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GNSO EPDP Team Meeting Part 1
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Rafik Dammak: Good morning, everyone. (Ohayō Gozaimasu). Welcome to Japan, to Kobe. And I hope you are enjoying your stay here. But today we are starting serious business and we have several session today for the EPDP team. We send the agenda and the slides this week so you – in order for you to prepare and to be ready for this meeting.

                 But first thing we'll start with is to – since we have Keith Drazek, who is the GNSO Chair, and he will say some words I think from the Council here to – maybe to give us some guidance from the Council and regarding our work in the next days. Please.

Keith Drazek: Okay thank you very much, Rafik. Good morning, everybody. I'm Keith Drazek, GNSO Chair. So yes so as Rafik noted, I'd like to just make a few remarks to perhaps help set the stage for the work of this group moving forward this week. I know you all have seen your agenda. But before we get to that I just want to take an opportunity to publicly acknowledge and thank all of you for the incredible amount of work and the sacrifices that you made over the last six months or more to deliver a final report that is now a consensus policy recommendation to the Board.

                 So I just want to really make this – take this opportunity to acknowledge that on behalf of the GNSO Council and frankly the entire community to

acknowledge the work and everything that you all put into that. I know it wasn't easy, challenging at times, incredibly intense amount of work went into that but the outcome is really quite remarkable; something to be proud of I think.

I know not everybody was pleased with the final outcome but that's the nature of consensus building and the ICANN model at times. So thank you to all of you. And a particular thanks to Kurt at this time who, as everybody knows, has indicated that he is stepping down as chair of the Phase 1 work, going into Phase 2. And I just want to take this opportunity to publicly acknowledge Kurt for his leadership and for the sacrifice and commitment that he put into all of this so Kurt, to you, thank you for all of your service. Thank you.

So with that let me move then to give you all an update of some of the preliminary discussions that we had at the GNSO Council level. If you have not listened to the last couple of meetings, in particular the last meeting, where we approved the Phase 1 final report on the 4th of March, we did then move into a discussion about the real significant importance of Phase 2, the importance of ensuring that Phase 2 and discussions around a standardized system for access to nonpublic registration data is as important as the Phase 1 work.

We all know that the Phase 1 work had a timeline, an externally imposed deadline with the expiration of the temporary specification, but the EPDP was chartered intentionally by Council at the very beginning of this process with a goal towards delivering on a standardized system for access to nonpublic registration data.

So while part of the work is done, and the Phase 1 work is complete, it is now time to roll up our sleeves and get busy with the moving forward to try to figure out how do we transition into Phase 2 most efficiently, effectively and to develop a roadmap or a work plan towards delivering on the obligations of Phase 2 as outlined in the charter.

And so I think obviously there are implementation efforts that need to come from Phase 1 and I know that ICANN GDD staff will be working with the team and with an implementation team to look at the implementation aspects of Phase 1. There are also the components of Phase 2, or sorry, of Phase 1 that were deferred to Phase 2 that need to be addressed. There are questions about how best we structure the work of Phase 2 to be most efficient.

And at some point I think we all need to recognize that as we develop a Uniform Access Model or a standardized system, that there's going to need to be a checkpoint or a touch point to ensure that what we're designing is compatible and compliant and frankly legal under GDPR. And so the earlier that we as a group, that you as a group, can come up with a framework that can be socialized or vetted with legal experts or perhaps a DPA or Data Protection Board, I mean, I'm not expert enough to know who the right person is there, or the right entity, but these are some serious questions that I think we all need to ask moving forward.

So as you all work towards developing the work plan for Phase 2, and this is important, the Council has acknowledged that we are not intending, and we will not reopen the charter for this group. The charter, in our view, is still fit for purpose for this group in Phase 2. We at the Council do not want to interfere in the work that you all have in front of you of designing the Phase 2 work.

We may send guidance, we may send additional recommendations or considerations to you as you continue to work along these lines, but our view at this time is it is still completely within the remit of the EPDP Working Group or the EPDP team to be designing your own work plan for this next phase.

So I'll just wrap up, Rafik, by saying I think we at the Council and I think we in the community recognize and are committed to delivering on the Phase 2 effort. We recognize that there is an urgency associated with it even if there's not an externally imposed deadline and that we as a community need to keep

up the momentum and perhaps not at the intensity or the crazed pace that Phase 1 had because of the externally imposed deadline, but we can't simply let the momentum slip away, we've got to keep up the, you know, the hard work and the effort and the collegiality that got us to the delivery of Phase 1.

So Rafik, with that, I'll stop. I'm happy to answer any questions but this is your meeting, back to you.

Rafik Dammak: Okay thanks, Keith, for this and clarifying kind of the thinking from the Council and the expectation to the EPDP team. And so I think, you know, that also setting the scene for us and what we are going to do today and the coming days with regard to the work plan and we hope that we get that done quickly.

So let's see if there any question or comment? Okay. I don't see any so thanks again, Keith.

Keith Drazek: Thank you.

Rafik Dammak: Okay.

Keith Drazek: Good luck, everybody.

Rafik Dammak: Okay, so that's it, so we can I think move to the – give the overview of the agenda for today. So I think can we show that or? Okay. Okay, what we can do without any technical issues. So everyone please, log into the Adobe Connect so you can see the slides.

So we can go I think to the outline of the agenda that should be the next slide. Okay, so we are taking now that first 30 minute for the welcoming and to explain about the objective for this week. After that we will have the tour de table to hear from the different group in the EPDP team so to understand about their objectives, commitment and the expectation for Phase 2. I think

that will help us in term of to work on the work plan and to see the different position and perspective around it.

After we will have the lunch break and I think it will be here, we'll give later on in term of housekeeping information about the catering. From – how to say – 1:30 we'll have the overview of the topics in Phase 2. Just as a caveat, this is I mean, how those topics are ordered doesn't mean that kind of the order we will follow but that just that we how they are listed I think in the charter. So first we will start – the system for standardized access to nonpublic registration data, and then the annex and last the issue deferred from EPDP Phase 1.

What we will have later and I think that's kind I believe the most critical part of our work today is the brainstorming exercise. We will give more details how we will conduct that and also the question that we are trying to answer. Based on the input we will get from the brainstorming exercise we'll use that for the plenary session trying to see if we have any preliminary agreement on the different topics that we are asking about.

And then we'll have a meeting I think with the GDD team for the implementation status update. So we will touch base with them. And I think they have more question to us and so we'll see how we will maybe to set the scene and just to have a common understanding with them about the implementation. And hopefully we have kind of for the team a social gathering after that. Okay. Next slide.

Okay, so also we will have a meeting tomorrow at 5:00 pm and this will be with the Technical Study Group on Access to Non Public Registration Data. So that group I think they just published their report yesterday, if I'm not mistaken. And this is an opportunity to discuss with them – say very focused on kind of the technical side and we would expect they have a question to us but also to – it will help us to understand more about if there is dependency to our work for Phase 2.

And then Wednesday at 10:30 we'll have another meeting for Phase 1 implementation. So we'll continue the discussion about the implementation and try to see if there anything, I mean, about the next steps. And the last meetings will be on Thursday at 8:30 and we'll try bringing back what we got as input and try to see if we have to start to kind of shaping a draft work plan and the approach that we will – either we have something that's kind of that we need to refine or just we will need to continue the work on.

And also to kind of discuss any input that we will – we would get during the week either from the Council or the meetings like with the Technical Study Group. And last we will discuss about the next steps and how we will continue the work. Okay, so any question or comment? Okay, that's good.

So other than that so Marika, do you want to add anything or – okay. So if there is no question and I think we got this quick overview about the agenda but we can, you know, if you have any question you can ask later. And so we are I think ahead of time but let's maybe move on to the next agenda item, which is about the tour de table.

I know maybe we made the request quite late but the idea is really to hear from the different group if you have any statement and you want to kind of set – to indicate your expectation and commitment for Phase 2. Can we move to the next slide? Yes.

So we put, like here, maybe we can go with this order for those who are going to speak for their groups. So let's maybe can start with the Registry Stakeholder Group, so who will be the volunteer or the speak – spokesperson for the Registries? Beth? Okay, thanks.

Beth Bacon: Good morning, everyone. This is Beth Bacon for the record. Just because it did come out a little bit late we just have a short statement to respond to the request for commitments. The Registry Stakeholder Group is committed to

participating actively and in good faith to develop the appropriate consensus policy recommendations around access to nonpublic registration data per our charter that Keith has noted is fit for purpose and to ensuring such recommendations provide a clear path to compliance with the GDPR as well as being commercially reasonable and implementable to take into account our differing business models and not inhibit innovation as well as flexibility.

I think we also agree that there certainly is a need for timelines in a work plan but we do want to note that because the request did come out a little bit close to the start of the meeting we would like to be able to have the flexibility to go back to our stakeholder groups and ensure we have the right resources and agreement once we talk about the timelines and work plans. Thanks.

Rafik Dammak: Okay. Thanks, Beth. Okay, so I see that James wanted to, maybe ask question? Yes, please go ahead.

James Bladel: Not a question but I'm prepared to make a statement on behalf of the Registrars if it's the right time for that, Rafik?

Rafik Dammak: Yes, the right time you were the next.

James Bladel: Okay. Thanks. So very similar to Beth's intervention on behalf of the Registries, the Registrars are noting that there is a commitment to the work and to the necessity of a successful outcome of Phase 2. However, we had significant reservations from our EPDP delegation about the ongoing commitment particularly towards the end in the last several months of Phase 1 that that was unsustainable and certainly stressed the limits of what could possibly be asked of a volunteer-led organization.

And to highlight that or put a point on that, we have lost one of our members already who has stepped down due to the time commitment and we're in the process of filling that particular vacancy. Emily Taylor has said, you know, essentially she's out for Phase 2. And I think the rest of us have said that

conditionally we will continue provided that we have some assurances that it won't look like it did at Phase 1 particularly around the holidays.

So I think that where we stand. As always, we want to arrive in a system and a process that's predictable, implementable, scalable, that isn't addressed to individual interest needs but it can operate at the scale and speed of the DNS industry and of course as always that gives us the necessary legal assurances and regulatory assurances that by fulfilling our obligations under that system that we won't run afoul of the various authorities that might seek to sanction us.

So I think that's aligned fairly similarly with what the Registries have said and shouldn't come as a surprise to anyone here in this group or who's listening to the call. Thanks.

Rafik Dammak: Okay. Thanks, James. Okay I think Ashley want to comment? Yes, (unintelligible). Okay. The next is the ISPCP.

Thomas Rickert: Thanks very much, Rafik. And hi, everyone. I'd also like to go on the record on behalf of the ISPCP and thank Kurt for his efforts and tireless work on this so that's been great and great experience to work with you. The workload is an issue, time is an issue but the ISPs are committed to working on Phase 2 and driving this entire process to consensus.

There is no formal ISP position on what is to come in Phase 2 but I guess that, and this is me speaking in personal capacity, I think in Phase 2 it's more important than it was in Phase 1 to get legal support with the work that we're doing because Phase 2 particularly when it comes to the access model as we call it, or as it's called in the charter, i.e. developing criteria based on which parties can get access either on a semi-automated or automated way, that's unchartered territory.

So that's a concept that's not enshrined in the GDPR which is the basic legal source that we're looking at and therefore I think it's imperative for us to either get guidance from the European Data Protection Board but also from our GAC representatives. And I think it's important to get feedback that is not only asking for us – our group to deliver certain outcomes, right, that it's desirable to have access to certain data to – for the reasons of security and stability and all that, but what we need is a robust rationale as to how we can make things work legally because that's something that where I think even if our group was solidly composed of lawyers we wouldn't be able to do the job. Right?

Because this is something that's really new and I guess that we all want to make sure that this is – the system is run in a compliant fashion without the risk of any of the players being sanctioned including the requestors that also run the legal risk of obtaining data illegally. So I think we need to find ways of interacting with them and getting feedback that we can rely on so that we can build our policy around a robust legal foundation.

The other point that I wanted to make is that our charter, if I'm not entirely wrong, spells out a process of dealing with issues that the EPDP team has with the way consensus calls are conducted. And staff may correct me if I'm wrong but I think we've taken those parts from the standard GNSO charters that if you think that the chair has inadequately determined consensus or any other level of consensus or lack thereof, that this can be challenged vis-à-vis the chair.

And I think what's caused a lot of frustration and irritation is that, you know, we had our consensus call which was done by the chair, the report was then shipped to the GNSO Council and IPC and BC have then voted down the report for procedural reasons, i.e. that there was something wrong with the consensus call. And I think that this is an unfortunate procedural matter that I think we should, at all cost, try to avoid for Phase 2.

Because I'm unclear as to how the Council level vis-à-vis the consensus challenging process in our group would play out against each other. Right? Because I would have thought, you know, had time permitted any of the players to do so that if there is an issue with the consensus call that our group would be using the mechanism that is in our charter and not have the issue escalated to the GNSO Council. Right?

So in an ideal world, the charter related or the consensus call related issue should be handled here and only if it can't be resolved here it should be brought to the Council level. Maybe it's just me. I'd like to hear more views about that. But I think that we need to get clarity on such a point in order to avoid that for procedural matters we're getting the comparable issues with our Phase 2 report. Thank you.

Rafik Dammak: Okay. Okay, thanks Thomas. So we'll continue I think the – to take all statement and maybe if time permits we'll have some discussion. The next are the BC.

Mark Svancarek: Thanks. Mark Svancarek. First I would like to state our appreciation for Kurt and the staff for the Phase 1. I meant all the compliments that I said when we were emailing Kurt after his retirement was announced. Just a minute, I'm getting to my prepared statement. Pardon me, just another moment.

The Business Constituency is looking forward to working diligently and with increased transparency to develop effective timelines and action plans for the completion of Phase 2. We're looking for an expedited timeframe but we recognize that it will not be at the same pace as Phase 1 and that we will need more extensive legal support in order to make progress in a reasonable time.

We hope for a process that provides specificity and resolution of the issues that we raised towards the end of Phase 1. And we look forward to working with you all on that. Thank you.

Rafik Dammak: Okay thanks, Mark. So let's move on to IPC.

Alex Deacon: Thanks, Rafik. It's Alex Deacon for the record. Yes, so the IPC is fully committed to completing the important work of this EPDP as outlined in the charter. As of now the current team is going to continue and we look forward to that but discussions are ongoing within the IPC. I agree 100% of the words of Keith, I don't know if he's still in the room, that this phase is as important, there he is, hi, Keith, as the Phase 1 work that we just completed. And we agree the charter is fit for purpose so I think we're all set in terms of having a good foundation to move on.

On that note, the recommendation of the Phase 1 final report, just only a portion of the issues that we were chartered to address and that challenging but very important issues remained, especially the issue of access, so we look forward to working with everyone to come to agreement on those – that topic.

And again, I think Keith's words were that it's now time to get busy and quickly move onto the important Phase 2 work. And we should work together to set an ambitious but pragmatic, I agree, pragmatic schedule to complete this work. So we're under a little less pressure to complete this work but still get it done in a timely manner. Thanks.

Rafik Dammak: Okay thanks, Alex. So the next is the NCSG.

Stephanie Perrin: Hi. Stephanie Perrin for the record. Firstly I'd like to echo the concerns that have just been stated by my colleagues about the workload. We agree that it's getting a little out of control and we don't really want to continue with that level of exertion as we have under the Phase 1.

Secondly, we haven't completed the details about our team but we're going to continue to serve in good faith as we did the last time. Looking forward to it.

And thirdly, we believe that it's critically important that we do a legal review of the report that we completed in Phase 1 prior to moving forward into Phase 2 just so that we have some baseline of agreement on whether we have actually achieved a report that meets our legal obligations and some pointers to where the pitfalls might be moving forward. So I think that's briefly where we stand but we're eager to commence after a brief pause and rest. Thank you.

Rafik Dammak: Okay thanks, Stephanie. We move to GAC. Yes. Ashley.

Ashley Heineman:. Thank you. This is Ashley with the GAC. So we have spoken as the GAC small group with respect to how we kind of see things proceeding. And I am pleased to hear that there seems to be general agreement that this group needs – this work needs to proceed with earnest. And I just want to highlight in case it's not immediately obvious but from the Whois user perspective I think we've all been working very patiently and constructively in Phase 1 and we expect and at least hope that that will continue for Phase 2.

We recognize that bringing the contracted parties into compliance was of top priority but it's also of critical importance and to address the very legitimate interest of the users of Whois as well. We think that not only should this work commence and take place with earnest but also should have a conclusionary date. We recognize that perhaps not at the exact level that we experienced with Phase 1 but this is still a matter of critical importance and should not be kind of relegated to lesser status and therefore to take more time that's leisurely a pace.

I would also like to note that in terms of process, we hope that we've proven ourselves to all we professional and trustworthy and that perhaps we can revisit how we treat the alternates as we proceed in our work. I think at a minimum revisiting the use of Adobe Connect and just permitting them to also be able to see chat in real time because if you haven't used the alternate

Adobe it goes away within seconds and it's actually quite helpful to see what the chat is.

So again, I hope that we can continue these conversations with the recognition that it is critical and important. I think we also need to look at scope very carefully because it's not clear to me that we need to be developing a technical solution that that work is going on, it's more or less what needs to happen from a policy perspective to enable these systems to be – to develop. So I thank you all for this opportunity. Thank you.

Rafik Dammak: Thanks, Ashley. The next is the SSAC. Okay thank you.

Ben Butler: Hi. Ben Butler. The SSAC is wholly committed to the importance of completing Phase 2 work and is extremely appreciative of the consolations and collaborations that this group made in Phase 1 recognizing that it is sometimes hard fought. We were very much aware that Phase 2 is kind of where the rubber meets the road for a lot of groups, the access discussion has been the looming shadow since we started.

But we're very committed that this is important work and our stance will remain that we want to make sure that whatever solutions the EPDP recommends do not deteriorate the security and stability and hopefully help enhance it and in a way that is balanced for all parties involved recognizing of course that we have to – balance means we have to talk about security and stability, we have to talk about the commercial feasibleness of the solutions and we have to talk about what's best for the privacy rights of the data subjects. So we just want to make sure that all those factors are considered in each phase as we go forward. Thank you.

Rafik Dammak: Okay. Thanks, Ben. So we'll go with ALAC.

Hadia Elminiawi: Hadia Elminiawi speaking on behalf of the ALAC. So our commitment is both to the EPDP team Working Group and to the ALAC whom we represent. So

our commitment to the EPDP team is to continue working in good faith in order to make the work of this group successful and where success is yet to be defined but success I think would be where we reach consensus. Our commitment to ALAC is to serve and protect the interests of end users and as such, we worked to make sure that end users have safe and secure access to the Internet while protecting the consumers and individual rights.

I will jump to the expectations and then talk about the objectives. So our expectations are to work together as a group in order to maximize our joint gains and this is really important, joint gains and not individual gains. And the other point is to meet our timelines, so that a reliable and timely access mechanism is available within a reasonable period of time.

Our objective are, I think, obvious and clear in so based on a robust legal foundation and in full compliance with the GDPR, we are looking forward to developing a policy for an implementable standardized access model that fulfills the legitimate purposes of third parties to access nonpublic registration data.

Also following the GDPR scope, maybe I'm being a little bit precise here but that's what we understood of the putting objective, so we – so I'm just being like straightforward, those are our objectives. Following the GDPR scope, coming up with a recommendation that differentiates between registrations of legal and natural persons allowing for public access for the registration data of legal persons, and coming up with a recommendation that allows data processing for the purpose of research and cyber security investigations.

Exploring the possibility of differentiating between registrations based on their geographic location of the processing controller and registrant and targeting (criteria). We have concerns, as other mentioned, with regard to how to build consensus, how consensus is built. And again, all of the objectives that I stated, you know, definitely we are looking for legal foundations and full

compliance with GDPR. And again, I reiterate that we are looking forward for joint gains and not individual gains or win-win situations. Thank you.

Rafik Dammak: Okay. Okay thanks. Thanks, Hadia, and thanks, everyone for all those statement. So I would like to ask if you can send the written version of your statement to the staff so we can include them into the notes. I see that we are quite ahead in the schedule, I mean, it's not something we can complain about. And maybe it's an opportunity that we use that time to move to the next agenda item, which is about the overview of the topics. So Marika, can you give that maybe in particular I think about the mind blowing map so that – it was shared this week. So.

Marika Konings: Yes thanks, Rafik. And this is Marika. Hi, everyone. We actually have some printed copies of the mind map. We don't have one for everyone but if you can maybe share and want to look at it. You also received it in your inboxes so hopefully you already had a chance to look at it. But what staff basically tried to do is map out the different topics that are included in the Phase 2 scope and there are basically three buckets that we've identified.

So the first two buckets basically were already part of the EPDP team charter so the first bucket there is the system for standardized access to nonpublic registration data. And as Rafik said before, these are not in a – any kind of priority order, we've just put them in order as they appeared in the charter.

Then there's a second bucket that appears in the charter as well which relates to the annex to the temporary specification. And that was also labeled important issues for further community action. And they include a number of topics that were identified in the context of the conversations around the temporary specification that needed further consideration.

And then there's the set of items that were deferred from the EPDP team Phase 1, either because they required further discussion and consideration and there was not sufficient time to do so in Phase 1 and it was also not

deemed necessary as such for GDPR compliance, which was, you know, the main focus of the Phase 1 conversations; or those were topics that were dependent on input from others either in the form of legal guidance or consultation with other groups working on those topics.

So the mind map that, you know, we've distributed, and I can show you as well, although as said on this slide you can't really see a whole lot, basically it maps out those three areas and highlighted in yellow are those aspects that were deferred from the initial report or from the Phase 1 final report. And as you can see, you know, some of them are in that separate category but there were also a couple of items that already directly relate to some of the topics at were either identified in that, you know, first bucket or the second bucket.

So that maybe hopefully gives you a visual perspective of the topics that are incorporated here. And I'll have a bit more detail on the next slide to go through those.

So in relation to the system for standardized access to nonpublic registration data, the charter actually already identifies a number of questions that the group is expected to address and those specifically focus on the purposes for accessing data, credentialing and terms of access and compliance with those terms of use.

In addition to that, there were also a number of questions that the EPDP team formulated in the context of Recommendation Number 3 of the final report. Those questions are, you know, whether such a system should be adopted? What are the legitimate purposes for third parties to access registration data? What are the eligibility criteria for access to nonpublic registration data? Do those parties/groups consist of different types of third party requestors? And what data elements should each user or party have access to?

And of course there may be a need for the group to kind of consolidate or align those with the questions that are already in the charter as there's, you

know, potentially some overlap. And of course the group may need to give some consideration as well to, you know, the intersection of this work with the work that's ongoing at the ICANN Org level as well as the Technical Study Group in relation to the unified access model. And of course there's a discussion scheduled for tomorrow with the TSG to get an update on the status of that work and better understand, you know, what intersection, if any, exists with the work that has been going on there.

So in the temporary specification, as said, also had an annex that identified a number of issues and again, some of those overlap with some topics that the group already identified during its Phase 1 deliberation. So again, you know, the first one here I think is closely linked to that – the first bucket on the standardized access model, you know, to continue the community work to develop an accreditation and access model that complies with GDPR recognizing the need to obtain additional guidance from the EDPB.

Second topic relates to the feasibility of requiring unique contacts to have uniform and anonymized email address across domain registrations while ensuring security and stability. And I think as you'll recall that was also a topic that came up during the Phase 1 discussions.

Next one was also one that I think was flagged in Phase 1 deliberations to develop methods to provide potential URS and UDRP complainants with sufficient access to support good faith findings of complaints. And this may also align with the Phase 1 request to get an update from the RPM PDP Working Group to better understand the status of their work and what if anything they are doing in relation to this specific topic to help inform the EPDP team's consideration of this question.

The next one also I think aligns with the previous topic that a consistent process for continued access including nonpublic data for users with a legitimate purposes until a final mechanism is fully operational on a mandatory basis for all contracted parties.

Distinguishing between legal and natural persons, and that of course links as well in with the Recommendation Number 17 of the Phase 1 final report, where there is also requests for a study to be carried out by ICANN Org on this topic to help inform those considerations. Another topic identified in that annex is the limitations in terms of query volume and then there's a last point the confidentiality of queries by law enforcement authorities.

And as noted then there as well a couple of topics that were deferred from Phase 1. I think most of these do have some dependencies that we tried to identify them in the mind map as those were, you know, called out in the Phase 1 final report. So that relates to Recommendation 2, the additional purposes for OCTO research; Recommendation 14, privacy proxy registrations; Recommendation 15, data retention; and Recommendation 11, city redaction.

And then we also noted that there were still a couple of outstanding legal questions to which the group had not received feedback yet. I think some of those have come in, in the meantime. One of those related to, you know, legal establishment and you know, geographic basis and the other one in relation to thick Whois.

And as I said, you know, all of those items appear to be dependent on external input to be provided either from, you know, legal counsel, ICANN Org or another group. And I think that's – I had on the list of items. I don't know if there are any questions or concerns. And of course if there's anything we've missed especially in relation to, you know, items that were in the final report for Phase 1, please do let us know because we would like, you know, to make sure that we have a complete picture of everything that the EPDP team is expected to address in Phase 1.

As said, you know, as a next step you may want to look at which of the topics especially I think in the second bucket are directly linked to the Phase 1

bucket and of course we can move things around to make sure that we have clear streams of work and this will allow you as well to organize or plan work as you think is, you know, best suited for the different topics also factoring in the dependencies that may exist. So we hope this is helpful.

Rafik Dammak: Okay thanks, Marika, for this overview. Okay, the group's quite silent today. But it's also an opportunity so as it was said, if there's anything missing or you want to add or if you want to comment it's good opportunity to do so. Okay.

Marika Konings: Do we need to brief people on the brainstorming exercise so we can think about it as the start of…

((Crosstalk))

Marika Konings: Yes.

Rafik Dammak: First question from Farzaneh and then go to Marika. Yes.

Farzaneh Badii: Farzaneh Badii from NCSG. It's not a question, it's just a comment. And I'm very sorry, it's not even related to what Marika was saying. We keep saying that access to nonpublic Whois data, and I am always puzzled by this term. What do you mean by nonpublic Whois data?

You mean personal information, right? So I think that we need to change that term but I have been saying this for a long time and it's not necessarily – but I think to be clearer also to the crowd that are not following nonpublic Whois we actually mean personal information or if it's not, if it's anything, because we don't redact non personal information, so I just thought I'd put that out there.

Rafik Dammak: Thanks, Farzaneh. That's point taken, noted. Okay I see a comment, okay, Hadia and then Brian and Volker. Okay so let's move and I will try to keep.

Hadia Elminiawi: Hadia Elminiawi for the record. So I think using the term "access to nonpublic data" is actually the correct term because some of the data as it stands alone is not considered personal data so if you consider for example the city field as it stands alone it's not personal data but when combined with other pieces of data it leads to identifying the natural person so not all of the data is personal data as it stands alone. Thank you.

Rafik Dammak: Okay. Thanks, Hadia. Just to be sure the queue so we have Brian, Volker, Marc, I'm not sure, Ashley wanted to speak? No, or yes. Okay. So let's go with Brian. So Volker.

Volker Greimann: Thank you. Sorry, I'm enjoying one of those nice (matcha kit-kat) so you surprised me.

((Crosstalk))

Volker Greimann: I think we're basically using the wrong word here when we're saying "access to information." Access to information is, under the GDPR at least, not a term that we should be using; we should be talking about disclosure because that's what it ultimately comes down to. Using the word "disclosure" instead of access actually nails down the problem much more clearly than the word "access" does. And I think by changing that terminology in our work we would be making a great step forward in clearing that up and working towards a goal that is achievable.

Rafik Dammak: Okay. Thanks, Volker. Marc. Sorry.

Marc Anderson: Okay. Marc Anderson for the transcript. I guess I'll make two points. First, I want to encourage everybody to not use Whois and instead use RDDS or Registration Data Directory Services. You know, so Whois is the protocol, RDDS I think is the term most of us really mean when we're saying "Whois." So I'll just make that as a general comment.

But the reason I raised my hand I want to – reflecting on the statements a lot of the group's made, the question of legal support and having access to legal counsel during Phase 2 came up a couple of times. And so I'd like to ask, you know, sort of staff and the leadership where we are with our contract with Bird & Bird. You know, I think a lot of us don't know the status of that, how long does that run for? Do we have that in place? Do we have an option to continue it?

I think that's going to be, you know, there's sort of some questions we have that'll go into our discussion about what's needed for Phase 2 later on in the agenda. So if you could sort of give us an update on where we are with that and what's available to us.

Rafik Dammak: Okay. Thanks, Marc. Yes, so we'll discuss later about in term of resources that need for Phase 2 and that brainstorming exercise and (unintelligible) question about the legal support. But I don't want to put Berry on the spot but probably he can give matter update about situation for the legal counsel.

Berry Cobb: Berry Cobb for the record. There are a couple of outstanding legal advice items that will be sent to the group shortly. I'm not sure exactly when. So as I understand Bird & Bird is still engaged. I'm not certain about if there's an end date for when ICANN Org would continue to retain their services or not. I think that's one of the strong parts of the discussion today especially when we get later on as understanding the resources that are going to be required for Phase 2.

And, you know, from what I'm hearing in the room it sounds like there's general support for that continued legal analysis but we just need to understand, you know, is the scope going to be the same for their assistance as it was in Phase 1? Try to put more structure around if the group plans to continue that engagement.

In terms of from a budget perspective, from the funds that we had in Phase 1 we had still, what's the appropriate word, committed funds to help cover the invoices. We haven't actually received any of those actual invoices so we just really have a committed amount. So there's really – it's kind of work in progress. I don't know if that was helpful or not.

Rafik Dammak: Okay. Thanks, Berry. So again, I mean, as we are working in term to prepare the work plan and think about the resource, also something that we can bring and the opportunity this afternoon that you can support to have the legal counsel for Phase 2.

Okay, so I'm trying to double check for the queue, so we have Alan, I'm not sure about the order so sorry if I'm messing up, but maybe Margie, Thomas, Benedict and then Mark. Okay, Alan, please go ahead.

Alan Greenberg: Thank you very much. In terms of the yellow sections, I don't see geographic differentiation there and I believe that it was – we made a statement very near the end that that was clearly something we were going to defer and not just scrapping all together.

Marika Konings: Yes, this is Marika. I'm happy to double check the report but I think the report just notes that there was disagreement on that. I don't think it noted there was agreement to defer that to Phase 2.

Alan Greenberg: I think if we check the transcript you'll find me among other people saying it's okay to leave the words there as long as it is understood it will be discussed in Phase 2. If not, we have a problem. Thank you.

Rafik Dammak: Sorry. Okay, so let's continue with Margie. Yes.

Margie Milam: Thank you. This is Margie from the Business Constituency. I had a couple points. The first one, will we still get the mediation support that we received last phase? I think when you look at the success we had on some of the

discussions I think it was really enhanced with the help from the team and so I'd like to carry that request forward that in Phase 2 we actually continue the mediation support.

And I also wanted to echo what Alan was saying, I wasn't sure how with the GNSO Council vote what the divergence means on those – I think there's two recommendations where the report mentioned there was divergence and so I would certainly – wasn't sure whether that was carried on into Phase 2, the discussion related to geographic scope.

Rafik Dammak: Okay. Thanks, Margie. Thomas.

Thomas Rickert: Thanks very much, Rafik. I hope we don't spend too much time on terminology, but I plead guilty for having used the evil word "access" before. But I used the qualifier with it, I said access as it's called in our charter. And I guess this is something that we should maybe clarify once and for all, in our report we've actually defined that, you know, it is called access in our charter but what we mean is responses to lawful disclosure requests, right?

And I think that it's important for the community to understand that when we're working on the UDM, probably, the Universal Disclosure Model, instead of the access model, that we're actually fulfilling the duty of our charter. And I don't know how to do that procedurally but I would be very much in favor of getting the terminology right and getting it right once and for all.

And maybe that requires the GNSO Council to resolve that, you know, when we are making reference to the UDM or whatever we might call that animal, that that is actually what's previously been called the Uniform Access Model. I mean, it's – we've known artists that have previously been called different things so that's not unprecedented in the show business that we're in but I think we need to sort that out once and for all.

Another point that I'd like to make goes back to the issue of legal support. And I mentioned legal support but we need to discuss this I guess at two different levels. One is the counsel that we are hiring to support our work, right? And that I think is important and we need to get clarity on that. That I think is required to get our work – our work in good shape.

What we haven't done so far, but I think is required, is to think about data protection impact assessments when it comes to, you know, the UDM or whatever we might call it later. So counsel can help us produce such a document so that it passes muster if ever tested.

The other thing is interaction with governments or the European Data Protection Board, because those are the only authorities that can give us the legal clarity that we can actually rely on to avoid the risk of being sanctioned. So I think we need to discuss those two areas separately.

And talking about that, maybe we can have a discussion about timelines and how we sequence our work because what I think we should try to avoid at all costs is conflating the discussion about disclosure of registration, nonpublic registration data, when it comes to civil claims versus to criminal claims or criminal authorities requesting that access.

That's an entirely different world that we're talking about, legally. For those who have not familiarized with those concepts at great detail, GDPR makes it relatively easy to process data when it comes to civil claims while when it comes to passing on data to law enforcement authorities that is much more impactful to the data subjects because criminal sanctions include indictments or even putting people in jail, right?

And maybe what we could do or could consider is working on these two buckets separately and getting, you know, one part of our work shipped to the European Data Protection Board for their consideration first while we're working on the other. You know, so I guess that would avoid making it difficult

for them to just get a report from us at the very end of our work and then being forced to react quickly which likely they're not in the position to, right?

So I guess that's something that I'd like to discuss either now or while we are here together. And just to offer one or two more sentences of rationale for why I'm saying all this is that I think we're partially discussing past each other when it comes to honoring disclosure requests. Some look at the European Data Protection Board's letter and say, well there you have it, they wrote that, you know, data can be made available, right? So that's one fraction.

But the other camp says, okay, you should be reading the second half sentences – sentence of what the European Data Protection Board said, and that is subject to national or subject to applicable laws. Right? And I think what we haven't yet received is a rationale on how things can be disclosed in a legally-compliant fashion. Again, in short, my plea is let's work on civil matters separately from law enforcement disclosure requests.

Rafik Dammak: Okay. Thanks, Thomas, that was brief.

((Crosstalk))

Rafik Dammak: So regarding the terminology, I know that we kind of get into that discussion. So that's in the charter, however, we have, you know, the counsel that it will give as guidance and we cannot bring that to the counsel so without really reopening the – or re-amending the charter we can get clear guidance from the counsel on that matter. And I think we can clarify the terminology if it raise concerns.

Okay, so I'm trying to, I mean, it's not easy when, I mean, we don't have a time stamp for those so it's not easy to know the order so I'm sorry if I'm messing up. We have Benedict, Marc, I think Georgios and then Tatiana. Yes. I saw it. No need to wave. Okay. Benedict. Okay thanks. Mark.

Mark Svancarek: Thanks. Mark Svancarek. Yes, just another terminology point, I'm sorry if it's passé at this point, some of us have been using the term "access" as sort of a shorthand for the types of disclosure that weren't already defined in Phase 1, types of disclosure that might be built on a system defined by the TSG group and so if the term "access" is – remains problematic certainly we're open to creating something. But I do think we need a term that distinguishes what we've already defined in Phase 1 and things that we define subsequently in Phase 2.

Rafik Dammak: Okay thanks, Mark. Georgios, yes.

Georgios Tselentis: Yes thank you. Georgios Tselentis for the GAC. Just on the point of the legal counsel I want to make a – some clarification questions. So far if I'm not wrong, we received five memos from the legal counsel regarding those issues that were requested. And if I'm not wrong, Berry said that there are some pending ones, so what are the pending ones still to be processed?

And the second thing that I would like to ask is when we receive those memos, how this is – because I'm not very sure that we had also – as soon as we received this advice that I find oh so useful, we don't have a very clear process about how we take this advice into consideration in our documents. So I think it should be very – it should be spelled out how we do so.

Also I would like to agree with Thomas when he mentioned about that despite whatever we get from the legal counsel as an advice the ultimate judge will be the data protection authorities and we should be more concerned about how can we get an earlier response about compliance on the issues that we are discussing from those authorities in any possible way. Thanks.

Rafik Dammak: Okay thanks, Georgios. Okay, so Tatiana.

Tatiana Tropina: Thank you very much. Well first of all I would like to say that I fully support changing the terminology from "access" to "disclosure" and further to what

Mark said, I don't think that if we change terminology it will cause problems because we can always add clarification, you know, or explanatory note in terms of how this new terminology relates to work that has already been done and what the correlation is just to make clear for everyone so everyone will be comfortable.

But I would like to respond to Thomas, I think Rafik made it clear but I would like to say again from the position of also GNSO councilor, so now putting on my GNSO councilor hat, I think that we have to be clear that this amendment of terminology is not changing the charter. I don't know how procedurally GNSO can take this input from EPDP and confirm it or clarify it without changing the charter. But I'm sure that Marika would know or GNSO leadership would think about it.

But on the – during the GNSO discussions we said that we're not going to change the charter but EPDP can determine, you know, the scope, the path of work and (unintelligible) the charter. So I think this clarification will fit fully into this idea. How it is going to be procedurally confirmed by GNSO I really I have no idea right now but I think that we have to be clear that we're not amending the charter with this. Thanks.

Rafik Dammak: Okay. Thanks, Tatiana. I think, Caitlin, you wanted to maybe to respond to Georgios's comment?

Caitlin Tubergen: Thanks, Rafik. This is Caitlin Tubergen from ICANN Org for the record. And I'm responding to Georgios's question. There was a recent batch of questions sent to external legal counsel and those questions were specifically on city field, thick Whois, and geographic establishment. We recently received memos on two of those questions, the thick Whois and the geographic establishment which we will shortly forward to the EPDP team and post on the wiki.

Legal counsel did ask some additional questions regarding city field and I believe they're doing further work on that question so when we do receive that advice we can forward it to the team. So that is the outstanding question.

Rafik Dammak: Okay. Thanks, Caitlin. Okay we have Hadia. Yes, please go ahead.

Hadia Elminiawi: Hadia Elminiawi for the record. So I was also going to comment on Georgios's question with regard to the questions to the legal counsel. So actually Caitlin did say basically what I wanted to say. But one of the questions actually – but my point, one of the questions was actually with regard to ICANN as an establishment and the geographic distinction. And as a team we haven't received yet an answer with regard to that question. And that's why I was puzzled how the geographic item or issue was vanished from Phase 2, although we hadn't yet received the answer that was posed to the legal counsel during Phase 1. Thank you.

Rafik Dammak: Okay. Thanks, Hadia. So checking who is in the queue, so we have Farzaneh and then Amr. Anyone else? Because we are close to the lunch break so just to be sure that everyone has a chance to speak. Okay so Farzaneh, please go ahead.

Farzaneh Badii: Thank you, Rafik. Farzaneh Badii, NCSG. So I think that it would really help us if ICANN staff look at how we reached the conclusion on the recommendation on general name – sorry, (unintelligible) differentiation, and I think that would come from a neutral – a more neutral standpoint and they can like remind us how we got there. But as far as I remember Kristina made some changes to that recommendation and (unintelligible) and it was on the mailing list for a while and the groups were given time to object to it and there was no objection I assume.

But I will leave it – I think we should just request staff to just give us a bit of background on how that recommendation came to existence and also I don't

think we should reopen it and I think we have actually reached a conclusion on that, but I still think staff should look into it.

Marika Konings: Yes thanks, Rafik. This is Marika. Yes I think we'll happily look back into that but I think indeed there was a reason for why that recommendation received divergence as I think several groups expressed that they didn't think it was going far enough what was in there. And, you know, I do recall that there was a lot of discussion on what if anything should be done in Phase 2 but I don't think there was ever agreement reached on that and such, you know, for the mind map staff has based itself and that a least serves as the official record on the final report.

It does outline the issue, it does note that, you know, legal guidance was requested but it does not specify that this is an item that, you know, the group agreed to refer to Phase 2. So that's how at least staff has interpreted that. But we're happy to look at any further information that people want us to look at. And as said, you know, there is of course the memo that will be shared and, you know, maybe that changes people's minds or would trigger, you know, a need for further discussion. But that's at least our recollection of the conversation.

Rafik Dammak: Okay thanks, Marika. So we have this as an action item. Amr, please go ahead.

Amr Elsadr: Thanks. This is Amr. My recollection is very similar to Marika's on the geographic differentiation issue. I think there's a bit of misunderstanding from several folks on the team regarding what the purpose of the legal guidance on this issue was. The recommendation on which there is divergence, there was divergence amongst the team was that contracted parties may be permitted to differentiate based on the geographic location of the registered name holders.

When we were developing the question sent to legal counsel on geo differentiation at the time we were still discussing this issue. We finalized in the form that it currently exists. I agree, there was divergence amongst the team; we did not reach consensus on this but the Council did vote on it. My understanding is that this issue was settled.

If you look at the question we sent to legal counsel, the purpose it would serve at this point would be to determine whether this differentiation would actually be permitted or not. It was based on the European Data Protection Board's guidelines on the geographic scope of the GDPR that was published I think in late November of last year.

And if we get a specific answer to the question that determines that ICANN as an organization has stable establishments within the EU that would require it as a controller to be compliant with GDPR across the board, then this would actually remove the option of allowing contracted parties to choose whether they may differentiate between registered name holders or not based on their geographic location.

So that's what we need to be looking at in terms of the answer we will get on legal guidance. The purpose is not to revisit the recommendation we finalized in Phase 1, it's to actually determine whether this recommendation goes far enough in terms of GDPR compliance or not.

Rafik Dammak: Okay. Okay thanks, Amr. So we have three minutes left before the lunch break and I see Hadia wanted to comment or respond back?

Hadia Elminiawi: Yes this is just a quick response to Amr. Actually we posed a question to the legal counsel in order to make an informed decision. So I don't understand how could we have possibly reached a final decision without actually having some of the information that – on which we would have based our – this final decision.

So actually there was divergence, yes, with regard to this recommendation but again, we had a question posed to the legal counsel which was not answered and based on that question we would have finalized our decision or our recommendation which actually did not happen. Thank you.

Rafik Dammak: Okay, so let's I mean, in term of time management I understand that everyone want, I mean, to go further. So we have just two minutes left so Margie, okay, Amr, you can – if you respond back briefly. So and then we go to Margie.

Amr Elsadr: Yes, thank you. This is Amr. Very quickly, there were a lot of issues that were brought up on geo-differentiation. It wasn't just the issue of GDPR and, you know, how compliance might be in that respect. The recommendation we reached was also based on other issues such as, you know, how contracted parties may be able to practically implement a recommendation that requires them to differentiate geographically. There were other issues at stake or involved in the decision or the positions that some of us took. And those were what were considered.

Again, the question, if you actually read the question that was sent to Bird & Bird, it wasn't to help us understand whether the option should be available – whether geo differentiation should be allowed or whether it should be mandatory; it's whether it could be allowed or whether it cannot be allowed at all. So I would encourage folks just to revisit that question and try to figure out, you know, what the answer to that question might imply. Thank you.

Rafik Dammak: Okay thanks, Amr. And so we closed the queue. So Margie.

Margie Milam: This is Margie. I don't remember the question being that narrow, Amr, but I can certainly take a look at the memo. But I do have a question for staff, if you could give us clarity on what the Council voted on. Did it include the recommendations? Are those considered passed or are they not considered passed, the ones that had divergence, that's my question.

Marika Konings: Yes thanks, Margie. This is Marika. So I can confirm that the Council did consider the fact that, you know, not all recommendations had the same level of support but they did decide to consider the report as a whole. So they voted on the report as a whole, that meant the whole report, all the recommendations, met the required voting threshold, so all recommendations are considered adopted by the GNSO Council and as such will be passed onto the ICANN Board.

Rafik Dammak: Okay thanks, Marika, for the clarification. And so we reached the end of our first session. So we'll call here Nathalie to give us some housekeeping information about the catering. Where is she? Yes, please.

Marika Konings: So I think Nathalie is hiding. But I think that announcement is basically there – the lunch box is available for the EPDP team, so please give the EPDP team priority to those, you know, if there are any left others are of course welcome to help themselves but so EPDP team members get there fast. And I think we're back here at 1:30. Yes.

Rafik Dammak: I think so, yes. Yes. Okay.

END