

**ICANN Transcription
GNSO Temp Spec gTLD RD EPDP call
Tuesday, 18 September 2018 at 1300 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-18sep18-en.mp3>

Adobe Connect Recording: <https://participate.icann.org/p2p4iyylf10/>

Attendance is on the wiki page: <https://community.icann.org/x/3AONBQ>

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:

<https://gnso.icann.org/en/group-activities/calendar>

Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the fourteenth GNSO EPDP Team call taking place on Tuesday the 18th of September, 2018 at 1300 UTC.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the telephone bridge could you please let yourself be known now? Hearing no one, we have listed apologies from Ayden Férdeline, NCSG; and Tatiana Tropina has been formally assigned as his alternate for this call and any remaining days of absence.

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

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up at this time. Hearing and seeing no one, if you need assistance updating your statement of interest please email the GNSO Secretariat.

All documents and information can be found on the EPDP wiki space. There is an audiocast in view only of Adobe Connect room for nonmembers to follow the call. So please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted to the public wiki space shortly after the end of the call. Thank you for this and I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks very much, Terri. And thanks everybody, for being here for a timely start. The agenda for today's meeting are some administrative updates from me and a brief glance through the action items, and then the substantive discussion today will cover Appendix C where we've had a recommendation to essentially eliminate that and then some modifications to that, so want to go through that, in some detail and see if – check to see if we're close to having an agreement there or what steps should be taken next, and then carry on with that.

The lion's share of the meeting will have to do with Section 4.4 of the temporary spec which is the purposes for – the lawful purpose for processing gTLD registration data. And essentially you know, maybe we'll stop calling it Section 4.4 soon but taking on the work that's done by Thomas and Benedict and creating a new – a matrix and a set of purposes so that'll take up the lion's share of the meeting today.

With regard to administrative items, the initial GDPR training class is to be finished by tomorrow so at the last check I think there were 14 people that hadn't completed it yet. So that's a prerequisite to the next step where we're going to have a session with Becky Burr on Wednesday and the time isn't

here but the time has already been published and maybe someone from the support team can type it in here.

For those that would like specific questions answered or topics addressed during that meeting, that – please send those to this web address right here, and you have the slides so I think you can cut and paste the link rather easily there. We have some input already and to the extent we can respond to certain requests for topics that would make it a much meatier session I think. We wrapped up the ICANN travel support requests for the meeting in Barcelona. And thanks to the cooperation of you guys, we received only four applications that were received and granted for travel support so thanks very much, everybody, for finding alternate means of transportation to Barcelona. Great job.

Yesterday we had a sort of an open house session with CBI, representatives from CBI who are listening on this call from the observers' platform. And they were David Plumb, Gina Bartlett and –oh sorry, Toby Berkman. And we – for those who weren't on the session, you know, the CBI guys did a brief introduction; we then sort of went around the room and those that wanted to offered advice and – about, you know, factors that could make a face to face fail from their past experience and factors that could make it succeed.

And those were taken onboard and then the CBI team reviewed some of their methodologies with us, reflected on the topics they thought were going to be discussed during the meeting in Los Angeles next week and offered some detail into how that might happen.

Right now – after that session, the support team got on the phone with CBI for almost another two hours and went through potential – the potential agenda for the Los Angeles meeting. And CBI took it onboard to (gin) up the agenda for us so we expect a copy of that today that we – where we expect there to be some iteration in the agenda.

We received a couple requests to get involved from you guys to get involved in that agenda-building, so, you know, maybe rather than noodle the agenda with CBI just on our side of the fence, you know, we'll make that more public. You know, understanding that there can only be one agenda and the agenda has to be buttoned down in the next couple days, for those of you that want to review, (arrange) and then contribute we'll be happy to take that input so that's the input there.

And then finally I just want to touch on the DSIs that are distributed by staff before each meeting. So I've found them to be a really handy one-stop shop for all the documentation that supports any subject matter. And, you know, we talked about the slides and the slides we create are really a duplication of all the material in the DSIs which have, as you know, the pertinent temporary spec sections, any input from the Privacy Board, all of your comments during the triage section and so on.

So we're going to – not so much in this meeting, I didn't succeed at that, but in the future rely much more heavily on those. So I've take to printing them out and having them ready as a reference along with the screen I have on my laptop, those of you that have three screens might not have to print it out but I think those DSIs are a really good idea and they're also really well executed. So we'll try to – having gone to the effort and having that tool on hand, we'll make a better effort to use then rather than recap that information in abbreviated version on slides.

So that's the agenda and the updates. I'll just pause for 30 seconds, take a sip of coffee and see if anybody has any comments. Okay, great. Let's get into the substance. Well not quite yet, so in our timeline we see that we're just crossing over halfway between when we started and the ICANN meeting in Barcelona. Oh, Kavouss.

Kavouss Arasteh: Yes, good morning, good afternoon and good evening to everybody. With respect to this face to face discussion with CBI, we had an agenda, you

know, a small group of GAC this afternoon before your meeting and there was no conclusion whether we need such a face to face discussion. It was not decided and so on. I don't know whether you have received anything from any other group because we are nine groups, any – the remaining eight whether they need or not so we would be very happy if we know the reaction of others with respect to this private face to face meeting of CBI with the different member of the team – group of the team. Thank you.

Kurt Pritz: So, you know, CBI can't talk to that now because they're in observer mode. So I'll just do the best I can and probably muff the answer a little bit. But in using mediation there's often contacts between the mediator and individual parties. And this offer of CBI to talk to individual parties is really not about substance at all but just to get advice on the operation of meetings. And, you know, to ensure that, you know, substance even if, you know, even if it came up in some sideways way does not affect any outcomes, you know, the support staff and I and Rafik have not to attend those meetings with CBI so there can no influence there, only if there's a certain reason to be.

So it's really a typical way for the mediators to learn about the issue. But I'd ask – what I'll do, Kavouss, is ask CBI to respond to your question in writing. And thank you for it.

So with regard to the timeline, I just want to reiterate that we're – where it says "Now" it's at least halfway to ICANN 63 and so we're going to lay out some goals for the Los Angeles meeting that have to do with what I think are the most critical aspects of the policy that we're developing. And so, you know, we'll know and set some pretty clear objectives for coming out of that, so I think we'll know out of that whether our goal of achieving an initial report that outlines the policy in sufficient detail that can guide us forward in our operations, you know, we'll know where we stand there. You know, it's my clear impression that we had to reach consensus on many – or any issues so this will be a time for this LA meeting will be a time for coming out of a session with some agreed-to documents.

So with regard to the action items, you know, on Appendix A, there have been some comments made on those already but, you know, we have a request to have a session about Appendix A to discuss it amongst us all before launching that group of volunteers so that's going to be on the agenda for Thursday. But the content of Appendix A is an important part of the Los Angeles meeting, so we should be ready for that. And then the other action items here have to do with training. So now let's get into substance.

In Appendix C, you remember, there was an original proposal by – from Alan Woods to essentially eliminate Appendix C as it was going to be replaced by other documents in the future. And Alan did a nice job of laying out the case for that and addressing them all. Margie followed up with a request for modification on behalf of the Business Constituency where she suggested that many of the prescriptive items that Alan described should be eliminated but that some of the principles or the principles outlined in the document should be kept. And then just recently Diane Plaut wrote an email in support of that.

So what I took the liberty of doing, and hope you take it in a constructive way that was in the packet that was mailed out last night is I created a redline of Appendix C that was my best faithful reproduction of Margie's email, so without applying any judgment in any way, laying out what I thought Margie's email indicated the – should be kept in Appendix C and deleted the rest.

So I think the way forward here might be to take that as a starting point and discuss a draft. I also, you know, after discussion with others think that, you know, now that this is a statement of principles, you know, even titled Principles for Processing Registration Data, you know, it should be taken out of the appendix because it's not really an appendix because they usually include, you know, detailed direction and, you know, those prescriptive portions are no longer a part of it so it's really more appropriately placed in a different part of the policy that we're creating.

So I don't know if anybody has had any chance at all to look at that or wants to make any comments about the best way to move forward. I'm going to request to the support team that we, you know, just do the usual thing and create a redline document in either Google Docs or, you know, in Google Docs and then have you all comment on that one place. So to the extent anybody's you know, considered this approach that I've outlined here or been able to review the document I'd appreciate comments.

So, Marc, thanks very much for raising your hand.

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

Kurt Pritz: Yes, perfectly.

Marc Anderson: Great, thank you. So I raised my hand because I want to sort of take the first stab at trying to, you know, address this. And I think the first thing just to note sort of in between the second and third bullet points, Alan responded with another email sort of – trying to address the points that Margie raised and, you know, hopefully clarify the points he made in his original email. It was based on, you know, we also, you know, had a discussion following Alan's proposal on one of our biweekly calls. And one of our takeaways was that sort of members of the group maybe sort of missed the point that Alan was trying to make in his first email. So he took a stab at trying to be a little clearer in that. And so there should be a fourth bullet point there under Contributions.

But the, you know, I have two other points I want to make, and, you know, I appreciate your attempt at redlining sort of a new version of it, but I think you know, I think the proposals are sort of diametrically opposed. You know, there isn't, you know, the Registry Stakeholder Group's, you know, proposal was to remove it altogether, you know, and I think we laid out, you know, our reasons why we think that is a way forward. And Margie and Diane

responded with proposals for a different approach. So, you know, I'm not sure how to close the gap between the two.

But when I was reading Diane's response from yesterday I was really, you know, struck by something and that, you know, I think looking at Diane's response and, you know, sort of the rationale behind, you know, the Registry Stakeholder Group's proposal, I think we're coming at this from different perspectives. And, you know, if you – in looking through Diane's response, you know, at one point she talks, you know, in her first paragraph she talks about, you know, laying out and developing a comprehensive and exhaustive framework for ICANN.

And from a Registry perspective, you know, certainly in this phase, in this Phase 2 of our work here between the triage and access exercises, you know, our focus is really on just the things we absolutely have to get done for GDPR compliance and looking for some of these, you know, bigger picture items I think to go to Phase 3. And so what we were really struck by in looking at Diane's response is that I think, you know, really before we can have a substantive discussion on this we need to have agreement on what the scope of our work product is going to be, what the scope of this Phase 2 is expected to be and, you know, and what our deliverable is going to be.

And so I think that's, you know, hopefully that point comes through that really we need to come some fundamental agreements on sort of the scope of our Phase 2 work and what our work product will be I think before we can get into the substance of sort of what Alan, Margie and Diane have raised for a path forward with Appendix C.

Kurt Pritz: Thanks very much, Marc. Kavouss.

Kavouss Arasteh: Yes, Kurt, I have a very general question. I have no difficulty to review the changes proposed for various parts of Appendix C and others. But my question to you as the chair of this group and to those who propose

modification is that to what extent the proposed modification once agreed would be in full compliance the remaining part, what is agreed would be (unintelligible) would be in full compliance in the GDPR? Do we miss anything? I have read this booklet 99 articles, only one time, I have do for the second time, but I wonder whether all these changes would be – would respect to be compliance with GDPR.

So we should have this assurance that the changes proposed would still remain to be – the remaining document to be in compliance with the GDPR and nothing will be left from that, for instance, identification, many people they propose to delete that. I have read identification many, many times, identification, on identified, identifiable, so just my general question, I don't want to prejudge the (unintelligible) but I just want to have the assurance that we need to remain and respect fully the GDPR. Is it that in the agenda? Thank you.

Kurt Pritz: Thanks, Kavouss. Yes, I think that's right. I think that's the threshold question and any – not only in any change but in any place where we can (unintelligible) the language of the temporary specification for our policy. Hadia.

Hadia Elminiawi: So I won't speak about retaining the Appendix C or not because I have no strong opinion there. But the only thing that I think that is in there and needs to remain whether in the appendix or else is the processing activities in relation to the GDPR as this is not present elsewhere in the temporary specification and we need to ensure that these activities are going to be carried on and in compliance with the GDPR. So that's the only thing that I think should necessary remain whether in the appendix or somewhere else. Thanks.

Kurt Pritz: Hadia, could you just repeat the activities you were referring to again? I missed that for some reason.

Hadia Elminiawi: Okay. (Unintelligible) the kind of activities (unintelligible) collection of registration data from registered (unintelligible) registration data from registrar (unintelligible)

((Crosstalk))

Terri Agnew: ...sorry for interrupting, but it sounds like your audio is cutting up now and it's very difficult to hear what you're saying. Are you able to adjust?

Hadia Elminiawi: I'll try to type in; I don't know what's wrong with my mic. Thank you.

Kurt Pritz: Okay thanks, Hadia. Diane.

Diane Plaut: Sure. Hi, Kurt. How are you?

Kurt Pritz: Good.

Diane Plaut: I want to comment on the different – talk about the comments that were made by Marc and reflect on what Kavouss said, as well as Hadia and Thomas. I think that the – our goal is to follow what the charter says, to follow what the scope of this EPDP is as laid out in the charter. Now the charter was created with a lot of thought in making sure mission was to find compliance with the implementation of the GDPR as the baseline data protection – global data protection law in the world right now, certainly of course taking into account other data protection laws.

So whether we – we need to look at that like everybody is saying and compliance is the key. So it seems very cosmetic to me to try to break it down in Phase 1, Phase 2, Phase 3, to backtrack. To delete Appendix C would be to do that because in creating the charter and creating this temporary specification, a lot of work went into it and thought because ultimately compliance with the GDPR, as we all just – as everybody just took the

training appreciates, is a laying out the specified purposes and (unintelligible) in legal bases, and the purpose of Appendix C is to do that clearly.

And as supported by ICANN's bylaws and the charter, that's what Appendix C does for the data subject. Now the contractual – further contractual obligations of registries and registrars is a separate issue. And so I don't think that at this juncture, whether we call it Phase 2 or Phase 3, that to delete Appendix C is helping us at all, in fact it's really taking us back. And I appreciate that Thomas feels that, you know, perhaps the format should be different, the legal bases and purposes could be laid out differently, but fundamentally it's the same exact information that we're going to come down to.

So I don't see how this isn't exactly within the scope of this EPDP, it exists, its subgroup, its correct for the most part and it provides the data subject with the information in compliance with the GDPR.

Kurt Pritz: Thank you, Diane. Alan.

Alan Greenberg: Thank you very much. As we seem to have an echo from someone if staff can try to find that? Oh, okay it's gone. As you mentioned before, the – it is an appendix because it's an addendum to a specification, a contract clause, essentially a clause of a contract, so whether it should be an appendix or some other form, I think is moot and I don't think is worthy of us spending a lot of time debating.

Thomas is right, a significant part of Appendix C is simply reciting GDPR rules slightly reworded. And I don't believe we need to do that. However, there is also part, it's specifically the table at the beginning, which is talking about the legal justification of why we're doing these kind of things and we use glib terms thereof we have a legitimate interest, and I think that's where we need to be spending a fair amount of time to actually define what the interest is.

The GDPR says we need to specify why we're collecting the data and we can only use the data for specific purposes. Simply claiming legitimate interests where we don't go a lot further along the road of saying why we're collecting that data I believe is going to get us into problems, it's going to make it hard to justify or impossible to justify why we want to do some of the things that I think we need to do with this – with this data and I think that's where we should be focusing our interests.

So to glibly saying delete Appendix C I think is wrong but there is no need, in my mind, to repeat the rules of the GDPR there in kind of level. We may want to refer to them, but I don't think we need to replicate them in ICANN's policy and certainly if we try to replicate GDPR rules, we're going to be in a horrible place going forward when we try to adapt to other privacy legislation in other jurisdictions. Thank you.

Kurt Pritz: So what I've heard so far is that – is that, you know, Alan came in behind this and in his memo he understands the reasons for including some of the material but also says some of these other sections are prescriptive and need to be deleted. And, you know, the memo is a lot deeper than that so if you haven't read it, you should. And then Thomas, you know, in all of this then Thomas come in and said Appendix C you know, paraphrases a lot of GDPR and that's – we should ascertain why that is but it's probably not useful to paraphrase the law either cite it or have something.

So those are the two areas where I think we should relook at Appendix C, one is to cast an eye over what's left to see if there's some operational blocks to making – prescribing that in this; and then secondly, you know, achieve the aims of what, you know, Margie and Diane are talking about but do it in an appropriate way and an appropriate part of the document. And then finally, I just want to agree with what Alan said, and that's what we're going to spend the lion's share of time at this meeting. Marc, sorry, I interjected but we're

kind of going around the cycle again so I wanted to say – stop for a second and then please go ahead.

Marc Anderson: Thanks, Kurt. This is Marc Anderson. You know, I raised my hand to respond to something Diane said where, you know, she stated that, you know, she seems to be looking at Appendix C as laying out the purposes and the processing activity and purposes and justification under GDPR. And, you know, I guess, you know, fundamentally that's not how I view Appendix C at all. And in fact as you pointed out, you know, we have, you know, we have the 4.4 purposes, you know, purposes discussion to go through and there we have to agree on the purposes for each of the processing activities and make sure there's a legal basis associated with it.

You know, and there I think, you know, we have some of the disconnect. I think some of the things that I'm hearing Alan and Diane argue for as reasons for keeping Appendix C and here I, you know, I agree with Alan, I don't think it matters if we call it an appendix or what we call it, you know, but some of the reasons why they're arguing for keeping Appendix C you know, I think from a Registry standpoint we agree these are things that need to be kept in; we just disagree that Appendix C does any of those things or really adds value to, you know, to the document.

So, you know, I'm not sure exactly how to bridge that disconnect because we seem to be slightly off in, you know, we're not quite seeing eye to eye, we agree in some principle but maybe not in execution. And, you know, and again maybe, you know, I encourage everybody to go back and reread the, you know, Alan's document. I think he does a really good job of laying out, you know, our rationale for why Appendix C is not necessary and how, you know, the important principles and points from Appendix C are covered in other areas and are in scope of our working group.

Kurt Pritz: So I don't know whether the approach is to – well let's go to Kavouss and then I'll suggest a next step from there. Kavouss?

Kavouss Arasteh: Yes, thank you. I thank Marc for the intervention. Several times he mentioned that we don't need these because they are elsewhere, where they are? They might be within the 99 articles spread over various article different manner and so on so forth, but what is the problem to put all these together in a self-contained, self-sufficient supporting document for the readers not having the knowledge of Marc and others to know that what is the role of the registrar, what is the role of the registry, what is the role of ICANN and so on.

What is the problem spreading 99 articles does not serve its purposes for the people that may not be familiar totally with all of these things. They find a very good supporting document using everything relating with data, registration, and process or requirement, data processing requirement, sorry, data processing requirement.

Still I'm not convinced what is the problem. Does anything have a fear that this may have danger for them, they have risk for the job or they don't want to do something, they want to be hidden somewhere? It is very clearly mentioned here, so what is the problem?

Still I am not convinced the problem and I'm not convinced that it is elsewhere and this article we have to go and put article – could someone who proposed the deletion of that going to this appendix on Principle 1 up to the end and indicate is found in Article X, is found in Article Y and so on so forth whether fully or partly and so on so forth. Still I don't understand either that is here is totally wrong, that we have to blame those who have prepared this, or they are right, they have taken from the GDPR various elements from various articles and put them together which serve a good purpose. I'm sorry, I am not convinced for the deletion. Thank you.

Kurt Pritz: Thanks very much, Kavouss. That's a good point and related to what I think the next step should be, and that is – and I don't know the who yet but I'm going to kind of zero in on that. So, you know, what I did is I took Margie's

memo and sort of dispassionately marked up this appendix. And maybe the next step, or what could be done instead is to, you know, take Margie's memo and look through the temporary specification and find that, you know, define the goal Margie had and then find that in the temp spec or if it's not there or needs to be augmented in some way do that augmentation.

And given Thomas's comment, you know, do that augmentation in a way that precisely reflects the wording in GDPR and not a paraphrasing of it. So I think that's right for, you know, taking from Marc and – Marc, Thomas and what Kavouss just said, so I think the next steps would be to find those things that Margie mentioned and either find them in the temporary specification or insert them into what's going to be the new policy in some way. I don't think things should be repeated; I think things should be clean, and state them in a clear succinct way. And if some of those things are inappropriate then have the debate about those.

And I think, you know, I don't know, so let me defer maybe to Marika here, but do you think this is – unless there's a volunteer in the group that wants to – oh Margie's got her hand up so go ahead, Margie. Margie took her hand down.

Margie Milam: No, Kurt, it's Margie, sorry. Yes, I think your approach makes sense. In my suggestion I wasn't trying to duplicate things that are already in the temporary spec or other parts of the policy we're building but I do think it's important to identify where there is – where it doesn't exist and then make sure that that is somewhere whether it's an appendix or in, you know, in the body of the policy. I don't really care, but there are certain sections in there so I think your suggestion of having staff go through and identify what doesn't currently exist elsewhere would probably be a good exercise and then that could focus the attention of this group.

Kurt Pritz: Thanks very much, Margie. I'm just looking at the chat for a second. And I don't know if somebody from Marika, Berry or Caitlin can sign up to this? Marc, do you want to speak?

Marc Anderson: Thanks, Kurt. This is Marc. I just want to ask, you know, Margie a question to follow up. You know, in, you know, maybe you can do this offline if it's easier but I'm not sure I completely follow what sections you're concerned are, you know, are not covered elsewhere. So I was wondering if you could follow up on that in a little more detail. And, you know, are you talking about like just the, you know, like the processor or coprocessor, you know, controller designations or is there something else specific that you're concerned about? I guess I'm just looking for a little more detail because I'm just not quite following what, you know, what you think is in Appendix C that's not, you know, covered elsewhere.

Margie Milam: Sure, if I can respond. So if you look through the redline and I didn't have a chance to look at it before this call, but you'd see things like standard terms applicable to third parties; you see things like standard notices to registrants, you see the principles in Section 1. And those aren't just recitals of GDPR, those are actually applications of the principles as it applies to the Whois system. And so that's really what I'm looking for is where the GDPR principles are applied specifically to Whois in a way that makes it clear for all of, you know, contracted parties, the registrants, the people that access the data, the ICANN community.

And so I agree if it's simply a, you know, a recital of GDPR with no real applications, then that's a separate issue and we will want to think about how to apply it. And if we really can't come up with a way to apply it to GDPR then there's really no need to put it in the policy in some way. So those are the things that I'm talking about or like the things like asking for specific requirements related to security of the data, that's, you know, I think that's an accountability principle that is important for ICANN to reflect in its policy.

And I don't think it's sufficient to just say as required by GDPR, I think that that's an area where we could be more specific and show how it should apply in the context of the domain name system.

Kurt Pritz: Before I get to Kavouss, Marc, do you want to reply to that?

Marc Anderson: Thanks, Kurt. You know, I raised my hand initially because I wanted to reply but now I think maybe I want to circle back with my colleagues there so, you know, I understand the points you're making, Margie, I'm not sure I agree I guess in principle that some of those things should be part of the policy recommendations that we're making. You know, I think some of the things you're talking about are, you know, contracted parties have an obligation to comply with GDPR, you know, whether we put it in the policy or not.

You know, and so, you know, we, you know, we have to follow the law. And so putting, you know, principles that apply to GDPR in a policy, you know, I'm not sure that that's exactly our task here. I think we're developing, you know, policy for what, you know, what contracted parties must do around the processing of registration data. You know, so I think, you know, I think maybe this goes back to my initial point in that we need to be, you know, we need to come to agreement I guess on what is the scope of, you know, what we're trying to do? What is the scope of the policy recommendations we're making and what is our work output supposed to be?

So I'm not sure we're, you know, we're, you know, I'm not sure we're completely disagreeing; I think we're just not coming at this from the same place as far as what the scope of our, you know, what the scope of our job here in this working group is supposed to be.

Kurt Pritz: So if I could – this is Kurt – if I could just interject? Very specifically on this issue and our scope, you know, I think the document we're creating has to have the, you know, we have to apply our judgment so the document we're creating as the right amount of specify. And so if standardized notices are –

would be beneficial, you know, to implement and, you know, the benefit outweighs the detriment then that should go in. But I think we have a sort of a broad remit to decide what sorts, you know, how specific we are in this document, has to do with, you know, that sort of balancing.

So and I also just want to mention that, you know, some of the things – so Marc, I'm really glad you're going to take this back because I think it takes a measured response. So those things – some of those things that Margie mentioned didn't strike me as principles, they struck me as, you know, sort of directive, you know, standardized notices and things like that. So and so that's the question is whether things like that are appropriate and should be included in this. So forgive me for saying all that. Kavouss.

Kavouss Arasteh: Yes someone very rightly mentioned that we are turning around ourselves many, many times. It was said that this is the third meeting we're talking about Appendix C. I think the best way is that put it to the responsibility of the ICANN Board liaison to indicate where these terms, clauses and text comes from, one article, two article, identify them and then we will discuss if it is redundant we will delete that, if it not redundant we could decide whether we still prefer to have it in a self-contained, self-sufficient document or we leave it to those various different articles and transfer the responsibility to each reader or each application of that to go and to find out what is the situation and so on. This is one point.

The other point I don't agree with some people saying that this appendix only help registry and registrars, I don't know whether they help or not. But they said that our duty is to have policy of ICANN. Does or do registry and registrar not part of the ICANN? Are we talking of ICANN the Board, ICANN the organization, or ICANN the community? I don't agree with that, that our duty is to prepare policy for ICANN, what is ICANN? We are talking of ICANN the organization or ICANN the community? So registry and registrar.

And apart from that, we also are very interested to see these elements to be somewhere to easily identifiable and easy look at. Still I don't believe that we should delete everything and not have any appendix. We should give another reference to the appendix as supporting material and so on so forth. But I don't think that we should delete anything before we have that identification that I think Board to prepare this document and approve that on 17th of May, 2018 is responsible to identify where or somewhere they have taken this and put them together. Thank you.

Kurt Pritz: Thanks very much, Kavouss. Milton.

Milton Mueller: Yes, Kurt, these comments are primarily directed to you as the chair of this committee. We've just spent half of our meeting on an extraneous agenda item. I don't know how we got – how this got prioritized. I think it's very evident from the discussion that it should not have been prioritized. And I'm – I really think that we need to have better management of our agenda. We have to focus on the things that are essential to the temp spec and that is what data is collected, what are the purposes and what data is going to be redacted in public Whois.

It's simply unacceptable for us to keep getting distracted from these fundamental issues onto things that are secondary and that may not even be controversial once we've decided what data elements are actually going to be collected and what are going to be disclosed. So can we get off Appendix C? Can we just drop it? It's not getting us anywhere. It's a waste of time and I think I still don't understand how we even got on this.

Kurt Pritz: Okay, Milton, thank you. So I'd like to just close this with the direction to staff to take on Margie's comments and at a time convenient, match them up with the rest of the temporary specification and see how that fits. So let's, if you could put the slides back up?

With regard to the purposes of processing GDPR data for processing registration data, there were two documents that were created. I think the most important one is probably the latter one that was distributed with the meeting materials and is an overview of the purposes that Thomas and Benedict worked on in preparation for us.

So I think, you know, this is sort of an overview slide, but in, you know, when we get to the end of Section 4.4 I'm sure we will have answered these charter questions and so what we're going to do here is just briefly discuss the recommended changes to 4.4, the overview section over the 13 subsections, and then go onto the matrix that was created by Thomas and Benedict and undertake a really specific task that I think we can get through in this meeting that will be good preparatory work for the meeting in Los Angeles.

So there's – these next two slides I just want to check with Thomas and Benedict, so their recommendation on the overview section, I'm sorry, on Section 4.4 really had to do with listing the six tests that are laid out in Article 1 of the GDPR for legitimate processing of data and saying that every purpose that we list in our policy should pass the test of one of these six or pass the criteria of one of these six items. So as we consider data processing purposes, we will test it against one of these six. So that's one question.

And then a second question is, you know, we decided that under the purposes we should separate purposes for registry processing of data, registrar processing of data, the ICANN purposes for processing data and then finally either purposes created by third party interests or third party interests regarding the processing of data. So my – what I take away from that is in our policy document the replacement for Section 4.4 would be sort of this format that there be four Section 4.4s and even though there'd be repetition of purposes amongst each one they'd look like that.

So I'd just like to – go ahead, Benedict.

Benedict Addis: Hey, I think this may be where I disagree slightly with Thomas. And I see this – what I've described before as a quasi-regulatory activity as the sort of top down activity of ICANN saying, here's our purposes and we're asking (unintelligible). I think these are allied to – these should be thought of as kind of joint purposes in making the domain name system work on a sort of strategic level so that we'd of course acknowledge that for an individual registration to work you don't need any Whois data at all, I think James Bladel has been pretty clear about that. But for the whole system to work, you need Whois and you need to be able to investigate and produce trust and all the other sorts of things.

I think it's a real mistake to ascribe that to any individual player in the ecosystem. I think it's a joint interest and I think it's much better to put the sort of ICANN plus contracted parties, so A, B and C, together and then a firm D recognizing of course that Ashley's made quite a clear statement that there are some purposes that whilst they're things like, you know, antifraud and cyber security, that whilst they're processed by others, and, you know, there are – we acknowledge there are third party interests involved, they are some of those ICANN purposes, that's the first. So I'd distinguish just between first and third party purposes.

And the reason I say that is simply that I think we can – we just avoid going into the sort of mad taxonomizing that has strapped attempts to do this before. Thank you very much.

Kurt Pritz: Thanks, Benedict. That's a good clarification. Kavouss.

Kavouss Arasteh: Yes I see the common product of Benedict and Thomas very useful. They just want to rearrange the 4.4, rearrangement in the subject of purposes in term of registry, registrar, ICANN and third party and so on so forth is good provided that after that we do not miss essential point which are indicated in relevant article of the GDPR. If the remaining part comply with this

subdivision we have no problem. I see it guidance for rearrangement, it may be better now, we know that who's purpose is what, so that is good.

So I think perhaps Kurt, if you agree you put this arrangement to the views of distinguished colleagues, if they agree with that then we go to see whether they (unintelligible) comply with what is already in the GDPR and maybe in the temporary specification. Thank you.

Kurt Pritz: Thanks, Kavouss. Mark.

Mark Svancarek: This is Mark. I'd like to thank Benedict for his comments. It's really – sorry, this is Mark. I'd like to thank Benedict for his comments, it's always refreshing when someone in this group says, you know, we're all in this together and we do share purposes in common. That said, I'm very fond of (mad) taxonomization to paraphrase Hunter Thompson, it's always worked for me. So I'm still advocating that we do this, you know, with an eye towards, you know, identifying the areas where they overlap.

So, Thomas, it's kind of a thought exercise, it's not – we're not trying to totally atomize everything but for the purposes of having the discussion I think it is good to perform this taxonomy exercise.

Kurt Pritz: Thanks. Alan, I hope you don't mind if I let Benedict respond to Mark?

Alan Greenberg: No, please.

Benedict Addis: All I was going to say was fine but on your head be it. I think we'll get into, as I've just said in the chat, sorry that wasn't meant to come across aggressive, as we said – as I said in the chat, I think the problem then lies is that the exercise doesn't just end with the matrix, so the registries, registrars, ICANN on the columns, we then get into sort of 3D matrix where we then start talking about what kind of data is processed.

And I think because each – because I don't agree that the parties processing requirements are all as aligned as they are for the purposes and I think you'll start to find this model falls apart. I don't want to be a Cassandra here, but I think you might find that the model falls apart when you start trying to pick apart processing sort of – so what data gets processed once you define the purposes.

Kurt Pritz: Thanks. Go ahead, Alan.

Alan Greenberg: Thank you very much. I guess I don't really care at this point which format we put the tables in and whether they're two dimensional or three dimensional, although three dimensional ones are awful hard to put on paper. I agree completely with Benedict that I think we – when we finally come to the real work we're supposed to be doing of defining what the purposes are for who to – for who is allowed to process the data, we are going to find significant overlap. I believe we will find the purpose is rooted in the ICANN Bylaws of why ICANN is making sure we have the data and then multiple people will get access to it for specific uses of that data.

I don't think we're ever going to be able to itemize each use because there will be subtle differences, but I think we have to identify the generic uses based on the ICANN bylaw requirements for why we're collecting it. And, yes, we can present this in multiple different ways, I think we need to start doing the work and we may well find out, as Benedict says, that when we get a certain point we find out that the way we're trying to organize it is unwieldy and we will have to juggle it and, you know, invert the matrix or something like that. But ultimately I think we need to start doing the work and pick one method for documenting it right now and if we find it unwieldy then we'll have to change. Thank you.

Kurt Pritz: Thanks, Alan. Alan Woods.

Alan Woods: Thank you. I just want to make two very quick points just going back to the slides that you had up there. I don't want to sound like a broken record so I'll keep them short and sweet. The first one is that ICANN's purposes and the registries and the registrars' purposes are not necessarily the same thing. ICANN has purposes, the registries and registrars have shared purposes with ICANN but what we're talking about here are probably purposes that are only ICANN's purposes and not the registry and the registrars' purposes. We have to keep that in mind.

And also, in the document as well, you're noting there that it says "the purposes of third parties," and I see Milton saying this in the chat, third parties do not have purposes, it is not their purpose; it is their interest, they're completely separate things. And we've really, really, really, really need to draw a line in the sand between what is the difference between the third parties' interest and an actual purpose of the controllers in this particular data – what's the word – ecosphere, shall I call it. So I just want to make those very clear points I have to.

Kurt Pritz: Thanks, Alan. Stephanie.

Stephanie Perrin: Thanks. Stephanie Perrin for the record. In many ways Alan has just made my point. We are going in circles, folks. I hope some people have now taken the training but unfortunately the training is, while it's very good I think, for length of time that takes to do it, it's not a bad little effort, it does not help us do a privacy impact assessment on framework that we're dealing with.

And the problem, as I see it, is that the bylaws to which Alan keeps referring, I'm just going to hang up that phone and make them call back – require a privacy impact assessment. Everybody's assuming that the bylaws as ICANN has set them up, are some kind of gospel. They don't comply with data protection law. We have been told by the DPAs point blank over years, that is not up to ICANN to set itself up as a law enforcement data dump. I'm paraphrasing there. I do apologize for the phone, it happens every time.

Folks, the purposes of third parties are not the purposes of ICANN and ICANN cannot write itself bylaws that provide that. Thank you. If we're going to be going in circles you might as well go back and do a privacy impact assessment of the entire registration data service because this isn't working. Thank you.

Kurt Pritz: Thanks, Stephanie. Ashley.

Ashley Heineman: Hi, thanks. This isn't so much a comment on the chart that is being put forward but more along the lines of responding to some of the comments that are being made. I think what we're all just kind of struggling to get past here, I think there's a lot of assumptions as to what the motives are behind what we're trying to do and I think that's unfortunate but it could be perhaps we're not explaining ourselves properly, which is that I think most of us agree here wholeheartedly that the very detailed and specific interest of third parties are a separate exercise and should be dealt with elsewhere.

But what a number of us do firmly also believe is that ICANN within its bylaws does have purposes associated in a very – also in a narrowly framed way but not in the specific format of third party interests. I think we would have a very long list of third party interests and purposes but ICANN has a very small subset of what they're responsible for as dictated in its bylaws so therefore are their purpose.

I think unfortunately though what's happening is that we're all assuming that we're trying to load in all of the third party interests here which isn't really the case, it's just to recognize what ICANN's purposes are and those are in the bylaws and I'd be happy to have them posted again. I think Lauren did a very good job in an email that she circulated last week. But I hope we get to a point where we kind of recognize what's trying to be achieved here and that, you know, we're not trying to make this a unified access discussion, we're not

trying to make this a discussion about very specific detailed interests of third parties. And I'll stop there.

Kurt Pritz: Thanks, Ashley. Emily.

Emily Taylor: Hi. Thanks, Kurt. And I found Ashley's statement very helpful, thank you for that. I don't want to belabor the point, I wanted to support the comments made earlier by Alan, strongly. But also what's happening in the conversation – and I must say I'm finding it very hard to follow the thread, but what I think is happening is that we're conflicting ICANN's purposes with those of the registries and registrars.

Now in relation to Whois, it might well be that ICANN's sort of public purpose as set out in the bylaws is really the reason why the Whois data might be made available to third parties with the correct type of interest that would satisfy GDPR. But those are not necessarily the registry and registrar's own purposes. And therefore I think again not wanting to belabor the point too much but the reason why that's important is because it goes to, you know, the controller with this and who carries responsibility and therefore liability for anything that is or is not legal in the implementation of the Whois access or publication requirements.

In this respect, the registries and registrars are just sort of implementing what they are required to do by ICANN; they don't particularly have any purposes of their own to – as far as I can see. So I just wanted to support the comments made by Alan and also to try to tease out this point so thank you.

Kurt Pritz: Thanks very much, Emily. James.

James Bladel: Thanks, Kurt. James speaking for the record. And, wow, there's a lot to unpack here in the last 10 minutes. I think just quickly agree with many of the points made by Alan. I think Emily has also I think very astutely articulated, you know, something we should be mindful of. But I want to go back to

something that Ashley had said because I think she's onto something and I could actually maybe paint an exit out of this quicksand that we sometimes find ourselves in.

And that is that if we acknowledge that registries and registrars have purposes for processing and collecting data, and that those purposes are separate from ICANN's purposes, then it seems like we're missing a voice here; we're missing the voice of ICANN. We have registries and registrars essentially trying to limit their exposure for overreaching collection and processing of data that they don't feel they can justify if they're ever hauled up in front of some sort of EU tribunal.

But – and I think we have third parties saying that their interests kind of fall down if they're not included as part of the ICANN Bylaws. So where is the voice of ICANN saying, you know, raising their hands and essentially saying, you know, when it comes to this particular interest or this particular purpose, it's us; we are on the hook. And, you know, it's not registries and registrars and we are doing this because our bylaws say X, Y and Z, as I think Ashley pointed out.

So can we get that? And I'm kind of directing this maybe not towards Kurt but towards some of the high level staff because it seems like we're all speaking through ICANN or on behalf of ICANN as this interested party here that is relatively silent. Thanks.

Kurt Pritz: Thanks, James. You know, we had – a bunch of us had this exact same conversation yesterday and thought that – and debated whether it was for ICANN staff to come and talk about the exact things you're talking about, or whether it was, you know, really us that are the bigger ICANN that shoulder that burden or should be speaking on their behalf. So what you're advocating for is – what you're suggesting as I understand it is to have a member of the senior ICANN staff talk about – or the appropriately placed expert member of

the ICANN staff talk about these things and, you know, if not to defend them, at least to explain them. So that's interesting. Marc.

Marc Anderson: Thanks, Kurt. Marc Anderson. You know, we've had, you know, we've had a very, very, you know, interesting I think you know, very, you know, very good discussion so far. But we're not talking about the purposes themselves yet; we're so far, you know, we're talking about sort of how we approach purposes and sort of some, you know, some principle type ideas on how we look at purposes as they relate to the processing of registration data.

And, you know, as I've been listening to the conversation I think there's been a lot of really good points, really good comments but, you know, what I think we need, you know, we keep circling back on some of these same issues in our conversations, and I think what we need to do is, you know, is put pen to paper on some principles that will guide our discussion on purposes. You know, some of the things, you know, that James, Alan, Kristina, you know, Ashley have made, you know, are I think, you know, good points and, you know, and I think they can help us come to a common understanding as a group around, you know, put some guardrails or some scope around the purposes conversation.

You know, and I think that's important, you know, you've heard me talk about this a number of times but we all need to be on the same page when we talk about purposes. If we're not in agreement on what we're trying to do here then it's difficult for us to come to consensus. And so my suggestion is to take some of these, you know, these excellent points people have made, you know, and put pen to paper and say okay, these are principles for the working group to follow in our discussion on purposes. I hope that helps us move forward and get to the meat of the conversation on what are the purposes for the data processing activities and how does it map to a legitimate basis under GDPR.

Kurt Pritz: Thanks, Marc. I'll take that as an action. Thomas.

Thomas Rickert: Thanks very much, Kurt. And good morning, good afternoon, good evening, everyone. I guess I'd just like to make one point. In the way I see it, but I might be corrected, I think that when Benedict and I accepted this action item for the matrix of purposes, the intended outcome of this exercise was to establish who needs what purposes, who is pursuing what purposes. And that is not only to respond to the European Data Protection Board request to separate ICANN's own purposes from the third party purposes, but also for us to make a first step in determining whether the purposes enumerated in the temporary specification are actually purposes that anyone in this game is interested in.

So it may well be that we find nobody is actually pursuing a purpose. We also might be able to identify some duplication here. We might identify areas where multiple parties pursue the same purposes and that would pretty much speak in favor of a joint controller scenario. Right? But having said that, this is just an exercise of who is interested in what purposes, who is pursuing what purposes.

That is completely separate from the exercise that we need to go through and determine whether the purpose is lawful, that is entirely separate from the discussion whether we find the legal basis to support a certain purpose. And that I guess we need to do in the other document that we started discussing the last but one meeting I think it was on the, you know, with all the data elements in it because then we can take a look at concrete processing activities, spell out why the data shall be collected, what the legal basis for that is. We're going to go through 6.1(b) and in the course of 6.1(b) we will also need to check you know, do you need to process the data to perform the contract?

But we can then also discuss the question of, you know, what additional things can probably be imposed on registrars by ICANN as the quasi-regulator in this. And this is where the question of what's inside, what's

outside ICANN's mission and is this – are these requests legitimate, so that will be done there. And once we've gone through that exercise we can then match it back to this very document and establish whether, you know, whether and how we can link this to the purposes that we've identified.

And at the end of the day we might as well need to reword some of the purposes, some purposes might need to be framed more specifically, but I guess that we shouldn't try to answer all the questions in this document but rather move to the other document for the legal implications arising from Article 5 and 6 GDPR. Thank you.

Kurt Pritz: Thanks, Thomas. Kavouss.

Kavouss Arasteh: Yes when I look into the initial text (unintelligible) two and then what is proposed I think they (unintelligible) half of the essential parts, collecting and processing data (unintelligible) and then based on legitimate, that has been deleted. Why it has been deleted? So we don't know, where we can find that? Thank you.

Kurt Pritz: Thanks, Kavouss. What I'd like to do next to make this more concrete is to look at the chart that's currently up and I find it easier to bring up the chart on my laptop. But for the time remaining in this meeting and – for the time remaining in this meeting and to put a point on some of the changes that have been suggested here and some of the comments that have been made, I'd like to focus on the columns that are Registrar Purpose, Registry Purpose, ICANN Purpose and, you know, third party interests or purpose to be determined by third parties.

And as we talk about some of these in more concrete style, the discussion about the inclusion of the word "purpose" here might or might not melt away if third party interests are addressed. So what I'd like to do is hear from some of those who commented on this chart and in particular focus on the area where

purposes have been added to the chart. So those are the areas that are marked in red with the red X that was there.

So for example, in Section 4.4.2, “providing access to accurate, reliable, uniform registration data consistent with GDPR,” I’d like to hear from one of the commenters there, either Alex or someone else about adding the Xs under – especially under ICANN purpose or purpose determined by third party interests and understand why that, you know, why you’re advocating for this X.

And before we start this exercise, I think one of the – one of the goals – the goal here is just to have each group say why they have a – why there’s a purpose for processing that data or why there’s an interest in that data and then take that as a given that that group has that interest. We’ll test later I think whether it’s legitimate or not. So this is sort of a two step process I think.

One is, you know, sort of a noncontroversial, you know, I’m a processor of – I have a purpose for processing that data or I have an interest in that data. And then second, having asserted that, then we take one of the GDPR subsections under Article 1 and say, okay, you know, that data can be available when that test is passed. And that’s the next step.

But for this I just want to have parties provide the reason why for example, in 4.4.2, that’s been added as an ICANN purpose or a purpose determined by third party interests. So I don’t know if Alex, you’re up for commenting on that. Go ahead, please.

Alex Deacon: Yes, thanks. And, you know, to be honest I hesitate commenting on this based on the conversation we just had, but really the point is and our concern is is that with the full understanding that we’re going to talk about methods of access after these gating questions have been answered, we believe it’s important that at least in the – our initial report that there are – that we discuss and we set purposes for access. I mean, I’m not saying we need to

discuss the details there but without having those purposes outlined in our initial report there's really no basis to have further discussion around access post October.

And I just want to reference the charter text here that basically says exactly that, which it says, "Because providing access to nonpublic registration data is a processing activity, there must be a legitimate purpose or purposes with corresponding legal basis established prior to granting such access."

So I think we need to be explicit here when we go through this chart that those purposes for access are listed. Now, having said that, I think it would make sense for us to talk about registrar purposes first, registry purposes first, then go onto talk about ICANN purposes and then based on that we could see where we are with regard to third party access. But I think it's important for us to not park and maybe also it's this term "park" which I'm confused about, we can't park this; I think it's part of the charter for us to discuss this and I believe it's important for us to have those details in the initial report for October before we can then talk about more detailed access topics later on. Thank you.

Kurt Pritz: Thanks, Alex. Thomas.

Thomas Rickert: Thanks very much, Kurt. And let me try to offer a comment on Alex's point. In fact, after we have shared the document in which we have suggested to park that item, I got quite a lot of heat from some parts of the community for, you know, that's my words, not theirs, for trying to postpone or delay that important question or sweeping it under the carpet or however you want – might want to call it.

I guess nothing could be further from the truth. In fact I think that the access the question, the disclosure question, is very important for ICANN and on top of that, it's legally and academically very interesting so I'm very much looking

forward to having that debate. But I think that we might get lost and tied up by this discussion if we start the deliberations on that at this stage.

The reason for that is that I think that, you know, even though you might want to put a marker into this document that we need to work on – on access and even though some might say that a purpose needs to be spelled out that data needs to be collected for the purpose of making it available to certain third parties, that's all fine. But I think that you can't, even if you wanted to, answer the question on the legality of the collection without discussing the legality of requesting access to that data because if there is, let's say, no legal grounds to make data accessible to certain parties, then the collection for that very purpose cannot be legal as well.

So I think we need to discuss those two points together and hence I had suggested that we take a holistic view at everything related to access once we've responded to the other gating questions. And also, I think that we need to discuss what can be collected first with the catalogue of legal bases as we've started during the last meeting, and should we find out that there is another purpose required to define the collection of data but otherwise couldn't be collected, let's add it at a later point if we find out that it can be legally done.

Kurt Pritz: Thanks, Thomas. What do you think about Alex's comment that we should go through these purposes vertically rather than horizontally? So we've essentially done the review of the registrar purposes, should we undertake this review vertically and look at the registry purposes and the ICANN purposes and then talk about third parties?

Thomas Rickert: As you wish. I think everything that helps us make progress is welcome.

Kurt Pritz: Okay. Alan.

Alan Greenberg: Thank you very much. I have no problem doing it vertically; I think we're going to get rid of the first few columns pretty quickly. And then the crunch comes of getting into the really substantive ones. I tend to agree with the implication of Thomas's last intervention that regardless of what we do, we are going to go back on occasion. There's just no way. If we have – find out that the reason we are providing access is not justified by the rationale but we need to keep it, we're going to have to back and change the purposes. On the other hand, if we say we're going to collect data but we cannot justify any real purposes for it, we're going to go back and remove that item. So there will be iteration in this; let's accept that and not get hung up on it. Thank you.

Kurt Pritz: Thanks very much, Alan. I'm just taking a second to look at the chat here. So I'm going to continue just to go down horizontally to get a flavor for these. But, you know, in the next one, "enabling a mechanism for contacting the registrar, the registered name holder for a variety of legitimate purposes," this is where we discussed whether identification was in place or not. But I've noticed that we've added ICANN purposes here for this one. Does anybody – again I don't want to put Alex on the spot or maybe Hadia, but is there anybody responsible for adding these checkmarks that wants to speak to it? Go ahead, Alex. Thank you very much. Hey, Alex, you're still muted, okay?

Alex Deacon: Can you hear me all right?

Kurt Pritz: Yes.

Alex Deacon: All right, sorry. Yes it occurred to me while I was going through these that – well are we going horizontally now, Kurt?

Kurt Pritz: Yes.

Alex Deacon: Or are we just – you just want me to tell you about 4.4.43?

Kurt Pritz: Well either way, we're still going horizontally though.

Alex Deacon: Yes, so as I was going through these over the weekend it seemed that this 4.4.3 was also a purpose of ICANN and so I think given the requirements in, you know, the various contracts I figured that there was a missing X for ICANN so suggested that be placed there.

Kurt Pritz: Because – right, for several reasons.

Alex Deacon: Yes, for dealing with the abuse essentially. I don't have the, you know, specific – I could collect them if you want – the specific references but basically this is to deal and identify and manage abuse.

Kurt Pritz: Alan.

Alan Greenberg: Thank you very much. Something that we've never – I don't think we've ever mentioned here, when we're talking about registrar and registry use of some of the fields, and you may recall that we decided that registrars don't really need any of these fields because they have their own customer databases on which to base it. But that presumes we're talking about the registrar that originally created the record. Should we ever need, because of a registrar failure, for instance, to go to the escrow data, the escrow data is largely based on Whois and the receiving registrar at that point, the only information they may have on the – who the customer is, is in fact what is in Whois.

So as we go forward and talk about registrars, let's not just look at the registrar that created the record, but a registrar that may have to take over the record should there be a registrar failure or some other reason to revert to escrow data. Thank you.

Kurt Pritz: Yes, and I think you made a comment similar to that before and in fact way down in 4.4.11 we've added an X. But your comment is well taken and it might belong here too. Milton.

Milton Mueller: Yes, I want to agree with what Alan just said, Alan Greenberg, and also disagree with Alex of IPC that identification is not a purpose which ICANN has in the collection of Whois data and even contacting the registered name holder is not something that ICANN typically does. However, registrars, I think Alan put his finger on it when he said we're kind of assuming that the only registrar of interest here is the one who actually holds the registration at the moment.

But one of the main purposes of the ICANN regime was to coordinate and facilitate transferability of the domain name from one registrar to another by creating a vertical separation between the registry and the registrar, which is entirely a product of the ICANN regime and required by the ICANN regime. Again, that has nothing to do with identifying or contacting the registrant by third parties, that is about giving the registrant a right to port the name from one registrar to another which of course is very important for registrant interests.

So I think that's something we need to take into account, that the registrar, you know, you can say in isolation, oh, when I'm holding the registration I don't need any of this Whois data, but in fact, the 6000 other registrars who might receive the name at some point do have an interest in the information being out there in some registration format that they can access when the name is ported.

Kurt Pritz: Thanks, Milton. Margie.

Margie Milam: Sure. If we're talking about 4.4.3, and I'm a little confused as to what sections we're talking about, I made the suggestion that ICANN had a purpose in some of this and I can give examples of where it makes sense, for example, we're talking about enabling a reliable mechanism for identifying the registered name holder, well that's for example in the case of the UDRP, ICANN set up the mechanism to enable the UDRP to work and part of the

way it works is by identifying the registrant so that the dispute can continue. That's just one example.

Another example is through the compliance processes, and we could certainly get Maguey on the phone to talk to us about whether they ever deal with the identity of the registrant to confirm that that registrant has, you know, rights to complain about the way they were treated by the registrar, as an example. So I could see that ICANN has a role there.

Another example is in the security space when the Security Department, you know, sometimes helps facilitate resolution of technical issues. I imagine that there's a situation where you would have to identify the registrant. So that's why I saw that there were many places that this could be used by ICANN.

Another example is ICANN has an obligation to fulfill its obligations related to the first Whois Review Team, there's to have an accuracy reporting system that they've built that reports on accuracy and in order to do that you need to at least have some kind of linkage to who the registered name holder is. So there's lots of places where the ICANN processes would touch on the identity of the registered name holder.

Kurt Pritz: Thank you, Margie. Alan – Alan Greenberg.

Alan Greenberg: Thank you. Just a further clarification in regard to what Milton was saying about transfers. Transfers between registrars don't actually require – rely on the Whois data because they rely on you as the registrant proving to the original registrar that you are the correct registrant and that gives you some information you can transfer to the new registrar or transfer to the registrar. Whois data, however, does kick in both, as I mentioned, if you have to use escrow data, and of course in the case of resellers, the registrar does not have the customer data. And in the case of a reseller failure or any other potential problems with resellers, it is the Whois data that kicks in.

So there's a number of times where the Whois data is meaningful to try to not identify – to not identify who the registrant is, we're not collecting driver's licenses, as Farzi said, but we do have to identify that it is the registrant we're talking about in regard to a particular registration. Thank you.

Kurt Pritz: Thanks, Alan. Alan Woods.

Alan Woods: Thank you. I just wanted to go back to the points that Margie was making there. I was just taking quick notes on all of them and I disagree with each one of them unfortunately. So I just want to give you my reasoning and the thought processes as to why this is not necessary for ICANN to have it for this purpose.

So as she mentioned necessity in the UDRP, the UDRP the necessity of them accessing the client's data is not there; that is a registrar's purpose in the UDRP to have access to the client data for the purpose of supporting the UDRP. Yes, ICANN has people behind and basically telling us that we have to do the UDRP, but if they do not have a necessity to see that data in order to fulfill that.

She then moved onto saying something about whether it was a complaint from a registrant, and they have to follow up on that. Well then absolutely they will have access to the data of that registrant because after all it is the registrant or the data subject themselves who is actually making the complaint directly to ICANN and therefore there is a whole different and separate processing going on there. It's not necessarily Whois access, they will verify that with the registrant if necessary, but again, the necessity is not there.

So again, resolution of technical issues, also the same. That again is talking about a complaint made to them or they have been asked specifically to intervene and the details are being provided. And then when you're talking about – you were talking about the obligations and the first Whois review

about accuracy, that is a specific purpose in its own right as well and that is to do with the audit; they're not doing it – they don't need a general access to Whois for that, they are invoking their purpose of audit in order to fulfill the obligations between them and the contracted parties.

So again, what we're missing in this entire conversation – I don't mean to pick at Margie at all on that one, I'm just pointing out that what we're not considering here is the necessity. Yes, we can come up with all these reasons as to why they might but really at the end of the day is it necessary? And that is a huge question of the GDPR as being our baseline here. What is it necessary? And if it's not necessary for them to have it to fulfill that function, then they shouldn't have it.

Kurt Pritz: Thank you, Alan. Amr.

Amr Elsadr: Thanks, Kurt. This is Amr. Yes, I think Alan just pretty much said everything I was planning to say. The only thing I would add would be a question, you know, when Margie and others refer to identifying I think because this to me is quite new, the concept of defining a registered name holder and to me it also seems that, you know, in the traditional sense of what identification means, a requirement to identify registered name holders would create a new obligation on contracted parties that doesn't currently exist in terms of verifying identification.

But it might be helpful to us if Margie or anybody else explain to us what they mean by identifying when they use that word, just to make sure that we're not, you know, we're not accidentally disagreeing on something we don't actually disagree on. So if by identifying if they mean something closer to what Alan Greenberg said a little while ago, or I think I believe he said it, it's just a means through an ICANN process to make sure that, you know, the right registered name holder is being contacted. Is that the extent to which identification is meant here or is it something else? So a sort of – the

definition of identifying here might be helpful just to understand what it is that we are agreeing or disagreeing. Thanks.

Kurt Pritz: Right. And one way to ask that – thanks, Amr – one way to ask that question is to ask the author of the temporary specification what was intended, but it's probably not necessary to do that since we're writing the specification we could put our own definition to that where it might be easier to agree to that definition than debate whether that term is there or not. Thanks. James.

James Bladel: Hi, Kurt. James speaking. So just a note that Alan Greenberg, and we're kind of also exchanging in the chat that transfers used to function the way he described but since the adoption of the temporary spec they are completely dependent now – or I should say independent of any information and they are now solely reliant on auth info codes, which are not public.

We could talk about the relative tradeoffs that we had to make to get there and that would probably consume another hour, but generally speaking I think it's worth noting that transfers not function outside of the Whois ecosystem. Thanks.

Terri Agnew: And, Kurt, this is Terri. It looks like your mic is still muted.

Kurt Pritz: Great. Thanks, Terri. And thanks, James for the clarification. You know, before letting Margie respond I just want to point out something I noticed the first time, you know, I read the subsection and that was that this particular one refers to, you know, enabling a reliable mechanism for identifying or contacting the registered name holder, you know, for legitimate purposes more fully set out below.

So even though there's not – the subsection (unintelligible) it seems like somewhat of a heading, and so some of the things, for example, that Alan captured might be – and saying those are dealt with elsewhere might be included below. So as we read this – as we read it again we should think

about whether some of those things Margie mentioned are included below in some way. Margie, do you want to go ahead?

Margie Milam: Sure. And I think there's some confusion here about when we talk about ICANN purposes. It doesn't – I'm not necessarily saying that for that purpose they need to have access to the entire database; it's – so don't confuse the volume of access or the – with the purpose itself. The purpose, if it's, for example, to resolve a particular compliance issue, then it's to access that – those specific records. If it's, for example, it's related to the accuracy reporting system, which is actually not an audit issue, it's a separate standalone obligation that ICANN is committed to for the last, you know, five years or so, then it's accessing the records to enable them to do that.

So it's, you know, it's not an all or nothing proposition; the amount of data you get is specific to the purpose. And so – and I also, yes, agree Kurt, that the – that that clause is further limited by what's below so it's not a catch-all to have that access to the information for any purpose but for the ones that are specified below.

Kurt Pritz: Thanks very much, Margie, and everybody for that. If I look at the next subsection, 4.4.4, there's no one with a legitimate purpose for that. So Thomas, is this one of those ones where we just, you know, and registrar – the registrars in their presentations on this issue have indicated that this information is – Whois information isn't used for this purpose so Thomas, I would think that this is one of those areas where this subsection would come off.

So if we – so if I scroll down to changes that have been made and try to cover those, in Section 4.4.10, and I'll give you a minute to get down there, it's facilitating the provision of zone files to Internet users. And then the ICANN purpose, you know, I hate to do this to you, Alex, again or maybe Amr commented on this also, but can one of you comment on the use of zone files by not registrars or registries but others? Amr.

Amr Elsadr: Thanks, Kurt. This is Amr. My question here is not on how zone files are used but rather how access to – or any sort of processing of the – well access to – we're actually not talking about access, are we? My question is really about how processing of gTLD registration data does actually facilitate the provision of zone files. I'm not clear on this, so I'm not disagreeing to it, I just don't understand how that works. I never thought that was the way it worked and I never thought that zone files were something that required facilitation in terms of accessing them to begin with. Thanks.

Kurt Pritz: Yes, maybe somebody better than me can answer Amr's question. So I won't do my best at that. Hadia.

Hadia Elminiawi: So actually I would like to give an actual example of how the center that I'm leading, the Domain Name System Fellowship Center used zone files of gTLDs. Actually if you can hear me well I won't take the call because they're dialing me so can you hear me well?

Kurt Pritz: Yes.

Hadia Elminiawi: Okay good. So actually we were conducting a (unintelligible) with – in cooperation with IBM where we had some students – engineering students, they used the data, the zone files data that we downloaded upon their request, some zone files, and gTLD zone files. And then using some analytic tools IBM analytical tools, they started doing some data mining in order to come up with some useful information that could be useful to the domain name industry.

We were only able to do that because the zone files were there. We needed permission but one we got the permission we had access to the files and that was a project that was actually – that was a project that we did last year with IBM. So that was an actual (unintelligible) we did.

Kurt Pritz: Thanks very much, Hadia. Reading this – so there's quite a long queue and reading the chat, it's described that zone file data is not private, so does not contain personal information. So with that in mind, how much of this discussion is moot? So I don't know, Alex, do you want to go next?

Alex Deacon: Thanks, Kurt. Yes, it's Alex. Yes, I think I agree, given there is no personal data except in the extreme that James mentioned in the chat, it may be a moot point. But I think at most this is an ICANN purpose based on, you know, requirements to collect this data and make it available to others. I don't have a dog in this fight really. But I think if for completeness we may want to talk about zone file data later on when we talk about ICANN purposes. Thanks.

Kurt Pritz: Thanks, Alex. Benedict.

Benedict Addis: Hello. The requirement may have been sort of jammed in there because ICANN has a system called CZDS which you have to sign into in order to get access to zone files and you have to provide some PII, so maybe it was – my guess is it was just put in there as a (unintelligible) because when zone files through this centralized system that ICANN rolled out a few years ago, the Central Zone File Data something or other system, I have to give my PII there.

To those arguing on the chat particularly that the domain name can contain PII, I would argue with you that whilst we of course can come up with a reductive example, jamesbladel.com, that is not labeled as information, no computer system will process that as personal information and remember that GDPR requires the text, requires an identifiable natural person. So I'd really be grateful if we could not chew over that old text but we're purely talking about stuff that computer systems can process. Thanks very much.

Kurt Pritz: Thanks. Alan Woods.

Alan Woods: Thank you. Benedict stole all my thunder there. Thank you, Benedict. I think your second point there was – is more of an interesting academic question but definitely not something that we need discuss, I completely agree with you on that one. With regards to the actual CZDS system, again, I think it's just a – it's a symptom of the haste and lack of understanding that unfortunately I think the temp spec was compiled unfortunately at the end there. They did put this in here, it has nothing to do with what we are scoped to look at. So again, I'm going to be one of those controversial people and say, you know, zone files I don't think should be here at all.

Kurt Pritz: So Alan, it's data that's collected, right, in conjunction with the registration of a domain name, so from that standpoint it's collected. Isn't the question whether or not there's any personal information there?

Alan Woods: Sorry, just to – no, just to say it – the CZDS data has nothing to do with the registration of the domain, it's to do with the person who wants to get access to the zone file so it has nothing to do with the registrant, it is a separate – again, this was one of these concepts of it's a completely separate data processing playing field; it has nothing to do with registration data.

It just incidentally gives a zone file which I think we can all agree that doesn't actually contain to the extreme, maybe 99.9% of it is not personal data and whatever is remaining probably wouldn't reach the threshold of something that would be considered to be detrimental to the rights of any person if it were to be released. So no, I don't agree with you there. It's a completely separate processing operation and not within scope for us.

Kurt Pritz: Okay, thanks very much for that, that was really clear. Alan and then Marc.

Alan Greenberg: Thank you very much. Having participated in what seemed to be an infinite number of discussions in the RDS PDP on whether the domain name itself and the DNS servers are personal data, and there are people who adamantly claim that they are or can be, if they are indeed deemed to be personal data,

and I'm putting a big if in front of it, then since we are collecting it, it is subject to GDPR and we have to justify the uses.

Now, clearly one of the uses is we want to put an entry into the zone file that we send to IANA so it can be published in the DNS. That's absolutely mandatory if it's going to work. We also publish the name and the servers in Whois to facilitate debugging among other things and to make sure the Internet works. If indeed they are personal information, then the question is, is there a reason that we need to distribute zone files to users, not to IANA, but to users?

And that's an interesting question. So if we determine that indeed their personal information then the distribution of zone files is a use for that information then we have to factor that in. If it's not personal information then the zone files are not part of this discussion whatsoever. Thank you.

Kurt Pritz: Thanks. Marc.

Marc Anderson: Thanks, Kurt. Marc Anderson for the transcript. I guess I just need to clarify on something Alan said, you know, IANA's only involved when we're talking about the root, the top level; IANA doesn't have a role to play at the second level...

((Crosstalk))

Alan Greenberg: My error, you're right.

Marc Anderson: So thanks, just a minor clarification there. You know, I think, you know, I think there's – this is an interesting inclusion in the purposes. It seems out of place and, you know, my, I mean, have the same suspicion as Benedict, that this really, you know, was, you know, has to do with CZDS and maybe not directly related to the work we're doing here.

But it's also so interesting, you know, I think you have to consider as well what the you know, what the service is that's being delivered when you're talking about the registration of domain names. And, you know, the service really comes down to two things, you're allocating a record, or you're allocating a string to a registrant, but the other part of the service is you're activating that string in the DNS. And so, you know, putting that string, putting that record in the DNS is what the service is, what the, you know, we talk about delivery of the contract. You can't deliver the contract if you're not putting the string in the DNS.

So the conversation about, you know, whether, you know, could a domain name be considered personally identifiable? You know, sure, you know, you know, jamebladel.com was given as an example so I'll just steal that especially since he's next in the queue. But sure, that can be considered personally identifiable, but it's also tied to the delivery of the service. You can't deliver the service without putting that string in the DNS.

So, you know, I think that's, you know, going back to what Alan said, you know, if it's – if we consider that there could be personally identifiable information then maybe we need to, you know, maybe we need to consider it to some degree. But in general this section seems, you know, this, you know, 4.4.10 seems almost out of place the way it's written.

Kurt Pritz: The way it's written meaning it could be rewritten in a different way or out of place meaning we shouldn't consider zone file data as part of this exercise?

Marc Anderson: Thanks, Kurt. Marc again. Just to respond to what you said, I guess, you know, I'd ask, you know, what are we trying to, you know, do we have a reason for putting this purpose in, you know, in the Purposes section here? You know, is there a processing activity that we need to define and justify under GDPR? If it is, then we should you know, carry that out to the end and do the full exercise; but if there's not a problem we're trying to solve here, then I think it doesn't serve a purpose.

Kurt Pritz: James.

James Bladel: Hi, Kurt. And James speaking. I know we're getting close to our time. But I think we have an opportunity, a rare opportunity perhaps, to arrive at some degree of consensus and really kind of end this particular call on a high note, and I think we should try and grab it if possible. I think that we're circling around consensus that domains in and of themselves are not personal data and if we agree upon that then I think that we can then say that zone data files, including centralized zone files, are not subject to any of this. And I put that out there in the hope that we can we at least check one box for today and declare victory and then move onto the rest of our week.

I would point out that there's a number of really weird edge cases, for example, if I were to register, you know, kurtpritzlivesat123mainstreet.com, I mean, you know, I'd possibly done something, you know, abusive to your personal information without your consent. And I think there's, you know, some edge cases that would have to be addressed. But otherwise I think, you know, if we start with the premise that – or the assumption that domain names are not in and of themselves personal data and aren't subject to those restrictions, then I think that we can drag the rest of the camel into the tent and say that zone files are off the table. Thanks.

Kurt Pritz: Thanks. Hadia, can you take 30 seconds or less?

Hadia Elminiawi: Sure. So I just wanted to make two notes. First, the zone files are available as part of the ICANN open data initiative, so it is sort of an ICANN purpose. And then the only thing that I could think of that could be a personal data in zone file would be (unintelligible) and that's it. Thank you.

Kurt Pritz: Thanks, Hadia. And given that, but in recognition of James's call that we do get out of here with an agreement and understanding there's, you know, maybe less than a tenth of a percent of uncertainty about this, rather than

calling it for a vote, is there any group here that wants to – that objects to consensus finding that domain names are not personal data and that the – we remove consideration of zone file access in this discussion? Milton.

Milton Mueller: Yes, I'm not sure I want to say that the domain names cannot be personal information, James just explained that they can be. And in some ways they can be personally identifiable. But their publication on the Internet is necessary for them to work, I think that's the point that...

Kurt Pritz: Right.

Milton Mueller:...there's a legal or a contractually required, I'm not sure of the technicalities of the legal formulation here but the privacy advocates here have no problem with the domain name itself being published in such a way as to make it work. And the same with zone files.

Kurt Pritz: Thanks, Milton. Is there any objection to anyone on this list, or any group, that we remove this subsection out of our consideration for the policy that we're creating? Great. All right so if the ICANN staff can do the wrap in 30 seconds or less that would be great.

Marika Konings: Yes thanks, Kurt. This is Marika. So I have four action items coming out of today's meeting. First of all a reminder again to complete the GDPR training at the latest today or at least ahead of the Q&A session that's scheduled for tomorrow. The second action item is to – for the EPDP team to submit any questions or topics for this Q&A session through the Google Doc, the link was provided as well in the agenda. Action item 3, staff to review the Principles document and aim to identify where these data processing principles are already covered in other parts of the temporary specification.

Action item 4, the EPDP team leadership to see if points that were made in relation to the conversation on 4.4 can be translated into principles that would guide the EPDP team's discussion on purposes. I didn't note any questions

for ICANN Org although I do note there was conversation in the chat and at some point on the call in relation to a possible question but I don't think we got around to formulating a specific question so that may need to be taken to the list. And that's all I had.

Kurt Pritz: Great. Thanks, Marika. Any closing comments from anyone? All right terrific. Thanks very much everyone, for staying on the call and your constructive input. Have a great day.

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

END