
BETH BACON: Hi, guys. Thanks for joining. I really appreciate and thank you very much for ... Matt, you did a ridiculous amount of work on that data protection terms, so I'm really appreciative of that. Thank you for everyone taking a look, I hope, already at the responses to ICANN's questions. It was not so difficult to answer them, seeing as we've answered them several times before.

So, just to set expectations, we do have a meeting next week that we will ... By the way, if you guys see the link on the screen—Sue, if you could drop that into the chat box. If you haven't responded to that Doodle poll, can you guys do it now so that we can set that meeting with ICANN staff so we can talk about the responses to them, the terms and their tip-top memo that they shared on Friday. Thank you.

Does anybody have any questions or comments or anything they see missing from the agenda that they want to talk about?

UNIDENTIFIED FEMALE: Nope.

BETH BACON: Okay. All right. Well, let's get going. Sue, can you put up ... We'll talk about the easy thing first. I think it's the questions from ICANN. Thanks. Sorry, I forgot to turn the chat on, so I can look at it. So, I put these together. I put in ... Green I think was the stuff that we had already said before and blue were things that I was just making up and asserting.

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So, has everybody had a chance to look at this or do we want to go through more granularly and take a moment to read and comment on each of these? Keep in mind, I can't read your thoughts.

UNIDENTIFIED FEMALE: I'm happy to go through the questions, the 3A, 3B, 3C.

BETH BACON: Okay.

REG LEVY: But I don't know that they're actually asking for our responses. I think that our responses might help them understand that the questions are wrong and I don't really meant that the way it sounds. But that they're looking at it from the wrong perspective and to help them understand where our perspective is, which is why I don't think that necessarily answering the questions is required but I think that's still a good framework for us to respond to them.

BETH BACON: Okay. So, they specifically asked us to respond to the questions. And at this point, we're a little late in responding. So, if we want to think of a different way to respond, then okay. That's fine. I don't want to do that, but fine. I mean that I don't want to actually redo all this. But I get your point.

I think, honestly, you can see these questions and you can see now that they sent the memo how they correlate directly to the things that they're commenting on. And I think in general it's a little bit of them playing dumb in that they want us to write down and commit to things. They want us to say, "This is what we think we should do," and then they will try and [inaudible] to that.

Some of this is just common sense and it's just the way things work. So, I think that ... I don't have a problem just answering the questions. I did put in there at the top that it's for discussion only and it's not considered binding. So, if anyone has any concerns about that, please let me know.

Sue, if you could zoom in just a tiny bit, because I'm old and can't see, and we can go through the questions and we can see if there are any areas of disagreement. I don't want to keep you guys for the whole hour if it's not required. But I certainly don't want to spend more time on this particular document than we have to. Does that sound good, everybody? Is that fine?

REG LEVY: Yes. And I'm sorry, I was looking the wrong questions, so disregard my prior response.

BETH BACON: Oh, okay. You mean the part where I was like, "Thanks, Reg, I don't want to do that."

REG LEVY: Yeah. No, I was like, "What's wrong with that?" And then I realized that we're looking at two different things.

BETH BACON: Okay. So, we're looking at the actual question questions.

REG LEVY: Right.

BETH BACON: The first part is Alan offered a tweak, but this is something that I believe we have said before. So, I will continue to move along. I'll give you 30 seconds. Skim it.

All right. No feelings? No hands? I don't see any hands. All right, let's go down to question A.

Please be more specific about what you have in mind when you say that ICANN and the contracted parties are joint controllers. How is this joint controller arranged?

Again, this is ... Well, the green stuff might be the new stuff. Oh, cute kids. Sue, your notes are on top of the document, so we can't see. Thanks. Oh, okay. As long as it's not covering the text. Sorry. I was like, "I don't think we can see it."

So, this is just the same thing we said previously. I did note in the green part as well as being charged with coordinating the development and implementation of DNS policies by the ICANN bylaws. We hadn't

invoked the bylaws in a while, so I thought maybe let's refresh and stick it in there. Does anyone object or disagree with that evaluation? Because this is new. These are new words that I made up.

MATTHEW CROSSMAN: Hey, it's Matt.

BETH BACON: Go for it.

MATTHEW CROSSMAN: I'll just jump in. I like the text. I think it makes sense. Having read their memo, though now, I think what maybe this section is missing ... I think it does a good job of talking about what ICANN is doing but I'm not sure we make the case for why we are jointly establishing purposes or that we have a joint roll here. So, I think maybe if we can think about what we could add here to kind of tie in why this is joint, because I think ICANN will read this, especially in light of the position they're taking on their memo and say exactly ICANN is an independent controller based on what we've laid out here. So, I don't have anything on the fly, but I'd be happy to try to add something there.

BETH BACON: Thanks, Matt. I agree. To be honest, guys, I skimmed this memo directly before this and I was in another meeting. But that is, I think, 100% correct. So, I've made a note in the doc online, so I'll just highlight it in a different color because it gives me joy.

REG LEVY: So, do we consider it a failure if we come away from this with ICANN being a sole controller? Because I think that if that's what they read in this, that's a win. Am I wrong?

BETH BACON: Well, I think the problem would be is that they would be ... How would we then? I think it's the cooperation there because it's not that we're designating them something. They are that.

UNIDENTIFIED FEMALE: Correct.

BETH BACON: Jointly do this. Honestly, I don't want to die on this hill, but it's just—

UNIDENTIFIED FEMALE: I just mean—

BETH BACON: It's just reality. And when a DPA comes and says, "Well, this is wrong," they're not. It's like, "Well, okay, great." Ding us. Sam I see your hand after Reg.

REG LEVY: Sorry. Go ahead sam.

SAM DEMETRIOU: No, Reg, if you want to finish your thought because it's in response to the question you just raised. So, if you want to finish your thought.

REG LEVY: So, when we did our own GDPR work at our company, we looked at every piece of data we collected and said, "Why are we collecting this?" And if we didn't have a good reason, we stopped collecting it.

We have decided that we need to know, for example, the name of the person that we are in a contract with and we kind of also want to have their email address so that we can contact them. But we don't consider it necessary to collect a phone number, fax number, or physical address for them.

Now, that's just for our personal purposes in terms of entering a contract. And this is an example. Please don't report me to the DPA. So, for those, we determined that we are the controller for our own purposes.

But then comes a registry and they also want us to collect certain data by contract and we also took a look at those and if they have a good reason, which sometimes they do and sometimes they don't, then we determine that we might be joint controllers for those pieces of information.

And then we come to ICANN and ICANN also requires that we collect certain pieces of data, and because it's an ICANN requirement, that makes them the controller.

So, I am okay if they look at this and say, “Well, then, how are we joint controllers? We’re sole controllers.” We being ICANN. Because that’s true. And we are also controllers for the same pieces of data which we collect separately and for our own purposes. I feel that probably is going to confuse the fuck out of them since we’ve seen the memo that is the basis of their current level of understanding. But that’s what I meant when I said do we consider it a failure condition if ICANN says, “Oh, wait, we are sole controllers.”

BETH BACON:

Sammy?

SAM DEMETRIOU:

So, I know that I’m always perpetually the problem child in this discussion group and I’m going to just have to be that person again. I’m not so far away I think from where Reg is sitting. So, just to be very frank, because we’re among friends here, right at this point in time, we don’t really see ourselves processing personal data if we don’t have to receive the registration data from the registrar.

So, to that extent, I kind of see us outside this arrangement and you guys can all just go have fun with it. But I am thinking about a possibility in the future where, if for some reason we’re forced to bring Com and Net thick, then frankly, we wouldn’t be determining the purpose or the means of processing that personal data. We would only be doing it because ICANN says we have to. So, in that scenario, which is not a reality yet but could be, our analysis would be that we are processors at ICANN’s controllership.

So, I'm not saying that we need to change the way we approach these questions now as a result of that analysis, but I guess this idea of would it be okay if it's concluded that, for the purposes of registration data—RDDS data—that ICANN is a controller on its own ... I don't think I've ruled out that possibility either. Again, I know I'm kind of on an island here and I'm sorry to throw a fly into the [inaudible], but I'm just tossing it out there.

BETH BACON:

No, thanks, Sam. I'm going to use the privilege of being forced to convene these meetings to just insert my opinion now and jump the queue. You're not a problem child. And Reg, I see your points. I do think that we need to keep in mind that the data protection terms, these are meant to be simply for the registration data and that the EPDP Phase 1 and Phase 2 have been arguing for almost two years about joint controllership.

So, if we are consistent with them, then I think that's a problem and then we all need to get together with our EPDP folks and be like, "Fine. Give it up. Let's just not be controllers."

I think that one of the changes that the memo presents is that ICANN is actually saying, "Well, we would be an independent controller," when in fact they were saying they were nothing previously. So, if they were controllers and we were processors, then maybe that's another thing to discuss. But Kevin, you have raised your hand.

KEVIN KREUSER:

Yeah. I think, to your point, we're not going to get them to agree to something that is a controller-processor relationship. So, when we were drafting this, the goal was you define all these things. What is a joint controller? Who's a controller? Who's a processor? What does it mean in the backend? You have the roles and responsibilities. Who is telling who to do what? And ultimately that plays itself out to the extent the data protection authority comes and looks at the agreement and decides who has ultimate responsibility.

I think we should probably change these. We could tweak this response a bit. So, the first paragraph simply is actual. I mean, that's the reality. That's who the joint controller is. The last sentence, I think maybe we could soften where ICANN must be seen as a joint controller along with ... We could just let that kind of linger out there. If you're dictating this, you're going to be what you are under the law. I don't know that we have to necessarily in this response assign who is what.

And to Matt's earlier point, we should now take a look at what they sent over and see if we need to address things specifically in responding. Otherwise, they're going to dismiss our answers entirely anyway because they've already basically preempted us with some new set of questions/answers.

BETH BACON:

Yeah. Thanks, Kevin. I agree with that and I think that ... I'm taking notes in the Google Doc as we go. I'd be happy if they were the controllers of some kind and I agree that they won't accept a controller-processor. I'm

almost shocked that they're saying they would be an independent controller for anything.

I do think this draws attention back to the need for us to go through the chart because they spend the first eight pages of the memo talking about how you need to evaluate each piece of data. And we have done that and we can't get them to say what their role is and they continue to have us fill that out.

So, I think maybe instead of going through all ... We should go through the rest of these a little bit and take some more notes. But let's just get through these questions and I will take notes. Oh, you can see them now. They're synching. I'll put where we need to flesh this out in response to the memo because I think that's a fine point and it's actually in our favor that we have it first, so I'm kind of glad that we're a little late with these because now we can use it. Does that sound good to everybody?

I'll note in the document where we need to make these changes, and then maybe at the end we can come back to the higher-level discussion of what's a win? What can we live with? Does that sound good?

Silence is [inaudible] today. Okay. Well, I'm going to roll down a little bit here, if we can slide down just a tiny bit there to the next question.

So, this is again supporting the need for ... Oh, and Alan has made edits. Thank you, Alan. The need for there used to be individual contracts. Does anyone disagree with that? No matter the roles of the parties, I think that we need them to be parts of the contract—amendments to the contract. Does anyone ...? I know Matt said something up in the

chat previously that it seemed ... That he agrees that it highlights why these need to be bilateral agreements between Part A and ICANN. Business models and relationships may differ. So, is everyone still on the same page with that?

REG LEVY: Yes.

BETH BACON: Thanks, Reg. Sue, can you scroll down just a scotch? Thank you. All right. Again, I'll keep this open so when folks are going to ... I'm going to ask you to go in and make some changes and add to it. So, it's not the last chance to edit. All right. Let's slide down to the next one.

This is much the same but they're asking the question differently. Do you have to have an agreement with everyone? Yes. And we can go down to three.

REG LEVY: Going back quickly—sorry—to do we have to have an agreement with everyone. Do we have a sense of what's behind this question because—

BETH BACON: They don't—

UNIDENTIFIED FEMALE: Sorry?

BETH BACON: I think they simply don't want to do this. They don't want to go through and sign 1200 contracts.

REG LEVY: Why? Because it's a lot of paperwork or because it establishes legal liability?

JIM GALVIN: Because it's a lot of paperwork.

REG LEVY: Okay. If it's just a paperwork question, then fuck it.

BETH BACON: Yeah. I 100% think it's a paperwork question because they're going to have legal liability whether we put this in as part of the consensus policy or as a—

REG LEVY: Who?

SAM DEMETRIOU: Well, they also don't want to have this fight with every single person.

BETH BACON: They think it's paperwork and they don't want to have to have to have ... When we say there's different business models, they're going to be like, "Ugh, I don't want to have a slightly different thing with everybody."

REG LEVY: Yeah. But again, there are registrars that aren't going to be covered by the GDPR and aren't going to need it and they should have the ability to opt out of it. The registrars, not ICANN.

BETH BACON: Yeah. Good luck with that fight. All right. Let's go down to three, Sue, thanks. Thank you. So, is everyone a joint controller? Quite frankly, I think that registrars could be processors, but I'm going to let that go. Does anyone want to change this at all? Was this fine? Do you want to—

REG LEVY: I think that registries, to Sam's point, could be also processors because thin registries work. We don't actually have to send—or collect—a significant amount of the data that we both send and collect to the registry in order for the DNS to function.

So, ICANN is requiring that registrars do X with data, making ICANN a controller, with regard to a registry, making the registry merely the processor. It may be that registrars are also a controller in that instance because we have the direct relationship with the registrant. But it does mean that certain registries—in fact, perhaps, most registries—ought to

be part processors instead of controllers. Or just not have the data in the first place, which I'm sure would make Sam very [happy].

BETH BACON:

Yeah. Well, to be fair, I see Sam's point. On the other foot, thick registries are required by contract to have that data. So it's not a choice. It's what's in our contract. So, Verisign has a different contract. They have a different set of requirements. If they're able to continue and move forward and not have to do that, then great.

I think that if PIR stopped collecting a lot of this data, we would get in a lot of trouble from ICANN. Compliance would come after us.

UNIDENTIFIED FEMALE:

That was the point of Phase 1 is that it should become optional and should be at the registry's discretion to establish whether it wants to [inaudible] receive the data.

BETH BACON:

I think that's another issue because I think ICANN reads that differently. I think they read Purpose A and Purpose B as not ... I think they still read it as if you're doing it now, you're required to do it.

REG LEVY:

I think that's right. It's also something that's frankly been a pain in my ass for the last, like, twelve months. So, just to go back to this question at hand here, I don't think that this ... I think Alan's response is actually

pretty good here. I don't mean to say "actually" like I was expecting it not to be, but in the sense that it is drilling down to the main point that we're trying to make which is this is a factual arrangement that has to be assessed on a per-party basis.

So, these questions that are continuing to drive at is everything exactly the same across absolutely everyone, the answer is just no.

BETH BACON:

Great. Agree. Okay, next question. We're all starting to I think go a little bananas because we have these conversations six different ways and in six different venues, and then we talk to ICANN and they change their point of view as well. So, I think it's good that we have these conversations. But I do want to go into the meeting next week with them with us in a fairly aligned place. So, at least if we're ...

To be honest, I think that they're going to look at these questions and throw them out, so I'm not bending over backwards to ... I think what we're going to have to do is discuss the memo more. But I don't think that they're going to take these responses to heart, so I'm not dying on this hill.

Do you guys want to take just a second and look at those responses and let me know if you have any comments?

KEVIN KREUSER:

What are we looking at, B?

BETH BACON: Yeah. Can you scroll up a little bit, please, Sue, so they can see the whole response? Thanks.

KEVIN KREUSER: Well, which part is ... Is this [inaudible] what Alan added to something or how ...?

BETH BACON: The highlighted stuff is our response. I'm not sure what Alan added.

KEVIN KREUSER: I think the first part of it is right. We should be [inaudible]. It should be noted the answer is no. "Principles of direct control do not apply to all processing activities." That's why we've gone through this exercise of having this long chart that identifies who does what in each of these [inaudible]. So, the first part of the response seems to indicate yes and I don't know if I'm reading it wrong.

BETH BACON: Yeah. I feel like that was supposed to read no.

KEVIN KREUSER: Yeah. So, then we leave ICANN Org and [inaudible] are direct controllers [inaudible]. I don't think that sends the right message.

BETH BACON: No. Agree.

KEVIN KREUSER: Okay.

BETH BACON: Yeah. I'm making notes. They're just not synching that fast. I'm writing all this down. It will pop up on the screen in a second.

SUE SCHULER: Sorry. It's because I'm pausing the share. I'm taking notes in the background. Sorry.

BETH BACON: No, that's fine. I understand. I'm just taking loose notes, and remember, you guys can go and do this, too. Can we scroll down to C? Kevin, are you good with that?

KEVIN KREUSER: Yeah.

BETH BACON: You're a delight. Thank you. All right. Let's look at C. And some of this, it's standard operating procedures if you have read GDPR or any other law. So, I'm not sure why we're doing this, answering these particular questions, but I attempted. They're also very broad. So, there's a lot of scenarios where this could—

KEVIN KREUSER: Yeah. I really don't like that ... They know the answer to these damn questions. They're trying to get us on record.

BETH BACON: Yeah.

KEVIN KREUSER: And E is a really, really difficult question to answer because there's so many factors. It's going to be dependent upon the roles and responsibilities based on the particular data processing activity ... I'm not going to notify a registry if it's ... I don't know. If we're somehow ... We're ever in the flow we are defined as a controller. I wouldn't then notify the registry or ICANN. But it's ICANN that finally accepts responsibility and is the controller, absolutely, I'm going to notify them because I want that liability off my back. And that's where they're trying to get to is tell us exactly what you expect us to be liable for. That's what they want to hear. That would answer their ... Trying to read in between the lines.

BETH BACON: Yeah. And I agree 100% with that. So, before this, I think that we could ... I'm just going to put hedge because what I think we need to do is ... This is a note to myself. I think we could add and be stronger saying this is very dependent—

KEVIN KREUSER: Circumstances. Yeah. Depending on applicable law, circumstances, roles and responsibilities, and everything, terms and conditions.

BETH BACON: Yep. I'm adding this. Okay. So, I put that in there and I think I'll do that for all of these. I'll do it for C and then [all of the parts] because it's basically a flow of a data breach. This is when I walked away from this document and had to come back the next day because I was so annoyed. I was like, "This is frustrating."

KEVIN KREUSER: [inaudible] the registrars [the] processor and we caused a data breach, and the contract says, in that case, we have to ... We're responsible for notification and ultimate liability. That's something we can talk about contractually.

BETH BACON: Yeah. And all these are things that should be laid out in the terms. All right. Well, let's plow through here because I want to get actually to the terms because those are longer. And I agree this is just them trying to get us on record which is why I started with this is not on the record. None of this is binding. So, if we could just slide down ...

I will add that particular hedge for all of these for the who would be responsible for issuing notices, what would happen if a notice is deficient, all of that. It's like basically you just have to go to DPA school here.

So, D was a very frustrating question, simply because ... And I just went with EPDP Phase 2 is working on this. It's the actual job of them. Then, simply just ... I just sort of tossed that one away. So, if anyone thinks we need to be more in-depth or even say less and just say it's currently a subject of the EPDP and then full stop.

KEVIN KREUSER: Yeah. I think what they're talking about is [erasure] and affordability. Is that what they're ...

BETH BACON: I have no idea.

KEVIN KREUSER: Yeah. I think they're going beyond just the access request kind of stuff.

BETH BACON: Yeah. [inaudible] too simplistic to answer their [civil rights]. I just point to chapter three and was like, "We can't answer these questions."

KEVIN KREUSER: Again, this could be dictated by contract. It's the agreement, if they want to put something in there, if they were smart and creative, they could start adding things. All right, we get it, we've got some responsibility [inaudible] and contractually. You guys have the interaction with the customer and you need to do this, subject to applicable laws.

BETH BACON: All right. Putting that in there, too.

MATTHEW CROSSMAN: Sorry. I was just going to say I took a crack at this. We've got a section about this in the terms. It is sort of complicated, given the different roles. But I think we might also reference back to that we're trying to work through these in the sort of draft terms about when we're both holding these roles, who should be responsible for responding to those types of requests.

BETH BACON: All right. Awesome. So, I'll do a nod to that in the text. Can you scroll down a little bit to the "if a registrar does not timely respond" just so we can see all of that text? Great. Thank you. This is more of the same, more of the same. Let me know if you have any issues with these two.

LUC SEUFER: Again, what kind of request is that? To update the data, to delete it?

BETH BACON: Yes. This is ... Yeah. And I think that's the end. All right. Luc, I'll put that in there as well. I'll go through and make sure that those are all very ... This is not specific enough we can't really answer these questions. And I do think we should spend more time on a response to the memo, which I don't think we need in writing, simply because they gave it to us Friday

and we're supposed to meet with them ... What's the best date right now, Sue, Thursday or something? Next week, Thursday?

SUE SCHULER: Yeah. Right now it's a tie on Thursday between 2:00 PM Eastern and 3:00 PM Eastern.

BETH BACON: Okay. So yeah, I don't think we need to get something in writing, but internally, I'm happy to go through this and we could start doing some bullet points and make sure we're all on the same page on the memo, because at this point, I think that discussion sort of trumps these questions because they've addressed them. Does everyone agree with that? Does that sound good? I'll clean these up, send them back around. Please, if you're on the call, we can resend the link if you want because it would be helpful if everyone else could also add a little bit to these questions. I'm glad you're so excited about that. Okay.

Did you guys want to move to data processing terms? Is everyone happy with where we are in the questions? And by happy, I mean just accepting of this madness. All right. If you could put those up, Sue, that would be great. The terms.

Matthew Crossman, can I tap you in to go through what you've done here? Mostly because I'm really tired of talking. Thank you very much. This is really great. I appreciate you putting so much time into this.

MATTHEW CROSSMAN: No worries. So, I've been meaning to kind of spend some time and go through this and try to fix some of the things that ICANN did when they tried to kind of make this not a bilateral agreement. But then also kind of simplify and make sure we're being cautious about future proofing and taking out things that were maybe redundant and then some of the other things that we had called out on, on our prior call with ICANN.

So, I don't know if it's easiest maybe just walk through. I had put some questions and comments on the side. Maybe we can just walk through those, and if folks have input, we can add that in. But then also feel free to jump in and take a look at the entire document.

I think Beth sent the redline as well with the email, so if you do want to see the totality of the changes that were made, you can jump in there. It's sort of a messier document to work off of, just because there's been a lot of changes. But if you want to see what's been taken out or what's been changed, that's a good place to go.

So, just scrolling down, I guess the first comment I have here is ... Again, I tried to change this back to this is an agreement between contracted parties or a contracted party and ICANN. So, I tried to flag that throughout by putting double brackets around either registry or registrar. I think that's something that we can change as we implement this agreement with different parties.

In the intro section, I had one question here. We say this agreement defines the requirements and responsibilities of the parties when processing shared personal data in the context of the performance of

the obligations of the parties under the RAA or RA for the specified purposes set out below.

And I just wanted to make sure that that ... I think that appropriately captures the contracted parties processing. But I wanted to make sure that appropriately captured what ICANN's obligations would be that are subject to this agreement. Does anyone have any thoughts on that or are we comfortable with that? We captured the universe of ICANN's activities that we want subject to this agreement by calling out either specifically the RAA or the RA.

BETH BACON: So, I have a question here and it's kind of a devil's advocate question, if that's all right.

MATTHEW CROSSMAN: Yeah.

BETH BACON: So, if we talk about ... So, this is a data processing amendment that came out of the EPDP Phase 1. I think we need to be prepared to say to ICANN, "Just FYI, this is for all data under the registry agreement," or the registry/registrar agreement. Sorry, the Registrar Accreditation Agreement. Could we not have done different names, guys? Because they may say, well, this is only for registration data. Is it? Or is it for everything? And I know it came out of the EPDP Phase 1, so I'm just ... When we put this in here, they may fight to say, well, this is just for registration data. But I think that's inaccurate. I think the DPA needs to

cover contractual compliance things and those sorts of things that are in the contract. Does anyone disagree with that?

MATTHEW CROSSMAN: I guess I don't disagree with that. Is that captured by the purposes? So, have we captured the full universe, then, by saying the obligations under the RAA and the RA for the specified purposes? Is that ... Have we then captured the whole universe? Because I'm thinking ... Compliance is called out as one of those purposes. Is there anything else that is not captured by that, that we think should be?

KEVIN KREUSER: I don't think so, if you define RAA and RA properly and the scope. I know there's a comment in here from Amy about better defining policies, but it [inaudible] defined in the RAA/RA itself. I would think that ... I think it's broad enough.

MATTHEW CROSSMAN: Okay, cool. Any other comments on that? I'll move on to the next one. We've talked a lot about trying to future proof this agreement and not be tied necessarily to GDPR even though GDPR was before. So, I added this clause that, essentially, we provided the definitions below but any of these data protection terms that are used, it has that agreement unless it's otherwise defined in applicable laws. And I think with the way we've defined applicable laws, that gives us a bit of future proofing, so that if there's something truly inconsistent in the way we've defined something here, based on some future data protection law or the way

in which a data protection law applies to a party in a specific jurisdiction, I would think it would still be ... This would be a good way to make sure that they're still covered and that this would be [inaudible] flexible for any future changes.

KEVIN KREUSER:

Yeah, that's smart. I think you could even add that 1.4 as a preamble to the definitions section of [inaudible] works either way. And it might even be a way to broaden that language a little bit. But certainly the concept is right on.

MATTHEW CROSSMAN:

Yeah, thanks. I was trying to figure out where it might fit and I think you might be right. It may be better in the definitions section. We can definitely move that. And if there's a way we can broaden that further, I'm definitely open to that.

Let's see. Moving on. So, I just have a note here on 2.9 that this is just consistent with the definition coming out of the Phase 1 recommendations, but wanted to make sure that that's consistent still with how we're envisioning the scope of this agreement. And maybe lumping in then 2.11 which has the shared personal data definition and just wanted to sense check again that ... Just to make sure we're all on the same page about what is the shared personal data that is subject to this agreement and making sure that this appropriately captures that universe. Any feelings?

BETH BACON: Yeah, I think that looks good. This is Beth. I'm not sure if you guys can tell it's me from the deep underlying hatred of all of this in my voice. I do think that we're going to want to explain. Amy was oddly confused by shared personal data and didn't really seem to accept that we would have any. So, I think we just need to be ready with a little more detail as to maybe examples as to what we think would qualify as shared personal data. But I think that these are good. Thank you.

MATTHEW CROSSMAN: Yeah. The shared personal data is kind of a concept introduced here that is our actual shared controller agreements. That works a little bit more if you have a university kind of setting. So, it might be something that we revisit completely, and does it work here? If it's causing too much confusion, is there a way that we can accomplish the setting objective without this definition if it's causing them a lot of angst?

BETH BACON: Yeah. Is there a way we could make that clear or include the shared personal data definition in either just personal data?

MATTHEW CROSSMAN: Yeah. And the whole processing—

BETH BACON: Yeah, because I'm getting a little nervous.

MATTHEW CROSSMAN: Yeah. Inside the processing and all of that. You might be able to do it. I think the reason that we introduced this originally was because ICANN was so fearful of any kind of controllership, so the [objective] was trying to convey that, hey, essentially we're going to share this information amongst ourselves because we all [inaudible] ourselves of this nice domain name community registration process. So, I was trying to soften it, so that they would get on board. But again, maybe there's a way to revisit.

BETH BACON: Instead, you just confused them.

MATTHEW CROSSMAN: Yes, [clearly].

BETH BACON: Yeah. So, I like that, but maybe we look at getting that—combing it somewhere else or just calling it something else. A “look over here” approach.

MATTHEW CROSSMAN: Yeah. I mean, maybe it's just the aggregate minimum data set or ... I just want to make sure it's a defined set of personal data, that we're not unintentionally broadening the scope to capture personal data that parties are processing that wouldn't be subject to this agreement. But that all makes sense. I'll see what we can do to readjust that.

Going down, Amy had a comment about defining policies. I'm not all that concerned about that. I don't know if anyone wants to discuss that. I think that's pretty well defined.

BETH BACON: It don't make any sense to me, that question.

MATTHEW CROSSMAN: So, going down to section four, if you look at the redline, I kind of tightened this section up a bit. 4.3, though, is just ... Again, this is all really in flux, and based on our conversations we had today, we don't want to presuppose an outcome necessarily but this is just maybe some placeholder language and we can maybe frame it as placeholder language so that they don't panic over this, that we're going to have this annex that lays out the [factual] arrangement, and based on these [factual] arrangements, the parties understand that we are X, essentially.

[BETH BACON]: Yeah. I think that's good. It does remind me of one thing, which is we have to take another look at the chart. We should go through that, and if anybody wants to volunteer with me and make sure that we have joint controller/controller/processor where we want it, especially in light of the memo, since we'll have to go back on that. Thanks.

MATTHEW CROSSMAN: Great. Moving down to 5.3, again, to future proof and make this flexible, I made the cross-border data transfer section a little bit higher level so that this could apply, should there be other restrictions the party faces similar to [EA] to non [EA] transfers. I think it still includes those transfers but try to take it up one level higher just for flexibility and future proofing.

So, 5.5, this is a general question for data protection experts on the call, Kevin and Beth. I tried to take out redundancies. There were a few things in this section that I thought were covered in the data subject rights or the security section.

One that I left in that I wanted to ask about is this 5.5 where we have these organizational and security measures spelled out. But then if we go down into the security section, 6.2 also enumerates a different set of security, technical, and organizational measures.

So, my proposal would be that we either consolidate these into one or delete one and keep the other. But I didn't know if these were intended to cover different things or whether this is just sort of a relic of us combining a couple of different agreements to try to get to this draft.

[KEVIN KREUSER]: I thought 5.5 is more of a high level and then the section six is actually [inaudible] organizational that we're going to dictate to them, so that there was at least some [inaudible] to this agreement. There's maybe a way to better write it or to ... Based on the language [inaudible] combine. I guess this is really speaking to the same thing. So, yeah, maybe we can combine that into ... If we do, I would pull 5.5 down into

... Even have a generic statement that says, “Shall comply with the organizational security measures in section six,” and nothing more. Then we could bring some of that language down.

[MATTHEW CROSSMAN]: Great. Yeah. I just wanted to sense check. Sorry, go ahead, Beth.

BETH BACON: I was ... Kevin, sames. I think 5.5 goes down. But I do want to note we still have these titled as processing shared personal data. So, if we do try and collapse shared personal data into the other definition, we’ll just need to amend this [inaudible].

KEVIN KREUSER: Yeah. It’s all over the place in here, so that’s why it’s got to

BETH BACON: Because it makes perfect sense, unless you’re ICANN and you get confused easily by shiny, shiny toys.

KEVIN KREUSER: Yeah. It was really [nice]. It was a gift for them to call it shared personal data.

BETH BACON: It’s like you went into a room full of kittens and threw glitter in the air, Kevin. It didn’t help. It really was as gift.

[KEVIN KREUSER: I wonder how they feel about the letter. Okay, great. That's helpful. Go ahead.

JIM GALVIN: Sorry, this is Jim Galvin. I'm usually the fly on the wall here in this thing. But as I think about section six, I really just have to ask this question. It seems awfully specific and awfully detailed about what we're supposed to do. Is that really necessary in this? I mean, isn't it sort of an automatic obligation that you're going to employ ordinary commercial best practices to do all the right things here? I'm really a little worried about what some of this stuff looks like because it almost feels like you can't use the cloud, for example. This business about IT equipment being locked up, for example, in lockable areas. And portable equipment, laptops, where stuff might be.

I mean, anything is possible and I just worry about the specifics about any of this in section six being in a contractual obligation that we will be tested against, given that these kinds of things evolve over time. Anyway, sorry. Just had to ask that.

KEVIN KREUSER: Yeah. Language like this should be in your data processing addendums because it cuts both ways because the ... I mean, I think this is language from ... This is what we do. This is what we require. So, I think this came from ... There may be ways that we could genericize it and it might make sense to do so considering we're unclear on the roles and

responsibilities here and who exactly needs to adhere to this. But you have to have some level of detail with regard to security, and under the laws, you can't just anymore say you got to do a good job without specifying what that means, at least to some minimum. So, we can look at it, whether it makes sense.

Certainly, [you look at 65] and the encryption standards change, which is why there's a language qualifying it at the end. And often, that's the most [often] thing we hear from our vendors is, "Oh, we don't use [AS]. We use something different." All right. That's fine. Suitable equivalent. But we should look at where are the real issues that you guys may have because [inaudible] for you guys to do this where you're the processor. I don't have an issue with any of this language as a company, but others might.

BETH BACON: Jim, do you have any ... I mean, it would be helpful. Do you have any thoughts or do you want to think about this a little bit more?

KEVIN KREUSER: If you want to take it up on—

BETH BACON: What's the minimum? Yeah. Like, what would make sense?

JIM GALVIN: Yeah. I will take it offline and give this some thought and ask around, ask our guys. Yeah. I hear you, Kevin, and thanks for that. And I do understand. I do want to give some consideration to whether it's possible to make this a bit more generic without losing the requirement. So, I'll take as an action to do that and I'll offer some comments back to the team here for consideration. Thanks.

BETH BACON: Thanks, Jim. I mean, I agree. I'm happy to come at this from a more generic minimum, setting a floor, because it is going to be for a lot of different kinds of companies. So, I'm fine with that. But also agree with Kevin, we can't lose the requirements because we have to have requirements. But, yeah, thanks, Jim.

MATTHEW CROSSMAN: So, I'm conscious of the time. I think there was some other stuff we wanted to get to as well. So, maybe if I could just quickly flag the couple other big things in here that folks can maybe take a look at offline and drop some comments in.

If we scroll down to section seven, that's the security breach notification section. I think this gets to some of what ICANN is worried about, about the different roles of the parties. This is pretty standard language, although I would note that it seems to contemplate the situation where both breaching and non-breaching parties who become aware of a data security breach would be required to notify each other, but then the notification format and content is really sort of tailored towards the breaching party or the party who is in control of the information about

the situation. So, might want to think about how we frame that or if we need to change that. But that's something I would appreciate folks taking a look at.

I think, then going down to section eight, that's also fairly important. We've got the data subject rights outlined there and a proposed approach of how, as joint controllers, each party would be responsible. If we're both controllers, we can't turn parties away if they come to us with a request, but we should have some sort of a process to cooperate and make sure those requests get to the appropriate party when they're received. So, section eight is an attempt at that.

KEVIN KREUSER:

And I think this is where we should put back on ICANN ... Obviously, the areas where ... Two sections are struggling with most I think is seven and eight. And maybe we put it back on them to [say] all right, we get it. You guys don't want actual day-to-day responsible where you're not responsible for a data breach. [Nothing] says that but propose some language that would [inaudible] that would make you more comfortable.

BETH BACON:

Yeah. So, I think it'll make sense. If you guys are supportive of this ... Because we have attempts at answering the questions, again, I can just go back and pare back the responses of the questions and just say we've proposed contractual language to answer this question and we look forward to your comments to make it comfortable for you. That way, we don't actually have to answer the questions.

MATTHEW CROSSMAN: Yeah. I think that's great.

[BETH BACON]: Okay, great, because I'm just [inaudible] on paper if we don't have to in more than one place.

MATTHEW CROSSMAN: Right. I think that's great. Last thing I would just flag, too, that I haven't addressed here ... And again, there are some other comments throughout that, if folks have time to take a look at and you have thoughts, please add it to the doc. But we still haven't approached the indemnity issue which I'm totally fine with. I think it's in 5.8. Trying to talk to some folks internally about how we would handle those sort of imbalances that they're flagging, like what some options might be. But I think that's such a difficult issue that I don't want it to derail the work that we're doing on some of the factual determinations. So I think we just leave that as a placeholder for now.

So, yeah, appreciate any comments folks have. If you have some time to go through the document and add stuff in, that would be great. And hopefully that wasn't too terribly boring.

[BETH BACON]: No, no, it's scintillating. I promise. Thanks, Matt. So, just if you haven't done the Doodle poll, please do the Doodle poll. Broken record. If you don't have ... If you can't click on that and then we've sent it around

several times, do send it. And it's also in the chat there. I feel like a homeroom mother. I know it's not a fun meeting but it's one we get paid to attend.

So, I just want a quick in AOB. We have three minutes. I want to go through what we're going to do. And some of you can just ... If you would be so kind as to follow-up with an email to this group with these due dates and times. Beth is going to clean up the responses but would appreciate your help as well. The Google Docs are going to remain open. I will do that by Wednesday COB Eastern time. I will also request that you guys take a look at the chart if you'd like me to schedule 30 minutes so we can all hop on a Zoom and do it together, just to be on the same page, I'm happy to do that before we meet with them.

I would like to send the responses to the questions, as well as the data protection terms as edited by Wednesday COB, again, Eastern time. Does anyone think that is too quick?

Great. And then because we want to talk about the memo in more detail, I was going to create a Google Doc and we could start doing some bulleted responses to the ICANN memo, so that we are on the same page. I don't think that's something that we need to send around to ICANN at this point. But we should have our thoughts in one place. Does that sound reasonable? Does it sound so reasonable that you're going to say nothing at all? Thank you, Sam! Throw me a bone.

All right. So, we'll create the Google Doc and send that around. And everything else, please have everything done by Wednesday COB or I'm going to close the Google Doc and send it.

I thank you for your time. You guys are great. Thank you for having these conversations. Thank you for showing up. I don't want to [lead] this group anymore, so if there are any volunteers ... Just kidding.

UNIDENTIFIED FEMALE: Thank you, Beth. You're a great leader. We love you.

BETH BACON: I don't believe any of that. Just what I'm hearing is none of us want to do it.

UNIDENTIFIED FEMALE: And we love you.

BETH BACON: Yeah. I mean, that's true. That's true. All right, guys. I really appreciate all your time and all your work, especially to Matthew for the [inaudible]. That was a really giant job and you went through it and it looks great. So, thanks. And bye. One minute back of your life.

UNIDENTIFIED FEMALE: Yay! Thanks, Beth.

BETH BACON: Thanks. You can end the recording.

[END OF TRANSCRIPTION]