
PATRICK DODSON: Remote people, can you guys hear me? I'm on the microphone right now. I want to see if it's working properly. Stephanie and Thomas, this is Patrick. You can hear me?

[It's Erika]. Great. [inaudible].

Yes, thank you very much, Stephanie. I appreciate it.

Okay. A real quick process check, as often happens, things are shifting based upon what we're learning in the room as we discuss these topics. We want to get into the points of starting to truly address the debates and discussions that were surfacing this morning, but what we would also like to do is take a little bit of a step back and do some prioritization.

So rather than do the alignment exercises I had mentioned before at the lunch break which we haven't done and there were some valid points brought up as far as the completeness of some of that information at this stage, we quickly regroup with the co-Chairs and we have a slightly different exercise that we will need to help the remote folks capture what these categories are as I read them out. Alice and Jean-Baptiste?

But what we want to do at this point, part of our assessment from this morning's discussion is that there are a lot of things that we can debate. The question is: what are the right debates to have based upon the importance and prioritization or even inclusion in what would be formally reviewed as a part of this Review Team's efforts?

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

So, we've come up with a bit of a different framework for assessment that we'd like to ask you guys to do. Think of it as a poll, and we're just trying to get a sense from the group at an individual level on where they are on the prioritization, important feasibility, value of the different scope elements that are currently on the table.

We have a table graph for the remote participants. The exercise that we're going through right now is the prioritization exercise. So, you have that table in your handout that were sent to you last night. What has changed are the header categories on the voting which is what it was originally thought to be. This is now a polling to identify where everybody is as far as each of the ten different topics under consideration.

The headers and we, by all means, considering these were our discussion over lunch, think that these are complete, the absolute right ones, we'll go through this process probably once or twice. But what we want to do is start to localize where the right next discussion is that we should have as a group rather than run the risk of debating something that at the end of the day might not actually make it into the final review effort.

The headers that we have here – I'll read this out for everybody in the room, and they're being transcribed into the chat, I believe, right now by Alice and Jean-Baptiste, thank you – are that for each of the ten topics that we went through this morning and added content too, we have some categorization. This isn't about scope as much as it's about focus for the Review Team on the merit of it being involved in being reviewed.

We have some different headers here. The first one is that it's an important topic but it's not valuable at this time to review it. So, there were examples this morning that were brought up where there were arguments proffered up and we want to see how many people are aligned around that opinion on an example there where it's important but not valuable. I think some of the RDAP activity might be there.

The second categorization is "Important but not feasible at this time." This is where we have some PDPs under evaluation or things haven't been implemented yet, and it's too soon to draw a conclusion on effectiveness. There's some topics that way.

There's the center column on this five-column grid is "Should be reviewed at this time." Fourth category is "Unimportant. Don't include for review." And then the fifth one is "Unsure. Too soon to make a conclusion."

So, now [inaudible] the version of the European DJ routine which I was listening to at the Alif Hotel lobby at midnight last night.

We want to get a heat check, a temperature check on where we have agreement or disagreement angst this type of a framework to identify not that it should be in or out of scope but where do we need to localize and have some discussion or debate because one of the things that came out of this morning's conversations and what side conversations are there might be points where it is a particular element might be acknowledged and noticed but not an opinion offered or a recommendation made. And so, there are different variances I think within these topics that we were seeing and hearing this morning.

So, I would like to ask everybody to grab a sharpie pen for your polling.
Yes, Alan?

ALAN GREENBERG: Just a comment. Unless I'm mistaken, people putting things in categories 1, 2, and 4 end up having the same impact. That is, they don't think for one reason or another that we should be doing it. Is that assessment correct?

PATRICK DODSON: Yes. One of the words in here is the reviewer. And a review infers analysis and recommendation versus comments. No, that's not accurate. I'm getting mixed up on our terminology at this point. It'll ask for help.

SUSAN KAWAGUCHI: If we do a review, it doesn't necessarily conclude with a recommendation. You could do a review without coming up with a recommendation. But you can't do a recommendation without a review.

PATRICK DODSON: Okay. Got it.

ALAN GREENBERG: What I was saying is that if it's either not feasible, not valuable or we will not review it, they all have the same net effect.

PATRICK DODSON: They do but I think is that –

ALAN GREENBERG: Okay. You don't want to summarize them yet. Go ahead.

PATRICK DODSON: No, that's okay, Alan. I think that's valid. I think that the other point though is we want to identify with just amongst this Review Team what their opinions are of these different topics to identify if we have everybody agreeing that this is important but not valuable versus it should be in the review, right? So, this is just to identify where the gaps are in alignment.

ALAN GREENBERG: Yes. I'm just a little concerned that some of us, for completely valid reasons, may put the same item in different categories with the same intent. That's okay.

PATRICK DODSON: Okay. Apologies for it being over a little bit on the screen. We're running out of wall space and we can move this if we need to. Each of these are the topics that we discussed this morning on the column to the left. Spend some time, read them, think about it and where would you put your checkmark to the best of your understanding of this, and let's see what the outcome is. And then we'll see what the discussion needs to

be from there. I just want you to put checkmarks up here. It will not leap through on the wall. I'm a trained professional.

Thank you, Alan. All right. Yes, Dmitry? Question.

DMITRY BELYAVSKY: Just to clarify. This time, in the sub-point, it means the current meeting or our scope.

PATRICK DODSON: This Review Team's effort. This review. Yes. Not today. Yes, the efforts of the Review Team or RDS2. Yes, thank you.

Are there any questions from the remote participants? Okay. So, they'll convey their assessments or their polling results to Alice and Jean-Baptiste and that will be tallied. And I'll ask everybody here to just take the next ten minutes to think through and come up and make your marks and let's see where we have any kind of grouping or clustering or if we don't. It's all right here on the paper. For this one, it goes, you would check here. For this one, you might stay here. Yes, I'll click all of it.

Correct. Yes, for legibility that are saying that are on the latest scope document and they're in the same order as well.

Yes. Stephanie and Thomas, this is Patrick. We have updated the Google Document that you see on the screen now. You can't modify it but you can come through and under the topics that are there, they are ranked one through ten. It's in the same order as in the scoping document that

was sent out that you guys have been working on. And we want to then identify up the new five headers that we've established. We've numbered those as well so you can go through and for Topic 1 is your poll response 1, 2, 3, 4, or 5. And then subsequently do that for the remaining nine and we'll have your polling results as well that we'll transfer over into the analog poster.

ALAN GREENBERG: What category do we use for something which is important but included within another one?

PATRICK DODSON: [A valuable] because it's already being done by somebody else.

Welcome to the party, Erika. Welcome.

Stephanie, welcome to Google Doc. Wonderful. All right. We're going to get Stephanie's contributions up on the wall here as well. And Thomas, if you're there as well, if we can get your results of your polling, we'll include that too. Then I'll do a readout of the results and we'll ask the Review Team how they want to tackle it next as far as the topics. So, we'll see where the outcomes are and have a conversation about that.

We have until 3:15 is our next scheduled break which is about an hour and 35 minutes from now I think. So, we'll identify the topics and then see if we want a time limit a discussion and then open the floor for the conversation. And then Lisa and I will be doing our best as well as Jean-Baptiste and Alice digitally to capture the points being raised as you guys have your discussion.

Everybody in the room here has already posted up your results. Anybody still working on it? Okay. Got it? All right. Just give me a minute here to tally it.

Okay. I don't know for remote participants, Alice or Jean-Baptiste, if potentially, you can add to their comments in the Google Doc with the numbering of the results for the group including their votes or poll polling results. We're not voting.

So, I did go through and number them. Hopefully, you can read my handwriting. It's truly not as good as the professional font that I've used. We have our first point of consensus, everybody. Just a handclap for everybody. We got nine out of nine on the first one which is also in the Bylaws that should be reviewed at this time.

You have on the second one, the Board shall cause a periodic review to assess the effectiveness of the then current RDS. We have eight. [Having a] numbering issue here. We have nine but ten, nine. I'm wondering if I had double counted. So, eight and two, we got ten. So, we've got some votes. I've got nines and tens as the total. I don't know if I'm misreading some of the checkmarks so help me if I'm misrepresenting anybody.

Chris Disspain stepped out. So, somebody did it on the first one. That's ten, ten, nine, nine, nine. That's fine. No, it's fine. I'm just double-checking it.

So, second topic is eight which should be reviewed. Two "Important but not feasible at this time." Three "Implementation. Legitimate needs of law enforcement." Five that it should be reviewed at this time. Four results in the "Important but not feasible at this time." And one in the

“Too soon to make a conclusion.” We know that that’s going to be a topic for discussion. We’ll come back to that.

And whether it’s implementation meets the legitimate needs of voting consumer trust – we have three in the [not] “Important but not valuable.” Three “Important but not feasible.” Four “Should be reviewed at this time.”

And whether it was implementation meets the legitimate needs of safeguarding registrant data – one “Important but not valuable.” Two “Important but not feasible.” Six “Should be reviewed.”

Number six, the OECD topic. One “Important but not valuable.” Six “Important but not feasible.” Two “Should be reviewed at this time.” Seven “Assess compliance enforcement, action, structure and processes.” One in the “Important but not feasible.” Seven in “Should be reviewed.” And one in “Unimportant. Do not include for review.” I’ll go through the rest of these and then I’ll open it up to comments and observation.

Eight is “Assess the value and timing of RDAP.” Four as “Important but not feasible.” One as “Should be reviewed at this time.” And five for “Too soon to make a conclusion.”

Assess current protocol for current purposes. We have one in “Important but not valuable,” “Important but not feasible and should be reviewed.” We have two in “Unimportant,” and four in “Too soon to make a conclusion.”

And then IDNs. Two “Important but not valuable at this time.” Six “Should be reviewed.” And one “Too soon to make a conclusion.” You’ve made a comment that this is interesting. What was interesting? From law enforcement? Online? Sorry.

DMITRY BELYAVSKY: The one in law enforcement. It’s interesting that breakout, important but not feasible at this time and it should be reviewed. That’s a black and white. The IDN one is down there. I was kind of [budging] my own conflict because one fact, I really have an interest in looking at internationalization per se because that one, I think it would be useful for us to explore a little bit about the translation issue when it comes to elements, not just the name, the name type, the name of the domain name but the elements, the relevance that a part of it was [record]. So, I’m quite interested in [C6 versus] I don’t want to go too deep into that and I wonder how are we going to limit what we do at the IDN level. I really am interested in seeing how we do that.

ALAN GREENBERG: The last one also, I would like to understand more people’s comments because my thoughts are it’s largely included in the existing recommendations on IDN or national character sets or an extension of it so I’m not sure why it’s a separate item.

DMITRY BELYAVSKY: If you agree, it becomes a much smaller [inaudible] for us. Yes. Okay. All right, good.

I think that I agree with Alan that it's a battle for other process. But I think we should just review the documents and on this point, I will [go over] them. Thanks.

ALAN GREENBERG:

My concern is not with IDN. I'm just worried that if we start a new [inaudible] the other things that were already done in the previous review has new items that it ends up getting a little bit hairy.

PATRICK DODSON:

Okay. So, I just did a quick color coding on the topics here while we were just chatting through that topic with greens indicating a strong or stronger emphasis on "Should be reviewed at this time." And we have one, two, three, four, five of those, and then five that I have color orange which have a broader dispersion and are probably worthy of some other discussions as well.

So, we touched a little bit here on the law enforcement one where we've got almost a split of five "Should be reviewed at this time" and four "Important but not feasible at this time." I'll just back up. Do you want to take these orange topics as a place to start the discussion? How do you guys want to use the time going forward? Alan?

ALAN GREENBERG:

I'm particularly interested on the ones that we're making a decision to go ahead on what the views are of the people who disagreed and try to understand why it is they thought something that the majority thinks is

important was something we shouldn't focus on. I think that's important.

PATRICK DODSON:

Great. Thank you, Alan. Unless there's objection, I'm going to go ahead and dive in then. So, no objections on the first one, but on the second topic, there were two who voiced an opinion that it's important but not feasible at this time, and that is assessing the effectiveness of the then current RDS. Is anybody that was one of the two points made there who want to comment?

Okay. The next one with strong agreement, six to move forward on the evaluation of implementation meeting legitimate needs of safeguarding registrant data. We had six there. We had two in the "Important but not feasible" and we had one in the "Important but not valuable." Alan?

ALAN GREENBERG:

My votes are easy. I'm the left-handed tick. So, I was "Important but not valuable." And I've ticked that off because it's quite clear we don't protect user data right now in any of its many definitions. So, I'm not sure there's a lot to gain by spending a lot of time on that.

PATRICK DODSON:

Okay. Any other counterpoints? No?

That was in the "Important but not feasible" or "Important but not [inaudible], important but not valuable." Alan. [inaudible]. No. We're talking about 5. Sorry. Apologies. Okay.

The next one. We had one on “Assess compliance enforcement, action, structure, and processes.” We had one in “Important but not feasible,” and one in “Unimportant. Do not include.”

Does anybody want to make any comments on those contributions?

Seven, compliance. Assess compliance enforcement, actions, structure, and processes, availability of transparent enforcement of contractual obligations data.

No comments?

The last one: IDN. We had two in the “Important but not valuable.” Six “Should be reviewed,” and one “Too soon to make a conclusion.”

Anybody have any comments or thoughts they’d like to share there?
Alan?

ALAN GREENBERG:

I did a Category 1 because I believe it’s already included in Item #1.

PATRICK DODSON:

So those are the green ones, and we seem to have rough consensus that those need to be in scope. I think that that’s a point where we just table it now for when you have to get into the broader part of the work planning effort to identify if that scope is a little or a lot within the review, unless you all have another thought.

I wanted to go back now to look at the orange ones and see whether there’s a bit more disagreement on inclusion for value. The first one is

the law enforcement. We have five “Should be reviewed,” four “Important but no feasible,” and one “Too soon to make conclusion.”

For those that checkmarked the “Important but not feasible” area, do you have any comments you would like to make? Or explanation?

Erika?

ERIKA MANN:

Yeah. I put this on because I think it’s very difficult to evaluate because first of all, law enforcement responds very differently and they have different request systems. So if you want to get this right, I’m very doubtful these will be in this group and we will be able to do it, actually. I would love to have it in there to be included, but I’m just very worried that, because it will be very difficult to get it right, we might waste expectation on something which is not correct. So I wonder how we can do it. That’s why I put this in this little frame. I think we have to be very super-careful to include it but be very cautious how we do it to avoid any misrepresentation in the future about what we want to achieve or what we think is right.

ALAN GREENBERG:

I put this in that same category when we started, and I changed. We gave Cathrin the challenge of defining legitimate needs, and she came up with a relatively short, concise statement that I think is usable. I think the evaluation, to the extent that we can do it, can be done with surveys of actually dealing with law enforcement and trying to get some feedback.

Right now, law enforcement has access to all the information that's there, so all we could do – really the only question is: is there something we could do to increase accuracy to the extent that accuracy is important? We can certainly make comments on that, and accuracy already is covered significantly in the current reviews, which is why it put it as both feasible and important.

I think it's something we can address. It may not meet the needs of everybody, but remember, we're in the context of the current WHOIS, not the next WHOIS. So I think it's doable. That's why I made it as feasible. Thank you. But I did start off with your feeling before Cathrin came up with her nice, short sentence.

ERIKA MANN:

Yeah. I understand. That's why I have it in the frame. So I'm just waiting out about it, not against it.

PATRICK DODSON:

I would characterize it as risk on scope [inaudible] to the point of challenge.

Anybody else have any other thoughts?

We have – Volker, please. Sorry.

VOLKER GREIMANN:

I'm on the "Too soon to make a conclusion" column here on this one because I simply feel that this has too many variables at this point that

would have to be defined. This is not a no. We should probably do this once we finalize what this actually means. What do we mean by law enforcement? What do we mean by legitimate? What do we mean by needs? We must define it before we can make a decision of whether we can take this on effectively or not.

PATRICK DODSON: Great. Thank you. Any other comments?

ALAN GREENBERG: One other one. From the perspective of whether law enforcement needs just crime law enforcement or also data protection law enforcement, again, I think it's a completely different question and different set of answers. But I think it's pretty easy with the existing RDS. We don't do anything in that area, so we're not [meeting the need]. So that's why I felt comfortable with that within the scope or without the scope. Thank you.

PATRICK DODSON: Thank you, Alan. Jean-Baptiste?

JEAN-BAPTISTE DEROULEZ: Yes. There is a question from Thomas.

PATRICK DODSON: Yes, Thomas, please.

THOMAS WALDEN: I concur with Volker [inaudible] –

PATRICK DODSON: Yeah, the audio is coming in very faint.

THOMAS WALDEN: Is that better?

PATRICK DODSON: Yeah. That's [inaudible]

THOMAS WALDEN: Okay.

PATRICK DODSON: Sorry, Thomas. We're having audio issues here.

THOMAS WALDEN: Okay. [inaudible]

PATRICK DODSON: Okay. Yeah, if you want to type it in, Thomas, we'll make sure that we get it read out.

THOMAS WALDEN: [inaudible]

PATRICK DODSON: Okay. Let's tackle the next one here for a second, which was #4, whether implementation meets the legitimate needs of promoting consumer trust. This is three in the "Important but not valuable," three in "Important but not feasible," and four in "Should be reviewed."

Any comments from those that contributed on the first two categories?
Erika?

ERIKA MANN: Again, I have it in this frame. In principle, I would love to see it included, but unfortunately the term "consumer trust" is quite loaded in legal terms, and one has to be obviously very careful with how to use it because you automatically will have a certain obligation if you include it in your list of obligations, which you then will have to fulfill, at least in many laws globally. So one has to be a little bit careful. In principle, yes, but again, it depends on a more detailed and careful definition – what we want to capture, actually, there. Just in consumer law it's a bit too broad, I would say.

ALAN GREENBERG: I also put "Not feasible" for that one for the same reason. I just don't think we can define it well enough in the timeframe for this review to do anything really meaningful.

PATRICK DODSON: Great. Thomas, can you check the audio again and see if you can speak? Then we'll have Volker go. I just want to make sure that Thomas is able to. We have IT in the room now.

THOMAS WALDEN: [inaudible]

PATRICK DODSON: Thomas, go ahead.

THOMAS WALDEN: Is that better?

PATRICK DODSON: Yes.

THOMAS WALDEN: Outstanding. I wanted to say that I concurred with Volker in the last comment made there regarding the WHOIS and in regards to law enforcement. I wanted to say this a little bit further. Maybe a discussion needs to be had regarding the PSWG and some various entities regarding exactly what they require. My understanding is there's been some discussion ongoing with some of the shepherds or some of the RIRs regarding the WHOIS policy and how to best try to get policy implemented that would benefit all aspects of law enforcement and to help them in their endeavors. However, maybe there's some additional

questions that need to be answered that need to be discussed also. I just wanted to put that out there.

PATRICK DODSON: Thank you, Thomas. Volker, did you have a comment to make?

VOLKER GREIMANN: Yes. This seems then, when we're dealing with consumer trust issues, that it would duplicate a lot of issues that other groups are currently taking care of. There is [inaudible] panel that specifically deals with the consumer trusts issues. Therefore, would we be duplicating their work or would we actually be adding something valuable to their work? How would this pan out? That's my question.

PATRICK DODSON: Okay. For the sake of folks who can't see me in the room, I've been taking some notes on the comments that are being offered up and putting them next to the readouts that we did from the first exercise, just so, under the consumer trust topic, it's a question of redundancy and duplication, and the also that consumer trust is loaded language. So I just want to capture these for the good of the conversation to keep going as we go further into exploring the scopes.

Alan?

ALAN GREENBERG: I don't think the Consumer Trust Review Team – Carlton can comment more – has really a lot of overlap. They're looking at consumer trust associated with new TLDs, not with WHOIS.

CARLTON SAMUELS: Yes. It is our [inaudible] to the consumer trust issue. It has to do with new gTLDs in general, not just WHOIS. It doesn't matter [inaudible] very small. Tiny, tiny, tiny part of it.

UNIDENTIFIED MALE: [inaudible]

PATRICK DODSON: I'm sorry?

CARLTON SAMUELS: Two sentences. If you read the... It only comes into being because of the identification requirement. That's it.

PATRICK DODSON: Thank you, Carlton. Any other comments on that one? We have a bit of a tie here on "Important but not feasible" and "Should be reviewed." Maybe for the folks who are part of the 4 that said it should be reviewed at this time – are there any comments that you'd like to make?

No? Okay. The next one here is Category 6/Topic 6: the review team for directory services OECD guidelines on the protection of privacy and trans-border flows of personal data as defined by the OECD in 1980 and amended in 2013. We had two that said it should be reviewed at this time. We have six where it's important but not feasible at this time, and one that it's important but not valuable, which I think was Alan, if I looked at the checkmark correctly.

Any comments there from those that thought it was important but not valuable or feasible at this time to this review?

Alan?

ALAN GREENBERG:

I'll give mine. Given that there are GDPR issues going on in the very short term and a new PDP in the long term, all of which have to address privacy issues, and the fact that we know this current doesn't address privacy at all, not does it address trans-border data flow, I don't see any value in going through a process to say it doesn't do it.

CARLTON SAMUELS:

Here's something else. [inaudible] if you do anything now. There is going to be some outcome when the fines go into effect next May. Somebody is going to have to do something to reduce the risk. I think we have time so don't worry about it.

UNIDENTIFIED MALE:

[inaudible]?

CARLTON SAMUELS: GDPR, yes.

PATRICK DODSON: Cathrin?

CATHRIN BAUER-BULST: Thanks. I put important but not feasible because the OECD guidelines, for better or for worse, are guidelines that are addressed to state for them to take into account in their rule-making. But it's actually not a set of guidelines that fits our purposes. Rather, we should be looking at how they have been taken up in different laws that then apply to us, but not the guidelines in and of themselves. So that's why I put "Important but not feasible."

PATRICK DODSON: Volker?

VOLKER GREIMANN: I agree with this. That's why I put my mark in brackets there. The question is not the OECD guidelines. The question is broader than that, i.e., what flows out of these guidelines, how they've been implemented, and how the implementation affect us. So I think this is a very important topic that we should discuss, but the headline is wrong.

PATRICK DODSON: Are there suggestions on a different framing for it that might rechange the polling?

Erika?

ERIKA MANN: I still would want to keep the reference to the OECD because there are still many countries globally who are searching for solutions. To have the reference somewhere mentioned is not bad, but it's not something we can base on the future policy on the WHOIS. So it's just a reference base. Maybe we should do this in other areas as well if we need to.

PATRICK DODSON: Okay. Thank you. Cathrin, please.

CATHRIN BAUER-BULST: Sorry. I don't know whether this [is too many details] but I think that raises the point that Alan was already making, whether this is an item or we actually should think about possibly changing the Bylaws instead of just saying we cannot address this. Maybe that's delving too much into the details, but we actually take issue with the task that we are given and have to think about reframing it and what that means for us, rather than addressing the task as it stands.

PATRICK DODSON: Alan?

ALAN GREENBERG: At this point, I think it's a given, although we can obviously make a formal decision one way or another, that one of our final recommendations is going to be on the Bylaw and whether it should be changed or revised completely, whether we propose a revision or propose it be done sometime. We found enough things wrong with it, of asking us to make judgments where we don't even understand what the words are, that we would want to attempt that the next group that meets five years from now, probably not including any of us, have a slightly easier time. Of course, they will still be talking about the ongoing PDP.

PATRICK DODSON: Ouch. Okay. A question, though. It sounds like if it were to be reworded – forgive me, I don't know if this is one that is Bylaw-mandated or was offered up by GNSO – okay. So, yeah, that will help dictate your course of action.

Alan?

ALAN GREENBERG: It's the main item that is in the Bylaw that was not in the Affirmation of Commitments. It was added in on the fly, and one could comment on that process. But we won't.

PATRICK DODSON: That's also out of scope, right? Okay. The next ones are the two RDAP-related topics. We only have one[s] in the "Should be reviewed at this time." For the first one – we'll take them one at a time – [8] assess the

value and timing of RDAP as a replacement protocol. There are four polling results for “Important but not feasible at this time.” There was one “Should be reviewed,” and five “Too soon to make a conclusion.”

I’ll open up for comments on the too soon or important but not feasible.

Dmitry?

DMITRY BELYAVSKY: As RDAP is not currently implemented by most registries, I don’t see a practical difference between 2 and 5 points, so I [inaudible] point 2, but it can be point 5 with the same success. That’s all.

PATRICK DODSON: Okay. Alan?

ALAN GREENBERG: I have a question for those who answered “Too soon to make a conclusion.” Do they foresee that we will be able to make that conclusion during the life of this group, or does too soon mean that sometime after the PDP finishes we’ll be able to make a conclusion? Because if we’re predicting we cannot draw a reasonable conclusion during the next two or three months, then it’s the fact that we don’t do it. So I agree that until the PDP completes it’s a moot question, but I’m just not predicting that will happen in the lifetime of this group or my lifetime.

PATRICK DODSON: Volker?

VOLKER GREIMANN: Maybe I should qualify that checkmark in a way. When I made a checkmark in “Too soon to make a conclusion,” it’s not the subject matter at hand but rather on the question of whether the definition we currently have in place for our work is sufficient to make the work possible, as in we would have to scope the question better and maybe narrow it down at parts to make sure that this is a feasible question. That question was obviously not yet answered, so I couldn’t favor a “Should be reviewed at this time.” I was rather pointing out that we would have to do some work to make this question workable.

ALAN GREENBERG: That question didn’t come from the Bylaws. It came from the GNSO. So I put it to the GNSO representatives at this table. Can they flesh it out more or not?

PATRICK DODSON: Susan, please.

SUSAN KAWAGUCHI: I put it in Category “Too soon to make a conclusion” because I do think it warrants some discussion by the Review Team, but I have a feeling that at the end of that discussion – I would hope it wouldn’t go more

than an hour or two – that we would say, “Okay. That is as much review that we’re going to do. There isn’t really anything there that we can look at, and we need to move on.” That’s where I sort of see it going, but I don’t have enough information at this point to know that.

PATRICK DODSON:

Great. Thank you. Anybody else on that topic?

I’ll move to the related one, which is to assess the current protocol for current purposes. This was the only one that had a checkmark in every column. One “Important but not valuable.” One for “Important but not feasible.” One for “Should be reviewed.” Two for “Unimportant. Don’t include,” and four for “Too soon to make a conclusion.”

9. Assessing current RDAP protocol for current purposes – current WHOIS.

ALAN GREENBERG:

We have a protocol that’s been in place forever, and it is well understood what it does and how it does it. Why is it too soon to make a conclusion? I’d like to understand that.

PATRICK DODSON:

Volker and then Cathrin.

VOLKER GREIMANN:

For me this is the question of purposes. This is a very deep question, a very long question, that the RDS Working Group has dealt with for

months now and probably will for another couple of months. If we can make a definite call on what the purposes are for the purpose of our review, then I think we should move that to should be reviewed at this time. At this point, I just don't know what this means when we say "current purposes." What are those?

PATRICK DODSON: Cathrin?

CATHRIN BAUER-BULST: I fall into the same category but for different reasons. But I also felt that, for both this and the one above, for me it was too soon to make a conclusion on where I fall on this scale. So it wasn't too soon to make a conclusion on the protocol but the question is not sufficiently clear to me on both for me to say this is unimportant or important or that this should be here or there, beyond the point that we were discussing earlier.

PATRICK DODSON: Great. Thank you. Good clarification.

Okay. We've now gone through all of them – the objections and the outliers – for the ones that I marked in green, which were should be reviewed at this time, and those include Topics 1, 2, 5, 7, and 10. I see, of the remaining five, the law enforcement one I've moved from orange to yellow, meaning that it is important but on the exploration on feasibility and Cathrin's definition, there's probably some more work to do be done there, either as a large group or we'll identify here in the

next section how you as a Review Team will tackle getting a little bit more specific around these scopes to see if there's a different polling result if we were to do this again. That would be I think for the law enforcement one as well as the RDAP question that just seem to lack a little specificity or the right clarity for a better determination.

That leaves consumer trust and OECD as ones that are still questionable for feasibility of including in the review. I don't want to overly characterize it. I'm just trying to do a bit of a readout of where we are for the last 40 minutes of conversation.

Any disagreements? Any mischaracterizations that need to be clarified?
Any other comments?

If not, then my next question to the group is going to be: what do you think at this stage is the right next step for this group to tackle some of the areas of lack of clarity to make that determination? I think that, with the green ones, you're ready to go into more of the work plan effort. It's the yellows that need some reevaluation or further clarification. I'm just open to suggestion or thoughts from this group on how they'd like to tackle that. Would they like to do it as one big group and tackle one at a time, or would they like to potentially break into groups based upon interest and understanding and context? What are you guys' thoughts?

Cathrin and then Erika?

CATHRIN BAUER-BULST: I like the one big approach because we're not that big of a group and maybe we can get through it quickly. That's just my first opinion.

PATRICK DODSON: Okay. Great. What I'd like to do at this point is a quick time check. Erika wants to go to the bar. 2:21. How about if we take a ten minute break here? We'll reset the room and restructure it. We'll try to go and do a beer run. So give us ten minutes and we'll restructure this and then we'll take those two topics and see if we can get them to a place that would change the polling results and clarify for the stage setting for work plan work tomorrow, if not starting that process later this afternoon. We can also reevaluate to see if anything has been brought out of scope or reduced in scope size for feasibility on just the Review Team's efforts.

All right. Ten-minute break. For remote breaks, ten-minute break, and then we'll reconvene.

UNIDENTIFIED MALE: [inaudible] This is [Eric].

PATRICK DODSON: 30 seconds and we'll start again. 29, 28... I can hum the Jeopardy [inaudible] exactly 30 seconds.

Okay. I think we might be waiting for a few to come back in, of course.

For the next 40 minutes – then we have another scheduled break, we can decide if we want to take it or not – I thought this would be a good time window for us to tackle one of these topics. Looking at the first one that we generally agree needs to be in scope but there are just gaps to

close is the law enforcement topic. We've pulled that one up forward here, and the Google Doc can be referenced for the remote participants.

Part of this is I think to look at – as we go through the objectives text, it includes some of the clarification language from Cathrin that helped Alan get a bit more comfortable. But I know that there's still some issues, specifically around some definitions of terms, and one of them, just to start with – let's see if we want to start here – is whether or not this is applicable to civil, criminal, or digital law enforcement. What do we mean by law enforcement or what do we believe this needs to mean by law enforcement?

Thanks, [inaudible]. If you want to pull that up and – I wouldn't put it up on here, but... yeah. The remote folks can see it on the Google Doc or just on the Adobe Connect. I don't know if we should project it, Alice, but we can put it on the screen if we bring it up on the shared there. Otherwise, we'd be projecting over this and it'll get a little bit messy.

Volker, please.

VOLKER GREIMANN:

Just one point that comes to mind here. When you're talking about law enforcement, there's a discussion that we had on the RDS PDP for a while as well. What do we mean by it? We mean officially chartered law enforcement agencies that have some face in law, function – it wouldn't in certain country or Google countries. Do we also want to include the – I don't want to use any negative terms – private law enforcement –

UNIDENTIFIED FEMALE: [inaudible]

VOLKER GREIMANN: I have used some terminology that they found offensive, so I don't want to repeat. Rent-a-cops –

UNIDENTIFIED FEMALE: [inaudible]

VOLKER GREIMANN: The anti-abuse community, who also consider themselves as part of the law enforcement community. But there's contention on that. The question here that comes to mind is, if we talk about law enforcement, do we want to include the [inaudible] not even reference [inaudible]?

PATRICK DODSON: Cathrin and then Alan.

CATHRIN BAUER-BULST: I understand why for the RDS PDP that this would be an important discussion to have because of course there's demands from the cyber security community in terms of their inclusion in any future model. But I think for the purposes of this, we're looking at what the Bylaws drafters probably thought at the time when the Bylaws were drafted. There I think we can afford to stick with the traditional notion of law

enforcement. I think there was a question on the scope: whether it should also include other law enforcement, including civil law enforcement, for the purposes of consumer protection or data protection or other needs, which I would be fine with but that we keep it as a public authority as a basis for the definition. Maybe that's something we can all live with.

PATRICK DODSON:

I see nodding heads. Does anybody want to comment?

Alan?

ALAN GREENBERG:

I can support what Cathrin just said in the context of how it was written. I can also understand why some people now claim there were no modifiers in law enforcement. So whether it's laws for protecting against cybercrime or laws protecting privacy, I can accept that also.

But we're in the context of the current WHOIS, which has no restrictions on anyone getting data at all. So I don't much care which it is. The next Review Team is going to have a much harder problem than we do, but in our cases, we are providing access to everyone. So the only issues that we can talk about is people give false information or omit information, and that's already to a large extent covered in the existing reviews in recommendations from the previous review. But even if it isn't, that's all we can talk about. So I don't think it makes much difference whether we are talking about the cyber abuse community or law enforcement community in the context of the current WHOIS.

PATRICK DODSON: Susan and then Cathrin. I was going to give her time to [chew] her –

SUSAN KAWAGUCHI: This is something the first Review Team definitely had to wrangle with, but to me, inaccuracy is not the only issue. But I also don't agree with your statement that all of the data is available because somewhere between 25-30% of the WHOIS data is masked and because we don't have yet a process for law enforcement to easily unmask – get that contact information – I think that's an issue. But it is a recommendation, so it fits into the other group. So I can get your point there, but I think we should lose sight of that.

It looks like, before the privacy proxy process will be implemented, we'll have GDPR, which may force many more registrations into a masked status. So it is a growing problem in my opinion, and I think the problem may be a little bit different now than it was in 2012 in that area. So we need to look at it. Do we need to –

ALAN GREENBERG: Oh, yeah. We're agreeing on that. I'm just saying –

UNIDENTIFIED MALE: Okay. Cathrin and then remote.

CATHRIN BAUER-BULST: Thank you. I finished chewing. I just wanted to say that, in terms of limiting the definition of law enforcement to what the drafters might have had in mind, just thinking ahead to the discussion at [inaudible], if I remember correctly, also wanted to have on the legitimacy of the needs, we might be better served in limiting the scope because, if we start talking about – we don't want to reiterate everything that the RDS PDP has already been through, so if we're civil and criminal law enforcement, I think it's a bit easier to agree on their legitimate needs than it might be for some of the other folks that might wish to be included in the law enforcement definition in the context of the RDS PDP. So that's why I think it also makes sense, and that's also speaking to Alan's point about what difference does it make? So that's the difference that I would see in terms of the legitimacy of the needs.

And I do agree with Susan in that, just because I'm limited to three short concepts, those concepts are probably not going to be all that easy to analyze and take off. But maybe I shouldn't talk about that anymore. I will try to limit the scope on this point.

PATRICK DODSON: Great. I have Stephanie in the queue. Stephanie?

STEPHANIE PERRIN: Thanks. Can you hear me?

PATRICK DODSON: Yes, we can hear you.

STEPHANIE PERRIN: Sound like an echo, so you must be hearing me. Jolly good.

Okay. I just wanted to comment that, even though the systems aren't necessarily working, you'd have a WHOIS conflict with law policy, and the European registrars will be strongly motivated to start using it. So I would expect that life is going to be more complicated. It's not accurate to say that everything is in the WHOIS and it's open. So I think we have to review these items, given our timeframe, as if these things were going to all of a sudden be implemented before May 18th of 2018, a little more acidulously. Thanks.

PATRICK DODSON: Thank you. Please, Alan.

ALAN GREENBERG: I need clarification. Stephanie, are you saying that we should be doing the review as if GDPR has already been addressed by some sort of adaption and we should be commenting on that? I don't see how we can do that until it's done.

Now, if we are not complete by the time that happens, we may have to do a change course because of it, but I don't see how we can put it on our plans right now.

PATRICK DODSON: Stephanie, do you have a comment?

STEPHANIE PERRIN:

You were cutting in and out there, Alan. But I gather you're basically saying are we going to review as-is or as potentially in the future.

Now, I'm told that the registrars need several months of testing and running before May of next year, and then they're not going to wait until May of next year to start implementing compliance with law. So that means we will see a rush on getting waivers and figuring out how to do this to avoid fines.

So I think that as we study now – obviously, existing data will not reflect this, but as we study now, if we go and ask for a review of something, we will find more compliance. I'm guessing that we cannot say that everything is wide open.

The question that I think is a very big one for me is what procedures do law enforcement have to follow in those two scenarios? Number one that the data is, as Susan says, masked, that it's privacy proxy. How are they getting access to the real data? And secondly, if there is a waiver, what procedures are they using to get data when the registrars are using the WHOIS compliance with law or conflicts with law policy.

The other question I would have is I don't see how we can avoid dealing with private sector law enforcement because it is the private sector that is policing cyber space. So I would argue a lot of the criminal matters are probably stemming [open] to content and that the area that sits squarely within the mandate of ICANN would be the private sector law enforcement. Thank you.

PATRICK DODSON: Great. Thank you, Stephanie.

ALAN GREENBERG: I guess my only comment is we can hypothesize how GDPR will be addressed by different registrars, and I would suspect it's going to be addressed very differently by different ones and I'm not sure we can do that until we actually understand what the environment is.

We can hypothesize the whole WHOIS will be shut down, that it will be almost clear, completely restricted, or that we will believe the privacy commissioners will allow us to keep everything open because we have good socially redeeming reasons for doing that. I can put percentages on what I think the chances of that happening are, but I don't think we can plan a line of work at this point based on it.

PATRICK DODSON: I'm looking at the board here for our objective text and I'm curious to this group, what are the gaps that need to close in identifying the scope for this to get it to a place where we're ready to go into a work plan?

Yes, Jean-Baptiste?

JEAN-BAPTISTE DEROULEZ: Yes, there is a question from Stephanie.

PATRICK DODSON: Yes, a question from Stephanie. Go ahead, Stephanie.

STEPHANIE PERRIN: I'm just responding to what Alan said.

I understand that this is ugly. I'm on the RDS Committee too. However, I do believe that one of the main problems with WHOIS is that we abduct addressing these complicated issues, and if we want our review to be relevant at all, it should at least review the effectiveness of the measures that we put in place. And the measures that we put in place are privacy proxy, WHOIS conflicts with law, the new triggers. All of those are there. Whether they work or not is what we ought to be effectively reviewing.

So I mean, if we avoid all the hard stuff, we will be done by Christmas and maybe that's your goal. I don't know, but I do think we have to examine these things. Thank you.

PATRICK DODSON: Okay. Volker, please.

VOLKER GREIMANN: I think Stephanie makes a valid point here. When looking at issues regarding WHOIS, we should already be reviewing the measures that have been put in place if we feel there is a problem there, i.e. are these measures working or not? Then that's something that we should definitely include in our review.

ALAN GREENBERG: Just for the record, I put my [tick] saying it is within scope and we should be doing it. I wasn't arguing against doing it. I was just saying we have to base our review on what we know, not hypothetically predicting the future.

PATRICK DODSON: Does everybody in general agree? Go ahead, Lisa.

LISA PHIFER: So you asked what do we need to do to tighten down this particular scope topic, and what I heard earlier was that there was maybe lack of clarity and convergence on the definition of law enforcement, that is who's needs are being assessed here.

The proposal on the table, I think, from Cathrin is that that be interpreted that the drafters of the Bylaws probably meant it, which would be the traditional definition of law enforcement, both civil and criminal.

That would mean that it would exclude the anti-abuse community who house no official position, public role. And that would also potentially exclude data protection authorities. But I'd like to hear your views on that, since that probably wasn't in the minds of the original AoC for sure. It's questionable whether it was in the minds of the drafters of the Bylaws themselves.

PATRICK DODSON: Chris. On the mic, just so we can get that on the record for the remote.

CHRIS DISSPAIN: I said since I was one of the people who drafted the new Bylaws, I can tell you that that wasn't in our minds at the time.

PATRICK DODSON: Erika?

ERIKA MANN: I'm not actually sure what the issue is. Maybe I don't understand it because if somebody has a request, which is legally correct, a law enforcement-related request, it doesn't matter where they sit, if they're cyber security or data protection people, they obviously love to go into law enforcement first.

I mean, only if information is publically available, they don't have to do it. But otherwise, they will have to do it and this will not change in the future.

I mean, in some countries, it might change. Depending on the national law, there might be cases where, depending how the cyber security people are defined, they can have access. But it just depends. There's nothing we can do to change it.

Did I misunderstand you?

PATRICK DODSON: Cathrin?

CATHRIN BAUER-BULST: No, I think that's a very interesting question. I'm not sure that's the one we have to tackle today on this. When I took this sort of conservative definition of law enforcement, I was basing it on the previous WHOIS Review Team's scope and the definition of law enforcement that they took, which I think works quite well.

It's based on the Affirmation of Commitments, not on the Bylaws. But nonetheless, what they said was they defined law enforcement as any embassy charged or otherwise mandated by governments with enforcing or insuring observance of or obedience to the law, an organized body of people officially maintained or employed to keep order, prevent or detect crime, and enforce the law.

So that would encompass civil and criminal law enforcement. That could also encompass data protection, competition, consumer protection, all sorts of other civil law enforcement. It would not include, and that's what it specifically says, intentionally does not include private individuals and organizations, such as anti-spam groups or those bringing civil enforcement actions whose efforts may be viewed as within a larger concept of law enforcement.

And I mean, for me, this works. I'll stop here.

PATRICK DODSON: Yeah. Erika, comment? Oh, Lisa.

LISA PHIFER: I just want to ask one clarifying point, which is I think in the original review team, that definition applied to access to data through WHOIS – right? – as opposed to enforcement of laws in the broader sense.

So if you're looking at assessing the ability to meet the needs of data protection authorities, well, they have some needs, but is it around accessing data or is it around protecting data and enforcing laws around data protection? That's really a different question.

PATRICK DODSON: Cathrin?

CATHRIN BAUER-BULST: I mean, I would argue that we're looking at using WHOIS, not redesigning WHOIS. So if they have needs to redesign WHOIS, that's not something we're assessing here.

I would say what we're looking at is any need of law enforcement to use the WHOIS in the way in which it can be used by every user at the moment, which is to access data.

PATRICK DODSON: Alan?

ALAN GREENBERG:

Current WHOIS is, except for the privacy proxy ones, are publicly available.

If you talk to law enforcement or other groups in a similar sense, they say it's a big difference between what they can get revealed with a warrant and what they may want to look for. A lot of investigation is done before you're at the stage where you can actually get a warrant out.

So unmasking information, whether it's because it's currently held by a proxy provider or some future need, may be protected except in certain circumstances, according to rules we don't yet have.

The world is going to get a lot more complex at that point. It already is complex for privacy proxy things because the individual privacy proxy vendor may not feel they want to respond to law enforcement just because law enforcement says, "I want it."

You know, in the U.S. right now, there's large disputes over what border people can access without a warrant. And there's interesting disputes going on about why should people's privacy be able to be violated by those when other parts of law enforcement require warrants.

But we're not in that world right now and until the world changes around us, and it may because of GDPR, it certainly will because of any future RDS, we have a lot simpler world to look at right now and I think we should take advantage of that.

PATRICK DODSON:

So I'm seeing in the room, a lot of nodding heads of agreement on the clarifications regarding scope.

And one thing that I think will be helpful for these exercises we're going to do through the rest of this afternoon is that let's align on the intent of it.

So the intention here is to get to a level of consensus amongst this group on the scope that would then appropriately inform the work efforts around fleshing out the more detailed specifics of the work plan.

Do we have that level of alignment and consensus on this topic at this point? And part of what you may choose to do – this is part of the framework that Lisa and I had worked through on the work plan – would be based upon the scope as we've identified it and aligned on, what are the actual things that have to occur during the discovery of all the relevant data that then you would need to analyze and then work through the drafting of recommendations in the report.

Are you, in this topic right now for number three for law enforcement, are we a suitable place where we can obviously capture and reflect this language back and get the information from Cathrin that she was telling us about, what they did in WHOIS1.

Are we in a good place on that and we can go to another topic, or are we still open that we should discuss here and get the general noddings of heads?

Cathrin? Oh, Susan. No, it's Cathrin's turn. We'll buy Susan some time.
Cathrin?

CATHRIN BAUER-BULST: Right, and I'm not chewing this time.

The one thing where I wasn't sure whether everybody was nodding heads yet was on this issue of whether we're considering access to the public WHOIS, which I think is what Alan was suggesting, and which I would also endorse, or whether we're also going to look at how easy it is for law enforcement to get access to other data.

So that's the one point where I wasn't yet sure whether we wanted to cover that now or whether everybody is in agreement and I've just missed it. So I would love some clarification.

I'm talking about other registration data, so data that is not contained in the public WHOIS because it's a thin record, because it's privacy proxy shielded, or for whatever other reason, it is not contained in the database that's in the part of the database that's publicly accessible.

PATRICK DODSON: Susan, did you have a comment that you wanted to cover? Volker.

VOLKER GREIMANN: I'm sorry to cut in. I think that's not part of the scope because it is not part of the WHOIS record and we are here looking at the WHOIS Review Team, not the other data [than] WHOIS Review Team. I just feel that as it's not part of the data, that it isn't included in WHOIS by definition. It's outside our scope.

PATRICK DODSON: Alan?

ALAN GREENBERG: I tend to disagree. Now, there's no doubt that the answer is going to be law enforcement would prefer to get access to everything that they need or want in a moment's notice. That doesn't mean we're in a position to say, "Yes, sir."

There's law enforcement in some parts of the world that believe they have the right to do things that I strongly don't agree with, and that's including in my country sometimes. Just because they want it, doesn't mean they're going to get it and there's lots of stuff. If our ICANN policy allows privacy proxy services, then they are going to have to go to those private services and the laws of their countries, the country of law enforcement, the laws of the residents of the service, are going to have some impact and not everyone will get what they want. But that's fine. We can say that. The only possible answer isn't, "Yes, sir," and we give them everything they want.

VOLKER GREIMANN: Actually, I was saying that. I was just saying that data is not in WHOIS is not within our scope to discuss as data that should be given to them or not. It's just something we would say we are discussing WHOIS data, not data that is not WHOIS.

So data that is not in WHOIS as in privacy shield data is not part of our scope, and therefore, not part of our discussion. Therefore, [we shouldn't] even be touching on that.

ALAN GREENBERG:

Yeah. I think we can come at the same thing by several things, but it's the same answer and I can say, "Well, we are allowing privacy proxy servers as part of WHOIS, and therefore, the data there held is something we can discuss." The answer is the same.

So I don't really care which we come at it, but we are talking about WHOIS-related data in any case, and the answer is going to be law enforcement is happy with some of it and they're not going to be happy with all of it. And that's life.

PATRICK DODSON:

Susan?

SUSAN KAWAGUCHI:

So before I get to my original point, I am still not understanding what you're saying, I think. Volker, I'm confused by what you were saying but maybe if he clarifies, then I'll –

So you're saying that if data is masked or has a privacy shield on it, then the underlying contact data is not WHOIS data, and therefore, we do not discuss that data.

Okay, so I totally disagree with that. Absolutely, I just want to be as strong as possible, absolutely disagree with this partially because we – and it is, sort of goes to that sort of higher, number one or number two, but we have a pretty strong recommendation on privacy proxy from the first WHOIS Review Team and it covers that under access to that underlying data because that’s truly the WHOIS data.

Just because somebody has decided to not show it, which may or may not have been adhering to WHOIS policy – I don’t want to get into that debate – that does not mean because somebody slaps something on top of WHOIS data and you can’t access it doesn’t mean that’s not WHOIS data.

We have very defined criteria for what is collected for the WHOIS, for each registration and that is WHOIS data. I would never agree to define it any other way. So I’m just going to be very forceful about that.

The other thing is on law enforcement, I looked up because Cathrin brought up the first Review Team’s definition of law enforcement and the Privacy Proxy Working Group came up with a very similar definition, so I think we’ve got some consistency in the community and to move forward with that type of definition makes sense.

PATRICK DODSON:

Okay, thank you, Susan. And I think you triggered some other things so we’ll come back to your other original question in a second.

Carlton and then Cathrin and then remote. Oh, I’m sorry, and Dmitry. Never mind. Carlton.

CARLTON SAMUELS: I just want to support Susan in this. We have WHOIS record defined. It is defined and it's in the contract, all of the elements. Regardless of the bump in the road, the definition is and it remains what it is and that is what we should look at, period.

CATHRIN BAUER-BOLST: I just wanted to say that I [inaudible] second what Susan was saying, that we should look at the WHOIS regardless of whether it is at present publicly accessible or not.

And in fact, one of the more interesting questions will be how well law enforcement access to the WHOIS data that is not publicly available currently works, including through privacy proxy services because, to my understanding, there are some major issues there and I'm not sure that the current policy, although I know there's resistance to possibly reopening it but I'm not sure the current policy on privacy proxy accreditation will address these issues. So I think that's going to be one major point that we do need to look at.

And just in terms of the language, I mean, I understand that not everybody here may agree with everything that law enforcement does. But they're not doing this for the fun of it and they're not doing it for mass surveillance. They're doing it to investigate breaches of laws. At least in democratic countries, that's the main purpose. And I just want to caution us all to use the appropriate language and be respectful of the work that they do. Thank you.

DMITRY BELYAVSKY: Just a brief remark to Susan's words. That data, which is collected by registrars and the data that is provided to the registry are different sets of data in general. So I think we should speak about the data provided to the registry, not the data collected by the registrar.

CARLTON SAMUELS: No. In the course of the business transaction, there's lots of data that is collected by the registrar. In the course of the business transaction between the registrar and the registry, there is a mandate of the record data that you should send to the registry. That is all we are interested in. That is called the WHOIS record. That is all we're interested in. We're only interested in the WHOIS record.

There's lots of stuff that they collect. They collect IDs, they collect credit card numbers, they collect all of that. We're not interested in that. We just want the WHOIS data.

ALAN GREENBERG: Could we try speaking in the order we're called upon and not have private conversations? I'm wearing my Chair hat.

ALICE JANSEN: Coming from the staff, I am with Susan on that one piece, [with] my strong support for Susan on this issue.

PATRICK DODSON: All right, Alan.

ALAN GREENBERG: I thought there was someone else. First of all, what is transferred to the registry is not necessarily the same as WHOIS. We still have thing registries where very little information is transmitted and what is collected by the registrar for their own purposes, including credit card numbers is not synonymous with WHOIS so let's not use the terms loosely.

However, on privacy proxy type things, they proxy server for proxy services is the registrant of record. So the information that is being collected according to WHOIS policy, the long list of issues, is the information about the privacy proxy server because they are the registrant of record.

However, we have just completed a PDP on this. It is not yet implemented. As Volker said earlier, we should not be in the process of reopening PDPs no matter how much we dislike the results, especially if it's not yet implemented so let's not go in that direction please, if we can possibly avoid it. If that PDP was so offensive and so wrong, then we need to take action but it's not this Review Team, I think, that needs to do that.

PATRICK DODSON: Yes, Stephanie, you have your hand raised. Stephanie?

STEPHANIE PERRIN:

I agree with all of these distinctions that are being made between what's in the WHOIS, what's in the registry and what is in the data collections held by the registrars.

However, I would point out and I think it's relevant and sort of evaluating whether the WHOIS data is meeting the legitimate needs of law enforcement, that the law enforcement asks that was stated in the documents that came up before the 2013 RAA. So the octopus document that forms part of the pre-2013 review, they're looking for data that is not in the WHOIS. I would question whether it's legitimate or not without a warrant, but I just wanted to point that out, that there is a bit of a gap here between what we have presently configured as available publicly and what we've been asked to make available to law enforcement. Thanks.

ALAN GREENBERG:

Can I suggest – again, I'm putting my Chair hat on – that we not try to resolve the long-term question that we have to address of is it meeting the needs or not? But the question here is, should we be discussing it or not?

So the answer, surely, is going to need, it probably doesn't meet their long-term needs because they have all sorts of needs we're not going to be able to satisfy. But that's the answer to the question, not should we discuss the question.

PATRICK DODSON:

Thank you, Alan. I have Susan, and then Cathrin, and then Volker.

SUSAN KAWAGUCHI: So I just want to clarify because you confused me again. Or I'm confused by something.

So I get, and if you look at 3.773 in RAA, it addresses the licensing of a domain name. But it also gives an out to that proxy provider to disclose the current contact information, which is the underlying information, within seven days. That is still WHOIS information that they're going to disclose and that our discussions should contain.

I don't want to open up the PTSAI. I spent enough time on that and we need to play that out. But I do think we need to take a step back, and with law enforcement, see if anything has changed since that report has come out and how law enforcement is included in that process.

It hasn't been implemented, but if anything has changed, and I'm not saying there has been a change, but what I don't want to have happen here is that we come, walk away from this meeting and in a month, we go, "Oh no, proxy is not included. Proxy information is not included in our discussion." So I just want to be really clear about that.

PATRICK DODSON: Thank you. Cathrin?

CATHRIN BAUER-BULST: This is just a brief [inaudible] on the privacy proxy policy development process.

I think there is a difference between –

PATRICK DODSON: Hold on. Alan, I remember the [inaudible]. Hey, Alan. Sorry, just –

CATHRIN BAUER-BULST: I think there is a difference between looking at what impact it has on the effectiveness for law enforcement's access, and between this and reopening the PDP. And I think it's very legitimate for this process to look at the impact that this has, and since the process that's now being endorsed and the implementation is sort of reflecting what is already in place now, I think we can probably get some data from law enforcement on how that has affected access to data.

And in fact, there is some data out there now as part of the abuse study that was conducted for the CCT Review Team, so I think we can use that as a basis to look at how the policy is affecting law enforcement's legitimate needs, and that's not the same as reopening it. Thank you.

PATRICK DODSON: Thank you. Volker, and then Lili, and then Alan.

VOLKER GREIMANN: Yes, thank you.

Just one point that Cathrin said earlier that popped into my mind was I have the utmost respect for law enforcement and they are doing a great job, most of them, at least.

And I absolutely get it that this data is usually used for legitimate investigations and not [inaudible] of it, but not always. There are cases of abuse where agencies do use mass surveillance and where regimes that have law enforcement that we would call criminals because of what they do, but luckily, there are law enforcements, they would have the same rights to access, they would have the same rights as what we call legitimate law enforcement.

So I would like to be cautious that when we say legitimate needs of law enforcement, that we find what we mean and that we do not enable regimes that sponsor terrorism or regimes that we would call criminal or use law enforcement to crack down on their population to afford them the same rights and the same ability to abuse the data that we put out for legitimate use, and consider that as well. Law enforcement is not law enforcement.

PATRICK DODSON: Thank you. Lili?

LILI SUN: I have two points to add.

One is about the definition of law enforcement agencies. I was part of the Privacy and the Proxy Service Accreditation Implementation, the framework for PPSAR, yes. And we borrowed the definition of the law enforcement agency's definition from the 2013 RAA.

So at the beginning, I think the law enforcement agencies should be globally recognized, and we propose it as a text. But we were rejected by the registrar side for it was already depicted in the 2013 RAA.

And according to the definition of the 2013 RAA, the law enforcement agencies are only referred to the local jurisdiction. That means the privacy and proxy service providers' local jurisdiction. So I don't think there is any expanding [inaudible] definition about the law enforcement agencies.

Second point is about the legitimacy of law enforcement agency's request. I'm a police officer before in China and according to my experience, the data request from law enforcement agencies are not coming from a single police officer. I can only speak on police authority's behalf.

So there is not a single request come from a single police officer, and it's not for fun, as Cathrin just mentioned. We have our internal procedure, and our internal approval procedure to guarantee each request is for legitimate needs. So I don't think there is any rationale to challenge the legitimate needs from law enforcement agencies.

Regarding Volker's abuse cases, there are also numerous abuse cases regarding DNS abuse. So it's totally out of the scope of ICANN's remit discussion. So it's a different thing.

I think it's better to discuss it, to take it as a separate question. We have other accountability procedures to guarantee the legitimate needs. Thank you.

PATRICK DODSON: Thank you. Alan?

ALAN GREENBERG: Yeah, I think on the whole issue of definition of law enforcement, that's out of our mandate and there's lots of things that ICANN can and cannot do. I don't think that's one of them. So I think we should try to avoid it.

Yes, there's probably abuses of all sorts of things around the world. We can't fix them all.

However, I'm not hearing anyone in these discussions arguing for not doing this because it's not feasible, which is where the four votes were that are causing us to have this discussion at all.

I suggest, perhaps, we want to retake this poll and it may be a simpler answer and we can be done with it.

PATRICK DODSON: Thank you, Alan. I have the queue of Alice, remote, and then Chris, and then Erika. And maybe we close it there and see if there's a quick polling we can do to see if we're at the place we need to be for this topic, and then break for a break.

ALICE JANSEN: This is Alice reading a comment from Stephanie.

“The question I think we might wish to evaluate is whether or not the needs are legitimate with respect to whether or not the access to data demanded is within the power of ICANN’s set policy.”

PATRICK DODSON: Thank you. Chris?

CHRIS DISSPAIN: Thanks. So forgive me because I’ve been out of the room and I’m, perhaps I could ask if somebody could just simply tell me what we’re talking about and why we would need to figure out what is legitimate law enforcement and what is not. What are we reviewing that requires us to do that?

PATRICK DODSON: Yeah. Chris, real quick. Coming off of the morning session, we recalibrated the activities to go through a polling to identify and try to localize out where there was commonality or discord of opinion on the legitimacy of the scope being something that this Review Team at this time should address versus things that are legitimately important, but may not be valuable or feasible to do at this time for this Review Team.

And then, from that discussion, we have five of them that are very clearly green in the sense that the scope is in there and we then tackle those. This one is the one, number three, which started out as orange and yellow is more about some definition of terms and closing the gaps on understanding of what do we mean by legitimate needs, what do we mean by law enforcement.

CHRIS DISSPAIN: What are we reviewing?

UNIDENTIFIED MALE: Are we asking that question? You need to put your mic on, Carlton.

CARLTON SAMUELS: The question whether we could assess the effectiveness of the current gTLD registry service and whether it meets the legitimate needs of the law enforcement.

So the first part is about effectiveness, and the second part is whether [it] met legitimate needs. So if you're going to assess effectiveness and legitimate needs, then the question is what is a legitimate need?

CHRIS DISSPAIN: Right. So now I understand, and now I understand why we are talking about what is legitimate. And now I understand the minefield we could very easily be about to step into.

I appreciate Cathrin's point about what law enforcement does and doesn't do. You cannot – simply, cannot – work on the basis that you get, we get to decide which government is legitimate and which government is not. You equally cannot work on the basis that we have the skill or the ability to decide what is a legitimate request and what is not.

Well, I'll rephrase that. A legitimate request is a request for data that forms part of the WHOIS definition. That's a legitimate request. The question then becomes does it matter? If that's a legitimate request, are going to have to decide whether the law enforcement requester is legitimate? And I would argue the answer to that is no. What we should be saying is if a request comes in for data, is that being satisfied?

If you want to go a stage further and say, "And did it come from someone who should have been allowed to ask the question?" that's a completely different question and not one we should be even closely coming near to addressing.

Yeah, so explain to me what you, is it okay, Patrick, if we have this discussion?

Carlton, you need to use the mic, mate. What do you mean by the need [inaudible]?

CARLTON SAMUELS: No, it says legitimate needs of law enforcement, so there's two parts which you so brilliantly, so that is the third piece.

CHRIS DISSPAIN: Yeah. So again.

UNIDENTIFIED MALE: Sorry about it.

CHRIS DISSPAIN: You can't claim that a request from law enforcement, you can't claim that a request that comes in from law enforcement is not legitimate. You can claim that it's not law enforcement.

You can say that, but if you acknowledge it's law enforcement, then it's legit because the legitimate needs by who's definition? And if we can't answer that question, it's perfectly responsible for this Review Team to say, "We're not going there," rather than "Let's go there and see if we can answer it."

It's not our job and in any event, I would argue it's policy, or possibly, legal, but certainly, policy if it's not already enshrined in a [law].

PATRICK DODSON: Thank you, Chris. Yep. I was glad I had that straight. My jet lag is kicking in.

Any comments on that? Anybody else on the queue? Are we to the point where we might be able to revisit this from a poll standpoint and think if we have clarity on scope for moving forward to another topic after our break?

ALAN GREENBERG: Stephanie does have her hand up.

PATRICK DODSON: Stephanie's hand is up. So Erika, and then Stephanie, and then Lisa.

ERIKA MANN:

I'm very much on the same side what Chris said. I think we can't go into defining what legitimate means. We just can't do it.

But there's something we could do, and I'm not sure if it will work in this environment. We could say it must come from a legitimate source, from law enforcement, because even within law enforcement, you have sometimes pretty wild approaches. So one could [add that] this could help maybe.

The second what one could do, and this would be more an addition to what we are doing right now, we could just list cases which have changed the environment, the law enforcement environment, since the last WHOIS was done. Just list it as a kind of reference base, and this can continue in the future because I know there are some cases which are, we can't add anything we can take a decision about or we can do anything.

But they are interesting in the moment for intellectual legal purposes, but they might help in the future to take decisions or to add something to the WHOIS in a different way, just nothing else. And this could be open and we don't even [inaudible]. It shouldn't be us. It should be something else at ICANN, should continue to do this.

PATRICK DODSON:

Thank you. We have Stephanie and then Lisa and then Alan. Stephanie, please go ahead.

STEPHANIE PERRIN:

Thanks very much. I'm going to apologize in advance to anybody who put up with me on the Experts Working Group because I believe I bored you on multiple occasions with this kind of discussion.

It's not our job to set policy and procedures. It's our job to evaluate how well those legitimate needs of law enforcement are being met. And I would certainly construe within that, because as Lili says, legitimate law enforcement agencies have policies and procedures, these requests for data are not coming willy-nilly or for the fun of it. However, setting procedures is necessary because it is quite astonishing how many different agencies, individuals, etc. will come in considering that they are law enforcement. That's why we have procedures.

So we are not setting the policy for that, but I would suggest that we should evaluate whether, in fact, there are any procedures in place because, as I said on the EWG, this is nothing personal are preventing the dog catchers nowadays, coming in looking for data. So when we went to the GAC with the EWG preliminary report, one of the [inaudible] large [inaudible] said, "We have no way of knowing who is law enforcement," to which I say, "If you don't know who is law enforcement, how on earth are the registrars going to decide?"

So I would call this a gap, and I think that it's a paragraph, but it is pointing out to ICANN that we need to set policies and procedures if we are going to call this a legitimate process. Thanks.

PATRICK DODSON:

Thanks, Stephanie. Lisa?

LISA PHIFER: I was actually just going to summarize what you were going to repoll on. So why don't I let Alan go first?

PATRICK DODSON: Alan, Chris if you'd like, and then Lisa. So Alan?

ALAN GREENBERG: Thank you. I'd like to read what the document is that we're actually talking about.

Number one, it says do we meet, whether the implementation meets the legitimate needs of law enforcement. Legitimate is not modifying law enforcement, and we are not trying to define who legitimate law enforcement is.

It says the legitimate needs, and the words – that's the description in the Bylaws – the words we're using in our proposed objective and scope is whether it meets legitimate law enforcement needs for swiftly accessible, accurate, and complete data. That's it. That is what we're talking about right now, and that's what we're trying to decide unless someone wants to meet or contest the wording that Cathrin provided.

That's the words that we're talking about and trying to decide on whether we're going to go ahead and do it, exclude it or include it. Thank you.

PATRICK DODSON: Thank you. Chris, and then Stephanie.

CHRIS DISSPAIN: So I just want to be clear. I agree with you, Alan, and I guess we're just going to take a vote on this in a minute. And so that's why I want to get really, really clear. I value my vote. Those early birds vote often.

Are you saying, Alan, that by that definition or by those words, you say it is not necessary for us in answering that question to deal with whether X, Y, or Z is actually law enforcement. And neither is it necessary for us to deal with what is a legitimate request, but rather, simply, to deal with whether a request, if it meets the criteria coming from law enforcement, would be dealt with in a – whatever it is you said, “timely blah, blah, blah” way.

Is that an accurate? Is my understanding accurate of what you just said?

ALAN GREENBERG: Yes, and in the context of our WHOIS currently, which other than for proxy privacy, the actual WHOIS information for the registrant of record is public knowledge.

PATRICK DODSON: Thank you, Alan. Stephanie, and then Cathrin. Stephanie, please go ahead.

STEPHANIE PERRIN:

I'd just like to clarify that remember, our current WHOIS public record includes the proxy data that is shielded and the data of individuals in data protection jurisdictions where there are exemptions from disclosure from the WHOIS. That is where the legitimate needs of law enforcement are exercised, or at least, fulfilled by accessing data.

While I understand perfectly well that the modifier legitimate applies to needs, not to law enforcement agencies, I would suggest to you, being a longtime friend of law enforcement agencies – they don't always say that of me – that abstaining from proper procedure to provide access to personal data to any Tom, Dick, and Harry who comes along professing that they are legitimate law enforcement agencies, is not serving the legitimate needs of (not within our definition) legitimate law enforcement agencies.

And we have a stunningly good example in the recent Equifax, and I'm not actually sure whether this was part of the breach or just data that we dredged up and talked about during all the press over it. But they were found to have been selling customer data to criminal gangs for the purposes of identity theft. This is why it's important to have proper procedures to protect proper law enforcement. Thank you.

So I mean, we can dock this one if you like, but it only gets us further and further into what I would describe as a real [inaudible] in properly addressing the needs of law enforcement. Thank you.

PATRICK DODSON:

Thank you, Stephanie. Cathrin?

CATHRIN BAUER-BULST: I just have a really small point, which is on Chris's point about law enforcement. Now, we're not going to decide who is legitimate and so on. Just to say that we were thinking of going with the definition.

[CHRIS DISSPAIN]: I'm fine with that definition.

CATHRIN BAUER-BULST: Okay, [inaudible]. Thank you.

PATRICK DODSON: Yeah, to clarify. Yeah, there is the definition and I think that also is to Stephanie's point as well that we still have an active working definition of law enforcement even if we're not making any judgments on the legitimacy of the law enforcement versus the need.

Okay, Lisa?

LISA PHIFER: In fact, that was the point that I was going to clarify in advance of your poll, which is that I think we had multiple proposals about the working definition of law enforcement.

Cathrin has quoted the one from the original Review Team, which [inaudible] says is similar to, but not the same as the one adopted by the privacy proxy service accreditation, PDP, which really has explained

is not necessarily or, in fact, she can clarify the same as the one in the 2013 RAA.

So we have three candidates for the working definition.

CATHRIN BAUER-BULST: Is anybody in the queue in front of me?

PATRICK DODSON: No. Please go ahead.

CATHRIN BAUER-BULST: Because otherwise, I would just propose that I can volunteer to take a look at the three definitions and display them for everybody tomorrow morning, and come up with a working definition for us that we can subscribe to because as far as I understand, the main uniting concept is that of the publicly appointed authority, and I think that's pretty much the main point that we're concerned with.

So I'm pretty confident we can come up with a working definition for our team, if that's okay.

PATRICK DODSON: Alan?

ALAN GREENBERG: I would hypothesize that it's not our job, that we may well want to make a recommendation that I can consider coming up with a uniform

definition of law enforcement, or legitimate law enforcement. But we don't need to do it.

PATRICK DODSON: And Cathrin?

CATHRIN BAUER-BULST: I still think we should have one for the purposes of this report. And then we can propose to ICANN that it adopts our brilliant definition as the permanent one. So we [inaudible] two birds with one stone. Patrick, I know you like metaphors. Here's one.

PATRICK DODSON: There we go. Okay, we're overdue for a break and we're certainly ready for a break – an hour ago. It's the energy here. From this last discussion which was very good, I think it was very helpful for everybody to get all the different points on the table. To bridge some divides, oftentimes these come down to glossary of terms issues.

With what we've aligned on here conceptually, knowing that there's going to be some wordsmithing to address the three versions of law enforcement definitions that have already been previously approved by other groups and bodies, what I'd like to do is actually look at the original alignment exercise here for this quick poll which is: how aligned are you that this is a good scope objective and the definitions that we've discussed here at this point? Where is everybody at as far as a general agreement on we have a good direction going into a working

plan exercise on the scope of this particular area which we have all agreed at this point I think that needs to be in the review?

If I could just get a quick show of hands, 0 to 5, with 0 being not even close, not at all and 5 being, yeah, I believe we have consensus; 4 being strong agreement, think we nearly have consensus, or 3 being we still have some things to discuss, 2 is many points left to discuss, 1 is virtually no alignment. So just from a closed-hand fist to 5, where is everybody on this being ready for further efforts in the working plan efforts that would happen tomorrow? Okay, keep them up. Keep them up.

UNIDENTIFIED MALE: Can you define this?

PATRICK DODSON: No. Which definition? There are like... We can't [even separate out]. All right, so I see 4, 5, 5, 4, 4, 5, 4, 5. Okay, great, with approval from Germany. Volker, where are you at? Oh, I'm sorry, with the draft objective and the definitions and the conversation we've just had here.

Are we at a good place here to stop? There we go. We're in that area, which is good because that's actually where you want to be at this point because it will be further scrutinized as you get further into your work plans and into the details. We just want to make sure we have enough agreement to go forward.

We have a break now. I think 15 minutes that is scheduled, 15-minute break. It is 15:43, so we'll just start at the top of the hour and we'll see

what we tackle the next hour and 15 minutes. 15-minute break for those on the remote. Thank you, guys.

Okay, we'll start up here in just one minute. Update to the remote folks. One minute, we'll get started on the next topic.

Sorry, just one more minute, everybody. We're just waiting on a few folks to come back in. All right, are we ready to get going again?

Okay, so suggested topics to cover next because we have about an hour and 15 minutes until we're done with this section and we all get on our motorbikes and go home.

Here's what Lisa and I just [inaudible] really quickly. Here's what I'm proposing and we're proposing as the next topic to tackle, which is the one that has full consensus which is Category 1. But I want to bring up Topic 10, IDN, because it also has a very strong connection to it. But I think that, Alan, you're one of two that felt it important but not as valuable because you think it's actually already a part of 1. So I'm wondering if we can take that topic and put it on the table and talk about and see if these are collapsed and we actually have nine topics with IDN being involved in 1. Is that agreeable?

ALAN GREENBERG:

I'm agreeable and, although I may have misread him when I said that, Dmitry I think shook his head yes. So he who is the one who proposed it may be agreeing also, but I don't want to put words in his mouth.

PATRICK DODSON: So I'm going to put that topic on the table here to see if everybody is amenable to that. If so, then we actually have this one then turning green, #1, and this one green because it's #1. So I'm putting that out there not because it's my proposal, because it's the proposal that has been proffered up by the group at some point. Are there any comments, objections, concerns? Dmitry, please.

DMITRY BELYAVSKY: I have only one concern. I mentioned we should add one or two sentences about non-ASCII e-mails and that the IDN point will become a part of point 1. Yes, I agree with Alan that one or two sentences will be enough for this.

PATRICK DODSON: Thank you, Dmitry. Alan?

ALAN GREENBERG: Just to be clear, in my review of the implementation, I think it is already implicitly referenced so it may not even need that. But regardless, I have no problem with it.

DMITRY BELYAVSKY: I think that it should be written explicitly.

ALAN GREENBERG: Fine.

PATRICK DODSON:

Any objection on that proposal? That's great. Okay, then the next one I wanted to go after because I was hoping that would be a quick one because – that's 10, that one comes down now.

Now there was an interesting discussion that was starting during the early morning exercise on the post up regarding the relationship between Topic 1 and Topic 2. So I thought that would be the next one we could tackle for clarification purposes for everybody because there's already very strong agreement that it needs to be in the scope but it would be probably good for everybody to align on what these two different pieces are discretely asking for of the Review Team.

I don't want to put anybody on the spot, but I know that it was Alan and Chris that were starting to have that conversation, so I'm going to offer you the invitation to lay out the conversation between the relationship dynamic between Topic 1 and 2.

Volker has his hand up though. We'll start with Volker.

VOLKER GREIMANN:

From the discussion the way I now understand these two questions are that they're basically two sides of the same medal because obviously the second question was asked to the first Review Team and they came up with the recommendations in the first question. So basically to differentiate at this point, I would understand these questions in a way that in #1 we look at the recommendations of the first Review Team,

how they have panned out and what the results were of that, if they have been implemented or not and if they had any issues with that.

And the second question would be to again as the question that the first Review Team had asked of themselves: are there any issues that the first Review Team that have popped up in the time since? Is there anything else besides the recommendations that the first Review Team made that we would have to ask if we asked ourselves the same question that they did?

PATRICK DODSON:

Alan?

ALAN GREENBERG:

That's basically it. I would frame it a little narrower than that, however. The first Review Team did not have any previous recommendations. All they had was basically the first statement and the subsidiary ones that we are looking at. They had basically those. They didn't have the OECD one, but they had those kind of things.

To a large extent, I think we have already identified the other things. Those are the Items 3 through 10, or some of them anyway, the latter ones. So hopefully, there will not be anything else that comes up that will be a major one. But as we're going through it, we may well find something. It may something that has changed in the last five years.

As Chair, I would like to see that we don't have too many things popping up in there as major unexpected studies but, yes, conceivably other things could come up in that point and that's our escape clause, a place

that we can put them if they do. I'm optimistic we won't have too many or this work will grow to be something unreasonable and will grow at a very late date, which will make it hard to meet targets. But, yes, it essentially is the extension of #1.

PATRICK DODSON:

Thank you, Alan. Chris, you good? Okay, then I think that we're going to tackle #2 because there were some issues there on the feasibility button. So I'm going to hit that, but before we do that, real quick, we have 9. We have general consensus that this topic and its objective for Topic 1 is ready to put aside until we go through and revisit on the work planning efforts that happen tomorrow. Any disagreements with that? If we go through that voting of 4s and 5s, is everybody going to be 4s and 5s?

#1, we have agreement. I just want to make sure that we're all good with that and we can check it off. If so, then we're going to go to Topic 2, which is this related topic: "The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service." A lot of questions here around how we define effectiveness. I know that, Susan, you have found some information and maybe this is the right time to talk through some of this information to see if we can get to a general working consensus on some of these topics that are going to take us from the important but not feasible into the important and feasible. Lisa, please?

LARISA GURNICK:

I think I got a little lost.

PATRICK DODSON: I'm sorry.

LARISA GURNICK: I thought previously you had suggested that 1 and 2 be combined.

PATRICK DODSON: Oh, 1 and 10.

LARISA GURNICK: 1 and 10? Okay.

PATRICK DODSON: Yeah, IDN to be [inaudible] as a part of this, but we'll make sure that it's explicitly included.

LARISA GURNICK: Okay, because what I heard was if there were any issues that the first Review Team had either overlooked or that had arisen since the first Review Team, that would fall into 1 and that would be broader than IDN if I understood that correctly.

PATRICK DODSON: I don't want to speak for anybody else. We were talking about the relationship and the clarification between 1 and 2, and now I'm just trying to close out the 1. Alan, please.

ALAN GREENBERG: The question of define effectiveness, how does one determine effectiveness were all mine, so I'll fully admit to that.

PATRICK DODSON: All aligned?

ALAN GREENBERG: Were mine.

PATRICK DODSON: Oh, were yours. Okay.

ALAN GREENBERG: Now that we've recognized that this was the core work that Review Team 1 did and we are now just looking to see whether anything is missing, I have none of those concerns anymore. So "The Board shall cause a periodic review to assess the effectiveness of the then current gTLD registry directory service" I am translating into "Is there anything else wrong that we need to comment on in the current one that wasn't already covered?" And I no longer care about whether we defined effectiveness or not anything more than the first Review Team might have done.

PATRICK DODSON: Okay.

ALAN GREENBERG: So I'm happy with just going ahead with 2 and not having it. But once I wrote them they become the ownership of everyone, so other people may now object.

PATRICK DODSON: Okay, anybody else have comments on #2 as far as questions on the objective text? We do need to address that part, Susan's comments, and I don't know how much this has been broadly discussed in the group.

SUSAN KAWAGUCHI: It hasn't at all.

PATRICK DODSON: So do you want to take a minute now and talk through this language that you surfaced in trying to address that? Do we need to?

SUSAN KAWAGUCHI: We could discuss that document, but it seems that if you have agreement to just go along with this objective –

PATRICK DODSON: So we're all 4s and 5s on that one? Lisa?

LARISA GURNICK: But there isn't actually objectives. There are angle brackets that say "insert something here."

PATRICK DODSON: "Based on action item resolved [inaudible]."

LARISA GURNICK: Maybe we should work on that instead of –

SUSAN KAWAGUCHI: So let's do that.

PATRICK DODSON: Based on "Insert text describing how 'effectiveness' will be measured and the nature of recommendations, if any, to be produced." That's the current placeholder in the document.

UNIDENTIFIED MALE: [inaudible] supposed to do that. [inaudible] works? I thought so if I look at [inaudible].

[LARISA GURNICK]: When the issue of effectiveness came up, I was on vacation I think so I was not part of that discussion. So I just came up with the effectiveness part. If the group feels we could plug that in there, I'm fine with that. But then I guess we should discuss it, yes.

PATRICK DODSON: Yeah, let's spend 10-15 minutes it right now and align. Alan?

ALAN GREENBERG: What if instead we simply say basically what I said and what we agreed to a few minutes ago when we were talking about 2? That 2 is essentially this Review Team will continue the work of Review Team 1 and identify any major deficiencies or issues with the current WHOIS and make recommendations on them.

PATRICK DODSON: Alan, just to clarify, utilizing the framework of effectiveness that was used in the WHOIS1 review?

ALAN GREENBERG: I'm fine with that.

PATRICK DODSON: So that's the proposal? There's an established effectiveness framework from WHOIS1 that should just be utilized for this one for the same purposes?

CARLTON SAMUELS: The second part of Alan's proposal is that you use the outcome of that triage to make recommendations. The recommendations could be a

reassessment of what effectiveness means, right? Is that what you're proposing?

ALAN GREENBERG: I was trying to avoid the meta discussion of what effectiveness means and simply say, "Are there any other issues related to the current WHOIS that we need to flag for additional work, investigation, studies, or whatever?"

PATRICK DODSON: To clarify, because effectiveness is really the core root of the first topic, not the second. The second topic is about any new items that have surfaced.

ALAN GREENBERG: If we're saying that #2 on our list is the catchall for anything that wasn't covered already in the previous recommendations that we need to address, then I'm trying to say that in words without having to go back to basic definitions.

SUSAN KAWAGUCHI: I'm not sure I disagree with that, but what I am disagreeing with is Carlton clarified what you said – or maybe he did, I don't know if Patrick did – that there was an effectiveness framework developed by the first Review Team and I don't think there was. I don't remember that. We just sort of decided on "Oh, this seems effective" or "No, it was not effective."

PATRICK DODSON: Understood. Forgive my... yeah.

SUSAN KAWAGUCHI: So I think the fact that I've written this up, it would be good to have a standard of "Did we answer this question about effectiveness and this question and have we done this and have we done that?" It would be helpful in our work.

PATRICK DODSON: Okay, thank you, Susan. And, Carlton, yes. You're next in the queue. But just one point of clarification. I know that I'm probably getting confused between Topic 1 and Topic 2 where I think effectiveness is probably that content that you have here is potentially more about Topic 1 to measure effectiveness of the previous review. Then Topic 2 is, is there anything else that we should be looking at because of things that have occurred since that last review was done?

Forgive me remote folks for the visual exercise, but if they had to do this in WHOIS1, look at what was current, and then they make recommendations. That gets implemented, and that comes to [inaudible]. Now your group has to go and do this effort, but it's going to look at this the way that this group looked at this, right? That's 1; 2 is, is there anything else that we need to deal with that is not a part of that, that has come into our sphere of impact that we should then look at brand new? So that's the clarification there that I was taking away from the discussion that we've now had twice.

If so, then we don't need to go and have that conversation about effectiveness as much as it's probably more part of the meat of the work plan in Topic 1, not Topic 2. But we still don't have an objective. So [I look at] Lisa saying, "That's great, but we still have a place holder on the objectives, and do we want to rework that?" And Alan is proposing – now that I'm fully caught up – that it's to only look anything else that was not a part of the previous review implementation recommendations that we should evaluate that's a [new thing].

ALAN GREENBERG:

We could look at it in another way. We could say Review Team 1 looked at the effectiveness. They were doing their job. We are now assessing what they're doing and stop. We could eliminate #2 altogether and say we're reviewing what they did. If we have anything else, we should identify them here. We haven't. It's done, and we don't have a #2. It's less open-ended.

PATRICK DODSON:

My apologies, Carlton, you were [next in the queue]. So, Carlton, go ahead and please go, and I think Susan probably wants to [speak].

CARLTON SAMUELS:

I'm a little at sixes and nines here. The Review Team 1 had a very loose framework of effectiveness. This is what I hear. So if you're going to look at what is required in the first one, you can either then using the SMART model develop a framework to assess their effectiveness from

what we know now using the SMART model. That is what I thought Susan was trying to come up with, right? Right?

Okay, so the outcome from that triage becomes the pieces that Alan would want to address: whether or not they were met, whether or not they were done right, and so on. What do you say we should do with that now? We just say these are the pieces that we can [work off of] good enough in the first part. Is that what your solution is?

ALAN GREENBERG:

I wasn't trying to pose it as a solution. I was giving an alternative to addressing this section. The alternative is Review Team 1 did a whole bunch of stuff. We are looking at it right now trying to determine scope. If we believe there are other areas that we should be looking at, as Dmitry referenced specific issues related to internationalized names, then we should be talking about right now when we're trying to determine scope. If we can't think of anything else, then declare success or whatever and say our job is done. We didn't come up with any other items.

It doesn't have to be a catchall forever and ever. It's the catchall we're discussing today. Is there anything else we need to discuss? If not, then let's go on. That was an approach. I'm not even advocating. I'm just saying that we could look at it that way and not keep it open-ended. Because otherwise, if it is a catchall that we can then fill in going forward, our scope is undefined until we come to the end.

CARLTON SAMUELS: Just a follow up. This is what I was concerned about, keeping it open-ended, and that's why I thought Susan's work would enable us to pin it down fairly efficiently. You don't think so? Okay.

PATRICK DODSON: All right, we have remote and then Volker and then Lisa. Stephanie?

STEPHANIE PERRIN: Hi. Firstly, thanks to Susan for filling in my homework that I should have done a couple of weeks ago because I had said I would come up with what I meant by effectiveness. I think she has done a good job. I think that what I was looking for was a framework for evaluating whether the actual recommendations that we are reviewing have actually addressed the WHOIS problems or the WHOIS, let's call it environment. I think this does it. It's broad enough that we will be able to put things we uncover into it without making the whole thing open-ended. So I would vote for having a close look at that document that Susan has sent us and considering that as a good framework for evaluating effectiveness. Thanks.

PATRICK DODSON: Thank you, Stephanie. Volker?

VOLKER GREIMANN: Yes, I would be a bit hesitant to follow Alan's approach simply because it seems too easy and seems like we're just doing a checkmark exercise and not doing real work. It's a bit like people in the past had all the

knowledge and we'll just check if they're correct. It's like religion and not like doing a real review.

I think we should take what the first Review Team did as a basis and then work on top of that. We're working in a changing environment. WHOIS has changed and will continue change a lot in the future. Needs of law enforcement may have changed. Other needs of the community may have changed. We should take any possible changes into account, and even the first Review Team may have missed something as well.

So I think we should make our independent thoughts based on the work they did. That's already a great relief I think that we have that to rely upon, but it shouldn't preclude us from doing any additional thinking and asking the community if there's something that we might have missed as well.

PATRICK DODSON:

Lisa and then Alan. Go ahead, Alan.

ALAN GREENBERG:

Look, ultimately no matter what we put on the document we give to the Board, if we find something that we feel is really important going forward, we're going to look at it and no one is going to stop us from writing a recommendation on it. If we want to leave a catchall there and fill it in if necessary if we find something that's crucial, fine. If we leave it blank completely, then we'll add one.

As long as we don't feel, "Oh, we have Category 2 there. We have to put a half dozen things in it just to fill it up," I don't much care which

direction we go. I think they're the same thing. There is no way we're going to be told, "Sorry, it wasn't in your objectives, you cannot do it," if we think it's important. Equally, I hope we will not fill in blanks just to fill in some holes because we left a catchall.

I don't see much difference in the two approaches, and I proposed it knowing it was not likely to be very acceptable but pointing out that we're not looking to find a whole bunch of things. We've spent the last two months saying: are there any other things we need to look at in WHOIS? And we haven't found a lot of substantive ones. So I don't see much difference either way going forward in terms of the net result.

PATRICK DODSON:

Lisa? Thank you, Alan.

LISA PHIFER:

Just a couple of observations listening. There is a difference between evaluating the effectiveness of the original Review Team's recommendations and how they were implemented and evaluating the effectiveness of today's system. If you think about what the first Review Team did, of course, it did the latter. It looked at what was "today's system" five years ago.

If you actually go back and look at how the Review Team did that, it did that by conducting a couple of surveys looking at specific targeted communities. They asked law enforcement, "How is it working for you?" The asked consumer, being end users, "How is it working for you?" Then they took from that problems that were identified and focused

recommendations on trying to fix those problems. But they did only look at those two communities.

So if you're thinking about this more holistically, the question would be: do you want to look beyond those two communities to think about the effectiveness of today's WHOIS?

PATRICK DODSON: Thank you. Any other questions or comments?

ALAN GREENBERG: My only comment on that is, but we're also to note we are doing this in the environment where we are envisioning a replacement system, whereas they weren't at that time. So I think that changes the context somewhat, even if some of us are pessimistic about how long it will take.

PATRICK DODSON: Cathrin?

CATHRIN BAUER-BULST: Yes, I think you've heard me before and I'll just say it again because it is the GAC's position. The GAC does think that we might be stuck with this system for a while to come, or at least it did when they come up with their position, and that the RDS PDP may not conclude so quickly. So they are interested in assessing the effectiveness of the now current system.

PATRICK DODSON: Thank you. Again, this is one that we're all in agreement on with just a couple of outstandings here on questions around feasibility and an incomplete objective text. What I think I heard is that Stephanie I think is advocating that the language that Susan has brought forward could be worked into a revised objective text that then this group could evaluate for alignment. Is that – no? Susan?

SUSAN KAWAGUCHI: I thought the effectiveness was for 1. Am I confused? I think what you ended up with is for 1, even though the assignment was for 2.

CARLTON SAMUELS: So [you had it for 1 and, Susan, you said] – that is why I got into it saying I'm between sixes and nines. You had it for 2, but it turned out for 1. What you said was that in the original review there was not a tied-down definition for what is effectiveness. So you had a framework established now. My thinking was that we were going to assess all that has transpired since then against that framework.

Having now a framework, we could get to Alan's point that says there might be bits and pieces that didn't make it for whatever reason and those are the ones that we would then look at in 2 and say these didn't happen. That's what I thought. And that's what Stephanie was referring as I understand it.

SUSAN KAWAGUCHI: Well, I guess maybe I'm confused in why wouldn't we use this effectiveness framework for 1 and 2 then.

UNIDENTIFIED MALE: [inaudible]

SUSAN KAWAGUCHI: Hey, it's 4:30, okay?

PATRICK DODSON: It's 4:30. That's all fair. Expand on the clarification and then, Alice, I see you in the queue or Stephanie. I think that's right. It's just how you apply the framework. You would be applying the framework in 1 on that which has the recommendations. You then look at that framework to assess, is there anything else that weren't a part of those 15 recommendations in one? We're all there. Stephanie?

STEPHANIE PERRIN: Thanks. Forgive me if I've already said this. I can't remember whether I said it, wrote it, or just thought it. But it does seem to me that this WHOIS Review Team exercises a cross between what government does – at least in [inaudible] countries. It's a cross between program evaluation and audit. To a certain extent, we are looking at data on how effective a mechanism has been, and to another extent, we are looking at the policies and programs we've put in place to see whether they achieve the policy objectives, which is what program review is.

So we are dealing with a kind of an amalgam. I hear Carlton sixes and nines that he wasn't referring to that, but I do see it as a bit of a problem, because these are separate activities. And to the extent that we have not established a program to deal with something – I won't keep you there while I think of an example – then we evaluate that as kind of program review, and to the extent we establish something – here's an example, the WHOIS conflict with law procedure. We know that thing doesn't work, and yet we haven't been able to develop a new one that does work yet.

So that's I think a dual way of evaluating effectiveness, and I thought that Susan's framework is a good thing to build on. Thanks.

PATRICK DODSON: Thank you. Lisa?

LISA PHIFER: Hi. Just building for a moment what Stephanie said about conducting a program review. It is possible that what is the RDS PDP is tasked with is actually doing the program review, establishing the requirements for today's RDS and then establishing whether a new policy framework is necessary to meet those requirements.

That really sounds like much more what Stephanie is describing as a program review, whereas what you propose, Susan, is much more of an audit on the first Review Team's recommendations and their effectiveness and improving the situation.

PATRICK DODSON: Okay. I see some nodding heads, I see people thinking that through. So what's the approach then as far as closing the gap on a placeholder text on the objective? Is there an action that we need to capture here based upon the content and the discussion? Alan?

ALAN GREENBERG: There's a document pasted up on the wall of Stephanie's [inaudible] defining effectiveness – sorry, Susan's [inaudible] defining effectiveness. We are not going to paste a two-page document into this thing.

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: Okay. I'm happy to say we will use Susan's work as the basis for the definition of effectiveness, changing it if necessary if we find out that it's inappropriate, and just use the word "effectiveness" in this document. So essentially say if there are additional effectiveness issues that need to be addressed in addition to those covered by the first Review Team. Okay? Because that's what this is.

The first Review Team reviewed the effectiveness of WHOIS at that time. We are doing an incremental review subject to what was done last time. And should there be other things that arise as we go forward either because of the recommendations or because of the environment changing, we'll address them. [inaudible] Does that give you enough thought on how to draft that?

[SUSAN KAWAGUCHI]: Certainly referring to a framework that is then described below the list of objectives is the easy part.

ALAN GREENBERG: I don't know if you even have to refer to it.

[SUSAN KAWAGUCHI]: Well, you need the definition of effectiveness, correct?

ALAN GREENBERG: The Bylaws didn't feel they needed one. Why do we? We may have one, but why do we have to cite it in the document? Chris, do we need to cite it?

CHRIS DISSPAIN: No. You don't need to cite it. And frankly, I can envisage months of discussion figuring out what it actually means. Can't you? I don't think we need to define it.

[SUSAN KAWAGUCHI]: It seems though that it might be a shame to lose the consensus around what a framework would be for defining effectiveness.

ALAN GREENBERG: I'm not suggesting losing it, I'm just saying it doesn't have to be in our terms of reference. But I admit I'm a minimalist.

[SUSAN KAWAGUCHI]: Okay. So but what we're discussing now is really just sort of what document the definition goes in, and then what time period. I'm still a little stuck on what is the effectiveness, what you're examining the effectiveness of. Is it just the implementation of the first Review Team's recommendations, or of WHOIS as it exists today?

ALAN GREENBERG: We are reviewing the effectiveness of the current gTLD directory services as a follow-on to the first Review Team's work. So it means we take their findings into account and add anything on to it that we believe needs to be added.

PATRICK DODSON: Chris.

CHRIS DISSPAIN: So we're in danger of unwrapping all the stuff that we've managed to successfully wrap up, but I find it easier to do it in sort of small chunks, I think. Are we reviewing the implementation of the last set of recommendations? Yes.

Are we reviewing the effectiveness of those recommendations – in other words, that they were 100% implemented wonderfully, but it's

been a complete disaster, are we reviewing the effectiveness of those recommendations on WHOIS generally? Yes?

And are we also open to any other – so if we find that something has not – so Review Team 1 said in order to improve accuracy, do X. X has been done, accuracy has not been improved. What do we do then?

ALAN GREENBERG:

The words in section number one say we are to evaluate the extent to which ICANN org has implemented each of the directory service recommendations noting differences if any of them were – if there were differences in the implementation for the recommendation.

B, assess to the degree practical the extent to which implementation of each recommendation addressed the identified issue by the prior Review Team or generated additional information useful to management of WHOIS.

C, determine if any specific, measurable steps need to be recommended to enhance results going forward.

CHRIS DISSPAIN:

Right.

ALAN GREENBERG:

So I think B is saying effectiveness.

CHRIS DISSPAIN: [That's exactly what we're doing.] Yes.

ALAN GREENBERG: That's already covered in wording we've agreed to.

CHRIS DISSPAIN: That's my understanding.

ALAN GREENBERG: Okay. So Item 2 here is, is there anything else that they didn't cover that we need to add?

CHRIS DISSPAIN: Right. So –

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: I can't read it because it's not written.

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: Are there any other things addressing the effectiveness of the RDS – the whole reason for this review – over and above what was addressed during Review Team 1’s recommendations?

CHRIS DISSPAIN: Which in essence allows for completely new ideas?

ALAN GREENBERG: That seems to be the desire of this group. Whether we do it by having two or leave it out altogether and say, “Hey Board, we’re changing our rules because we found something important.”

PATRICK DODSON: Susan. Sorry. Thank you.

SUSAN KAWAGUCHI: So to use Stephanie’s example, the WHOIS conflicts policy or whatever that’s called.

UNIDENTIFIED FEMALE: [inaudible]

SUSAN KAWAGUCHI: Yes. There we go. That is something that the first Review Team didn’t review, and it has now been changed, and maybe – though there is not a PDP, there is a PDP plan that is not ongoing, so – and I’m not recommending this. I’m just saying that as a classic example that might

be something the team would want to look at that the first Review Team didn't, and so we do a full assessment of that, whatever that means. And there could be other issues as we do our work that we go, "Oh, hey, this really has changed in the last five years and we need to focus some attention here."

CHRIS DISSPAIN:

Yes. So the problem is that it's a jagged line. I mean the endorsement of RDAP by the IETF didn't exist five years ago, so that's a significant change. So, are we suggesting that this Review Team should feed that into our deliberations, or are we saying, "Well, it's already – in essence – been ticked by [inaudible] as being the future," and so therefore that's okay and we don't need to look at it? Or is it a combination of both?

SUSAN KAWAGUCHI:

My viewpoint of that is we may need to look at RDAP a little. But then come to the conclusion that RDAP is impacted or being covered by the RDS Working Group and maybe the Thick WHOIS policy and blah, blah, and we don't see any changes needed and move on.

CHRIS DISSPAIN:

I guess my concern is if two is currently an empty bucket, which I believe is the case right now, then do we address what the criteria have to be in order for something to get into the bucket, or do we wait until something comes up and then argue about it?

UNIDENTIFIED FEMALE: That's a good question.

CHRIS DISSPAIN: Because if we wait until something comes up and we argue about it, we're going to be arguing about it from a position of, "I think it's really important, therefore it must go in." And if we argue about it philosophically without having any specific things to go in the bucket, then we may stand more of a chance of creating a pathway that's less divisive for this working group.

SUSAN KAWAGUCHI: I drafted the effectiveness framework, so maybe you should draft [inaudible].

CHRIS DISSPAIN: I'm going to shut up now.

PATRICK DODSON: Chris, that's a great idea. Why don't you? Alan.

ALAN GREENBERG: That's why I – perhaps facetiously – suggested the other alternative, but maybe it has merits. That is, not give an empty bucket which people feel compelled to fill, but understand that should we find something compelling, we will make a change. But the difference is it's not the empty bucket, might as well toss something in it that's already there, but we will have to make a change to the terms of reference, and that's

a bit more onerous and puts a bit more seriousness on it. Is this something really important, or is it just someone's pet peeve that we don't want to say no to?

PATRICK DODSON: Lisa.

LISA PHIFER: So let me see if I understand. So you're advocating that Objective #1 already includes determine if any additional steps should be recommended to enhance results from Review Team 1, and that that is sufficient, you don't need Objective #2 unless something wholly new and compelling comes up that warrants a change to the defined scope.

ALAN GREENBERG: Given that we spent the last two months and no one has come up with one of those yet. Again, I'm not wedded to it, it's a way of going forward which doesn't have the worry that this is an overexpanding project that will go on forever because we have this bucket to fill.

PATRICK DODSON: Volker.

VOLKER GREIMANN: I get where you're coming from, and I think you're right in that we probably should have the bucket standing there, and if something is

thrown into the bucket, then we should probably have a look at it and see if we should discuss this part of our work.

In everything that we do, discuss as part of our work and form us a recommendation in the end will have to be looked at in a couple years' time by the third group that's going to review at a certain point. But we should also not forget that we're not the only persons who can fill the bucket. We will have some public comments at a certain stage where we'll request for input from the community, where a lot of people will put their pet projects into that bucket, and it will be beneficial to have that bucket to put them into at that stage. [inaudible] terminology.

PATRICK DODSON:

Chris.

CHRIS DISSPAIN:

I get that you say that no one has come up with anything, and I'm sure that's correct, but my question is, given that the Bylaw under which this current review is happening wasn't written when the last review happened, wouldn't assessing how this review has worked and whether in the future such reviews need more guidance and changes to the Bylaw be something that fitted into Bucket 2, or would you argue that that's actually covered by something else?

ALAN GREENBERG:

We could put it into Bucket 2. I think it's almost the unwritten one we haven't talked about that we have an obligation in the Bylaws to assess this process, and if necessary, make recommendations for it to change.

We didn't look at that as a WHOIS issue, so it's not an issue with WHOIS itself, but it's a WHOIS review issue and that's implicitly part of our mandate. I don't think we can avoid doing that one even if it wasn't on this list.

CHRIS DISSPAIN:

Sure. To be clear, I would be advocating that you can only do that review in respect specifically to WHOIS reviews. You can say there are specific requirements for a WHOIS review and therefore maybe the Bylaws should be separate from the WHOIS [inaudible] it and leave the others to review their own what they need.

But all I'm saying is if the feeling of the Review Team was that they did want to test what would fit in Bucket 2, you could use that as an example. I generally favor – I think your approach works, because as you say, I'm kind of clutching at straws to find something to put in the bucket right now. Straws and bucket don't really go very well together. So it may be sensible to take your line, which is, let's just acknowledge it sits in the back of the room, and if we need it, we'll bring it forward, which I think is what you're saying, isn't it?

ALAN GREENBERG:

Yeah. You're quite however about reviewing the review, we probably do need a paragraph in the terms of reference saying we're going to do that. It's not a WHOIS issue, but I think we do need to make sure we mention that.

PATRICK DODSON: Okay, so where are we then? Are you sure? I don't know that I've heard a consensus of, is it in, is it a topic, or not? Lisa.

LISA PHIFER: So yes, I think we have the two proposals on the table. One is drop it, and if we need it later, we'll add it. But then it has to cross a threshold of actually changing the agreed terms of reference. Or leave it in and see if anything falls into it, but I'm not sure if you leave it in and see if anything falls into it works unless you define what it is you're going to do to decide what falls into it.

So one approach if you leave it in might be to define it as taking a look at what has changed in the past five years to WHOIS, the entire landscape, and then assessing, has anything changed that wasn't addressed by the first Review Team that should be addressed by this team?

That would be something actionable you could do in response to leaving it in, should you choose that.

ALAN GREENBERG: Operationally, you can say if you want to suggest a new topic, you have to be prepared to do all the work on it.

PATRICK DODSON: That could be the threshold.

ALAN GREENBERG: [inaudible] sure how you put that in the terms of reference.

PATRICK DODSON: Again, still, ideas floating. I want to see if we can land somewhere with a consensus to this group that it stays in but with clarifications about intent or threshold, or it's out, and we reserve the right to go through the onerous thing of cracking open the [TOR] later if public comments or other ideas pop up.

ALAN GREENBERG: If someone can propose what those conditions are, then we can simply take a vote. But right now, I'm not sure if we can take a vote between something to be written and something [inaudible]

PATRICK DODSON: So, Lisa, not to put you on the spot, but do you think that you have enough from this conversation to take a draft at what that would look like if it stayed in? Okay.

LISA PHIFER: Yes, I can take [inaudible]. We could revisit tomorrow what it might look like should, it stay in.

PATRICK DODSON: Just to see if it's closer to clarity of keeping it in for the merits that that argument has been versus the merits of keeping it out. Okay, time check. We have 20 minutes left. Try and tackle one more.

I was going to propose Lisa's recommendation of looking at 7, assess compliance enforcement actions, because we have a lot of strong opinions that it should be in. we have one that says it shouldn't, and we have one that says it's important but not feasible at this time. So I wanted to pull it up and look at it, and see what might be causing some deltas there.

ALAN GREENBERG:

And we hear from the two people who gave the other answers.

PATRICK DODSON:

If you remember who you were, you can answer and want to comment, put them on the spot.

Yes. That's why you [hold] twice, right?

So as the objective test is written and it's fully drafted, it doesn't have placeholder copy, is it easier if I just read it? Consistent with ICANN's mission to ensure the stable and secure operation of the Internet's unique identifier systems by enforcing policies, procedures and principles associated with registry and registrar obligations to maintain and provide access to accurate and up-to-date information about registered names and nameservers, the Review Team will – to the extent that this is not already covered in prior Review Team recommendations – A, assess whether contractual compliance actions, structure and processes are effective, and B, assess the availability of data related to transparent enforcement of WHOIS RDS contractual obligation.

I used a lot of words. Cathrin.

CATHRIN BAUER-BULST: [inaudible] very German comment. We can choose as to how the analysis would be informed by the [inaudible] recommendations. Patrick, I'm looking at you, of course.

PATRICK DODSON: You're looking at me like [inaudible] not my department.

CATHRIN BAUER-BULST: If anybody has any –

PATRICK DODSON: 16 recommendations and they're up.

CARLTON SAMUELS: In the old review, sixteen outcomes. 16 recommendations from that review, and all of those, if they're measurable, a lot of that is going to come down to compliance data. And so this just says that we want to see what you have, and we want to see if what you have correlates to the recommendations. [inaudible]

PATRICK DODSON: [inaudible] topic too, but it's specific to compliance, right?

CARLTON SAMUELS: Yes, that's it.

CATHRIN BAUER-BULST: I agree. I'm just wondering whether what Carlton is saying is what we're in fact expressing in the text, because I can subscribe to that. We want to see whether the data that's available is actually sufficient for us to be able to assess compliance efforts, and those compliance efforts may already be informed by previous Review Teams' recommendations. But I think the analysis per se is not determined by the previous recommendations. That's the part that I'm stumbling over.

PATRICK DODSON: Dmitry.

DMITRY BELYAVSKY: If I'm not mistaken, the position [is mine] on this point. Well – yes. As I wrote in the – I forgot the word. On the [spotter] sometimes we need to harmonize contractual compliance with national laws or mechanisms. If it's not harmonized, it can cause a lot of problems for the registries. So I made this point. Thank you.

PATRICK DODSON: As far as the feasibility because with the different – okay. Alan?

ALAN GREENBERG:

That's an issue with the contracts that we should not be imposing rules that are at odds with national laws. And if they are, we have to fix the contract. That's not a compliance issue.

Now, right now we may have a compliance position where certain things are overlooked because of the knowledge that our regulations are not in line with some national laws, but that's not really a compliance question that we're talking about here.

I'm more worried about this one because it says, "Assess whether compliance actions, structure, and processes are effective." And I'm not sure I know how to do that. We can make relative statements, but I'm not sure we can make absolute statements like that. But we get to interpret it, so I'm not nearly as worried.

But I don't think there's an issue between national laws and compliance. There's an issue between national law and the regulations that compliance is enforcing, but that's different.

DMITRY BELYAVNSKY:

Sounds reasonable. Okay. Thank you very much.

PATRICK DODSON:

So Carlton, if you wanted to say anything. Otherwise I've got Chris and then Stephanie. Chris?

CHRIS DISSPAIN: Yes. Compliance has moved on significantly in the last five years, so since the Review Team made their recommendations five years ago or however long ago it was, it's moved on significantly, which is kind of why I don't understand the paragraph, because the logical thing to say would be in one part of what you would do because compliance was a series of recommendations, so in point number one, what we would do is look at the implementation of those, and look at the effect of those, and the obvious effect of introducing compliance is so people comply. So it's a fairly clear and straightforward line to make, which is these were the recommendations, they were implemented. Is compliance being done, etc.?

I don't understand what this adds to that, unless there's some suggestion that you wouldn't look at that in one. I don't understand what this adds other than what you would do in one, unless you want to open up a whole heap of new compliance issues, in which case that's an issue for Bucket 2. So I don't understand why this is its own point.

PATRICK DODSON: Stephanie is in the queue and then Alan. Stephanie?

STEPHANIE PERRIN: Thanks. I'm not sure which buckets we're talking about here, Bucket 1, Bucket 2, so I'm probably adding to confusion here. But it does seem to me that whilst agreeing that Compliance has come a long way in the last five years, we can assess whether Compliance is evaluating all the WHOIS issues that are in the contract. I would suggest not. I think that they haven't evaluated compliance with national law, they haven't

evaluated the requirements to let the individual know of their privacy rights, and they haven't evaluated [inaudible]. Never mind, that's enough. And that we might make recommendations to ask Compliance to diversify its compliance actions to include some of the other elements. Thanks.

PATRICK DODSON: Thanks, Stephanie. Alan, and then Chris is in the queue, and then I think maybe Carlton and Lise.

ALAN GREENBERG: This recommendation, this issue is pretty wide ranging. The recommendations that came out of Review Team 1 were relatively targeted, and things have changed a lot. There is still a fair amount of dissatisfaction in parts of the community over the current compliance, and this is an opportunity to try to comment on it, I think.

CHRIS DISSPAIN: I think the last two comments clarified to me why I'm so uneasy about this. Compliance is far wider than WHOIS, and if what you're looking at is if you specifically and only limit the review to looking at compliance as it relates to WHOIS, then so be it, but I've heard examples being given that I would argue are outside of WHOIS and are in fact legal issues rather than WHOIS issues, and that is absolutely and categorically not part of this review.

This review is about – if you want to bring compliance in, the way you bring compliance in is, how is compliance being used to ensure that

WHOIS does what WHOIS is meant to do? So let's just take accuracy as an example. How is compliance being used to ensure that? It has to be limited to that. And so I ask again, if you take the first step in Bucket 1 of saying, "Let's review the implementation of the first Review Team's recommendations, some of which were about compliance," so we've done that, and then you take a look to see whether or not there is anything else that needs to be looked at in respect to WHOIS and compliance, I still don't get why this is [a] point here. I don't understand the point of the point I suppose is my point.

ALAN GREENBERG:

May I qualify? To the extent the wording here does not say within the scope of WHOIS should. And it does in one sentence, it may need to in another sentence. But I believe there are issues.

When I said we haven't raised a lot in the last two months, this was one we did raise.

CHRIS DISSPAIN:

Could you give me an example of something that you think would fit under this that we would – not looking at the existing implementation and stuff, but something – if I can use the word "new" just for the shorthand, that would fit into this area, Alan? Please.

ALAN GREENBERG:

I will let Susan speak since she was next anyway.

SUSAN KAWAGUCHI: Do you want an actual compliance issue?

CHRIS DISSPAIN: Give us something that in two months' time we're going to be discussing under this heading.

SUSAN KAWAGUCHI: Just from my point of view that ICANN Compliance is now releasing much more data, we had very few stats to work with last time and we're told they had very few stats, so there was none of the statistics to really look at and see if there were problems.

Systems were broken before, they're not now, so that would fit in the first objective. But I think for me, the reason why this is here is that compliance is critical to the health of the Internet and the domain name system, and so this brings it – sort of ratchets up the importance of looking at compliance so it doesn't get lost.

The other thing is that if we did put it in Buckets 1 and 2, reviewing existing recommendations and then whatever else is new, which I think there is a lot new in compliance to work with, we would need to go through this exercise and really figure out how we are assessing compliance. I think that's part of the discussion we've been doing, and which I think is helpful and will guide us in our work.

PATRICK DODSON: Erika.

ERIKA MANN: But I [inaudible] reference to narrow it down to our particular environment the compliance, because otherwise compliance can have a very broad definition background. So it might be helpful to do this.

UNIDENTIFIED FEMALE: For me [inaudible]

ERIKA MANN: [inaudible] for me. It's clear for many.

UNIDENTIFIED FEMALE: But we're not going to look at [inaudible]. I don't care about that.

ERIKA MANN: I agree. But [inaudible] for everybody. We [inaudible] later.

PATRICK DODSON: Yeah. Thank you. Lisa –

ALAN GREENBERG: We probably need a reference to WHOIS in Paragraph [8].

PATRICK DODSON: Yeah. Lisa and Chris.

SUSAN KAWAGUCHI: If I could just jump in on that point, we've been talking about reviewing the Review Team 1 recommendations, but in fact, what was the Review Team 1 objective related to this? And the Review Team 1 objective is to review the effectiveness of ICANN enforcing its existing policy relating to WHOIS subject to applicable laws. So that was their objective, coming up with – as you pointed out – some very targeted recommendations. But if we're looking at what the original Review Team was trying to accomplish and how well the recommendations accomplish that for other objectives, it would seem to encompass the kinds of things you're talking about.

CHRIS DISSPAIN: Susan, I get it, but I have a supplemental or further question. I can think of an example. It would be legitimate to look at whether or not since the new compliance stuff has all been done after the last review, the instances of recognizing inaccurate entries in the registrant field, just use that as an example. Inaccurate entry, that's probably the most important field. Inaccurate entries in the registrant field of being picked up, and I can see that that would be something that you would be looking at. My question is, do you think it's this review group's job to then look at the action that's taken and comment on that? Because that's a contractual issue rather than a WHOIS –

UNIDENTIFIED FEMALE: [inaudible]

CHRIS DISSPAIN:

No, what I mean is, can you envisage that this Review Team could make a recommendation that said for example, “We recommend that” – I know you wouldn’t, but just bear with me, it’s the principle of the thing – “after a letter has been sent and no response has been received, this name is removed from the database?” For example.

Because of that, that doesn’t fit under the review of WHOIS, right? So my concern is that you end up instead of reviewing what compliance does in respect to WHOIS, you end up reviewing what ICANN does as the results of what compliance does in respect to WHOIS. And I think that’s a different point.

I don’t think it’s this Review Team’s job to set out a punishment table, for want of a better way of putting it. And that’s why I said I think if you stop at the point of saying, “Yes, we are now getting many more data about how many inaccurate things there are,” that’s fine. But if you then start threading into areas about what the results of that are, that’s going to be problematic. Does that make sense?

SUSAN KAWAGUCHI:

Yes, and I don’t think it’s our mandate to decide punishment, for example. What I am concerned with with the Compliance Team and WHOIS data is that in their processes and how they manage and work through a compliance issue that’s reported to them, that if there are inconsistencies in the outcome.

Sometimes when you report something, you get this type of outcome. Sometimes it just goes into a black hole and you never find out anything. And it also really depends on which registrar you – who is managing that registration. So to me, that we have a responsibility to look very closely at this ICANN compliance processes to see if they consistently handle the same set of facts, different registrations in the same manner.

Obviously, there has to be some give and take and there are extenuating circumstances, but I do not see a consistency in my experience with ICANN Compliance that is responsible, let me put it that way. And I think we could use the data that is now out there, ask them to tack other data, which we did that in Review Team 1, and ask them to fix some things, which they did. So I think because ICANN Compliance has changed so much in the last five years, that other recommendations could be made. But I don't know what those would be until we actually review.

PATRICK DODSON:

So in the queue we have Alan and then Carlton, and then Trang. And we are at time. And Volker. So if we can be brief, then we can jump into next steps and I'll wind it down.

ALAN GREENBERG:

I will try to be brief. I'll give you an example of things that have happened that hopefully are fixed now, but they were process issues. A particular complaint was made at one point, and it was rejected. It was incorrectly rejected, but rejected.

It was a complaint about WHOIS information. The WHOIS information was invalid. Compliance said, “No, looks okay to us.” The complaint was made again a second time. This time, they agreed that it was invalid, reported to the registrar, the registrar put the domain on hold – which essentially takes it out of the DNS – and said, “Our job is done,” and reported to the complainant.

What they didn’t realize is six days later, the registrar turned the hold off, and suddenly it was back. And they never thought that they had to check again a week later, because no registrar would do that, of course. And hopefully it is now part of their process that they go back and check routinely. I don’t know whether they do or not. But that’s a process-related thing that indicated that they didn’t really understand the environment they were working in. And I’m ignoring the fact that the complaint was rejected the first time where it shouldn’t have been.

So there are things like that that come up continually, even in today’s world, that some of us have concerns about.

PATRICK DODSON: Thank you, Alan. Carlton.

CALROTN SAMUELS: I just wanted to point out the last piece of that that I think is critical, the transparent enforcement of contractual obligations data. That to me is probably the single most important piece of all of this. You trust, but you must verify. And right now, we don’t have much way of verifying that it actually is happening. That’s a problem.

PATRICK DODSON: Thank you. Trang.

TRANG NGUYEN: Susan, I have a clarifying question. When you were talking earlier about the compliance processes, are we talking about a review of the general compliance process, or were you sort of referring to an audit of compliance, all of the specific complaints and how each one was dealt with? It wasn't clear to me when I was listening whether or not you were listening to sort of an audit of compliance or just a general review of compliance process.

SUSAN KAWAGUCHI: I think it would involve an audit of the statistics that Compliance is now providing, but I also think it would be very helpful to the community if – and using Alan's example of reporting that – they closed the ticket is what it sounds like they did and said, "No, it's valid information," and then – I don't know how many days, so say, three days later he files it again and they're like, "Oh, yes, this is inaccurate information."

So to me, that indicates – and I've filed a lot of inaccuracy reports in my day – and so I just see an inconsistency in how those – and I don't know if it's a specific person, or do they have a written process to say, "When you see this, do this?" And I think it's our responsibility for the community to make sure that ICANN Compliance is following a standard process so there's a consistent response. And consistency is not a term you can use with ICANN Compliance at this point.

I have a lot of war stories to share over a glass of wine.

PATRICK DODSON: Thanks, Susan. Volker, please.

VOLKER GREIMANN: Yes. Dealing with compliance on the other end of things, I can agree to a lot of these points, because sometimes in a response that we'll be giving to ICANN Compliance for a certain registration will be sufficient, whereas a different time for a different registration, the same answer will not be sufficient.

It does seem like some of their staff are working via checkmarks in a book. So looking into their process could be interesting, although I'm not sure how much it goes into – our scope takes care of that.

One other compliance issue that I regularly see is WHOIS ARS. And I don't think we have to have that on our scope at all. ARS, which is basically the automated system of looking at WHOIS data and making reports for Compliance out of that.

There's a lot of reports that we're getting that are simply incorrect. So basically, sometimes the filter works too good, sometimes it works not enough. It's a manual process at Compliance, and they have to make a judgment call at a certain point. And I get that, but still, sometimes it's annoying to get work that you shouldn't be getting.

So I agree with some of the points you're making from a totally different perspective. It's on both sides.

PATRICK DODSON: Chris.

CHRIS DISSPAIN: I know you want to move on, and that's fine, but I want to think about this because – the point Volker just made about WHOIS ARS is I would argue smack bang in scope and relevant. I'm not comfortable yet that the way that Compliance reacts or the way that Compliance moves things forwards is encompassed – A is whether it should be, but even if it should be, it is encompassed in that wording. I'm not comfortable that that is actually the case. So I just wanted to say if we could flag that, let me think about it and we can maybe come back to it tomorrow.

PATRICK DODSON: Yes. Just as a part of closing on this, because I think we're close to bottoming out on a few things here, but I think it'll help if we take the feedback that has already been proffered. I'm hearing the theme around transparency, being able to emphasize consistency, and I think even handedness in how processes are put forth, but I also think that there's the question of whether or not these are compliance delivery issues that are broader than WHOIS, or is this specific to WHOIS? So there's the issue of, is it best addressed in another vehicle? So we'll revisit that tomorrow at some point. I know we have to figure out agenda and such, but I did want to just quickly recap.

I think we made quite a bit of progress here on about half of these, [bringing them] very close to the place where the team can move into

the drafting of working plan elements and looking at milestones and activities and timelines in the time you have allotted tomorrow. We still have a few opens obviously on some of the more challenging topics that may or may not make it into the review, and we'll have to look at whether those can fit into the work efforts tomorrow. But you covered a lot of ground today, so thank you very much, and a good discussion and I think we got some good clarity on some points, and hopefully that momentum will build through tomorrow. And with that, I'm going to hand it back over to Alan.

ALAN GREENBERG: Who has to figure out where we are in the agenda.

UNIDENTIFIED FEMALE: [inaudible] review date to agenda, provide [inaudible].

ALAN GREENBERG: It says we're going to review tomorrow's agenda, which Alice will do very quickly, and then review what we're doing with regard to dinner.

ALICE JANSEN: Tomorrow on the menu we have a day one debrief and day two objectives. Then we'll have a short presentation from Jean-Baptiste on meeting costs to inform your work plan discussion happening in the afternoon. Trang and Akram will be walking through Recommendations 1, 2, 3, 6, 7, 9, 15, and 16 for you tomorrow. And we will dive into the

work plan session and finally adopt potentially some of the terms of reference language as well as scope and objectives.

And to conclude the day, we'll discuss the – sorry, leadership, if you want to confirm the current leadership or make some adjustments, and talk about the Board request for the terms of reference work plan, the meeting communiqué, [inaudible] ccNSO and run through the action items and decisions reached.

So this is your program for tomorrow, and this evening you have a dinner party planned for 7:00 p.m. at the restaurant at [inaudible] very close by, so you should all have selected your menu choices.

If someone [inaudible] that would be great.

UNIDENTIFIED MALE: [inaudible]

ALICE JANSEN: Okay. Great.

UNIDENTIFIED MALE: [inaudible]

ALICE JANSEN: As you're facing the arch, it's the restaurant on the corner. [inaudible] Thank you, Stephanie and Thomas for staying with us the entire day. You've been wonderful, and we look forward to speaking tomorrow.

Have a great day. And with that, we're closing the session for today. Thank you everyone who's been listening, and look forward to seeing you tomorrow. Thank you. Bye.

[END OF TRANSCRIPTION]