BRENDA BREWER: Good day, and welcome to the RDS-WHOIS2 Review Team Plenary Meeting #6. Today is August 31, 2017. The call is to begin at 11:06 UTC.

In attendance today, we have Alan, Carlton, Cathrin, Dmitry, Erika, Thomas. In the observer room, we have Vignesh and Svitlana.

Apologies today from Chris Disspain, Lili Sun, and Susan Kawaguchi.

From staff we have [Alice], Jean-Baptiste, Steve, myself, Brenda.

This call is being recorded, and please remember to state your name clearly for the transcript. Thank you. And I'll turn it over to you, Alan.

ALAN GREENBERG: Thank you very much. We have a moderately packed agenda. I'm not sure we're going to meet our target of completing in one hour, but I will certainly complete in an hour and a half.

The first item is the terms of reference, and we're trying to chip away at the sections here. The first one that we're going to discuss today is the team member replacement or removal.

You'll recall that I was asked to – or I volunteered to – draft something. I have no particular stake in what is there, but it's comparable to what I've seen in other groups. And I'll summarize the comments that people made. I may not catch all of them, but I think I'll catch the substance of them.

There was only one comment on the first paragraph, that is the replacement of a new person. Carlton said he thought he Board had to do the replacement.

In fact, the selections for specific reviews with the new Bylaws, the actual selection is done by the Chairs of the ACs/SOs. And our practice is that each AC and SO may designate three people that are essentially automatically taken. Any others, there is a discussion whether the AC or SO can have more than three people on the group. But the first three are taken without attempting to either balance diversities or make any other selection among them.

So, effectively, the AC and SO does designate most of the people on this group with no real discretion taken by the Chairs, by the selectors. In previous rounds, the selectors were – depending on which review it was – either of the CEO, the President – the CEO, the Chair of the Board or the Chair of the GAC. But regardless, in all reviews that have happened since they started, regardless of who the selector was, if someone needs to be replaced for one reason or another or named after the fact, then it is always done by the AC and SO without any intervention by the selectors. So, I opted – for the multiple reasons I just gave – to say that that seems to be a reasonable thing to do and to proceed with that in our case.

So, I hope there's not a lot of discussion there. This entire thing is not – certainly, the second part of removing people is not something that's likely to happen, and in all past reviews – including the SSR review that's ongoing right now – the group has been silent on how to do this, and just reacted as necessary if there was a case that arose. We've been

asked to fill in the section, but I really don't think we want to spend a large amount of time on debating it.

So, on the second section there were several comments that perhaps the first threshold I mentioned should be raised. I presume it should not be higher than the second threshold, which was implied by one person, but that may have been an error.

The other – there was a comment of replacing the word "fails" in the middle of the second paragraph to "refuses." That's pure grammar; I have no problem with that change.

And the other question is, can we define disruptive? Do we have to put specific limits on it to make sure it's not being abused by the group? Now, I think it's highly unlikely we would ever even try to exercise this, and in my opinion, disruptive is in the view of the beholder and if enough people it's disruptive, then it is disruptive. But I'd like to open up the discussion. I'm quite happy just to leave the whole paragraph and say we will respond on an ad hoc basis if it is ever necessary. But I'd like to open the floor, and we have several people.

Erika, go ahead, please.

ERIKA MANN: Yes. Sorry. Just forgot to unmute. Thank you, Alan. Yes, I'm fine in principle with the text. I'm even fine supporting like it is. I have no real substantial issue with it. But typically what is done, you would weigh the threshold a little bit in numbers. So, my recommendation was to include 70% just to avoid that you build up the potential negative blocks [and]

against a particular person, which can happen sometimes. So, I doubt it will happen in our group, but just to be on the fair side.

And then I had on the first part [inaudible] I think you can call it a new member which joins, replacement member, maybe the word "new member" rather than replacement. Again, minor point, and whatever comes out, I'm happy to support.

ALAN GREENBERG: Yes. I have no worry. Replacement and new I think in my mind are synonymous, and if there's a preference for one or the other, that's fine. When you say 70%, I presume both of the numbers 70%. Because by only changing the first one, the second threshold is lower.

ERIKA MANN: Yes.

ALAN GREENBERG: Okay.

ERIKA MANN: Correct, totally right.

ALAN GREENBERG: Yes. The reason I put that as a lower threshold is that's only a request to the AC/SO. The AC/SO agrees, then it's a done deal. But if it doesn't

agree, it would be the higher threshold. But I honestly have no trouble increasing them both if that's the only difficulty people would have.

Anyone else? Anyone would like to speak to the issue of disruptive, or to support simply taking the whole thing out?

VOLKER GREIMANN: Yes, Alan. I have no general objection against this rule. However, I doubt that we'll ever use it. It seems to be overdesigned, and for our group it's probably not something that we actually need. We are a very small, select group of people, and I don't think there's much potential for disruption in this group. But I might be wrong.

ALAN GREENBERG: Yes, I agree. I think that the fact that the section was added to the Terms of Reference for us is questionable, but it was, and we were told that we have to fill it out. So, we were trying to fill it out.

At this point, I think the question is either we leave in the disruptive as it is with the 70% number changed, and "fails" changing to "refuses," or we delete it altogether. And as I said, I'm happy to go either way. Is there anyone who feels strongly it should be deleted, or should be kept? Erika says she has no objection. Cathrin says we should keep it in. Erika, no objection. "Leave it in with the change."

Okay. I think for a last call for comments at this point, we will make the changes of "replacement" to "new," "fails" to "refuses" with the appropriate grammar if necessary, change both thresholds to 70%, and I think I've caught all the changes as it stands.

Volker, I presume that's an old hand.

VOLKER GREIMANN: Yes, very old.

ALAN GREENBERG: Okay. You're not that old. Alright, next item then. Next item is dependencies, and I'm going into this one cold so I will ask someone on staff to put it on and make any comments.

Well, I can make one or two comments. It's a long laundry list of the other things that are going on. I'm not aware of any that are missing, but if anyone is, please let us know. Other than that, I don't think it needs a lot of debate.

The implication is that to the extent that things are essentially a done deal – and privacy proxy is one of them, implementation of Thick WHOIS is another one – we can certainly comment on it. Again, these are largely policy or starting recommendations that is not clear we can effect, but to the effect this list is incomplete, we should add to it. Other than that, it's there for reference.

Any further comments either from staff or from team members? Cathrin, please go ahead.

CATHRIN BAUER-BULST: Yes, thank you, Alan. I would just propose to add the GDPR mapping exercise, just for completeness sake, because that's another one we probably want to keep an eye on.

ALAN GREENBERG: Good idea. Thank you. Erika.

ERIKA MANN: I wonder whether we should add a paragraph, a short one which would say that ICANN staff would alert us of any changes immediately which would appear to be a point mentioned above.

ALAN GREENBERG: I've no objection to it. I don't really see the need. I think that's what they're there for.

ERIKA MANN: Yes. There are so many things going on all the time, it's just an internal alert system. But again, if you think it's not needed and if you find it may –

ALAN GREENBERG: What I'm saying is I'm not sure a line in a Terms of Reference which gets filed makes a difference whether they do it or not. But I have no problem at all putting it in, so we can do that.

ERIKA MANN: You're totally right. We never know [if it's going to happen]. I agree.

ALAN GREENBERG: Volker, go ahead, please.

VOLKER GREIMANN: Yes. Just because it came up this week during the RDS Working Group call, the Registry Registration Data Directory Services consistent labeling and display policy which has recently been completed, I think makes sense to also include the work that has already completed. Even though we would not be duplicating anything that's currently ongoing, it's something that the community has recently made a decision on, and I think it might not be our place to critique the recent decisions of the community. I think when we go to older decisions, then it might be open for criticism at some point, but recently completed and ongoing I think should be the ones that we should be careful about commenting on. Thank you.

ALAN GREENBERG: Thank you. Adding it is fine, and I tend to agree with you. I think you were the one who made the comment on the RDS call also. And yes, I strongly agree that we should not be in the business of rethinking something where a group has recently spent a year or two years agonizing over the details and this is the best they could work out.

                         Yes, it may well warrant some changes, but we cannot keep on reopening issues continually that have just finally been closed. So, I strongly support what you're saying. That's really a discussion for the

scope, but certainly adding it as a dependency I would agree. Any further comments?

So, we're going to add the items that were mentioned. We're going to add a short paragraph saying this list will be kept up to date, and we'll be alerted if there are any changes noted. And other than that, it's a done deal. Any negative comments or disagreement? Seeing none, hearing none, we have completed that item.

The next item on our agenda is scope. Lisa who is not on the call with us has tried to flesh out the Scope document, and I'd like to go through it now. I largely agree, although I think one or two areas there are some small things that I disagree with and I don't know to what extent anyone else has had a chance to look at it in any great depth.

I think we should go over from start and try to make sure that we're all agreeing. In at least one case, I don't agree with what it said we decided, and I'll raise that when we come to it.

Okay, the first item is a Bylaws mandate, and that is the review of the past review. I'm presuming there is no disagreement on that, and that is definitely within our scope and will be something that we do.

Now, I should note that something being in scope does not mean that we are deciding to do it. We can decide not to or we can decide to decide later in the process. But just so we understand what being in scope means.

Alright, the second item is the current effectiveness. Stephanie was going to come back to us with some words on how do we define

effectiveness, because I am somewhat at a loss on how do we either quantify it or even qualify it

Since the RDS PDP has spent an immense amount of time and not finished on trying to understand why do we have WHOIS and what it is used for, I'm not quite sure how we comment on effectiveness. But Stephanie said she would come back with words, so I think we're going to defer that discussion.

I will comment on the implication that the word "effectiveness" was referring to the law enforcement and other clauses. I'll read out the whole statement first. It says, "The Board shall cause a periodic review to assess effectiveness of the then current gTLD Registry Directory Service and whether its implementation meets the legitimate needs of law enforcement, promoting consumer trust and safeguarding registrant data."

And the proposal or the hypothesis was that effectiveness refers to the implementation, whether implementation meets the effective needs of the three items. And I think if you remove the clause on the then current directory services, it becomes obvious that effectiveness was not modifying that, because the sentence would read, "The Board shall cause a periodic review to assess the effectiveness of whether its implementation meets legitimate needs."

I don't know how you address the effectiveness of whether something meets needs, because essentially there are two different things you're judging. So, I think it's moderately clear that the term "effectiveness" is just describing we are to assess two major things: the effectiveness of it,

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and whether its implementation meets legitimate needs and promoting consumer trust and safeguard data.

So, I'd like to come to closure on that and that we can agree – we're not dropping the "Whether it meets the legitimate needs of law enforcement promoting of consumer trust," we're just saying the word "effectiveness" is not a modifier of that one, and that takes out some of the confusion because we don't know how to define effectiveness anyway. Erika, go ahead.

ERIKA MANN: Alan, I agree with you. I think we had a parallel discussion – if I remember this right – where I argued it would be good to copy the practice from other Internet companies to install transparency procedures or to recommend the ICANN organization [and] for supporting parties to install transparency procedure.

This would help both on the side of – to some degree saying that effectiveness doesn't become too broad and too big, because it would explain what actually is happening within a year, and it would as well show that there is hopefully no requests coming from law enforcement which are cumbersome and problematic for the consumer side.

So, typically these kinds of transparency reports are quite helpful. So I think to indirectly – you might get some help for what you want to achieve from requesting such kinds of transparency procedures.

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ALAN GREENBERG: Thank you, Erika. That was captured somewhere. It's not a scope issue, but I know I've seen it written somewhere, so we did capture it somewhere along the way. But I don't think it's scope. It may well be one of the recommendations we make.

Volker, go ahead.

VOLKER GREIMANN: Yes, I'm just wondering – it might be a slippery slope to ask that, but are we free to expand the definition of what the RDS is effective for? As in, is it effective in as an example protecting privacy of registrants with all the mechanisms that are currently in use and in place, such as WHOIS privacy [inaudible] choice. Is it effectively doing that as well? And maybe you want to add other questions where effectiveness might be relevant other than those that are mentioned in the scope at this time.

ALAN GREENBERG: Certainly, that's one way of looking at it. And that actually removes one of the later items that we have on evaluating the current RDS. I'm not quite sure what the words we are used for current – sorry, one second. Assess the value and timing of – no.

I thought it was there somewhere, but certainly, that is one definition of effectiveness that is to the extent that we can identify specific needs which are not controversial either because they are – I hate to say intuitive or obvious because nothing in this business is, but to the extent something is mandated by law for instance, then yes, we could certainly do that.

I suspect the example you gave is already referenced in the safeguarding registrant data, so we may have a problem finding things that fit into that bucket. But I think that's certainly one way of doing it. Essentially, we're saying on an ad hoc basis, can we find areas where it is not effective without trying to gauge effectiveness in all of its possible areas?

Erika. Or is that an old hand? Why don't we go to Cathrin?

CATHRIN BAUER-BULST: Thanks, Alan. I remember we had a conversation already about this and about whether the law enforcement, consumer confidence and privacy are modifiers, and it was the way that I suggested as an approach to try and limit the scope of the effectiveness criteria in which [I still] can be quite bound, borderless.

In the meantime, I went back to the first WHOIS report and looked at how they did it there. Because of course the first WHOIS Review Team was also struggling with the same issue of scope and what to do with effectiveness, and they indeed have done as you suggest and put effectiveness as a separate item from whether or not the WHOIS serves the needs of law enforcement and consumers and privacy interests.

So, they have them as four separate points, and then they went back to the Affirmation of Commitments and basically distilled a couple of further principles to help inform what the effectiveness might be used for. And I think we can maybe also learn from that, and they went through a public comment period on their scope of work where this was further refined.

So, maybe we can basically build on that in our own approach to this, and then try and see whether we as a Review Team think that makes sense.

ALAN GREENBERG: Thank you. I find that very useful. And I think we've exhausted the queue on this one, so I think we've decided that we will basically treat them as four different things, or effectiveness and then evaluate the other three.

And we are still waiting for Stephanie to come back with anything she has on defining effectiveness, but barring that, we will try to extract some words out of what Volker said or perhaps what Review Team 1 said, and to try to flesh out how we treat that word.

Next item is current implementation and legitimate needs of – oh, sorry, essentially that's what we've just been talking about. So, those are really two issues that we will subdivide them differently to make them mutually exclusive, but those two are the sections we just talked about.

Bylaw section 3 is OECD. Can someone remind me on where we are on that? The action says staff will produce some draft text for leadership to refine reflecting OECD component and Bylaws mandate. Where are we on that? Anyone from staff? I know Lisa is not on the call. Jean-Baptiste?

JEAN-BAPTISTE DEROULEZ: Yes, Alan. We were asked to provide some support documents for this discussion and we sent it to Cathrin. We had to [inaudible] from that.

ALAN GREENBERG: Alright. Cathrin, what are your plans to get something to us for the next meeting, or are you withdrawing from your support on that?

CATHRIN BAUER-BULST: [inaudible]. There are two different – my action is now listed under the GNSO scope, so row five, and indeed I'm working on a short formulation of objectives for the current implementations and the [definite] needs of law enforcement for the section [46E II] of the Bylaws.

And then for the OECD privacy and transport of data flow, the action that the ICANN staff has undertaken I think is completed because they circulated the text.

ALAN GREENBERG: I think it was just circulated to you, perhaps, or to the leadership and you. Jean-Baptiste, can you confirm?

JEAN-BAPTISTE DEROULEZ: Concerning [inaudible] circulated to everyone.

ALAN GREENBERG: Oh, it was. Okay. Sorry.

JEAN-BAPTISTE DEROULEZ: No problem.

ALAN GREENBERG: Okay, so that is not on Cathrin's to-do list, but the document is for us to review.

JEAN-BAPTISTE DEROULEZ: The document on the legitimate needs of law enforcement I think was only sent to Cathrin. The one on OECD was definitely sent to the Review Team.

ALAN GREENBERG: Yes, okay, but the OECD one is the one we're talking about now.

JEAN-BAPTISTE DEROULEZ: Yes.

CATHRIN BAUER-BULST: Yes.

ALAN GREENBERG: So that is one that we have to discuss further. It is not on Cathrin's list.

CATHRIN BAUER-BULST: Right.

ALAN GREENBERG: Okay. I haven't looked at that in detail. Has anyone looked at it and is in a position to start any discussion? My preference is to defer it until we've all had a chance to look at it carefully, and unfortunately I misunderstood that one and have not. No one seems to –

JEAN-BAPTISTE DEROULEZ: If you wish, we can put the text on screen if that helps.

ALAN GREENBERG: If someone is willing to talk to it quickly, yes, certainly.

JEAN-BAPTISTE DEROULEZ: Okay. So, the text is on the screen. So this was in response to one action item by the Leadership Team, and the following was offered for consideration so I can read that out loud.

"Consistent with ICANN's missions and Bylaws section 4.6 (e) (iii) [inaudible] Organization for Economic Cooperation and Development (OECD) guidelines on the protection of privacy and transport or flows of personal data as amended in 2013 by an identifying example of where today's RDS WHOIS appears to be in conflict with OECD guidelines. The examining steps currently being taken by ICANN to address WHOIS compliance, WHOIS-related data protection laws example given to GDPR and seek producing high-level recommendations focused on promoting RDS WHOIS compliance with existing [inaudible] data protection laws."

ALAN GREENBERG: Alright. Any comments? Erika, go ahead.

ERIKA MANN: I have in principle no problem with the text, but I think we have to be aware that it's not saying much. The OECD guidelines are practically – they are no laws, they are just guidelines, and in many countries they're outdated by now or they're much more – the way privacy laws are implemented is not really – these guidelines are not [always] capture the law.

So, we have to be certain about the character of these guidelines. We don't want to give a wrong impression, and maybe we have to reread it just to be sure that we don't look naïve and just referencing the guidelines.

ALAN GREENBERG: Thank you, Erika. We have you with us, and I'm sure you will repeat that at the appropriate time. I will add that one of the mandates that we have – and it's a generic one for specific reviews – is we can recommend changes to the scope for future reviews, including changes to the Bylaws.

This particular one was added in without any debate by literally by one – I believe by a single person. A lot of other people nodded their heads, but I don't think anyone looked at it to a great extent at the level that Erika has just described, of just how appropriate it is for us to be looking at guidelines. Number one, they're not laws. They may or may not be

supported by the constituent countries. And number two, something that is at this point effectively outdated.

So, we may well make a recommendation, or we could make a recommendation that that whole section be stricken and replaced with something else or not replaced as we wish. So, just something to keep in mind as we go forward. One of our responsibilities is to make sure that the next review doesn't have to deal with problems which are not really applicable.

Cathrin, go ahead.

CATHRIN BAUER-BULST: Thank you, Alan. Just to say that also in light of what you were just saying about these being guidelines not laws and them being somewhat outdated, I'm not sure we're in a position to identify examples where today's RDS appears to be in conflict with those guidelines.

I think for the items that are listed here, we probably need to be quite careful, and I think – I don't remember the conversation focusing in particular on the idea that we would probably refrain from going into any details such as providing specific examples of where we see conflict, and rather just doing C, namely producing high level recommendations focused on promoting compliance with data protection laws, which in a sense is what the OECD guidelines are aiming for.

And since the mandate in the Bylaws is quite unspecific, I don't think we should make our lives as difficult as is now set out here. We should really stay at the higher level and not go into the weeds on this one. I

would wholeheartedly support Alan's idea of proposing that this is probably not the most useful thing to consider also for the further iterations of this review.

ALAN GREENBERG: Thank you. If we change the word "will" at the end of the first line to "may," does that satisfy you? That says we may choose not to do it, we may choose to do it in a slightly abbreviated form. Catherin.

CATHRIN BAUER-BULST: That would be one way. I'm just wondering whether we need to do this because we're completely free, and how we want to interpret this. It just says we should consider the guidelines in our assessment in the Bylaws. So, why should we even say things such as that we're going to do a detailed analysis and identify examples?

ALAN GREENBERG: Okay. I didn't read detailed analysis and examples. In my mind if we come up with two examples that we simply know are there – and we do – that would complete it. But I'm very happy to say we have considered it and due to the fact that they are just guidelines, they are very outdated, we have decided that it is not worth our effort or ICANN's effort to address this issue in this review. I'm very happy to do that if the group agrees. Volker, go ahead.

VOLKER GREIMANN: I'm not trying to be disruptive here –

ALAN GREENBERG: We now have a method on handling that.

VOLKER GREIMANN: Yes, I'm aware of that. If we [see this], the original suggestion by changing the "will" to a "should" or a "may," we are losing also the reference of the requirements to also look at current laws and regulations that flow from the OECD, even though the OECD guidelines may be outdated because they have been superseded by something else. The later text goes into the GDPR and related data protection laws that are related to the OECD guidelines, and as it stands, we're required to consider them. If we change it as you propose, then we can't negate them, and I don't think that's the right way forward.

We should maybe – rather than changing it as you suggest – add something to this as in to say "Or its successors or related laws and regulations that flow from these guidelines." So, any successor protocols or regulations in law should be considered as well. I think that would make more sense in the context of what's written here.

ALAN GREENBERG: I would strongly disagree with that, so it's my turn to be disruptive. There were discussions within the – I think – WHOIS Review Team that were related, essentially saying ICANN or a part of ICANN should evaluate and look at the laws of all applicable countries. Here it's a subset of applicable countries, it's OECD countries. And I think that is just something that we do not have the manpower to do, nor should we

attempt to do a definitive study on whether specific laws are being followed or not. So, I would strongly object to trying to put within our mandate an evaluation on whether the current WHOIS meets specific laws and national laws. Erika, please.

ERIKA MANN: I just read this text again, and I wonder what we actually want to achieve here. We want to say that ICANN's mission is consistent with the recommendation done by the OECD. And then the second point we are saying is to identify examples of where today's RDS appears to be in conflict with OECD guidelines, and B, we are seeing we are examining steps currently being taken by ICANN to address WHOIS compliance with related data protection law.

So, these are super big goals. Are we really considering to do this? Are we really considering to examine or to consider to examine, for example, where the RDS is in conflict with OECD guidelines?

I wonder if we just have to reframe it. Practically, what we want to say is that the base, what we want to do to some degree on the OECD guidelines, being aware that in many ways various laws across the globe implemented the guidelines in a different way or implemented the guidelines in a more [inaudible] [endeavor]. Do we need the rest that we really want to say we want to use it as a reference base?

ALAN GREENBERG: Okay. Just to be clear, when Jean-Baptiste or whoever wrote that said identifying samples, I think that was just examples, not the definitive list

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of all cases. So, I think it's less of a major review than you're describing, but I think you're basically supporting Cathrin's view that either we do this in a very minimalist way, or provide the rationale for why we're not doing it at all. I think I'm hearing very similar things, and we can debate further which of those paths we take, but they're similar.

Volker whose hand is up again now – and I'll turn the floor over to him – is arguing that we do a much more intensive review that is not just look at the OECD guidelines but things that have been driven by the OECD guidelines or their follow-ons. Volker, go ahead.

VOLKER GREIMANN: Not necessarily. I think we should just consider the impact that current WHOIS privacy has on – or that certain lows can have on that, if we are aware of them. I don't think we should go out of our way to identify every single privacy law in the word, but we should at least bear in mind that there are certain issues with WHOIS that have been pointed out by various organizations, not the least Article 29 Working Party and others, that current WHOIS is simply not working well to satisfy. And we should recognize that and maybe have some reference to that in our reports showing that we considered this.

I'm not necessarily married to the OECD guidelines being in there or any specific law being mentioned, I'm just saying that we should be cognizant of the fact that current WHOIS has certain issues and with legal compliance that are currently not being addressed or are being addressed by ICANN staff at this time, and reference those.

ALAN GREENBERG: Okay. So, I think you're back on the minimal side, that is we don't ignore the issue altogether but it's not an in-depth review, it's simply noting – and we can give a few examples if they're obvious – when there are issues that ICANN needs to be cognizant of going forward.

Cathrin, go ahead.

CATHRIN BAUER-BULST: Yes. Thank you, Alan. And just to say that I think Volker and Erika and I are actually not that far apart, because what Volker just suggested, namely acknowledging that issues have been raised by other, possible more competent parties on the specific laws that they're in charge of I think is a very useful and in fact essential thing for us to do, because we cannot fully ignore this issue in the report.

What I'm afraid of is that we should, on our own, set out to analyze examples and assess their compatibility or not with the OECD guidelines, because I think that's actually quite difficult to do given the somewhat vague nature of the OECD guidelines, which in and of themselves are addressed to governments and not to organizations that are implementing individual policies.

So, I would say entirely comfortable if we acknowledge that others have raised issues and that probably they have a point, and that there are efforts ongoing to address these issues. It's just I don't feel comfortable for us to do the legal analysis that others have done or attempted to do.

ALAN GREENBERG: I think we have coalesced on a single position, that is the two options of ignore it completely has gone down to a relatively simple review or comment noting that there are issues. We can cite references to other groups who have more in-depth knowledge in the area, who have identified potential issues, and leave it at that. And adding to that, also make a recommendation to drop it from the future – either drop it altogether or replace it if we have a suggested replacement from the Bylaws for future reviews.

I think we have an agreement. Staff, is that captured? Is someone capturing that? I'm assuming yes.

UNIDENTIFIED MALE: [inaudible]

ALAN GREENBERG: Thank you. Next item on the agenda is the one that says, "Assess whether RDS efforts meet legitimate needs of law enforcement." That in fact is something the GNSO said, but we have now covered that under the second 4.6 (e) (ii) and where the second and third line of this table is going to be rewritten to cover the two halves, so that's already covered there. And Cathrin does have a to-do, an action item to try to flesh out the law enforcement part of that.

I'm a little concerned on the promoting consumer trust and safeguarding registrant – rather promoting consumer trust part, because its words overlap significantly with the CCT review. But from a

point of view of RDS, I think it's a different view and I think we can come up with something there.

Curiously in my mind, those may directly overlap and conflict with privacy issues. I may trust a website or a URL more by having information on it, whereas privacy implications maybe I shouldn't have information on it. So, that may be an interesting section to write given that the future is changing under us. Volker, go ahead.

VOLKER GREIMANN: Actually, I think you're right on this one. Personally, I do not trust a site that has WHOIS privacy on with my business. But that doesn't mean I don't like WHOIS privacy, I just think that whoever's doing that site and putting himself under WHOIS privacy is making a bad call and probably foregoing a lot of business that they could be making.

So, I think consumer trust follows from WHOIS data is a factor in consumer trust. Not the only one, of course, but I think we have a role to play here and the similar sounding working group review team, their work does not necessarily conflict with us. Where it does, we should just acknowledge their work, not duplicate their work. Maybe stay informed of what they're doing at the same time, but where it's not conflicting, where it's not overlapping, then we have a role to play.

ALAN GREENBERG: Interestingly, it does go against one of the earlier things you said, and that is the privacy proxy group recommended that we not attempt to identify a commercial organization because of the perceived difficulty in

recognizing a commercial organization from a women's shelter which may have reasons for privacy, but an organization that solicits money, and therefore their recommendations may well be at odds with what we're looking at here.

And I think if we find such conflicts, we simply call them like they are and identify the issue, and we're not really in a position to make a change on it.

VOLKER GREIMANN: Just to comment on your remark there, I do not think there is a conflict or difference of point of opinion there. I think we as registrars, registries, service providers should not differentiate between whatever entity is requesting WHOIS privacy, but as a consumer we may make that choice for ourselves. And it may actually help us to have that visible in the WHOIS that there is nothing visible in the WHOIS when making [inaudible]. So, I'm separating my role as a registrar, registry here from the role as a consumer.

ALAN GREENBERG: We knock heads on occasion, but I agree on that one. Alright, so I think – sorry, that was really just going back to the previous item. So, that item disappears in its own right and goes up to item three of the current list.

Next one is assess how RDS current and future recommendations might be improved and better coordinated. And I think we already made the decision saying that assessing future WHOIS is something that's directly

overlapping with an ongoing decision process and we are not going to include that one in our list.

Volker, is that a new hand or an old hand?

VOLKER GREIMANN: The same old hand.

ALAN GREENBERG: Alright. The last item on the first page disappears. First item on the second page, assess compliance enforcement actions structure and processes, availability of transparent data. I think we already decided that that is within our scope, and we would likely do that to some extent.

The next one is assess the value and timing of RDAP as a replacement protocol. Given that we don't know what the functionality requirements will be for the replacement protocol, I don't think we can look at it from that perspective. We could certainly do an evaluation of whether RDAP is suitable to replace WHOIS without any logical changes to WHOIS. We know it is. But overall, I object to this item being there at all, because we are not experts in protocols. And RDAP was written by experts in protocols to replace WHOIS and add additional functionality. And I'm not sure we have a real need to do that within our scope. Dmitry, please go ahead.

DMITRY BELYAVAKY: I think that we should at least – I agree that RDAP is designed by specialists in protocol, but I think at least we should mention that it covers I think all the [inaudible] and WHOIS protocols such as privacy, [IDN], strict format, so on and so forth. So, maybe we should not study it, but we should say that it's a good solution to implement. Thank you.

ALAN GREENBERG: Any other thoughts on this? Again, if we're saying to implement it to replace the current WHOIS, that's already actually in the contracts, that there are contracts that say, "Should ICANN decide to go ahead with RDAP to replace WHOIS, the registries and registrars will adapt to it." I believe that is something in the current version of the contracts. I'm sure Volker can confirm or tell me I'm wrong.

So, I don't believe there's any need to do that, because it's a decision that has already been taken. And to judge whether it is suitable for the future RDS, we don't know whether that RDS will have requirements that are not met by RDAP and will have to require RDAP enhancements. So, I don't see how we can do that, but I'll go to Volker.

VOLKER GREIMANN: Thank you, Alan. Yes, as you may be aware that there's a certain amount of pushback from the contracted parties at this time against the plan to implement RDAP at this time, as you probably know, there has been an effort to implement RDAP prematurely as we would say simply from our view, because the policy background is somewhat defined and it would make more sense to implement it once that is done as well.

So, having to implement a protocol and then having to change a protocol from an economic perspective and from a perspective of the implementer is never very useful. We would rather implement it once the policy implications have been decided and we know what ultimately to implement, in which direction to implement it on our end because it has to function in our systems. And if we implement that has to change something, we might have to do the entire thing over because it doesn't work anymore the way we implemented it.

That said, the timing of the implementation is part of what we're discussing as well, so we might be able to say that, yes, it should be implemented now, or yes, we should wait for the implementation until we know what actually will be the policy implications and how the exact implementation would look like once it's being used.

So, that's my main concern, that when we look at RDAP, it's not – is it a replacement protocol? Yes, it is. Are we obliged to implement it at a certain point? Yes, we are. The big question is, when does it make sense to do so? And that's something that we can and we may want to or may not want to discuss during our group work.

ALAN GREENBERG: Okay. But the point of what I was saying was that ICANN has already made the determination that it is suitable to replace the current protocol.

VOLKER GREIMANN: Correct.

ALAN GREENBERG: It may be of a lot of wasted effort, and given the number of things we have to do, why are we going to go through the motions of replacing it to do a job which the current protocol does adequately prior to changing the policy?

So, I agree with you 100% on the position contracted parties are taking. I'm just saying we don't have to evaluate whether it's suitable. That has already been done. That part is done, and I don't see how we can evaluate whether it's suitable for the policy that is not yet written.

I have no problem saying that we suggest that we not move to a new protocol until we have a new policy, but I think that's already a decision that was effectively taken. But I may be wrong on that. In any case, I would strongly suggest that we not do anything more than what Volker is suggesting.

Dmitry, would you want to get back in, or are you satisfied with that? Go ahead.

DMITRY BELYAVAKY: I agree with Volker's suggestions.

ALAN GREENBERG: Alright. We will capture that, and essentially we will evaluate whether RDAP should be implemented prior to a new policy being developed which specifies exactly what the protocol – whatever the protocol is – will have to meet.

Next item is one that Carlton suggested, to assess whether the current protocol for current purposes is suitable. And I think the answer is yes, we can do that, but it is a really low effort one because it's trivial to find examples where it is not suitable and we don't need to exhaustively identify all the reasons it may not be suitable. So, I'm happy to keep that in with that understanding. We'll have to wordsmith the wording slightly, but I don't see any objection, any hands.

The last item is IDN. Carlton and Dmitry I think have suggested that, and whether the current things are suitable, whether IDN is considered certainly again, that's in the same class because IDN is in fact the simplest example of why the current protocol doesn't work or cannot work. So, that one is within scope, but again a very minimalist effort on it.

Are we done? I think we're done for today's review. We're at the hour, so I would not like to further this discussion in any case. But I think we are close to closure on the scope, so we'll need to get this –

VOLKER GREIMANN: Alan?

ALAN GREENBERG: Yes, I'll go to you in a minute. We'll need to get this redrafted, but we may be close. Yes, go ahead.

VOLKER GREIMANN: Yes, excuse me, Alan. You were a bit fast on the item on compliance, and the one that Carlton raised. Could you confirm the decision reached or action item, please?

ALAN GREENBERG: Compliance is within scope, and we didn't specify any more detail at this point. So, we will look at compliance issues. To what extent we focus on them, we will have to decide as we go forward.

And on Carlton's issue, we can include it, but it is again a very minimalist one because there are ready examples of why the current protocol is not suitable. But as we discussed on RDAP, we are not recommending a replacement just to fix those problems, because there's a larger change coming down the road and it's foolish to duplicate.

VOLKER GREIMANN: Thank you for the clarification.

ALAN GREENBERG: Okay. Next item on our agenda is the fact sheet. This is a relatively quick one. This is a document that ICANN staff will be publishing quarterly on our report on our progress, and I have one or two questions for the group on this.

This is comparable to the fact sheet that you've seen for other groups if you've looked at it. The only questions I have are, number one, if you look in the upper right hand corner, it says we are expecting this review to take 12 months. I certainly went into this review expecting to take a

lot less than that. And do we want to leave that 12 months there, or in fact set a target that's less?

I open the floor. Volker, go ahead.

VOLKER GREIMANN: If you've watched Starship Enterprise the Next Generation, you may remember Scottie the engineer who always overestimated and overperformed his time estimates of when something would be done. I think we should stick to the same and announce that we will need 12 months. And if we're faster than that, everybody will look at us and say, "What a good job they did," if we overrun our own estimates, then we are still within the estimate that we provided. So, I think better estimate on the safe side and leave the 12 months.

ALAN GREENBERG: I will accept that even though you have merged two different Star Trek series.

VOLKER GREIMANN: Sorry, I'm more a Star Wars man.

ALAN GREENBERG: Any other comments? So, Volker is happy to leave it and then overperform. I guess my overall intent is to get confirmation from the people in this group that our target is not 12 months but is less. But I'm

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fine with publicizing 12 months. I dearly hope this will not be a 12-month effort.

Alright. The other item is – and it's not really a debate, I'm just curious and I'd like to ask staff – the percentages of time that the section at the bottom identifies as going into the various efforts. And I'm just mildly curious how those numbers came about.

I would have thought the research and studies is a significantly larger amount than 20%, and the report gets written a lot quicker. Certainly if I had drawn this up, I would have put a much larger part into that second item and much less into the draft reports. And I'm wondering if anyone has any input. Volker, is that a hand on this, or a previous one?

VOLKER GREIMANN: It's a pathological problem I have of lowering my hand when I'm done.

ALAN GREENBERG: Well, I can stop calling on you if I see your hand. Is anyone on staff who handles this, or are these all people who weren't on the call right now? I can live with it, but I find the numbers rather an anomalous. I don't know if anyone else does. Any other thoughts? Anyone care? No one cares enough. Let's leave it be.

JEAN-BAPTISTE DEROULEZ: I will ask [Charla] if she can get back to you on that.

ALAN GREENBERG: Okay. Please. Thank you. Next agenda item is the agenda for the face-to-face meeting. I don't think we have enough time to talk about it here. It has been distributed. I would like to make a couple of comments. And if other people could think about it over our next two weeks. The important part of this agenda is making sure that we have the right people there. The detailed day to day agenda – or within the day to a large extent – we can be flexible on and revise as we go forward. And there are a couple of things that I think are missing from this.

Number one is there's a good chance – as I'll talk about in a minute – the GDPR may be done there. I think we need a discussion sometime on future teleconferences on an ongoing basis, when they are held, how often they're held, and the length. We had tentatively decided on a schedule until the face-to-face, so I think we need an item for that.

And my overall comment on it looking at it is I don't think there's enough value coming out of this meeting to justify the cost that's going into it. And part of that is due to the fact there is significant time allocated to the Terms of Reference and to the Scope, and I think the scope we're almost finished on right now, so I think we're going to have to try to put more substance into this meeting. And unless people object to that, that's something I'll work on, that the leadership will work on with staff.

I'm particularly concerned that although we're talking about subject matter experts, I only see one subject matter expert listed on this document, and that's Trang. So, I guess I would like to focus more on implementation briefings than we are on the other things. But I'll open the floor for other people to comment.

Short of having strong comments against that, then Cathrin, I and Susan will work with staff and see if we can make some adjustments in this. And Cathrin agrees with the substance. Alright, then we'll work going forward on that.

Quickly from staff, do we know who is confirmed coming to the meeting, or better still, who is not coming to the meeting?

JEAN-BAPTISTE DEROULEZ: As far as I recall – and Brenda, please correct – I think only Thomas was not attending the meeting.

ALAN GREENBERG: Okay.

THOMAS WALDEN: I'm sorry. Yes, that's correct. [inaudible]

ALAN GREENBERG: Are you likely – Sorry, go ahead.

THOMAS WALDEN: That the beginning of my agency's fiscal year, and financially they aren't funding any travel for the first two weeks in October. That was when we were [bannering] back and forth with dates, that was why most of the dates I gave were in September. So, unfortunately I won't be able to attend.

ALAN GREENBERG: So they're not funding travel and you're not allowed to take ICANN funding for it?

THOMAS WALDEN: Correct.

ALAN GREENBERG: Okay. Will you be participating remotely though to any extent?

THOMAS WALDEN: Yes, I will. I plan to [do that].

ALAN GREENBERG: Okay. Alright, so we will have full attendance that this meeting as far as we know right now in terms of participating, even if it's not face-to-face.

And I will tell you, chairing a meeting where one participant is remote and everyone else is in the room and can wave and make funny faces at you is a real challenge, but I'll do my best to make sure you get equal time.

THOMAS WALDEN: I appreciate that, and I'm sorry to [inaudible] challenge before you.

ALAN GREENBERG: No, no. And I'll say right now, please call me on it if I'm not doing that. I've been the sole remote person on occasion, and I know what it's like.

THOMAS WALDEN: Don't worry, I will.

ALAN GREENBERG: Thank you.

THOMAS WALDEN: Yes sir.

ALAN GREENBERG: RDS PDP calls is the next item, and that was simply a comment that it may be useful for people in this group to participate occasionally, either while the RDS PDP calls are going on, or listen to them after the fact just to get some idea of what they're going through. I will tell you that some of those calls end up being very productive, and other ones you wish you had had something else to do in parallel. But if I could turn it over to staff and talk about the methods that you can do this, I guess it's Jean-Baptiste who is the lone man standing here.

JEAN-BAPTISTE DEROULEZ: Yes. Thank you, Alan. In fact, [Lisa] prepared those two slides for your review which are currently projected. So, it's basically some background information on the role of the PDP on the WHOIS PDP Working Group.

And also on the second slide, [Lisa] has identified a few upcoming RDS PDP Working Group meetings, so each of them last 90 minutes and also she highlighted the fact that there will be one happening on the second day of the face-to-face meeting in Brussels at 6:00 p.m. local time. So, this would give us ability.

If you're interested in joining as an active member or as a mailing list observer, there is a signup form that is available and you can send a Word document [filled] to the GNSO Secretariat who will confirm that you are registered and an active member. And you have to know that only working group members can participate in working group calls, and that recordings and transcripts are public and accessible to anyone.

ALAN GREENBERG: Thank you. I'll note the second day is – we are talking about having an informal dinner for those who are still available on the end of the second day, but the RDS meeting goes until 7:30 p.m. so it's not incompatible with doing an informal dinner and attending that meeting should we choose to.

Thank you very much. Next item is Any Other Business. I didn't call for Any other Other Business at the beginning of the meeting, but I will once we complete the two items I have. They're both very short. Or one of them is very short.

I've been speaking with Theresa Swinehart on the GDPR briefing. The solicitation of input has just closed a few days ago, and her staff is busy analyzing the data and she asked if we could defer this for a little while. And a little while translates to either our next teleconference, the one

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on the 28th, or the face-to-face meeting. And I said I didn't see much difference on one of them or the other.

So, we can expect by no later than the GDPR meeting – than the face-to-face meeting probably. If there's some snag, I told her we're looking for quality better than speed. So, if there is some reason to defer it again for two weeks, that can certainly be done. But our target should be to get it done probably no later than the face-to-face meeting.

So, that's just an update on that and I think she understands what it is we're looking for right now. We're not looking for a pat on the head and saying, "Don't worry, ICANN will look out for you," but we're looking for some specifics of what ICANN is doing and what their expectation is to come out of it.

Lastly – and I see Dmitry your hand is up, I'll go to you in a moment – I'll note the next meeting is on the 14th of September, and the one after that is on the 28th. And two days later, most of us get on planes to go to the face-to-face. And the question is, do we want to hold that meeting on the 28th?

We don't have to make a decision today, but my inclination is to cancel that meeting, and I'm wondering if there's any input and thoughts on it. We can certainly do – I can do a poll on the mailing list. It doesn't have to be decided this moment.

Jean-Baptiste, go ahead.

JEAN-BAPTISTE DEROULEZ: Yes. I just wanted to raise that – and I don't have the schedule of briefings yet – but there might be an opportunity to have a briefing schedule on that date. Just a heads up.

ALAN GREENBERG: Alright. Carlton said cancel. If you can give us some idea of that, that may be a reason to hold it.

JEAN-BAPTISTE DEROULEZ: Yes. We are waiting for feedback on that, and as soon as we have information, we will share it with you.

ALAN GREENBERG: Okay, thank you. And I trust you'll also take into account my comments and Cathrin's on the lack of real substance in the meeting, in the face-to-face, and perhaps that's an opportunity – if we can get the right people there – to look at some of the more controversial implementations or the more interesting ones. We have Dmitry and then Cathrin, please.

DMITRY BELYAVAKY: Do we have plans to have face-to-face meeting during the ICANN60 meeting?

ALAN GREENBERG: No. I believe we decided we would not hold a face-to-face given that we had a face-to-face just four weeks before.

DMITRY BELYAVAKY: Okay.

ALAN GREENBERG: So, there is not going to be a face-to-face meeting. We still have an opportunity – if we thought we had anything to present – to give a public facing meeting, but to be honest, I don't think we're far enough along to warrant that. If anyone differs, we can certainly still look at that, because the schedule is still being developed. But I don't believe we had intentions of holding a Review Team meeting there, and therefore people who are not otherwise at the meeting are not being funded for it.

Cathrin, go ahead.

CATHRIN BAUER-BULST: Thank you, Alan. And actually, it's exactly what Dmitry was asking about, because I also have to make travel plans for ICANN60 and I remembered our discussion concluding that we would not have a special official face-to-face meeting, but that there would be an informal meeting of the Review Team, if possible.

And I also remember that we indeed did not think it was useful to have anything public facing, but the informal meeting I think would be quite interesting to have, possibly even with remote participation for those who are not going to be traveling. And because the schedule is filling up so quickly, it would be really helpful to have an idea of when that might happen. Because I'm being asked about other sessions and whether I

have preferences on timing. And it would be really good because I do want to be there for our informal, it would be really good to have an idea of when that might happen.

ALAN GREENBERG: Yes. Thank you, Cathrin. Thank you for reminding me. I had forgotten about that. I think it's a given that it is impossible to set up a session where there will not be conflicts. So, within that scope, I guess it's a question for staff. Who will have responsibility for attempting to schedule it and trying to find the right slot? Does MSSI have its own set of sessions that it's scheduling, and therefore will do this one as well? And Jean-Baptiste, I guess it's you again who has to make up an answer.

JEAN-BAPTISTE DEROULEZ: I would have a few questions on that. So, is it an informal meeting that you want to have like in a meeting room or something more on the – like you would like to meet around lunch time? What we could do is to send out a Doodle poll with different timings on the different days of the meeting just to have a better idea on when the most Review Team members would be available to meet.

ALAN GREENBERG: Yes, I suspect most Review Team members don't have a clue at this point because the rest of the schedule is not settled. My inclination would be to try to do it as a lunch meeting. Not in a restaurant, but in a private room if you have the budget for catering that. And hope that we

can find one lunch hour – or breakfast for that matter – where most people can be available.

I think doing it outside of a food event makes it almost impossible for a significant number of people to be there. Even lunches and breakfasts are often scheduled, but I think there's more chance we can find one of those. So, let's try. I'm not quite sure the method. I don't think a Doodle today will be very effective.

JEAN-BAPTISTE DEROULEZ: Yes. [inaudible]

ALAN GREENBERG: We can try to block out one or two and then hope that each of our groups can allow it. And I'll talk to my scheduling people and see if they can try to keep an eye out for that.

Cathrin, go ahead.

CATHRIN BAUER-BULST: Sorry. Just to say I think the lunch meeting is a really good idea. And I remember we already did a Doodle on who's planning to attend ICANN60, so we already know whether there is a need to organize remote participation or not for those who cannot come to Abu Dhabi. I remember that actually quite a lot of us were planning to be there anyway. [inaudible]

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ALAN GREENBERG: I'll ask staff to reconsider that. But if we do it in a meeting room, pretty much every room has remote participation. But thank you for that reminder. Anything else? Cathrin, I assume that's an old hand, and it is. And we are at 23 minutes after the hour. We again have proven that it is likely to be impractical to have 60-minute meetings, but we are under the 90-minute mark. And I'll turn the next six or seven minutes back to you to do as you wish. Thank you all for being here. It's a good meeting. Bye-bye.

UNIDENTIFIED MALE: Thanks, Alan.

[END OF TRANSCRIPTION]