ICANN
Transcription
EPDP Team F2F Meeting
Monday, 24 September 2018 at 15:30 UTC

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Adobe Connect recording: https://participate.icann.org/p855board6i/

Attendance of the call is posted on agenda wiki page: https://community.icann.org/x/rQarBQ

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Kurt Pritz: Hi, everyone. Welcome. I think with the possible exception of me, everybody had to travel some distance to get here. But let it be noted I had to travel on the LA freeways to get here so I might have had it worse.

I want to make some opening comments, and I hope you don't mind, pay attention to the content and not the style, the style won't be so good so I want to make sure I've captured all the points I want to make here. First, I wish this was our first meeting. As soon as I got this job, I thought let's have a face to face meeting first so we could establish some interpersonal relationships and, you know, not under – not only understand each other's positions but our core values and reacquaint ourselves with one another. But that's almost impossible with a group this size so this is the earliest we could do this.

I'm certainly aware of the concerns and even criticism of our progress to date so I've taken, you know, every comment I've heard on board. And in hindsight we might do some things differently. But, you know, almost every meeting we changed our approach in response to comments we have. And we, you know, as we continue to zero in on the best way to go through this. And the support staff, you'll see, has done quite a bit of – I would call ingenious work with the help of Thomas and – yes, so nonetheless, you know, we've developed quite a bit of material and if you compare where we are with other

PDPs and if you compare, you know, we've spent about as much time so far as it took to write the charter so while I wish we were further ahead, I don't feel so bad about it.

Several have urged me to describe the importance of this work and its time – the timeliness requirement and talk about that in some detail but I think that would be kind of patronizing because we all get the importance of what we're doing. You know, personally I don't think that the multistakeholder model can take to more of these top down temporary specifications before it falls in on itself so it's really important for us to use this as an opportunity to capture the high ground in the bottom up process and get ahead of the power curve in this very public discussion.

So what do we need to realize besides that we're all in this together? You know, we're all in this together are a couple of the terms I've heard alongside of the clock is ticking and we're in uncharted waters. So I think the first thing to realize is that, you know, everybody in the room has good motives.

And that goes without saying, you know, whether they're operating a business that's now facing uncertain existential penalties and possibly uneven enforcement of those so there's a great deal of uncertainty; those that are pursuing either on a professional or personal level the prevention of abuses and crime or the protection of valuable intellectual property values that's been built up over many years; or addressing you know, the nightmare that the Internet has become for some people whose personal data has become compromised, so these are the core interests of everyone that we're trying to address here.

So what does that mean that we're trying to address here? How do we fold that into our discussion? How do we fold, you know, understanding that everybody has good motives? So, you know, my recommendation is to attempt to – every time – which is really hard to do when you speak, it's not only to make your point, but then signal that you understand the other side's

core interest in this. And you might, you know, you might provide a path for compromise, you know, how do not only do I need to make my point to represent my needs but how can we take my point and use it as a building block to build on the core values of everyone and support those?

So I think we have a good path for these three days that considerable work – considerable thought product, which is a lot harder than regular work – has been put into how to configure these sessions. There's some ambiguity so you need to deal with that but there's also a fertile field and a path forward where we can have a constructive discussion about taking the purposes of processing data and hammering that into some sort of shape so we can actually have a discussion about how to evaluate those.

So the discussion is not choreographed in any way to lead us to certain results at certain times but rather one of the reasons we ask companies like CBI to join us is to watch the conversation evolve and then take it – keep focusing it in a direction that'll deliver some values. So there's an opportunity for everyone here to find a joint way of addressing all the needs at this table if that's what you want to do. So that's it; that was pretty painless.

I want to introduce – pretty painless for me, not for you. I want to introduce Gina Bartlett and David Plumb, (unintelligible) wrong, David Plumb. So they've come here in an industry where lead times are measured in months and you plan these things six months or a year out in advance, they marshaled their company's resources to be here on really short notice for someone in that industry and I'll tell you at some personal expense so I really appreciate that. And in fact probably several of you made personal sacrifices in order to be here too with regard to, you know, family or personal needs or running your business so I appreciate that.

So I'm going to ask them to introduce how we're going to go around the table and introduce ourselves and then we're going to come back to me for some opening comments before we start the substantive part.

David Plumb: Good morning, everyone. It's good to see you. I know some of you from previous work with ICANN but most of you I don't. It's a pleasure. I look forward to speaking more in breaks, lunch, etcetera. Okay so we need to get going, we need to get going on substantive things, talk about what's important in these three days. Before we do we're going to do a quick check in about what we believe success; is what we believe victory could look like for this meeting, this three-day in-person meeting. We also recognize we have people on the line, at least one person, so we want to find ways to be inclusive there.

We're going to do something that's a little unorthodox, we're not going to just go around the room and people say their names and what they hope to get out of this meeting, we think that might be a little slow. We're going to do a quick, you know, five minute thing in pairs. We'd love you to literally stand up in just a second and find someone who you really don't talk with much, yes, it's going to be tricky, it's going to be a little bit of a mess with how tight it is on this, but we're going to try it. Find someone you haven't spoken with recently or ever, right. And we've got three questions of which you can choose any two that you like, right.

One of the questions is about what do we think victory looks like this in this meeting, right? What do we think is success here for us in these three days? Right? We talked a little bit about it, you all talked a little bit about it on the Thursday conference call, right, and Kurt's put out some proposed objectives for the meeting, which are also right there. Right. How much are those making sense to you? What do you really think victory looks like? Okay that's one question.

The other two are a little different. One is, what's the first job you ever had? Right? Kurt says one of the benefits of interpersonal – of in-person meetings is you actually can get to know each other a little bit better, and if you get to know each other a little bit better usually you work better together. And if

you're trying to build agreement, that's very helpful. What was your first job? The other could be, what's one thing you probably don't know about me? You might have heard my voice on the AC chat for the last seven weeks, what's one thing you probably don't know about me?

Okay, so pick one of those – two of those three, five minutes, we're going to have to literally get up out of our chairs and when we come back, anybody who's on the phone, we're going to weave you back into that conversation. But I encourage you to find not your buddy, not you friend, right, not who you're most comfortable talking about, but someone who you don't actually know that well, all right? Let's just give it five minutes, let's literally get up out of our chairs and let's go find someone we don't actually talk to very much, two of the three questions. Thanks, guys.

((Crosstalk))

Woman: Okay, if you haven't switched, please switch to the other person. If you have not yet, switch to the other person.

David Plumb: Wrap this up – folks, let's wrap up your conversations and come back into the table. Let's wrap it up. Okay. Okay. I invite you to sit back down. I invite you to come back in. I invite you guys to come sit back down. I invite everybody to come sit right back down.

Okay. Okay. All right. Don't have them, right. Okay. All right great. I always take it as a good thing when it's hard (unintelligible). Let's do a quick (unintelligible) one thing that was surprising (unintelligible) say who you spoke with (unintelligible) one thing that was surprising. Who did you talk with, one thing that was surprising.

Benedict Addis: I spoke to Diane.

David Plumb: You've got to say your name too (unintelligible).

Benedict Addis: Hi, listeners. I'm Benedict Addis.

((Crosstalk))

Benedict Addis: I spoke to Diane, and I was surprised to find that we both agreed that ICANN needs a direct relationship with the data subjects.

David Plumb: Great. And just (unintelligible) I spoke to Diane – you say I spoke to Diane Plaut from IPC, right (unintelligible) for me, not for you all probably. But okay great. Yes, okay quick. Let's jump out. Anything. Go ahead. Introduce yourself too please.

Milton Mueller: Hi. I'm Milton. I spoke to Margie Milam of the Business Constituency who has disappeared but I didn't do it.

((Crosstalk))

Milton Mueller: The surprising thing was how quickly we agreed, so when we were talking about what was victory she said, well if we could get to the purposes, and I said, well, if we get to the data elements, and then she said well, why don't we do both and I said, yes, that sounds like victory to me. And that's what this form is about was it has both purposes and data elements so that would be great.

David Plumb: Fantastic. Great. What else? Anything surprising? Anything you want to share? It could be on the personal side too. Any first jobs that were kind of interesting? What else? Folks, don't be shy. Go right ahead. Yes.

Ashley Heineman: Okay, so I met with Ben Butler, my name is Ashley Heineman from the GAC. Ben is with the SSAC and he explained to me that he was the first person to register a name with Go Daddy back in the 90s, which I thought was interesting.

David Plumb: Great. Other things. Surprising?

Leon Sanchez: Okay, I'm Leon Sanchez. And I spoke to Kurt and I was surprised to hear that his first job was in an ice cream store, it was a summer job. But the surprising thing wasn't that actually, the surprising thing was that the summer lasted from April to October, so that was a long summer.

David Plumb: Okay great. Other things? Things about what is victory in this meeting, things about personal stuff?

Alan Woods: Matt Serlin from the Registrars and he used to be a photo journalist. And I'm like – I was very impressed with that because, you know, lawyers. We don't usually start off, you know, with actual (unintelligible), so I'm kind of impressed.

((Crosstalk))

Alan Woods: Oh yes, yes, right.

David Plumb: And that was Alan Woods speaking.

((Crosstalk))

David Plumb: Who else? What have we got? Go ahead, sorry.

Hadia Elminiawi: My name is Hadia. And I spoke to Marc Anderson from the Registry Stakeholder Group. And my surprise was when we talked about what victory looks like, that he said that if we agree on the scope of this group and what the deliverables should look like.

David Plumb: That was surprising?

Hadia Elminiawi: Yes.

David Plumb: Right. And that's been one of these issues that I understand has been
                   somewhat frustrating, right? We really have our hands around. Other things?
                   Other things you heard that are important or not important but just surprising?
                   How about purposes, folks? Yes, Alan.

Alan Greenberg: I talked to Farzi who the last time I heard her introduce yourself, introduced
                   yourself as Farzaneh Badass. And she's a…

((Crosstalk))

Alan Greenberg: …concern violinist in the making.

David Plumb: Yes, not surprising…

Alan Greenberg: Badass or the concert violinist?

David Plumb: All right, let's do a quick check in on the victory. So what we've heard so far
                   for this idea, oh, if we can just agree on purposes, great, just agree on data
                   elements, right. Those are the two things, that feels good, right? Then we
                   have this other thing like you actually have the scope clear of this group.
                   Other comments that happened when we asked each other that question on
                   (unintelligible), what does victory look like? You're going to have to raise your
                   hand really high. Yes, give me – I'll go right (unintelligible) in just one second.
                   Yes, anything else here? Yes.

Colin Kurre: Hi, I'm Colin Kurre from the NCSG and I spoke to Rahul from the GAC. And I
                   found it quite interesting that our conversation revolved around not
                   necessarily the outputs in terms of the GDPR but like the process as a whole
                   as an iteration of the policy development process, so we both agreed that
                   victory would be producing a result that all parties thought was, you know,

legitimate and fairly reached and things like that. So we were kind of talking more about procedural victory more so than the substance.

David Plumb: Got it. Got it. And that's an important thing, right, in a stakeholder group want to feel a sense of some kind of reachable correctness or fairness, yes. Other things here and then I'm going to go – yes.

Marc Anderson: Marc Anderson. And I had Hadia from the ALAC who just spoke about what I said, but when we talked about victory we talked about victory for this weekend. And one of the things we talked about was, you know, victory would be able to break down some of the distrust that there is among this group.

Hadia used a specific example of human rights, when somebody talks about human rights, if somebody – if there's an element of that somebody disagrees with, they should be able to disagree with that without being labeled as being anti-human rights, and that was a specific example she used and I thought that was a good point, you know, victory maybe for this weekend would be the ability to, you know, come to some – you know, develop some interpersonal relationships and break down some of this distrust that we seem to have developed.

David Plumb: Great, okay. Wonderful. Other things you want to say? And I was going to go for a question but I'm worried, Kavouss has got his hand up, then maybe we need to – let's quickly – I don't know how that's going to sound in here, is that going to work? We've got Kavouss over the speaker. Kavouss, you want to go ahead?

Kavouss Arasteh: Yes, good morning, good afternoon and good evening, perhaps for you who are there, good morning, for me good afternoon, others would be evening. Yes, I have two things to say. The first is victory, not only at this meeting, victory for the entire preparation of PDP, number one.

And number two, victory for everybody it should be a win/win all stakeholders, advisory committees, and the communities and everybody should have a opportunity to have a win/win and we should have a degree of understanding and degree of listening to each other to see each other's problems, difficulties, each of this group they have their own internal problems, difficulties, cultures and so on so forth so we should understand that. We in the GAC we have certain policies, we have certain objectives and we would like these objectives will be – or should be achieved. And one of these main objectives is enforcement of the law; we should be able to enforce on the law whenever circumstance arises.

Second, I have a statement to make. I send already a message to Kurt and he said that he will give me the floor. I don't know whether you want that I make this statement now or you want to give me the floor once everybody said whatever they wanted to say. And thank you very much.

David Plumb: Thanks, Kavouss. I think if you can hold off one second, we're going to do one little question here which you can participate in as well, and then let's go to that statement you mentioned, Kavouss, if that's okay? David talking.

Kavouss Arasteh: Yes, it is okay. I have another question, that may be silly question, this meeting is not video casted, is just audio cast, we cannot see each other facing? Many of the people I hear your sound, I have known how you look like so in ICG in CCWG we had the face to face meeting we had video cast but why we have the audio cast unless I am mistaken to be connected to it appropriate channel. Could somebody provide that information to me? Thank you.

David Plumb: Sure, and Marika can explain but the quick answer to that is there is none, but Marika, if you want to give a longer explanation?

Marika Konings: Yes, thanks very much, David. So this is Marika. Correct, for this meeting there is no webcast. I think for the CCWG meetings those were typically

linked to an ICANN meeting and as such the meeting rooms were already set up similar to how other ICANN meetings are run with webcasts. So but for this meeting unfortunately that was not possible.

Kavouss Arasteh: It is very pity. It is a pity that being in the most progressive and most top countries in the world in the home of the ICANN we don't have these facilities, it is a pity, I don't understand that. In the small meeting elsewhere we have these facility, I don't think that that is something we could forget. It is unforgettable. Thank you.

David Plumb: Thanks, Kavouss, for that concern. Okay, what I'd like to do just quickly before we hear again from Kavouss and then go more directly into our agenda for the meeting, we want to test these little gizmos that are in front of each of you. And if someone can't find one, these little tadpole things that are in front of you, right? So if you grab one of those, this is an opportunity to quickly and anonymously take the temperature of the room, right?

We're not making decisions here, we're not voting on anything, we're just taking our temperature, okay? So I've put a question on the screen here, and Kavouss, you don't have a machine to answer this but think about what your answer would be. Through chat, okay yes, that would be great. So and you can grab another. So here's how it works, for this particular question, you can click (unintelligible) two times on your little machine, right? And this is the question, if folks who are in this row are going to have to look (unintelligible) room or behind you. But what's your gut telling you about this meeting right now? Right?

You can have two things going on, that's why you can select two options. You can be excited about the opportunity of this thing; you could be nervous that we're going to spin our wheels and not get very far; you can be curious to see others are going to act and react be in this space; you can be curious to see what Gina and I are going to do; you can have some serious doubts about what Gina and I are going to do; or you can be too jetlagged to really have a

clear sense. Okay? So take a moment, click on the two things. If you want to change your mind just click on two more...

Woman: So we have to have one answer each, then we can have multiple answers too.

((Crosstalk))

David Plumb: You can click twice because we all know we got all kinds of things going on inside, right? Select two, anonymous, I literally have no way of knowing who it was. Yes.

((Crosstalk))

David Plumb: Oh yes. Julf, hang on one second.

Julf Helsingius: Yes, Julf. As somebody who's actually looked very much into electronic voting, is there any way we can actually check that the count – the votes are correctly counted here?

David Plumb: Yes. Well, this is going to be a leap of faith for you all that I'm not trying to pull a fast one here. And honestly, the good news – I have – I do not have the technical competence to pull a fast one, so let's just stop it all. We got 29 votes, anybody else missing? 31. It's impossible to vote twice unless you stole a second thing. All right, let's cut it off there. (Unintelligible). Okay great, so nobody's all that jetlagged – that's one – one person's probably jetlagged. Okay.

What are we learning about from these results? Right? We're learning that the number one vote-getter here was are nervous about spinning our wheels, about not making progress. At the same time, we're pretty excited to be here. We're very curious to know what's going to happen, how others are going to react. Honestly don't care about us. (Unintelligible) okay.

Does anybody else have a different meaning of these results? Anybody else want to say something about the results? It raises the stakes on all of us, take steps, act in a way, behave, work in a way helps avoid this (unintelligible). It rests on all of us, right? And we're going to talk a little bit about the process, we're going to suggest some things today, but it rests on all of us to avoid that as much as possible.

Great. Kavouss, you had mentioned you have a statement you'd like to read. I think how's a great time to do it and then we're going to…

((Crosstalk))

Kavouss Arasteh: Yes. Yes, I want to make a statement. This is a nonpolitical statement. As I mentioned before, I hesitate to comment in this very technical and professional meeting on (unintelligible) entry policy of a given country. In particular, those countries or country currently there's only one, imposing general sanctions and bans on the national of certain specific countries preventing them to enter in that specific country and to contribute to the activities of the multistakeholder community. I, Kavouss Arasteh, as a professional, I have been involved in the international activities for 45 years. Five years I am working hardly in the ICG, CCWG Work Stream 1, CCWG Work Stream 2, IoT, auctions, new gTLD subsequent round and so on so forth, very active.

Most of my time and family life was that. I was prevented and refrained and excluded to participate at that meeting. This comment is addressed to the ICANN, the organization, in holding a meeting of an ICANN or of a constituency of a stakeholder of ICANN in such countries which prevent attendance in a face to face meeting being scheduled in that country. It is not the first time that such inattention of ICANN decision making is observed. They have done it before, I was not in a position to attend Puerto Rico

meeting because Puerto Rico is under the jurisdiction of the same country that putting general bans on certain countries.

National of these countries like me, on which the general ban was applied, could not attend ICANN 61 for the same reason as the venue was in a country geographically under the jurisdiction of the same country putting back. The purpose of this statement is twofold. One, on the one hand, I strongly object to the intention of ICANN, the organization, that planned to held the face to face meeting in a country which impose general ban on other countries by granting entering visa or even if visa entry were granted, there have been no guarantees that the person could enter in that country. There are several evidence on that.

And as I mentioned, it is for the second time that this has happened. The second is that ICANN should never in future hold any meetings whatsoever in any country that prevents other countries to attend. This is a multistakeholder democratic open, transparent as we should allow everybody to contribute. This meeting does not belong to particular country or countries or group of countries, in particular the entire community. I am as a user of the system Internet even not a participant.

So I strongly invite and urge ICANN management not to hold any meeting in any country that impose sanctions or bans on the national or any other country on a general manner. As I mentioned, I don't want to discuss the entry visa of a particular country, which is the prerogative of that country. But I'm talking of the meeting, in future, ICANN should not do that. This is the second time. I hope there will be no third time. And I thank you very much.

David Plumb: Thank you. Kurt, you want to go? Thanks for sharing that. And I know it's very hard to be on the phone in a meeting, it's a very difficult thing and so, you know, we appreciate your patience, Kavouss, being on the phone. Okay, let's jump into our agenda. And Gina is going to walk us through that (unintelligible).

Gina Bartlett: And, Kavouss, this is – we'll do our best (unintelligible) benefit your contribution so really appreciate your patience and really want to make sure that we can (unintelligible) on mind and (unintelligible).

So I'm just going to walk though at a high level the plan for the day and then I'll pass it to Kurt to do a more formal setup. I think the good news is that the victory that you identified is exactly what we have prepared for you for today to work on. So we have aligned there. So the goal for these (unintelligible) to confirm the roadmap or minimum requirements for GDPR compliance. We want to make sure by the time we (unintelligible) we have understanding amongst all of us what is the minimum that (unintelligible) develop a policy to be GDPR compliant.

We want to develop preliminary (unintelligible) for the purposes and data elements processing and then there may be other topics that you identify that (unintelligible) prioritize to also advance but our primary focus is going to be on the purposes and the data elements. So roughly today we're going to check in that we're on the same page about the requirements and then in front of you and on the wiki (unintelligible) we have – the staff have taken (unintelligible) document. One is a purpose for processing registration data and, Kavouss, this is on the wiki – look at.

We're not going to get – we'll jump into this in more detail in a minute but these are here for you to start looking at and reflecting upon. Second (unintelligible) and on the wiki is a data element worksheet that builds off the work that Thomas and others and the working group has done in the past but formatted it so that we have a working document that (unintelligible) work the elements, the data elements.

So what we're going to do is first check in on where we are with the purposes, then we are going to go to an example – walk through an example of a purpose of the data elements. We'll take breaks and we will have lunch,

and it kind of depends how the conversation evolves, we have some strategies that we're making a decision.

And then we're going to come back later and workshop the data elements so what that means is we're going to look at the purposes in parallel with the data, work-shopping that. At the end of the day we'll check on what the progress that we've made and make our plan for tomorrow. So we are going to be dynamic (unintelligible) as we go but we're all driving towards the outcome of developing the purposes, developing preliminary agreements on the purposes as well as the data elements.

(Unintelligible) very rough chart that I put iterative process, what we're (unintelligible) is we're going to do is work on the purposes, and where they go into the specifics of the data element and how we're processing those for the purposes, look back at the purposes (unintelligible) reach a point where something (unintelligible) document that and set it aside, keep working in this iterative way.

But our goal is to develop a working document that you're crafting that will inform your work today and ultimately serve as your output of the conversation from today. Okay? So I just want to say a couple words on working (unintelligible). As you know, we have gotten (unintelligible) attending your calls, the materials, worked really extensively with the staff and (unintelligible) to make sure that we are able to facilitate and engage in a meaningful way with all of you and to participate in the meeting effectively.

Our goal, and role here is to be impartial with regard to (unintelligible) but really guide the process, work with (unintelligible) toward outcomes, issues that you've identified so you can maximize and make as much progress as you can, take advantage of the face to face time to the greatest degree possible.

So what that means is that we are going to ask probing questions, we're going to encourage (unintelligible) we're going to work with the staff to craft the document of the working document to serve as the product of this effort. (Unintelligible) on the document (unintelligible). We'll ask questions and note problem solving and I think the last (unintelligible) fundamental, and many of you touched on it, and Kavouss did when he talked about a win/win (unintelligible) being able to disagree respectfully and build trust.

All of you are here and in this chair because you (unintelligible) broken or here to represent a particular (unintelligible) so that all of your interests are what we're solving. It's no longer possible to (unintelligible) exactly what you (unintelligible) proposed ideas that manage for all of (unintelligible). It's a much (unintelligible) problem that way but that is (unintelligible). So we view our role as probing, problem solving, encouraging (unintelligible).

Diane Plaut: Sorry, can I just say, I think your premise is false. You're equating everyone's interests in this group as at the same level, and that is not true. I'm sorry, the contracted parties and ICANN, those are the most important ones to be honest, and they have actual purposes. The rest have interests to access the data. There is a distinction and I really think you ought to make that.

Gina Bartlett: I completely agree that there is a distinction to be made, all that we were trying to say is in the development of the product, purposes and data elements that we are cognizant of the different players and there is (unintelligible). So it's not to say that ICANN is the central figure in the purposes and the policy, it is ICANN's policy but as we think of how to (unintelligible) data elements consider that others care about that as well in this ecosystem of the policy.

Diane Plaut: Okay, I understand that. But don't forget, what we're actually coming from, first and foremost is the law, that's what you have to start with.

((Crosstalk))

Diane Plaut: Anything else actually is almost in some respects irrelevant. If you look at the law and see okay, what can we collect because that's the first thing. So…

((Crosstalk))

Diane Plaut: …that's where we need to start. And I'm sorry that just wasn't coming across.

Gina Bartlett: Oh thank you. I appreciate the clarification. And I think it's vital that we all clarify that our (unintelligible) we are working in the law, right, we have to be compliant with GDPR, have the gating questions (unintelligible) questions, we are charged with answering the gating questions, those will inform our conversations along the way. Those are our (unintelligible) that reminder.

Caitlin Tubergen: Hi, this is Caitlin Tubergen from ICANN Org. And this is just a kind reminder for all the participants to please state your name before speaking for the remote participants. Thanks.

Gina Bartlett: Thanks, Caitlin. I'm going to hand it to Kurt and he's going to walk us through some intro type slides to set the stage to confirm what our minimum requirements are and what we're covering and how we're going to walk through the day. And then we'll just dive in and get started. Kurt, I'm going to pass it to you.

Kurt Pritz: Thanks, Gina. I noticed Kavouss has his hand up so, Kavouss, before I finish the introductory comments, go ahead.

Kavouss Arasteh: I'm sorry, I don't know what we are doing now. Are we listening to some (unintelligible) advice and so on so forth? Are we given some lessons? Are we given some tutorial? I don't understand according to agenda what we are doing, sorry, could you please kindly remotely guide me what we are doing? Thank you.

Kurt Pritz: All right so the next thing we're going to do is I'm going to take us very briefly through the documents that are going to be supporting our discussion and then we're going to launch into the substantive discussion on each of those issues. So yes, so much of what I was going to say has been said so luckily for you I won't be speaking too long.

I was gratified to hear that the – oh it was good, it was better than I would have done. So I was gratified to hear that the meeting objective we put together in the past week was the same that many of you identified here that we want to answer the charter questions associated with the purposes for processing registration data and to identify the data that's collected, redacted, disclosed etcetera.

And so Gina exposed or briefly described the documents we're going to be using this week. This one here, this worksheet is really the progeny of the work Thomas and Farzi did on a big spreadsheet. And we were looking for ways to simplify this. So this will become a workbook for each of the 13 or so purposes for processing registration data, there'll be one of these for each. And so this will be used to – the basis for the lawfulness of processing so we'll select that out of GDPR Article 6.

We will select the data that is necessary for that purpose. And we'll answer a series of questions associated with that to ensure that the purpose is sufficiently narrow, that the data set is sufficiently narrow, the processing – the principles of minimization have been obeyed and so that we feel good that this purpose is lawful under the eyes of GDPR, and the data set is correct. So this is essentially the first two pages in your workbook to do that.

Before launching into the workbook though, we, you know, we examined again the purposes for collecting registration data as they currently exist so you remember we deleted two and there was some controversy about some of them so we subdivided them into separate purposes so it would be easier to read. So these don't have to be perfect because the analysis of these

purposes is going to take place when we do this workbook. But some of these purposes we think are still a little broken so we wanted to start with a scan of these – of all the purposes and have a discussion on which ones we might edit or even delete before we stick them into these workbooks and start working.

So the first step is to look at these purposes and make sure they're good enough so that we can do this analysis. And so that's our first step today will be to go through the list of purposes and beat them into some shape. When we feel comfortable with that, we'll take up this workbook, march through the workbook, we don't finish all 13 we'll – we will, as a goal have a roadmap for how to finish it.

Benedict Addis: Hi, Kurt. I'm looking at everyone around the table and everyone is on a laptop. And I noticed that people are looking at social media and chatting on their back channels and or messages. We're all communicating with lots of different people and I would suggest that maybe perhaps we could agree that we try a laptop free hour to try to knock through some of this, maybe give the room our full attention out of respect to one another?

((Crosstalk))

Benedict Addis: We don't have to.

((Crosstalk))

Benedict Addis: I know we're all in the Adobe room but there – there are lots of folks that aren't just in the Adobe room and I'd be – I think it might be nice to try to – out of good faith and mutual respect to try to perhaps not look at our laptops for the next hour or so.

Kurt Pritz: Yes.

((Crosstalk))

Kurt Pritz: So this is Kurt. So Benedict's point is well taken. I was aghast to find some people were typing during my opening remarks that I carefully crafted at two o'clock in the morning. But so but your comment is really well taken but let's make it an honor system sort of thing, so if you need your laptop to follow in the Adobe room or communicate backchannel with your staff on a specific question, I think that's important, but I'd also urge us to listen to what everybody has to say. So thanks for being bold and making that statement.

David Plumb: Okay so one quick thing that we talked about with Kurt and the leadership team, one of the frustrations folks have had, many of you and the leadership team is that it feels like there's a lot of questions about how we're working and that sometimes gets in the way of actual talking about the stuff, right, the content, right? So we're constantly saying no, but let's do it this way or let's do it that way because legitimately it's kind of hard to figure out your pathway into this, kind of a tied up knot.

We're going to ask a big request of you today and (unintelligible). We're going to ask that you be willing to run that Kurt's saying about how to do this work today, right, using these two big sheets, right, two worksheets that we're going to be using today to let us run with that, Kurt and Gina and I and the leadership team. Don't – if you have a suggestion about how to do this better in terms of processing, hold that and at the end of the day we're going to do a check-in. We're going to say, was this working? Was this not working? What do we need to do different?

Let's not spend every session making those suggestions. Okay? So our big ask of you today and all of us, let's hold that process type advice and suggestions to the very end. And we'll (unintelligible) back to our first. You guys okay with that? That all right? Okay. Let's do that and Gina and I will help remind you if it comes up during the day. Okay.

So our first job is around the purposes matrix that – not the pretty multicolored one but the other one, okay, this is our first set of conversations, right? This is our set of conversations where we took all the good work that had been done over the last several weeks, multiple calls and went through all those purposes in Section 4.4 right, had a Google sheet, we're doing this – had your adjust to the language, you were making little Xs next to which parties actually had that purpose, right?

What we did, staff in particular, what we did is take that and reframe it from an actor's perspective starting with ICANN. Didn't change any language, just took it and said, ICANN for instance, lower down it says Registrars and others, ICANN needs registrant data to do the following. Right? So it's that vertical analysis many of you had asked, right? What really is the purpose? What is it that you need to use registrant data (unintelligible)? Okay?

We're going to keep working on this document until we feel they're kind of good enough that we can (unintelligible) other analysis (unintelligible) elements need but really make sure it makes sense in GDPR client framework, right and it does a much more detailed set of questions. Get to the detailed set of questions, we need to do a first pass on the purposes (unintelligible).

Gina Bartlett: Can I ask everyone, rather than putting your hand up in the AC, just to like flip your card up because we're not able (unintelligible) card up.

David Plumb: The reason I'm giving this intro which is just repeating what Kurt said, I haven't told you anything yet that Kurt hasn't said, just to start to give you a flavor of how we're going to be working today and the tools that we're going to be doing.

Stephanie Perrin: Yes, thanks, Stephanie Perrin for the record. And I said I wasn't going to interrupt today but sadly I have to. It's all very well to invent a way of approaching this problem, after all we are not doing a proper GDPR legal

analysis, we are figuring out whether the temp spec is what we want. And that is not how you do a proper GDPR analysis. But sadly, not determining the accountability structure and the framework prior to looking at purposes cuts out an important step, in a normal analysis that would be being done by a data protection authority in investigating a situation such as this, the first thing you determine is the accountability structure. Who's the data controller? Who are the co-controllers? Who are the processors?

Then you do a data protection impact assessment and figure out who's impacted. This is where you identify third parties whose legitimate interests in accessing the data are or are not being resolved. We're cutting off the first two fundamental steps and leaping to the third step. I'm just saying, don't be surprised if we don't get good results. Thank you.

David Plumb: Thanks for sharing. And I think the key thing is, let's see how it goes, right? If we get to the end of the day we're like back it up to those steps that Stephanie said, let's back it up. But let's move forward with this for now. And thanks for that, Stephanie.

Farzaneh Badii: Thank you. Farzaneh Badii speaking. I just wanted to make sure that if we magically go through this first phase it won't be a finalized purpose. So even if we go through it, it won't be finalized or, you know, okay.

David Plumb: Yes, that's a great question because the way we're envisioning, as Gina pointed out in her little circular map there, we are not finalizing stuff particularly not in the morning of Day 1, right? What we're doing is we're getting stuff close enough so we can do the second level of analysis more detailed. It's from that second level, certainly (unintelligible). So, yes, we need to get it to a place where we feel comfortable it makes sense in that second level of analysis, right, and then that gives us the chance to go back and go (unintelligible). That's the logic.

Before I give this to Marika to talk us through the way this matrix purpose (unintelligible) in this document, I just want to circle back to one quick thing that Gina said, (unintelligible) this is where Lindsay makes a great point that we have a legal mandate for legally, you know, inside GDPR, that is what we (unintelligible) of our actions along with the mandate of this group, the gating questions are the orders of our actions stay within those (unintelligible).

And at the same time the reason this isn't like a little confab of some very high paid lawyers doing this, because the multistakeholder process. (Unintelligible) is because ICANN is saying, I want different interests to be part of the conversation. Not because we're going to break the law or go somewhere else, no, because I want them to be part of the conversation, that's the logic behind this (unintelligible) process, the multistakeholder (unintelligible).

So at the same time we have a really tight order, a tight mandate, it has to be in our deliberations recognize there's different viewpoints, interests and core needs at this table and that's part of what we (unintelligible), we have our own interests, we need to not only solve for our own interests but those of others. I'm going to do four quick questions before we dive into those and like (unintelligible) yes, James, please go ahead.

James Bladel: Sorry to interrupt, just – this is James Bladel speaking for those on the phone. So just another point on that to kind of carry on with I think the theme that you were making is I think it's framed sometimes as a Registry and Registrar interest to maybe conservatively apply – comply with the laws conservatively as possible. Certainly we're the ones that our heads are on the chopping blocks.

But I think we should also take a step back and remember that everything that ICANN does is based on a contract or different flavors of contract, and so if we were to, let's say, creatively interpret GDPR in a particular instance and write it into our contracts, then some registry or registrar in some far flung

jurisdiction challenges that in their court system, then the whole house of cards could kind of come tumbling down.

So I think we need to be careful that it's not just a registry registrar issue, it's also an ICANN issue, and it's also just kind of like the bottom row in the Jenga tower that's holding this whole thing up. And we don't want – obviously we don't want ourselves to get smacked but we also don't want someone to start pulling on a threat that undoes the whole sweater. Thanks.

David Plumb: Yes, that really speaks to those orders Gina was talking about, those orders are there, they're there not only because they are but (unintelligible). Two questions and then Marika is going to walk us through purposes as we start to dive in (unintelligible).

On the chat, those who can't see the screen very well, the first of two questions. (Unintelligible) judge my understanding what's fundamentally important other stakeholders (unintelligible). How well do I know what's really important to the other people around me? Okay, 28 that's pretty good unless anybody wants to get a last vote in, 31, there it is. Okay.

Okay, okay. All right so we've got 29% and 48%, if you add those up that's a large majority who feel very clear (unintelligible) right? And there's about 1/4 of you who are saying, you know, it's not always (unintelligible). Go to the second question, how would I judge other stakeholders understanding about what's fundamentally important? How well does everybody else who's sitting around this table understand what my stakeholder group views as most important? I've left almost the identical responses (unintelligible) for people and then we'll close it off.

Okay, last chance. And what are you seeing? A little bit further down on the answer list, right? You each have a sense that you understand each other better than your sense that the others understand you. Right? Probably different explanations for that or possible explanations. One of the things

that's going to help us reach agreement as Gina says, over these three days, (unintelligible) that we're really focusing in on how well am I letting others understand what's really important to me? How well am I listening to what's really important to the other and solving for that in the same way I need to solve for my needs.

That's going to be our pathway to (unintelligible) how that goes (unintelligible). Any comments about this before we – Marika jumps in? Anything else we want to say? Good. Okay, Caitlin.

Kavouss Arasteh: Excuse me, I had a question. I raised my hand, I have the question. Please.

David Plumb: Please go ahead, Kavouss.

Kavouss Arasteh: Yes, my question is that is this a self assessment when you say how would I judge, who is I? That means you are referring to every participant or every stakeholder or what? And then my core interest, who is my? Whom you're referring to? It is a self assessment that means I assess myself saying that how would I, Kavouss Arasteh, judge other stakeholder? And how well do they understand my core interest, Kavouss Arasteh, core interest or GAC core interest? What is this my and I? Could you be quite clear? Thank you.

David Plumb: Thanks, Kavouss. It was just a quick shorthand to say what's important to me as a representative of stakeholder group, just I, me, as a representative of a stakeholder group and others who might represent other stakeholder groups. And again, this is just taking the temperature, there's nothing all that scientific happening here. All that we're doing is taking the temperature of the room and seeing where we stand and the big takeaway, at least for me on this, is we all seem to think we understand each other better than we think others understand us. Okay? Great. Marika, do you want to walk us through this document that now we're going to really dive into the content (unintelligible).

Marika Konings: Yes so thank you very much. So this is Marika again. Oh, all right. This may be better. So quickly scrolling through I just put together a brief couple of slides. Some of the points have already been made but it may be helpful to just restate them again so everyone is really clear on what you're looking at and where it comes from.

So basically this has been derived from the purposes Google sheet, the one that you may remember with the Xs on it that I think started off with Thomas and then the group worked on that and added some Xs, added some comments. So those purposes have been transferred into the document that you have in front of you apart from those three purposes for which it was identified that actually no one was pursuing that purpose so I think we agreed to not include those for further conversations.

But there were also a number of purposes suggested or at least being pursued as by certain actors that weren't originally identified. So those purposes are flagged in brackets in the document. So again, it's for the group to look at especially the actors that have been identified as pursuing that purpose to look at that and kind of confirm, is that indeed a purpose that, you know, you as a registrar or you as a registrar or as ICANN is being pursued so that can either be confirmed or taken off the list in that regard.

We also incorporated here the legal basis reference. And I think that's something that Thomas has been pointing out as well, that there's a test that will need to take place. So for every purpose you'll need to identify the relevant legal basis. So we've taken a stab at suggesting a legal basis there, again, that's not meant to say that that is the legal basis; that's for your review and discuss but to give you a starting point we've added a column that indicates the legal basis that, you know, from our perspective based on the conversations we thought might be the best fit. But again, that's not meant to – to say that it should remain that way.

And then there's also – also wanted to point out that of course in the document originally we worked as well with four columns, Registry, Registrar, ICANN and Third Party Interests. But for this effort the focus is really on collection at this stage, they have been brought down to the three categories of ICANN pursued purposes, registries and registrars, again, noting that those purposes that were flagged as being also pursued by third party interests are actually encapsulated in the ICANN purposes that are incorporated in that document.

So again, as I think David spoke to this earlier, but again to emphasize, the objective here is really to look at this list and to see, you know, which ones you feel comfortable with moving into the next excursive which is the worksheet that is in front of your table. So this is not about, you know, agreeing on the purposes, you know, if you say yes now, you know, you're tied to it forever, there's no changes to it, and no further modifications.

The only objective really is to go through this list and look at you know, are you comfortable with moving this into the next exercise as again, I think having spoken through like the worksheet an again, we'll go into more detail in the follow up conversation, the idea is by going through some of the detailed questions that need to be answered it will actually become more clear to everyone how a purpose may need to be formulated, as well through the questions whether purpose is actually legitimate and meeting the requirements under GDPR.

So again, we're hoping that that exercise will actually bring some clarity and I think as Gina already indicated, that is intended to be an iterative process so we may indeed have a purpose, take that through the data elements worksheet and actually come out of it with a renewed understanding or appreciation for a certain purpose and we may actually need to then redo it again if that has resulted, for example, in significant modification to the wording or underlying principles of that purpose.

So again, I think here on the right side you see some of the questions that will come up in that exercise with the worksheet so hopefully that will give you a bit more context as you look at the document that you have in front of you now. And I think here Gina will kind of take over and lead you through that.

Gina Bartlett: Great. I think what we were going to do, Marika, while you were talking is if there's any questions, take a few questions, and then give people an opportunity to review this and say got it this morning and we'll take a break and people can review, grab a coffee, whatever and then we'll come back and check in and go forward from there. Does that sound all right to you, Marika?

So any questions at this stage or I know, Thomas, you had done some of the early work on this, anything you care to add with regards to the data – where we're at? Yes, Mark. Try again.

Mark Svancarek: I just have a question around this table. Legal basis, must there be a single legal basis for purpose or can there be multiple legal (unintelligible)?

David Plumb: Marika, do you want to say anything about that?

Marika Konings: Yes, this is Marika. Actually, I don't know the answer to that. I'm looking to Thomas if he can help.

James Bladel: I just – if we can come up with more than one I think that's helpful.

David Plumb: So much the better, yes. Okay, great. Any other questions you would like to ask before we – you have a chance to really read through?

Alan Greenberg: Yes, it's not a question, just being somewhat anal, the legal basis should be Article 6.1 bracket F, there's a 1 missing for anyone who wants to look at this…

((Crosstalk))

Gina Bartlett: Article 6.1…

((Crosstalk))

Alan Greenberg: …and feel if we knew what we were talking about.

Gina Bartlett: Okay. Over here, Georgios. And then Thomas. Great.

Georgios Tselentsis: Georgios Tselentsis from the GAC. Again, from the same column, I understand the legal basis here is referring to the compliance issue, but and then I go back to what was – when I was asking to include this column from Thomas and Benedict. I think we have to see also what is today the legal basis based on each one of the actors for performing the purposes that are the other column. So is one thing to have the compliance as a legal base but there is another issue about having the reason for this purpose from each one of the actors. So I go back to what Alex said I think in this column we have to have much more meat, much more input and include that there.

((Crosstalk))

Kurt Pritz: So the ICANN purposes and others are better suited to answer this than I, but – than me, but the ICANN purposes are broader than just compliance; the ICANN purposes really go to the formation of ICANN and how it operates through contracts with registries and registrars to build the whole marketplace. So that's why under ICANN you see all the purposes for processing registration data because it's the broader ICANN role, not just the narrow compliance role and the narrow compliance role comes through on one of these. Nonetheless, your point is really good. When we get through with the ICANN purposes, if the registry purposes or the registrar purposes have a different basis, different legal basis, then we should note those also.

Gina Bartlett: Marika is going to respond to that and then I have Thomas, Alan and Benedict.

Marika Konings: Yes this is Marika. I think to note because indeed, you know, some of these purposes come back under the different groups because they're shared purposes or similar purposes and indeed for those I think certain cases there is a different legal basis identified, but again, I think indeed as part of the group exercise if you're of the view that that's done incorrectly or there are more multiple –or there are additional legal basis that you could identify, that can be added.

If I can take advantage of having the mic to add one more point, one thing you may see as well at the top of these tables is that based I think on something what Becky said as well on how to go about formulating purposes, we added as well the sentence for each of these parties, you know, the actor is processing registration data in order to really make it very concrete and very focused when you look at the purposes on what is being or what is trying to be achieved.

And I think trying to put them in front of some of the purposes may already make people feel a bit nervous because it doesn't really make a lot of sense with some of the purposes that are currently framed so maybe thinking in that mode about some of the purposes may already help as well making the language more specific about what is actually being pursued here and what is the objective of the purpose. So again, just wanted to add that.

Gina Bartlett: Thanks, Marika. Thomas, Alan, Benedict and then Kavouss. Go ahead.

Thomas Rickert: Thanks very much. And good morning, good afternoon and good evening everyone. To answer to Alex's question first, you know, the general rule would be that you have one processing activity, let's say the collection of certain data elements, and there can be different purposes pursued by those

who are involved and they – these different purposes can have different legal basis. So it can be required to perform the contract for the registrar, and for ICANN it it can be based on 6.1(f) because they're pursuing their third party interests. Right, so that would be the general rule.

I also agree that when looking at ICANN's purposes, I think what we find in this sheet is a reaction to the discussion that we had on the first version of the data matrix where folks said, if you look at 6.1(b), the collection or the processing to perform the contract, where are all the ICANN requirements that come from ICANN's RAA and the RA and the consensus policy? And I had asked the group to stay with me for a moment and look at what technical required to make to make a domain name work, and look at the other aspects later.

And what you find here is an evolution of that because we're looking at what other ICANN requirements are there and are those okay requirements? Right? So let me give you two examples if I may? The requirement that ICANN poses on contracted parties to collect registrant data to make the domain name work, is I think uncontroversial. ICANN can require a registrar to do that because that's what I think we've agreed ICANN does, entitling domain name owners to the rights in a registered name, right?

At the other end of the spectrum, ICANN in its RAA requires bindingly the registrars to obtain consent from the data subject and it requires that consent for the publication, unlimited publication of their personal data, which as we know by now is an illegal requirement of ICANN to establish. And therefore, I think we have to take a multistep approach, look at what's required to perform the contract first technically and then look at other requirements that ICANN imposes on the contracted parties and see whether they are – these are, number one, in compliance with applicable law and that's not only GDPR but also the human rights charter and other things that might be applicable.

And number two, are those requirements in line with or within the boundaries of ICANN's mission? Right? And this is what you find here. And I would really like to applaud ICANN staff and Kurt, our dear Chair, and CBI for taking this massive spreadsheet that Farzaneh and I have produced and putting that into chewable bits that we're going to work through.

And I think that when we go through this exercise what we – and I'm not sure whether this is going to be repeated but I think it's worthwhile saying so that it's really sought by everyone. We have the ICANN purpose or the purpose at the beginning and that's basically a copy out of the purpose sheet that has been produced. And I think that goes back to Kurt's request to make the purpose matrix, which we've developed, match or link with the data elements matrix.

But that doesn't mean that those – that that is the final language of the purpose, that's just to make it reference to the temp spec and what we're actually discussing. We will probably need to rework the language of the purpose specify and make it more narrow to be legally compliant. But that's basically the reason why we are taking the purposes as a starting point now and then look for the legality.

And I think we have 13 of those sheets for the individual purposes, but we will need to do that…

Gina Bartlett: Not yet, we're not going there yet.

Thomas Rickert: Okay. But we will need to go through this testing exercise for the whole catalog of 6 and primarily it's going to be 6.1(b), 6.1(f) and 6.1(a) for each purpose to establish, you know, who wants…

((Crosstalk))

Gina Bartlett: Okay.

Thomas Rickert: …who wants to process what and what…

((Crosstalk))

Gina Bartlett: Thank you so much, Thomas. Excuse me. So I have a thread here, I'm going
                   to review it. I have Alan, Benedict, Kavouss, Stephanie, Margie and then
                   we're going to check in and see if we can pause and take a break and give
                   people a chance to review and think about this and then come back and pick
                   up the conversation. So Alan, did you already make – was your point the
                   6.1…

Kavouss Arasteh: Excuse me, is not Alan, Benedict and Kavouss, it's Alan and Kavouss.
                   Please. Please, madam, keep the queue. Is not Alan, Benedict and Kavouss,
                   is Alan and Kavouss. Thank you.

Gina Bartlett: Alan, did you make your point already or you still have another comment?

Alan Greenberg: I have one other comment. Just to note that something being in an ICANN
                   contract does not make it legal by any reason. This is a PDP for things in the
                   picket fence, and Whois is in the picket fence. We will ultimately decide on
                   what is in the contract. No, if we decide that we need everyone's social and
                   insurance number in the US, that's not going to pass muster, so just because
                   it's in the contract doesn't matter; we really need the reason – our operational
                   reason for doing it, not because it's in a contract. Thank you.

Gina Bartlett: There's a request for you to clarify, that they didn't understand your point,
                   Alan.

Alan Greenberg: Okay. The point is various people have said that if something is in a contract
                   that is the purpose because we put it in the contract. I'm saying that whether
                   it's in the contract is a decision we have to make and we need a rationale for
                   why it should be in the contract if I understand GDPR properly.

Gina Bartlett: There's name plates going up on that. I'm going to go ahead and follow the queue. I'm going to go to Kavouss and I'll come back to you, Benedict. Thank you for your patience. Go ahead, Kavouss.

Kavouss Arasteh: Excuse me, madam, may I respectfully request you to kindly observe the queue? Even you announced, Alan, Kavouss and then you say Alan, Benedict, Kavouss. I have no problem if people talk how many times that we want, but please kindly observe the queue in particular from the remote access. This is a request, respectful request to you. That is number one.

Number two, I think that there should be some limitation of the duration of intervention. Some people they talk five minutes, not one time, 10 times and so on so forth. Thirdly, I am not in favor of the people saying that we should narrow down the lawfulness. This is a narrow treaty; we should not narrow it down. Please kindly observe that.

Fourthly, please kindly request the secretariat not to intervene unless they are requested to intervene. This is a meeting of the participants and member of the EPDP, it not the meeting of the ICANN. The request to the secretariat to intervene, is good provided that we need that they intervene. They should not dominate the discussions by giving unnecessary argument and by biasing the discussion. Lastly, I think the issue that are discussing is not relevant. Somebody says how many legal or how many lawfulness should we mention? It is not a question.

There are in Article 6 saying that at least one so I think the best question that you should have raised, Chair, is that is the provisions of Article 6 is sufficient, is extra, should be deleted, should be added and so on so forth. But not asking how many because Article 6 mentioned at least one should be raised; if you have two, you have two. But the question is that are Article 6 really complete or extra or so on so forth. Sorry to be so clear and sorry to be so direct. Thank you.

Kurt Pritz: Thanks, Kavouss. And we're managing the queue here in a little different way than we usually do, people essentially raise their hands and we have a dedicated person here to raise their hand when you have a question, so that's why your perception of the queue order might be different than is actually. And on my left hand side is Gina Bartlett from CBI and she's managing the queue and the issues for us so that's who you hear talking and she's doing this at all our requests.

                   So who's next in the queue, Gina?

Gina Bartlett: Benedict.

Benedict Addis: Yes, hello, Kavouss. I can see lots of wrists being slapped here. You're quite right, Kavouss, I think on your Point 5, that Article 6 says purposes can be supported by at least one base, right, so that's I think, James, your question and Alex, your question. Can we have a purpose supported by more than one base?

                   But the IAPP on this says kind of in summary, don't do it; don't go there. It's a bad idea. You should try to link one purpose to one and only one base. That way lies madness if we start to try to assign multiple legal bases. Thanks.

Gina Bartlett: Thanks, Benedict. Stephanie.

Stephanie Perrin: I've stepped out of the queue. Thank you.

Gina Bartlett: Margie.

Margie Milam: So as we talk about the legal basis I think we need to explore all of the ones that are potentially applicable. So for example, consent is – if you look through it, it's 6(a), processing necessary to – for compliance with the legal obligations to which the controller is subject is 6(c). So I just want to note that

the – what's been reflected on the sheet isn't complete and I think it'd be useful to at least have those listed somewhere so that we can at least look at them and say, you know, do they apply? Yes or no.

Gina Bartlett: So we can try to get a list of those that people have available and put them up. Okay. Margie, wait, that was Margie, sorry. I'm sorry, James, excuse me.

James Bladel: Hi, thanks. James speaking. And going back a little bit to Alan's point about, you know, I think he was – what he was trying to say was, I'm sorry, Alan Greenberg, not Alan Woods, thank you. I should clarify. I think he was trying to mention like, you know, just because we put something into a contract doesn't mean it necessarily is now comes under this umbrella and is now legal. And I think he used the example of collecting social security numbers.

And I think what we should focus on is this bit taken from GDPR, it's necessary for the performance of the contract. So I think if you can demonstrate that you can operate a domain name without collecting a piece of data I think you've got a pretty good case that that piece of data is not necessary. And so I think it kind of goes towards what you were saying is just layering on requirements into the contract doesn't necessarily you know, bless them under the GDPR framework. Thanks.

Gina Bartlett: So on this question of legal basis and whether there can be more than one, I mean, we've heard the case for more than one, but also that – or that they should be considered but then maybe narrowed down to one. So I think when we proceed and progress you can talk about those bases and figure out and then that will be something that you'll ultimately have to make the call on as a group recommendation is whether there should be one legal purpose.

Margie Milam: This is Margie. I'm not understanding why there has to be one. I thought some of us thought that it, you know, if others apply – and there's actually, you know, a reasonable basis for them applying, not just throwing them out there, that they could be listed.

Gina Bartlett: Alan Woods and then Benedict.

Alan Woods: That's Alan Woods. So just on that point, Margie, you can identify where there are several perhaps several purposes that you can have. However, when it comes down to looking at things like showing compliance, compliance by design, compliance or sorry, privacy by design and privacy by default, if you were to communicate to a data subject that hey, we're going to process this under maybe this purpose and maybe this purpose is that first purpose didn't actually work out, you know, in the courts, data protection authorities will go, no, you're hedging your bets there, I do not look favorably upon this, it is not specific enough for you to claim that purpose, why are you picking two purposes when you should be quite happy to pick one purpose?

So what we should be doing in this is looking at the purposes that are applicable but at the end of the day, we should be aiming for that single concise clear legal purpose as to why we are collecting and processing that data at any particular time. We can't hedge our bets because it shows weakness in our process and that would be absolutely the first thing that would be thrown in our face if, you know, as a contracted party if I was bought up against a DPA, they'd be like, well, why are you choosing two purposes here? Choose one and stick to that because you clearly don't – you don't believe your own purposes if you're hedging on two. And that's the way they look at it.

Kurt Pritz: So I think the resolution to that might be in our discussion, we'll consider two and then arrive at the right one. So, Gina.

Benedict Addis: It was just to correct.

((Crosstalk))

Benedict Addis: Oh sorry, hello. Benedict Addis from the SSAC. Just to correct a little misunderstanding, we didn't mean one legal basis for the whole lot; we just meant one per purpose is a good idea. That's the advice. Margie I think was saying that we should, and again, sorry if I'm putting words in your mouth, but I think we're saying that we should consider other bases. I think we have – Thomas has done some of that and it looks like I think he mentioned C – 6.1(c) which is the – a sort of public policy area so legal obligation.

It's my understanding from what Thomas has explained privately is that that only applies either to public bodies or private bodies that are servicing a legal requirement so a national law requirement in their countries. So my understanding is that we can't – it'll be hard to rely on 6.1(c) specifically.

If I may also respond to James Bladel? James, I accept that, I mean, I don't think SSAC disputes that in a reductive sense Whois is utterly unnecessary to run the domain name system, we're not – I think what we're talking about here today is what we need for trust to work in the system and not a simple, you know, here's how to make a domain name work.

And I think it'll be better if we didn't start from a sort of reductive sense of arguing for every single data element in a pure processing basis but to look at the mesh of contracts that operate in this space and what bits we need to work for the overall strategic aim of getting Internet to work and all the players to be able to communicate with one another. Thank you.

Gina Bartlett: Okay. Oh sorry. Kavouss, you're next on the – are you on the legal basis thread?

Kavouss Arasteh: Yes. I think it is not appropriate to mention give only one legal basis. We should put it different. If we look at Article 6, started data subject has given consent. This is the only legal basis? Only consent? The issue is that if processing is necessary for the performance of the contract, so in addition to the consent, this one so we should do it differently, we should say that

provide minimum absolute necessary legal basis which may be one or complemented by more than one. We should not limit it and we should not make it totally open.

If you make it totally open, would be difficult for the investigator to see whether really there is the legal basis is really legal basis. So we have to try to do something, I don't think that is all of the six or seven is necessary to mention that but we should do it in a different way. Absolutely minimum necessary starting with one, which may be complemented by other legal basis if necessary. Thank you.

Gina Bartlett: Thank you, Kavouss. I've got Milton, Alan Greenberg and Thomas and Lindsay. I've just been putting your names on and we can be more fluid if we want to later but for right now I'm going to go to Milton.

Milton Mueller: Okay thank you very much. This is Milton Mueller from NCSG. I just think we're kind of losing momentum here and I thought we had – you had gotten us focused and I think we're drifting away from that. So my understanding is that we are going to be going through each of these purposes. I think Thomas made a very constructive emendation about that that we will have to talk about multiple legal bases and there may be multiple purposes embodied in each of these that we'll have to sort out as we get through them.

But I don't think that undermines the procedure that was proposed and I want to say that I don't agree with Benedict that we need to talk about the overall context of the domain name system, we need to specify specific purposes and specific data controllers and so on. And I think Stephanie's comments can be incorporated in this framework also. We can say who is the controller here when we're talking about these purposes and who is the processor, etcetera. So I would urge that after the break we just jump right into doing that.

Gina Bartlett: Thank you, Milton. I think that sounds great. And we can work through those issues once we get to the specificity. Is there anyone in the queue that is compelled to speak at this point or can we take the break and come back to the purposes? Okay, Alan G, yes.

Alan Greenberg: Yes, two things. On the multiple purposes, I really think if we have two independent purposes why we need to have them to collect the same data, then that doesn't show weakness, that simply says we're being clear about why we are doing it. And if either of them were discounted, the other one is still – may still apply. So I think it's really important that we not ignore that.

                  And one more comment on the issue of contracts, my reading in Article 6.1(b), is processing is necessary for the performance of a contract to which the data subject is a party. I've always read that meaning that you are subject to a contract that essentially is imposed upon you that you have signed, not one that you have written. And it is a big difference when James and I were talking about contracts about a clause that we put in a contract, the registrar is bound – if we put it in a contract with the registrar, they now have a legal reason for having to do it.

                  But that doesn't give necessarily us grounds for putting it in the contract. So my reading is always that this is a requirement of a contract we have signed, not something that we have arbitrarily put in ourselves. I'm not quite sure I'm correct though.

Gina Bartlett: Okay, I'm wondering if we can go to the break? Thomas, can we go to the break?

Thomas Rickert: No.

Gina Bartlett: Okay. So I'm going to take Thomas's and then we're going to pause and go to the break and we're going to come and pick back up, or Lindsay, go ahead.

Lindsay Hamilton-Reid: Okay. Sorry, Alan, just - Lindsay Hamilton-Reid from the Registrar Stakeholder Group. I have to say just putting it in a contract doesn't make it legal. And I think really don't conflate that with what the law is. Just because you put it in a contract doesn't mean it complies with the law. So I really – just let's not have confusion over that because I think you said that a couple of times now and I don't want that to be a thing. Thanks very much.

Gina Bartlett: Is it the distinction that you're all making – isn't the distinction that you're making that if something is in a contract there is a legal requirement for the contracted party to comply with the contract? But what goes in the contract needs to be GDR-compliant. I think we're separating – we're conflating the two pieces. So a contract between a contracted party and the contractor, they have to comply but it is possible to put something that is not GDRP-compliant in the contract even though that's illegal. And so that's the distinction I think I hear you all making. Okay.

So working toward the break.

Thomas Rickert: Yes, and I think Margie makes a good point with different – or with the question of different legal bases potentially being applicable. And I think we need to get this crystal clear because we're going to get distracted at every juncture of our discussion. So if – you have one processing activity, let's take the example again of collecting registrant data as a registrar, this processing activity might be carried out to pursue different purposes. So the registrar might need it to technically allocate a domain name to a registrant. But ICANN might want that collection to fight DNS abuse or coordinate that.

So you have one factual collecting – processing activity, different purposes pursued by that, and each of those purposes can have multiple legal bases, but that's in agreement with what Benedict and Alan have said, that's something that we should be very cautious doing. The preferred method is to

have one legal basis per purpose that you put. Let me give you an example, if the…

((Crosstalk))

Thomas Rickert: …yes, but we need to – we need to get this – we need to get this as clear as possible. If the registrar can legitimize the collection of registrant data to perform the contract, the user, the registrant, does not have a right to object nor to withdraw consent. So to say that we could as well collect that data based on consent would be a disservice to the contracted party because what do we do if the customer then withdraws consent even if we didn't need that consent or if we said there's a legitimate interest to collect the data to perform the contract, and give the customer the right to object without a need to do so. Right?

So we should be nuanced and say who is pursuing what and what legal basis is applicable for that specific purpose. Right? And I think that's something that we need to do for every processing activity throughout but we need to do one step after the other.

Gina Bartlett: Thank you. I'd like permission to go to the break. I know some of you have your hands up. If you could please find the person that you're interested in sharing the idea with? When we come back from the break – during the break we want you to look at these purposes, and then when we come back from the break what we're going to be asking you is, is this set of purposes, can we work with those to go through the data element exercise? Can we use these as our working drafts to go to the next stage?

If not, then we will you know, organize to work on the purposes before we go to the data elements exercise and example, but we want to give people a little time at the break. So if you're in the queue, thank you for your patience, and were going to take a 15-minute break to look at the purposes and then come back and pick up from there. And thank you all for your insights.

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