
JEAN-BAPTISTE DEROULEZ: This is the afternoon session of the Face-to-Face Meeting #4 on 11 December 2018. It's currently [inaudible] UTC. I remind everyone that the call is 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 very much. Volker and I worked over lunch, and we have a draft Recommendation to replace CM.2. CM.2 you may recall was talking about the roughly what we guess were 180 million grandfathered domains, those that were not subject to the validation verification rules in the 2013 RAA. Those rules only applied essentially to new domains or new registrations or those transferred in or otherwise had their contact information changed.

There was significant pushback in a number of quarters. You will recall when we discussed it, Volker and I volunteered to try to draft something new, driven to some extent by the possibility that the EPDP might eliminate the admin field. Under the 2009 RAA, the registrant contact field specifically e-mail and telephone were not mandatory but the admin contact fields were. We might be in a situation where if the admin contact is eliminated, we have a situation where we have a domain with effectively no contact information at all. This is looking at [attempting] that.

The recommendation that we are talking about reads: "The ICANN Board should initiate action intended to ensure that for all gTLD [domain name] registrations at least one full set of contact details as

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required for new registrations under the 2013 RAA or any subsequent version thereof or applicable policies” – and there need to be some commas scattered throughout this sentence – “must be collected or be present for either registrant or admin contact. The rationale is in light of the possibility that some contact fields may be eliminated or significantly reduced. A concrete risk exists that with regard to domain name registrations that do not meet the requirements of the 2013 RAA (i.e., grandfathered domains) no longer have one complete set of contact details associated with the registrant or representative [registrant or admin]. In such cases, action should be undertaken to ensure the registrant or his representative remain contactable. Timeline: four calendar years or next renewal date, whichever is larger.”

And the four, obviously, is subject to discussion. It’s just there as a number to start with. So essentially we’re saying that we want to make sure that there are no registrations that are uncontactable, whether it’s because of a UDRP or a registrar going bankrupt and the receiving registrar not having any contact information whatsoever. I’m slightly uncomfortable with the wording of the recommendation in that the reference to the “required for new registrations” might be construed despite the word “all” that this only applies to new registrations. But I suspect my level of comfort will increase once we add a few commas.

Open the floor. Volker? Prime author.

VOLKER GREIMANN:

Thank you. Just to provide some more background, we looked at the original recommendation and the first question was, and it was also the

question that was raised by a lot of comments, [was what] is this actually trying to fix? The biggest issue that we could come up with was that with certain registrars eliminating the admin field altogether and the EPDP also discussing the elimination of the admin field, we might end up with a situation where we would not have any quick way to directly contact the registrant [from] sending a letter for certain registrations that predate the 2013 RAA, the so-called grandfathered domain names.

We, therefore, thought about what might be appropriate and we figured that ultimately we should ensure that either the registrant or his representative, the admin in case the admin is not eliminated, should have some form of contactable contact details available.

This basically means, to interpret what the section actually is trying to do, if a domain name has a contactable admin, nothing needs to be done because it has the full contact details. However, if the admin field is eliminated either by the registrar because their interpretation of applicable laws or by incoming policies or new contracts, then at least one contact field should remain as the full contact details as are required for new registrations under the RAA that is applicable at the time. Which basically means if you have an old registration and you eliminated the admin detail and you have the registrant detail with incomplete details, then you better make sure that those registrant details are completed as soon as possible.

And the timeline that was a suggestion from Alan, I think we should be open to [inaudible] leave it open for the implementation phase of this recommendation. But, obviously, I'm not [refusing] four years.

ALAN GREENBERG: Thank you. Can I ask Jackie to make a note that – and it was something I was thinking of and I never mentioned before but it’s particularly applicable – in somewhere around the introduction when we talk about the EPDP, when we talk about GDPR, note that the final face-to-face meeting and decision-making of this group was in December. At that point, the EPDP had been meeting for N months and had issued an interim report. And to the extent that their deliberations so far impact our areas [in] our review, we are factoring those in. That needs to be reworded. That goes along with our original decision that we are not ignoring the GDPR, but we’re not trying to replace the other processes that are going on around us. Thank you.

Comments on this discussion? Susan?

SUSAN KAWAGUCHI: [I think that] we need to rework some of the basic language [in the report] in this section to lead it up to that. I don’t know who takes the lead on that.

ALAN GREENBERG: I would suggest you take a highlighter to it, and if you want to do any wording, fine. Otherwise, at least highlight it for Jackie to make sure that when we get closer to the end something has been adjusted by one of us.

SUSAN KAWAGUCHI: Okay.

ALAN GREENBERG: The same with Volker.

VOLKER GREIMANN: I [posted] it to the list, so everybody should have the language. I think it's not the intention that we are providing a fully fleshed out language over the course of a lunch break. This is a suggestion. This is an idea of how to address the comments and the issues that many had with the original recommendation by directly targeting the main problems that we were trying to fix. Any suggestions then, I think we should discuss that on the list and have it done by the time that we are ready to prepare a final version.

ALAN GREENBERG: One note that when we were doing the draft report, there were a couple of places where it became obvious in the final editing that the wording of a recommendation really needed to be changed. We didn't change it because we had already taken the consensus [inaudible] and we were not willing to reopen it. We being Lisa and I were not willing to reopen it at that point. I would like to establish the principle that if we find things comparable in this pass that we do present it to the group and we'll have a little bit more flexible time. But just to serve notice that, yes, we will try to come to closure here, but it is subject to editing and readability. And my preference would be to reopen those and redo

the consensus call or ask is there anyone who [inaudible] their position because of the timing?

In the case I was thinking of, there was really no change of intent, but the wording was really awkward. So hopefully we can fix those with the agreement of the group. It's conceivable someone's position may change on a recommendation because of it, but I think that's something we'll have to handle. All of which says that there may be e-mails you have to pay attention to in the next month and a half.

Any other comment on this one? Then let's go back to Law Enforcement and review for Cathrin what we decided, and hopefully she will agree with everything. I say with a smile on my face.

CATHRIN BAUER-BULST: I apologize for being back so late. I'm not the master of my own schedule, unfortunately.

ALAN GREENBERG: I will try to remember what we did, but I won't [inaudible] and I'm hoping Jacking and Negar will be able to remind me. Now we left off at the last comment on LE.1 I think when Cathrin had to leave. I think there was one on the next page. Am I imagining it? Or next page. That's the one. Okay. All right, the first part of the comment is talking about why we should do studies of well-funded areas of Internet business and the security community that safeguards Internet commerce. This recommendation is talking purely about law enforcement, so I don't think that is applicable.

UNIDENTIFIED FEMALE: Is it possible that this one refers to the next part where we propose to expand the reach to also include cybersecurity organizations?

ALAN GREENBERG: It is certainly possible. We will address a similar concept there. Is there anything else I forgot about this one? In terms of the costs of the [inaudible] MSSI will attempt to give us a number of hours they put into it, but the survey was largely done on volunteer time. Have I missed anything that we need to report to Cathrin?

NEGAR FARZINNIA: No, Alan. You've summarized the two items. One was that the review team's response to the comment was you had concentrated on law enforcement because you were instructed by the bylaws to do so and you intentionally decided to leave aside [inaudible] part of it or the commerce part of the equation I guess. And the second one was for MSSI to determine if feasible the number of hours spent to put together the survey on it.

ALAN GREENBERG: Thank you. In the future ones I'll let you report first because you actually have notes.

NEGAR FARZINNIA: You did a great job.

ALAN GREENBERG: Cathrin, you're happy with that? Let's go on to LE.2. I'll start, but please don't wait for me to ask if I'm missing something.

BC says they're basically supporting it. ALAC support it. Sorry, BC?

NEGAR FARZINNIA: No. I was just going to say I'm happy to go over the notes we've taken so you don't have to think through what you guys decided before lunch.

ALAN GREENBERG: Okay, I'll just finish. You can go on.

NEGAR FARZINNIA: Sounds good.

ALAN GREENBERG: The ALAC said it's unclear how the surveys are going to lessen potential consequences. The answer is they'll provide information which ICANN may if it is so empowered take action on. If it's not empowered, then try to convince someone else to. Negar?

NEGAR FARZINNIA: Thank you. On the I2C comment, they noted that the coalition "finds the language of this recommendation quite vague and invites the review team to clarify which 'RDS' and what 'regular basis' mean, and solicits additional input."

So the response was the review team can define what RDS means in the document. Regular basis is our best attempt to identify a group of people often working with the law enforcement group but not on a formal basis. That's what we had captured in terms of our response. Any comments that you want to address? Cathrin?

Okay, moving on to the Non-Commercial Stakeholder Group comment: "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."

The response was we don't expect any action to be taken on this report until the beginning of 2020 at the earliest given the board action and the [implementation time] needed. We actually left it at that for this particular comment. Is there anything that you would like to add?

CATHRIN BAUER-BULST:

Yeah. I think the one thing that I understand even the EPDP can sort of agree on is that at some point there should be legitimate access for law enforcement. So doing some evidence-based policymaking doesn't necessarily hurt. And that means that I think there should be openness to even consider this now. If you weigh this against the impact of designing something now that doesn't fit any needs later on, then arguably the cost is much greater. So I don't believe in not looking for

evidence, and I would argue that this [arguably] should happen already now.

I recognize that, of course, we're working within a very specific timeframe and this will still be useful for further iterations because I do think this will take us a long time to get right. So I think that we should maybe add a little more [inaudible] to the text that you have now suggested to put in response, which is that of course all of this is very far down the road. To say that evidence would be helpful even earlier of course. And the cost of this once you have set up the survey, the survey itself was free to run and the graphs are produced by the software. So the manpower in terms of analyzing it is not huge. And so I think we should just add a little bit more on that. And when it [inaudible] and so on, I'm happy to be more specific but also want to make sure that it's proportionate, which is why we left it bit of flexibility there.

ALAN GREENBERG:

I have a question. I don't think we cover it anywhere, but I may be wrong. When you talk about law enforcement and access to data, the response from some people very often is law enforcement is special. They can get a subpoena. They can get any action, any data they want or need. That ignores the fact that there are time delays associated with that process, and historically much access is not at the stage where they have the ability to get a subpoena and the WHOIS information has been useful prior to the formal law enforcement access to data. And I think we need to say that. That may or may not happen in the future, but I think we need to make it clear what the process is that law enforcement access at this point prior to GDPR and WHOIS was not at the stage

where subpoenas or a formal legal action could be taken. I just want to make sure we're covering that somewhere in the dialogue if it's not already there. So that's a note partially to Cathrin and partially to Jackie.

Cathrin and then Volker. Or Volker then Cathrin.

VOLKER GREIMANN:

Yeah, I keep pointing back to due process for timelines and those process steps are there for a purpose. I also think that many governments are cognizant of the problems with the current due process rules as regards to, for example, international law enforcement access to data. And that's, for example, why the European Commission is currently working on the evidence regulations that would vastly streamline such processes. And I would recommend to all governments to engage in [inaudible] that would streamline these access provisions simply because they themselves are complaining that the mechanisms that they currently have put in place are not sufficient and instead of asking the contracted parties to circumvent those, they should make these processes better as some governments are doing.

ALAN GREENBERG:

If I may make clear, I wasn't implying that we should give law enforcement full access to all data just because they happen to want it. I'm [inaudible] pointing out that the current processes, there are different levels of investigation that they have used in the past. They may or may not be available in the future. But just pointing out that not all access to information by law enforcement is done through due process today or last year, whatever. Cathrin?

CATHRIN BAUER-BULST: Yes, I mean, thanks for the kind words about the evidence which is the reason why I'm late because I'm [inaudible]. But that's was never designed to be a solution for the WHOIS. I know that the contracted parties are in there, but that's [for bidding] information. You cannot move WHOIS requests [to] mutual legal assistance or anything like. And, of course, the evidence is within the union. It doesn't cover U.S. companies other than those targeting the union. And it doesn't actually fix anything, and it wasn't designed to do that for WHOIS because we're dealing with situations where you know. I mean, on cybercrime you have botnets that move [command control] every five minutes. If you leave those investigations to be performed through mutual legal assistance, that's not going to fly regardless of what laws we come up with.

So we need to fix the system that we used to have even if it's not openly available anymore. But I think this is really a [side fight], and that's one that the EPDP is engaging in. It's not something we can fix in this report, and I didn't aim to do so. I think the recommendations we put forward are extremely cautious in terms of [not having] any specific way forward. All they seek to do is to create an evidence base so that there can be evidence-based policymaking by others. If that's deemed to be too costly, then I think the investment we make in non-evidence-based policymaking is much more of a risk than actually spending a little bit of money on surveys and studies. Thank you.

ALAN GREENBERG: I don't think we want to be in the position of advocating non-evidence-based policymaking. Any further comments on this particular comment? Let's go on to the next.

NEGAR FARZINNIA: We have two more comments on the next page that I'm bringing up now.

ALAN GREENBERG: Please.

NEGAR FARZINNIA: Oh.

ALAN GREENBERG: I think we're on the right display.

NEGAR FARZINNIA: That might help, right? The next comment is from the DNRC. They are suggesting the "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 registration data under the GDPR. ... Issues connected to law enforcement access to RDS data, including gatekeeping questions of how 'law enforcement' should be defined, should only be determined by the EPDP."

The response that the review team came up with is that we're simply looking to understand the environment. We don't believe this recommendation runs roughshod over the EPDP. We are not proposing noncompliance with the law. We are proposing assessment of needs. And Stephanie actually provided us with additional comments that we're going to capture off the recording in response to this. Is there anything you would like to add to this, Cathrin?

CATHRIN BAUER-BULST: No, I think it's extremely eloquent. I particularly like the "roughshod" part. Very nice. I can fully subscribe to that. And just to say there is no interest [to] law enforcement to gather evidence in a way that's not compatible with the law because it comes back to bite you when you go to court. You're not going to be able to [inaudible] someone if you've taken action that is not within your remit. So I think this point is a bit exaggerated sometimes. But happy with the response, and if I can add some of my extra pro law enforcement flourishes, I'll be even happier. Thank you.

ALAN GREENBERG: Stephanie had a rather eloquent one. I'm not sure if you can reproduce it now, but we said we'd capture it off of the recording.

CATHRIN BAUER-BULST: [inaudible]

ALAN GREENBERG: And lastly?

NEGAR FARZINNIA: And the last comment is from the Registrar Stakeholders Group: “RrSG cautions against including parties who work with LEAs in any survey or attempting to equate the needs of those who work with LEA to the actual needs of LEAs. 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 service.”

Our response has been the intent was to “extend content of surveys and studies but not the pool of the survey takers.”

ALAN GREENBERG: Not “content.” I thought “concept.”

NEGAR FARZINNIA: Yes, apologies. We miswrote that. The intent was to extend concept of surveys and studies, not the pool of the survey takers. Cathrin to clarify intent, so this comes squarely back to you, Cathrin, for input please.

CATHRIN BAUER-BULST: Yes, thank you. I think at the time we discussed that there are two sets of [cybersecurity players] which are I would say equally important. One is the public sector. So we have a number of, for example, computer emergency response teams that are set up as public entities that are not generating a profit off their activities but, for example, are reporting

government agencies and others with cybersecurity needs. Then there are some mixed entities that are public/private partnerships usually. And then there are the private cybersecurity companies.

It is, of course, not always easy to delineate who is working just for their own profit and who is working for the benefit [inaudible]. But at the same time, at least from the law enforcement perspective, anybody who contributes to cyber hygiene is necessary and is a welcome player in terms of trying to already combat things on the cybersecurity side before it gets to the law enforcement side.

So that's why at least that was the rationale that I remember that led us to add language which I must say is extremely cautious even in the recommendation where we said it doesn't quite have to be that they have a statutory role, but there needs to be a connection to law enforcement. I remember Stephanie and I worked a while on coming up [with the] wording, and I think we should stand by that wording because it does try to balance these interests and it does try to create a sort of cut off point between entities that work with law enforcement on a regular basis and entities that may just be out to generate their own profit even though incidentally they might contribute to cybersecurity.

ALAN GREENBERG:

Thank you. I've never heard the term "cyber hygiene" before. I like it. What we realized in looking at this comment was not an issue with the last part of the sentence but with the first part where it says we "should consider extending and conducting such surveys." That was read to say

we should take the same surveys and send them to the non-law enforcement people and apply the same studies. I think the intent was that we should conduct surveys and studies of those working with law enforcement [inaudible] necessarily the same questions and the same intent. And their concern was we were treating them as law enforcement, whereas instead they are important players in the process and we should not ignore them.

So the suggestion was we reword the first part of the sentence to not imply that we're talking about the exact same survey documents or study documents.

CATHRIN BAUER-BULST:

I guess I had a different interpretation of the comment which didn't [inaudible] just consist in thinking that they were opposed to using the same questions. I understand that there is a general issue with even expanding the surveys per se regardless of what we ask. So maybe there's a way of addressing both points by also addressing the second one which is that we actually did work on carefully limiting the scope of actors who we think should be surveyed. But I think we should stick to that careful extension and maybe also explain that if that's [inaudible].

ALAN GREENBERG:

And that was the reason I said somewhere we need a bit of description saying there are different players in the field that have different roles but they work together. I think we're done. I think this is the last one.

Back to the normal program. Where are we? Consumer Trust.

UNIDENTIFIED MALE: [inaudible]

JEAN-BAPTISTE DEROULEZ: So at this stage, Alan, either we continue with what we had tomorrow morning.

ALAN GREENBERG: Well, look, it's a quarter to 3:00. There's no way we can let these people out at this point.

UNIDENTIFIED FEMALE: Well, I would prefer to power through and then just go home early tomorrow.

ALAN GREENBERG: I support that strongly.

JEAN-BAPTISTE DEROULEZ: Okay, we move to Safeguarding Registrant Data and ICANN Bylaws afterwards.

ALAN GREENBERG: There is a fair amount of work that still has to be done by a few of us, so I hope we'll still be finished early today and get some of that work done.

JEAN-BAPTISTE DEROULEZ: So welcome, everyone, to Face-to-Face Meeting Day 3, Objective 5.

UNIDENTIFIED FEMALE: Can I interrupt [inaudible]?

JEAN-BAPTISTE DEROULEZ: Sure.

UNIDENTIFIED FEMALE: Okay, everybody [inaudible].

JEAN-BAPTISTE DEROULEZ: Can we leave the zoo for now and go back to...?

ALAN GREENBERG: Jean-Baptiste, this is the zoo.

JEAN-BAPTISTE DEROULEZ: All right, so moving on to Objective 5: Safeguarding Registrant Data. Starting with the public comments on the section itself from the RrSG, they have “no issue with these requirements, with the assumption that any update of the contracts will not be extended to anything outside of them. Such requirements should be general, not specific and merely reference best practice legal regulations such as the GDPR.”

ALAN GREENBERG: Let's go back and say what the recommendation was. I can read it if you want.

JEAN-BAPTISTE DEROULEZ: No, I can read it: "The ICANN Board should require that the ICANN Organization, in consultation with data security and privacy expert(s), ensure that all contracts with contracted parties (to include Privacy/Proxy services when such contracts exist) include uniform and strong requirements for the protection of registrant data and for ICANN to be notified in the event of any data breach. The data security expert(s) should also consider and advise on what level or magnitude of breach warrants such notification. In carrying out this review, the data security and privacy expert(s) should consider to what extent GDPR regulations, which many but not all ICANN contracted parties are subject to, could or should be used as a basis for ICANN requirements. The ICANN Board must either negotiate appropriate contractual changes or initiate a GNSO PDP to consider effecting such changes."

UNIDENTIFIED MALE: [inaudible] the recommendation, just one comment for change. I think we should not have the ICANN board negotiating but rather [inaudible] direct ICANN staff to negotiate.

ALAN GREENBERG: We're going to catch all of those. Now alternately, we could use the wording that Volker used in the replacement CM.2 of the ICANN board should – whatever it said – ensure attempting or....

VOLKER GREIMANN: [inaudible] the ICANN board could also take action [commending] to the EPDP or any working group that [inaudible].

ALAN GREENBERG: Oh, okay.

VOLKER GREIMANN: So it's not direction to staff. In CM.2 it's more general.

ALAN GREENBERG: Okay, we'll correct all of the wording where we instruct the board to do something. And if we can use cleaner words, we will. I will point out that the GDPR contains requirements that are comparable to these, so chances are in satisfying the GDPR we will in fact have met pretty much all of the requirements that are within this requirement except possibly the reporting to ICANN. That may depend on controller relationships and things like that. Jean-Baptiste, back to you.

JEAN-BAPTISTE DEROULEZ: This recommendation, there were three supporting comments from RrSG, RySG, and ALAC. And then two following comments, the first one from the Internet Infrastructure Coalition where they have "concerns

about making sure contracts of Contracted Parties should be aligned with each other when it comes to requirements of user data security, noting these requirements should be strengthened and ICANN should have a right to be notified of breaches. They would like to see this move towards having both ICANN and GDPR compliant contracts.”

ALAN GREENBERG:

I think the first part is basically agreeing with us. And GDPR compliant contracts are, I hope, a given, certainly those who are subject to GDPR. I’m not quite sure what ICANN compliant contracts are. I mean, how can ICANN have a contract which is not compliant with its own policies. Does that make any sense?

UNIDENTIFIED MALE:

[inaudible]

ALAN GREENBERG:

Please use your microphone.

UNIDENTIFIED MALE:

I am surmising that what they mean is that there has been noncompliance with existing contracts [inaudible] ICANN, that is the RAA contracts. And the RAA contracts, I think that’s a clear reference to those contracts. So it’s saying that they should make sure that they are compliant. In other words, enforcement is an issue. I think that’s what they are pointing out.

SUSAN KAWAGUCHI: Yeah.

ALAN GREENBERG: That isn't the contract not being compliant.

UNIDENTIFIED MALE: I think that's what they mean to say. Enforcement, lack of enforcement.

ALAN GREENBERG: Okay, then I guess our answer [inaudible] we support compliance with law and support compliance with ICANN contracts.

UNIDENTIFIED MALE: [inaudible] in answer to the earlier question, you also pointed out that if ICANN is going to be GDPR compliant anyway, then all of those contracts would follow.

ALAN GREENBERG: Well in theory, we could have non-GDPR compliant contracts with non-GDPR subject parties.

UNIDENTIFIED MALE: Right. But at this time [inaudible].

ALAN GREENBERG: There's no – no. I think we're okay. I think we'll have a simple, clean answer for this saying thank you and we agree.

JEAN-BAPTISTE DEROULEZ: The next one is from the Business Constituency: "While there has been a significant and useful focus at ICANN on registrant data privacy over the last several months, it remains unclear whether registrars and registries are adequately protecting registrant data (e.g., from data breaches). ICANN's contracts with registries, registrars and escrow agents include varying requirements for how data is to be protected from inappropriate access or change. We have limited transparency, however, on whether, and how well, these contracts are being enforced. For example, there's a contractual requirement that ICANN be notified in case of a data breach, but it's unclear whether and to what effect this has been enforced. We suggest this is an area for the Team's further consideration."

ALAN GREENBERG: Well, we are specifying that we believe we must be notified of data breaches. And we are saying use reasonable industry standards in protecting data and stuff like that.

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: We, this review team, are saying.

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: Oh, sorry. ICANN org. Or me personally. I want an e-mail. I can add you to the list if you'd like. The part that we are not saying is public disclosure of the details or the statistics, that escrow agents [have been] subject to 493 breaches or registrars or whatever. Or go to the extent of documenting them, which law requires in some jurisdictions anyway and public companies often have to publish because of liabilities and stockholder implications. Do we want to make any reference to disclosure information related to breaches in our recommendation? Disclosure to the public by ICANN. Erika?

ERIKA MANN: Alan, I would be surprised if ICANN would not have to do this anyhow because I believe there are laws in most countries in place which would request ICANN to notify data breaches, at least major data breaches.

ALAN GREENBERG: I'm not talking about notifying the entities whose data is breached. I'm just saying a public disclosure either on a detailed basis or a statistical basis what has been reported to it. Whether it is obliged to notify the data subjects would be a really interesting thing [inaudible] have that data of who they are. But ignoring that part for the moment.

ERIKA MANN: Yeah.

ALAN GREENBERG: Stephanie, go ahead.

STEPHANIE PERRIN: This is a good example of where ICANN will have to modify its contracts in order to be in compliance with GDPR. Because at the moment, there's no obligation that I can see in those contracts, in the escrow contracts, [inaudible] anybody to notify the individuals. And it is not the registrars that are in control of that contract. It is ICANN, I would argue. So therefore, they have to either figure out a way to notify the registrants or figure out a way of transferring that responsibility to somebody. So maybe it is the escrow agents that have to do it, which would be logical. But that's not usually the way that you do these processor....

UNIDENTIFIED FEMALE: [inaudible]

STEPHANIE PERRIN: No, you can't really download it on the processor. So that contract will have to be changed, in my view anyway.

ALAN GREENBERG: That's a GDPR issue. We're saying they must notify us as someone they have a contract with or a relationship with. The notification of the

registrant is subject to the laws that are applicable in their jurisdictions, I would think. Or in our jurisdictions if we have to force it upon them. But the question here I was asking is, do we want any issue of ICANN issuing direct public...?

UNIDENTIFIED FEMALE: [Public notice.]

ALAN GREENBERG: Pardon me?

UNIDENTIFIED FEMALE: [Public notice to everybody.]

ALAN GREENBERG: Yeah.

STEPHANIE PERRIN: I leave it to the security [inaudible] as to whether that's a great idea, you know?

UNIDENTIFIED MALE: [inaudible]

ALAN GREENBERG: I'm sorry?

CARLTON SAMUELS: [inaudible] escrow contracts, there is requirement for data breach notification to ICANN.

ALAN GREENBERG: Yeah, only the escrow. The others do not.

CARLTON SAMUELS: Only in the escrow.

ALAN GREENBERG: Yeah, that's we [report].

CARLTON SAMUELS: So what you're saying, Alan, is that the recommendation is whether or not then there should be an obligation for ICANN itself to publicly disclose that which comes from its contracted parties. And [inaudible] context I agree with Stephanie that maybe [as] a best practice that we could recommend that they do public disclosure of what those parties tell them.

ALAN GREENBERG: Simply saying public disclosure makes it unclear whether ICANN reports that seven registrars reported breaches in 2018 or whether we say on December 31 Verisign reported a breach of 14 million records. Those are two very different things.

UNIDENTIFIED MALE: [I agree.]

ALAN GREENBERG: Okay. And I'm not sure we are either knowledgeable – and there are potential hazards associated with disclosure of some things. And I would suggest we might want to add that the ICANN board consider whether public notice should be given regarding breaches that it has been informed of and [leave it] [inaudible] completely. And the board in its wisdom will consider whether to do it and at what level.

UNIDENTIFIED MALE: [inaudible]

ALAN GREENBERG: Hey, we just said the board had wisdom. You should at least nod.

UNIDENTIFIED MALE: [inaudible] [I'm in shock.]

ALAN GREENBERG: Agreement to add that the board should consider?

UNIDENTIFIED FEMALE: Yeah.

UNIDENTIFIED MALE: Yes.

ALAN GREENBERG: Anyone disagree? The board in its wisdom [should].

UNIDENTIFIED MALE: Let's get that concept of wisdom in the report.

ALAN GREENBERG: Stephanie, you look [unhappy] about it, but I'm not sure.

STEPHANIE PERRIN: [Unhappy?]

ALAN GREENBERG: Yeah.

STEPHANIE PERRIN: No [inaudible].

ALAN GREENBERG: No? Okay. All right, if we can record that. The board should consider whether and to what extent notifications it receives of breaches should be made public. Do we have anything else?

UNIDENTIFIED MALE: [inaudible]

ALAN GREENBERG: That is in response to it is unclear whether and to what extent this is being enforced. Are there any more on SG.1? Let us go on to BY.1.

JEAN-BAPTISTE DEROULEZ: All right, we're now on Recommendation BY.1: "The ICANN Board should take action to eliminate the reference to 'safeguarding registrant data' in ICANN Bylaws section 4.6(e)(ii) and replace section 4.6(e)(iii) of the ICANN Bylaws with a more generic requirement for RDS (WHOIS) review teams to assess how well RDS (WHOIS) policy and practice addresses applicable data protection and cross border data transfer regulations, laws and best practices."

Here we have several supporting comments.

ALAN GREENBERG: Sorry. Before we talk about the details, several of the negative comments are removal of the words "safeguarding registrant data." Our intent was we replaced it with applicable data protection across border regulations laws and best practices, and we presumed that safeguarding registrant data was implied in that. Several people took great umbrage I think is the right word of us omitting those words implying we no longer considered safeguarding registrant data relevant. I will propose that we amend the recommendation to include those explicit words to make

clear that we were not omitting them; we were just omitting them as a separate action of future review teams. So that we incorporate the term “safeguarding registrant data” into the last half of the recommendation. I’m stating that ahead of time because it will come up in several of the recommendations. So I’m not proposing wording right now, but I will soon. Let’s go back to the scheduled [inaudible].

JEAN-BAPTISTE DEROULEZ:

There are four supporting comments and two disagreements. The first one is from I2C where they support “the idea of updating the bylaws, but wants to ensure up to date and effective data safeguards are part of that discussion.”

The second one is from the RrSG where they take “no issue with the bylaws being updated, however, it should be ensured that the data safeguards remain part of the revised language.”

Third one is from RySG: “supports the second part of Recommendation BY.1 to replace section 4.6(e)(iii) of the ICANN Bylaws, but does not support the first part of this recommendation to eliminate the reference to ‘safeguarding registrant data’ in ICANN Bylaws section 4.6(e)(ii).”

And finally, ALAC supports the recommendation.

ALAN GREENBERG:

I think those are all addressed by the change I’m suggesting.

JEAN-BAPTISTE DEROULEZ: All right, and two disagreeing ones. The first one from the DNRC: “Concerned about the deletion of protections for Registrants from New ICANN Bylaw Section 4.6(e)(ii) and ask that this recommendation be removed, as they consider it dangerous and short-sighted, as removing or changing this Bylaw protection would violate key promises made in the ICANN Transition, and fundamental commitments of the ICANN Community to its foundation of domain name registrants. The publicity of such a change, alone, would undermine confidence in the DNS.”

ALAN GREENBERG: Okay, with the change that we’re suggesting, what we are doing is omitting reference to the OECD guidelines and replacing it with “applicable data protection and cross border data transfer regulations, laws and best practices.” And we will put back the explicit wording of “safeguarding registrant data,” and I think we’re addressing this. Stephanie looks concerned.

JEAN-BAPTISTE DEROULEZ: All right, next and final comment is from NCSG: “We understand from examining the discussion on page 129 that the goal behind this recommendation was to eliminate reference to the OECD Guidelines, and to replace it with reference to data protection law and best practice (with a view to compliance), but as currently worded the recommendation does not do this. It sounds like the team is recommending the elimination of the reference to ‘safeguarding registrant data’ in ICANN Bylaws section 4.6(e)(ii). If this is not indeed

the intention, the recommendation must be reworded to precisely state its intention.”

ALAN GREENBERG: Done. All we have to do is figure out the rewording.

JEAN-BAPTISTE DEROULEZ: So that’s it for the section on BY.1.

UNIDENTIFIED FEMALE: Who is going to be the penholder to reword the recommendation so we can capture that, please?

ALAN GREENBERG: Do we have a volunteer?

CARLTON SAMUELS: [I will do it.]

ALAN GREENBERG: I think Carlton just volunteered. [inaudible] or my phone’s going to ring again. All right, it is 3:00. Yes, sorry.

JEAN-BAPTISTE DEROULEZ: I just wanted to mention that I also reported in the [slide deck] general comment on the draft report from the Domain Name Rights Coalition. If you wish, I can [read it].

ALAN GREENBERG: Oh, yes, please.

JEAN-BAPTISTE DEROULEZ: That's the last thing that you have to [inaudible]. All right, it says the following. They ask "that the RDS/WHO2, in fairness, acknowledge the many deep and lengthy concerns raised by members of the ICANN Community on the EWG Reports, where new sections were first introduced in the final report (without public input), and without factoring into compliance with the GDPR."

They also "ask that the Final Report highlight more strongly the important role of domain name Registrants, and highlight their rights as protected data subjects in the DNS. Coalition strongly opposes with recommendations potentially calling for mass takedowns of domain names. DNRC also asks that the Final Report reflects more of the history of the WHOIS databases and the robustness of the debate that has taken place throughout the history of ICANN."

ALAN GREENBERG: Let's deal with this one-by-one. References to the "deep and lengthy concerns raised by members of the ICANN Community on the EWG Reports, where new sections were first introduced in the final report

(without public input), and without factoring into compliance with GDPR.” To what extent is this within our mandate?

SUSAN KAWAGUCHI: I would say [inaudible] [Kathy] hated EWG in the report. See if that satisfies her. It’s nonsense.

ALAN GREENBERG: Microphones.

SUSAN KAWAGUCHI: I’m just trying to figure out what this means because a) report, b) I can’t recall, since I spent a lot of time in that, I can’t recall any final section written in that was not a response to comments and was not included, at least the idea was not included, in the first report. I cannot recall that.

SUSAN KAWAGUCHI: That was [inaudible].

UNIDENTIFIED MALE: You were here, Susan. Can you recall [inaudible]?

SUSAN KAWAGUCHI: That was her impression that we had. Because we went from one [inaudible] concept in the report, issued a draft report or at least questions for comments. I can’t remember the exact pattern either. But

it was sort of [inaudible] the last three months of all our deliberations that we went to the point of contact strategy in the report, and she objected to that. But I just don't think there's any relevance. If she wants to make a big deal about the EWG report now, she can do that in her own comments like she has done. But I don't think there's any reason that this review team would go back and....

UNIDENTIFIED MALE: How is this...?

SUSAN KAWAGUCHI: It's just not relevant.

UNIDENTIFIED MALE: We did not start with EWG here.

UNIDENTIFIED FEMALE: No.

ALAN GREENBERG: We could have put within our Terms of Reference a review of the EWG process which came out, came [inaudible] result of the first WHOIS review team. We could have, but we didn't.

UNIDENTIFIED MALE: We didn't.

ALAN GREENBERG: And I'm not sure – if we were to now go into what might amount to a diatribe on the EWG, people would accuse us of doing exactly what she's worried about in our report. So I can't see suddenly introducing a section on the EWG. Yeah, I think our response to that part is it was not within our Terms of Reference and we do not believe it would be appropriate for us to start commenting on the EWG. It could have been something within our Terms of Reference. It was not mentioned at the time. It was not agreed to by this review team, and we don't believe we should begin that now.

Next part.

JEAN-BAPTISTE DEROULEZ: All right, Alan, if I can just complete to that. I don't actually recall at ICANN 63, but I think that was a concern that she had that she was scared that some new sections would be introduced into the final report that were never submitted for public comments or something like that.

ALAN GREENBERG: At this point, I don't believe we are introducing any new sections. We are rewording some recommendations.

CATHRIN BAUER-BULST: But in adding something like this, she suggests we would be doing precisely what she has criticized elsewhere. Namely, adding sections

that we have not addressed previously. So I really do not think this is a good idea.

ALAN GREENBERG:

No. We're agreeing. I think we just said we would be doing exactly the same thing, and it just wasn't even within our Terms of Reference to talk about it. And that was published almost exactly a year ago. There could well have been comments on the Terms of Reference, but we didn't receive any. So I don't think we can act on that first one.

UNIDENTIFIED MALE:

Can I say what might be the objective here is that second sentence in that second paragraph: "Coalition strongly opposes with recommendations potentially calling for mass takedowns of domain names." We don't have any recommendations that even go close to that.

ALAN GREENBERG:

We've already addressed that in her particular comment. Because the reference to mass takedowns was there. I can't at this point remember which recommendation it was. There was one. It certainly may have been in relation to CM.2 which we're talking about in a different way right now.

STEPHANIE PERRIN:

[inaudible] to understand the DNRC comment in any depth. It confused me totally on several fronts. The mass takedown, the only mass

takedown that I think she could possibly be referring to is the takedowns that happened in response to the RAA 2013 accuracy requirements. That prompted mass takedowns. But how does that relate to this? I don't know.

In terms of dragging the EWG report in here, theoretically you could say in the section where we say that the board acted on this, this, and this. I can't remember which recommendation it was from the WHOIS 1 report, but we said, yes, the board studied this and recommended [struck] the EWG, took the report. Then that report then went into the RDS working group. You might [inaudible] to that [inaudible] and say we hated the EWG report – because she did. That might be logical, but it doesn't make much sense here.

ALAN GREENBERG:

I have no doubt we referred to the EWG report. And if we didn't, we could. But an analysis of the EWG report and the process they followed is out of scope. It could have been in scope should we [inaudible] decided to since it was a fallout of the first WHOIS review team.

STEPHANIE PERRIN:

And I can't believe she'd want us to be reviewing it. And I would have been screaming, "What a waste of time," because really we have EDPD. We don't need to triplicate.

ALAN GREENBERG:

Stephanie, aim your microphone closer at your mouth. Okay so, yeah, the EWG we could have, we didn't, it's too late now. Because otherwise, we would be accused of adding things at the end.

Okay, so the second part of it now, the mass takedowns. It was referenced in one other place. It may have been the CM.2 where we said you have to – if you say you have to do something like add contact information, the accuracy rules that were applied in the RAA said you must do something and if they don't respond within 30 days, you must put the domain on hold or something like that. So I'm not quite sure that's a takedown, but that's the term used.

Clearly, if we are making a recommendation like that, one could apply different rules to it. Historically, on domain expiration the PDP recommended [inaudible] that is, stop the domain from working. And it turned out that's the only effective way of waking up a registrant who doesn't know what's going on and has been appreciated. So it's all in the implementation. And I don't think we are advocating mass takedowns. A really bad implementation of something we say might result in it, but that's a really bad implementation. As per the [inaudible] I'm not quite sure that's mass takedowns.

Okay, also “the final report more of the history of the WHOIS databases and the robustness of the debate that has taken place through the history of ICANN.” That's an interesting question. I was told at one point that executive summaries should stand on their own. That someone should be able to go into an executive summary and find out what this is about without having a lot of history. So I put a fair amount of history in, and then a number of people commented saying [inaudible] do we

need to recount the history or presume that someone who is foolish enough to read an RDS WHOIS review team has some knowledge of the background and history? I'm asking for opinions because we can go either way at this point. Cathrin?

CATHRIN BAUER-BULST: Yes, thank you. I would suggest that we simply reference the ICANN website because by now there is a pretty comprehensive history of the WHOIS on the WHOIS section. And then the entire data protection can be followed on the data protection privacy part of the site. So maybe we can just say we refrain from reexplaining the whole history here, but for everyone who is interested here are the links to the relevant parts of the ICANN website where this is explained in more detail.

ALAN GREENBERG: I actually found some of that recently. It's quite interesting. Erika, you were going to say something?

ERIKA MANN: Alan, I'm not so sure if this helps because most of the stuff I've found is not really helpful. So you are saying you found something helpful. I haven't.

ALAN GREENBERG: Let's [talk] to the point. If we can find something good to point to, we will. If we cannot find something good to point to, do we recount

[inaudible]? Do we build our own history or do we assume that people have some vague idea of what happened before?

UNIDENTIFIED FEMALE: Might I suggest that you don't write this history? I think you can link to an appropriate part of the ICANN website and go from there. And I think you have covered a fair amount of it in your executive summary as well. And then again in the review background.

ALAN GREENBERG: My take is if we try to write a history, we will [inaudible] write it as a [balanced] history from someone's point of view and no matter who likes it someone else will hate it. And I don't see any need to tread on that ground. Erika?

ERIKA MANN: I wanted to say the same. But we might want to review maybe the introduction. Maybe there are certain points where we [inaudible] want to be a little bit more explicit. But that's all I would do.

ALAN GREENBERG: Okay. Done. Anything else? Are you folks in a position to review what it is we have decided and what still needs to be done going forward other than what was formally on our agenda tomorrow?

JEAN-BAPTISTE DEROULEZ: Okay, let me try to do that starting with the first item we had on the agenda today which was [single] WHOIS policy. On that, Jackie will work with Alan to [inaudible] the problems of the policy development process regarding [inaudible] RDS WHOIS to be placed in the executive summary.

Under Common Interface, so that's comments that [were] updates in the public comments [inaudible] will be added, but no action item on the review team on that.

Internationalized Domain Names, the review team will review the section and recommendation and decide if changes are needed. Review team will need to evaluate [inaudible] the recommendation....

ALAN GREENBERG: Remind me what the [RDN] part was. You said will review and decide if changes are needed.

JEAN-BAPTISTE DEROULEZ: For the IDN section.

ALAN GREENBERG: Dmitry is looking as confused as I am. I'm having trouble remembering exactly why we're reviewing it. What are we looking for?

NEGAR FARZINNIA: Based on some of the comments provided by the community, nothing was controversial or questionable. There was just a general statement

made that Dmitry and the rest of the review team were going to just read the section to make sure it's quite clear and decide if they want to clarify it some more. But there was no particular need for that. It was just something you wanted to do as part of reviewing that section.

ALAN GREENBERG: Okay, we will, although I don't remember why. Thank you. Please go ahead.

JEAN-BAPTISTE DEROULEZ: Also on that, review team to evaluate the recommendation numbering and include a potential explanation in the executive summary.

Then on Recommendation 15-16: Plan & Annual Reports, on Recommendation 15.1 add a comment that ICANN needs to focus more on ensuring the [recommendation] is implemented.

ALAN GREENBERG: Jackie will be doing that as a first cut? That's a question.

JEAN-BAPTISTE DEROULEZ: [inaudible] we're under Plan & Annual Reports.

UNIDENTIFIED FEMALE: Yeah, Alan, we can do that and then ask for clarification if we don't have all the data.

JEAN-BAPTISTE DEROULEZ: [inaudible] was to add something focusing [consider] to what extent implementation is [meeting] the intent and was effective. Then we have Stephanie to work with Jackie to modify the recommendation language. Immediate suggestion to [inaudible] language impact evolution.

JACKIE TREIBER: Excuse me. Is that third option with Stephanie related to the first one? Okay, so it's just a reiteration of that?

UNIDENTIFIED FEMALE: That is correct. Those comments [all apply] to Recommendation 15.1.

JEAN-BAPTISTE DEROULEZ: All right, and that leads us to Anything New. There were no [inaudible] there.

Law Enforcement Needs, for LE.1 [MSSI] will estimate the number of hours spent on the law enforcement survey in response to the NCSG request for estimated costs associated with conducting the survey.

For LE.2 in response to NCSG comment, a clause will be added factoring cost and benefit analysis, and also reword recommendation to define what [expense] means.

Suggested text: "The ICANN board should consider extending [inaudible] and that's where [inaudible] text should consider to extend comparable surveys and/or studies to [inaudible] RDS with users working with law

enforcement on a regular basis.” That was what Volker, I believe, had suggested.

And then in terms of action items, I think that’s it for these two recommendations.

Consumer Trust, there was [inaudible] to – okay, there was no change to the recommendation.

ERIKA MANN:

[inaudible] This was what we discussed in the morning. And Alan and I would be working on it.

JEAN-BAPTISTE DEROULEZ:

Okay. Thank you. Then on Safeguarding Registrant Data, there was an action item. An agreement to add “ICANN board should consider whether and to what extent notifications of breaches should be publicly disclosed.”

For ICANN Bylaws, the recommendation will be amended to incorporate the words “safeguarding registrant data” and provide clarification that the suggestion is meant postpone the topic to future reviews. And Carlton will reword [the recommendation].

Finally, on the general comment on draft report, the action item was to [suggest] linking to the history of WHOIS on the ICANN website and review [the] introduction.

ALAN GREENBERG: I have on my list on CM.1 and perhaps other places the board should negotiate, to reword that to be applicable, correct language. On CM.3, we're dropping CM.3 I believe, and I will put reference to the Global South in the outreach recommendation. And on CM.4, I'm supposed to write to the ICANN organization and again I can't remember what I'm writing. Remind me, and I'll try to write it down this time so I'll remember.

UNIDENTIFIED FEMALE: We can send you the notes. The idea was to contact Compliance [inaudible] negotiate clarifying language to be added to one of the Compliance pages so that the recommendation itself could be deleted.

ALAN GREENBERG: Ah, okay. Got it now. Okay, so if I can find out where it is again, I'll suggest it be put somewhere else also. Got it. And Erika?

ERIKA MANN: Yes, to the discussion we just had [inaudible] language which would justify a link to the WHOIS relevant data. And actually, it is. It's just a little bit confusing, so we will provide you with some ideas how to frame it and how to make the links. Because the history of WHOIS actually is quite comprehensive and at the very end, although it ends in July 2017, to the very end there is a sentence which says, "To learn more, see what's on the horizon." And the link to what's on the horizon is a link to the current [process], including the [EDP] whatever discussions.

So it's pretty good. The link is just [that]. Yeah, but the trouble is you will not find it if you have no clue where to look for it because it doesn't show up on the front page. It's missing there, and it just shows up at the end. Just above where it says "last update July 2017. Of course, it's not an update in 2017, but at least the link to what's on the horizon was done in May 2018. So it's very confusing. But we can, I think, explain this and then [inaudible] can [inaudible] check.

ALAN GREENBERG: But we have something to point to.

ERIKA MANN: It's good, yeah. It's quite well done.

ALAN GREENBERG: Okay, tomorrow we have an item to look at the Executive Summary, and I think we're going to have Jackie can lead us through it, show us what's there, and try to get a feeling for how we need [inaudible] needs to be dropped, what needs to be emphasized.

The overall structure of the report, Jackie talked about a little bit at the beginning. Several people weren't here, and maybe we want to review that. Plus, it may be slightly different because of what we've talked about since. So I think we want to come to an agreement of roughly what the report will be looking like and get everyone to buy in on that.

And we then also need to have the recommendations to the extent we have them at [inaudible] time, display them one-by-one and look to do

a consensus call to see if we have general agreement. Now as noted, those may still change and there may be one or two that are not quite firm. But to the extent possible, we'd like to see to what extent we have unanimous consensus or partial consensus and then review everything going forward. Negar?

NEGAR FARZINNIA:

Thank you, Alan. I wanted to add a possible [inaudible] for tomorrow. We are anticipating to send that operational input I had referenced earlier to the review team before end of today – and by that I mean 11:59 PM today, not by 4:00 PM – or tomorrow morning. And if possible, that would be a good time since everyone is here to go over those comments. I suspect that with a lot of the changes that the review team has discussed over the past couple of days, some of those items would have already been addressed. So hopefully we'll be able to knock them off the list. And then if there's anything else, either if you have questions that [inaudible] ask our team, we can take them back with us or we can just look to see how we can address them and close them off.

ALAN GREENBERG:

I would suggest that we do that as early as possible. That is assuming we have them when we convene, start. I would like to suggest that I don't think we have a full day's work at this point unless there are unforeseen things coming out of this. I would suggest we start an hour later if we can do that. Is that a major problem with breakfast?

UNIDENTIFIED FEMALE: Sorry. You don't think that we have a full day's worth of work tomorrow?

ALAN GREENBERG: Well, if you think we do, then we'll start at 9:00. Otherwise, we can start a little bit later. Sorry, I can't hear you.

UNIDENTIFIED FEMALE: I think I've still got some, like one action item to work on. It's about the Recommendation 5.1, the data accuracy. Based on the discussion we had yesterday, we agreed to rewording the recommendation [or get] some replacement.

ALAN GREENBERG: Yeah, do you have something? Are you planning to have something for us to look at tomorrow morning? Or are you looking to work with someone on that?

UNIDENTIFIED FEMALE: I think Cathrin made a very good point yesterday. She suggested we would rather not focus on the process. Maybe we can replace that recommendation with a general one. So like I couldn't remember who suggested that. We should maintain the ARS or other [inaudible] to be maintained to focus on the data quality.

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: Okay, 5.1 is the ARS one. Well, I think among other things we said that we believe the ARS must continue. And remember, we don't know if the ARS is going to continue because of EPDP. But I think the general feeling in this group is something comparable to the ARS must continue. Cathrin, please go ahead.

CATHRIN BAUER-BULST: Just to support Lili's point, I think what we had discussed yesterday and I think you're both agreeing is that while the new system for [inaudible] of data might not necessarily be called ARS or be the ARS process, there might be something new that is designed to ensure data quality in the future. We wanted to abstract a little bit from our very specific recommendation and add some language that opens up this recommendation to also cover whichever process might come to replace the ARS. So that there's clarity that we're not just [inaudible] doesn't just fall once ARS is replaced if that happens but rather that it still stands as a general recommendation concerning data quality. I think that was the gist of it.

ALAN GREENBERG: Okay, and you were going to make reference to some of the GDPR requirements related to accuracy also, I believe. The obligation that we have to ensure accuracy. Maybe not in the recommendation but in the preamble. So [inaudible] the two of you likely to get together to do that?

CATHRIN BAUER-BULST: If we have more time this afternoon, I can propose something for tomorrow morning. I'll send something to Lili for review, and then we can discuss it tomorrow morning. That being said, I do agree with you that if we all have time now to take care of our various action items, even that will probably not leave us with a full day of work tomorrow. And depending on how many comments Negar's team still has, that probably doesn't. I mean, I don't know how much time you would need.

ALAN GREENBERG: I retract my suggestion to start late. We'll start on time at 9:00 and if we leave early, we leave early. And at this point it is just barely 3:30, so there is an opportunity now for if people want to work in small groups that we can carry [inaudible]. Yes, Susan?

SUSAN KAWAGUCHI: Stephanie was not here when we did data accuracy, so we could review that again really quickly if that's something you would like to look at.

UNIDENTIFIED FEMALE: I would certainly [inaudible].

ALAN GREENBERG: Do we want to go back to the data accuracy discussion then? Well, hold on. One moment. It's break time. If we're going to continue working afterwards and there's a few more things to do, let's take a short break.

We're going to be finished by then. I'm only the chair. I have no authority. We're reviewing the data accuracy section for Stephanie's benefit.

JEAN-BAPTISTE DEROULEZ: So we'll review the comments that were received on the accuracy starting with comments on the section. The first comment was from the RrSG where they remind "ICANN that data accuracy is achieved by providing our customers the tools/rights to access, correct and/or update their information and by establishing internal processes and procedures that ensure the data provided by our customers remains accurate and complete. Article 5(1)(d) of the GDPR does not require we poll our customers to ensure the data they have provided themselves as part of the underlying transaction was in-fact accurate. Any suggestion to the contrary is a misinterpretation of the GDPR. Furthermore, since the signing of the 2013 RAA, Sections 1(a-d) as well as 1(f) of the of the WHOIS Accuracy Program Specification have been implemented. Implementation of these five sections has resulted in near perfect address accuracy and contactability rates. As of January 2018, postal address operability is 99% and postal address syntax accuracy is 88% (up from 80% three years earlier). ICANN's own key findings include that 'nearly all WHOIS records contained information that could be used to establish immediate contact: In 98 percent of records, at least one email or phone number met all operability requirements of the 2009 RAA.'"

ALAN GREENBERG: And our comments were?

UNIDENTIFIED FEMALE: Our comment to Registrar Stakeholders Group was that we will be reviewing this section of the report and we will consider rewording as needed. Cathrin was to help provide Jackie with the correct references, which will also be included [inaudible] reporting the public comments section as to how we are addressing it.

ALAN GREENBERG: Certainly, part of it is that their statement that data is provided by the registrant to their satisfaction, GDPR among other things requires the data be accurate for the purposes for which it's collected. And we have data that has purposes [inaudible] other than for the registrant itself.

We are going to review it. The numbers that they've quoted did not sound right to some of us, and we need to review the specific ARS reports which these ostensibly come from and verify [inaudible] whether that – these numbers don't mesh with the accuracy numbers that we've seen. So we need to find out where they came from, which we think are ARS reports and follow up on it.

I think we have basically decided that the ARS recommendation that we had there which was questioning why the correction rates were so high is going to be replaced by another statement requiring that we maintain a watch on accuracy issues, whether it is the ARS or something else. But ICANN has an obligation to maintain accuracy and monitor accuracy.

I think that was the general consensus. I don't have notes on it, but that was I believe the direction we were going.

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: Yes.

JEAN-BAPTISTE DEROULEZ: Business Constituency: “The Temp Spec allows redaction without consideration of data subject (EU or not) or legal entity. The contracted parties claim that they cannot reliably make these distinctions because the data is inaccurate. The convenient solution – redact everything – is over-prescriptive. The long-term solution that is most beneficial for all parties – and one that we recommend the Team emphasize – lies in improving data accuracy to the level where contracted parties can be confident when making data subject or legal entity/natural person distinction.”

Here the comment was [mark as] noted and [inaudible] [make reference] [inaudible] [EPDP].

ALAN GREENBERG: I think the reference the EPDP is we are not in a position to dictate what the EPDP says. I don’t think we commented explicitly on their statement that the potential conflict between registrars saying the data is accurate and the data is not accurate enough to trust it. Nor am I sure we should make a comment to that effect.

UNIDENTIFIED FEMALE: Data can be good enough for one purpose but not good [inaudible].

ALAN GREENBERG: We said we are withdrawing the recommendation as it was presented, and we will be redrafting a new recommendation....

UNIDENTIFIED MALE: Which only says improve accuracy around....

ALAN GREENBERG: Well, improve and monitor.

UNIDENTIFIED MALE: And monitor, right. [inaudible] asking for that.

ALAN GREENBERG: I believe the recommendation that came out of RDS 1 which said improve accuracy and gave what I perceive as some ridiculous targets like 25% improvement every six months was basically rejected by ICANN org. And instead, they came up with the accuracy reporting system so at least we could monitor what was going on and perhaps be able to take remedial action [inaudible] results.

Okay, we are reiterating not that we have to improve accuracy at 25% per six months, but we must continue to monitor it and presumably take appropriate action but that's out of our hands.

UNIDENTIFIED MALE: Right, so we just take steps, continuous improvement and monitoring.

ALAN GREENBERG: And monitoring. As long as we're at the stage right now where we are still seeing 40% of [inaudible] sampled domains tickets are opened that there is an issue, that's a high percentage of ones to recognize. Now a modest percentage of those are street addresses which are deemed to be valid by someone looking at them even though they don't meet the UPO requirements. That's not a large number. [Proceed.]

JEAN-BAPTISTE DEROULEZ: So then that's comments on the recommendation. Would you like me to read the recommendation [again], Alan?

ALAN GREENBERG: Yes, please.

JEAN-BAPTISTE DEROULEZ: Okay. "The ICANN Board should direct the ICANN Organization to look for potentially-anomalous ARS results (e.g., 40% of ARS-generated tickets closed with no action because the RDS (WHOIS) record changed between the time the ARS report was generated and the time the registration was reviewed by ICANN Contractual Compliance) to determine the underlying cause and take appropriate action to reduce anomalies."

First comment is from ALAC. This is a supporting one where they “support recommendations for determination of causes of data inaccuracy and actions to be taken to address the inaccuracy.”

The next one is from RrSG where they wonder “what purpose does this recommendation serve. The review team seems to draw conclusions from thin air instead of accepting the most reasonable explanation that due to the time lag between the data query in the ARS program and eventual compliance review the cause is most likely simply the passage of time. The RrSG is of the opinion that recommendations should address actually existing issues that are evidenced by data instead of initiating fishing expeditions. They also note that they consider it highly doubtful that the ARS program can be resumed under the GDPR and other applicable privacy legislation as it requires ICANN accessing and processing non-public personal information for no valid purpose.”

And on that, we don’t have any [inaudible].

ALAN GREENBERG:

We certainly had comments on it. Well, noting that the recommendation as such is being withdrawn, but we will be recommending something comparable. In terms of [inaudible], yes, we acknowledge that. No one when we had the first discussion, despite Volker saying there was a time lag, imagined it might be as long as a year and a half from the time the records were pulled till the time that they were inspected. Certainly, a year was not uncommon. So, yes, the time lag was known, but it wasn’t appreciated at that level. We no longer have the same concerns that were worded in that

recommendation. Whether it will ultimately be allowed under GDPR and the EPDP is out of our control. This review team believes there's still a need for such action. Whether it will happen or not is a different matter altogether, obviously.

CARLTON SAMUELS: Can I?

ALAN GREENBERG: Please.

CARLTON SAMUELS: [inaudible] the time lag issue. You mentioned that already, and it will significantly reduce because at one point the reason for the time lag was operational. The operational challenges, [enough] people to eyeball what they had. So that's out of the way.

The issue of the....

ALAN GREENBERG: On what are you basing that?

CARLTON SAMUELS: Well, there's staff. [They've got] more now.

ALAN GREENBERG: No, no. We're talking about today. If the ARS program had not been suspended, there is a five- to six-month lag from the time the records are pulled until the time they....

CARLTON SAMUELS: Pulled [inaudible] time that they are addressed.

ALAN GREENBERG: No. Until the time ARS publishes its report. They then go to Compliance. Compliance now has 4,000 tickets.

CARLTON SAMUELS: Right.

ALAN GREENBERG: Which they ration out because they don't want to overwhelm their staff. So it can take something like six months plus. I don't remember the exact number. Six to eight months to process those.

CARLTON SAMUELS: Okay.

ALAN GREENBERG: So we're now talking about potentially well over a year. And it was certainly over six months and could be well over a year until the record is inspected from the time it was pulled.

CARLTON SAMUELS: My reading of it is a significant improvement on what was historical. They are at least looking at them within six months to a year, so that's one thing.

But that aside, this RrSG comment says that there is no basis for looking at those records for accuracy. It may not be GDPR compliant. It might be [inaudible] to do that. I would take issue with that. There's still a requirement to have accurate records.

ALAN GREENBERG: If the ARS program ends up not being something that we can do lawfully, then we will not. We will not. If we don't have access to the data, we can't use it. So that's not a question. That's not under our domain.

STEPHANIE PERRIN: I don't follow. I don't get it. You don't have public access, but that doesn't mean they aren't dealing with the data.

CARLTON SAMUELS: That doesn't mean that ARS can't [inaudible].

ALAN GREENBERG: That's the point exactly, Stephanie. If we put in place – sorry, I'm going into EPDP language. If we build a purpose that says ICANN must be able to verify access and must be able to get selected access to contact

information to verify its accuracy and it's proved and part of the EPDP, then it can proceed. If we can't pass that through the EPDP, then it might not happen.

STEPHANIE PERRIN: That's actually a processing activity that we don't [inaudible].

ALAN GREENBERG: We haven't finished writing all the purposes yet.

STEPHANIE PERRIN: Yes, but it's not really a purpose. It's a new processing activity.

UNIDENTIFIED FEMALE: [inaudible]

UNIDENTIFIED MALE: [inaudible]

ALAN GREENBERG: I don't want to get caught up in the language.

CARLTON SAMUELS: [inaudible] the data controller and the data subject are both within the right to ensure that the data is accurate to the extent that ARS....

STEPHANIE PERRIN: Right. [inaudible] mutual accountability.

CARLTON SAMUELS: Mutual accountability.

STEPHANIE PERRIN: Right, but they may not be. [Those] mutual accountabilities are not as stringent as the current.

CARLTON SAMUELS: Current, right. That's the point I'm making.

STEPHANIE PERRIN: Yeah. I think I'm backing Carlton up on this.

ALAN GREENBERG: Maybe I'm missing the point you're making. Say it again.

STEPHANIE PERRIN: [inaudible] process.

CARLTON SAMUELS: This is about [the] processing. This is about processing.

STEPHANIE PERRIN: Exactly.

CARLTON SAMUELS: There is a processing requirement. It is incumbent on the controller and on the data subject. They have mutual responsibility to ensure that whatever data is kept is accurate. To the extent that ICANN [inaudible] the controller has that data, then the process by which they ensure that the data is accurate is the thing at issue right here now.

STEPHANIE PERRIN: Right, and has to be [proposed now].

CARLTON SAMUELS: But it has to be proposed [inaudible].

ALAN GREENBERG: The problem is you said ICANN as the controller has the data. Well, it is still subject to debate whether we are a controller, whether we are a joint controller or whatever.

STEPHANIE PERRIN: Who is we?

CARLTON SAMUELS: ICANN.

STEPHANIE PERRIN: Well, you're talking like you're ICANN org.

ALAN GREENBERG: I'm tired.

STEPHANIE PERRIN: I know. I know. I'm just....

ALAN GREENBERG: And I know you're having fun.

STEPHANIE PERRIN: Yes.

UNIDENTIFIED MALE: [inaudible]

ALAN GREENBERG: The day I am ICANN org and paid for ICANN org, I will stop doing this and [inaudible] take the money because right now I'm not making [inaudible]. As a typical controller, one would have access to the data. We don't. If we're going to get access to the data, we need a process by which we get data and a legitimate, lawful purpose for doing it. Right now, that's up in the air.

CARLTON SAMUELS: [It's a view. It's a view.]

ALAN GREENBERG: Volker?

VOLKER GREIMANN: I think the only way forward is the way that this has been regulated in the past for decades now, which is that it's incumbent on the registrant to ensure that its data is accurate and incumbent on the registrar or contracted party at least to ensure the data is corrected by inserting certain contractual language into their agreements that requires the data to be accurate, to take certain investigate steps if notified with evidence that the data they currently hold in store is incorrect.

So if a third part comes to us and says the data you have on that data subject is incorrect, then we will investigate if that is substantiated in any form or shape. For example, proof of a returned letter or something like that. Otherwise, we would not go out of our way to ensure that the data is correct because we have no indication [inaudible] correct. If we have an indication that it's incorrect, of course, we will do whatever is [inaudible].

And I think that is all the GDPR asks us to do as data processors.

STEPHANIE PERRIN: [inaudible]

ALAN GREENBERG: No one is arguing [with] that. I mean, we could ask you to audit all of your records, but we haven't so far.

UNIDENTIFIED MALE: We being?

ALAN GREENBERG: ICANN org. The "we" is whoever I want it to be in that sentence. Cathrin?

CATHRIN BAUER-BULST: Right, "we."

ALAN GREENBERG: We're going downhill fast here.

UNIDENTIFIED FEMALE: Yes.

CATHRIN BAUER-BULST: Just to reiterate what I said yesterday to this point which was to reiterate the union position taken in January, the European Union which basically says that, of course, accuracy is something that is [defined in relation to] the purposes for which the data are collected. And [inaudible] need to be taken to ensure accuracy and data quality in respect of the purposes. And whether or not that requires more proactive measures or just sitting on data until somebody tells you it's

incorrect, I'm not sure we should venture as far. But I think it would not hurt to say that there is a more general – in response to this comment – that data quality is not just a requirement that requires companies to respond to complainants by data subjects, but it is [inaudible].

ALAN GREENBERG: Do we have further discussion on this point, or may we go on to the next one?

JEAN-BAPTISTE DEROULEZ: The next one is from NCSG. "The Review Team has done great work in compiling the work that ICANN has done on registrants rights and responsibilities, and this report will be a good resource document for those who attempt to fix this problem. However, this very detailed section should remain a resource for this future work. We do not see the merit in developing new accuracy recommendations when the entire data set for publication is about to change. NCSG recommends removing this recommendation unless as your footnote indicates, something arises which merits further action."

On that, that data will not be published [is] irrelevant. The data will be [locally] available by some means and this follows [who will] have access [inaudible] accuracy matters and get [relevant] citations from GDPR that [inaudible] address this.

ALAN GREENBERG: Further comments? Next. Oh, at this stage, the recommendation is being withdrawn. A replacement recommendation will reiterate the

need for continued diligence regarding accuracy and will be recommending that the ARS or something comparable be continued.

[Goodbye, Chris.]

What's next on the agenda?

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: I'm hoping it's going to show up by tomorrow morning.

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: But do you wish to contend or disagree with the intent of the recommendation, not seeing the wording? [inaudible] concern with the wording, is there an overall intent?

UNIDENTIFIED FEMALE: [inaudible]

ALAN GREENBERG: Please, go ahead.

UNIDENTIFIED FEMALE: Please understand that our objections are not so much to the concept of accuracy. It's the response burden and the consequences for the end user in the case of inaccurate data. That's what [inaudible] comment. So, yeah, if we could reword this, it's great.

ALAN GREENBERG: By the end user, you mean?

UNIDENTIFIED FEMALE: The registrant.

ALAN GREENBERG: Some of us mean something very different by end user.

UNIDENTIFIED FEMALE: I know. I refer to people who harvest the data for their purposes as third-party users just to be clear.

ALAN GREENBERG: Any further comments? Seeing none, next item on our agenda?

UNIDENTIFIED FEMALE: No other items on the agenda, Alan. You've covered all the recommendations. We have now re-reviewed the data accuracy section since Stephanie originally wasn't part of the conversation. At this point in time, we don't have anything else on the agenda, but it's up to you to decide if there's anything further needs to be done.

ALAN GREENBERG: It's 4:30 right now. I am happy to adjourn, and anyone who chooses to stay in the room and work on any joint efforts, they certainly may for I'm presuming, Jean-Baptiste, you're going to be here for a little while?

JEAN-BAPTISTE DEROULEZ: Yes.

ALAN GREENBERG: Okay. And barring that, we will reconvene at 9:00 tomorrow morning and be prepared to wrap up this whole show before we leave. Negar?

NEGAR FARZINNIA: Thank you, Alan. I also wanted to note that some of our action items [inaudible] the past two days resulted in language that some of the review team members are going to help provide references to Jackie so the report can be updated. So tomorrow since everyone is here might be a good time for her to [carve] out some time and sit down with individuals who need to provide references, links, or specific language for those recommendations that we need to update before the end of day.

ALAN GREENBERG: And could I ask, Lili, you said those numbers the registrars quoted in their overall statement on 5.1 come from the ARS reports. If you could

provide me with a few URLs or something like that, that would be useful. Or pointers to them.

LILI SUN: Yeah.

ALAN GREENBERG: Thank you.

LILI SUN: I even have the full report in my hand.

ALAN GREENBERG: Then you can give it to me.

[END OF TRANSCRIPTION]