

AMY BIVINS:

Hello everyone, good morning, good afternoon and good evening. If everyone could please mute if you're not speaking, I'd appreciate it. Welcome to the Privacy and Proxy Services Accreditation IRT call on the 30th of August, 2018. In the interest of time today, there will be no roll call. I'd like to remind you that this call is being recorded, and to please state your name before speaking for the recording, and for the transcript.

Also, please keep your phones and microphones on mute when not speaking to avoid any background noise. And I've already mentioned and I'll mention again, we don't have Michelle's support on this call, so if there are any technical issues, I'll be trying to solve them myself in real time. So, if you have a technical issue, feel free to speak up and raise your hand in case I don't see your comments in the chat right away.

Okay, so welcome everyone. I know it's been awhile since we last met, and we have a lot to discuss, so this is our agenda. And also, for the transcript, I'm Amy Bivins from ICANN org.

First today I'll give you a brief status update and summarize the markups that you'll see in the Privacy Proxy Accreditation agreement document. And, we can talk about any comments that you have on the contract. But, I'm expecting that we will likely spend most of our time on the big picture questions that we sent around yesterday, and we can circle back to the specific edits in the contract next week, after you've had more time to review the document.

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

Then, after I walk you through quickly some of the more significant edits to the contract, we can talk about the big picture questions and next steps, and where we want to go from here. Does anyone have questions before we get started, or comments?

Okay, so we can move onto our first agenda item, which is just a status update. You can probably tell based on what came to the list yesterday where we are, but just to be thorough. So, yesterday I distributed a markup of the accreditation agreement to the list, and this is accompanied by a list of discussion questions. There are still some GDPR related questions that we're working through internally, so we want to make clear that the document that was distributed, it's not a final proposal and we could have additional items to discuss in the next few weeks.

The analysis related to GDPR that we received, I think there was some confusion among IRT members about what the analysis actually was. I just want to clarify that what we received in terms of legal analysis was the markup of the contract, and that's what was passed on to you. We took out, obviously, privilege information, but you received basically what we received.

The markup addresses contractual issues, but there are broader questions as noted in the message that was in FLIP yesterday, and that we'll be talking about in a few minutes. So, our plan from here is to discuss the markup, and we'll also discuss broader discussion questions, and potentially we could get through that within the next couple of weeks, but if it takes more time to go through the markup specifically and also the bigger picture questions, we'll of course take that if we

need it. If we were able to get through it that quickly, ideally, we could pick up our pace again and proceed to public comment before ICANN 63, but obviously that depends on the extent of the discussions that we have.

Obviously as we've talked about throughout this IRTD, if there are any policy questions that arise and it's the consensus view of the IRT that there is a policy question that would be taken back to the counsel, but we would follow the appropriate processes for that.

We're in the process of planning a Privacy and Proxy IRT meeting for ICANN 63 in Barcelona. We don't have a date and time for that yet, but when we have it we'll pass it along to you. We had a question in the chat from Volker; how did this legal review take this long? Thank you for the question, Volker, I don't have a specific answer for that, other than it took time to go through the contract and to think about all the issues that were raised, and that's why the review took that amount of time. Obviously, the same legal counsel that were working on this were working on other GDPR related issues, so we had bandwidth issues to deal with too. So, that's how we got to where we are now.

Does anyone have questions, just in terms of status, before we get into the specifics? Steve, your hand is raised, you can go ahead.

STEVE METALITZ:

You say it's not a final proposal, which I understand, because you're going to get feedback from us and that might create some changes, but I think you said something in one of your emails that this hasn't been reviewed by senior management or something, are you going to be

making changes that don't come out of this discussion that we'll have to deal with, or is this really what you guys are putting forward and subject to feedback you get from us, this is what we'll go ahead with?

AMY BIVINS:

Thank you Steve for the question. And, to clarify, and I think I mentioned in the message to the group yesterday, and there are also some comments on the document, in terms of what else may be coming with respect to the contracts, the legal team, they reviewed the contract and they believe that the edits that we're putting forward were addressed, GDPR related issues in the contract, but there could be an additional action item with respect to controller type agreements that may need to be put in place between the privacy proxy provider and ICANN and the sponsoring registrar, or the registrar that the provider is working with.

And still trying to think through that, but in terms of additional changes to the contract, what you see here should be basically what you get based on the feedback that we've received from the group, obviously we'll take it back and if further edits are needed, we would make them. Does that help you?

STEVE METALITZ:

Okay, so from your perspective, the only other outstanding item is this question of whether there needs to be controller; data controller agreements?

AMY BIVINS: Yes Steve, that's my understanding. And, if I'm misspeaking, I'll confirm that with the legal team today, but that's my understanding, that we're not going to be seeing more extensive changes to this agreement; it should be related to that.

STEVE METALITZ: Thanks.

AMY BIVINS: Greg, your hand is raised?

GREG DiBIASE: You're saying that even if the EPDP, the result of EPDP is to change the temporary steps dramatically, ICANN is saying the comments to this draft would remain the same?

AMY BIVINS: Thanks for that question Greg, and your audio, it was kind of hard to hear you, but I think I got the gist of the question. I think we're going to be talking more about this topic as we go through this meeting, and what Greg is asking is what happens in the EPDP and if something happens that would dramatically change what we have here, how would we deal with that; would we go ahead with this or not? Greg, is that an accurate summary of your question?

GREG DiBIASE: Can you hear me better now?

AMY BIVINS: Yeah, that's better Greg, thank you.

GREG DIBIASE: Yeah, so you said that the changes ICANN made to the contract, you don't expect those to change, but my question is; if the EPDP changes the language in the temporary spec dramatically, is that position going to stay the same? In other words, basically, if you're saying these are the contractual changes, and they're set, you're saying that what happens in the EPDP doesn't matter, or if the EPDP changes what's in the temporary spec, then we have to [inaudible] disagreement? Does that make sense?

AMY BIVINS: Yes, it does Greg, and thank you for that question and comment. That's an issue that we have been trying to work through internally; how to address our work here in light of the fact that the EPDP is also working on similar issues. And that's an issue that we'll talk through more later. Cyrus Namazi has his hand raised, but I just want to clarify quickly before Cyrus speaks that we are very conscious of what's happening in the EPDP, and we're conscious of what's in the temp spec, and we did, there are provisions in this agreement, and proposed edits that are modeled after the temporary specification.

But, once you look at the edits in this draft, the provisions that are modeled off the temporary specification at this point are likely edits that we'd be making anyway. For example, a lot of the requirements

are related to notices that need to go to customers about data collection and what a provider is doing with the customer's data, and that irrespective of what was in the temporary specifications, based on GDPR we'd likely be proposing edits like that anyway.

So, I think it'll help once we get to look more specifically at the edits, bit in regard to the big picture question of how we should be handling what the process between the EPDP and the IRT remains a question that I think we need to discuss. I'll defer to Cyrus Namazi here, Cyrus your hand is raised and you can go ahead.

CYRUS NAMAZI:

Thank you Amy, hello everyone. This is Cyrus Namazi with ICANN. Just in reference to Greg's question, I think the impact of whatever the EPDP decides in terms of their proposed policy and such, it's going to have more of an implication and impact just to this policy, it's going to have an impact on I think a number of services and policies, and we'll just have to see what it is, and how we end up dealing with it.

And if some provisions of this policy end up needing to be edited, reviewed and revised, then we'll have to address that at the time that we know what it is and how to do it. But, obviously we won't be in conflict with the policy that comes up in the future. You can ask that question about just about any policy that's not even in existence today. So, there is a standard process that we'll follow for that. Thank you.

AMY BIVINS:

Thank you, Cyrus. Theo, your hand is raised, you can go ahead.

THEO GEURTS: Just to circle back on that, Cyrus, I mean, that is policy work that is all going on, and might be subject to change, based on the EPP, but we also have, I think, when we're looking at the scope of our current work, the GDPR kicked in 90 days ago, [inaudible] the U.S. I don't have any appetite myself for a privacy service, I don't see the use for it anymore. So, how are going to deal with that?

I mean, when I look at a proposal for the setup cost, which is 1.1 million, is that business case still valid; that there's going to be 250 contracted parties going to apply for this service that we are talking about here within the RT? How do you envision that? I mean, I think it's a very weak business case now that we are fully into the GDPR and its effects to the contracted parties and everybody around it, thank you.

CYRUS NAMAZI: Amy, this is Cyrus, may I respond?

AMY BIVINS: Absolutely, thanks Cyrus, go ahead.

CYRUS NAMAZI: Thank you, Theo. I think you're asking a valid question, but I'm not sure if we're in a position from the staff side, the ICANN org. side to sort of take a decision on the potential impact of what the EPDP might do. We have a policy that we're tasked to go implement, we're obviously mindful of everything that's going on.

If this team collectively feels that it needs to pause this policy implementation, then I would suggest that you come up with a consensus and to ask the GNSO to officially tell us to stop it, because that's the process you follow. I'm not empowered to say, "Let's hold off on doing anything until we see what happens three months from now, or six months from now," that I'm not questioning the legitimacy of the issue that you raised, but that's something for you all to decide, and ultimately, I think that it is for counsel to give direction on. Thank you.

AMY BIVINS:

Thank you Cyrus. Steve Metalitz, your hand was raised but now it's down, did you want to comment, or were you going to save it for another time?

STEVE METALITZ:

No, that hand came up by accident, sorry.

AMY BIVINS:

Okay. Thank you. So, and we are, and this really leads us into our first discussion question about overall status, and if the group would like, if you want to go directly to that discussion before walking through the edits to the agreement, I'm totally fine with doing that too. It's really up to you. Would the group like to go ahead and just discuss this issue that's been raised? I see a few typing in the chat. I'm not seeing...yeah, so we can go through the edits first quickly.

So, I understand that you just received the edits to the contract yesterday, and we're not expecting you to have gone through the

contract from front to back to look at all the edits, but I just want to provide a high-level overview of what's in there so you know what you're looking for when you look at the document, at least as it pertains to the edits that were made based on the GDPR review.

The first set of edits are in the section of the contract that governs the notices, the privacy and proxy service providers are required to give to their customers. There were several recommendations in the final report about things that providers need to disclose to their customers, including their terms of service, and when customer information is revealed and price, but these proposed edits take it a step further based on the disclosures that are required under GDPR, so these proposed edits would add specific requirements for providers to disclose information about their data processing activities to their customers. This is modeled on what's in the temporary specification I believe, with the exception of obviously changing specific information to make it relevant for privacy proxy.

Does anyone have questions specifically about that, and we'll give you time for you to go through them and look at them specifically?

Okay, so the next edit that we had in the document that you'll see is in the IP framework specification, and we wanted to flag this edit specifically because other than this edit, the IP framework was basically copied and pasted from the final report. It was very thorough in the final report, and there haven't really been changes to it. But, there is a proposed edit in the framework that would add a new reason that a provider could refuse to disclose information that's requested by an intellectual property holder.

And the new reason would be; where the provider has a reasonable basis for believing the disclosure would violate relevant data protection laws. And, because this was not included in the final report, we wanted to flag those specifically and just make sure that you saw that and receive your feedback on that. Does anyone have comments about that proposed edit at this point? This isn't the last time that we'll talk about this, but we can -- Steve, your hand is raised, you can go ahead.

STEVE METALITZ:

I don't think this is even the first time we'll talk about this, because I'm not prepared to give a position on it, but just to say that I'd be interested to have some case examples of where this new reason for refusal would apply. Because, I think the intellectual property disclosure framework really, it's approach is to have a demonstration of legitimate need, legitimate purpose for accessing the information, and also balancing that against the privacy interests of the registrant, so while it doesn't necessarily use the same verbiage as the GDPR, I think the spirit of it is similar, so I would be interested in any examples that anyone can provide of where they think this new reason for refusal would properly apply. Hopefully people can maybe provide that on the list, thanks.

AMY BIVINS:

Thank you, Steve, and Volker, your hand is raised, you can go ahead.

VOLKER GREIMANN:

Yes. I'm close to Steve here, I don't think there will be many cases where this refusal to disclose would actually apply, this would probably

be some fringe cases based on the GDPR, but I think it's reasonable to have some dissertation, dissertation is the wrong word, but some ability of the contracted party to refuse, if legally required for example by the GDPR, there might be issues where the requestor is not able to guarantee the safety of the data or equal processing of the data which the GDPR requires.

I think these are easily solved, and there will probably be most majority of cases will be sufficiently addressed by the framework that we have developed because there are sufficient safeguards in there, but still I think it's helpful to have this back stuff in there, that if there is an issue where disclosure might not be possible under the GDPR or equivalent relevant distillation, that could be taken as the basis for refusing disclosure, but as I said, those would be fringe cases, mostly will be.

AMY BIVINS:

Thank you, Volker. And we can also continue this discussion on the list as well if those of you in the room think of other examples. Does anyone else comments about this now?

You'll see that there's a related question in the document asking whether there should be a similar provision in the law enforcement authority framework. There's not a provision in there now, because the thinking in the draft was that it would already be covered under, there's a rationale for refusing to disclose where the provider believes the disclose would violate applicable law, so we were thinking that it would be covered under that, but if you would like to explore adding that in the law enforcement authority specification, we can discuss that as well.

The next major edit to the document that you'll see is at the very end of the document. It's a new data processing specification, and that was what was modeled on the temp spec. And so that is the area where we could potentially see the most changes, if that were to change it's under the EPDP.

Does anybody have questions or comments about that at this point? Volker, your hand is raised, you can go ahead.

VOLKER GREIMANN:

I would be very hesitant to base anything on the specification that has a deadline in existence, basically saying; we are enshrining the terms of the temp spec in the policy, and thereby circumventing the end date of that temp spec, and making it somehow permanent, at least in some form or shape, then having it backed up to incorporate through the back door into other agreements or policies as well.

I would rather like to see a statement in there that requires the privacy proxy service provider to comply with applicable law when it comes to data processing. That has the same effect, because they will be bound by the GDPR when they are, and won't be bound by the GDPR when they aren't or equivalent loss and we won't have implemented a piece of, I wouldn't say legislation, but non-policy through the back door, and I think that would be preferred.

AMY BIVINS:

Thank you, Volker, for that feedback and I'm sure others will have comments about this as well. In terms of enshrining a temporary

specification into a preeminent, contractual provision, Cyrus has his hand raised, but I just want to also clarify here that it's my understanding that this specification, you're right; it does mirror something that contains, because the temp spec will expire and may be changed by the EPDP, however, if it is changed under the EPDP, it would also change for privacy proxy, so it wouldn't be, this temp spec is for privacy proxy forever, but whatever comes out of the EPDP will govern other contracted parties.

Under the consensus and temporary policy specification of the agreement, if a new data processing requirement is adopted through the EPDP, they would apply to privacy proxy also, so it would be more of a situation where privacy proxy providers might be implementing this, and then they would need to update their practices to accommodate whatever comes out of the EPDP, and that's just a blank contractually how this works and the way the agreement is structured, at least today.

I'll defer to Cyrus; Cyrus, did you have comments?

CYRUS NAMAZI:

Thank you, Amy. I actually wanted to echo also what you said, that I don't think the intent here is to enshrine anything that is obviously5v temporary in nature like the temp specs, to be a permanent piece of this policy, but I actually went back and read these changes in the document that Amy circulated; I don't think that's the intent and I don't see that written as such. But, Volker, if you see it differently, maybe you can highlight that piece and send it to us so we can take a look at it

and fine tune that piece so that this concern, which I think is very legitimate is addressed. Thank you, Amy.

AMY BIVINS:

Thank you, Cyrus. Volker, your hand is raised, you can go ahead.

VOLKER GREIMANN:

Yes, thank you. Just maybe one thought; one way that we could process this is that we say that we include similar language to the registry agreement and registrar agreement into the privacy proxy service provider agreement, and the next time that the board implements a temporary specification that then also refers to that privacy proxy service agreement, then such a temporary specification could become binding.

I think that would be the proper process, but implementing terms out of the temp spec into this agreement, or simply assuming that the board decision to have a temp spec for the registry and registrar agreement somehow also magically applies to privacy proxy service provider, which it doesn't, is I think the wrong way. So, if we want to do this, we have to do it right.

AMY BIVINS:

Thank you, Volker. And, does anyone else have comments about this at this point? I'm expecting we'll likely have a significant amount of additional discussion on this specification, so don't feel like you have to raise all your points now.

Okay. I'm not seeing any hands in the room. Obviously, I know this is still very new in your hands, and you're going to need to look at it for awhile, so we'll continue this discussion. I just wanted to provide an overview of what's in the document so you can take a look more quickly at where most of the changes in the document.

In the document, at the red line, you'll also see copy edits throughout the document, but those I'm not highlighting them here because they're largely not substantive. The edits that you'll see in the law enforcement authority specification are the ones from the last draft, based on the IRP discussion, we just left that part in red line because those were still relatively new, in case folks haven't had a chance to take a look at that closely since the last round of edits that we had on it.

As I mentioned previously, there are still some other GDPR related matters under consideration. One action item for me is to consult with legal to confirm exactly what else may be coming, but it's my understanding that we could be looking at controller arrangements among providers, and ICANN and registrars. But, at least based on what I know, I don't believe anything else significant is coming to the contract. If that is not accurate, or if I'm not aware of that, I'll let you know as soon as possible; I'll check with legal today.

Okay, so we can move on, or first, does anyone else have questions or comments generally about the draft that I sent yesterday?

Great. So, we obviously will be talking about that in much more detail after you have had it for a more extended period of time.

Moving on to our big picture discussion questions, we have already touched on this but we want to focus on the questions specifically. So, the question is; how should we approach drafting provisions that are similar to the temporary specification which could be impacted by the EPDP?

We have heard feedback on the list from you that we should not be listing language from the temp spec because the temporary specification is temporary, so we are very aware of that feedback. We heard from Volker today that perhaps we should, instead of copying information from the temp spec, we should consider another provision that would incorporate any new temporary specification into privacy proxy where it addresses privacy proxy, so that's one option we could consider.

One of the questions we had for you, a related question to this is; if we're not incorporating material from the temp spec, but we know that there's a topic that we need to address in the document, for example data processing, how do you propose that we handle that? So, for example, this large specification at the end of the contract, if we're not taking it from the temp spec, what do you propose that we have in the document instead, because we need to have something related to data processing? Theo, your hand is raised, you can go ahead.

THEO GEURTS:

Yes, thank you Amy. Can you explain this data processing a little bit more? Maybe I'm just tired, but I'm kind of wondering what kind of data processing are we talking about here? Thank you.

AMY BIVINS: Thank you for your question, Theo. So, you'll see in the document, the data processing specification, it's a fairly long specification, and for any of you that happen to be looking at the contracts right now, it begins on page 75, and it's the remainder of the contract. So, what the specification does broadly is; it sets out the principles for processing of customer data, and also registration data. And, then it goes through -- Theo, your hand is raised?

THEO GEURTS: Thanks for reminding me there, so regarding the processing, that is up to several parties here, and instead of having that all laid out into a huge section, I think we should simply refer back to applicable law, and then the parties amongst themselves will have to comply with those laws, and whatever processing, and how processing needs to be done will be according to the law, and that makes things a lot easier than having a huge section there, making it confusing for everybody. If there is anything on the ICANN side between the providers, I would say ICANN legal can sort it out, but, let's make it as easy as possible, thanks.

AMY BIVINS: Thank you, Theo. Volker, your hand is raised, you can go ahead.

VOLKER GREIMANN: Yeah, I'm with Theo on that. Just referring back to applicable law is, I think, the best way forward. We would be building a double-compliance section here, because on one hadn't, the service provider

would be bound by local law and faced with the sanctions of that local law if they violated the applicable data protection requirements, and at the same time you would also have to set up compliance in a way that they suddenly become a data protection agency as well and enforce that part of the agreement that concerns data protection law.

I think that's, A; something that compliance doesn't need to take on additionally, and second; it's something that's already taken care of with most data protection laws, and if it isn't, then if the provider is not bound by any data protection laws and requirements, then why should we impose such requirements on them when they legally aren't bound by any such requirements?

I mean, the only reason we are taking on in this form or shape is because of the GDPR. And, similar legislations. So, let's just leave that to applicable law and the enforcement mechanisms there, and let's not turn compliance into a DPA.

AMY BIVINS:

Thank you, Volker. And for everyone's feedback related to this, the call is being recorded obviously and we're going to go back through it very carefully and discuss all your feedback with the legal team, so I don't necessarily have a substitutive response today, but we're going to take it back and then we can talk about this more as we go forward.

Does anyone else have comments specifically about the data processing specification, or how you believe we should handle that, or any of the other provisions that are at least proposed to be incorporated into the contract, based on GDPR and/or the temp spec?

Okay, so seeing no hands in the room or folks chatting about that, I'm not expecting that this conversation, or that this is the end of that conversation, but we can come back to that since no one seems to have further comments on that at this point.

A related question that we had for the group, and we've touched on this somewhat already, is that; do you have views about the IRT progressing to public comment at this stage, and do you believe that publishing the material for public comment at this stage would provide a benefit to the community, both to see what the requirements are and to provide an opportunity for the community to weigh in on what the proposed requirements are?

Obviously, the point has been raised that the EPDP is going on, and there could be things that come out of the EPDP that could be relevant to privacy proxy in some way, but based on where we are now and based on the status of the materials, it's our view that there's nothing at least procedurally in between us and going to public comment, other than finishing the document. We were given the final recommendation to implement, and we believe that the materials are nearing completion and ready to receive community feedback, so we want to hear whether you agree with that assessment.

Volker, your hand is raised, you can go ahead.

VOLKER GREIMANN:

Yes, thank you Amy, and basically, I agree that there is nothing that stands between us and public comment, however, if I remember correctly, and I might be wrong because it has been a couple of months

already, there are still a couple of open questions that we are looking to ask the community to provide input on. For example, the feedback times for law enforcement, and there might have been others. And, I would be very happy if we could review how these questions are phrased and put to the community before we release it so we have a more or less neutral way to phrase these questions.

Or, allow for both parties to make their argument when the question is asked, and therefore provide the community with some basis to make a comment. I'd be very hesitant to just say, "We want one day," or do we want one week or whatever the time frames were, I don't remember. And, make it a popularity contest without having the argument that we've had back and forth in the working groups, so that should be part of the question. And, I think therefore before we go to public comment, the exact document that is going to be put to public comment, the questions should be discussed. That's the only caveat I have there.

AMY BIVINS:

Thank you Volker, this is Amy. And, I see Cyrus' hand is raised too, Cyrus, did you want to speak to that?

CYRUS NAMAZI:

Yes, very briefly, I see Peter also had his hand up before me. Just to respond to Volker. Volker, we'd be happy to, actually as a courtesy, share with you what we end up posting for public comment, I would just for the footnote of that statement by highlighting the fact that this will be an ICANN document that will be posted, so it really is as a courtesy and just to make sure that we're not missing anything and if there are

really some misstatements and such, we'll be happy to incorporate your feedback, but I don't want it to become yet another sort of three weeks of going back and forth and such.

Because, in this case, we really are sort of tasked with implementing this policy with the assistance of the IRT, and our overarching goal, frankly, is to not take sides with anything and just present the questions that are still open in as much of an impartial manner as we can. But, we'll be happy to do that for you. Thank you, Amy.

AMY BEVINS:

Thank you, Cyrus. And Peter, your hand is raised, you can go ahead.

PETER:

Thanks, I actually am not going to get back into that; everybody will probably be pleased to know. I had a more existential question that goes back to the point I think Volker was making earlier, and I think I saw him making it in the chat too, which is; does it make sense to raise this if there essentially isn't going to be a business? It sounds like there may be some issues with it being a business case for continuing that privacy proxy, I was wondering in addition to that whether there might be a policy argument about whether or not privacy proxy makes sense going forward.

And the basic thought that I had is just that if the registrant data is all hidden, which at this point it more or less is, and either there is a wall so it allows certain parties like law enforcement and the IP rights holders and sites for the researchers to get in and see that data, or if there's

not, in which case there's really no access to it, from a policy perspective, do we want there to be privacy proxy on things that would potentially be behind that wall, right?

Because it's no longer public, you don't have that fear of being spammed and all these other things everybody was worried about. And at least in theory, and again, we have to wait for the end of the EPDP, but in theory, the only people who would be looking at the registrant data would be the folks who ICANN has determined have legitimate need to have access to that.

So, it's sort of a two-part point there I was trying to make; the first is whether we should go forward or not if we really think there is sort of an existential issue here, and then the second one is; should we be considering either here and obviously online discussion, the policy question about access about privacy proxy, given if there is a second tier.

AMY BIVINS:

Thank you, Peter. And, I see Cyrus' hand is raised, so I'll defer to Cyrus.

CYRUS NAMAZI:

Thank you, Amy. I'm sorry, I don't mean to be overtaking this whole conversation, but I think Peter raises a good question. And, Peter, I think to your point, I myself see a reasonable argument to be made regarding the point that you made. I would sort of highlight the fact that I don't think all registration data today is actually being concealed and hidden; we have the largest registrar in the world actually I think

there is not doing that, is here in the United States for instance, so I don't think it's become like a global thing.

But, to go back to the fundamental macro-level question, if this team, it's IRT feels that there is a reasonable justification to sort of slow it down and hold it off to see how the dust settles with EPDP. The process to follow would be to write to the GNSO which then can come back and tell the board officially that, "We think you should be doing this," and then the board tells us, "Well, hold off." We've done that with a stake WHOIS transition for instance, but it really isn't something for us to do, although again, I see a reasonable case to be made for it. I hope this is helpful.

AMY BIVINS:

Thank you, Cyrus. I see Steve Metalitz has his hand raised, you can go ahead.

STEVE METALITZ:

Yeah, I think Peter has raised an important question and I'm glad that he surfaced it, but I feel quite strongly that we do need to proceed ahead on this work that we've been engaged in for the last five years. There is a policy, consensus policy adopted by the community, and I had to chuckle a bit at Cyrus' suggestion that we could ask to have it slowed down a little bit; I think ICANN has done an excellent job of that over the years.

And, there's no need for any further slowing; it's time to go ahead and get this implementation in place, and I also agree with what Cyrus said,

that although there may be some registrars on this call who don't plan to get into this business anymore because of GDPR, I think there are probably some or many registrars or some significant registrars that I think do plan to remain in this business, and as long as that's the case, the work that the community has done to reach a consensus on how, what the ground rules ought to be for that business, or the minimum standards I guess I should say, I think we should move ahead with those, thanks.

AMY BIVINS: Thank you, Steve. Theo, your hand is raised?

THEO GEURTS: Yes, thanks. So, I don't agree with Steve; I think we lack a lot of information here to actually move forward, so that sort of puts us back like we are somewhat divided here, and that's going to be problematic while moving on. I understand the argument that there's going to be some registrars, privacy providers, who will continue their business, that's okay; I think they're going to squeeze that lemon dry until there's nothing more and the entire world is under some data protection law, which is certainly getting a lot of traction at the moment. But, let's not go there, but if the RT is divided on this point, how do we proceed then? Thanks.

AMY BIVINS: Thank you Theo for the question. I think that there are a lot of issues within the question to try to address. I think though, the fundamental

question of whether to proceed now, how to proceed now, whether there are questions that remain that we can't address now and what to do about them.

The process that we have is that if there is a consensus of IRT to believe that there is an issue that should be taken back to the counsel, we would take an issue back to the counsel. If the IRT is divided on an issue, for example; the status of privacy proxy in light of the current RDBS environment. If there's not a consensus of the IRT to take that issue back to the counsel, one of our options would be to flag that issue in the call for public comments and receive community feedback on it.

We had a question from Darcy, just asking what we plan to publish for public comment, and I noticed also that Cyrus' hand is raised, and I'll defer to Cyrus' question too, but just to clarify; what we're planning to publish for public comment will be everything that we have related to the proposed program requirements, so it would be the drafted accreditation agreement, it would be the fees proposal, it would be the applicant guide, it would also be the -- Steve, I'm sure you're very familiar with the call for comment that we have, so we could potentially, with questions specifically for the community in there as well, so our plan would be to publish everything, identify any issues or any minority positions or unresolved issues in the materials that we publish for public comment. So, I'll defer to Cyrus and then we have a couple of additional folks in the queue.

CYRUS NAMAZI: Thank you, Amy. Just very quickly to Theo's comment and question, a potential way forward and a suggestion is to actually flag this in the list of issues that we post for public comment. I think that may be a reasonable forum and a reasonable sort of vehicle for this IRT and the organization to post the question to the community to solicit input. Thanks.

AMY BIVINS: Thank you, Cyrus. Greg DiBiase is next in the queue.

GREG DIBIASE: I think an unresolved issue here is; the document we got back was ICANN's legal review, and the legal review we have to include this language from the temporary specifications. If ICANN legal determines that this language needs to be in it, then I think that might be a cause for a delay of going to public comment, because obviously that language is going to change, so I think we need to determine whether Volker and Theo's suggestion about just -- we don't need to write out all of specification 8, and whether we're able to proceed without pulling all this language verbatim from the temp spec, needs to be settled before we can make this decision.

AMY BIVINS: Thank you, Greg. And, that's something I should be able to get an answer from the legal team on pretty quickly, and I can get back to the list on that hopefully before our meeting next week. Peter, your hand is raised, you can go ahead.

PETER:

Yeah, I wanted to take a slight left turn, because I think it got buried in the bigger existential question, but if we are going to go forward with this, and we are going to present it to the community and ask for feedback, then given the effect that the GDPR seems likely to have, I would propose that we address the issue of whether or not you can provide privacy proxy services for registrant information that is not publicly available, but would be available to law enforcement and cyber security and IP rights holders and so on.

For example, I was thinking that you might want to say, or I would propose that we say, "Privacy proxy providers may not provide privacy proxy services for customers whose data is kept in the second tier of the new WHOIS system," assuming that's how that develops. And, one of the reasons I would be interested in potentially delaying is because it doesn't make a whole lot of sense to propose that language if that's not where this is going, but I think we're all pretty sure that that's where the EPDP is going, and so we should probably address the issue of whether or not it's appropriate from a policy perspective to be protecting data that ICANN has already decided the folks are getting access to it have legitimate access, or right to access, thanks.

AMY BIVINS:

Thank you, Peter. I think that issue is not one that we can cover in the next seven minutes of this call; we went to hour calls, we may need to extend our calls again given the depth of these discussions. However, in terms of that specific issue, we would need to have a conversation

among the members of the IRT to try to determine whether or not that would be within the scope of what we were given to implement. Given that the final report was written in a time where there was not a gated RDBS model, this obviously was not addressed in the final report, and it's not clear whether we would be stepping beyond scope trying to address that here. So, that's something that we would need to have a discussion about. I don't know if anyone has comments about that specifically now? Or, if you'd like to think about it, we can continue on the list and discuss it next week.

I know we have Darcy Southwell on the phone too, who's our liaison to the GNSO counsel, it could be that for a matter like that we might need to ask whether such an issue would be in scope or not? If the IRT can't reach a resolution on that.

Okay, so that's a battle we can continue on the list, because that's a very broad and fundamental topic that we obviously can't address in the next five minutes on this call.

Does anyone else have comments that they'd like to get on the record today? Steve, your hand is raised, you can go ahead.

STEVE METALITZ:

Yeah, just to reiterate what I just put in the chat; I think if we're going to look at that question that Peter raised, I'd like to have a clearer idea of what he's actually proposing that we say. So, hopefully when we have this discussion on the list in this coming week, it can include -- if Peter wants to put this forward, include some actual language, thanks.

AMY BIVINS: Thank you, Steve. Peter, could you do that for us?

PETER: Absolutely, although I don't know what we're calling that second -- does anybody have language from the EPDP for what they're likely to be calling that second tier? You can share it with me offline, we don't have to do this on the call.

AMY BIVINS: Okay yeah, I'll look in the materials and I'll consult with the policy team, and we will be in touch with you about that.

Does anyone else have comments at this stage about proceeding to public comments? I know I have an action item to consult with the legal team about specification 8, so I'll do that and hopefully have an answer for you in the next couple of days. I will also consult with the legal team about the additional GDPR related work, and what that might be, and how long that might take. So, I'll provide an update on that.

Does anyone else have comments or questions at this stage? Okay, so since we don't really have time to go to any additional topics, I will follow up on the list with you, I'll circulate the recording and the materials, and hopefully we can continue this discussion on the list this week, given that we clearly have a lot of material to discuss, we'll definitely be meeting next week. I hope you enjoy the rest of your week, and we'll be speaking soon, thanks.

[END OF TRANSCRIPTION]