

**ICANN
Transcription
Next-Gen RDS PDP Working group call
Tuesday, 06 February 2018 at 17:00 UTC**

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Operator: Excuse me, the recording has started.

Julie Bisland: All right. Thank you. Well good morning, good afternoon and good evening everyone. Welcome to the Next Generation RDS PDP Working Group call on Tuesday the 6th of February, 2018.

In the interest of time, there will be no roll call. Attendance will be taken via the Adobe Connect room. If you're only on the audio bridge would you please let yourself be known now?

All right, well hearing no names I would like to remind all to please state your name before speaking for transcription purposes and please keep your phones and microphones on mute when not speaking to avoid any background noise.

With this I'll turn it back over to our chair, Chuck Gomes.

Chuck Gomes: Thanks very much, Julie, and thanks everyone for joining our call today, and special thanks to all of you who joined on time, that's very much appreciated.

Does anyone have an update to your statement of interest please raise your hand if you do. Okay, not seeing any hands, let's go ahead and move to agenda item 2.

You can see that the presentation for today's meeting is in Adobe and you have scroll control. So you have the flexibility of moving around in there as you see fit.

You can see on Slide 2 and in the upper right corner of Adobe the agenda for today so we're going to start off with discussing a list of criteria that makes purposes legitimate for processing and focusing in particular on Question 2 from last week's poll.

I saw a hand up and disappeared so I guess that's okay. The agenda then takes us to Slide 3, the criteria that make purposes legitimate for processing, which we've been working on for a few weeks.

And remember we're using the GDPR definition of processing so it includes lots of things. It does not necessarily mean collection; collection is one aspect of processing. And there are lots of other elements, access and storage, etcetera, you can read through those on your own and most of you have done that a few weeks ago.

The poll results are posted and hopefully you've had a chance to look at those. We will review those. Remember that last week, and this is in the box at the bottom of Slide 3, we revised the proposed criteria that we had and then we polled on some variance of that. And so we're going to talk about that when we talk about the results for Question 2 in the poll.

So thanks to all of you who completed the poll and that gives us some good facilitation of our meeting each week so thank you very much for that. There were 27 respondents as you can see on Slide 4. And just 56 – 41% said support or could live with.

The main concerns were consistency with ICANN's mission and/or – there were four comments – I should rephrase that. The main concerns were consistency with ICANN's mission and then the issue of and/or that was one of the questions.

So four comments proposed alternatives; those were comments 1, 4, 9 and 13. And we'll – I don't know that we'll get to those today but we will take a look at those and let the whole working group discuss those.

Now what the – the leadership team reviewed all of the comments and put quite a lot of thought into it. In fact, our leadership call yesterday went almost 30 minutes over plus the time we spent in email interacting with one another. And we're going to propose two possible agreements based on what we read and what we've done over the last few weeks.

The first one, Agreement A on Slide 4, is that any purpose for processing registration data must be consistent with ICANN's mission as it relates to RDS. Any recommended purpose must be confirmed by the Board with respect to consistency with ICANN's mission.

Now we fully recognize that last week we kind of backed away at several people's suggestion from saying "consistent with ICANN's mission" and we said "non inconsistent."

Several people made some pretty good cases in the comments pointing out that that kind of leaves it a little too wide open and we think they had a reasonable case there. At the same time, we don't want to get into a situation in the working group where we're debating ICANN's mission. Historically, pretty much from ICANN's beginning, there have been different camps with regards to ICANN's mission; those saying that it is very limited, it's a narrow technical mission and they make a reasonable case for that.

But others point out that it's broader in some respects and we could probably debate it for several months and probably not do any better than what's happened over the last 17 years or so.

So what we're suggesting is that we accept the fact that any purposes we propose need to be consistent with ICANN's mission and we should do our best to make sure that's the case but ultimately that's going to be determined by the Board as is always the case, okay.

So they have to approve any policy recommendations we make and hopefully before we would ever get to that point they would have already – we would have already received feedback from them if there are any purposes we're proposing that are not consistent with ICANN's mission.

Now that said, that means that we're not – it doesn't work very well to use ICANN's mission as a criterion for it, but we certainly should measure criteria against that mission to the best of our ability.

But rather than getting into long debates about what the mission is let's recognize that ultimately it will be determined by the Board whether something's in mission or not. And we will certainly get feedback on an ongoing basis from the Board and staff as we move through.

So I'm going to stop there and we'll come back to the second possible agreement. And like to open up discussion on this possible agreement. Bradley, go ahead.

Bradley Silver: Thanks, Chuck. Bradley Silver for the record. I have a question, do you see a difference between ICANN's mission versus ICANN's mission as it relates to RDS? Because it does seem that we're not just talking about ICANN's mission anymore.

We're talking about a subset of ICANN's mission which may be an even narrower concept than we've encountered in the past and one which I would imagine if there are differences in how ICANN's mission is perceived by different parties that there may be even further splintered differences as to which parts of its mission relate specifically to RDS and which does not.

Chuck Gomes: Thanks for bringing that up, Bradley. This is Chuck. Note in this – in the wording of this possible agreement we actually inserted “as it relates to RDS.” Now again, we could probably get into debates on specific purposes as to whether they relate to RDS or not, probably lead us down the same path of just debating the thinness or thickness of ICANN's mission.

But we have that in there because obviously there are lots of things in ICANN's mission that may not specifically deal with the RDS. And our focus, of course, is the RDS, so that's why we put that in there.

Are you okay with that, Bradley?

Bradley Silver: I'm just a bit concerned that it may give some the opportunity to argue that it could be consistent with ICANN's mission but the justification for that is not somehow RDS-related, that ICANN's mission, you know, I think so we're – it seems that we've, you know, gotten into territory where we're narrowing the scope of what – of the threshold for the level of the threshold for RDS, not just to ICANN's mission but to something narrower than that.

((Crosstalk))

Chuck Gomes: So just one more follow up question, Bradley. So you would probably be more comfortable if we didn't have that phrase...

Bradley Silver: Correct.

Chuck Gomes: ...“As it relates to RDS.”?

Bradley Silver: Yes, I think, you know, I think that in order to avoid going down the rabbit hole in that issue, you know, ICANN's mission should be ICANN's mission.

Chuck Gomes: Okay. Thanks for that input, appreciated. Alan, go ahead.

Alan Greenberg: Thank you very much. I have the same concern and it's even wider than that. But to be quite honest, I don't have a lot of interest in debating these words but I do have a very great interest in understanding how they are interpreted by various people.

And let me give you the specific example, we have had innumerable discussions here about whether RDS information should be made available to law enforcement or cyber investigators. And people have said that's, you know, law enforcement is not ICANN's mission.

We now are saying we may restrict the use, the processing of things, which implies collection among other things, and storing, only if it's within ICANN's RDS mission. I'm not sure there is any RDS mission. So by saying – using the term “RDS” in related to mission we may be cutting out almost everything. We've now had a letter from the European Commission, you know, saying access to law enforcement and cyber investigators is something that is important and must be maintained.

So if these words that you're putting on this page here are going to be used as a rationale for why we should not collect certain data or should not make it available for, you know, fighting cyber issues, then I have a real problem with.

If everyone says no, fine, fine, we accept it's within ICANN's RDS mission to make information available to allow the Internet to be secure and safeguarded then I have no problem with it.

But what I'm hearing from people – what I've heard people say over and over again, that they already have problems with some of those rationales for collecting and distributing data and that potentially these words are going to be used as the argument for why we should not be allowing those pieces of data. And if that's the case I find this really problematic, thank you.

Chuck Gomes: Thanks, Alan. I'm going to also ask you a follow up question or two in a minute. But first let me make clear that the leadership team had no ulterior motives, okay. We're not trying to be restrictive later – use this as a club later on, okay.

Alan Greenberg: To be clear, Chuck...

Chuck Gomes: In reality – go ahead, Alan.

Alan Greenberg: Chuck, I was not accusing leadership of doing that but I can see these words being used by some people...

Chuck Gomes: Okay.

Alan Greenberg: ...for just that purpose and that's my concern.

Chuck Gomes: Yes, no, no, and your concern is appreciated. Keep in mind that we're going to go through every purpose in detail so the arguments that you've heard people make that you like or don't like or whatever we're going to deliberate on those one by one.

There's just a couple that we're kind of past as we'll see later on hopefully in this meeting. But we're going to get there. And if at that point we see that ICANN's mission is being used the way you're suggesting we can deal with that, but it's a good thing to say.

Now one follow up question at least for you, would you prefer we removed, “as it relates to RDS”?

Alan Greenberg: I believe – I’m not sure what parts of the mission relate to RDS because I don’t think the term “RDS” or “Whois” is mentioned in the mission. So...

Chuck Gomes: Yes.

Alan Greenberg: ...I would if nothing else want to understand what parts of the mission does it relate to if it only relates to the RDS parts.

Chuck Gomes: Yes, okay thanks. That’s helpful to know. Greg, you’re next. Greg Aaron.

Greg Aaron: Thank you. This is Greg. Certainly the phrase “as it relates to RDS” is redundant. This project is just talking about RDS and anything we recommend we will be about RDS. So I agree with Bradley, it’s redundant and I agree with Alan that it’s a little ambiguous and could certainly be misinterpreted.

The second sentence I think is also redundant. The Board always approves the entirety of a PDP recommendation. It – this is just saying something that is already going to happen.

They’re going to like what we suggest or not. Yes we should run it past the Board at some point. But there’s also this – you’re also implying here this long process where we’re going to spend multiple rounds explaining to the Board everything we’ve done.

And this is – I think the second sentence is trying to make people feel better but it’s also passing the buck and I don’t know if it’s – it’s practical and it’s also something that’s assumed anyway as part of the process, so I’m not even comfortable with the second sentence at this point. Thank you.

Chuck Gomes: Thanks, Greg. So you're absolutely right that it's – this is ambiguous and we did – the leadership team decided that intentionally because we knew that if we start getting very specific in terms of what's in ICANN's mission and what is not we will spend several months working with that and probably have the same results that has happened in the ICANN community over many years.

So you're right, it is and we were trying to provide a comfort level with that second sentence, you're right. And you're also right that it doesn't need to be stated; that will happen, that is part of the GNSO PDP process and part of the ICANN Bylaws. So you're clear. I think if I understand you correctly you would remove “as it relates to RDS” and you would remove the second sentence, is that correct?

Greg Aaron: Yes, that is correct. I mean, in general working groups don't consider things outside of – out of the ICANN Bylaws anyway and they do have to consider those issues anyway.

And this always happens in any working group, some people argue about what exactly is in scope and out of scope. We're going to have to do that anyway and ultimately we're going to have to make some decisions.

Chuck Gomes: Yes. And we'll do that one by one as we go through the purposes, okay, and try to at least reach rough consensus, probably won't be too many times when we'll have unanimous support but hopefully that'll happen once in a while too. Thanks, Greg. Appreciate that. Greg Shatan, you're next.

Greg Shatan: Thank you. This is also Greg for the record. Greg Shatan. I agree with my namesake and also largely with Alan and Bradley. I think as it relates to RDS is both redundant and recursive, one of my favorite words that basically it comes back in on itself like an ingrown toenail. So I think that it adds nothing but the potential for mischief as Alan referred to.

And I think that the interpretation of the rather abstract high level statements is critical and I think we may need –before we make any decisions or on these high level statements need to understand how they concretely apply to particular purposes.

It's a bit of a chicken and egg question but I don't want to kind of come up with some high level purpose restrictions that then work to, you know, swat down any number of purposes that, you know, I believe and many others believe are proper purposes.

So I find it troublesome to try to agree to anything in the abstract without knowing how it works in the field. And I think to some extent we're fighting about these in the abstract – or not fighting, we're discussing these in the abstract but with everyone having a keen awareness in their mind of what they believe the concrete effect of certain words to be and either suggesting strongly those words should be in or those words should be out not so much based on some high philosophical concern but on making sure that the knife is pointing in the right direction so that they don't end up committing (seputu).

As to the second sentence I think first the PDPs results as a whole will end up being confirmed by the Board. And where this sentence could get troublesome is the idea that if somebody comes up with a purpose that they believe is within a purpose that's been named or if the purposes – is a non-exhaustive list but it's based on high level principles that we do agree to, that a sentence like this would mean that no purpose could be invoked unless it was specifically approved by the Board. And we're never going to anticipate every combination of variables that could make one purpose slightly different from its predecessors.

And so putting – making the Board into sort of the purpose police or the purpose court could end up giving them a full time job in the end one could see challenges to purpose being made using this sentence on everything that doesn't fit exactly into the four corners of the stated purpose. And for that

matter – for those reasons I would end this whole agreement after the word “mission.” Thank you. Bye.

Chuck Gomes: Thanks, Greg. And you'll note that that's what Lisa put in the chat there as a possible agreement on this. And I want to reiterate I think what I've said more than once already on this call, we will get more specific and beyond the abstract when we look at each specific purpose, okay? Now I want to back up just a little bit before I go back to Bradley because Alan said something that I meant to respond to and I forgot.

Notice this says, “consistent with ICANN's mission.” I don't think that means that there has to be a specific reference to everything we do in the bylaws. And if somebody thinks that's what that means maybe we need to fix the wording. So I just want to comment on that.

So like one of the comments in the chat is the ICANN's mission statement doesn't refer to the RDS, and I think that's accurate, it doesn't. So we're not saying that there has to be something in the mission about everything in RDS that we recommend at all. So hopefully everybody understands that.

Bradley, your turn again.

Bradley Silver: Thanks, Chuck. It's Bradley. I have a – talking about redundancy, the bylaws clearly state that ICANN shall not act outside its mission. Why do we need a statement like the one in the first sentence?

Surely there are already checks and balances and ring fences around what ICANN can and cannot do as it relates to its mission. Why do we need this?

Chuck Gomes: Well I guess literally we don't need anything, okay, because everything is in the bylaws that we have to follow, right? But it is helpful I believe for us to have some guidelines.

It will be helpful as a couple of people have said in their comments already today for us to check our consistency with ICANN's mission as we go. You're absolutely right, it's not a totally essential. A lot of what we're doing is not totally essential but hopefully it will be helpful guiding us through the process.

Keep in mind what Lisa emphasized last – in our last meeting, that the reason we're doing this is we were having trouble agreeing on purposes and what the basis for them were and so we were trying to establish some criteria that would facilitate our discussion.

So is it absolutely essential? I don't think I could argue that it is. Could it be helpful? I think it might be. If it isn't I don't think we've lost anything. So that's my response there. Kathy, you're next.

Bradley Silver: I just – would just to make sure that I think that the basis of my concern here is I think the thread that runs through a number of the comments that have already been made is not wanting to get into re-litigating ICANN's mission and not creating some sort of super threshold for what RDS is and how it can be used and how others may use it outside of the ICANN universe that doesn't necessarily have a clear basis within ICANN's mission. That's my concern.

Chuck Gomes: Thank you, Bradley. And we as a working group are going to have to make some decisions when we get into the specifics for each of the purposes. So our goal will to try and at least reach rough consensus on the decisions we make.

We probably won't have unanimity on very many things but hopefully we'll have strong enough support to justify moving forward with some recommendations. Kathy, your turn.

Kathy Kleiman: Hi, Chuck. Hi, everyone. Kathy Kleiman. Okay so we're just talking here, we're not even on the purposes here, right, we're talking about the criteria for processing registration data...

Chuck Gomes: That's correct.

Kathy Kleiman: Terrific. So consistent with ICANN's mission is where we were last week. It seems to make sense. I wanted to ask you, before we delete some of these carefully chosen words that the leadership team has offered this week, I wanted to ask you, Chuck, or anyone on the leadership team, to discuss what the process might be. And I'll explain that in a second. And also what we lose by taking it out.

So there's a reason you added "as it relates to RDS" not you but the leadership team and so I'd love to know that that is and what we lose by taking it out. And then the sentence which is really interesting, "any recommended purpose must be confirmed by the Board with respect to consistency with ICANN's mission."

So of course the Board, we hope, will approve whatever comes out of this working group that has, you know, acceptance by the GNSO Council and by the stakeholder groups.

But is there another – is this second sentence like another level of process? Any required purpose must be confirmed by the Board. So is this inserting a new kind of process? What does it mean to have it and what does it mean to take it out? Thanks, Chuck.

Chuck Gomes: Thank you, Kathy. Chuck again. And I'm going to ask some of the members of the leadership team to respond, so be thinking and ready to respond before I go to Alan.

With regard to that second sentence, I mean, Greg Aaron said it pretty well, it's not really necessary, we were trying to create a comfort level on this but in the end game the Board is going to have to check and make sure it's consistent with the mission and so forth. So we're stating something that's already a fact and it will happen anyway.

So I don't think we had any but I'm going to let other members of the – and I would appreciate it if members of the leadership team who are willing to respond to raise your hand and I'll jump to you next.

With regard to “as it relates to RDS” I'm just going to share my opinion and let other members of the leadership team share theirs. I don't think it's a big deal. We were – we're always trying to be careful because we know that some people may be concerned that ICANN's mission will be used too broadly to expand it, you know, some people are fearful of mission creep and things like that.

But myself, I mean, for example several people today – I think at least four have suggested removing that. That doesn't give me any heartburn. I don't think it necessarily does anything but that's my thinking so let me turn it over to leadership team both staff and the vice chairs if you would please. And we'll start with Marika.

Marika Konings: Yes this is Marika. I can just restate what I put in the chat as well. I think as Chuck noted I don't think too much should be read into this second sentence, I think it's just to reaffirm that whatever eventually comes out of this working group, you know, once it has passed the GNSO Council stage for approval it will go up to the ICANN Board and they will need to assess indeed whether any of what is being recommended, you know, is consistent with ICANN's mission or, you know, would run contrary to that.

But as I noted in the chat as well, you know, if at some point there would be concern or there would be a need or a desire to have a kind of confirmation

that, you know, the group is not going in the wrong direction you could, for example, consider at the time of an initial report when things are further fleshed out to also ask, you know, the ICANN Board to indicate if they see anything in there that is an obvious red flag to indicate that at that point in time. So you do have some guidance or indication you know, before it actually gets to the final stage.

But as said, I don't think that is what is currently intended here. This is just a reassurance that, you know, whatever this working group does, you know, it cannot rewrite ICANN's mission. At the end of the day the Board will need to make an assessment on whether or not recommendations are consistent with ICANN's mission and so I think that is just what it's trying to state there.

Chuck Gomes: Thanks, Marika. And in that regard let me remind people that the Board actually has an RDS committee, I forget their official name, but that we periodically – the leaders meet with sometimes at in person meetings and so forth. And so there's an easy channel for us to seek guidance from the Board at any time we need.

Chris Disspain heads that up, if that hasn't changed, and so it's real easy to go to Chris and say, hey, Chris, could you ask your committee to give us some guidance or clarity or whatever we need. So thanks, Marika. Let's go to Alex.

Alex Deacon: Thanks, Chuck. Yes at the risk of repeating kind of what Marika has said, you know, when we talked about this in the leadership team yesterday I did raise the issue that that sentence about being – issues that we agree on here must be confirmed by the Board is redundant.

So, you know, just to respond to Kathy's question, it doesn't add any new process, it was just there to remind people that existing kind of Board approval process exists and I don't think we lose anything if we remove it, actually, I suggest we do.

It's a simple reminder that the policy that we set in the PDP does go to that one approval – Board approval process. And they will take a look at this though the lens of the ICANN mission at that point, but it doesn't add any new process.

Chuck Gomes: Thanks, Alex. Lisa.

Lisa Phifer: Thanks, Chuck. This is Lisa Phifer for the transcript. I just wanted to I guess it's both answering Kathy's questions in a way and address a couple of points raised in chat with regard to the phrasing of being consistent with ICANN's mission versus not inconsistent.

And although we haven't gone through the comments from last week's poll in this call point by point, there were quite a number of them and that would take the entirety of the rest of this call.

I would like to explain that the reason we included the phrasing "consistent with ICANN's mission" or – yes, "consistent with ICANN's mission" is because there were roughly nine comments expressing some level of discomfort with the phrasing "not inconsistent with" so in coming up with the phrasing of this possible agreement we tried to go with what people seemed to be most comfortable with based on those poll results.

Chuck Gomes: Thanks, Lisa. Hopefully that gives you a reasonable response, Kathy, to your question. And thanks for asking it. Alan, sorry to keep you waiting. You're next.

Alan Greenberg: Thank you. I think hope you won't have to go through all the leadership to answer my question now. As we're talking I realize I have a larger concern with the second sentence and that is the Board doesn't approve our report; the Board approves our recommendations.

And it is not at all clear to me that the purposes that we are including any particular data in the recommendations of what to collect, what to disseminate, whatever, is going to be mentioned. In other words we're making recommendations of what to do, not in the recommendations giving the rationale for why we are doing it.

And I think we may have a very significant problem that the Board doesn't approve that level of detail, they approve recommendations, nor do I think they want to approve that level of detail and therefore I'm not sure that this sentence even makes any sense in terms of what our Board does as opposed to what we – new processes that we may want to put upon them. Thank you.

Chuck Gomes: Thanks, Alan. Chuck again. And you're right, that the Board approves the recommendations. I'd like to think that our recommendations will be based on decisions we make with regard to purposes in particular and if that's not the case your concern may be more important. But I think we'll have to wait until we get there to see.

All we're trying to say here is that, you know, a very simple statement like Bradley said, probably doesn't even need to be stated, any purpose for processing registration data must be consistent with ICANN's mission. Notice even in this discussion how much time it takes to go through it. If we were to actually get down in the details of ICANN's mission it would be multiplied many times over. Let's go to Kathy again.

Kathy Kleiman: I wasn't sure if Alan wanted to respond. This is Kathy.

Alan Greenberg: I did.

Chuck Gomes: Go ahead.

Alan Greenberg: Yes. I'm – my comment was this says "the Board must confirm." That's an action of the Board. It doesn't say that the Board must be satisfied that anything recommendation they approve were based on things that were consistent with the mission, it says they must confirm. So...

Chuck Gomes: Got that. Okay.

Alan Greenberg: I think we need to be really careful what we say the Board needs to do if we expect this to go forward. Thank you.

Chuck Gomes: Thank you, Alan. Kathy, your turn.

Kathy Kleiman: Yes, this is Kathy. I just wanted to point out that even if we delete this sentence it stays in effect because now that I appreciate the discussion you, Chuck, Lisa, Alex, Marika.

So any recommended purpose must be confirmed by the Board with respect to consistency with ICANN's mission. So I'm doing a lot of research on the privacy shield in the United States. This isn't any policy we're creating, we're creating one that's – we're seeking to be consistent with the GDPR.

So of course the officers and the Board will have an ongoing responsibility to ensure that what the data that's being processed is consistent with the GDPR and the mission of ICANN.

So even – I just wanted to note and I'd love for the notes to reflect that even if we delete this sentence its actually saying something very important that the Board has an ongoing leadership role, as I understand both the GDPR, the privacy shield which is the US – EU data flow agreement consistent with the GDPR and similar agreements being passed around the world.

This is the role of the officers and Board of a corporation. So our Board doesn't – the Board doesn't leave, they stay involved in the process. Thanks.

Chuck Gomes: Thank you, Kathy. Okay, I'm going to suggest that we move on and make a decision here. There seems to be strong support for just a possible agreement here of any purpose for processing registration data must be consistent with ICANN's mission, period.

Does anybody object to that and we would test it in a poll this week. Alan. Okay, hand went down. Anybody object? And you can – and several of you have basically said that in the chat and Lisa of course put that statement in the chat quite a while ago.

Okay, so we'll accept – oh Mike, go ahead. Mike Palage. You must be on mute, Mike, because we're not hearing you. Still not hearing anything. Okay he's got an audio connection problem. Okay. If you can put something in the chat that would help. Okay thanks, Mike. That's good.

So let's move to the second possible agreement that – and I can tell you we struggled, I was probably one of the biggest problems on the wording of this one as the other members of the team will attest. Long after our call yesterday we were exchanging emails on this one .but here's what we came up with and we'd like to discuss it.

“If applicable data protection laws require a legal basis for processing then any purpose must satisfy at least one legal basis for processing.” Like I said, we struggled a lot with the wording and I was the biggest culprit probably in that. But we'd like you to tell us what you think about that. Does that work? Can we possibly reach a tentative agreement on this criterion for a purpose?

Now note that we're not saying that there is – there has to be a legal basis for every purpose that we have, for example domain name management or technical issue resolution, two that we've already reached strong agreement on.

But we're saying if applicable data protection laws require a legal basis for processing, then any purpose must satisfy at least one legal basis for processing. Mike, is that a new hand? Okay, Greg Shatan, you're first.

Greg Shatan: Thanks. Greg Shatan for the record. And more of a question or concern at this point, I may have more to say about this, but I think there's a difference between a legal basis for processing and a lawful basis for processing that's actually quite significant. And, you know...

((Crosstalk))

Chuck Gomes: Would you – Greg, sorry for interrupt, but would you explain the difference?

Greg Shatan: I would say that a legal basis for processing means that there needs to be a basis in the law in question that is stated whereas a lawful basis means only that the basis is consistent with the laws, in other words it's not violative of the law. So one would be require an actual prescription or statement of a particular legal basis and the other just goes to whether the law is begin violated or not.

If I recall correctly the GDPR says "lawful" not "legal" but – and I don't know about other privacy regimes but I think before we go too far we need to understand what we're talking about and if we're using the right words to talk about the right things because when we do get to the law the words are important.

Chuck Gomes: Thanks, Greg. Chuck again. So you would suggest changing the word "legal" to "lawful" is that correct?

Greg Shatan: I'm not saying I agree with the sentence in either regard but I think that properly posed at least if we're asking this about the GDPR and of course the GDPR is not the whole story even though it's crowding out every storyline...

((Crosstalk))

Chuck Gomes: So...

Greg Shatan: ...if we're going to ask the question properly and if my recollection is correct and the question should be asked about whether it's lawful. I may still object but at least I'd be objecting to a properly phrased question if my understanding is correct.

Chuck Gomes: So if we can – let me rephrase. So if we consider the – a possible agreement like this you would prefer the word “lawful” to “legal.” Not committing you to support it.

((Crosstalk))

Greg Shatan: Well yes but the question is – well then the question itself would be probably ineptly phrased because when you talk about satisfying a legal basis you're talking about satisfying a clause in the law.

So I think a lawful basis wouldn't be one where you have to – wouldn't be one that's set out in the law in the same way so the question itself actually wouldn't make sense that way.

Chuck Gomes: Thanks, Greg. By the way, earlier in the meeting a working group member suggested that we put a timer on comments. I'd like to hope that we can manage that without a formal timer like ICANN does in its public forums and so forth and in person meetings.

So let me just encourage people to be as brief as possible, try not to repeat things over and over again. I'm not picking on you, Greg, I'm just – this is a general comment that came up in my private chat probably 20 minutes or half hour ago and I haven't responded to it.

So if everyone can try and be as – it's great to have the different participations but to allow as many people to participate as possible if everyone can be as concise and to the point that would be appreciated.

Okay, let's go to Greg Aaron.

Greg Aaron: Thank you, this is Greg Aaron. I agree with Greg Shatan, laws often are not really specific, they tend to be general and they rarely address specific use cases. In our case, for example, we want to collect different kinds of information from registrants like their names, the contracts mention IP addresses, lots of different things, none of which are actually mentioned in the laws.

There are good reasons to collect them and those would be lawful, but you can't point to the – to a law and say it says – the law says anything specific about domain name registrations, it's beneath the notice of the laws. So Greg's suggestion has merit.

Chuck Gomes: And you're talking about the suggestion of lawful instead of legal?

Greg Aaron: Yes.

Chuck Gomes: Thanks, okay. Michael Hammer.

Michael Hammer: Yes, sorry I had to get off mute. For the record, Michael Hammer. I also want to support the concern about the wording "lawful" versus "legal" because as was pointed out something may be lawful while not being specifically stated in a law. And so we want to be very, very careful in how this is worded. It's all I have.

Chuck Gomes: Thank you, Michael. The – all right so let's do this, okay, on this particular statement, does anybody for right now without any – making any commitment to whether you support this possible agreement or not, regardless of how it's

worded, does anybody oppose at this time changing the word “legal” to “lawful”? Again, we’re not committing to the overall statement, okay. Kathy, did you want to talk about that?

Kathy Kleiman: Yes. I do, it’s one of...

Chuck Gomes: Go ahead.

Kathy Kleiman: Thank you. This is – am I off mute?

Chuck Gomes: Yes you are.

Kathy Kleiman: Okay great. Yes, this is one that we would, you know, I would think people need to think about closely for what the implications are. We understand legal but lawful, you know, it’s a basic presumption that that there has to be a legal basis for processing.

I really don't – I’m trying to get my hands around what the difference would be by saying lawful but it’s practically like, you know, an idiom in our heads, legal basis for processing. So I’m not sure I would recommend changing it. Thank you.

Chuck Gomes: Thank you, Kathy. And let me jump – we’re going to come back to more discussion on this possible agreement with the word “lawful” for now, not that that’s a done deal but just for the sake of discussion.

But I want to go back to a question that Kathy asked in the chat, “What happened to the necessary to the functionality of the DNS?” and I’ll give my response, other people on the leadership team can share as well just raise your hand if you'd like to do that.

I think at least in my case I assume that that particular element is really inside ICANN's mission so if we’re consistent with ICANN's mission it would be – it

would include that particular element of necessary to the functionality of the DNS. So we assume that.

And some of us, me in particular, didn't think that everything in ICANN's mission, even related to the RDS, is necessary to the functionality of the DNS so it's not as if and only if type situation there.

So that's my thoughts on that. We think that's still valid but it's not – doesn't necessarily cover all of ICANN's mission that may relate to our work. In fact if you look at my comments in the poll, you'll see that I gave two examples of things that I thought were part of ICANN's mission, I actually took quotes from the elements from the bylaws that I don't think really are necessary to the functionality of the DNS. And I think one of them was like reserve names. Okay. Okay.

Now back to this discussion on this agreement, let's try and hash it out a little bit. If applicable data protection laws require a legal basis for processing then any purpose must satisfy at least one legal basis for processing. I guess one question is is legal okay in the first part of the sentence and the second part lawful? I'm not sure because I'm like Kathy a little bit, I – and Greg, thanks for the explanation of the difference, but as you know I'm not an attorney so it's a little more challenging for me.

Greg Shatan, go ahead.

Greg Shatan: Thanks, Chuck. In response to your question I would object to that especially as getting a little bit more clarity in the chat here that Article 5 and 6 of the GDPR use "lawful" and "lawfulness" – or sorry, lawful, yes Article 6 is called Lawfulness of Processing; Article 5 1A uses the term "lawfully." So if we're talking about a data protection law that requires a legal basis then are we talking about the GDPR?

Seems the GDPR talks about lawfulness which is a different concept and so, you know, and then I think the second part of the sentence would be that any purpose must thus be lawful under the data protection law but rather than satisfy legal basis that is set out in the data protection law.

So I'm glad that we were able to get past the idiomatic and inaccurate recollections of what the GDPR states and get back to the actual words and, you know, hopefully if there's anybody who's still confused about what lawful means versus legal means we can get to that especially in this context. But I think you know, if we're defining something as critical as a high level agreement every word matters. Thanks.

Chuck Gomes: Thank you, Greg. So does anybody oppose this agreement assuming we can get the words right? Is it a legitimate criterion that we can use for some purposes? We're not saying that every purpose has to have a legal basis, but if there is an instance in law where something is legitimate for a particular jurisdiction is that a reasonable basis for a purpose understanding that we're not talking yet about who gets access or whether it's public access or nonpublic access, we'll get to that. But if there is some legal basis or lawful basis for processing some data in some form is that a legitimate criterion for a purpose?

Kathy, go ahead.

Kathy Kleiman: Hi, Chuck. Kathy. Can I suggest that we hold this, that's why I keep putting into the chat and Lisa recommended that I raise my hand, that, you know, legal and lawful seem to have some substantive interpretive changes here so lawful is changing, the meaning that's why, you know, Greg wants it which makes sense.

But I don't think standing on one foot we should be deciding that, let's think about it like we did last week, and come back and just confirm because

otherwise we'd have to sit here and, you know, kind of research these important legal terms but we can't do that because we're in a discussion.

Chuck Gomes: Okay.

Kathy Kleiman: So I just – thanks.

Chuck Gomes: Okay. And I may come back with a suggestion to make sure that we facilitate some specific thought on that maybe even with a small little drafting team with people to come back so that we don't just postpone this without getting some results for our next meeting, so thanks, Kathy. Okay, (Siva). Are you on mute?

(Siva): Chuck, I'm a little concerned about what you said that lawful – what does lawful – what is lawfully required in some jurisdiction. I mean, jurisdictions – what is lawful differs from jurisdiction to jurisdiction so something may not be lawful in United States that's maybe lawful in Europe or in Thailand.

So if in some country certain purpose is considered lawful are we going to comply irrespective of whether what is lawful in that jurisdiction is not lawful in every other jurisdiction. So I think we should either be specific that – specific about one jurisdiction or completely do away with the lawful in a jurisdiction. Thank you.

Chuck Gomes: Thanks, (Siva). And in fact we didn't put "jurisdiction" in the statement itself, but the reality of the matter is is exactly what you said, some things are lawful in one region and not in another. Fortunately we now have a protocol, the RDAP protocol, that allows us to differentiate between geographic jurisdictions and their associated laws.

So for example, to use the GDPR, which is a European regulation, we can actually technically we can – assuming we can come up with the processes to do it, we can provide what we're calling in the working group gated access,

other people are calling – it's been called tiered access or controlled access or whatever term you want in our charter it's called gated access.

We're able to differentiate in a lot of ways, not just with jurisdiction, but so the reason I said that if there is one jurisdiction and we're all right now very tuned into the GDPR in Europe, we have the technical means, the protocol means, of dealing with that. That may not be easy, in fact it may be complicated but we do have a means to do it whereas several years ago we didn't.

So the reason I bring that up if there is one jurisdiction that has a particular legal requirement or requirements, okay, then – and assuming we have to come up with recommendations that work globally, we're going to have to be flexible in dealing with the variations in those different jurisdictions.

And we have the capability through the RDAP protocol to treat registrations from the United States, one example you used, differently than registrations that are applicable for the European regulation. So that's the only reason I said that. It's a reality we're dealing with that we're going to have to be able to deal with conflicting laws with regard to personal data.

Did that help a little bit, (Siva)?

(Siva): Thanks, Chuck. Thank you and I'm not able to put my hand down in my phone so please consider my...

((Crosstalk))

Chuck Gomes: Okay, all right, good. But did that help? Did my response help a little bit?

(Siva): Yes, very much. Thank you.

Chuck Gomes: Okay good, good. Thanks for asking that, I appreciate that. Okay, so it sounds like for the – this particular proposed agreement we need more time

but to make time more valuable next week we need to be able to get some clarity on the meaning of lawful versus legal and hopefully enough clarity so we can move forward.

So is this the case, and I'm looking for help from leaders – the leadership team as well as anybody in the working group, would it be – will it suffice if just a few people individually do some homework and thinking like Kathy said on this issue of lawful and legal and come back to the working group next week? Or would it be better to form a small team to do that? Anybody have a comfort level one way or another?

Alex Deacon: Chuck, it's Alex.

Chuck Gomes: Who's that?

Alex Deacon: Hi, Chuck. It's Alex.

Chuck Gomes: Oh go ahead.

Alex Deacon: I'm wondering if we could just leverage the mailing list to do this. We could set up a small team but does it make sense to try to have a discussion on the mailing list? I think the sentence of B is correct, we just need to get the wording right. So I know we haven't leveraged the mailing list in this way in the past but I'm wondering if this is a good opportunity to give it a shot.

Chuck Gomes: And, Alex, thanks. This is Chuck. I'm okay with that, in fact I'd love that to happen. Like you I think kind of just said, we haven't had much success of getting leveraging the mailing list on issues like this.

If this is a first time or one of the few things that'd be great, but I think we need a commitment from several members to contribute in the next you know, in this upcoming rest of the week in that regard. I'm okay with trying

that if we can get some individuals who would commit to contributing some thought and research on that on the list.

So do we have some volunteers who would, by Friday, in fact it'd be better earlier than Friday if you can share your thoughts to allow time for people to respond and interact and therefore we can make some more progress next week because if we come to our meeting next week and we haven't made any progress we're at the same point all over again.

So Lisa, go ahead.

Lisa Phifer: Thanks, Chuck. This is Lisa Phifer for the transcript. There have been several suggestions in chat that this is an important point and that the discussion should happen in plenary whether that plenary is on the full working group mailing list or on the next call that it not be something carried off by a small team that may or may not understand the legal implications of each of the phrasings suggested.

Chuck Gomes: Thanks. And I'm fine with that, like I said, but what I'm going to ask for are some people to put a green checkmark in Adobe if you're willing to commit to contribute to that thought and discussion on our list this week. Okay? Thanks, Denny. Thanks, Kathy. Thanks, Bradley. I got to scroll down here because the list is long. Okay, looks like there's nobody down lower.

Stephanie, thank you. And again, people, please try to follow through on your commitment because we really do need to keep making progress if we can however small it may be. And so please follow through. Mike Palage, I see you, thanks. Greg Shatan, I was hoping you would, Greg, you knew that I'm sure. So the – since you're the one that initiated that, so thanks a lot.

Okay. And this doesn't mean that the rest of you can't contribute, in fact I really hope you at least respond and ask questions to the contributions by the people who raised their hands. Kathy, go ahead.

Kathy Kleiman: Hi, Chuck. It sounds like a lot of work before the end of the week which is great. I did want to circle back to the question of the purpose must be necessary for the functionality of the DNS or inherent for the functionality of the DNS because there was such agreement with Andrew Sullivan last week who's not here on that to talk about that. But it seemed like there was total agreement on that. The issue was, you know, the mission statement and other things.

So is there a way to keep that in the discussion because we really haven't – I know you said there's some disagreements in the comments, but it's strange to kind of toss it out when there was such general and broad agreement on it last week. Thanks.

Chuck Gomes: By the way – thanks, Kathy. This is Chuck. I wasn't saying that we're tossing that out, I was saying that it was included in ICANN's mission. But I don't have any objection to having a criterion as long as it's not – of that particular statement as a separate item that if there is something that's necessary for the functionality of the DNS it's a legitimate – that's a good criterion to use for a purpose.

I don't think it can only be that because I think there are things that fall outside of that. I hope that made – in fact, if you look at my comments, again, I said – or my choices – I don't know if you can see on that level of detail but my choices, I said I could live with that particular thing in there.

I don't – it's one of those cases where I don't think it's necessary but if it's helpful that's fine. Lisa, go ahead.

Lisa Phifer: Thanks, Chuck. The reason that I raised my hand is that I think what we're experiencing on the criteria related to functionality of the DNS is inconsistency in participation from week to week.

There was pretty strong support for that as a criteria in a call around the middle of January. In the subsequent call it seemed that there was less support for that and even in last week's call even less.

And that may be a result of changing of minds, but it also maybe a result of different people participating in each call. And that does make it difficult for us to make progress. And just double checking here, I think that a couple of the calls – excuse me – comments related to DNS – that particular criteria of DNS necessary for functionality of the DNS there were a couple of comments in last week's poll regarding that expressing some concerns about it so you might want to – those of you who are thinking about that criteria again, might want to take a look at those comments and think a little bit about your current position on including that as a criteria.

Chuck Gomes: Thanks, Lisa. So I mean, is there value in polling on that as a criterion by itself? Now I would tend to oppose although I can be overruled and should be where needed. Getting into the and/or thing again, that complicates it, there are too many variables, it's too ambiguous.

But we could have a separate statement if working group members think it's useful and support it the says if a purpose relates to the functionality of the DNS, it's a – that can be a legitimate purpose, I didn't word it very well like usual, but I would not want to get into the and/or or issue again because that just – there's too many variables when you start looking at all the combinations it gets too complicated.

I mean, is there support for testing that as a separate criterion in a poll this week? If you'd support that put a green checkmark.

Now we can always come back to that if we see it's useful so it's not as if we're throwing it out. But so I'm not – okay so Ayden thinks it might be useful, Kathy thinks it might be useful, Farzeneh. Anybody opposed put a red X. Okay, Bradley, why would you oppose polling that?

Bradley Silver: This is Bradley. I think we should only poll it if it's clear whether it's an "and" or an "or."

Chuck Gomes: It's not going to be either.

((Crosstalk))

Chuck Gomes: I'll be fairly specific there. It's going to be a standalone statement.

Bradley Silver: Then...

Chuck Gomes: That's what I was trying to say earlier.

Bradley Silver: Then what are we asking for views on?

Chuck Gomes: So we will be asking if there is support for a statement that'll have to be worded by the leaders I guess unless we come up with it real quickly here that says that, a legitimate reason or criterion for a purpose is the technical – sorry,

I'm – the functionality of the DNS. So if a purpose related to the functionality of the DNS is a legitimate reason for accepting a purpose. Again, it's got to be – the wording has got to be refined but it would be a standalone statement something like that.

Bradley Silver: So it's a question of do you agree or disagree with the statement?

Chuck Gomes: Yes.

Bradley Silver: Something that...

((Crosstalk))

Chuck Gomes: Yes. Keep in mind we were...

Bradley Silver: Yes, okay.

Chuck Gomes: ...discussing criteria, okay and we would add this...

Bradley Silver: Yes.

Chuck Gomes: ...as a criterion by itself not with an "and" or "or" related to the others.

Bradley Silver: Yes just as Greg said in the chat now the way that you phrased it does sound like we're suggesting it's once something satisfies that then it's a legitimate purpose and it's in, which sounds like an "or."

Chuck Gomes: Yes, that's probably true. I just don't want to put these things together in an or statement.

Bradley Silver: That's the problem. I don't think I could honestly express an opinion about whether I agree or disagree with that statement unless I know if it's an "and" or an "or." I think that's really the crux of it. And I think it is for a lot of people.

Chuck Gomes: Okay. Lisa, go ahead.

Lisa Phifer: Chuck, sorry, that was an old hand but I'll just point out there's one possible phrasing in the chat.

Chuck Gomes: And I personally have a problem with that phrasing and I tried to express that in my comments this last week in that there are some purposes that may be legitimate but they're not inherent to the functionality of the DNS.

And I think if something is inherent to the functionality of the DNS that's a legitimate reason but if we make that a must for every criterion it's a problem.

Yes, I agree, must equals and. That's where I get into trouble or I have trouble I should say, probably get into trouble too.

So all right, the leadership – what we'll do rather than belaboring this, well we have a couple hands up, let me let you talk. Michael, go ahead.

Michael Hammer: Michael Hammer for the record. So one of the issues I have in this statement requiring it to be related to the functionality of DNS, abusive registrations or abusive activity actually is technical functioning of DNS.

And so I think limiting it is a problem. DNS may function technically but it may still be problematic. This would fall into the category of logic subversion. So I would be opposed to that wording.

Chuck Gomes: Yes, and several of you in the chat and verbally like Michael just said are expressing where I'm at on that. I think something that is related to the functionality of the DNS is a legitimate reason for having a purpose.

But if you make all purposes – if you require all purposes to be related to functionality of the DNS you're going to lose some, I think, legitimate purposes although we still have those to decide as a working group. Greg Shatan, go ahead.

Greg Shatan: Thanks. Greg Shatan. I just had to finish what I was typing, which wasn't what I was about to say when I put my hand up. I was going to suggest that we could vote on this as an "and" statement if we define what the statement is properly just to see whether there is support for that or not.

Based on what I've heard on this call there are a lot of people that don't support this as an "and" or maybe some that support is an "and" as a must, as a necessity, as a gating factor. So one reason to have votes or polls or expressions of position is to figure out what people – what doesn't have enough support to go on.

I think everything that we're looking at here in this section has to be considered as a "must" versus a "may" or as a "necessary" versus a...

Chuck Gomes: So, Greg, I have a question for you. This is Chuck. What is about "inherent to the functionality of the DNS" that you don't understand?

Greg Shatan: I lost connectivity there for a minute.

Chuck Gomes: I'm sorry, what?

Greg Shatan: In any case – I just said I lost connectivity for a minute.

Chuck Gomes: Oh okay. What I asked was what is it about "inherent to the functionality of the DNS" that you don't understand?

Greg Shatan: I don't understand the limits of what it is referring to. Are we referring to mere technical operability, in other words, that the engine starts; or are we referring to all of the infrastructure and super-structure and policy structure that we've built around it so that the DNS works as intended including the addition of new TLDs in an orderly manner and every other – essentially every other ICANN policy which is all related to the DNS.

If we're trying to – if we're illuminating a totally to kind of a pipes sort of definition of the DNS then I think "inherent to the functionality" is way too narrow.

If we're referring to the DNS as we've built it then still a problem with that but it's so inherently ambiguous that I think – if we leave it this way everyone is going to think it means what they want it to mean and disagree with anybody else's definition of it and then we haven't accomplished anything at all.
Thanks.

Chuck Gomes: Okay, thanks. I'm looking at what Lisa wrote here. "One criteria the working group will consider when determining whether a purpose for processing is legitimate is whether the purpose is inherent to the functionality of the DNS. This will not be the only criteria considered and is not a requirement that all purposes must satisfy." That's where I'm at so – but I'm just one person, even though I'm the chair I'm just one person.

That statement we could test in a poll. I would certainly support that and I think it's quite clear there. Now Greg seems to need more definition of functionality of the DNS.

I'm not sure I'm too inclined to spend a lot of time defining that. If we do that with every time we run into a term like this again, it will take years to do what we're doing and hopefully that's not anybody's motive.

Okay, hang on a second. Let's go to – Michael Hammer, is that a new hand or is that an old hand? I think that's an old hand, right? I'm looking at too many things right now. So okay, Greg Aaron, you're up please.

Greg Aaron: Hi, Chuck. Can you hear me?

Chuck Gomes: Yes, can Greg. Go ahead.

Greg Aaron: Okay, this is Greg Aaron. I'll give you an example of something that's not – that has nothing to do with DNS resolution and all of which is a cyber squatted domain name, people use Whois to look up information about that and file their UDRP cases and so forth.

So there's an example legitimate use of Whois data and access and has nothing – is a good reason to collect – and has nothing to do with resolution.

When I hear the term inherent in the functionality of the DNS I think of something that's very core to the DNS like a protocol or infrastructure. I'm not sure what that phrase means and I'm fairly well versed in these issues.

So it's not a useful phrase for me and I think it's highly limiting. I think it means something different from having to do with resolution but even that is not good enough to just mention. Thank you.

Chuck Gomes: Thanks, Greg. Appreciate that. So I think – yes, Kathy, I'm going to come back to you if you don't mind me picking on you a little bit. So you wanted us to reconsider that particular criterion based on what you've seen and heard in the last 10-15 minutes of our call, do you think it's worth polling on this?

And I would say polling on the wording that Lisa put in the chat several chats back.

Kathy Kleiman: Chuck, thank you for asking. Yes, I do. And I think it's interesting the idea of taking it out of the list which is where we had it last week and where we had it in the poll and kind of making it a separate criteria so it's not part of the "and or" discussion that's about to come. Yes, absolutely.

Again, because there didn't seem to be any agreement or that I don't remember any major disagreement last week, so I think so. And it is kind of core to what we're doing so thank you.

Chuck Gomes: Okay, you're welcome. Is that an old hand, Greg Aaron, or you have something new? Okay, thanks. All right, if the leadership team doesn't think any differently we'll go maybe they see some reason or not to go ahead.

We'll add that poll question using the wording that Lisa put in there. And if nothing else you can, you know, express your opinions in a comment if you find it difficult to respond to.

In the meantime if people want to continue the discussion in terms of “inherent to the functionality of the DNS” means please do that on the list. If you have a better wording – I know Greg Aaron proposed one but he – even he noticed that that’s somewhat ambiguous which is –we’re going to run into that an awful lot.

To make reasonable progress, if we can ever get to that point in the working group we're going to have to choose things that we spend time on and make sure that they really add value. I know the point was made that definition of terms can make a big difference, and I agree with that. But if every term we run into considering that we have a couple hundred people in our working group somebody questions the definition and we have to spend several weeks on the definition there’s no way we’re going to ever finish this thing. So we have to make some calls as to when it’s worth it and when it’s not.

And so please keep that in mind when you're dealing with this. If we can all make some choices there and realize yes, it would be nice to have less ambiguity, yes, ambiguity is always undesirable, but to remove ambiguity in a group this size and this controversial can cost us literally years in our work. Bradley, go ahead.

Bradley Silver: Thanks, Chuck. It’s Bradley. Just a question, I understand that we’re trying thank you find a neutral way to phrase this and yet we are still I guess being asked to agree or perhaps disagree as to whether or not this criterion has its own inherent quality that will boost a legitimate purpose in a way that it becomes more legitimate than other reasons, which I think is a lot of the debate on this call is well.

If something is not inherent to the DNS does that mean that it suffers from the ability of being considered a legitimate purpose which is really not what the broader discussion is about today certainly in the context of GDPR and I guess that’s still our biggest frame of reference here.

So why that as opposed to, you know, the other kinds of general factors and number of them and test them out if that's what the group wants to do such as the range of uses to which, you know, the existing RDS is used for today.

You know, I'm just wondering why inherent functionality of the DNS is one that we're picking out of a number of factors that we would want to consider when we're going through the list.

Chuck Gomes: Thanks, Bradley. I think Kathy – what Kathy said, and Kathy, you can correct me or add to it if you'd like, was is because she had perceived that there was a lot of support for this one so why did it get dropped. My response was, we thought it was included in ICANN's mission.

I guess another question we can ask even if you support this particular criterion, does it add any value to our process of deciding on purposes? And people probably have different opinions on that as well.

So Bradley, if you go back to the quite a few messages back, Lisa's – and it starts with "Chuck is this what you intend?" and I said, "Yes. One criteria the working group will consider when determining whether purpose for processing is legitimate is whether the purpose is inherent to the functionality of the DNS.

This will not be the only criteria considered and is not a requirement for all – that all purposes must satisfy." Do you have a problem with that statement in and of itself?

Bradley Silver: I don't as long as the way we're approaching it is that this is something that we will continue to discuss and that there is no inherent you know, value given to this above other criteria, at least, you know, as far as...

Chuck Gomes: Right.

((Crosstalk))

Bradley Silver: ...agreement to the group is concerned.

Chuck Gomes: Yes, I think that's a correct assessment. So okay, so let's poll on that and we may get creative, Lisa, in terms of how we do it and the choices we give so that – but we can talk about that separately after this. Our time's just about up. The – several of you volunteered and your names will be identified to help you be accountable on our meeting notes.

Please respond to your volunteered task as early as possible this week regarding lawful and legal and if some of you can look into the GDPR and any others laws you want to use to refer to language like Greg made – Greg Shatan made reference to that would be helpful.

But the sooner you can do it in the week the easier it will be to allow time for people to respond and ask questions and so forth on the list so when we get to our meeting next week we can be as productive as possible.

And Steve Metalitz, thanks for reentering my examples that I gave in my comments that I didn't think were inherent to the functionality of the DNS but they are in ICANN's mission. I appreciate that very much.

The – have we disambiguated inherent to the functionality of the DNS? No. But hopefully we have enough general idea on it and I'm sure you do, Greg, that we will – we can work on it more if we need to.

And when we start working on specific purposes we may have to dig down further in terms of the rationale that we use. That said, our meeting next week is at the same time, same day next Tuesday. Please remember that.

We've got action items for staff and the leadership team in particular to do a poll, hopefully that will be out later today and you'll have until Saturday night

to respond and all of you respond, several of you individuals volunteered as I already said, to do some things, get that started in the next couple days if you can on the working group list. Are there any other action items that we should call attention to or anything else we need to do on this call?

Okay, our time is up. Thanks, everyone. Again, I think another productive session even if we only made a little bit of progress, still we're moving forward I believe. So thanks. Have a good rest of the week and we will – I will adjourn the meeting and the recording can stop.

Greg Aaron: Thanks, Chuck.

Julie Bisland: Thanks, Chuck. The meeting has been adjourned. Everyone can disconnect your lines.

Operator, can you please stop the recording? Have a good day, everyone.

END