

**ICANN
Transcription ICANN63 Barcelona
EPDP Team F2F meeting
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Kurt Pritz: We'll start in just a minute. Thanks very much for being on time, everybody. Do we want to start the recording? So we'll try to end this today's meeting as quickly as possible. The agenda is over in the right hand corner. The first topic we're going to discuss is data redaction, that data that's withheld from the public, nonpublished that's collected through Whois.

We're going to review updated timelines, different timelines for the production of an initial report and have a brief discussion about options we have. In yesterday's meeting Kristina brought up working methods so we might go around the room and touch on that, see if there's any other input on that and any other outstanding action items.

I know a couple people have to leave early, some are catching flights, some are being recognized in the community, justifiably. I'm going to be presenting in the next session so I have to leave a little bit early, it's called Innovations in TLDs so everybody here has to come or never get called on again.

So that's the agenda. And so our first topic is to talk about data formally published that's not redacted and it's the form that – it's the list of data that is in the temp spec as directed by the temp spec to be redacted. And there's a couple that we've raised questions on in our conversations. So if you could put that up in bright lights so it's easy to see. And then Marika is going to take over from here.

Marika Konings: Yes thank you, Kurt. So what you see here on the – this is Marika. What you see here on the screen is the document we circulated yesterday. And although it may look like a new document it shouldn't be because it all has information that has already been out there for a bit and is basically a compilation of a couple of different documents. I think as we've already shared with you, we included an additional column in the Purpose B data element template to deal with this question of redaction as it's kind of of course linked to, you know, disclosure to third parties.

And also a couple of charter questions that are specifically related to this issue. And I'll just read those out. The first question is, "Should there be any changes made to a registrant data that is required to be redacted? If so, what data should be published in a freely accessible directly?" Second question is, "Should standardized requirements on registrant contact mechanism be developed?" And three, "Under what circumstances should third parties be permitted to contact the registrant and how should contact be facilitated in those circumstances?"

So what you see in the redacted column, and I'll scroll a little – oh that goes too fast – a little bit down is basically based on the elements we've discussed to date and a little caveat here, you know, this list may not be complete because of course there's still a couple of purposes that, you know, people are reviewing and I'm especially thinking of Purpose N where I think there's some potentially additional data elements that are in there in that list. But it's basically roughly what has been I think discussed at least looking at, you know, Purpose A and C specifically.

So we basically mapped that against what is currently required in the temporary specification and that is what you see here. So basically where you see a "no" it means that it's – the temp spec recommends or requires that it's not redacted. And where it says, "yes" the temporary specification currently requires that it is redacted.

What is highlighted in yellow are a couple of data elements that people indicated in their responses to the triage survey that they would either like to see redacted or at least discuss that or which they would like to see not redacted. So we thought for this conversation it might be helpful to at least start focusing on those because at least on all the others there didn't seem to be any input at least in response to triage or to early input from what we can tell.

One thing to keep in mind here as well is that in relation to registrant email, there's another requirement in the temporary specification that notes that, "Registrar must provide an email address or web form to facilitate email communication with the relevant contact but must not identify the contact email address or the contact itself."

So even though email address is here listed as not redacted, there are currently specific requirements in place in relation to, you know, what is published there. So the group may also want to discuss, you know, whether that – and I think that relates as well to the charter question whether that requirement remains in place, whether that's changed or, you know, whether something else needs to happen.

So we've also reflected that because I think based on our other conversations you know, I think we adapted here already in the tech fields what, you know, the group at least has discussed to date and I know there may be still some elements to be considered. And then at the end of the document, for your convenience, we kind of copy and pasted some of the rationales from the different groups in relation to, again, the data elements highlighted in yellow where in certain cases some have recommended additional redaction and I think in other cases some have recommended not redacting certain data elements.

So again I'll probably just scroll back up and maybe it makes sense for those that, you know, made comments on the highlighted parts to maybe give very briefly make their case as to why they believe it should be redacted or not redacted. And I don't know for the conversation it may be worth as well to focus on what impact does that have from a risk perspective in relation to compliance with the GDPR because I think that's, at the end of the day, the underlying goal here.

So I think as, you know, people make their case for why – why yes or no it may be helpful to do that from that perspective to see if there's, you know, broader agreement in the group around that or not or whether, you know, the current requirements should remain as they are.

Kurt Pritz: Thanks, Marika. Collin. Good morning.

Collin Kurre: Good morning. So we had submitted comments on – in the triage report that were overarching and that actually didn't make it into the comment on this particular annex. So I just wanted to clarify that the NCSG was in favor of redaction of – sorry – okay yes. Yes, exactly. So we were in favor of redaction by default of all of the fields that could be – that could contain private information, protected information. And that would include the registrant org and the email fields.

And then we were – I believe that we said in our comments as well that the tech email and – was to be redacted by default with an opt-in for that to be included, an opt-in from the person who would be contacted because that could also be construed as personally identifiable information that could be protected under GDPR. It might complicate compliance if it was – if it was displayed by default. Thanks.

Alan Greenberg: Can I ask a clarifying question? Collin, as Marika mentioned, there's also requirements that for certain contact information that it not actually be presented as-is but either anonymized or using a web form. Are you still

saying that shouldn't be done or are you simply saying the original address as entered should not be displayed which I think is the default from the temporary spec.

Collin Kurre: I think that anonymized, as long as the personally identifiable information is not displayed as-is, if it was anonymized then I could imagine that that would be compliant. Thanks.

Kurt Pritz: Go ahead, Thomas.

Thomas Rickert: Thanks, Kurt. And good morning everyone. I think that on the organization...

Kurt Pritz: This is Thomas Rickert.

Thomas Rickert: Pardon?

Kurt Pritz: This is Thomas Rickert.

Thomas Rickert: Oh I'm sorry, Thomas Rickert for the record. We have commented earlier in the response to the questionnaire that there is a question surrounding the organization field. I think that James is better placed to report figures, but if memory doesn't fail me you have more than 60% of all registrations where the organization field is identical to the registrant field, right? I think some – that some registrar has done such data mining.

And if you establish that in many cases organization information is – or can be PII then I think it's straightforward to have that redacted as well. However, following up on our discussion yesterday on the distinction between legal and natural persons, I guess that the idea of asking the commission or the European Data Protection Board for help with that received quite a lot of support from this group. So I suggest that procedurally we could wait for getting some input on that and make the publication of the organization field dependent on the outcome of that because I think they're intertwined.

Marika Konings: Thanks, Thomas. This is Marika. So do I understand you clearly saying that the potential recommendation could be dependent on the feedback that for organization field, registrants would have the option to provide information there but they would kind of need to declare that, you know, even if they fill in the information there that, you know, they're responsible for that and you would like to get a clarification that that, you know, wouldn't be held against contracted parties. Is that a...

Thomas Rickert: That's correct. Let me clarify. We established that organization's names i.e. legal person's names can be PII if the name of the company makes direct reference to a natural person. And therefore the establishing of two buckets by registrars, one for natural and one for legal persons, there's the risk of getting that wrong.

And I thought that this group who had quite some sympathy for asking the authorities whether it would be okay and at no risk for doing a – such classification based on the self identification of the registrant as either a natural or a legal person. If that were true, then this exact question about the publication of the organization field would be answered if we get the answer to the first question. So it's just a logical thing, you know, on how we respond to things.

Kurt Pritz: Go ahead, James.

James Bladel: I've learned my lesson not to move the microphone. This is James speaking. So just to respond to Thomas, I think we may be confusing a couple of different statistics. We had statistics where the registrant information was identical to the other contacts, admin, technical and billing. I don't know that we had any statistics on organization field; we can get some. But I can tell you that that field is, candidly, a mess. Registrants put whatever they want in that field without really understanding – and I'm sorry – and registrar

interpretations of whether or not that counts as an assignment from a natural person to a legal entity is not standard.

So we're – that's one of the things I think that we should be talking about. Now I would say that like the issue of PII in a domain name or PII in a name server, putting personal information in the name of a company, you know, James's Plumbing Service, or something like that, while I think from an academically legal perspective does cross the threshold and becoming personal information, it also, you know, becomes sort of self evident that if you don't want your name to be published, don't name your business after yourself, don't name your website after yourself. I mean, at a certain point this starts to look a little – but if we are now going to seek some guidance and clarity on that, I think great.

But I would also just say like, I thought that organizations like domain names and name servers, while we acknowledge they could be PII, we also acknowledge that treating them as un-publishable or redacted was also probably going to create problems. And if my memories on that is wrong, I mean, Alan's right here.

Kurt Pritz: Alex.

Alex Deacon: Wow. Thanks, Kurt. It's Alex for the record. This early on the last day I think I'll just jump head-first into the deep end of this pool and, you know, as IPC has stated in previous comments, we believe that publishing of the email address in the RDS system is proportional and does not outweigh the privacy interests of the data subject. We believe, under 6.1(f) and there's been some analysis that we've provided in our comments and pointed to in our comments that outline the reasons for this.

I won't go through those at the moment but the first is analysis available from a law firm in Brussels, (Petion) and the second is an analysis performed by (Bristos), a UK firm. The high level, you know, summary of this analysis is

that publishing the email address is proportional because it protects the interests of the users and the general public against fraud, identity theft, cyber security threats that may arise, or implicated by domains at use, and it also protects the registrants themselves, for example in the event that their domain is compromised.

And so just in terms of redaction, I just thought I would reiterate IPC positions that have been made in the past that we feel that email – it's important for email address to be unredacted in the RDS system. And then as I'm at it, we have also – we also believe that the city should remain unredacted as it's critical information in determining the venue for legal proceedings, including lawsuits filed against the registrants and contacting local law enforcement. So I think I'll leave it there and just say that we believe email address and city should remain unredacted. Thanks.

Kurt Pritz: Okay, I'm looking at this list and to me it's kind of bifurcated. There's organization that, as James said, people treat differently in different ways and then there's city, postal code, email address that everybody treats the same way so it's kind of like two different buckets. So let's just – I just want to talk about organization right now and then – but we'll all remember Alex's comment for later. So are there any other comments about organization because that seems to be an area where there might be vagueness and other stuff. So Ashley and then...

Ashley Heineman: Thank you. Ashley representing the GAC. So just to follow up on James's comment, if it wasn't mentioned I was – I'm tired, but another thing to note is that from what I understand in terms of if an individual decides to use their name as the organization's name, I mean, my understanding is that in Europe there's a business registry that you're required to publish that in any way that is publicly available. So I wouldn't see the need to redact that information.

And if there's problems with people not filling in the form, filling in their information correctly for Whois, perhaps we should focus on how to improve

that rather than jumping to the conclusion that we have to redact it because people aren't filling it in properly. Thanks.

Kurt Pritz: Is there any support in the room for redacting organization?

James Bladel: Can I – Kurt, I'm sorry, can I respond to that just?

Kurt Pritz: Yes.

James Bladel: I don't know that there is a correct way to use the organization form is my point. I don't know that they're doing it incorrectly. I don't know that we've – there is a standard, an agreed upon way to use that form. I think folks are using it aspirationally, they're putting (Nuco) in there, you know, so I just want to be careful when we say they're filling it out, they're using it incorrectly, let's help them fill it out correctly. I think first we have to know what to tell them.

((Crosstalk))

Ashley Heineman: I just wanted to say that if we're – I don't want to say the dreaded A word, but if we're going to have some sort of tiered model that allows for legitimate purposes to access this information anyway, I'm not sure why we would need it to be publicly available particularly if it's available in other places like business registries or like other business registries or on the website itself.

And I could imagine that publishing – making this information publicly available might make a website more susceptible to attack, for example, if it's like – if it's from some protected or, you know, disparaged marginalized group. So I don't know – I don't think that a suitable case has been made for this to be made publicly available and not included with the rest of the personally identifiable information that's a protected category.

Kurt Pritz: Go ahead.

Mark Svancarek: This is Mark. I had a couple of questions, one, I think we'd like, you know, BC would like to keep it unredacted; it's already unredacted, we'd like to keep it unredacted. I'd like to comment that the IPC feedback does not seem to be in this document so as, yes, as Alex was reiterating his stance, I was noticing, well it's not really reiteration because it's not in the document today so I wondered about that.

And I also wanted to clarify what is the aim of this discussion? Is it just simply to clarify for the record the opinions that were expressed among which, you know, the IPC is not represented or are we trying to do something else?

Kurt Pritz: Well and aspirationally we're trying to get to consensus on which fields should be redacted and if not, we should decide what the next steps are.

Mark Svancarek: Oh good. I just wanted to check.

Marika Konings: Yes, this is Marika. And apologies if we overlooked this. I know that yesterday everyone was encouraged to look at it and make sure that all the comments were included, you know, we did a quick look through the triage document, although I think Alex said that some of the information he shared was actually more recent, I think the studies you were referring to. But if we overlooked that, apologies. You know, it is all in that Appendix A triage document so everyone should hopefully have seen it at some point.

Mark Svancarek: ...for clarifying that.

Kurt Pritz: Alan.

Alan Woods: Thank you. Alan Woods for the record. So I'd like to start by just saying that this is one of the areas that the registries we're happy with the way the temp spec sets the reaction. But because I do appreciate the process that we're going through and we should put on the record as things that we are considering thoroughly in our deliberations of this.

I'd just like to remind one of the issues with the concept of the organization field, and I've actually seen this in practice at the registry level is – the problem is more so with the legacy data that is out there that is already available and that the organization field itself is capable of identifying people through other means in the sense that it can be connected with emails that were previously published in say databases that have been scraped, etcetera. So that is one thing.

And that's pretty much in line with what the European Data Protection Board said in their last letter, that they're saying that, you know, the organization field itself if you are – well this is probably reading into what they say in apologies, but that they're saying by publication of the organization field it can be then linked with personal data in the form of an email address that could be connected with that if we were to take the opportunity to unredact all of that field or all of that.

So again as I said, from a registry point of view, you know, we think that the organization field being public is not necessarily an issue but we should have it on the record and consider that there are links currently the way the system are that might lead to instances where personal data can be released as a result of that. So we just have to be caution – have caution but just wanted to get that on the record. Thank you.

Kurt Pritz: Thanks, Alan. I'm sorry it took so long to get to you. James.

James Bladel: Yes I think Alan actually captured my comment which is that we are seeing harvesting of public – unredacted organization fields that are then being used to infer what the registrant – the redacted information is based on other redacted fields. It's an interesting thing that they would use the registrant org as a pivot field essentially. And so I think while we also agree that it shouldn't be for – there's no legal basis to redact organization I think we should be aware that it is a vector for abuse.

Kurt Pritz: Alex.

Alex Deacon: Yes I think I mean, I understand that the – this is Alex for the record. I understand that the data in the org field currently, it's a mess. I think we should be pragmatic though, and again, based on GDPR and I think we should assume that this is data associated with a legal person and agree even if it was moving forward that this field would be used to somehow indicate that or a separate field as we've discussed.

I understand there are cases where the org field, as Thomas mentioned, could be personal – PII but I think we need to move into a world where we educate users and ensure that the org field is in fact representing the name or data associated with a legal person. We could address how we deal with the legacy data but I think moving forward we should try to be pragmatic and ensure that this valuable data is not lost.

Kurt Pritz: Yes Farzi.

Farzaneh Badii: Farzaneh Badii speaking. So I thought that we were in general agreement to redact the personal data, whatever is personal information, and then discuss how we can give access to legitimate interests groups. We can't have this both ways. I don't think we should have both give access to the legitimate interest group and not redact personal information, it just doesn't make sense.

I don't know why we are going this way. If we are going to give access to legitimate interest group why are we not – why are we discussing? Why are we not just redacting the personal information of people? We have to protect – we have to protect the privacy of people. It's not about business needs anymore. Business needs they can get it if they have legitimate interest through the legitimate process.

Kurt Pritz: Farzi. Alan.

Alan Woods: Thank you, Alan Woods. Just want to clarify maybe a comment – and, please, Alex, if I misheard you please do correct me on this one. But you said that we can get to a point where it is the data of a legal person that we can assume that it is – it should be published and that point. And I'm loathe to have to do this, but, you know, what is common sense and what is legal are not necessarily meeting in the middle at times.

And just remember what the European Data Protection Board did say, that the mere fact a registrant is a legal person does not necessarily justify a limited publication of personal data relating to natural persons who work for or represent that organization such as natural persons who manage administrative or technical issues on behalf of the registrant.

So again, yes, in a common sense way I completely agree, but that's not the way that it's being perceived. We're being told make sure you're considering them as still as natural persons who work for a legal person and be very careful on that, so I just wanted to clarify.

Kurt Pritz: Briefly, yes.

Alex Deacon: Yes, Alan, this is Alex. I understand that. But again it seems – I think what you're saying is because there may be a case that there's PII in this field that it should always be redacted. I guess I'm saying I don't agree. I think again, there has to be some way for this field, when it is in fact information associated with a legal person, to be used and made available. I guess that's all I'm saying and maybe it's early but it doesn't seem difficult to me but...

Kurt Pritz: Thank you. Go ahead, Milton.

Milton Mueller: Yes, I think we have to go back to our purposes and what purpose of ICANN is advanced by actually publishing the organization name that is we

understand why that is collected, that fits in with Purpose A and Purpose B does not justify collection of any additional information. So the – it's unclear about Purpose C because you don't need the organization name to contact them; you can use the covered up email address or the registrars and registries can contact them because they have the data.

It's just not clear other than, you know, the fact that they find it, you know, some people find it convenient to have this data published but there's no justification for publishing it based on our framework for – our GDPR-based framework for collecting and handling this information, collecting and processing it.

The other comment I have in that regard is that the – if it is indeed an organization, a true legal person, it's not going to be difficult to get the organization name. I mean, in many cases you'll just look at the website that the domain is supporting and you'll see the organization name. If it's a registered corporation of some kind, you know, many European countries require them to publish their corporate information.

So my problem is not so much that I think it's a terrible death blow to privacy if the organization name is published. My problem is that it, you know, there will be all these blurry cases in which people who shouldn't be publishing their name of their organization will be required to publish it and that could lead to some problems. Obviously in probably 90% of the cases it doesn't matter but it's those 10% which in this case constitutes millions of domains where there will be ambiguities and possibly privacy problems. And again, I don't see the gain really; I just don't see that it's necessary or required by any of our purposes. Thank you.

Kurt Pritz: Thanks. That's thoughtful. Ashley and then Steve and I want to suggest a way out of here.

Ashley Heineman: Thank you. This is Ashley with the GAC. So I just want to say that Alan raises great points when it comes to the technical fields, contact fields and organizational fields, but I don't think that applies to organizational – to the organization field. And GDPR is not intended to protect legal entities. And to go to Milton's point, we actually do have a purpose that requires organization so I think we're spinning ourselves around on hypothetical – it's UDRP – so I just – this seems like, I don't know, if stocking horse is the right word, but I don't see what the issue is outside of some very Fringe cases. Thank you.

Kurt Pritz: Thanks. Steve.

Steve DelBianco: Steve DelBianco. As the alternate sitting at the table, I have a particular excuse of being confused about the circling back to prior positions. I mean, I read with interest the comments made several weeks ago on the triage document because I think you teed this discussion up as F1, the question at the very top of the document is, "Do we want any changes from the temp spec's policy of redaction?" And this report accurately reflects that the BC wants to convince its colleagues here that email should not be redacted like it is in the temp spec, that we shouldn't redact postal code and city.

But that's not what we're doing; we're listening to groups contradicting what they had said about the triage document. And is that because Milton, in the case of the NCSG, maybe the purposes now that they've been defined better, maybe the purposes lead you to reconsider your thoughts on the triage document from several weeks ago? And that's fine.

But if staff summary of the comments on redaction are here, there was only one comment, well I guess there were two comments on organization, right, from the ISPs and the Registrars, right? And the rest were fine with organization being displayed. So I guess the previous comments on triage, are they or are they not sort of relevant here? Are we having a de novo discussion? Thank you.

Kurt Pritz: Yes thanks, Steve. So I think the comments certainly are and that's why they're posted here, but at the time we allowed, because the triage was conducted in a very rapid fashion, just like everything else, we allowed for every group to revisit their comments. So I really want to get out of here. Alan, do you have a comment?

Alan Greenberg: I wasn't going to comment on the substantive discussion at this point. We continually make references to websites. You can have a domain name without a website, let's not presume there is a website there that is – wants to contact the public. Domains names have lots of other purposes.

Kurt Pritz: Thank you. Hadia. All right, we done? So – oh I'm sorry, sir. Benedict.

Hadia Elminiawi: So I actually had my card on – up for a long time, like before others...

Kurt Pritz: I'm so sorry.

((Crosstalk))

Hadia Elminiawi: Like before three others that spoke before me. And anyway I just wanted to respond to assure Farzaneh that what she said is exactly what we are doing, and we cannot – and will not be able to – or publish personal information. And the other thing with regard to the organization name being published, I don't know where is the issue here because as many before me said, the organization information is already published in many other places. Why are we arguing about it that much here? And that's it. Thank you.

Kurt Pritz: Thanks, Hadia. And I apologize. Benedict.

Benedict Addis: Hello. Benedict Addis. I think the reason we're getting into trouble is because this is actually a different purpose. It's not the purpose of redaction, it's the purpose of making a public register, which we haven't actually written down as a purpose. Right? We've talked about making data available for certain

cases for third party access, we've talked about contactability but this is a different thing, this is making a public register.

Now some would argue that ICANN has an obligation, some don't. But I think it might be better to recast this as a purpose and do the analysis that Thomas and Berry have proposed in the past and then within that consider a redaction as a data processing activity as we do normally in the workbooks rather than try to talk about answering the charter question directly. Does that make sense as a possible approach? Thanks.

Kurt Pritz: Excuse me? Oh go ahead. And I've got Lindsay on the phone that I hadn't realized so I want to make sure she gets to talk. So if – but if you have a direct answer to Benedict, go ahead, and then I'll get to you Stephanie.

Milton Mueller: Yes, I think my answer is that yes, it is not a purpose. The purpose you're proposing is one that we probably would not accept. We've discussed that quite a bit and therefore you have basically sort of agreed with my argument that you would like to have another purpose but you're admitting that there's no purpose now that justifies you know, that kind of publication, right?

Benedict Addis: I'm saying we should have the discussion in the right context. Thank you.

Kurt Pritz: Lindsay, can you go ahead please? I'm sorry you had to wait so long.

Marika Konings: Yes this is Marika. We're just trying to I think to get Lindsay on the phone so we can maybe wait for Terri to notify us when she's on.

Kurt Pritz: Not on phone yet. Kavouss.

Kavouss Arasteh: Yes, I am in your 90-degree angle of sight. You never see me, sometimes I forget, now it becomes (unintelligible) several people you never give the floor to others, it's not. Please I have a – 20 minute ago I asked for the floor and I forgot what I wanted to say.

Now, I don't understand why we have different format for presentation. In other data elements we have one, one in closed brackets and dash. Here we have no, yes, and dash. So is there any reason that we don't have the same format for all, yes, no, dash? And what dash means?

And now coming to main items, you redact, sorry, the name but not email. Email sometimes has indication or some reference to the name so the people could easily, if we talk, not redact the country, and put the email then they could find easily the name. So what is the reason that you have email not be redacted, but name is redacted? Very good, name should not be redacted but email may find the situations here that people could find it, there are – I have seen several tables and if the people are clever after some exercise, some reiteration they could easily find the name of the registrant. Thank you.

Kurt Pritz: Thanks. Stephanie.

Stephanie Perrin: Thanks. Stephanie Perrin for the record. And I just really wanted to respond to Hadia's question, the mere fact that data has been published somewhere does not destroy its character as personal data and does not permit you to republish it in – without proper reasons. Thanks.

Kurt Pritz: Amr.

Amr Elsadr: Thanks. This is Amr. Good morning. I just wanted to point out something that we had heard from what we were calling the EU data protection experts on the RDS PDP and I think it as in April 2017. And presumably here we're speaking about the organizational name, which is an optional field for natural persons. And so it's not just about the fact that there might not be personal identifiable information in that data element itself, but we also need to consider whether that data element in being published in conjunction with other data elements that may be published, including the domain name itself, whether that might lead to identifying the registrant.

And I think they also mentioned, you know, in making a determination the policy to address this sort of issue this needs to be done in conjunction with a data protection impact assessment, so it's not just a matter of whether the organizational name has or doesn't have PII in it but we need to consider it along with other factors and whether in combination with other data elements it might lead to identifying a natural person.

Kurt Pritz: Milton, that's an old card, right? And Kavouss has taken his down. So as we stand as different representative groups I'm understanding like the noncommercial group would like to see this information redacted but I don't see any other – is there any other group that's for redacting organization data? Could you guys – could the Non Commercial Stakeholder Group either develop some, you know, find some parallel cases where it's been found that this is private data or some other practice where it's been redacted?

I think you know, we can go to school. I'm going to talk in a minute about the rest of these fields that are more standard in nature and understandable but, you know, to help you make a case to the rest of us if there's any other authority, standard practice, recognition, definition, something in the GDPR in which you can hang your hat on, that would say that this should be redacted it'd be great if you could make your case with that. Go ahead, Milton.

Milton Mueller: The burden of proof is on you; you tell me what purpose requires publication of it.

Kurt Pritz: So I think some others in this room did that. I'm not – the burden can't be on me, I'm the ignorant one in the room. Kavouss.

Kavouss Arasteh: Perhaps I was not clear. My problem was with the footnote, but not the text. The footnote is not clear. The footnote reads, "Must provide an email address or a web form to facilitate email communication with the relevant contact." Yes. But not identify the contact email address or the contact itself. This is

unclear, so we have to really be clear what the footnote is. I didn't have problem with the table, I have problem with the footnote. Thank you.

Kurt Pritz: Thanks, Kavouss. And the language might be awkward, we just cut and pasted it out of the temp spec but I don't disagree with you that the language is awkward. Hadia.

Hadia Elminiawi: Just to respond to Milton, we haven't discussed the reason for publishing any of the data, so it's not all the – only the organization, this is something that we haven't tackled.

Kurt Pritz: I think Lindsay is available to us. Lindsay.

Lindsay Hamilton-Reid: Yes, can you hear me?

Kurt Pritz: Yes, we can.

Lindsay Hamilton-Reid: Fabulous. I'm sorry I'm not there in person. I hate to be blunt but at the end of the day whether it's legal or natural, that email address can still contain personal data and as a registrar, and I'm sure registries are the same, to try and differentiate between those, not only we're relying on the registrant to tell us that, effectively we're relying on consent which can be revoked at any time. So that's all well and lovely that everyone's going oh well, we should publish it. No, just no. I think most of us have already decided that we're going to do this blanket and that won't change. Trying to put something like that in contractually isn't going to work. Thank you.

Kurt Pritz: Thanks, Lindsay. Collin.

Collin Kurre: Collin Kurre. I just wanted to further Milton's point that the burden of proof isn't necessarily on the justification for redaction but it's on demonstrating how in the absence of freely given consent the publication of this information would be necessary for the performance of the task or and legitimate –

necessary and proportionate to the performance of a task or for legitimate interests. And I'm not sure if we've crossed that threshold yet so it seems to me that redaction by default seems to be the safest option for a global policy. Thanks.

Kurt Pritz: So I want to try to – so I think you don't get to that test if it's not personal information in the first place. So I think if I were you I'd be saying there's cases we aren't 100% sure that this never contains personal data therefore you know, it should not – it should be redacted, but I don't think we get to that other test until we see it's personal information so kind of the same argument, right, same string different yo-yo. Diane.

Diane Plaut: To take your point further, Kurt, you don't get to that task yet and this is a total over-application of the GDPR because let's even just start at that starting point.

Kurt Pritz: Stephanie.

Stephanie Perrin: Stephanie Perrin for the record. I hate to be pedantic but I will because this use of the word "publication" has an implicit assumption that we have a purpose to have a public register and we haven't actually decided that. So what we're really talking about here is disclosure, okay? And when you are disclosing data, the burden of proof is not on the individual who's data that you've gathered to determine which field is personal and which isn't really. The burden of proof is on you as the organization, as the data controller. So I think we need to keep that in mind when we're discussing this. Thanks.

Kurt Pritz: Alex.

Alex Deacon: Thanks. It's Alex. Yes I don't think this is about the access, Stephanie. You know, one thing that popped into my mind just now was, you know, in the RDS Working Group previously for those who were there, we spent a lot of time coming up with what we called the minimum public data set, this was the

data set that would always be available to anyone requesting it without any authentication, it was my assumption, right. And so I think really that's the crux of this debate that we're having is which information will always be available and which will be behind the gate? Right?

And I think the debate we're having and the things highlighted in yellow where that there are some of us who believe that some of this data, when it's not personal data, or data associated with a natural person, should always be available in front of the gate, if you will. And so it's not access, I think it's actually a different debate; it's the debate of which is actually truly public data?

Kurt Pritz: Sure.

Collin Kurre: So, Alex, are you saying that even the – if it's unredacted people would still have to ask for that indicating that there would be a record of who was accessing the data? Like it wouldn't be displayed on a page for anybody to access anonymously. I'm just trying to understand what you were saying just now because you said they would ask for it but without credentials?

Alex Deacon: Well unless I'm confused, it's Thursday and it's early and I think we're all, you know, kind of at the end of our wits here. But I think, you know, aren't we really talking about what data is redacted and what is not? Right? Data that's not redacted is data that is in front of the gate, no?

Collin Kurre: It was asked (unintelligible).

Alex Deacon: Well when you...

Kurt Pritz: Okay.

Alex Deacon: ...when you do a Port 43 query now there's data that is not...

((Crosstalk))

Kurt Pritz: Okay so let's – did you have a succinct comment, Collin, or did you make your question? Stephanie. And I really want to close this. Stephanie.

Stephanie Perrin: Actually I think Ashley was ahead of me.

Kurt Pritz: Ashley.

Ashley Heineman: Thank you. Thank you, Stephanie, I appreciate that. This is Ashley with the GAC. I just wanted to ask because it hasn't really been covered here, and I know that we're talking about these fringe cases where people don't understand what they're doing or it's not clear what they're doing. But this is marked "optional." Does that alleviate any of the concerns that we have here? It's not a requirement for somebody to fill in. But again, I have to go back, we're talking about very fringe cases where this – I mean, I'd be interested to hear maybe some statistics from the registries and registrars, if this is such a problem that this is, you know, really the issue that we're making it out to be. Thank you.

Kurt Pritz: Go ahead, Stephanie.

Stephanie Perrin: Stephanie Perrin for the record. And usually when I start my remarks with, "I hate to be pedantic, but," it means I'm just really talking about the discourse. You know, Alex, you're right. What I'm trying to do is sort of flip this back to how you would make – do this discussion in a data protection framework. We are taking it as a given that we're talking about a public directory, the former Whois, and so we're talking about redacting data. But in fact, what we should be talking about, in my view, is start from a clean slate, what are you going to disclose? What do you have to disclose to achieve your purposes?

And we've agreed that there is a minimum data set that we have to disclose.

((Crosstalk))

Stephanie Perrin: Well, no, and for those of us who are veterans of the last one, there's a kind of a hangover that we still have from the RDS group...

Woman: Literally and figuratively.

Stephanie Perrin: Yes, literally and figuratively, right. Coffee would help, you know, Kurt.

((Crosstalk))

Kurt Pritz: So I've got – I think cocaine would help. So I've got – let's close the queue at Steve, Lindsay, Amr and James. Okay, so Steve.

Steve DelBianco: Thank you. Steve DelBianco. This notion of imposing a burden on someone to have to suggest a purpose for anything, it's really got me confused because ICANN has a lot of policies that it enforces through contract and otherwise, ICANN does a lot of things, but the only things about which we are talking are things the GDPR has something to say about. So if there are fields in existing ICANN policy, existing ICANN contracts that have to be published, then those fields continue to get published unless those fields have an implication for GDPR.

And that is why this notion of a burden, it only applies to come up and – with a purpose when we need a purpose to justify the publication of something that GDPR says we cannot. So the notion of the temp spec was ICANN Org's best attempt to look at what existing policy published and decide whether if any of those fields should be redacted, right? That's how we got here. And we all prepared input on the triage document about which of those redacted decisions were right or wrong. And there's a temptation – let's just start over, clear the decks and pretend there's no publication of anything and see if we can come up with purposes to do any publication.

I think that was Milton's approach and it's intellectually appealing but it has nothing to do with our job here. Our job is to say does GDPR compliance require changes to ICANN policies that already exist? And the temp spec was Org's attempt to do that. And all we're supposed to do here is determine if there are – if there's a field in here that GDPR does not affect then we don't need a purpose. Thank you.

Kurt Pritz: Lindsay's on the phone. Go ahead, Lindsay.

Lindsay Hamilton-Reid: Thank you. Lindsay Hamilton-Reid for the record. I notice we're still talking about access. Yay. This is something we've agreed to park, we keep agreeing to park it and yet it keeps coming back. Can I just say for the record, access, disclosure, whatever you want to call it, that is not a purpose. And I appreciate there's people in the room who seem to think that it is, it is not. It's – I have to say this is driving me mad, absolutely mad. We've got enough things to talk about to make sure we get right so we are compliant with GDPR rather than just going on about disclosure of data. And I think I'd rather we focused on that. Thank you very much.

Kurt Pritz: Thanks, Lindsay. Amr.

Amr Elsadr: Thanks. This is Amr. And I'd like to just take a minute to read a section of the WSGR memo to the RDS PDP Working Group last year. They said, "Data elements are considered to be personal data if they relate to an identified or identifiable natural person, i.e. an individual. This depends on the context and the particular data element involved and data that may not seem identifiable on the face may still be considered to be personal data, an example a 16-digit number may actually be a credit card number."

"Given the growth of computing power, much data that was earlier not considered to be personal has become viewed as personal data, so the concept is fluid. Under current data protection law, i.e. the directive of national implementations of it, the data of legal persons is covered in only a

few jurisdictions while under the GDPR it will not be covered by data protection law at all, see Recital 14.”

“The GDPR gives, as example of the data of legal persons their name and form as well as their contact details which it states are not covered. However, the key factor is not just whether the name of the registrant is that of a natural or legal person but how the different data fields when taken together relate to an individual.”

Kurt Pritz: So what conclusions do you draw from that?

Amr Elsadr: My conclusion is that we cannot discuss publication of an organization name on its own; we need to consider it in conjunction with other data elements, which is the point I was trying to make earlier. I think this discussion right now is not necessarily constructive.

Kurt Pritz: All right. James.

James Bladel: So I'm going to move to James.

((Crosstalk))

James Bladel: Yes I think we're – I feel like we're going in circles here and I think we're putting a lot of stuff on the table so let me just kind of be clear because our position I think is a little nuanced is that at least my position, I'm looking at the other contracted parties, is that registrant org, if it's used properly is not personal data. However, it is not being used properly. So the way around this potentially would be let's say that registrant org is published by default, and to Ashley's point, I'd love to get you statistics, it is a significant number, there's a lot of junk in there, okay?

So let's start with a clean slate. We can say that registrant org is not redacted, it's outside the wall, whatever you want to call it, but we should

blank out all existing registrant's registrations that contain data in registrant org and redact them and then ask folks to actually correct them because there are just millions and millions of records full of junk there and I think the risk of accidentally publishing something where someone – the intentions were not to assign that registration to an organization was not clear when they were making that assignment.

So I think we're going around in circles here, but I think can we kind of – can we kind of coalesce on a couple of things, what do we want to do? And I think this is where I agree with Steve is that we've got to separate now where we're talking about kind of the academics of the legal debate of this – these issues which are probably best solved in parliaments in congress and really get to what our work is and what's within the scope of our ability to control and let's just fix that.

Kurt Pritz: And can you just finish the end of your sentence and so we should...? So Beth, I'm going to take two more comments and then we're stopping.

Beth Bacon: So this is Beth Bacon. This comment is from I don't know, like 25 minutes ago. We were talking a little bit about Stephanie made a nod to it as well as Steve, talking – we're talking about going through existing obligations to publish things. I think what we actually need to remember is that we need to go through and see if those obligations are appropriate and if we need to be collecting all of those things and then if we need to be publishing them. And publishing is disclosure.

So I think we just need to remember that we have other steps to go through as well. We're working off this, you know, the old Whois and I think we need to remember that status quo is gone and we need to take a full look at that. So I just wanted to put that on the record as well. Thanks.

Kurt Pritz: Right, and I – but I also want to point out that the reason why we've postponed this discussion was to collect data elements through the other –

the other workbook so this is the result of that. Okay, Farzi, last comment.
Ashley, do you have your hand up?

Ashley Heineman: Thank you. And I'm trying to be constructive and chipper this morning but I'm frustrated too, just like Lindsay. But I think, you know, building on Steve's comments, which thank you for being so articulate and rationale and calm because I think most of us at this stage are just fried which I imagine you are as well, you're just better at coping.

But I just wanted to reiterate again, I mean, if you go back to like the purpose of this whole effort is to maintain Whois to the greatest extent possible. So again I'd just like to reiterate that the part of this – this was not an effort or an attempt to start from scratch; this isn't about access, and, you know, it's very frustrating to constantly have that thrown at people who thought they were following the sentiment of the effort.

So I think we just try and keep things as civil as possible and rather than jumping to the assumption that those nasty old users of Whois are trying to tackle the access issue again, we've got to start from the same I think sheet of paper which is – I thought was clearly articulated in almost all of the statements made by ICANN and in the charter which is, you know, try to the greatest extent possible maintain Whois so thank you.

((Crosstalk))

Marika Konings: Lindsay, you may need to mute?

Lindsay Hamilton-Reid: Oh sorry.

Kurt Pritz: So we're going to leave this, I think if we were to write the initial report today we'd reflect that this would be – this would continue to be published but we'd cite the opposition to that and to what extent there's rationale for opposition to

that, we'd include that in the report and then say so comment, you know, please comment on this.

So I just want to – here's an idea on the rest of these fields, city, postal code, email, especially taken into account what Amr read, it seems to me, and I'm probably the most ignorant one on the table, but where there is evidence of GDPR implementation there must be evidence of these fields and how they're treated by others. And I wonder if the existence of that evidence could be easily uncovered and either in documentation or in actual practice and used by us to guide us. Marika.

Marika Konings: Yes this is Marika. I actually had a question in relation to city and postal code because I think that was identified by some as being necessary to identify jurisdiction. So my question is, how is that being done currently if that information is not available?

Kurt Pritz: Amr. Yes.

Marika Konings: So this is Marika. So some indicated that city and postal code should no longer be redacted because it's necessary to determine the jurisdiction so when you want to file a suit that you know in which jurisdiction you need to file. So my question is, as that information is currently redacted, how is that managed? Does it mean that can only be determined once information is revealed? Or are there other ways in which jurisdiction can be determined to decide where a file is – court case is filed? And if I misunderstood the reasoning behind it but I think that's what I took away from some of the comments.

Kurt Pritz: Benedict, you have your hand up?

Benedict Addis: Yes, it sounds to me like filing a suit falls under the contactability requirement so I think there's still that information available under contactability unless I misunderstood the purpose and Purpose C.

Kurt Pritz: So I'm kind of – okay. Well I think John – James had his hand up first. No? Okay, Steve.

Steve DelBianco: Marika, this is Steve. The BC comment that you summarized in the triage document was that registrant city and postal code should be unredacted as they are not personally identifiable and they're applicable to the selection of venue when required legal action. So I've never taken a legal action in my life; I'm an engineer, not a lawyer.

But I can say that when BC and IPC members and others in the GAC and so on, law enforcement, when they are even preparing a request for access, there I used that word, when they're preparing a request for access, they try to determine to the best of the ability what the jurisdiction is for the purposes of articulating the argument for why they should have access. And I'm guessing here.

And for that reason it is very helpful to determine the jurisdiction in order to justify the access so given that they're not personal and they can be helpful, they're not personal and they can be helpful, you can see where they contribute to what would be needed. The nature of your questions seemed to be how are you doing things today? But I don't really know how that's relevant since prior to the temp spec for years we can suggest that these were relevant points and they were published and they contributed to the way actions were done. So are you asking for the post-May environment or are you asking for time immemorial?

Marika Konings: Thanks, Steve. So I can just respond? This is Marika. My understanding is that as part of GDPR you need to justify, you know, why it cannot be done in another way so I'm just curious to understand if it just means that you are currently enabled to determine jurisdiction unless indeed you obtain that information after a request or are there also other ways in which this information is obtained? So it relates to that question I think that comes from

the GDPR of determining, you know, is this the only way in which you can have access to that information or are there other ways in which you can make that determination? So just trying to understand that.

Steve DelBianco: Okay, but city and postal code aren't PII, they're not personally identifiable information so they're not even applicable to GDPR. I understand that a new insight, I think is this notion of data in combination with other data. I'm starting to appreciate that distinction. If that's the way that city and postal code suddenly came in and that's the reason they were redacted, then we have to think that through. But they're currently redacted and the BC had made an argument that they shouldn't be redacted because they're not PII, they're not subject to GDPR. So that doesn't even get to the notion of whether there's another way to get there. I was giving you a practical reason for why they help.

Kurt Pritz: It'd be great to understand how it got in there, you know, is there – Dan, is there rationale for the formation of the temp spec and the – no, you can't tell me until – turn on your microphone and identify yourself. Yes.

Milton Mueller: This is Milton Mueller, NCSG. So I'll read – there was a series of reports that the ICANN commissioned the Hamilton – and then there's a Swedish word that I can't pronounce, some kind of law firm that was expert in the GDPR. They say, "Access to the email address of registrants or to natural persons is not necessary for any of the purposes listed." And they had a much more expansive notion of purposes than we do. So, "Email addresses should not be made publicly available through the Whois."

Report refers to an October 17 memo which says that, "The opinion of both Article 29 Working Party and the data protection authorities appears to be that legitimate interests in accord with Article 6.1(f) cannot be used to legitimize making personal data publicly available through the Whois services."

Now when Steve says your city and postal code are not personal information, he's just flat wrong. In conjunction with, you know, that is – they define personal data is something that either identifies or makes you identifiable, an individual identifiable. And finding out where you live is fairly identifiable particularly when it's used in conjunction with other factors.

If you include the city and the postal code I am 100% certain that you will be deemed not in compliance with GDPR and I don't think we can take this request seriously to have all of this location information. Now to answer Marika's question, which is a good one, how does this happen? Well first of all in most sort of trademark and/or legality questions the jurisdiction matters a lot less than you'd think in the sense that I have registered some variant of Microsoft.com in Lesotho, it's probably illegal whether I'm in Washington the United States or anywhere in the world, it's a trademark infringement; the law is pretty globalized.

So they're going to come after you. And if they decide they're going to come after then they go through the access process and they get access to whatever information they need to sue you. That's how it works and that's pretty much how it works with even now if you're doing a UDRP you pretty much find out what you need via the UDRP process, not necessary through Whois. You're going to go after that domain whether it's – you don't care what jurisdiction it's in, it's a trademark infringement.

So really I would urge our colleagues in the BC not to press too hard here because number one, you're risking, you know, having the whole thing thrown out as illegal and you also trying the patience of those of us who really think that Whois, you know, needs to be reformed and you're also flying in the face of ICANN's own decisions which are based on legal counsel.

Kurt Pritz: So I think we've been very patient with everybody today so I don't mind being patient with the BC. Beth.

Beth Bacon: You guys are the picture of patience. This is Beth Bacon. I just – I wanted to note that I was – to your question, Kurt, why is this in here? I was in the room when it happened in the temp spec, we talked about it for a long time. And we did that balancing test and we talked quite a bit about what would be disclosed in the Whois and how in combination with each other that would impact the privacy of the individual. So, I mean, essentially you're describing, we would like more information so that we can correlate the data elements to identify where someone lives. And I'm not sure what could be more personal or private than that.

So right now we do – we did settle on the state and province and the registrant country saying that that was enough to establish enough jurisdiction and then there were other means to find other information if you needed to. And we did discuss the postal code in some detail simply because there was evidence shown that in places in Europe and other countries where the postal code can be as small as, you know, two streets...

((Crosstalk))

Beth Bacon: Or one house. Yes, there's one house. So and we – and I know that people will say, you know, that's a small percentage of registrants. But in what way do we get to decide who we protect? It's got to be – if we know that that is the case then we need to say, well, if that person wants to register a domain name they should be able to use their address and their, you know, if they would like to even though that postal code is one house. So...

((Crosstalk))

Beth Bacon: Oh every single postal code in Ireland is one house. So I think – and that's part of the reason – the driving reason why we did not include the postal code. Thanks.

Kurt Pritz: That seems a little redundant, Alan, to have one postal code per house.
James.

James Bladel: Sorry, I'm breaking the phone moving rule. So this has moved on a little bit, but if I could go back to something Benedict said, establishing jurisdiction for possible legal action maybe needs to be a separate purpose and we need to call it out separately then from contactability. And if so then I think that we, you know, have – we have over here that, you know, we probably don't need postal code or city; it's probably just state, province and country.

And, you know, I understand – I don't own my zip code but I live in a very kind of rural area so let's not pivot on my experience. But I also just want to point out that I'm not clear that, you know, where jurisdiction varies from postal code to postal code. If there's an authority that's assigning postal code then it probably shares a jurisdiction somewhere up the food chain. So it just seems like that doesn't even – I question the utility of having the postal code to establish for that purpose.

So I would say let's maybe if it isn't lining well with the purpose of contactability or publication then let's carve it out separately and let's look at that separately and then let's go back to those conversations which were I think in Los Angeles or something earlier this year where we said, look, the postal code can be a problem and it can be used to kind of correlate and cross reference other personal identification and so it falls on the other side of the scale in terms of weighing the rights of the person.

Kurt Pritz: Stephanie. Oh, shit, I'm sorry.

Stephanie Perrin: Stephanie Perrin for the record. I don't want to beat this horse to death but postal code – like in any country where there's been data protection law this whole topic is just so well known. In Canada, for instance, there's a statistics Canada rule of four, you can't go below that in any disclosures because of the ability to identify people. And in Canada the postal code system very

often has less than four units in it, in Montreal, which is not a small city, there are three houses in my postal code. Now that's one point. So please, trust me, postal code can be personal information.

Second, we continue to freeze the notion of Whois in time when it started. And the advice we got from data commissioners back in 2000, the issue that they were worried about with the publication of a public directory was reverse searching because that was an invasion in other words if you're going to release my name and address associated with one domain are you going to enable people to find all the other domains? So you have a letter on file including the 2000 opinion of the Berlin group on that topic so please let's do our homework and read it. It was sent to ICANN.

Anyway, the problem is that the technology has changed. Someone might be able to release their address and their postal code back in 2000 and the proportionality feature – or not feature but what's the word – principle in the law you might not reach the conclusion that there is a risk to the individual in this.

Now we have Google Earth and when we did the PPSAI nightmare a couple of years ago, we received I think it was 20,000, I'm looking at Kathy, it was 20,000 comments on this on the – on losing privacy proxy services. And we talked to women who were victims of the Doxing scandal and in particular talked to one girl whose – had registered a domain name under her parent's address and these goons that were threatening to kill and rape women because they didn't agree with them gaming, were – she had to phone her parents this is a long time since she registered the domain, and warn them that some of these creeps were going to show up at her elderly parents' door.

That is something that we have to think of when we continually point to well we've always done it, yes, but the risks are different now. So you have to measure it in terms of can we do it any other way without this disproportionate publication of every single address just because some folks

are going to be served a suit? No, you're going to have to go to a two-step process where those who seek to serve papers are going to have to look for more information first, get it and then serve the papers.

Kurt Pritz: Thank you, Stephanie. Alan, can you recapture your comment? I know you have to go get a justly deserved recognition but I'd like to hear from you.

Alan Greenberg: I'm not going to bother making my original comment at this point. I'd like to register my extreme frustration that we are not tracking speaker queues, number one; and number two, we are letting people talk for unlimited amounts of time and repeat things that are said before multiple times and this is not worth wasting my time if we're going to continue going like this. We spent almost an hour talking about a subject, organization field, that we had – at the very beginning of this meeting decided we're going to go out for outside consultation on. We are wasting our time.

Kurt Pritz: Thanks, Alan. Who's next in the queue? Alex.

Alex Deacon: Thanks. It's Alex for the record. So I'll just – I'll repeat what I said earlier about the city, and I just want to clarify in the IPC comments we only asked for city, not postal code. You know, the city is critical information in determining the venue for legal proceedings including law suits filed against the registrant and contacting law enforcement. You know, knowing that – knowing that something is happening in California is not sufficient; we need to know that, you know, where in order to contact law enforcement and so we just need to keep that in mind.

Kurt Pritz: Farzi, are you in the queue?

Farzaneh Badii: Yes. Farzaneh Badii speaking. I would like to know who wants to – would like to know like examples of who you have in mind that might want to establish the jurisdiction of the domain name registrant and that does not have a legitimate interest to do so because if you are going to – if we want to

establish the jurisdiction of the domain name registrant to file a lawsuit and we don't have – for people that do not have a legitimate interest, then (unintelligible) to ask for.

Excuse me, but just to add, there are like some texts in the European data protection guidelines in response to ICANN questions on legal, natural person and it actually mentions the organization and how natural person that work at a organization there might be personal data that is theirs and it should not be published. So there are texts there, GDPR applies to this. And I don't know why we are arguing over this anyway.

Kurt Pritz: So I think the preliminary question before we get to, you know, it's necessary to do an investigation or find someone is just whether or not, you know, I'm kind of channeling Steve DelBianco here on our earlier discussion on organization is that, you know, is this private information or not? If it's not private information then we don't get to the rest of that stuff and if it is then it's redacted and then we get to the inquiries that Farzi was saying. Benedict.

Benedict Addis: I guess, Kurt, asked my question. Steve, this is a good faith question, can you help us understand a little bit more about your process? So we've already established one or two purposes around disclosing data to third parties, so that's – in the old terms, the full Whois data available to third parties for legitimate interests. And I think it was painful but we got there. We've got this separate contacting, identifying purpose, Purpose C, again, I don't think those are going to be particularly burdensome. So can you articulate why this sort of pre – having some data out with that system is important, why do you need this as an indicator to fulfill, presumably fulfill those secondary purposes? Thank you.

Kurt Pritz: Go ahead, Steve. Thanks. Thanks for the question, Benedict.

Steve DelBianco: Yes thank you. And for the BC Marc and I are both the engineers, not the best persons to answer that. But I understand that when it comes to access,

and this is not a conversation about access, but when it comes to access the forms that we hope to see from the contracted parties, the forms we need to fill out, the conversations and emails that are happening today to justify the access that's requested to the nonpublic fields may require suggesting that under the jurisdiction of this registrant this is the – this is a legitimate – is this how the legitimate interest is affecting legal rights or legal proceedings?

So that if our need is to prove enough to you so that we get a reasonable access disclosure, then we have to have enough information to make the – a sufficient argument to convince the contracted party to reveal. So that's my best take on what I understand and then when Alex gave California, Pennsylvania, the state level, there's completely different federal district courts in Pittsburgh and Philadelphia and San Francisco versus Los Angeles.

And I realize the contracted party may not need to know which court we would use, and yet requesting the data, we'd like to have everything we need to give it to you. Now, there's this separate need called even if you give the data – gibberish data we've got to go to court and don't know who it is. So when somebody has to go to court they absolutely do need the jurisdiction, so Pittsburgh and Philadelphia are completely different courts. If you file in the wrong court I understand you don't even get to first base, you have to start over at the other court.

So there's a 50/50 shot at getting the court right with California and Pennsylvania, and so the city alone might be worth talking about and the postal code, I truly understand the notion of postal code may be too fine, especially in combination with anything else, I see that. And city, though, there's some awfully good examples where city is necessary for those purposes. Thank you.

Benedict Addis: So as a possible resolution or a way out of this, may I suggest that if we are not agreed on this that the kind of information that Steve discuss as being entirely publicly disclosed that we bear in mind that when we come to talk

about contactability in access, that a – that pre-identification or pre-contactability, in other words establishing jurisdiction may be a legitimate interest. And there may be one request to establish jurisdiction with very little information, as Steve has articulated, followed by a second request if they decide to proceed. And that is a legitimate interest of BC by the sounds of it. Thank you.

Kurt Pritz: Milton.

Milton Mueller: Yes, I just – Steve, I don't believe what – I just can't follow the train of your thought here. You're talking about people who are seriously mounting a law suit and you're saying that they don't – aren't able to go through the access process and get the information that they need to file a law suit? That there's a legal problem serious enough to justify the expense of a law suit and they are unable to demonstrate a legitimate interest and get access to the information. It seems to me what you're saying. And this is just...

((Crosstalk))

Steve DelBianco: The information revealed in a reasonable access request is not accurate enough to even pick the right court. So...

((Crosstalk))

Milton Mueller: If the information in Whois is inaccurate then it doesn't matter whether it's published or not, right? The point you seem to be missing here is that when you put it in public Whois it's not just people with legitimate interests who get it, it's everybody. Everybody in the entire world. And that's just completely noncompliant with GDPR. That will not happen. If we – if this committee is dumb enough to put so much identifiable information in the public Whois, I guarantee you we will be starting over in a few months after we're informed that it's not compliant with GDPR.

Steve DelBianco: So you believe city is personally identifiable information in combination with the unredacted fields that are here?

Milton Mueller: I believe that – you're asking for city and postal code. It sounds like you're willing to back away from postal code.

Steve DelBianco: Yes, we backed off on postal code.

Milton Mueller: Okay. But you've already got country, you want city and state.

((Crosstalk))

Milton Mueller: Which is, you know, may mean province, we may mean district, we may mean – they call them in Paris...

((Crosstalk))

Kurt Pritz: Yes, so let's put a point on it.

((Crosstalk))

Milton Mueller: I just – I think the problem is we're not accepting the fact that we are – we are questioning, based on GDPR, the whole standard of what needs to be published is not the convenience of people anymore; it is what is legally required to fulfill our purposes and that the information that is legitimately needed to go beyond that will be made accessible.

Mark Svancarek: Yes, the concern was that if we didn't have sufficient information to start, and again we're the engineers here, we're trying to figure out, you know, what forms you fill out or what API you access, that if we didn't have sufficient information in order to start the process, that we would dead-end and we're just trying to avoid that, you know, so we just need to figure out how to make it work and then we can figure out whether we need this field or not.

Kurt Pritz: So to try to end this, I'm taking on board Amr's reading of the book and then our inquiry is really is it private information or is it not? And if it is, then even if it's helpful it shouldn't be – it should be redacted. And so, yes, and so what we've – what you're proposing is that the postal code not – the postal code be redacted but not the city. And that the rest of this list stays the same. Go ahead, Marika.

Marika Konings: Yes, this is Marika. And for the purpose of the initial report we've heard the BC support that few others that want to have their views associated with that and I think we're probably at a stage where we just need to document, so BC, IPC, we just document in the report that some are of the view that, you know, city should be unredacted and maybe just the way public comment and again maybe it's a similar question as well to the EDPB what their views are on this.

Kurt Pritz: And can we not find out what others are doing and how this is treated elsewhere, Thomas or, you know, Amr read from that source. Is there no standard practice in this regard where GDPR has been in place, you know, essentially for years, the privacy rules, hasn't this been well defined somewhere? No?

Thomas Rickert: This is Thomas. No, that's a level of granularity for individual data elements, I think we're on our own here.

Kurt Pritz: That's funny to me. Okay so what we're going to do is document the best we can the positions we've heard here. I'm not sure we're going to leave this behind forever before we publish the initial report but we'll put it up and see if we can put a fine enough point on it to engender the correct form of public comment.

Marika Konings: Yes thanks, Kurt. This is Marika. If I can just flag that there's one part that we haven't discussed yet and I don't think we have time today but maybe it would be good if people can start an email thread on that in relation to email. And as

I said before, that's currently not redacted but that's linked to a specific requirement to provide either an anonymized email address or a web form, so again would be really good I think if we can start some conversation around that on the list because I know that some I think had – I think Alex already expressed the IPC view that that shouldn't be redacted, and I think there were also some other comments made that in the anonymized email address there should be a way at least to see if, you know, the same registrant has – is linked to various registrations.

And again, it would be really good if people can start a thread on that so we can maybe come as well either to documenting the positions on that or some kind of preliminary recommendation for inclusion in the initial report.

Kurt Pritz: Beth, can you give us a briefing on what happened in the room when we decided to not redact email, what the thinking was?

Beth Bacon: Sorry, did you say when we decided to not redact email? For sure redact email.

Kurt Pritz: That says "no."

Beth Bacon: We don't publish the email in the Whois.

Marika Konings: It's the anonymized email that gets published or a web form is provided, right?

Kurt Pritz: Oh okay.

Beth Bacon: I broke it, I'm sorry. So the – I can tell you that we decided to do that and James can speak to it too, he was there. We had that discussion of the balancing of, you know, clearly an email address has a very high chance of having personal information in it. I'll disclose mine, my email address is baconelizabethb so you not only get my full name, you get my middle initial

and you could probably figure a lot out from there. So and that's what people are using.

So what we decided was because the registrars already had the technical function to provide that service and it made most – and we generally do direct registrar domain name inquiries of that type to a registrar, it made the most sense to have that at that level and we made it – and it definitely made sense to not publish it.

Kurt Pritz: James.

James Bladel: Also we kind of came up with some dissimilar requirements between registries and registrars on this because most registrants have no idea who their registry is or the link between them. Their registrar is the one that has the customer relationship. So having that reference was going to be not only confusing for customers but also really technically challenging to implement at the registry level so we just left that at the registrar level.

I will say that there was – since this group just loves this really interesting and sticky academically challenging questions, there was this idea that if we created an anonymized email address for each registrant and applied to all of the registrations that they own then didn't that just now become personally identifiable information? So it's like you can try these things but then you've now kind of come full circle where you started with something anonymous but you've used it in such a way that it's now personal.

It's like giving someone an ID number or a social security number, an account number or whatever. And that's why I think most registrars in addition did not opt for the relay email address where you would have some sort of a junk email address that you could send email to and it would blindly relay it to that because it was from a spamming and harvesting perspective it was just as bad as putting the actual email address in the public Whois and exposing that

persona information. So I think what you've seen is the most popular implementation of this is the web contact form.

Kurt Pritz: Kavouss, do you have your hand up?

Kavouss Arasteh: Yes I wanted to...

((Crosstalk))

Kurt Pritz: Last comment on this topic or penultimate.

Kavouss Arasteh: Excuse me?

Kurt Pritz: Go ahead.

Kavouss Arasteh: Yes, I said that I understood that the text on the footnote will be changed to be clear and unambiguous, did I understand right?

Kurt Pritz: When we write our policy recommendation it will. This was just cut and pasted from the temp spec.

Kavouss Arasteh: Yes, because currently it is unclear and ambiguous. Thank you.

Kurt Pritz: Thomas.

Thomas Rickert: I think the concerns about the email relay, which would include I think this has been mentioned but I think it's the point jumping to most is people use auto replies when they're on vacation so if you're using an email relay service and there's an automatic reply you might reveal the identity of the registrant immediately. So I think that the preferred option is actually the web form. I think it's – you know, if it's implemented properly I guess that's the best way we can offer in this is something that potentially leading – getting towards the end of this frustrating meeting that we can get consensus on.

Kurt Pritz: Go ahead, young man.

Mark Svancarek: Not so young anymore. Yes, really the crux is, you know, quote unquote if it's implemented correctly, because as you say, there's a lot of considerations if the auto reply is identifiable then you haven't actually done anything. If there's no way to determine that it's been received though, that's also problematic. There is a lot to figure out here so...

Thomas Rickert: Sorry, if I may? Mark, I was suggesting that we settle on the web form and not on the email relay service.

Mark Svancarek: Well right, but so okay so there's a web form, how do I know it's been received or acknowledge or anything like that? You know, it...

Thomas Rickert: This email we – I think nobody can guarantee can delivery of email services unless you really make it, you know, confirm receipt type thing which I think would go too far in this instance.

Mark Svancarek: So, yes, I'm just saying there are ways to implement but I don't know that we have any consensus on those at this time. So I guess we'll just have to log our concerns.

Kurt Pritz: So I apologize for this long winding conversation this morning. I think I should have done a better job in driving the conversation, so we're going to work pretty hard over the weekend to make the points here more succinct for either continued discussion or how it'll look in the initial report. And I apologize a second time because I have to go because I'm in a session that you should all attend after this.

But what we want to do is put up a couple timeline – potential timelines for publishing an initial report. I'll just say that in considering what forms the initial report might take I am for taking the time necessary to make it as complete

and consensus-packed as possible with the idea of avoiding have to do a second initial report that requires another comment period. But there's a couple different ways to skin that cat and I think Marika and Rafik, who's going to take over the meeting now, will review those with you and get you out of here on time so you can come to my session in the big room after this.

Marika Konings: Yes thanks, Kurt. So this is Marika. So this is a draft updated timeline that I think we circulated the day before yesterday that tries to factor in, you know, some of the discussions we've had here on, you know, possibly needing some more time to finalize the report. We initially I think were looking at a I think 4th of 5th of November publication deadline but I think there's some more time needed for the group to identify what issues need to be further considered or modified in such a way that, you know, there – everyone's comfortable that they go into an initial report.

Of course that does require everyone to review the materials and flag if there are issues. I think we initially had given everyone to – a deadline of this Friday and we realize that that was maybe a bit too aggressive. But still, you know, in order to meet all the timelines we need to be, you know, diligent about this so everyone will have until I think 9 November which I think is next week Friday, if I'm not mistaken, to at least flag the issues that you think you cannot live with for the purpose of the initial report or state our concern for, you know, why you wouldn't like to see it included in that way in initial report.

I think in that way the group can kind of determine is it just something that, you know, needs to be flagged as such that a specific group has spoken out against or has a concern or whether it's an issue that we should just talk about a little bit more before we're ready to include that?

In parallel to that because I know several of you have asked as well, you know, what will the initial report look like? It's a bit difficult for us to comment if we don't know, you know, what it's going to look like. I think it's, as staff has tried to make clear basically you've already seen the skeleton for that and our

ideas just to kind of slot in all those things that we have been discussing and some of the things that you have already agreed on.

So what we will do we'll go ahead with that but you'll need to know that we'll do that on the basis of what is currently there, you know, noting that you know, not everything that is in the data element workbooks has been signed off, there may be other issues the group may consider, similar, the small group – the small group recommendations are too that we need to do further work on but just for the sake of seeing what it looks like we'll slot that all into the initial report and our aim is as well to publish that by next Friday so you can at least see what that looks like in combination as well with some of the other parts of the report which again are more standard reporting items.

So once you have those two items in place, you know, we'll have some time to look at it and hopefully discuss but we're still looking at, you know, publication of an initial report for public comment, you know, around the 19th of November. And again, the reason, you know, I know Kurt has been saying, you know, we do need to take the time to make sure that, you know, we have something that people can comment on that's as close as possible to what, you know, the group thinks are potentially find recommendations, but we're also very constrained by the timeline because any more time we take here will need to be taken off from the additional – or the other steps that are required.

And you see those other steps mapped out, you know, there's potentially a little bit of flexibility at the end but one thing you need to factor in as well, if we publish around the 19th of November for public comment, and we're already proposing here a reduced public comment period compared to the normal one, public comment period of 30 days so that gets you to the 19th of December. So you need to factor in as well the later you publish your initial report the more it gets into the holiday season which, you know, may result in complaints from groups that need to comment. So again it's just something to factor in.

I know someone said, you know, we've all worked hard so now it's turn for others to work hard as well so that is up to you to decide, but again something for you to consider.

Then you'll look at, you know, a review of public comment period taking you into January and that's where we're discussing as well a possible third face to face meeting to be able to do that. And again, we're currently looking around, you know, the week of 14th of January and we hope to share further details on that shortly. And then followed by that, you know, very quickly after that a submission of a final report to the Council, you know, there's a required timing in there as well, the timeframe in which that needs to be delivered to the Council.

Then it needs to go up to the Board, the Board has another requirement to publish for public comment or at least provide a forum for public input and discussion which then takes it up as well, you know, you're getting into the March timeframe, and let me just scroll down here. Then there's some other required step there, the GAC needs to be notified, the Board paper needs to be approved and that would take us to around the 14th of May for Board consideration and approval. So as you can see there's relatively little margin in there.

So again, you know, I think our call is here, and I can pull up the next document or we can share it afterwards, we've kind of tracked the action items coming out of this meeting. You know, I know that it's – it is tough, we have a couple of items that we hope to get input on by Monday. Again, you know, as much as possible you know, from your group perspective, I think we really need to move as well towards a stage where, you know, we can be clear that a group is uncomfortable with something versus an individual so I think we really need to be able to make that determination as well for the report. If states are made, you know, we cannot live with this, it has to be a “we” not “I,” because I think otherwise we'll probably never get there.

So I think that's what we're putting on the table as the possible timeline for your consideration. I think I saw Mark up and then Milton.

Marc Anderson: Thanks, Marika. Marc Anderson. You know, I think you said you'd send around a link but I just, you know, wanted to make sure can you, you know, send it around in one place or reference where on the wiki page all the documents we should be reviewing are. You know, I'm worried at this point about things slipping through the cracks. And also I want to recognize, you know, staff support. You guys have been great, I know you're working overtime to pull together these documents and support, you know, the working group and, you know, I know we can be needy and challenging. So I think I probably speak for everybody if I say, you know, thank you and, you know, if we can maybe give staff a round of applause?

Marika Konings: Thank you, Marc, that's really appreciated. And yes, this is Marika, we can definitely do that when we send out the list of action items, we'll make sure we include as well the links to where that information can be found so you have a one-stop shop. And just want to thank you as well for all your efforts and patience because I know it's a heavy lift for us but equally for all of you who have additional jobs to do as well.

Milton.

Milton Mueller: And a similar question, these identify issues that cannot be lived with, is there a consolidated list, I mean, like a bullet point list of those things that we are considering to be open for discussion? I would really appreciate having that because when I navigate the wiki or look over the email list, you know, it's chaos and...

Marika Konings: Yes, thanks. Thanks, Milton. And I'm actually just uploading, and this is actually something, you know, we have not shared, this is actually something we pulled together just prior to this meeting and during of this meeting and

we'll probably need to do a bit of updating based on what we discussed here, but we've tried to track, you know, what are the action items that came out of this meeting, you know, with very specific deadlines tied to that because we really need to get to a place where we kind of know what are the issues that, you know, you cannot live with or we just need to discuss a bit more or document what the status is before, you know, we can finalize the initial report.

Then we have a category of outstanding charter questions, there are I think three that we've identified that – four, yes, I think there are four, that we've identified that we haven't really discussed and – you can help? Okay all right, help me first then.

Alan Woods: I'm not going to throw away my shot on this one. We agreed on the strikethrough text that the Registry Stakeholder Group is okay to remove the strikethrough text.

Marika Konings: Excellent, and actually I'd forgotten about that so thank you very much, Alan, so another point of agreement. So these are some charter questions that we identified that we haven't really discussed, you know, I'm not necessarily sure whether they're on the critical path but again I think for all of the charter questions we at least need to document something so would be really helpful if we can get some people to volunteer to maybe write up a draft response.

I think for especially you know, Question B and Question L and I think there's another one, let me just scroll down, and Question M, you know, those ask about registrar and registries responsibilities and processing data. I don't know if registries and registrars would be willing to come up with a first draft response. I'm actually not entirely sure what was the idea behind these questions, you know, apart from maybe saying, you know, whatever the GDPR requires.

And then there's the first question in relation to sunseting Whois contractual requirements. Again, maybe that's a question that we can deal with later once all the other pieces come together, but again, if someone has some insight into that or at least otherwise some placeholder language that we can put in for this question that would be really helpful.

What we started doing then as well is create a kind of punch list, I think for, you know, several – for A, for example we can take that off with the confirmation of the structure of language, for the others staff has identified some items that you may want to focus on as you review the data element workbooks.

So we've kind of taken the liberty of going through each of those and kind of start formulating the responses in a way that are kind of aligned with each other and, you know, are kind of ready for inclusion in the initial report in the versions that we had before this meeting there was still a lot of reference, you know, the small team discussed this, during the LA meeting this was discussed so we're really trying to – we've tried to formulate these into responses that are initial report worthy.

And of course, you know, reflecting I think what has been discussed. But again if we've missed something there, you know, we've included some references for example to the bylaws that from a staff perspective seemed to apply. If we get those wrong please flag those.

There are of course still a couple of data element workbooks that haven't received maybe the same amount of air time, that may be as well, you know, less critical but still really important as well to look at those. I think, you know, Purpose E I think the registry escrow is I think near completion looking at Berry, and will go up shortly.

There's Purpose F, we made some updates I believe there as well based on the additional input received from our compliance colleagues. M underwent

quite a few changes and we still need to talk about, you know, the inclusion or exclusion of the three registry dispute resolution procedures and I think Kristina who had the lead on that may be better positioned to talk the group through that.

And again, you know, confirm, you know, processing activities and disclosure and retention. And same for Purpose N, I think there the big question is, you know, is this also an ICANN purpose because I think it's currently written as a registry purpose, would be really good to get some clarity around whether this should also be developed from the perspective of an ICANN purpose. And if it's the question if it's only a registry purpose, you know, does it need to be here?

So I think that's it in a nutshell. And again we'll share this and there may be other items of course that you've identified and please feel free to add these. We'll get this out with the link to, you know, where you can find all this information. Next meetings have already been scheduled for next week so we're back to our usual rotation, Tuesdays, 1300 UTC and Thursdays.

We also had a point in here, but I know we're running out of time here, we're already over time, on working methods. You know, Kristina shared some ideas yesterday. If you have some additional ideas, you know, please share those. I think we'll work with the leadership team to kind of write those up and ahead of the next meeting, get those out to the group so if you have any ideas or thoughts on how to, you know, better manage the conversation, how can we avoid, you know, repeat points, how can we make sure that we hone in on the end goal here and get to, you know, what needs to be in the initial report, I think any suggestions in that regard are very welcome.

Any – oh, Hadia.

Hadia Elminiawi: Hadia Elminiawi for the record. I just wanted to ask about the research purpose, I think it was Purpose O. Did you post it?

Benedict Addis: Thanks, Hadia. I need some help so, Thomas, Berry, I need to grab you afterwards, but yes, I'll be posting it today. Thank you.

Marika Konings: Thanks, Benedict. It's Marika. So that's another one we need to add to our list and Benedict, it will be really helpful as well indeed to flag any kind of specific issues you want the group to focus on and discuss.

Berry Cobb: And if you can maybe pull like Purpose A or N and – from the wiki and try to fill that out with this new form, that way we can kind of keep consistency, or are you just doing a purpose statement and that's...

Benedict Addis: I've done that so it uses the new format, I was told.

Marika Konings: Yes and I think Berry's referring to similar to how we've started responding to the first three questions, because we had some templates that just said, yes, no, good idea. And I think we tried to kind of elaborate a bit more and provide some more substance there. Rafik, I think back to you if there are no further questions. Hadia, that's an old card?

Rafik Dammak: Okay, thanks, Marika. So I'm trying to see, I think I mean, everyone is leaving so I'm not sure, is it an old – new one? Okay, please go ahead.

Collin Kurre: Many of us are trying to plan our work and business schedules so we'd like to know – there's been a suggestion about a face to face and where and when it's going to be and so we could plan our schedules accordingly and also whether CBI is going to be there, because we have so much to go through when in fact if we could have as productive as we had in LA with sorting through these many things that would be extraordinarily helpful.

Rafik Dammak: Okay thanks. Yes, for the face to face we are discussing the location and the date and you – also depending on the timeline. For the CBI, yes we – also we are discussing because all this is depending of the budget but all this are

under discussion at the leadership team. And hopefully we can come with response soon. Yes.

Collin Kurre: Quickly as possible would be appreciated.

Rafik Dammak: Yes. Okay, any further comment, question? Seems everyone want to leave, so Marika, please if you can share all this just shortly after the meeting and to make it and structure to so it's easy for everyone to refer. Okay thanks, everyone. And this is the last EPDP team meeting for ICANN in Barcelona meeting. Thanks you all and see you soon.

END