BARCELONA – High-Interest Topic EPDP on the Temporary Specification for gTLD Registration Data - Review of
Draft Report and Recommendations
Monday, October 22, 2018 – 15:15 to 16:45 CEST
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KURT PRITZ:

Thanks very much for coming, everyone. If this is the most stressful PDP ever worked on, how come everybody is laughing? So thank you very much for coming. We're really pleased to be able to sit with you and present the work that's been done so far. We know your time is at a premium in this meeting, and so we're taking this large attendance as a compliment. So thanks.

We have a group of the expedited PDP members that are presenting on behalf of the entire group. From my left is Alan Woods from the RySG, Diane Plaut from intellectual property constituency, Emily Taylor from the Registrar Stakeholder Group, Rafik Dammak, vice chair of this policy development process, Thomas Rickert, ostensibly from the Internet service provider constituency, and Amr Elsadr from the NCSG. So I'm very pleased to have this group here.

Here in the front row is the other members of our team that might come forward to answer questions you have at the end, except for James Bladel who is hiding three rows back. We know where he is.

So I want you to know first that everyone sitting here with me are here as members of our team so they're not here to advocate for a certain

position or defend for a certain position. They're just here to present our work in a neutral way so that's sort of the tone of our conversation to explain our processes, new tools we've developed, how we're going about things. So I wanted you to know about that.

And then I was hoping to get to the agenda. Let's go to the next slide. Or I can push this button.

So I think what's important in this agenda is that, you know, you look at the temporary spec as a document that lists a number of purposes for the lawful processing of registration data and some supporting steps that go with that. But we found that we really needed to build a wholesome set of recommendations going forward. This policy is -- this policy is very much in-depth and detailed.

So we're going to review how we built up the purposes for processing registration data that we believe are lawful and how we did that. And in order do that, we had to describe the legal bases for each one of those that are described in the GDPR. We had to understand each of the processing steps involved and actually analyze each of the data elements and understand whether they were necessary or not. So it was quite an in-depth study.

And so this agenda matches that, the purposes for processing data, the required data processing activities, and other issues having to do with that.

Can I have the next slide? So what's the mission and scope of our work? As in so many slides, the smallest font is the -- the smallest font size is

the most important. So this work was initiated by the GNSO after the - - after the Board approved the temporary specification for registration data.

And we sort of have three different jobs: To confirm or not the temporary specification as it is; to develop policy recommendations, develop new policy for the processing of registration data; and also answer the 52 charter questions that were included in the charter that was presented from the GNSO to this group for having done that. So quite a bit of work, so we're obviously being responsive to all three sections of that work.

And then at the end of that, we'll undertake this group -- or another group -- or this group will undertake a standardized access model discussion. Where the slide says "only after gating questions are answered," our initial work is going to answer all those gating questions. So we'll be ready to launch that.

So I'm going to ask Rafik as a vice chair of this team and vice chair of the GNSO to describe the team composition and our schedule since they're the ones that helped us put that together.

RAFIK DAMMAK: Okay. Thanks, Kurt.

So as you can see here, we have diversity in a way that we have the different representatives -- rep resentive from the different SO and AC and also stakeholder group and constituency from the GNSO. So during

the chartering, we choose to have this composition. And we also extended the invitation to all SO and AC to see if they are interested to join us in this EPDP effort.

We have, as you can see, representatives or members and alternates. And also we have liaison. We have liaison from the ICANN staff, a liaison from the ICANN Board. Also, as usual for any GNSO PDP, we have a GNSO Council liaison. So we have this team that was a choice from the GNSO Council for this EPDP to get all this representation and to have this balance.

Can we go to the next slide, please. Yes. So with regard to the time line, while we selected the expedited PDP as a way to deal with temporary specification, there is no so much difference compared to the usual PDP except that we didn't have the issue report.

And we are roughly now in the middle of our time line. So we can skip the first step where the GNSO worked on the drafting and then we did the formation of the EPDP team. And we started in 1st of August with the deliberation and working on responding to all the charter questions.

And so we are now close to our first important milestone -- not first, sorry. I skipped one which was getting the triage report. That was done in September. But I think here what is important is our second milestone, which is to get the initial report by November. And we are here in Barcelona meeting working toward that.

After we would have the usual steps when we publish the initial report to go through public comments, reviewing the input we get during the public comments, and work to get the final report to be considered by the GNSO Council and so on. So the time line was really constrained by what we have with the temporary specification that we need to respond within one year.

Just as you can see, there are some reminders that we will work on the standard access model when we finish with the first phase of our effort.

Okay. So over to you, Kurt.

KURT PRITZ: Now, I'll just note while everybody talks about having a year to do this, the lion's share of the work and conclusions need to be made in number 3 there which is 12 weeks long. So all the rest of the ICANN processes built around that give us 12 weeks.

I just want to describe for a minute our first deliverable which was a triage document that was very helpful. So we scanned through the whole temporary specification to understand where we thought that there was agreement around -- where there was agreement around the temporary specification as written. It was really helpful because it really laid the baseline for our work going forward.

I've got to make this editorial comment that in our discussions we decided to take out this red and green diagram because it shows a great divergence and somehow it remained in there. But I want to make two

points about it. One is even right after this was published, the group got together and said, Yeah, we really agree with what's most in the temporary specification but maybe not what's written. So some of the greens mean we agree, but there needs to be some changes. A lot of the reds mean we agree, but there needs to be some changes. To me the fact that the group wanted to take this diagram out indicated to me they wanted to demonstrate to everybody here that they are acting as a cohesive team with a concrete goal in mind, and they really struggle to find consensus. So I think that's cool.

So with that, a lot of our work is really study and understanding the GDPR and how it applies to our individual situations and our collective situations and requires a pretty deep understanding of how the law operates and how our situation is applied to the law. And it required us to develop several tools and methods for doing that. And Thomas Rickert has really been a leader for us and a thought leader for us -- yeah, hear hear -- in developing some of these methodologies we have. So I'm going to let Thomas describe that work for us.

THOMAS RICKERT: Thanks very much, Kurt. This is Thomas Rickert from the ISPCP for the record.

And before I'm going to talk to the next two slides, let me say that this EPDP team is a great team. We really have a very, very big challenge in front of us because we as a team not only have to work with the complexities of the GDPR which is basic compliance work but we also

have to do policy. So we basically have to operate in two worlds in parallel. And the policy work is something where the community can shape things, where the compliance world brings with it its limitations. I think it's been very challenging for us to find a way to operate adequately in both worlds. And that required our group to develop its own tools to work with. That's what you see here.

So basically what you have to understand is that if you are operating in the world of GDPR, you have to follow some rules. And for those who are interested in digging a little bit deeper, I would recommend that you read Articles 4 and 5 and 6 of the GDPR to start with.

And for every data element that contains personally identifiable data, you need to be able to identify both a lawful purpose for that processing as well as a legal basis for that processing. So what we need to do is establish a list of data elements that we have to work with -- that's basically the registration data that we needed to take a look at -- and find a way to follow that data through its entire life cycle from collection to deletion.

And for every modification or transfer in between, we needed to conduct an analysis to see whether we found a legal purpose, whether we found a legal basis, and then we had to work on the additional complexity living in the ICANN world. Because we can't do anything that would be outside ICANN's mission. We needed to make sure that what we're doing is within the picket fence. Because outside the picket fence the ICANN community can't produce its consensus policies.

So basically what we did is we created a big spreadsheet and further on in I have been working on this quite a bit -- to capture everything that we need to take a look at. And then this has been further developed into workbooks. And we're going to take a quick look at what a workbook looks like to answer the chartering questions subsequently. And we've created data processing maps. And I should be precise and say that ICANN staff has prepared those, and our staff is excellent, as always.

So let's move to the next slide, please. Thanks, Kurt. So basically drilling for data elements is our mission. So we needed to take a look at the purposes as defined in the temporary specification, and in our discussions we found that many of those purposes were formulated far too broadly and GDPR requires purposes to be specific. So we needed to work on those to make them limited enough to pass muster on the GDPR. We also needed to make sure that we linked the purposes to concrete processing activities, that could be collection, the transmission, disclosure of data, and also the retention of data. How long can we keep it before we must delete it? And then we also needed to do the test of checking whether -- you know, if there's a requirement to process data, whether that's actually within ICANN's mission, whether the ICANN requirement imposed on the contracted parties is lawful itself. I'll illustrate that with an example. So far the RAA2013 has required contracted parties to make sure that all WHOIS data is publicized, and as we know by now, that is going too far and would be illegal. So that is an ICANN requirement. It's in the contracts. It's in the policies. But that's going too far. And therefore, we had to do this

additional test as well. And then we created these -- these tools that I alluded to earlier. But let's try to take a look at the real life example. So let's, please, move to the workbook, and I know that staff has prepared one for us to take a quick look at.

UNKNOWN SPEAKER: (Off microphone).

THOMAS RICKERT: Can the technical person, please, switch the -- he's doing it. That's great. So basically for our purposes -- and we're going to get to them in a moment -- we tried to be more specific than what's in the temp spec where needed. And again, this is the ICANN purpose. Other parties, registries have their own purposes, registrars have their own purposes. We were focusing on what is the appropriate ICANN purpose. And then we would look at what's the rationale for this purpose? Why are we actually trying to process data in a certain fashion? And take a look at if it's -- if it's rooted in an ICANN policy or contract, as I just mentioned, is that requirement itself lawful under GDPR and other laws? And that goes back to article 5.1 GDPR. And then we would check whether it's in violation or not of the ICANN bylaws because we can't force the ICANN board to adopt a consensus policy that would be in violation of the mission and bylaws. Let's move down a little bit. So that's all about the rationale. Please scroll down a little bit. I don't think I have scroll control. Great. Thank you.

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We would do the picket fence check. Let's control down further, and we'll be done in a moment. Same table, just scroll down a little bit more, please. And then we would look at, you know, we have the purpose, can we find a legal basis? And Diane will talk about the legal basis in a moment. It needs to come from the catalog of article 6, subsection 1. And we would also discuss who's the responsible party? Who's the controller? Who's the processor? Do we have a joint controller situation? So this is basically our blueprint, including rationales, for all the processing activities and the purposes. And we had to change back and forth between the -- the purposes and the processing activities over and over again to ensure that those match. We're not there yet, but this is basically for you to help you understand. You might say, well this should be an easy task but, in fact, it's not. We had to do a lot of tests for each of the purposes and each of the processing activities. So this is what I had to say about the methodology -- methodological approach. Thank you.

KURT PRITZ: Wow. Thank you very much, Thomas. Can we go back to the slides, please, tech? Good job. As you know, we're -- we're crafting an initial report, so that initial report will answer the 52 charter questions and include policy recommendations and then also confirm or amend the existing temporary specifications. How are we doing it? Well, as we fill out these workbooks, those sections of the workbook are actually designed to plop right into the initial report and answer the charter question. So the workbooks are not only helpful in thinking through a

lawful way to process data but also to answer the charter questions. We also have some innovation that we'll talk about later, but instead of having all our meetings in plenary, we break out into small groups for half an hour, an hour, hour and a half, especially in face-to-face meetings, to address some specific issues that we'll talk about later. So we're doing that. And then in certain cases we're not getting to certain of the work and so we're prioritizing things. So certain things like UD -- URS and UDRP and domain name transfers are already working under GDPR requirements. So they'll require much less work and they're not so controversial. So if we don't get to that, we can leave that by the wayside.

So the -- so in this presentation we're going to -- you know, we showed some of our preliminary conclusions in that -- in that one document and some might be alluded to later, so I just want to be careful to note that we don't have recommendations yet. This is all work in progress.

So we're going to talk about the purposes for processing data next. And I want to introduce -- oh, Alan, there you go. Alan Woods from the RSG.

ALAN WOODS: Thank you, Kurt. Alan Woods from the registry stakeholder group, for the record. So I have the task of going through the purposes that we have been discussing, and in a way, Thomas has taken the wind out of my legal sails in this which I'm quite happy because he put it in a very easy way. What I will say, one of the things we went through and what

we need to do in this, we need to -- under the GDPR one of the additional requirements that we had is we must now show compliance, not just be compliant and claim to be compliant. And us going through these -- these workbooks, each one of them with a purpose, is the task of going through that specific almost like a data protection impact assessment per purpose. So can I go to the next slide, please. Thank you.

At the beginning of our discussions there was -- there was, you know, confusion as to the difference between what is a purpose and what is an objective. And we had to have the conversation about, you know, what is the purpose with a small P and the purpose with a capital P. And the purpose with a capital P is what is the use to which the data is going to be put, and that is the legal requirement under the GDPR. So, you know, working on through these -- these workbooks is very illustrative for us because it makes us and forces us to think in this way.

So we were looking at, you know, are the purposes that were stated in the temporary specification, are they valid and are they legitimate? Are they necessary for us to achieve the purpose, basically?   Do those purposes have a corresponding legal basis, and Diane will go through that in a minute so I will not step on her toes on that. Again, asking the questions. There was a lot of purposes -- and Kurt, you mentioned this -- in the temporary specification.   We went through and we consolidated or removed certain purposes because they were through -- they were too broad. So we had to tighten them up and make sure

that those purposes were representative and again asking the question, should there be any purposes which are to be added as well.

So the approach that we have, as I said, and it's already been gone through, is that we've reviewed the purposes within the temporary specification, we're factoring in the GDPR requirements and the advice, of course, from the European Data Protection Board, the EDPB, and we have developed some new and revised purposes. So if I can go on to the next slide, I'll take you through the purposes that are currently on the table. These are purposes that we are still obviously discussing and as Kurt just said, there's no recommendation per se yet. We're discussing these. So I'll just go through them very quickly.

The first one is the core purpose of our job as registries and registrars and that is to establish the rights of the registered name holder in those domain names. The second is to use data to enable lawful access for legitimate third-party interests. C is enable communication or notification of the registered name holder to use the data for the purposes of contacting that registered name holder. E, the safeguarding of the registered name holder's registration. A lot specifically to do with the requirements around escrowing of the data. So again, we have to go through all the requirements and say why do we need to escrow the data, what are the legal bases behind that and go through the list that Thomas did. F is the handling of contractual compliance. So again, there needs to be a purpose for contractual compliance to access and use such data. M is the implementing for ICANN dispute resolution policies. So again, we have to process data,

disclose data, and use data for the purpose of the URS and the UDRP. And so we're stating the legal -- the purpose and the legal basis for us to use that, again showing compliance as opposed to just claiming compliance. And then the validation of registered name holders, gTLD registration policy eligibility criteria, which is an awful lot of words. Just it's -- where there are certain registries who have validation requirements that extra data is needed to be processed in order to get those validation criteria on the table. And again, we need to explain and put into the documentation that we are -- that we have, we have to justify the use of that data.

Now there is will a final one there, it's O and that is just in brackets for research as it is another one of those purposes which has been suggested. It has not yet been developed as we are focusing a lot on the other purposes, but it is pending and we will, in time, have that conversation and we will go through the entire process, again justifying those data elements.

So, you know, that's the high level of the purposes. Each one of those small boxes is an awful lot of discussion and we have an awful lot of more discussion to be had on them. And that's -- that's what next we will do. So I'm going to hand over then, if that's okay, just to Diane who is going to take us through legal purposes.

DIANE PLAUT: Diane Plaut. Pleased to be discussing the lawful bases. So as Thomas has so ably explained and Alan, we have the separate purposes that

we've set out, and then we're going through, as defined in the GDPR, the legal bases that are relevant in evaluating the necessity of different data elements in the processing activities. So for each purpose we look at what the different relevant legal bases could be and we then adapt those accordingly.

So the most relevant ones that we have discussed and are applying are article 6.1(a) which is consent. The data subject has given consent for the processing of his or her personal data in one or more specified way.

Article 1(b) which is the processing necessary for the performance of a contract to which the data subject is either a party or which takes steps at the request of the data subject. And article 6.1(f) which is the processing which is necessary for the purposes of legitimate interests pursued by the controller or of a third party except when those interests are overridden by the interests or fundamental rights and freedoms of a data subject.

So we are doing this for each individual purpose, and there could be one or more different legal bases that we are recommending. And in making that application, we have -- I will give a couple of examples of how this is applied. For example, in purpose A, which Alan explained, is to establish the rights of the registered name holder and the registered name, we, for example, reference the fact that 6.1(b) for registrars would be applicable because it is necessary for registrant data to allocate a string to the registrant. Another example is in purpose b which is the enablement of lawful access regarding the disclosure of existing registrant data for lawful access for legitimate third-party

interests, and we are recommending one of potential bases is 6.1(f) for the purposes of legitimate interests pursued by the controller or third party.

So the EPDP is making these preliminary determinations in reference to legal bases and then we are going to be looking for the DPAs to review this and to accept it accordingly. I will pass it over to Emily to go on with the third -- oh, to Kurt. Okay.

KURT PRITZ: Thanks. It's not me, but once we have a purpose and established a legal basis for that purpose, we really needed to look at each of the data elements and how they were handled and each of the steps in data handling. And Amr Elsadr will describe that for us. Thanks.

AMR ELSADR: Yeah, so I think everything I'm going to discuss here in terms of data processing activities is very tied in to what Alan and what Diane were saying because to really figure out the purposes are in a very specific sense and to determine what the legal bases for these purposes are, you really have to understand the data processing activities in a -- in such a granular level. You have to drill down to the real details in this. Could we please move on to the next slide.

These are some of the processing activities that were included in the charter for the EPDP team, and using those workbooks that we saw earlier that Thomas had explained and presented, we'd have to

understand these processing activities and understand how they correspond to the legal bases and the purposes. So we have like, for example, the collection of data by registrars, what type of data needs to be collected. What are the different types of contacts that registrars may need to be required to collect or what may need to be optional for collection. What data is transferred from a registrar to a registry, and again, corresponding that to the different purposes of, you know, is -- is this data required in order for the registry to allocate a name or to allow a domain name to resolve. And similarly registrar/registry to data escrow, should any of the rules required there be changed or should they continue. Registrars and registries to ICANN, particularly in the case of compliance issues, what data is required to be transferred there. And again, same issues for back-end registry operators. Publication is the next bullet you see down there by registries and registrars. You will notice in the temporary specification a great deal of the data elements that were previously published publicly in WHOIS have now been redacted. One of the questions the EPDP team was tasked to address was should any changes be made to those data elements that are now redacted, should any of them be published, should any additional data elements also be redacted, and under what conditions in the processing activities, again corresponding to purposes and legal bases, what should -- what may or may not be disclosed at some point and how would this disclosure be facilitated. So these are all questions and issues that we've been trying to address. Data retention is another one. There have been requirements for data retention in the Registrar Accreditation Agreement. So are these requirements legal? Do they

correspond again to the purposes and legal bases that have been described earlier. Should the requirements change. And then I think the applicability of data processing requirements, I think those are special circumstances I think Emily is going to discuss a little later. But could we move on to the next slide because this is one of the tools we've been using, along with the workbooks that Thomas showed us a little earlier. Here you have a list of the data elements, all the ones we mapped out, and correspond them to each purpose. And so this is something that will be available with the initial report. I think the one on the wiki page for the EPDP team is still not updated. It says it's to be updated, so this matrix will be helpful in mapping them out. It's just giving like a bird's-eye view of this. And again, the workbooks will get into a more granular level of details to explain how the processing activities in the initial report will amount to these. So I think Emily can -- can go ahead with the applicability of data processing requirements. Thanks.

KURT PRITZ: Thanks very much. I just want to introduce this next topic by saying there are issues other than the ones described by deciding for which purposes data should be processed and all the work that underlies that. So there's some additional issues that add another layer of complexity to the work, as if this wasn't complicated enough.

So, Emily, would you present that please.

EMILY TAYLOR: Thank you very much, Kurt.

So in addition to all of the above that you've just been listening to, the charter sets out three questions which really highlight issues where there may or may not be change going forward. These were identified as issues where the temporary specification may or may not go forward in its current form.

The first one is whether the contracted parties should be permitted to differentiate between registrants on a geographic basis.

Those of you familiar with the GDPR will know that it has what's called long-arm jurisdiction. It goes -- it protects European citizens' data wherever they happen to be.

The implementation that the temporary specification has made is to apply those rules globally. And so that is the first question that we're looking at, is that appropriate going forward.

The second is whether there should be any distinction made between legal and natural persons, or in plain English people and companies or organizations. People, us as individuals, as citizens are the target for the protections under the GDPR. We are the ones who enjoy those fundamental rights. Organizations and companies are different. So is there scope to treat these two different types of person differently going forward?

And, lastly, as others have referenced, after we're done with the so-called gating questions, the next thing to do is to enter into the very

complex territory of defining what exactly reasonable access to data means.

So what our approach has been is -- for these additional questions is to really use the mechanism of small groups. And this has worked particularly well in the face-to-face environment.

And, particularly, I would like to shout out to Gina of CBI who has been very helpful in facilitating these and getting us on our feet, getting us talking across the different divides of the different legitimate interests represented in the room.

We are nowhere near finished with these. In fact, we're just starting. But we just wanted to highlight that these are live issues that are under consideration and, of course, additional work will be needed. And similarly, you know, what happens with the requirements for reasonable access and whether the temporary specification remains in place until the model is developed in more detail. So that's that piece. Thank you.

KURT PRITZ: Terrific, Emily.

There's some additional materials on work we're doing, some additional slides that we didn't think we had time for. So they are posted as part of the slide deck, and you can see those.

From time to time, somebody in our sessions will raise their hand and say, "It seems like we're stuck in the weeds here a little bit." And going

through this material it sort of makes me realize that we are sometimes, but it's a necessary part of our work. I will tell you, just listening to this made me realize -- or appreciate better the complexity of our work because to us it seems sort of rote that we're going through this process now.

So we want to get to questions. I just want to put up this aspirational schedule for you to review. And as you can see, we're doing something practically every month between now and April. We have -- our due date for publishing the initial report is November 5th. You know, I'm not sure we're going to hit that. I would say we're probably not. I have been trained not to commit to a date until I'm certain of it. So I only recommit once. But we're perilously close to really having what I would call a punch list of items that are required for the initial report. And as soon as that's done, we'll publish a final date.

We expect that it will work in some way with the May 25th deadline of 2019 that looms before us.

And I just want to say a word about the initial report. You know, it will either have a policy recommendation or it will have an open question that's precise enough so that if you provide input into that question, then that will help the team decide which way the policy recommendations should be created and so the issues defined will be precise enough or narrow enough that the community will feel that it's had input into the initial report.

And then following that will be a series of comment periods and final report writing and GNSO submission and Board submission and the administrative parts that are required to address the substantive work that is done during these 12 weeks.

So with that, if there are any questions or comments to this work or anything, I'd like you to keep the comments to this group. So we have the group sitting at the table. We have the rest of our team sitting here. And if you guys want to raise your hands to answer any of these questions, that would be terrific. I'd appreciate that.

And it's not a time for addressing questions to the Board or the ICANN staff but it's really meant to target our work and see if there are any questions about our work.

MICHELE NEYLON: Good afternoon. Michele Neylon for the record. Thanks for the presentation, and thanks to all of you for your hard work. I know the workload in this particular group has been very heavy and the demands on you all personally and professionally has been very strong.

Just at a practical level, I sit on the GNSO Council. But I'm asking this in my kind of more personal capacity as somebody who does sit on the GNSO Council.

Do you as a group need anything from us specifically? Is there something that we can do to help facilitate your work in moving this

KURT PRITZ: Thanks, Michele. And I don't know where you are. Hi.

Thanks for the question. I think we struggled a little bit with the charter at the outset and how best to address that. And we did -- we did some cycles probably driven by me that were where we weren't as efficient as we would.   But we have kind of settled on what we believe the requirements of the charter are and the deliverables.

But I really welcome your question. And as we -- I think we'll have some specific questions about how to go about answering charter questions or if the GNSO Council would think an answer in such and such a form would be adequate. It would be great if we could sort of signal what our input might be and if you think that would be adequate. So some give and take there would probably be good.

Other than that, if anybody else on our team has -- Kavouss, can you call on Kavouss because he's a member of our team and wants to help answer the question.

KAVOUSS ARASTEH: Yes.   Good afternoon, ladies and gentlemen.   Buenos dias, senors, senoritas.

I think the answer would be what we expect please kindly, carefully read and when you comment, provide your comment in most precise, clear, and transparent manner in order to enable the team to go through those comments and try to take it on Board as much as possible where appropriate.

At this stage, although you can help but perhaps you should leave the team a little bit to reflect. But during the comment period, that is most important thing that we need, not only from public but also from the chartering organizations, indirectly are not affected but in any case to carefully read it and provide the comments.

Even during this period and this meeting, if there is any comment during the discussions of the different constituencies, stakeholder groups, we would much welcome to receiving directly or indirectly those comments in order that the member of the team take that into account when they comment on the further actions. Thank you.

KURT PRITZ: That's well-put, Kavouss. Thank you.

Thomas, did you have a comment?

THOMAS RICKERT: Thanks, Kurt. And thanks, Michele, for the question. When Fadi Chehade made his first speech at the opening ceremony, he said that there seemed to be two issues in the world that obviously can't be resolved: The Palestinian conflict and WHOIS. I'm not sure whether I

would have chosen that example, but I think it helps illustrate what complex of a matter it is that we're dealing with.

I think that we already got excellent help from CBI. Gina has already received a shout-out today, and she very much deserves so because we're a small team but very, very diverse interests represented around the table. And CBI has done an excellent job in helping our group converge to consensus. We're not yet there on every item, but we're getting there.

So I think in terms of resources, it would be great if we could continue to have such support.

But also as I mentioned earlier, we had to develop our own tools to do the legal work in the ICANN environment. And, therefore, some of the groups, including the group that I represent, have asked for legal assistance. That's not to ask for legal expert opinions, but what we need sort of is a legal expert to coach our group to do difficult legal analysis.

One point that we haven't yet discussed so far is the data -- data protection impact assessment. So that's something we still need to do. In legal literature, you find different approaches to conducting those. And it would be great to have somebody who is independent of our community to help us navigate through that difficult work.

And I guess that additional resources for that would be most appreciated. And booze.

[Laughter]

KURT PRITZ: I just want to add to Thomas' comment that we do find ourselves having a legal rather than policy discussion from time to time. And at the end of the day, we'll settle on what we think the recommendations are but test them against DPAs and other legal authorities.

Amr, did you have a comment?

AMR ELSADR: Thanks, Kurt. I was actually going to bring up the legal assistance issues that Thomas mentioned.

And, Michele, if you recall back in the RDS PDP days, we did have legal advice come in both from data protection experts and a law firm, WSGR, that the RDS PDP had access to.

So, yeah, I think this would be very helpful if and when the EPDP team decides the right time has come for it. But, yeah, as a GNSO Council member and the council in general, please do keep that in mind and be prepared for that ask when it does come. Thank you.

KURT PRITZ: Number 2.

MARITA MALL:

Hi. My name is Marita Mall. I'm the incoming NARALO person at the ALAC Council. You.

People -- because necessity is the mother of invention and you have been under an incredible amount of stress -- have had to develop new tools and processes for doing what needed to be done. In the previous session we heard, in the strategic plan, that ICANN is going to be looking for more effective and efficient ways of coming to resolutions and conclusions in some of this policy work.

Do you think any of the work that you've been done, is some of that learning that other people are going to be able to use?

KURT PRITZ:

So this is Kurt. I certainly think so. One is the use of small groups to toss out of the room for a couple hours to work on a problem to me has been a surprisingly effective. But how to adapt what is a typical mediation tool for our purposes -- I shouldn't use the word "purposes" -- is some work needed to be done.

The facilitation and mediation of our discussions by CBI has been a powerful tool for us. And I think, you know, ICANN should be known as the coolest place for arriving at consensus in the world.

And so developing these sorts of expertise further I think is an important part of that. So, yeah, I do. I think part of the byproduct of this might be to improve the whole process. I don't know if any of the group has discussion.

Kristine, did you have something to say? Okay.

KRISTINA ROSETTE: Kristina Rosette, Registry Stakeholder Group. I think the worksheets we have been using are obviously very specifically designed for GDPR analysis. But I think kind of that concept, particularly where the charter for the PDP has set out specific questions that need to be answered, I think that can lend itself for use in future PDPs.

EMILY TAYLOR: Thank you for that question. I think we're still -- although we put in hours and hours of meetings so far, I think we still feel like we are at an early stage. So perhaps it's a bit early to reflect. But sometimes the value of consensus is sort of downgraded in today's world, is very difficult to reach consensus. And it requires each and every person in the room to think about other people's perspectives and think about what they can live with rather than what they might necessarily want and as the best possible outcome. But, in fact, it is consensus that is the best possible outcome and that proves the value of this model if it is to be sustainable.

My question is: The workload that it puts on individuals is very, very heavy. And that itself is a barrier to participation. And I think this is something that ICANN needs to reflect on. I don't have an answer to it.

KURT PRITZ: I wish I could talk like that.

Oh, is this a remote question?

REMOTE INTERVENTION: Thank you, I have a remote question from John Poole: Why reinvent the wheel? ICANN Org had two years to prepare for the GDPR effective date of May 25th, 2018 and surely did all of the analysis purpose work, et cetera, that the EPDP is being asked to do in less than one year.

Has the EPDP team seen, asked for, or used the analysis work that ICANN org did before issuing the temporary specification?

KURT PRITZ: Hi, John. There's good news and bad news. First is to me the temporary specification sort of came over the wall. So we do wonder a little bit about the background for that and how it was developed and the supporting information. So you'll see that in our list of purposes, A, B, D, F, N, M, that all connotes that we've taken the purposes that were delivered in the temporary specification and reorganized them in some way that made sense to us who are really in the industry of processing this data.

We have availed ourselves of information that the expert working group did some years ago and the RDS group that preceded us. So all that work is not left on the cutting room floor.

So I think there's been some taking advantage of information but maybe not enough.

Number 1.

EDUARDO DIAZ: Thank you. My name is Eduardo Diaz. I'm the NARALO chair. First of all, I want to congratulate the team and all the efforts that you have been doing in the EPDP.

The question I have is: What happens if we don't meet the May 25 deadline? Is there a fall-back position? For example, is the WHOIS going dark after that or the temporary specification becomes a permanent specification? I just want to hear your comments on that. Thank you.

ALAN WOODS: Alan Woods for the record.

I think the first thing we really need to focus on is that every single person at the table of the EPDP is focused on the success of this. I know particularly from the contracted parties' house, you know, it is in our interest to ensure that this is successful because we are trying to ensure that our processing of data as contracted parties for the maintenance of registrations within the DNS is within the realms of the GDPR. And we have to -- we have to be focused on that success.

Whether or not there are contingency plans, I mean, that's not something, to be flippant about it, it's not in our scope. Our scope is to be focused on success by this.

So I can't answer that. I mean, I can only assume that there will be machinations. But at the moment, our focus is on successfully ensuring that we succeed. That's a really bad sentence, but you know what I mean.

[Laughter]

KURT PRITZ: Number 4.

VICKY SHECKLER: Thank you. It's Vicky Sheckler with Recording Industry and the Coalition of Online Accountability. Thank you again. I know this is a tough job, and I know you are working really hard and I appreciate it.

I heard Kavouss, I think, talk about time for reflection and also realtime comments coming into the group. And I'd ask that you consider a lot of the data and analysis that have been done to date and that are coming fast and furious dealing with WHOIS and access to registrant data.

In particular, I'd point you to for the legal analysis, there were several legal analyses that were done in addition to the one from Wilson Sonsini leading up to May 25th. I encourage you to reflect on those as well. If you choose to get others, I appreciate you will do so. I think it's a good idea.

EN

I'd also encourage you to look at the surveys and other datasets that have come out with concerns with access to WHOIS data to date and how fragmented it has become.

So, for example, I'm told that MarkMonitor put out a blog today that has some data about their experiences with this.

I believe that the APWG and Mog put out a survey in the past couple of days that talks about the concerns that their group, cybersecurity professionals, have had with the degradation of WHOIS data over the past couple of days. There's the Appdetex data that has been discussed this week. There has been my personal experience that I shared with the GAC yesterday. And then there's also what we have been hearing in the GAC room today about the concerns that other government officials have been having.

I hope you'll consider all of that as you move forward.

KURT PRITZ: Thanks, Vicky. And I know that staff had compiled for us a library of information, so without being -- without being glib, I just want to work together to take steps to continue to augment our library of available information.

DIANE PLAUT: Vicky, I just want to say thank you for that comment. I think that this is very relevant to help this group recognize that even though we're doing a very academic and legal analysis and policy analysis that we have to

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understand the practical and very real things that are going on in the community and implications and results that are happening from the GDPR implementation and how there's no set course and plan in effect to date and how the temporary specification, in fact, is falling short for people and is not clear. And so this lack -- this vagueness and lack of clarity needs to be rectified and that we take this job very, very seriously to help answer and come up with solutions.

KURT PRITZ: Jonathan Zuck.

JONATHAN ZUCK: Thanks, Kurt. Jonathan Zuck from the Inventors Network Foundation and policy co-chair for the At-Large. I wanted to ask what the relationship is between this EPDP and the icann.org proposal or surrounding a unified access and accreditation model that's also being circulated and propagated and discussed and what the overlap is. Thanks.

KURT PRITZ: So Goran came to Jonathan -- I'm sorry, Goran came to our group and gave us a briefing about the goals of the work that are being done so far and took some questions from the group. But other than that, in line with what Alan said, we're, you know, operating independently and focused on accomplishing the goals set out for us by the GNSO. Number 1.

UNKNOWN SPEAKER: Yes, thank you for that. Maybe it's too early to make this question, but I think it's very interesting that you're considering the information (indiscernible) through a lot -- sorry, to contact companies differentiated from people from the point of view of restriction of access. But I think that you're also thinking of giving interesting information to law enforcement and other communities of users, and I would like to know how far have you progressed in the definition of these different categories of users that have -- may have different access rights to the information.

EMILY TAYLOR: Thank you very much. And you've raised, of course, a crucial issue about who has legitimate rights to access the information and we've heard from others in the audience who are very keen to see this resolved. Yes, that is a key focus for the group, and we've been discussing this as early -- or as recently as I think yesterday or Saturday for many, many hours. And I think this comes back to the purpose definitions and the -- the working through those that Alan and others have been talking about on this. So really just to thank you for raising it, to note that it is a difficult issue to resolve, and we've gone from all sorts of different approaches, as I'm sure others in the front row will -- will chime in on, from listing all the possible people we could think of as being legitimate to actually flipping back and saying something a bit more high level about it being the reason why you're -- why you need the data that is the most important thing. So it's -- it's an absolutely

pivotal question for us to deal with. And I don't know if others have more to add on this.

KURT PRITZ: Right. And certainly we've identified that certain groups have legitimate interest in data that's not overcome by the rights of individuals, and we're identifying those groups. But the circumstances under which they have access to data and to how much data they have access will really come in the second stage which is the access discussion. So right now we're at the policy level and then that access discussion will describe more of the circumstances under which that access to data is granted. Number 3.

UNKNOWN SPEAKER: Hi, all. Yeah. Hi, all. Yeah, my name is (saying name) from Korea. And my question is, do we have any consideration for cross-border data transfer, yeah, from Europe to non-Europe territory? In my understanding, GDPR totally regulate such data transfer from Europe to non-European territory. If registries, registrars, or escrow agents are located outside of the European territory, there will be necessary additional legal challenges and requirements. So I'm curious, yeah, what are you thinking about those additional requirements for international cross-border data transfer. Thank you.

KURT PRITZ: Thomas and then Alan will take a whack.

THOMAS RICKERT: Thanks very much. And thanks very much for the question. You might remember that during the presentation earlier I said that for every processing activity you need a purpose and a legal basis. And, in fact, you're right, that there's a third step. So whenever there's a non-EU data transfer involved, you also need to be able to justify that. And the GDPR has a catalog of measures that can be used for that, and that's certainly something that we also need to attend to in order to keep the system compliant.

 And I think you're also touching on a very important point, namely that there's an awful lot of more work that needs to be done. And a few points that were made earlier alluded to that. So one question was, are we actually building on previous work that ICANN org has done. And we have asked for that, and the response was that what ICANN did was published on ICANN's website. So we tried to get all the intelligence that's inside the org in order to make that available to our work here. Then there have been questions about access. And I would really recommend that those who are interested in it take a look at the charter of what we're doing because that has very specific questions in it. That means number one, that we have to follow the catalog of questions in our charter and our charter requires us to respond to certain questions, so-called gating questions, before we get to the question of who can get access to what data based on what parameters. That's within our work. That's what we've been tasked to do by the GNSO council. We can't go outside this limited charter that we have. And the -- the unified access

model that's been posted for public comment by ICANN, that's a totally different exercise that has been started by ICANN. And it's not for us to determine if and at what point that's going to be intertwined but that's a separate activity.

KURT PRITZ: Alan, did you have anything to add?

ALAN WOODS: Alan Woods, for the record. It actually comes directly on from what Thomas was saying there. Go back to I think it was Vicky who talked about the APWG and the reports, and again, this is the access. I think what we need to understand is that we are coming from a place where WHOIS, prior to the GDPR, was still likely -- would have been considered illegal. In fact, the European Union or the -- they told us, the working party 29 told ICANN several times that they had issues with the concept of WHOIS. So when the GDPR, when we sat up and took notice of the GDPR, there was always going to be a difficulty with people getting access to that data. Because we were giving the data in a public database. And now we're not giving the data in a public database. That is a given. It should have always happened. It was a part and parcel of GDPR and should been 19 -- the 95 directive. So, you know, I worry when I hear about these references to how it's more difficult to get the data. That is correct. It is more difficult to get the data because now we are paying attention to the legal requirements. And that is the job of the team, is to map that out so that we can provide the data in a legal

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manner. It may be more difficult because we are jumping through more legal hoops, but that is the goal, for us to decide and to figure out how we do this in a proper way. And that is part and parcel of the consensus. For all to come on that same page and say right, this is the law, this is the way the law has been. Let us work within the boundaries of the law so that legitimate purposes can be dealt with. And I think that's a very important point, that, you know, we can't just be throwing, you know, the references to these over and over again. Because we have a very true path, and that is to find a legal way of doing these things. And I think we can do that.

DIANE PLAUT: And following up on Alan's words and tying into the question of what other support we could use and Thomas' comments, is that we have discussed very carefully the fact of responding to Goran's request also to us on making legal recommendations. And so in making the legal recommendations, and working on the scope of our work, we also have to understand how to apply the GDPR, make a legally compliant framework, and in doing so, make recommendations of data processing agreements and the model legal clauses that will be necessary for the transfer of data properly.

KURT PRITZ: And one member of our team, Kavouss, wants to comment also. Thank you for standing so long, Keith. I'm sorry.

KAVOUSS ARASTEH: Thank you. In addition to what Thomas said and what others, what the distinguished lady mentioned, some of the aspects of transfer relates to the implementation. Not all of them is the policy. We could address those aspects as a policy -- as far as policy is concerned. But we could not completely of just those issues relating to implementation and could not overnight to address everything. Thank you.

KEITH DRAZEK: Thanks, Kavouss. Keith Drazek. Verisign, registry stakeholder group, GNSO Councillor, and was also a member of the drafting team for the charter for this group. I just want to go back to the question that Jonathan Zuck asked about the relationship between this group and the development of a uniform access model or an access model. And I think it's important for everybody to recognize that Kurt's right, that this group currently is not working on a uniform access model and has no relationship to the proposal, the hub and spoke proposal that's been circulated by ICANN staff. But this group, this EPDP does have in its charter as the third phrase or third deliverable an opportunity and an obligation to focus on an access model. So the charter, as it's currently constructed, is three deliverables, one the triage, that's done, two, the initial report and the final report on the temporary specification. That's the part that has the deadline of May of 2019 due to the expiration of the temporary specification at that time. But after that, this EPDP working group has an opportunity to focus on policy development related to an access model. And I think ICANN staff, Goran, has been very clear in communicating that the work that he's been doing

engaging with the data protection board is an effort to try to get information to help inform the policy work that this EPDP will conduct when it gets to its third phase. So I just want to make sure that everybody understands those dynamics, sort of the process. Thomas was exactly right, that there's a structure and a process that this group has to follow. The gating questions must be answered in order for us to have an informed conversation about an access model. But this group will eventually get to that conversation around an access model. Thank you.

KURT PRITZ: That's excellent clarification. Thank you. Microphone 3.

STEPHANIE PERRIN: Thank you very much. My name is Stephanie Perrin. I'm a member of the EPDP, and I represent the noncommercial stakeholders group. And I just wanted to, in plain language, clarify something. Access is not a valid primary purpose of processing for a data controller. You provide access, but your purpose of processing is not to gather data to release it to third parties. That's covered under separate provisions of the GDPR.

KURT PRITZ: Thank you, Stephanie. Microphone number 1.

EN

ANNE AIKMAN-SCALESE: Hi. It's Anne Aikman-Scalese with the IPC. I wanted to take a moment to celebrate the fact that there's an EPDP and thank Chuck Gomes who led the policy and implementation working group and to thank especially Marika who at the time was so incredibly helpful to us in establishing these procedures which we didn't even know at the time this would be so needed. Thank you all for your work. And the question that I have, it is a phase 1 question, I believe, because the temp spec says that for dispute resolution providers that the registrars must provide data to them when there's a UDRP filed, for example, and we note that in the dispute resolution provider rules such as those that WIPO has outstanding, it includes the postal address and fax, if available. So on the question of collecting data in connection with phase 1 of your work and a review of the temp spec, it would seem that in terms of the legitimate interest of the dispute resolution providers that the postal address and fax, if available, should at least be collected if needed to be provided to dispute resolution providers such as WIPO, NAF -- the forum, I mean. Sorry, correction. And I wonder if that's been considered, discussed, et cetera. Thank you.

ALAN WOODS: It's Alan Woods from the Registry Stakeholder Group. Yeah, I mean, your point is very valid. But also if you look further on in what we're looking at within this and with any policy development program -- program? Policy development process, we will have to look to see whether or not the conclusions that we come to impact other policies out there. And part of our plan is to, of course, issue recommendations

where we believe there is necessary extra policy development process. Again, we're focused on whether or not the data we're using or collecting or processing at this point is necessary and minimal. And if that does have an impact -- and it might very well be that we need to do that. That will be the conclusion. But we will then also have to make a recommendation upon those policies or processes that have been impacted. And such as the URS. One of the things we've already found out in the URS the EPDP itself -- or sorry, the temporary specification itself does cause a bit of an incompatibility within some of that. And we have done on paper that that would be a recommendation that should go to, say, the RPM review team to take a look at it. It's not huge but it's enough that we would have to notify them. So it is -- if we make a change that affects something, then we're going to have to recommend that as a change as well.

KURT PRITZ: Microphone number 1.

STEPHANIE PERRIN: Thanks very much. Stephanie Perrin again. I think the last speaker has highlighted a problem that leads to some of the confusion and conflation in this EPDP. Obviously you need the address, you need billing information in order to effectuate the relationship with the individual over a domain name. That does not mean that ICANN needs to control as a data controller all of that data. We still continue to think of this whole problem in terms of the paradigm of a disclosure

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instrument called WHOIS, a publication, a directory. The registrars could be compelled under policy to gather this, but that doesn't mean that it's going to appear in a directory because how many UDRPs are there where you couldn't get the data from the registrar as a subsequent disclosure later. So, I mean, I wish we could be more clear by means of a data map of how all these processes nest within one another because you need that for legal clarity.

KURT PRITZ: So I think -- thank you, Stephanie. So I think there are no more questions. I'll just repeat one of the earlier questions about, you know, what have you learned that might be applicable to future policy developments, and one of them is certainly the utility of face-to-face meetings that, you know, I wish that -- we had our very first meeting face to face but obviously you can't pull something like that together in a week. But I've found that in our -- in our initial face-to-face meeting which lasted three days, about 10 hours a day and then the one here that the substantial progress is really made when -- when we're together working.   So somehow, you know, the interpersonal relationships that develop and the ability to look in one another's eyes is really helpful for that.

And saying that because I think we made good progress in our face-to-face meeting and again progress here. It's a slog, evaluating each word in a carefully worded purpose. But at the end of the day, everybody feels the sense of accomplishment and we'll get some of that done.

And so there's what I think is significant progress made and there's a significant way to go. And I know this -- everybody in this room is essentially part of this team because every constituency group, stakeholder group, supporting organization, advisory committee is represented in the team and is represented out there. So I'm sure many of you are called on to help us with that. So your continued help and support will be appreciated.

So I really want to thank the members of the team that sat up here. It's terrific. And everybody that sat in the first row and just behind, thank you very much. And thanks for your attention in this session. And thanks to the tech guys back over there for your helpfulness. Thanks very much. So have a great rest of the meeting, everyone.

Thanks.

[Applause]

[END OF TRANSCRIPTION]