Kavouss and then we're going to see where we are. Yes, (Emily). Yes.

(Thomas): I think we have difficulties with this in two different areas. Of course, you know, what we're trying to describe here is the purpose, why data is being processed.

And it was my understanding that this purpose, one, is to link a registered name holder to a domain name and make a result, right. And that's – for me that would have been it.

Have you ever read a privacy policy where it says we collect your data to be able to service the subject to our terms and conditions? Of course it's subject to terms and conditions. But we're framing a purpose. We're not writing the terms and conditions here.

But even if we wanted to, RAA 2013 makes explicit mentioning of consensus policies and the rights and responsibilities document. So, you know, in my view mentioning the terms and conditions is already something that's unnecessary to mention and even more so with the rights and responsibilities because they are part of the terms and conditions because the RAA is part of this.

So I mean that's a formal point you know, because then the question is, how far do you want to go with spelling everything out? So I think it's not needed. I would have accepted the terms and conditions because you have different registry policies where it can do different things with domain names and it was my understanding that we wanted to cover that but not make it a catch for every policy.

But, you know, but I guess your point is a valid one. I just don't think that purpose one is the right place to put it systemically.

(David): Okay guys. I know this is a critical purpose. We're not going to solve it now although it would be lovely to solve this particular issue right now. Kavouss and then we've got three comments over here and then we really do – (Jean) has given me the look like if I don't stop, you know, I figure they'll put the legs out.

But Kavouss, go ahead please.

Kavouss Arasteh: Yes, I have some doubt about the second bullet. It said, to ensure that the registered name holder may exercise. Ensure is not consistent with may. You could replace may with could – ensure that it could exercise, if he so decides. But not may exercise.

(David): Okay.

Kavouss Arasteh: May is not consistent with ensure. Thank you.

(David): Okay.

Kavouss Arasteh: Replace it by could. Thank you.

(David): Okay. So strengthen our language so we're not wishy-washy on that. Okay. (Emily)'s up. And then I've got (James) and then I've got Alan. Okay, great

(Emily): Yes, on this. I don't want to prolong our agonies. But (Milton's) point has a lot of force of course since this is just not open-ended with responsibilities or whatever we want to call them to absolutely anybody we can think of.

I was actually making the point in the narrow context of the contract of registration and those obligations under the contract or contracted parties. Those include things like providing accurate and updated information and that is an obligation towards the other party of the contract.

So that was my meaning and I'm really open to language of course as we all are that helps to clarify that but I'm happy to make that clarification.

(David): Okay great. (James) and then we're going to go to Alan.

(James): Just want to point out to respond to (Thomas) that the RAA refers to the registrant benefits and responsibilities statement. We fought very, very hard for several weeks to get that word in there so thank you.

We are but we're talking about the variation of the word rights and benefits and you said that the 2013 RAA references registrant rights. It actually references to benefits.

(Thomas): When I was speaking, I was actually referring to that document.

(David): Right. Alan.

Alan Greenberg: Thank you. Given (James)' comment I can't not point out that the registrant benefits' document in the next title lists the rights. They changed the major title but not the lower one.

May I remind everyone, we're here defining purposes and one of the parts of GDPR is to make sure that the data owner understands what's going on. And saying that something is embedded in the terms and conditions which refers to the RAA, which refers to another document, nobody goes through all of those things.

So if in our purpose we can make it a little bit clearer by having a little bit of redundancy that's not absolutely necessary I strongly support that. So I support the reference subject to the terms and conditions and I support the reference to rights and benefits whether the right is to right and/or benefits and obligations because I think it makes it clear why we're collecting this data. Thank you.

(David): Right. So quick question folks. Can anybody not live with essentially the language of rights and responsibilities? You guys can't live with that? You're not going to have anything around responsibilities or obligations?

Milton Mueller: (Unintelligible).

(David): Okay, microphone, microphone, microphone.

Milton Mueller: (Unintelligible).

(David): Nobody's hearing you. Milton no one's hearing because microphone. Yes.

Milton Mueller: Yes, we can't because it's a different purpose, okay. And the people have said it themselves. They said, oh, in the contracts, in the terms and conditions, in the policies of the registrar there are obligations. Okay, then it's covered. You don't need the additional word

Tell me what you get by doing this other than pissing us off? Tell me what additional data element is collected because of putting that word in there? Tell me how the purpose is clarified in any way by putting that in there that isn't already covered by terms, conditions and policies?

I mean I just see this as a form of torture. I'm really upset about this. It's absurd. We're wasting time.

(David): So let's do one more test. Can anybody live or excuse me. Can anybody live, yes, can anybody not live with just having the word right and including obviously, subject to terms and conditions and all that is still in, right so, can we ...

Man 1: You went really fast. We still have some queasiness about rights in a commercial contract. Thanks.

(David): Benefits. Okay. So – okay. Wow. So we're talking about using the word rights versus benefits? I don't know whether our friends in the non-commercial have any opinion about that but yes, can you live with the word benefits?

Man 1: (Unintelligible).

(David): Microphone.

Man 1: We settled this in Barcelona. We went through this. We accepted rights subject to terms and conditions. That was the basic bargain we made in Barcelona so why are we re-litigating that?

(David): Right, okay. So let's do this folks. We know we need to deal with the split issue and we're going to look at that when that's ready. We're going to do – for anybody which has queasiness around it which is what (James) is suggesting, we're going to test that over the next 24 hours.

And hopefully we'll resolve that. We don't need to have one of these conversations again, okay. We know that you discussed it in Barcelona. You reached a deal but there was some public comment around it, okay.

So what I suggest is with Principle One, we put it aside for now. Well come back when we have the revised language on the split and in the meantime I'm going to talk to some of you about how to deal with this language, rights, you know, versus benefits versus obligations et cetera, et cetera, okay.

All right. We've got time to do one more of these. That one was a lot of fun but let's see if we can do one more.

(Gina): I just want to check in with the group because I think we go until 5:30, right. Right, (Terry), 5:30? So I know that early this morning some folks wanted to spend a little bit of time each day talking about the final report. Is everybody okay if we just keep going on the purposes?

(David): Yes.

(Gina): Anyone have any major concern with that? Okay. So the next one that we're going to go to is Purpose Seven and you can see the comments up here that we received, the public comments.

So what we're trying to do – I can't remember – did we talk about Purpose Seven in a small group? I don't remember. No, it was not discussed in a small group so what we're going to ask is that you look over, you know, that we summarize the buckets of comments here but that you spend five minutes looking at the PCRT on the comments received.

And then we're going to bring it into the full plenary to say what comments merit group discussion and then try to resolve the feedback received, okay?

(David): Yes.

(Gina): So five minutes and we're going to – please look at the PCRT for Purpose Seven and we're going to work through the topics that merit group discussion.

((Crosstalk))

Woman 1: Yes, can I – actually I have a request for staff and I apologize if it, I've missed it and it's gotten buried in my email. I have the PCT. (for that group). I have the PCT for Seven. What I don't have is this. Is that something that you guys can share by email?

((Crosstalk))

Woman 1: Okay, awesome.

((Crosstalk))

Woman 1: Okay, perfect. Thanks.

(Gina): Okay, are folks ready? Oh, (Diane) and (Alex). Sorry. Okay, can we pick-up on Purpose Seven as a group. And this is the first time you've discussed this in the context of the public comment.

And so just like we did in the small teams, the question before you is, which comments merit group discussion and if you could please flag those and identify the concern and any suggestions you might, concrete suggestions you might flag to address that concern.

So are there any comments that merit group discussion? Kavouss.

Kavouss Arasteh: Yes. From legal point of view the two term optional and voluntarily in the way that express in this purpose is not correct. First of all either of them but I am in favor of listing both of them. Thank you.

(Gina): I'm sorry, deleting voluntarily and ...

Kavouss Arasteh: Both. And optional. Delete voluntarily and optional.

(Gina): And was that in response to a public comment Kavouss? Was that in response to public feedback on the initial report? It is? Okay.

Woman 1: (A response).

(Gina): So a response to the proposal from Kavouss is welcome and if there's anything else anyone wants to flag from the concerns expressed during the public comment and a proposal for addressing? Yes go ahead.

Woman 1: The reason we added, and we did actually add optional and voluntary, voluntarily in here is to make clear that we are talking about GTOB registration policy eligibility criteria that are not imposed on the registry operator by ICANN.

That they are instead criteria that the registry operator has voluntarily agreed to and as a result are optional. (Unintelligible) sounds a little circular.

((Crosstalk))

(Gina): Alan Greenberg.

Alan Greenberg: Thank you. There's a number of comments that I have a problem with. There's one from (Black Knight) that says this is in reference to a bunch of contracts but not ICANN and therefore it's not an ICANN purpose.

In fact, it is at times part of the ICANN contract, the registry contract and therefore it is an ICANN purpose at that point. And the other issue is a number of comments talk about, there may be a lot of personal data here and there's no reason to put it in the RDS but it may be stored somewhere.

But at least one registry that I'm aware of and there may be others have required that it be publically visible to demonstrate the people do meet the nexus requirements of the registry. Thank you.

There may well be other information that some registries require which is not public and I'm presuming, you know, examples of, you know, the documentation provided by a pharmacy to prove they're legitimate. It's certainly not going to be made public but there may be public elements. Thank you.

(David): Alan, just to be clear, you are not suggesting any change?

Alan Greenberg: No, I am not suggesting change. I am explaining why I think those comments should not be factored in.

(David): Right. Excellent. Thanks.

(Gina): I have Margie. And then Milton. Kristina, is your card still up?

Kristina Rosette: No.

(Gina): No, okay. Margie and then Milton. And I think the clarification is helpful if you can flag the concern you're responding to, what the response is. And if you're making a suggesting for change, please let us know. Margie.

Margie Milam: Yes, the BC I think tried to clarify this by showing that – we're talking about the registration policy eligibility card here required by the registry operator because I think the voluntary kind of confused things so we just tried to clarify that.

And I know that language is problematic to you guys but I think we weren't trying to change the intent of it. We were just clarifying what it meant.

(David): Great. So there's a specific suggestion in your comment about taking out the word voluntary and saying requirements or required by the registry operator. And so Kristina just real quick, does that work for you? Not using the word voluntarily?

Kristina Rosette: I want to think about it because I am concerned about – there's one scenario that I want to work through in my head because I don't want to inadvertently create GDPR issues where there aren't any now.

(David): Okay, great. Think about it for a second. Okay.

(Gina): Milton. Any response to comments and any proposed changes as a result?

Milton Mueller: Well as you know, we want this purpose to be deleted and I would like to explain the comments. I think that as this debate about voluntary and optional has made clear, that the registries are walking a kind of tight rope

here, from our point of view if this is indeed a voluntary decision by the registry to create a policy for their own TLD that they will enforce the eligibility requirements for, we don't see why it needs to be part of the public who is.

We would appreciate elaboration on that and if it's not voluntary, then the eligibility requirement data can be extremely personal and we're a little bit nervous about putting that kind of data into a public database that is globally accessible by God knows who so we really have problems with it.

And we would of course put deletion but we realize those comments were not the majority.

(Gina): Kavouss and then Kristina, then maybe you can respond, if your card's up. Kavouss.

Kavouss Arasteh: Yes, so far, I repeat again. Here we use double applications of policy (unintelligible) and optional. One of them is superfluous.

(Gina): Okay.

Kavouss Arasteh: If they agree voluntarily to have policy delete optional. We don't need to say both of them but having said that if everybody agrees that if the name holder meets more or less an obligation, it is not shall., It is not must but in the present terms it's more or less an obligation.

They are obliged to meet something which has been voluntarily (unintelligible). Why is that? Because this voluntarily may be changed every time. So why we put such an obligation today to just a name holder? To meet something, the preparation of which is voluntary. That means it could be changed from day one to day two.

If I have an explanation, I could agree to change voluntarily but deleting optional. Thank you.

(Gina): Okay. So can someone respond? I mean I don't know Kristina, were you going to respond to the concern around, if it's voluntary why do we need it and if its required, sort of the vulnerability around the personal data?

Kristina Rosette: Sure.

(Gina): Thanks.

Kristina Rosette: Taking them kind of in the order in which I heard them. So I think Milton, the first thing to keep in mind is that we're not talking just about RDS here. We're talking about the processing of GTLD registration data which under the extraordinarily broad definition of the temp spec would in fact include these data elements.

Which, you know, as we talked about in for example our natural versus legal person could even if there may not be any initial intention for the validation the registration policy eligibility criteria result in a collection of personal information it could.

And that's part of why we want to make sure that we have got this covered. The other contractual background element is that the ability under – let's just go back a bit.

The context for this is the fact that part of the introduction in the GTLDs was introduced competition, choice, new business model. Some of the ways in which new registry operators, new GTLD registry operators are introducing that competition and choice and innovation is through the use of registration policy eligibility criteria.

And we heard in Barcelona at one of the sessions about like that (Art) is doing something. That (Luxury) is doing something. These are all validation, you know, registration policy eligibility criteria.

So while I understand kind of the point about (RDDS) we're talking more broadly than that. I will say Alan is correct. There are in fact registry operators that have gone through the (RCEP) process to amend their contracts to require that the particular data element which at this point has really just been, I think it's only .NYC that has done that in which case they're talking about (unintelligible).

So depending upon how fine a point we're drilling down on that it may or may not be personal data but that's kind of an existing situation. So I would suggest that we, if there is a concern specifically about the RDDS, that we try and tackle that separately as opposed to the broader collection, the broader processing of registration data.

In terms of Kavouss' point I understand what he is saying and one of the – that's why I want to go through is there any scenario in which changing voluntarily adopted to required would have an unintended consequence? I'm not 100% there yet so I want to make sure that it doesn't.

But as a practical matter, even today in most cases under most registration agreements, the registry operator and in some cases the registrar depending will reserve the right. And in some cases that's kind through kind of grandfathering existing registrations and saying okay, everybody who's registered up to this point, you know, you came in under our open plan.

But starting January 1 2020, new registrations are going to have to meet, you know, these new criteria. And the registry operator is completely free to do that. And so we want to make sure that registry operators have the flexibility to pursue their individual business models within the broader confines of the contractual framework.

(Gina): And so just to follow-up on that, to make sure I understand would the registries – if this purpose were not there, would the registries be blocked from doing that? Would they be unable to do this?

Kristina Rosette: That is the concern.

(Gina): Okay.

Kristina Rosette: Because there is, it is often the case that registry operators are told that something that's not specifically permitted is prohibited.

(Gina): Okay. (Terry), I'm going to ask you to put 15 minutes on the clock just as a post-check for all of us to have on our radar screen. I've got Alan ahead of you and then Kavouss, we'll have you respond to Kristina's explanation. Alan.

Oh, okay. Kavouss, did you hear Kristina try to provide an explanation to your proposal. She's still thinking about it a little bit more but if you could be responsive to her thinking that would be helpful.

Kavouss Arasteh: Please carefully kindly listen to what I'm saying. If something is (unintelligible) by one party optionally or voluntarily it could not be put on the other party's obligations.

So in order to resolve the issue in the chat, I have suggested to put the words should meet and then voluntarily but not meets. Meets is too strong.

(Gina): Okay.

Kavouss Arasteh: Thank you.

(Gina): Okay. Margie and then Stephanie or I'm not sure who was first. Margie and then I'll go to Stephanie.

Margie Milam: Thank you. This is Margie. I think a couple of things maybe Milton to think about. Just because it's getting processed as Kristina suggests, you know, at the registry's requested program, doesn't mean it's going to get published. Those are kind of two separate concepts.

And I believe Registry Five, what they're going to do with that data, so they'll take into account whether it complies with GDPR included in the (unintelligible) data.

No one's telling – this thing is not telling them they have to publish it. It's just giving the opportunity to have it as it fits their business model and they make the decision of whether or not it complies with GDPR or not so I just wanted to clarify that.

(Gina): Thank you Margie. Stephanie and then I'll come to (Emily) and then maybe we'll try to check-in. Ah huh.

Stephanie Perrin: Stephanie Perrin for the record. Not to beat this particular dead horse but we are talking about ICANN's purposes. And once ICANN has decided that a registry can operate in a certain way, why would we be worrying about what it optionally requires it's registrants to provide?

Because there is a bright line between what control ICANN exercises over registries and what control registries independently in their own business exercise. And for the latter ICANN and therefore we have no business opining on it.

It would be as it we said you have to have a MasterCard and if they only have VISA we're not going to let them pay for it. So, or actually that's a lousy example because we're talking about optionally providing data so I won't drag you through reframing that.

But you get the idea. I don't see that his is our business. Now if it was mandatory, if it was a term and condition that ICANN provided when allowing the registry to operate the registry, fine, but that's not the case. Thanks.

(Gina): Thanks Stephanie. (Emily), and then I'll come – it looks like Kristina is going to respond to that question, Stephanie.

(Emily): It's really hard to get your head around the idea of voluntary things becoming obligations but I think it sort of – registry, this is my understanding of it.

A registry says in order differentiate all business in the market, we are going to do these three things which are not actually in the standard vanilla obligations and those then become contractual obligations exactly as you described, Stephanie.

They are reflected in the RA so then the other parties of that RA is ICANN and they are reflected in the eligibility criteria which a registered name holder is obliged to fulfil, if they want to register in that domain.

I know it's like – especially in this time of day it's difficult. So these are – I think it's a time sequence. The registry starts off by saying, I want to do these additional things. I'm not obliged to. You know, it's not part of the standard criteria that every registry has to fulfill in order to be part of the ICANN environment.

But once they have said we're going to do that, it then gets translated into contracts both with ICANN and the registered name holders. And so I hope that clarifies that. I can see you both looking more confused now but I tried to clarify.

(Gina): Alan.

Alan Greenberg: Yes, (Emily) captured a lot of it by things, the timeline. The voluntary is early on in the process by the registry. Once the registry makes that voluntary decision it's no longer voluntary on someone else's behalf. It's obligated. It's an obligation.

The word optional before the GTLD, I'm not worried about eliminating that one because what the registry voluntarily does may also be time sensitive itself. You know, it may say you know, this is going to be required if the registration is done after 2020 and not before so I'm not as worried about the optional.

But the voluntary is very consistent with it being mandatory at the registrant and the registrar level later.

(Gina): Okay. Oh, Kristina. Then Stephanie.

Kristina Rosette: Just a, Kristina, just a very quick follow-up to (Emily)'s explanation which I thought was excellent. The only thing that I would add is that it's important to keep in mind that once it is in the registry agreement, then I can't complain of the right to audit the registry operator's compliance with those requirements.

(Gina): Okay, so Stephanie and then I'd like some attempt to summarize where we're at and see if I can make a call, you know, for where, what people can live with. Stephanie.

Stephanie Perrin: Okay. Stephanie Perrin for the record. I think I understand that if it is part of the registry agreement and ICANN has an interest in auditing to ensure that those within that registry meet the requirement, then that becomes an ICANN purpose and then it puts us within our agreement, right.

But if it is not part of the registry agreement and then the question is how proportional is the data collection that is required and under the registry agreement. You following me? In other words, every blessed document in

this place in my view has to go through a legal analysis to see whether it complies with GDPR.

We may have put into the registry agreements here totally ridiculous demands for data, you know.

(Gina): I think Alan would like to reply. Go ahead Alan.

Alan Greenberg: Thank you. I think Stephanie's point is very good. It probably should say voluntarily adopted by the registry agreement and incorporated in, by the registry operator and incorporated in the registry agreement.

Something they do off books if not necessarily subject to here. I think that's a reasonable addition.

(Gina): Yes. So I think the concerns that we've heard are around this personal data being released and we have the reminder that they don't have to be published. That will be captured elsewhere.

It seems like we have an addition and that we clarified that it does fall within the ICANN purpose. We understand there's a timeline of voluntary that moves it into obligated, right.

So I feel like we have a couple suggestions on the text. One is to add this last piece at the end and incorporate it in the registry agreement. And then I think we still have Kavouss' suggestion that we change "meets" to "should meet." That doesn't work? Help me out.

Alan Greenberg: Because, just to be clear the issue of who's meeting this, this is, as you said, it becomes an obligation to, if you're going to be part of this registry. It's a meet. It's not a should so it's a must.

But the thing, to deal with this is sort of optional and voluntary and all the confusion that we've had and we're kind of experts in all this, right. So it seems to me there is a way to provide some clarity that this is about the additional criteria that the registry might come up with and then ends up in a registry agreement, right.

And then Kristina, I wonder if you want to take overnight and come back, if you're okay with some way to eliminate some of the optional and voluntary so other people don't have the level of confusion we have, you know.

Kristina Rosette: No, absolutely. And my recollection is that some of that language was added after discussion with some of the folks in this room so I'm going to want to circle back with them first and make sure that that's not going to cause – again, I don't want to solve one problem, create a new one.

(David): Absolutely. So I wonder (Gina), if the pathway forward on this folks is we, everyone can live with the fact that this is an ICANN purpose especially if we add that phrase at the end of the registry agreement, right.

Everyone understands that these were additional criteria setup by a registry for X, Y, Z business but they end up as obligations on the people who want to sign-up and be part of that registry.

And Kristina is going to go back overnight and check with some people to see if we can clean-up the language so that optional and voluntary don't stick out so much and cause a lot of confusion. That sound good? Can everybody live with that pathway forward? Milton, can you live with that pathway forward?

Milton Mueller: Yes.

(David): Okay great. Kavouss, can you live with that? We're going to try to fix the ...

Kavouss Arasteh: Again, optional will dropped, will be dropped.

(David): We're trying to find ways to drop those words.

Kristina Rosette: But we're going to need a little more time.

(David): Yes. take a little bit more time.

(Gina): Take a little bit more time to do that since everybody's tired and come back around. Okay. Is everybody tired? Okay.

(David): Look at that yawn over there.

(Gina): Okay. It's 5:08 and we're scheduled to go to 5:30. I'm just debating, you know, how do we just drive this train home.

((Crosstalk))

(Gina): I'm just trying to think, is there anything we could do in 20 minutes?

((Crosstalk))

(Gina): Milton would like the floor. I mean the next thing that we had planned was to look at recommendation one and the overall comments and the proposals and new purposes. I mean we could just have Marika frame that up for us

((Crosstalk))

(Gina): Marika did you acquiesce after giving me a dirty look? Yes. I mean maybe what we could do is have her at least frame that up for us so that we don't, you know, we could percolate on it over dinner. You know, that's what we could talk about at dinner, ha-ha.

So maybe we frame that up. I don't know that there's anything that we can do super quick or we could go back to Recommendation 15, the introductory language.

(David): We're not ready.

(Gina): Okay, we're not ready for that. So how about if we have Marika frame-up purpose one, comments and then, you know, we'll see where we land and spend a few minutes on that and we'll take a break for the evening and go have dinner.

Man: (Unintelligible).

(David): Rec 15 - I want to have actual text that we can put up on a screen.

(Gina): We do.

(David): You have it?

(Gina): Yes, we do have text.

(David): Okay. Well then we're ready.

((Crosstalk))

(David): I just didn't want to do it verbally. I wanted to do it with actual text. And where is the text?

(Gina): Caitlin, you want to throw it back in the chat? It was much earlier today.

Caitlin Tubergen: Sorry. Caitlin Tubergen for the transcript. I believe Kristina and Milton have some proposed language so if they can just put it in the chat we can blow it up.

For the introductory clause - for recommendation 15?

(Gina): This is recommendation 15 that we're talking about. Okay.

Man: (Unintelligible).

(David): Going to give it a second, yes.

Caitlin Tubergen: Yes, so while everyone is waiting for that you can have a look as well on the document that's up on the screen that provides an overview of the additional suggestions that were made in response to recommendation one in relation to additional purposes that should or could be considered.

So I think the question is similar to what we've done for the other public comments, you know, have a look at these and, you know, determine or indicate which ones require further consideration by the (EPDP) team.

And, you know, if not as well, of course you can indicate as well which ones are already covered or do not need to be addressed so we can also record that in the public comment review too.

(Gina): Whoever's controlling the screen for the discussion table, could be scroll up so we could see the concerns.

(David): Hang on one second. We've got two things going on at the same time which is always a dangerous thing.

(Gina): Right.

(David): Let's put the pause button for a second on recommendation one. And we've got Milton's text in here. Let's put this to bed otherwise everyone's going to be readying this and not paying attention to principle one I think.

So Milton, can you walk us through what happened here just real quickly and we'll put this to bed. And then we can do a proper work on principle one? Or recommendation one.

((Crosstalk))

(Gina): Does everyone have their screens open so you can read it??

(David): It's hard to read - yes.

(Gina): I can't read it. I mean I can but, you know.

Milton Mueller: They're going to blow it up over there so.

(David): They're working on it.

(Gina): Okay.

Milton Mueller: So essentially we think that within the temp spec there is in effect a disclosure access policy and clearly it needed to be amended. It is not good, well specified so we have really no problem with the amendments.

What we were concerned about was that there is in fact a disclosure policy and we're supposed to be talking about disclosure in phase two. So we're willing to accept recommendation 15 as it is proposed provided that it could be superseded by recommendations from either the RPM (CDC) working group and/or policies from the EPDP regarding disclosure that we developed later.

So we're kicking the can down the road in some sense. We just don't want to say, this is our final disclosure policy because it happened to be in a temp

spec. We think that when we're debating access we will inevitably be dealing with issues like this.

And so we are accepting the proposed amendments to recommendations and as long as the temp spec remains in effect those will be the policy as amended here. That's a compromise.

(David): Great. So is that clear to everybody? Essentially adding some ...

(Gina): (Unintelligible).

(David): Sorry. Cleaning up the language a little bit. Adding this language of about, it's not only the working group. It's also about ourselves when we were talking about access, further down phase two, right. Yes. And then taking on those two little fixes of language that are a problem right now in the temp spec, okay.

Aby concerns on this? Can we live with this? This seems fairly clever. Great. Okay, 15 is done. Done on 15?

Man: A short comment.

(David): A short comment on 15. I guess I assumed that language was implicitly there that we might come back and revisit and of course (unintelligible) after this can always change the rules so dandy. Perfect. Yes,

((Crosstalk))

(David): Great guys. Okay.

Milton Mueller: He needs a microphone for that one.

((Crosstalk))

(David): Yes, that was easy. Okay. So, folks, this is great. So let's say that we have done recommendation 15 with this new approach. We're going to use this new approach and we'll capture that in the notes.

Okay, we still have our 15 minutes to go ...

(Gina): (Unintelligible) a summary of everything.

(David): Awesome. Can we do that?

(Gina): So I don't know if we want to look at the (purpose one)?

(David): So purpose one, Marika what is it we need to do?

Marika Konings: Yes thanks everyone. This is Marika, Just to clarify, we're talking about recommendation one.

(David): Recommendation, excuse me, recommendation one.

Marika Konings: So recommendation ...

(David): Love that.

Marika Konings: ... recommendation one basically, you know, covers the current purposes that we've been discussing but an additional question on the public comment forum asked, you know, are there any additional purposes that the group should address or look into?

So this, you know, of course you have an overview of the full comments. This is just a synopsis of the specific recommendations Again I said, you know, I think a similar approach might be to give five minutes to look at this and then just to come back and table it. And to indicate, you know, which of these

suggestions do you think the EPDP team needs to consider further in order to ensure compliance with GDPR?

(David): So folks, this is what I recommend. Let's take advantage of this moment to read. We're going to take five minutes of individual reading. We're not going to have any discussions amongst the groups. Let's just read and make sure we've gone through this.

This is really critical. Then (Gina)'s going to summarize the day. And then we're going to get out of this room, all right, because I think we're just at that limit of how much time we can spend in this room, all right. So let's take five minutes. Let's make sure everyone has read in detail what these comments are because these could be profound, right.

And then let's let (Gina) summarize the day and then let's go have a drink or something.

Man: Marika is that document in the public comments summary. I don't see it?

Marika Konings: This one's going to get posted. If not I'll go there now and post it. Okay. All right. I'll go then.

((Crosstalk))

Marika Konings: In Adobe Connect everyone can scroll for themselves and blow it up as needed.

(David): We're posting it right now. This version of the document, of the summary document is being posted right now.

Marika Konings: And for those of you using Adobe Connect I think there's also a way that you can download it directly from the pod because it's un-synced, if I'm hot mistaken. If you go to the menu I think there's a way to download it directly.

((Crosstalk))

(Gina): Okay are we ready?

((Crosstalk))

(Gina); Are we ready? We're not going to - we're just going to summarize where we're at at the end of the day. Kurt is gung-ho. He's ready to go. So on recommendation one, I hope you noted any of your feedback and ideas because when we take that up we're going to want to jump back into those items, okay.

So I'm going to attempt to summarize everything that you've done today which is actually – We didn't make it through everything but we did everything except for two recommendations.

So with direction for the final report, purpose number three, it went forward. It's going to continue on as proposed like from the small team. Purpose four is moving forward from the small team recommendation.

The only change was that you change defined to described in that purpose. Purpose five, handling contractual compliance, the recommendation proposal is moving forward. I'm trying to do these in order but I don't think I can.

Purpose 15, you have new language that you just approved. I'm sorry. Thank you. Recommendation 15, you have new language that you just approved. From the UDS UDRP.

Recommendation 19, on the transfer policy, is moving forward out of the small team. Recommendation 20 which is input to the transfer policy, the change is to add in great urgency.

Recommendation 21 is data processing agreements with non-contracted parties. The small team proposal is moving forward. Recommendation 17, inputs on the RPM TDP workgroup. We need to clarify the language that we are – it is your handwriting – that we are - oh, we're moving it to a to do.

You agreed with the recommendations on the small group, that that's going to become an action item in the initial, in the final report. Recommendation number 18, data processing agreements with the dispute resolution providers, you're adding in as appropriate.

And you, there's a question to just reference the period of – I forgot what that's called – the period of retention. And that it's different in recommendation 11.

Recommendation 11 is tied into the contractors and this is with the dispute resolution providers. So just make that clarification. Purpose number six, resolution of DRPs, we have struck coordinate and facilitate so the revised language is operational (despite the comment of course), policies for resolution, et cetera.

Okay. Purpose number 7 you confirmed it's an ICANN purpose. You confirmed that personal data which was a big concern because when released does not have to be disclosed. You agreed to amend the purpose language with an incorporated and registry agreements.

And we're going to come back to the conundrum of optional and maybe voluntary language not because we disagree with it but just because it was confusing for folks and we want to make sure and have a little time to percolate and make sure we can have some clarification on that or improved language.

Okay. Purpose number one is the split. Folks are generally open to the split as long as the introductory clause is maintained and they might have some questions around the data elements and how that affects them.

On establishing the rights of the registered name holder, we're still not clear non the rights versus obligations and the comment. And we have to come back to that. We just cannot reach closure. And (David) is going to do some work on that.

Recommendation 1 we just had you read the comments. We've got to come back and resolve those. And then Recommendation 5 was on our agenda today and we didn't get to it so we'll pick that up either tomorrow.

We'll have to meet. Staff and the leadership team will have to meet. And Recommendation 7 was on day three but we thought we would have extra time today so we brought it over, so.

So that's where we're a for the end – that was what we accomplished today. Any questions, concerns or comments? Not to reopen any issues but just anything you want to flag.

Okay and then lastly we said, bear with us. We're going to walk you through all this stuff. We're going to have a structure and a proposal, you know, process for you to work together but we said that we would take feedback.

So I know everybody's just dying for feedback right now but if you have concerns or questions about how we work together today, this was an opportunity or you can catch-up with us later. But any feedback for CBI or the leadership team on how we progressed today? Yes, Alan.

Alan Greenberg: Worked much better than past times. Thank you.

(Gina): (Emily).

(Emily): I'd just like to thank you all for a really great moderation and leadership today. I think you got us through a really tough...

Man: (Unintelligible).

(Emily): What do you call it? The chasm of despond or something when you ...

((Crosstalk))

(Emily): We had some very good sessions and I decided that so thank you very much, all of you.

(Gina): Thank you. Kavouss.

Kavouss Arasteh: I echo the last proposal that we had a very efficient and effective day and that is the usefulness of the face-to-face meeting. Thank you.

(Gina): Bravo. Well thank you all for your flexibility and your willing to problem solve. And please appreciate someone that is not in your group. On your way out or at dinner tonight, please express your appreciation for people's flexibility and willingness to problem-solve. Really, just take a moment and thank somebody, okay.

Okay, and like I'm running to the bar for a martini or whatever so just follow me.

((Crosstalk))

(Gina): Oh yes, dinner. So can we get the details on dinner? And then we're going to reconvene here at 8:30 and we're not going to leave until we resolve access. Just so you know.

((Crosstalk))

Man: Dinner is in (Regatta) but where is (Regatta)?

(Thomas): In the lobby.

Man: Lobby, thank you.

(Gina): So go to the lobby, okay.

Kavouss Arasteh: The location for the dinner, right, lobby?

(Thomas): It's near the bar in the hotel lobby.

(Gina): Okay. And what time does dinner start?

(Thomas): 7:00.

(Gina): Oh, not until 7:00.

(Thomas): Yes, (Leon) and I are busy building a wall here so we've got some ...

(Gina): Are you guys sure you want to leave? I mean we have until 7:00.

((Crosstalk))

END