
JEAN-BAPTISTE DEROULEZ: Thank you. Hello. Welcome to RDS WHOIS2 plenary call 33, face-to-face meeting four. This is day two taking place on 11 December of 2018 at 8:00 UTC. Attending the call today we have Lili Sun, Dmitry Belyavsky, Alan Greenberg, Volker Griemann, Susan Kawaguchi, Chris Disspain, Erika Mann, Stephanie Perrin, Carlton Samuels.

For ICANN Org, we have Jackie Treiber, Negar Farzinnia and myself. We have no observers currently in the room, and no apologies. Today's call is being recorded. May I please remind you to state your name before speaking? I will turn the call over to Alan. Thank you.

ALAN GREENBERG: [Thank you.] First thing I'd like to do today is to review a little bit about yesterday, and with a particular focus for identifying deliverables that we need to complete pretty much before the end of today so that we can review them tomorrow and make sure we're all clean. And if we can have the slide on those.

Okay. Operational input on recommendations [to be] provided by ICANN Org, we hope sooner rather than later. We decided that a number of recommendations need to be reworded. I'd like to go through those one by one and make sure we have someone assigned to take responsibility for it. And if as I go through the number, Jean-Baptiste can remind us what it is. R4.2.

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JEAN-BAPTISTE DEROULEZ: So 4.2 is for Volker and Alan to work on rewording the recommendation and add some metrics in for measurability and successful implementation.

ALAN GREENBERG: What is the subject of 4.2? For those of us who don't have any memory.

JEAN-BAPTISTE DEROULEZ: Recommendation 4.2 is the ICANN board should direct ICANN Contractual Compliance to look for patterns of failure to validate and verify RDS WHOIS data as required by the RAA. When such a pattern is detected, an audit should be initiated to check if the registrar follows RDS contractual obligations and consensus policies. Sanctions should be applied if significant deficiencies in RDS.

ALAN GREENBERG: Okay. Alright, I think Volker said he would try to put a hand on that one, and I would certainly work with him, and I guess Susan also has to sign off on it. So I think that one primarily sits on Volker's area since he has to [inaudible]

JEAN-BAPTISTE DEROULEZ: Next one is CM1, reword recommendation so that it doesn't say – sorry, I will tell you the recommendation again. So recommendation CM.1, the ICANN board should negotiate contractual terms of initiate GNSO PDP to require that gTLD domain names suspended due to RDS contact data which the registrar knows to be incorrect and that remains incorrect

until the registration is due for deletion should be treated as follows. One, the RDS WHOIS record should include a notation that the domain name is suspended due to incorrect data, and second, domain names with this notation should not be unsuspended without correcting the data.

ALAN GREENBERG:

Okay. That one, essentially we want to remove the term “the board should negotiate contractual terms” and relate it closer to the way the process would work if indeed it happens. I'll take that one.

JEAN-BAPTISTE DEROULEZ:

Then recommendation CM.2, this one is the ICANN board should direct ICANN organization to assess grandfathered domain names to determine if information is missing from the RDS WHOIS [inaudible]. If 10 to 15% of domain names are found to lack data and the registrant filled them, the ICANN board should initiate action intended to ensure that all gTLD domain names adhere to the same registration data collection requirements within 12 months.

ALAN GREENBERG:

Okay, that one is Volker and I to reward with the intent of saying post-EPDP – in whatever words we need to say that in – there must be some contact information, and we need [inaudible] to decide whether [inaudible] or whatever. And we'll try to do that at lunch hour today. Thank you. Next.

JEAN-BAPTISTE DEROULEZ: So just in order, CM3, which was the ICANN board should direct ICANN organization to review the RDS records of gTLD domain names sampled by ARS for each region to determine [whether] lack of knowledge of RDS inaccuracy reporting tools [or other] critical factors are responsible for low RDS inaccuracy [inaudible] regions.

ALAN GREENBERG: We're deleting that one.

JEAN-BAPTISTE DEROULEZ: Yes. Deleted, and it would also mention to add this as a more targeted outreach in the relevant recommendation, existence of ARS is not relevant in the future and this item will be moved under outreach.

ALAN GREENBERG: Sadly, that's mine also.

JEAN-BAPTISTE DEROULEZ: Alright. Next one is recommendation CM.4. This recommendation is the ICANN board should direct ICANN organization to publicize and encourage use of the bulk WHOIS inaccuracy reporting tool or any successor tool.

ALAN GREENBERG: And I don't recall who we said is taking custody of that or exactly what we're doing with it. Susan?

JEAN-BAPTISTE DEROULEZ: This action item was for you, Alan, to write to ICANN org compliance and negotiate language to be added to relevant pages. If successful, recommendation will be deleted.

ALAN GREENBERG: If I volunteer for anything today, someone tell me to stop. Okay, in that case, [I'll write] to ICANN Org, that's not something we can settle today.

JEAN-BAPTISTE DEROULEZ: Next one is R10.1, so this recommendation is the board should monitor the implementation of the PPSA. In the event that the PPSA policy does not become operational by 31st December 2019, the ICANN board should propose an amendment to the RAA that privacy proxy providers affiliated with registrars shall verify and validate underlying customer information provided to them in the same way as registrars are required to verify and validate all the registration data.

This one, recommendation [inaudible] that need to make sure wording is clear, and there were comments on this recommendation, and it was written that as we are reviewing this document, we will verify that the wording is crystal clear. No other action is necessary.

SUSAN KAWAGUCHI: [inaudible]

ALAN GREENBERG: I think that one fell on Volker. Clearly, we're the important people.

SUSAN KAWAGUCHI: [Stakeholders, you guys. Look at that.]

ALAN GREENBERG: My pen is worn out. Alright.

JEAN-BAPTISTE DEROULEZ: And talking about Volker, there is one other recommendation where he volunteered.

SUSAN KAWAGUCHI: He doesn't remember that either.

JEAN-BAPTISTE DEROULEZ: That's not there, sorry. That's recommendation 4.1. And recommendation 4.1 was the ICANN board should direct ICANN Contractual Compliance to actively monitor and enforce RDS WHOIS data accuracy requirements to look for and 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. And on this recommendation, Volker, you had volunteered to provide language to update recommendation, and also, based on the comments, clarify that [inaudible]. Yeah, that was based on RySG and NCSG comments.

VOLKER GRIEMANN: [inaudible].

JEAN-BAPTISTE DEROULEZ: And finally, recommendation R5.1, [inaudible] Alright, recommendation R5.1, the ICANN board should direct the ICANN organization to look for potentially anomalous ARS results, for example given 40% of ARS-generated tickets closed with no actions because the RDS WHOIS record changed between the time the ARS report was generated and the registration was reviewed by ICANN Contractual Compliance to determine the underlying cause and take appropriate action to reduce anomalies. On this one, the action item was to double check whether the recommendation – no, sorry.

It was for Kathrin to phrase a reply to RrSG comment, recommendation needs to be reworked, it is considerable that the recommendation could be removed or replaced with a different one, consider changing the recommendation to say ARS or some sort of accuracy reporting system [has] continue even post-GDPR because the end users of the data will want accuracy of data available to them. There must be some level of contactability, accuracy of the data, and we must consider the resources of Compliance.

And there was another action item for us to double check whether the recommendation numbering was – [inaudible] comment was in response to recommendation [5.2.9] and adjust as needed.

ALAN GREENBERG:

Alright. I'll note Kathrin has now joined us. I'm a bit worried that we've taken on an awful lot that has to be done today if we're going to ratify it tomorrow. So we may want to try to allow an hour or so today that we can spend time working on these things, and those of us who nominally volunteered to try to get a few other people involved. If a few people are involved in the drafting, there's more chance there'll be minimal discussion on it tomorrow when we have to ratify, so let's look at the schedule as we're going through, try to save a bit of time and open up a window to do that.

Day two objectives, continue working on it with the added proviso now of trying to find a bit of spare time. And tomorrow's our last day, so hopefully today, we will have tackled any of the really hard issues, or at least set them up so we can have discussion tomorrow. The intent is to have finished the full review and know where we're going by the end of tomorrow morning to leave the afternoon for either sightseeing or making sure that we really understand where we're going.

We must make sure that we have finalized and consensus calls on all recommendations well prior to Christmas, which doesn't give us an awful lot of days between now and then. And we'll be using a good part of January to clean up the report. And for those who weren't here at the beginning yesterday, [inaudible] as much as possible, remove redundancies so people who actually go to the trouble of reading our report are not bored out of their minds and don't feel that we've just padded it by adding language. Move as much to appendices as makes sense so the report proper is of a reasonable length.

Comments, questions before we proceed with work? Alright. Do we want to stay with the schedule or go back to the section that we missed yesterday because of Carlton's lack of presence? Let's clean up yesterday and do that one.

JEAN-BAPTISTE DEROULEZ: Alright, so on single WHOIS policy, there were two comments on the section, one from RrSG and the other from NCSG. First of is findings of the RDS WHOIS2 review team on recommendation 2, very similar to the ones of the first review team, and we wonder why this recommendation is assessed as fully implemented. Moreover, ICANN board has not created a single WHOIS policy document, therefore this recommendation should only appear as partially implemented.

Second comment is the following. The relevant question that the review team [appear to] ask is why did all these efforts fail? In order to determine why ICANN continually fails to come up with a holistic WHOIS policy, perhaps an examination of the various efforts is overview. It is [a pity] the review team did not recommend an independent expert review of why these various policy procedures failed.

ALAN GREENBERG: Alright. I'll note that the registrar comment says we've come to the same conclusion, but we did not actually make a recommendation, so we're not asking anything to be done. We do note – ICANN did not create a document in the traditional sense. They created a webpage with hyperlinks in it, which perhaps one can call a document in this year,

or perhaps one can't, but we deemed it to be as effective as could be done given the world we're living in right now.

ICANN board did charter a group to create a new policy, it floundered for two years and has since been dissolved. So I'm willing to stand by it. Now, the question of whether we should deem that to be partial because the long-term issue didn't come to fruition, the position [we've taken on] things like privacy proxy or IDN is all the work was done, therefore we said it was completed even though we don't have the benefits of the product. So I could live with changing it to partially completed, but I'm happy to leave it. What do other people think? Carlton?

CARLTON SAMUELS:

Thank you, Alan. You said pretty much most of what I wanted to say about it in response to the first comment. The overall provision was if you accept that there's a webpage with hyperlinks constitute a document, then there is a document, and that we agreed on that. And as a matter of fact, the [inaudible] was that since we do most of this thing online, that was probably the most effective way to create a document. So I would say that's my answer for first one.

The second question was whether or not we have simply regurgitated what was said in the first review. Again, I would say no, because we didn't make a recommendation here. To the NCSG's question, I quite agree that – well, first of all, it recognizes that there's been [some] changes. What they're saying is that it's not holistic, and we agree on that. But I would then point out that the recognition that there was not

a holistic change was what led to the AWG, and the AWG recommended a holistic framework for updating WHOIS policy, and [inaudible] deliberate set of actions that was supposed to come afterwards that they were supposed to initiate the PDPs and the PDP was initiated. It failed, we know. So in that sense, it might be useful for us to recognize that the framework was actually chartered, but the results of the action are still not complete. And that would be my answer to it.

ALAN GREENBERG:

I'll also note that the merits of doing a sociological study to understand why we have not been able to do better over the last couple of decades I'm not sure has enough merit to warrant doing that. We may have an opposition to that. I'll give you a chance. You can put your hand down, I've seen it. And given that the GDPR has overtaken us and has changed the dynamic somewhat, I feel comfortable in what we have recommended. Stephanie and then Volker.

STEPHANIE PERRIN:

You don't need a full sociological analysis to understand the root conditions that are causing failure in policy development processes time after time. First point, we didn't actually start from de novo, as a de novo review in the EWG. Every now and then, we say that, but we didn't actually [inaudible] use cases. So that's not de novo, that's taking status quo and working from that.

Second point, I understand that GDPR and its fines are the driving force nowadays, but nothing has changed in terms of the law since the directive and the relevant European law. So this was not new, and it

hasn't been new in the WHOIS discussions that we've been having since about 2003, really. So I think Chuck Gomes came close one time in the RDS discussion saying that it was very difficult to make progress when some of the constituents of the working group were actually being paid as lawyers to represent their client's interests, so you're basically in a courtroom situation. You are not in a compromise situation, and you're running a compromise policy development process. Now, that's not a sociological review, that is a pragmatic kind of discussion such as one as in government [when one is as a] multi-stakeholders in a room to say, "Here are the ground rules, guys. You have to be ready to compromise, and we're going to cut you off from representing your client positions after X interventions." Or something. But you at least have to do a stakeholder analysis and say, "Right, this corner is doing this, that corner is doing that, for all good reasons," and then figure out how you move forward, because we keep doing – and we're doing it again on the EPDP. Either we give up doing this and we have a failure of the multi-stakeholder process, or we figure out a way to deal with it. That's what that point is about. Possibly, I didn't elaborate enough in the comment, but I don't think it requires a sociological review.

ALAN GREENBERG: To be clear, are you making a recommendation to change what with e are doing?

STEPHANIE PERRIN: It would be very nice if we could acknowledge this fundamental problem, that it would be a useful contribution to the literature on why

WHOIS fail here at ICANN. Because we keep glossing over as if, oh well, it's going to work the next time. No.

ALAN GREENBERG: Cathrin. Sorry, Volker was next.

VOLKER GRIEMANN: Yes, just with regard to the RrSG comment, and this is not to say that we're not happy about all the steps that have been accomplished in the past, it's just that even having all the policies that deal with [inaudible] on one single webpage still means that the registrant and the registrar trying to learn the ropes when you're starting off has to figure out how these puzzle pieces all fit together and where WHOIS policy is and every single policy. So while we acknowledge that creating a single policy document would probably be very difficult because that would be requiring a different policy to be created that incorporates all this existing policy into it and those parts, it might be helpful if a summary document could be created down the road. That was the impression of the author of that and was supported by a lot of members of the RrSG. That is not to say that we're not happy with the status quo, and we do not necessarily require a recommendation [inaudible] in the future, it's just something that we'd like to see down the road as a suggestion for ICANN to create, so maybe something that we could point out in our reasoning why we are not [inaudible] recommendation that we still would suggest or would find it helpful if ICANN created a document that summarized all policies and puts all policies related to WHOIS in one place, and while this would not be a policy, it would point to the policies

where every single section that's references in that document originates from, and that would be updated whenever there's a change to WHOIS policy so that there would be a true one-document solution. But like I said, we're happy with no recommendation.

ALAN GREENBERG:

Thank you, Volker. My recollection is we basically said that, that we said although they gathered things together, it did not end up with something which would allow a novice to quickly assimilate it, but we did not believe that was in fact practical or possible to do. So I think in the report, we acknowledged that had that problem, a significant problem, but we didn't see a practical way forward to address it, and we should perhaps make sure that we are seeing that clearly in case we aren't, but I agree with the intent, I think we all agreed with that intent. That was the reason why my original position was we have not implemented this at all. Cathrin.

KATHRIN BAUER-BULST:

Yes. Thank you, Alan. Just picking up on Stephanie's point, I think we all agree [inaudible] in fact that the GNSO [inaudible] currently do not work the way they need to work in order to deliver the actual policy, especially not in the timeframes that are necessary to respect. And I'm not sure that this is the best place to put this sort of meta comment, because here, as Alan and Carlton were just pointing out, we're talking more about the organizational aspects of putting everything in one place, making it accessible, whereas your point is more about how do we get to actually developing the policy. And what we had agreed

yesterday, as I recollect, is that we would add some language in another, more fitting place in the report to basically welcome the efforts that Chris was reporting at the level of the GNSO and the board to reflect on how policy processes can be possibly reformed in such a way as to ensure that something comes out of them in a reasonable amount of time. So maybe that would be one place, and I'm not sure whether we have a volunteer, but if you want to join that effort, of course, that would be great [inaudible].

ALAN GREENBERG:

Thank you. Not clear exactly where that will go, but I tend to agree it doesn't fit here where the req was not to write a policy but to write a document.

STEPHANIE PERRIN:

Yeah. If I may respond to that comment, I'm not sure that the GNSO policy development process is broken. There was a lot of really good work last year on some of the threats to it. It might be that – what I'm really talking about is we're not getting anywhere near to a holistic policy here because we don't start in the right place repeatedly, and I think that could fit here. The whole multi-stakeholder challenges as we get bigger and more global and all the rest of it. And it affects the GAC as well with the number of members now. That's a different problem, yeah.

ALAN GREENBERG:

Erika?

ERIKA MANN:

I agree with Stephanie. I believe the discussion about how the GNSO and the coordination between GNSO and board and community is working and is changing and is getting more appropriate, I don't believe it's a place to mention this here. There's no reason for this. But I think it's true, somewhere, we should mention that WHOIS is an excellent example to observe why the – and I wouldn't go too much into depth why the current structure, how the multi-stakeholder system is working is maybe not appropriate any longer. We can say this even in more polite and diplomatic terms. Because it is an example, and I think we would fail if we wouldn't mention it.

Just imagine we do a review about a period, and in the meantime, the whole system changes. So I think there is something that we can reflect [inaudible] and we should definitely say – I don't know what the most appropriate place is for it, maybe in the introduction, maybe it could be like a kind of policy observation and done very early without making recommendation to it, because I'm not sure it's a place to make recommendation in this report about it.

STEPHANIE PERRIN:

I would tend to argue that the failure to reach a single WHOIS policy isn't a bad place to comment on it, because quite frankly, strategically, if you have very few [resources] and you've got six or seven different processes going on like Thick WHOIS and [you may] just divide your resources and say, "Right, we'll go ahead and make sure that Thick WHOIS happens, and then the other stuff is irrelevant because it's

already there.” Or privacy proxy for instance, everybody went to privacy proxy. So these are important aspects of the failure to reach a complete – but it then surfaces the larger issue which you leave parked.

ALAN GREENBERG:

I would suggest, however, that if we put it in this section, it gets lost. There is no recommendation coming out of it, the section will be skipped over. I think putting this somewhere in the beginning and a ref to it in the executive summary is probably a better way to make sure it doesn't get lost.

STEPHANIE PERRIN:

Yeah, it has to be in the executive summary, but that doesn't mean that this isn't the place to anchor it.

CARLTON SAMUELS:

I agree with Stephanie as well as Erika that it is an opportunity to reflect on the larger issue. I agree with Erika that the place to put it is not with this section but to put it further ahead. I agree with Alan that we need to mention it in the executive summary. Where we anchor it though as at the larger picture, it will emerge over the [period that why] we put it in this preamble, but there's no specific place in the recommendations for it. so we might refer to it as we go along.

ALAN GREENBERG:

Alright. We need to move on. I'd like to ask Jackie to take responsibility for working with me ultimately in finding a place to put it, and during

the final drafting, and I'd like to ask Stephanie and anyone else who would like to contribute to it to give me a set of talking points that we want to reference in this thing. And I think I said [inaudible] to add to that or work with Stephanie.

I think we're done. Let' go back to the regular agenda then, and we are on common interface. Volker's section, and Jean-Baptiste's summary.

JEAN-BAPTISTE DEROULEZ:

[So recommendation] 7.1 was the following. The ICANN board should direct the ICANN organization to define metrics or SLAs to be tracked and evaluated to [determine the] consistency of results of queries and use of any common interface, existing or future, used to provide one-stop access to registration data across all gTLDs and registrars, resellers. Specific metrics that should be tracked for any such common interface include how often RDS WHOIS fields return blank, how often data is displayed inconsistency for a similar domain name overall and per gTLD, how often [inaudible] not return any results overall and per gTLD, what are the causes for the above results?

So here we have three supporting comments from RrSG, RySG and ALAC, and ALAC adds that they support it particularly when ICANN policies on registrant data are finalized. And there are two other comments, so one from the Business Constituency, WHOIS portal cannot be considered a reliable source of WHOIS, it seems that ICANN efforts with respect to GDPR have [broken aspects of the agreed to functions,] purpose of the portal. We again refer ICANN to the APWG M3AAWG survey where investigators, either in survey responses or

through submitted comments, identify prominent pain points and emphasize a need to restore timely access to complete WHOIS data for legitimate purposes seem to address this in their recommendations. Do you want to react to that before I move to the next one? Alright.

And last comment is from the NCSG, even the state of flux of the data returned in response to queries, perhaps defining metrics is a low priority at the moment. We recommend dropping this one.

ALAN GREENBERG:

Alright, let's go back and go through them one by one. Okay, I don't think we need to comment on supports. The ALAC comment we did discuss, and we come to the conclusion that at this point, there is data available and lawfully available that the portal is not delivering, and we believe that that needs to be rectified and not wait [inaudible] things to change. The portal may well have to change going forward, but not delivering data currently implies broken, and I think we – I certainly stand by the current request to do this in a shorter term. And of course, as has been pointed out, we're looking at starting this in January 2020. It's not going to happen today anyway. I'd like to think the dust has settled a bit by January 2020, but I'm not foolish, so I won't claim it might be. So I think that's an easy one to answer. Next page.

I think the first half of the Business Constituency is saying, "correct," that they're agreeing, and the last half is saying we must restore lawful access, and that's an EPDP issue and not something on our table. Any further comments on that one? And on NCSG, they may be right that establishing the metrics are not the highest priority. And if we wanted

to give this a split priority of fix the problem, high priority, establish metrics, medium priority, I suppose we could.

I don't think we split priorities on any other recommendation. We can certainly mention that in the implementation notes, and perhaps that is warranted, that we can mention in the implementation notes the operating properly is a high priority, metrics and things like that might well be a lower priority. Comments, anyone?

CARLTON SAMUELS:

I agree [about operation, and as a practical matter, it would work out.] I think fixing the problem – metrics tells you if the problem is fixed or not. So to me, it's the first one that really matters, and that should have priority, fixing the problem. If you measure it, you manage it. That's [a memo] from day one. So you fix the problem, the way to show the problem is fixed is that you've got to go in and measure it. And if you don't see more blank fields coming up, then you know the problem is fixed. But if you start to see the blank fields –

ALAN GREENBERG:

I disagree. Before May, blank fields meant it was not working properly. Right now, blank fields in some cases means it's working quite properly. They are asking contracted parties for data, the contracted parties are saying, "Under GDPR, I'm not going to give you any data," and that's perfectly legitimate having blank fields or fields saying "redacted." They vary depending on how they're presented.

CARLTON SAMUELS: Okay. So when did the first one become the second? When did we know it? When did we know that we're not just missing the data, it's people refusing to give data? Where is –

ALAN GREENBERG: As soon as some of us looked at the results post-May 25th.

CARLTON SAMUELS: I'm not so sure [inaudible]

ALAN GREENBERG: No, Carlton – after one more sentence. When the portal was written for a Thick WHOIS, the registry was the authoritative source.

CARLTON SAMUELS: I understand that.

ALAN GREENBERG: Okay. Right now, for Thick WHOIS, the registry may or may not be the authoritative source, because in certainly some cases, the registry is delivering zero, zip, and the registrar is still delivering data, but ICANN is not looking at the registrar. So it's accurately reporting what it was [inaudible] but it's looking in the wrong place. That's the problem. Volker.

VOLKER GRIEMANN: And you can also differentiate for the Thin WHOIS TLDs between did not get any data and the redacted data, because when it's redacted data, it will say some variation of "this data has been redacted for privacy purposes," whereas if they didn't get the data, those fields would be blank. Under the temporary specification, blank fields are not allowed, you have to have some default language that indicates that there has been some redactions taking place. So there is a clear differentiation possible.

ALAN GREENBERG: But that's a compliance issue if the contracted party is not delivering that properly. Susan.

SUSAN KAWAGUCHI: There are a lot of examples of registrars just not providing any – they're completely blank. What I see more of is registrars timing out the ICANN portal, and therefore, I'm assuming that they're either saying, "No, I'm not going to respond to this," or you get five a day or something, but I've got lots of screenshots showing different registrars doing that. And my feeling is this did not start on May 25th, it started closer to January, and maybe prior to that. This is an ongoing problem.

ALAN GREENBERG: I'm sorry, what I was talking about in fact is the next recommendation, not this one, the broken [inaudible] GDPR. The first review requested this as a definitive source for WHOIS without people having to play games to figure out what the right answer is. That is still valid. All the

more so because it's more difficult to get the data now and more confusing. It used to be that for information that's available through a registrar or a registry, they matched. It was only an occasional timing or other issue where they didn't match.

Now they don't, and it's important that we know that if we ask for data, we get the definitive data. So I believe this stands. My discussion of the GDPR is the other recommendation, my apologies. So I think we stand by this one. Okay. Agreement? Next one.

JEAN-BAPTISTE DEROULEZ: Can you please confirm what is the next step on this one then?

ALAN GREENBERG: The next step is we respond to those comments, but we're not taking any action to change the recommendation.

JEAN-BAPTISTE DEROULEZ: Alright. Next, recommendation 11.2, the ICANN board should direct the ICANN organization to continue to maintain the common interface to keep up to date with new policy development or contractual changes for contracted parties to ensure that the common interface [inaudible] available RDS WHOIS output for each gTLD domain name registration available from contracted parties, i.e. when they [inaudible] and registrar RDS WHOIS output could be shown in parallel.

First comment from [RySG,] they believe that once the RDAP protocol is adopted by registries and registrars, ICANN should use RDAP as the

underlying protocol to support the functionality of this interface, and eventually work towards retiring the WHOIS protocol for this feature. ALAC supports recommendation, particularly when ICANN policies on registrant data are finalized, and NCSG supports.

ALAN GREENBERG:

Registry – I always assumed that that was a given. The only problematic issue is we've named the page WHOIS.icann.org, so we have a synonym of [inaudible] via RDAP.whois.org or whatever. So I think that's in complete agreement and certainly in line with what we were imagining would be done, even though we are not recommending what to change the name of the page to. [inaudible] history buff, I like keeping the old name. Volker.

VOLKER GRIEMANN:

Yes. It's an interesting recommendation, because it also gives a bit of an indication of a timeline. It clearly indicates that this should not be implemented at a time when RDAP has not become the standard, yes? So this seems to suggest that ICANN should undertake this only after RDAP is implemented. Which I don't necessarily disagree with, it's just, yeah, something for the group to consider.

ALAN GREENBERG:

I don't think that says that. Maybe that's what they meant, but that certainly doesn't say it. It simply says that once the protocol is adopted, it should be used internally. [inaudible] I hope is common sense. So I think we're okay. ALAC comment is, again, we think it's important that it

be done now, because the lack of information makes it even more crucial than it was before. And NCSG supports. Done.

JEAN-BAPTISTE DEROULEZ: There are two other comments.

ALAN GREENBERG: Sorry, I'm just optimistic.

JEAN-BAPTISTE DEROULEZ: So one from RrSG, there seems to be more risk associated with this recommendation than any resulting benefit. However, if ICANN [plans] to be the sole controller of this common interface and will be responsible, liable for pulling the data to create it, presuming the data is being correctly displayed in the first place, meaning not PII, and they are comfortable with risk and their ability to comply with applicable laws, then RrSG agrees.

RrSG appreciates the apparent intent of ensuring that the common interface provides both registry and registrar RDS outputs, as these may currently differ under the temp spec, thereby reducing the potential of confusion with the users of the interface.

CARLTON SAMUELS: [inaudible]

ALAN GREENBERG: Sorry, Carlton.

CARLTON SAMUELS: [That was preempting you, Alan,] but it's the last sentence that makes sense. That's exactly what we were trying to say.

ALAN GREENBERG: And to the point, it's not necessarily only under the temp spec. The final recommendation may well allow registries and registrars to take a different position on what they [inaudible] presenting. So I don't think there's any issue there at all. And BC?

JEAN-BAPTISTE DEROULEZ: WHOIS portal cannot be considered a reliable source of WHOIS. It seems that ICANN efforts with respect to GDPR have broken aspects of the agreed to functions, purpose of the portal. We again refer ICANN to the CPWG and M3AAWG survey where investigators either in survey responses or through submitted comments identify prominent pain points and emphasize the need to restore timely access to complete WHOIS data for legitimate purposes. We ask the review team to address this in their recommendations.

ALAN GREENBERG: I believe we are addressing the first part, of not reliable sources of WHOIS, and the second point is, again, I'm afraid EPDP, and we have no control over that. I'll point out that in the previous one, the registrar one, they make a reference [inaudible] comfortable with the legal

aspects of it. There is an issue of if ICANN, which has a presence in Europe [inaudible] displaying data that one might construe as not being legitimate, is there a legal liability? And I fully expect if there is one, that we'll hear that from ICANN. But I don't believe there is actually one, because if for instance a European registry does not display certain data of their choice but the registrar chooses to support it, I don't think ICANN relaying it puts any liability on ICANN, especially since if they are going to be providing multiple forms of the data, they'll have to identify where it came from. But if ICANN has a problem, ICANN will tell us. Any further comments? Go ahead.

STEPHANIE PERRIN:

I'm not sure that you can bet on ICANN telling us what their views on their risk are, judging from the lack of transparency we've been experiencing on the EPDP. Just a comment.

ALAN GREENBERG:

It is what it is. We can't change that. If ICANN does not say [inaudible] Erika's asking for the first page. May we proceed? Next one, Jean-Baptiste.

JEAN-BAPTISTE DEROULEZ:

So this is recommendation 12.1, and that's for – so reviewing the effectiveness of the implementation of recommendation 12 to 14 should be deferred, the ICANN board should recommend that review be carried out by the next RDS review team after RDAP is implemented,

and the translation and transliteration of the registration data [inaudible]

We have two supporting comments on RrSG and RySG where they support the deferment, ALAC supports the deferral of the review of effectiveness until the program is fully implemented, NCSG agrees with deferring further work on this topic, and finally, Business Constituency, a number of studies and a PDP were carried out for which ICANN Org should be acknowledged, however, resultant policy and practices are not yet in place because they depend on the new RDS WHOIS system which is not yet implemented using the RDAP. Recommend the team to reinforce this priority.

ALAN GREENBERG:

So, everyone there is agreeing with what we're saying. The last one says in saying that we should defer evaluation, we should encourage ICANN to do RDAP as soon as possible. I wouldn't object to that, although I feel given the need to [inaudible] RDAP for GDPR, it's a somewhat gratuitous statement for us to make, but I don't object if people feel strongly that we should. Any thoughts? Volker. Sorry.

DMITRY BELYAVSKY:

It seems rather strange to get neutral comments from BC and a recommendation to implement RDAP as soon as possible, because one of the most significant reasons to not implement RDAP is a lack of commercial feasibility.

ALAN GREENBERG: I think a pressing need was seen to justify the cost until now, but it's now there. Volker, please go ahead.

VOLKER GRIEMANN: Yeah, I'm not quite sure if we should agree that RDAP should be implemented as soon as possible. I think RDAP should be implemented as soon as practical and as soon as it provides additional benefit. I think the main problem with implementing RDAP until now was that there was certain resistance to do that because it wouldn't confer any practical benefits until the policy elements of RDAP have also been decided, which there are many of that are still in flux that would require changes to the implementations down the line. So I would say that ICANN should ensure that as soon as RDAP provides a tangible benefit to the community, then it should immediately be implemented, not before that.

ALAN GREENBERG: I would strongly disagree.

VOLKER GRIEMANN: So you would say that RDAP should be implemented regardless of whether it confers a benefit or not?

ALAN GREENBERG: No, that's not what I'm saying. I'm saying these recommendations alone justify – should have already done it. The work on IDN has been carried out. It cannot be implemented because of lack of RDAP. The need to use

internationalized registration data is an existing problem today. Admittedly, we do not have complex rulesets that will be needed under EPDP or under the GDPR, but we didn't need complex rulesets, we just needed the ability to display non-ascii data. So I believe the belief within [ICANN] that it wasn't urgent at this point indicates the lack of understanding within ICANN of the need for internationalized registration data. So we can disagree on that, but at this point, RDAP is going to come about for whatever reason that are now presumed as being important. So I don't think changing the recommendation to encourage it has any real relevance. We certainly [inaudible] the report does not already say it, we can regret that the lack of RDAP has prevented this from actually being implemented in a more timely manner, but I don't think we need to comment on the other aspect. I think ICANN has a lack of sensitivity, but that is what it is. So I don't think there's any change, I think we will respond appropriately to the [inaudible]. And if Dmitry or someone would like to review the paper, the document and say, should we emphasize that we shouldn't have had to defer this evaluation because it should have been done by now, I have no problem saying that. Microphone.

CARLTON SAMUELS:

I was saying, Alan, that's what the BC's suggesting in their last line. So maybe that's what we should do.

ALAN GREENBERG:

I tend to agree that we should point out, if we have not already, that it's unfortunate that this was deferred because of this, but the economic

reality of it is for most contracted parties, this was not something that was needed by them, and therefore it's understandable. Still regrettable in my mind. Volker.

VOLKER GRIEMANN:

Well, just as an aside before I get to my [inaudible] we sell domain names all around the world in every country, a lot of countries that would use IDN, and we have not had a single request from any customer or reseller that said, "Gee, it would be nice if I could use my own language." [That just for the need,] but for the general RrSG position on RDAP, we support the implementation of RDAP as soon as the implementation of RDAP means that we don't have to touch it again for the foreseeable future. If it is missing certain rulesets and policies [inaudible] then we are against implementing RDAP at that point. We want to do it once and be done with it.

ALAN GREENBERG:

I think believing the ruleset will not change is living in a dreamworld. That's a personal opinion though. Done?

NEGAR FARZINNIA:

Sorry, Alan, just wanted to reiterate the comment [inaudible] no changes needed to this recommendation and that Dmitry will address the comments.

ALAN GREENBERG: Dmitry will take a look at, as well as the rest of us, and if anyone wants to propose editing as we're going forward, then we can propose it. I should note our intent is to put all of these sections on Google Docs, everyone on the review team will have suggesting capabilities to suggest – either make comments or suggest potential edits. So it's not restricted to just the author or the primed leader of each team. And to the extent that everyone wants to read what will still be close to 100 pages and is willing to do a careful edit [inaudible] Back to you.

JEAN-BAPTISTE DEROULEZ: [inaudible] agenda item, we arrive at the break, and we are ten minutes in advance, so it's up to you whether you want to keep going.

ALAN GREENBERG: Let's take the break.

JEAN-BAPTISTE DEROULEZ: Alright.

ALAN GREENBERG: Reconvene in 15 minutes, please.

VOLKER GRIEMANN: Are we taking a break?

ALAN GREENBERG: We are taking a break. We are ten minutes early. We will make use of the time.

Shall we restart? Shall we gather the troops and then restart?

JEAN-BAPTISTE DEROULEZ: Is there anyone here? Thank you, everyone. We restarted the recording.

ALAN GREENBERG: May I have your attention, please? Jean-Baptiste.

JEAN-BAPTISTE DEROULEZ: Thank you, everyone. We restarted the recording, and at Alan's request, we'll go back to recommendation 12.1, and we'll give a few seconds to Alan.

ALAN GREENBERG: Sorry, you got me in mid-cookie. NCSG had made a comment that our recommendation numbering was confusing, and although we carefully patterned it after the recommendation numbers in the last review, we never told anyone that, and thus it ended up being somewhat confusing.

One of the potentially confusing issues is if you look at the IDN one, we call it recommendation 12.1. The IDN recommendations in fact were 12 through 14 and we simply took the starting number of the sequence and used that, and we did the same for the data accuracy ones, which there were four, I think. I'm happy to do that and we'll define it that

way. Alternately, we could have a more confusing numbering scheme of calling this one R12-14.1. That's not nearly as pleasing, so I think we'll simply say that when a recommendation is a follow-on to a previous recommendation or set of recommendations, we number it based on the first one in that set.

VOLKER GRIEMANN: [inaudible]

ALAN GREENBERG: The suite. Very good word. And of course, for the recommendations that are not affiliated with the previous ones, we used a two-character code to identify the subject. So I think we'll keep – sorry, Chris? So I think we'll keep what we have, but we'll this time make sure to go to some pains to explain it. Back to the regular – oh.

JACKIE TREIBER: I was thinking maybe we could explain the numbering in the methodology section of the executive summary.

ALAN GREENBERG: Well, it has to be done both in the executive summary and the regular [inaudible]. Back to you.

JEAN-BAPTISTE DEROULEZ: Thank you, Alan. We are now on recommendation 15 to 16, [inaudible] reports. Starting recommendation 15.1, the ICANN board should ensure

that implementation of RDS WHOIS2 review team recommendations is based on best practice project management methodology ensuring that plans and implementation reports clearly address progress and applicable metrics and tracking tools are used for effectiveness and impact evaluation.

ALAN GREENBERG:

If you're going to speak, please use your microphone.

JEAN-BAPTISTE DEROULEZ:

So first comment from Business Constituency, while plans and reports were issued, their duty was limited and they failed to provide transparency into areas where implantation fell short. The disconnect between ICANN Org's claim of full implementation for recommendation and the reality of what has transpired is substantial. Clearly, changes are needed in future implementation plans and reports. We suggest the team recommend planning and reporting activities in concert with the recommendations.

Second comment is from ALAC where they accept the recommendation, and the other one is from RySG. RySG supports the sentiment of this recommendation but cautions that the implementation of the recommendation should not create new reporting burdens on contracted parties.

Other comment form NCSG, "Would it prevent ICANN from continuing to drive the train into the brick wall at the end of the tunnel? A bit more discussion of risk [planning] and [inaudible] management might improve

this recommendation. We would therefore disagree with your comment on page 84 that the GDPR has no impact on this recommendation. If the WHOIS review team [inaudible] the action plan for WHOIS improvement, then there must be flexibility to map projects to map projects to reality [inaudible] between reviews.

ALAN GREENBERG:

Alright. Let's go back to the top. The BC comment raises the issue of the disconnect between ICANN's evaluation and ours, and we do make a comment somewhere, but I wonder if perhaps they're right and there should be some reference to that in this recommendation.

In other words, this recommendation says, "Use better methodology to plan and report." Do we – [inaudible] Carlton.

CARLTON SAMUELS:

It is in the bulk of the report, that's what's recommended in the first overview of the report. If you're saying that we should put that in place here, make a specific reference, then I can agree with that. But this was actually a part of the overall recommendation, better planning and better reporting.

ALAN GREENBERG:

Yes. I guess the point I'm raising is I believe – and maybe this review team believes – that there has been too much of a focus on being able to tick off the boxes and less on focusing whether the intent of the recommendation has been addressed.

CARLTON SAMUELS: Yes.

ALAN GREENBERG: And the question is, should we actually put something – we say that in the report. Should there be something in a recommendation that alludes closer to that? Which is what BC is saying, and I'm questioning whether that is maybe correct.

CARLTON SAMUELS: To me, if you want to do that, you see where we address the issue from [inaudible] data? We might append that recommendation, append this to that recommendation. We [ask] some more and better data and better planning and implementation with specific responsibility to look at outcomes rather than just denominative ticking of boxes.

ALAN GREENBERG: Where are we saying that currently? I don't believe we're saying it in an actionable recommendation.

CARLTON SAMUELS: No, we are not, and I'm saying that we could – the first recommendation where we talk about the need for better and more data, we can add this as a second part to it.

ALAN GREENBERG: We can add it here, or we can add it as a completely separate comment, separate recommendation that ICANN in this review and in all reviews needs to focus on ensuring the intent of the recommendation and not just – I'm not quite sure how to say it. We have two options. We can do nothing, we can add it to here, we can create a new recommendation.

CARLTON SAMUELS: [inaudible] we want to keep this report as tight as possible, so we have a choice. We can add it here and we keep it a little tighter or we [inaudible] eyeballing of the recommendation itself, we make it a separate one. So I think to the extent that you believe it should be included but emphasized, we put it in a separate recommendation. I would believe right below the one about data.

ALAN GREENBERG: Which one about data are we talking? I'm not sure what recommendation you're talking about.

CARLTON SAMUELS: At the top of the list of recommendations, we had a general recommendation [about] improving the data collection.

ALAN GREENBERG: Point me to a number, because I don't recall such a recommendation. Stephanie.

STEPHANIE PERRIN: And I'm sure we came up with this recommendation, although I can't exactly remember the context of it. But reading it kind of naked as it stands in the list, it does sound kind of like MBA 101. What exactly are we trying to say here? Are we saying – and this makes sense to me – that we should be tracking change over the at least five-year period between reviews and monitoring and determining whether continuing on that course of action is a good idea, or are we asking for metrics and data on everything, which is expensive and unnecessary? I would harken back to our risk-based management of all audits and data collection. “Why?” is the question that leaps into my brain here. Why did we do this?

ALAN GREENBERG: Are you finished?

STEPHANIE PERRIN: Yeah.

ALAN GREENBERG: The history here is we had a far more specific recommendation or maybe even a set of them, I don't remember, and they were very specific. And essentially, we were directing people on which sections to put in reports and micromanaging it at a level that some of us felt was inappropriate, [inaudible] work at a level higher than that, and this is what resulted from taking out the specific details.

STEPHANIE PERRIN: And as so frequently happens.

ALAN GREENBERG: You can relate to a certain EPDP discussion where we said, “Let’s remove the details,” and then, “We need more details.” So that’s the history. I’m not sure if Lili has anything to add. This is one of her sections, I think. My inclination, having listened to this, is I think [inaudible] refine the recommendation a little bit, and particularly, put in something closer to the – don’t just check the boxes. I’m not quite sure how to word it properly, but a little bit more substance might be helpful. But not at the level of saying exactly what sections to put in the report.

Certainly, we are saying track outcomes, not implementation. It’s really important. Go ahead.

LILI SUN: So the basic assessment of the implementation of the recommendation 15 and 16 of the WHOIS1 review team is that the report is generally activity-based, not outcome-based. There is no assessment about the progress has been made so far, so this recommendation was based on the assessment [we just want to] have a reporting structure or even planning structure for this review team’s recommendation.

ALAN GREENBERG: How about if we add something to the effect of there must be an increased focus on outcomes and effectiveness of the implementation? ICANN has said it’s not their job to judge effectiveness, it’s our job five

years later. I think if you spend five years doing something and aren't evaluating it on an ongoing basis, you're misusing your resources? There always needs to be an opportunity to rethink what we're doing and making sure that we're not doing something by rote. So I think adding a sentence to that effect, focusing on outcomes and effectiveness [on an annual] report basis would be a marked improvement. What do people think? Negar?

NEGAR FARZINNIA:

Thank you, Alan. The new bylaws dictate that there is a requirement for a new report to be done on an annual basis on the [progress of] the implementation of review recommendations, which is something we've actually started. The first one is due to come out sometime early next year.

So that report is supposed to be comprehensive, covering all of the specific reviews as well as the implementation of any review that has gone into implementation phase. My fear is that if we add a sentence like you're suggesting, we're going to have duplicative reports, one that's mandated by the bylaws and one that the recommendation, if drafted that way, will require us to produce. I'm not sure if there is value in doing both as opposed to what is state in the recommendation today, which is asking for better progress reporting and more clarity around implementation.

I remember when we were first discussing this months ago when you guys were trying to draft this recommendation, there was concern, as Lili pointed out, that there was not a lot of clear reporting on the

progress of implementation at the time the work was getting done. And one of the things we had to [inaudible] was we as staff are actually putting in place measures to do that progressively going forward on the implementations of the recommendations of all of the specific reviews. Not sure if an additional annual report on top of that is going to help provide the clarity that you're seeking as opposed to the monthly and quarterly reports that we're going to be providing with much more detail on the progress of implementation of the recommendations. Thank you.

ALAN GREENBERG:

I see absolutely no conflict between those two, and I certainly would not presume to say that because the bylaw says "write a report" and we say "write a report," that implies two reports. The two are rather synergistic, I would think, and we're simply saying that the reporting – let's not focus on the piece of paper but the action – should consider both to what extent the implementation is meeting the intent and to what extent in fact it is effective. So I don't think there's any conflict at all. We could even add a statement to say we think that's synergistic with the bylaw requirement for reporting on reviews. But I like the idea of adding something saying, "Consider to what extent this is meeting the intent."

If u remember correctly, in the first WHOIS review, there was great angst over one of the recommendations where – and I don't remember which one it was, but they said, "Well, we can't do that," and then they went ahead and did something different, which is a good thing, meeting the intent, but there's never been in the reporting saying, [are we

satisfying the need?] There was assumption that if we planned to address the intent by doing something, it will work. Well, real world doesn't always work that way. So I like the idea of adding something focusing on, "Are we meeting the intent, and is the actual implementation effective?" And it certainly doesn't imply a separate report. How do people feel? Lili?

LILI SUN:

I agree with you, Alan. The intention for this recommendation is definitely not to ask for ICANN Org to produce a new report, a separate report. Even for the first WHOIS review team's recommendations, there was no separate report for the implementation, it was part of the WHOIS annual report. So what we are asking for is just for all substantial, all concrete elements to be shown there about the implementation.

And what Alan mentioned about recommendation 9, that's about the metrics on the reduction of WHOIS inaccuracies, it was clearly indicated in the planning action plan, based on the WHOIS1 recommendation, that it's not feasible. There is an assessment over there for this recommendation, it's not feasible [inaudible] there is no [inaudible] it was proposed as an ARS project instead, but actually, even for the ARS project, there is no metrics on the WHOIS inaccuracy reduction. There is no measurable way in the ARS project. So just as a substantial element we're missing all the way from the planning and to the report stage.

ALAN GREENBERG: I think I haven't heard any negative comments about adding a sentence to that effect. The reliance of the next review team to decide whether ICANN has wasted its time or used it properly and effectively, I think, is rather poor management. Five years is an awful long time. And it was three years when we started, it's now five. Have I phrased it well enough that we can add a sentence? Done. Next.

JEAN-BAPTISTE DEROULEZ: And we're now moving to "anything new." On "anything new," there was just one comment on –

ALAN GREENBERG: Did we respond to the last NCSG comment on the bottom? I'm not sure we did. Okay, we didn't respond to any of these, come to think of it. On the registry one, don't increase costs, well, I can't promise we won't increase costs in a minor way. I'd like to think writing a report doesn't have a major effect on a \$100-something-million budget. I know Stephanie wants to speak. But at the same time, I don't think we can – oh, sorry, I was misreading this. That says don't put new burdens on the registries. I don't think we're explicitly putting burdens on the registries. I can't promise that some future recommendation won't put a burden on a registry, but that's life.

STEPHANIE PERRIN: I certainly support the RySG comment there, because metrics and tracking tools, impact evaluation, that all sounds like [added response] burden to me, and that's a cost for the registries. So I guess the NCSG

comment is directed towards continuous change management as you go through the phase between implementation reviews. If the world changes because you have new law that you have to accommodate, and yet you continue to measure things that for instance registrars – like you could spend your time measuring the output from registrar at the moment, and that would be a waste of money because the GDPR has happened, and the ones who are tuned in have cut back on their output in order to comply with law. So if you're continuing to track and monitor and do follow-up on things that are now required by law, you're wasting somebody's money, right? So change management implies an evaluation of your actual management plan as you go [inaudible] and that's what we were driving at, that's what I think you're trying to fix in the recommendation.

ALAN GREENBERG:

Okay. On the registry one, I don't believe that we are currently requiring registries to do anything which would require additional tracking. I can't promise that some recommendation in the future by some review team will not put additional requirements on a registry, but that of course can only be done through a PDP or contractual [inaudible]. Review teams are not in a position.

STEPHANIE PERRIN:

But a management plan, you see –

ALAN GREENBERG:

We're talking about the registry comment.

STEPHANIE PERRIN: Yes.

ALAN GREENBERG: Okay.

STEPHANIE PERRIN: I'm talking about that. I'm responding to your comment. A management plan would have metrics or methodology in place to measure the response burden. So if you are correct and there was zero response burden on registries, there's a problem. But if you're not measuring response burden – and my take on ICANN's activities is they don't measure response burden, I haven't seen any signs of it – then you may be imposing things that are – well, and that speaks to the NCSG comment – useless, and not bothering to measure the impact.

ALAN GREENBERG: My point [inaudible] an odd place. We as a review team cannot place responsibility on a contracted party. We have no ability, as has been pointed out multiple times in these comments. We have no ability to place burdens on a registry or registrar. That can only be done through altering their contracts, which can be done through negotiations or a PDP.

STEPHANIE PERRIN: I don't understand where that comment comes from, Alan. The recommendation regarding – okay. Let me read it. "The ICANN board should ensure that implementation of bla bla recommendations is based on best practice project management methodology." Okay, so who is implementing the best practice project management methodology?

ALAN GREENBERG: ICANN Org.

STEPHANIE PERRIN: ICANN Org, right. "Ensuring that plans and implementation reports clearly address progress and applicable metrics and tracking tools are used for effectiveness [and evaluation.]" Okay, who's doing that with the metrics and the tracking tools? ICANN Org, right? But what are they measuring, and what are they following up on? They're measuring and following up on the deliverables that are currently in the – among other things – accuracy requirements and the contractual requirements branch activities with the registries, and registries are contracted parties. So by encouraging ICANN.org to ensure best management practices, absent a specific callout to measure response burden on the impacted parties, we are adding workload.

I recall vividly Elliot going to the mic after the RAA accuracy requirements were put in place – and yes, that is in the contract, but still, that's what we're talking about, we're talking about project management practices for measuring the impact of all these things. And it was a huge response burden with very little impact assessment. In

other words, how many people got arrested? How many domain names were actually taken down for the right reasons? That's just an example, I'm not saying we're talking about that specific requirement.

ALAN GREENBERG: Are you finished? Microphone.

STEPHANIE PERRIN: Sorry.

ALAN GREENBERG: What I'm saying is there is nothing that we are doing to increase the burden. If ICANN decides that they need additional information from contracted parties to be able to do this, whatever reporting is applicable, for any given recommendation, that would have to be done through a separate process. I cannot guarantee that nothing any future review team says will ultimately involve a burden on a contracted party. I do not have the [inaudible] to be able to do that. Clearly, a recommendation that everyone has to implement RDAP has a requirement. It doesn't necessarily have a reporting requirement. I just think that's a second [order effect] that we're not in a position to measure.

STEPHANIE PERRIN: Okay.

ALAN GREENBERG: Can you [inaudible] would you want to see?

STEPHANIE PERRIN: Well, impact evaluation. Maybe if we expanded impact evaluation and talked about response burden. So period after impact evaluation. Impact evaluation, in keeping with ICANN's mandate, should ensure [inaudible] and evaluate it in terms of goals.

I mean, you can price something out of the market by [inaudible] implementation of RDAP at the moment. It doesn't make any sense, because you build something when you don't know what the features are going to be. Doesn't make sense.

ALAN GREENBERG: What are you requesting we do?

STEPHANIE PERRIN: [inaudible]

ALAN GREENBERG: Microphone, please.

STEPHANIE PERRIN: Add a sentence, amplifies the impact evaluation. The impact evaluation not being just greater accuracy for the benefit of third parties seeking data from ICANN, but response burden on the contracted parties that inevitably winds up for higher cost for end users.

ALAN GREENBERG: Jackie, do you have enough handle to understand what it is that you're being asked to write? Because I still don't, but I'm not going to belabor [inaudible] because of my lack of understanding.

JACKIE TREIBER: No. [inaudible].

ALAN GREENBERG: Microphone, please.

JACKIE TREIBER: That doesn't mean I can't understand it eventually, but at the moment, I do not.

STEPHANIE PERRIN: Okay. Supposing I take it offline and discuss with Jackie come up with a sentence. It's easy enough, it's one line.

ALAN GREENBERG: I honestly am not quite sure why adding this line to this recommendation is something that we should be doing, but I'm not going to belabor the discussion at this point. I don't feel comfortable with it that it's part of reporting on implementation of review team recommendations. I may be misunderstanding.

If we look at the NCSG comment, I would like to presume – and maybe it is not presumable – if one is reporting on effectiveness [inaudible] or regular basis, if we come to the conclusion that we’re working on something, we have put a huge effort into it and it’s proven to be not effective, we will not continue to do it by rote for the next three years but will take some corrective action. I would like to think that that’s implied in the evaluation of effectiveness, which ICANN has said it’s not their business. So we are suggesting a sea change in how ICANN [inaudible] review team recommendations, certainly of WHOIS recommendations, they’re the only ones under our mandate. And I would like to think that that does address the NCSG comment. Carlton, and then Stephanie.

CARLTON SAMUELS:

One of the things that the IRTs have done now is to include members of review team in that team which gives some guidance as to what was the intent of the recommendation. That is a result of these kinds of discussions in the program where the intent of the recommendation itself might not have been readily apparent to the ICANN Org implementation people. So I believe that structurally, the implementation team now have a basis to always refer intent in the implementation. So I think it’s taken care of in that sense. That’s my feeling on it.

ALAN GREENBERG:

I’m agreeing. And we certainly [inaudible] review team and we can mention that in the response to NCSG as well. And by the way, the

reason we don't have Alice here is she's working on implementation-type things right now. So we have –

STEPHANIE PERRIN: Is it my turn yet?

ALAN GREENBERG: Oh, sorry. Yes.

STEPHANIE PERRIN: Thank you. Yes, I totally agree that the IRTs can do this, as long as the intent is clear. And my comment about how 15.1 currently reads like MBA 101 basics is that I'm not sure the intent is clear. By removing it [inaudible] recommendations, we're basically saying, "Follow best management practices, bla bla." What do we actually mean?

What we mean is – and that's why we got a little frustrated, cited page 84 and said, "Will ICANN continue to drive into the brick wall?" As it has in the past, as it continues to do now on some committees. It needs to undertake change management, evaluate the changing regulatory environment, etc., and know when to put something on hold with full reasoning explained [inaudible] So yes, know when to hold them, right?

ALAN GREENBERG: I think the statement that we have agreed to add does address [inaudible]

STEPHANIE PERRIN: Hopefully. That's my goal, is to address my comment in the final statement.

ALAN GREENBERG: Yeah. Negar.

NEGAR FARZINNIA: Thank you, Alan. I know we've been talking about measuring the extent – ICANN Org measuring the extent to which implementation addresses or has resulted in the intended effect. I do, however, want to point out that in the bylaws, the new bylaws of ICANN, not just for RDS review but for all specific reviews, one of the mandatory items that each review team must undertake is worded as the review team shall assess the extent to which prior review recommendations have been implemented and the extent to which implementation of such recommendations has resulted in the intended effect, clearly making it the review team's responsibility to assess the effectiveness of the implementation and whether the implementation met the intended effect.

Obviously, ICANN [inaudible] we do so with the intent of meeting what the recommendation is requesting, and it's up to the next review team to assess if that is the case. So I'm not sure how much value there is in writing the recommendation such that it says, "Show metrics and tracking tools to assess the effectiveness and impact of the evaluation," because from our perspective, we are doing what we think we should do to meet the intended effect of the recommendation, but obviously, the future review teams may not agree with that 100%.

ALAN GREENBERG:

Your last point hit it exactly. Review team's responsibility to determine to what extent the intent was met and to what extent it was effective. It is not a review team's sole responsibility. The ICANN Org has a responsibility to do it as well. It already says that in terms which are not 100% clear perhaps, and we need to clarify that. and yes, the review team then does a sanity check and says, "Were they right?" But not doing it – and I'm not saying ICANN has never done it, but if you look for instance at the WHOIS portal, we're pointing out that, yes, you implemented it, but because of certain failings in the design it was not completely effective. That shouldn't have to wait for us to do. Stephanie.

STEPHANIE PERRIN:

This is not something I'm suggesting we embark upon at this stage in the game, I probably ranted about this the first meeting I attended. Really, if we were doing a program evaluation in the review team, we would be evaluating what the intent was, as the bylaws – as Negar just explained – tell us it's our job to do. So what was the intent, to what extent can we measure whether it was effective across those parameters, effective for whom for what, and then we would evaluate whether we should continue with a recommendation or not. Now, I don't think we've done that, and what I'm trying to do – and this is why I say I agree with the RySG's comment – we've got to have the intent clear that whenever we ask for something, we also ask for a measurement. The response burden, that's a fiduciary responsibility.

You don't throw more stuff at people without measuring the response burden. That's all. So I'll try and get that into my sentence.

ALAN GREENBERG: For the record, certainly for the ones that I took responsibility for, what you described as what we should be doing is exactly what we did do. So it may well not have been done for everything, but it certainly was for something. I believe we've now finished a section again. Let's go on to the next one.

JEAN-BAPTISTE DEROULEZ: Thank you, Alan. We're on "anything new," and there was just one comment on this section, which is the following from NCSG. "The inventory of activities, policies and procedures will be useful to help guide the GNSO when it determines priorities for subsequent PDPs after the temporary specification is dealt with or disappears in May 2019."

ALAN GREENBERG: The answer is "Thank you." Any further discussion on "anything new?" Done.

JEAN-BAPTISTE DEROULEZ: Alright. And it's 11:30. Normally, we're arriving at lunch break at this time in the agenda, so would you like to move on with law enforcement needs or consumer trust, or would you like to leave time for everyone to work now? There is one hour.

ALAN GREENBERG: I'm not sure the work that has to be done is uniform. I would suggest we press forward and hopefully adjourn earlier today to give people a bit of time. Agreement? I see no objection.

JEAN-BAPTISTE DEROULEZ: Alright, so we'll move on to law enforcement needs.

KATHRIN BAUER-BULST: Just a note, I have to go and attend a farewell for a colleague at noon, so if we break at the proposed time for lunch, I would be missing part of the law enforcement needs, I'm afraid. So perhaps we could pull up the consumer trust one if that's okay for everyone, and then do law enforcement needs after lunch? Thanks.

JEAN-BAPTISTE DEROULEZ: Is that okay with you all? Alright. So consumer trust. On this section, we had one comment from Business Constituency where they support the view that for the purposes of these activities, consumer trust should not be restricted only to registrants but must apply to all parties who consume domain names through registration and resolution services. This definition is better aligned with ICANN's domain name system remit which spans domain name registration services and name resolution services. Limiting consumer trust to the registrant population of millions constrains the scope of consumer trust, and we recommend that the team address this in its report. Access to accurate WHOIS data for legitimate purposes of addressing threats to the integrity of domains

is clearly within ICANN's mission. We also recommend that ICANN [inaudible] its obligation to assess the level of consumer trust in the new regime of RDS, privacy proxy services, GDPR-redacted data fields and limited or rejected access to registration data. The question ICANN should ask and answer is, do these changes to WHOIS enhance consumer trust?

ALAN GREENBERG:

Erika, any comments to start with?

ERIKA MANN:

Yeah. I agree with the comment, actually, from the BC. In particular, the last point [inaudible] we had a discussion about it at one of our exchanges about the topic, but we then came to the conclusion that maybe we shouldn't go too much into details about potential issues which we can't really frame well. But when you [– I like] the last one, the question ICANN should ask and answer is, do these changes to WHOIS enhance consumer trust?

So [inaudible] that we pick up the topics mentioned here in the BC comment and we try to answer them appropriately. I don't think that we can make clear recommendation. I'm still not convinced that we can make recommendations, but maybe we come to the conclusion that we can describe the issues better, and we can insofar maybe we can help in the future whoever is working on this topic maybe to look into it in more details.

ALAN GREENBERG:

Thank you, Erika. I think the BC comment – I agree also, by the way, I think the BC comment is quite appropriate. The last part basically saying we should weigh in on the EPDP, I think we need to refrain from doing, but, but I like the fact that they have identified that it's a bifurcated issue, it's registrants on one side and users on the other. And approaching it in our section with the two different sections, the two different perspectives, I think would be appropriate. And a lot of what we have right now is really from the registrant side, and I think we need an increased focus from the user side of the impact, and it's interesting, over the last year or two, I've asked a lot of people what do you believe is the utility of WHOIS on users, and the answer always is, "Well, so I can look up who it is that is the company I'm dealing with." The reality, of course, is only an infinitesimally small fraction of users know about WHOIS, and most of the time when you look it up, I find it hidden by a privacy service anyway. So I really discount that as a major impact, but the use of WHOIS by intermediaries is in fact, I think, one of the issues we have to raise and make that clear. So I like what they're saying. Volker.

VOLKER GRIEMANN:

Might be a bit of a [inaudible] question, but I think we might even suggest that future review teams do not look into this topic, because it's already part of the remit of another review team. I think it was the consumer trust and something something review team. And therefore, we might be agnostic about the [inaudible] of WHOIS in this respect and just relate that question for future review teams into that consumer trust review team, because it fits more squarely into their remit.

ALAN GREENBERG:

I disagree. Two reasons. Number one, it's not clear there will be another CCT review. The AOC said there must be one after the first round. It's not clear there will be another. That's number one. Number two, they're looking at [inaudible] impact of new gTLDs on consumer trust. It had nothing necessarily to do with WHOIS. So it really is a different thing.

now, I could almost live with saying let's delete this section – making a recommendation in the bylaw to delete this section altogether, because I think it was originally there from a U.S. Department of Commerce concern that I'm not quite sure is greatly applicable. But I'm also not sure I want to start a controversy [inaudible] of eliminating it. But I do think we need to be more focused on this section, so this section perhaps needs a little bit more rework of the actual text more than some of the other things. Erika and I have already discussed that, so I don't think we're in disagreement on it. Carlton.

CARLTON SAMUELS:

Yeah, just emphasize a thing about the consumer trust review that you mentioned, the bylaw actually requires just one after the round, but it doesn't say that it should go on. the CCT RT structure is very limited [and might not,] but I will say this. In the CCT, we recognize that there's an ongoing trust [inaudible] in terms of users on the user size, and what we recognize is that it's mostly about surrogates having access to the data that use it on behalf of users. So I think in the BC – and I'm agreeing with the BC here that one of the things we wish to do is to

emphasize the side about users and recognize that for the most part, it's the surrogates that access the data on behalf of users.

ALAN GREENBERG: So, no change in the recommendation? We acknowledge and agree with the comment, and we'll make some – probably substantial – change in the text but still resulting in no recommendation? Agreed? We've done consumer trust now. Kathrin, you have to leave at noon? Is there any chance of moving our dinner?

KATHRIN BAUER-BULST: But if we do law enforcement needs quickly, [inaudible].

ALAN GREENBERG: We have half an hour, let's start it and see where we go. Or half an hour to an hour. Let's start until Kathrin has to leave and see where we are.

JEAN-BAPTISTE DEROULEZ: Thank you. So we have 20 minutes to close this section.

ALAN GREENBERG: We will not succeed, but let's start.

JEAN-BAPTISTE DEROULEZ: So we had received the following comments on the section itself from RrSG. The RrSG [inaudible] surveys to ensure that results or questions are not biased towards the interest of any particular group. They note

that only a selected number of law enforcement agencies, i.e. those that have a direct relationship with the GAC and members of the review team participated in the questionnaire and so the results do not necessarily reflect the view of a full cross-section of national and local law enforcement agencies around the world.

KATHRIN BAUER-BULST: I'd like to comment on this one, if I may.

ALAN GREENBERG: Please.

KATHRIN BAUER-BULST: Indeed, when it comes to the outreach, there were two elements that we faces. First of all, because of data protection concerns, there was a concern on the part of ICANN Legal that we could not just spam the world with this but only we're allowed to contact those who had already agreed to be contacted for such purposes. So that is what we did, and then there is an underrepresentation in particular when it comes to the global south which we [inaudible] by reaching out through regional GAC representatives and other contacts that we had, for example in the [OAS] to try and improve the feedback from those regions. and Alice, when you all for example also tried to reach out to the African Union Commission, the fact of the matter is that just as we see less uptake of domain name registrations in that area, we also see much less law enforcement activity, and to find law enforcement [inaudible] in those areas which are, in a sense, involved enough in the

issues to provide feedback on this proved extremely difficult, which I think is the same experience that has come up in many places, and so I don't think we were in a position to take measures to address the general issue that we have as a multi-stakeholder community with the representation of the global south. So I think that's what we should explain there. When it comes to the drafting of the survey questions, while we didn't use [inaudible] facilitators, we did work of course with representation on the review team of the different ICANN parts of the community to make sure that the questions were not biased. So I'm a bit surprised at that comment. I must say that my proposal would be to respond that, namely that as representation of the community, we tried to formulate the questions in a nonbiased manner, and that's as much as we could do at that point.

ALAN GREENBERG:

I'll note that to the extent that our recordings are timestamped, this was 11:40 in the morning if people want to go back to what Kathrin said. I think Kathrin captured pretty much all of it that should be embedded somewhere in that response.

VOLKER GRIEMANN:

Just to comment, I think this is more in reflection of any future reviews that we're recommending rather than the review that has already [inaudible] because that's not changeable already, that's already done.

ALAN GREENBERG: But I think her answer, to some extent, counters the second question that although we did it through people involved in the review and ICANN, we did go to other people outside through intermediaries.

CARLTON SAMUELS: So, can I bridge the two? Because it is true that we went through all of the steps to get more involvement here, but as a practical matter, I can tell you from where we sit [in] global south is that a lot of these issues for law enforcement is just now coming on stream because you have data protection laws and cybersecurity laws that are just being implemented now. I can tell you in the last three months, I've been across the Caribbean, been asked to speak on these issues, and in all of the Caribbean [inaudible] and all that, there are probably about three lawyers who actually even asked a question about data protection and cybersecurity. We have a cybersecurity team in the police force, and it's a liaison and one person. So they are building [inaudible] now. So for future review teams, you'd probably have better standing, Kathrin, to get some response on that. And as Volker says, maybe what we need to do is to put something in here that shows that we've made the effort, and here's what we're recommending for follow-up review teams.

ALAN GREENBERG: Erika?

ERIKA MANN: I agree with the comments made. There's one other issue, which I'm working on [inaudible] totally separate, different case to gather

information, how much information actually law enforcement request, because they only can operate if they have a viable case, otherwise they pretty much can't even do it. There are certain cybercrime units which can be more operating and preventive measures and terrorist threat units, but these are very particular cases. But the [inaudible] so Internet companies. And they use, of course, the WHOIS data to prevent and identify potential misuse or potential harm which can be done, and they can do this, and they will only inform, of course, law enforcement in case there's a real imminent threat happening. So we haven't captured this kind of [inaudible] really well.

ALAN GREENBERG:

That of course falls on to the next recommendation. Kathrin.

KATHRIN BAUER-BULST:

Yeah. Just to say, indeed, of course now we're dealing with the law enforcement needs, right? That's what's in the bylaws, and what we did suggest and what I argued for at the previous face-to-face meetings was that we should consider expanding this survey to include other parts of the community which are not reflected in the bylaws but which, as you rightly point out, play a key role in this ecosystem. So I fully agree with that, they do the main work, and especially when it comes to the prevention, but you need both sides, because without law enforcement action, you can only just build higher walls and you don't have any [inaudible]. So that's why we added the second recommendation related to law enforcement, is that [inaudible] expand the survey. But

we'll come to that on the second recommendation. Let's maybe cover the next comments on this one.

ALAN GREENBERG: Jean-Baptiste, let's go on to the recommendation [inaudible].

JEAN-BAPTISTE DEROULEZ: Alright. On LE1, [inaudible] data gathering survey and studies are to be conducted by ICANN to inform a future assessment of the effectiveness of RDS WHOIS in meeting the needs of law enforcement as well as future policy development, including the current employee specification for gTLD registration data expedited policy development process and related efforts.

First comment is from the I2C. They strongly support initiatives to solicit feedback from a broader cross-section of law enforcement agencies.

ALAN GREENBERG: What is I2C?

JEAN-BAPTISTE DEROULEZ: It's the Internet Infrastructure Coalition, if I recall. That's the group that Volker mentioned that is the international [inaudible]

STEPHANIE PERRIN: [inaudible]

JEAN-BAPTISTE DEROULEZ: Yeah. Second comment from RrSG, they support this recommendation but caution that ICANN should not [conflate] surveys with more rigorous studies. Surveys often result in response bias where only those parties interested in a certain topic [inaudible] respond to the survey. ICANN should seek out ways to ensure that it is gathering data from a broad and truly representative cross-section of law enforcement who understand how RDS data does or does not meet their needs. Furthermore, ICANN must ensure that any studies or surveys relative to contracted parties are either voluntary or based on an explicit requirement in the parties agreements with ICANN.

And there's a comment from Business Constituency. "We found the law enforcement survey conducted by the team to be useful, as [inaudible] provide insight into law enforcement needs regarding RDS WHOIS but also gave us preliminary understanding of whether GDPR was likely to have an impact on meeting those needs. We support the conduct of additional surveys and research in this vein." Shall I pause for now?

KATHRIN BAUER-BULST: If I may react, I think all those comments make sense and we should just take them onboard in suggesting [that the possible ways] forward, we can add a couple of sentences in the rationale to say that in response to comments, "Here's some further suggestions on how to expand the survey size and make sure it's based on a robust methodology."

When it comes to whether surveys or studies are better, I don't think – you're comparing apples and oranges. Surveys tell you about a need of a specific population. You cannot, of course, draw policy conclusions from

surveys per se, but I don't think anybody was suggesting that, including us. So maybe we can add a sentence to clarify that this is a survey and not a study, understand that there's limitations. And I'm happy to work with Jackie on refining the text.

ALAN GREENBERG: I'll point out their actual recommendation doesn't just do surveys, it says surveys and studies. We had a certain amount of insight, I guess. Volker.

VOLKER GRIEMANN: This is a separate comment, not reflecting anything in the comments, just a thought that I just had late in the game. Do we have any measures in our survey that differentiate actual needs from wants and nice to haves? [inaudible]

KATHRIN BAUER-BULST: Well, I think in any case, however you formulate it, there is always an issue with whether what is represented is a need, a want, a wish, a desire or whatever. What we tried to do in the questions was to basically say based on operational experience, and to link it to concrete cases. So it wasn't just [inaudible] I had more time to go and hunt down people on the Internet, I would like these additional tools. It was linked to concrete cases, and that was our way of trying to make sure that it wasn't just some random exercise.

ALAN GREENBERG:

Stephanie?

STEPHANIE PERRIN:

And maybe we have enough depth in here already. I think that's the reason to discuss studies, is if you get a legal expert to go in and do a study – I'm thinking of like a [inaudible] can't pronounce his name – to look at whether actually what you're doing is legal and whether the right people are filling it out and all the rest of it. That's one thing. As a former bureaucrat that got stuck doing all the OECD studies because I went to the OECD, trust me, it's very hard when you get these surveys landing on your desk to fob it off to somebody else. And you may not be the person that should be filling it out, you just may be the one that got tagged to fill it out.

So [inaudible] as a concrete methodology, I think, is problematic for a whole bunch of reasons, and the global south problem is a whole other separate problem, but then we know that we're not going to get response even if we send in a legal expert, because there's no time to do it. It's just not a priority to act on these kinds of things. So you don't need to spend money finding out it isn't happening, you know it isn't happening. So yeah, I think we maybe ought to emphasize studies more in this and trying to come up with better surveys, just for the short term, because we know pretty well the state of cybercrime enforcement and the public sector, private sector cooperation at this point, and it needs to get better. And sadly, I think, speaking as a victim of the EPDP process, law enforcement hasn't focused enough on the opportunity to use the provisions in the EPDP to get better law enforcement in place. There's an opportunity there for standards for

some of this stuff, particularly in the matter of data breach. Oh, yeah, [inaudible] security side [up] at the same time. It's certainly in there.

KATHRIN BAUER-BULST:

I could spend an hour now on the GDPR and the EPDP part, which I will not do, just to pick up on the points you made relating to the survey and the study. We now put them at the same level, which I think is appropriate, because I think we do need both. You need to understand what the user experience is, and then you can do studies, and the leader aspects, I think, for me, are an entirely different issue. Our task under the bylaws is to identify the needs of law enforcement, and whether the WHOIS implementation is meeting those needs. That's a very specific task. It's not about assessing [the whole] leadership and everything around it, it's really that. And that's what, I think, the survey was well-designed to do, and we have recognized the point that studies would be helpful in the future, which is why we put them there. So I think the recommendation can stand as it was put here, and in the rationale, we can add some language distinguishing surveys from studies and explaining a bit more about why under our task given to us by the bylaws we believe that what we have done responds to our task, and that of course [inaudible] to further elaborate on this then also change the overall setting if they so choose.

ALAN GREENBERG:

Yeah. I'll point out we had a \$200,000 budget to do studies. This is one of the few areas where it may well have been well-used. If this was a two-year review team and we had the luxury of somewhere around last

July deciding to commission a study, well, the window for doing the studies was closed long before that, so we did what we did. I agree that the one word [inaudible] here may be overwhelmed by the discussion of the survey, and we may well want to look at the text and make sure that we are stating in the text what we've said here of they serve different purposes and yada yada. So I think that may well be warranted. Next comment. Okay, do we have – alright, I think we can address the registry comment. Let's go on to the next one. No, let's stick with BC. I don't think we've answered the BC.

KATHRIN BAUER-BULST: I think we did try [inaudible] to address all three together, because they're supporting, and I think they can just help us refine the rationale.

ALAN GREENBERG: Okay. Thank you.

VOLKER GRIEMANN: Just wanted to mention that there is another supporting comment, and I hope you addressed it too, which is from ALAC. They support the recommendation, particularly if the finalization of registrant data policies. The ALAC can agree with the recommendation to continuously monitor the impact of WHOIS RDS [inaudible] but it isn't clear to the ALAC how surveys and data gathering are to lessen the potential negative consequences of law enforcement work.

ALAN GREENBERG: I don't think they have a direct impact. The surveys and studies may allow us to recognize that we have to make changes and if those changes are made, that would lessen the impact. But that's a multi-stage project.

JEAN-BAPTISTE DEROULEZ: Alright. Next one is from RrSG. Law enforcement agency needs in the past often seemed to go beyond the scope of RDS services provided by contracted parties and relied on the use of third-party datamining, data scraping services, so surveys may not correctly reflect the effectiveness of RDS services alone.

KATHRIN BAUER-BULST: Yes, we did reflect that in the survey, of course, because we distinguished between direct access from registries and registrars-based services in the WHOIS portal, and third-party tools such as the DomainTools service for example, and we did specifically highlight this also in that section of the review because we refer to the fact that a lot of law enforcement agencies basically seem to think there isn't a problem because they can still use tools such as DomainTools but don't realize the data is now out of date. So we have specifically addressed this in the survey, but they do have a very good point. Of course, in the law enforcement views, this is completely conflated, the services that are provided by the registries and registrars and the services that are provided by third-party companies. Then of course in the future, the [picture] will look very different, and that's of course why we thought to rerun the survey or at least recommend that it is run again, because

then that distinction would become clearer to law enforcement, we would get clearer feedback on just the RDS services provided by the contracted parties, who soon will be the only ones [inaudible] such services. So I propose we take this onboard and then say that the need should be addressed in future iterations.

ALAN GREENBERG: Volker.

VOLKER GRIEMANN: Yeah, I agree. And just to provide some background, there has long been an impression with the registrars especially, fortified by comments made by law enforcement at ICANN meetings that request ICANN give them back reverse WHOIS search and all those nice features that these third-party services provided but never were part of the original WHOIS setup. So I think it's important to point that out and make that distinction between what is actually in the WHOIS service and what were services obtained by third parties that were usable by and quite beneficial for law enforcement that weren't part of the original WHOIS setup, were something that the WHOIS was never designed to do but was available as packaged services.

KATHRIN BAUER-BULST: So on the [DNRC] one, Jean-Baptiste, do you want to read it out?

JEAN-BAPTISTE DEROULEZ: With pleasure. If this recommendation is kept, Domain Name Rights Coalition [inaudible] expanded to include data protection authorities as ICANN must be in a position to receive comprehensive information about the full and complex situation to learn how the laws are evolving and what compromises are being reached domestically. However, they recommend to delete the recommendation considering ICANN's new bylaws require only periodic review of the legitimate needs of law enforcement, not regular, meaning done [inaudible], thus avoiding a continuous cycle of expensive and time-consuming surveys. Any future surveys need to explore all sides of these complex issue from all law enforcement and related parties involved, but only on a periodic basis.

ALAN GREENBERG: I could be a devil's advocate and ask Stephanie, in her previous life, does she believe we should be surveying data protection authorities?

STEPHANIE PERRIN: [Sorry, I wasn't paying attention.]

ALAN GREENBERG: They're suggesting that we don't only survey law enforcement but also survey data protection authorities. I'm asking you, would you welcome more surveys in your previous life?

STEPHANIE PERRIN: No. [inaudible]

ALAN GREENBERG: That's why I tongue in cheek asked you. If we can go to Kathrin first, and then Volker.

KATHRIN BAUER-BULST: I think, again, we have a [inaudible] under the bylaws which is to ensure that law enforcement needs are met by the current implementation of the WHOIS, and that, I guess, is there because there is a recognition that at the level of the organization, this should be an activity to engage in. So I think what we have set out here in this specific scope, and I recollect that we also had discussions on whether to include cybersecurity at all, is what we need to do here. But of course, that doesn't mean that [inaudible] legal circumstances [inaudible] ignored. I think that was the purpose of our recommendation 1, which basically relates to the strategic priority and the need to have a forward-looking mechanism to take accounts – we're not talking about recommendation law enforcement 1, but our first recommendation, which basically seeks to have this analysis of the legal framework performed at a higher level, and we don't think this should be done through surveys necessarily. Here, that's really a better place to use studies and to continue staff involvement in monitoring as we suggested under the first set of recommendations. So I would propose that for this one, we say, yes, we fully acknowledge. Of course, law enforcement is not the only relevant stakeholder in this. However, for the purposes of this particular part of the bylaws, it is. This is what we're setting out for law enforcement needs, and what we're setting out for the data protection and other relevant legislation is what we did in the strategic priority 1.

ALAN GREENBERG:

And I've got me in the queue, Stephanie, and Walker. Okay. My response to the comment about the bylaws only requiring reviews every five years is that is indeed correct, but this review is suggesting that we must keep track of things on a more granular basis than every five years, thus our recommendation. That doesn't discard the fact that it must be done every five years also. Stephanie.

STEPHANIE PERRIN:

Yes. I didn't actually realize [you asked me to comment on this recommendation,] so I kind of blew that away jokingly. But in fact, many data protection authorities are involved as overseers in cybersecurity and law enforcement activities. So for instance, I was on a taskforce that developed the antispam law in Canada, and the commissioner has an ongoing role. The commissioner audits are [cybercrime reporting act,] all the time, it's a regular requirement.

So many data protection authorities have an ongoing role, and they certainly are regularly engaged with law enforcement in terms of the legal nature of their activities. And with companies as well in terms of what they do in terms of handing over cases to law enforcement. So it's not a crazy idea to also poll data protection authorities to get a balanced view, and [also] pragmatic advice on how to do this [inaudible].

So maybe we need to take this onboard a little more seriously. I see you shrugging. You don't like that idea.

ALAN GREENBERG: No, I'm questioning whether it's within our scope to make that recommendation.

STEPHANIE PERRIN: Why would it be out of scope? Data protection authorities are constituted by governments. The fact that the GAC doesn't bring them on their delegations and they do bring the public safety [inaudible] –

ALAN GREENBERG: That is not within our scope.

STEPHANIE PERRIN: Law enforcement needs include enforcement of data protection law.

ALAN GREENBERG: Okay. My question is, is it our and ICANN's responsibility to, in looking at law enforcement needs, directly consult with the data protection, or should that be done on a national basis themselves? That's the question I'm asking.

STEPHANIE PERRIN: The bylaws talk about law enforcement needs, so does our mandate. Law enforcement needs include data protection law. We consult law enforcement investigative authorities and do not consult data protection investigative authorities.

ALAN GREENBERG: We'll go to Chris and then Volker.

CHRIS DISSPAIN: I don't necessarily disagree with you, Stephanie, but doesn't that analysis mean therefore that trademark law sits in exactly the same position, and that therefore, the enforcement of trademark law is also included in this section?

VOLKER GRIEMANN: I think Stephanie is quite right when she points out that for example under GDPR but also other legislations, privacy data protection officials are law enforcement officials. The definition in this question that has been put to us did not differentiate what kind of law enforcement officials we are looking for – the needs are being looked for. It is clear that whoever put this question up meant a very certain section of law enforcement, but it [inaudible]. Now, trademark law enforcement protection, that's not official, that's private. There is no governmental trademark law enforcement protection agency, but there is for data privacy laws.

Now, we should recognize that there is law enforcement needs on the privacy and data protection officials, but we should also maybe point out that when the question was formulated, this was not the question they were thinking of. And also, a survey designed for data protection law [enforcement] officials might be very different from a survey that's sent out to criminal law enforcement agencies, because they would be

asked different questions what their needs are, because their needs are totally different. And therefore, we stand before the crossroads of either expanding that question to the linguistics of what means and ensuring that two surveys are put out for different laws that are being enforced, or that the question is concentrated to criminal law enforcement but we then point out that this question needs to be phrased correctly for follow-up reviews.

ALAN GREENBERG:

I would suggest we may want a second bylaw recommendation that ICANN clarify what kind of law enforcement they are talking about or not clarify and leave it to each review team to decide. Chris.

CHRIS DISSPAIN:

So again, stressing that I don't disagree, you have to be extremely careful here. If you wanted to draw a distinction and say trademark is – which I accept is a different – what about consumer rights? You could argue that the consumer trading standards offices or whatever they call them in each different countries have an equal level of rights to the privacy [inaudible]

UNIDENTIFIED FEMALE:

[inaudible]

CHRIS DISSPAIN: It depends on the country. What I'm saying is we need to be – I'm going to stop here, we just need to be extremely careful that we don't just willy-nilly expand the definition of what we mean.

ALAN GREENBERG: We are at the last face-to-face meeting, our planned last face-to-face meeting and our hoped last face-to-face meeting and plan to issue this review literally in weeks from now. I think it's a bit late for us to reinterpret law enforcement. I believe our response to this one is we have interpreted law enforcement as criminal law enforcement, and I also believe we should put a recommendation under the bylaw one that this be clarified for future reviews, or allow the review to decide on its own each time which law enforcement it's talking about. I see no more hands. Next comment.

KATHRIN BAUER-BULST: Sorry, but since I actually do have to go because I'm already late, so maybe we can do this after the lunch break? Or you continue.

ALAN GREENBERG: Let's continue and do a quick run through, and then we'll review and give you an opportunity when you come back. Enjoy your lunch. Enjoy doing your duty in lunch. Jean-Baptiste?

JEAN-BAPTISTE DEROULEZ: So last one is from NCSG. We fail to see why ICANN should conduct studies to determine whether third parties are achieving their desired

results in accessing registrant data. By all means, this relatively well-funded area of Internet business – referring here to the security community that acts to safeguard the Internet for commerce – may present survey data to ICANN, the Compliance department and the SSAC, but in a time of falling revenues and new compliance costs related to the GDPR, we think this recommendation should be withdrawn. In the interest of transparency, the NCSG request that the current survey be included in the report, surveys are [inaudible] but they are not cheap if properly done.

ALAN GREENBERG:

Alright. I'll take it. Number one, the reference to law enforcement safeguarding the Internet for commerce, I believe, is quite inappropriate in that – I suspect we can provide evidence that a major focus of Internet-related law enforcement is not for commerce, is not protecting commerce but protecting people. I'm not sure we want to go into that depth here, but we may want to comment on that.

STEPHANIE PERRIN:

[We can't blow it off.] Allow me to defend the statement. Internet [business is] referring here to the security community that acts to safeguard the Internet to commerce. They act, they're hired by business to protect their websites. Yes, they're protecting people, they're protecting people from identity theft. They're also protecting the flow of commerce. Come on.

ALAN GREENBERG: This is a recommendation saying ICANN conduct surveys and studies on law enforcement, which are government agencies.

STEPHANIE PERRIN: Well, yes, but we recommended – part that we’re responding here is the extension of the recommendation to expand to –

KATHRIN BAUER-BULST: [inaudible]

VOLKER GRIEMANN: That’s actually the next recommendation.

ALAN GREENBERG: That’s LE2. If people want to conduct discussions, please use your microphones. If you want to keep me out of it, just keep your microphones off. Further comments on this one? I believe we did this because we were instructed to by the bylaws and we did not choose to explicitly not do it in our terms of reference. Volker.

VOLKER GRIEMANN: I’m sympathetic to the funding and financing aspect of this response. I agree also with Alan that there is a certain obligation that ICANN needs to ensure that WHOIS actually fulfills a certain need and is not something that’s done for its own purpose. Therefore, I also agree that there is a need for such studies if they're done right. There's a bit of conflict there, and maybe we should just recognize that if there are

already existing studies in the world or done by other organizations, that these be taken into account in subsequent rounds just to make sure that no duplicate work exists. If there's already a study or research on A, then we don't need to do the same study again just because we feel we have to do it. So if other organizations already conduct these studies and this data is available, then yes, we should use that, but that doesn't mean we shouldn't do studies in the first place, it just means that we might be able to cut back on scope if certain questions are already answered.

ALAN GREENBERG: You mean we should do it intelligently? Radical idea. May I ask to what extent was MSSl involved in this survey that we did?

NEGAR FARZINNIA: My understanding is that we had helped organize and prepare for the survey, but our involvement was just to that extent, and to collect the data.

ALAN GREENBERG: Are you prepared to put a number on that? Number of hours that were MSSl staff that was involved in it. We don't have to put a dollar number on it, I don't think.

NEGAR FARZINNIA: We can try to look into it. I don't have guarantees that we would be able to provide feasible numbers, but we can look into it.

ALAN GREENBERG: I wouldn't suggest you put a huge effort into it. You shouldn't spend more time figuring out how much time you spent than you spent. We were asked the question if we can come up with an answer. Largely, the survey was done by volunteers, however. Anything further on the NCSG comment? Next then.

JEAN-BAPTISTE DEROULEZ: Next one is the following recommendation on law enforcement needs. The ICANN board should consider extending and connecting such surveys [as described] in previous recommendation to other RDS WHOIS users working with law enforcement on a regular basis. [I'm starting with] two supporting comments, first one from Business Constituency –

ALAN GREENBERG: Before we continue, I'll remind people we spent a near infinite amount of time refining that last sentence to try to capture the group we were talking about and not use words that generated additional sensitivities. So just reminding the group. Please go ahead.

JEAN-BAPTISTE DEROULEZ: So first comment is from Business Constituency. "We found the law enforcement survey conducted by the team to be useful, as it not only provided insights to law enforcement needs regarding RDS WHOIS but also gave us preliminary understanding of whether GDPR would likely have an impact on meeting those needs. We support the conduct of additional surveys and research in this vein."

Comment from ALAC, they support recommendation, particularly after finalization of registrant data policy. The ALAC can agree with the recommendation to continuously monitor the impact of RDS-related developments, but it isn't clear to the ALAC how surveys and data gathering are to lessen the potential negative consequences of law enforcement work.

ALAN GREENBERG:

I would say the only way that they do that is their results may cause entities to take action which may enhance law enforcement activities. There is no direct connection, it depends on the details. Such enhancements may not be possible. No comments? Let's go ahead.

JEAN-BAPTISTE DEROULEZ:

Okay. Next one is from I2C. "Internet Infrastructure Coalition finds [inaudible] of this recommendation quite vague and invites the review team to clarify which RDS and what regular basis mean and solicits additional input." Next one is from NCSG –

ALAN GREENBERG:

Excuse me. Do we need to define what [RDS is] in this case? I understand the vagueness of the next phrase, but as I pointed out, that's when we agonized over and came up with something that was not wholly objectionable to everyone, or to anyone. Not wholly satisfying to anyone either. So I think our answer is RDS, we can define for them, and the regular basis was our best attempt at identifying a

group of people who often work in conjunction with law enforcement but not on a formal basis.

JEAN-BAPTISTE DEROULEZ: The next [comment is from] NCSG. “If law enforcement bodies wish to conduct surveys, ICANN should, within reason, cooperate. However, this recommendation should be reworded to clarify who pays for the research. Given the current state of flux in GDPR compliance, no action on surveys of law enforcement satisfaction should be taken until the state of registrant data access is stabilized.

ALAN GREENBERG: Alright. The last part is easy to address because [inaudible] expect any action to be taken on our report until the beginning of 2020 at the earliest. And do we say we’d like to think things will sort of stabilize by then? Do we dare? I don’t see how we can survive if we don’t have something semi-stabilized by that point. I’m not sure how we get there. Stephanie.

STEPHANIE PERRIN: Do you want me to respond to that?

ALAN GREENBERG: We can't stop you.

STEPHANIE PERRIN: Well, you were looking in my direction.

ALAN GREENBERG: Nor do I want to.

STEPHANIE PERRIN: I think it is not a given that no one will respond to this recommendation until 2020. If you make a recommendation for further law enforcement surveys, there may be added pressure immediately to start doing them. That's certainly been the case in the past. Whether things are going to be stable in [2020,] I think that my betting is that we will not have a stable outcome from the EPDP until we have some court cases to make binding decisions on us, because I don't see us coming to consensus anytime soon. Maybe I'm being unduly pessimistic.

UNIDENTIFIED FEMALE: [No, you're not.

STEPHANIE PERRIN: No. So, in which case, it will take until 2020. Although the German courts, I have to say, are moving a lot faster than I ever thought they could. But European court justice will not move that quickly. Thanks.

ALAN GREENBERG: [inaudible] stabilized is not from the point of view of tested under courts of law, but that we've decided what we plan to do, and then the world unfolds as it may. So that's the way I interpreted stabilized in any case. In terms of who pays for it, I don't know how to respond to that.

We certainly can't mandate that ICANN ensure that other people pay for [– have do] surveys and other people pay for them. That's outside of the board's remit for us to recommend. I now have a speaker queue, if I may finish. And on Stephanie's comment on nothing's going to happen, well, you can't stop pressure, but at this point, the board will almost certainly not take action until June, July at the earliest. They may choose to push it down to less than six months to meet the June meeting, but that's optimistic, and we've already heard from Negar that that's likely to result in at least six months of detailed planning before any action is taken. So yes, someone may push to do something quicker, but it's not really acting on our report, it's just the ideas in someone's head. So I don't think we can defer action because someone may like the idea. Stephanie, and –

STEPHANIE PERRIN:

But we shouldn't waste time debating your opinion on whether somebody's going to cat and my opinion on whether somebody's going to act. It's not in the recommendation. I was merely responding to your response to me that nothing would happen until 2020. But let's not waste time further on that.

My opinion of the EPDP is that we are not going to have a stable product at the end. We may very well have the temp spec lapsing, in which case we'll be in no man's land. So that's what I meant by unstable. I'm just clarifying that. Okay?

Now, in terms of who paid, I think it is well within our remit. If we're making sort of a blanket recommendation for further studies and

surveys, then we should be clear on whether we're recommending that ICANN do this or ICANN hire people, because [inaudible] has as a result of WHOIS activity in the past, spent a lot of money on studies. And that's really where our remark is targeted there. I'm not sure the cybersecurity industry is quite well-funded. I don't see that ICANN should be paying for cybersecurity studies. That's where this particular comment is directed. Why should ICANN pay for [Symantec] to do a study? Or [inaudible] the effectiveness. Just saying.

ALAN GREENBERG:

We'll go to Chris first, and then to Volker.

CHRIS DISSPAIN:

So, just a couple of things. First of all, this recommendation is that the board should consider extending, so it doesn't tell us to do it, it tells us to consider it. So we wouldn't have any trouble whatsoever in accepting this recommendation as it stands, because we're always happy to consider things. But secondly, and perhaps far more importantly, irrespective, if the board decides it wants to conduct surveys on [inaudible] it will do so. It's got nothing whatsoever to do with whether a recommendation is made. If this review team is saying, "Do this," then say, "Do this." But what you're actually asking us to do is to consider doing it, which I think is fine, and I don't see any issue with the recommendation. As for who pays for it, well, then if you want to change it, you could say, "Consider extending and conducting such surveys at cost of others." But that's not going to stop the board, if it

thinks it's worthwhile doing a survey, doing it, because it doesn't need this recommendation. Thanks.

ALAN GREENBERG: We have Volker, and then me.

VOLKER GRIEMANN: I think, Chris, that's part of the comment I was trying to make, because this is not an order but a consideration, and you may consider this in five minutes and deny it. But to put a button on something that Stephanie said, a lot of these operatives that would be included in this consideration under this language are for-profit organizations that are providing a service and make money doing that service. And I'm very hesitant to spend [inaudible] on lobbying for-profit organization, because that is part of what this survey will present. These are for-profit organizations, they will have needs that will be based on their bottom lines and the services they're providing to third parties. But basically, their bottom lines are, because they're for-profit organizations, their main concerns. And any surveys that are extended to them for whatever purpose will be skewed towards benefiting that bottom line, so they will turn out to be at least influenced by lobbying concerns and commercial interests. And I am very hesitant to spend money on that, or even to suggest spending money on that.

ALAN GREENBERG: I guess my position is that we continually talk about ICANN making decisions based on [facts,] on knowledge and not random perceptions

of one person versus another, and since WHOIS will continue to be a subject that with are discussing here, GDPR's not going to be the only legislation on privacy, there are going to be other aspects that change over the years, and I think if we need to be informed about how this information is being used or how it affects communities, then we may want to commission studies or surveys to try to understand that better before making decisions. It doesn't commit us to doing it, and certainly, if we are looking at surveying things directly related to for profit companies which I don't think is intuitively obvious, but it might be. Then we do that with due understanding of the impact. So I think it's something that we're saying, consider it, it may allow us to make better informed decisions, and I think it's a completely reasonable thing to do in that context. Do we have any further comments? Stephanie.

STEPHANIE PERRIN:

Okay. So you don't think our comment is worth incorporating into this recommendation. Is that the final word? [inaudible] is bringing up cost on every single recommendation, but ICANN is in an environment of falling revenues, it just [inaudible] to dip into the auction proceeds funds to shore up the reserve. I think it is part of our responsibility to not make recommendations without at least cautioning on who's going to pay for it. Cost is an issue, and as Volker summed up our concerns rather well, we could survey existing [inaudible] by the private sector quite cheaply, because everybody knows that [Krebs] and every man and his dog has had a survey out there about how they need WHOIS. We don't need to spend \$300,000 on a survey ourselves.

ALAN GREENBERG: I have no problem adding a clause saying factoring in cost-benefit analysis. If that gives you a higher level of comfort, I would like to assume the board would consider that, period, but I'm happy to put [inaudible] the specific wording.

STEPHANIE PERRIN: If I may respond to that, the board has a pretty good history of responding in a positive way to GAC recommendations, and I am confident that GAC will be looking for more data on this matter, and therefore, if you're going to have a fight with the GAC over IGO, INGO, and you're going to have Amazon out there, what better way to have a positive response to their communique than [to say, sure, we'll] fund another study?

So I think it's not responsible to just leave it up to the board without giving them some guidance from our committee.

ALAN GREENBERG: Then we add a clause factoring in cost-benefit analysis? Done.

JEAN-BAPTISTE DEROULEZ: [inaudible] comments are from [DNRC] and RySG. First one is this recommendation should be deleted as it is untimely and has the potential to run roughshod over the work of the EPDP. It is also unclear whether other RDS WHOIS users working with law enforcement can legally access personal and sensitive domain name [inaudible] data under the GDPR convention 108, and the over 100 national laws which govern data protection. Issues connected to law enforcement access to

data, including gatekeeping questions of how law enforcement should be defined should only be determined by the EPDP.

ALAN GREENBERG:

Okay. Let's try to take this part by part. There's an implication [inaudible] what we recommend or what the surveys say will end up in something counter to various privacy laws, and I think that's a given is that everything is subject to privacy law. So I don't think we're running roughshod over the EPDP, we're not making any recommendations, we're simply saying, understand the environment. And as I said, I hope the EPDP will be over by then, but lord only knows. I have a hard time relating this particular comment to what the recommendation is saying. Maybe someone else can elaborate.

VOLKER GRIEMANN:

I think the second part at least seems to enquire [inaudible] of these needs. That might be forthcoming under data protection laws. The environment has changed to favor data privacy over the needs of such providers, and while they may claim or rightly say that they have certain needs to further their work, these needs may be in conflict with data privacy laws and therefore should be disregarded. At least that's how I read that.

ALAN GREENBERG:

Yeah. Certainly, defining law enforcement, my understanding is various privacy legislation defines law enforcement, the EPDP is not going to define law enforcement. Under GDPR, law enforcement is governed by

a separate section altogether, and I don't think it's us who decide. Stephanie?

STEPHANIE PERRIN:

I think this recommendation isn't particularly elegantly worded, but Volker is probably right, what they're trying to get at here is that our recommendation doesn't bother making a distinction as to whether this third-party exchange that we want to survey is in fact legal and we should leave it to the EPDP. Well, the EPDP isn't going to make that determination. The data protection authorities are. It seems to me a more – if you wanted to get at that, you would then make sure that we can solve [inaudible] authorities on the legality of this at the same time. That would be a better recommendation if you're trying to address that point, but I didn't draft this recommendation, obviously, so understanding it is a little difficult.

ALAN GREENBERG:

Again, aren't we recommending that we obtain understanding of how well groups believe they are served? Not necessarily determining what we do with that data or how it affects the outcomes. Certainly, we won't have any surveys done while the EPDP is still running, not if the "expedited" has any meaning close to what I think it was. [inaudible] others?

STEPHANIE PERRIN:

I think this recommendation kind of conflates in error what we're driving at. We are going to the third parties that work with law

enforcement, so the [Symantecs] and the Rod Rasmussens of the world, and we are asking them whether their needs are being met through the WHOIS or whatever's public, and I think that is valid. I'm not questioning the validity of that, but these guys are questioning the validity. They're saying that may not be legal and it's up to the EPDP to do that. No. The sharing of data may be a legal issue, but the accessing of data in the WHOIS is not a legal issue once we have a WHOIS that is legally compliant, right? So presumably, we would not be surveying – in other words, they've leapt to the conclusion that the [inaudible] are going to say, "We're not getting the data that we used to get in WHOIS," which is possibly true, but we're not implying that we're going to fix that and allow them to illegally get data anymore. You know what I mean? I think that's where this is headed off the rails.

ALAN GREENBERG:

We may also be in the [world] when we do the survey that by that time, we will have settled on accreditation, and these people are getting the data they want. No? The skies can open and all sorts of marvelous things can happen.

VOLKER GRIEMANN:

[inaudible]

ALAN GREENBERG:

Pardon me?

VOLKER GRIEMANN: [inaudible]

ALAN GREENBERG: So all we're saying is we need to understand, is there any issue? And then we can look at, is there a way to fix the issue? The answer may well be, "Tough. It was a nice world you used to live in, you're not living in that world anymore, we don't have it within our power to change that." Parents can say that all the time.

So they're presuming outcomes from these surveys which I don't think are at all reasonable, that they're presuming that we're going to act and we're going to bow down to them and say, "Oh, you need that? Yes, we'll magically make it happen even though it's against the law." That's not going to happen.

STEPHANIE PERRIN: Well, you can say that, but I think the point is that they are conflating in their comment, and we're not here to predict outcomes, but I don't think we need to [respond to them] in that way.

ALAN GREENBERG: How would you respond to it? We have to respond to it.

STEPHANIE PERRIN: I would respond to them by saying we are not clear as to how your comment responds to the possibility of polling the third parties that are

not law enforcement agencies. We are not proposing noncompliance with law, we are [proposing an] assessment of needs. Okay?

ALAN GREENBERG: Thank you, Stephanie. I hope it's been captured. Appreciate it. Next. I note we are past lunch time, but is this the last one?

JEAN-BAPTISTE DEROULEZ: Yes, and the lunch is gone now.

ALAN GREENBERG: Okay. Cute.

JEAN-BAPTISTE DEROULEZ: Yes, that's the last one. [RrSG] questions, again, [inaudible] the expansion of such a survey to third parties that have not been empowered by regulation or statute with legal enforcement or investigatory powers and legal rights is highly dubious as the legitimacy of such parties is not equal to that of LEAs even though they may provide useful services.

ALAN GREENBERG: Stephanie?

STEPHANIE PERRIN: I have to say that's a more elegant way of wording the thought that the DNRC had expressed, but I'm not sure – I think the same comment does

apply. They're players, whether they are duly empowered under [inaudible] or not – and most of them aren't, but some of them are. I mean some of them would have no problem being authenticated because they have been duly authorized by a law enforcement agency to act, but that would be the minority, I'm betting. I don't think APWG, for instance, shares this data with an appropriate mandate, and I've been snooping on them.

ALAN GREENBERG: Volker.

VOLKER GRIEMANN: Maybe just to clarify, because we discussed this. I don't think the comment here is trying to say "Don't ask them," but it's rather the part of the recommendation that says expand the survey that is taken issue with. In the mind of many in the [RySG] conflate these third-party services we law enforcement agencies. [inaudible] separate entities with separate rights and responsibilities, and treating them the same or including them in the survey that's directed at law enforcement would confer the idea that they are the same, which they're not, and that they should be treated differently. If they are to be surveyed, it should be in a different survey. The results should be spread apart. It should be made clear that law enforcement have their needs and third-party services may have their needs, but they're not the same even if their needs are the same, because law enforcement have rights, they're empowered on the statutes, these parties have nothing. They're empowered by contracts with third parties that they serve.

ALAN GREENBERG: The wording of the recommendation was ICANN board should consider extending and conducting such surveys and/or studies to other users working with law enforcement on a regular basis. I don't think the intention of the recommendation was they take the same surveys with the same questions, because indeed, the mandates and tools they have available are very different, and the laws under which they may access data are very different. Stephanie.

STEPHANIE PERRIN: The use of the word “extending” then is problematic, because extending, the way I read it, implies enlarging the pool.

ALAN GREENBERG: I think the intent – and we'll wait for Kathrin to get back, but I think the intent was extend the concept of surveys and studies, not necessarily –

STEPHANIE PERRIN: But the purpose of our recommendations is to be clear, so if there has been any ambiguity here and the RrSG doesn't get it and the DNRC doesn't get it, then we need to clarify.

ALAN GREENBERG: That's why I was saying what I was saying. I think the word “extending” and “[inaudible] surveys” implies – it's easy to see how people can construe we're saying, “Send the same surveys.” And clearly, that is not

what we would do. The reason we're saying "Extend," that is extend the pool that we are looking at, is we well understand that if you're looking at how cybersecurity issues are addressed, things only get to law enforcement typically when it's become obvious that it's a criminal event or something law enforcement has the powers to investigate. But a lot of the preliminary work is only going to get done if it gets done by non-law enforcement groups, and we're saying these non-law enforcement elements have a critical role to play in cybersecurity, that we should understand the impact to them as well. I think we need to reword it to make it really clear that we're saying – and maybe the preamble too, to make it clear that these are important components in addressing cybersecurity issues. They are not equivalent to law enforcement, and in fact, they do things that law enforcement can't, because law enforcement only acts when there's a belief of a criminal act, with very few exceptions. They do have investigative roles in a few areas. So I'd think this is pointed out that we need to reword this recommendation to make it really clear what "extend" and "such" means. I think both words need to be avoided. Go ahead. Sorry.

VOLKER GRIEMANN:

Could you just go to the previous slide with the recommendation? And Alan, you're quite right. Law enforcement also has preventative capabilities, they can act in order to prevent criminal acts from occurring as well, and that should be [inaudible] conduct such surveys, or should consider to also conduct such surveys.

ALAN GREENBERG: Comparable surveys or something.

VOLKER GRIEMANN: Yeah, comparable surveys, exactly. I think that will already alleviate the concerns of the RrSG completely here.

ALAN GREENBERG: Good point. One of the reasons we ask for comments is people may actually have salient, important comments to make. We're done, I think. Lunch, one hour.

VOLKER GRIEMANN: Not for us. We just get it in here.

ALAN GREENBERG: Yeah.

[END OF TRANSCRIPTION]