ANGELINA LOPEZ:	Hello, and welcome to ICANN's Data Protection and Privacy Update webinar. This is Angelina Lopez, ICANN's communications manager from the Global Domains division and I will moderate today's webinar and the Adobe Connect chat room. Before we start, I'd like to remind everyone to please follow the ICANN's expected standards of behavior. You can find them in the link provided in the chatroom.
	To facilitate global participation, we are providing interpretation services in Arabic, Chinese, French, Portuguese, Russian, and Spanish. Today's webinar will last 60 minutes, including a Q&A session at the end. This webinar is being recorded. Link to the recording and presentation materials will be posted on the ICANN data protection and privacy section of our website. We will answer questions at the end of the webinar. However, you may ask your question at any time in the Adobe Connect chat room simply by typing your name, your affiliation, company, or organization along with your question in the box labeled "submit questions here". Instructions are also shown in the chat room.
	Lastly, I'd like to remind you to please mute your computers and phones. With that, we will begin. Göran?
GÖRAN MARBY:	Thank you, Angelina. Good morning, at least for me. Hello, everybody, and thank you for joining today's webinar. We want to provide you with an update on recent data protection privacy activities. We will be transparent to make sure everybody is on a level playing field.

Clearly, GDPR will affect us all in one way or anything. I am really impressed with the community's effort on the progress that has been made overall. This is a really big job and I want to thank everyone for their hard work and contributions.

We have received a lot of good input on potential models for compliance with GDPR and ICANN agreements. It looks like there's a growing support for some sort of tiered access models, which is called in Europe a layered model. But, there's also been a lot of talk about non-public access and accreditation, which are topics that require more discussions.

In terms of engagement, we have valuable discussions with many different parties including ongoing dialogues with the Article 29 Working Group. [inaudible] elected to Article 29 Working Group and the European Union to consider four theorems on GDPR compliance. We will also notify the Governmental Advisory Committee and the United States government [inaudible].

I would also like to take this opportunity to say that we have a great fora for all the discussions that have occurred over the last several weeks and input we have received. Let's keep the conversations going also inside the community.

So, now to the webinar. First, Theresa Swinehart who is responsible for coordinating our GDPR output, will talk about the process and provide an activity update. Then, John Jeffrey is going to talk about our proposed interim models and share some preliminary comparison on how we're going to move forward on this point.

We plan to leave plenty of time for questions and we'll do our best to answer as many as we can during the webinar. In the interest of efficiency, we are only going to take questions through the Adobe chat and ask you to submit one question at a time. That way, we can make sure that we hear from as many as possible. If we don't have time to answer them now, we will come back to you in writing.

With that, over to Theresa.

THERESA SWINEHART: Thank you, Göran. As many of you know, we posted the draft interim model on the 12th of January and this has followed several iterations of community discussions, community input and dialogue, including around the Hamilton memos that it posted. We really want to thank the community for the tremendous input and comment on the draft models that we received to date. It's really a demonstration of the outstanding community participation and collaboration in moving this process forward and finding the right path in that direction.

In total, we received approximately 65 comments or proposed variations on models, and this is very much appreciated and those are being posted on the website itself, so that's all available to everybody.

We've also been asked to participate in several community discussions, including with the Intellectual Property Constituency and Commercial and Business Users Constituency, with the Governmental Advisory Committee, with Contracted Parties. Later today, we also have a meeting and call with the non-contracted party house here in Los Angeles.

With that, we also wanted to ensure that we have a webinar in order to allow an opportunity for the broader community in the discussions as well.

With that, I'm going to turn this over to John Jeffrey who is going to talk about some of the models and some of the variations that we have started to see in programs. With that, John, I'll turn it over to you.

JOHN JEFFREY: Thanks, Theresa. The first thing we're going to do is put up on the screen if you're on the Adobe chat a graphic. This graphic, if we can blow it up so that you can see as much of it as possible. The graphic is the proposed interim GDPR compliance models and selective community input from some of the models that we've received so far. I'll go through why it's these as opposed to some of the others.

As I understand it, and I haven't counted them but we have about 65 models that have been submitted ..

THERESA SWINEHART: Comments.

JOHN JEFFREY: Comments on models that have been submitted. Eight of the models and ICANN's models are all graphed on this chart. Then we have a second document that we'll show you that breaks it out into a matrix which shows some of the key factors and how they compare across those various models. But, if you look at this graphic, you can

[inaudible] bottom right corner, and looking at the access, if you look at due process only and minimum data, you start on the bottom corner and that's … You're looking at the EFF model or close to the ICANN model 3 and some elements of the ECO model are close to that.

Then, as you go across, almost in a line to the far corner where we look at full thick data and we look at what's closer to the current WHOIS, you can see the other end of that spectrum.

Now, an important element of this is that it isn't in scale. So, if you put the actual current WHOIS model on this graph, you would go much further out to the top right. So, that's one thing to look at.

Then, of course, focusing on the elements along the way, we tried to show some of the key elements. If you look at the left access, the full public access, case by case access, self-certification, accredited access and across the bottom, minimal data, reduced data, and full thick data.

So, this is an attempt to put those into a model and show how close they really are. Remember, there's a key element to all of this, which is almost all of these models contain the tiered or layered model at the very core of it. So, the starting point is already from the very start much different than the current WHOIS. So, there would be a set of data collected and then a different set of data publicly made available. And of course one of the key elements as we look across these models is how that information – the information that's not public – would be provided to those who have a legitimate purpose for the use of that data. We'll make both of these, this document and this graphic and the

document that we're going to show you next, available after this webinar.

Let's go to the graphic and we'll start to talk a little bit about [inaudible] show all of the different elements that are being measured. This will be very hard to see I think just based on the scale of it in the Adobe room.

I want to just point out a few things about this. What's the purpose of our doing a paper like this? We're seeing really a fantastic response from the community, a lot of very skilled and complex responses through the models and the comments and we wanted to make sure there was some way to show comparisons across it both in the grid of how they fit, but also in comparing individual elements of it.

So, with this matrix, we're trying to show a direct comparison between the various models and what elements of each of those models change across some of those key factors. The goal of this is to show not the differences, which are significant, but actually begin to show the common approach that many of them have because we believe and are encouraged by the submissions to see that there may be a way to take us toward a single approach to WHOIS and WHOIS compliance as we go through the next phase of the analysis and the selection of an interim model.

Another really important [inaudible], as you start to look at this data, don't expect all of it will be correct. So, we've done our best in a very short period of time to synthesize it, but literally every time we look at it, we adjust something else and we would appreciate and hope that you will look at the individual models you submitted, the ones that you

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care about or understand, the ones that you don't, and make sure we're collecting information in the [metrics] in the best possible way, so that we can be as correct as possible in making an analysis from the collected and collated data.

So, [inaudible] of what's on this the five GDPR compliance models have been proposed by the community. All of those are included. We've also included the three models, or four depending on how you count them, submitted into ICANN proposal. So, the 1, 2a, 2b, and 3. As we said before, one of the critical elements is how these are, although different, they're all coming from the same base and they're all centering around a single type of set of [matrix] information.

One of the key points is layered tiered access, but the second one is that we're seeing that most of the models now support a continued collection, transfer, and escrow of the full thick WHOIS data. Now, there are some outliers and you can clearly see that, but the majority of the submitted models now are approaching it from that angle.

The other thing to realize is we've not received indication from the [DPAs] yet that we need to approach the full thick WHOIS model, so the principle that ICANN started with is that, if possible, we should remain as close to the current WHOIS model as we can, recognizing that some elements of that model might not be consistent with the GDPR.

What haven't we covered? The areas where we think there could be more discussion, although there's a common approach emerging on some of the elements, we also have a breakdown and concerns about whether these changes would apply only to the European economic

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area or whether it would apply globally. That's still a pending question and an important one. And whether the interim changes should apply to registrations of natural persons or registrations of both natural and legal persons, and that's an area of focused discretion in some of these models and comments.

We think that there could be more attention and more analysis around whether or not the registrant e-mail address would be included in the public WHOIS. That seems to be a variance point across many of the models as well.

Again, just to repeat the purpose of this [inaudible] paper is not to be conclusory or to point to a specific conclusion. It's to make sure we're capturing the differences, we're capturing the similarities, and trying to drive it toward finding a final interim compliance model. So, we really appreciate any thoughts or suggestions that you have about how to improve this, what we might be missing on it, what might be inaccurate or incorrect, or what could be perhaps a data point that we've not yet captured across.

With that, I'll pause, and I think we could go to questions.

THERESA SWINEHART: Thank you, John. As a reminder, we will answer questions in English via the Adobe chat room. We also have interpreters who will translate the webinar's questions and answers whether they're in Arabic, Chinese, English, French, Portuguese, Russian, or Spanish. If you have questions, you still have time to type your questions into the labeled box: submit questions here. We will make every effort to answer questions in the

allotted time. As a reminder, a recording of the webinar will be made available and posted on the ICANN's data protection privacy section of our website. Should we run out of time or if you have additional questions after the webinar has ended, please e-mail gdpr@icann.org.

Our first question comes from Thomas Rickert, ECO Association. Göran will answer that question.

GÖRAN MARBY: Hello, Thomas. The question is: "Why does ICANN only engage bilaterally with the Article 29 Working Party? Why are the contracted parties not invited to the table?"

The last six months, I encourage everybody to have their own context with the Article 29 group. I think I've gone on record several times. I thought it was important for all parts of the community, contracted parties, civil society, intellectual property, to have that context to be able to tell their version of their reasoning behind their views on GDPR.

When people have asked me, I help with contact names, but I don't think it's proper for me at ICANN Org to represent different parts of the community. The discussion we're having with Article 29 is really to channeling your questions that we got from them. If you look at this [matrix], for instance, we presented today you'll see there are some questions that need to be answered. We've tried to build up a good relationship with the Article 29 from ICANN and ICANN Org. But, I hope that you have been in contact by [inaudible]. I think that would have been very helpful and very [inaudible]. Thank you very much.

THERESA SWINEHART: Thank you. Our next question comes from Ashley [inaudible]. Her question is: "Which models have received the most support from contracted parties? Who are actually liable for the data being processed? I know the ECO model has received wide support from contracted parties and this wide base of support should mean that the model is given more weight in ICANN's consideration."

GÖRAN MARBY: We don't really think about this as a popularity contest because we're actually talking about being compliant to the law. At the end of this, which we talked about for the last six months, we are in the unusual circumstances that I, as the CEO of ICANN, have to figure out a way how ICANN Org can be compliant with the law.

We have constructed a process for input of that and I hope we've been transparent in that. Some people think we move too fast. Some people think that we move too slow. They're probably right, both of them.

The thing is that what we're trying to do now is to get the best legal discussion out where we have been trying to look at the different components of the different proposals, so we [inaudible]. Remember, that's also a part of the reasoning why we can have a WHOIS system in the first place. The user cases, the requisite for the law that you have to have a purpose on that. [inaudible] helped a lot with that. It creates a legal guidance for us to perceive, but is not a popularity process and it's not a negotiation in that sense.

With that said, over the last couple of weeks and months, have engaged in several discussions, if I may say, with different parts of the community that over time has for a long period of time not really been on speaking terms. One of the things you can see in this documentation we're sending out is that those parties are today much closer than might things. There are things to be discussed. I asked you to come together and discuss those issues. I will be … I'm very much in favor if the community can agree on the last parts of this, and you moved a long way over the last six months. We will be very, very thankful and that will be important.

So, it's not a popularity within different parts of the community, but we would be very popular [inaudible] if you agreed [inaudible]. Thank you.

THERESA SWINEHART: Our next question comes from Taylor RW Bentley, Canada GAC. "Is the GAC model plotted on the graphic meant to represent the proposed hybrid outline in the GAC's most recent comments?" John?

JOHN JEFFREY: Yes. This is an effort to capture the elements that were submitted by the GAC and their comments. I believe they called it model 4. So, this is an effort to capture the elements of that. Specifically for the questioner, if you see elements of that that don't look like they capture that, we'd be very interested in making corrections. Thank you.

THERESA SWINEHART: Our next question comes from Thomas Rickert. "Why does ICANN continue to only look at disclosure of data? The collection of data and other processing also requires analysis as recently pointed out in the letter dated January 29th from the European Commission." John?

JOHN JEFFREY: If I understand the question correctly, it makes an assumption that's not the case. So, we're attempting to not just look at collection of data, but we're trying to look at the whole spectrum of how the WHOIS information is collected, how it's used, how it's published, how it would be accessed by parties for the portions that are collected but are not published.

THERESA SWINEHART: Our next question comes from [inaudible] Abril. "Can ICANN confirm that registries have negotiated a different WHOIS output with [NPA] and with IC?"

GÖRAN MARBY: What they negotiate with other ones I'm not a part of. Maybe that question should be raised to the people actually doing negotiations. With that said – and we are in part of this process, again, it's a compliance issue for ICANN Org. We are not talking about policies here.

We said many times, and I'm going to repeat myself. It's important that we [inaudible] talking about is compliance, [inaudible] law in Europe but also with the [respect] of our contracts. We cannot … Local law always supersedes our contracts. That's why it's a compliance issue for us. I

think it's extremely important, but that's more of a personal view that the community has to continue the important policy discussions about WHOIS system on the side of this. That's why we call this interim solution, until the community continues its work about WHOIS policies that is already happening with the community.

THERESA SWINEHART: Thank you. Our next question comes from Michele Neylon. "Is ICANN going to acknowledge that it is a data controller?" John?

JOHN JEFFREY: Yeah. There's never been a question about whether ICANN is a controller. The question is about how ICANN is classified as a controller. There are different types of controllers. There's joint controllers, co-controllers, etc. One of the things to understand on this particular point as you look into how we would classify ourselves or how the [DPAs] might classify us is that ICANN has factual control and is a data controller only for exceptional cases. For example, audits, inspections during compliance, transitioning of domain names in places such as that, which are someone who requires through our contracts with you, our contracted party. The use of that data.

But, it's also important to realize the registries and registrars and ICANN have distinct and different purposes in dealing with the registrant data and that there's no overall or joint determination of the purposes and means of the WHOIS services among registries, registrars, and ICANN.

THERESA SWINEHART:	Thank you. Our next question comes from [inaudible]. His question is, "Can we still submit a model? Negotiating with [DPAs] has taken some time."
GÖRAN MARBY:	We are getting closer to where we have to make a decision. I think we will give time. We continue the discussions with the [DPAs]. We are also sending a letter to the DPA's Article 29 for recognizing the fact this will take … Whatever the solution will be, take some time for the contracted parties to implement.
	Any input on the data received, but it's really hard for us to say that we can take new things into account. As I think JJ mentioned, we received close to 80 comments and different varieties a couple of days ago. My team is working around the clock really to break down.
	We have received very good comments. I think that always [inaudible] that's important, but right now we have said to the community that we stop that [on Friday]. We are analyzing things and we're getting closer to where we have to make the decision. Thank you very much.
THERESA SWINEHART:	Thank you. Our next question from Maxim Alzoba. "What was the reason to exclude registry, registrar, IP from publishing? It is not [password]. Just alphanumeric entry unique for that TLD."

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JOHN JEFFREY:

I'm not sure I understand the question exactly. If you don't mind perhaps resubmitting it, we can come back and answer. It just disappeared from my screen so I can't see it anymore, but I think there's an element of the question that's implying that we've made decisions about it and we're still interested in your input about it.

THERESA SWINEHART:

Thank you. I'd like to remind people, when they ask questions in the chat room to please start with the word "question". This way, we know fully that you are asking a question. Thank you.

Our next question comes from Maxim Alzoba [inaudible]. "Does GDPR recognize special role of LEA, the law enforcement agencies, outside of EU in their respective jurisdictions on their soil? Usually, they are exempt from some of personal data protection laws locally and local law enforcement, non-EU. Add legal requirements and the clarification to the question is are they valid reasons for companies to collect data?"

JOHN JEFFREY:

Thank you for the question. I believe it's somewhat complicated by the fact that GDPR is attempting to put a set of rules around the collection and use of data. In this particular case, where there could be a legitimate use related to a law enforcement agency outside the jurisdiction, we would expect that there would be some recognition of that. But, that's a question really for the [DPAs] in the end.

But, one of the things you'll notice in some of the models that are being submitted is that we're looking at ways that we could have a mech for

the display of non-public data that would be included in the WHOIS for law enforcement agencies that were seeking to gain access for a legitimate purpose.

THERESA SWINEHART: Thank you. Our next question comes from Steve DelBianco. "Do you expect specific guidance from the Article 29 Working Party regarding WHOIS?"

GÖRAN MARBY: The word specific could mean many different things. If you ask for specific, the answer is no. It's built into the system, and I'm saying this with all the respect for the Article 29. The [DPAs] cannot give specific advice before they make a decision. It's actually against how they do things. It's also against the law.

The why we're dealing with this is we were building a relationship with the Article 29 group where we share with them and we are trying to be as neutral as possible. That's why we also asked you to contact the Article 29 group to give the different perspectives of the law.

That's why we say we can continue the dialogue with them to provide them with as much information as possible for them to know more about the WHOIS systems, our policies, our [inaudible] working with them. So, the word specific I would say no.

The sort of interesting thing is that they cannot do that today. But, after the new law is fully in place, they can do much more because Article 29 group is … I'm hesitant to say it, but it's sort of voluntarily cooperation

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between the [DPAs] in Europe. That will be formalized with the new law where they can issue more specific guidelines, something I think most people think is a great idea.

But, on the other hand, we have to make some decisions before the law is enacted. That sounds like a Catch 22. Thank you.

THERESA SWINEHART: Thank you, Göran. Next question from [Arnad]. "What is the current ICANN timeframe for GDPR compliance?" John?

JOHN JEFFREY: Very important question. We're aware that the GDPR law is not new in its whole. There are elements of it that are already part of the law and this is why it's an important consideration to move as quickly as possible, but the law which requires certain elements relating to – and if we get certain rights to the [DPAs] regarding enforcement changes in May. So, the timeline for compliance will be tied into the May timeframe. We'll be looking at an interim model for compliance toward the May timeframe, but we're currently in discussions with the contracted parties and others about how we could enforce compliance in that time window, particularly in light of the fact that we're still trying to find the appropriate model.

We're also intending to communicate with the authorities about whether there could be additional time before enforcement of the law might be applied to WHOIS, but we have no direct answers and don't expect them in the short run on those questions.

THERESA SWINEHART: Thank you. Next question is from Paul McGrady. "What is the legal basis for any argument that the GDPR should be effective outside of domain names in the EU zone or for domain names anywhere that are not registered?" I believe that's what he means to say "By natural persons." Göran, John?

JOHN JEFFREY: There isn't really a legal basis if the question is very narrowly tied to are we caused to require legally persons data outside of the European economic area to be restrictive. There is a complicated set of issues that come around this in terms of how it can be maintained as a system by both the registrars and the registries and how ICANN could create a compliance model around that. So, those are some of the questions that are in the current model discussion and that we are seeking additional input about.

As I outlined at the very beginning when we said there are still some key questions that we have to deal with in terms of looking at an interim compliance model, one of those is who it applies to and how the system could take that in.

GÖRAN MARBY: Just building on what John is talking about is that if you take a look on where we're going to publish that now, you can compare the different models, you would see that the way we set it up is you can sort of take out and put in.

Just to give you an example is if you look at the ECO model and compare that to our model 2b, they were actually quite close in some features because in the ECO model some things are optional, and if they became a standard feature, in particular, transfer registrant data to registry for a variety of purposes, including compliance with [inaudible] policies such as inter-registrar transfers, thick WHOIS, etc., that would actually bring them together.

So, if something is called optional in a model, we have to take it as a standard. It's important you can actually pick and choose. So, think about it as a pizza. Our model starts with it's [inaudible]. You take away the pineapple, it actually ends with another [inaudible] with another name. That's how close the different models are. I think it's good to recognize that. Thank you very much.

THERESA SWINEHART: Thank you. Our next question comes from Chris Lewis Evans. "What is your current timeline for publishing the interim model?"

GÖRAN MARBY: We are working 24 hours a day, more or less, and [inaudible]. Our planning is to come up, distribute our position how ICANN Org will be compliant and the effect of that on our compliance … Well, in the middle of [inaudible].

The reasons why we have this timeline is because we also continue the dialogue with the Article 29 group to make sure that we are … Not being sure, but knowing that we're on the right track. We're also trying to give

some time to civil society, to intellect property, to anti-abuse, to cybersecurity, to contacted parties, to have dialogues in between themselves because we're still hoping, because now when we see how close we are, [inaudible] on something that's been so heavily debated that there could be a bigger agreement between the different sides of the community and this important issue.

But, we are well aware that we have to publicize a position in the next coming weeks.

THERESA SWINEHART: Thank you. Our next question comes from Jim Prendergast. "Will contracted parties have to use the model ICANN chooses or will ICANN also approve community submitted proposals that can also be implemented? And, if they can implement community developed ICANN approved proposals, what is the timeline for ICANN approving this?"

GÖRAN MARBY: This is a very good question, Jim, and I want to answer it. No. There can only be one model. It's something that we've been talking about for a while. First of all, this is not a policy. This is an interim solution because of a European law. The way we set things up is that the policies can never supersede any local law. So, [inaudible] model for ICANN Org to be compliant and for [inaudible] reasons we're going to use the same for our own compliance.

The only way that could happen after that, that you come up with your own model, is that in accordance to the ICANN principles can show

[inaudible] which is very hard in this environment, have a different [ID] than the other [DPAs]. So, I think for transparency and for clarity, it's going to be one model.

Also, remember that I'm bound. My Bible. And I'm not saying it's anything else. I'm bound by the policies set by the community. There are policies set by the community how to address the WHOIS, for instance, in the contract. I'm not the person who can go away from that. I'm actually quite happy that to a lot of extent the comments we've had have been understanding the differences in compliance and policies. Most of the comments have actually been about compliance with our contracts rather than try to drive a bus through the policy process. It's been very, very good and I'm very happy about the quality of the answers we've got in.

So, I hope that the community will enhance its work, in its policy work, to a [inaudible] GDPR [inaudible] effect. We will see this many times over the next couple of years where privacy laws, data protection laws and other ones will have an effect on our ability or your ability to make policies. One of the things we are working on internally is to make sure that we can engage with the community or help the community and inform the community as much as we can when [inaudible] happens around the world.

For instance, there is proposal for e-privacy legislation in Europe that we probably need to be aware of a little bit early in the process. Thank you.

THERESA SWINEHART: Thank you, Göran. Our next question comes from [Jan McCurler]. His question is, "Which model is ICANN recommending for registrars?"

JOHN JEFFREY: Just to remind you where we are in the process. We've currently collected these models including the five community ones, the three or four ICANN models. We've had over 65 comments. We're attempting to collate that and present that to make sure we understand what's been submitted from the community and that we understand the differences and similarities across those. So, we've not selected a model for the registrars. We're in fact asking for additional input to be able to provide that interim compliance model before the community would go back and look at policy processes or other things to form a more formal proposal in the future.

THERESA SWINEHART: Thank you, John. Our next question comes from Michael Palage. "Has Dan Halloran, as ICANN's Chief Data Protection Officer, undertaken a [DPIA]? When will Dan in his capacity as CDPO participate in these public sessions?" John?

JOHN JEFFREY: Yeah. I know, Michael, you've asked this question before, so I know that you know the answer. I'll answer it so everyone else knows, too. Dan's role inside the company as Chief Data Protection Officer relates to not being the data protection officer for all the registries and registrars in the contracted parties, but relates specifically to ICANN the

organization. So, his focus has been primarily geared toward all of the systems that ICANN has inside in making sure that we're also meeting compliance requirements as it relates to those.

I think there's another question down the queue that becomes part of this, so I'll join them together. I think Dean Marks had asked, "Does ICANN intend to request a formal DPIA from one or more of the DPAs for selected interim model as recommended by Hamilton?" I think part of the question is are we looking at DPIAs? Are we approaching that? If you remember, part of the Hamilton memo outlined that there are certain circumstances where we may benefit from filing a DPIA, but that isn't necessarily the most beneficial thing to do at this particular time. So, we're continuing to evaluate that and we'll look very carefully both at the community's advice on this matter or Hamilton's advice and how we would go from an interim compliance model to a more formalized model and whether there would be an opportunity or a benefit to go through [inaudible].

THERESA SWINEHART: Thank you. Our next question is from Keith Drazek. "Wouldn't ICANN be considered a controller through its role approving and enforcing the compliance model?" John?

JOHN JEFFREY: Keith, I appreciate the question and I think there continues to be confusion when I say ICANN is not – we believe ICANN is not a joint controller. I think that's been confused to say that ICANN is not a controller of data. I'd like to be really clear. We understand that ICANN

has a role in this both in requiring through agreements that the registries, registrars, and the community participants, have a view on how WHOIS works inside of our system and is applied through contracts.

There's been a long history of how WHOIS works both before ICANN and through the ICANN contracts. But, as it relates to ICANN as a data controller, we're just questioning whether the designation of joint controller is the right term, and there could be a determination that we are a joint controller, but we have a question about in light of the way that ICANN uses data and [inaudible] different and distinct from how registrars and registries would use that data. In particular, ICANN's use of that data for audit, inspection, transitioning domains. We think there's distinct similarities in how you use it, but there's also very distinct differences.

So, we know that we have a role as a controller. The question that I'm raising and the question that I think still has to be evaluated as part of this overall is what type of controller is ICANN and how much do you want us to be controlling the data that you collect and what would be our role in that data?

We assumed that some of the data that is collected by registries and registrars are used for purposes that are outside of the way that you would want ICANN to control that data, and so there may be a role for some sort of controller agreement or relationship at some point as we go through the models.

THERESA SWINEHART: Thank you, John. Our next question comes form Ashley [inaudible]. "How does ICANN plan to proceed if its chosen model is not deemed by contracted parties to conform to GDPR requirements? Meaning, how will ICANN proceed if there is a conflict between ICANN's legal assessments and the legal assessments of contracted parties?" Göran?

GÖRAN MARBY: I can start and then lead it over to JJ. Could I go back on something? One of the reasons why we're presenting this chart is that you would see think about tit's not that easy to say that you will accept or not accept a model. Actually, most of the models contain the same solution to the problem. Six months ago, or for a long time, it's been [inaudible] tiered access. The difference between the models are not that big, which is one of the reasons why we point that out.

There is a big line between the current version of WHOIS and what will be the new version of WHOIS in the [compliance] [inaudible]. That is tiered access or layered access. That is a big difference from the current WHOIS system.

So, to what extent are we talking about? Which data is going to go in the system, how this information is going to transfer within the systems, within the registrars and registries, and how are the accreditation system actually going to work in practice? How are we going to accredit it, organizations into the system?

Apart from that, it's very hard to say choose one model because you might say that I choose one model and we add something or take

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something away. You eat sort of a pizza, you end up with something else.

My hope is, of course, that everybody will understand why we [inaudible] certain components and how we tend to solve that. I'll answer the questions after that. That's the model or that's what we're going to enforce from compliance because that is what we think [inaudible] with all the input we've had and [inaudible] process we've had is a sweet spot, if you excuse my language, between compliance with the law and compliance with the policies set by the community.

That's where we're trying to find that and that's why we're giving you the time to give us input. That's why we have the dialogue with so many to find those.

But, if we go back to a discussion that model is better than the other model, we sort of go away from the fact that there is a lot of agreement between the models, which we're trying to show with this documentation. JJ, you want to add?

JOHN JEFFREY: Yeah. I think what Göran is saying is we'd like to avoid the hypothetical you're calling out. We don't want to be in a position where we're forcing the model on contracted parties that they don't like or understand.

On the other hand, we can't guarantee that every contracted party will agree with our approach and we can't guarantee that every contracted party will believe that they're compliant with the law based on the

approach that we select. So, we will have to consider how a conflicts of law provision is dealt with and where we land if there is a disagreement about compliance with law as opposed to disagreement about how the model applies more generally.

THERESA SWINEHART: Thank you, John. Our next question comes from Jeff Neuman. "Will ICANN assist contracted parties in the case that the ICANN interim model is deemed to be non-compliant and there is an enforcement action taken?" John?

JOHN JEFFREY: So, we assume that we're all in this together in terms of ICANN being a controller of data and you also being controllers of data if you're a contracted party. So, yes, absolutely we're in this discussion. I'm not sure what the word assist exactly means, but we're certainly going to be participating in that discussion and working with you in terms of making sure that our model remains compliant and consistent with the law and with where we can the interpretation of the [DPAs].

THERESA SWINEHART: Thank you. Our next question comes from [inaudible] from [CORE]. "Some registries such as [dot-cat] already have an EU data protection legislation compliant system approved by national DPA and by ICANN. We understand that no interim model would apply to them. Additionally, could that model be taken as the solution for other registries in the same jurisdiction?

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GÖRAN MARBY: To say that something is approved from a [regular] perspective that's never been legally tested, the only way to test a law like this or any law in Europe is that it actually goes to DPAs. It goes out and says that you're wrong. They never sort of go out and say that you're right. Then, if you don't like that, you take that to court. I don't know if [dot-cat] have gone through that process. My knowledge right now, but I could be wrong, is that the closest we have received from a country is from the Netherlands, which we received I think at the time at the [inaudible] meeting we had, which has been a very good guidance to our work as well.

But, you have to also look into this from an overall perspective when it comes to ICANN. I'll continue to talk about the policies set by the community, as is an important point. But, there's been a lot of development just over the last week. I would like to point you, for instance, to the letter from the GAC to us, with input and also proposals for their own model, where the governments of the world have come together and through the GAC has provided us with a good written reasoning why there could be a WHOIS system. That's fairly important, as we didn't really have a WHOIS … A general WHOIS policy before. Bits and pieces of it, yes. Bits and pieces [inaudible] contract, but not this balancing between the right to privacy versus balancing the need for information, for instance, police forces.

We can also add information we received from the US government and also from the three commissioners about the reasoning behind there has to be a WHOIS system. These are important things going in a legal

way because it proves a point. I don't know if JJ is now going to look strange with me. A sort of protection for the contracted parties, where governments have stood up and said this is important.

Also, pointed to the letter we received from the Article 29 group, which we're very grateful for earlier in the end of last year.

So, we are building … With the help of you, with the help of GAC, and the help of governments, we are building a platform for the WHOIS systems going forward. That is what we take into account also when we're going to make those decisions going forward.

But, the other question is I want to emphasize that there is a room for the different sides in this discussion to come together and talk about some of the few remaining issues there is outstanding when it comes to data collection, when it comes to accreditation system, when it comes to some extent jurisdiction, because I'm also knowing that, for instance, the contracted parties knows more about the practicalities of implementation of this and the different user groups including civil society has more knowledge about the [inaudible] with this information.

So, I'm again reaching out. I will try anywhere or go anywhere if I'm needed to facilitate such a discussion and provide the expertise and knowledge we have about it. I think that the community has come such a long way in just a couple of months that I hope there will be bigger agreement. If the different parties doesn't agree, it sort of forces me to make a decision which I, to some extent, think that the community is better off finalizing. There are few things left. Thank you.

THERESA SWINEHART: Thank you, Göran. At this time, I also want to say that we're doing a five-minute warning. We can take a couple more questions, but as a reminder, if we can't get to your question, you can e-mail to it gdpr@icann.org. Thank you.

Our next question comes from Bradley Silver. "After the interim model is chosen, if a registrar believes that their implementation of it will result in non-compliance with GDPR, will they be entitled and/or required to invoke the WHOIS conflict procedure, or do you anticipate that the compliance obligations will continue to be suspended for a period of time." John?

JOHN JEFFREY: Yeah. So, just as a reminder, no matter what interim model ICANN selects, we cannot force contracted parties to violate laws. So, at the very heart of this is the principle that ICANN can't and won't make you violate a law. So, if there's a determination by a contracted party that they believe they're in violation of the law, we would ask them to go through a process to provide information about that to prove through documentation as we've done with the conflicts policy that there is an application of that law that you believe would be applied against you and would make you unable to conform to your legal obligation inside of our contract.

So, how that is going to be best maintained as part of this discussion, we're certainly interested in input on, how the conflicts policy would be utilized and what a process might be for that as it specifically relates to GDPR.

But, if you have concerns right now or you have indications and evidence that a model, the model, as we move towards an interim compliance model is incorrect, we want that information. We want to understand it and we want to evaluate the input that you're receiving that indicates that you would be violating the law.

THERESA SWINEHART: Thank you, John. Our next question comes from [inaudible]. I'm sorry. I'm caught up now, I apologize. Our next question is coming from [inaudible]. "If I don't believe that topics chosen by ICANN on a pizza, that was the reference, are implementable, can I as a registrar, make my own pizza with ingredients from each of the pizzas proposed by ICANN?"

GÖRAN MARBY: Thank you. My communications department has already looked at me as knowing less things about communication, adding a pizza discussion to this one. So, I will take the [inaudible] and say that I will not comment on pizzas, but I will of course to my communications department's delight.

[inaudible] there is a pizza. The content of this pizza is sided by the community. There are different [inaudible] different parts of this on that pizza. We tried to take away as few as possible toppings on that pizza still and want to be compliant with the law. I with this hope that I will figure out something else to talk about than pizzas. Yes. Because I think that will be another rabbit hole I'm going down. Sorry about that. But,

think about it. [inaudible] something else. I will ask communications to come up with a better analogy. Thank you.

JOHN JEFFREY: I want to just add, as a big fan of pizza, I like the analogy. I think it's a good one for us to understand this. But, this is your time to comment on the topics. This is we want your input on what those toppings are, how we're going to form that interim compliance model. I think after it's ordered, it gets harder for all of us, especially the contracted parties who are going to be trying to implement these models.

THERESA SWINEHART: Thank you, gentlemen. Our last question comes from [Richie Fundon]. "Would ICANN not agree that any community developed policy that would violate the law if implemented or continued is actually void?"

GÖRAN MARBY: Thank you. That's the perspective we're in. The policy set by the community is deemed to be in violation with the GDPR. That's why it's a compliance issue. That's the whole exercise we're going through. If you, again, look at the [inaudible] that we have on the Adobe room right now, you would see up in the right corner is the current WHOIS and then you see a line and that line actually means a tiered or layered access to the system, which means that our fourth process right now, [inaudible] for a while is that the GDPR will have an effect on the WHOIS system. We said the next step of that will be tiered or layered access.

We look into the purpose of why we have a WHOIS, the user cases of the WHOIS.

So, I wouldn't say they're void because the policies still exist. But, as I said in the beginning of this call, I think it's important for the community to come back and look at the policies under the impact of GDPR and other parts of legislation. But, that lies in the hands of the community and not ICANN Org.

JOHN JEFFREY: The only thing I'd add is the question [inaudible] some things, that there's a community developed policy on WHOIS and that this has been implemented in some way or would be implemented in some way. One of the issues is WHOIS is much older than ICANN. Historical origins of it come to us and we have applied it through the agreements. But, there isn't a policy that's being voided. There's a set of practices and contractual terms that are no longer consistent with the European law. That's why most of the models are already approaching one of the fundamental elements of it, which is not all of the collective data may be shunned.

So, now we're at a point where how do we take that practice, that WHOIS policy that's been [inaudible] community developed policy, but how do we take that policy and transform it to something that is meaningful and useful for the legitimate uses that have been identified through this process of that data?

THERESA SWINEHART: Thank you. That was our final question of today's webinar. Thank you for everybody who joined. I would like to remind you that if you still have questions, you can e-mail them to gdpr@icann.org. We will also be posting a link to the recording and presentation materials on the ICANN data protection and privacy website, section of our website. Thank you, everybody.

[END OF TRANSCRIPTION]