ALAN GREENBERG:	I would like to welcome you to the RDS WHOIS2 Review Team face-to-face #3 occurring in Brussels, Belgium on the 26th I think of July 2018. I'm getting thumbs up from people who appreciate that I managed to figure out what the date is. I'll turn it over … First of all, can we have a roll call? I don't do roll calls.
ALICE JANSEN:	Okay. Alice Jansen, ICANN staff. Before we start the roll call, I would like to just flag that we have three apologies: Dmitry, Thomas, and Jean-Baptiste. Let me start with Negar for the roll call. Thank you.
NEGAR FARZINNIA:	Negar Farzinnia, ICANN staff.
SUSAN KAWAGUCHI:	Susan Kawaguchi.
CATHRIN BAUER-BULST:	Cathrin Bauer-Bulst.
CARLTON SAMUELS:	Carlton Samuels.
LILI SUN:	Lili Sun.

VOLKER GREIMANN: Volker Greimann.

CHRIS DISSPAIN: Chris Disspain.

ERIKA MANN: Erika Mann.

ALAN GREENBERG: Alan Greenberg.

LISA PHIFER: Lisa Phifer, ICANN staff.

ALICE JANSEN: Also, I'd like to add that Stephanie Perrin is on the way. She's delayed because of a weather situation. Thank you. We have no observers at this time, but we'll make sure to record any observers joining the session.

ALAN GREENBERG: Thank you, Alice. Any statement of interest changes? I will note on the face-to-face I changed my statement to say I'm participating in the EPDP. I'm not sure that's a conflict, but it certainly does change substantively the list of activities.

CHRIS DISSPAIN: I should probably also add that to mine. It's Chris. I'm also liaising with the EPDP. There's no conflicts. I'm not even sure it's an interest, but it's certainly a statement in there somewhere.

ALAN GREENBERG: I didn't actually … I started reading it, but when I got to item number seven, it says, "What other stuff are you working on?" So, it seems to fit under that. We'll note Stephanie Perrin has also been appointed to the EPDP. I assume she also will change her statement of interest to go along with it.

Chris is saying something, but off microphone, so we don't know what it was. Volker, did you want to speak?

VOLKER GREIMANN: Yes, I've already I think announced it by mail, but just to make sure. Key Systems has been acquired by [inaudible]. That's a slight change in my regular work plan, so that's a statement of interest update that I think I already posted to the Wiki. I will also provide it in a document form.

ALAN GREENBERG: Thank you. Housekeeping? I'll turn it over to Alice for housekeeping.

ALICE JANSEN: Thank you, Alan. Welcome to Brussels, again. We're delighted to have you here, and I'm sure you know it like the back of your hand now. So,

just a reminder to raise your hand if you wish to be added to the queue. The session is being recorded, so make sure to use your microphone, always. State your name before you speak for transcript purposes and limit the use of your laptop as much as you can, so you're 100% focused on the discussion with your colleagues. We do have our regular breaks at the reception area here. We have a number of badges by the door here for you to use the laboratories as needed. Then, the kitchen area will be used for the lunch.

Maybe we can go through the agenda real quick, just a refresher?

ALAN GREENBERG: Why don't you do that while I'm [inaudible].

ALICE JANSEN: Of course, yes. So, before we move on to the day one objectives, the meeting objectives overall, I just want to [inaudible] the agenda real quick with all of you, just a refresher.

So, we do the overview of the draft reports right after the welcome. Then, we'll ask you to approve the draft report [inaudible] session. So, the draft report was sent to you a few days ago and we flagged the background section as one of the sections that will need to be approved today.

We had anything new on the agenda, but I'm afraid Stephanie is delayed, so we probably will start strategic priority first. Then, a short break followed by law enforcement needs and a compliance discussion that Susan will lead.

After lunch, we have the data accuracy group [inaudible] will be shepherding, followed by the privacy proxy services. Volker will be taking us through that. And safeguarding registrant data with Alan.

After the break, we'll end the day with common interface, Volker again. And a day one wrap-up where we will read all the decisions reached, action items reached today, so it's clear for everyone leaving this room what was agreed to do and what the next steps are. Then, of course, we'll have a little dinner tonight offline.

With that, let me … Yes. Just a reminder of all the subgroups that will be presenting today when and who the rapporteur is [inaudible] time allocated. So, some of the subgroups are allocated more time in light of the discussions that still need to happen. I think it's fairly straightforward.

With that, let me pass the torch back to Alan for the day one [inaudible] meeting output. Thank you.

ALAN GREENBERG: Thank you very much. The original plan coming into this meeting was we would have pretty much everything tied up. Words written for the draft report and certainly all of the work done. And within a few days, we would be able to draw together the draft report and go out for public comment.

We made a decision a few weeks ago that we wish to have the public comment open through ICANN 63. In other words, through October. Pardon me? That implies if we still want a 60-day comment, the report

must be issued by essentially the first of September, adding an extra month to it. We obviously could open it earlier and have a longer than 60-day period if we chose. I suspect if we have it much longer than 60, people are going to be so afraid and it's so difficult, they won't even open the book.

In any case, that has resulted in the ability of us to delay having the report ready to be issued, instead of very shortly after this meeting we have another three to four weeks. That would be just dandy, except Lisa was planning to retire at the end of this meeting. As you remember, at the last meeting, she gave notice. I've already told her that's not acceptable and she's agreed.

CARLTON SAMUELS: [off mic]

ALAN GREENBERG: That's correct. But, for a limited amount of time. We have to have everything finished and given to Lisa in enough time for her to draw this report together by mid-August, approximately two weeks. Threats hanging in the air like that are not nearly as effective as face-to-face meetings to get people to produce work. That's a sad reality, but I think we are going to have to all commit around this table that we will make that deadline. I'm looking at you, I'm looking at a number of other people, some of whom are not here and preferably not at the last day, if possible. But, it's not going to be a deadline we can extend and the only alternative is to write your stuff on your behalf and say you agree to it. So, there's some danger in not actually finishing your own work. Among

the leadership team, we will write something and we will put your signature on it. That's on the record, right? That's on record. Well, I don't know if it's something we'd follow through on, but honestly, we really do have to commit coming out of this meeting that anything that is not yet done has to be done within a couple of weeks and I fully understand we are still working in a GDPR world and an EPDP world where things are only going to get messier and not better. Certainly, for the few of us who are on the EPDP, I fully expect that to be true. We have three people here who are, one of whom is a board member, so he doesn't really have to do anything. He didn't even laugh when I said that. Shameful. Alright.

So, it's not quite as clean as we had hoped coming out of this meeting, but we really have that hard target. My preference is to have everything really tied up on or before the middle of August and I would like to then everyone ignore for a week and then probably do a final proofread, just to catch all the typos that you never see when you're looking at them continually and get it issued probably the first of September or some reasonable date right around there.

So, our target today is to get to the point where we can do that, which means complete as much as we can before we leave this room tomorrow and really understand how it is we're going to do the rest going forward. That, of course, includes a revised work plan that we'll look at tomorrow that will have some really, really hard deadlines in it. And I think that's about it. I'm sure I forgot something and Alice will correct me.

ALICE JANSEN:	Thanks, Alan. We do have a list of points to consider throughout day one.
ALAN GREENBERG:	Do you really want me to read those?
ALICE JANSEN:	Well, just a reminder. Yeah, go ahead.
ALAN GREENBERG:	Do you agree with the subgroup's recommendations? It's really useful if you disagree now instead of a week later. Are the recommendations SMART? And I don't remember what SMART stands for, but somebody will remind us. I'll note on microphone that people off-microphone are reading out what the words are. Would anyone like to say them on mic? Okay.
CATHRIN BAUER-BULST:	I'm going to forget now. Specific, measurable, achievable, realistic, and timebound.
ALAN GREENBERG:	An ICANN group has to do something that's realistic. It's going to be hard.

UNIDENTIFIED FEMALE: Sarcastically, an example would be can we land on the moon? Sure. All of us can go to the moon. It's going to take some time. It's realistic. It can happen. But, not very specific.

ALAN GREENBERG: Okay. So, we have from our MSSI support staff telling us that level of realistic is sufficient.

UNIDENTIFIED FEMALE: Don't forget the hashtag #sarcasm.

ALAN GREENBERG: What, if any, open issues remain require further clarification? Is the subgroup's output clear enough, concise enough?

Next major bullet. Subgroups fully address their assigned review objectives. Could any further specific measurable steps be recommended? I will add to that the report today is about 100 pages before appendixes. It's likely to grow at this point. We had a bit of a discussion before the meeting started on whether that is a good thing or a bad thing. I think everyone feels the report is probably larger than we really want it to be if we're actually going to have people read anything other than the executive summary. How we get there is not clear. It's been noted that, for some of the sections, but not all, there's a lot of redundancy between the problem statements and what was found and the recommendations. That is, there are sections of the recommendation sections which are effectively redundant. It's too late at this point to change that overall structure. We may want to think

about changing it for the final report if we feel there is really too much redundancy. But, at this point going forward, we're not going to switch in midstream. I think that is all for that section. Does anyone have any comments or thoughts? Lisa?

LISA PHIFER: Thanks, Alan. Two things. One is it's actually relevant, not realistic, which does add a dimension and brings me to in our recommendation section one of the things that we're asked to do is to consider whether each recommendation is within ICANN's mission and plan and whether it's within this review team's scope. So, that's our test, to see if it's relevant.

The other thing I wanted to mention was with respect to the report length itself. In the draft report that we've assembled, we've integrated all the subgroup outputs. Obviously, there's differences in writing style and level of detail that one goes to. So, we can attempt to clean up some of that in the next couple of weeks, but there will still be an opportunity to do that as well, after public comment. So, I wouldn't worry as much about that as I would about making sure that, coming out of this meeting, we understand that we have consensus on what subgroups said they found, what their analysis was, and the problems that they've identified.

Ultimately, this team has to agree on the recommendations as well, so I think as we go through today and tomorrow, we need to be thinking very carefully about are there areas that we don't have consensus

around the room and how can we work through that to achieve consensus on those points?

ALAN GREENBERG: Thank you. I'll note that consensus is not necessarily unanimity, although it would be really nice to have unanimity. I'm not looking at you. It's just my head only turns this far. The rule of thumb we put into the terms of reference was 80%. So, essentially, out of ten people, if we have only two people objecting, we might still call it consensus. In my mind, I'd prefer not to, but we'll look at it on a case by case basis. I don't think there are too many items where we will not have almost complete consensus in any case, but we'll go ahead. Next slide. This, of course, was the plan we had. It will change, but hopefully change not a lot. Now, I think I'll turn it back to Lisa.

LISA PHIFER: Thanks. I think Alice is attempting to bring up in front of us now the updated assessment tools. Each of you received an e-mail with a synopsis of where your subgroup report stood with respect to these tools. The one tool looks at the subgroup report itself and if there are sections or elements that were identified in the template for the report that are still missing or in the process of being updated. Then, the other tool identifies for each recommendation whether all of the desirable elements were hit upon as part of the recommendation.

I did update that after receiving a new subgroup report from some of you. Overall, we had a new subgroup report from the single policy

group. Actually, two updates. So, that subgroup report is pretty close to being fully baked.

We also had a new subgroup report from outreach and that I believe is pretty close to done as well. There is some tightening up in the recommendations, but that one seems pretty close.

Plans and reports. We had an updated report from Lili, but we still have some discussion around that report probably since the subgroup didn't provide you with feedback yet on it.

The other subgroups that have outstanding updates due actually haven't provided them as of yet, so we'll have to address some of those gaps that we've identified as part of our discussion. Anything that's relatively easy to address we can address in real-time. Anything that requires some more substantive writing, we'll do that offline, but try to pull those gaps together.

Now that we have everything pulled into a single draft report, we're actually going to try to do some live editing of that full draft report in our meeting this week. That means if you haven't provided a final update to your subgroup report as of yet, the master copy, if you will, is the section in the draft report, not the last document that you were editing. So, please keep that in mind.

The other thing I wanted to point out with respect to the assessment tools is I had some questions about what some of the categories mean. I wondered if you had questions you wanted to discuss now. Yeah? So, as soon as … Why don't we, actually, can we just go to one of the slides it shows? Small technical difficulty. Hold on just a moment. That'll do.

So, this just happens to be anything new, but it's the table on the right of this slide are the categories, if you will, or elements that we were looking for in subgroup reports. So, just to step through it briefly. Subsection one obviously is supposed to clearly identify the topic, the objective from the terms of reference and any key questions that the subgroup was attempting to answer. I think pretty much all groups have done this. Some just don't have the text in section one, but they've all done this.

Section two summarizes the research sources and the methodology the subgroup took to approach the assigned objective. Some subgroups haven't really written about their methodology, but probably know what it is and can fill that gap in fairly easily.

The next section, subsection three I believe – no two – summarizes the important findings of the group as well as tying the findings back to the key questions. This is something that some of the group struggled with a little bit. Identified, but then laid out findings and didn't go back and say this was the question we answered with these findings. In some cases, it's done, but just not tied together.

In the notation, the check means done. The M means it's in the report, just in the wrong section and should be moved. The U means in the process of being updated. So, didn't really make an assessment of it because I knew it was being updated. Okay. So, I was relating key findings back to the key questions.

The third section, subsection of each subgroup, is to clearly identify any problems that the group may have addressed. Again, those problems

should be linked back to the findings in the analysis. If they're not, if they're just joint, it becomes harder for the reader to figure out what facts you based those issues or problems on. And that is missing in some cases. I'm sure it's in your heads, but it's just not on paper yet.

Obviously, identifying the problems does require some rational as to why it's a problem. Not just that it is a problem, but in fact, why that presents a problem. In some cases, what some of the subgroups have not done is identified for whom it is a problem. So, if you identify a problem, what are … So, I believe some of you struggled maybe with why you identified impacted groups. So, that's what was expected in the problems and issues section.

Then, the last section of course is the section on recommendations and there we agreed in one of our recent plenary calls to very clearly state for the subgroups that looked at a particular WHOIS1 recommendation succinctly state that the recommendation was fully, partially, or not implemented, so in some cases, it's a matter of just putting that text in there. You'll see in the full draft report, I actually copied in what we had for ICANN 62, because I know that groups may change that conclusion.

ALAN GREENBERG: Lisa, my recollection is – and I think you just said it, but I'm not 100% sure – that we should put this in the recommendation section. I found as I was going through one of my sections it really fits at the conclusion of the findings section, because if there aren't any recommendations sections, it doesn't matter, it doesn't make sense to have a

recommendation saying everything is done. So, just moving it up above that title I think seems to make a lot of sense.

LISA PHIFER: Yeah. I think we can move things around. In some cases, the subgroups needed to discuss a problem in order to explain why the implementation was not complete, so it's a little bit of a chicken and egg. As long as we put it in the same place when we're all done, I think [inaudible].

ALAN GREENBERG: Hopefully, we have a good editor for a while. While we're waiting, if you can go back to the previous slide. Those speakers I think are doing it. That's the problem with using a meeting room that's never been used before. That's what the [inaudible]. Understood. Now we will talk and see what the problem is. It's gone. It's like sound on some advertisement. They turned their speakers back on because they know you want to listen.

LISA PHIFER: Alan, did you have a question about the subgroup still?

ALAN GREENBERG: It's a question about both of them, actually. In at least one of the boxes you hadn't ticked off … I didn't have a sentence saying this is who is affected I think was on the previous slide. But, I had implied in the context who was affected. And it applies more to the questions in this

slide, in this one on recommendations. Is it in scope? Do you believe we must be saying it is in scope or it's relatively obvious if anyone looks at what the scope is that it is in scope or who the impacted groups are. In many cases, it's effectively implied by the content and to what extent do you believe it needs to be explicitly said as opposed to implicitly.

LISA PHIFER: I think that's a good question. I was looking for it to be explicitly said at this stage. By the time the report is actually finalized, it may not be necessary to say that for every single recommendation, but rather to say that as a blanket statement. But, at this stage, it is important for us to ask about each recommendation. Is this recommendation within scope for the review team? Is this recommendation within ICANN's plan and mission? So, it's really kind of a thought exercise at this stage.

ALAN GREENBERG: Maybe we want to put things like that in square brackets or something like that, confirming. Putting those statements within the text I think is going to alter the flow and I'm not sure it makes a lot of sense to the future reader. But, maybe that's a matter of style.

LISA PHIFER: Again, I think it's something we can clean out, but it is important that each of the recommendations has been tested that way. The only way we know that is to make a notation of it.

ALAN GREENBERG: Okay. I'll look at [inaudible] ticked off and see how they worded it.

LISA PHIFER: And to your other question, though, about I think impacted – who's impacted or have you identified the functions that are impacted or the groups that are impacted for recommendation, this is of course my take. Could I find it in the text? And if I couldn't find it in the text, I'm human; I might have missed it. But, also, it might not be jumping out clearly enough, so just take that as feedback from an informed reader. Could the find it? Can you amplify it?

So, the GAC's assessment on the recommendations, just to point out, these elements came from the template, so if you don't remember exactly what one of these cryptic items mean, you can go back and look at the report templates and find a more full description of each of these items. For example, what is the impact if not addressed? I think we talked about that on our last plenary call, but as everyone was not on the call, this was something that many people actually didn't do. So, some people described the impact of implementing the recommendation, but not what would happen if the implementation – if the recommendation was not adopted and implemented. So, that was what we were looking for there.

Impacted functional areas would be is it compliant, is it contracting, is it policy, the functional areas that might be impacted by carrying through the recommendation. Impacted groups would be groups within the community that might be impacted by adoption of the recommendation. The not-functional groups within ICANN, but groups

within the community itself that would be impacted by the recommendation. Things like feasibility and timeline are something that we'll talk I think in today's meeting and try to get a better sense of.

As you can see right now, anyone that mentions timeline probably mentioned that it should be implemented immediately, under six months. We'll have to be a little bit more realistic about that at the end of the day.

Another element that many subgroups missed was just talking about whether work going towards the recommendation is already underway. So, if you know that something is already progressing … The single WHOIS policy is a really good example of a group that did talk about work that's underway. But, in some cases, work is underway and just touch upon what work is underway or state that none is.

Then, target for success. This one is important because in order to implement the recommendations, we need to describe what you envision happening as a result of the recommendation. What's the outcome that you're trying to achieve? A little bit more attention to that will make the recommendations effective, I think. That's one of the things I think that many of the subgroups struggled with in the original WHOIS1 recommendations was what was the intent behind that recommendation? And to the extent that this group can be a little bit more explicit about what your intent is, it will help the next review team assess effectiveness of the implementation.

Are there any questions about the other categories here? I know, Susan, you struggled a little bit with some of these. Did I hit on the points that you found confusing?

SUSAN KAWAGUCHI: [inaudible] definitely had an issue with, and just because I wasn't quite sure I could make that determination how people [inaudible]. The other issue is I don't care how people [inaudible] implement. It's just more of a perspective problem.

LISA PHIFER: Yes. For that one, I think two things. One is some recommendations you can probably already envision what some of the challenges are. So, even just noting what you think are going to be the challenges might be helpful, but then, also, during the review period, we'll get some feedback from the organization and from other groups about how feasible they think some of the recommendations are and that will help expand on the …

So, we'll touch on these gaps for each individual subgroup as we go forward, but I just wanted to use this as a time to sort of clarify some of those questions about what we're looking for.

ALAN GREENBERG: Thank you. Where are we next on the agenda? And we are on overview of draft report and back to Lisa, I think.

LISA PHIFER: Alright. This is the [inaudible]. So, just to touch on the layout of the report, the consolidated report, and remind you. Hopefully, everyone read this on their plane or train or metro ride into the meeting. There's an as yet unwritten executive summary. Of course, that will be written … I believe the leadership team is taking the pen on that one, but [inaudible] written after we've pulled together the component pieces of the subgroup. The review team recommendations, it's just a table or recommendations pulled from each of the individual sections. It does exist now and that reflects the text that you all submitted, but obviously it gets updated. Any kind of recommendation gets updated.

Background on the review. So, staff took the pen to pre-populate the background section based on the items that we defined at our last meeting. We talked about the template for the draft report based on what we said this background section should be about. So, it introduces WHOIS itself. It introduces the first WHOIS review team and the history leading up to this review team. So, it's not a section that provides opinion or outcome of this assessment, but rather just background that a reader would need in order to a why this review team even exists.

[SUSAN KAWAGUCHI:]   On the background – and I have not read that, so I apologize, but did we include … Did anyone include the challenges and discussion that the community discussed on scope?

LISA PHIFER: It was an attempt to be brief, but it does discuss the limited scope proposal and the feedback from the community having been taken into

account by this team and producing its objective. You should read it to see if it captures sufficiently for you that background, but it was mentioned.

ALAN GREENBERG: Before we go there, we've separated executive summary from recommendations. In many cases, people presume the executive summary will include the recommendations. If this is a conscious effort, how do we make really, really sure that people don't miss them? Maybe it's just a matter of packaging executive summary and review team recommendations as a single PDF to download, because otherwise, we risk people who only read the executive summary never actually see recommendations. Just a thought. It may well just be a PDF [inaudible].

LISA PHIFER: Yeah. That's actually a really good suggestion. Having a table of recommendations is really important to be able to pull that away. That's why it's captured as a separate section and table here, but you're right, it's obviously an integral part of understanding even at executive summary level what the findings were.

ALAN GREENBERG: Just changing the numbers from 1a and 1b or 2a or 1a or 1b may be more effective.

LISA PHIFER:	I will take a note of that and I believe we have time in our agenda tomorrow afternoon to adjust the layout of the report and perhaps that's something that we can revisit and reconfirm, but that sounds reasonable to me.

So, section four is all about the first objective, which is of course the review of the first WHOIS1 recommendation implementation. There's a subsection for each of the subgroups that did that in section four. So, the subsection numbering gets a little deep, but this mirrors the output of each of your subgroups, so all the subsections, they correspond to subsections that were in your subgroup report.

Section five is obviously subgroup two, anything new and so forth. What is not yet in this report is the objective from the terms of reference about any possible updates of the bylaws. So, I don't know if that's something that the group wants to try to tackle before its draft report or something you want to tackle after the public comment period, but just calling out that's the one objective from the terms of reference that's not mentioned here.

Additionally, I know that you all in developing the terms of reference felt that you wanted to say something about some of the items that the review team is not looking at. Notably, the OACD objective in the bylaws. So, that's text that's not in the report yet, but would need to be incorporated at some point in time.

ALAN GREENBERG: I think when we talked about the OECD, we decided not to do it because we felt that wording was exceedingly outdated and not applicable. So, I

think that was a section that we decided was not going to be in there because the section on safeguarding user data really covers it. So, I think we've already made the decision, we can change it of course, that we're going to omit that. it's not clear whether there's other changes we ought to make as well. But, I think we probably could do at least a boiler plate section on the bylaw changes because I believe that one is already there.

LISA PHIFER: Yeah. With regard to the OECD guidelines, I wasn't suggesting that that would be an objective section, but rather that there's a subsection missing somewhere, where the review team might want to comment on the items you chose not to review. So, in the terms of reference, you talked about that, but you also said you might want to provide some text as part of the report describing why you chose not to look at. RDAP I think was another one. Timing of implementation of RDAP. That's just not captured anywhere in the report currently.

ALAN GREENBERG: Yeah. Careful. RDAP came out of a GNSO comment. It was never in the original list of things to review. I don't think we need an analysis of the input that went into the topic discussion in this point. But, the OECD one, I think we do need to cover somewhere why we didn't do it and there be a parallel recommendation somewhere to omit it. But, I don't know to what extent we need to rationalize the things that someone suggested we look at and decide who was not applicable. We can certainly do that, but I'm not sure. That's covered in the history of we

look at all the input into what our scope and topic should be and we decided what they are based on our general wisdom. So, I don't know if we … There could be a sentence there saying why we didn't do RDAP, but I don't think that it needs to be anywhere else. Carlton?

CARLTON SAMUELS: I'm thinking that, yes, we should at least someplace say why we did not take up the OECD guidelines and we can put that on … I would say we do it after the comments, after the public comment period.

ALAN GREENBERG: I think we could [inaudible] now and just leave it there, but I don't really care.

CATHRIN BAUER-BULST: I agree that it would be good to [explain] this, and also, the RDAP issue because we did have a discussion on it and it might be useful, for example, if now either if the next review team rolls around and looks at why we decided not to do this at this point because I think we all agreed that it was reasonable to, in principle, have this review. We just felt that this wasn't for the present review to deal with the RDAP issue, that we needed to first wait for the pilot phase to finish and everything to be implemented before anybody could review it, but just to have it in there somewhere I think wouldn't hurt.

Also, in terms of showing that we took the community input seriously, because now we sort of have a sentence saying there was input and then we move on to saying that we decided to do the following. And it

might be nice to just have not more than, I don't know, four or five sentences just saying in particular these points were considered, and at the time, it seemed like it wasn't the right time to do this.

ALAN GREENBERG: Sorry. I wasn't saying don't have it. I thought Lisa implied there was already a section on the discussion we had to establish what the scope was. Maybe I misunderstood.

LISA PHIFER: So, in the background section, it notes that there was a limited scope proposal and that the review team took that on board when coming up with the terms of reference. There is also an appendix that is the terms of reference, but what I'm telling you is there's no other text in the report that goes into detail about the rational that the group may have applied.

In addition to those couple of things, in our last face-to-face meeting, there was I think a decision taken that there would be some overarching discussion about the time that it took to implement some of the recommendations, as well as GDPR and its impact and how this team applied that to its thinking.

So, I'm saying there's some of these overarching things that don't fit in the sections that we've developed already that we need to not forget to come back to, make a conscious decision to include or exclude, and if we want to include them, find a place for them.

EN

ALAN GREENBERG: There were two main documents that went into the scope discussion. One was the limited scope proposal. The second was the response from the GNSO later supported by the GAC, that that fed into that. That's where the RDAP came into it. So, we need at least the GNSO document inserted as an appendix or somewhere also to point out, because some of the things that we ended up adding in our list of after the review came from the GNSO document.

So, there was one thing pulling to minimize one thing, pulling to do a lot more, and we melded that together to get the final scope. So, there seems to be at least a reference to that document pointed to where it can be found if nothing else.

LISA PHIFER: There's definitely a reference to the document in the appendix that is the terms of reference, but the entire document is not incorporated.

So, that's the structure of the report as it exists now. We obviously haven't fleshed out. There's a list of reference documents – I think it's called bibliography or something – that would be populated at the end, based on the aggregation of all the documents that everyone referenced in their reviews.

SUSAN KAWAGUCHI: On the previous table of contents, I guess, it references GDPR as the last topic, but I don't think we've addressed that per recommendation [inaudible]. Is that something we are envisioning on doing now or is that

just in the final report? Because we're starting to see evidence and issues arise from the GDPR.

LISA PHIFER: Yes. In our last face-to-face meeting, we agreed to add a subsection to every single subgroup's section, which is sort of a parking lot for where you would put any discussion of GDPR impact, either seen now or foreseen of the future, but no subgroup has actually drafted text for that. I think your question is good. Is that something we're trying to achieve for the draft report or is that something we think we would flesh out for the final report?

ALAN GREENBERG: Okay. So, the ones where it's obvious, we can write it now. The others to be determined.

LISA PHIFER: I think we should make the decision on whether we address it. My opinion is, right now, just to get the draft report out, we probably don't address that, but make some sort of notation that we're continuing to see what … Evaluate what's happening or watch this space, basically, and we'll have something for the final report.

ALAN GREENBERG: Carlton?

EN

CARLTON SAMUELS: Essentially, the GDPR, the impact of GDPR, is going to be what is the outcome from the PDP. That's essentially it. I mean, the board's temporary specification was a response to GDPR, definitely. So, what we can say overall to everybody is that the impact of GDPR is going to be seeing the outcome of the EPDP.

ALAN GREENBERG: And then how the policy commissioners view that. The game is not over then.

CARLTON SAMUELS: The game is not over then because one of the things I wanted to say is that if you look at [inaudible] people, they've been saying we've been telling ICANN about data protection overarching issues since 2003 and they haven't done. So, I would tie those things together and make this one specific recommendation instead of putting it into [inaudible] subsection. I would prefer to see a single reference to the impact of GDPR generally and tie those things together there.

ALAN GREENBERG: In some of the reports, it's already integral. In outreach, we say don't do anything until we understand what GDPR is. In other ones, on safeguarding user data, safeguard it more. It's relatively easy to understand what the impact is. I see no reason not to put it if we already have those [inaudible].

UNIDENTIFIED FEMALE: See, I would argue completely with that statement right there. I think GDPR is going to hurt or create or allow more identify theft, so I don't think … I would absolutely disagree with that.

ALAN GREENBERG: Okay. You shouldn't choose to sit at the table [inaudible].

ERIKA MANN: I love to sit at the end of a table. Don't ask me why. I just love it. Apologies.

ALAN GREENBERG: That's why I have co-chairs over there, vice chairs.

ERIKA MANN: And it doesn't matter. I'm not offended by [inaudible]. I can scream if I need to. I just wanted to support what Carlton was saying because I believe he's right. It would be nice to have it in a single place, but I have that there's variation. In the case of consumer trust, when I am still reviewing some of the website and in the case of … I don't believe, for example, that in the area of consumer trust, for example, you want to put [inaudible] website is information for consumers in this particular field. There are already some really, really good websites and there are very poor ones. So, it doesn't matter. GDPR will not change that because good website and good information for consumers, whatever the outcome is, is going to be. It's essential. So, we can certainly make a recommendation how good information for consumers, how a good

website shall be done. But, this is not related to any particular point in relation to the GDPR and GDPR will not change that. There's no connection to it at all. Are you surprised, Alan?

ALAN GREENBERG: No. I'm surprised that we're considering that good website design is relevant to WHOIS.

ERIKA MANN: It actually is. It's not relevant to WHOIS, but it's relevant for the question. It's between WHOIS and between consumer issues. It already is now, so I can show you some good ones and I can show you really poor ones who are providing information. So, yes, it is. For consumers, in particular, if you take the definition here using for consumers, practically all Internet users, it definitely is.

ALAN GREENBERG: I guess I have to read that more clearly, because although I understand how what you're saying with relation to consumers, I don't see what the intersection is with whether WHOIS exists or not and what it is populated with. Someone who wants to be friendly to their consumers will provide the information. Someone who doesn't won't, but I'm not sure that's a WHOIS issue. I'll read your section more carefully when I see the next version. Volker?

VOLKER GREIMANN: Yes. I mean, websites and WHOIS don't really have much to do with each other because websites [inaudible] remit of ICANN. However, much of the information or services that are provided by WHOIS can be provided on the websites and are required to [inaudible] the websites, at least in terms of jurisdictions. I mean, all of Europe has the requirement to put certain information on the website and that deals with everything that [inaudible] and more. That's where something … For your [inaudible] websites that are designed in accordance to European law, or websites that are non-European websites that are designed in the same principles, WHOIS is absolutely unnecessary because it doesn't provide any additional information.

ALAN GREENBERG: Except for my fraud website which says I'm Key Systems and provides all of the relevant Key Systems information.

VOLKER GREIMANN: Well, that is not in [inaudible] with the European law and can be called on that.

ALAN GREENBERG: [inaudible] I'm not in Europe.

CARLTON SAMUELS: Yeah. I want to just echo what Erika and Volker says. In terms of consumer protection, if you look at a web design, website, a lot of the information that we would require consumers to have is already there

[inaudible] provided, but there's one additional other thing [inaudible] non-European website. It concerns this issue and it's a third-party issue, because it's about trust. Some websites are given sticker by third parties who develop the reputation for the website by using WHOIS data and that is very important to remember as part of that.

Insofar as the end user is concerned, the trust issue is actually a third-party benefit for them, but the originator of the reputation make use of WHOIS, and even websites that don't have [inaudible].

ALAN GREENBERG: I think we're getting into too much detail on the consumer trust issue and need to back to the old issue.

CARLTON SAMUELS: Maybe. But, I just wanted to … I believe that there's an issue there that can be tied to the WHOIS. That's the point I wanted to make.

CATHRIN BAUER-BULST: I actually have two points. The first is on the GDPR, whether we want [inaudible] or overall in a sort of horizontal way. And I see the arguments, particular from the perspective of some of the subgroups were having one horizontal issue on the WHOIS or one horizontal chapter. I would actually argue in favor of keeping it in the individual sections because there are some sections, for example the strategic priority, that in and of itself is not at all affected by the GDPR and the only way the GDPR comes into the picture is that we're arguing that if there have been the kind of strategic priority [inaudible] to the WHOIS

that was, in our view, requested by the 2012 team, then maybe we wouldn't have headed in to the GDPR implementation with as little preparation as we had this time around. So, it's more of a meta level. Whereas for some of the other priorities, like the law enforcement one, there is a very specific impact on law enforcement specifications and that I think is better addressed in the individual sections, also because law enforcement has a different angle on the GDPR because of its own framework than some of the other groups such as, for example, the consumers.

So, I would [inaudible] for keeping it for each of the sections, knowing that, for some sections, there was [inaudible] saying this doesn't change. For example, on IDNs, I expect Dmitry will come to the conclusion that it doesn't have any affect, but nonetheless, I do think it's better to have a specific argument as to what the impact of the GDPR is [inaudible] general.

The second point is just on the consumer. I'm sorry to keep harping on this issue. But, just to say that in the country I know best, I would agree with Carlton's statement because in Germany we have the e-commerce directors for commercial actors and we have a press law that says anybody who publishes a webpage has to identify themselves on the site. So, that is, in a sense, fully covered in Germany and nonetheless, the German consumer protection authorities have for years been telling people to go and use the WHOIS as a way of identifying the people behind the website, even though we have the specific legislation.

When it comes to the rest of Europe, the regulation … Well, the rules that are in place, the e-commerce directive, only applies to commercial

actors. So, we don't actually have coverage for private actors of websites, and there you would still need the WHOIS even within Europe, just to clarify that part about the scope of the legislation at present, which I think makes a difference because I would [inaudible] that probably not even the majority of websites have a commercial purpose and therefore fall under the e-commerce directive.

Thank you. Carlton, if you're going to speak out of turn, speak with your microphone. I agree with Cathrin on the one by one GDPR reference. It's only a brief sentence. We may well have a summary also somewhere. That's a different issue. Volker?

VOLKER GREIMANN: Yes, but just for the anything new section later on, I wonder if we want to include some reference to the GDPR recommending to ICANN that they should have a more proactive look at incoming legislation, privacy legislation, and other affecting legislation, so in the future they will not be that surprised maybe by such events and have a more detailed plan laying in the back for when such laws become effective. I mean, GDPR has probably beyond its direct impact, should be taken as a lesson for ICANN to boost its compliance processes with regards to legislations that may affect certain processes within ICANN and we might well have a recommendation there that ICANN should be more proactive in monitoring such laws and being proactive but reactive.

ALAN GREENBERG: I'm not sure compliance was the right word, but isn't that the whole gist of make this a strategic priority, that have someone who cares and

someone who is, in theory, responsible for making sure you're not surprised.

CATHRIN BAUER-BULST: I fully agree with Volker and that's the gist of why we're saying that the strategic priority bit has not been fully implemented, because in the view of the subgroup, the whole idea around this was not just to monitor that there was implementation on the review team, but to have a forward-looking approach towards any changes that could impact the WHOIS, including of course [inaudible] and, Volker, I would even go further and say there should be a general … Going beyond the WHOIS, there should be a strategic approach to legislation and developments around the world, but of course that's far beyond the scope of this review team.

ALAN GREENBERG: I mean, being strategic means you have someone to blame when you mess up. We're well over a half hour late at this point, so I think we need to try to move on. Lisa, back to you for the report.

LISA PHIFER: Thanks. Just to tie this up. I think that we had some discussion about whether to pull in the limited scope proposal and the GNSO response to the limited scope proposal. I heard Carlton say he was fine with just referencing that as a separate document as opposed to integrating it in this document. are we agreed on that?

ALAN GREENBERG:	I would suggest referencing a separate document, not necessarily integrating. But, in the reference, you may want to pull out one or two key words, such as RDAP, so we have a basis on which to say why we didn't. Just to say where it came from.

LISA PHIFER:	The text may need to summarize the reference document, but not actually incorporate it as an appendix.

ALAN GREENBERG:	Or at least summarize the parts that we're going to need to reference afterwards. Just make sure that where you point to it, it's pointing to a place where that URL will still exist six months from now. Seriously. If not, then let's waste an extra page and do it that way. One way or another.

LISA PHIFER:	Alright. Cathrin?

CATHRIN BAUER-BULST:	I was just going to say that the proposal is actually super short. So, the two pages that [inaudible] we can just add it as an appendix, so whoever downloads the report in 20 years because they're so fascinated with our work and want to trace it can just have the two pages there. And we can even copy the little list that they propose as to what we should be doing as a team. I think that would be fine to just put in the background and then we can just say we fully agreed with the

GNSO on points X, Y, and Z and we didn't take up this because we felt that, at least for some points, it was necessary to go beyond reviewing what was done before.

LISA PHIFER: Okay. So, that sounds like the decision is to incorporate it as an appendix. Does anyone disagree with that? Alright. So, we'll take that down as a decision. Of course, all decisions can be revisited.

With respect to the subsections within each subgroup's section discussing impact of GDPR will retain those individual subsections for now acknowledging that some groups will say there is no direct impact of GDPR. And we'll have another chance at the end of our two-day meeting if we get there to revisit any other comments on the report structure.

ALAN GREENBERG: I would suggest that we do the same thing in this effectively table of contents as we did in the summary for the engagement session. That is, we include a section with a title compliance and point to the fact that the content is all within section 4.something.something. We have done a significant body of work on compliance over and above reviewing the last review and we chose to, for convenience, put it into one group. But, I think we have to give it visibility there, even if we say the full content is incorporated somewhere else.

LISA PHIFER: So, Alan, if I understand you, you would have a section on objective six compliance that would state that the findings for that review objective can be found in section 4.5. Yeah.

ALAN GREENBERG: It's a one-page section, but it gives note to the fact that there was a substantial body of work done. We may even want to flag with an asterisk or something or other the parts that are really in response to WHOIS1 and the parts that are new in the recommendations or something like that. That can be done [inaudible].

LISA PHIFER: Yeah. It actually occurs to me, Susan, that your section for recommendation four actually has discreet subsections for those objectives and after we look at compliance, maybe we can think about whether you want to pull that separate. Even though it was the same subgroup that looked at it, you have actually about put that's unique to that objective. Maybe we just pull that there and that makes your section actually less deeply nested, which might be nice, too, because I think you had up to six levels in the table of contents. Alright. We'll put a note to think about doing that, but definitely, it sounds like everyone is agreed there should be a section on objective six compliance that either provides the answers to what the subgroup came up with or refers back to the section on recommendation four.

SUSAN KAWAGUCHI: Okay.

LISA PHIFER: And that's all we had on organization of the report. Susan?

SUSAN KAWAGUCHI: Just real quick. Thanks, Alan. Earlier I thought about that and then lost track of that point.

ALAN GREENBERG: I think we've now finished the section on approved draft report background section which we haven't quite done, but I think we've done a fair amount of discussion about it. We are now on subgroup two, anything new. We are 45 minutes late and Stephanie has not shown up, so I presume we move to section five on strategic priority first and decide how we reorganize afterwards if Stephanie has made it to the airport, assuming she was on the flight that we had planned. I don't think we've gotten an e-mail from her. Has anyone seen one? No? I'm sorry. I thought you said she landed already, not scheduled. Okay. Then we're onto Cathrin.

CATHRIN BAUER-BULST: Wonderful. We're onto strategic priority. As you may remember – actually, we can probably catch up some time here because I'm not sure we'll need a full half hour to take you through this.

                         The main gist of our findings was that the strategic priority, as intended by the 2012 review team, was not fully implemented, so that there were steps taken towards implementation, but that the overall

objective that would presume lies behind the recommendation from the first WHOIS review team was not completely fulfilled because it was supposed to put ICANN in a position to anticipate the impact of changes in the outside world on the WHOIS and that was not the case because the scope of the effort was more limited to the actual actions that were assigned by the WHOIS1 review team report.

So, that was the overall gist of our finding, and to get there, we basically looked at the records of what actions, in particular the board, but also the organization has taken to make sure that WHOIS was a strategic priority both from the perspective of putting the right organizational steps in place. Is anybody else hearing a very high-pitched wine from the speaker? Sorry. I'm just wondering whether it's my voice. I'm overthrown. I have noticed before, but it's very unpleasant. Sorry about that.

So, we looked at the organizational steps that were taken and offer the compensation changes. On the organizational steps, there was some track record [inaudible] decisions taken by the board and the notes that were made in the fiscal year operating plans and budget, and in the five-year strategic plan to make sure that the WHOIS was officially signed as a strategic priority.

And on the compensation side, there was no more detailed data available. We were assured this was taken up in the overall management tool as an objective and that it was part of the CEO's compensation. We didn't actually see the underlying document, nor were there records of any meetings of the board subgroup on the WHOIS. So, we were working on sort of a limited [inaudible] when it

comes to the details, but the overarching gist of it was clear from the operating plan and budget and from the board decisions on the issue.

So, what we came to on the basis of this evidence was basically what I just summarized in a couple of words, namely that while a number of steps have been taken that on the face of it fulfilled some of the intention of the board – sorry, of the review team 1 recommendation – the actual events of the last couple of years, in particular around the GDPR, show that the overall goal was not yet achieved. Yes?

ALAN GREENBERG: Question. So, this is saying that the strategic priority was implemented by assigning it to the CEO in conjunction with a board committee. Am I understanding that correctly?

CATHRIN BAUER-BULST: It's not just that.

ALAN GREENBERG: I'm not looking at [inaudible]. I'm saying that's how it was resolved. [Chris] is not here.

CATHRIN BAUER-BULST: So, there were several steps. That was part of it. They were asked to form a subgroup of the board including the CEO as part of it, but it was also supposed to be part of the compensation incentives for the CEO and parts of the organization that were dealing with it and this we've

been told is the case. And it was supposed to be organizationally integrated into the overall strategy of ICANN, so that is what is reflected in the ICANN five-year strategic plan and the operating year's budget and plan.

But, what we see … Already, if you look at the operating year plan and budget, you see that it sort of switches sections. It's not very clear who is assigned to this overall and what their activity is supposed to be because I think midway between it shifts through another section of the operating year plan that is more focused on technical security. Then, there's actually no actual implementation KPIs or anything related to the strategic priority which shows that even at the level of the organization, there wasn't this overarching thinking going on, at least when you look at the plans.

Then, when you look at the board subcommittee, it was very clearly focused on specific aspects of the previous review team report rather than on looking ahead, which we [inaudible] was the original intent of the recommendation.

So, that's why we came to the conclusion that, overall, it wasn't fully implemented.

ALAN GREENBERG: Okay. In addition to that, I believe that's the committee that Chris has more recently referred to as it has been reconstituted because it sort of disappeared. So, altogether, I'm not sure we want to completely omit that even though I don't want to put it in Chris's [inaudible].

EN

NEGAR FARZINNIA: Thank you. I wanted to just make that point that we have already a [inaudible] working group that has recently been reinstituted to continue their [reports] pertaining to WHOIS. If Chris is not able to elaborate on it as part of this conversation now, we can certainly ask him to write a brief note to the review team and inform everyone of the undertakings of the board working group and what they're focusing on going forward.

CATHRIN BAUER-BULST: Thank you, Negar. It would, indeed, be a very good idea, because in terms of the written record of this group, all we had was the board's decision to create it and we were told that there's no further record of its existence or meetings because that's not what the board usually does. So, that means that we have to assume it was existing and working, but there's no written proof of it actually doing anything.

ALAN GREENBERG: We were explicitly told it has been reformed because it had essentially dissolved.

CATHRIN BAUER-BULST: Yes. So, I guess with that official notification, we can expand that section a bit and beef up our argumentation about why this isn't exactly what was originally intended.

We've made a very limited recommendation, in fact. So, we've talked about how in the operational plan and budget, the topic shifts and how we're not really clear on what's happening there. We haven't made a specific recommendation to address this issue. Rather, what we focused on is the overall forward-looking perspective of the board, including the CEO on the WHOIS and what should happen, because in a sense, all the other actions should naturally follow from that. If you are committed to having a forward-looking perspective on impacts on the WHOIS, then naturally you also have to have resources dedicated to informing the board about what's happening, monitoring legislation. I understand that's something that the organization is already implementing now with a new director in Brussels whose mainly focused on [inaudible] monitoring other legislative change. Sorry?

ERIKA MANN: That's only for Belgium. It's only for [inaudible].

CATHRIN BAUER-BULST: Yes. I'm hoping that the same … I only have a visibility on the [inaudible] but I'm hoping that the same effort is going on elsewhere in the ICANN offices. But, if this is a concern for us, of course we could also have a second recommendation more focused on whether we also need to specify the organizational investment that should underpin this forward action.

So, what we did for now as a subgroup was just focus on the board subcommittee that should [inaudible] action and take a bit of a broader

perspective, exactly along the lines of what Volker was saying earlier. Sorry, Lisa, go ahead.

LISA PHIFER: I didn't want to actually interrupt your train of thought, but I want to note that in the last call I believe it was where we talked about the recommendations 15 and 16, Lili had actually percolated up from discussion of the implementation reports and the annual WHOIS report questions about whether there was in fact someone within ICANN assigned that overarching project management for all things WHOIS, which I believe you submitted as a question and received an e-mail in response.

My question to you is: is that something that belongs in strategic priority? Is that something that belongs in the implementation reports and plans? It seems like you both have identified this as a concern, but it's not clear to me that we have assigned responsibility for it.

LILI SUN: According to the [inaudible] answer from ICANN Org, there's not a specific committee or taskforce to deal with the issues. It was only clarified there was one dedicated staff who is overseeing the whole process. So, I believe that's [inaudible] from the initial intention or recommendation.

ERIKA MANN: Maybe just a principle one. I think ICANN over the, at least [inaudible] observers, which is quite long, never really dealt with any kind of

legislation which were relevant for ICANN around the globe. We discussed this on the board many times and there was no awareness and I'm still certain that [inaudible] is still quite poor. So, it's glad to see that certain areas progress is made, but it's no surprise. There can't be no surprise that the WHOIS issue was slipping away. Of course, IANA was trumping all the attention as well internally, so we have to be clear there was another topic which was more prominent at the time, so WHOIS was slipping to some degree away, but it was, in general terms, very poor awareness about legislation, with the exception sometime of certain legislation which were key in the US because it's understandable because [inaudible] just because of the headquarters is in the US, so it would be the same tool for a European company which would pay more attention to European legislation, so it's not a real surprise.

CATHRIN BAUER-BULST: Thank you, Erika. We have Carlton and then Negar.

CARLTON SAMUELS: Thank you. That's what I wanted to say, but Erika already said it. There was [inaudible] legislation [inaudible] political things in the US side, definitely. Around the rest of the world, not so much. So, I think there needs to be a requirement that we put in this report the strategic priority, as part of the strategic priority, to have some sight of legislation around the world that could impact ICANN mission. And, B, that [inaudible] as Volker was suggesting, we have the implementation issues. Not Volker, but Lili. When you asked the question and they said it was only a single [inaudible] that was looking at it. That was for

implementation. And we might want to suggest that, given the scope of legislative issues around the world, maybe we want to beef up the numbers staff is actually looking [inaudible] implementation.

NEGAR FARZINNIA: Thanks, Cathrin. I wanted to make a similar clarification, that the question that Lili had put to us was about the oversight of the implementation of the recommendations pertaining to WHOIS1, which is a different point that who oversees the WHOIS program at ICANN Org [inaudible]. And speaking to that, in terms of implementation, we have made that clarification. Typically, MSSI team – our team – is in charge of the oversight of implementation. However, we work with various subject matter experts across the organization to implement different recommendations resulting from a given review.

In terms of the overall responsibility for the WHOIS program within ICANN Org, we have an individual with a supportive team that oversees WHOIS and they also work with the RDS board working group to have the bridge back and forth to oversee WHOIS program, and I guess that is the point that Cathrin was trying to refer to.

CATHRIN BAUER-BULST: Thank you, Negar and Carlton. [inaudible] on the organizational … The feedback we got was that there is somebody in the global domains division who is in charge of overseeing … Let me see what it's called. For actively planned for changes in the use of unique identifiers. Yeah. The role is very much focused on supporting what's going on in terms of community initiatives rather than the forward-looking planning and its

budgeted with a relatively low 0.6 full-time equivalence. So, that's something we might want to revisit.

So, what I'm hearing now, just to reflect, is that there are considerations, possibly [inaudible] specific recommendations in terms of mandating the ICANN board to include some sort of foresight mechanisms on [inaudible] implementation and to possibly say something on the need to dedicate staff also within the organization to specifically support that board function.

Chris, did you want to say something?

CHRIS DISSPAIN: Thanks very much, Cathrin. Yes. Only just to really … I apologize, I've been in and out on the call and I apologize for that. I think just really to support … If I've understood you correctly, to support what you've just said. I was going to say when I came in that what would be really helpful I think is if in your recommendations you were able to say, to provide some guidance as to what you think making it more of a strategic priority actually looks like. So, what you've just said about talking specifically about [cutting] individual people, whatever, I think is helpful.

Part of the issue with the original recommendation was I think in part that there was a lack clarity around what that meant. So, any guidance in that that you can put into the recommendation that is SMART would be helpful, I think.

CATHRIN BAUER-BULST: Okay, note taken. I'm wondering whether on this one … Let me just get the mood in the room around these two concepts that we've now thought about introducing. What do you guys think about adding something specific about needing to have a forward-looking approach to possible changes in legislation that might impact the WHOIS? And what do you think about us saying something more specific about the need to dedicate staff also to the forward-looing perspective to support the board working group specifically? Is there anybody who thinks …

CHRIS DISSPAIN: Can I just respond to that, Cathrin?

CATHRIN BAUER-BULST: Sure.

CHRIS DISSPAIN: Just so that you know, I'm fine with the review team saying both of those things. But, just so you know, the board has already said that it doesn't want to be put in this position again. When I say this position, I don't mean with you in this review team, although I don't want to be put in this position again. In respect to GDPR, we want there to be the forward-looking necessary stuff to tell us about legislation around the world. That said, it's absolutely something that you should say, I think.

And certainly, making a recommendation about the WHOIS review team – sorry, the board working group support and so on, that's fine, too. So, I have no issue with either of those two things.

CATHRIN BAUER-BULST: Okay. Does anybody else have opinions on this?

SUSAN KAWAGUCHI: So, you found the board working group was in effect, then it sort of dismantled and it's now being put into effect again. But, there was no record. Erika stated that isn't usually … Notes aren't kept from a board working group.

CHRIS DISSPAIN: I'm trying to remember what status.

UNIDENTIFIED FEMALE: [off mic].

CHRIS DISSPAIN: No, I think that's probably right. I think Erika is probably correct. But, again, if you want to say … I mean, look, you could say if you wanted to … It would be challenging to make this into a committee. A committee comes with a whole heap of stuff and it's got to be in the bylaws and all of that. A board committee. But, you could say we think that the working group is of significant importance and should therefore be supported in much the same was as a committee and that there should be minutes published. That would be fine.

SUSAN KAWAGUCHI: That was the point I was getting at is, going forward, some of the thoughts or work that that group did on the board should be documented, so that the next group would have something to review.

ALAN GREENBERG: Chris, my recollection is there are a number of board committees that are referenced in the bylaws. Pardon me?

CHRIS DISSPAIN: Every committee has a charter. Working groups are much more flexible [inaudible].

ALAN GREENBERG: But, my recollection is some working groups – committees, sorry – such as the one that now handles IRPs and things like that are referenced in the bylaws. I don't believe the existence of committees are identified in the bylaws.

CHRIS DISSPAIN: They are, but I'll check. I'm fairly sure they are, but I'll check. Because when we set up the [BAMC] we had to go through a bylaw change.

ALAN GREENBERG: Because it was referenced. It was used in the text somewhere.

CHRIS DISSPAIN: Oh, I see what you mean. You mean there are some committees that the bylaws say you have to have. That's what you're saying.

ALAN GREENBERG: Perhaps. Anyway, I'll check it out. Whether we call it something else other than subcommittee, there should be vague records of its meeting at least.

CATHRIN BAUER-BULST: So, just to clarify, the first report did ask for a committee to be formed, and in response, the board adopted a resolution forming a board working group in July 2015. So, a while afterwards, which then we … And it did have an actual charter outlining what it was supposed to do, which was quite specific. So, what we could do is now that it's already been revived say that we support this revival and we think it should include the following things in its mandate and it should keep a record of what's happening, which I understand would address Carlton's [inaudible].

CHRIS DISSPAIN: I think that's fine. Just to be absolutely clear, it never went away. What happened was by dint of the winds of the ICANN board, of the six people on it, four left the board at the same time and it took a little while longer than I would have liked to re-people it, for want of a better word. So, it never actually went away.

I will double check because I am fairly sure there are minutes or there are certainly notes of meetings. I'll be surprised if there aren't at least some of those. Let me double check that.

CATHRIN BAUER-BULST: That would be brilliant. Thank you, Chris. Just to say, I mean, the strategic forward-looking approach is actually not in the mandate of the working group as per its charter. The mandate of the working group, when it was formed, was to liaise with the GNSO on the RDS PDP and to oversee the implementation of the remaining projects arising from the action plan adopted by the board to implement [inaudible] WHOIS review team.

CHRIS DISSPAIN: I wouldn't recommend suggesting that it's the working group has that forward-looking mandate. I think we should just recommend the board puts in place mechanisms for it, because it's not necessarily limited to WHOIS. It's not necessarily limited. It could be all sorts of different forward-looking legislation.

So, my recommendation would be that you just suggest the board puts a mechanism in place rather than trying to shoot it home to that working group.

CATHRIN BAUER-BULST: Okay. So, you would think we shouldn't even say anything about the group, but rather focus on the board introducing whatever mechanism.

Chris, I'm also trying to address your concern about how you didn't know what we wanted last time around.

CHRIS DISSPAIN: Sure.

CATHRIN BAUER-BULST: Because if we're not specific about what exactly the mechanism would be, then I'm worried that five years from now, somebody will look back and say, oh, this cryptic thing that the WHOIS2 review team asked the board to do.

CHRIS DISSPAIN: That's okay. Let me respond to that, Cathrin. Maybe I haven't made myself clear. So, first of all, in respect to the working group itself, recommendations that talk about support, operating it so that it has [inaudible] transparency, etc., that's fine and that's good. When it comes to the recommendation about the forward-looking [inaudible], my suggestion is that rather than saying the working group should be mandated to do that, you just say the board puts in place a mechanism to do that.

That's simply because I think the board may well want to put in place a mechanism that's far wider than WHOIS and there's no point in repeating it in various different working groups. That's my suggestion. That doesn't prevent you, nor should it, from making specific recommendations in respect to the working group itself, but those are

more around structure, support, and output than a specific task of being forward-looking.

CATHRIN BAUER-BULST: Chris, that was very clear.

ALAN GREENBERG: I would word it in such a way that whether they call it a subcommittee or a working party shouldn't be an issue.

CATHRIN BAUER-BULST: Lisa?

LISA PHIFER: So, earlier when you were describing the possible new recommendations, you talked about assigning dedicated staff to WHOIS. That was linked in my mind to having the responsibility for this forward-thinking approach of coming legislation. It sounds like now that might be decoupled [inaudible] recommending some mechanisms to be forward-thinking, and in addition, that you were looking for dedicated staff focusing on overall management of WHOIS activity. Is that true?

CATHRIN BAUER-BULST: What I was actually thinking is that if there is supposed to be this [inaudible] function on the board to make this happen, you would have to have somebody in the organization actually providing the input from the different regions and alerting the board to legislation. So, I would

see it coupled in the sense that there needs to be a change in the organization to enable the board to have this function because they're not going to be able to do it of their own resources.

The oversight, in a sense of the [inaudible] activities, I think that is already provided. To some extent, I was [inaudible]. The question was there adequate resources and that's also something that Lili's group is looking at. Erika?

ERIKA MANN: I mean, in practice, it would work differently. So, it would be this – I don't know who [inaudible] going to set in place to [inaudible] it. But, typically, it would be done by the legal team in cooperation either with somebody who is overseeing different regions in the globe and scanning the legislations which are going to impact the ICANN ecosystem. Then it will go as an alert to the board and then the board will have to respond to it. That would be the typical approach and I'm pretty sure it will be done in similar ways.

CHRIS DISSPAIN: Thank you. Yes. So, the way that it should work is that the board … What the board does is basically strategy. So, the actual way of dealing with it should be the recommendation to the board that, as part of its strategy, it instructs the CEO to create a mechanism that is able to report to the board on a regular basis about global legislation, rather than recommending the board has a mechanism. It should actually be the board instructs the staff. Because the board is not going to have a mechanism itself. It can't, by definition. It's an ICANN Org mechanism

that reports into a committee of the board or a working group of the board. So, that's the way that it should be structured, if you could figure out the wording for that.

CATHRIN BAUER-BULST:　　Right. Thank you, Chris, for that, and Erika. I note that you mentioned that there would be … That there are efforts of the working group, you believe. So, if you could … Yeah. If I can give that to you as a to-do, because the organization came back to me saying that there aren't any. So, if you have anything, it would be great if you can dig it up and let us know because I think it actually doesn't look so nice in the report to say that there's no records of any activity, so if we can prove that there was activity, that would be helpful.

And on the recommendations, I agree that indeed there should be reporting mechanism of some sort to the board and then it's up to ICANN whether they place that in legal or anywhere else. But, I think it would also be helpful if the board itself was assigned the responsibility as part of the strategic planning to look specifically at this issue also. So, that would be the gist of the recommendation that we have related to the board itself.

CHRIS DISSPAIN:　　No, I think that's right. I think we're agreeing with each other. I'm simply saying that the recommendation should be that the board does that and puts in place a mechanism that enables it to do so. What I'm saying is that mechanism is actually going to effectively be through Org rather than through the board itself. That's all.

CATHRIN BAUER-BULST: Okay. So, I'll do some redrafting of this one and then we can see what it looks like next week. Then, I guess you'll have to take another look at this section to see whether you're happy also in terms of was it attainable and realistic perspective. Now we have Lisa. Relevant, yes, sorry.

LISA PHIFER: So, two things. One thing is I'm still not really clear I understand the concept of the board ultimately having responsibility by implementing that through a mechanism that probably falls to ICANN organization to carry out. What I'm not clear about is whether you also wanted essentially a WHOIS [ZAR] within ICANN Org, like the first review team asked for compliance [ZAR] within the organization – not the board, but within the organization. Is that part of what you're [forcing] your recommendation would touch on or not?

CATHRIN BAUER-BULST: I have to say I'm not really sure about this one because there are so many different aspects to it that really the strategic bit is the part that I think is most relevant, and it's different from compliance in that compliance is sort of an area where it makes sense to have a person who is overseeing the whole bit, whereas with the WHOIS, there's so many different aspects of it that I'm not sure the same logic would apply here. But, I'm very open to hearing what other people think on this one specifically and whether it would be useful to have a WHOIS

[ZAR] in the organization, to have one person just like the chief compliance officer or something.

CHRIS DISSPAIN: I think flexibility. I think delivering a high level, clear, set of recommendations is more useful than being specific about the way that those recommendations should be implemented.

CARLTON SAMUELS: I'm just echoing what Chris said. I think it's very important to specifically state whether a recommendation [inaudible] get down to the point of determining how it's implemented I think is a bit too far down.

ALAN GREENBERG: I think, on the short term, ICANN would be insane not to identify a person, to be blunt, who can be blamed when the next problem happens. But, on the long term, I don't think WHOIS is such a thing that it needs a [ZAR]. It's going to fade into the background once we actually figure out how to do it right.

ERIKA MANN: Yeah. In principle, I agree with Alan, but there's one point, because the legal environment might change in the future where you might want to have a person who will oversee such kind of implementation compliance [work] related with … Just imagine the outcome of it, which I would assume the temporary spec [inaudible]. I maybe shouldn't say this, but I'm very doubtful that there will be a uniform, for example,

access to WHOIS in the future. Uniform [inaudible]. I don't believe it. Because legal environments differ from country to country. It's so different what they allow, how data can be accessed.

So, in this case, if you will have a non-uniform system, it might be actually [inaudible]. You will have a very diverse WHOIS system which needs to follow national laws. Then it might be actually that you need a person who can oversee this. But, we're looking so far ahead. We shouldn't make a recommendation for this.

ALAN GREENBERG: Erika, we're saying the exact same thing. I didn't put a timeline on it and it's going to be a while before we get this right. But, at some point, we may not need a point person for WHOIS as such, at which point, we don't want to put ICANN in a position of, well, you promised to have a WHOIS [ZAR] and now it's 2029 and you don't have one, therefore you're in violation.

CATHRIN BAUER-BULST: Okay. What I'm hearing is we don't necessarily need the one WHOIS [ZAR] at the moment, but we of course should still look at making the recommendation specific enough so that it's clear what is wanted and what we would see as achievement on the objective of the recommendation. So, I'll try and work on that fine line. Susan?

SUSAN KAWAGUCHI: So, I had a question about the compensation. That was something that the first review team felt was important, that it was some sort of

outcome was tied to the compensation of the executive team. And I apologize that I haven't read your report recently. Is there any way of actually tying that in?

ALAN GREENBERG: We're never going to …

SUSAN KAWAGUCHI: WHOIS is a strategic priority, so the intent of the first review team was that if someone screwed this all up, which I think is what has happened, that would hit their compensation. Now, the problem being that we get a new CEO every three years, so who gets blamed and who loses compensation is the question. But, I was wondering if we could make it more explicit that there has to be a portion of their compensation is truly based on making this a strategic priority.

ALAN GREENBERG: May I? Two things. Number one, we are never going to get reports on who got all of their at-risk compensation and who didn't. number two, I've been told that, in general, everyone at ICANN always gets all of their at-risk compensation. So, it's not … I don't think it's an area we can go into [inaudible], which says something about at-risk if it [inaudible].

CATHRIN BAUER-BULST: It was actually very hard to get any details on the compensation. We asked twice. And we were told that the compensation of the CEO is tied to the strategic plan and that the compensation of staff working on this

is tied to some management tool which relies on the strategic plan as implemented in the operating plans and budget and that's what determines the impact of the WHOIS on compensation. So, that's the extent to which we have transparency on this, and [inaudible] of the organization to be more transparent about how exactly this works. But, I think it's safe … Given how many priorities are in the strategic plan, that this is not going to have a major impact on anyone's compensation I think is a conclusion we can draw.

CARLTON SAMUELS: [inaudible] what Alan says. I now sit on a board compensation committee of a private company and usually you look at a strategic plan and you look at the elements of the strategic plan, and once there is an initiation of a task from the plan, you never get in the next compensation [inaudible] of that task. So, you never ever look at outcomes. What you look at is was the plan initiated and if it's initiated, then it's somebody else's task to get it through to the end. So, that's how it is, so I'm not surprised you wouldn't get the compensation [inaudible].

ERIKA MANN: Yeah. And you look at the number top priority of the strategic plan, which at the time, was the IANA transition, so everybody focused on this one. I mean, I was a member of the compensation committee like Chris, so that's the prime. I'm not aware that different boards handle this differently. I've been on many boards, so I don't think they target each strategic priority area and [inaudible] certain percentage, what you

could do in theoretical terms to it because priorities shift as well, so you're never totally certain which one is going to be the number one.

ALAN GREENBERG: If I may add a little humor to it, I don't know how many non-Americans here are familiar with Lake Wobegon. It's a fictional town in Minnesota. The introduction to the show includes the phrase "Where all children are above average." I get the impression that, based on what I've heard about ICANN's at-risk compensation and how it's paid, all employees are above average. No one ever fails. It doesn't necessarily show from the results.

CHRIS DISSPAIN: May I please respond?

ALAN GREENBERG: Sure.

CHRIS DISSPAIN: Again, just in the spirit of giving you some sort of in-depth information, it takes a while to get a handle on this and I've never really understood why it's phrased the way it's phrased, but it probably has to do with California not-for-profit legislation. At-risk is not a bonus. It is your salary. It's computed as part of your salary. And it is held back over a period of time and dispersed twice a year. My [inaudible], so hang on a second, so you just do your job properly and you get your at-risk. So, it's

not for extra service. It's for doing your job properly, [inaudible]. That's exactly what it is.

Then, to answer your question about I'm not aware of anybody who … So, we've asked that question. Have there been people who have been not given their at-risk? I can tell you that the answer to that is yes because Fadi was not given 100% of his at-risk on at least two occasions during his time as the CEO.

The response that we got from staff was that it is rare for a staff member to not get their at-risk, but that it has happened, and on almost all the occasions that it's happened, the staff member has actually left because the problem has been big enough so that not getting the at-risk has meant that they've left.

Now, I guess you're having this conversation in the context of getting the CEO goals for WHOIS. Is that right? Okay. So, let me say on that score, recommendation that asks the board to ensure that they are properly informed so that they can carry out the strategic – sorry, they can make this recommendation of making it a strategic priority, making that … Recommending the board makes that a goal of the CEO and leaving it at that would probably be fine. Anything further than that might be difficult.

CATHRIN BAUER-BULST: Thank you, Chris. Lisa?

LISA PHIFER: Thank you. I'd like to, if we've reached the point where discussion is done, I'd like to recap a couple of the actions and then suggest a way forward.

So, ICANN Org and presumably Chris have an action to provide a summary of the board working group current composition and remit, that Chris is going to double check to see if there were in fact some meetings notes of the board working group that can be shared with the subgroup.

Along decisions, here's what I heard, and Cathrin, I know you've been taking notes, too, so tell me where I've got it wrong. You decided to add a recommendation that puts a mechanism or mechanisms in place to take forward-looking approach regarding legislation that may impact WHOIS, that you add a recommendation … These don't have to be separate recommendations. That you add a recommendation that the board working group is of sufficient importance and that it should publish minutes, etc., to enable review of its activities in the future. And that you add a recommendation to assign dedicated staff but not necessarily a single person – in fact, not a single person – responsible to overseeing all WHOIS initiatives. Does that have it in a nutshell?

CATHRIN BAUER-BULST: Yes. Thank you, Lisa. I think that summarizes it. The one thing I'm not yet clear on is the compensation angle, whether we would need to repeat that, because it's already been part of the first review team's recommendations which I assume will stay relevant. Maybe we should say that somewhere in the report, that we, just by putting our new

recommendations forward doesn't mean that we're trying to replace the previous ones, but assume that they will remain in place and will continue to be respected where they have been accepted, and that for me would include the one on the compensation, on tying the compensation to the WHOIS.

So, for me, I would not necessarily want to add new wording around this, because I think that's the one point where the outcome of the discussion was not yet clear to me. Alan, I see you want to comment.

ALAN GREENBERG: Two points. Number one, technically, the board did not accept that recommendation on compensation. There are people who claim the board accepted all the recommendations. They didn't. The minutes show they did not. And I don't really want to get into that debate right now. It's a complex one. But, number two, I'm not sure a recommendation on compensation was implementable at the beginning, so I don't believe it necessarily applies now and I would probably not recommend, given what we've been told by compensation, putting in another compensation one. Holding people to something may [inaudible] compensation may involve something else. I think we should put our end points in, but I would not suggest compensation.

CATHRIN BAUER-BULST: Does anyone want compensation in? Let me ask this way around. Okay. Not seeing anything, I guess that point has been also clear. I think we have what we need to move on with this part of the report. Thanks to

everyone for the input. Lisa, do you want to say any concluding wise words?

LISA PHIFER: I do. So, I think our face-to-face time is extremely valuable, especially when it comes to reaching consensus on the wording of recommendations. So, if it is at all possible for you to draft the new text of a recommendation that we could look at tomorrow morning when you're still with us and hopefully reach at least consensus on those recommendations, I suggest we do that.

ALAN GREENBERG: Thank you. We're 15 minutes past a break, so I think we'll go into a break right now. Let's keep it to 15 minutes. Just for the record, we're about 45 minutes or an hour behind schedule right now, but we'll do what we can to make up.

CATHRIN BAUER-BULST: I was speaking, but I didn't hear it anymore. It was just when I started my presentation. Now I don't hear it. It was at the beginning of the strategic priority. I just mention it because it drove me crazy at the time. I was having a hard time continuing to speak, but then [inaudible]. Now it's not a problem. You probably don't need to worry about it. I can start complaining again when it comes back.

ALAN GREENBERG: I'd like to reconvene the meeting. Is there anyone still missing? Is there anyone missing? Speak up if you're not here. Alright, we are going to reconvene. Are we prepared to do law enforcement? May I have your attention? May I have all of your attention? Is there anyone in this room who would like to take responsibility for doing the law enforcement section at this point? Thank you. It's all yours.

CATHRIN BAUER-BULST: Right. You can hear me draw on for the rest of the day. This one should really be quick. I know I said this for the first one and it wasn't true at all, but I'm going to repeat this in the hopes that with the two sides we have on the law enforcement one, one of which we've already covered because it was a typo slide, we're really going to get through this one very quickly.

So, after long deliberations among the subgroups and [inaudible] delay of my side, we finally managed to put out a survey for law enforcement around the globe to tell us about what role the WHOIS plays for their investigations and how it's worked for them before and after the … See, now I can hear it again. I'm trying not to [inaudible]. I have witnesses.

ALAN GREENBERG: In any discussion on law enforcement, it is important to have witnesses.

CATHRIN BAUER-BULST: Yes, indeed. Okay. I'm going to try and ignore this. So, we tried to gather from them both the use of the [inaudible] of the WHOIS before the change and the use of the [inaudible] after the change and the impacts

that has had on them and on the success of their investigations. We also tried to identify to what extent the use at present private sector tools that are available, such as [inaudible] domain tools and what other sources [inaudible], what other sources they might rely on in the absence of the WHOIS.

We have to date 49 responses. There is still some concern about regional distribution because, as with all ICANN processes, of course we have an over-representation of certain regions and an under-representation of other regions, which is not ideal.

So, one thing we are now considering is to reopen the survey for a limited period of time to make sure that participants who are not able to respond in the timeframe that we set them the first time around might be able to contribute to the survey still, which I reassure you will not keep me from writing up some results based on the first iteration of the survey and the [inaudible] we already received during the next week to share with you.

Given that we don't want to influence the survey, we might not be able to actually share any results with you now or in the weeks to come because anything that we share with the full group is also included on the Wiki, so people could actually already review the results we received to date which might impact the way they respond to the survey in the future, so we don't want to … We want to ensure that the survey is done impartially and that requires keeping a certain degree of confidentiality, so we need to consider how we can do this when we update the report now, so as not delay the timeline. One option could possibly be to share it with you individually by e-mail rather than using

the group list for now for that section of the report to make sure that that's kept confidential, but I'm sure we can work out the technical details.

Yes. I think that just about concludes what we can say on law enforcement needs at this point in time. Just to say that I have [inaudible] to complete this section of the report, which is still pretty much empty in the next week or so, so that we have actual text to discuss and I'm really looking forward to seeing the survey results as to what the impact has been.

Very interestingly, one of the things that I've heard separately is that there is actually a large degree of reliance on private sector tools and that a lot of investigators are still working on cases from about six months ago, which means that the data they're relying on is still up to date because that was before the 25th of May when even the private tools still had access to refreshing their data, to refresh their data, which now is no longer the case. So, once the investigators hit November, we might expect to see a greater impact because of the fact that they will then be investigating cases that fall into the same timeframe of June/July where they will no longer have data available from the private tools. That will be an interesting development to possibly keep an eye on later in the game if that goes beyond the framework of this report, of course.

So, that's it from the law enforcement side. I'm sorry we're so far behind, once more. I don't know whether there is any comments on this now. Lisa, please, and then Alan.

LISA PHIFER: A couple of things. Some of the material that's not yet in the draft report is actually just the approach that you took in the methodology, the target, and so forth and it strikes me that that can be shared even on the public Wiki, the actual findings and problems identified and so forth might be what you want to keep private at this point.

It's interesting the point that you raised about current investigations maybe being based on information that was collected six months ago. It strikes me that repeating a survey like this at some regular interval might give the next WHOIS review team or RDS review team additional data to go on. So, one possible topic that you could consider for recommendations is how to continually collect useful data to inform future analysis of how effective the system is.

The question that I have maybe we'll need to come back to at the end for everybody, but law enforcement hasn't even gotten to the point where they can postulate some recommendations. How will we discuss those recommendations among us and reach consensus when clearly we're not going to have them this week? What kind of timeline do you foresee being able to do that?

CATHRIN BAUER-BULST: Maybe I'll quickly react to this before giving the floor to Alan. Yes, indeed. I think, first of all, on the data collection, that's a very good idea. We should consider having a recommendation around that and the [inaudible] of data gathering. That's definitely something that could create more transparency and also provide material for not just this

review team but also, for example, the EPDP if there is a need to assess what exactly the impact is of certain changes, because there is disagreement also on the facts on this one.

When it comes to agreeing on the report, the recommendations … My thinking was that would be done through on the basis of a subgroup call and then plenary call where we can discuss draft reports and possibly also feedback via e-mail, if that's acceptable for everyone. I have Alan and then Volker.

ALAN GREENBERG: Two comments. The first one, in the middle of your talk you used the expression weeks. Later on, you said in the next week or so. I think the weeks was in terms of keeping the questionnaire open. We really don't have much more than about two weeks to finalize this. Just looking forward, we really need something.

In terms of the recommendation, I find it hard to imagine we're going to do anything other than ICANN should take whatever actions it can to maximize the amount of data available for law enforcement. Other than that, it's not a lot else we can say at this point, given that we know it is in flux and we know it's likely to only move in a negative direction. Are we really going to be in a position to say something more definitive that?

CATHRIN BAUER-BULST: I'm not convinced we can't be more specific, but I would rather have this discussion once we have some input to base it on, if that's okay. So,

I would just propose that we postpone this to a time when we actually have a draft to discuss among the team, and then we can come back to what we think would be reasonable recommendations.

And note taken. For my part, I intend to write the part, the subgroup report, this coming week just to reassure you on that count. So, when I talk about weeks, it's about the possibility to reopen the survey for a limited number of days and then incorporate the results into a subsequent iteration of the report, which however, should not prevent us from discussing any recommendations that could follow.

ALAN GREENBERG: Two quick points. I only mention the recommendation in that I think it's going to be a relatively simple one, and therefore I'm not particularly worried that we'll draft it during a meeting or something like that.

The other point is the Wiki. We can't put access restriction on pages on the Wiki if you want to make it just accessible to this group. You can't do it on a particular PDF or doc file, but you can do it on a page that can then point to those documents. They are implicitly restricted at that point.

CATHRIN BAUER-BULST: Yes. I'm sure we can figure out the technical means.

ALAN GREENBERG: Yeah, that, too. [inaudible].

CATHRIN BAUER-BULST: Volker, you were up next.

VOLKER GREIMANN: Yes. One little point. 49 responds [inaudible] looking at the number of law enforcement agencies out there in the world, that's rather small. I appreciate that we're trying to reach out more and get more response for that. Have we reached out to all levels of law enforcement? How did we reach out and ask for comments in the first place? Was it on a national level, regional level, state/city level even? Law enforcement on every level has to deal with that and I'm just worried about the composition of respondents here, whether all levels of law enforcement have been involved, not only regional but also [inaudible].

CATHRIN BAUER-BULST: Thank you. I think it's a very valid point. We have five times more respondents than the previous report, which is already a positive sign. But, indeed, 49 is not the world. What I did for my part was I contacted the public safety working group of the GAC, so not the full GAC, but really the public safety working group which is also quite [inaudible] and asked them to either complete this themselves or forward the request to the appropriate person to then contact me.

Within the union, we have asked each member state to nominate an expert who is supposed to be a representative of the member state. So, I sent it to those experts. Also, we didn't include in the agreed wording any specific request to forward the request, so nevertheless, a couple of

individuals contacted me and asked whether they could forward it to others and I said yes, provided that those people then contact me with their agreement and everything and you can ensure that they're law enforcement.

So, that's what [inaudible] ensured as a somewhat balanced picture within Europe. But, of course, on the public safety working group, especially the Latin American and African representation is [woefully inadequate] and I think we only got parts of Asia because of Lili's involvement in this.

I also got a bunch of respondents from the US, even though Thomas Walden also reached out I understand on his side and tried to get US law enforcement involved. So, that's my report. Lili, I don't know whether you want to say a little bit about what you did in terms of outreach.

LILI SUN: Yes. I only reached out to my [inaudible] contacts in the capacity of a review team member. So, I didn't launch the survey from [inaudible] perspective. So, only in the capacity of I'm involved in the review team. I reached out around 100 point of contacts. My memory is it's globally, so I did receive agreement from the South America, also Africa region, also the Pacific region. So, maybe I can ask Alice to just quick look at how many regions we get [inaudible] which regions are still absent. So, I can still reach out to the missing regions to get some feedback.

Also, one separate note is that for some of the jurisdictions, they really take the survey serious, like Hong Kong and Japan. They only nominate one representative to speak on behalf of the whole jurisdiction.

ERIKA MANN: Just purely interest because I haven't followed your debate and discussion. Have you ever had a discussion in this group in looking at examples how other Internet companies provide access to law enforcement entities? Because they're quite valid established practices. ICANN is a little bit more complicated environment, so it has to be modified. But, did you actually look into it or is there a need for ICANN to invent a wheel totally new?

CATHRIN BAUER-BULST: Thanks, Erika. And just for the record, I can hear beeping again. Sorry. I don't know if anybody else can. We didn't discuss it in the subgroup in detail, but of course that's my day job is actually looking at legislation to work on these other mechanisms. That's, for example, the large social media platforms and other large companies that put in place to enable law enforcement access to non-content data.

However … I mean, there we have a mechanism that now includes Internet infrastructure providers that we've proposed as the commission, but the challenging part for us in that is that, of course, it's not based on the lookup and what we have not entirely discarded at this point is making sure that law enforcement has access on the basis of a query and response system that works like a database request rather than the individualized review of each and every request, that the large

[inaudible] companies for subscriber information and meta data for the other types of services that are provided, such as Facebook or Microsoft or Google [inaudible].

So, while there is a certain parallel, I would say it's necessarily transferrable, or at least it wouldn't be my preferred opinion to transfer this system to the WHOIS because, administratively speaking, it entails a much higher burden, both on law enforcement and on the registrars and registries that would be responding to this because it is based on individualized review of each request. I have Susan in the queue, then Alan, then Carlton.

SUSAN KAWAGUCHI: Thanks. I just wanted to make a comment about the responses from the global south because that was one thing we found in some of the inaccuracy reportings of those who are [woefully] small, too. It seems like a systemic issue that we may not be getting input or any actions from those areas. Maybe we want to call that out eventually and say, well, we looked at it several places and it seems like the global south is an issue, for whatever reason. I haven't figured out why they're not.

The other question I have is if … I like the recommendation that [inaudible] ongoing gathering data exercise, but – and I would hate to see it just opened up to the world because we've seen examples of that and what happens with data that we receive. But, would it be possible to open this survey up to cybersecurity roles instead of just law enforcement? I know there could be some issues with that, but if you established a criteria of what cybersecurity roles would be able to be

answered, could answer this, then I think that would be a more effective set of data down the way. I'm not saying let's do that now. I'm just saying down the way maybe that's part of the recommendation.

ALAN GREENBERG: Two comments. A quick one on regard to the global south. I think the problems in the global south include Internet access, number of registrants, number of contracted parties and the whole kit and caboodle. It's common across thread.

Interestingly enough, in some areas, the incidents of abuse is not necessarily as low there as all the other metrics. But, that's a different issue and that may well have something to do with the amount of money people have and how they get it.

In terms of Erika's comment, until ICANN steps up and decides that ICANN is the entity that is going to oversee an accreditation process, we don't have the data. So, it really is an issue of the contracted parties who have the data. It remains to be seen what the process that comes out of this whole thing is in terms of who sets up accreditation process, who runs it, who even manages the database to decide whether the authorization database, never mind the accreditation, may well be outsourced [inaudible] ICANN.

So, to what extent we could establish rules depends on whether we have anything to establish rules about. Right now, we don't.

CARLTON SAMUELS: [inaudible] how Internet companies handle it. I'm going to make two concerns or observations about [inaudible] cybersecurity response. Internet companies. I won't call the name of the company, but they had a problem where a government in the Caribbean region requested information from them and basically sent to their regional people and they have a regional group, and the regional group will try to identify the requestor and then depending on what it is, they make a response. If it is to do with security, they're a little bit more responsive.

But, here's what happens in this case. Their regional team in Mexico City could not get the Caribbean government representative, the person who requested the data. They asked me if I knew the person, if I knew them. I didn't know the person directly, but I have a contact in that country, so I sent the information to the contact. Contact got the number, sent it back to me, I sent it back to [inaudible] and so on. Because of cybersecurity, they responded. But, it was something else, there was no response.

So, there are two things that you should take away from this. one, Internet companies, they do have a way of filtering those requests back to the area. Two, they do it when the interest is high or when they think it is something of great importance [inaudible] security. Three, the local representative, if they don't recognize who is making the request, they don't respond anyway.

ERIKA MANN: That's correct, but what you typically do, you have on both ends authorized entities, so you have a national contact point of law

enforcement, which filters national [inaudible] different national law enforcement entities because you need a kind of authorization and you have of course an entity inside of the company who only deals with these kinds of issues.

CARLTON SAMUELS: [off mic].

CATHRIN BAUER-BULST: Just to say that this is a very challenging topic and if anybody wants to see an exhaustive treatment of it, my colleague wrote one for our impact assessment. It's 176 pages and I'm willing to share it with anybody who wants some weekend reading. It's very well-written, I must say, very clearly structured.

On the contact points, those exist in some countries but not in others, and overall, I would still maintain the premise that this process does not work for our purposes because it is too [inaudible] and too administratively burdensome. It doesn't scale to the kind of ecosystem we're working with here. It's easy for some of those larger companies to say we have the funding to put in place this department that deals with nothing but these requests, and it is much harder for some of the smaller registries and registrars, at least at the current cost scale, to be able to implement anything similar.

So, my preference would still be for an automated lookup system for all purposes that would recognize as legitimate. So, that's something we don't have to decide here, luckily. I would propose that we [inaudible]

out and recollect that this was an interesting point that possibly the EPDP will spent a lot more time on, but that's probably not relevant for our law enforcement section here.

Alan, you wanted to say something.

ALAN GREENBERG: I think I did already.

CATHRIN BAUER-BULST: Okay. Then, Carlton.

CARLTON SAMUELS: There is discussion that … I don't know how many fall into accreditation working group for the Business Constituency. There is a very interesting discussion going on there. Exactly the same reasons that you're talking about there, Cathrin. It might be useful to look at what they're saying there.

LISA PHIFER: So, if you want to bring this to a close, now would be the time for me to recap what I think we decided and actions. So, a decision to reopen the survey to collect additional responses and to defer discussion on the actual survey results and any issues or recommendations that might come from them until after the survey finally closes, so as to not influence respondents.

Cathrin, you have the action to draft both the methodology and some findings based on what you've got currently for review team consideration but will keep that … In some way will keep that confidential until the survey does finally close.

For ICANN Organization, there's an action item to investigate the geographic distribution of the responses we've currently received, so that the subgroup could do additional targeted outreach if that seems necessary to expand geographic reach.

We discussed the possibility of opening the survey to cybersecurity professionals, but it sounds like the decision reached on that is to not do it right now, but possibly consider addressing that in the findings of the – or recommendations of the group. I'm not sure that you've reached the stage of a recommendation, but to address that in what you write up that that might be something to consider in the future and that identifying the audience, what the criteria will constitute a cybersecurity professional will be part of that, should that be done.

Have I missed anything?

CATHRIN BAUER-BULST: No, I don't think so. Thank you very much, Lisa. Yes, I think in particular, this repeated data exercise and how it could be possibly include – how it could possibly include other parts of the community, which would give more consideration to the cybersecurity is of course the primary one that comes to mind. But, when you look at other types of law enforcement or consumer protection agencies, the one message I keep getting now from the EU member states is that they're very concerned

that we're working on solutions for law enforcement and that their consumer protection authorities and tax authorities and whoever else now uses this is being left behind, so there might be other parts that's being left behind. Yes. So, just as a consideration. I have Alice and then Alan.

ALICE JANSEN: Thank you, Cathrin. Quick question. What is the new deadline for the survey commissions?

LILI SUN: If we didn't receive any feedback from South America, at least I do have one colleague to reach out. So, he is on leave this week.

CATHRIN BAUER-BULST: Maybe we could do until 23:59 UTC on August the 6th, a Monday … Because if there are people who come back that week, they still have a chance at least on that same day if they see it in time to complete the survey. Then, we can still get [inaudible] additional findings incorporated in time to have a review and to have the whole thing be sort of complete for everybody by that week.

ALAN GREENBERG: Thank you. We have meetings on the 6th and the 13th and a few days after that, Lisa develops wings and flies off to other things. So, really, it would be good if we had a draft to the subgroup by somewhere around the 6th even if we don't have all the data filled in, just so we can see the

overall structure and so we can get it to the plenary by the 13th, if that's a reasonable target. Because if we don't get it to the plenary by the 13th, I don't see how we're going to incorporate it in the draft.

CATHRIN BAUER-BULST: Right. Just to make sure that there's no misunderstanding, I still intend to draft the report, the subgroup report, next week so that there would be a draft by the end of next week at the latest for you to review and that we could possibly discuss on the 6th. The idea would just be that we could possibly then incorporate the additional survey data, adjust the percentages, draw any additional conclusions that might follow from that and update the report on the whatever, 7th, 8th, 9th and then have that be complete hopefully. But, it wasn't … The survey's reopening is not intended to delay the drafting of the subgroup report.

ALAN GREENBERG: No, I understood that. I just wanted to make sure the overall timing is clear. Susan?

SUSAN KAWAGUCHI: I'm just wondering whether or not … I mean, I understand why you need to pick a date and look at data. But, once we publish this report, we might find that there's more law enforcement that are interested in answering these and we might find with more targets to receive data from the final report would benefit from that. So, as long as this is invitation-based only anyway, is it possible to either leave this open for response several months so we can then look at that data at the end of

October, for example, after comments and then reevaluate, see if any trends have changed? I don't know what you think about the benefits of that.

LISA PHIFER: One of the challenges in surveys is that you influence future respondents if you disclose the results of an ongoing survey. But, I think to accomplish what you want and still preserve the integrity of the initial survey, you could repeat the same survey at a future point in time. So, close it, take those results, analyze that. That's what the draft report is based on. But, then do the survey again, and in the final report, basically show how things have changed, if they in fact have.

CATHRIN BAUER-BULST: I was just going to say that we could tie this somehow to the public engagement, to the possibility of comment on the report. Maybe we could make a reference that if there is an interest to provide specific input from a factual basis that we open some channel to make this possible.

ALAN GREENBERG: I'd like to make a comment, not for this report, but make a sort of a Post-It note to ourselves that if you consider Susan's comment about how can we open up – I think it was Susan – this to other than law enforcement, the cyber community, Cathrin's comment of but how do we open things up to other parts of governments to where there's taxation, consumer affairs, things like that. I think we may have a

recommendation in the final report that ICANN should investigate how to increase involvement with these areas, whether it is a new constituency in ICANN or simply ICANN sets up a mailing list for communication. Don't need to hypothesize. But, just to increase involvement in these areas that we do not have traditional contact with. I think if we can file a note away, staff can file a note away, for us to consider it as we're looking at the results of the public comment, we may well have a substantive and critically useful recommendation that we can put in here. Thank you.

LILI SUN: Just one quick comment. Can we revise a [inaudible] to collect or circulate to the survey [inaudible] first batch of [inaudible] contacts. It took me like three times to get the feedback. First, I need to send an informal message to my [inaudible] contacts to check with them if they're interested to take the survey. Then, I circulate the template text, and if they need to explicitly show their agreement to take the survey. Then, I circulate the survey link.

So, from my perspective, it takes like three rounds back and forth e-mail changes. So, that may be a draft for the feedback from the participation. Can we just circulate the target audience, the survey link, and we collect their e-mail address there, duty station, and also the agencies to the same [time]? So, is it still acceptable? This is one.

The other is I echo Susan's comments. Actually, I did read the issue during the deliberation of the survey that the cybersecurity community feels important to collect the feedback. For some of the jurisdictions,

the cybersecurity community, they are, at the first place, to deal with DNS abuse. Once they collect some concrete issues, they will pass on the clues or information to the law enforcement agencies to follow-up.

So, actually, the staff, conducted by the cybersecurity community, that's a part of the law enforcement agency staff. So, I echo Susan's comments to reach out to the cybersecurity community. That's all.

CATHRIN BAUER-BULST: Thank you, Lili. I think it's a very valid point. In terms of the bureaucracy that was involved in just getting people in a position to respond to the survey, I agree it was a bit cumbersome. I understand that that is required by ICANN's privacy policy in case people inadvertently enter personal data into the survey. They need to do this up-front check.

But, for the other part, I would fully agree that we need to also do something similar for cybersecurity. I think we need to very clearly distinguish the communities, though, because what we're tasked to do by the bylaws is the law enforcement check. And while I agree that the cybersecurity part is essential for law enforcement to do its job, as are other private efforts, we nonetheless I think have no interest in creating an [inaudible] to the report here by mixing law enforcement and cybersecurity in the report.

That being said, if we distinguish clearly, I think there's opportunities for having this – for drawing conclusions on the basis of what the cybersecurity community might provide to us.

ALAN GREENBERG: Microphone, please.

CARLTON SAMUELS: I just want to make a note that cybersecurity and law enforcement are not mutually exclusive groups, at least not from where I come from. [inaudible].

CATHRIN BAUER-BULST: Right. I think the way we define law enforcement is that there is a – and we have a definition I think also in the report. I agree that there is [inaudible]. I agree that there is close collaboration in many cases, but there is a difference as to whether you're authorized to take certain actions because you're part of law enforcement or whether you provide expertise to law enforcement from a separate entity, such as [inaudible] or private cybersecurity company or as a researcher. I think we should carefully distinguish there also for the reason that, of course, for [inaudible] community, this is not the most popular part of the community, so we should not unnecessarily basically create a weak spot in the report by conflating the two. Volker, you are next.

VOLKER GREIMANN: Yes, I agree with that sentiment that we should keep the report clean and clear and stick to what we were assigned to do. The cybersecurity community is very fluid definition. I don't think there is a very good definition of it. Anyone I know could call themselves a cybersecurity expert and send in a comment for that. I regularly look at abuse issues.

Am I cybersecurity expert or not? I would say yes. Others would say no, depending on what we're looking at.

But, opening that up at this stage would just be very, very risky for the quality of the report, and I think we should leave that out and [inaudible] at a later stage.

CATHRIN BAUER-BULST: Okay. Note taken. Thank you very much. And I guess that proves once again how [woefully] I feel at keeping my subgroup report discussion short. So, apologies for that. But, I think now we have come to an end. Lisa, do you want to once more add some wise words at the end or do you not see a need at this point?

LISA PHIFER: So, I took down one additional decision reached – actually, Alice did – that the new deadline for the survey would be August 6th. But that your draft would be available in advance of the plenary call on that date.

We recorded several discussion items that the subgroup has an action to take under consideration, the geographic distribution and issue about – maybe a systemic issue about underrepresentation of global south. The idea of continuous data gathering by repeating the survey to inform both a future review team as well as policy development. The idea of opening the survey to cybersecurity professionals, and [inaudible] discussion around that.

And the idea of repeating the survey between the public comment close and the final report to allow for additional participation and then allow

for you to compare results from the initial survey and the subsequent survey. So, I will capture those in notes so that you can follow-up in the subgroup.

CATHRIN BAUER-BULST: Thank you, Lisa. I guess that concludes the two slides on the law enforcement [priority assessment] report.

ALAN GREENBERG: I thought outreach was on the agenda for today. No, it's safeguarding data. I can do safeguarding data. Just let me send off … I'm in the process of sending off a message to Stephanie, so let me finish that.

Alright. Safeguarding data. The findings were currently there's no effort made to protect data. We knew that. We identified that safeguarding is not only keeping it private, but keeping it safe and unchangeable. Neither the registry nor the registrar agreements make any explicit requirements to either use specific means such as standard business techniques or whatever to protect the data, nor to talk to anyone about a breech. Escrow providers have a requirement to use commercially reasonable efforts [inaudible] industry standard safeguards to protect the data, but also there is no recommendation of a breech.

And I realize now we probably shouldn't have been doing this without Stephanie because she has some specific objections to some of these items. Do we want to continue anyway? We're going to have to do it again, so I would suggest we go on and do something different. Sorry. I just realized that. We can start compliance and not finish it or we can

try to do one we think is short. Lunch is officially due in 25 minutes. Data accuracy?

UNIDENTIFIED FEMALE: Yeah. We do need Stephanie for that one. How about [inaudible]?

UNIDENTIFIED MALE: Early lunch?

UNIDENTIFIED FEMALE: [off mic].

ALAN GREENBERG: Sorry, which one?

UNIDENTIFIED FEMALE: Recommendations 15 and 16.

ALAN GREENBERG: Annual report, okay. Chris is here, so that's good, because [inaudible] had some comments on that one. It's always good to have Chris here anyway, though.

LILI SUN: For the plan and annual report, I shared an updated version of the draft report. If I remember, it was earlier this week, right? So, following Lisa's

suggestions, I updated the summary of the relevant research part and including some reference of background materials in the subsection. For the analysis and findings, subsection three, there were some updates of the [inaudible].

Initially, I took the annual operating plan and budget as a workplan for the implementation of WHOIS1 recommendations and there was concerns raised by Chris that the operating plan, the annual operating plan and budget, and it may not include all the details of the implementation plan. Actually, I received a written briefing on the recommendations 15 and 16 that there are some quarterly updates or reports on the implementation.

There is also a roadmap of WHOIS activities. So, for the analysis and findings of the planning, I updated the draft report and stated that ... So, the general assessment is that the recommendation 15 for the planning is partially implemented, and from the findings and analysis, I still have the point of view that there is not a workplan [inaudible] in any [inaudible], either in the annual operating plan or budget or in the quarterly report.

I also want to check with other [inaudible] rapporteurs, especially the subgroup one, subgroups [doing a] review of other WHOIS1 recommendations. Do you have the view that there is a clear workplan in implementation, your specific recommendation? Is there clear deliverables, milestones, in addressing the specific recommendation?

I went through the draft report of the recommendation one, strategic priority, and it's clear that there is no clear roadmap to implement the

recommendation. I can also speak on behalf of the data accuracy subgroup and until now there is still no timeline for the data accuracy check within the WHOIS [ARS] project. So, I still have the view that there is not a well-developed or defined workplan for the WHOIS1 recommendation implementation. How about others? Alan, please.

ALAN GREENBERG: I think there's probably good evidence that the implementation of the WHOIS Review Team and the implementation of other review team records does not use the best of management software or management methodology – I'm not restricting it to software – that are used. If I, for instance, looked at what was done in the WHOIS transition where it was planned carefully with timelines checked or created and tracked as we went through to make sure that we indeed were taking this complex project and implementing it properly, that sort of methodology I do not see being used at all in the implementation of any of these recommendations in our case or, in fact, if I look at ATRT-2, the same thing.

So, I think we have a general recommendation to make, and perhaps it's a recommendation to ATRT-3 that ICANN needs to treat these things perhaps not with the full level of detail that they did for the IANA transition, where huge resources went into just the tracking and making sure there was no slippage. But, something a little bit more professional than what seems to be done here.

I think you've identified a problem. I think it is common to most of what we've done, but it's wider than that. I don't think we should try to

address it in a recommendation by recommendation basis, but on a larger scale than that. It's not quite a recommendation that we can make within our own remit, but we can certainly note it and suggest that ATRT-3 consider it.

LILI SUN: Anyone else? So, this is for the recommendation 15. For the recommendation 16, for the annual report, I repeat the analysis and findings for last face-to-face meeting. So, the annual report activity based, not outcome based. There is no [inaudible] impact evaluation about the WHOIS1 recommendation. So, that leads to the draft recommendation.

So, ICANN should conduct [inaudible] reports in a [inaudible] way and the metrics should be developed [inaudible] this of the implementation of each recommendation. And the impact evaluation of implementation should be included in the annual report. So, can we quickly go through the text for the draft recommendation, and if you have any feedback or comments on this draft recommendation?

LISA PHIFER: So, I think I understand what you're looking for, which is more of a project management approach to implementing recommendations as opposed to just recording what happened, actually planning in advance what should happen and then tracking progress towards what should happen. Is that true?

LILI SUN: Yes, Lisa. Yes, please?

CARLTON SAMUELS: Two things. One, there was a WHOIS implementation plan and there was a table that was used to track all of the implementation. What is [inaudible] missing? Again, it's activity based and not outcomes based. So, we have to understand that there was a methodology that they adopted. They had documentation of that methodology.

What we should note is that the outcome from that is not usually tracked as rigorously as you would expect. That is something that we need to make sure that … Because there is an implementation plan and there's a table that they [inaudible].

LILI SUN: Alan?

ALAN GREENBERG: I don't think it's quite that simple, Carlton. If you look at things like the accuracy check, the initial response was it can't be done. Then, a response came back saying, "Well, we think we figured out a methodology that we can do something about it." And they actually went and did a fair amount of work. But, you don't find that history documented properly.

CARLTON SAMUELS: [off mic].

ALAN GREENBERG: But, even when they had a plan, the plan changed, but that didn't get recorded. As I said before, that is a complaint that I think we can issue for everything and I wouldn't want to put it into this recommendation because I think we need a more general recommendation. [inaudible] we can find in many of the cases, but I wouldn't want to localize it to one recommendation, to one of the items of the original WHOIS report, when I think it's endemic not only in the responses that they did to the WHOIS Review Team, but to the other review teams as well. It's an issue we don't want to drop, but I don't think we want to put words in it associated with a particular recommendation, other than to note the lacking of it. The lack of [inaudible] information make understanding how well this was done differently.

CARLTON SAMUELS: [off mic].

ALAN GREENBERG: Okay. What I'm saying is I don't think we need to be saying much of what we're saying in this one, because it is the standard [inaudible] verbiage we want to put everywhere.

CARLTON SAMUELS: [off mic].

ALAN GREENBERG: Yeah.

LILI SUN: So, can I repeat what you are suggesting is to have an overarching recommendation for the whole review team, not specific links to the two implementations?

ALAN GREENBERG: We can certainly put here because, I mean, look, why the WHOIS1 Review Team saw it necessary to say write a plan I find rather curious. Those who were involved in that review team might tell us why they thought it was even necessary to say plan what you're doing. Susan is [inaudible] ignoring me. What made you think you needed to tell them to write a plan, to implement the recommendations? I would've thought it was a given.

SUSAN KAWAGUCHI: Because there was so little information and because of the topic and the scope of WHOIS, we felt like there should be a plan that was laid out to actually implement all of these, and to inform future work on WHOIS.

ALAN GREENBERG: I guess I'm not quite sure how to handle this. We are chastising them, and this isn't in the recommendation. It's in the text before. That you didn't do this properly. That's quite reasonable. I'm not quite sure what is in the recommendation. I guess we could say for recommendations that come out of Review Team RDS WHOIS2, you should document and

plan it and track it. And a note to ATRT saying, "Why was it necessary for us to write this?" It should become part of business as usual.

I'm just very troubled that we're dealing with what should be a professional organization and telling them how to plan when we have hard evidence that's saying they know how to plan projects and they do it all the time. They implemented the first release of new gTLDs. They're going to do it again. They're going to plan it excruciatingly and they're going to track it. They know how to do this. Okay. So, why do we have to tell them they should do it here? This is important.

CARLTON SAMUELS: Caution. There is evidence that there is a plan. There is also evidence that they attempted to executive various tasks in that plan. What is missing from the outcomes is this data reporting. [inaudible] to say to them, "Make another plan, so that you can report to me in more detail." I think that is what I'm saying. We shouldn't go down that road.

ALAN GREENBERG: What I think is missing is they did not apply the methodology they know how to use to WHOIS, and unspoken is because it wasn't important enough. I'm just having a bit of trouble understanding where do we put this. I guess we can put it here and then note it somewhere else that we shouldn't have had to say it, maybe. I don't know. Negar?

NEGAR FARZINNIA: Thank you, Alan. In terms of implementation of recommendations and reporting on said implementation of recommendation, we are actually

making improvements in the way we're handling implementation going forward. we are putting in place a more systematic and thorough reporting mechanism to show progress on the implementation to track against the recommendation implementation plan.

Additionally, as you may be aware, there is a new requirement under the new bylaws requesting for an annual implementation progress reporting, which also includes implementation of recommendations as part of that report. That will be produced on an annual basis and it will cover the implementation of recommendations across the four specific reviews, which is another element being added.

One thing that we have been lacking in previous review recommendations that has hindered our ability to provide metrics and show measurability for how successful implementation has been is that recommendations were not really SMART, so to speak. One of the reasons we keep asking for SMART recommendations is because if the recommendations are vague and broad, it's hard to measure against the [inaudible] implementation. And the more specific and SMART the recommendation is, the easier it will be for us to show successful implementation.

Another measure we are hoping to put in place that you're starting with the CCT Review Team, actually, is requesting for a couple of review team members to engage after final report has been submitted to the board and we are starting the implementation process, not to do any work, but just to help provide clarification on the recommendations, so we make sure that our interpretation of what the recommendation is seeking matches the intent of the review team, so that when we

implement, we don't go down the wrong path. And hopefully, all of these elements together should help provide better clarification and better reporting in the future so that subsequent review teams, when they look back on the work of implementation, they can make a judgment on how implementation was done a lot easier.

ALAN GREENBERG: May I ask one question, Negar? Does that mean we don't need to say this because it's implicit or do you need the reinforcement that we should say it?

NEGAR FARZINNIA: This is something we are implementing. From my perspective, there is no need for it, but of course, I'm biased because I'm staff and I know that internally you're implementing all these new measures. It's obviously at the discretion of the review team to determine if you feel the need to mention this other recommendation. I can assure that, from our side, we've already created all the necessary templates and we are working on the reporting mechanisms to be more effective and concise in the future.

ALAN GREENBERG: I am happy to go back on what I said and leave it there and perhaps reinforce it somewhere else. Lisa?

LISA PHIFER:	So, it strikes me that having a written description of what Negar just said, actual description of what changes are already underway would allow you to assess whether that would have addressed the concerns that you had with reports and plans that you looked at.

LILI SUN:	Just a quick response to Negar's comments regarding the SMART recommendation. For example, for the implementation of recommendation nine, to develop metrics to trace the impact of the [inaudible], the WHOIS data reminding policy. So, actually, ICANN board has taken [inaudible] away to implement this recommendation. So, actually, that's exactly what's a meaningful plan. So, ICANN board has the authority to review the feasibility or achievability of the recommendations we made.
	So, if you choose an alternative way, there should be a clearly defined [inaudible] rationale for the alternative way and what you are going to achieve, the intention of the initial recommendation, [inaudible] the implementation or recommendation nine, there is still a missing part for the plan and report.

NEGAR FARZINNIA:	In terms of evaluating the implementation or how successful you think the implementation of each of the recommendations were, that's one of the goals of the review team. So, if you as a whole review team agree that a portion of the recommendation was not implemented, that's your finding. It's not something that we would sit down and argue about. That's your finding. And so long as we have a discussion about it

and there's a rationale or if there's additional information we can help provide to inform your findings and recommendations, we are more than happy to do that.

The idea behind … In terms of the WHOIS1 implementation, there's obviously a little bit of a difference from the way we would do things today, because under the new bylaws, the board either accepts or rejects recommendations. They're not going to be changing anything.

And our intention is when the recommendations are accepted and we are directed to start planning an implementation plan for each of the recommendations, we will think through the recommendations and determine what our interpretation is or what the recommendation is intending to achieve. We would like to have someone on hand to send a note to and say [inaudible], we need clarification. Get that understanding so that we are both on the same page, all on the same page, regarding what you want the implementation of that recommendation to achieve. Then, we'll come up with a plan to hit that target objective.

And if we still don't achieve it at the end of the implementation period, we haven't accomplished this for whatever reason that we need to then identify. But, the intent is to make sure that we know clearly what the understanding is from everyone's perspective to reach an objective for that recommendation and for us to do our best to get there.

LISA PHIFER: I guess I'm not sure where this leaves us. I heard Carlton argue that the implementation reports and annual plan, there was a methodology

behind them, that the methodology fell short of your expectations with respect to just reporting on activities and not on the outcome of the activities.

Negar told us that there are improvements underway, so to me, I'm wondering if the improvements that she's talked about would have met your expectations. Maybe the question is: is ICANN already moving towards something that would address your concerns or do you have additional concerns that you would want to subscribe in a recommendation be taken into consideration by the organization?

LILI SUN: So, may I have a suggestion? Can we revise a text when we get all the other recommendations ready? Actually, this recommendation has been [inaudible] with other recommendations, whether the other recommendations have [inaudible] requirement. So, when we get ready for other recommendations, we can come back to revise the text here.

CATHRIN BAUER-BULST: Thank you. Just with a suggestion on how to move forward on this. Once we get the information from Negar, it could be incorporated and then we could say something about how we welcome the efforts already underway and recommendation that these be maintained with a specific view to what you're saying about increasing measurability, including KPIs, so if there's specific direction that we want to give on the content of the effort, that could be done while acknowledging that the effort is already underway on the formal part of it. So, maybe that's a sort of happy midway that we could pursue for the recommendation.

ALAN GREENBERG:

I think at this point, the fact that something is underway, it does not stop us from making a recommendation. We can certainly acknowledge it and ICANN will be in a strong position to respond to it, if indeed you keep on implementing what you're saying and then you keep on doing it and we don't stop next week because of a budget cut and we're cutting three salaries, and sorry, we don't do that anymore, which is, at this point, always a possibility.

I'm hesitant to be too specific. It's fine to say everything should be measurable and we should be able to report on success. That's not always going to be possible. One of our recommendations here is to redo all of the outreach material and education material. Well, it's easy to say we've rewritten it. We can count words that are written. We can count how many new pages of texts and webpages we have. The success of that is only born out through several years of use and what kind of complaints we get and what kind of questions we get. It's not a particularly easy thing to measure on the success. So, I think we have to be flexible on that. Negar, please?

NEGAR FARZINNIA:

Thanks, Alan. Actually, two comments I wanted to make before I move on to addressing the comments you just made. Cathrin, you noted that it sounded like you're waiting for some sort of update from me on implementation. I wasn't sure that there was a task for me to deliver anything on that.

CATHRIN BAUER-BULST: Just to clarify, what Alan suggested was that you provide – or what Lisa suggested, rather, was that you provide in writing what you just told us about the efforts underway already implemented. So, what I understood the request for you to provide in a [inaudible] implementation report, per se, but really just a written record of what you've just told us about the efforts underway, and then that could be incorporated into the subgroup report. We could welcome that. And then we could make a specific recommendation building on what you've told us.

NEGAR FARZINNIA: Very good, thank you. In fact, we've already hinted at that in the response that Alice helped provide to the comments that Lili had made about implementation and who has oversight over the implementation. So, a very high-level summary of what I had said a few minutes ago is already in that written response, so perhaps that can be used as an answer.

And with that, Alan, I just wanted to clarify that you're absolutely correct. There are some items that would have measurable outcomes [inaudible] by any means. But, it would be quite useful if we had measures of success identified for recommendations, and for one recommendation, it could be you achieve such results in X number of days, for example, or you have 50% rate of success or something. I'm just making obviously stuff up. Or, to say this is, for example, an implementation of a process, the results of which could be seen in two or three years, but this is how we would know that this implementation was successful for said recommendation. And it would [inaudible]. It

doesn't have to be something substantive in terms of numbers, specifically.

ALAN GREENBERG: I guess, in my mind, part of those less substantial, lets metrical, success measures are not something we should have to define. This should simply be part of the process of how do you know you're doing it properly. I mean, if we provide it, fine, but the reality is these are well-understood methodologies.

In terms of the details of what's implemented, I think it's quite sufficient to say we have been informed by MSSI that much of what we're talking about is in plan and we look forward to seeing the detailed implementation. I don't think it needs to be a lot more specific than that. Lisa, then Lili.

LISA PHIFER: Yeah. I'm not sure what our action plan is to bring this one to closure. I heard several ideas. I heard the idea that MSSI would provide more specifics on improvements that are underway. I heard the suggestion that high-level statement that improvements are underway is sufficient at this time. So, which approach are we taking? Lili clearly has an action to revise the recommendation in some way, but I'm not sure what the some way is at this point. So, how do we move this forward?

LILI SUN: Actually, I just refer back to the requirement for the recommendation. So, if we're following strictly for the SMART requirement, I don't think …

I echo Alan's comments. There is no need for us to put up such a recommendation here. If every recommendation made is specific, measurable, and achievable, relevant, and timebound, there will be no need for us to put out such a recommendation here.

ALAN GREENBERG: I'm not going to agree. The fact that it's done right doesn't mean they're reporting on it in a way that they can demonstrate it's been done. So, I think there is a need somewhere, and whether it's here or in a more general place, I don't know.

I think we should … Let me put something on the table and I haven't thought this through. Our analysis of this recommendation of the recommendation from WHOIS1 said they didn't do a really good job.

I'm not unhappy to say in terms of you should plan for this to not make a further recommendation, but note that we are making a global recommendation that the amount of planning and tracking that was done with regard to WHOIS1 was not sufficient, despite there being an actual recommendation saying you should do it, even if it wasn't necessary. And we believe ICANN needs to put in place methodology to make sure that this does not happen again for both WHOIS reviews and its other reviews. I don't quite know where we put that. Sorry. You're having a problem with this? Okay.

NEGAR FARZZINIA: Yeah. The problem that I'm having I think is that is not telling ICANN what to do differently. How did we fall short of the goal? Clearly, there

were quarterly implementation reports, there were annual reports, and that's what the recommendation asked for. But, somehow, it's all short of your expectations. I think I understand how and I think that's what's useful for the review report to say whether that's a recommendation or not. But, to really better describe what is it that you need so that can be implemented?

ALAN GREENBERG: I can certainly give anecdotal examples of when the plan changed [inaudible] from what they originally wrote in that document that was accompanying the board resolution and what they ended up doing changed, and that was not recorded as such. Another example of there were no timelines done, at least publicly available, so it was very hard to know when is this one going to be finished, when is your target for finishing it.

CARLTON SAMUELS: And all of those things were recognized. The implementation plan that is now in work, take note of all of these. They have mechanisms to ensure that the tracking is better, the reporting of outcomes is better, and how it gets publicized, now they have a mechanism to do that. That's what I'm hearing. That's what I'm saying is … That's the missing piece. So, if you recognize that something is happening now to address those right now from the analysis [inaudible], these are things that I didn't see are missing. Then you have it covered, so you don't need to go back and tell ICANN Org that you didn't do this right. What you need to tell them is, "Okay, now you recognize you are doing some things.

Let's see …" At minimum, we can say, "Let's see if the way you responded to the disconnects actually [inaudible] we expect." That's the only thing.

ALAN GREENBERG: We're in it [inaudible] some level of quandary. It is easy to specify a large number of things to do to track problems, track everything effectively. That's going to use a level of resource we probably don't want ICANN to devote to this. But, you can't ignore it completely because you don't want to do everything and you don't want to do it as if this is a space shuttle we're designing and taking off.

So, how do you write those right words of do it at a reasonable level? That's a judgment call. I don't have the magic answers. Negar does this professionally. Maybe she can give us the magic words that will convey the message that we're not looking for rocket ship plans.

NEGAR FARZINNIA: Like I noted before, we do recognize that the implementation planning and reporting could have been done a lot better, and as such, we are making improvements now because, personally, I did not like the way they were done for the past reviews, so I would like to see changes done to make them more effective and more successful in terms of the community getting an understanding of where the implementation is at.

The new bylaws obviously mandate better measures of reporting across [inaudible] specific reviews, which is something that we are working on as well.

One suggestion that you might want to consider is that instead of putting this down as a recommendation, perhaps having a note in the final report that says for the next review team to take a look back at how implementation reporting was done, and if after all of the improvements we've made it's still not meeting the requirements that the community would expect, then that could turn into a recommendation at that point in time for that team to consider.

ALAN GREENBERG: We need a mechanism for passing something on to the next review team. We don't have one right now. But, it's easy to lose everything except the recommendations. Lili still looks confused, though. Microphone was off for that. Susan?

SUSAN KAWAGUCHI: So, way back when last September, I ended up drafting something on effectiveness. Is that it? I can't remember. And really, I just [inaudible] off the Internet. But, one of the things was if you have a policy that you can't track or find metrics to understand how effective the implementation or the outcome of that policy is the intended consequence of that policy, then you don't have a good policy. So, I think what I don't want to lose in Lili's recommendation here is the metrics to track the effectiveness.

Now, I think ICANN does a fine job of saying we did this, we did this, we did this. But, I think what is missing is any sort of metrics on, okay, you check the boxes, the policy went into effect, but what kind of impact and was that the impact that the review team intended? Because we

could be totally off base with something and never know that that wouldn't work.

Now, like the working group on [IRTPZ] for the transfer of domain names ended up – and I don't even know what this is. I think it's still out there trying to be fixed. But, didn't understand the impact of removing a proxy registration, the need for removing a proxy registration for a transfer because that, in effect, changed ownership and therefore delayed the ability to transfer that domain name. So, that's supposed to be working itself out in the wash. I think everybody agrees it needs to be fixed. I just don't know if anybody is focused on it.

So, that was, to me, a real good life example of, okay, well, this policy, there was a certain … They created the policy with a certain impact and result in mind and got a different one, and that is what we want to make sure, that that type of issue is what we want to make sure that these reports would reflect and point out to the community. So, however we get there, I'm fine, but I do think that we don't want to lose this recommendation completely.

ALAN GREENBERG: Just a quick … Something I can't remember, but within the last week or two, I used the term effectiveness and the answer I got back – and I really cannot remember the context – is review teams check the effectiveness of the last review team. ICANN doesn't do that. I don't remember the exact context. But, if indeed that is the case, it's something we need to think about or talk about because that changes the tone if indeed ICANN should be looking at effectiveness.

LISA PHIFER: Yeah. I think that actually was something that I said in the recommendation 15 and 16 call, and it's my understanding and I welcome my colleagues' opinion to, but it's my understanding that ICANN could be responsible for measuring against metrics that would be defined by, in this case, a recommendation, but that ultimately applying those metrics to decide whether the implementation was effective and achieved the original intent would be the job of the next review team. That's my understanding, but I'd like you guys to comment.

NEGAR FARZINNIA: No, Lisa, I second that. Your understanding is on track with what's in the bylaws, too.

ALAN GREENBERG: Although that implies we're going to keep on doing it for the next four years, even though we know it's ineffective.

CARLTON SAMUELS: To answer the question, it goes to this WHOIS data [inaudible] policy. Remember that one? Okay. What was the objective of that? My understanding of this was the objective was to get registrants to update the WHOIS record. That was a major …

ALAN GREENBERG: Are you talking about the original policy or the recommendations?

CARLTON SAMUELS: The original policy. The original policy. So, we implemented a policy. We had something called [inaudible] and we've got [PTRS] or whatever it is. And we sent out the notices and so on. And out of that, we realized that, while this is now in effect and we learned [inaudible] registrars are doing that, we are not seeing the delta between data inaccuracy before and the accuracy afterwards. That's a real issue.

But, the fact is that every single registrar can tick the box, so to say, "I am in compliance with the policy because I have a mechanism that I have implemented and it goes out and there's no …" They know what they are supposed to do. And presumably, the registrant was doing also what they were supposed to do, because unless they tell you that there was something that has changed, the registrar has no reason to flag it as an inaccurate record.

ALAN GREENBERG: If I remember correctly, the recommendation in WHOIS1 says find out if it's doing anything. Is it working? And ICANN said we have no way of doing that.

CARLTON SAMUELS: Right.

ALAN GREENBERG: An individual registrar might. If Volker sends out WHOIS reminders and sees a huge influx or a small influx of changes that get done within a short timeframe after it, then we could perhaps hypothesize if people are reading the message, checking their WHOIS and saying, "Oops, I found out that I have the wrong e-mail address," or the wrong phone number. No, no. ICANN has no record of that. ICANN does not currently require the registrars to report such activity, and therefore ICANN could not implement it. ICANN, I'm sure, chose not to try to negotiate that into every registrar contract, nor did they choose to implement a PDP to require registrars to report on such activity, so we don't know. We still don't know. And until someone gets up enough energy to try to find out or confirm Volker's shaking his head no that it's a bloody useless effort that annoys everyone, they're going to continue, because we set a policy. But, it's not clear we have an easy mechanism to verify in that case. Sorry to mention Volker, but go ahead. Volker?

VOLKER GREIMANN: Yes. Being the only registrar on the table is of course [inaudible] always directed. Yes. This is something that we're sending out, but we're not tracking any results because even for us it would be hard to just determine whether an update to the WHOIS record is due to the mail that we've sent or for some other purpose. I think the only way to figure out if this is effective is to do a general overview of overall numbers of accuracy or WHOIS inaccuracy, as in since these mails have been sent out, the overall numbers of inaccurate WHOIS occurrences gone down, stayed the same, or even gone up. That way, we could measure some effectiveness of this policy, but there is no real way of figuring out on an individual per-domain name basis. We could only observe trends. That's

something that ICANN could do probably with their ARS mechanism. But, then we're missing the data from before.

ALAN GREENBERG: I don't think you can really do that because the policy has been in place for far too long and the other things have changed in the world that are far more relevant. You could do a statistical analysis of certain classes of changes to WHOIS elements and how long it was after the last WHOIS reminder went out and you might see blips, if you choose to do that, with statistically valid methodology, which any given registrar may or may not know about. Could.

VOLKER GREIMANN: Basically, [inaudible] should have been done from the start, from the point where this policy [inaudible].

ALAN GREENBERG: Yeah. But, given that we're sending them out annually, we could do such a distribution, if there was a wish, but it's nothing ICANN can unilaterally force. ICANN could develop a methodology and some sample software and send it to their ten largest registrars and say, "Could you please do this, perhaps give us an indication?" ICANN has never chosen to do that kind of thing. But, they could. But, that's a good example of ICANN could have come up with an alternate methodology to try to address the intent of that recommendation and chose not to because it would not be definitive in any case. Volker? I think we're already quite late for lunch.

VOLKER GREIMANN: Just as an aside, maybe, when I was still on the GNSO Council, we had debates about these kinds of issues, that there's no real measurements of tracking the impact of these policies. I'm not sure where this has gone since I've left the council. I'm sure that this is something that should be baked into every new policy that is released by the GNSO to make sure that there's tracking mechanisms included with the implementation that shows whether this new policy, whatever the policy may be, has the desired impact or no impact at all. That could influence future policy making. We're currently operating into an empty space.

ALAN GREENBERG: There was a [inaudible] PDP that said they would do that from now on. I don't believe they are.

LISA PHIFER: So, to try to bring some of this to closure, let me just ask some specific questions. Do you want ICANN Org to provide you a summary of the improvements they already have underway?

ALAN GREENBERG: If it can be done without a huge amount of ICANN Org effort.

LISA PHIFER: Do you have sufficient information? Do you need more?

LILI SUN: Actually, according to my impression, at least for the data accuracy recommendations, there are some measurable requirement to be achieved to implement the recommendation, at least for the inaccuracy should be reduced 90% or something. Yeah. There are some concrete requirements for the implementation. If you have a general improvement, [measurable] implement, that would be good.

LISA PHIFER: So, that's not actually the question I was asking. The question I was asking was related to the improvements that Negar talked about, project management, tracking and reporting, do you need more information about the planned improvements?

CHRIS DISSPAIN: It seems to me that, Negar, how easy would it be to provide that information?

NEGAR FARZINNIA: Not that easy at the moment because you're still developing templates and working it out, so I won't have anything to report on, but the results will be seen once we start implementation on ccTLD.

ALAN GREENBERG: But, Negar, you can say we understand there is a problem. We are working on it and we will report to the community in general as we develop these.

NEGAR FARZINNIA: Most definitely.

ALAN GREENBERG: Then, if you can write that one or two sentences, please do.

NEGAR FARZINNIA: Consider that an action item for me. I'll do that.

LISA PHIFER: Alright. So, ICANN takes that action item. [inaudible] just need to revise it. One of the things that we discussed was whether a recommendation should come from this or simply a finding and maybe an identification of a problem. Do you still want to have a draft recommendation that would be tasked to Lili to write? You wanted to keep a notation about effectiveness, but does whatever get said need to be a recommendation?

ALAN GREENBERG: I started this whole discussion and I said somewhere along the way I'm willing to withdraw that and that we do have a recommendation that ICANN should use professional level of – sorry, I'm not going to try to craft the words at this moment. I'm willing to do it with Lili over lunch. A

professional and reasonable level of tracking and planning, so that community can follow the implementation of recommendations in the future.

LISA PHIFER: Does anyone think there doesn't need to be a recommendation?

ALAN GREENBERG: I can live without it, but I can live with one and I think it will [address some of the issues].

SUSAN KAWAGUCHI: I'm sort of wondering if we look at this recommendation as drafted and the one from compliance and see if there's a central … If we merged those.

LISA PHIFER: You're referring to the compliance recommendation about all policies should have metrics?

SUSAN KAWAGUCHI: Mm-hmm.

ALAN GREENBERG: May I suggest we leave it here? I'll work with Lili a little bit to perhaps change the wording. We still have another full round before the final

report. And see if it makes sense or if we want to generalize it, whatever.

LISA PHIFER:

So, I'm hearing there's agreement that there should be a recommendation coming from this subgroup and the recommendation, Lili and Alan will take the action to draft what the recommendation covers. But, it sounds like it should cover things such as project management, communication to the community, the use of metrics in order to determine effectiveness.

ALAN GREENBERG:

And be short. No, we were never early for lunch. We could have been. We had a one-hour lunch break. It is now halfway through the lunch break. We have missed out completely the anything new section. Maybe we missed out another one. I've lost track at this point. We are sort of behind schedule. I would suggest we take a 30-minute break for lunch right now and reconvene at the scheduled time of 1:30 approximately, 1:31. This meeting is adjourned.

If I may try to reconvene this group. Ahem! May I ask before I reconvene the meeting, what are we reconvening on? I suspect we're going to do compliance, but I don't know that for a fact. Lisa is shaking her head yes. So, I would like to reconvene the face-to-face meeting of number three of the RDS WHOIS2 Review Team in Brussels on the 26th of July. We will go next to review the section on compliance. I will turn it over to Susan Kawaguchi.

SUSAN KAWAGUCHI: That is me. I appreciate staff putting together the PowerPoint slides, hopefully to keep me organized. So, for the original WHOIS1 recommendation, we came to the conclusion the compliance team had made significant progress in reporting metrics and data in their annual report, and it appears that the compliance team has all the necessary resources to manage compliance activities. It will be interesting to see if they comment – I don't know, can ICANN comment on our report? If they come back and they know we don't. But, they definitely have a much more robust team than they did for WHOIS1. But, there is no indication WHOIS1 recommended reporting structure was implemented, so to remind you that we asked for – as Lisa called it – a compliance [ZAR] in that recommendation and that its report to the board committee, but that's problematic. That request was probably problematic for an ICANN Org individual to actually report up to a board committee or working group or whatever it is.

The intention of that was to make sure that compliance sort of stood alone and could take the action it needed and not be reigned in by the legal department, ICANN Org legal department. So, we say it's partially implemented. The intention of the WHOIS1 recommendation was to ensure this role had the independence needed to reform the compliance function without restriction from the rest of the organization. So, this intention wasn't fulfilled, but I'm not sure it could be. I'm not sure … I don't know if anybody agrees or disagrees with that.

So, in the next slide, additional reviews needed to determine whether or not it's feasible, and then also that WHOIS inaccuracy report data

provided by the compliance team is not clear on several points and the compliance team does not utilize available information for proactive assessment and enforcement. So, I think we have two recommendations coming out of last second two points here. I don't know if there should be additional discussion on the feasibility of the reporting structure. Does anybody have questions on that one? Yes, Lisa?

LISA PHIFER: So, I guess the question that I would have is whether you think that there was still a problem that the WHOIS1 was trying to address, that the lack of independence I guess that still needs to be addressed or you feel like the way that the recommendation was implemented addressed sufficiently the problems that you saw, even though there's not independent oversight.

SUSAN KAWAGUCHI: So, from my personal standpoint, I think we got half of what we requested there because we did get somebody that was a senior position that had the ability to make decisions and budget to implement is now in that role. It took a long time to get that person, in my opinion, because really they didn't appoint anybody until Jaimie, a little over two-and-a-half years now, where these … So, that would have been 2016, I think. So, these recommendations are over six years old.

ALAN GREENBERG: Wasn't Allen Grogan in that position?

SUSAN KAWAGUCHI: Oh, you're right. Okay, never mind. My brain is a little fuzzy.

ALAN GREENBERG: It took two years after they said they were hiring someone.

SUSAN KAWAGUCHI: Right, they did.

ALAN GREENBERG: But, I believe it was a while ago.

SUSAN KAWAGUCHI: Either that or I didn't really count Allen.

ALAN GREENBERG: Different issue.

SUSAN KAWAGUCHI: This is a different issue. I still am concerned at times with how much the compliance team relies on the legal, ICANN Org legal team, for input and to take actions. But, I'm not sure that there's another recommendation that we could make that would manage that problem. Go ahead.

ALAN GREENBERG: Is there any indication that … Not that they rely on legal to take action or to vet the letters they're writing, but that there is any level of control from legal as to whether they do it or not? That's really the question. ICANN is taking action which could end them up in court or various things, so you can't ignore the fact that ICANN – that legal has to get involved. The question is: is there a level of control, do you believe, or not?

CHRIS DISSPAIN: I'm not sure I understand what you mean by that. I might be able to answer it if I could understand the question.

ALAN GREENBERG: Well, Susan said that she still has concern there's so much involvement with ICANN legal and my question is: is it involvement which could end up in compliance saying we have an action but we're not going to take it because of advice from ICANN legal?

CHRIS DISSPAIN: But, if ICANN legal advised that, then that would be the result, wouldn't it? ICANN legal is the ultimate [inaudible] … Well, you get outside, I suppose, but in general terms, ICANN legal is the ultimate [inaudible] of legal steps that ICANN would take.

So, to take a simple example, compliance follows a process of asking … Send us this information, do this, do that, etc. That process on its face is not met, is not dealt with. There's a whole thing that happens. Then, in the final analysis, it would have to be checked by the lawyers to make

sure that everything is being done properly. So, I'm not sure why it's a bad thing or there seems to be an implication it's a bad thing.

ALAN GREENBERG: The question is, based on past history, might legal say, no, don't do anything – and I'm paraphrasing – they're our friends, or whatever, as opposed to you don't have a case.

CHRIS DISSPAIN: I can't imagine that legal would say don't do anything to our friends.

ALAN GREENBERG: That was in air quotes.

CHRIS DISSPAIN: They don't have any friends, do they?

SUSAN KAWAGUCHI: Having submitted a lot of enforcement issues to compliance over my career, there does seem to be a few that they could interpret the contract language in a – obviously, any legal language can be interpreted to allow for a more strict interpretation than a loose or a light interpretation. ICANN compliance talks all the time about collaborative enforcement, which I don't even … In some ways, if you've got a registrar that just doesn't understand the rule, that's one thing. But, when you know you have registrars that are abusing the system and you point that out to them and they still collaboratively work with

that registrar, and so [inaudible] drawing a line in the sand and saying, "No, you're wrong. You will do this now." Then I think that that is probably my feeling is or guess is that that is coming from an interpretation by the legal department to not enforce the language as strictly as it could be. [off mic].

CHRIS DISSPAIN: Yeah. It's not been my experience that legal is shy about enforcing stuff. It is my experience that legal tends to get involved perhaps in slightly more depth than one would necessarily expect, but I can understand that from the history of ICANN. It doesn't mean I necessarily approve of it, but I can understand it.

But, I don't think you can say … I don't think we can say, unless you can point to some evidence that suggests there's other inconsistent or [inaudible] application in compliance or lack of application in compliance. I'm not quite sure how you can make a recommendation.

ALAN GREENBERG: Chris, I think we're looking at this from a historical point of view. At the time the original recommendation was made, compliance reported to and took instruction from ICANN legal.

CHRIS DISSPAIN: Correct.

ALAN GREENBERG: That was felt by the then review team one that that was exceedingly problematic and they believed there was evidence that there was some level of control expressed by ICANN legal far over what it should be, using them as purely your legal advisor. And the question is: has that been fixed by the change of structure or not?

CHRIS DISSPAIN: And my answer to that is, yes, I believe it has. My understanding is that ICANN legal now steps in when legal action occurs, but compliance is compliance and compliance runs itself. Does that make sense? I can ask the question if it's helpful.

SUSAN KAWAGUCHI: Actually, if you look at the numbers of serious actions that compliance takes now, it's much higher. So, I do think there's been an increase in compliance activity that is beneficial. Personally, I would say this probably … The reporting structure is fine, but [inaudible].

ALAN GREENBERG: There is no way we're going to prove that there hasn't been a case where there was some intervention which we might consider improper and there's no way to prove that kind of thing, so I'm not quite sure writing a recommendation on saying don't ever do it is going to make a different. It's certainly not something which has ended up being measurable.

SUSAN KAWAGUCHI: So, Lisa did … I don't have the report in front of me, but of the first paragraph here, the sample of the October 2017 accuracy reporting system report domain names over one-third required a ticket to be created. Over half those tickets were closed before first notice [inaudible]. I still don't think we've drilled into that completely on why there's over 2200, almost say 40% of those were closed.

Lisa did pull some information out where it was on the length of time between where the ticket was created and when they were closed. I can't remember what that stat was. [inaudible] my concerns there was, okay, they do, but it doesn't really tell you what those … I did not understand the reason for those closing. Now, if the data had changed, and therefore the ticket was no longer relevant, that would mean a high percentage of domain names change in a short period of time. That makes no sense because that doesn't happen.

If ARS is just sort of overly diligent in not sending accurate issues to compliance, that could be a reason. But, I don't know. Was it two or four months?

LILI SUN: My memory is four to five months. So, for the [inaudible] to go to the compliance, it takes four to five months, and during that period of time, at least half of the tickets created closed due to the WHOIS data already different from the [inaudible] time.

ALAN GREENBERG: That still seems like a rather high number for randomly sampled domains. I mean, if you were picking ones that were abusive or deemed to be abusive, it's a different thing. But, randomly sampled?

VOLKER GREIMANN: Well, another point is that you have to look at renewal rates. I mean, renewal rates [inaudible] registrations [inaudible] depending on TLD between 17-18%, so that's another fifth of domain names that could have been deleted in the time being. So, it might not only be changed, it might also be issues with the domain name no longer being there.

Another point is that we found, being on the frontline, the receiving end of these compliance tickets – and this has gone much better over iterations of the ARS, but in the beginning they were flagging a lot of things as incorrect, which were in fact correct. They were flagging missing state references in countries where this is not normally part of the address, incorrect telephone numbers where they were actually correct, but just incorrectly formatted and were part of the grandfathered domains.

So, there were issues with the results produced by the ARS in the beginning and second and third iteration that have gone better in more recent iterations, but might also have led to closure upon review by compliance when they say, okay, this is something that we – or this is an error and something that is reported as incorrect, but we already know that this is actually correct and therefore we close it.

ALAN GREENBERG:	Yeah, but these are the ones that they closed before you ever saw them.

VOLKER GREIMANN:	Actually, we saw them in the first round, and when they receive more … They work on them iteratively. So, they don't send them all out to the registrar at the same time. They look at them, and of course that takes time, and in the meantime they already get responses. They learn certain issues that the ARS is reported are not actually issues, therefore are able to close them early. That's why I assume, at least, to be the case because once we report an issue with certain domain names not [inaudible] an issue, then we no longer receive these kinds of complaints.

ALAN GREENBERG:	My recollection was this was not what happened in the very first pass, but is the ongoing.

SUSAN KAWAGUCHI:	I do remember, Volker, that you made a comment via e-mail about this wasn't correct because of the 2018 report that came out and I have not read that. I just have not had time. So, I think the number is going down on closed tickets before first notice has been out. So, I can go back and review that. But, I still think there's a question there. I think we asked that but didn't get an answer or the answer was not informative enough, actually. So, that was one of the issues with the …

I don't know that there's a recommendation to come out of that. We didn't create one, but that is an issue. We might want to think about something [inaudible].

The next one, 40% of the … Did you have a comment before I move on?

NEGAR FARZINNIA: Yeah. You said you got an answer, but it wasn't informative enough. Do we have a follow-on question that you wish to ask?

SUSAN KAWAGUCHI: Probably. I didn't think about it until now. So, maybe we need to look at [inaudible] because they do the ARS report, right? Exactly what their process is to determine the domain names that are selected, reviewed. Well, not reviewed. We know that process. That criteria they look at to determine why they would send it over to compliance.

ALAN GREENBERG: Don't we first need to look at the most recent data?

SUSAN KAWAGUCHI: Yeah. I mean, I just said that [inaudible]. But, it came down a little bit, but not a substantial. We might have gone from 40% to 30% or something. Let me make a couple of notes here. Okay, so I got an action item on that one.

Then, the next, 40% of the WHOIS ARS domain name [inaudible] program are grandfathered domains and are not required to adhere to

the 2013 RAA. So, if you have a sampling, maybe the random sampling just comes out strange, but I would think that you could take that 40% and apply that to the whole number of all gTLDs. So, 40% of the grandfathered domains of gTLDs. Go ahead, Volker.

VOLKER GREIMANN: Yes. I really think we should base this number on the most recent report, which is now 30%. Looking at the barriers reports over time that the ARS has produced, we see a definite trend that this is on a linear basis going down and should probably not be the case anymore in two or three years. I mean, there will always be … It will flatten out at a certain point, but we see a definite trend that this number is reducing fast at the moment.

SUSAN KAWAGUCHI: So, my concern with this is … Hey, Stephanie! Welcome! My concern with that number is the ARS looks at all gTLDs. We didn't have new gTLDs until we already had the 2013 RAA, correct? So, this could only be the 21 legacy, correct? But, if you're taking the whole population of new gTLDs and gTLDs and 40% of that population is coming out as – and it could only be … Okay, 30%. It says 40 in my document. So, 30% of those is really a higher number if you just take out … If you look at just the legacy domains. Huh?

ALAN GREENBERG: [off mic].

EN

SUSAN KAWAGUCHI: So, that's a good point. But, nonetheless, let's say at the very least we have 30% of domain names that do not adhere to the same policy as the rest of the … Not required to adhere to it. So, we've asked GDD – I didn't do this until last week or the week before, I can't remember – what they think is the number of grandfathered domains in the whole … The actual number of grandfathered domains in gTLDs. Has GDD come back at all on any of that request? Okay. So, it's a little hard to really complete an analysis, but I think in general that you do not want two different policies that domain names have to adhere to or required to adhere to. And in general, it's a healthier environment that all the domain name records are based on the same requirement. So, that is a recommendation this group is going to make or is proposed.

Also, in the dashboard report, which actually is pretty helpful on inaccuracy reports, it looks like there's many inaccuracy reports are not valid reports. So, that may be just a point of education and outreach. People just don't know what they're doing.

So, anecdotally, ICANN compliance probably closes 75% [of mine] or they come back and ask for additional information when I provide that up front. I haven't figured out why, because I don't have time to really focus on that, but it's like I'll always give them the reason. I always provide a bunch of information and about 75% of those get closed because they come back, they ask for more information, I've already given it to them and I don't respond and then they close it. It's funny that they get a month to ask me. I only get a week to respond. It's sort of irritating, but that's just an irritation point.

Then, on the bulk … I need to fix that. In the bulk WHOIS inaccuracy submission tools, there's only ten actual users who are approved. I may be now the 11th because I just applied. I don't think I got my login, though. And only three actually used it, which I think that is a viable tool, and again, this was sort of an outreach thing, that education and outreach about the tool may be helpful.

Then, it appears that the compliance team does little in proactive actions to discover and mediate the issues with WHOIS data. That's another one of our findings that we created a recommendation for. And for at least one new policy, RDS consistent labeling and display policy. There were no statistics we could gather from the compliance team. They don't collect statistics on [inaudible] enforced or not. They said that was a registry issue. A registry policy. But, that makes no sense to me. If it's an ICANN policy, it's an ICANN policy.

ALAN GREENBERG: Last I checked, compliance does [inaudible] registries and registrars. They say they have no teams. Everyone cross-pollenates. You're not allowed to write to anyone. You have to write to the team and it gets routed to the right person who is doing that this week.

SUSAN KAWAGUCHI: Then, some additional issues that we discovered. This one I put in here, but Volker, it would be good to get your input on this. The registrar can choose to unsuspend a suspended domain name any moment with inaccurate data remaining in WHOIS. I just could not figure out from the information provided, is that really accurate? I mean, I've seen it

happen. Is that just somebody not following the rules or what are the checks and balances for that?

VOLKER GREIMANN: That's a very good question. I mean, technically, it's only a small [inaudible] switch whether a domain name is suspended or unsuspended. But, it goes beyond that. I think the policy is very unclear of what has to happen after a domain is suspended. Basically, it makes no requirement on that. So, business, when the policy says that in certain [inaudible] a domain name has to be suspended, then that has to be done, but there is no real process around unsuspension. So, registrars are basically left to their own devices of how to deal with cases when a domain name is requested to be unsuspended.

In some cases, we get a request from a customer that is only now realized that their domain name was actually at risk of being suspended when we had done that, and they wanted it unsuspended right away because it's costing them money. So, what do we have to do to get it unsuspended is not very clear. We usually request the same information that they would have had to provide in the first place and then unsuspend it on that basis.

ICANN also comes back to certain issues when we unsuspended the domain name and requested … You said that it was suspended. Now we noticed it's unsuspended again. What have you done in the meantime? So, ICANN compliance will request certain information and they usually contend when we provide them with the information that we've done the thing that we were supposed to do in the first place to verify and

validate the [inaudible] information for the registrant. When we've done that, then ICANN compliance is also happy.

I am not sure whether that's 100% of the cases that we've unsuspended. We don't have any data on that. I just have seen those tickets come in that they look at the suspended domains and see whether they have been unsuspended or not and then ask questions based on that.

So, I would say that the best practice for that is that the requirements for unsuspension should be the same as the requirements for not having to suspend the domain name in the first place, but there's no real policy on that. So, basically we have to make a decision on a case by case basis.

ALAN GREENBERG: Certainly, there is a history up until a few years ago where ICANN would verify after a complaint that the domain is suspended and never look at it again. There was certainly a practice among some unscrupulous registrars to wait a week and turn it back on again and no one would ever notice. ICANN, in theory now, does some level of verification again later. How often they do it or whatever, I don't know. But, they're certainly now aware of the practice and therefore presumably that practice is less common than it was before.

VOLKER GREIMANN: Just to come back on that, it doesn't even have to be an unscrupulous registrar. It depends on what processes are used to suspend a domain

name because that is also required by the policy. The policy doesn't say [inaudible] name service, that a suspended domain [inaudible] suspended domain. The policy doesn't specify that.

So, when a registrar suspends a domain name, he does one of these things that causes the end result of the domain name no longer resolving. However, whatever process they use can possibly mean that somebody else would be able to undo that.

We've seen, for example, that certain processes we used in the past were [inaudible] resellers that couldn't remove a client hold or had set back the registrant data, so we have to employ a different process for that. [inaudible] processes just involve … Just make it harder to undo that, but I have other unforeseen consequences. For example, one thing that we did was realize that we couldn't do for a long time was that we placed a lock on any changes to a domain name that resulted in the resellers not being able to delete the domain name after a while, which is ultimate what we wanted and [inaudible] renewals.

So, we had to [inaudible] adapt our processes to find out what process actually works in the [inaudible] to just go ahead and have a process there. So, it doesn't have to be an unscrupulous registrar. It just could be a bad process.

ALAN GREENBERG: I wasn't claiming that every time it gets [inaudible] it was in a scrupulous registrar, but the cases I was talking about, there was no question what the issue was. I started in ICANN where registrars would say those don't exist, so thank you.

SUSAN KAWAGUCHI: Another question for you, Volker. Can a suspended domain name, if they didn't put it on client hold, but maybe removed the NS records, the name servers, could that be transferred? [inaudible]. So, it seems to me like some sort of actual … I mean, I have other recommendations on suspended domains because I also have been bothered in the past of having company information remain for an abusive domain name. Everybody thinks this is suspended for abuse, [inaudible] Facebook was abusing people. Now, no comments about how Facebook does business. But, in that case, in that domain name, they were not abusing anybody.

VOLKER GREIMANN: Yes. That's definitely an issue that might be looked at. There is nothing in the policy that prevents any other action being taken with a domain name that has anything to do with its resolving or not, so transfer is possible, an owner change is possible. As long as the domain name remains with us, [inaudible], we have no control over what happens when it goes to a new registrar and that new registrar probably has no reason to know whether that domain name has been suspended or not because that's information that does not transfer.

SUSAN KAWAGUCHI: Right. But, a client hold would.

VOLKER GREIMANN: Well, a client hold might be put there for many reasons and the domain name is transferred with a client hold, but it might not be transferred

with a notice that this client hold should not be removed unless certain conditions are met. So, a client hold, a [inaudible] hold …

SUSAN KAWAGUCHI: You can still transfer? It can still be transferred?

VOLKER GREIMANN: I think it can, yes, because the client hold only stops the resolution. I would have to check that, but I'm pretty sure it can.

SUSAN KAWAGUCHI: And can a registrant remove a client hold?

VOLKER GREIMANN: It depends on the access level that the registrant has. A normal end customer in our system would not have that possibility. A reseller might, depending on the access levels they have.

UNIDENTIFIED FEMALE: That's a [reseller] problem.

VOLKER GREIMANN: It depends. It depends on how we [lock that down]. For our system, for example, we have registrars using their own accreditation and they're just using the same system that the reseller would, but we are just plugging in their accreditation with our system and they need to have

that access. But, they're not a reseller [inaudible]. That makes it harder to [inaudible]. We all live and learn.

ALAN GREENBERG: Are we getting to the point where we're finding enough things that are curious around holds that we need to recommend policy be revised, that there is a policy regarding under what conditions holds can be taken off? In your case, that there is a policy on under what conditions does information in the contact information actually get changed because it is found to be improper, therefore it shouldn't stay there, even if we don't have replacement information. Do we have enough to say we should have a PDP on this?

SUSAN KAWAGUCHI: So, the problem with this is unless you do a registry lock, a registry hold, there's nothing to prevent a registrar from doing whatever they want with that domain. Once it's a registry lock, they can request – the registrar can request the removal, but it's more ... It's a little bit more burdensome of a process.

VOLKER GREIMANN: And we also need to understand that the requirement to suspend a domain name in certain cases is not based on policy at the moment. It's based on contracts. It's part of the RAA. So, any policy that we would recommend to be developed would impact language of the RAA and might even require a change to that. So, there's that aspect also to consider.

ALAN GREENBERG: That's why we call it consensus policy.

CATHRIN BAUER-BULST: If I may, can somebody explain the difference to me of policy that can be put in contracts and policy that cannot be put in contracts? I thought the whole system was based on contracts.

VOLKER GREIMANN: Yes. It's a bit difficult because there's a flowing line and it has something to do with what is called the picket fence and things that are either within or without the picket fence can or cannot be subject to policy and must be part of the [inaudible]. So, that's something that we have to add. I think we would be in safe territory with suspensions, but somebody else will have to look at it.

ALAN GREENBERG: Picket fence are the parts of the contract that can be changed by a PDP by consensus policy and I believe pretty much anything related to WHOIS is within the picket fence. At least that's the interpretation that's been followed.

UNIDENTIFIED FEMALE: [off mic].

VOLKER GREIMANN: Exactly. Just for clarification on your earlier question, I looked up the ICANN resources for the [EPP] status codes and client holds tells the domain's registry not to activate your domain name in the DNS and, as a consequence, will not resolve. That's all it does.

SUSAN KAWAGUCHI: And there's really no other status that would work.

VOLKER GREIMANN: There's a client transfer prohibited that would do that, but that has nothing to do with suspension, so that's something the registrar would have to put on the domain name on their own volition without being required to do so by contract which could cause customer claims. Could be done. Might become part of a recommendation. But, at this time, it's not part of the requirement.

SUSAN KAWAGUCHI: Well, even the registry lock, the registrar controls that. The registrant doesn't. So, if we were trying to bullet proof either inadvertent actions by the registrar or intentional bad action by the registrar, the registry lock wouldn't do it either. It's just costly and it's not [inaudible].

ALAN GREENBERG: A registry lock might do it, but I don't think we want to introduce things that the registry has to do every time there's an action against the registrar or a ticket against the registrar. That would rightfully get a lot of complaints from registries, I would think.

SUSAN KAWAGUCHI: Well, it's burdensome and it's $10 or $15, at least with Verisign, and not all registries have registry locks, either. A lot of them won't do it.

VOLKER GREIMANN: Actually, that wouldn't require a registry lock. It would just require a server hold, which is a lock placed by the registry, but registry lock is something different. Registry lock is actually not being able to change anything on the domain name. [inaudible], but I don't think there's a process for a registrar to request a server hold with a registry. I don't think there is any [inaudible] for that. The registry may place a server hold in case they have received a complaint that they find immediately enough that they take action immediately.

ALAN GREENBERG: I'm going to exercise chair's prerogative and say we're getting into the deep details that are really out of our domain.

SUSAN KAWAGUCHI: If I can jump in, that's why I had my hand raised. It felt like you were trying to solve a problem, but what we really should be focusing on is identifying what the problem is, and if there's a recommendation to address that problem, not invent what the answer is.

ALAN GREENBERG: Thank you.

UNIDENTIFIED FEMALE: No, but sort of thinking through the issues with what could the answer be also impacts the recommendation. That's why I was sort of going down that hole and I also hadn't had this opportunity really to discuss this with Volker.

SUSAN KAWAGUCHI: So, maybe the high-level recommendation there is that process and requirement be put in place, so that there's a … And just off the top of my head here, that suspensions for inaccurate WHOIS have treated the same or something. Consistently. Probably both because if they're not being suspended consistently, how can they be unsuspended consistently?

ALAN GREENBERG: I don't think there's any evidence that they're not suspending them consistently at this point.

SUSAN KAWAGUCHI: Well, the mechanism they're using to spend may not be consistent.

VOLKER GREIMANN: Do we have any data of how many domain names have been suspended by registrars are being unsuspended, either legitimately or illegitimately? I don't think we can make the differentiation. But,

overall, unsuspended domain names after suspension, that will be interesting number to have. I'm not sure if compliance has that.

ALAN GREENBERG: I would hope they have it, but they may not be a big number.

UNIDENTIFIED FEMALE: So, we need to ask compliance for the number of …

ALAN GREENBERG: Yeah, for domains that they recheck after suspension. As a percentage, what number do they find unsuspended without the problem being corrected?

VOLKER GREIMANN: One thought … I mean, speaking from a practical perspective, probably the easiest way would be for ICANN and the registrars to agree to an amendment of the RAA. However, even if that is something that all registrars all agree upon, this one topic would change and there's still very high reluctance to open the RAAs for discussion because then all other kinds of interest might come in. So, it might be better to [inaudible] PDP. But, I agree. Certain requirements for unsuspension would probably make a good subject for policy review.

ALAN GREENBERG: I think the wording that we determined we would use if a policy [inaudible] is the ICANN board should either, through negotiation or

initiation of a PDP, take action to attempt to change these things. Neither of those are guaranteed actions, but they can take them.

CATHRIN BAUER-BULST: It sounds to me like a very good idea. I just have one question. If we're going to go back to compliance and ask about the figures for unsuspension without resolution, it might also be interesting to see where the domain has been unsuspended after resolution versus just disappearing because that can also be … Basically, the figure that we're looking for I think is the unsuspension after resolution of the problem because that should give us an indication of honest use of the website and there being an inaccuracy would fix the website and put back online versus suspension continuing without resolution because the website just disappearing because criminals would rather go elsewhere than pursue a process of unsuspending the domain that they have gained through criminal activity, if you see where I'm going with this.

So, I think it would be very interesting to have that figure of unsuspension after resolution, also, specifically. To have an indication of where [inaudible] inadvertent issue or there's somebody who's acting in good faith and is trying to fix the issue.

SUSAN KAWAGUCHI: Thank you. So, the other clarification … When you're looking at record and it's not clear whether a domain name was … Why it was suspended, though it does say suspended sometimes. Sometimes it says client hold, so you assume it's a suspension. Sometimes the name servers are removed, so it was suspended in some way. There's a lot of reasons

those things happen. But, without any sort of designation, this doesn't really accurately show why something … Was this inaccuracy? Was this abuse? Was this, whatever, you didn't pay your renewal fee so they suspended it or you paid but you paid with a credit card that wasn't actually viable or something like that, wasn't yours? I think it's important that there be actual suspension code for something that indicates why these domain names are suspended. Volker is shaking his head.

VOLKER GREIMANN: I am rather cautious about anything that requires a lot of implementation efforts or affected parties. Everything that can be implemented with policy changes is very easy to do, but if you're asking for additional codes, that has implications on a lot of technical implementations and [inaudible] with it a certain amount of costs that might be higher than the benefit that could be derived from those codes.

SUSAN KAWAGUCHI: So, maybe I misspoke. What I meant was more of something … Because you'll see it now. You'll see … Yeah. And [inaudible] consistent one. So, repossessed at GoDaddy, for example, you see frequently. Now, I am assuming somebody didn't pay their bill there is why it was repossessed or suspended due to abuse. You'll see that in … Some registrars put that.

ALAN GREENBERG: Clarification. Put it where, in the name field?

SUSAN KAWAGUCHI: [off mic] variety of designations that you'll see, depending on the registrar, which can be very confusing.

VOLKER GREIMANN: Yes. We have experience with that. One thing that we notice, for example, we also use a placeholder DNS record that indicates that domain was suspended and some genius came up with the idea of registering that domain name and then pointing it to some parking or other efforts, which basically meant that the domain name we had suspended was unsuspended through no fault of our own, so we had to change that.

SUSAN KAWAGUCHI: Inadvertent consequence there. [off mic] was more that … Was consistent across the industry, so it was understood why these were … And somebody would have to just go out there … Maybe ICANN should register the domain name for it and whatever.

The other thing is, with inaccuracy, if the domain name is suspended, that inaccurate data still resides in the record, for the most part. Go ahead.

VOLKER GREIMANN: Yes. And I think there is a very good reason for that, because the suspension may not actually mean that the data is inaccurate. It may just mean that the customer has not responded to our request to confirm it's accurate. So, non-response by a registrant within a certain time also can mean that the domain name is suspended even though the data is mostly accurate, and by removing his data from the WHOIS, then we would basically be contesting its ownership rights. So, I feel uncomfortable with changing any data in the WHOIS without having evidence of inaccuracy.

SUSAN KAWAGUCHI: I can understand that position, but when you have inaccurate data or stolen data, identity theft, in a record and then abuse with that domain name, one of the tools … If you cannot get the registrar to recognize that there is abuse with that domain name and take action there, inaccuracy report is another mechanism to actually get action taken and oftentimes they will take action then when you file inaccuracy report, because then that is something that ICANN tracks. Is it accurate data? Did your person respond? Well, if it's abusive domain name, a lot of times, they do not respond. Not all the time. Sometimes they respond and say, "Yes, I am FaceBooking," and I've already proactively said … This is my former role, obviously, but also it has the same issue with eBay and PayPal. "I know that this is not a registration by our company."

It seems to be that some sort of designation should be made of why if there's alleged abusive activity, then it should be indicated somewhere.

VOLKER GREIMANN: Actually, that cannot be resolved [inaudible] other issues. You may know that because we had an issue with Facebook and other individuals where we treat them basically the same way. When somebody comes to us and says, "As you have our name in the WHOIS, but we didn't register than domain name," then we go, "Here you go. It's yours." Because then we basically assume that somebody made an order on behalf of the registrant, and if you can evidence that you are the person or company that [inaudible] the WHOIS, then we say, "Well, it's yours." But, there's a policy on that. It's just something that we do because we feel it's the right thing. We think that it's the thing that we can legally do, that we're legally entitled to under German law and basically resolve the issue in the most effective way.

SUSAN KAWAGUCHI: And that's great as a best practice, but it doesn't work for all registrars, and if you could go talk to [Online NIC], who allowed several registrations to abuse 30,000 of Facebook users through messenger using domain names that have everything but name servers, including the domain at FB.com in the e-mail address and ICANN compliance still wouldn't take action, that's a problem. So, is that a WHOIS issue? Because I'd love to add that as a recommendation.

ALAN GREENBERG: What I'm hearing here is we have a whole mess of problems associated with WHOIS contact information and WHOIS suspension processes that are less than precise and do not allow us to address things that happen in the real world. The only practical solution I think is to look at these

things and change the rules, as painful as that might be to a registrar who then has to address software. Are we going to be in a position by the time we finish, perhaps not the draft report but the final report, to actually make a substantive recommendation like that? In other words, instead of trying to fix piecemeal with one bit here and one bit there, saying we really need to address these kinds of issues?

Now, there will always be edge cases which you don't cover. That's inevitable. The old expression saying it's hard to make things idiot proof because idiots are so innovative.

UNIDENTIFIED FEMALE: I don't know. I mean, what would it take to [inaudible].

ALAN GREENBERG: Cathrin, that's your job from now on.

CATHRIN BAUER-BULST: [off mic].

SUSAN KAWAGUCHI: There's a lot of anecdotal evidence. There's a lot of inaccuracy. So, really, a lot of what starts, it ends up as an inaccuracy report starts out at the collection spot, at the beginning of collecting the data. So, the data shouldn't be collected for that person because it's not their data to give, but that opens up a huge can of worms. I can write a

recommendation right now on what I think should be done, but that doesn't mean that we have the evidence to back that up.

ALAN GREENBERG: There are places where you can't buy a domain or register a domain without showing your passport. We're not going to make that a universal rule everywhere. We know that. I'm just wondering, as we go with whatever recommendations we end up with at this phase, do we want some sort of little box in the report saying the review team is considering whether we do something in a more general way to cover all of these issues and input is welcome or something like that? Cathrin?

CATHRIN BAUER-BULST: [inaudible] just start as a question for the public consultation. I think it's very difficult if you are very open. It might be easier if we propose a way forward that we think is appropriate and then people comment on it and they can disagree or agree or give us other ideas. But, sometimes … I find that you usually get better input if you provide text first. I see Stephanie has her hand up just in case you can't see behind you.

ALAN GREENBERG: Let me respond and I'll go to Stephanie. I agree, but we're trying to get to closure in the next day or so and I don't think we're going to do that at this point, so I'm trying to say is there something better we can do for the final report? That's the context I said that in. Stephanie?

STEPHANIE PERRIN: It seems to me that there's a cluster of issues here that, if you're talking about a recommendation to come up with recommended policy and best practice for, for instance, suspension, at least it seems to me reasonable that we could come up with a recommendation that there be certain categories – standard categories – of suspension. You can't just allow a free-for-all out there when you're taking away domain names, right? But, you can't conflate that with verification of identity before you [inaudible].

So, if you were to list – I'm now doing wordsmithing, which I gather is what you were asking for, Alan. If you list the issues – A, B, C, D, E – on A, we could recommend some kind of standard practice recognizing there will always be edge cases for suspensions. And B, compliance ought to be following up on complaints related to identity theft as a priority. I'm just also walking that very fine line on whether we're getting into content, but I don't think we are. I think we're still talking strictly domain names. Because whose job is that? It's really up to compliance to police that, right? And why not pick on them for a change instead of the registrars?

And C, the whole issue of verification, it's a problem. I don't think we're ever going to go there. So, what recommendation would be made? I don't know what Susan [inaudible].

LISA PHIFIER: So, as you know, we've been trying to jot down some decisions reached as we go along, and the one that I had already jotted down in notes, and Alice I think has already copied into a table of decisions, was that policy

requirements and processes should be put into place to provide consistency when domain names are unsuspended and possibly a policy or best practice for indicating why a domain name is suspended. So, those were two specific items that are on our radar.

The one about verification strikes me as in the accuracy ballpark rather than in compliance, because there should be, it seems to me, a thread between a finding at a problem that you identify and then a new recommendation made, so that finding wouldn't really come from … If there is one about identity, it would come from the accuracy part of the review.

SUSAN KAWAGUCHI: So, it seems to me, on the verification – I'm not advocating for verification. We've got enough on our plate with the EPDP and all of that, GDPR and all the other laws around the world. Even though I would love that and I've had to participate in doing that. My passport is all over the world and my driver's license, which someday I'm going to spend the time to make sure that, at least in Europe, they have deleted all those. So, now that I could use … Yeah. Well, just wait until you get a letter from me saying, "Do you have any information upon me?" Because I had to do that as an employee to do my job because they didn't want verification of the company. They wanted verification of the individual making that request all over the world. So, not gTLDs.

There's a lot of people out there that have my passport. They could be traveling around as Susan Kawaguchi and probably more look more like a Susan Kawaguchi than I do.

But, you had mentioned the best practice when identity theft is alleged and proven and that would have to be within a certain … A certain amount of information would have to … Because people put Facebook on their WHOIS records all the time, like "find me on Facebook" or whatever, which is always bizarre to me, but they do.

But, when a certain amount of information has been stolen, then it would be good for the community in general, in my opinion, that all the registrars follow the same process of, here, this says they're Facebooking at 2145 Willow Road. I get eBay and Facebook addresses mixed up nowadays. Anyway, that domain name then would be turned over, and as you put it, it was registered on our behalf or on Facebook's behalf or any company's behalf. So, it seems like there could be something there.

VOLKER GREIMANN: Just one thing. I would note once anything that we recommend to be too prescriptive of what has to be done, because in my experience, any process that you develop will, in some form or shape, attract people that are trying to abuse that system. So, having a multitude of systems also is a bit of a … It's sometimes [inaudible]. One of the examples I said earlier was, for example, the suspension method that we use [inaudible]. Criminals and abusers look out for these things and will find ways around them very quickly. So, the more unified such an approach is across the industry, the easier it becomes for them to apply their circumvention methods. So, if you have a bit of variety there, then it becomes harder to abuse or to circumvent, because we learned anything that we can put in place to make certain verifications, to make

certain efforts for better compliance, for better practice and that invariably attracts someone who will figure out a way around that. It's like any [inaudible]. If you only plant one type of banana, the rot will affect all bananas.

NEGAR FARZINNIA: I think you captured, Lisa, what we're thinking right now on that. Maybe some of this goes in after we get some comments back, too. Yeah. Just on the topic of identity theft, even if there's no appetite for formulating a recommendation on it, is it a problem that's something you wish to mention in your analysis, even if it doesn't lead to a recommendation, but rather something … An observation you make that may warrant further consideration in the future?

SUSAN KAWAGUCHI: So, one of my problems with actually adding that in is we don't have any sort of metrics or anything on it. I mean, I guess we could go back and say how many … Compliance team, how many [assertions] of identity theft? But, because the way the tool is set up, it doesn't track that as far as I'm concerned, but we could ask … Go ahead.

NEGAR FARZINNIA: So, one useful thing to say whether it's a recommendation or not is just that. That you have no data to assess this and identifying some metrics around this that could be tracked to inform future policy would be helpful.

SUSAN KAWAGUCHI: Maybe even we make a short recommendation that the compliance team changes their WHOIS inaccuracy tool to include reason codes or something, so it's just ICANN having to change the tool when you submit. Because you can sort of write things in, but I don't know how well those attract. If people are saying this is identity theft … And I really don't know. I mean, I know that's a problem from my experience, but the average user wouldn't see that, even though I don't know how many of those I resolved for people and filed on their behalf in my career, because after you contact them and they're like, "What? What's a domain name?" because they've actually used real information and it's like, "Can you get your son on the phone or your daughter? Let me explain this to them."

UNIDENTIFIED FEMALE: It looks like we sort of talked about this one. It says if we can extrapolate from the ARS sample 30-40% of domain names registered before 2013 may not have all registrant data collected and displayed in WHOIS. I still don't know if that's an issue or if it's just that's the way the policy states, but there's been some … I chatted with a few people and they were like, "I've never run into a registration without registrant data, with that missing." So, I don't know if you have any idea. Do you see registrations without [inaudible]?

VOLKER GREIMANN: We do. Usually, it's a technical error. It's some glitch in the system, some process hanging that's, for example, when a domain name is transferred, we used to grab the WHOIS from the old registrar and do

various steps [inaudible] when the domain name is actually transferred, then that [grab] is used to populate our WHOIS and it has been the case in the past that sometimes this routine hangs or something other happens.

So, there is a certain mechanism that, once you're aware of that, can cause that to happen. That's only one example that just popped to mind. Once you know that this happens, then you can scan for that, then you can have other processes that correct the data. Other registrars may never scan for that. So, there are processes where a domain name can exist [inaudible] database with no data, just technical usually.

UNIDENTIFIED FEMALE: But, the policy from the 2009 RAA doesn't require the collection of the registrant data. Admin and tech, they do. So, you don't know whether it's been a technical issue or it's because somebody is saying, "I don't have to provide that," because the 2009?

VOLKER GREIMANN: Well, with the 2009 RAA, we pretty much know which domain names that, under our management, would be considered grandfathered which would not have to be provided. So, we wouldn't be able to differentiate between domain names simply by looking at the registration data or the date when the domain name was transferred to us because we know when we signed the 2013 RAA at which point we [inaudible] compliant with all the requirements, so everything that was registered or transferred in before that date is likely a grandfathered

domain. If no owner changes have occurred between them, we also monitor that, of course. And if something else occurred in the meantime, if the date is after that, then they will have to have provided it.

ALAN GREENBERG: If I may interrupt, we're about 90 minutes into the 90-minute session and we haven't started the recommendations yet.

SUSAN KAWAGUCHI: Real quick, then. Africa and Latin America appear to be unrepresented in the number of inaccuracy submissions and those two areas came up in discussion earlier. Users who might benefit from the bulk submission inaccuracy tool may not be aware of it. By [inaudible] reacting to reported compliance issues, opportunities, or misdefined systemic issues, there may be policies that are implemented but not [inaudible].

Then, a cross-field validation. I didn't find any issues, but if anybody else did, then we should discuss that. I need to go back and look at it again. I started into that last week and didn't finish that.

So, WHOIS1. This is the recommendation that the subgroup came up with, require all new policies implemented to be measured, audited, tracked and force as required by the compliance team. Stephanie, this just said enforced before, but it seems to be you had some time along the way sent some comments, edits, and as required seemed to fulfill your request for wording there. Yeah, it was like April or May.

ALAN GREENBERG: Last face-to-face.

SUSAN KAWAGUCHI: Okay. Policy should integrate metrics, measurements, and recordings to ensure that the policy is effective in addressing issues … Well, you guys can read it better than I can. We all agreed on this. Any disagreement? How's that?

STEPHANIE PERRIN: I've been just sitting here thinking. All the folks who complained about accuracy – I'm not talking about this ARS particular study. Are they using WHOIS or are they using a third-party product, like a domain tools? And if so, is there an accuracy problem there and have we ever studied whether any of the third-party products are accurate? No?

ALAN GREENBERG: I've never heard a report that they're not. Are you basing this on something specific?

STEPHANIE PERRIN: It's just a question. I'm just wondering because, as I have talked to some of the cybercrime researchers and cops, they rely on domain tools and a couple of others. If we haven't studied whether domain tools is accurate or not, maybe it's got bad data in it.

SUSAN KAWAGUCHI: In my opinion, they're just pulling the data Port 43.

STEPHANIE PERRIN: So, there's no gap there.

SUSAN KAWAGUCHI: No. They're not like pulling fields and not pulling all of them or anything. They're pulling them [inaudible].

STEPHANIE PERRIN: And they're up to date.

SUSAN KAWAGUCHI: Well, if they have [inaudible].

VOLKER GREIMANN: Not anymore they're not.

SUSAN KAWAGUCHI: Not now they're not. Well, they are up to date per … Right. But, they're just pulling whatever the registrar is allowing. Now, there's a bunch of registrars that aren't putting anything in the WHOIS record nowadays, but that's a different issue.

LILI SUN: Just to be clear, for the new policy, what should be defined as new? So, after the recommendation being published or before? What's the time [inaudible] we can define as new?

ALAN GREENBERG: After the board approves, and if there's any implementation involved, other than them simply issuing a directive to the GNSO. One could then ask: does it apply to GNSO PDPs that are currently in process or only new ones? So, the answer is it may vary. But, it would certainly apply if the board approved it and instructed that it would presumably apply to any PDPs that were initiated after that and probably ones that were partially in process. Volker?

VOLKER GREIMANN: Just one little point and that's not going against the recommendation, which in basic, I really like the intention behind that. I just wonder how much bureaucracy this is going to add to ICANN and therefore costs? If every little action that any team within ICANN policy [inaudible] compliance – in this case, it's only compliance. But, if it was to be tracked, measured, a report written on it and that can easily add a couple of heads to the organization and I wonder if we are taking that into account or not.

ALAN GREENBERG: Lili was next in the queue, but I'll simply ask you and you can respond when you come back in, is there some way you can refine this to say as reasonable to add a level of reasonable? Because I totally agree. ICANN is really, really good at increasing bureaucracy and process.

LILI SUN: I have a concern that, actually, my impression is that the policies is never not enough. There are too many policies regarding WHOIS, especially for the accuracy. We have the WHOIS data reminder policy and we also have the contractual obligations in the 2013 RAA, but still, the accuracy, the situation is not ideal.

So, my concern is this is really not necessarily an urgent need to create a new policy just to enforce the old policies in place. And even for the WHOIS data reminder policy, it has been coming to effect more than ten years and, yeah, according to compliance team, it was [inaudible] but only on the sample basis. It's not enough.

ALAN GREENBERG: The auditing on the WHOIS reminder policy is whether registrars send out the letters. That's all that they audit. The effectiveness is something that we already have discussed. We don't know how effective it is. Stephanie?

STEPHANIE PERRIN: Thanks. It is now coming back to me where that 'as required' came in. I believe we went into a discussion on risk-based auditing and verification, because even in government, we do tiny, tiny samples of accuracy and tiny audits once in a very long cycle. So, to ask ICANN to go out and enforce and do metrics and all of this on everything is crazy. We need a risk-based approach. So, maybe that needs to be reinforced there in that recommendation that would limit the growth of the compliance branch.

SUSAN KAWAGUCHI: Do you have any wording that you might want to provide there?

STEPHANIE PERRIN: Yeah, it's in the analysis.

ALAN GREENBERG: Being in the analysis is not good enough if the recommendation implies it's all-inclusive.

SUSAN KAWAGUCHI: And just to your point, this really isn't saying let's create new policy. This is saying if there are new policies, then we should make sure that they're audited and tracked.

ALAN GREENBERG: The word suitably sometimes can soften things like this. I'm not quite sure where it fits, but … It's a judgment call, of course. Lisa?

LISA PHIFER: So, there's a separate recommendation on taking a risk-based approach to compliance overall, so it wasn't specific to this recommendation. That doesn't mean that you shouldn't mention it in the discussion for this recommendation, but there is one – I think it's recommendation seven – that recommends a risk-based approach overall to enforcement.

ALAN GREENBERG: May I suggest some wording? And, please, someone capture it. During the development of all PDPs, the policy group should consider the inclusion of metrics, monitoring, and such. Using the word "consider" means think about it and you may have to make value judgments.

STEPHANIE PERRIN: If we were to put this in the active voice and say the compliance team should measure, audit, track, and enforce all new policies as required in a risk-based approach.

ALAN GREENBERG: That doesn't address … In some cases, you cannot monitor and measure it unless the PDP has required that certain things be tracked. One of the problems, for instance, with the reminder policy is there was no requirement to get any feedback, so it's out going stuff only that can never be tracked. So, it may have to be considered during the policy. It's not just a compliance issue.

STEPHANIE PERRIN: Yeah, but I mean, that's biting off a whole other recommendation that all policies should have measurable provisions. I mean, how far do you want to go? I don't think that the sentence itself is wrong. Just mainly flipping it on and say [inaudible] risk-based approach …

ALAN GREENBERG: That's why I said consider. Lisa?

LISA PHIFER: So, I think we need to be clear here. So, recommendation that this be considered during policy development or is the recommendation purely on the implementation policy and enforcement?

ALAN GREENBERG: I believe if you don't consider it during the development process, you may not be able to do it during implementation.

LISA PHIFER: I mean, the implication of not applying it do development is exactly what you found. You have a policy that was recently developed that has no metrics, and therefore, compliance has no mandate to track or enforce compliance.

SUSAN KAWAGUCHI: And that thinking sort of came out of that effectiveness document, that if you can't really track and measure a policy and figure out if it is effective, it's not a very good policy. So, I think it's more in the development of the policy.

ALAN GREENBERG: Stephanie?

STEPHANIE PERRIN: I think this recommendation is then morphing towards what is really a maturation of problem of ICANN's policies. I mean, some of the policies, in my view, aren't even policies. They're quick fixes to a problem, but they're not necessarily policies.

So, if all policies were to be measurable, auditable – trackable is not a good word – and enforceable, then you're really making a recommendation that in the development of policy with respect to WHOIS, attention, criteria, whatever you want to put it, should include that they be measurable, auditable, trackable, and enforceable and then you tell the compliance team to do it.

ALAN GREENBERG: Two things. Number one, it's not clear we or the board has the ability to enforce that the GNSO build metrics or trackability into any policy. The GNSO has already adopted a non-PDP saying they will anyway, and whether they're actually doing it or not is a different issue. But, just note, when we finally come to a recommendation, it's got to be something we can recommend to the board. And maybe it's only the board recommend to the GNSO to do something, but eventually we are going to need to figure out how to do that. But, I would really caution against the wording that Stephanie just used. By building trackability into everything we do, we are potentially adding a huge load on the contracted parties, which may or may not in any given case have value.

There is also an issue of competitiveness, particularly issuing data which may well tell competitors about things that … All those things have to be considered. I'm not saying don't do it, but it's not trivial and it could well

STEPHANIE PERRIN: If I may, Alan, that's why the "in a risk-based approach" is in there, because you always assess the risk. But, it's going to become unaffordable. But, it's going to put too much burden on small players, it's going to hurt competition, blah-blah-blah. They're all risks. So, once you've got risk in there, you don't need to go over every single thing in the ICANN lexicon.

ALAN GREENBERG: My word, consider, does that. It's just that you used the term "all" and that was the part that worried me. I think we need to move on. Cathrin, could you turn on her microphone, please?

SUSAN KAWAGUCHI: For a while, I had my hand there, so I wouldn't forget.

ALAN GREENBERG: Excuse me. The benefit of having someone who doesn't hear very well is if I don't hear it there, I know you don't have it on and I do look.

[NEGAR FARZINNIA]:   I did have one thing. I think we'll have to find the way to say where we landed there. In the spirit of asking the question is it within scope … So, this would be policies related to WHOIS or policies related to RDS,

because it's beyond this team's purview to recommendation things [inaudible] policy.

UNIDENTIFIED FEMALE: [inaudible]. Yes. I just didn't want to put that in there. I was hoping it would [inaudible].

CARLTON SAMUELS: Are we accepting that if you use the term risk-based approach it will take care of all of the issues which Alan raised, which is very important?

ALAN GREENBERG: Only if we define it that way. It will not imply that to everyone. I can tell you I might not have read it that way, if we hadn't also said the word, so maybe I'm the only other one in the world, but …

UNIDENTIFIED FEMALE: We'll come back tomorrow with language on this one.

VOLKER GREIMANN: I still have all the reservations I already announced on the list regarding this recommendation. I think it's a problem that's resolving itself already. I think we need to have more discussion on this because [inaudible] recommendation has a lot of problems in how to implement that [inaudible] incredible amount of work to those parties that have to do that, and as we are seeing, in my view at least, with the

grandfathered domain numbers going down, down, down, down all the time, it's something that usually—

ALAN GREENBERG: --big enough, it's easy to see a big decrease. The rate of return is going to continue to go down and I believe it is quite reasonable for us to put an absolute limit to it. Twelve months may well be completely unreasonable, but a number longer than that which allows you to … Some domains are renewed for 12 years, or 10 years rather. Many are not. So, if, for instance, a registrar insists that when it is renewed, information that is missing or inaccurate needs to be corrected, that will implicitly fix a large number of them with moderately little pain on your part. Well, I didn't say zero. I would suggest come up with a number that is more reasonable than 12 months, because otherwise, you're likely to be overruled, I suspect, and I prefer to see this go ahead in a way that will not hurt registrars [inaudible].

VOLKER GREIMANN: You have to understand how the process works. I mean, the touching point with a customer when the domain name is renewed has, in most cases, nothing to do with any data that is on the domain name. We are just looking at the expiration date, see if the renewal date is coming up, see [inaudible] information [inaudible] and then we deduct it from his balance or charge his credit card. There is no actual step where we contact the customer. So, the pain is there. It's going to be huge, if you require something like that.

Especially with old registrations, you have no other touching point with the customer than his credit card information, usually. And maybe the account information, but you know you're never going to use that because there's no communication going on and everything is going well.

I think, in most cases, these issues will resolve itself, especially with the grandfathered domain names. I also think, yes, you're absolutely right. There's going to be a bottom number where this is going to level out, whether it's 10%, 5%, 2%, but its curve is going to flatten out and the current trend will no longer hold. But, usually, those aren't the domain names that are problematic. I mean, these domain names do not cause problems. And, yes, it would be nice to have 100% accuracy on these domain names as well, but I don't really see any harm coming from these domain names because they are all domain names that usually use domain names. They're not domain names registered for abuse purposes. Those are usually, as a trend, domain names that have been registered for a very short amount of time.

So, what we want to address, what [inaudible] address when we added to the requirement to the 2013 RAA was to make sure that the domain names that had a high likelihood of being abused would be in a better framework and that all domain names, most domain names, would come under the same regime sooner rather than later. But, we explicitly didn't set a deadline for that. That was intentional when we agreed to that in the RAA. I think that's a good process that's currently airing out in the numbers, trending in the way that we expected them to be, and I think making that recommendation is overshooting the target. I think

the target is being met, that the 2013 RAA set out to achieve on that specific aspect, as in accuracy numbers.

ALAN GREENBERG: Thank you. At some level, a conceptual concept of having a reference to a 2003 RAA when it is long gone for everything else I think is somewhat problematic. If the numbers are indeed going down, then the numbers affected are going down. And if all it takes is a flag that says, "This information is … This is grandfathered domain with inaccurate or missing information," and that it must be corrected at renewal time, I don't think it is quite as onerous as you're implying and I would think it's to your advantage to name a reasonable period, if 12 months is not reasonable, on the slight chance that it ends up in the final document. Don't make it harder for yourself than you have to.

CATHRIN BAUER-BULST: Thank you, Susan. This is Cathrin with a microphone provided by Susan. I just wanted to highlight that I disagree a little bit with the conclusion that we obviously don't have a problem because there's a certain trend. It's been five years and we still see 30-40% of records where there hasn't changed. And I agree that, of course, for certain types of abuse, you would tend to rely on newly registered domains, but abuse that's related to hijacking existing sites usually relies on sites that are well-established and that have a lot of users already, so those could very well be the long registered sites where it would be useful to have accurate and complete WHOIS information so we can actually contact the customer whose domain is being abused.

And I don't see how, from a registrar perspective, you can entirely leave out the argument of having one policy apply across all your domain registration which should bring certain cost savings with it also. So, that's my two cents on this. Yes, I'll leave it here.

VOLKER GREIMANN: Yes. I would like to come back to the five years because that's a number that's a mistake that's easy to make. I mean, the 2013 RAA [was] negotiated in 2013, but I think first [signs] were at the tail end of that year and no registrar was required to sign that RAA at any time. Only when [inaudible] previous RAA came up for renewal, they had to update to the new version. The last registrar that updated … I don't think … I'm not sure if they have by now updated, but there was still one registrar when I last looked that was [inaudible] 2009 RAA because they renewed basically immediately before they were forced to do that 2013.

So, last year, we had a couple of registrars. The year before, we had a couple of registrars that were renewing the RAA. Even my registrar signed that RAA at the last possible moment. We opened a different registrar so we could sell new gTLD registrations, kept the old registrar, the old registrations simply because we didn't want to inconvenience our customers with the new regulations sooner than we actually needed to.

So, basically, you have a lot of registrars that signed it in 2014, many that signed it in 2015, many that – still a few that signed it in 2016 and a very small number that signed it in 2018. So, basically, what I'm saying is it's not correct that this probably overall had a five-year time to be

implemented. For some registrars, this was implemented last year for some registrations. This new policy was very new.

SUSAN KAWAGUCHI: Okay, Volker, that reasoning escapes me completely. So, you just said, okay, we did what we could. We paid the money for new accreditation to circumvent new policies. That's not very helpful [inaudible].

VOLKER GREIMANN: No, not policy. Contractual requirements that …

SUSAN KAWAGUCHI: Contractual requirements then, but still …

VOLKER GREIMANN: That were not binding on us because we didn't sign the contract yet.

SUSAN KAWAGUCHI: Okay, but that's still …

VOLKER GREIMANN: And a lot of registrars did that.

SUSAN KAWAGUCHI: I am having a very hard time with that because here we have contractual requirements that you found a loophole to get around, so that is a problem.

VOLKER GREIMANN: Actually, those weren't contractual requirements unless you signed that contract.

SUSAN KAWAGUCHI: Still a loophole, that when the community as a whole has come to an agreement that this would be good for the whole industry, but that's neither here nor there. I'm just a little bit amazed at that. But, what we don't know about this is … We do know that there's a certain amount of grandfathered domains. We don't know if the domain, if the information is missing. If the information is not missing, I still think all registrations should adhere to the same policy. It doesn't matter when you sign an RAA or whatever. And, I'm sure each registrar changes their terms of service more often than signing a new RAA. Most companies update their terms of service at least a couple years or every year.

You don't have to answer this, but how often does your company update their terms of service? To me, it's a simple, "Here's our terms of service. We're requiring that you adhere to this new policy or new contractual terms we have to adhere to, and therefore it's implemented." But, this could not be a problem, but nobody knows if it's a problem or not is the problem.

ALAN GREENBERG: I am sitting here in somewhat of amazement to know that we're at this point trying to lock down our recommendations and we don't have an – excuse the language – a fricken' clue what percentage of these grandfathered domains are problematic or not. How did we get here?

UNIDENTIFIED FEMALE: [off mic].

ALAN GREENBERG: Well, what if I ask Volker to quickly run a report for grandfathered domains, how many of them have, based on your evaluation standards, inaccurate data? If I asked you to do that, is that possible?

SUSAN KAWAGUCHI: So, it's not inaccurate data.

ALAN GREENBERG: No, no. Data that …

SUSAN KAWAGUCHI: Missing data.

ALAN GREENBERG: Data that does not meet the current standards or a phone number which is not formatted as a phone number or whatever.

VOLKER GREIMANN: Exactly. I think that's the main part, that there are certain formatting requirements that came into play and e-mail address. Basically, most issues that we have had with compliance complaining about grandfathered domains when they didn't realize they were was that the phone number wasn't in the right format or that the address data was in the wrong field or something like that. It's mainly formatting issues.

ALAN GREENBERG: I didn't ask how many have bad data. I asked how many would trigger the inaccuracy clause? Is there any possible way we can actually find that out, to know whether we have a substantive problem or not? Lili?

LILI SUN: I don't have the exact numbers, Alan, regarding your question, but I did went through all the WHOIS ARS project regular report for the format errors, at least for the meeting for the country code. That was not deemed as an inaccuracy. So, I believe for the format errors in the WHOIS data, it's not deemed as a valid inaccuracy report. So, like Volker mentioned, that's not a problem. Yes.

ALAN GREENBERG: My understanding was for the ones that were grandfathered, they didn't look at them at all. There was no inspection of them whatsoever, I believe. Sorry, it would be useful if you turned on your microphone so we could know what you're … I'll take a break. Folks, we're going to be here until Sunday at this point.

VOLKER GREIMANN: [inaudible].

LISA PHIFER: Does anybody else [inaudible] agree to not agree completely on this? It looks like everybody agrees, except one.

ALAN GREENBERG: And I would feel more comfortable if the 12 months resulted to something more realistic, if anyone would want to contribute that.

LISA PHIFER: And what do you feel like is more realistic?

VOLKER GREIMANN: Within a reasonable period.

UNIDENTIFIED FEMALE: No, because we've already [inaudible].

ALAN GREENBERG: If we say within three years, it's within three years of the board adopting this, which is a year from now, which gives you four years warning. Susan, take it under advisement.

NEGAR FARZINNIA: So, I just want to ask a question. It seems to me that this is sort of two related recommendations rolled together. The first part is the policy implementation within a 12-month period. The second part is the assessing of the grandfathered domain to determine if there is, in fact, a problem. Does anyone disagree that grandfathered domains should be assessed to see if there's information missing? Okay, so we have agreement on that part. Does anyone disagree with the recommendation that if a statistically significant number of domain names have that information missing, then that should be addressed?

ERIKA MANN: I'm talking to myself. Volker just posted the link to the information we were trying to find, relative [inaudible] and it has some updated information. It's now in Adobe, but I can't open it still.

NAZAR FARZINNIA: My point was I feel that we actually may have consensus, trying to understand if there is a problem and taking action if there is a problem. Then, the remainder of the recommendation, which applies more broadly to how new policies are … When they actually take effect in contracts. That could be, essentially, a separate recommendation that at least one person is not happy with.

VOLKER GREIMANN: Well, I think we should differentiate between contractual requirements and policy requirements. I have no issue with ICANN policies coming into effect within a 12-month period. I have a problem with contractual

period because simply registrars sign contracts at different times, and especially with this issue, we have foreseen this. This was part of the design of the problem.

I think, with the policy, usually there is no issue because I can usually give a six-month period to come into compliance, so 12 months would be fine to recommendation, but I don't see any need because it's already done. For the 2013 registrar accreditation agreement, I would just like to suggest to take that out [inaudible].

When the new policy comes into effect, the board approves it, the IRT has done its work and the policy is published, there is a timeframe for contracted parties to come into compliance, which is usually a lot less than 12 months. It can be nine months, it can be 12 months, depending on how onerous the implementation requirements are.

So, when a new policy is implemented, then more registrations having to adhere to those new rules is the standard. I think extending that to the grandfathered, the requirement with [inaudible] grandfathered domains under the 2013 RAA it goes too far, though.

So, basically, I have no problems with having the recommendation without the reference to the grandfathered domains as in only applying to new policy.

ALAN GREENBERG: Excuse me. We seem to have three distinct statements in this recommendation which sound like they're related but are not. The first

one says all new domain registrations should adhere to the WHOIS requirements in 2013 or whatever the current one is.

SUSAN KAWAGUCHI: Or the latest implemented.

ALAN GREENBERG: Yeah, or the latest whatever it is. My way of saying that. Then, once a policy is implemented, it should be 12 months to actually adhere to it. So far, we haven't mentioned the grandfather clause. Now, right now … One of the problems I think in here is we are interchangeably using the term RAA and policy.

SUSAN KAWAGUCHI: Yeah, I agree with that. That's my mistake.

ALAN GREENBERG: You can enact de facto the way things are done, either by policy, if it is within the picket fence, or by negotiations, in which case, it is not policy, but it's effectively the same as policy. It's a contractual term and we're using the term interchangeably, and therefore …

UNIDENTIFIED FEMALE: [off mic].

ALAN GREENBERG: Okay, good, because we could, in some future RAA, negotiate a WHOIS term which is never policy, but we would want it to be implemented anyway, so I think we have to tighten up on our use of words, aside from anything else. Go ahead.

SUSAN KAWAGUCHI: So, we can't … The WHOIS Review Team can't do contractual language. I mean, we can't propose contractual obligations, right? We can only propose … Okay.

ALAN GREENBERG: Anything that we want to see done, I believe we should be instructing the board to either negotiate or initiate a PDP. Either of them are guaranteed. Both of them have the same net effect.

SUSAN KAWAGUCHI: Let me just say my [inaudible] first. So, what if we skip everything in this recommendation and say a new policy should be created to ensure all gTLDs adhere to the same WHOIS requirements? We might need more detail in what WHOIS requirements.

But, what I think is the problem is that we have different groups of domain names, depending on when they were registered, that are treated in different ways. And I think for a sound policy, all domain names should have to adhere to the same policy or contractual language, I guess. So, I guess we could create a new policy. We could say new policy or contractual language, but the whole point of this was

that we shouldn't have domain names for the last nine years pertaining to different rules.

NEGAR FARZINNIA: I just wanted to make a quick comment regarding the language of the recommendation, and Chris can of course correct me if I'm misstating this. I don't believe the board has the remit and the authority to mandate an initiation of policy. Obviously, that goes to GNSO and other groups within the community.

CHRIS DISSPAIN: No, the board can. Yes, sorry, [inaudible].

NEGAR FARZINNIA: Correct. So, I just want to make sure we are mindful of the language used in the recommendation, so that that request can be passed on to the appropriate groups if need be because wording becomes really important.

ALAN GREENBERG: Negar, that is why I said any request we will make regarding policy, in lower case B, will be either to request the board negotiate, or cause to be negotiated, or request the initiation of a PDP.

NEGAR FARZINNIA: You're absolutely correct. Thank you.

STEPHANIE PERRIN: I'm just curious – and I don't like to harp on this picket fence thing, but I kind of almost want a little red light, green light on for all of our recommendations if we are steering into picket fence territory. It's not clear to me what our role is in terms of picket fence items, and of course I'm perpetually unclear as to what appears to be a picket fence because many of the picket fence items, in my view, are policy, and should be consensus policy, but somehow somebody has managed to grandfather them in as picket fenced off items.

ALAN GREENBERG: If I may, picket fence in the way I've used it, although I have occasionally in the last few months seen people using it in other ways, the picket fence was defined as anything within the contracts that are eligible for changing based on consensus policy. And there is an explicit list in both the RAA and in the registry agreement of the types of things that are eligible for consensus policy. Those are within the picket fence. WHOIS is one of them.

STEPHANIE PERRIN: I would gently submit that those documents are muddy enough than confused enough that that doesn't clarify.

ALAN GREENBERG: Then a registrar or registry could take us to court to say it is not well-defined, and therefore you cannot build consensus policy on it, and that has happened on occasion. WHOIS certainly is within that picket fence.

VOLKER GREIMANN: Just because we can doesn't necessarily mean we should. I'm just looking at the last status report of the ARS again, and on page nine it shows very clearly how over the various cycles that they have done a number of domain names under the 2009 RAA have basically decreased significantly from originally 63.7% in June 2015 to now 30.3%, and while that's still quite a large number, it is a reduction of more than half within two years. It was foreseen that … This only takes into account the numbers where domain names have been registered or transferred. The actual number of domains under the 2013 regime should be much lower because ICANN and the ARS team have no indication of whether user change [inaudible] change has taken place, which would also take a domain name out of that. So, the actual number is even lower than that.

Seeing this trend on a graph and in the numbers, I just don't feel that it is beneficial to make any recommendation with that, with a problem that's actually resolving itself and that's not causing any harm. And that doesn't take into account that policy should be implemented fast. It's just, in this particular case, I think it's a situation that resolves itself. It doesn't cause any actual harm. It would cause exceptional harm and time and effort and downtimes of domain names if we were forced to address this issue manually. I think this will resolve itself and a few remaining ones that will be remaining in another two years, I think, will also not be a problem.

ALAN GREENBERG: I'm sorry, I'm going to get down to some nitty-gritty. We're 15 minutes past a break and three hours behind in our work. If we continue anywhere near like this, we are not going to have a report out, period. So, somehow we have to change our working methods rather quickly. I suggest we take a 15-minute break and reconvene and try to do something. It's a 15-minute break, so I suggest you start it quickly.

[ERIC]: Everybody, this is [Eric]. Please [inaudible]. This is Eric. Everybody, this is Eric. Can you say something if you hear me? Hey, everybody, this is Eric.

ERIKA MANN: [off mic].

ALAN GREENBERG: May we please reconvene, Alice? We are reconvening the RDS WHOIS2 meeting in the afternoon on the first day of our face-to-face meeting. We will be … The schedule calls for us to adjourn this meeting at 5:30 this afternoon. We will run until 6:30. I am suggesting that, in the last hour, assuming we can get to the last hour, we do anything new and safeguarding registrant data. Those are items that Cathrin is not actively involved in and she will have to leave at 5:30. So, our target is to start one of those at 5:30. So, we have an hour and a half. It would be nice if we didn't use the full hour and a half for the rest of compliance. I'll turn it back over to Susan.

SUSAN KAWAGUCHI: Thank you. Lisa kindly edited the recommendation. I can live with this. I don't know if anybody else can.

ALAN GREENBERG: I noted that the word "ensure" in the middle of the last full line needs to be changed, just because the board cannot ensure something, but they can initiate it. We'll do some wordsmithing to make that work.

SUSAN KAWAGUCHI: Okay.

ALAN GREENBERG: I take it we're dropping the other two aspects of that recommendation at this point.

SUSAN KAWAGUCHI: Well, it includes assessing to see if it's a problem and we're not putting in a time limit. That would depend on the community to create that. Does that make sense?

VOLKER GREIMANN: I think it's still missing the question of whether … The question is still if something is missing, is that actually a problem with the registrations that we're looking at? It could be missing certain information, but …

SUSAN KAWAGUCHI: Excuse me. It's specifically the registrant data is missing.

VOLKER GREIMANN: Yeah, but the thing is we're currently now only assessing if information is missing from the registrar, information field, not whether that it actually poses a problem in some aspects. So, I'm perfectly fine with certain information being missing from the registrant field for grandfathered domain names, as long as there's a process in place that ensures that, at some point, these will have to be updated and as long as these domain names are not causing any disruption to third parties. It's ultimately the registrant's problem to update that and I don't feel that we needlessly need to interpose a time limit which the registrant has to come into compliance.

ALAN GREENBERG: Remember, we're only talking about missing at this point.

VOLKER GREIMANN: The thing is it wasn't missing when the registrant made that registration. He provided everything that he was required to provide at that time.

ALAN GREENBERG: What information has been added since?

VOLKER GREIMANN: For example, the e-mail field for the registrant didn't have to be part of the WHOIS record.

ALAN GREENBERG: Do we really believe this is an onerous issue?

VOLKER GREIMANN: I do, because in many cases, we do not know what they would put in there, what they would want to put in there, so it means we would have to contact each and every registrant of each and every domain name that we find after the deadline that still has this information missing and make him update it or else.

ALAN GREENBERG: We could also suggest in the annual reminder letters, for those that are in that situation, that they do that.

VOLKER GREIMANN: Well, that's the WHOIS reminder policy, data reminder policy. We do that anyway.

ALAN GREENBERG: Right, but you can explicitly point out in big block letters.

VOLKER GREIMANN: I would be fine if we put that in there, that there doesn't have to be any suspension or anything like that.

ALAN GREENBERG: You could ameliorate the problem by taking that action ahead of time. Prefer not to have to take a vote on this, but we may have to in this case. Is there anyone else? This is a straw poll, not a vote. Is there anyone else who agrees with Volker that we should not make this a requirement? We have Stephanie and Volker. Pardon me? And Erika is not here. Several people are not here. We'll redo this at some other point. Just leave it in for now. Susan, please go ahead.

SUSAN KAWAGUCHI: Domain names. Can we put up the slide 36? Domain names suspended due to inaccurate information and remain in that state until it is due for renewal. The WHOIS record should be updated to a new status and the inaccurate data removed, as further described below. Policy or contract require that WHOIS indicates whether a domain name is on hold, due to inaccurate data. Domains on server hold due to inaccurate data and WHOIS should not be unsuspended without inaccurate data being [inaudible].

So, there's some issues with this after our earlier discussion, so maybe it's not a server hold. It's a client hold. But, maybe just suspended – domains suspended due to inaccurate data. And I know, Volker, you voiced your opinion about removing the inaccurate data, so maybe we could come to terms on if it's identity theft or something. [inaudible] we talked about just having a consistent process for all registrars to follow.

VOLKER GREIMANN: I think if we can qualify the second inaccurate data, as in data that positively has been identified as inaccurate should be removed. I could

live with that. But, if we say inaccurate data, that just covers everything under the ICANN compliance rule of inaccurate data. Inaccurate data, to ICANN compliance, means everything, whether the street name is misspelled or parts are missing or it's not correctly formatted or anything. We should limit this to this is actually identity theft. This is actually stolen information, because otherwise, we would be removing partially correct data as well and I don't want to go there.

ALAN GREENBERG: So, we're really talking about a domain where the contact information is known to the registrar to not correspond to the original registrant.

VOLKER GREIMANN: Correct.

SUSAN KAWAGUCHI: I'm fine with that.

VOLKER GREIMANN: Like I said, if we could make that change to make it clear in the way that Alan has said, then I could live with that, too, I think. I would have to look at the specific language, but that's the direction I would like this to go.

ALAN GREENBERG: The question is: do we specify what replaces it? This removed you to identity theft or …

VOLKER GREIMANN: I think we would have to have some sort of agreement there how this would have to be formatted because I think a blank WHOIS wouldn't satisfy you because that could be anything. Just using the redacted for privacy would also be misleading, so there should have to be some form of indication of removal that's …

ALAN GREENBERG: Due to ICANN contractual terms or policies.

VOLKER GREIMANN: For example.

ALAN GREENBERG: I'm not trying to word it.

VOLKER GREIMANN: So, we should not say that inaccurate data be removed, but be replaced with a certain placeholder data that would have to be defined.

UNIDENTIFIED FEMALE: So, I think item one here was intended to say that the decision of exactly how those would be flagged is a matter of policy or contract, but you could say the inaccurate data be remedied or something, so that then you're indicating the remedy is what follows rather than implying that you actually take the data out and replace it with something.

VOLKER GREIMANN: Just as an aside, remedy is probably, for the abusive ones, in the realm of the impossible because it means to replace with something that is correct and we may not ever find out who would be the right person to put there, so I would rather not see the word remedy in there.

ALAN GREENBERG: Masked.

SUSAN KAWAGUCHI: Would that be confusing with a proxy?

UNIDENTIFIED FEMALE: How about, simply, where it says … Well, let me just read it. Domain names suspended due to inaccurate information and that remain in that state until it is due for renewal … Wow. I can't even parse the sentence. Where I was going with that is we could just say the WHOIS record should be updated as further described below.

STEPHANIE PERRIN: I had been working on it myself. Do you like: where domain names are suspended due to inaccurate information, and remain in that state until they are due for renewal, the WHOIS records should be updated to a new status and the inaccurate data removed as further described below. I would put a colon there and then one and two. I agree about the remedy, but I haven't come up with anything to replace remedy.

VOLKER GREIMANN: There's another point there I forgot to mention and thank you for bringing it back to my attention. I think we should remove the entire renewal language here because there's nothing that requires a domain name not to be renewed in case of inaccurate data.

UNIDENTIFIED FEMALE: So, it can go year after year after year with inaccurate data.

VOLKER GREIMANN: Correct, unless we want to recommend that deactivated suspended domain names may not be renewed, which I think have all kinds of problems of abuse. We should just remove that language because there's nothing currently in policy I would think that there's high potential for removal if we add that as a policy suggestion.

SUSAN KAWAGUCHI: And would that be [inaudible] item? Just joking. So, my whole point of putting renewal in there was more to get to expiration. What if we put in "and remain in that state until it expires"?

UNIDENTIFIED FEMALE: [off mic].

SUSAN KAWAGUCHI: Well, my whole … Yeah.

VOLKER GREIMANN: [Delete] would probably be the right word because expired domains still resolve for a certain time, can still be renewed, and [unexpired], so deletion is I think …

SUSAN KAWAGUCHI: That's good.

VOLKER GREIMANN: You have the restoration possibility, which also brings it back to life. Deleted at the registry, maybe.

ALAN GREENBERG: The whole problem of domains that are taken over by the registrar, which gets into an ugly situation.

SUSAN KAWAGUCHI: For the registry.

ALAN GREENBERG: Pardon me?

SUSAN KAWAGUCHI: Registry does that, too, sometimes.

ALAN GREENBERG: Well, perhaps, but the registrars have it all in their agreements that they can, so it's … I'm not sure how a registry takes over a domain name. We'll talk about it some other day. Someday.

SUSAN KAWAGUCHI: Let's move on to the next one. Publicized and encouraged to use the bulk WHOIS inaccuracy reporting tool. It just seems like a lot of people don't know about it and it could be helpful to others. Review the WHOIS ARS domain name sample for each region to determine whether or not low submission rates of the WHOIS inaccuracy reporting tool are due to the lack of knowledge of the tool or other critical factors. That doesn't really … Some of these I drafted months ago and they just don't make any sense to me anymore. We didn't give any sort of action and then take …

ALAN GREENBERG: Sorry, I'm having trouble parsing this. Remove the accuracy …

SUSAN KAWAGUCHI: I'm on recommendation 4.6.

ALAN GREENBERG: Low submission rates by whom?

VOLKER GREIMANN: I think the intent behind this, if I can just break this down, is to check the numbers that we see from the WHOIS complaints, put them against

the numbers that we see from WHOIS ARS and see if there's any disparities between the results for incorrect domain name complaints to the number of incorrect domain names found by the ARS and then find out if there's a way to better educate those.

If there's a difference, for example, in South America, you see under the ARS that they have a 20% inaccuracy rate, but you only get 5% of inaccuracy complaints from there, then the differential [inaudible]. Can anything be done by educating people to have better access to the WHOIS inaccuracy complaint? I think that's [inaudible].

ALAN GREENBERG: But, it's saying inaccuracy to the WHOIS … Low submission rates to the WHOIS inaccuracy reporting tool. Okay, not the ARS tool, but the reporting tool. I've never heard that referred to as a tool, sorry.

SUSAN KAWAGUCHI: Oh. Well, we could be back and look and see what ICANN calls it.

ALAN GREENBERG: Process the term or something.

SUSAN KAWAGUCHI: Go ahead, Lisa.

LISA PHIFER: Is that just the relatively low rate of WHOIS inaccuracy reports.

SUSAN KAWAGUCHI: Yeah, [inaudible].

LISA PHIFER: But, Volker has got it right. WHOIS ARS reports, a certain amount of inaccuracy in those countries, the global south, but the reports into the WHOIS inaccuracy pool or whatever you want to call it aren't at the same number. It seems like that's an indication that people are not reporting them.

ALAN GREENBERG: I wasn't arguing with the concept, just the wording of the rates to the WHOIS inaccuracy reporting tool, [inaudible].

LISA PHIFER: My use of English.

SUSAN KAWAGUCHI: Lisa, you're saying that low submission rates of the WHOIS inaccuracy report …

ALAN GREENBERG: The rest changes, not to lack of knowledge about the tool, but the process or something.

SUSAN KAWAGUCHI: So, this one is going to take a little bit. Lili, we changed this recommendation a little bit. The following a valid WHOIS ARS ticket or WHOIS inaccuracy complaint and whether …

ALAN GREENBERG: Change the slide on the screen, please. Seven.

SUSAN KAWAGUCHI: So, we added … Go ahead.

LISA PHIFER: I'm sorry. I just want to make sure that we're accomplishing something at the end of each slide. So, did we agree on the previous one with some rewording?

ALAN GREENBERG: Yes.

LISA PHIFER: No objection. Thank you.

SUSAN KAWAGUCHI: So, Lili, we added where there is a pattern of failure to validate as required by the RAA. A full audit targeting the relating registrars should be initiated. So, we just added … Because at the Panama meeting, there was some criticism that it couldn't just be for one complaint. We'd have to see a pattern.

ALAN GREENBERG: In the discussion we had via e-mail, I don't think there was an argument of the intent, but the wording of it did say a complaint, and that was the thing that was commented on.

VOLKER GREIMANN: Here I am again. I still see that this could be tightened up. I think we can get this in a direction where it would be probably acceptable to the registrar community.

First point. I think an immediate audit would probably be problematic. I think as there is an audit cycle going on, annually [inaudible] registrars that are randomly selected [inaudible] on certain patterns. It could be sufficient – correct me if I'm wrong – if we just recommend that such registrar would be selected automatically to take part in the next audit circle. So, they would be a part of the regular audit program. That would probably also save costs on the ICANN side because, on the ICANN side, the audit program is also very work intensive and cost intensive, and having to do an audit just for one registrar or a couple of registrars every couple of months could probably be quite costly. So, including them, such a registrar just in the next audit cycle would probably be the better choice here.

The second part. I think we should add the word significant pattern of failure, just to make sure that it shouldn't be just minor issues where …

ALAN GREENBERG: I'll tell you why I laughed in a bit.

VOLKER GREIMANN: So, I think the first sentence should still be [inaudible]. I mean, following [inaudible] inaccuracy complaint and then adding the pattern, it still puts the focus on the single complaint and the single ticket and we would like to see the pattern of abuse or the pattern of not doing their job as the qualifying issue. So, following occurrence of a pattern of failures to validate and verify as required by the RAA, evidenced by a number of valid WHOIS ARS tickets or WHOIS inaccuracy complaints should trigger the audit of that registrar within the next scheduled audit cycle. Something like that would probably work for us.

ALAN GREENBERG: A couple of comments. One error in there with four million domains is a pattern.

VOLKER GREIMANN: That's [inaudible].

ALAN GREENBERG: I was agreeing with you. That's why. I don't feel comfortable saying in the next cycle. I don't know what the cycle is or what it's going to be.

VOLKER GREIMANN: Annual.

ALAN GREENBERG: Well, that means we'll wait a year to do it, perhaps, if we pick it on the wrong day. So, I would say that should be subject to an audit, and I don't know what the difference … An audit or a full audit are two different things. I'm not quite sure. Is full audit a terminology that's even used in compliance?

VOLKER GREIMANN: I don't think so.

ALAN GREENBERG: Okay. So, I would say an audit and I would say with undue, due haste or something like that. In other words, it should be done soon. Immediate may be not the right word. Remember, compliance is going to see this and will give us comments, so if the wording is really bad and it's something stupid causing us to recommend they do something really stupid, we'll hear back from them.

SUSAN KAWAGUCHI: [off mic].

ALAN GREENBERG: Use your microphone, please, because there are potentially remote people. Okay.

SUSAN KAWAGUCHI: Yes.

ALAN GREENBERG: I don't remember exactly the wording that Volker used at the beginning, but I think we'd want a target word saying should there be a significant pattern of failure to validate based on ARS data or WHOIS inaccuracy complaints, then take the action. Maybe a combination of the two. It may be one. It may be the other. I think we're supporting this, except for Lili. But, Lili, go ahead before I say anyone is supporting it.

LILI SUN: Just to clarify the background for this recommendation. So, why I proposed the initial language as follows are valid, WHOIS ARS ticket or WHOIS inaccuracy complaint audit should be initiated, because I read from the contractual compliance annual report in 2016 and 2017. The most common issues with regard to registrar compliance on WHOIS inaccuracy are the registrars failing to verify or validate WHOIS information as required by the 2013 RAA.

I remembered Volker commented through the mailing list that this personal perception, actually, it's not. We have the rationale from the contractual compliance and a report to support. It's not maybe [inaudible]. It's not a single fail for the verification or validation. It should be a pattern behind it.

Also, for the … Is it better to replace the word significant pattern of failure or something like … Can we replace it, like if the registrar couldn't provide proof they have fulfilled the validation or verification, if they couldn't provide proof?

ALAN GREENBERG: I guess I would actually do the two together, but I would assume that if there is some pattern noticed … Now, remember, compliance right now doesn't look for patterns. But, if there is some pattern, then implicitly, they have verified individual tickets. They still work ticket by ticket. So, they have the results of a number of tickets that have already gone through in the registrar will say, "Oops, okay, I'll fix it." Now, one error, mistakes happen. Two errors, mistakes happen. 49 errors, you start wondering: was it a mistake? Okay, right.

So, if by the time you have a pattern you already have a series of interactions with the registrar, according to the way contractual compliance works right now …

So, yes, they fix them one by one, either by deleting the domain name or fixing the information, but clearly, you have noticed there's something funny with this registrar and I think an audit at that point is quite reasonable.

So, you don't have to verify with the registrar essentially at that time because you already have a number of times by processing the tickets. Volker?

VOLKER GREIMANN: Yes. Thank you, Alan. One of the worries that a lot of registrars have with this proposal is also that if it's not worded correctly, then any old WHOIS inaccuracy complaint and [inaudible] occurrence could also be interpreted as part of a pattern. We should be very clear that when we

are saying that we are looking for a pattern of verification, [inaudible] only applies to such cases where the way the actual … The registrar fails to validate or appears to fail to validate, and excludes specifically all those cases where the inaccuracy complaint was because of a stolen identity or somebody else's information was put in or [inaudible] information that was put in that wouldn't be met, that wouldn't be triggered by the validation requirements.

So, basically, all complaints that would occur where registrar did its job properly, and through no fault of its own, was triggered with an inaccuracy complaint because those are the majority of [inaudible] information.

SUSAN KAWAGUCHI: I think your concern might – that concern might be addressed just by simplifying, to simply state where there is a pattern of failure to validate as required by the RAA, an audit of the registrar should be initiated.

VOLKER GREIMANN: [off mic].

SUSAN KAWAGUCHI: Yes. So, it's affirmative [inaudible] has been a pattern detected, and in that case, an audit should be initiated.

VOLKER GREIMANN: Just moving back to the first point, I still think, if feasible, this audit should take place as part of the audit program and we could recommend that this not be part of the audit program if that program has already started or is within a half years' time, just to make sure that, if it happened, then it's taken care in the most effective way. But, [inaudible].

For example, if [inaudible] detected one month before the audit program starts, why not include it with that?

ALAN GREENBERG: How about within undue delay? So, due delay is fine, undue delay is not.

VOLKER GREIMANN: And then maybe add, ideally of course, the next audit [inaudible].

ALAN GREENBERG: Presumably, they're smart enough to know that. Let's not go there, Volker.

VOLKER GREIMANN: We're dealing with ICANN compliance here.

ALAN GREENBERG: Lili, are you moderately happy with that? I know we don't have it written, but is someone in a state to read it, to write?

LISA PHIFER: Yeah. I think all it is, is deleting the text, the first three lines and the word "and". Right. Delete the word full.

ALAN GREENBERG: Should be initiated without undue delay, to check.

LILI SUN: But, if we delay the first three lines, there will be a [inaudible]. So, who should the [inaudible]?

ALAN GREENBERG: We can certainly say where there is a pattern, a failure to validate, parenthetically, as indicated by ARS reports or multiple WHOIS inaccuracy complaints and/or. Doesn't hurt if that makes Lili more comfortable.

LISA PHIFER: So, I think there's an implicit statement here, which is you're asking compliance to monitor and detect patterns, and then where there is a pattern.

VOLKER GREIMANN: We should maybe just make a recommendation that compliance should look for such patterns, and if it detects such a pattern, then that triggers.

ALAN GREENBERG: Many years ago when compliance, shortly a year or two after Maguy took over, they proudly showed me the reports that they were running on number of complaints per registrar including breaking them down to type of complaint. They're already tracking it. They just have to decide to do something about it. And that was years ago. And if they scrap that report because they didn't want to know anymore, that's their problem.

What we're trying to do is wake them up and shake them and say if you have evidence, as demonstrated by ARS reports or something else, that there are patterns, take action. I mean, what the audit has triggered, we don't know what the end product of that is. We're simply saying go look. You may find something interesting. I physically don't know what an audit from compliance means.

VOLKER GREIMANN: An audit for compliance is not something that's fun and it usually means at least three weeks of work, manpower, for the registrar and as well for the affiliate resellers, from whom we have to get certain data as well, digging into all kinds of data that deal with requirements from the RAA and policies, basically requesting all kinds of information, all kinds of domain names that has to be dug up from all kinds of databases.

ALAN GREENBERG: Volker, let me ask a question. Do they do audits that are not full audits? Do they have a partial where they want to come in and look at something?

VOLKER GREIMANN: Like I said, this is [inaudible] define term. There are voices within the registrar stakeholder community that postulate that every time they ask for certain information, that would already constitute an audit. So, I would consider what ICANN is doing as part of the audit cycle to be a full audit and everything else to be just an audit, but there is no [inaudible]. There is no such term as a full audit, so we could just say an audit.

ALAN GREENBERG: So, we're giving them, in fact, some flexibility to do what is appropriate based on the problem they're investigating.

VOLKER GREIMANN: Yes.

ALAN GREENBERG: Lili?

LILI SUN: I went through several of the audit reports, actually. There is not so much detailed information in the audit report. Actually, in the report just [inaudible] several registrars are identified for this [inaudible] and there are some deficiencies identified and [inaudible] are fixed. That's it. There is not so much detailed information in the audit report.

And I agree with you, actually, this recommendation maybe the actual outcome is just to urge the compliance team to have a look at the

problematic registrars. The outcome is still hard to see what's the concrete outcome.

ALAN GREENBERG: But, given that we know they have said they do not look at patterns, they just handle complaints that come in one by one, even if they come in on the bulk tool or through an ARS, they simply handle them one by one and all we're saying is you have to actually look for patterns. I think we're in good shape at this point. Lisa?

LISA PHIFER: So, here's the text I have, possible text I have in front of me. Tell me what I've missed. ICANN compliance should detect patterns of failure to validate WHOIS data as required by the RAA. When such a pattern is detected, an audit of the registrar should be initiated to check if the registrar follows WHOIS contractual obligations and consensus policies. Sections should be applied if deficiencies are identified.

LILI SUN: Lisa, [inaudible] linkage with WHOIS ARS or WHOIS inaccuracy complaint?

LISA PHIFER: That's how they would detect the patterns, correct?

ALAN GREENBERG: I think Lisa is saying that's the only way to detect the pattern, so we don't have to mention it. Volker?

VOLKER GREIMANN: Yeah. Throwing in the wrench again, just looking at the last couple of audit reports, from memory I think the number of registrars that actually went through an audit without any deficiencies was significantly under 50%, simply because of the way that ICANN has been dealing with the audit results. Basically, if a registrar provides an answer that the registrar was confident was sufficient but the external third-party that did the audit review couldn't parse because they didn't know the lingo or they required additional information or [inaudible] deficient. So, even though the registrar was then afterwards able to show that he has actually all the processes in place, provide additional information, this was not corrected. This was still noted as deficiency in the first pass and it was just resolved as part of the [inaudible] iteration.

So, just the word deficiencies might be, again, inviting compliance to be overreactive if significant deficiencies relating to the validation of verification requirements.

It makes it longer, I know, but I think we should be very targeted in here in what we want to occur.

ALAN GREENBERG: All we're asking them is to do an audit if there are apparent deficiencies in verification and to take action if there are … If the audit proves that

there are, indeed, issues. So, adding the modifiers that say this is in regard to WHOIS inaccuracy I think is not unreasonable.

VOLKER GREIMANN: And we should always say verify and/or validate because those are different terms and different requirements for different parts of WHOIS. So, we should have both words.

ALAN GREENBERG: Let's get some words there. This is not the final path. We'll have comments made on it. We'll have an opportunity to reword in any case. We're going to look really, really bad if we don't issue a report in the next few weeks. We did make some commitments.

VOLKER GREIMANN: I know, but to me, image is secondary. Having a good result is primary.

LISA PHIFER: Okay. So, do we feel like we have a tentative agreement on that? Granted, we have to bring the words back, but … Good.

SUSAN KAWAGUCHI: 4.8, direct contractual compliance to proactively monitor – slide, sorry. There we go. To address systemic issues, a risk-based approach should be executed to assess and understand inaccuracy issues and then take the appropriate compliance actions to mitigate risks in systemic lengths.

So, this was to get at the [inaudible] as part of the discussion in the previous one is that ICANN just takes a complaint and acts on it. They're always reactive. They're not proactive. So, we're trying to get them to proactively monitor, using the tools they have. They have all the [DAR] information and they have other sources of data on abuse from the CTO's office, but they don't use that to take any compliance action.

ALAN GREENBERG: They also say that they talk to people, such as the Anti-Phishing Working Group. They have no formal relationship with them, but they do talk to them. But, they have no mechanism for taking information from these people and acting on it, other than if they file one by one complaints. So, that was an example of the types of information that they are essentially ignoring right now.

STEPHANIE PERRIN: I may be guilty of proposing this language, so apologies, but I think we need to add a few words at the bottom of that recommendation. Take the appropriate compliance actions to mitigate risk in complaints which demonstrate patterns of abuse, patterns of whatever they're patterns of. Because it's not that the complaints are systemic. I mean, there could be a systemic complainer, but [inaudible], for instance, Facebook filing in complaints. But, that's not what we're driving at. We're driving at complaints that demonstrate a pattern of abuse that needs to be investigated as opposed to a one-off.

NEGAR FARZINNIA: I think I agree with your intent, but my understanding is this is not complaint-driven. This is [inaudible] to actually look at activity and draw their own conclusions as opposed to being kicked off by a complaint or a ticket.

STEPHANIE PERRIN: Right. So, maybe what we need to do is … A risk-based approach should be executed to assess and understand inaccuracy issues and then take …

ALAN GREENBERG: A suggestion is being made to just replace the words complaints with something else.

STEPHANIE PERRIN: Yeah, but what?

ALAN GREENBERG: Abuse for this first [inaudible].

STEPHANIE PERRIN: Systemic abuse.

ALAN GREENBERG: Issues, abuse.

STEPHANIE PERRIN: It could be abuse or it could be just sloppiness or technical problems. I don't like issues because it's so vague. If we could enumerate with a nice series of three. I'm looking at Volker to think of the three because I can't. There's abuse.

ALAN GREENBERG: We're already saying and understand inaccuracy issues, and then take appropriate compliance actions to mitigate them. Yes, but your last ticket you can complain about.

VOLKER GREIMANN: I [inaudible] complaining. It's just an idea that I just had. Sometimes, compliance might actually detect something in monitoring that is an issue which is not covered by policy and that might actually lead into an issues report or a trigger for the work. So, maybe we should also ask compliance to feed those results back to the community in some form to investigate whether there is certain problems that need addressing by [adding] a new policy. Should we include something like that? Like I said, they might detect something that is not a compliance issue, actually, because there's no policy covering that, but still may be helpful to address in the future.

ALAN GREENBERG: Drop the word compliance and it does that.

STEPHANIE PERRIN: So, if you added a comma after the first sentence, systemic issues, and said, "And report on them to the community," would that solve that?

VOLKER GREIMANN: [off mic].

STEPHANIE PERRIN: Right, but they're going to proactively monitor and enforce those required to address systemic issues, comma, and report to the community.

ALAN GREENBERG: I wouldn't do that. If the systemic issue is with one registrar, they're not going to report on it as such. And they are obliged to report in a more general sense, without naming names, to everything. So, I'm not sure we've gained an awful lot.

STEPHANIE PERRIN: Fair enough.

ALAN GREENBERG: But, we're only talking about contractual compliance. By dropping compliance at the end, we're saying they can take a variety of actions. They can take the unusual action of coming to the GNSO and saying, "We need a new policy because."

STEPHANIE PERRIN:	Have they ever done that?

ALAN GREENBERG:	No. They have sent things into negotiations, but they have never, to my knowledge, come and tried to feed things into the policy process, despite having pointed out to the [inaudible] numerous times they should. Their position is, if it's policy, we enforce compliance. It's not our job if it's not policy. Do we have closure on this?

LISA PHIFER:	So, we're effectively agreeing to the words that are on the screen, except that in systemic complaints is just going to be replaced by "them".

ALAN GREENBERG:	No. I think we shortened it even more. Take a risk-based approach and to understand inaccuracy issues and then take appropriate actions throughout compliance to mitigate, to address them or mitigate. Mitigate is a nice, fancy word. So, yes, you were right, but we also were dropping the word compliance before actions. Susan, back to you.

SUSAN KAWAGUCHI:	My brain. Privacy and proxy registration data providers must adhere to the current RAA requirements for verification and validation of the underlying registrant data. So, this gets to a recommendation that Lili actually came up with first and then I put out to the list Volker had some issues with it because this falls in the [PPSAI] final report, but

considering how slowly the accreditation process is developing, I thought it was worth that we bring it up here because of in our recommendations because it may get some traction here that it doesn't get the accreditation, because if accreditation implementation fails, at least this is also going to protect it.

ALAN GREENBERG: I support the intent, but remember, we can only ask the board to negotiate something and they have no one to negotiate with. And if it goes to a separate PDP, chances of creating a PDP to do just this is virtually zero. So, the only privacy and proxy providers we could do anything with are those that are captive to our registrars, and they, I believe, are already required to do this, I think.

For instance, if GoDaddy does a registration and you tick off the privacy box, I believe even though the registration ends up the WHOIS shows that it's domains by proxy, I believe GoDaddy still had a responsibility to do the verification. I'm not 100% sure because they handled the paperwork, but it's not their domain. The registrant of record is domains by proxy and that's accurate.

So, we could certainly pass policy or negotiate to make sure for captive privacy proxy providers that they do it. We can't force anyone to.

As I said, I support the intent. I'm just not sure if there's anything that's really going to do in the end. Volker?

VOLKER GREIMANN: Yes. First of all, I don't know what a privacy proxy registration data provider is. I think data is [inaudible] circumstance. The main point is that this is something that the PDP has already decided that's in the recommendations that have been approved by the board. This is something that's currently in implementation. The only thing that's really holding up implementation right now is the waiting for the legal review that ICANN is currently undertaking. Then, it will go to public comment. There's two issues that are [inaudible], one of which comes from the Public Safety Working Group, and the other one, I don't quite remember right now, but I don't see any reason why this working group, this implementation should fail at this time.

ALAN GREENBERG: [off mic].

VOLKER GREIMANN: That's not an issue. Pricing is not an issue. But, that's between ICANN and the providers, ultimately. I feel that we make the recommendation that by the time this report comes out, it's already implemented. I think that might make us look a bit stupid. I think we should focus on the things that we identify as problematic, not on the things that are already solved or are in the process of being solved. Just like we're not commenting on the EPDP, we should also not be commenting on the final [inaudible] of the implementation review team of a PDP that has already finished its work.

STEPHANIE PERRIN: I'm just concerned. The pricing is not just between the registrars and ICANN. I mean, there are registrants in there, and if these things are priced out of the market and they can no longer get them, then this has been a massive policy failure because if the move to create accreditation systems effectively removes the tool for people and GDPR is not going to apply in enough countries that there are still going to be people in need, domains by proxy. I don't mean the brand, I mean the phenomenon.

So, I think somehow we don't have this anywhere in our observations and we should observe it.

SUSAN KAWAGUCHI: I think that actually is in the privacy proxy section, though.

CHRIS DISSPAIN: I want to make sure I understand correctly. This is something that's already happening. Is that right? Or are we concerned that it isn't already happening? That privacy proxy data providers are required to adhere or are going to be required to adhere to the RAA.

ALAN GREENBERG: If the new privacy proxy policy ever gets fully implemented and privacy proxy services are accredited by ICANN, they are required to do the same checking.

CHRIS DISSPAIN: So, any other circumstance in which this recommendation would be of value? In other words, is this recommendation worth anything if those things don't happen? And if those things do happen, it's going to happen anyway.

ALAN GREENBERG: If those things don't happen and we could get this implemented by board negotiation or a new PDP, then it would affect the privacy proxy services that are wholly owned by registrars that we have agreements with.

CHRIS DISSPAIN: I'm just [inaudible] to know quite why … I mean, what base are we covering by having it in there?

ALAN GREENBERG: The belief that this whole privacy proxy thing may fall flat on its face.

CHRIS DISSPAIN: But, the board's not going to instruct a PDP on that if [inaudible] has already recommended it [inaudible], is it? That doesn't achieve anything.

ALAN GREENBERG: Sure it does. It means that we know the information that the captive providers have when there is a reveal, if and when there is a reveal, that it will be data that's more usable or more likely usable.

CHRIS DISSPAIN: I must be missing something or maybe I'm not making myself clear. If this is already down to happen and it doesn't happen …

ALAN GREENBERG: The existing privacy proxy PDP.

CHRIS DISSPAIN: Yes. If this doesn't happen, then why would you imagine making a recommendation that the board does it again is going to make it happen?

ALAN GREENBERG: Because it's for a subset and there's no price associated with it. Stephanie?

STEPHANIE PERRIN: As I understand it, this is already in there in the IRT. But, I think there's a risk that this thing will fall flat on its face, in which case, this recommendation then provides a marker for any further work. And there's a pretty good chance, I would bet – at least I could tell you what we'll be fighting for on the EPDP, is that we have to very quickly review all these other policies to see whether they're in compliance with GDPR, in which case, there might be some revision of this particular group.

CHRIS DISSPAIN: Let me be intentionally practical for a second. This recommendation comes out … Sorry.

STEPHANIE PERRIN: Not [inaudible]. I'm talking, Chris.

ALAN GREENBERG: Why are you trying to be different than all the rest of us?

CHRIS DISSPAIN: [off mic].

ALAN GREENBERG: Excuse me, your microphone.

CHRIS DISSPAIN: This recommendation arrives on the board's desk in December, whenever. The board looks at it says, "Okay, well, that's great, but it's already in an existing PDP, so we'll just ignore it for now." Then what? I mean, what are we going to say? Are we going to say, "Thanks very much for the recommendation. It's already happening." If you wanted to write a recommendation that said if the following things don't happen, then we recommend you do this, that might make some practical sense, if you think you can do that. But, writing this as it is right now is just going to get skated over because it's irrelevant. The board is going to look at it and go, "But, this is already happening in a PDP, so why do we care?"

ALAN GREENBERG: If six months later, the board has to give an answer, and at that point, the board has to reject or accept. You can't say, "I'll keep it in my back pocket in case it's ever relevant."

CHRIS DISSPAIN: But, that's my point, isn't it? What you seem to be saying is, so say in a years' time, how would we respond to this recommendation? If the relevant PDP is still carrying on for very good reasons … If the GNSO – who knows? Exactly. I mean, all I'm saying is … I'm not quite clear what we're trying to achieve by … If the goal is to achieve this happening no matter what happens, then I'm not sure this actually does it.

ALAN GREENBERG: Certainly, the timing is going to be problematic for when it comes. I'll go to you in a moment, Stephanie. I wonder if this makes more sense being a recommendation or a something out of the privacy proxy one than out of this one. Maybe we can figure out a way to word it there. Stephanie, please go ahead.

STEPHANIE PERRIN: I like your workaround there, Alan. One of my problems is this kind of sticks out under compliance for the reasons that Chris has described. It doesn't stick out under the privacy-proxy. It's just one more thing under there. And there is value I think in putting out our markers because three years from now, when the next review team looks at it, maybe nothing has happened. Who knows?

CHRIS DISSPAIN: I'm not sure if this is helpful or not, but first of all, taking it out of compliance makes sense to me because [inaudible] belongs there. I think that … It seems to me, we're recognizing the following things, recognizing, first of all, that this is without any doubt policy. So, you can't make it happen. All you can do is to say the board should initiate a PDP. Is that right? Okay. So, first of all … Well, which is it?

ALAN GREENBERG: It's either.

CHRIS DISSPAIN: No.

ALAN GREENBERG: Yes. May I interrupt for a moment?

CHRIS DISSPAIN: Please do.

ALAN GREENBERG: Volker, let me ask you, as a representative registrar of the honorable type, not the sleezy guys … Just pretend for the moment. Okay. If ICANN asked the big registrars, most of whom are the ones that are sitting in negotiations, the ones who have their own privacy proxy service that they offer, do you mind words that says if you are going to register a

privacy proxy domain with your own internal [inaudible], whatever, then the actual registrant as opposed to the registrant of record, that you verify that information just like you do for a regular domain, would that be something that would likely be acceptable? And you're not empowered to accept on their behalf. Now, you're probably already going through that verification process.

VOLKER GREIMANN: Well, it's an easy one because we always validate and verify the underlying data, not the data that is actually displayed in the WHOIS. For example, due to privacy services that we operate, if we know the data of the other underlying registrant, we verify and validate that. So, it doesn't matter if we flip the switch that displays the privacy data instead. In our database, we have the real data and that's what we … That's the data that we verify, validate. The question is whether we should recommend that or not.

ALAN GREENBERG: I understand. My question is do you believe registrars in general would accept that additional term in the RAA?

VOLKER GREIMANN: I do not have any indication of any registrant that wouldn't.

ALAN GREENBERG: Registrar, you mean.

VOLKER GREIMANN: Registrar that wouldn't, yes. I assume that's best practice, but I don't know how other registrars do it.

ALAN GREENBERG: I'm just giving indication to Chris that it might be something you can negotiate also, not just a PDP.

VOLKER GREIMANN: Just the thought of opening up the RAA for an additional negotiation is going to cause …

ALAN GREENBERG: It's going to have [inaudible] anyway. My only concern … I think it is a good thing. I think it should be under privacy proxy, but I'm not sure how to word something which is a recommendation if.

CHRIS DISSPAIN: That's the thing, isn't it? That's the challenge. I mean, you could say something like recognizing that it is currently part of the policy development process by the following da-da-da-, in the event that, for whatever reason, that should not be sorted out within a reasonable period of time, then … You could do that.

ALAN GREENBERG: A conditional recommendation.

CHRIS DISSPAIN: I don't think there's anything that stops you from doing that.

ALAN GREENBERG: Which gets released the day the privacy proxy thing dies.

LISA PHIFER: The reason I raised my hand is I think we have a recommendation somewhat similar which says that the board should monitor something, and in the event that something doesn't happen, this is the recommendation.

ALAN GREENBERG: Thank you, Lisa. You've earned your pay, as usual.

VOLKER GREIMANN: Isn't it nice that Alan determines whether someone has earned their pay or not?

ALAN GREENBERG: Luckily, she gets paid regardless of what I say. Shows how important I am. Does the owner of the privacy … Excuse me, owner of privacy proxy, do you accept that this be transferred to you with those additional weasel words?

VOLKER GREIMANN: Please put it in my list, Lisa.

ALAN GREENBERG: Next.

LISA PHIFER: That was it on recommendation … There's a slide on gap assessment, but I can take care of this.

ALAN GREENBERG: Then, I'll turn it over to Lisa and dare her to do a summary. Sorry, I'm getting sort of tired here.

VOLKER GREIMANN: Just one addition. I'm just looking at the RAA and I think we could even propose a process for this. I think the easiest way to do this for the board is to recommendation an amendment to the RAA. There's a process for that. It would be very limited. It could be targeted just on this one amendment, and then we could say that the board should negotiate with the registrars to amend the RAA to this effect. That would be a process that's established in the RAA. It wouldn't open the RAA to a complete renegotiation and could be targeted in case the PDP or IRT as it is now fails, which I actually don't assume could happen. [inaudible] there.

ALAN GREENBERG: Thank you, Volker. There's a [inaudible] on you to your colleagues that you're recommending the RAA be changed. Would you like to say that on the microphone?

VOLKER GREIMANN: No.

LISA PHIFER: So, Volker, I'm giving you the action to actually propose language around that. To recap where we are on compliance, we made a decision early on – could have been just after lunch – that no further recommendation was needed regarding the compliance reporting structure. We gave ICANN Org the action to ask GDD what is the process and criteria used to determine the domain names that are reviews within the ARS. That was further investigation of the high rate of [inaudible] generated tickets that are closed with no action.

When we discussed the grandfathering issue, we reached the decision that we'd site the latest percentage in the report. That is 30%. And note the overall downward trend.

We reached a decision that we'd add a recommendation that policy requirements and processes should be put into place to provide consistency when domain names are unsuspended and possibly a policy or best practice for indicating why a domain name is suspended.

So far, does this sound familiar, even if hours ago? Alright.

Then, ICANN Org has an action to ask compliance for domain names that are rechecked after suspension what percentage are found to be unsuspended in total and [inaudible] as a percentage that are still non-compliant once unsuspended.

Okay, that brings us to recommendation 4.1 was about metrics. Susan has an action to refine recommendation 4.1 text to address some concerns that were raised about risk-based approach, make sure that it shows that the RDS is the scope of the policy affected, and that GNSO would be responsible for implementing it.

For recommendation 4.2, which was about grandfathering, we reached an agreement with two objections, Volker and Stephanie, that grandfathered domain names should be assessed to determine if information is missing from the registrant field. If statistically significant number of domains lack registrant data, then the board should initiate action intended to ensure that all gTLD domain names adhere to the same registration data collection requirements. I suspect we'll be revisiting that to try to eliminate the two objections.

For recommendation 4.3, that was about inaccurate data in unsuspended domains or domains that get unsuspended. Susan, you had an action item to refine that recommendation to address the issues that were raised, that it applies only in cases where contact data is known to the registrar to be incorrect and to domains that remain in that state until they are deleted, to not replace the data but actually to update the record with something.

Recommendation 4.5, which is about bulk outreach, there was no objection. There was agreement on that one as is.

Recommendation 4.6, which is about the low submission rate, appears to be low submission rate in the global south, we agreed to it rephrased in this way. Review the WHOIS ARS domain name sample for each region to determine if the low WHOIS inaccuracy report submission rate in some regions are due to the lack of knowledge of WHOIS inaccuracy reporting tools or other critical factors.

For recommendation 4.7, we agreed to the recommendation with this rewording. ICANN compliance should detect patterns of failure to validate WHOIS data as required by the RAA. When such a pattern is detected, an audit of the registrar should be initiated to check of the registrar follows WHOIS contractual obligation and consensus policies. Section should be applied as significant deficiencies and WHOIS data validation or verification are identified.

Then, recommendation 4.8, which was the one about proactive monitoring, the rephrasing was direct contractual compliance to proactively monitor and enforce as required to address systemic issues. A risk-based approach should be executed to assess and understand inaccuracy issues and then take the appropriate actions to mitigate them.

Then, the new recommendation is still on screen, deferred to the privacy proxy section where Volker has an action to provide a new wording. I'll send you the draft text, Volker. And it's almost 5:20.

ALAN GREENBERG: I think we decided we are going to use the next hour to do anything new and safeguarding registrant data. Is that correct, Cathrin? So, we're actually going to try to do the [inaudible] in close to 30 minutes and have a few minutes to summarize. That would be sort of nice before we run off to the hotel and then dinner. Sorry, I've lost track.

In that case, Cathrin, thank you for joining us and we'll see you tomorrow morning. We have to decide what time we're starting tomorrow morning. We tentatively decided in our leadership meeting a few days ago – or maybe it was in the plenary, I've lost track – that we would start at 8:00 tomorrow morning. Breakfast may well not be delivered until 8:30, so if you desperately need a coffee or something like that, then get one at the hotel or somewhere along the way, but we will start at 8:00 sharp if everyone can be here, please. That will give us another little bit of time to try to make up what we've lost today and to benefit from Cathrin's presence with us. Thank you for being here. You are released to go now, if you wish.

CHRIS DISSPAIN: Alan, I'll be late. I have a call that starts at 8:00, but I'll get here as soon as I can.

ALAN GREENBERG: If there's any subject that you'd prefer us talk about, tell us before we leave. I'll give people two minutes for a bio break or whatever and then we'll reconvene very shortly. Are we all here? I think we are. Stephanie, all yours. Stephanie, all yours soon.

STEPHANIE PERRIN: Okay. My apologies for sending this literally five minutes ago. No excuse. Basically, my task was to go over this and fill in under the … Basically, under three. There are some empty boxes which still need to be filled in. But, the big thing is under four to come up with wording that explained the situation that we found with the failure to address WHOIS as a strategic priority and take note of the GDPR.

So, I had some language on the slides, but of course that was slide language, in Panama and this builds it out more into more fulsome language. If you'd like, I can read it.

ICANN's current focus on compliance with GDPR appears to indicate that the new regulation had caught ICANN [inaudible]. Given the fact that the GDPR was initiated in 2012 and most global corporations acted promptly to ensure compliance as soon as the regulation was approved, the review team notes that ICANN was not swift in ensuring its compliance with national law. I think that's a fair thing to note.

A greater focus on compliance of existing data protection law earlier, e.g. EU national legislation that complied with directive 9546, would have been beneficial and in keeping with ICANN's obligations to comply with national law.

This failure to address the need to comply with data protection law is a risk to the organization and the community and impacts the ability to develop a sound strategic plan for registration data. The lack of a strategic priority on a central WHOIS policy based on consensus policy compliant with law and in keeping with acceptable risk management

practice impacts several other policies. It also leads to disjointed development of policies and procedures, which produces a lack of congruity. And that's it.

ALAN GREENBERG: Second line of the second bullet near the end, develop. Okay. Lisa?

LISA PHIFER: This just might be the lateness of the hour for me or earliness of the hour, I don't know which it is. Lack of congruity. Can you explain what you mean?

STEPHANIE PERRIN: Well, basically, we have disparate policies. So, we have a thick WHOIS policy that really pays no attention to the fact that we've got a data escrow policy that allows people to opt out in case of non-compliance with – privacy shields killed, as was safe harbor. Both the thick WHOIS policy, which went through really without, I would say, significant data protection review and the escrow policy which has had a lot of pushback since the [Shratus] decision from the European registrars. Both of those are sort of incongruous, and yet it's the same problem. Can you export data?

Quite frankly, these all belong, in my view, in a large congruent WHOIS policy where you deal with all of these things sequentially.

CARLTON SAMUELS: This morning, we had a conversation about the lack of … Well, let's say ICANN's showing any kind of knowledge of legislation around the world think about might impact its whole operation [inaudible] policies. So, that's the gap that we actually acknowledged this morning.

There's just one thing, though, that I thought I would point. Maybe it's just me. But, I don't think ICANN has ever believed it should follow national legislation. It says that the contracted party wasn't sure that it was following [inaudible] legislation. So, it's not ICANN itself that is engaging that.

STEPHANIE PERRIN: And maybe that needs a little wordsmithing, because I understand that, but it does have the throwaway words "comply with national law" so it puts it in there. It doesn't itself feel that it has to do it, or at least it's taking the legal position that it doesn't have to, I would argue. But, I think it's not like ICANN doesn't know any better. It does. It's taking a legal risk and it feels it's not going to get burned, just like, say, domain tools takes that legal risk. Maybe it's going to get [inaudible] now. Who knows? But, it's not like ICANN is not aware of data protection law. Every company that shows up at ICANN has already been working on their data protection compliance.

ALAN GREENBERG: A couple of things. ICANN, of course, is subject to national law where it operates and that's simply the fact or a reality of being a corporation with offices somewhere. The other reference to national law, I believe, is that it will … Its contracted parties are obviously obliged to follow

national law where they exist and ICANN will not require them to do anything that violates that.

Again, it's not ICANN that follows national law in jurisdictions where it doesn't operate. There's no obligation for us, for ICANN to follow national law in Afghanistan if it doesn't have offices in Afghanistan. That's the whole concept of national law, [inaudible].

I think this section on anything new is what are our comments on new policy that has come along since the first WHOIS. I think these paragraphs – and I don't know exactly where they fit or where they will need slight rewording – fit as examples of how ICANN has not implemented, did not implement WHOIS as a strategic policy. And I think it fits in that section, and probably would fit in pretty easily, although I don't have the document in front of me. And I think it would make more sense to put it there and have more power there where we're ramming home the fact that ICANN ticked off that green box [inaudible] made it a strategic policy, but then clearly they didn't.

Now, there's already some words there about GDPR. These may be a better replacement or something to merge with it. Stephanie?

STEPHANIE PERRIN: I take your point, Alan. I think this is a big enough problem you could put it in both. It's not like we're coming up with a recommendation here. But, if there's one major thing that is new, and fair enough for the review team not to have pointed to this, because the review team completed its work around the time of the tabling of the regulation. And when I say table, I mean placing on the table, initiating. So, it was

anybody's bet what was going to happen and there was a massive lobbying to push it back and certainly I never thought they'd get 4% fines through. So, it is genuinely new since the last review team commented. So, that's why I would argue for it being here.

ALAN GREENBERG: Yeah. My only comment is the intent of the anything new section was how do we address policies that have come through at ICANN. Do they have implications on WHOIS? This is really anything new that happened in the world around us, and that's why I think it fits very much in strategic policy because that's where we should have noticed it. Not as a result of the policies that were already made. I don't [inaudible]. I just think it fits better there and will have more power there than stuck in here where no one will [inaudible] recommendations.

STEPHANIE PERRIN: Allow me to make the argument that under strategic policy, somebody should have been paying attention to those of us who were arguing for privacy for the last 20 years. Forget the regulation. The fact that ICANN continued to ignore privacy as late as 2012, that is a failure under strategic priority to address that major concern. But, that's different from GDPR. GDPR is new and they're associated because, if you had been paying attention to data protection, then you would have noticed that GDPR was tabled and you would have been following it or following its progress.

ALAN GREENBERG: No. May I? We spent a good 45 minutes saying exactly that this morning. I know you weren't there, but the whole point was we're not paying attention to what's going on in the world. That's why I think it fits relatively well there. We had … Chris?

CHRIS DISSPAIN: I agree with Alan simply because of this. I think if you put it here, it's going to be dismissed as rhetoric. If you put it underneath the specific strategic priority thingy, then it's very clear that you are commenting in respect to a previous recommendation and I think what Alan says about making it more powerful is precisely that. It becomes much more powerful if you [inaudible] into the recommendation.

ALAN GREENBERG: We have a long queue. Lisa, Volker, Carlton.

LISA PHIFER: I just wanted to read what we decided this morning when Stephanie wasn't with us to kind of bring us all up to the same place. On strategic priority, Cathrin actually took away the action to formulate this into a recommendation text, but we agreed to add a recommendation that ICANN should put mechanisms in place to take a forward-looking approach regarding legislation that may impact WHOIS.

ALAN GREENBERG: My real worry is if we leave it here, since there are no recommendations, it disappears. Volker and then Carlton.

VOLKER GREIMANN: Yes. I absolutely agree with that. I think everything that you are writing here under the [inaudible] description we could also put under strategic priority and there we have something to back that up where we're saying ICANN should do this because of that. We spent the morning discussing that and I think we are unanimous on that being the reason why we are only giving a partial on the implementation in the strategic priorities and I think having it there makes more sense, and here we can still put in a reference that we're saying [inaudible] GDPR has been an impact, and it would've been here, but we found it better to be there. Just make a reference that we realized that there's something new there and point to the section of strategic priority. Then, we just add that language there that you proposed and make sure that it is backed up with a recommendation. I think that's the best solution here.

CARLTON SAMUELS: There are two things. Post final report, [inaudible] report. Two pieces of consensus policy that came out. The thick WHOIS came out of that and the data reminder policy came after that. So, you could … And you mentioned them as part of what you're thinking about. I think you could develop something around those two because they came after the [inaudible], after the WHOIS first report. Data reminder policy was in … WHOIS reminder policy 2013.

ALAN GREENBERG: I'm having [inaudible] WHOIS reminder has been around for eons, for [inaudible] age.

CARLTON SAMUELS: Thick WHOIS came after … No, it's not data reminder. Yeah. There's two of them, I know. [inaudible] the other one.

ALAN GREENBERG: I'm confused. We've already gone through all of the policies. We analyzed them. We said the only recommendations that come out of them we are transferring to other sections because they fit more there, and we have no recommendations that are coming out of directly any of the other policies. Are you reopening the whole issue of the anything new? I don't know where you're heading.

CARLTON SAMUELS: No, I'm not reopening anything new. What I'm mentioning is that Stephanie started off by noting that the thick WHOIS policy was implemented and she explained what she meant by the congruency issue between two. That is something that has some resonance to it, because one, thick WHOIS came up and there another one, there's another one. I'll get it in a few minutes in my head. It came after the report.

Two, when she raised the issue of congruency, I thought there was some evidence there to show because she spoke about the data …

ALAN GREENBERG: Escrow.

CARLTON SAMUELS: Escrow policy. I'm saying that if I were Stephanie I'd look at that to see if I can develop something from that, specifically. That's what I'm saying.

ALAN GREENBERG: Remember, the thick WHOIS policy simply put a few domains, one large one admittedly, but a few domains in the same pile with the other 1400 domains or something like that.

CARLTON SAMUELS: Big ones. Yes. But, if you look at the numbers they're talking about, and if you [inaudible] the congruency issue, but I think I have what she's saying about that.

ALAN GREENBERG: We're not here to debate what is going to be GDPR compliant and what is not. Either thick WHOIS will ultimately be allowed or it will be killed everywhere.

STEPHANIE PERRIN: That was not the point of my [introduction] on [inaudible].

ALAN GREENBERG: No, no. I know. [inaudible] Carlton. I just don't think it's an issue we want to raise. Stephanie and then Volker.

EN

VOLKER GREIMANN: Just speaking of thick WHOIS, that's something that's been curious and running around my mind for a while since I read the temp spec is that, apparently, ICANN is moving back from thick WHOIS to thin WHOIS again because the registries now have less data in WHOIS than the registrars do and the temporary specification specifically directs the registrar to have more information than the registry for all gTLDs.

So, for anyone looking at WHOIS data, currently the best address to find most information is, again, the registrar and that's true for all gTLDs. So, that may be something that we would like to mention, perhaps, in the anything new section that there has been the thick WHOIS PDP that has decided this, but now with the implementation of GDPR, certain decisions have been made by the ICANN board that are binding to contracted parties that may roll that back or indicate that a revisitation of that might be appropriate and community should form an opinion on that.

ALAN GREENBERG: When we set our scope, we froze things and we cannot keep commenting on everything that happens day by day or this report will never go out. Stephanie?

STEPHANIE PERRIN: Just agreeing with Volker. And that was a conclusion that we actually reached in the EWG was that the registrar was the holder of record … I mean, nobody wanted to use the word controller, but you know. So, I mean, it's one more example of the lack of congruity in the policies. We

have crumbs emerging and all these different pieces that are WHOIS related.

Now, what's my takeaway here? Cathrin is coming up with a text for the strategic priority and the recommendation. Is that it? Do you want me to rework any of this and put it in the other section and do you want me to … I think we have to note that GDPR is something new and point to the other section, right?

ALAN GREENBERG: It's not as if GDPR isn't being mentioned already in our report.

STEPHANIE PERRIN: Well, yes, but do you not think it belongs under anything new? I mean, I think we would look pretty silly if we didn't mention it.

ALAN GREENBERG: I don't really care at this point.

VOLKER GREIMANN: [off mic].

STEPHANIE PERRIN: What the heck, eh? Alright. I will volunteer to rework, pending Cathrin coming up with what she's coming up with.

ALAN GREENBERG: I would suggest you talk to Cathrin tomorrow morning during a break to figure out how you can integrate this into her section.

STEPHANIE PERRIN: Yeah. Sounds good.

ALAN GREENBERG: Lisa?

LISA PHIFER: Actually, Stephanie, did you send your updated draft just to us or to the review team?

STEPHANIE PERRIN: I just sent it to you guys and I'll be happy to send it to the whole group. I just wanted to get it to you before my time came up after the break.

ALAN GREENBERG: Just for the record, who is you guys?

LISA PHIFER: Staff, I assume.

STEPHANIE PERRIN: I just replied to Lisa's gentle nagging last week, which was her and Alice.

LISA PHIFER: So, the path forward, I would suggest, is to share your draft with the full review team indicating that we looked at the text in section four, I believe, that we concluded it would be helpful rationale to include in the strategic priority section and ask Cathrin to incorporate it where she thinks it fits there. I know she's working on that tonight, so giving her the heads up tonight would probably be helpful.

STEPHANIE PERRIN: I will send that out and I will also try and fix the compliance with law words because when I say compliance with law, I mean that the policy should reflect that requirement to comply with local law. I don't mean, obviously, ICANN compliance.

ALAN GREENBERG: Do you have anymore to present? Can we try to pull up strategic – safeguard data, rather. Sorry.

The findings that are in the current document at this point, no effort has been made to protect registrant supply WHOIS data from viewing. That may change as policies adapt to GDPR and other legislation. Safeguarding includes ensuring the data is not lost in the case of registrar or registry failure or unknowingly changed.

Neither registry agreements, nor the RAA make any explicit demands on registries and registrars with regard to data protection or the actions they must take in the case of discovered data breech.

Escrow provider agreements do require commercially reasonable efforts and industry standard safeguards to protect the integrity and

confidentiality deposits but make no reference to timely breech notification. Any discussion on this? Next slide.

Traditionally, all WHOIS data is public. Under GDPR and similar legislation, some or all of that data may no longer be collected or publicly available. Exactly what data may be subject to these new rules is under discussion elsewhere and will not be addressed in the RDS WHOIS2 review team.

Registries and registrars are not explicitly required to use commercially reasonable and industry standard safeguards, nor are any parties, registries, registrars or escrow providers required to notify ICANN in the case of breeches notified. Comments? Next slide.

Alright, the recommendation. ICANN should consult with data security experts – and it does not say contract with anymore, which [inaudible] pointed out we may have people internal to ICANN. Stephanie?

STEPHANIE PERRIN: Sorry, Alan. I'm slow to react to the previous slide. I have been going on at great length on our calls about the requirement, the ubiquity of data breech law. I think we have to be clear here that registries and registrars are not explicitly required to notify ICANN in the event that a breech is discovered, but they would be definitely covered by local law and that may obligate them in fact to notify registrants and other people in the chain of command for the data.

So, it makes it sound like they have no requirements, whereas they certainly do under applicable law, notably California law. That was the first state to have data breech law.

ALAN GREENBERG: Are you suggesting that we put it under findings or issues? I have no problem noting that registrars and registries may well be required under their own local law to disclose breeches to applicable customers. Now, I'm not sure, as an example, if a registrar has a breech, are they required to notify … Their customers are the registrars, not the end users. So, I'm not quite sure how data breech law says people have to be notified.

STEPHANIE PERRIN: I don't know the California law well enough, but it's the individual, the end user, whose personal data is being leaked, released, or whatever. It's not the guys in the [chain] that you have to notify.

ALAN GREENBERG: Okay, but today, under thin WHOIS, for instance, the registry doesn't know who they are.

STEPHANIE PERRIN: The registry might not. They could surely find out. And the registrar would, right?

ALAN GREENBERG:	Well, as I said, I'm not sure whether the registry is required to notify the registrar …
STEPHANIE PERRIN:	Okay, I think we're quibbling here, Alan. The point is that while ICANN in its policies is silent on breech disclosures, relevant law applies. Okay?
ALAN GREENBERG:	I have no problem putting that I guess under findings. It's not an issue. It's not bad that they're required under local law to notify people. Volker?
VOLKER GREIMANN:	Just one thing. One part of this issue, the last part, is actually incorrect. Under Article 3.20 of the RAA, registrar will give ICANN notice within seven days of any unauthorized access or disclosure of registrant account information or registration data. This must include [inaudible] subsection three. So, include data description of the type of unauthorized access, how it occurred, the number of registrants affected, and any actions taken by the registrar [inaudible] response. So, basically, that can be [struck] because that's actually not correct.
ALAN GREENBERG:	Dandy. Do we know if it's also true for registries?

VOLKER GREIMANN: We have to check, but [inaudible].

ALAN GREENBERG: I've been asking for months now and no one gave us that little tidbit. I'm delighted. I didn't notice it myself in going through the RAAs, so thank you.

VOLKER GREIMANN: [inaudible] question because [inaudible].

UNIDENTIFIED FEMALE: [off mic]

ALAN GREENBERG: 320. We need to verify if the registry agreement makes a similar requirement. This is the verb that they used? I thought I actually searched for breech, but maybe that was the wrong word. Disclosure. That's intriguing. Escrow providers are not required to notify about breech but are required to use industry standard methods. Registrars and registries are not required to use industry standard methods but are required to notify a breech. Good consistency, indeed. Volker, we can do that offline. One less thing to do. Fine.

So, Stephanie, you want us to acknowledge the fact that many of these parties may well be required by law to notify the appropriate parties. Okay, that's fine. Make a note of an action item for me for that. And we have a new action item, removing the part about notification of breech

for registrars and maybe registries. Let's go to the next slide. Hopefully, half of it's gone now.

The first part, if I may summarize it, says we should decide whether we need appropriate language in our registry and registrar agreements to make sure that they take appropriate … Hold on a second. Yeah. How data is protected against unauthorized breech, so that addresses what standard should be used, since we didn't want to specify specific words on the appropriate way to describe that.

And the second part, ignoring the part in square brackets for the moment … Oh, no. Sorry. Okay, next paragraph. This is an optional one we were to be debating here. ICANN should similarly consider whether the contractual requirements are required to require registrars, registries, and escrow providers to notify registrants in the event of a data breech.

Now, my concern is, as Stephanie has pointed out, there may well be laws in many jurisdictions requiring them. In the general case, for instance, escrow providers, they don't have the information of who the registrants are. It might be imbedded in data in which they've been entrusted, but among other things, we'd have to get permission from the registrants to use that data.

They certainly, I believe, need to have a requirement to notify the registrar or registry as appropriate and ICANN if there is such a breech. And what those parties have to do may well be covered under their own local law. But, attempting to go back to the registrants I think is a place we don't want to go. Well, the escrow providers don't have access to

that data. The registrar, registries, certainly in a thin WHOIS don't have access, and in a thick one, it's not obvious they have the right to use that data as contact. So, I don't think there's any practical mechanism for anyone other than the registrar to notify about breech.

STEPHANIE PERRIN: [off mic].

ALAN GREENBERG: Yeah, but they're not a data controller. Escrow providers we're talking about. They have a variety of bits of contact information as part of the data they had been entrusted. They have no real way of knowing to what extent that is an authoritative person, entity they should contact.

STEPHANIE PERRIN: Okay, so if I'm [inaudible] and I have [off mic].

ALAN GREENBERG: Chris and Volker, one or both of you may know the answer to this. My understanding is ICANN has a contract with escrow providers to essentially accredit them to have contracts with registrars and registries. You have a contract with the escrow provider. They do the work under contract to you, although ICANN may be paying them.

VOLKER GREIMANN: There's a three-party contract that is between the registry … The escrowing party, the escrow provider, and ICANN and there's an agreement presumably between ICANN and the escrow provider.

ALAN GREENBERG: We need to get a copy of that three-way contract, which I have not been pointed to, I don't think. We were pointed to the escrow provider ones. I don't think there was a three-party one. I don't think so. I need to check.

UNIDENTIFIED FEMALE: [off mic].

ALAN GREENBERG: Well, not public is not an issue. We should be able to get a hold of a contract, certainly a blank one. Even if that requires non-disclosure, which I can't imagine it would in this case.

STEPHANIE PERRIN: Well, quite frankly, the [off mic].

ALAN GREENBERG: Sorry, Stephanie, if you're going to say something, please turn your microphone on.

STEPHANIE PERRIN: Yes. I've been really bad today. I'm going to blame it on jetlag. My point was the provisioning requirements are almost like a policy statement from ICANN as to what an escrow provider has to do in order to be accredited. It should be public in my view.

ALAN GREENBERG: That contract is public. We have that one.

STEPHANIE PERRIN: We do?

ALAN GREENBERG: Yeah.

STEPHANIE PERRIN: How come I couldn't find it.

ALAN GREENBERG: The contract between ICANN and an escrow provider, it's all public.

STEPHANIE PERRIN: Okay.

ERIKA MANN: Just one tiny look, which [inaudible] data breech, a notification under GDPR. So, [inaudible] guidelines. Not helping the escrow issue, but at

least there are certain procedures which would allow a notification under GDPR.

UNIDENTIFIED MALE: [off mic].

ERIKA MANN: No, in general, it is, but GDPR makes everything more complicated. Just saying there are guidelines.

ALAN GREENBERG: Yeah. GDPR is one really important set of privacy rules which talk about what to do in breech.

ERIKA MANN: I know. I'm just [inaudible] additional information. I know we're all tired.

ALAN GREENBERG: I certainly am. Alright. So, Volker has pointed out we already do have breech notification and at least registrar agreement, possibly registry agreement. He'll get back to us.

VOLKER GREIMANN: I looked at the registry agreement and it doesn't have a notification requirement, but it's under 2.18, was it? [inaudible]. They have a duty

to implement the measures [underway]. They have to do the precautionary measures to protect the data.

ALAN GREENBERG: Missed that one, too, apparently, and no one is double checking what I'm doing. So, there's a clause. They're saying they have to use industry standard methods or something like that?

VOLKER GREIMANN: It's very vaguely formatted, but they are [inaudible]. I have to look at it again.

ALAN GREENBERG: But, the RAA does not say that.

VOLKER GREIMANN: No. I have [inaudible].

ALAN GREENBERG: Gotta love the consistency. I've lost track of where we are. Thank you. In carrying out this review, which may not be necessary now because we're told it's already there, external consultants … And that shouldn't be external anymore. Sorry. That word should have been removed. Consultants should consider whether requirements within the GDPR could be used as a model, as many ICANN contracted parties already adhere to those. If changes are deemed to be required based on the results of the above-recommended studies, ICANN must either

negotiate appropriate contractual changes or initiate a GNSO PDP to consider effecting those changes. And what are you showing me? Okay. So, is reasonable steps enough? I don't know. Those are the words that I took out of the escrow agreement.

VOLKER GREIMANN: [off mic].

ALAN GREENBERG: Okay, but that just takes reasonable steps, not who's …

VOLKER GREIMANN: [off mic].

ALAN GREENBERG: Okay. Are you suggesting that's sufficient or not sufficient? Be really clear. Not sufficient, thank you. Lisa?

LISA PHIFER: It seems to me that finding changes, but not necessarily the recommendation and that you may still want the language reviewed to determine whether it's adequate.

ALAN GREENBERG: That's correct, although I … I'll check exactly what words are used. We may be registrars and registries are just one, depending on [inaudible] appropriate. Are we in general agreement? We will add the reference to

the fact that many contracted parties are already subject to data breech notification regulations, rules, laws. My inclination is to say we do not want to get into the business of requiring any of these parties to notify the individual registrants for escrow providers. It's probably not practical. Maybe even not legal, in some cases. Registries don't have the data at all right now, but certainly we will require that they notify their registrars if it's not already in the agreement. I'll pass everything by Volker to make sure we're not skipping something.

VOLKER GREIMANN: And I think we should also include in this language just the caveat that where such contractual terms do not currently exist. Should ensure that [inaudible].

ALAN GREENBERG: Okay. Well, Lisa suggested that we say do an external review and ensure that the words are either present or meet the standards that they should meet and I like that. That covers all the corners. Are we done? I don't think there's a second recommendation.

VOLKER GREIMANN: Maybe just one caveat, again. I am just worried that we might end up with … I mean, what we've looked at is that we said that certain registrars are bound to the GDPR, and in that case, it's okay. When we discussed that, but other registrars are not bound. They should be bound to the same rules. I'm afraid that if we phrase it like this, too loosely, whether the requirement [inaudible] GDPR could be used [as

model]. If we question that, then we might create an incentive to create requirements that go beyond and therefore cause implementation work for those that have already implemented.

ALAN GREENBERG: No. What we're suggesting, that is not related to the breech part, but related to protecting data and we're saying if we have to invent new words, consider looking … That came from you, by the way. Consider looking at GDPR as a model to minimize the effort that we'll have to do.

VOLKER GREIMANN: Ah, okay. I read that whether that could be used as a model or whether something else would be needed. I think the "whether" is consider the requirements within the GDPR to be used as a model, not whether these could be used as a model. So, we would propose the GDPR requirement as the model and not question whether that can be used as a model. Did I make myself …

ALAN GREENBERG: To consider the GDPR part of that in that.

VOLKER GREIMANN: Yeah. Just regarding [off mic].

ALAN GREENBERG: Okay. I will try. I'll probably get it wrong, but you'll correct me. Yes, Erika?

ERIKA MANN: I would have some concern with this because of different reasons. Not arguing against it, but there might be [inaudible] around the globe. There's so many emerging in the moment, so why would we practically indirectly say this is a valid model, and we don't even know how the model in the GDPR will evolve? They have a review in two years. I can tell you many things will be scrapped. So, are we not maybe a little bit over confident that this is really …?

ALAN GREENBERG: It was put there because someone who is subject to GDPR thought it would make it easier on him and his colleagues if we used those words. I have no vested interest in deleting it or not.

ERIKA MANN: Maybe certain principles from the GDPR and then you leave it a little bit vaguer. I don't know.

ALAN GREENBERG: Can we assume any experts that are employed or used are cognizant of what's going on around the world, in particular GDPR, and be silent on it?

CHRIS DISSPAIN: Are we seeking to mandate a methodology here?

ALAN GREENBERG: We're seeking to say if we need to add words in the contract which require a contracted party to use good – to safeguard data in good ways, do we want to guide them slightly with respect to GDPR as perhaps the way to do it? I'm happy to remove it altogether.

CHRIS DISSPAIN: The more you mandate, the more you increase the likelihood of liability. So, if you say do it this way, there's an implication that you tested that way and you think that way is the best, and that is not a wise thing to do in a contract.

ALAN GREENBERG: Exclude all reference to GDPR in this section.

VOLKER GREIMANN: I mean, going back to the original purpose of why we have this in there, if I remember this correctly, we were worried that when a breech occurs, there's currently no consistency of either that breech [inaudible] to be reported to ICANN or no consistency that certain industry standards would have to be met.

ALAN GREENBERG: May I interrupt? This was not in regard to breech. This was only in regard to the contractual language about how to protect data.

VOLKER GREIMANN: Exactly. So that we would basically say that as ICANN is mandating the collection and use in certain [inaudible]. I was concerned that if ICANN got really creative, they would create very, very strict framework that would even [surpass] what the GDPR mandates. And therefore, I suggested using the GDPR as a model of how data protection could be mandated in contracts to contracted parties. This is as a minimum requirement you would have to fulfill if you want to collect this data and process it. That's how the GDPR entered into this.

ALAN GREENBERG: Okay. The escrow agreement, which exists today, says use commercially reasonable efforts and industry standard safeguards to protect the data. We were suggesting that if the current agreements do not have any words, instead of us saying use those same words, we suggested that ICANN contact people who would understand this stuff to find the right words. Volker then suggested make reference to GDPR so they don't invent something, a brand new cow. We're now saying we're going to take out that reference. Yes, Stephanie?

STEPHANIE PERRIN: Thanks. I think we have to draw a distinction here under safeguards the disclosure of a breech is a right that a registrant has, or that an individual has, under data protection law. It's not really a security requirement. It is a notice of security failure. So, that's quite different. So, you can use the – using industry best practices language, you're not going to say, "And you will need ISO 170222.

However, I think, following up on what Volker was saying in terms of explanation, you want to make sure that your liabilities are covered on transparency requirements under data protection law and it's a little hard to keep up right now. I think GDPR is further ahead than many, but I don't read every wretched law when it comes out and gets updated. 72 hours is hard to meet, and the contractual provision that are spelled out there, which are absolutely vital if you're going to do this. You have to know who's on first and who's on second when it comes to where your liability ends. That's also I think cutting edge. I know in Canada we don't spell all that out.

So, I do think we should make a differentiation between spelling out security standards and spelling out transparency requirements. Maybe that's the language you need to use.

ALAN GREENBERG: All we're describing right now is the language to talk about security and I've come up with a word that I think matches what we need. ICANN should specify suitable standards by which data has to be protected by its various contracted parties. I'm not going to decide what suitable is. Presumably ICANN will talk to someone who is knowledgeable about these things to find the right language which minimizes their liability and liability for specifying something wrong or liability for not specifying it at all.

VOLKER GREIMANN: [off mic].

ALAN GREENBERG: Yeah. Erika?

ERIKA MANN: I made a comment to add 'state of the art' but then Volker made a comment it might be not a good idea, so suitable alone is probably more appropriate.

ALAN GREENBERG: Done. We are nine minutes before the end of our period. Can we take a few minutes to summarize where we are and how much… Can someone add up how much we didn't do today we planned to, to know whether the hour tomorrow is going to cover it or not?

[END OF TRANSCRIPTION]