

**ICANN
Transcription
GNSO Temp Spec gTLD RD EPDP Team
Tuesday, 11 September 2018 at 13:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at: <https://audio.icann.org/gnso/gnso-epdp-gtld-registration-data-specs-11sep18-en.mp3>

Adobe Connect recording: <https://participate.icann.org/p3bt85i37p4/>

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Coordinator: Recording has started.

Terri Agnew: Thank you. Good morning, good afternoon and good evening and welcome to the 12th GNSO EPDP Team meeting taking place on the 11th of September, 2018 at 1300 UTC for two hours.

In the interest of time, there will be no roll call. And it does appear we have an open line; if you could please mute? Attendance will be taken via the Adobe Connect room. If you're only on the telephone could you please let yourself be known now? Hearing no one, we have listed apologies from Georgios Tselentis with the GAC and Ashley Heineman, GAC, as well as Chris Disspain, the ICANN Board. They have formally assigned Chris Lewis-Evans and Laureen Kapin as their alternate for this call and any remaining days of absence.

During this period, the members will have only read-only rights and no access to conference calls. Their alternates will have posting rights and access to

conference calls until the member's return date. As a reminder, the alternate assignment must be formalized by the way a Google assignment form and the link is available in the agenda pod to your right.

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 documentation 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. I'll turn it back over to our chair, Kurt Pritz. Please begin.

Kurt Pritz: Thanks very much, Terri. I'm reading the chat and noticing that cats are unfairly not mentioned there so maybe we could fix that. By – for the next meeting I'm going to be taking – on Thursday I'm going to be taking one of my son's to college near Chicago so I'll be taking the call somewhere between Albuquerque, closer to Albuquerque than Kansas City so somewhere in there so that'll be a little bit of an adventure but I think it'll be fine.

I noted in the emails the many comments about diving into substance rather than administration first so I take those on board and in fact you've seen we have quite a bit today of administrative so you saved me from about half an hour worth of talking and I'm grateful for that. And I will – but I will touch on these things as we go through the slides.

So in the agenda we have these many administrative things that I'm going to mention in five minutes that I was going to take half an hour for. We're going to talk about progress in Section 4 where Thomas and Benedict did quite a bit of work in – I wouldn't say re-scoping Section 4, I would say relaying it out

with some finer attention to detail and Appendix C where it's been proposed to eliminate that. But there's also an alternate proposal on the table that'll be described.

And then we wanted to finally dive into data and the handling of data and then we'll get to finally the redaction of data after that and Appendix A. So largely I'll be able to turn this meeting over to the discussion of others which should make you guys very happy.

So with that, let me just take a minute to say in these administrative issues, one is I consider the triage report to be done and dusted so thanks for your help on that. On training, you know, I'll take some comments on this at the end of the call if we want to discuss it and save some time for that. You know, some of you have completed the module on IT governance and found it lacking. Let's follow through, finish that and then we have a session scheduled with Becky Burr for Wednesday 18 September. If you have certain items that you want to be addressed in that session let me know. I know that's a holiday for some but that's the only availability we have and – or that Becky has. And the session will be recorded so that's that.

We spent quite a bit of time last time going through action items and I think the best way to handle this going forward will be we'll create a – either this or a better online tool in the wiki so we can easily see what's done and what's late and what's coming up and maybe have just a one slider for these things after that so we don't spend time, but we could spend time on the end of this – at the end of this meeting on these things if you want.

With regard to the timeline and how we're managing this, I'm just going to take – I was going to take quite a bit of time and really condense it down. So one is, you know, and I've been thinking hard on this and I welcome your input too, you know, we've had a lot of discussion and many proposals and little consensus so it's time, you know, to drive some of these issues home to consensus, decide what things will affect, you know, the collection and

processing of data going forward and what items will affect the access model and which items can be left in various states with the idea that this policy that we're creating is going to be a living document and be amended over time.

So the two points I want to make is I can't emphasize strongly enough that we're behind schedule and in trying to get a preliminary report out with some real conclusions to it. And two is you know, when I sit in these policy making meetings I often sit and muse and say, if I were the chair I'd be doing this, not like this guy or woman's doing. So if you do have ideas you can communicate them to me in any manner you want and if you want to have a phone call about it that's fine. And we can make those offline phone calls known to others so there won't be any sort of improper ex parte communication, but I just want to make that point.

The rest of these slides really go to managing our workload going forward and understanding that, you know, there's not enough time to – the meeting cadence doesn't leave enough time to do some homework, get it out there, let people think about it and then come back. So the support team's put quite a bit of thought into sort of a bifurcated or hopscotch sort of method where we can discuss one section one day and then do some homework and append it out to the meeting after the next so that there's time to do this. And I don't think the amount of work goes down but it'll provide more time to review materials.

So I'd ask you to take a look at the work that's been done and we will try to supplement it with some emails and we'll follow the schedule. So the downside of this is it exacerbates the idea or exacerbates the impression that we're hop-scotching from section to section and does that in the name of providing some time for people to review the materials, so please take a look at this and we can have an email discussion on how this particular thing is managed and also, you know, thoughts about driving us towards a consensus model going forward.

So with that I'll just pause for a second. I really want to take these administrative items to the end of the agenda as so many of you urged, but also again, you know, to repetitious or communicate about these things on via email or phone or however the heck you want to get a hold of me or any member of the team.

So with that I want to – I'm going to sort of turn part of the meeting over to others and Section 4 where Benedict and Thomas did quite a bit of work and taking Section 4 and having it instead of being a list of purposes that to me were sort of randomly ordered and instead create, you know, categorizing the purposes for processing data by the – gosh, I don't know whether to call it the data processor or the data controller but I'm sure those more knowledgeable about the terms can correct me.

And we have that – we have that part so I want to turn that over to Benedict and Thomas. I also want to alert you that I wrote kind of a lengthy email about some of the subsections in Section 4 where I thought we were either agreed to the existing wording or wording changes or if we didn't, you know, we could kind of hone down a single issue that we might be able to discuss online.

So I'd ask you to review that email and I'd ask the support team to create a online Google Doc or something like that where we can make suggestions or make comments to each one of those sections, so I think each one of those sections in that email merits its own Google Doc. And maybe we could just drive those six or seven sections home via email.

And then in addition, we have the work that was done by Ashley and Amr on Sections 4.2, 4.4.8 and 4.4.9. Ashley's not here today and so we may or may not discuss those. But what I'd like at this point rather than to talk about those other things is to introduce either Thomas or Benedict to talk about the work they did and, you know, what we'd have to do I think is put up their email. So

Thomas or Benedict, if you wanted to give a preamble and ask what part of work you'd want to be put up, that'd be great.

Thomas Rickert: Thanks very much, Kurt. It's Thomas Rickert for the record. And I have discussed with Benedict that I would take the first crack at talking you through the document that we sent, pause here and there to give Benedict the opportunity to make additional comments because whilst we've worked on this document very hard and we discussed very long over the weekend, we have not reached agreement on each and every point. So we would, you know, if we had both done things individually we would have probably come up with quite diverging document. So that is what I should say at the outset.

Also, for the entire group, we should take more or less none of what you see in the document as carved in stone where we might need to revisit the language of the purposes, in fact as Kurt just outlined, we have other drafting teams that are working on particular sections of this list but I guess that the benefit of this discussion will be that we get more clarity on what the purposes are to hopefully come up with a conclusive list of purposes that we want to consider as a group and that will be clear on whose purposes those are.

I should also say that all of these purposes need to be checked by this team for the legality. So this is basically a collection exercise and a grouping exercise to see who's interests are concerned, i.e. who is the entity or the group that is pursuing a certain purpose but we will for sure find that some purposes are too broad, they need to be more specific and we might also need to regroup them into other categories as we move on.

So this is the first step of writing up the purposes and then we'll go to – then we will have to discuss are these purposes sufficiently specific and all the other criteria of article 5 and we need to find the legal basis to support achieving each of those purposes as we move on? Right? So for those who are going to start screaming that they don't like certain purposes, which we

find on the screen, it's too early to get excited about that because none of these purposes I guess have made it to the final list in their final format.

So what we have done is, and you see this in Column B, in fact I would recommend you take the spreadsheet that was sent to the list and make it as big as you can on your screen. In Column B you find the current text of the temporary specification so we have listed all the purposes in there on an as-is basis. Then you find additional purposes that we thought were not encompassed by the existing purposes and you find those under the heading Other Purposes in lines 23-25.

The next column, Column C is the revised language as we saw it on the list or as we thought it would be required, right? So those are changes to the language of the purposes, we will go through that in a moment, and either we can agree or either there will be no objection to the alteration or more work needs to be done. Then in Column D we've added some comments on some of the purposes and in Columns E-H you find the name of the group that is pursuing the purpose. So you have registrar purposes, you have registry purposes, you have ICANN purposes and you have third party interests.

Actually, we've discussed whether there should be an additional column for the registrant purposes or the interests of the registrants. So far I guess we would be good to go by having that included in the registrar purpose because the interests of the registrant will likely be covered what the registrar's interest is – interested in defining as a service for their customer.

Also, we had quite some discussion whether we should have more detailed approach to third party interests and whether we should actually break down the third party interests into various customer groups, and it will be primarily Whois customers that will fall into that category. But for the time being and since the gating questions have to be answered first, we thought that we should group them but as we move on as we get to the second phase of our

work, discussing disclosure questions, we will need to break that down to the various third parties that are involved.

So now let's dive into the substance of the individual purposes. And the approach that we discussed before we came into this call is that we don't want to hear from you if you agree with what we outlined to you; but we would ask you to only let us know if you have an issue with what we are presenting so that we can see what areas need more work and hopefully tick off the issues that – or tick off the lines that we are in agreement.

So I see there's a queue and also a comment by Farzaneh, so Kurt, if you permit I would manage the queue as well; I think that makes it easier. So let's go to Alan, Kavouss and then I'd like to outline the substance of this table please. Alan, you go.

Alan Greenberg: Thank you very much. I put my hand up to question your recommendation or suggestion that we don't need a registrant column. That presumes that the registrant has no way of verifying what information in fact is stored about them other than through their own registrar. And in most – in many areas, the holder of the privacy – the owner of the privacy data has a way to verify exactly what is being stored by them and I'm questioning whether we in fact, although I don't know how we could implement it, whether in fact the registrant should be able to verify independent of their own registrar what the data is that is stored about them? Thank you.

Thomas Rickert: Thanks, Alan. Quick response, the information rights that you are mentioning is enshrined in the GDPR so that is a legal right, a statutory right that you're entitled to learn about the information that's stored about; that doesn't need special mentioning as a purpose. But I'm not against opening up an additional column to gather the purposes that the registrant might pursue.

The only caveat that I would have is that if the registrant is interested in let's say having his or her Whois data publicized widely then that would be

something that we're looking into anyway. But, you know, let's see whether there's more traction for adding a registrant column, and if so then we will add one no problem. Kavouss is next in line. Kavouss, please.

Kavouss Arasteh: Thank you, Thomas. Good morning, good afternoon and good evening. I would like to know that you refer to registry purpose, registrar purpose, registrant purpose, ICANN purpose and (unintelligible) purpose, where and how you put together this purpose? Did you take them from the GDPR? You take them from the existing practice of ICANN?

You take them from the contracts currently enforce or it is your very good thought, you and your colleagues, to put these together? I think there are many good elements of the comments from registry and registrar and others with respect to the process. The issue is that I don't know whether you want to quote something from the GDPR and further develop, explore that, paraphrase that? Or you want to rewrite the temporary specification?

Thomas Rickert: Thanks for the question...

((Crosstalk))

Kavouss Arasteh: Yes, excuse me just let me – half a minute. I don't want to get into the business that we need not at all this temporary specification. This doesn't help. The reason doesn't help us, like registries and some registrar, I have read that, like Kurt said, not one time, 10 times. They pick up elements of GDPR part of that without looking into the remaining parts, without looking into the recitals or reference articles 5, 6, 28 and so on so forth and putting something together which makes something quite difficult to understand.

So I think we have to clarify the situation before going further. I have no problem with what you propose but we would like to discuss the principle, what we do. Thank you.

Thomas Rickert: Thanks very much, Kavouss. And I should have made this clearer at the outset probably, but what you find in the second column of the table that you see in the Adobe room is the list of purposes as currently stipulated in the temporary specification. So what we're doing here is not invent new purposes but we're actually trying to group the list of purposes into various categories as to whose purposes these are.

The only additional purposes that we wrote into the document are at the very end of the list and those are purposes that Benedict and I thought were not adequately covered by the purposes currently found in the temporary specification and those are the operation of a central repository of registration data for a given TLD to be able to help resolve ownership disputes, that's an interest primarily of the registry, potentially; then being able to identify patterns of abusive registrations that might be an interest of registries, registrars and ICANN and also supporting a framework for research access. And that is primarily an ICANN and a third party interest. But other than those three purposes, the list of purposes is taken from the temporary specification and then comments on those are made based on our previous discussion. Thanks, Kavouss. Let's move to Farzi and then to Emily and then I'd really like to close the queue because I already got a warning message that we should have this exercise completed by the top of the hour. Farzaneh, please.

Farzaneh Badii: Thank you, Thomas. So I just wanted to comment on the second page, added purposes. I do not believe that these added purposes are necessarily ICANN purposes and I think you have mentioned that be able to identify patterns of abusive registration is an ICANN purpose.

And also I support your framework for research access is very vague and I don't – and I only see that you mention temporary – you mention Specification 11 as being able to identify patterns of abusive registration, I have concerns about using the Specification 11 as arguing for ICANN purposes as its basis because there's like a lot of discussion about that and it

is not that temporary spec was actually based on what was said in the Specification 11. And it is – a lot of things that is said in the Specification 11 might not – has different interpretations.

So also the other thing that I want to say, identifying pattern of abusive registration, so finding a pattern of abusive registration is – I think it's more of a technique than a purpose as such. So there is one that you want to prevent DNS abuse but and then you look at – you use a technique which is like looking at pattern of abusive behavior. I don't think it is as such a purpose. I think all these three that have been – so I believe that at least the last two, being able to identify patterns and supporting a framework for research access, they should be removed or discussed. Thank you.

Thomas Rickert: Thanks very much, Farzaneh. And actually I'm not sure your point on patterns of abusive registrations, so my follow up question to you would be, is this something that you would see covered under 4.4.8C which is currently the DNS abuse part? So would you agree that fighting DNS abuse is a purpose pursued by registries, registrars, ICANN and third parties? Or is that a purpose that in general you object to?

Farzaneh Badii: I have to look at the ICANN Bylaws in more – I cannot just give you an answer right now. I have to look at the bylaws. But the problem is that we've always had a problem with DNS abuse and how it's interpreted it. And it has to be interpreted narrowly and within the mission of ICANN which is like security and stability and should not go beyond that. And the moment that we have – we invoke Specification 11 to argue that these are the purposes of ICANN then we are making ourselves prone to going beyond the technical definition and technical mission of ICANN. Thank you.

Thomas Rickert: That's fine. And Farzaneh, I think that's very thoughtful and we had discussed quite a bit how to do a proper demarcation between DNS abuse fighting and the content related issues, right? So I think we need to find the right word for this. And if I were the chair of this exercise, I would probably ask you if you

would accept the sacrifice of coming up with language for that that you think is in compliance with the bylaws but I leave that just for Kurt as a matter of inspiration. Thanks so much. Next is Milton and then let's move on.

Milton Mueller: Yes. Thank you, Thomas. Again, I would echo various people saying that this mapping out of these purposes and different drafts is really a very clarifying exercise and I appreciate the way you put that and like we are not considering the revised draft to be final language, we're just – you're giving us an opportunity to show where we agree and where we disagree. So Farzi has already made clear our concerns about Spec 11, but I'm concerned also about what's on Row 16, this enabling the – a very long statement about enabling prevention and detection of cyber crime and illegal DNS abuse goes on and on.

And this replaces a much better statement which was simpler and providing a framework to address appropriate law enforcement needs. We do not view the revised draft language as an ICANN purpose; we view it as a third party interest often a legitimate interest. And we, again, remember what we're saying when we say we don't think it's an ICANN purpose, it doesn't mean that we don't want people to do law enforcement or prevent DNS abuse, it means that we don't want it defined as an ICANN purpose because that affects the data that it collects, that is could collect.

So if we simply agree that this is a legitimate third party interest, it's fine but when we start defining things such as identifying patterns of abusive registrations as the ICANN purpose, then you're opening a door to collection of additional data and we think that that's not justified by ICANN's limited mission in coordinating the DNS. I could go into some of the other things but I think the main objection we have is to Row 16's revised draft language.

Thomas Rickert: Thanks very much, Milton. And actually we will go through topics line by line in a moment, and hopefully we can take a couple of purposes off the list or at least get clarify on who is pursuing a certain purpose without having the finite

– the final language for that. And I think Benedict was slightly earlier than Kurt to raise his hand and I'd really like to move to the – to discussing the line items afterwards. Oh my goodness, there's a long queue forming. Let's go to Benedict first and then Kurt.

Benedict Addis: Hello, Milton. I had a kind of crazy idea yesterday while I was cycling, my best ideas while cycling, having worked on this with Thomas all weekend. And my idea was that pickles we're getting ourselves into here or have got ourselves into here is exactly to identify the third party interests, not interests, not purposes. And it struck me that perhaps – that I think we wanted to do two things very clearly here which is the ICANN purposes is justify broadly the collection of data and as a processing purpose. That makes – that doesn't say we publish it or we make it available in a particular way.

But rather than try to exhaustively list third party interests which I think is where a lot of things fail, and typically when I find – when I'm find I'm taxonomizing something, I'm trying to write exhaustive lists, I tend to find that that way – it means I'm probably onto the wrong track.

And what occurred to me while I was cycling is that we – instead of trying to list these out, we just create – we acknowledge that those interests exist and that we define third – we ask third parties to act as controllers for the purposes of data that they seek, which nicely ties the legal liability, in other words, the risk that those third parties take when they acknowledge that they take and process data, and it nicely makes those people legally responsible for that data.

And I see some sort of accreditation system that asks third parties when they're accessing data, in more than just a, you know, an occasional way, to take that risk on. So perhaps this is something for an access model rather than now, but it struck me that we want – I wanted to be very clear that we – having spoken at length to Thomas, I completely acknowledge your

distinction of third party interests, I think that's the correct way to think about it.

And also that we separate out James's edits which I also understand, that James was speaking purely on behalf of the registrars, deleting a number of statements because he saw those as commercial purposes. I also think that those don't belong in this section of the temp spec in 4.4 and we can be very clear about sort of that distinguishing between ICANN first party purposes and third party interests.

Thanks very much and I'm sure there'll be some comments on that as well.

Thomas Rickert: Thanks very much, Benedict. So everyone can think about Benedict's approach. Kurt, you've lowered your hand; do you still want to speak?

Kurt Pritz: No, I'll pass. Thanks.

Thomas Rickert: Thanks, Kurt. And for the others that have put themselves in the queue after I had closed it, if you want to speak to individual items in the table, we're going to go through all of those so I'd like for those who want to speak on particular points to please lower their hands and get back in the queue when we get to that item. So I would welcome only comments on the general nature of this table. So Alan's hand is still up. Alan, please.

Alan Greenberg: Thank you. It's half what you're saying and half not. I'd sort of like a clarification from Milton, his concern about putting it in as it is right now and he implied that if we do that then there would be opportunities for other data to be added, which ICANN definitely does not need in today's view, but would under those definitions. So is your concern that we might then use the presence of those words to justify adding more data? Or is it with the current data you're concerned?

Thomas Rickert: So thanks, Alan. I would suggest that Milton responds to that in the chat. Anyway, we need to make sure that all the purposes that we discuss are sufficiently specific, right? So we will need to test each and every purpose anyway to avoid that there's mission creep with unintended side effects. So as promised, let's try to get through the list of purposes as quickly as we can.

So the first purpose is reflecting the rights of a registered name holder in the registered name and ensuring that the registered name holder may exercise its right in respect of the registered name. I think this is basically saying, you know, you can register your domain names, you can prolong the registration, you can transfer them, you know, you can use them, they're made available via the DNS. I have not seen any requests for changes of that language, so my question to you is, is there any objection against accepting this purpose as a purpose pursued by the registrar, the registry and ICANN? So I will pause for a second. I don't expect any comments in support but just concerns or objections.

I see Margie's hand is raised. Margie, fire away.

Margie Milam: Sure, thank you. I think you're missing a column or you want to expand what third party interests address. When you're talking about reflecting the rights of the registered name holder, then the registered name holder has that purpose as well. So – and I'll give you an example, if a domain name is registered to a corporation, the actual contact details for that and account for that domain name with that registrar may be lost. And so sometimes the organization might have to try to get access if the employee that set it up left. And so they have an interest in ensuring that they can access the data and then try to gain control of that domain name. And so it's not necessarily a third party interest per se but maybe you need a column for the registered name holder.

Thomas Rickert: So thanks very much, Margie. And actually this request has been made earlier and I said if it gets traction we will just add a column and I just did this

in the version of my spreadsheet so I have added a column, Registered Name Holder and I tick this box for the registrant for this very purpose, so thanks for making that comment. I have not seen any objection on that purpose so we have – we are in agreement that this is the purpose jointly pursued by registrar, registry, ICANN and the registrant.

Let's move to the second purpose, 4.4.2. Actually my spreadsheet has converged this into a date format, which I apologize for but I couldn't turn it back to 4.4.2. Providing access to accurate, reliable and uniform registration data based on legitimate interests not outweighed by the fundamental rights of relevant data subjects, since this is what the GDPR (unintelligible) original language of the temp spec, the altered language would be, "Providing access to accurate, reliable and uniform registration data consistent with GDPR," and that point has been parked by this group earlier until we, you know, until we have worked on the gating question.

And therefore you find the purpose columns empty. So I suggest that we stick to that and park it for the time being. And I see that Milton says we don't need the additional columns. I mentioned earlier that we might not need it, Benedict also supports that. Why don't we just gather information for the time being? We can take it out at any point in time but I think it doesn't harm for the time being to keep it in there.

So any concerns with, you know, I see hands raising. It is not my intention to discuss the access question now, so if you want to talk about the access point, we parked that, so this is basically just a placeholder. Do you – if you still want to speak, Hadia, hand's up but I would like to ask you to keep your statements as brief as possible because it's likely out of scope for this call today. Hadia, please.

Hadia Elminiawi: Okay so actually I'm not going to speak about this point from an actor's point of view, I just want to point out that in order to decide which purpose or – I think we need to understand here what the legitimate interests are. It's very

important to understand what legitimate interests are in order to decide the purpose it is. So I'm not talking about actors but I'm talking about guidance or understanding of what the legitimate interests are.

And I see actually that it is really necessary to have guidance on the legitimate interests and unless we do understand what the legitimate interests are, we are never going to be able to clearly state whose purpose – whose purpose is legitimate. As an example, for example, if the interests of – if the interest is necessary for ICANN to use some obligations, governance obligations or whatever, then this could be an ICANN purpose. So anyway that's my comment here. Thank you.

Thomas Rickert: Thanks, Hadia. Let's collect – now let's hear Alex and then Alan and Benedict very briefly and then I will respond to both. Alex, please.

Alex Deacon: Thanks, Thomas. It's Alex. Yes, I just want to repeat quickly a comment I made on the list to James's and the Registrar's input regarding 4.4.2. And James suggested that it be removed. I didn't agree with that; I suggested that it – that while it may not be a registrar purpose it is probably, it is, I believe, an ICANN purpose and we should ensure that, you know, the sentiment expressed in Column B, 4.4.2, is expressed as an ICANN purpose.

The – we have to remember there's a difference between discussing kind of mechanisms around access and defining kind of the purposes for processing, which access is one of many. And so it doesn't make sense to me, I don't quite understand how we could not put in this section a purpose for access and then later on move onto defining kind of methods and implementations for access. So I think it's important that while we not discuss the details of access, we still need in this section, that will eventually turn into a section with four buckets I suppose, perhaps five now, we still need to make sure it's laid out clearly and concisely the purposes for access. Thanks.

Thomas Rickert: Thanks, Alex. Alan, very briefly please.

Alan Greenberg: Thank you. I just wanted to question, I thought we had decided to not use GDPR within the body of this and use some more generic term?

Thomas Rickert: In fact – yes, okay. Okay Benedict has lowered his hand. So let me try to respond briefly to the comments that have been made. So in response to Hadia, you are right that the third party interests need to be fleshed out more, but I guess that needs to be done once we get to discussing access. In response to Alex, we're parking the access purpose for discussion, we're not killing it. So I think nobody wants to remove that conversation entirely but since we're not discussing the access question I think it's not appropriate to try to be – to discuss the purpose for accessing data.

And in fact, if we get to the point where we need to add additional purposes, more precise purposes, that even justify the collection of data, then we can always put that on top once we have responded to the gating questions. And Alan, yes, there's been some discussion about making references to GDPR, but my takeaway from previous calls was that we would keep this in there to make it easier to understand for everyone for the time being at least.

So let's move to the next purpose and that is enabling a reliable mechanism for identifying and contacting the registered name holder for a variety of legitimate purposes, more fully set out below. It was too broad as language. That was narrowed down to enabling a reliable mechanism for contacting the registered name holder. And actually we split this into two purposes, the second (unintelligible) enable a reliable mechanism for identifying the registered name holder because registrars may fear that they're not interested in identifying but others might be interested in identifying. So basically we're separating the contacting from the identification part.

So as far as the contacting part is concerned we thought this would be registrar purpose and a third party interest. And for the identification that would be a third party interest because for the registrar there is no need to

have a specific purpose to identify the registrant. So let's check whether there is objection to this categorization. And I see Hadia is back in the queue and Kavouss. Hadia, you go first please. Hadia, your line...

((Crosstalk))

Thomas Rickert: Go ahead.

Hadia Elminiawi: ...that you said that it's at third party interest with regard to the previous section, I actually object to (unintelligible) it is a third party interest because now if it's a third party interest or it's a interest of someone else, because we haven't refined what legitimate interests are. So again that takes me back to my previous comment that in order to say that it is a third party's interest, we need to understand what the interests are, that the legitimate interests are. So I was a little bit shocked that you said that it's a third party interest and then we will decide if – who said so? Thank you.

Thomas Rickert: Thanks, Hadia. And this was exactly the reason why we need to park this point because I guess it's for those who are requesting that third party interests should be reflected to let us know what these interests are. And also what, you know, why these interests might be legitimate. So I think we've all agreed to park this for the time being until we get that information after the gating questions have been answered.

So we are losing a lot of time on this question of – which is actually related to access so I really want to get through the points that are not related to access. And I see a queue is forming so please keep your statements very brief and just on this very point. So Kavouss, Benedict and then Mark.

Kavouss Arasteh: I guess, Thomas, could you please once again mention what do you mean by categorization? This is the first thing, just a clarification because you asked whether there is any objection or opposition to that. But perhaps I may reiterate the question I made at the beginning of the meeting with yourself

kindly. You refer to GDPR, first of all, anything we will do should remain within the main framework of GDPR. But the issue is not GDPR, the issue is that how to implement that. Anything you add that would it help for the implementation of reference paragraph or article or subsection of GDPR or required another course of action how to implement.

From the very beginning at any meeting of the ICANN I have mentioned that I am not very much concerned about policy...

((Crosstalk))

Kavouss Arasteh: ...but about the implementation. Could you please clarify that? Thank you.

Thomas Rickert: Kavouss, I think we're moving – we're not discussing whether references to GDPR can be made. This is just to establish who pursues a certain purpose. So let's please stick to that point. And the reason why we're doing this just to repeat it for you, Kavouss, the Article 29 group has criticized that ICANN conflated its own interests or its own purposes with third party purposes and this is where we're trying to get clarity on who has an interest in pursuing certain purposes for processing data. This is why we're doing the categorization.

Thanks very much, Kavouss. I think Hadia's hand was an old hand so let's move to Benedict now and then to Mark.

Benedict Addis: I just wanted to amplify a point in the chat and to make clear that one of the approaches that Thomas and I came up with was actually separating out these ICANN purposes and these so called third party interests. And we need to be really clear about the language here. The specific language, "legitimate interest" singular is a lawful basis for processing the data under 6.1F of GDPR.

Now we've got to be very careful not to confuse that with the language "third party interests," plural, which I think we put in the – in one of the columns here which is just a recognition of the potentially legitimate reasons that other people, outside of ICANN and the contracted parties, might want to access Whois data. Again, that's not an exhaustive list, that's just some example, okay? Thank you very much.

Thomas Rickert: Thanks, Benedict. Mark and then Margie and then we need to move on please.

Mark Svancarek: Mark for the record. Yes, Benedict has said almost exactly what I was going to say. First, the column is called "Interests" not "Purposes" and that's because it is a container for things that are potential purposes. And if we get stuck on that column (unintelligible) row we will never make progress. We can come back to that later. This is just an expression that third parties have expressed an interest in this (unintelligible). That's it.

Thomas Rickert: Thanks, Mark. Margie.

Margie Milam: Yes, I have a question for the Registries regarding the Registry purpose. Is there ever a situation where there is a registered name holder that's contacted or identified in the – through the registry process or – and I'm thinking about examples where there might be some sort of cyber security issue, phishing, malware associated with the domain name. Is that something that happens? I don't know the answer to the question, but I just wanted to raise it.

Thomas Rickert: So Benedict will offer an answer to you. Benedict.

Benedict Addis: Margie, yes, for security reasons often cyber security law enforcement often prefer to deal with registries directly for registrant data rather than registrars. So, yes, thick registries are occasionally approached for data, although I would say that's definitely a minority case.

Thomas Rickert: Thanks very much, Benedict. And I think that it's for the registries to let us know if they think that we're missing across here and that and that will go for other parties as well. But I see that the Registry rep has raised his hand, so Alan, fire away.

Alan Woods: Thank you very much. Yes, we were just discussing that. We probably would like to see that that be noted as a registry purpose as well. I wouldn't go quite down the road Margie was, I mean, from my point of view personally I would look at it more as a way – a purpose that is stated by each registry operator in a manner to look after their own zone and the messages of their business, number one, but also in the application of the acceptable use policy of each registry, that one area. And of course then just looking at generally speaking in order to properly enforce Spec 11.3B, these are things that we would have to look at and discuss greatly. But, you know, there is definitely a purpose in there for a registry, I would suggest. But again, it depends on the business model of the individual registry and we're going down a bit of a rabbit hole with that one but I definitely think we should be considering that as a purpose.

Thomas Rickert: Thanks very much, Alan. And we only have a few minutes left before the top of the hour and I promised to Kurt that I would use the microphone by that time. So my suggestion is that now that we've gone through a couple of examples, not as many as I would have hoped, on how this table works, I would suggest that everyone in this group takes a close look at where we've put the process and that you comment on whether that's an accurate reflection of the realities in the gTLD world in your view.

I would caution you not to get too hung up on the third party purpose or third party interest column because at the moment that is basically a pool where we put the third party interests and we will discuss that in a more nuanced session once we have responded to the gating question. And my guess is, as well as Benedict's, that most of the purposes that third parties pursue are related to access or are related to getting access, being disclosed certain

data elements. And should we actually find that we need to add something for the collection part, we can do that all the time, right? So we will not lose anything if we park that for the time being. Right?

So please focus on the purposes relating to the collection and any other processing other than disclosure and see if we got it right. And then once we have established that we got it right, then it will be easy for us to segue into a discussion of whether the purposes are specific enough, whether the purposes need to be worded differently in order to avoid the floodgates being opened. We will be able to attach legal bases for processing, doing the – going through the catalog of 6 GDPR and also we will be able to establish what the responsibilities are, whether the parties are joint controllers or co-controllers. So I think once we've gone through this a lot of other questions can be asked – can be answered more easily subsequently.

So thanks so much for being so active during this session. I think we've accomplished quite a bit. And I give back three minute of the total to Kurt, over to you. Thank you.

Kurt Pritz: Well so, Thomas, you're not quite done yet. So what – in what form, what is the best form for people to comment on this in between meetings? Or what – how do you see this discussion in the next meeting so we could perhaps if not drive to consensus on everything, at least sort of pinpoint the issue that needs to be decided in order for us to achieve a consensus?

Thomas Rickert: Well, if – if that's okay for everyone, Benedict just sent me a private message saying that an email to Benedict and myself would probably be the best way forward. So Kurt, I don't know when you want to bring this back up on the agenda, i.e. what the deadline for comments would be, but I would suggest that, you know, within the time that we specify, participants of this group send their objection or requests for amendments to Benedict and myself. We will accumulate that and get back with an updated version to the list and that could save some traffic on the mailing list for everyone.

Benedict Addis: You know, obviously, Thomas, we've given our Skype IDs and our email addresses and telephone numbers so you can, you know, tap us or wire us or Skype us, but maybe email would be – would stop both of us going...

Kurt Pritz: Thanks very much. So I think two things, one is I'd really rather not see, you know, one on one communication but rather make your communications to the list. We had scheduled this discussion for Thursday, which is 47 hours from now but, you know, let's take the sense of the room and say, you know, would we rather have – if there's going to be not just email comments but some email exchanges maybe we should have this discussion a week from today and have the deadline for sort of a robust email discussion close say – I think we need 1700 or 1900 UTC is sort of a close of business in California, so on Friday.

So does – I don't know, you can – show your little green light or something like that. My two points are I think the email should and communication should be on the list, and two is that we'll close this off on – this discussion on Friday for – and devote a session to it on Tuesday. Benedict.

Benedict Addis: Hey, sorry, you're absolutely right, of course this should be done transparently, I was being glib, apologies.

Kurt Pritz: Oh that's all right. And then so we found – so I'm looking at Amr's question about could the spreadsheet be placed in a Google Doc, and I'll leave that for the support team to do. I think it might be better to put it in a – the support team could put in a Word doc and that way – in a table and that way people can comment on it more easily. I think that's what we've found out.

So again let me thank Thomas and Benedict for – the problem is there might be several copies being passed around, yes but if it's in Google and people can comment on it, they can place comments on it. I encourage the email

discussion, we'll create a Google Doc and put it in commenting mode so people can make comments on the different parts of the table.

Okay, we're going to – I don't know if I've expressed my thanks to Thomas and to Benedict but this, as so many have said in the chat, this is a terrific clarification and thank you so much for putting work into it. Thomas, you're going to get to talk again during this meeting. Can the slide deck be put back up? Where the heck are we?

Okay, so we've also – we've also discussed Appendix C and there was a pitch to I think by Alan to delete Appendix C. And we had some discussion about that and Margie volunteered to provide some reasons why elements of Appendix C should be retained and published to the list a rather eloquent email on this. This is a summary of this. And again this is one of those issues where we'll – we can have a full discussion later on but I wanted Margie to introduce the thoughts behind her email.

This is a, you know, as you know she sent the email last night and I did this slide even later last night so it's probably the first time Margie's looking at it and but I'd ask Margie to touch on the highlights of her proposal to retain portions of Appendix C. So just before I call on Margie, I'll call on Kavouss.

Kavouss Arasteh: Hello? Yes, Kurt, I have given some support to Margie's views but I think before doing that we have to give the opportunity to registry to also describe why they have proposed the total deletion of Appendix C. It is up to you to decide but I think that we have to listen to both sides because I don't remember that we have discussed or debated what registry mentioned. Many of the things they have mentioned is right but most of the argument or counterargument of Margie also is right, that we have to find some way between. So I think perhaps we should listen to both. Thank you.

Terri Agnew: And, Kurt, this is Terri. I do believe your mic is still muted.

Kurt Pritz: Yes, thanks. Yes thanks. Thanks, Kavouss. We did discuss this to a certain extent and Alan's proposal for eliminating Appendix C, maybe not to the degree you would have desired. So if – one of the things we'll do as support team is combine Alan's initial pitch and then Margie's email and sort of combine it into one email so that people can see the original proposal by Alan and then Margie's modification of that. Margie, do you want to introduce your thoughts here?

Margie Milam: Sure. Thanks for giving me the opportunity to describe this. When I take a look at Appendix C, and I really listened to what James had said, I thought that there were parts of it that were needed in particular I think there's a – there's benefit to the ICANN community to know that these principles are being addressed and especially where the principles are applied specifically to Whois. And so there were sections in Appendix C that I thought were really important from that perspective because it was tailored to the Whois.

There were other sections that they're obviously important principles but it seemed like the only thing that the temporary spec had done was to just recite, you know, a provision of GDPR and didn't give an application of how it would apply to Whois. And so with those either you delete them because it doesn't really add to the discussion, or be more specific, I mean, that's sort of my take on it. And, you know, because there are important concepts there that should be fleshed out.

In particular if you take a look at some of the sections, I thought for example 3.4 it would be important for ICANN to clarify what kind of records it thinks it needs, should be maintained with regard to, you know, Whois records. So that's kind of the area where we could be more specific. I thought that, you know, statements that, you know, that your information with your registrant needs to be clear, concise, you know, they're nice principles, obviously they're in GDPR but we can be more specific. And one of the suggestions is let's, you know, let ICANN develop what those terms of disclosure should be

so that they are, you know, concise and provide a kind of transparency that's needed for the registrant.

And so that was – that's basically an overview of what I was thinking but I do think that it's important to maintain, you know, some transparency and accountability into these issues so sections like Section 1 should be retained; Section 2, to me seems like it was duplicative of what we're already talking about for the purposes and in fact might even contradict what we're doing in the – with respect to purposes in this. So I would simply, you know, refer back to however we resolve the purposes that we just discussed with Thomas.

References to GDPR I think we need to genericize it to applicable data protection law. And then I think that one area where I thought we should add to Appendix C is to really set forth standard terms that apply to the third party access because I think it's important for the entire ICANN you know, community and transparency and accountability to know what terms are going to apply for the third parties who access the data, you know, with a purpose that's recognized as we'll develop in the prior discussion.

And so I think that that, you know, similar to what we do with the registry agreement in the RAA, Section 3.7, there's a list of things that need to go in the registration agreement. I think you could follow that format so that there'd be a list of things that need to go into the access agreement so that there's a standard terms and conditions and then you don't end up in a situation where the controller or processor is asking for things that are either too lax and don't provide enough protection for the personal data or the opposite, too onerous. And so that's essentially what I covered in my email and I'll pause and take questions.

Kurt Pritz: And before you call on Emily, Margie, this is Kurt, I just want to point out to everybody that this slide includes nearly all of Margie's recommendations but her email contains the rationale for those and the reason for those so I urge you to read those. Margie, if you want to manage the queue you can or I can.

((Crosstalk))

Margie Milam: Sure, I'll go ahead. Emily.

Emily Taylor: Thank you very much. Can you hear me, Margie? Hello?

Margie Milam: Yes, we can hear you.

Emily Taylor: Sorry. Just wasn't clear. Thank you very much for summarizing the points that you raised in your email. I think that it's – there's just several comments that I'd like to raise at this stage. The first one is that where language in a temporary specification or the – what will be its successor summarizes existing legislation but isn't exactly in line in the wording, that's potentially problematic. It's also problematic if the legislation is updated in the future or if as some people on this group have been advocating, we think about the privacy laws as something that will be implemented in numerous other countries and beside the European Union with potentially some tweaks.

And so I think that that was you know, nobody's questioning that these are not all provisions, that the principles aren't very sound, it's just that having a sort of summarized version where the wording isn't exactly aligned creates an uncertainty. It also creates difficulties in the future where one piece of legislation is updated and potentially the policy isn't, and also if it's applied more widely than to GDPR alone.

I thought that your suggestions about how to apply those principles to this specific context of the Whois is a very useful exercise and useful suggestion. My suggestion to your third point about, you know, useful for other people to understand what those principles are and how it all works, you know, people perhaps who aren't that close to the whole nitty-gritty of it, then I think there's no reason why there shouldn't be published guidance or something that isn't going straight into the contracts of the contracted parties but is there as

information helping people to get to the sources, helping to interpret them, helping to apply them on specifically to various use cases or scenarios.

I think that the question mark is whether that's appropriate to be done in something that has contractual force or whether it would be much more useful to be done in sort of guidance that is a bit easier to update, a bit more flexible instrument. Thank you very much.

Margie Milam: Great. Thank you, Emily. Marc.

Marc Anderson: Thanks, Margie. This is Marc Anderson. You know, first, you know, since there's some confusion in chat, you know, I think I'll just remind everybody that, you know, this is, you know, this is going back to a previous meeting, you know, Alan had proposed the, you know, or Alan Woods I guess I should specify, had proposed the removal of Appendix C and had provided a document with a rationale for removal of that.

Alan presented that and, you know, and Margie, you know, you had suggested that there were sections or at least reasons why Appendix C should be retained and so you provided this justification or additional materials to back that up and so thank you for that.

You know, I want to say, you know, registries – haven't had a chance to, you know, fully review and digest the response that Margie provided so we'll do so and, you know, either, you know, be prepared to respond via email or have a more fulsome discussion at a future meeting.

I guess maybe, you know, just, you know, point of clarification, I take your comments that suggest to, you know, I understand your comments are that there are some sections that you agree make sense to be removed; some sections that you think should be retained, some that should be retained but need to be updated and then you suggested some additions to this section.

And so I think registries will need to review that and get back to you with a fulsome response at a later date.

And, Margie, maybe this is just a question for you, when you were describing it you talked a couple things, you know, a couple times about what ICANN should do and it wasn't clear to me if you meant ICANN Org or us, the EPDP Working Group as the policy body, so maybe just a clarifying question for you there. Thank you.

Margie Milam: Sure. Thanks for those comments, Marc. I was talking about ICANN Org because if you think about the policy process, the policy process sets, you know, high level principles and then, you know, the GNSO adopts it and then it goes into implementation stage and that's when, you know, there's an implementation group and ICANN works with, you know, contracted parties and others that are interested in defining the specifics.

And so some of the things in the temporary spec that were really detailed, I'm not saying I disagree with, and they are things that probably should be considered, but they seem to me to be a little too detailed for the policy and that ICANN Org, when it gets to the point of implementation and starts, you know, fleshing out how it amends the contract, would, you know, be more specific in that area.

I mean, like, you know, for example the operational details that deal with security, are those the right ones? You know, I don't know. I don't know if this EPDP is going to do that. But it's – the concept that you need to have some requirements related to security, you know, is obviously something that I think we support and think is important but those details would be fleshed out in the implementation stage when you get to the, you know, the actual amendments to the contracts. Does that make sense?

Marc Anderson: Thanks, Margie, that's helpful. You know, I think we're going to have to discuss that and get back to you. To some degree I think you're agreeing with

the points that Alan made in his rationale. So, you know, I think we're going to have digest that and figure out how best to respond. Thank you.

Margie Milam: Okay, thank you. Milton, you're next.

Milton Mueller: Yes, Margie, basically I'm just asking a question. It seems like from what I'm reading from your proposal that you want an access model to be worked out via Appendix C, in other words you're talking about terms applicable to third parties who (unintelligible) public data, is that something that we should be working on when we do access? Or do you want it to be done during Appendix C?

Margie Milam: This is – I think what we were talking about in the past was waiting on accreditation. So this isn't addressing accreditation but access was part of the temporary spec and it's obviously in this appendix. So I think it's something we should address, and I think that having a consistent standard for, you know, what will be required of, you know, someone accessing the data actually makes sense in Appendix C because Appendix C is talking about data processing.

And so if you look at all the different things that are in Appendix C, it's commitments that relate to data processing and it's basically ensuring that there's compliance with GDPR. And I think that compliance element is necessary for the person that's actually receiving the data from the third party point of view, and that it's important, you know, in the ICANN community to know that the – if you're accessing the data that you're going to apply, you know, the, you know, held to, you know, fulfilling the requirements under GDPR.

So, yes, I mean, it's not accreditation in the model for accreditation but it is dealing with important access issues. And I feel like it's – if it isn't included then we're really missing a big important part of, you know, accountability

with respect to the data and so that's why I'm encouraging that we keep it in Appendix C.

Milton Mueller: So the simple answer to my question is, yes you think Appendix C is basically the site where we work out the access model?

Margie Milam: When I think of model I think of model as being accreditation, so these are access principles...

Milton Mueller: No, no accreditation is not access. Accreditation is a completely separate process.

Margie Milam: Right, and that's where...

((Crosstalk))

Milton Mueller: ...accreditation says here are people that we will justify to have access but it doesn't say what the access model is.

Margie Milam: So – so, yes, in – this – somewhere in the temp spec in this case it makes sense here in Appendix C where you should have the principles and the rules that relates to access, so yes.

Milton Mueller: So we could deal with Appendix C without going through the gating questions?

Margie Milam: I'm – I guess I'm not following you.

Milton Mueller: According to the charter, before we deal with access we're supposed to answer a bunch of gating questions. But Appendix C is not considered to be access in the original charter so in modifying the temp spec and in modifying Appendix C, we would be – and if Appendix C is actually defining the access

model then we would be able to approach access without going through the gating questions, is that right?

Margie Milam: We're going through this because this was the issues that the leadership has asked us to go through. So I'm not – I guess I don't – are you saying we're prohibited from talking about this? Because I would disagree with that.

Kurt Pritz: This is Kurt. Yes, so I think – I don't know if we're going to be able to resolve this here but I think the question is in the continuum of – is there going to be disclosure of personal data to third parties under the right circumstances or are third parties going to be able to access personal data? So that's one side of the continuum. And then at the very other end of the continuum is the accreditation model and the precise mechanism for how that happens.

And so what we're struggling a little bit here is I think is where you draw the line between those things and to what extent do you preserve the principle that there will be disclosure to third parties and there will be access by third parties under the right set of circumstances, how do we memorialize that in the temporary specification without getting into the, you know, details – and when I say "details" I don't mean precise mechanism but how far can we go in those principles without first answering those gating questions and where those questions are required to be answered.

So I think that's the thought there, and so let's leave this and go ahead to Alan and see if others have – want to shed some light on this issue or want to talk about something else?

Alan Greenberg: Thank you, Kurt. Yes, I think you've said similar to what I was going to say and what I put in the chat. This is establishing that there will be an access model and that contracted parties are going to be required to adhere to it. Because otherwise that's not mentioned anywhere else and I think we need to say that. It's not detailing what the access model is, it's not detailing the rules of what's going to go out, you know, and who's going to get access but

just there will be such a framework and they are required to follow it. Thank you.

Margie Milam: Benedict.

Benedict Addis: Hello. Well the simple engineer in me really likes the chart in Appendix C, nowhere else do we lay out controller and processor here. So I think whilst there's some argument that the rest of it restates a lot of bunch of stuff that's in GDPR anyway, there's – it's sensible to have that chart although of course a couple of points about that, the chart is partially incorrect, it relies far too much on legitimate interests, which it sometimes pluralizes, sometimes doesn't.

The key question here for me is whether we add under the second – the line second from the bottom which is disclosure of nonpublic Whois to third parties, whether we reference that those third parties have potentially a controller role as well and that would not fit into these three columns, I think this is the place to – if we do want to make a change to reflect that change. Thank you very much.

Kurt Pritz: Hi, Benedict, this is Kurt. The physicist in me can't help but comment that the chart can't be partially incorrect; it can only be incorrect or correct. Is there a sense – and so we've talked about the chart before, is there a sense in the room whether this chart can be if corrected should be included in the spec? And can we turn on our green lights for support for the chart if clarified that it would be helpful and included in the spec? You know how to turn on your little green lights like Benedict did?

I think, while I wait just 30 more seconds...

((Crosstalk))

Kurt Pritz: Yes, so while we wait 30 more seconds for this I'll note that when we talk about this – when we talked about this chart we also talked about adding the domain name lifecycle into it and that would be I think the very first box, collection of registration data would be expanded into the lifecycle of the domain. So if somehow it's really split here, so the support staff can take a picture of that, is that sort of thing possible? Just leave your hands up for a second while people count. And I'll note that, and then let Margie go into managing the queue. Go ahead, Margie.

Margie Milam: Sorry, I was on mute. Stephanie, you're next in the queue.

Stephanie Perrin: Thank you. Can you hear me? It's Stephanie.

Margie Milam: Yes.

Stephanie Perrin: Good. I just wanted to raise a couple of points. I thought we were not going to discuss Appendix C until we had sorted out the gating question. And I don't believe that we have whatsoever to a framework for disclosure. Disclosure is something that the registrars and registries, any of the data controllers, can do without a framework. And the question (unintelligible) out in implementation. So I guess I'm objecting to the notion that a framework is something this group has agreed to, thank you.

Margie Milam: Thanks, Stephanie. Emily.

Emily Taylor: Thanks. I just wanted to elaborate very briefly on why I didn't put a green tick but put a red cross in answer to the question about including a table. It's always tempting to try to narrow every potential activity and justification and it's really not ever going to include everything that happens in practice. It's a sort of exercise that feels comforting but is not really going to be that helpful.

And if it's included in a contractual document like the temporary spec, then it, you know, it's inappropriate to include it in the contract. Sure, if you want to

publish some scenarios or if you want to do some guidance on these sort of things and give some information out to the public, go right ahead; this can be really useful as a sort of training or learning thing, but it's inappropriate in a contractual document in my opinion. Thank you.

Margie Milam: Emily, if I can respond? The RAA already has that language in there. What I'm talking about here is identifying the areas where it would be beneficial to the registrants to have clear concise description of what the information is going to be used for. So it's a common set of disclosures. It's not to say that the contracted parties (unintelligible) to it, that's what happens right now in the registration agreement.

So I'm simply saying that that approach should also apply with respect to the third party access and that the ICANN, you know, as a whole, as a community should want to have that sort of commitment so that they know that the data isn't going to be misused, that the person that's accessing it for third party purposes is committing to only using it for that purpose and, you know, and so on. And so I think there's a common set of principles that need to be incorporated into the contract and there's nothing inappropriate to do that, that's the way other things have landed in the contracts from other consensus policies.

James, you're next in the queue.

James Bladel: Yes thanks, Margie. James speaking. I just want to register my agreement with Emily that this may be a helpful visual aid or it may cut through some of the confusion and present this in a digestible format. But when we include something in a specification or in a contract, I can tell you it becomes a point of argument between us and our customers, between us and ICANN, and if it's something that we believe is meant to be guidelines or meant to be an aid, but has questionable enforceability under the agreement or under the law, then frankly it shouldn't be there. Now I'm not saying we should throw it

out; it should be somewhere, but I just – I don't think it's appropriate to include it in the contract. Thanks.

Kurt Pritz: So this is Kurt, James. I have a clarifying question. So when you said it shouldn't be there, we've talked about – I don't what "it" is – so we've talked about two different things. One is a chart that's – that I would call a precise recitation of data flows and another that is a representation for education purposes.

So could you just go back to your comment and say which you're talking about? I found the comments of Emily, you know, quite helpful as having something illustrative in this which is a policy, right? It's not – what we write is going to be a policy, not a specification. And so I found that attractive so I – anyway, I've talked too much and just ask you to clarify what you meant by "it."

James Bladel: Yes thanks, Kurt. And I'm trying to see if I can unpack this here. Whether it's a policy or a specification, you know, it's somewhat irrelevant in terms of the enforceability of our agreement because our agreement, the RAA, contains both – it contains the provisions of the agreement, it contains specifications and it references consensus policy, so all of them are, you know, are enforceable by ICANN Compliance, Contractual Compliance.

And so my concern is, is that we put something in that, you know, let's say tries to capture or illustrate all of the potential data flows, and (unintelligible) that are then obligated to follow that and nothing else. And I think that is another point for folks on the call is it becomes limiting in some respects that by implication that if something is not included in this chart or if there's a new purpose that arises at some point in the future we'd have to modify the chart in some formal way to ensure that we were allowed to process data then in a way that wasn't displayed.

So, you know, I feel like putting these things together can be helpful, but again, we have to be very, very careful about overloading contracts that are executed between you know, between contracted parties and between ICANN and then those obligations pass through to our registrants that, you know, that what we're putting in there makes sense and is useful and moves the – and progresses the work forward as opposed to, you know, tying our hands. So I hope that's helpful. I don't know if it's digging a deeper hole. Thanks.

Kurt Pritz: No, I think that was good. Emily, do you have a response or is that an old hand?

Emily Taylor: No, I just thought – and if I may just add a couple of words to support what James is saying. And it's really not to argue that any of this information is not helpful or that it's inaccurate but just the argument about placing it into the contract, which creates a sort of rigidity and a level of obligation which may not be that appropriate.

Margie's, of course correct that the contracted parties who are operating under the GDPR within the European Union or making sales to European Union citizens will have to ensure their own compliance and will have to ensure that they have privacy policies that spell out in what circumstances they'll be collecting, processing and disclosing data and ensure that they're – that they are compliant for their own purposes.

But, you know, my intervention is really only to try to avoid layered complexity and layered obligations that attempt to do the same thing but might in the future very well diverge from each other and create confusion, ambiguity and potential (unintelligible). Thank you.

Kurt Pritz: Thanks. So as this group thinks about this one issue in that chart, first I'm not sure Margie advocated for keeping the chart in her email, but secondly, you know, I'd like this group in trying to – we were split on it – in trying to come to

an agreement, think about the comments of James that, you know, inclusion of the chart cuts both ways and essentially would eliminate chances to improve things from either side of the table. So I'd ask you to think about that.

And before I close this off I just want to go back to (unintelligible) comments – verbal comments because we didn't really talk about them. In the chat, you know, you mentioned, Stephanie, that you do not recall agreeing to a framework for disclosure, so to me this – what Margie's advocating is that there will be a framework for disclosure but not that we've agreed to one. But when I say that I think I'm missing your comment, so could you reiterate it in that sense? I don't think we're, you know, my point being I don't think we're agreeing to a framework, we're just agreeing that there will be one or are you saying we haven't agreed that there will be one at some stage of the game?

Stephanie Perrin: Hi, this is Stephanie again. I don't think we have agreed that there will be a framework. I'm not convinced the framework is necessary or specific enough to deal with the issues. And in any case, we're not there. What we have agreed, and what is in the temp spec is that registrars have to provide access to legitimate requests for personal data coming from third parties who have a legitimate interest in the data.

But we have not agreed to construct a Whois-like framework (unintelligible) and I've commented, this (unintelligible) in the past the more we talk about framework, the more we set people's minds (unintelligible) what has happened in the past rather than permitting us to think de novo about how we should provide access in a new world where there are many more technological capability and where we are constrained by GDPR to do so in a privacy-enhanced, what do they call it?

I believe they refer to privacy by design but employing privacy-enhancing technologies many of which involve obfuscating the data and providing pass through and that sort of thing. So I think that any use of the term "framework"

implies a way of thinking that we should abandon under this new regime. So that's really what I'm trying to say.

Kurt Pritz: Thanks. Margie, if you don't mind I'll call on Benedict.

Margie Milam: Yes, go ahead.

Benedict Addis: Sorry, Margie. Hello. Stephanie, just to challenge quite firmly something you've put in the chat and your point, whilst you stated that a framework is not necessary and data can be (unintelligible) from registries and registrars, in practice that's not workable and would lead to a complete mess of access. It's – I think it is absolutely the job of this EPDP to define that. And not just for those advocating for greater access to data but also for those who are seeking to bind law enforcement and others because cops tend to obey the rules so if we have rules they'll stick to them typically, if – it'll be a mess of people pushing their luck.

And a question for you, if that's okay and if I may, you've restated quite a lot that the gating questions need to be answered. Can – I'm sorry for being stupid, can you re-articulate what those questions are that we need to answer, either here or in an email to me or on the chat. Thank you.

Kurt Pritz: So if – go ahead, Stephanie.

Margie Milam: No, it's Margie. I was just trying to...

((Crosstalk))

Margie Milam: ...Benedict has a question for Stephanie, is that right?

Kurt Pritz: Right. So, go ahead Stephanie.

Stephanie Perrin: Thanks very much. I don't disagree with you that having a methodology for access and setting out the parameters of this would be useful and possibly it's necessary, but we're talking about timing here. The clock's running out. We have to figure out whether the temp spec complies with the GDPR. That is one of the reasons why certainly some of us, including myself, fought hard to keep the access regime, the UAM, or whatever, Appendix C represents here, out of the discussion until we solve the basic question of how we're managing the collection, use and disclosure of data.

Coming up with a methodology for this is going to be non-trivial and I don't think we've got the time. That's what I'm saying. I agree that rules are very useful, particularly for law enforcement actors and that's why I'm working on the standards proposal. But I don't think this EPDP has time to work out all the details of this. And why do I hate the word "framework"? Because it reinforces this notion that we continue to have a Whois but that it just happens to look more like an iceberg with only the tip out of the water. I don't think that's the model that we ought to be working for. Thank you.

Margie Milam: Benedict, did you want to respond back to Stephanie?

Benedict Addis: No, I think we spent enough time on this already. Thank you.

Margie Milam: Okay, all right. Well so, Kurt, do you want to go back to the queue or do you want to...

Kurt Pritz: Yes, James, do you want to make a last comment on this?

James Bladel: Sorry, I'll lower my hand. The chat discussion has passed me by. Thanks.

Kurt Pritz: All right so I think that, you know, where, you know, there's certain groups that still want to opine on this and that's completely understandable because this is a newly presented by Margie. So the plan here is that, similar to the last one, we will close this – we'll come back to this discussion a week from

today on Tuesday so we'll ask for email discussion and comments on this to close on Friday.

Margie and I have been chatting, I think it'd – my fond goal is that she and I can collaborate on the list of questions that came out of this discussion so we can kind of steer the conversation, so if we can do that, you know, Margie and I will talk after this and look at the transcript and see if we do that. But nonetheless we'll close – we'll take this offline and then have a more pointed discussion about each change on – each area of retention of Appendix C on a week from today, on Tuesday.

And just from the – from the school of management, I'll, you know, let's wait until Friday to make our comments but start the discussion on both what Thomas presented and what Margie presented as early as today so we have some robust conversation going. If we wait to Friday that sort of obviates the effort we're going to preserve several days for the discussion instead of many hours so I encourage you to start with that early.

So sadly we're kind of – we're to the end of our time. I'd ask for the next call we will go onto the net topic, which will be the matrix mash up, the Thomas Rickert's list of data to be collected as it exists before and exists now. And he's sent around a matrix with the data list and the ICANN support team has mashed that up against other GDPR requirements to – you know, all the different purposes to create one list of data so we'll have that discussion next time.

And we'll send around so they're at the top of your mailbox, the two data matrices that we can have. We'll also start our discussion on Appendix A and then come back to Section 4 and Appendix C on Tuesday. With that – with that I'll – I was just looking at the chat – with that I'll turn it over to one of the support team to look at action items or any questions we have of ICANN staff, I don't think there are any.

Marika Konings: Thanks, Kurt. This is Marika. So the action items coming out of today's meetings are first of all, all members, alternates and the agents to complete the GDPR training as soon as possible but no later than 17th of September. And just to note that you know, we are tracking progress and we'll probably send an update to the list and see how everyone's progressing with their training.

Second, the action item is the GDPR session with Becky Burr is scheduled for the 18th of September, EPDP team members are to submit questions in advance to allow for adequate preparation. A third action item is the EPDP team is to review the overview of purposes table and provide input on whether this provides an accurate picture.

The focus should be on the purposes for collection and processing, the registrar, registry and ICANN-related ones, but not access or third party interests as these will be further- will be considered in further detail in the context of the standardized access discussion. Also consider whether purposes are specific enough and this input is to be circulated at the latest by Friday 14th September at 1900 UTC.

Fourth action item, the support team is to put this overview of the purposes table into a Google Doc to facilitate input from the EPDP team. Fifth action item, the support team to collate the registry proposal and Margie's proposal into – in relation to Appendix C into one document to facilitate review and consideration. And then the last action item is the EPDP team to provide input, again at the latest by Friday, 14 September, 1900 UTC on Margie's proposal as well as the registry proposal in relation to Appendix C in view of wrapping up this discussion during next Tuesday's meeting.

Kurt, that was all I had.

Kurt Pritz: All right. Yes, thanks very much, Margie. I think James had a comment about a slight misspeak but he's corrected that. Are there any closing comments that anybody wants to make on any aspect of the meeting? Kavouss.

Kavouss Arasteh: Yes, I wish to come back to my earlier request, yes, to use the arrangement of the meeting from 120 minutes to 90 minutes. Few people have left already so far (unintelligible) to have two almost consecutive days with two hours and so on, so please kindly consider we have to be pragmatic and realistic. Two hours is exhaustive and tiring. Thank you.

Kurt Pritz: Thanks, Kavouss, we're doing the best we can and I'm not disagreeing with any of your sentiment. Thanks very much. Anybody else? Great, well thanks to Thomas, Benedict and Margie for their contributions to the meeting and making my load lighter so well done. And we'll talk to everybody in 46 hours. Thanks very much.

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

END