
BETH BACON:

Thanks, everyone. So, welcome to the reboot of the roles and responsibilities group. We are meeting with ICANN on Friday. It's been probably a month and a half or so now since we've met—maybe even two. There's been a lot of scheduling issues once everyone starting working from home. And then we were focusing on resources on EPDP Phase 2. So we've taken a little bit of a break. And I don't know that's a bad thing.

So, what I would like to do before our meeting with ICANN on Friday, which if you have not gotten that invitation, please just reach out to myself or Sue and we can make sure you're added to the list and you get that. I would like to go through the email that I sent yesterday evening. And I realize that you may not have gotten to it yet but we could just walk through it a little bit.

There were some lingering concerns. And I've spoken with some folks—members—of the group about this just to bounce ideas off of them. There seems to be some concerns for ICANN that they don't necessarily articulate on the calls because it's devolved into a very in the weeds, granular examination of every data element that we process for registration or to run our business in any way. And it's become clear that that is not the path to a solution. And what we want here is not necessarily the perfect, but a workable, solution which seems to be the path for everything data related in ICANN.

So, what we've done is taken a look at that original data processing agreement that we proposed to ICANN that they didn't necessarily light on fire but had questions about, and looked at those comments they

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made to try and reveal what the real concerns are for ICANN, as opposed to going again through those little tiny chunks every single [inaudible] on it.

So, what I think those are—and I'm open to comment and discussion. Please just raise your hand or talk if you have a question or comment. I think that ICANN is really concerned about what do they actually have to do if they were to get a data request for data they don't have? What are they actually responsible for? What are they really liable for? What's their very factual role?

Those are the things that they want to know because those are the things that they're actually going to have to do and operationalize. So I think those are the underlying concern and I will send them out in an email.

So, in an attempt to address those concerns, we've made some changes—some suggested changes—to the draft DPA and those include largely taking the data from one huge granular chart of every single data element and putting it into blocks of data, essentially three buckets and talking about the responsibilities and roles for those buckets of data. Now, we'll still have an attached chart but we can do some amendments to that to make it, again, the buckets as opposed to every single data element, because quite frankly, the registries and registrars don't always ... Everyone in this group doesn't always agree what the role might be for those data elements. There's sometimes different interpretations and that's not helpful when we go to discuss it with ICANN because they want to do it with their [Jones Day] lawyer and it's very, very ... We end up arguing about the role for one data element in

the sea of 80 data elements and it's not productive. So I think that that could alleviate that problem and make it a lot more digestible for ICANN because we know that ICANN isn't great at this, so it's easier if we can spell it out very clearly in smaller, digestible chunks.

So, those are the main changes. Sue, if you wanted to ... We can pause here and talk about just the approach, but Sue, if you could put up the draft and we can scroll down to the highlighted text, which [are] the main changes that reflect this. So I'm going to pause, and please ... Alan and Matta have been really, really helpful and have taken a look and helped with these edits and changes and brainstorming. So if you guys want to add anything, if anyone has any specific questions, let's just open the floor and start talking because no one wants to hear my voice anymore. Or you could sit silently because it's absolutely perfect and I've solved all the problems.

REG LEVY:

This is Reg Levy from Tucows. I think this is a good way forward. I anticipate that there will still be confusion and that ICANN will not bring the appropriate parties who would be able to agree to this, to the call, because they never do. So, I don't think anything is going to be resolved our call on Friday, but I do think this is a good start.

Beth, you know better than I, and though I am [loathed] to ask you to speak more since I know how much you hate to do it. It's my understanding that concerns about the roles and responsibilities of— which word? It's my understanding that the roles and responsibilities is something that came up in the EPDP that was put to the side from the

standpoint of having to be dealt with by the EPDP because of the work that the roles and responsibilities team is doing.

Is that true and do you think that this DPA would fit into what the expected output of the EPDP is going to be

BETH BACON: Well, first of all, thank you. I've always wanted to sound [inaudible]. I feel like that's the nicest thing anyone has ever said, because if anyone has ever heard their own voice on recording, you sound like a troll.

REG LEVY: Oh, God, I hate my own voice on recording. I'm fine to hear myself speak when I'm making a presentation like this, but don't ever make me listen to the recording.

BETH BACON: Don't ever do that ever. If you love yourself at all, don't do that to yourself.

So, the reason we have roles and responsibilities, this started way back in I think Kobe. We kind of re-kicked this off because, really, it started back at the GDD in Madrid. So we've only been doing this for three years.

What it is, there is a recommendation in the EPDP Phase 1 report that just explicitly says ICANN will engage with contracted parties to develop a data processing agreement as required. So we are doing that. And it's

not necessarily taken out of the IRT effort. It's just that the IRT is creating the policy and this recommendation was to create a standalone data processing agreement.

There are some process questions with the IRT and I've talked to Russ and Dennis and the IRT has talked about this a little bit. The IRT would like to get the draft policy out probably end of summer, August, because seasons and time don't matter anymore. So the end of August.

And the question is do we put that out for public comment and then can we follow-up with this DPA and put that out for public comment? Because it's always been clear that we will put it out for comment, just as we do RA changes and that sort of thing.

But what's the process there? I think that a lot of the IRT members would like to see this draft document go out with the policy simply because it is referenced in the policy—the consensus policy.

So, to answer your question, yes, this is out of the EPDP Phase 1. There were two buckets of recommendations—recommendations that the IRT had to address in text in the consensus policy and those that were either recommendations to amend other policies which would go to the GNSO or something like this which is to create a data protection agreement that is standalone from the consensus policy. Did that answer your question?

REG LEVY:

Yes. And I think it's going to be interesting to discover whether or not ICANN believes that this is going to need to go out for public comment. I

know that our contracts—our respective contracts—with ICANN are public commented, but I don't necessarily think that it's appropriate that a DPA get public comment. It's kind of required by law, so what is the commentariat going to say? That would be good to know. Thank you.

BETH BACON:

Yeah. Well, in this case, yes they definitely do. [inaudible] beat me to it. But they definitely do think it needs to. That brings us to another process question which is what is the mechanism for operationalizing this particular DPA?

We have said in the group that we would prefer to be assigned addendum to our RA or RAA as opposed to a part of the consensus policy because there are parts where certain people will ... Just like when we did the registry—registrar agreement DPA, there are going to be those folks that might need some changes based upon their jurisdiction as well as [mild] contractual clauses to cover—sorry—[international] data transfers.

So those are sorts of things that we'll need some flexibility on. So that's been I think the consensus of this group for quite some time. ICANN would prefer to not to have to sign a bunch of agreements because it's a pain, but I'm not as sympathetic to that.

REG LEVY:

Yeah. Life sucks, [inaudible].

BETH BACON: So those are the questions there. So if it is an addendum, then it would technically be a change to the RA or RAA. Then it would make sense to have it commented upon. Matt, your hand is up.

[MATTHEW CROSSMAN]: Yeah. Hey, everyone. I think it's a good point, both Beth and Reg. I think it's clear that ICANN wants this to go out for public comment. I think the question is kind of what do we do with those comments? Because I agree, these are sort of legal requirements and I don't know that we would be onboarding comments in the same way we might for policy changes or something else that goes out to the traditional public comment.

I would also just flag that there are also some very loud voices in the IRT in particular that are saying we must see the DPA in order to sign off on the Phase 1 policy, and I've been thinking about this a lot and I'm not really sure what the expectation is about what is going to be in this policy or in this document that is causing so much interest from folks, particularly the IPC and BC. I don't know if there is an expectation that there is going to be something in here about third-party disclosure, which doesn't seem, in our view, appropriate for an agreement between ICANN and contracted parties.

But I'd flag that as well as we're considering this idea of public comment. I think there is some sort of expectation about what is going to be in here by certain parties that I've yet to be able to put my finger on but I think we need to maybe think about that and see if we can

figure out what exactly it is that they are expecting, so that we can potentially get ahead of that. Thanks.

BETH BACON:

Right. Thanks, Matt. I think that's a great point. I also do think that the IPC and BC folks, when they are insisting upon seeing it, I think what they're hoping is that there's nothing that would bar a third-party request. Maybe they're thinking we'll use this DPA as a back door to put the [inaudible] on disclosure, which I don't think we do or will.

REG LEVY:

Can we do that?

BETH BACON:

Reg is like, "What?!" So, I think this is a pretty vanilla, straightforward basic. It has the basic elements of a DPA. We're adding a little flavor so that it makes sense for us. But yeah, I think it's—and Ashley has noted this in the comments as well. What's the weight of the public comment?

And I think ICANN has said previously when we've talked about this that they would view it like they do with RAs as well as those things that are more informational rather than ... We're not taking line edits. If there's a huge issue that someone flags and we say, "Oooh, yeah. We missed that." Then we can make an edit. I guess if there's enormous objection to it, then ICANN would have to consider it. But that's a little bit on ICANN as they are [inaudible] of the public comment. But it would come back to us I guess kind of like IRT to discuss the recommendations and the comments. Donna, your hand is up.

DONNA AUSTIN: Yeah. Thanks, Beth. I put this in chat, but from memory, when we did the RDAP profile and that went for public comment—I'm pretty sure it was the RDAP profile—we had an agreement with ICANN and we managed that process with them in some way. So no changes could be made to the profile unless we agree to it. So we have a precedent there that we can probably use.

Jim, I don't know if you recall but I'm pretty sure it was the RDAP profile that we did that on.

BETH BACON: We'll [inaudible] and I think we can—

JIM GALVIN: Yeah. There may have been something else, but certainly we can do it that way with that. We wanted to maintain control because that's what we did, just based on our experience. It seemed appropriate for random people to have something to say about it.

BETH BACON: Yeah. I think that's another thing. Once we actually get some agreement on the ... I mean, we're acting like they've agreed to this. They have not. But once we do get some movement towards a solution, I think that we can work that out with ICANN. I do think ...

ICANN I think, thinks they can put out the IRT comments, the consensus policy, and then follow-up a little bit later with this. And as Matt says, there's folks in the IRT that are going to give that a hard no. So that's an issue.

But I would like to just ... So, I think that's all important procedurally, but I do want to kind of shift back to just views on this text. Reg said you like this approach. You think it can move towards a solution. I would like to As I said in my email, I would propose that we send this as a proposal to ICANN to discuss on the call. I did speak to Russ and I will speak to him again. They were hoping to maybe do the data elements but start with disclosure, so do it in reverse. And I was like that just means we're going to do it ... Have the pain backwards. There's no answers there.

So, I have let him know that we have a proposal that can perhaps provide some solutions and we would rather discuss, get towards an actual solution as opposed to continuing to discuss the data elements.

So, hopefully, this can help move us out of that granular conversation into something more concrete. Sam?

SAM DEMETRIOU:

Thanks, Beth. I'm going to apologize in advance because I don't know that this question is constructive or more just worrying out loud. But I guess I'm just wondering, if Russ was thinking about, "Oh, let's start with disclosure," the phase two of the EPDP is all about setting up a universal system for disclosure. I mean, the expectation that that's what is going to come out of phase two, is that going to throw a major

wrench into this process? I guess I'm just a little bit worried about that, because otherwise, like you guys said, we're fairly close if we can all just agree to keep these terms pretty high level.

BETH BACON: Alan, your hand is up.

ALAN WOODS: Yeah. Just to [inaudible] what Sam is asking there, I personally don't think so, purely because the agreement that we're trying to do here is procedural in nature. It's about how do we handle the data between the parties? How are we going to transfer? Who's going to deal with data subject requests? Things like that. So they're all kind of on the much more hands-on specific, how the data is transferred and dealt with and held, whereas the SSAD itself is just a process that is being placed with the underlying statements that we will process the data in line with our DPA so that we have the security in place and we understand who is responsible for what.

So, I don't see it as specifically intersecting with the SSAD, I just think that it would be relied upon in how we handle the data whilst transferring it.

BETH BACON: Yeah. Alan, I tend to agree. Also, I draw distinction between the SSAD because this DPA is to be attached to your RA or RAA and it has the defined data sets. In this case, we've broken it out into the buckets of

the registration data and that which is defined as required personal data in this agreement, and it's for registration data essentially.

Then the SSAD would require its own privacy policy in DPA which is also in the recommendations, albeit slightly vaguely, and that would be that, while ICANN could be the vendor, they could do an RFP and seek another vendor to provide the service, the actual gateway and services.

So, I think that particular action would be a separate data processing agreement because we would essentially be taking that vendor on separately. So, I think that that separation for me is enough to say that the SSAD in phase two won't get in our way.

I do think that they think ... That was not a great sentence. I do think that ICANN thinks that if they start with disclosure, they can say, "Well, in phase two, you're saying that you're the controller and you have to make the disclosures and you need all the control because it's your data." So then they'll be like, "Look, we're not joint controller."

So, I think that's their angle more than trying to squeeze the two together. Sam, was that helpful?

SAM DEMETRIOU:

It is. Yeah. I put my follow-up thought in the chat and I think, as long as we ... I guess my point of bringing it up is ... I think your point about this could be an angle for the controller discussion is probably more accurate. So I agree it's something we should all be aware of. But also to the extent that questions come up about, well, what about the SSAD? I think us just having this in our mind and being prepared to lay out the

reason for the split exactly is you and Alan have articulated it is probably just a good thing for us to have in our back pockets. So I think we're good.

BETH BACON: Great. And I apologize, your comment scrolled out of my chat view before I saw it. But I think it's important and I think they're all interconnected. Alan?

ALAN WOODS: Yeah. I just want to very briefly follow and say the beauty I think of this new approach—the new deal—is that we're not calling a processor joint controller or anything. What we're doing is we're just laying down a few things that we believe are necessary for our relationship, and then if ever the DPA came along, it doesn't matter what we think. They will call it the way it is. And I think it just gets us out of a hole.

So, even if they are trying to segue into some sort of avoidance of this conversation, ultimately it doesn't matter. It's not going to be us making that call at the end of the day but we will have those elements in here.

BETH BACON: Yeah. Sue, can I ask you just to scroll up just a scotch? Technical term. Just so we can see the full block of highlighted text. I'm sorry, scroll down. Everyone thinks scroll up and down are ... Reads that as a different direction.

So, 4.2, that first little sentence was mostly there and then we just added 4.2.1 through 4.2.3. I say “we” because I was making Alan and Matt help me. To define these kind of buckets. And I don’t expect that this is perfect language and I also don’t expect that it’s exactly what we would want or what we’ll end up with. But if folks are comfortable with this approach, then we can leave this and I will send this along to ICANN in advance and I’ll talk to Russ and see if we can ... Because they will want their [Jones Day] lawyer on so that she can take a look and be prepared and have comments.

I did ask him when we chatted previously, I did make the suggestion of, well, what if we backed away from the granular chart and went to categories of data as opposed to the data elements? And I asked him to float that with JJ and Dan and the legal team who has been involved, just to mull that idea over to see if there was a gut reaction. So, hopefully, they have this in their mind a little bit.

Then, Sue, if you could just scroll down to the next set of highlight. I just want to make sure everyone has seen it because I did send it last night and I realize it was only about 12 hours in advance of this call.

This is where we started to answer those questions that I think are weighing on their mind and I know weighing on some of the registry and registrar’s minds of how do we deal with data subject requests or breach notices as an integrated triangle of companies.

So, we wanted to lay out this may trigger reporting. They’re pretty well spelled out under applicable law. Sorry, go ahead.

REG LEVY: Just a quick question on this. Since ICANN and at least Tucows disagree about what the required personal data necessarily are. If we suffer a data breach that implicates billing data, even though billing data may also overlap with registrant data, right? It's the same person on the credit card as on the domain name. That wasn't a breach of registrant data.

I don't think that I would have to report that to ICANN. I would still have reporting obligations with respect to my customers, obviously. But I want to make sure that we're not imposing additional obligations to tell ICANN literally anything on us. And I see Alan's hand.

BETH BACON: Right. Alan, I'm just going to jump right in front of you because I'm running the call, so I'll take that privilege. I will say that registration data and required personal data, we use those as buckets because they are very clearly defined in the beginning of the document. So I think that narrows the scope of this. And then in the annex, we do explicitly lay out the details of the processing with the registration data, the required personal data. So, I hope that that ... And none of that includes billing or any of that other stuff that we do as businesses. So, I don't think you would have to. Alan?

ALAN WOODS: Yeah. Really quickly, just to say ultimately, at the end of the day, this is still an agreement between you and ICANN and not us and ICANN. So, how you interpret it and how you are going to apply that is still going to be up to you at the end of the day as far as I'm concerned.

BETH BACON: Yeah. We both know that's not true. It's going to be up to ICANN at the end of the day.

ALAN WOODS: Well, yes, but that hasn't stopped you in the past.

BETH BACON: Yes. I don't mean, like ... Does PIR think that Tucows needs to report this so much as are we all in agreement that this is how we read it, kind of? But yeah, I get that. I'm not asking you guys for your legal opinions or [inaudible].

UNIDENTIFIED FEMALE: I think we are all reading this in the same way.

BETH BACON: Cool. Matt?

[MATTHEW CROSSMAN]: Yeah. And I think that's sort of exactly why we added this language that's highlighted, so that instead of this being a flat requirement that each party has to notify the other of a security breach, there is this wiggle room, something a little bit squishy, where this only gets triggered if there is some sort of obligation under law that you would already have with regard to a security breach to report this to the other

party. So, hopefully, this language actually helps solve your problem a bit, rather than makes it more complicated.

BETH BACON:

Yeah. That was the goal. So, then also, the next change is data subject rights, and again it's just saying this is what you will do if you have the data. You will make your own decision. If you know that a registry has it and you don't, do a kindness. Notify the data subject that you are forwarding on their request and then we can respond to it through our own processes under phase one as well as the law. So that is done in 10.3. Again, I think this is getting to some of those brass tax concerns that ICANN has of what do we actually do? So, hopefully, if we can get those addressed, they will be more comfortable and be able to move on. Does anyone have any questions or comments right at this second? Matt, your hand is still up. Is that old? It's old.

Just the last few little points. There's the modifications and updates section. As you can see from Matt's comment, still not touching that. And I have some questions about that, so maybe we want to discuss that.

Then, Jim, we did put in, if you look at the security section which I believe is six—I could be making that up. No, it is six. Look at me! Which is then misnumbered as eight.

JIM GALVIN: I noticed and I replied to Matt's comment. Matt put his comment in there and said he put it in there and I said thanks. It's all good. I even checked it.

BETH BACON: All right. Awesome. I just want to make sure that was reflective because I thought that was good input and I appreciated you taking the time to do that. Sam?

SAM DEMETRIOU: Thanks, Beth. This is just a question of probably a really dumb question, as someone who's not an attorney. It's just about the inclusion of the escrow data. Is that because of the arrangement with the escrow providers and ICANN being—what is it? I think a beneficiary to those contracts. Is that why that's included?

BETH BACON: Crystal first and then I'll respond. Or Crystal can just put her hand—

CRYSTAL ONDO: I have [inaudible], so let's deal with Sam's first.

BETH BACON: Okay. So, I put that in there. Or we included it and then I made it up later. Put the escrow in there because there are still ... A, ICANN has actual control over that data and will access it in the event of [inaudible] or other things. And also they are a party to it, they are a signatory to

the contract for some of us. We have a three-way agreement with ICANN for our escrow provider. Not everyone has that arrangement but some registries do. I don't know about registrars. So we need to address it in that way, otherwise we're just ... We've just been escrowing data without a DPA for a long time.

SAM DEMETRIOU: Right. I guess my question was about why that data processing wouldn't be covered under agreements with the escrow provider.

BETH BACON: Well, because the escrow provider contract, I can't amend mine without ICANN and ICANN won't help me amend it to add a DPA.

SAM DEMETRIOU: Sorry, I just laughed sardonically.

BETH BACON: So, it should and could be, but I think, Alan, how long did we spend going over data escrow stuff? And then basically it got pushed to the side because of EPDP and other things? But yeah that would be the ideal is if we could amend our own ... Everyone could amend their own data escrow agreement with their vendor because they're essentially just a vendor. But I can't do that. So it's in there.

SAM DEMETRIOU: Again, it was totally I'm not an attorney, so I would think I'm not seeing all of it. But I think that answered my question. Thank you.

BETH BACON: Okay. Crystal?

CRYSTAL ONDO: Hey. So, can we scroll to the three highlighted sections that we're talking about with the escrow data and required personal data? I don't remember what section that is. Sorry.

BETH BACON: What page is that on? Just keep going up. There it is.

CRYSTAL ONDO: So, I guess my question—and I apologize because I obviously have not been part of these conversations for months and months and months. In line with what Reg was saying, the required personal data and disclosure, we require ... I guess I'm still, at a high level, super confused. We collect a lot of data because ICANN tells us to. And whether or not that overlaps with data we would collect as a company that was not "regulated", I guess I'm still confused as to how ICANN is considering to get out of all liability except compliance data. They're requiring us to disclose data through WHOIS. They act as "the WHOIS protectors" and I know ICANN staff has been recently saying those exact words more and more and more.

So, it seems to me like these three buckets mean contracted parties are responsible for 4.2.1. Escrow is kind of shared by escrow and ICANN maybe. And then compliance data is just ICANN. But does that mean we're relieving ICANN of all responsibility for registration data and required personal data? Or am I reading this incorrectly? And full disclosure, I have not read all of this.

BETH BACON:

I can't believe you, Crystal. No. So, what we tried to do here is use the lightest tough possible. And in the little [inaudible] above it, we do talk about it's not meant to say they're not liable, because if any DPA looks at our contractual agreements and the data processing flow, they're going to be like, "Oh, obviously, you're joint controllers."

But in this case, we're saying we are primarily responsible in that we have to take care of it. Not that we're liable. I mean, we are. But not that you're not liable, it's just that it is our primary responsibility to take care of this and manage this data.

So, we can tweak this language but it is not mean to relieve them of liability. It is meant to accurately show who is the primary caretaker of that particular set of data, even though we clearly only do this because we have agreements that require us to do so and those are from ICANN and we are interconnected as a joint controller agreement.

I see Matt and Alan's hands are up, so they can probably ... They'll just say Beth's wrong. But I do think that this will ... The reason we phrase it this way is because it's just more palatable to them. Alan, you want to go?

ALAN WOODS:

Yeah. You didn't say that wrong at all. I completely agree. I think what we're trying to ... This is very much a spoon-feed of our friends in ICANN here. What we're trying to tell them is, look, what you're worried about is do you have a direct liability for the core elements of the joint controllership in this?

The elements are the data subject requests, the security aspects, things like that. And we're saying to them, look, the registration data, we have—we hold—that data specifically. But we are saying that you're telling us to hold that data. So, we have more of a liability there, but if you're not supporting us properly in how we do this and your expectations are making it more risky for us, then a DPA will see that. We're not saying that it's just us. We're saying that it is definitely ICANN's responsibility as well, [inaudible] because they are telling us to take that data.

The only reason why we pulled out compliance data and the escrow data weren't because those were those two elements where ICANN might, at some point, actually direct and deal with that data specifically. The escrow they pulled out, it's their action will withdraw that data and pass it on. The compliance data is their action [inaudible]. They will have that somewhere. So, we have to literally spoon-feed them and say these are the instances where you have more liability than the registries and registrars in this instance. But definitely we're not saying that they do not have liability. We're saying they do. It's just, in these instances, they have more.

BETH BACON: Sorry, I was on mute. Matt, do you want to go ahead? I was like, “Matt, you might be on mute.” I was on mute.

MATTHEW CROSSMAN: Thanks. I guess I would just add I think the other piece of this, aside from the liability part, is I think we were trying to get at ... Trying to unblock us on these kind of practical pieces, the nuts and bolts of the DPA. So, it seems like there’s been a bit of ICANN throwing up their hands and saying, gosh, how the heck are we supposed to have responsibility for responding to data subject requests when we don’t hold the registration data? Or how the heck are we supposed to have security breach obligations when we don’t hold this data?

And I think this is trying to clarify that maybe, in fact, you are not the primary person responsible for responding to data subject [inaudible] requests for registration data, but that might be different for the escrowed registration data or compliance data, for again in a security breach situation, you may have more primary responsibility for that escrow data if there is a breach or compliance data if there was a breach.

So, it’s kind of both dancing around this liability question, but then also hoping that we can move us forward in talking a little bit more practically and spelling out in the agreement based on these three buckets, what are each of our responsibilities with regard to the more functional parts of the DPA?

BETH BACON:

Thanks, Matt. And Crystal, just to your final point where they said, “We’re the privacy champions,” which is hilarious, in conversations with ICANN staff, they’ve said to me, well, if the community said to us, “We want you to make all the decisions and you to be the central holder of all the data,” we would do that happily and take all the liability. I was like, “So, what you are saying is you would like the community to suggest that we restructure an entire industry that supports thousands of companies just so that you’ll accept that you’re a controller or a joint controller of data.” That seems like a bit much.

So, I think that they do say, oh, well, we would totally take all your liability, but only if it were structured so there was absolutely no doubt in any human’s mind that anyone but them was creating a [rule]. It’s a little bit of a ridiculous statement, which I think we all know, but I do think that’s their thought process behind that. That was a lot of answers to your question. Are you more or less comfortable? Do you want to amend it?

And guys, if folks have suggestions or they want to make changes or they want to make language stronger or a little more vague or whatever they want, please go ahead and go in and do some suggesting either in comments or in suggest mode. I’m going to take this version and put it in a fully clean copy and send that to ICANN so that they can look at it and we can continue to work on this draft itself.

So, if there are things that you have concerns and questions about, please go in and do that. This was just a suggestion and just a jumping

off point, just so that we can ... Again, primarily I want all of us to get on a call, be on the same page, so that we can try and shift the approach to this as a group, and when we get on the call, have a coordinated group position so that we can get away from having intellectual discussions about data elements, because quite frankly it makes me want to kill myself and it also does not move this forward in any way, shape, or form as evidenced by the last several months.

So, if I were to take this, drop it in a clean Word document, essentially share an edited version of the email I sent to you with the full group, ICANN staff included, as a proposal for our work on Friday, is that acceptable to the group? Does anyone think that's a terrible idea? I'm open to both of those responses. Sam?

SAM DEMETRIOU:

Beth, you can feel free to reject this out of hand if you think it's going to slow things down a little bit, but I'm wondering ... Just another idea is instead of sending the document itself over to ICANN, if you send your outline—like you said, largely similar to the one you sent us. And if we, on Friday, talk through this conceptually and make sure they understand it and potentially—fingers crossed—get on board with it and then send them the language, do you think that might be a better way to approach it? Just because I'm just wondering do you run the risk of then getting bogged down in some of the other sections that are, I would say, less pertinent for this first discussion but obviously will need to be addressed down the line? Just a suggestion. Again, feel free to interject. But just a thought.

BETH BACON: Yeah. Good points. What do folks think about that? Because I'm fine either way. I think that's perfectly valid because they do have the tendency to just lose their minds. So it could focus the conversation on just this section and this approach and shifting the approach and we could follow-up with that and we could also take this time to work on the chart and amend it to reflect this approach instead of being completely granular, like it is. Chris?

CRYSTAL ONDO: Sorry. Is ICANN aware that we're moving away from the data elements discussion and just to a general or is this the first time we're saying, hey, can we just do the DPA and ignore the data elements right now?

BETH BACON: No. So, they have seen ... They've already seen this DPA. The highlighted stuff is the stuff that they've not seen that's new. So, we did try and get them to take a look at DPA but then they wanted to go back to the ... They brought in a new lawyer and they wanted to go back to ... And they did a position paper and they wanted to go back to the elements thinking that would move things forward. So we've changed some things in the DPA. And I've also spoken to Russ and I've flagged for him that we were thinking why don't we shift this away from a granular approach and more to big buckets and concepts where we don't use the terms controller or joint controller anywhere in the document? And he seemed open to that approach.

CRYSTAL ONDO: Got it.

BETH BACON: So no, this should be a huge shift. And I plan on flagging it for us again. If it makes him want to throw himself into traffic, then we can do it a different way but ... Yeah. Okay.

So, I think I had one other question and I've just forgotten what it was. I'm just reading Alan's comment. Yeah. They probably would not have read it substantively in any case on Friday, so why not just start with the concepts? And I'm totally fine with that. So, I think that's what we'll do. We'll also need some folks to work on the chart.

Finally, I think Reg made this point in the beginning of the call. But having the right folks on the call to make the decisions is an issue. ICANN has also mentioned that to me as an issue. They were like, "Well, we discuss it but we're not sure if everyone is on the same page or where we are after we agree on this. Does it have to be run up five more flag poles?"

So, I do think that if we don't start to get some agreement and move forward, I think that ICANN is going to want to pull this into a higher level group that would hopefully include JJ and Dan and some other folks. Kind of a similar group to the one that discussed temp spec language. So that's one. I would rather just ... Just to be able to make good progress in this working group, we've put a lot of work into this and I think we've been trying to work well together, so I would hope to

keep it here and then have something to bring to the stakeholder group internally. But I do want to flag that as if we don't start to make progress—and I feel like it's going to be this call since we haven't had one in a while, I do expect ICANN to start reaching out and saying let's get the GCs on or the privacy officers. [inaudible] already had some of those. So I just do want to flag that for folks. Crystal, your hand is up. Is it old? It's old.

So, I think that's it. I will go ahead and send just the outline and propose that we discuss the new approach and then we can follow-up after Friday's call with the actual text.

In the meantime, make some comments, make some edits if you like now that we have more time now. Are there any last questions, concerns that folks want to discuss about this approach, the DPA in general, IRT? You're having feelings? Does anyone just want to weep quietly for a few minutes?

UNIDENTIFIED FEMALE: I thought that was why we had a mute button.

BETH BACON: No, I share that with everybody. Okay. All right.

UNIDENTIFIED FEMALE: This is great. Thank you so much, Beth, for your work on this.

BETH BACON: Well, it's not just me. I also made—brow beat—Alan and Matt into helping me while they spending all their other time on EPDP.

UNIDENTIFIED FEMALE: Thank you, also, Alan and Matt. This is ... I think that this can be agreed to by ICANN, which I don't even want to think, let alone say even though I just did because that will jinx it and they'll be like, "How dare we!" But this looks like something that should be acceptable, so hopefully it is.

BETH BACON: Yeah. I'm hoping it addresses those secret concerns that they don't really vocalize. All right. Great. You guys are the best. I'm giving you 12 minutes back.

ALAN WOODS: Great. Thank you, Beth.

UNIDENTIFIED FEMALE: No, you're the best. Thanks.

ALAN WOODS: A virtual [inaudible] hug.

UNIDENTIFIED FEMALE: Awww. Thanks. Bye, all. Terri, we can end the recording.

[END OF TRANSCRIPTION]