

ICANN Transcription
EPDP on the Temporary Specification for gTLD Registration Data
Tuesday 04 December 2018 at 1400 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:
<https://audio.icann.org/gns0/gns0-epdp-gtld-registration-data-specs-04dec18-en.mp3>

Due to a technical issue, the AC Recording dropped. There are two recordings below.

Adobe Connect Recording Part 1: <https://participate.icann.org/p9pibe5aoej/>

Adobe Connect Recording Part 2: <https://participate.icann.org/p54ohcb9343/>

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

The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:
<https://gns0.icann.org/en/group-activities/calendar>

Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 31st GNSO EPDP Team meeting taking place on the 4th of December, 2018 at 1400 UTC.

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

During this period, the members will have only read-only rights and no access to conference calls. Their alternates will have posting rights and access to conference calls until the member's return date. As a reminder, the alternate

assignment form must be formalized by the way the Google assignment form; the link is available in the agenda pod to your right and the meeting invite email.

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

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

Kurt Pritz: Thanks, Terri. And hi, everybody, how are you today? I hope you're well. So you have the agenda before you. I want to make one twist to it I think at the start of agenda item 4 where we're going to continue the list of topics for further discussion we'll ask Diane and – Diane Plaut and Dan Halloran to briefly describe the brief meeting they had in Brussels during the IATP meeting about how we're going to conduct the discussion going forward with creating either joint controller arrangements or not. So there's a discussion about that so I want to get that out in front of everybody, and then have some suggestions for how to carry on that discussion. So I'm going stick that at the beginning of item 4.

You know, as far as updates, I think I just want to call attention to the fact that we held the webinar last Thursday for those of you that did not attend. I don't really have an update – I don't really have an update for it other than we reviewed – after discussing with you guys we included some of the substance in the slide deck to show people at least where to find the substance and the basic topics that were discussed and then, you know, showed how the report

was constructed, how best to read it, where to find things and then importantly how to work through the comment form and the (unintelligible) of the comment form, tried to list the benefits the comment form the way – at least I see them and then – but provide alternates to people who want to provide comments in other ways.

There were a few, not really – there were a few questions that were I think all intended to be constructive and help the rest – help guide the rest of the audience in reading and commenting on the report and it ran through the hour so I don't know, I think – yes and I'll just note we had about 100 or over 100 attendees so I think that's a fair amount – a fair amount of response. I'll just pause for a second to see if anybody has a comment on the webinar. And it's posted so you don't need me to review it, you can watch it for yourself.

There's going to be a translation of the summary of the initial report – the section that held all the recommendations at the start so that should be posted in the traditional ICANN languages later today so that's to let you know that's happening.

And then finally my last update is just to make sure you've, you know, check and make sure you've received notification from the ICANN travel department about our face to face meeting on January 16-18 in Toronto and that you - that you're responding to that so if you haven't responded to it yet please do that. So that's all I have on that.

You know, to get into the agenda proper I want to discuss two what I'll call small team meetings that we had Thursday to discuss our potential communications with the European Data Privacy Board. And there about 10 people interested in discussing that communication and because of time zone differences – oh there's hands up – like reading other stuff. So Marc, please go ahead.

Marc Anderson: Hi, Kurt. It's Marc Anderson. This is just a follow up question or prompting I guess on the travel. You know, I did hear from ICANN travel but it looks like we don't have a venue or hotel identified yet. And I'm sure they'll let us know as soon as we do have a hotel but I can't really book travel without a hotel so I guess I'm just passing along a request for that to be expedited; I want to get my travel booked as soon as possible and, you know, need to know where I'll be staying before I do that. So thank you.

Kurt Pritz: Thanks. Can Marika, can you just acknowledge that and say we'll get after that?

Marika Konings: Yes, this is Marika. (Unintelligible) notes in the chat that the hotel final paperwork is almost done so we hope to be able to share that as soon as possible. We can't announce it until we've signed the agreement for I guess obvious reasons, so but again it should be almost done and as soon as we have that confirmation we'll send that to the group.

Kurt Pritz: You could give Marc a tip-off so he can at least make his travel arrangements if the final contract's not signed yet. That was a joke. Alan, please go ahead.

Alan Greenberg: Thank you. Mine is similar but a little bit softer. I really need to know, I'm presume it's a hotel either near the airport or downtown and I really need to know which because it's different airports for me. Thank you.

Kurt Pritz: Thanks, Alan. Yes, so let's make some calls after and see if we can – see if the travel team is 99% sure that we know the hotel and arrange for that. And then I'm with Kavouss; I don't like the airport hotels either but it's not up to me. Okay thanks, everyone.

With that I want to touch on – so we had actually two small team meetings to accommodate everyone who wanted to attends availability to discuss our communication with the European Data Protection Board. Gosh in my email I spoke European Data Protection Board wrong. And you know, I think the

email stands on its own. You know, I did just a tiny bit of research and but others have done more and have some personal experience with the Data Protection Board and I think made a convincing case that we should not be asking the Data Protection Board for advice in the form of, you know, what's the right way to go, A or B, but rather when have firm recommendations say these are our firm recommendations, are these okay with you?

So that's an indication that our questions aren't quite right. The Data Protection Board has pretty – in pretty plain language on their website that they're not a consulting firm; they publish guidelines and other information to inform the DPAs, the – in the various jurisdictions and so the governments are their primary customers, not public/private partnerships like ICANN. And so with those two things in mind, we pretty rapidly decided to take the questions that were proposed off the table and do a couple things, and that is create an abbreviated letter to send to the Data Protection Board and Stephanie's taking a shot at – a briefer letter that's more of a notice.

So I'd ask you to, you know, I have some comments on it, Stephanie and I apologize for not getting to that yet but if you could take a look at that. We're, you know, we're trying to decide whether we should be communicating with the Data Protection Board at all or not. And one way to do that is to work on this letter a bit to see if we can make it meaningful for them. So Stephanie, after this letter I'll send what I think might be some edits to your letter, but if the rest of you could read it she sent it around to the whole group in a clean format.

So the second thing we decided is that rather than seeking advice – sort of consulting advice from the Data Protection Board we would instead seek it from those who generally provide it so we energized our effort to seek outside legal counsel to answer these questions and in that vein Diane and – Diane Plaut is writing up a statement of work and we'll – Stephanie's going to review that and we'll get that to ICANN on a – to see if we can get the budget approved and get somebody on board in an expedited manner.

We're also suggesting we might use the law firm that the RDS Working Group used but that's not a requirement so if anyone else has any other suggestions of people that could come on board fairly rapidly that would be recommended. So that's the first.

And then the second is, you know, we – it was suggested I think by Stephanie but others too that we consult with the DPAs themselves and the Brussels-based DPA was suggested because ICANN has an office there – a main office there, so I know Thomas is helping create a contact for us and I think others are too. So the first is create a different sort of communication for the Data Protection Board; second is to seek legal advice and attempt to make contact with a DPA directly with our questions. And the third is that we haven't done much on yet is to modify those questions that we have so it was thought that the questions weren't ready for prime time.

And so what we'll – what I think we need to do is continue that small group work probably over email to answer those questions. And the second of the two calls we have it was noticed by I think Thomas and Margie that we do have questions having to do with somewhat vague input we got from the Data Protection Board about, you know, if a third party to a, you know, not the registered name holder is listed as a contact in the domain name registration does that require consent or is just a notification required as indicated in the Data Protection Board letter? So we have questions like that.

So I think what I'll recommend there is to create with that group of people that participated in the calls or signaled an interest in participating in the calls, that we create an email list and start to modify those questions over email and then maybe have a follow up call to kind of pound them into shape. So that's my recollection of our meeting. I'm just reading the chat for the first time. And I'll call on Marc. Go ahead please.

Marc Anderson: Hey Kurt. It's Marc for the transcript. I guess two comments real quick. The first one on, you know, you mentioned that you haven't had a chance to read Stephanie's, you know, proposed updated letter. But you know, I think that, you know, I've seen a couple versions of that and also there was a version that Kristina did where she provided some, you know, some I think fairly significant revisions to the version that Stephanie provided. So just sort of highlighting that for you, you know, please, you know, make sure you take a look at Kristina's version as well.

Ad then the other thing you mentioned that the statement of work for outside legal counsel, you know, as mentioned on the small team call I think it's great that we're moving forward with this so fully supportive of that. Just a request that the statement of work be shared with the working group; as has been pointed out, the, you know, the questions being asked and how they're being asked are sometimes as important as the, you know, pretty significant as far as impact and the answers we get back, so I think it's very important that that statement of work be shared with the full working group before it's finalized. Thank you.

Kurt Pritz: Thanks very much, Marc. And I'll – thanks for the heads up. I always have trouble with revision control so I'll make sure I'm editing the right version. Amr, could you just get in the queue to explain what your comment about Article 14 was because I didn't understand it. Alan, go ahead.

Alan Woods: Thank you. Just obviously I was (unintelligible) the first small team call and I just wanted to – I haven't actually caught up with the – most of the (unintelligible) but reading your email and listening to what you were saying there just about the data protection commissioner in Belgium, I mean, yes I understand it is a step down and it is probably the smarter of the moves to do in the sense of, you know, they are more placed to I suppose directly engage.

However, again, I really must caution against, you know, basically presenting to the people who are effectively going to lead any audit or any enforcement

against ICANN, handing them with a lovely platter saying this is what we're not actually doing at the moment, could you please, you know, give us advice on what we should be doing when in reality if I was a DPA presented with such evidence, I would probably turn around and go, well I'm just going to enforce now; let's do a full audit. So, I mean, yes, I get it, we want to do that but really do we want to be handing things on a plate to the lead investigator in this particular case is what I would be saying? So I would just be worried about it.

Also, there is (unintelligible) to be said that yes, they are more of a, you know, providing guidance however, again, it's still not their place to provide legal advice; they will just turn around to us quick smart and say, get a lawyer which I fully support and I think we should do that.

Kurt Pritz: Thanks very much, Alan. And I would hope the communication we'd make to the DPA if we make one, would first be – we'd be introduced through proper channels so we wouldn't be throwing a document over the wall but creating some sort of relationship, and then second, our communication should be, you know, kind of self-congratulatory, look at all the stuff we're doing instead of looking at what we're not doing and so we'd want to be very cautious in how we frame up that communication. But, you know, your advice is very well taken and we wouldn't proceed without the right amount of consultation amongst us as a group and then like I said, to appropriate introduction so that we feel it's a comfortable and unsurprising communication. Alan, go ahead, please.

Alan Greenberg: Thank you very much. My comment is sort of in line with Marc's that I appreciate the small team – or teams doing all this work, but it really needs to come back to this group first. I'll give an example, the question of whether we need to inform people that we name in an entry or get formal consent with them and how would we indicate that formal consent really comes down to does the person submitting the form have any liability or is it purely the

liability of the person collecting the information to make sure that we have appropriate consent or whatever.

And, you know, I really hope that the small team is not one that each of us – each of our groups have to have a representative on to make sure that the work is being done. I'm happy to delegate it to a small group but we really need to make sure that the overall group agrees or at least has an opportunity to voice objection before it goes forward. Thank you.

Kurt Pritz: Right, Alan. And I hope I didn't indicate that I think anything different from that, that where Alan kind of made his correction as to how I might have been handling things it might be for the statement of work for the attorney which is something where we just want to get a firm on board but I'm happy to review that statement of work with the whole team too, but certainly anything of substance like what you're discussing would never be published or thought to be released without a review of the small group, so I apologize if I indicated anything to the contrary of that. And thanks for making it clear.

Hi, Kavouss, how are you today?

Kavouss Arasteh: Yes, Kavouss Arasteh speaking. I have two comments. First comment is what Alan said, yes, anything from the so-called small group will come back to the main group to provide opportunity to everybody who has not been able to participate in the small group to freely express its views and its points. However, with respect to the small, I have some problems. We are 29 people if we just talk about members; if we count the alternates another 26 and if we count about liaison another six, so 60 or 29, small means five-six. I do not understand that how five and six could do all these things with such short amount of time.

I am not objecting but I see some difficulty in the short time available for us to proceed and have a successful output from the small team unless and until or unless it says, okay, quickly done but be done (unintelligible) in French. So

this is my comment with respect to the small group. I am still conscious that we may not do it in one small group; we may have few and dividing the things for several or chapters and then giving the substance to a small group, two, three. And I understand that and also support Alan that it should be representative of all constituencies and stakeholders and group. In that case alternates should also be taken into account if they are available.

Now, the second comment is that whatever letter we write to EDPB, at the beginning we should be quite clear to remove the source of apparent or quoted or understood (unintelligible) relation that EDPB does not wish to talk to individuals. We are not individuals and we are some 60 people in this EPDP, part of the GNSO, is another big issue, two house and part of the ICANN community. And I don't understand how EDPB considers ICANN community as individuals. So we should mention that when we talk about ICANN community and explain that we represent the entire community of the world on the activities of Internet.

We are not individual and I see – I wrote you, Kurt, something in my letter; you did not or you have not time to consider that. I don't understand such sort of relation that somebody saying I don't want to contact X and Y and so on so forth. And I don't know why people say that we should not raise the question; we are free to raise any question that is agreed by the team. And I don't understand we should say that okay, we don't (unintelligible) the question. So I am very much concerned about this sort of talk. I hope it is misquoted from the EPDP but not correctly, otherwise I have difficulty. Thank you.

Kurt Pritz: Thanks, Kavouss. So we could discuss your issues for quite some time, so excuse my brevity here, and I'm happy to take them offline. So first I understand your comment about small groups and the amount of work and the few amount of people. And I think even though we've been working on this for quite some time we're still trying to find our way about – on the best way to operate. So in some cases we create a small group because we think it'll be not only expeditious but give a better result and in each case we're

trying to find, you know, just not the fast way to do it but the right way to do it and not the (malway) to do it.

So but you know, we'll continue to –as roadblocks occur or as better avenues occur for getting things done we'll certainly explore them as we go on. And secondly, I think that – I think you know, I don't think we're as a group we're against communicating with the Data Protection Board, we just want to communicate with them in the right way and in a manner constant with their mission. And so that's the constructive warnings that this team provided when you know, an initial draft of a letter was proposed and that's why we're – that's why we're revising this draft.

I for one have – don't have any compunction with contacting someone and bothering them and asking them questions if I think it'll help me and our group even if the recipient of the letter isn't appreciative of that. But we also want to make sure that the response we get is helpful to us and not detrimental to our work and that's why I think we're being cautious in how we go about that. And so I haven't responded to your letter yet, Kavouss, you know, we're still all, you know, it's good food for thought and we're still all thinking this through.

So I don't think we're against corresponding with the Data Protection Board, it's that we want to communicate with them in the right way and DPAs perhaps in the right way and our own legal counsel in the right way so that's the balancing we're trying to arrive at. I didn't mean to end that in a preposition but there you go.

Amr, are you going to talk about article 14 or something else?

Amr Elsadr: Hi, Kurt. This is Amr. Yes, I was going to address your question on the article 14 issue but I guess it would make sense to go to Ashley first if she has a comment on the current topic.

Kurt Pritz: Okay. Ashley, can you go ahead?

Ashley Heineman: You know, I probably should even put my hand down. But I don't think I'm going to say anything new. I just, you know, think that, you know, at least from my perspective and the GAC's perspective we're certainly not saying not to communicate with the European Data Protection Board, in fact we think that's going to be very important. It's just making sure that we do so in the most informed way and that's why at least I think it's really critical that we do get some kind of legal guidance here because I don't want to look like, you know, we're a bunch of, I don't know, uninformed individuals and I think that's I think what we're trying to do and hopefully that's going to be possible.

I don't know if you've been able to get any kind of informal feedback from ICANN in terms of the actual ability to do this because I think getting this done sooner rather than later is going to be a very critical part of this approach. Thanks.

Kurt Pritz: When you say, "Do this," do you mean retain legal counsel or do you meant contact the Data Protection Board or a DPA or something?

Ashley Heineman: I'm sorry, I meant legal counsel.

Kurt Pritz: Okay, yes thank you. I'll work with Berry Cobb on that right after this. Hadia, please go ahead. Hey, Hadia, I see you're still on mute.

Hadia Elminiawi: (Unintelligible) are not leading to answers that we would like to hear. So the way (unintelligible) that we are going through after that (unintelligible) question is articulated and posed we need to be neutral and we should not pose the questions in a way that is kind of leading (unintelligible) so thank you.

Kurt Pritz: Thanks, Hadia. And I think that's a good rule for no matter to whom we pose the questions. All right so with that discussion I'll – we're – I think I didn't hear anything that we won't proceed the way we indicated and so we'll go along

those three lines and I won't repeat what I said earlier. So I just want to thank again everybody who participated in the discussion and I want you to, you know, and thank you for the, you know, I know you're looking out for the good of the team and so I appreciate everybody who spoke up, I appreciate their speaking up.

So Amr, I think we're making a slight change to the subject matter. Would you go ahead?

Amr Elsadr: Thanks, Kurt. This is Amr. And I'm going to just try to address your question to me a little earlier when you were referring to the EDPB letter and you know, that they mentioned consent might be something we might want to consider when we seek collection of information on the technical contact for a registered domain name. And that this might be something we might need to get clarification on. My comment in the chat in response to that was just, you know, pointing out that in the EDPB's letter they didn't mention article 14 of the GDPR at all which I found to be a little strange because that article deals with, you know, information that needs to be provided where personal data hasn't been collected or obtained from the data subject.

So this is personal data for a data subject other than the data subject we're normally dealing with which is the registered name holder. And article 14 includes a number of obligations on the part of the controller and what information the controller is required to provide to this other data subject I believe. And these are some issues I believe we might need to deal with if we're going to recommend the collection of a technical contact is required in one form or another.

And I believe it will also include some implementation complications as has been the case with a number of GDPR articles. And I don't believe that we as an EPDP team have addressed this either and we probably should at some point and preferably, you know, look over this before we seek legal counsel's advice just to be sure of what questions we might need to ask and what

clarifications we might need to see before publishing a final report. Thank you.

Kurt Pritz: Thanks, so I think that's really important input for, you know, our work in taking the current list of questions and creating – excuse me- a new set. That effort will occur – I think our question formation will occur in parallel with our securing legal counsel so that we can move forward as fast as we can so I appreciate that comment, Amr, and your explanation for my benefit.

So before we go into the next topic I have some good news for Kavouss and that is that there is a hotel for the – there is a hotel for the face to face meeting, it's the Weston Harbor Castle which is in Old Town – or Old Toronto, kind of on the water so I think Terri Agnew will – yes – put that in there. So that's that. Another EPDP success.

So I'll just – I'll just pause for a second and see if there's any more comments and then let's go onto some substance of the evening. Kavouss is pleased for all of us. So before getting into the – so before getting into the agenda as listed, there was a meeting attended by some of us in Brussels last week and among them were Diane, Thomas, Alan and Dan Halloran. And they had an offline discussion about joint controllership, making that determination if there are joint controllership relationships or not.

And that's the – that's the start of a discussion that that may become another small team discussion because some of us might be interested in that and some of us might not be. So I'm going to ask – I'm not looking at the chat room but I'm going to ask Diane to briefly introduce what was discussed in a general way and then Dan to comment also. And then anybody else on the team that was either there or not there and then maybe on this issue of whether or not this joint controllership relation exists, how we might have this discussion going forward. Thomas Rickert was not there, he was just copied on the email.

So Diane, could you take the mic? Would you mind?

Diane Plaut: Sure, my pleasure. I was very pleased to have a offline conversation with Dan and Alan. It was unexpected but very welcomed. We had a very full conversation about the work that's been done to date, thanks to Thomas's diligence on the joint controller relationship and what that could possibly look like, the definition of what that means.

And Dan seemed to be – Dan has acknowledged that he is very open to ICANN Org's – ICANN Legal furthering that conversation to explore whether there exists a joint controllership relationship and if so, what the joint controllership construct would look like in relation to the joint controllership agreement and any related DPA agreements and how that would be possible from a party participation standpoint and how it could really function.

So we then further communicated that we wanted to open the conversation up to an official small team and make sure that we're inclusive of other party views and that everybody participates. And so that's where we're at. So we're now looking to do that, to have representation by the different groups and Alan I know is really very supportive and is of course a strong participator, Thomas, myself, Dan and now we want to get insights from others and formulate the small group with the goal of furthering this discussion and hopefully if we find it all to be the right road that we could find a road to a negotiation of a JCA, so that's the goal. So take it from here, Kurt.

Kurt Pritz: Yes thanks very much, Diane. I was on mute. So thanks for that. Dan, do you have anything to add or any thoughts about how the discussion might go forward? You know, as not being there I'm just speaking in very general terms here so I don't have a specific for you.

Dan Halloran: Thank you, Kurt. And thanks, Diane. I want to, yes, I'll agree with what Diane said and how she characterized it. It was just so nobody feels left out – it was not any kind of formal sit down meeting. But I was happy to run into Diane

and Alan Woods there. I also saw a couple other community members and I think EPDP alternates there in the halls. And it was a great meeting; there were I think 3000 people and got a chance to do a lot of learning kind of for my day job in terms of, you know, data protection.

But the session where I ran into Diane and Alan was actually an excellent presentation that Diane and a couple other ICANN community members put on. It was a meeting session focused actually entirely on the Whois question and ICANN and the EPDP's work. Diane gave a very good presentation to the – to some of the leading SMDs who weren't ICANN regulars and kind of brought them up to speed on what the team is doing and encourage them to put input into the initial report. And then afterwards just standing up for, I don't know, it was 5, 10 minutes Diane and Alan and I had a talk through.

And I think maybe we were saying a lot of the same things that we've said on the phone but it's just different and you guys all know to there in person and, you know, Diane was able to see that I was actually saying the things I said, that we're open to discussing this and exploring it.

We have implementation questions and we want to make sure that the team's done the analysis and that we've made the correction decision on how ICANN and the contracted parties should approach this, whether under the law we are in fact joint controllers or not and if we are let's figure out how to implement it in a way that's going be implementable and deal with kind of the implementation questions that Trang and I have raised that like chief among them I think still is how is ICANN supposed to have, you know, 1200 open book negotiations you know, each registry could make its own unique demands, how could a registrar, for example, have to – if it's a registrar for 600 TLDs, is that registrar going to have to have 600 negotiations also?

So but it was a very good conversation. I think then I agree also with Diane, I think what really we had started a small group and Thomas was very helpful but I don't – we never really got to get it off the ground; we were in a rush to

get the initial report out. Thomas put together his first memo; we put together a written response. We had a conversation with John Jeffery and Thomas and others were able to attend but I unfortunately wasn't, and I think we should just kind of pick up where we left off before the initial report and continue that conversation and try to grapple with the legal issues of whether – if we are or are not joint controllers and pin that down and get an approach and then move into solving some of the implementation issues if, you know, it's ultimately decided that we are joint controllers.

Figure how exactly to implement that and what sort of arrangements – I think the initial report – I don't remember how it finally came it, it said something like ICANN should enter a joint controller agreement which is a little vague or ambiguous, I think the thought Thomas and others really had was that we should enter separate joint controller agreements, one for each registry and that set of registrars. And I'd like to explore things I've raised earlier like does it really need to be a separate agreement or the GDPR talk about an arrangement. You know, we already have existing arrangements; could those arrangements be amended? We already have existing procedures for amending those (unintelligible).

You know, if we open up brand new negotiations where each party can say yes or no, that puts us into uncharted terrain. So and thanks again, I agree with what Diane said and it was good to meet up with Diane and Alan and others there. And thanks to you, Kurt. Back to you, Kurt or Diane.

Kurt Pritz: Great thanks. I'll just pause for 30 seconds to see if anyone has a comment and then take up next steps. And just read in the – so I think – I don't know, despite Farzaneh's recent comment there, you know, I think the best way is to, you know, form a group to discuss this and then report back to this group with greater – with initial findings or conclusions so it can be debated at this level. But it seems like there's sort of a legalistic and detailed discussion that has to occur that might be best held at a small group. I think that – I think

that, you know, given some of the – some of the issues that Dan's raised with regard to implementation, you know, that's not the first time he's raised them.

And I've been mulling them over in my mind so I certainly think that, you know, registrars and, you know, registries have a big dog in this fight as, you know, we don't want to turn this into a contractual nightmare for them; we want to make it as easy as possible while still being lawful. So with that, I'm going to read Thomas's – right and I appreciate Alan's discussion – Alan's point about that it wasn't a planned meeting and so, you know, I just want to – I don't know how big Farzi's dog is. But I just want to, you know, read aloud what Thomas said here and, you know, let's ask for volunteers, set up a Doodle poll through an email and those that wish to participate we can.

And we'll select some of the meetings. Actually if you would, that – you know, this won't be the final call for volunteers but if I could have a show of green light hands about who would want to be a volunteer for this it would help the creation of a Doodle poll by looking at the geographic diversity of who's attending, although I can suspect what it'll be.

All right so, you know, anyway I don't know why I did that; it's not surprising that the, you know, the majority will be in Europe and North America so. Okay so I'm going to let this go. Like – I want to echo what Alan said earlier and that is, you know, not every group needs to participate if this isn't a full – if this isn't an area of interest for that group but that any discussion will come forward to the full group. And also if, you know, if your group needs more than one participant in this group that's welcome too, so what we'll do is you know, just go – just go out to the team with a Doodle poll and those that want to attend please fill out the poll.

And Dan, will you be the – will you be the – Dan and Trang, will you be the sole ICANN participants in this discussion?

((Crosstalk))

Kurt Pritz: Okay thanks, everyone. And thanks, Diane, and thanks Dan for reporting on that. All right let's go onto the portion of the agenda where we're going through the substantive issues that were remaining after the initial report. So if you could – let's see, I'm bringing up the right document on my computer. So we decided to start with recommendation – hang on for a second. Hey, everyone, I'm back, sorry. There was some background noise there.

So to get back what we had proposed to discuss substantively on the call were going down through the recommendations, I'm scrolling down to Recommendation Number 3 which – I'm sorry – Recommendation Number 6 which had to do with the relationships between ICANN and the data escrow provider. And Trang pointed out that there's three-way agreements in certain places where the contracted parties are also parties to this agreement. So I don't know exactly how to kick off this conversation except to ask Trang to provide some more detail and then we can decide how best to resolve this from a policy standpoint. So this has to do with ICANN and – ICANN creating – our recommendation that ICANN create an agreement with data escrow providers.

And I think – well we'll leave DRPs for later. And so there's some complexities involved with that. So, Trang, do you feel able to talk to this issue and maybe start a discussion on it?

Trang Nguyen: Hi, Kurt. This is Trang. Sure, yes, I'll get things kicked off here on this topic. So this is in relation to Recommendation Number 6 in the initial report where it talks about a data processing agreement between ICANN and data escrow providers. And as some of you may or may not know, data escrow agreements are quite complex. There are some of them are three-way arrangements between ICANN, the data escrow providers and the registrars; and some are two-way agreements, you know, between the registrars and the data escrow providers. And ICANN is a beneficiary in both cases.

So there's some complexity in terms of how the arrangement is currently set up. And then on top of that, we've had some – we've been having some conversations with some of the data escrow providers and they vary also in terms of their thinking of what their role is. Some believe that they are controllers because they hold the data and they make certain decisions in terms of the means of processing that data as well as independent determinations on how and when the data is to be released.

And so some of them view themselves as controller and some, you know, view themselves as processors and some either have not said where they stand. So, you know, we just wanted to bring that up to the EPDP team for consideration in its continued discussion on this topic because the way that the preliminary recommendation is worded right now implies that there's a straightforward controller/processor relationship. Thank you.

Kurt Pritz: Can I – this is Kurt. Is it possible to make a chart or some sort of graphic that indicates where ICANN has a relationship, where the registrars have the relationship and ICANN is the beneficiary or something like that? Is that easy to put into a graphical format or is it too complex do you think, Trang?

Trang Nguyen: Hi, Kurt. This is Trang. So we had intended on trying to put together some materials that would help the EPDP team visualize and understand sort of the complexity of this arrangement a little bit more so we can look into whether or not it's feasible to do a graphic. So yes, we can take that on, Kurt, to look into that.

Kurt Pritz: Okay. Alan, go ahead.

Alan Woods: Thank you very much. So it's Alan Woods for the record. Two comments really – well, two maybe three, so when I remember us originally making this recommendation with regards to the escrow provider, I think the detail that has gotten into the end is probably – it's helpful obviously but I mean, at its purest point the recommendation of the EPDP should be just to say that

ICANN needs to go in and have those discussions with DPAs, discussion with DPA, discussion with the data escrow providers.

And I understand that it is a complex legal relationship but at the end of the day, you know, this leads me straight away into the second point and that is I find it very difficult to think how a data escrow provider can consider themselves to be a controller in any way in this; I genuinely think it's a fundamental misunderstanding of data protection and that. They are service providers, they are holding data – that is after all what escrow is – in the event that there is a failure and that data is needed. They are providing a service; they do not have the control over the data, what data is provided to them, why it's provided to them.

They are merely a repository for the data they hold it, they have to have things in place and then they must provide that data in a way that is prescribed in the – in event of a failure of whoever it is. So I mean, I would caution and I would advise ICANN and them to push back because again, and this is goes back to the general discussion that we are having with regards to, you know, the controllership and the processor, and that is the legal facts are different to the belief of the parties. If the legal situation states it is a duck, it is a duck. And we must be very, very clear on that one.

And I think – I'm somewhat surprised that the data supervisors are saying that they are maybe a controller, I don't know why they would want to say that they are a controller in this instance. But it's surprising to me. But I suppose just to cut all that around and just to say again, the whole point of the recommendation should be clearly that, you know, a data protection or some form of an agreement must be put into place that takes into account data protection and the requirements under GDPR specifically. And it may be difficult but unfortunately that's what we need to do.

Kurt Pritz: So in the case where the registrar has the agreement with – oh, go ahead, Emily. Thanks. So thanks very much for that, Alan, that was thoughtful and I have questions but let's – I want to hear Emily first.

Emily Taylor: Yes, I don't really have a major substantive point to make except to agree with Alan's analysis. The escrow providers seem to be a classic (unintelligible) processor arrangement, they have their instructions and they're fulfilling the instructions on behalf of the controller bracket (unintelligible) in the value chain. So I just wanted to state that for the record. Thank you.

Kurt Pritz: Thanks, Emily. So for Emily and maybe the rest of the registrars, taking what Alan has said, who's responsible for – who's responsible for negotiating the right GDPR compliant agreement with the data escrow provider as a data processor? Is it ICANN or would it be the registrar? So I'm thinking that our policy – Alan seemed to be suggesting – or Trang seemed to be suggesting too that maybe the recommendation was too narrow. So does this require some type of rewording or how's the best way for us to manage that? Alan.

Alan Woods: Thanks, Kurt, and just Alan Woods again. I'm just going to answer your first question there and this maybe a controversial statement so apologies to everybody. But at the end of the day, I mean, the data escrow requirements, I mean, as a registry and most registrars would have their disaster recovery in place; that's good business practice. We all have data recovery centers, it's probably another ironically a good requirement by the GDPR itself under security measures.

So escrow is another layer on top which is required of us and both registries and registrars. And this is one of these conversations that would have to be had in the joint controller agreement where we would say, look, in reality the power balance of the escrow is that this is something that ICANN requires of both registries and registrars, maybe (unintelligible) community but ultimately at the end of the day it's something that's required of us. We have our own,

you know, as I said, disaster recovery in place that is quite similar. I mean, it is almost a duplication.

It's just that the control of it is in a different field specifically and it would be in the reins of ICANN. I think Trang, you said it yourself there that, you know, you are the beneficiary of the agreements in that. So these are all conversations that we would have on the joint controller side of it. So my belief on that is that if it were not a requirement I doubt a lot of people would probably do it therefore it errs on the side that this is something that ICANN should be negotiating with the data escrow providers and in this instance we would be acting practically like processors in this and when I say "we" I mean the registries and the registrars.

I don't think we have an issue, you know, I mean, we can accept that this is a requirement, but it is something that is required of us as opposed to something that we wholeheartedly embrace. So apologies if that sounded controversial; I don't mean to be but these are the sort of conversations that can tease it out from the balance of the parties, things like that.

Kurt Pritz: Thank you, Alan. Go ahead, Emily.

Emily Taylor: Yes just responding to your question, Kurt. And rather than repeating word for word what Alan just said, just to say yes, this is something in which the registrars are just told, you know, you can use this provider or that provider but this is a contractual relationship and a selection that is made by higher ups, not us. Thanks.

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

Marc Anderson: Thanks, Kurt. Marc Anderson for the transcript. You know, I agree with what others have said. You know, just I guess two points to add, you know, Trang in her intro pointed out, you know, there are different flavors of the escrow agreement and in some cases they are three-party arrangements so, you

know, I think most of them are a little more straightforward but there are, you know, are some differences in that language.

I think you know, for me though the important thing – the important, you know, the spirit, you know, the important point of this particular recommendation is that, you know, hey, you know, there are these contractual relationships for escrow and, you know, the, you know, the person responsible or the party responsible for those contracted – or contractual relationships need to look at those contracts and make sure they're GDPR-compliant. You know, I think that's sort of the spirit of what our recommendation is saying.

And so, you know, Trang brought up some, you know, some concerns about this particular, you know, recommendation and, you know, I guess, you know, maybe, you know, maybe this is a, you know, a follow up question for Trang is, you know, given the spirit of this, you know, we have these contractual arrangements, we want to make sure these contractual arrangements are GDPR-compliant. I, you know, I can't imagine anybody would disagree with that sort of high level principle. So with that as a high level principle is there you know, is there a way we could rewrite this particular recommendation so that everybody's comfortable with it? So that's I guess, you know, my intervention there.

Kurt Pritz: Thank you, Marc. I'm understanding more with each comment. Kavouss, go ahead please.

Kavouss Arasteh: Yes, Kurt. Maybe the example that you gave was not relevant to the case because of the answers you receive almost everybody saying that there is no such actions to be done, negotiations. However, in case – just in case, that is a joint action, a joint responsibility, if there is a negotiation should be jointly negotiated but not authority will be given to one but responsibility given to two; both should have shared responsibility and shared authority if there is any case of negotiation. Thank you.

Kurt Pritz: Thank you, Kavouss. Kristina.

Kristina Rosette: Kristina Rosette for the Registry Stakeholder Group. Just to answer your question a little bit more specifically, Kurt, for those who may not have had occasion to do a deep dive into the new gTLD Registry Agreement. Under that agreement registry operators have an obligation to enter into an escrow agreement that meets certain predefined technical and legal specifications. Those technical and legal specifications were set forth by ICANN.

Once – and before a registry operator can actually enter into an agreement with an escrow provider, they have an obligation to provide a copy of that agreement to ICANN for its review and approval. Unless and until ICANN approves it, the registry operator cannot enter into it. And on its face, the agreement also has to specifically identify ICANN as a third party beneficiary.

In practice, the way it worked was that ICANN reached agreement on the key technical and legal terms with the escrow agent; the escrow agent, NVs, then were – would provide a copy of their – I hate to say standard form because it wasn't completely standard – and then each registry operator had some opportunity to perhaps negotiate provisions that would not impact on the required technical and legal specifications, for example, if they wanted to, you know, jurisdiction, (unintelligible) law, that type of thing. So, you know, I think in the context of new gTLDs it's more accurate that not to say that ICANN controls those terms. Thanks.

Kurt Pritz: Thank you, Kristina. Thomas, go ahead. Hey, Thomas? We can't hear you.

Thomas Rickert: I hadn't heard you asking me to speak so I was waiting. Hi, everyone. It's Thomas. I think that yes we do have two different scenarios for escrow but not in terms of data protection and the controller question or the responsibilities question I think there's not too much difference between the two constructs which is why I think that we should worry more about the compliance in terms

of data protection laws rather than the question of who pays for the service ultimately because that's the main difference between the registrar scenario and the registry scenario.

Having said that, I think that the legal setup might only vary in nuances. The escrow agent, at least in my view, are processors. If we have a joint controller situation they would be processors on behalf of the joint controllers. But as we have written in our initial report, the joint controllers will amongst themselves share the responsibilities and the burdens of doing specific tasks and the task of setting up criteria for and identifying and contracting with escrow agents is surely a task that will be left for ICANN to take care of.

So regardless whether we have a joint controller scenario where ICANN will be tasked to enter into data processing agreements with the escrow agents; or in the alternative case that is still not off the table where ICANN is an independent controller, ICANN will also be required to think about making that relationship compliant, i.e. entering into data processing agreements with the escrow agents.

So my proposal, which hopefully will be received as a pragmatic proposal, would be to ask Trang and Dan to take back to ICANN Org that this is the right time for ICANN to work on the data processing agreement to be entered into and legitimize the data processing by the escrow agents, and we would add the components that are required to it as we get more clarity on the final EPDP team's recommendations. But I think that it would inform our discussions greatly if ICANN could plow forward and come up with a draft data processing agreement with the escrow agents.

Kurt Pritz: Thanks, Thomas. Kavouss, is that a former hand you have up or is that a new hand? So, Thomas, in your recommendation are you – would you suggest any change in wording to the recommendation which I think is in the spreadsheet here under Number 2. So it's Item Number 3, which is Recommendation 6 and then it's bullet Number 2 there I think is the

language. So would you recommend any changes to the language or would you leave the language as-is and say we have this request and make a request to ICANN?

Thomas Rickert: Kurt, this is Thomas. I guess that the change to the language of the recommendation is not warranted at the moment. I think we can work on that (unintelligible).

Kurt Pritz: So I didn't...

((Crosstalk))

Thomas Rickert: ...probably put something into our...

Kurt Pritz: Please continue, Thomas. I'm sorry I interrupted.

((Crosstalk))

Thomas Rickert: So I think if this team agrees with my suggestion I think we should make it an action item for Trang and Dan to reach out to ICANN Legal and get the work started so that we sort of get these things worked on in parallel.

Kurt Pritz: So I would recommend – and I'd like to hear from Trang and Dan on this – but I would think we'd put together – and we can do this for the team's review but, you know, put together a fairly carefully worded email that says – that says exactly that that, you know, recognizing the issues that Dan and Trang have raised here with the different forms of agreement that, you know, a general GDPR compliant data escrow agreement drafted by ICANN might be – would be appreciated if ICANN could draft that. Something along those lines.

So Dan was first in the queue but then he dropped back to second so I'm assuming that he wanted Trang...

((Crosstalk))

Kurt Pritz: Yes, go ahead Trang.

Trang Nguyen: Thanks, Kurt. And I'm just now reading the text of the Recommendation 6 again. And I think most of what we've been talking about is actually the first part of the recommendation, correct? "EPDP team recommends that ICANN Org enter into legally compliant data processing agreements with the data escrow providers." But to your point around Number 2, I look at that as more of what contractual requirements in the RA and RAA needs to be updated to ensure that it correctly reflects the data – what's in the data element workbooks. So just want to clarify what we're talking about.

Because I think if it's around the second item under this recommendation one thing that I do want to flag is we have – in the process have not yet completed really taking a look at the changes that have been made in terms of the data elements that are in the workbook and comparing that to what the current data elements that are required to be escrowed you know, under the existing agreements. So we may – once we've completed that we may have some follow up questions you know, for the EPDP team, but I just wanted to flag that that's something that we're doing but we haven't completed doing that yet if we're talking about Number 2 and the Recommendation 6. Thank you.

Dan Halloran: This is Dan. I'll just jump in if that's okay Kurt? So...

((Crosstalk))

Kurt Pritz: So I was – yes, go ahead, Dan.

Dan Halloran: All right thanks. Yes, I think Trang and I were going to say the same thing but I think what we flagged was the – at least for this particular point the wording

in that first sentence of Recommendation 6 is very specific and says, "ICANN should enter into a data protection agreement with escrow providers." And I think it sounds like everyone's agreeing that might not exactly be the scenario like in the – what Kristina sketched out, ICANN wouldn't be entering into a data processing addendum for that agreement because we're not even a party to that agreement, we're a third party beneficiary.

We'd agree it's, you know, likely here – possible for sure that the – the agreement itself should be updated to, you know, of course comply with GDPR. And I think – so it would make sense – and I agree that ICANN has a hand in approving the templates for those agreements of each – we approved a number – I think maybe six or eight different data escrow providers and each one is able to come up with their own agreement and then they're able to negotiate those agreements.

So if a registrar or registry doesn't like those arrangements it can find a different escrow provider, it can negotiate this. So it's not true exactly that, you know, ICANN has an iron grip on each of those agreements; there is room for negotiation and room for customization, negotiation.

And it's – like Trang also started out saying, it's a little bit more complicated, there's not just one scenario that's the new gTLD scenario let's say, there's another scenario with the legacy TLDs where the escrow agreement is baked into the Registry Agreement itself and ICANN is a party. Even with registrars there are different flavors where under the Registrar Agreement registrars have the option to either give ICANN a copy of their data to hold and ICANN has contracted with an escrow provider to take care of that holding, and then there's three party agreements there, or there's another scenario which is registrars free to pick their own escrow provider of their own choosing.

So anyway, it's kind of a – a somewhat complicated arrangement of different arrangements, let's say, and we already all have the obligation to comply with GDPR, that's an existing obligation and all the escrow providers and ICANN

and the registrars and registries are going to have to make sure their arrangements comply with GDPR. What we're looking at is a brand new legal obligation that the EPDP team is proposing to impose on ICANN which is to enter on its face here, a data processing agreement with each of the vendors which we're not even a party to in some cases.

So really it was a wording thing I think but happy to provide any information and take on any recommendations in terms of – I agree it makes sense to kind of centralize the work and maybe task ICANN Org with coming up with suggested templates or something and it'd be great to have the EPDP team input into that. But we were just focusing on the text of the new policy obligation that you – that the initial report proposes to impose on ICANN and question that.

Agree with Trang too, there's more to look at in this thing in terms of making sure the existing data processing agreements and specifications are somehow tracked and modified and comport with what the team is recommending in terms of data elements because in some cases there are data elements beyond what's in Whois or even what's collected. I think there might be, I don't know, dozens – maybe Marc would know better – Anderson – about what exactly is in all those escrow specs and what has to be escrowed. But it could exceed the little set of elements that is proposing to be collected and definitely displayed.

And just the last point on the arrangements, I agree about the question of whether a data escrow provider is a controller or a processor. I agree, if you think of a escrow provider as like a hosting company that's just a passive repository, you know, as like a cloud service provider where you're just going to upload gigabytes of files and let them sit there and then take them back and they don't do anything with the data except what the depositor's instructions are, then that's a clear processor situation.

I think some of the controllers see it more – a little more complicated and maybe more discussion needs to take place where they see it that they're holding, you know, megabytes or gigabytes of personal data of data subjects from sometimes all around the world and they don't just respond to instructions from the person they contracted with but in fact they have a more complicated situation where they have to make their own independent decisions about, you know, does this data meet the specifications that they agreed to check for?

Are these conditions present? Should they give the data back to the registry or the registrar or should they give the data to ICANN or to, you know, a successor registrar? So it's a little more complicated than a classic you know, data backup holder which would be a straight up processor.

And then back to you Kurt or Alan. Thanks.

Kurt Pritz: Okay great. So thanks, that was really clear. And I think that I probably focused us on the wrong paragraph and perhaps, you know, a one-word change to that opening paragraph would be easy to implement, that ICANN – that ICANN should develop GDPR-compliant agreements rather than enter into. So before I let Alan go, I also might make the point that, you know, creating these GDPR-compliant agreements might also take the form of making those processes sufficiently clear so that it's clear that the escrow provider is a processor and not a controller and to take some of the discretion out of that; maybe that's part of making it GDPR-compliant.

Alan, please go ahead.

Alan Woods: Thank you. Alan Woods for the record. Yes, I'm just going to talk on the tail of – on the points that Dan was making there because the essential points that he was making is actually, you know, the actual agreements and the creation of that. Yes, absolutely, we can appreciate that and I think we can all work

towards that particular goal and help where necessary. So just to go to the first point on that is, you know, what about Paragraph 2 and Paragraph 3?

I really do think that that is a result – result in the word I'm looking for – it's a result of stating that we can't just – that we can't just state, you know, in this instance you are a controller, you are a processor, etcetera. There needs to be some reflection of that within the contracts with the contracted parties as well.

And again, this is something that we're covering under the negotiation of the JCA we're saying that it can't just be in isolation, it can't just be, you know, ICANN is going to tell the registries and the registrars what to send here – the data to the escrow provider; what they're going to do is X, Y and Z and that is in their contract and it is, again this is part of our point in the – oh, the EPDP is that we're going to figure out the justification and do our due diligence on as to why that occurs. But it does need to be reflected somewhat within the contracts as well but that would be, as I said, in the JCA or – I say JCA, you can figure out what – if there's any difference in that.

The last part there that, again, I'll go back to this whole whether or not the data escrow provider is a controller or not, again, everything that you pointed out that, Dan, and I don't mean to like directly disagree with you on this but everything you pointed out there are specifically still instructions that they as a processor would receive as to how they would deal with those particular instances. You know, still nothing you said there would make me think anything other than being a processor pure and simple in this particular instance; they are still acting under the instructions of another party and how they deal with such queries.

So I just want to be clear that, again, if the legal fact that suggests that they are a controller – or a processor then they are a processor regardless of how they believe they are themselves.

Kurt Pritz: Thanks very much, Alan. So would anybody be adverse to this specific set of suggestions. One is that we amend Recommendation 6 to say that ICANN develop legally compliant data processing agreements rather than enter into – so that would be one change. And second, that we would write the, you know, a letter to ICANN asking them to do this development and especially with – so I want to make sure this is okay with everybody – with the idea that data escrow providers are in the role of data processors and not data controllers.

So those are the three things; the one word change to the recommendation, two writing an email to ICANN asking them to develop the template for this, and third is in that letter specifying that ICANN – that the data escrow providers or data processors and data controllers, or maybe asking ICANN for an analysis if not providing direction or asking ICANN to push back if they don't agree. Thomas. Thanks.

Thomas Rickert: Thanks very much, Kurt. I have a question for Dan and this is – Dan and Trang that is, so following up on my comments in the chat. Dan, the examples that you gave that you suggest would give the escrow agent discretion in the deal with personal data, am I correct to assume that you're making the case for the escrow agent to be independent controllers? To be quite honest, looking at the temporary specification in the table where the responsibilities are allocated, I read that as contracted parties being processors and ICANN being the controller for this exercise. And I took that both the EBERO as well as the escrow agents would be acting as processors as well.

So if there is anything to the contrary, if there are legal memos, for example, or if you think that my read of the temp spec is not accurate, please do let us know because I think it would be beneficial for our group to understand what ICANN's thinking is so if there is a legal memo on that as we had for the joint controller situation, please do pass that on so that the group is aligned with ICANN Legal's thinking. Thank you.

Kurt Pritz: Thanks. Dan, go ahead, if you have a response.

Dan Halloran: Yes, thank you, Kurt. And thank you, Thomas. I think I was not making the case that I believe or ICANN Org believes that agents or anyone as independent controllers here, just kind of laying out – agreeing with Trang that the situation is a little more complicated and repeating – I have not personally been directly involved in discussions with escrow agents on this but I've heard second hand that some of them don't see it as a straightforward matter, that they are processors. So I'm just relaying that, not arguing that they're correct. So I think more look needs to be done at this and – more discussions, you know, with this team and then with the escrow agents.

And I think that's not entirely in ICANN's hands too; I think I know many of the contracted parties have already had discussions with escrow agents on this and in many cases they're the ones holding those contracts and they also have an independent obligation to make sure that any data – that they're in compliance with GDPR. So anyway I think it's more that it's an open book and I was not making any particular argument on behalf of the controllers. And we will take it on back to provide more clarity, information from ICANN Org based on this.

Thomas, I'm sorry, I'm trying to read your last five comments. And full respect, Thomas, I appreciate working with you and the team but I feel like just if we can please dial back a little bit. I don't like feeling like I'm being like cross examined in the chat as I'm talking or as you're talking; it's hard to have the conversation and be following the chat.

And also respectfully I want, you know, keep everybody in mind that Thomas is a lawyer and ICANN and I believe he's, you know, affiliated in some way with present active litigation. And I just have to be on guard on these questions about like asking about ICANN's attorney client communication. So

I just want to stop a little bit carefully here with you and with respect to Thomas. And I know that's not Thomas's intent to, you know, be like cross examining me here but just to note that I'm not always fully responsible on these things.

But we will take it back like Trang said and try to come up with additional – I like the idea of the chart; we'll see if we can come up with that to kind of chart out where you've got ICANN and the registries and the registrars and then the escrow agents and the various different scenarios to provide additional clarity on that. Thanks.

Kurt Pritz: Thanks very much, Dan. Alan.

Alan Greenberg: Thank you very much. I'd just like to point out this is a topic that could have been delegated to a small group very effectively and not taken the vast majority of this group to sit here for an hour plus listening. Thank you.

Kurt Pritz: Thanks. So again, I'm for even with Dan's offer to go back on these things, I'd like to put these questions in writing to ICANN and, you know, specifically about the controller processor one and getting clarity on that. And so I'll – Dan's on – I'll write this email and send it to the whole group but unless I get pushback then I'll more formally address it to Dan. And it'll – again it'll suggest those three things that we make the one word change to the recommendation that we ask ICANN to draft templates and Dan mentioned the graphic too so that'd be great. And third is to shed light on the controller processor issue and I think our standpoint on that.

((Crosstalk))

Kurt Pritz: Oh sorry, I didn't know that was a new hand. Go ahead.

Dan Halloran: I wanted to just repeat back to Thomas. I know you've had no intent. I just, you know, was having trouble tracking all that and didn't want to seem like I

wasn't responding. On Alan's point, I mean, if there interest in a small group I think Trang and I would be happy to participate in that too and help support that. And happy to respond to any questions. Actually we much prefer to get kind of written questions on the stuff where you're asking for ICANN Org's view because then we can take that back and prepare a careful response and consult with our colleagues. It's a little bit tricky, you know, at 6:00 or 7:00 am to try and come up with this stuff on the fly so thank you for the written requests and we'll happily take those on. Thanks.

Kurt Pritz: Thanks. And for the team, as far as our recommendation goes I think, you know, we've settled on the recommendation and addressed Trang's issues with it with his discussion so I appreciate that.

The next item on the agenda has to do with Recommendation 18 and is similar in vein to this so I wonder if – and has to do with dispute resolution providers rather than data escrow providers and whether or not they are controllers. And I think this was another one introduced by Trang, so could you just give us a two-minute introduction to it and then we'll look at the recommendation language and see if it needs to be changed.

Trang Nguyen: Thanks, Kurt. This is Trang. Yes you're right, this is kind of along the same lines as the topic that we discussed just now except this one is on the dispute resolution service providers. Again, I think the initial report contemplates a straightforward kind of controller data processor relationship. And we just wanted to point out that again, it's kind of a complex situation. And it is possible that, you know, some of these dispute resolution service providers are themselves controllers. So we just wanted the opportunity to discuss this a bit more with the EPDP team. And Alan Woods has his hand up and probably will be making the same case as he did as it relates to the data escrow provider situation. But yes, yes so this is the reason why we had previously flagged this item. Thanks, Kurt.

Kurt Pritz: Yes I always get into trouble predicting what Alan Woods is going to say so let's see.

Alan Woods: Thanks. Sorry, Trang. Well in a way yes. I think this is a much more pertinent reason and example as to why we need this in here. And that's because one of the things in the temporary specification has stated that we are to release personal data to the URS providers – well okay, from a registry point of view – to the URS provider when they ask for it. But the problem is that me as a registry I have absolutely no contract or reason to believe that that provider has the security reasons in place and security requirements in place, things like that. I have no reason to release it other than the contract that ICANN is telling me to do so.

So we also now know that ICANN doesn't necessarily have a contract with the provider either. So again, I don't understand where we're getting the permission specifically to – and the assurances that are required under (unintelligible) to send persona data to the URS provider.

So in my mind it would be the easiest thing is that ICANN approve and appoint the – oh good Lord – the data protection provider, sorry, my brain is not working (unintelligible) today, not the data protection providers – the URS provider and in that it would make sense that they have a specific – again, a simple DPA or again (unintelligible) a JCA with them and they have more of a call to be a joint controller I think in this particular instance but again, so that we know as a registry or as a registrar why we are disclosing data and that we have a legal basis on which we can rely upon so that we are just ticking that box and we do (unintelligible) as well.

So apologies if (unintelligible) going back on these things but again, they are vital for us going forward and especially when looking at the temp spec and what it requires of us.

Terri Agnew: And, Kurt, if you're speaking it looks like you're still muted.

Kurt Pritz: Yes sorry. Yes, so in this case ICANN has the data processing agreement with the dispute resolution providers. So is there any requirement to change this recommendation? Do we want to change it from data processing to the appropriate GDPR-compliant agreements? Is that the solution to that rather than processing agreements?

Alan Woods: Perhaps, Kurt, I could just jump in. It's Alan here.

Kurt Pritz: Yes, terrific.

((Crosstalk))

Alan Woods: Yes, I mean, they are roughly the same thing. I think it was phrased specifically like that because we weren't presupposing what the relationship was. Either (unintelligible) or a DPA, they are data processing agreements in a way, you just need to (unintelligible) – I would be favoring just leaving it as-is to be perfectly honest.

Kurt Pritz: Any comments that goes against that? Kristina.

Kristina Rosette: Kristina Rosette for the transcript. Not a comment that goes against that. I think it would just be helpful for me to get a little bit further clarification from Trang in the sense of, you know, to the extent that ICANN Org has identified questions or issues with some of these recommendations, I guess what I'm not sure about is what the implication is of our deciding not to change those recommendations.

And to be pretty direct about it, you know, I think it would be helpful for us to know if the implication is that for those recommendations that ICANN Org has raised issues with, is it currently or is it possible that it will be ICANN Org's position to recommend to the Board that those recommendations not be approved even if they're ultimately – by the Board even if they're ultimately

approved by the Council? I think having greater clarity on what the implications are here would be really helpful for us I think.

Kurt Pritz: Yes so thank you, Kristina. I think that's an excellent question and it's that, you know, recognizing the concerns that ICANN Org raised in this for this recommendation and considering at least that we – the team still believes that the recommendation is okay as written and that the concerns that ICANN's raised can be addressed within that recommendation. So Trang, I guess, you know, it's sort of a yes or no question to you or let me – let me take it back and think about it.

Trang Nguyen: Kurt, this is Trang. So in raising these topics or areas for discussion, we were looking at this from the perspective of what questions we may have from an implementation perspective because obviously, you know, that's sort of the light that we're looking at this – Dan and I. and, you know, so for us – for this particular recommendation it was looking at what is the current situation which we have mentioned to you, we don't – ICANN Org does not have agreements – direct agreements with dispute resolution service providers.

So given that what would this recommendation mean for us, from an implementation perspective, and just kind of flagging that we may have to think about that some more, you know, it doesn't – it doesn't imply that we're not okay with this recommendation, or that we're okay with this recommendation, we're merely looking at this from an implementation feasibility perspective and seeing how would this work out, do we have any other questions, you know, are there certain areas that we need to – that we would like to flag for the EPDP team to have further conversations and discussions on. So that's merely the perspective from which we flagged this topic.

Kurt Pritz: Okay, so to bring this to a close I think again in a follow up letter we'll write to ICANN, we'll say that we reflected on this and we think the recommendation is fine as written and can be – we think your concerns can be addressed in

the implementation. But if in your analysis you think something else is the case then you need to let the team know and we'll leave this behind. So unless there's a comment about that, I want to kick off – Marc, go ahead please.

Marc Anderson: Thanks, Kurt. Marc Anderson. I'll just make the same point I made in the previous one. I think we're in devil in the details territory here, you know, and I think, you know, ICANN is, you know, is raising some, you know, some points about some of the finer details. And, you know, not – this isn't necessarily about the principle or the, you know, to use the phrase I used last time, the spirit of the recommendation. And so my, you know, my feedback here would be to, you know, to, you know, ask ICANN staff if they have revised recommendation language that would address some of their concerns and keep the spirit of the recommendation alive.

So, you know, like I said, you know, I've said this before, you know, I think, you know, you're generally in good shape when you start arguing about, you know, the finer points or the details of a recommendation and we seem to be doing that here on this call. And, you know, I'll agree with what Alan Greenberg said earlier, this is – some of these are probably topics you know, better left to a smaller group but, you know, I think, you know, in general I want to say, you know, I appreciate that ICANN staff is raising, you know, these questions and points but considering where we are what might be useful here would be if they have suggestions for alternative language.

Kurt Pritz: Great. So I think that's what we'll do. And I think also, you know, given the discussion and given that the issue was raised Kristina's comment was really good that we want to – we really want to put a point on the fact that this is not going to get in the way of our final recommendations.

So I want to tee up a couple things for next meeting. One is Benedict, I want to have a discussion on Purpose O in the next meeting so I expect that'll take up some time. So if the team could read and consider Purpose O, the

processing purpose for research purposes, processing data for research purposes, and have some specific questions in mind, I know I have a couple, that'd be great. And I'll give Benedict the floor for just a second and then I want to talk about one more thing before we – yes. Go ahead, Benedict.

Benedict Addis: (Unintelligible) so hopefully you can hear me. I – yes, I just wanted to be clear about Purpose O in that I thought that there was some confusion about where that arose from. And I just wanted to explain that this was something that was similar to the compliance purpose, so this is something ICANN's doing internally that we can't sort of jam into Purpose B because that's the third party for legitimate access.

And I need to also apologize for it being so sort of close to the mark; I was waiting for some information from ICANN that was a little late to arrive. But we've – I've provided everything I can from with ICANN, we're not at the moment I've sent some emails, I sent a sort of formal email to JJ asking for extra information but that hasn't been responded to so perhaps if Dan can hear perhaps he could ask or remind JJ to follow up with that one. At the moment the sort of data from within ICANN is about all they're allowed to say at the moment.

But this is just to be clear, this is a very limited purpose where ICANN is performing internal research on Whois for security, stability and resilience purposes. Thanks very much.

Kurt Pritz: Thanks, Benedict. Thanks for that introduction to the topic and to the extent – Dan, to the extent ICANN can follow up on that that would be great. The other – go ahead, Dan.

Dan Halloran: Thanks, Kurt and Benedict. I'm not sure exactly – I don't know if I was copied on that and I would just ask and urge that if there are requests for ICANN Org information that it, you know, be conveyed to me and Trang. And we have a system we coordinate with Caitlin and Marika and make sure that we're

tracing those requests and we then post the answers. I believe we've already received a question on this general topic and responded to it once.

And if there are follow ups I'd appreciate if you'd go through that mechanism, not accusing Benedict of doing anything wrong, just it's easier for us to track if it comes through that sort of system we've worked out rather than it's difficult to track down emails, you know, from individual EPDP team members to individual ICANN Org staff members where we're not in the loop is tricky to keep track of, so thank you.

Benedict Addis: Hey, Dan, you definitely weren't copied into that, apologies. It was following a personal meeting with JJ and Göran where we'd asked for this and he'd just asked me to follow up with him by email. So I apologize, I'll copy that to you guys now.

Dan Halloran: Thanks.

Kurt Pritz: Thanks, Benedict and Dan. I assume that's an old hand, Benedict. So the other thing I want to tee up for next time is to, you know, it's been raised several times that we have a discussion on Whois accuracy. And I'd like to – if they're willing to now, I'd like to give the floor to Margie and to Alan Greenberg for five minutes each as they – to just tee up if – in this discussion about Whois accuracy, you know, where, you know, what the hope for discussion or objective is and, you know, how that all hooks into the – how that hooks into the temporary spec and especially the charter.

And so, you know, Margie, asked for the discussion on Whois accuracy and Alan primed it up specifically with the Whois accuracy reporting system. So I don't know if we want to – if you're able to sort of raise some issues on the table for us so we can frame up the agenda for the next meeting or if you'd rather put that off; but I wanted to signal that it was going to be on the next call. And to the extent, you know, you can describe the hoped-for objective that'd be really helpful. So Alan or Margie? I don't know if you're prepared to

talk or you need to think some more about this; either response is fine with me.

Margie Milam: It's...

((Crosstalk))

Margie Milam: Oh go ahead.

Kavouss Arasteh: Excuse me, Kurt, I'm on audio bridge. I have a question. Please after these two give me the floor. Thank you.

Kurt Pritz: Sure, Kavouss. Go ahead, Margie.

Margie Milam: Sure. I think it's just better if we prep for it for the next call rather than give our thoughts without preparation.

Kurt Pritz: I think that's better. Thanks very much, Margie. Ashley, go ahead.

Ashley Heineman: Hi. Yes, this is Ashley with the GAC. And this is going to sound like a really stupid question and I apologize, it's one of those things that kind of dawned on me and I – yesterday and I realized I really should have already either asked this question or known the answer. So just to clarify with respect to data accuracy, so my understanding is that in the current contracts, or at least talk about the context of, you know, what the contracts looked like before May 25 of this year, there are, you know, some data accuracy requirements in terms of, you know, there is an expectation that data will be kept accurate and any inaccuracies will be corrected.

But it's not clear like how that stands now that the temporary specification is in place. My assumption has always been that those – that those data accuracy or at least like the requirement to keep – to correct inaccuracies still stands in light of the temporary specification but it wasn't explicit. So I just

didn't know if there anybody who could just clarify that before we have the conversation on the next call. Thanks.

Kurt Pritz: Right and go ahead, James.

James Bladel: Hi thanks, Kurt. James here just for a quick response to Ashley. Yes, there is a data accuracy specification in the RAA. And that essentially places the burden of accuracy on the registrants to provide accurate information and registrar to check that the formatting is correct and also send, you know, verification – verify either email or telephone.

The challenge is I think though that since May 25 because so much of the folks – the data subjects that are covered by GDPR are redacted, that doesn't mean that the registry and registrar are not continuing to uphold those obligations; what it means is that from the outside that's somewhat opaque and they're not able – the third parties or even ICANN might not be able to see the that's still occurring. And it may not be for some providers but I can speak, you know, for my company and others that it is still continuing unabated since May 25. I hope that helps.

Kurt Pritz: Thanks, James. Benedict.

Benedict Addis: On that topic, can somebody remember what Compliance told us about the accuracy reporting system, the ARS? Because I remember them in Los Angeles telling us that that wasn't theirs to enforce and that it had been suspended anyhow. Does anybody remember where that lives in...

Kurt Pritz: Go ahead, Alan. I knew you'd get a chance.

Alan Greenberg: Thank you very much. First of all, to be clear, the accuracy reporting system is not run by Compliance, it's run by another part of ICANN. But Compliance is then given the results of it to verify problems or to ensure that problems are fixed so it's a joint responsibility. Currently the accuracy reporting system is

completely on hold because it depends on access to – public access to Whois information and there is no provision for that department to get access under the temporary spec. So the whole program right now is on hold.

Compliance has also stopped processing the older data that they have because they don't quite see the purpose or maybe the data is just too hard to access. So right now the whole program is on hold. And as we'll discuss, you know, next meeting, some of us believe it is a necessary part of ICANN responsibility and we should try to reinstate it. But right now it is effectively dead.

Kurt Pritz: Trang, go ahead.

Trang Nguyen: Thanks, Kurt. This is Trang. So the status on the ARS is that since the temp spec it has been put on hold while we assess the implications of that program under the GDPR. So – and we are continuing to do that. I would expect that some communication relating to the future of the ARS would be – would be published either towards the end of this year or early part of next year as the team figures out, you know, how to continue to carry out the ARS methodology under the GDPR.

But it is intended that, you know, we will figure out a way to continue to carry that program forward. Now the program has always been done using publicly available Whois data and so – and will continue to be so. We understand that the availability of publicly available data will be much more limited now than it was previously but the core part of that program, which is that requirement, will continue to be in place. There may be some additional changes that we'll have to make internally, you know, but essentially the program once it continues will be continued using publicly available Whois data to the extent that there is publicly available Whois data for the program to assess and measure. Thank you.

Kurt Pritz: Thanks. Are these all new hands? Benedict.

Benedict Addis: Sorry, Dan, I understand from the chat that GDD is responsible for ARS. I think Margie said so we need to make sure that GDD is also captured as processing personal data inside ICANN which I don't think we've done yet. Thanks.

Kurt Pritz: Thanks. Alan and then Thomas and then we'll draw a line under that and bring the call to a close.

Alan Greenberg: Thank you very much. Yes it is GDD and the presumption has always been that if we have to do something regarding access for the ARS it would be for GDD. I've always contended however, when we talk about access it's access for ICANN Org; the purpose may be associated with a department but it's ICANN Org that has access. We can't differentiate in terms of access for which department within ICANN Org gets the access.

However, what Trang just said is brand new to me. I've had a number of private conversations with ICANN and my understanding has always been the program is on hold period until we either come up with a way that it can be accessed or not. This is brand new to me that it might continue using only public data which you know, essentially says it's only going to be accessing accuracy of a very – of a very specific subset of the data. So that's a brand new wrinkle that I haven't heard. Thank you.

Kurt Pritz: Okay. And so – and for my understanding, since I'm ignorant, the disclosure of this program – the data disclosure is only to ICANN and – ICANN Org and not to anybody else, is that correct?

Alan Greenberg: That is very much correct.

Kurt Pritz: Okay thanks. Thanks, Alan. Thomas.

Thomas Rickert: Thanks, Kurt. With respect to the – we had these discussions a couple of times in the EPDP and there are different views held. As you know there is one group that is of the opinion that accuracy in terms of 5.1 GDPR means that the collecting party needs to make sure that the information is put into the system as provided by the data subject but not necessarily to validate whether the information provided by the data subject is accurate. And the other camp basically suggests that there should be validation potentially.

So I guess that those who are going to speak to this at the next call should really try to make the legal case as to why the accuracy requirement in Article 5.1 would require additional validation requirements if any. I thought that we had moved past that point but I think that in order to ensure that this team is operating within the scope of its mandate we need to make sure that we're not going above and beyond what's required to be GDPR-compliant.

Kurt Pritz: Thanks very much, Thomas. So I'll – Rafik and I will work with the support team to provide the right set of documentation and questions for this. But I think that sort of puts a point on my opening comment so that Margie and Alan Greenberg could you know, start a discussion on this in the next meeting. So those are the two topics. Kavouss, you asked for the floor for a minute. Go ahead.

Kavouss Arasteh: Yes I asked for the floor for two comments. One is I am still confused about the Recommendation 1 and the text of Recommendation 1 about one word and that is “facilitating policy.” I do not understand how we facilitate policy. I understand you facilitate implementation of policy. I understand you facilitate the application of policy but I don't understand implementation of resolutions (unintelligible) but not facilitating policy. How you facilitate a policy? This is something that the – I have problems with for so many times. Still I don't understand. (Unintelligible) that's very good you have revised (unintelligible) coordinate, operationalize and facilitate. After facilitate you have “policy” and I have difficulty with the policy.

How you facilitate policy? Policy does not need any facilitation. Policy is policy. Establishment, yes, definition, yes, but not facilitation. I don't understand the meaning of facilitating policy. If we don't have time at this meeting maybe next meeting. This is first comment.

Second comment, there is a confusion between data accuracy and data validation. These two words are from time to time interchangeable. When you validate data means you look into the accuracy. Are these two things two different or are the same actions, validation and accuracy. Thank you.

Kurt Pritz: Thanks very much, Kavouss. I'm going to have to go back and read the specific purpose you're talking about. I remember the term you're talking about facilitation and a long discussion about choosing it. So we'll reread that and raise it as necessary. Benedict, so I'm assuming that's a former hand so I'm going to ask the ICANN team to go over the action items.

Marika Konings: Yes thanks, Kurt. This is Marika for the transcript. So reading through our action items coming out of today's meeting, first action item is for the EPDP team to review the updated letter to the EDPB that was circulated by Stephanie. And I saw she just recirculated again to the list and provide any input or feedback you may have. In relation to the review of the topics for further discussion, there's an action item to continue the small team deliberations on controller related issues and implementation questions. And to that end staff will set up a Doodle poll that will go to the full team for a small team meeting to further discuss the controller issues. Note that only those interested in participating in that meeting should fill out that Doodle poll.

In relation to I think it was Item 40 on the list in relation to Recommendation Number 6, staff to reflect in this document that the recommendation is to be updated to change from "enter into" to "develop" in the first paragraph of that recommendation. And an action item for the EPDP team to develop a message to request ICANN Org to already commence development of these legally compliant data processing agreements with escrow providers and

share these with the EPDP team to help inform its deliberations. And a question for ICANN Org to provide further details in relation to whether data escrow providers are considered independent controllers or processors.

And I have another item in relation to Purpose O research, the EPDP team to review that language that staff will recirculate to the list prior to the next meeting and EPDP team members in relation to the discussion just to share with the list what the objective of the discussion on accuracy is and how this fits within the temporary specification and the EPDP team charter. And noting the comment in the chat, that may also include what the appropriate time for that conversation is if it's not intended to take place now.

And I'm assuming that one action item for staff is as well to include agenda Item 5 that we weren't able to cover during today's meeting for the next meeting. And that's all I had.

Kurt Pritz: Great, Marika. I don't know if you said it or not, maybe I zoned, but on Recommendation 18 I think we want to also formally communicate with ICANN that we understand the concern and we've all talked about with ICANN during our meeting so we don't think a change is necessary to the recommendation. And we see the issue as an implementation one that can be resolved within the current wording of that recommendation, just so that's on paper. So you might have said that one and I missed it or not.

Anybody else have any more comments? I want to thank everybody for staying for the full meeting and contributing. Great. Thanks very much, everybody. Have a great day.

Terri Agnew: Thank you everyone. And once again the meeting has been adjourned. Please remember to disconnect all remaining lines. Operator, if you could please stop all recordings? Thank you, all.

END