ICANN
Transcription ICANN Panama City
GNSO ePDP Temporary Specification for gTLD Registration Data
Initiation Request and Charter DT Meeting Session 3
Tuesday, 26 June 2018 at 13:00 EST

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Heather Forrest: So good afternoon, everyone. Let's reconvene as the EPDP drafting team. Can we get a thumbs up from the tech folks when we're ready to go? Awesome. Well done. Thank you very much.

So let's revisit our agenda. We have it up on the AC Pod. You can see here that we've made very good time in terms of progressing through our discussions this morning and I personally, we had a chat, the leadership team, and frankly, I walked into the GAC room feeling really positive about where we've come today. I think Carlos is making, for the record, making faces at me.

But I think we've made huge progress here and to the extent that we can continue that momentum, I think we'll be in an excellent position to not just reassure ourselves but reassure the community that we are able to work together. And I think that's super promising.

We have now - so Carlos asked a fair question. Anyone want to comment on the discussion that we just had with the GAC? There's some good positive feedback that's come out of that. Michele, please, followed by Carlos. Michele, Carlos.

Michele Neylon: Thanks. I think one thing - I don't know how seriously the comment was made or what the actual impact of the comment was meant to be but this thing

about the GAC seems to be a little confused about the fact that we as the GNSO Council would provide advice to the ICANN Board on the GAC advice. I didn't really know what to do with that.

I mean they have been told repeatedly and have recognized that the GNSO looks after GTLD policy and that their role is to provide advice that may or may not be acted upon. So I don't know where that came from.

But another one just on process. I thought it was a little offensive that they had prepared a list of quite detailed questions for us and that they did not have the respect to share those with us in advance.

Heather Forrest: Thanks, Michele. Carlos?

Carlos Raul Gutierrez: Yes, I think it was very good that Michele has said that he expects a broad representation from data protection agencies. I would like to add to that, that we expect representation from countries, non-European countries, non-U.S. companies out of the group of five that have experience with the new law. I was in a short discussion.

The Chilean NIC has already processed GDPR and has come to clear positions and so on. So the same way we are expecting qualifications of the people in the members of the PDP, I think we could bring some ideas together of what we expect from the GAC.

We want some experience, European and non-European on GDPR. Thank you. And DPAs, as Michele newly included in the list. I will never forget that.

Heather Forrest: Thanks, Carlos. Keith?

Keith Drazek: Thanks, Heather and I'll respond to both points. Let me take the last one first. I think as it relates to GAC or government participation in the EPDP working group, if we're starting to talk about lots of different kinds of

experience and the GAC potentially needing to have various geographic diversity needs, we're suddenly talking about a working group that's much larger than we were anticipating just in terms of numbers. So I think we need to be - sorry, go ahead, Carlos. Did I misunderstand?

Carlos Raul Gutierrez: I didn't say members. I said experience. I mean it can be just a session dedicated to get these experience, or examples, or one-pagers, or list, or something like that. I didn't equate that with members. Sorry.

Keith Drazek: Thanks for the clarification. I misunderstood. So I agree then. I think the different types of experience and inputs are critical. So I agree with you there. Michele, I think, my interpretation of the question related to the GAC advice - and it may have been either another misunderstanding from me or maybe their question wasn't formed right, but I think they were relating to the fact that there was GAC advice included in the annex to the temp spec. And that they were asking for some indication or clarification about our intent with regard to that.

What did you interpret?

Michele Neylon: Thanks, Keith. Michele for the record. No, that entire intervention came when we were talking about the role of the GAC and the role of the GNSO. We weren't actually talking about the temporary specification or GDPR at that juncture. Now, if it was a case that they were thinking about the reference to GAC advice in the annex, maybe that's what motivated them.

I don't know how their thinking evolves, but my take from it was more to do with them being a bit confused about the fact that we would advise our Board on things, which I thought was a bit odd.

Heather Forrest: Thanks, Keith. So Michele, to the process point, it's interesting, we talked about this just before we left the room. We asked over, and over, and over again, and through Julf as well, please channel any specific questions to us.

We asked about the efficacy or logic of having SubPro on the agenda when clearly they had met with SubPro. I didn't want to make any assumptions there.

I think we need to work with our support colleagues in the GAC and GAC leadership. The only thing I can say from a Council leadership point of view is boy, we've tried and that tells me we need to work on some better methods here. Michele?

Michele Neylon: Thanks, Heather. Just so we're clear, it was not a criticism in any way, shape, or form of anything that GNSO Council Leadership might be doing. Not that of course you still withhold the ability to criticize GNSO leadership for other matters. But I think on a purely pragmatic and practical level, maybe we need to kind of work the back channels a little and maybe just talk to the GAC Secretariat and just say, hey, we've asked them for this. They haven't given us anything but we know based on past experience that they will turn up with very detailed questions.

If the questions had been simple ones like, hey, does anybody know a good steakhouse here in Panama, that would have been great. I would have taken that question quite happily.

But if you're going to ask a very, very detailed, quite nuanced question about something as complex as what we're currently discussing, especially when you have the situation that some of these things are not things that we as Council have discussed, nor are we particularly well equipped to discuss as a group. Because, well, it's not entirely in our remit.

What is the GNSO Council's experience of the temporary specification? Well, the GNSO Council isn't a contracted party. It isn't a registrar. It's a registrant. So I don't know what you're meant to do with that question.

Heather Forrest: I can assure you, Michele, holding the microphone, I didn't know what to do with that question either. Stephanie?

Stephanie Perrin: Thanks very much. May I just say, Heather, you were very cool up there despite all this. I'm just, in the spirit of helpfulness, recognizing there are 100 new GAC members I'm told and that's a bit of cat herding exercise right there. I'm always shocked when I hear a European representative blissfully unaware that the GDPR went through their own legislative processes and is in effect. And this isn't something that just got sprung on them by, oh, say, civil society.

Maybe it would be helpful if we did a briefing session. We have an expression of volunteering as a resource from the Council of Europe, who do sit at that table as, what do you call it, auditors, spectators, what do you call it - observers, thank you. I'm sure we could come up with something that might help them out. Because I don't believe that the law enforcement people may be aware that they've signed onto that or 53 countries have signed onto the Council of Europe's Convention 108. That brings with it obligations.

Heather Forrest: Stephanie, I very much appreciate the comment you've just made and by way of explanation, I didn't mean to make light of it with my bodily reaction of getting under the table. What I'm channeling here is I was once called out in front of the GAC maybe 18 months ago in suggesting why don't we do a briefing on this and was shouted at, we don't need a briefing. We know more than you do. And it was a matter that was specifically within our remit.

It's one of those, the implausibility of a GAC member knowing more about our own processes than we did was fairly, yes, self-evident. So I have determined and James isn't in the room anymore, I promised Donna and James on the spot I would never, ever again mention briefing or webinar in that room.

Donna Austin: We're actively doing so. We only a few weeks ago did a webinar for the GAC about what we do and it was specifically targeted at those newcomers. So we are doing that kind of stuff and between Marika's team and the GAC support, they're exchanging information. But there's only so much we can do in that regard. We do try, Stephanie, we do.

Stephanie Perrin: If I could just respond to that, yes, I totally take your point. I was unaware of the shouting at. Of course, I'm very used to being shouted at and when I used to brief executive management and they said, well, we don't need this, we've been trained, we know all about it, I would give them a pop quiz and they would fail, and then I would get my briefing. So maybe we have a pop quiz on our requirements. I didn't bother about whether I was popular or not, Susan. That's why my career kind of plateaued early.

                  But we could make that a requirement for membership, pass the quiz.

Heather Forrest: Let's all shove ourselves off the plateau, shall we? Stephanie, all good points and I think it's an ongoing, as Donna said. I don't mean to be factitious here. One of the frustrations about that webinar is it was designed for this 100 plus GAC members. Council leadership was up at really wacky hours. It was like 2:00 in the morning or something my time and then there were ten people on it. So we do our best. We'll continue.

                  But I think the lesson learned for me here is we need to try and think creatively, involve Julf, find more ways to do this. I can't promise anything but we'll continue. Any further comments or questions on the GAC? And I'm mindful that Julf is in the GAC room, but we'll channel all this back to him as well, get the transcript of this session to him so he has the full flavor. He won't be able to see me crawl under the table, but that at least will be verbally referenced in the transcript.

                  All right, excellent. Thank you very much. So let's go ahead and turn our mind to the minor matter, not at all of interest to the GAC or others, which is

scope. Let's pull out the charter in relation to that section and in fact, that section in the document is much more about scope. There's a fair bit here by way of indicative headings. Susan, you very ably led us on this yesterday. Over to you.

Susan Kawaguchi: Thank you very much. So I have not done a lot of work on this and Susan Kawaguchi for the record. But I have given it some thought, which how can you not at the temp spec and all. And it seems like we have several sources that we need to either decide for or against in including as resources for developing the charter. Obviously, the temp spec, everything is about the temp spec. So there's a lot of good information there that we could pop right into the charter.

Then we have the annex and there's definitely been a discussion on is annex part of the temp spec, is it not part of the temp spec, what should be included, what shouldn't be included. Obviously, from an IP perspective, and this is my personal opinion right now, there's several data points right there that relate to IP and that's critical.

SSAC came out with their advisory last week and their recommendations, and all of those to me may pertain to the temp policy, temp spec. And then we have GAC advice. So I'm not saying all of those belong in the charter, but I think we should be looking at a subset of that or all of them to guide our work.

Then we have the picket fence issues and not sure if we ever got that document really. Was your document the picket fence document or just?

Keith Drazek: No, that was the structure.

Susan Kawaguchi: So Keith provided a structure document, which we should review. We also have the looming legitimate access in the temp spec, which could then pull in other documents or other thinking if we decide that's true that we want

to do that. And then we also could consider, and don't throw me out of the room, looking at the RDS working group charter. And hopefully, I'm not saying duplicate that charter by any means, but there might be some language in there that we agree to and we wouldn't have to reinvent the wheel.

Just as a reminder, there was a Board GNSO Council working group that put a process framework together for their RDS working group. A lot of thought went into that and so if we can use any of that work to inform us or even maybe use some of those concepts in this charter then that might be helpful. So those are some of our resources.

To me, there's some basic questions just to start that we need to answer. This is the temp spec and maybe I'm -- since this is the first one -- maybe I'm not understanding the process but I think the first question after looking at the temp spec is, is this something we can live with this? Yes, let's rubber stamp and move on.

I doubt we could do that but to me, the first question should be looking at that. And if it's not, maybe we should look at things like what can we reach consensus on in the temp spec and then identify the bare minimum that must change for the community to support it.

What's essential to revise or add to become consensus policy? What's left out of this temp spec? I mean the Board and ICANN Org put some thought into this but there's no guarantee that it's completely fleshed out. I'm sure registrars may have an opinion on that and these are just really quick questions.

But are the data elements collected in the temp spec sufficient? Are the purposes sufficient. So in general, just to - I think we need to go through a series of questions to draft the charter and then propose those questions in the charter.

So there are a lot of questions that were proposed for the RDS working group charter and like I said, we could probably pull from those. So that's my thought process. Anybody else? Donna, I missed you. Donna.

Donna Austin: Thanks, Susan. Donna Austin. So I agree. I think there's probably some fundamental questions we need to know the answers to first before we can get too much into the substance.

A couple of observations from my perspective is that the - so the temporary specification was put in place for a specific purpose. And it's a mechanism that the Board has used for compliance for want of a better word to ensure that - to try to mitigate against the possibility of fragmentation of WHOIS so the data continues to be collected.

The timeline that we're working to here, so the 12 month timeframe, so in my mind, what that really applies to what's in the temporary specification. If that isn't confirmed as consensus policy and there's nothing to replace it then I think Michele spoke to this in the GAC room today that then that fragmentation of WHOIS - that's the real threat because registries and registrars will start interpreting GDPR in their own way and responding accordingly.

So in my mind that's kind of the - that's the really narrow pace that we need to get sorted out within the - before 25 May. And then those things that are in the annex, I think they're important because they've been identified through community discussion. But for me, the question is do we really need to resolve those within that 12 month timeframe that we're all saying the clock is ticking on.

Because in my mind, it might be that we could take a little bit more time to resolve those. Still some urgency within it. I don't deny that but I don't think

it's the same urgency at that enforcement pace that's actually sitting in the temp spec.

Michele Neylon: How can I put this diplomatically? We don't agree, Susan, on this one I'm afraid. I think opening - what you're attempting to do is to open up a much, much broader discussion around a whole range of policies. And if you go down that road then this will fail. Now, here's the reality and let me just put it in a particular way.

As of now, there is a temporary specification specifying what WHOIS should look like, so what data fields are published publicly, which ones are populated with data that is visible to anyway, which ones the contracted party has the option to populate, and which ones the contracted party has an obligation to obfuscate from public access. I

If you go down the route of opening up a massive range of broad issues beyond dealing with and reaffirming the temporary specification in 12 months' time, you will end up with an absolute mess. Because at the moment, you might be finding that there are differences in how contracted parties have implemented the temporary specification.

But because there is a temporary specification, there is a possibility of redress. Without a specification, without that being affirmed into policy and contract, there is no way that you will have any redress. It will just go away. So I think you need to be very, very narrow and focused on these things.

Now, the issues that are in the annex, the way the temporary specification is worded, it recognizes their importance. It recognizes that they need to be dealt with. So we at Council have to address that in some way. But this is kind of like the case of - I'm trying to think of analogy. I'm just thinking about something about severing limbs and using a band aid or, I don't know, trying to reinvent wheels.

If the focus is on fixing the temporary specification so that it is kind of permanent with some potential tweaks, great. But if it's opening up existential questions around WHOIS, this will fail.

Susan Kawaguchi: So if could respond, first of all, I'm not attempting to do anything except look at the scope with a broad view and I think we have a responsibility as Council to look at everything in a very short timeframe, I agree, and see - and make a decision, determine and make a decision.

So reviewing everything that everybody has read already I don't think is a lot to ask. And there's no agenda here beyond making sure that we have policies in place after this EPDP is done that adheres to the temporary spec, if that is what the community decides. I still think it's an open question. Just because we've been handed this temporary spec, is - I think it's responsible that we respond to that question.

Now, I think I know my answer for that but I don't know your answer and I don't know NCSG's answer and I think it's just worthy of a five minute discussion. And at the end of the day, I don't want to get to the end of this PDP and have SSAC say you completely ignored us and GAC, you completely ignored us. So we've been facing that for, and I hate to do this, 10, 20 years, right. Everybody feels ignored in this situation. We don't have the luxury of giving this a lot of time and a lot of thought but we also should not just skip through things and not make a reasoned decision here as Council in guiding this PDP.

Darcy Southwell: Thanks Susan. Darcy Southwell. Jumping back to what was discussed before Michele's comments, I think one of the things I'd also like to encourage about when we look at the temp spec is - and I'm not a privacy expert, but I think a number of groups have discussed that there are challenges in the temp spec about whether or not it - what is or is not compliant.

And I think it's worth - and I use the language I know of purpose for collection or legal purpose. We need to look at that issue and I think that will help inform us too of when you think of the time sensitivity and what we need to accomplish in the temp spec, as well as what's address in the annex.

How do we do that collectively? How do we do that in a way that gets us to where we need to be on May 24 of next year to have a policy in place for the contracted parties, while also addressing the accreditation model, access model.

And I think you have to be looking at some of those issues, because the legal purpose, for example, is going to inform what we can do in an access model. I think we can't make assumptions there. So I think there's an order of steps per se that we need to make sure we consider that are logical and inform us of what we need to do because we don't want to do them out of order. We may either end up in the wrong place or have to redo part of it. Thanks.

Paul McGrady: Thanks, Paul McGrady for the record. So a couple of things. One, I'd like to dispel the myth that somehow the access and accreditation exists only in an annex and is not really part of the spec. Just a casual review Section 4, 4.1 makes reference to maintenance of and access to and up-to-date information concerning registered name and name servers. 4.2, while ICANN has neither the authority nor expertise to enforce competition or consumer protection laws, and is only one of many stakeholders in the cybersecurity ecosystem, the provision of RDDS for legitimate purposes, apportioned uses and critical and fundamental way in which ICANN addresses consumer protection (unintelligible) abuse issues, sovereignty concerns, rights protection, enforcing policies that enable consumers, rights holders, law enforcement, other stakeholders that data necessary to address and resolve the use that violates law or rights.

There's 4.3. No need to read it to you. I don't think 4.4.2, 4.4.3, 4.4.8, 4.4.9, 4.4.12. The bottom line is it's not something that there's some temp spec that

doesn't consider access and accreditation issues and that somehow in some mysterious annex. It is smack dab part of the core of what it is that we need to be looking at. So I think if we could stop pretending that that's not there.

That's just a big piece of fiction that I don't think we should be prepared to purchase around here. It is central to what we're doing. It is, to use analogies or metaphors, I'm not sure which, I can never remember, we don't want to mint one half of a coin here, right. There's the collection of the data and then there's the access to the data.

I'm disappointed to hear that if we try to mint the entire coin that it's presupposed that it will ultimately fail. I think that that kind of approach to this is not going to get us where we need to go. I think we should instead have an optimistic point of view that if we all try to work real hard and enter this in good faith that in fact we'll succeed because we're smart and we worked hard. So I'd rather see us to do that.

I'm happy to talk further on this particular issue. I'm happy to talk further on the sense of urgency that at least my constituency feels for this. I know that contracted parties feel urgent about this and Donna pointed out how urgent they feel. I don't think that the contracted parties are meaning to give the impression that they don't think that we have a real problem, but we do have real problem. I can share real life examples. We collected some horror stories in the last 12 hours from our constituency if you guys would like to know about how access to information is not being handled appropriately under the temp spec.

So I just would like for us to move on from that and to do what the European Commission suggested. Let me see if I can find this here. In our last session, the European Commission, who was the nice folks who brought us GDPR, suggest or state, some of the points that I made this morning in front of the GNSO Council in particular that we need to have a comprehensive WHOIS policy in place and not just a partial approach that we have no in the

temporary specification and this policy should include access and accreditation.

And from what I understand that sentiment was echoed repeated time in the GAC session with other governments saying basically the same thing. So what I'd like for us to do is not spend too much more time on this topic. I just would like for us to agree that we're going to do a full job, not a half job, and then get on with putting together our charter questions. Because that's what we really need to do in order to make it to a vote tomorrow. Thank you.

Susan Kawaguchi: Keith?

Keith Drazek: Thanks, Susan and thanks to everybody who has contributed so far. I think there are clearly in the temporary specification requirements for registries and registrars to continue to collect registration data, to transfer registration data from registrar to registry when the registries are thick, and to provide access to that data within certain parameters.

If there are instances, Paul, in response to your point where registrars or registries are not doing that then that is a compliance issue today. ICANN made it very clear or has made it very clear that they will enforce the temporary specification, which includes collection, transfer to registry in the case of the thick registries escrow, and making that data available for legitimate purpose.

And this gets me to the point around purpose and legitimate purpose. And I think this is a really important discussion for us to have as we decide what the scope of the charter will be and the scope of the working group.

There are questions about the temporary specification that need to be addressed and that must be answered before we can actually start talking about the access and accreditation uniform model, however we're going to term that, whether it's a uniform access model, a unified access model, some

framework for providing predictability and all of the things that I think we recognize are necessary for users of the registration data, whether it's law enforcement, intellectual property, security researchers.

There is a recognition among contracted parties and I think all of us that this is a need. But there are parts of the temporary specification that we need to focus on prior to being able to actually start talking about building that framework. And that includes coming up and developing and identifying the purposes for processing this registration data.

You mentioned, Paul, again I'm responding to you in this case, that there's the collection of data and then there's access to data. Well, there's a big portion in the middle of that called processing that is basically the job of registries and registrars. And there is a yet undefined language around what that legitimate purpose is for the processing.

So that work is definitely a part of the temporary specification and resolving those outstanding questions will inform the work of the accreditation and access component.

So I guess what I'm saying here is that there are things in the temporary spec that are critical, are basically precursors to any further action, and will inform the work of the accreditation piece.

And so I think there's probably an opportunity for us here to identify either a phased approach or a segmented approach where we address the temporary specification, we identify the things that we can all live with, the things that we could confirm as consensus policy at the end of this working group, and then identify the subset of things that we feel like need adjustment o further work. Maybe that's 10%, maybe it's 20%, maybe it's 30%.

But I think we need to go through that process of identifying what we all live with, we can agree is a consensus policy and then focus on the next. And

while we're doing that start working on these definitions around purpose. And again, it's purposes outlined in section 4.4.1-4.413 of the temp spec.

It talks about establishing the purposes for processing data is a critical first step that will inform decisions about how personal data is processed. Again, data processing requirements, collection of data from registrant by registrar. Transfer of data from the registrar to the registry and the publication of that data. So all things that will be critical to this conversation moving forward.

So I'll stop there. I've gone on too long. I want to hear from others but I think there's a way for us to come up with an EPDP or two EPDPs. One will inform the next and we have an opportunity to get to the bottom of the temp spec issue and also, at the right time, deal with the accreditation and access piece. Thanks.

Susan Kawaguchi: Sure, Paul, go ahead.

Paul McGrady: So Keith, if it turns out there's three side to the coin, I'm not opposed to doing a fulsome three-sided job on this, right. That's not the issue, if you think that there's a third phase or whatever that needs to be looked at, or a third work stream with collection, processing, and access. That doesn't bother me. But what does bother me is the notion of leaving out entire chunks of the temporary specification.

I'm a little afraid that we're not being precise when we say temporary specification because I think when I say temporary specification, I mean the whole thing, like 4.4.8 supporting a framework to address issues involving domain name registrations, including but not limited to consumer protection, investigation of cybercrimes, DNS abuse, and intellectual property protection. I mean the whole thing.

I'm a little concerned that other people when they say temporary specification, they mean specifically the things that they care about within the

temporary specification. So we have to decide, I think, do we want to carve up the temporary specification and say this is the part that we'll deal with or do we want to do a fulsome job and deal with what's in here. I know it's inconvenient to some parties that this stuff is in here but it is in here and so I think we should do a fulsome job. Thank you.

Susan Kawaguchi: Stephanie?

Stephanie Perrin: Stephanie Perrin for the record. I'm going to try and make my points clear because there's about four of them. The first one is that at the risk of sounding like I'm whining, the fact that this issue has been dodged for 20 years does not mean that we can kill it all off in four months. And I think we need to set up the GNSO and the expedited PDP For success not failure.

The second point, and I know Paul will disagree and say this is my opinion, but I would humbly suggest that the temporary spec itself was not well vetted, may not be compliant with GDPR, and there's a number of things that need to be properly spelled out in compliance with GDPR.

I would submit that that being the case, that needs to be elaborated first before you start building a disclosure mechanism. Now, you may call this access. You can call it what you want but it is disclosure of personal information to third parties who do not have a nexus with the individual. The current existing regime is unknown by the individuals. It's what you call an invisible database and that's the subject of significant interest post-GDPR.

So before we build that disclosure mechanism, we should be sure that what we're doing conforms. And that is a big job because it is not an all-you-can-eat once you decide that you either a law-enforcement person, or an IP lawyer, or a paralegal working for a trademarked company, right.

That was the wall that the EWG hit back when we came out with the EWG report. We had no answers to all of those questions and they were not pursued, and they are big problems.

So to try to rush that through in four months is, in my view, folly, and will only yield bad results that will put the contracted parties who are at the immediate end of the lawsuits in a more vulnerable position. Thanks.

Susan Kawaguchi: Thank you, Stephanie. Heather and then Michele, I'll get to you.

Heather Forrest: Thanks, Michele, apologies. I just wanted to take the opportunity to make a few procedural announcement, which I've actually just myself faulted on. A reminder from staff, so this is Heather Forrest speaking, please reminder for the purposes of the transcript to give your name before your comments.

And also, I note we have a number of folks in the room and there are comments in the Adobe chat. So today's discussion in terms of the microphones is for drafting team members.

We very much welcome input into our discussions, but to ensure that that is captured in an equitable way, taking into account some folks are participating remotely, please put your comments into the chat. You're welcome to use the format that's depicted there, comment or question, and these will all be recorded and we will come back to them.

So in terms of the microphones that is for drafting team members only and a reminder to all of us, chiefly myself, I think I'm the worst offender, to provide your name before speaking. So Susan, apologies for the interruption. Thank you.

Susan Kawaguchi: Susan Kawaguchi for the record. But thank you, Heather. That was important. So the next we have Michele.

Michele Neylon: Thanks. Michele for the record. I've been sitting here for a while now. So the key thing here, one of the key issues that we're going to have and that we are all struggling with, within this specific PDP, EPDP is that it is not being driven by some kind of random academic desire or wish. It is being driven by a matter of law. As contracted parties need to operate legally. So one of the challenge - this is what drove the changes. This is what will have to drive the EPDP and any decisions, any changes to policies,. Be they temporary, permanent, or otherwise, will need to be legal. Because otherwise, if they are not, and they're discovered not to be then they will not be enforceable.

So we just need to keep that in mind with that throughout. So I think this is also something that is going to have to be dealt with somehow as part of this process that we cannot have a situation where we evolve a set of policies and changes, and then get to the end and are told categorically, well, that's lovely but it's completely illegal. You can't do that. So I'm not sure how to do that exactly but I think it's important.

I think because of that being the driver, again, the scope of this needs to be kept as narrow as possible. That does not mean that there cannot be other work at some time sequentially or whatever on other issues. But we need to keep in mind at all times, if I as a contracted party am given a contract or a policy that my legal counsel feels is not legal under our Irish law, I am not going to be faced with a very hard choice. I will respect the law. I will not respect something from a corporation in California that is not a government.

Susan Kawaguchi: Okay, Tatiana?

Tatiana Tropina: Thank you very much. Tatiana Tropina for the record. Well, first of all, I would like to address Paul McGrady's statement about access. I think some of the issues are already solved in temporary specification. Law enforcement has access already. It is only up to registrars to handle it. So it's not like, you know, we closed it and there is no access. There is so there is no pressing need to solve the issue of access from law enforcement. They have it.

Secondly, concerning the scope of this EPDP, I believe that for now, the most sane proposal I've heard is the one from Keith Drazek. I believe that this should be handled in two phases. It is completely unrealistic to put everything in one and address access and accreditation within the pressing issue that we need to address concerning temporary specification and law enforcement access is definitely not one of them. We will be overwhelmed and we are going to fail.

And I believe that we already had, and I know that I sound like a broken record, we had this process during the IANA transition when we had to address pressing issue for the transition to happen, and had a deadline. And then there was a second phase, which the first phase just fed with information, fed with processes. And I believe that - I mean if I think about these the two phases, I am not inclined to recommend the (unintelligible) processes. This will, again, lead to fatigue and maybe failure.

So I believe that maybe it would be good to address in temporary specification and then move to access and accreditation. So any proposal concerning this I would fully support. Thank you.

Susan Kawaguchi: Thank you, Tatiana. I have Keith, Paul, is anybody else in the queue right now? After Paul, I want to sort of reset and sort of figure out where we're going.

Keith Drazek: Thank you. Keith Drazek. So again, let me try to maybe clarify what I said earlier or be a little more specific in terms of what I'm proposing. I think job number one for the GNSO Council and for the working group that we're planning to set up, the EPDP working group, is to figure out whether we can confirm or not confirm the temporary specification as consensus policy. That's job number one.

So I think the first step in our scoping document and our charter is to call for the working group to conduct an analysis and to see if there is consensus on any number of issues related to the temporary specification. Where there is, we can set that aside. Where there is not, the working group can continue to work to identify where adjustments might need to be made. Because we were told by the ICANN Board in our conversation with them several weeks ago that it is not simply a binary choice. We have the ability to confirm, to not confirm, or to make adjustments as needed. So I think that's job number one.

The second job I think is to consider what components of the temporary specification, or specifically the annex, need to be included in the actual work of this EPDP. That could be a job for the Council and our scoping. It could be a job for the working group itself. I think that's a conversation we need to have. But I think importantly here, Paul, and responding to your point earlier about wanting to not leave anything out, I'm acknowledging that there is a need for this group to identify and to work on the issues that will help inform the conversations around an accreditation model, right.

So again, as I said earlier, there are parts of the temporary specification where there are unanswered questions in terms of the legitimate purpose for the collection, the processing, and the access to nonpublic data. Those need to be worked on. Once we've finished that process, then I think it's time to kick off the actual work on coming up with an accreditation and uniform access model, which is necessarily in my view the next step. So I think just in terms of phasing, in terms of process, in terms of - we all have different views on priority, but I think that's the necessary staging that we need to focus on.

And I'll be specific here. I think that the first two components that I'm recommending is that we go through and identify where the issues are that we can agree on consensus for confirming the temporary spec. We start the work on where we don't see or we don't agree on the components of the temp spec and we come up with these answers to the purpose question for legitimate access and legal access.

That all has to be done by Barcelona for the initial report. And what I'm suggesting is once that phase is done, in Barcelona we could kick off the actuals follow-on policy work on the accreditation and access model. So that' my specific recommendation. Thanks.

Susan Kawaguchi: Thanks, Keith. And Paul.

Paul McGrady: Thanks, Paul McGrady again. So Tatiana, you say that the law enforcement have access now. What part of the temporary specification survives after May 25? If the issue of access is for law enforcement, for intellectual property issues, those kinds of things, is not addressed, what part of the temporary specification will continue on or will it fall away? I think it falls away. That's what makes it temporary. So just because we have something today doesn't mean that we have it when the temporary specification expires.

Keith, I think at least we're all sort of talking about doing a fulsome job, which I think is progress. However, I don't think that stacking these things up into phases that will stretch on to eternity is what's going to move forward. I would be happy with a parallel track, two parallel tracks, three parallel tracks, however many we need, that essentially we take the position that they all need to be done before any of them are implemented so that we solve this problem once and for all.

And to Michele's point about intermediaries point about how legal things will be involved, yes, after we survived learning all about what an empowered community is, which by the way no one had ever heard of before, all the work around ICANN has legal ramifications. That's nothing new. That's a budgetary issue. We need to make sure that we have appropriate money to ask Council questions as we go.

So hopefully, we can, again, do a fulsome job, get it all done in time, and we have to really deal with what is in the entire specification, which includes access. Thank you.

Susan Kawaguchi: Okay, so these are very, very it because Paul asked you specifically, Tatiana, (unintelligible) and then we're going to…

Tatiana Tropina: So about temporary specification, Tatiana Tropina for the record, and law enforcement. Even if temporary specification would be, for whatever reason, Council were dead today or tomorrow, law enforcement will have access anyway under different laws and request, legitimate request. This is my first answer. Secondly, specification will be terminated at some point and if we fail to address the most important point in them, the issue that ICANN would be put in existential crisis. This is where we are going to fail and this is why I agree with what Keith is proposing. Let's address - let's confirm the major parts of it first. Thank you.

Stephanie Perrin: Stephanie Perrin. I'm just going to repeat one of my earlier points. There is no point in building yet another thing that's illegal. Let's find out whether the first part actually works and make decisions about some of these key things. And then there will be disclosure mechanism. Now, I'm crushed at the lack of interest in my standards development process that you've shown so far, Paul, but I have a list of problems that we need to solve, specific problems, one of them being of course anonymous access for law enforcement in cases of serious organized crime where anonymity is a requirement and searches have to be invisible.

So I'm busy on my list of things trying to knock that one off. Why can't we take that approach and sort of shut this down and realize that if we wanted to have status quo access machines, we should have started building them ten years ago or even five, or even in 2014 when the EWG report came out, and identified a lot of the issues, not try and ram them through in three months

only to spoil the outcome. You're more than welcome to come and talk to me about some of these problem lists.

Susan Kawaguchi: Okay. So I think we've had a good discussion and I think it's things that need to come out and be said. We've had some - we have some perspectives here but we have to get to this. So issue 1, issue 2, issue 3, topics, and so now, we need to move on to start fleshing this out in some way.

Keith has come up with a question that was sort of similar to one of the questions I asked at the very beginning. Are we going to confirm this? Is this something we're going to throw away and say, sorry ICANN, we don't agree with your temp spec but here's the new policy. And Keith suggested conducting an analysis to see if there is consensus. And if so, set those aside and then discuss that we don't have consensus.

There's talk about parallel tracks, legitimate purpose. We're always talking about purpose. It seems like we may be on track for some of that work having been done previously. We should look at that and a big question I think is how do we decide or how is it determined that what policy is generated out of this PDP is legal that can actually be implemented and poor Michele doesn't have to go to jail in Ireland. So there was definitely a call for a scope as narrow as possible, some other things. But anybody have any ideas on how we get to lining out those issues? Donna, I'm sorry.

Donna Austin: Thanks, Susan. Donna Austin. I don't think I'm going to directly answer your question but I think where we're getting stuck here a little bit is the timing. So Keith's proposal on a phased approach to doing this and Paul's suggestion that we have parallel PDPs to address the problems here. I wonder if…

((Crosstalk))

Donna Austin: Right, okay, my misunderstanding. I thought you were talking about parallel PDPs. All right, so maybe I'll park that because I think it's a timing issue on how much we can usefully achieve in four months and what we can kick over to a next phase.

Because I think in trying to work out the mission and scope of this one, we're going to have to make a determination on that when we decide what's within scope. Because if it is two phases, it can't be two phases of this PDP in my mind if we're going to try to meet that 12 month requirement. I'm struggling a little bit with how we phase that and we scope this effort.

Susan Kawaguchi: So one thing comes to mind is maybe we take Keith's first question on the temp spec and do a similar analysis, though obviously very quickly, to go through and figure out what we could agree is in scope. Maybe we take this in little bits and say, okay, does everybody agree this is in scope.

We can't do this without that, and then work our way down to the annexes and the different - or the different language in the temp spec that we don't agree is in scope. Maybe we agree more than we think we agree.

Michele Neylon: I think Susan's given me the opportunity to respond. Michele for the record. Susan, we do actually agree on some things apart from which are the best steakhouses.   It would make a lot of sense to me to be able to put out a simple list of topics, list of items, and just give people the opportunity to vote up or down, or whatever way. Just some way of collating that feedback, yes, no in scope, yes, no, or maybe, and then see what we come up with at the end.

Now, if as a rule of that exercise, we end up where there is something that a particular group, stakeholder, whatever feels very passionate about let's just say, then it should be the kind of are you willing to die on that hill type test. Is this something that you absolutely have to have and are willing to defend come hell or high water, et cetera, et cetera. Or is this more a case of I must

fight in my corner because it's ICANN and I'll fight in my corner until I die. Just be a bit practical.

Then we have something. But if we're continuing to discuss this, I'm just worried about the timing. I really am.

Susan Kawaguchi: I completely agree. I'm not sure how to figure out on the fly a list of topics or issues other than going through the temporary spec.

Michele Neylon: Well, going through the temporary spec rather quickly and it's going, right, okay, data elements, in scope, yes or no. Done. I mean that to me is very - I think I'm just trying to make this simple, fast, and just can we get this done rather than trying to be overly nuanced and spending the next six months arguing about what's in scope. And then we run out of time and then we have the existential crisis. But hey, it does mean we'll get back those 3:00 a.m.

Susan Kawaguchi: We're going to limit you to words, how many words you can say. Okay, Paul and then Darcy, and anybody else in the room, and then can we - in the meantime, can we have the temp spec put up?

Paul McGrady: Paul McGrady for the record. So instead of taking it subject matter by subject matter, why don't we just put the temp spec up and go through paragraph by paragraph and decide whether or not we're going to include everything that's in the temp spec or whether we're going to carve it up. Because I think that that's a very different EPDP once we start carving it up. But at least that way we can be transparent about what it is that we're trying to exclude. Thanks.

Marika Konings: This is Marika. We can put the temp spec but would it be helpful to look at the document that Keith provided, the Excel sheet? Because I think that has basically topics, which I presume are all derived from the temp spec identified. I don't know if that is an easier way than looking at the whole temp spec together. But Keith may be able to clarify.

So basically, the question is what is easier to put up on the screen to look at, the whole temp spec, or the Excel document that Keith circulated on the drafting team list?

Heather Forrest: Thanks, Marika. Can I suggest from a procedural point of view, I think - so Keith's document is very helpful but I think for the purposes of this discussion it might be easier to work with the temp spec itself just to capture things in order and that sort of thing. And what I might think we do is cross-refer back to the spreadsheet just to make sure that we've caught everything. Yes. I'm just conscious of, likewise, working with the charter itself that we work with the actual language. Thanks.

Darcy Southwell: Thanks, Susan. Darcy Southwell. I think the other thing I wanted to add is in addition to when we think about scope, think about the issue of do we have an open consideration here from a GDPR compliance perspective? Because there have been views expressed that there are areas of the temporary specification that do not comply with GDPR and probably just global privacy.

I know we talked a lot about GDPR but we do need to recognize that this is a global privacy issue, not just GDPR, and how that informs the stages proposal - the stage proposal I should say that Keith has proposed, and what open items inform the other piece of the temp spec, which is that access model. Thanks.

Susan Kawaguchi: You can't put mine up. I'm going to move mine. Anybody else? Keith first and then no one else. Okay.

Keith Drazek: Thanks, Susan, and thanks for all the continued conversation on this. Paul, I note that you typed into chat a question about if we don't talk about anything related to the continued access in the temp spec then does it survive. And I think the answer there is that we can absolutely consider whether to confirm what's in the temp spec, including continued access as part of this process.

The distinction I'm making is that I think building a new uniform access model for accreditation and access in a four-month timeframe is an entirely different animal. So I think there are discussions to be had around what is in the temporary specification that we have an obligation to say yes, we confirm that as consensus policy or no we don't.

So maybe we're talking past each other a little bit, but I think the idea of building some model that's going to support all the different variations for a uniform access engagement and building all those policies around who accredits, who gets accredited in terms of service, enforcement, and reporting, to me that's a much longer timeframe question.

But I do think that we have an obligation to focus on this question of continued legitimate access to data. And as I said in chat, I think we as a group have the opportunity, or the EPDP working group has an opportunity to extend that obligation until such time that a uniform access model is built and implemented. So I hope that helps clarify. Thanks.

Susan Kawaguchi: So I'm going to respond to that a little bit and thinking out loud so if you can't understand me it's because I don't understand my own thoughts. But if in the temporary spec, and we may want to go to a different page on this one to start, but if we are discussing legitimate purpose and the community and the EPDP comes to an agreement on legitimate purpose, that informs the access portion of it.

So we might find, in going through the temporary spec, that we are fulfilling elements necessary for creating an access policy. And there's not that much more work to do for developing the policy around access.

Developing the accreditation or who authorizes certain parties for law enforcement and sort of validated and accredits different parts of the

community for - or the globe for - to use those access policies is a different question. And I don't know that that's in the temporary spec.

So maybe what we need to do is just focus on legitimate purpose but also not rule out the thought that these legitimate purposes should be fleshed out in a manner that it can inform the access policy. So we're doing part of the work for access anyway. I'm not sure that was - I'm just sort of thinking out loud.

But I think there is probably a whole subset of the accreditation, and Paul, obviously you'll argue with me if I'm wrong, accreditation process that is not ICANN policy. ICANN's policy is not going to say you law enforcement in this country gets access and you law enforcement over here does not get access. We don't have that. Or you have the intellectual-property rights but you don't. That is not GNSO policy I don't think. I mean can we…

Stephanie Perrin: I think that's one of the hard problems, Stephanie Perrin for the record, that I was mentioning a moment or two ago. That is not a matter that I think ICANN ought to be messing with. That is a matter for legal compliance. I would certainly - I'm not a lawyer as I always say, but I would certainly not advise a contracted party to give personal data to an authority that they don't trust and that they have good reason to not trust. Because then they have knowledge and wrongful disclosure.

So I mean this is - that's a hard problem. Can't solve it at the Council of Europe and the cybercrime convention, we're not going to solve it here in four months and that's what you need for proper disclosure.

Donna Austin: Thanks, Susan. Donna Austin. So can I just go back to what you suggested about going through the temporary specification. I just want to understand what your intent is here. Is it to decide what's within scope and what's not in scope of this charter? Is that the intent of going through the temporary specification?

Susan Kawaguchi: So not sure, and maybe I'm grasping at straws, but it seems like if we could say, okay, 3, additional provisions concerning processing personal data in public, okay, that is basically - if you're in the U.S. is your data process in the same way as the GDPR. Do we all agree that is in or out. And if we agree that's one of the other, then do we really need to go back and look at that again (unintelligible) questions.

Donna Austin: So here's my problem with doing that. The task here is to confirm or not the temporary specification to make it consensus policy. So if we take any elements of the temporary specification, if we make that decision now, it's out of scope, then there can't be a conversation to make that consensus policy. So in my mind, the full temporary specification has to stay. It has to be in scope because that's the ask here is to confirm or not as consensus policy.

Susan Kawaguchi: (Unintelligible) your question but I have some thoughts. I'll put myself in the queue. So Paul and then Pam.

Paul McGrady: Thanks, Paul McGrady again. So I mean I agree with Donna. I think that the entire temporary specification, even the parts that people don't like, have to be in. I think it's consistent with the board resolution where they say that they will consult with us as soon as possible and then (unintelligible) consider the development of the consensus policy, the issues within the temporary specification.

Not on some of the issues, not on a few of the issues, but on the issues in the temporary specification. I think it's pretty clear that we're meant to look at everything that's in there, even the parts in Section 4 that some people don't like.

So again, the reason why I suggested we put the temp spec up on the wall and to walk through it is if we're going to ignore what the Board has told us to do and cherry pick out of here what people want, at least we need to be - at a minimum, we need to be transparent about what we're doing. I think we

should consider the whole thing and do a fulsome job but I know there are people around the table who disagree with me. Thanks.

Keith Drazek: I'd like to respond to that. Thanks. Keith in response to Paul. Keith Drazek for the transcript. Paul, I don't think anybody in this room has suggested that we need to carve out parts of the temporary specification as out of scope. I think what we're talking about is the references in the annex to building a uniform access model as being separate.

So, and again as I said earlier, everything -- and as Donna just alluded to -- everything in the temporary specification is subject to the review of this EPDP working group with the intent to either confirm, not confirm, or amend.

It's the things that are in the annex that are not part of the temporary specification itself. So I just want to be clear nobody is suggesting that we carve out the sections four point whatever that you've referenced. I think we're on board with the temp spec being the temp spec and the subject of this EPDP working group.

And as I said, I'll be brief, and I think as Susan suggested just a moment ago, very helpfully, is that there are things that we can advance in the review of the temp spec and identifying and defining some of the purposes for legitimate access and legitimate use that will absolutely help inform the discussions about the development of a uniform access model.

But a uniform access model is a very different animal than continuing to ensure that registries and registrars, under their obligations, continue to collect transfer, escrow, and make available for legitimate use the data that we're talking about. Thanks.

Pam Little: Thank you. Pam Little for the transcript. I just want to agree with Donna and what Keith said about the scope. I think the temporary specification,

everything should be in scope apart from annex, what's in the annex. And I wondered Marika, ask Marika to display 4.1 here.

I think it's important to bear in mind there is a difference between access and unified access model or accreditation model. Because they are two things.

At the moment, the temporary specification does provide access and that's the language in 4.1. Third parties who have a legitimate interest will have access if they satisfy 4.1. So you all have that. Our IP folks, colleagues, you have that today for the next 11 months until 25th of May. But if we don't have an EPDP that concerns the 4.1 or improve it somehow then that goes away. Hat is the risk. Then on the 25th of May you wouldn't even have that reasonable access even though it's not unified. You won't have access at all because registrar and registry would not be bound by that 4.1 anymore on May 25. Thank you.

Susan Kawaguchi: Okay. So Donna, I'm going to go back to you. I think I used the wrong words when I was using my reference to one of those up there. It's not in scope or out of scope, you're right. The whole thing is in scope but do we have agreement. Is there anything that parts - people at the table here and the GNSO Council would say, no, we cannot agree with this Section 3 and that needs to be worked on. That's more of what I was trying to get at that there could be parts of this temp spec where it doesn't require a lot of work. Still doesn't work for you. Please.

Donna Austin: Because in my mind then the Council would be making that kind of - we'd be making a policy determination, which is not within our purview to do. We're just scoping this. We're just scoping the charter. Those systemic discussions have to happen within the PDP working group itself.

Heather Forrest: Thanks, Susan. For the record, Susan, I think you're doing an admirable job here with a very difficult concept and this sort of thinking on the fly is exactly what we need. I'm about to suggest something wacky, but in view of the

need to move us forward. And I don't want to lose the goodwill that we had this morning. Let's say, is there room, having listened to everything, I haven't may any interjections to this point, is there room to say that what is in scope, because I've heard this a number of times, what is in scope is the temporary specification and the group then determines what that means as regards the annexes?

Because I do think we are tending to go down a path here of Council talking about the substance and it's Council who need to be directing its attention to the process. Thanks.

Susan Kawaguchi: So just my own quick comment. Rafik, go ahead and I'll start after you.

Rafik Dammak: Rafik speaking. So what we are saying is the scope is the temporary spec but maybe how we can phrase it is that EPDP team has to go through each section to analyze, review, in order to confirm, or not confirm, or tweak, amend that section. So maybe if we tried to work toward that language, I think that we spent some time now discussing about this, but is it kind of something we can work on that. We have to go through to review anyway and to do this action as suggested before by Keith.

Susan Kawaguchi: Michele, and then Stephanie, and then Tatiana, and I'll put my - who?

Michele Neylon: I think you gave it to me. Thanks. Michele for the record. So I think my understanding now is I think possibly the term scope may have caused confusion. So the entire - the temporary specification if what this EPDP is meant to deal with.

However, some items and matters that are specified in the current language of the temporary specification may be outside the bailiwick of policy development. However, it would be up to the group conducting the work on the EPDP to make that adjudication. Is that - is my understanding of where we are now at correct, or should I rephrase what I just said? I'm seeing some

nods, I'm seeing confusion from others and I'm not sure what the hell I'm seeing from others. I can't quite read their faces but that's okay. Can somebody confirm or deny?

Heather Forrest: You put me on the Scott, Michele. This is Heather Forrest. I would suggest that I think that's a fair representation, Michele. I think there might be a nuance to it, which is, is it confirm, deny, change, to give the three options that Keith has been describing. Confirm, deny, change or determine - park maybe.

Michele Neylon: Okay. I think we're moving towards agreement but I think the subtlety and nuance is slightly different. The certain items that are within the temporary specification that some of us feel, while they need to be addressed, doing so within there is not the place to do it, which does not mean they don't need to be addressed.

So for example, the SLA, there's language around SLAs. Should there be SLAs for certain things? Yes. Can a bunch of policy wonks who wouldn't know an RDAP server if it hit them on the head be making that decision? Hell, no. Does that kind of help you.

Heather Forrest: Thanks, Michele. I wasn't - I think maybe I've pushed myself into the position of trying to frame out the options. I think what I was thinking in my mind is that given that Council's remit is to focus on the process and we clearly have a number of views in relation to the outcome, let's say, I think we might be close to conflating the thumbs up, thumbs down and the process.

To the extent that we're able as Council to turn this over to the EPDP team, to say, what is in scope, it's a fairly simple definition of scope. What is in scope is to review the temporary specification for the purposes of confirm, not confirm, change, other. Or let's try again, I'm drafting on the fly. What is in scope in this effort is to review the temporary specification.

Susan Kawaguchi: Susan Kawaguchi for the record.   Stephanie?

Stephanie Perrin: Thanks very much. Stephanie Perrin and I hate to throw the apple of discord here but I am, yes. I think Michele has summarized what you were saying elegantly. I think Heather is trying to solve a problem diplomatically, but I think this is an excellent example of the kind of problem we're going to encounter actually on the EPDP itself.

Now, I don't think we can defer a decision on this. To my mind, we have to remember that that temporary spec was not a product of our policy development process. So the fact that it includes policy and implementation items within it is just the usual at ICANN.

I believe that this issue ought to be subjected to the scrutiny of all of the material that came out of that policy implementation working group that a number of people co-chaired few years ago, which we don't refer to often enough. I think this is an implementation issue, as I've said earlier and as Michele just alluded to with respect to how the hell you build an RDAP that does this.

And I think if we punt it to the group, they will lose two months arguing about this unless they come up with some kind of very difficult and probably subject to protest way of ruling. Thanks. So we should decide in other words.

Susan Kawaguchi: Tatiana please.

Tatiana Tropina: Thank you very much and thanks for Heather trying to get us out of stuck. Where I see the problem here, I believe that the group might run into the same discussion we are having now, but without us setting the boundaries for this. Why? Because if they are empowered to pick up the issues or address the issues, we have to maybe tell them to set the priorities.

And the second thing, if we just leave it to them to decide on the temporary specification, which issues had to be addressed, if they decide that some things are not in the scope, what are they going to do with them? Are we going to provide them with any idea that there could be another stream or something?

Because then it would go to the same loop, like we are leaving the issues aside and we are not addressing them. So maybe we say that they not only pick the issues, but they also prioritize so nothing would be left. Because it would be the same discussion again and again. Thank you.

Susan Kawaguchi: Thanks, Tatiana. Good points. Philippe?

Philippe Fouquart: Thanks. Philippe Fouquart. I just wanted to offer some support for focusing on the process really. It seems that - sorry, can you hear me? I just wanted to support the idea of focusing on the process rather than starting doing the work here. I appreciate that people of that PDP may actually come up against the same difficulties. Maybe want to think about a default option should it be impossible for them to decide, that's something that we could do. But we wouldn't be using our time efficiently if we were to start the work here.

Certainly I mean in the (unintelligible) and confirming, denying, or changing the options of the core of the document. To me, denying would be in effect considering that that would not belong to (unintelligible) and things like SLAs, for instance, might be part of that.

But that's really up to the group to decide and being mindful of time, I think we should really focus on what is input of that group, what is the remit, and what - to me, I have some sympathy for the phased approach of setting our priorities and to me that's the basic entry point and the nice to haves are the annexes.

But we should comment put something. That's certainly the view of the ISPCP. The worst case scenario would be to embrace too much and trying to bite off more than we can chew. And that's not something that would be a good thing eventually. Thank you.

Susan Kawaguchi: Thanks. And Keith is last in the queue because we're running out of time here.

Keith Drazek: Thanks, Susan. I'll be brief. So I agree, Heather, that we want to focus on process and we don't want to be overly prescriptive in terms of telling the workgroup how to conduct its business and to organize itself around - particularly around the review of substance.

But I do think because of the time constraints and the time pressures that the group will face, to the extent that we could provide them a framework at least start their work might be helpful.

And with that, I would refer back to the matrix document that we pulled together that essentially breaks down the temporary specification into its component parts and then identifies some of the open questions. So that might be something that we could consider incorporating into the charter, and again simply as a framework, not in any way dictating substance, or output, or what may come next. But just as framework.

And I recognize not everybody may have had a chance to review that document. We probably don't have the time to put it up on the screen right now, but we should probably at least incorporate that or consider that for incorporation as a framework for the charter. Thanks.

Susan Kawaguchi: Darcy is the very last one. Then I have a couple comments.

Darcy Southwell: Thanks, Susan. Darcy Southwell. I think to Philippe's point, we've got to be mindful of the time. And so I think having Heather's suggestion of affirm,

deny, change, I think is probably a better way to phrase that scope and get them focused on the work rather than review. I'm concerned that review is a very mild action word that doesn't really produce a result and we need a result. Thanks.

Susan Kawaguchi: Okay, one thing that has come to mind in this discussion, and I feel like my thinking has been very convoluted today is so now, we're back to where we started, what is the temporary spec. What is that? There's different definitions in the room. So is it everything the Board delivered to us? Does that include annexes and appendixes? I mean I think at the end of the day, we're going to have to figure that out because we're going to take the whole temporary spec and plop it into the charter in some way, we need to agree on what that is.

So just leave it in somebody else's hands. I have no clue.

Donna Austin: So Susan, if I may, Donna Austin. I actually think we've come a long way based on the discussion we've had and the way that you framed it. So I actually think we're in a lot better shape than we were when we started this conversation because it certainly - I'm trying to think about different ways that we can do this as well.

And it's also kind of led to a question that we do have a few questions that are outstanding from the Board, particularly the one around the picket fence and some of the conversation that I think (Krista) asked the question, but why do you need to know what's within the picket fence or not because how do you decide that within your normal policy process.

So that would be a gating factor. You know what, can we develop consensus policy on. And I think there's recognition in the contracted parties side that there are elements of this temporary specification that are not - that would not normally fit into that sphere of what consensus policy could be developed on. The easy one for us is SLAs.

So while I know that I was pretty adamant that this is a what's within and what's without, I think this discussion has helped us realize that it is a little bit more complex. But in having the conversation, I personally have a little bit more clarity around that now. So thank you for that.

Heather Forrest: Thanks, Susan, very much. Can I make a suggestion? In light of what Donna has just said, I wonder if it would be helpful - so let's just have a sanity check here. We have 25 minutes left in this session. We then have a series of two cross-community topics and the aim, let's say, is to have something to think about tomorrow. And I agree with Donna. I feel that this discussion has been really very useful.

We have this evening the opportunity to get together to prep for tomorrow. That's an opportunity to take stock of where we are at this point in time. I wonder in light of Donna's comment if it would be useful if leadership reached out to Cherine or other Board colleagues and just brought them into this discussion this evening on the picket fence issue and some of the key points that we've raised here.

Would that help or would that be premature at this stage? I wonder if this is a direct input. Cherine did offer assistance in the course of the week. Or do we maybe want to use - so we have an hour this evening. Another option is we have three motions on the table, but we could use this evening as an opportunity to come back to this specific issue.

We can come back to those items in that draft charter that we actually have text for and go through those. I'm just working on ways to progress. Michele?

Michele Neylon: Michele for the record. With all due respect, I think if we spend more time today looking at this, our collective heads are likely to explode. I have no issue, and I'm being quite serious, I have no issue with us doing

concentrative focused work but I don't think it's particularly healthy for us to spend as much time in a single day. We need to change the pace because, I'm sorry, my head is really beginning to hurt.

Heather Forrest: I appreciate that, Michele. Stephanie?

Stephanie Perrin: In that respect, Stephanie Perrin for the record, I tend to agree with Michele. I'm just contemplating the next panel that's coming up at 5:00. This is a bit of a three ring circus and I think our ability to maintain our focus, and in my view, make sure that we are using words appropriately and that our definitions aren't shifting, because quite frankly, I'm still reeling from the GAC session, it endangers our ability to come up with a scope within the time we've been given and finalize our charter.

So steady as she goes would be what I would say right now. I'm thinking of skipping the panel and trying to get (Tap) to take my place just in case I lose my focus again. So I wonder if we could have a list of words that we need to nail down, such as prioritize, triage.

I would like it recorded that we need to refer this to the policy and implementation issue and in that respect, the idea of inviting Cherine, since presumably, or even board members, they're responsible for the temporary spec that mixes all these things up and gives them a wee blend. So that's just my thoughts.

Heather Forrest: Thanks Stephanie. I'm going to make a suggestion. I think there's a human factor here and I take very much to heart the comments made by Michele and Stephanie. Stephanie, I don't know necessarily that if we start to work on a list now, it just might divert us. I understand the point that you're trying to make and consistency is important.

Can I suggest this? What if the way to progress this is we have a document that we've had brilliant momentum this morning. We have a document that

will have text in it. It won't have text in relation to scope. Scope will be blank. I wonder if looking at the document without scope will help us.

We'll see how things begin to shape up and start to comment on some of these other issues where we've made real achievement today in relation to composition, in relation to leadership. And this may help us to seed a bit more thinking in relation to scope. So that could be the basis of our discussion tonight.

In other words, continue with the plan that we have in place, our drafting team putting together some text, some straw man text, or our individual drafters. Susan, if everyone agrees to that proposal, it takes you out of the hot seat for the moment and we'll come back to you.

Your seat is still hot but the temperature at the moment is not as hot as it will be later. Does that seem acceptable to everyone? I see nodding around the table. All right, fantastic. Thank you very much, Susan, that was brilliant.

Let's go back then to our original slides. We have two topics left and we need to make sure that we end in a timely manner so that we can transition over to the cross-community sessions. So I believe Stephanie, you might be - so Stephanie, we have to warm up your brain now. I know you said you're having trouble with focus. Yes. We'll give you a jolt. Michele will - I see Ayden is ready to elbow you. Ayden is smiling. So am I.

Donna Austin: Can we maybe stand up?

Heather Forrest: Yes. In fact, we missed afternoon break. Why don't we take it, Donna's suggestion is a good one. Let's take a human factor break here, five minutes, stand up, move around, let's not all get DVT. Let's come back and Stephanie that gives you a chance. You can run some laps in the hallway. We'll come back to your topic, which is very timely I might add, dispute

resolution. Five minute break. We can stop the recording and we'll restart the recording when we resume. Thanks very much.

At the risk of pained expressions from council colleagues, could we come back, reconvene for 15 minutes and wind up on our session today please? So let's go ahead and reconvene and wind up for today. We're going to eat a few minutes into the tea break. We had our break a little bit early. Stephanie, I'm channeling you. Well done. Good stuff.

Tech team, could you let us know? Good stuff. Thank you very much. So this is the final effort that we have this afternoon in relation to the drafting team and what I'd like to do, we've had a little bit of a break early. It's now 2:52 local time Panama. The cross community sessions start at 3:15 and I'm conscious that a number of us have to get not just there but to the panel.

So what I would suggest we do is, Stephanie, you might just frame the issue for us in relation to problem issue escalation. And what I would suggest in line with the comments that I made this morning to Rubens is this is an opportunity to focus as narrowly as we can to deviations from the existing working group guidelines.

So Stephanie, if we can capture that in five to ten minutes, we'll turn it to Rafik to pick up some other issues, at least put them on the table, and then we'll break for the day. Thank you.

Stephanie Perrin: Thanks very much. Stephanie Perrin for the record and I did kind of get my dibs in by commenting in Keith's earliest intervention this morning about how clearly people didn't understand this when we were describing it in the GAC meeting room, when I was describing it. I should take full blame for this but I think it is a difficult concept. So we do have a set of proper procedures under the PDP to how we reach consensus and that process did not work in the RDS working group. I'm just going to refer to that as a recent example. We

know we've discussed this in our session in California back in January about some of the PDP problems.

So the question is when we know we are going to be facing entrenched positions, and a short timeframe, and things that are extremely important to all parties, how do we deal with conflict? And I'm not talking about bad behavior because I believe that we have mechanisms that if enforced will work and complaints about mistreatment, ombudsman. I'm talking about parties being unwilling to move at all in an attempt to reach a compromise.

So for instance, if Paul and I were to be completely intractable on the subject that we discussed just before the break, what happens? And this is where you call in an independent dispute resolution professional to try to get some kind of movement or at least to explain to the individuals that they were being intransigent. Because that's not a duty you want to throw onto the chairs on top of everything else. The chair can say, right, we seem to have an issue or the independent dispute resolution person, if present at all times, can say we seem to have a problem.

And then you pull it off and you do not wind up wasting the entire session, the entire week, whatever, arguing about this. So that's just one proposal but as I say, I ponder all the time how we could have done things better on the RDS and I do think that might have worked.

Now, I know the ombudsman would be willing to perform this role. I think we need to save the ombudsman to deal with abuse, and harassment, and that kind of thing that is his normal role. He's not really an independent resolution - dispute resolution professional.

I am thinking of the kinds of lawyers that show up in divorce court. So that's basically it. Comments, discussion. Clearly, Kavouss did not understand this because he tackled me a couple of times on it in the session we had in the GAC room. I'm not sure whether anybody else did either. Yes?

Heather Forrest: Thanks very much, Stephanie. That's a very helpful summary. I suspect, Stephanie, based on and I don't think it's just lack of inertia at this point, I suspect we're all in agreement on the need for some mechanism like this and I see nodding heads, which is great. This is another point that we're coalescing around. Lovely to end on one of these points too.

I think it's just the mechanics of what we add to the existing modules there in the working group guidelines. Stephanie could I suggest, and you have experience here as well from the previous PDP, could I suggest that given that we are all in principle agreeing that there's something more needed here, would you be willing to put down a straw man on what could be added to the existing working group guidelines?

Let's be very careful to note what is already in the working group guidelines. So you want to start with that text and pay close attention to that so we don't repeat ourselves.

And if you're willing to put down some straw men language that we could then put into the document via Marika, I think that would give us a good starting point.

Stephanie Perrin: I'd be happy to do that. Stephanie for the record. I think we also need to figure out a budget and get the request in immediately because clearly, Paul and I need it right now. That's a joke. And we need to determine what triggers it. So I'll put some language in for that. Thanks.

Heather Forrest: Stephanie, thank you. Heather Forrest. Stephanie, if you can get that text to Marika, Marika will put it into the document and we'll have something to discuss. I think that would be very, very helpful. The last item on our agenda is the sort of other stuff and in other stuff, we captured working group methods. That is really foreshadowed by the comments that Stephanie has

just made. Rafik, you were our lead there. Any thoughts onto how we might progress in relation to working methods? Thanks.

Rafik Dammak: Thanks, Heather. Yes, from yesterday, what we get as input mostly was around that we need that independent legal counsel. But there were several ideas I think around should not be that open, that we have a firm that we respond to whatever question, but to be really careful in terms of course something maybe we can work around it. When (unintelligible) we can ask those questions to get legal counsel.

So on the other hand, even when we asked about having the face-to-face meeting, we didn't get that much guidance. But I guess if we envision to have that, it should be - the face-to-face meeting should happen during some important milestones. So to not be used as the only way to do work. It should be the time to maybe to finalize some (unintelligible) to speed up the work.

So maybe like having the face-to-face meeting and if we are going with the current timeline, it should be in September, for example, just before the initiative or something like that maybe, it will be helpful. For the conference call, I guess knowing that we have that timeframe, probably it will be a weekly basis, but I guess it's up really to the EPDP team to decide. But maybe we can make clear that that should be within some budget constraint because we have to be mindful that having calls that it means it's not just the calls for the phone service but also the time from the staff and so on. So we need to factor that.

So also there was some - and as additional resource to have maybe. It's not clear if it's resource but maybe that can be covered in other areas to have a liaison from the DPA or European Data Protection Board. It's not kind of resource but maybe in other area of the charter. So I think that's what we have. So I don't think we have other - we didn't get other suggestions and

just getting the legal counsel and to be careful in term of cost. Yes, Stephanie?

Stephanie Perrin: Stephanie Perrin for the record. I'm very curious if the data protection commissioners have made any commitment to come and participate in policymaking here. It strikes me as impossible. I see Erika is shaking her head. So maybe she agrees with me, but we do have an offer from the Council of Europe. We had the up. We had (Peter Cimpion) participating on the RDS.

They are observers. They would be happy to join. It's probably a good idea to have them in some kind of observer role so that we don't load work on them. But they do have expertise in data protection law. (Peter) is a former legal counsel for the Hungarian Data Protection Authority and has commented on GDPR and throughout its trajectory. So we would have that resource and that is an appropriate role for them. It's not an appropriate role in my view for the data commissioners of the EPDP.

Rafik Dammak: Thanks Stephanie. You mean that it will be a kind of external resources about data protection?

Stephanie Perrin: Well, he would be on the group but he'd be functioning as a resource. Because clearly, he's not delegated by Council and I don't see GAC nominating them. Pity. But they would bring that expertise to the table. Fifty-three countries, the latest is Mexico, signing on apparently next week to the Council of Europe Convention 108.

Rafik Dammak: Okay, thanks. Ayden?

Ayden Férdeline: Thanks, Rafik. Ayden Férdeline. I feel like this is probably implied but just to make sure in terms of resources that we need that we do have transcription and I note this because the Council's standing committee on budget and

operations does not have a budget for its calls to be transcribed. So just for the avoidance of doubt, I think that's important. Thanks.

Rafik Dammak: Thanks, Ayden. So you are meaning that we should add all the additional service like transcription and so on. Okay. Yes, Marie?

Marie Pattullo: Thanks, Marie Pattullo. I'm not sure this is the right place to ask the question but you'll know the answer anyway because you always know the answers. Are we envisioning some kind of open mailbox where anyone who's not directly involved in the working group can comment or suggest anything? And if so, what poor sod is going to have to try to keep an eye on that?

Rafik Dammak: I see Michele want to comment. Yes.

Michele Neylon: Thanks, Michele for the record. I'm not sure exactly what you're trying to achieve. Are you suggesting that we have one or are you asking if we have one? Yes, to the second. Okay. Just my own personal opinion, oh god no, please no, which doesn't mean we shouldn't get input. I think there are appropriate means to get input, but having kind of an open mailbox is probably not the best way to do it because you could end up with getting all sorts of completely irrelevant things in there.

Just to give you a concrete example, as a registrar we want to deal with registries and I really don't want my sales team, who do not have the ability to sign contracts, to start getting these things. So I publish an email address on our website for that.

Do you know how many legitimate emails I got from registries? Zero. Do you know how many emails I got on that email address before I removed it and I'm still getting? It's ridiculous. So I think there's opportunities to collect, collate feedback and input but it needs to be something that's guided and focused, because otherwise you're going to get people coming with all sorts of insane out of scope things. Just my view. Others may disagree.

Rafik Dammak: Thanks. I guess also we need to wrap soon so we will go to Marika first.

Marika Konings: This is Marika. Just on the transcript something that to consider is in what circumstances transcripts are desirable or should be used. Because for example, if the EPDP team is meeting every other day, you will not have the transcript when the meeting already convened.

So in that circumstance, there may not be value to having transcripts. So again, that may be something for the team then to consider in which circumstance it's helpful to have those. Because there is of course a significant - there is an expense associated with having transcripts.

Rafik Dammak: Yes, Michele.

Michele Neylon: Just on that point, Marika, is there any kind of - can we get some visibility I suppose on the cost for doing the transcripts? Because I think in some circumstances, there's probably a value in having them but having them as the default, which some people might ask, is probably going to put a ridiculous economic burden.

Rafik Dammak: And if you wanted to make really a short comment because we really need to wrap here.

Ayden Férdeline: Yes, I can keep it really short. This is Ayden. I think we should always have the transcripts for all of the calls. They do not necessarily need to be available within one or two days, but I think for the record they're important.

Heather Forrest: Thanks very much. So I've made the let sleeping dogs lie motion to a few people. I'm must mindful of time. We need to get our panelists over to the cross-community session. Can I make a suggestion to wind up? So as I hear things, we've got three buckets here.

Rafik, I think we have things that happen during conference calls, things that happen during face-to-face meeting, and then general, which applies to everything. In the general bucket, I have legal counsel, transcription, an email box, and there may well be other things. If we can frame those things into the document as suggestions and we can do sort of strike and tweak and that sort of thing, that'll give us something to work with here.

Does that sound acceptable? Cool. Everyone that concludes our marathon drafting sessions. It's been brilliant. We're all smiling for the record, those not in the room, and I very much appreciate all the effort that's gone into this. All of you who signed up individually to put together some straw man text, Marika has included that Google doc link again. Marika and team will be available to help anyone who might want some help and we'll carry on and come back again tonight. So thank you very much.

END