ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Thursday, 03 October 2019 at 14:00 UTC
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TERRI AGNEW: Good morning, good afternoon, good evening, and welcome to the GNSO EPDP phase two team meeting taking place on the 3rd of October 2019 at 14:00 UTC.

In the interest of time, there'll be no roll call. Attendance will be taken via the Zoom room. If you're only on the telephone, could you please identify yourselves now?

Hearing no one, we have listed apologies from Allan Woods of RySG and Amr Elsadr of NCSG. They have formally assigned Sean Baseri and Stefan Filipovic as their alternate for this call and any remaining days of absence.

Alternates not replacing a member are are required to rename their line by adding three Zs to the beginning of their name, and at the end in parentheses, their affiliation, dash, "alternate," which means they are automatically pushed to the end of the queue.

To rename in Zoom, hover over your name and click "rename." Alternates are not allowed to engage in the chat apart from private

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chats or use any other Zoom room functionality such as raising hand, agreeing or disagreeing.

As a reminder, the alternate assignment form must be formalized by way of the Google assignment form. The link is available in all meeting invites towards the bottom.

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now.

Seeing or hearing no one, if you need assistance updating your statements of interest, please e-mail the GNSO secretariat. Oh, Becky Burr, I see your hand. Please go ahead.

BECKY BURR: Just to note that I am attempting my SOI to reflect my participation in this group, and that should be done in the next day or so.

TERRI AGNEW: Thank you very much, Becky. I appreciate that. All documentation and information can be found on the EPDP Wiki space.

Please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public Wiki space shortly after the end of the call.

Thank you, and I'll turn it back over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS: Thank you, Terri. Good morning, good afternoon, good evening everyone. Welcome to the 22nd – if my count is correct – meeting of EPDP. I would like to see if suggested agenda that was circulated last Tuesday is acceptable for today's meeting. I see Marc Anderson's hand up. Marc, please go ahead.

MARC ANDERSON: HI, Janis. This isn't a comment directly on the agenda, but I just wanted to note that the CPH has had the homework item coming out of LA to propose a letter to the ICANN board based on Chris' suggestion. We've been working on that homework assignment and have something that we think is ready to share with the full working group and we hope to get that sent out today.

JANIS KARKLINS: Okay. Thank you very much. Isn't that the same as questions to ICANN Org? Or that is slightly different? [inaudible].

MARC ANDERSON: It's slightly different, but similar in nature.

JANIS KARKLINS: Okay, so then let's talk about it once we all get to subpoint B of housekeeping issues. So thank you. Let me also note that there has been change in assignment from the board side, so liaison León Sanchez has finished his service in the team, and Becky has taken up the board liaison function. So Becky, welcome to the call and León, if you are on the call, thank you very much for your

contribution to the work of the team. And since we are on the update of legal committee, if you are on the call, could you do your last duty and update on the outcome of the previous meeting of legal committee?

Seems that León might not be on the call.

CHRIS DISSPAIN: Janis, León is not available for this call. He was going to try and be here, but he has a personal issue that he's dealing with.

JANIS KARKLINS: Okay. Thank you, Chris. Then may I ask Caitlin to brief the team on the outcome of the legal committee meeting?

CAITLIN TUBERGEN: Certainly, Janis. The legal committee met on Tuesday and is continuing to discuss draft questions, some of which came out of the face-to-face meeting. During Tuesday's meeting, there was no agreement on updated text of those questions, so the team will continue to discuss the questions during its next meeting, which will be in two weeks.

If you're interested in viewing those draft questions, they are posted to the legal committee's space on the Wiki on the agenda, and I'd also like to note that a few members of the legal committee have volunteered to review the batch one legal memos and will be highlighting some of the high-level points and takeaways from

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those memos for the EPDP team to review. Thank you, Janis. Back over to you.

JANIS KARKLINS: Thank you, Caitlin. So I would like to see now if there are any questions in relation to the [deliberations] of the legal committee. I see one hand up, it's Marc Anderson. Is it a new hand or old one?

MARC ANDERSON: New hand.

JANIS KARKLINS: Marc, please go ahead.

MARC ANDERSON: Hi, Janis. I just wanted to echo Brian King's question from chat, is, will Becky be taking over for León as chair of the legal subteam? I certainly understand that Becky has taken over for León as one of the board liaisons, but it wasn't clear to me what's happening with León's role as legal subcommittee chair. So I was just wondering if you had made the decision or if that had been decided yet.

JANIS KARKLINS: Thank you. Of course, I am proponent [or partisan of the] inheritance, so I hope that everyone would agree that Becky takes over the moderator's role in the legal committee, and I hope that Becky is willing to take up that role and provide service to move forward conversation within the legal committee. But I'm not

pushing for this for the moment. I see Becky is willing to do so as I read in the chat, but if I will not receive a private message – and I stress private message – from any of the team members until the end of this call, then Becky will continue as a moderator of legal committee. Otherwise, we will see how to proceed. But until now, I see that there are a lot of positive, welcoming messages on the chat, which means that we're in agreement. So thank you for that.

Let us move now to sub item B, questions to ICANN Org. And in this respect, we have received the text, the formulation from the google doc, and so if I may ask to put that on the screen and see whether proposed set of questions would be acceptable from one side, and from other side, the logical question would probably be to see whether the letter that Marc mentioned at the beginning of the call would be logical, that these questions would be incorporated in that letter if that letter is addressed to the ICANN Org. if that letter is addressed to the ICANN board, that's a different story.

So now we have five points on the screen. There is a proposal to change preference to stance, and otherwise, text is visible. Any comments, questions on the proposed questions to ICANN Org? I see Brian's hand is up. Brian, please go ahead.

BRIAN KING: Thanks, Janis. I think it might be better to ask these questions to the board, because the board will decide what Org will do. So, is that the context here, that we're trying to get ahead of this thing and ask, "Hey, if we all agree on policy recommendations that turn out like this, is this an outcome that's palatable to the board? Will

the board adopt policy recommendations that look like this. That's the value of doing this exercise. [That clarification would be] helpful. Thanks.

JANIS KARKLINS: I'm probably not very well placed to clarify these things since my knowledge of ICANN ends in 2010, which is almost a decade ago, but I may ask our board liaisons to think and provide their view on whether discussions would be better to ask to ICANN Org since they are rather operational, very much linked to the systemic issues of the SSAD we're working, but operational in nature.

Is there anyone who wants to take up that? I see Chris Disspain. Chris, please go ahead.

CHRIS DISSPAIN.   Thanks, Janis. I think you can refer the questions to Org and suggest to Org that if they want to discuss it with the board, they could do so. I can't see any reason why you need to specifically send them to the board. Or you could do both. You could send them to both the board and Org.

JANIS KARKLINS: Okay, and then Marc Anderson, question, how much these questions are different from the ones you're asking in the letter you're saying that you would share with the team?

MARC ANDERSON: Thanks, Janis. So I guess the letter we're planning to share with the full team today isn't a list of questions, it's an actual letter. So it's kind of hard for me to draw one to one comparison between this list of questions and the letter we have proposed.

And based on the discussion I'm hearing so far, it sounds like there's some legitimate questions as to whether or not it makes sense to have two letters, whether we should be asking ICANN Org or whether we should be asking them of the ICANN board.

So maybe the best course of action is to just table this until the full working group has a chance to see the contracted party house's proposed letter to the board.

JANIS KARKLINS: Okay. Milton, what's your take on this?

MILTON MUELLER: My take is that I think ICANN itself needs to determine whether this is a board question or a staff question. I would think that ICANN Legal would certainly need to be consulted on this, but I think the point I want to emphasize is that we need an authoritative answer from ICANN about these questions, particularly, who's making the determination of the validity of the request.

And we can't really beat around the bush. I think that these questions have to be answered now and they have to be – they're basically the first step in the resolution of the rest of the process. I think that we're fundamentally spinning our wheels until these

basic questions that are posed by the registrars are answered, and I suspect that the registry letter is not asking questions but it's also going to be saying something similar in that we just need to resolve this issue before we can do anything else, really. And I think we would want ICANN to be answering this question expeditiously and authoritatively. That's all. Thanks.

JANIS KARKLINS: Okay, thanks. I try to follow the exchange in chat room. Certainly, logic would suggest that there would be one communication, but since the letter that we will see later today is addressed to the board, and these, as I mentioned, issues are addressed to ICANN Org since they're rather operational.

So I would like to suggest the following. If staff liaison could informally share the questions, those five questions that you see on the screen, with ICANN Org as appropriate, with the CEO or with whoever might be the right person in Organization on informal basis, and then we would wait until CPG letter would be out, and we would then formalize based on what is in contracted party house letter, the text next week, and either we would formalize also these questions and send a formal request to ICANN Org or would incorporate those questions to the letter of the board.

But in the meantime, we would give already heads up to the ICANN Org that these type of questions would come up. Would that be okay? Marc Anderson.

MARC ANDERSON: Thanks, Janis. I fully support that plan of action. Thank you.

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JANIS KARKLINS: Thanks. So then if I may ask staff liaison to bring this set of questions informally to the attention of ICANN Org and with the explanation that there might be either formal letter coming up next week or these questions are incorporated, or these questions would be sent formally next week unchanged if we will decide that these are two different communications coming out from the team.

So with this, in absence of opposition, let us move to subpoint C, lawful bases [input] document. First of all, I would like once again to apologize for confusion that happened at the end of the last meeting in relation to this question.

I think staff clarified what was the intention of this exercise, and just to be sure, I will ask Marika maybe once again very briefly to walk us through the idea and then also to brief us on the state of submissions in this respect. Marika.

MARIKA KONINGS: Yeah. Thank you very much, Janis. As you may recall, this is something we discussed during the LA face-to-face meeting and it was kind of trying to see whether it would be helpful to look at a number of the building block-related questions and issues from the perspective of which lawful basis applies.

So the idea was to try and understand whether – depending on which lawful basis would apply to the disclosure of the data, what the different requirements would need to be developed.

So to give you a very concrete example – and I'll just in the document for [inaudible] to the criteria and the content of the request, does it make a difference whether it concerns 6.1(d) lawful basis versus 6.1(e). Is there a different set of information that would need to be provided if it concerns that specific lawful basis?

And again, I think what we're trying to do in this exercise was to be agnostic about whether or not such a lawful basis could apply. And I know some of the input we received went more in the direction of this doesn't apply here or that doesn't apply here, and I think that's not what we're trying to do here. It's really to try and understand, does a group need to foresee different kind of requirements factoring in a lawful basis that is applied?

So that is what we're trying to do with this exercise. I know some of you think Hadia has already gone in and provided some input. I know the Registrar Stakeholder Group separately submitted some input as well. But we haven't seen anything from any other groups yet. So maybe that means that there is no differentiation when it comes to the different lawful bases, or maybe people just haven't had time yet to look into this or didn't fully understand the exercise.

One thing I wanted to point out as well, and that was also something that came up in the LA face-to-face conversations. We also had some questions around automation and kind of this question, depending on which lawful basis is applied, can we already make a determination up front? And again, not going into the details of whether or not a certain lawful basis could apply but being agnostic to that fact, is there an easy way to say yes, for

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example in 6.1(b), there's no need for a balancing test, so is it likely that if that lawful basis applies, you can have automation of a response or most of it or part of it?

And similarly, I think that was also a point that Thomas raised, should we look at types of categories of requests under each lawful basis that could potentially be standardized? And I think he spoke a little bit about potential kind of templates that could be developed for how information would be provided, but also how a response could look or could be handled.

So again, that is the underlying thought behind this exercise, and of course, it's only as helpful as the input you all provide. If there's no input here, I guess we need to make the assumption from the staff side that it means that there is no differentiation and requirements will be the same regardless of which lawful basis applies.

So it probably would be helpful to know whether groups are still planning to look at this and provide their input or whether at this stage you don't think this is a helpful exercise and we'll just leave it at that.

JANIS KARKLINS: Thank you, Marika. Any reaction? Marc Anderson.

MARC ANDERSON: Hello. Thank you, Marika, for the explanation. That's helpful. I guess your description is slightly different than I understood the exercise to be when it came up in LA. If you remember in LA, the

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registries at least were supportive of this approach. I think from our perspective, it's useful and important to have a discussion about the lawful bases and what policy recommendations would be needed for each of the lawful bases for access to nonpublic registration data.

I think where we're getting tripped up is this exercise, at least as you've laid it out, ties it specifically to the building blocks, and I think as you've seen from the responses, that's sort of an awkward pairing. I don't think tying the request for input to lawful bases to the building blocks that we've [dealt] so far is a great match. I think that's unnecessarily constraining the exercise, if that makes sense.

From the registries perspective, we do drafted a response for the exercise and I think it's probably pretty similar to what the registrars already submitted, but I don't think that that approach is looking at the lawful bases specific to the building blocks is necessarily going to be helpful and move the discussion forward.

So I guess what I'm saying is I think we do want to have this discussion about the lawful bases, but I don't think framing the conversation based on the building blocks is the way to go about it. So I hope that's helpful feedback in moving this forward.

JANIS KARKLINS: Thank you, Marc. I understand you want to have a fully-fledged discussion rather than online sort of conversation, so let me take other hands which are up now. Marika first, and then Hadia.

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MARIKA KONINGS: Thanks, Janis. I'm not exactly sure, and maybe we just need to wait to see the registry response, what approach is expected to take. I think we've gone down the path before of focusing on the lawful bases, and I've always understood or the feedback we always got was that's not something the EPDP team needs to concern itself with, that at the end of the day, it's the controller who will determine or dictate under which lawful basis they would disclose the information or for the processing of the data in question.

We had understood this as looking at, do different requirements apply depending on which lawful basis is in play? And again, if we misunderstood the instructions here, we'll happily look at what the registry input looks like and see if that means we need to kind of restructure this or whether it takes a completely different direction. But again, that was why we focused n the building blocks, because I think we're really trying to understand, does the group need to consider different requirements depending on whether a request is submitted and subsequently data is disclosed under certain lawful bases or not for the controller to make that determination on whether or not they have that lawful basis for disclosure.

JANIS KARKLINS: Okay. Thank you, Marika. Hadia?

HADIA ELMINIAWI: Thank you, Janis. I've tried actually to respond to what Marika just said, the different requirements with regard to the different lawful

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bases for disclosure. And that's what I did with building block A where it talks about the requests and what they should include. And disclosing under lawful base 6.1(f) which is the legitimate interest constitutes three main things.

The first is the legitimate interest and the purpose test. The second is a necessity test and the third is a balancing test. And the other lawful bases don't actually require that, and therefore, the requirements for a legitimate interest lawful base is different than the others. And legitimate interest is not purpose, so if we take the first part as the purpose test, legitimate interest is not purpose specific, and it's flexible. It may be applied to a wide range of situations.

But GDPR actually identifies in recitals 47 and 49 maybe some purposes that could be regarded as legitimate interests, and those are the ones that I tried putting here because I was thinking if we are to go with accrediting some of the groups, like consumer protection agencies or network security agencies, then if they're accredited and they define their purpose as one of the three actually indicated by the GDPR, then this serves the purpose test required for the legitimate interest.

Also, the other thing I added is one thing regarding the balancing test. And again, if the processing is reasonably expected by the data subject, then this goes towards the balancing test, and makes the automation also easier if we are again going to go in this direction.

And then finally, the necessity measure, so whether the [inaudible]

JANIS KARKLINS: Hadia, we lost you.

HADIA ELMINIAWI: Hello.

JANIS KARKLINS: Yes, now we hear you again.

HADIA ELMINIAWI: Okay. And finally, I've put one item relating to the necessity measure which is requiring the requestor to identify if there are other means of obtaining this data.

And I think those three parts, one responding to the purpose tests and the others the balancing test and the third is being necessity measure, is a requirement for the legitimate interest for using the legitimate interest lawful base, and of course, the requestor has to respond to those three things, the purpose, the balancing and necessity, but then again, if they are accredited and they can respond to these questions, maybe this could help in automation if we do consider [inaudible]. I've put another requirement with regard to the safeguards because again, it's also important that this is in another block.

Maybe also the other lawful bases need some consideration as such.

JANIS KARKLINS: Yeah. Thank you, Hadia. I think we need to look to this exercise also from – I would use an analogy. So we're building a house, and so whether building blocks would be different shape or color depending on what legitimate purpose we're using to identify whether disclosure should be made or not. And probably this exercise need to be done first and foremost offline and then staff would summarize that, whatever input we will receive from different groups, and then [I would] do analysis and then present the outcome for consideration of the team. I think that that would be the most rational way forward. But I see Chris' hand is up. Chris Lewis-Evans.

CHRIS LEWIS-EVANS: Thanks, Janis. I'd just like to agree with Marc, really. The GAC's had a couple looks at it, and to be honest, I think Marc's [undoubtedly quite aware] how it's quite awkward to associate the legal bases with the building blocks. And to be honest, we've been struggling to see the real benefit that we can add with any input, because a lot of it is quite light and a lot of it is very much based on how GDPR works.

So going from Marika's explanation today, we can have another look, but yeah, just really want to agree with Marc in that we feel it's very awkward for us to make any real substantive input. Thank you.

JANIS KARKLINS: Okay. Thank you. Any other comments? Let me then suggest the following. If we will give another week of reflection for groups, if

you want to fill in, please do. Staff will analyze your submissions, if they will be provided. Otherwise, staff will summarize whatever is provided until now and see whether some conclusions could be drawn out of the proposals or information that has been put in the table. And then next week, we will hear maybe summary of the staff on this exercise. So if that would be acceptable as a way forward, then we will proceed as suggested. I see no hands up, so we will do so.

Next sub-item is status of building blocks. I've asked staff to put this item on the agenda and that will be recurrent item, meaning this is to visualize the progress that we have made so far in our work. So it is for information purpose only, to see what we have done and how far we have gotten with our work. Again, that is the preparation for Montréal meeting where we need to demonstrate significant progress. So we'll see how significant progress we will be able to demonstrate. And maybe if I may ask staff to use also some colors in this table, that will be helpful also simply from a visual point of view. This is just for point of information unless there is anyone who wants to comment or opposed to this idea. Marika, you're not in opposition to me, right?

MARIKA KONINGS: No, definitely not. Just going to add a bit of color to your explanation, if I may. And yes, the idea in the status page, as we progress, and of course, we'll start marking in green work that has been completed, and maybe as well in other colors if work is still on hold or out for review. But I also wanted to know that the other objective of this page is to make sure you have a clear view of

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when topics are being discussed, so it also allows you to hopefully prepare accordingly.

On the left-hand side, you'll see all the building blocks which have been set up as Google docs, so it also allows you to work in advance and already look at these and add any comments or suggestions that you have.

Staff already went ahead and made some updates to some of the building blocks that were discussed in L.A. I think you see the one at the bottom there, the financial stability. We've added some draft language there for your review. We also created a new one to reflect some of the principles that were discussed in relation to automation.

So again, just because certain dates are listed here for the meeting schedule, that shouldn't hold you back if you really want to start looking at some of the ones that are offered out, because obviously, if we get comments and input prior to the discussion on the meeting, it will help leadership and staff to prepare and understand what some of the concerns and some of the issues are which hopefully will also result in a more constructive conversation focused on addressing the issues raised.

So I just wanted to add that bit of information.

JANIS KARKLINS: Thank you. And also, I would like to reassure that we're not completed work. I would rather say that we stabilized the building block, the information inside the building block, because some of

them may need to be reopened at one point as a result of systemic decisions that we will make down the road.

So I would rather speak about stabilization and provisional closure of discussion about building block rather than conclusion of discussion. So as I said at the beginning, nothing is agreed until everything is agreed, but simply to also demonstrate it to ourselves where we stand with the closure of our activities or sort of convergence of our activities to the initial report.

So, any specific comments apart from acknowledgement of usefulness of that type of visualization? Thank you. We will show this screen during every meeting simply to cheer us up.

So now let us move to the next agenda item, query policy, so we had the initial reading of query policy, and maybe we can get the Google doc on the screen. So the query policy, it's building block I and building block L. Let me now see whether now suggested text of building block L is something we could [inaudible].

So, may I get the first building block L? Not I but L. Small i. Higher up on the text. So I have in the Google doc building block small i. Can I have that on the screen?

BERRY COBB: Janis, I think Marika just lost connection. We're going to try to get Caitlin to share her screen. Or here she comes back. Thanks.

JANIS KARKLINS: Yeah. Is that Marika's screen? Can you get on page one, Marika?

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MARIKA KONINGS: Yes, I'll go back. Sorry, having some connectivity issues here. I'll scroll up.

JANIS KARKLINS: So this is where we finished in the first reading, and there was some quiet work going on and this is the result that you see on the screen. Let me now go line by line or subpoint by subpoint and sentence by sentence and see whether we're in agreement with the proposal.

So EPDP recommends that the entity disclosing data may take measures to limit the number of requests that are submitted by the same requestor. If it is clear the requests are not legitimate or of an abusive nature. Any problems with this statement? Mark.

MARK SVANCAREK: Since I'm net to this policy development, only a year, when we say determined to be not legitimate or of an abusive nature, is that something that is defined during the policy development process that we're in now, or is that something that is postponed until the implementation phase where they might come to a different conclusion than the one we conclude in this plenary?

So that's just a question of the process of order. How does it get resolved? Thanks.

JANIS KARKLINS: Thanks, Mark. Since I'm even newer to PDP, let me ask Marika, whose hand is up.

MARIKA KONINGS: Thanks, Janis. This was actually one of the comments that staff had flagged as well in the zero draft, that it would be helpful if some specific examples of what is considered abusive behavior would be documented.

Of course, the details of how that's reflected in actual contractual language, that is what happens in the implementation phase, but at least having some kind of barriers around what the group understands to be abusive behavior would be helpful, because that gives specific guidance then to the implementation phase on how to translate that into a policy or contractual language.

JANIS KARKLINS: Thank you, Marika. James, do you have an answer?

JAMES BLADEL: Yes. Thanks. Just in response to Mark's questions and Marika's note, this probably would be kicked over to the implementation team. However, I think it's very important that whether it is the SSAD operator or whether it is individual holders of the nonpublic data, that there is some discretion in their ability or some flexibility is left within the policy to allow them to kind of adapt on the fly.

I think we can help this process along by maybe putting together a non-exhaustive list of examples of abusive behavior or illegitimate

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behavior, but we can't kind of give the bad guys or people who maybe want to DDoS this system a blueprint and then say, "And if you do X, the SSAD can't limit your request" or something.

So I want to make sure that we're not tying the hands of the operator or the data holders and that we can put together an illustrative but non-exhaustive list of some of the behaviors that would qualify as abusive or illegitimate. And I can take that as an action item. Thanks.

JANIS KARKLINS: Okay. Thank you, James. We note your proposal. Margie followed by Greg. Margie.

MARGIE MILAM: Sure. I am concerned that this should not be left to the implementation team. Having listened in on some of the implementation team, they need more specificity than this.

And I would encourage us to use the language that SSAC has already developed. They wrote a paper – and maybe Greg or someone from SSAC can remind me which one it was – talking about rate limits, and they use a phrase that I had used in a submission that the BC put for our accreditation proposal, and they used the word – basically where a requestor poses a demonstrable threat to a properly resourced system. In other words, trying to get at the DDoS type of request, because we run the risk that abuse might be linked with high volumes, and that's not necessarily the case and policy should not prohibit high volumes of requests if they are justified. And that's the worry I

have with the language and the ambiguities in the proposal submitted by staff.

JANIS KARKLINS: Okay. Thank you, Margie. Greg?

GREG AARON: Thanks. What I'm going to say I think is consistent with actually everything that everyone has said so far, but I'll give an answer to Mark's question, which was how far do you go in the work we do here versus implementation. And that is, in a way, up to this group. One of the challenges we have is translating policy into contractual language, that everyone can understand what it says and understand and get it to be something that everybody can rely on.

So whenever somebody feels that the policy work has to get specific in order to achieve that goal, then you can be specific. That's a judgment call we have to make as a group. But if we feel that something's really important, then we need to make it really clear, and sometimes you don't leave it up to implementation where you have a different group of people maybe without the appropriate context to make the thing happen that we want to happen.

In this case, SSAC has written about the issues here. On one hand, if you have a legitimate request, you need that to be accepted and then you need to get an answer to it, whether that answer is the data or, no, you haven't met the balancing test, whatever. But you have to be able to submit legitimate requests.

Sometimes there might be a frequency or volume associated with that and that has to be a requirement of the system.

At the same time, you don't want people doing things that are going to destroy the ability of the system to respond, but you also have to make sure that you have a system that is appropriately resourced, which is what SSAC 101 talks about.

So here, I would like to see some specificity and not leave it up to somebody else later to craft something that is not going to translate into something that all the parties can understand and rely on. Thanks.

JANIS KARKLINS: Yeah. Thank you. Just for the record, the zero draft was written by the staff based on case studies that were presented and discussed during the exploratory phase of our work. So that, I think, would be more precise presentation of the situation.

So James' proposal to draft non-exhaustive list of examples of abusive behavior which would take into account also SSAC's 101 paper is still on the table. I see a few hands up. Alan, Stephanie and James in that order.

Thank you very much. Just as we have to be concerned that the SSAD or whoever addresses the request has flexibility to recognize abusive behavior, I think we're also going to need flexibility to make sure that the requestor in the kinds of cases that Margie or Greg were talking about can make high-volume

requests which might be rejected if someone else was doing it or for a different reason.

So I think this is another one of those cases where it's not going to be a one-size-fits-all. I think based on the credentials of whoever's making the request and the specific rationale for the request, we may have very different parameters.

As has been discussed before, this SSAD is likely to be used, assuming ICANN doesn't have its own full database, and the general consensus is ICANN does not, then ICANN itself may have to be making requests for Contractual Compliance or other reasons, and they may be high volume.

So clearly, coming from ICANN, it's maybe a different rationale than coming from Joe in the street. So I think we need to keep in mind that this is not likely to be a one size fits all and there are likely to be parameters which allow you to recognize abuse from one group or entity that may not be abuse from someone else. Thank you.

JANIS KARKLINS: Thank you, Alan. You may be right. Stephanie followed by James.

STEPHANIE PERRIN: Thank you very much. Alan has said much of what I wanted to say in that the determination of whether a series of requests is abusive, vexatious, whatever, or not, is very much context specific. So we can provide guidelines, and Ashley put in the chat maybe we have guidelines for what isn't vexatious, and I heartedly

agree there because it's a much easier job. You want high volume when you're dealing with multiple new regs being used for a cyberattack. The same might not be true for certain other kinds of requests.

So I don't see how you're going to automate the determination of frivolous or vexatious, or whatever you call this, abusive requests, because of that case specific nature.

And I dk whether Milton has said this today or is just saying it in our own discussions, but because we are going about this backwards, we are positing a release mechanism before we decide who's the controller and who's making the decision about release, that's very important, because you may actually have two areas of interface where you could claim abusive requests if you're the registrars and ICANN is not holding a complete set of the data.

Because the holders of the customer file are most likely to know whether something is likely to be a valid request or possibly an abusive request because they hold the information of the individual in question, and if we have ICANN as the holder of the disclosure mechanism bombarding the contracted parties with requests to cough up that may or may not have the kind of data that is required, then they would have every right to refuse abusive requests as well. Just thought I'd bring that up. Thanks.

JANIS KARKLINS: Okay. Thank you, Stephanie. James is the last one.

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JAMES BLADEL:	Thanks. Just to remind the group that I offered and will continue to try to go back and come up with a non-exhaustive list of what would constitute abusive requests or requests of an abusive nature. So this is just one of those issues, I think, that it's very tempting – we have a lot of smart people on this call – for all of us to try to solve this now. I don't think we need to do that. Let's bear in mind that the policy says "may take measures to limit," not "must" or "shall" or must not. So let's just focus on the fact that this is guidance and not a commandment.

I think it's very important to note that we're talking about a shared resource here. What is legitimate and natural for a company the size of Facebook or Google, or let's say the FBI to send might be overwhelming for a small provider or for this system and might have the unintended consequence of blocking access to the system by smaller providers who maybe just need to check on one or two records or make one or two queries.

Again, no malevolent intentions or anything, but this is a shared resource and we need to be mindful of it. So essentially, it says "may take measures to limit," so there just may be maximums that are established to ensure that other folks have access to the system and it's not completely exhausted for a single player.

Anyway, let me get back and work on that, send something back to this list, but I think the key here is we want to provide some clear guidance to implementation but also leave some flexibility for those that are fielding the requests to say, hey, this is just too much, I just cannot handle the traffic load that's coming. Thanks.

JANIS KARKLINS: Thank you, James. Let me also suggest that you work with the staff to identify the best way how to place that non-exhaustive list either as a footnote or annex to this building block, but this issue is also captured in the text as well. Of course, we will review the list as soon as it will be available. So with this, I see Stephanie's hand. Probably that's an old one. Greg.

GREG AARON: Thank you, Janis. Thank you, James, for doing that. I wanted to tease out a thread in your comments. You seem to say that if a provider is small, they might have less of a responsibility to provide the data if they're getting requests about the registrants. Is that what you're saying?

JAMES BLADEL: I don't understand that question.

GREG AARON: You were saying, well, if an entity makes queries but makes a lot of them – and I'm a smaller provider, I might have a harder time fulfilling those queries, and might need to throttle it. I think that's what you were saying.

JAMES BLADEL: Greg – if I may answer, Janis – what I'm saying is if I'm a recipient of said request and I have one requestor that has sent me a list of 10,000 queries and I have another requestor that has sent me three, my question to this group is, should the requestor that has

sent me three, simply by first come first served, be effectively blocked from using the system until the 10,000 requests are determined to be either fulfilled or rejected?

This is the challenge with any shared resource. When we have different levels of usage or anticipated usage levels, how do we allow for the users of this system to equitably share this? And I'll give an example. I think Verisign is on the call. Verisign has very large registrars attempting to use the registration system for .com and they have very small registrars. So I think that they have been struggling with this issue as well, is, how do they provide the same number of connections is not really an equitable approach because it punishes the large users, and having connections to that system that are assigned or allocated by domains under management can be entrenching to those larger players to the disadvantage of smaller players.

This is not something that we're going to solve on this call today. I know that we're all very bright and we're looking out for the interests of our own particular equities and how we would use the system, but we need to take a step back and say a shared system needs to have an opportunity for every dog and cat to come and feed at this particular food bowl here, and we can't just have one or two users blocking out all of the smaller players.

So that's my response, and again, I will take this back and take a look at it. I think the language as it reads where it says "may take measures to limit" is a perfectly reasonable policy language – I'm sorry, there's some very significant background noise – that we may have that.

So I don't know, Greg, if this is answering your question, but it's not a question of small providers having less of a responsibility to be responsive. That's not what I was saying at all.

GREG AARON: Okay. Good. We'll figure it out later, but what I want to g et on the record is I think there are two things in conflict in your statement. I think ultimately, what we're both saying is if there's a provider who has to answer 10,000 from one and three from the other, the provider has the responsibility to serve all 10,0003. Correct?

JAMES BLADEL: In an equitable manner.

GREG AARON: And I don't know what that means.

JAMES BLADEL: Exactly.

GREG AARON: Let's figure that out, but I'll just say, look, Verisign is still responsible for fulfilling all EPP transactions that come its way. It may give more connections to one versus the other, but ultimately, it's responsible for serving all of them within an SLA. Thanks.

JANIS KARKLINS: Let's take this one once discussion will be more informed with the non-exhaustive list that James has promised to put together, if that would be okay, Milton. Are you in agreement?

MILTON MUELLER: I just have a very simple observation to make here, but I think that this building block – love that term because it sounds like what we're doing is play – is very closely related to the financial one because I think many people are assuming that these queries will be a free good, and that raises questions of capacity and handling excessive requests, that exacerbates the problem.

And we have been arguing all along that these queries cannot and must not be a free good. Anybody who's making 10,000 requests putting a burden on the system, that, as a user, they need to cover. So I think that we're maybe overlooking one of the natural methods of rate limiting that is fair and isn't leaving it totally up to the discretion of the registrar.

And the idea that this favors the deep pocketed, actually, not necessarily. The deep pocketed, if they're really issuing 10,000 requests, are going to be paying more which would support the capacity of the system to handle larger requests. But I don't see how we can disconnect this issue of query policy from a financial sustenance. Thanks.

JANIS KARKLINS: Thanks for noticing that potential link. Greg, I would like, for the sake of time, to stop now conversation on this subpoint. Let's revisit. We will not close this discussion today, but we will revisit

as soon as James will come up with the list, and then we will see how far we'll get with other subpoints in this building block.

So let me now move to subpoint [D,] and here I understand that there is some homework that Marc Anderson and Brian promised to do, and I just wonder whether that's the case. I see Marika's hand is up.

MARIKA KONINGS: Yeah. Thanks, Janis. I just want to clarify that this homework and most of the language that you see here basically was taken verbatim from the original use case that I think we discussed back in Marrakech, and I think at that time, there was some discussion around this particular point and staff would be happy to go back through the transcript and pull that information out if it's helpful for Brian and Marc to remind themselves of the action item here, because I think they agreed to work on potential alternative language for a point B as I think there were some questions around whether this was clear enough or whether some other elements needed to be added. So I just wanted to remind everyone that that's where that action item came from. And Brian is saying we moved past it, but I think then the question is indeed, if that homework is no longer relevant, we have taken that language verbatim from the use case, so if people are happy with the way it is, of course, no homework is needed, but we just wanted to flag that that was something that was originally discussed back in Marrakech.

JANIS KARKLINS: Thank you, Marika. Let me see. Take a temperature. Subpoint B that recommends that entity disclosing the data must monitor the system and take appropriate action such as revoking or limiting access to protect against abuse or misuse of the system such as unjustified high volume automated queries.

Are we happy [with the formulation?] Brian,

BRIAN KING: Thanks, Janis. I think as we mentioned in the chat and on the earlier point, high volume is problematic. Unjustified seems to be very subjective. What might be justified to someone might not be to someone else. I think we're generally in favor of the spirit of this and it kind of goes with A. I think we all reasonably expect that abuse of the system should not be tolerated and there should be reasonable safeguards against that. But I worry when I see words like high volume that has the potential to be misinterpreted down the road. Thanks.

JANIS KARKLINS: Okay. Maybe we can think of fine tuning the language of subpoint B together with James' non-exhaustive list of abusive behavior. So we can take it together. Let me see, we have a few hands up. Marc Anderson and Chris Lewis-Evans in that order.

MARC ANDERSON: Thanks, Janis. I was going to say something similar to what you said just now. I think probably James' homework on the previous building block really overcomes this, so I think we should wait and

see what James comes back with with his non-exhaustive list of examples.

JANIS KARKLINS: Thanks, Marc. Chris?

CHRIS LEWIS-EVANS: Sort of agreeing with what Alex put in the chat a little bit is really, the second part of B or the very last part of B is really detailing the misuse, which is really the same as A. So my suggestion with B is to protect against abuse and misuse of the system, just put a full stop there, and let A actually detail the abusive nature and what is abuse or misuse of the system. So I think keeping them separate makes sense, but just [going with what] we've already detailed in part A so we don't need to detail it again in part B. Thanks.

JANIS KARKLINS: Okay. Thank you for your editorial proposal. Staff noted that. I think we can then probably take into account what Chris suggested to put full stop after misuse of the system, and then as soon as we have this non-exhaustive list and we have a good convergence of opinion on how to handle it in subpoint A, we would apply the same thing or subpoint B.

They have different nature, Milton. One is to take action and other simply to monitor. So that is probably different in nature. Let me move now to the next sentence, response to the SSAD request must not include more than nonpublic data [inaudible] that have

been requested by requestor. The response must include public data elements related to the domain name registration.

Any issue with this? Greg.

GREG AARON: There was some discussion on the list a while back about not providing the public data in the system ad at the same time. I'm not sure where it came from, but it's very important to include the public and the private data at the same time. You have to be able to understand the state of the data, not get it in pieces from different sources that's unreliable for a lot of purposes.

There is also an understanding in the thick WHOIS PDP that that kind of disjunctiveness was a bad thing and that's why we went to the thick WHOIS policy, so we didn't get this piecemeal response. So I want to make sure that this language makes sure that if you provide some private or redacted data, you're also providing the public fields or can get the public fields along with it.

JANIS KARKLINS: Thank you, Greg. For me, not being well aware of the elements, that makes sense. But let me see if there's any further reaction. I see Marika's hand is up and there is also something that is outlined on the screen from the comments received. Please, Marika.

MARIKA KONINGS: Yeah. Thanks, Janis. I indeed wanted to highlight that this was one of the inputs we've received, and I think it came from the Registrar Stakeholder Group, and I'm happy to see that James has his hand up. I think here as well as some of the other building blocks, there was a suggestion that the response should not include any of the public data elements. So I think we f lagged here that it would be good indeed to get agreement or clarity around whether that is should, must not, could, should or must include public data elements as it's not only, I think, coming up here, but I think there are some other building blocks that also talk about what needs to be provided in a potential response.

JANIS KARKLINS: Thank you, Marika. James, your hand is up.

JAMES BLADEL: Thanks. While I think that there's a – recognize the concerns that Greg has read, the concerns from registrars in this – and I'm not sure if the registries agree or not, I'm not sure if they were consulted – is that if this system displays both public and nonpublic data elements, then it will be used for both. And I think the concern here is that it will be, just for convenience and simplicity, this system will be used in the public data fields would have served the particular purpose.

And I think this creates two possible negative and unintended consequences. The first one being that it puts traffic on SSAD that is unnecessary and redundant, that the data could be made available through other channels that didn't require this validity

check and credential check and balance test and all the things that we have to do on an SSAD request are unnecessary because they're looking for public data. So that's the first concern.

And then the second concern is that it kind of, again, has this blocking request that those folks who are using this system exclusively for urgent or – I want to say legitimate and legally valid – requests would find that they're in contention with other requestors that are using it for public data.

So I think we were saying that this system, particularly because of the resources involved in setting it up and maintaining it and operating it and evaluating all those requests, that we shouldn't waste those resources by providing data that is redundantly available elsewhere. So I think that's our concern.

JANIS KARKLINS: That's understood, James. Thank you. [Where you see] Milton typed what was on my mind. Would the price attached to the use of SSAD be a determining factor that those who are looking exclusively for public data would go for WHOIS lookups still and then would get whatever data is available free of charge without going through accreditation, without going through all the hoops that we're putting in the system?

JAMES BLADEL: If I could respond, Janis, I think that's a good point from Milton. I think that if we take a look at how the fee structure is established, if folks want to pay for bottled water when there's a drinking fountain right next door, that is their option and their prerogative

and we can probably take care of this by appropriately designing the fee structure. And that would address registrar concerns. Thanks.

JANIS KARKLINS: Good. Thank you. Staff, please note that, and there is kind of a link, but it may be resolved through fee structure. Alan Greenberg, please.

ALAN GREENBERG: Thank you. James' last comment is interesting given the number of people that do buy bottled water even though there's drinking fountains available.

That notwithstanding, I think there's two things. Assuming we will end up with a centralized system, when that system is designed, there may well be a decision made the integrate this fancy new SSAD system with effectively WHOIS and provide a path into it which doesn't require credentialing, it doesn't require balancing test or anything else, and just provides public data. So it may well be an effective way of unifying those two systems instead of having a single one. That's an implementation issue and we shouldn't forbit it. So let's not discard that because we think this is going to be an expensive system. There may well be parts of it that can be used for free.

However, I thought the intent of Greg's request that we issue the public data is for requests which do make a request for private data. So this isn't saying that you should be able to make a request for only the public data- although I just said that may well

be justifiable based on the implementation – but specifically, if you are requesting nonpublic data, along with it should come all of the public data so you have a single set of data that you don't have potential for conflicts or race conditions or they came from different places. So I think the aim of the intent of what's written there is get the public data along with some private data. Whether we handle requests for just public data is a completely separate question and I think is very much an implementation one, not a policy one. Thank you.

JANIS KARKLINS: Thank you, Alan. Mark SV.

MARK SVANCAREK: Hi. I think I have to disagree with James' starting proposition that people are just going to use SSAD as a means of getting public data, because SSAD has a bunch of rules and gates, so there would be no really good reason to get your public data from SSAD, however SSAD is pedantically defined. Because we all know it's going to be the same electronic infrastructure more or less.

So I don't see why that would be a valid concern, and to me, that tips the scales in the opposite direction, which is namely there is a risk of race conditions, and all the data's in one place anyway. You might as well just deliver it all in the same reply.

So if there's any way to mitigate his concern that people are going to just be using the SSAD as the public water fountain, I think it

would be great if we could remove the "must not" concept. Thanks.

JANIS KARKLINS: Thank you, Mark. I think James said that the fee structure may address the concern, and so I think we're heading towards that understanding. Let me take Alex and Greg. Alex, please.

ALEX DEACON: Thanks, Janis. I've been struggling to understand the reasons as to why we would limit SSAD to only nonpublic data. Remember as of I think August 26, all registries and registrars are essentially returning public RDS data to what are unauthenticated RDAP queries. In the future, the goal would be, I believe, to build upon this infrastructure and to provide gated access, which means it's going to be authenticated and authorized to that data.

It doesn't make a lot of sense to me -and this is maybe where my confusion is – that anyone would build or rebuild a separate system solely for SSAD and they wouldn't leverage the existing implementation. So one could envision that in a scenario where for example authentication or authorization to the SSAD fails, it would simply return the public data as compliant RDAP systems do today.

So I'm trying to kind of understand what we get from forcing, if you will, separate systems to be built, which will, I believe, use the same technology in the future. Thanks.

JANIS KARKLINS: Alex, I think James was very clear, the concern was that that may overload the system and take it down. But now with explanation and possibility of – and the fee structure that would clearly make folks looking only for public information to use SSAD, I think this issue is addressed. And let me see if we can agree on the text that is now on the screen in that version, taking into account that James' concern is addressed by the fee structure.

So again, please be cognizant of the time which is ticking. Greg, Milton and James, in that order.

GREG AARON: Thank you. I would assume that people who are using the SSAD are requesting nonpublic data. That's the whole point of the system. So they're not using it just for the public information.

As [a note,] it's fairly trivial to return the public information along with the nonpublic information, and RDAP is designed to be granular and to facilitate that. So it's not a huge deal.

There's some framing of the topic going on that I don't think is valid about how this depends on fee structure. Registries and registrars are licensed by ICANN on the condition that they fulfill some basic responsibilities which are core services.

One of those core services is the responsibility to provide registration data through WHOIS or RDAP. That's part of the responsibilities, and kind of what I'm hearing is we're not going to do that anymore unless we get additional consideration and money.

EN

So Janis, I don't want to frame this as part of the fee structure. We need to have a conversation about whether this is a core service that people are responsible for in their core responsibilities and they should be budgeting for as part of their normal operations. And again, I'm going to refer people to SSAC 101 which points out these issues.

Finally, I have to make the point that because of rate limits int eh current environment, it's actually extremely hard in a lot of cases to get the public information, that registrars and registries are willing to share with the public now. And I'll give you a very specific example.

Tucows is our second largest registrar in the world, but in their new RDAP service, they are limiting users to one query per minute. And not only that, their WHOIS service is not only serving Tucows but something like 12 other registrars. So if you make any query about any of those registrars' domains, those are also limited and count against your limit. I think that's the way that server's working right now.

One per minute does not fulfill the needs of cybersecurity. I can't get vital public information right now because the 2013 RAA's language is so loose and allows this kind of rate limiting. So it's a big problem. Thanks.

JANIS KARKLINS: I understand, Greg. You see it as a problem. I see a different problem. We're not tasked here to discuss how RDAP works or is

implemented in different registries. Our task is to think how SSAD should be built and [inaudible].

GREG AARON: Right, but what I'm saying is this is a public policy issue of whether the data is actually available to the users and who is responsible for serving it, and under what bases. So those are policy issues, not an RDAP implementation issue.

JANIS KARKLINS: Yeah, no, but you see this is the policy issue text that I'm suggesting to accept, is that the response must include the public data elements related to domain name [registration.] And there was a kind of concern expressed by James who said that that may overload system. We came to kind of agreement that that maybe is not fully valid concern because SSAD system will be limited in use because the price tag will be associated, and for the moment, I would like to see [whether we converge] on the proposed text that is on the screen. Milton.

MILTON MUELLER: Yes. I'm willing to converge on the language proposed on the screen, although it says, "Shouldn't, must not, could, should or must," so I think we'd have to clear that up before we converge on it. But let me just tell you why Greg and Alex and others are actually convincing me to oppose their position. That is because in principle, I have actually no objection to returning the full WHOIS record along with the undisclosed information.

EN

But what I'm hearing now is that essentially, the people who want that are making it sound as if they are planning to set up some kind of an automated query system which is going to use the SSAD for everything. Because why else – they can get the public data, and they're going to decide that they need some additional data elements and they're going to go to the SSAD for it. And what you're telling me is that they want to eliminate two steps and combine it into one step and trying to make the SSAD into a replacement for the old WHOIS in its completely.

I can't think of any other reason why you would care so much whether public data would be included with the private data. I haven't heard a good rationale for that other than that you would want to basically substitute the use of the SSAD for the public WHOIS queries. And when you talk about your frustration with rate limiting public WHOIS, I think you're conflating these two things in a way that really makes us somewhat alarmed about what this all means.

So just to be trying to reach for agreement here, I would have in principle no problem with just the entire WHOIS record being returned when you get private data if that did not also mean that you guys are going to just set up some kind of automated system that's going to turn the SSAD into the next version of public WHOIS. Thanks.

JANIS KARKLINS:	Yeah. I think we're overcomplicating this conversation. Here we're talking mostly about principle, and if there is a bad experience or something is not working elsewhere, this is in my view not the

place that we need to resolve this issue. And also, it seems to me that the conversation on chat gets maybe a little bit too emotional. And if I may ask team members to take a breath and count until ten before next emotional message in the chat.

Let me take now James, Alan, Chris, and then I would like to bring this discussion to closure. James, please.

JAMES BLADEL: Thank you, Janis. I'm going to back up just a little bit, and very quickly, just touch on a couple of points. But I think I have a way out of this mess for all of us. He said, hopefully and naively.

So the first point is that I think it was Mark SV who said it's technically trivial to just simply show the public data in response to – alongside of the nonpublic data. I think that's correct. No argument or objection there. I think the challenge is that we're not talking about a technical issue here, it is more of if it's coming through SSAD, a human being presumably either reviews it or has the ability to review it, and therefore it's a more resource intensive process, whereas if it's going through a public WHOIS or whatever the replacement of the public WHOIS channel, it's automated and that wouldn't be necessary.

So not really a technical problem that we have to solve, more of a human one. Regarding rate limiting and the Tucows example, I'm sure we at GoDaddy do something similar, if not more draconian. One query per minute is about 86,000 queries per day. If a user of this system believes that they're warranted in making 86,000 queries per day, I'm very curious as to what they're using the data

for, and that in and of itself, while each individual query may be legitimate, I think taking a step back, that entire schema of taking almost 100,000 queries every day starts to look very suspect and to me, it's indistinguishable from data harvesting and data aggregation at that point.

And to Greg's point, it's not the responder that receives the fees, so it's not a question of registries and registrars now want to charge a fee for something that we are supposed to do for free. It is the operator of the SSAD system, whether that's ICANN or one of the designees or contractors, whoever is actually putting the work behind this is the one assessing the fees. So I just want to clear that up. I think that was one of the early points that we all agreed on, is that this would not be a revenue generating operation, and certainly not an opportunity that we are enthusiastically looking to jump into.

So just my last point here, I think I have an answer. The answer is this is conditional. So if you submit a request through SSAD and the request is approved, then the response should – or must – include public and nonpublic data. And if you submit a request through SSAD and the request is rejected, then no public and no nonpublic data will be included in the response.

What this does is this essentially says whether or not you get public data is conditional on whether or not your request is valid and legitimate. And that will discourage folks, I think, from using one system, SSAD, for data that can be redundantly gathered through other system, and it will keep that traffic off of this, what we would call this very intensive fast lane and move it over into the free thing.

So that's my proposal, is that if the request is denied, that it would not return any data at all, and I think that would discourage the misuse of this scarce resource and instead encourage folks to use the existing resources that provide public data. And I just want to point out, I'm making this proposal. I had not cleared this with my company or with my colleagues in the Registrar/Registries Stakeholder Group. This just came to me a minute ago and I think that this might get us out of the current unintended consequences that we created, although it may, I can see, create a whole bunch of new ones. Thank you.

JANIS KARKLINS: Thank you, James. I think you consulted common sense, at least in my mind. So personally, I think that this is exactly how any common sense system would work. If there is no – meaning if request is rejected, then no information is returned at all, so that's kind of obvious at least in my mind. Let me take next in line, Alan, Chris, and Ashley.

ALAN GREENBERG: Thank you very much. I put something in the chat which I think is very similar to James, and that is just a minor changing to the wording on the screen. If the response must include public data [inaudible] related to the domain name registration along with any requested nonpublic data. So it's contingent on returning some nonpublic data that was addressing the request. And I think that change addresses it all. Thank you.

JANIS KARKLINS: Thank you, Alan. Staff is capturing this and we'll add that to the text. Chris, and then Ashley.

CHRIS LEWIS-EVANS: Yeah. Thanks. I think I've put it in chat a while ago. I pretty much agree with James and realistically the other thing that may need adding to this is that any request with no nonpublic – if that's not too many negatives – is not a valid request on SSAD's system. So both ways, I think we would cover that and stop the system being overloaded with requests for public data. I think we've got a way forward. Thank you.

JANIS KARKLINS: Thanks. Ashley?

ASHLEY HEINEMAN: Thank you. I think James put a really good proposal on the table. Thank you for that. I just wanted to go back to something I had said in LA, and I know it's hard to do what I proposed, which is basically if we could take a bit of a leap of faith that we're going to be able to find a specific – sorry, it sounds like the police are coming after me.

Alright, what I was saying is that if we could somehow go with an assumption that we're going to be able to find a system in which we could have one entity that will be responsible for taking on the responses and the disclosure responsibility and all the liability associated with that, a lot of these conversations could be much easier.

Now, I understand that without the clarity that the contracted parties want, it's really hard to have that conversation, but if we could at least not take the option off the table of having a single entity that has these responsibilities, because I feel like we sometimes find ourselves backing ourselves into a corner that will be hard to get out of further along in a conversation.

So I just wanted to put that on the table. I don't think that's [in the form of] anything concrete with respect to this particular item, particularly with James' recommendation, but if we could just be careful not to box ourselves into a system that's completely reliant on the contracted parties doing everything. So I'll stop there. Thanks.

JANIS KARKLINS: Thank you, Ashley. Maybe this was police outside my building. The decision of disclosure will be made in any case individually. Whether that is a central unit or central place or that is 100 or 1000 registrars who make decision, any case, even in each registrar case, that would be an individual who will take a decision. That'll be an individual decision anyway.

So in that respect, we are building the block which could be used in a centralized system and in a decentralized system, because the decision in any case will be individual. And whether individual by human or by machine, it's still individual decision on each request.

Mark, and then Ashley.

MARK SVANCAREK: I see what James is saying, I just want to be really clear, that was the system that I have always thought we were discussing. I don't see why I would get [in line] by the fancy bottled water if there's a chance that the person would not in fact sell it to me. So I always imagine that if I wanted public data, I would go through the public data path where I can't be rejected, subject to the rate limiting, which we still are going to need to talk about.

And then on the times that I do need to have the nonpublic data, I would go to the nonpublic data line. So I do think that this makes sense. I still have a lot of other concerns about things that are being said here. But let's go with James' proposal for now and see if we could make it work out.

JANIS KARKLINS: Thank you. Ashely, last word.

ASHLEY HEINEMAN: And I'm sorry, I don't want to beat this horse, but I just want to make sure I'm being excruciatingly clear. In the context of what I said before, it's mostly in a sense of like I don't know that it's in our interest to spend a lot of time debating whether or not it's feasible for small registrars to deal with query load and those types of conversations. It should be a consideration, but I think we should be careful on how we construct our policy here so that if we're able to get to a system that can avoid situations like the ones that have been described where an entity is not able to deal with the query load, I think a lot of that could be avoided if we had a single entity that's responsible for it.

So anyway, I just want to make sure that was clear, and I will shut up for the rest of this meeting. Thank you.

JANIS KARKLINS: It was not meaning of my remark that this is your last word, the meaning was that I think we are on the same page, all of us, and staff will reword the sentence, "Response must include the public data elements related to domain in the spirit of our conversation," and that will reflect idea that James put forward.

So thank you for that, and let me now go to the next sentence, an SSAD request meeting requirements as outlined in these policy recommendations must be received for each domain name registration where a nonpublic registration is requested to be disclosed. Each such request should be examined on its own merits. Can we agree with this phrase or these two sentences? Brian.

BRIAN KING: Yeah. Hey, Janis. I don't know what that means, "each such request should be examined on its own merits." Is that adding – I don't know what that adds. It seems to be perhaps a no brainer or just a truism. Can somebody help me? Thanks.

JANIS KARKLINS: Okay. Alan Greenberg.

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ALAN GREENBERG: Yeah, I'm troubled by that because we've talked a fair amount about certain classes of requests, be they security or intellectual property, where the whole request will be used repeatedly with just specific – the name changed or things like that. And does this mean that someone is going to have to be manually or – rethinking it, or will an SSAD be able to recognize certain patterns and that alone is considered evaluation?

And remember, we're doing this in the context of when Alan Woods was talking about his request, he said he had never done a balancing test because it was clear that geographic or other means indicated that it doesn't apply. So I'm just worried that an automated recognition of certain known to be valid requests or previously approved requests can be used and treated as an evaluation. Thank you.

JANIS KARKLINS: Thank you very much. As I already once said that the formulations that are provided in the text are taken from the case studies and the files associated with the case studies. And if that is something which is redundant or not necessary, it's easy, we can delete. But let me take James, Mark and Milton in that order. James, please.

JAMES BLADEL: Thanks, Janis. I guess going back to Brian King, I also just assumed that this would be the case, that each request would be evaluated on its own merits and that I guess – I don't know what we were trying to prevent by leaving this in here. I guess if it needs to be explicitly stated that just because a request is

submitted maybe in conjunction with other requests that the merits are not transferable or inheritable. This is probably just the cleanest way to say that. So I think we all understood that each request would be evaluated on its own. Thanks.

JANIS KARKLINS: Okay. Thank you, James. Mark SV.

MARK SVANCAREK: Thanks. Just a few minutes ago, Ashley asked us to take some leaps of faith. I think this is another one where we should take some leaps of faith. Alan's right, there's going to be many circumstances where there' going to be batches of requests made at the same time where the only difference between them is the actual domain name. So I'm investigating such and such a thing, exactly the same thing, or a similar thing as I did yesterday. Here's by bases, here's how I'm going to process it, etc. These requests are all going to be individual. That's the system that we're envisaging. But they're all going to be identical.

If a data controller seeks to look at them as a batch and perform their evaluation in a fashion like that ... I think what Alan is saying is true. I think what others are saying is true, that even though the justifications are put forward every single time and even though they're all evaluated sort of separately, in a de facto sense, they could be evaluated as a group.

So I think we just need to have some faith that this wording which lays out the safeguards does not actually stop the requestors from getting the sort of service that they need. I don't think I said that

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very well, but hopefully you understand what I'm getting at. Thanks.

JANIS KARKLINS: Thank you. Milton.

MILTON MUELLER: Yes. I think we do need to retain this language. I sort of agree with people who say, yeah, we're all assuming this would happen. However, that means we keep it, it doesn't mean we lose it.

and I think that the issues about bulk requests where the name is changed, I think the presumption built into the system has to be that you can't just say "Hey, here's a bunch of valid requests" and throw in a random number of different requests. You have to – each request does have to be done on its own merits, and this language is very flexible in that it recognizes that there could be some programmatic method of evaluating the validity of each of these requests, but I can't see why anyone would object to making this fact known that each disclosure request has to be evaluated individually in some way.

so we have left the door open to some kind of programmatic grouping of cases if they meet the criteria, but you first have to determine whether it belongs in that group. You can't just say it belongs in that group because a requestor says it does, because that would just encourage people to throw things in there that ... Throw 10% of the invalid requests or potentially invalid or controversial question with a bunch of valid requests. So we do have to have the statement in there. Thank you.

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JANIS KARKLINS: Thank you, Milton. I think that this is one of the safeguards that we want to build in the system just to make sure that each individual request is [dealt] on its own merits and that's maybe the simple way of how to put it.

We're ten minutes before the end of the call, and if there is no really burning disagreement or violent disagreement with the proposed language, I would suggest that we move on, unless Hadia has a disagreement. Hadia, please.

HADIA ELMINIAWI: Thank you, Janis. Really quick, I do agree with Milton that we should keep it. However, we should also make sure that this does not limit grouping of similar cases, that it wouldn't be later explained as prohibiting grouping of similar cases.

So maybe we could add another bullet somewhere saying that grouping of similar cases would be possible, or anything along those lines. Thank you.

JANIS KARKLINS: Thank you, Hadia. Maybe I can ask staff to think again about the formulation and provide some minor tweaks to make sure that the meaning of the sentence is clear from the first reading and we need not to reread it again to understand what it's all about.

So with this, I would like to suggest that we go down to building block L and start reading at least with sub-bullet A where we

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already have previous discussions and see whether we can agree on proposed text.

So the EPDP recommends that SSAD in whatever form it eventually takes – and I think that this should go out in [inaudible] form, because at the time, when the policy recommendations will be issued, the form will be already known. "Unless either required or permitted, must not allow bulk access, wildcard requests, reverse lookups, no Boolean search capabilities."

Any comment? Brian, James.

BRIAN KING: Thanks, Janis. My middle name's James, I thought I was in trouble there. We mentioned before, as Thomas mentioned and we supported, the charter does not call for us to discuss this. So it's out of scope for the EPDP to decide on this. While we might love for these things to be included in the SSAD, we realize that we can't advocate for that because it's not within scope for us. So it's not within scope to argue for or against these kinds of things, so we should strike this language. Thanks.

JANIS KARKLINS: Okay. James.

JAMES BLADEL: Hi. Thanks. My first thought here is that a lot of this touches on some of the conversation we've had earlier today, so I'm not sure that we're going to have time to crack all of this open. I'd just note

that the registrars in particular would disagree with Brian's statement that this is out of scope. This is most definitely, if we are attempting to reconcile the needs and the uses of nonpublic registration data with the legality under various privacy laws, then we have to consider these dimensions of the system.

And again, with the goal of ensuring that this survives any kind of legal challenges and that we aren't back here trying to solve this problem in 2021. But I don't know that we have a lot of it me to crack this open right now, Janis. I'm not being disrespectful, I'm just pointing to the clock. Thank you.

JANIS KARKLINS: Thank you. Mark SV.

MARK SVANCAREK: Thanks. I agree with James, I think that we've actually covered all of this stuff in the other bullets, so we're not getting a lot here. I am puzzled and a little bit concerned, I guess, about issues of charter questions, because sometimes we're very strict on charter questions, that we must do that, we must not do that. So we do work items that I think are not necessary because they're in the charter. We skip or defer conversations in some cases because of the way the charter's written.

And as I forwarded to the list a week ago, Thomas had made a very interesting, logical – he really reasoned through what the charter says about this sort of bullet. It does not explicitly forbid it, but it sort of strongly implies that it's out of scope. And I don't understand how we consistently talk about issues of charter in

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order to resolve concerns like that. So again, this is me – I don't have a lot of experience with this, but it feels like we're kind of all over the map regarding charter questions like this over the last year, and I wonder, how should we be resolving these? It feels like we're going to sweep Thomas' objection under the carpet right now. Thanks.

JANIS KARKLINS: Yeah. No, but I understand, Mark, that this is something – the language you worked out together with James as a result of homework coming out from Los Angeles, right?

MARK SVANCAREK: Yes. This is the homework that we did on the assumption that the charter allows us to create such language.

JANIS KARKLINS: Okay. Thank you.

MARK SVANCAREK: Which raises the other question, which is, well, if the charter doesn't allow it, then the homework was interesting but [we chuck it out.]

JANIS KARKLINS: Okay. So, would that be something appropriate if through GNSO council liaison we would ask [a kind of] clarification to the council? Or I don't know how that system potentially works on that, whether

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we're not allowed to mention or address issues that are not explicitly mentioned in the charter. And I will take just currently two hands up because we have four minutes to go, and so Milton and Thomas.

MILTON MUELLER: Yes. I hope I'm not preempting Thomas here, but I want to change the subject. I agree with James, we're not going to resolve this issue in three minutes. Therefore, I'd just like to ask about this footnote that was added by Mark and James about additional data processing agreements outside of the consensus policy process to serve business and customer interests.

I'm wondering, can you give me specific examples of what you had in mind by that and why you thought it necessary to add this into the proposed policy?

JAMES BLADEL: Janis, I can respond very quickly.

JANIS KARKLINS: Please.

JAMES BLADEL: Okay. Milton, I think that one of the things marc and I were kind of wrestling with is whether or not there would be perhaps a service that of course would be either legally offered or perhaps at the risk of some other party, that a registry or registrar might have some sort of unrelated to domain name registrations where they would

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offer this, so for example, their SSL business for example, if they're working with SSL providers and they have to enter into a contract where there's some other basis or something like that, and those things would be occurring outside of SSAD and therefore they would not be governed by these restrictions.

So I think what we're trying to say is that if these go forward, that these are applicable only to the system that is included in our governance with ICANN and would not necessarily eliminate their use in other products and services that would be offered by companies that are also contracted parties with ICANN.

So the thinking here, again, is that if those issues raise legal risks for the contracted parties, then that's their problem, but we're only talking about SSAD when we talk about these restrictions.

JANIS KARKLINS: Okay. Thank you, James. I will take Thomas as the last speaker today. Thomas, please.

THOMAS RICKERT: Thanks very much, Janis. Just to remind everybody, I hope I made it sufficiently clear in LA that I didn't bring up this point of order for strategic reasons but for procedure reasons, because I'm interested in ensuring the integrity of the process and I don't want the outcome of this group to be jeopardized by opening us up to criticism for having stepped beyond what we can do according to our charter.

So I was quite surprised to hear that the registrars sort of wiped the concern away. I am easy on whether we take on the policy question or not, but I think that if there's no consensus on following the point that I made on the charter, I think we better put in a quite robust rationale as to why we think that this point of order is unsubstantiated. Thank you.

JANIS KARKLINS: Okay. Thanks, Thomas. We will start on Tuesday from where we ended. We will start with building block L, subpoint A. In the meantime, I will think and consult what would be the best way forward on issues that are not explicitly chartered but that are logically linked to our conversation, building the system of thinking about the functionalities of the system. And we will resume this conversation on Tuesday when we have the next meeting.

Next week we have two meetings, Tuesday and Thursday. Please be prepared. And I thank all of you for active participation today. Staff will send out, as usual, recapitulation of action points and links to records and then chats to keep our conversation archivable conversation.

So with this, thank you very much, and meet you on Tuesday. This meeting stands adjourned.

TERRI AGNEW: Thank you, Everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines, and have a wonderful rest of your day.

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