
ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Tuesday, 24 March 2020 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 call taking place on the 24th of March 2020 at 14:00 UTC.

In the interest of time, there'll be no roll call. Attendance will be taken via the Zoom room. If anyone is on audio only, please identify yourselves now. Hearing no one, we don't have any listed apologies, however, Margie Milam from the BC will join for the first hour. Once she drops off, Steve DelBianco will be taking over as member for the second portion of the call on BC's behalf.

All members and alternates will be promoted to panelists for today's call. Members and alternates replacing members, when using chat, please select "all panelists and attendees" in order for everyone to see the chat. Attendees will not have chat access, you will only have view access only.

Alternates not replacing a member are required to rename their line by adding three Zs to the beginning of their name, and at the

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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 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 link. 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. James, I do see your hand raised. Please go ahead.

JAMES BLADEL:

Hi Terri. Just to note we've got a couple of folks trying to get in. Apparently, the Zoom link was not working. So please finish the housekeeping and introductions, and we'll see if we can get them connected. Thanks.

TERRI AGNEW:

Certainly. Just on a side note, we do see some folks joining as attendees and we are getting them promoted over, so we'll work through the rest of it here in a moment. Thanks, James.

If you need assistance updating your statements of interest, please e-mail the GNSO secretariat. All documentation and information can be found on the EPDP Wiki space.

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

With this, I'll turn it back over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS: Thank you, Terri. Hello everyone, welcome to the 48th meeting of the team. As usual, we will start with the agenda. Question is whether agenda proposed for the meeting would be acceptable. I see Marc's hand up. Marc, please go ahead.

MARC ANDERSON: Hi Janis. This isn't on the agenda but just noting I was not able to join Zoom through the panelist links and I had to join as an observer and get promoted to panelist. So just noting that.

JANIS KARKLINS: Okay. Thank you. I think that Terri is taking care of these technical issues. On the agenda, no requests for the floor. I take that we can follow this agenda. Of course, the indicated time is very tentative, and we will use as much time as needed to discuss each of proposed agenda items.

So we do not have specific housekeeping issues, I only would like to say that I hope that we will be able to finalize today the initial report on addendum to the report and publish it accordingly. So I noted that there have been some cannot live indications and I was

a little bit, honestly, surprised because all of those issues we have signed off by consensus literally a few weeks ago, and now there is attempt of opening up some of the topics. Of course, we will go through all of them, but I simply wanted to register that we need to honor our own agreements which have been taken recently, and if not, then it's very difficult to conclude the work in general.

I also vividly remember the beginning of the process in May last year when I was urged to organize the process aiming at finalizing the report in November. So then it was pushed to March, now it is pushed to June, and I have a feeling that there is no any longer appetite of the team to make this extra effort and finish work by end of June.

And I honestly do not understand what has changed since May last year when urgency was vividly expressed by many groups on the team, and now it is not any longer the case. What has changed? I simply wanted to understand, and maybe if you can give me some explanation in private, of course, that would be very helpful for me to understand.

So with this, I would like simply to invite all members to mobilize all efforts and show flexibility, because our aim is to reach agreement by the time which suits those who will potentially use SSAD, and the rest we can probably find a way to address as time goes.

So with this, I would like to move to agenda item four, which is purpose two. Last meeting, we had a conversation where all groups but one were prepared to live with the formulation proposed by the board, and in a conversation, NCSG asked for

more clarity on the meaning of SSR, and I asked ICANN Org to make an attempt to provide clarity, and we received yesterday the statement which was sent by Becky which is attempting to provide clarity.

I hope that everyone had a chance to read that statement, and maybe I will ask Becky nevertheless very briefly to introduce the statement is now seen on the screen. And after that, my question will go to NCSG whether that statement provides sufficient comfort that you can join the proposed formulation of purpose two. Becky, please go ahead.

BECKY BARR:

Thank you, Janis. As you can see, in formulating this discussion paper, we stayed very close to the specific words of ICANN's mission as set forth in the bylaw in an attempt to be as clear as we can about what we mean by security, stability and resiliency within ICANN's remit. Obviously, there are limits on the scope of ICANN's policy. Development authority and SSR is a fundamental aspect of those limitations. There's limitations both on the scope of issues and the manner in which the policies can be developed that further ICANN's mission of security, stability and resiliency.

The bylaws do provide specific examples of issues that would fall within those categories, and we've also provided what SSR means with respects to the [root name] server system with respect to ICANN's—to numbers and with respect to Internet protocol standards.

So taken together, these articulate with quite a bit of specificity the scope of ICANN's security, stability and resiliency mission and they do by definition limit ICANN's authority to process personal data in pursuit of that mission. So it is accessing accurate and up to date registrant data is necessary for ICANN to achieve its mission, and we've provided some specific examples about how, for what purposes, data would be processed in furtherance of the SSR mission, which is to inform and support consensus policy development, implementation and enforcement, conduct research in order to identify and address new emerging and evolving SSR issues within its remit, respond to and coordinate SSR threats within its remit, enable the work of supporting organizations, advisory committees and standards development bodies with respect to SSR issues within ICANN's remit, and study emerging technologies and national, multinational policy initiatives in order to educate the ICANN community as well as innovators and policymakers about the impact of such technologies.

So although we can't give a delimited list of every single circumstance in which ICANN might need to process personal registrant data to further its SSR mission, that processing is seriously constrained by the bylaws. And I just want to close by saying it's an org statement but the board firmly believes that given the rapidly evolving nature of DNS technology and SSR threats, the formulation that we provided above that was inspired by the European Commission is necessary and appropriate.

JANIS KARKLINS:

Okay. Thank you, Becky. I have Amr and Milton in that order. Amr, please go ahead.

AMR ELSADR:

Thanks, Janis, and thank you for that, Becky. If you wouldn't mind, would you just let us know where this came from? Was this you sort of going through the bylaws and mission and coming up with this—just for informational purposes, it would be helpful. But my general kneejerk reaction to reading this on list was that this seems to be taking SSR as kind of the overarching ICANN mission under which there are many different items? And the items listed here, and Becky also mentioned that you can't have an exhaustive list of everything that ICANN needs to do to fulfill its mission, but as an overarching mission and these little bullets underneath, I think those are really what we need to be looking at, the little details, and if we're going to come up with that purpose, that's what we need to do and that's kind of what we've been driving at in terms of specificity of a purpose two.

And going through them really quickly this morning, it seems to me that a lot of these are already covered in phase one when we were trying to identify ICANN purposes. A lot of these are already done. Some of them aren't, so for example I did note that for example access to accurate and up to date registration data is part of ICANN's mission which were now dubbing as SSR, and to be honest, I hadn't equated that the way that it was in Becky's e-mail. I thought SSR was referring to something very different, I thought it was just sort of the technical function and making sure that domain names resolve the way they're supposed to for example. but if we look at all of these items and issues, I think that we'll find that the supermajority of those are already covered in the phase one proposes that the ICANN board's already adopted.

So I'm not sure why it is necessary, or appropriate as Becky put it, to adopt the European Commission's wording of purpose two. If there are missing elements here that were not covered in phase one, we could look at those, but apart from that, just saying SSR, keeping this context in mind, is just a little strange. It's broad. Thank you.

JANIS KARKLINS: Thank you, Amr. Milton, and then I will ask Becky to respond.

MILTON MUELLER: Yes. My comments are in some ways similar to what Amr said, though maybe a little bit more pointed. As I said in the chat, we understand ICANN's mission. I was there with you, Becky, when we were hammering out the transition and trying to narrowly define the mission. Reiterating ICANN's mission doesn't really answer the question that's bothering us all, which is, how does ICANN's mission—what specific data elements does it require disclosure of via the SSAD or via other mechanisms? And I don't see anything in this restatement of ICANN's mission that answers that question.

I'm just not understanding a connection between—the whole purpose two debate that we had in phase one was about third parties saying they wanted broad statements about maintenance of SSR so that they could get access to the data. If you're just talking about ICANN Org getting access to the data, you're talking about something very different. It's not even clear that you need a standardized system of access [and disclosure] for ICANN itself to

get access to this data. We need it for third parties. So you need to tell us how ICANN's mission per se relates to the issue of disclosure of specific elements of registration data, and you need to tell us how those disclosures are not currently covered by existing purposes. Thank you.

JANIS KARKLINS:

Thank you. Becky, followed by Margie and Alan.

BECKY BURR:

Milton, apparently you know what ICANN's mission is, but I think it was useful for Amr and he asked me specifically where this came from. This is directly pulled from ICANN's bylaws. Security, stability and resiliency as defined by the bylaws is ICANN's mission. It's fundamental to that, and there's no question that in enforcing and implementing and supporting the development of consensus policies, ICANN will need from time to time access to registrant data.

Now, can I tell you now in each case every data element that it would need? No, because that is going to depend on the circumstances, and you still have to do a 6(f) balancing test even if you have a purpose. So I reject the notion that I have to tell you with specificity which data elements ICANN is going to use in every instance in which it is necessary to access registrant data in a proportionate way to carry out its mission. I fundamentally disagree with the notion that if I can't tell you what data element will be used in what circumstance today, given the pace of

evolution and change, ICANN cannot have a purpose for accessing this data.

JANIS KARKLINS: Thank you, Becky. Margie followed by Alan G.

MARGIE MILAM: Hi. We support what Becky is saying, and when we look back at phase one, the reason that purpose 2 was a problem was because of the conflation, not because there was a purpose for ICANN but because there were two purposes, essentially, in one.

So what we've done in phase two is separate out the third-party purposes, which is why we went through the exercise and have reached agreement on those, and this is just finishing the process from phase one. And I fully support what Becky is saying: there's no way ICANN can list every single thing that falls within this category, and there's still a requirement that they comply with the laws and apply the balancing test or other legal basis that's applicable. So I don't see why we keep going around on this. I think Becky answered the question because the NCSG asked for more specificity, and I think it's a really good result. So thank you, Becky, for doing this.

JANIS KARKLINS: Thank you, Margie. Alan G followed by James.

ALAN GREENBERG: I support what Becky has been saying. Milton asked why we need this information for the SSAD. That's not the question. This is a phase one problem that we're trying to go back and address. In theory, ICANN could get this information, but without an explicit purpose, we may not be able to physically access it because it's not in ICANN's hands. So the purpose has to be there and I just don't understand how anyone could expect that we could identify each processing activity and each rationale for each purpose at this point.

If you look at what governments are going through right now with the coronavirus, all of the things they're doing are not enumerated, but they have general rules, general laws that give them powers to do things. I think that's what we're talking about here. I don't think there's any possible way we could enumerate every possible use and feel secure that we weren't going to come up with a problem sometime in the future which isn't covered in them. And besides, we're supposed to keep these purposes short and concise, not 100-page volumes. Thank you.

JANIS KARLINS: Thank you, Alan. James.

JAMES BLADEL: Hi. Thanks. Didn't really want to weigh in necessarily on the substance, which just appears to be increasingly abstract. I think just for the sake of our work, we should just move on. I think that we've been discussing this and splitting hairs and now splitting

molecules of hairs, and I just feel like it's time to put this one to bed. Thanks.

JANIS KARKLINS: Thank you, James. I would like to again ask the same question that at the beginning of this conversation, whether with the explanation that was given in writing by ICANN and the subsequent conversation that we had here where some questions have been answered, that this is not specifically related to SSAD but this is attempt to overcome disagreement of phase one, would that explanation, whether we are in the position to propose the purpose two as formulated by the board to the addendum to the initial report? Brian, your hand is up.

BRIAN KING: Thanks, Janis. If you're calling a question here, I think the IPC supports this as purpose two, so I won't muddy the waters further. Thanks.

JANIS KARKLINS: Thank you, Brian. Amr?

AMR ELSADR: Thanks, Janis. And Becky, I didn't thank you for providing the details that you did earlier, so just take this opportunity to thank you because we did ask for them, so thank you again for the e-mail.

I think the NCSG, we need to discuss this internally, but if I'm looking at this from a registrant perspective, I'm still having a great deal of trouble with it. Becky explained that this is necessary and appropriate, and I can see how it's necessary. My problem is how appropriate it is.

Like I said, from a registrant perspective, this seems like a nightmare to me. Purpose for processing registration data, which is data pertaining to the registrants, has to be explained to registrants. So I'm still very unclear on how something like this can be explained to registrants. Would there be some sort of clause in the registration agreement that says please familiarize yourself with ICANN's bylaws and mission in order to understand every potential scenario where ICANN may be processing your personal information? I just don't see how it works. I appreciate that this is kind of a predicament, I understand why ICANN may need this or why folks say that ICANN does. Just the level of vagueness and it not being specific enough for a regular registrant who doesn't know anything about ICANN, I think it's just problematic at this point. But like I said, I think the NCSG need to discuss this internally and get back to the rest of the team. Thank you.

JANIS KARKLINS:

Thank you. I would like to suggest that we put the statement submitted by ICANN in the report, that we provide the formulation suggested by the board in the addendum, and we make very clear statement that NCSG was not convinced about this formulation and that NCSG will continue reflection and will provide input during the comment period. Would that proposal meet the consensus of the team at this moment?

AMR ELSADR: Sorry, Janis, could you explain it again? I'm not sure I understood.

JANIS KARKLINS: So we would add the statement received yesterday from ICANN to the addendum, we would use the formulation proposed by the board for the purpose of the addendum, and we would make additional statement that all groups but NCSG could live with the proposed formulation and NCSG would continue reflection and provide further input during the comment period. Because for the moment, I understand you're not in a position to join the formulation proposed by the board unlike the rest of the team. I have Hadia's hand up and then Amr.

HADIA ELMINIAWI: Thank you, Janis. I just wanted to note what Becky wrote in the chat, that it is up to ICANN as a controller to explain this to the registrants, and they find no problem with that. And again, I don't find the reason why good actors [inaudible] data for purpose of the security, stability and resiliency of the DNS. I would only assume that this would be a problem for only bad actors.

As to how to explain it again, ICANN is a controller [and definitely do that] and it's their job. Thank you.

JANIS KARKLINS: Thank you. Amr.

AMR ELSADR: Thanks, Janis. I think your proposal sounds fair. I don't think it would be fair for the NCSG to be the only group holding out on something and then have it excluded from the report because we disagree, but pointing out that we are not in a position to agree with this right now is also fair.

JANIS KARKLINS: That's a factual statement.

AMR ELSADR: Yes, exactly right. So I would also recommend something to the effect of Becky's e-mail also be included, possibly as a footnote to a link or something just so that people are reading this purpose and they wonder what SSR is, there is some kind of indication of what the EPDP team means when it's referring to SSR in this context. And of course, I am assuming that the rest of the team, the other groups represented on the EPDP team all agree with what Becky has shared with us. So I think adding that would add value to the report in general. Thank you.

JANIS KARKLINS: Thank you, Amr. This was the first element that I tried to say, that the statement of ICANN sent by Becky would make entry in full addendum to the initial report. And then this reference that NCSG couldn't agree and will continue reflection and provide further input during the comment period also would be part of the report. Of course, our secretariat will contact you to make sure that you can agree with the text which will appear in the report since we're doing now this orally.

Okay, so then with this understanding, we can move to agenda item five, and that is addendum to initial report. So I think that with closure of purpose two, we have reached the end, exhausted the list of issues in this section, meaning in priority two list of items. There is one that escapes our attention simply because of dependency, and that is legal versus natural where we're awaiting the study conducted by ICANN Org as requested by recommendation in phase one.

The rest, I think we have covered, and I had a feeling that all of the recommendations or draft recommendations have been agreed by consensus. Let me see whether that is the case. So I now see that there is a list of cannot live on the screen, and we should take one by one these objections.

Before we go in this, there is a question from Georgios in the chat. So Georgios, if you're referring to study legal versus natural, then my recollection is that the study would be done by mid-May. But that was discussed during our last face-to-face meeting prior the current sanitary crisis in the world, and of course, I don't know whether this sanitary crisis may bring any corrections in the initial schedule. So that is something to ask to ICANN Org and maybe through the ICANN Org liaisons we could ask that question and get clarification as soon as possible. Thank you. Georgios?

GEORGIOS TSELENTIS: If I recall well, the issue was that there were some intermediate results, but anyhow we asked in our last physical meeting that if any draft would help our deliberations, so these things are going in parallel. This is the ground of my question here. So any type of

progress report or intermediate report or whatever can we get for this, I think it might help advancing this pending issue. That was my question about.

JANIS KARKLINS: Eleeza, you have an answer.

ELEEZA AGOPIAN: Thanks, Janis. Not a very good one, but it's my commitment to get some more information. I believe you are right about the May timeframe, but I need to check with my colleagues and I will get back to the team right away. I'll see if I can find an answer before this call's over as well.

JANIS KARKLINS: Thank you, Eleeza. So with that, let us move to cannot live list, and I will call on groups who submitted the objections, the first to kickstart the conversation. BC. Before that, Alan's hand is up. Alan?

ALAN WOODS: Thank you, Janis. Because I'm reading these for the first time admittedly, I just wanted to say something before we hear these arguments again. I've done this once or twice some of the time. Can we go back to basic principles of why we're all sitting at this table? And that was as the EPDP to confirm or reject the temporary specification, not to create a brand new system. The temporary specification's put in place, our job was to see whether

or not what was put in place was legal or not. And reading these answers or these objections from the BC, the IPC, all I can see is an extension past the scope of what we have.

We have come to a conclusion. We've discussed, and if the discussion has come to a point where we are unable to say, then that to me is even clearer that we cannot confirm or actually reject a particular part of the temporary specification. What we're saying here is that we need to keep going until we get clarity as to what the law is. As far as I can see, from these particular objections, is that we don't have the clarity, we can't confirm, we can't reject, therefore we must let it as it is, as was stated in phase one, as we agreed, and also in the actual temporary specification.

So it's with some frustration I read these as well because I personally have a lot more work to be doing than going over these at this particular moment in time, and I think we should be all mindful of actually getting this done as opposed to extending it past what is by now a very dead horse.

JANIS KARKLINS: Okay. Thank you, Alan. Margie, please.

MARGIE MILAM: I think we can walk through these. I do object to what Alan just said though given that the issue of legal natural person was in the temporary specification and we've been waiting for advice regarding this. So the fact that we're raising this as one of the things we can't live with should be no surprise to this group because as we've said from the very beginning that GDPR does

not apply to the information of legal persons, and we are still of the opinion that we can do some policy work here. So I strenuously object to the way that Alan described our comments.

And what we said essentially was that in the last week or so—and maybe two weeks—we received legal advice from Bird & Bird on the legal natural person distinction, and in particular whether or not we can rely on the representations made by the registrant on whether or not they're a natural legal person, whether there's ability to get consent. We had some excellent advice from Bird & Bird which have us multiple options, and that's what we're talking about here. We're talking about continuing the work. We've paid for the legal advice, we've gotten some clarity, and now I think we can get to a place where we can actually address these issues in a way that would be beneficial for our stakeholders, the BC in particular.

So that's what this comment relates to, that we feel that given where we are in the timeline and the delays that occurred because of the face-to-face meetings being reduced and cancelled because of the coronavirus that this is an issue we feel should be addressed, and we should be able to take a look at the memos and come up with some policy recommendations based upon what legal advice we received from Bird & Bird.

JANIS KARKLINS:

Thank you. So Brian, your hand is up.

BRIAN KING:

Thanks, Janis. I'll be brief because I agree with Margie, but I will just note that we did pay for the legal advice and we received it and it's really good, and we are still waiting on the results of that survey. So the IPC doesn't think it's appropriate to give up on this work, because it's important and because it's half done. So I'm sorry if this is interpreted as backtracking on consensus that we had, but this has been an open item. I don't think this is something that we had consensus on. So we'd just like to see this through. Thanks.

JANIS KARKLINS:

Okay. So then my question to you is whether you would be prepared to delay release of final report on SSAD pending the results of the study, and then publishing—so that basically would bring us maybe in the best case to December this year, taking into account study would come out in May to consider it maybe in the best case end of June, then putting for public comment for a few months, so that brings us to October, November. So, is that something you are asking to do? Or we can look for alternative solutions whereby we are putting aside those topics that are important to the team but due to the time constraint we cannot consider now, and make a specific recommendation that these specific issues should be dealt or the GNSO council should consider how to deal with these issues in urgent manner after the completion of the work of the team?

It's simply that I would like to understand in order to keep all the groups onboard. At least so far I think we are pursuing that track. Alan G followed by Brian.

ALAN GREENBERG: Thank you. I think I understand what you say and I don't agree with any of those options. I am not recommending that we defer the SSAD report. This is not a direct connection to the SSAD report, and I believe the SSAD report has to go out. What I am objecting to is the EPDP saying we're simply not going to look at the legal natural issue and toss it back to the GNSO to handle at some future time, should it choose.

I believe it is a legitimate part of EPDP, we postponed it to phase two. If we have to postpone it to a phase three, so be it, but I don't believe we should give it up or some of the other things we're giving up because we've simply run out of time for the SSAD report.

So I understand the difficulties of continuing past June, but I don't believe we should be tossing them back to the GNSO for some indeterminate possible action in the future. Thank you.

JANIS KARKLINS: Okay. So my understanding is that we're talking about addendum to the initial report, so if we can separate that, then we can submit the report on SSAD to the council and then team would continue working on other issues until they're resolved. Brian followed by Milton.

BRIAN KING: Thanks, Janis. I agree with how Alan characterized this. There's a lot in here that we can agree on and publish an addendum right

now. I think our suggestion is not that we hold off on publishing an addendum or anything like that. I think we can probably move on with almost everything here.

This one though, I do support Alan's point that we shouldn't give this up just because we can't get it done in time for the addendum to be published. Rather, let's publish the addendum and then pack all this right after we do that. Thanks.

JANIS KARKLINS:

No, you're suggesting delete conclusion and replace with a policy recommendation to be determined after full discussion in the EPDP. So we're now having this discussion. Milton.

MILTON MUELLER:

I agree that we need to push off the legal natural question to the GNSO. It is in fact a policy question, it's not an immediate question that we need to resolve as part of the SSAD. Really, you can have an SSAD and we can determine all the policies that it requires to be operational without resolving this question.

I also believe that a very substantial part of the EPDP, certainly including NCSG, believes that we do not want to fragment the governance of DNS based on jurisdictions. We have made this point over and over again, and I think certain constituencies keep ignoring it.

We know that you prefer a legal system that was based on the North American model in which you could get open access to WHOIS data and we know that that is not compatible with the

GDPR. We believe as a matter of policy that ICANN should have a uniform and global approach to this question and that at the very minimum, you can leave it up to the contracted party to decide how they're going to handle it. And I thought that's what we sort of agreed on to get us through phase one, but if you're trying to say that we're going to try to establish policy in this phase that allows the domain name system jurisdiction to be fragmented into potentially 192 jurisdiction based on their differing legal treatment of legal and natural persons, then you're never going to get the agreement of NCSG. I suspect that there are many contracted parties that are never going to agree to that.

So further debate of this question in this phase literally is not going to get us anywhere. I frankly don't care about the results of this survey that's going on, because it doesn't matter to me because it's a matter of individual rights and legal uniformity. It doesn't matter to me what the outcome of this survey is, and therefore, what do you really expect is going to happen six months from now regarding this issue? Are we going to be more in agreement than we are now? The answer is clearly no, so let's separate the two issues. And I'm a little bit amused at Alan Greenberg's statement that we're just shoveling off to the GNSO. The GNSO is supposed to be the policymaking entity of ICANN. And I think that's precisely where the issue should be resolved if it ever gets resolved. It is certainly not necessary for us to do this to move forward with the SSAD, and people who say they want to have very badly a standardized system of access and disclosure, I don't understand why they're trying to do something that would lead to a six-month or possibly longer delay in the setting up of that system. Thank you.

JANIS KARKLINS:

Thank you, Milton. So now I see that there's not even—we tried to put little bit a [fig leaf] on the lack of consensus on the topic by saying in the preliminary conclusions that—and I'm quoting now from the draft addendum to the report—taking into account the timing of delivery of the final report, the EPDP team will not be able to consider the findings within the timeframe that has been established for the delivery of the final report. EPDP team will consult with GNSO council on if and how it is expected to consider the findings and the topics beyond the current timeline. So instead of saying that there is persistent disagreement on this topic.

So this is where we are. We don't have agreement. I see in the chat, also in the statements that have been made, that there is no also, it seems, any flexibility on the sides of the members of the team to find this agreement, not even in the current [inaudible] but also the extended timeframe.

So we have here options. Either we simply push it back to GNSO council and ask the question and let GNSO council to decide how to handle it further, or we make a statement of persistent disagreement and basically send this information to the GNSO council. So in reality, these are our two options.

I have Alan Greenberg, James, and Margie, in that order. And I suspect, Milton, your hand is old. Alan, please.

ALAN GREENBERG:

Thank you very much. I really object to having my comments mischaracterized. Nobody on this call, as far as I can tell, is saying

delay the interim report and delay the SSAD. Some of us are saying don't terminate the PDP, but that doesn't mean we're asking to delay the SSAD. This is not an SSAD question. That's number one.

Number two, we're talking about legal natural, not geographic jurisdiction. I don't know how we got into the geographic issue, that's not the one on the table right now. We're talking about legal natural, and as far as I know, virtually every privacy law in the world talks about legal versus natural.

And yes, this is a policy issue. There's no question it's a policy issue and the GNSO is responsible for policy issues, but the GNSO gave us this one. It's part of the temporary specification, and it is part of our responsibility. I'm not objecting to the GNSO having jurisdiction, I'm saying I'm objecting to us not addressing it and turning it in to the GNSO for some future unknown processing. Thank you.

JANIS KARKLINS: Thank you, Alan. James.

JAMES BLADEL: Hi. Thanks. Just like the discussion on purpose two, I think we need to make an acknowledgement that we're not getting anywhere on this, that it's holding up our work and it's holding up our progress and we need to move on. I just note in the chat because I know that there's a lot of back and forth going on in the chat that we had very, I think, constructive and illuminating discussion at the beginning of our call for Becky on ICANN's

position on security and stability of the DNS, and I pointed out that creating classes of registrant, whether that's delineated by legal or natural person or one could easily foresee that expanding into virtual, noncommercial, nonprofit, government types of registrant, and then also finding a vertical access for all of the different geographical jurisdictions doesn't sound like a very stable DNS to me. So I think we should be mindful of what we discussed at the top of the call when we talk about breaking up and categorizing registrants.

So I just think we flag this as no consensus and move on, because I'm starting to just reach a point of fatigue of continuing to discuss these things and hearing the same positions repeated. Thanks.

JANIS KARKLINS: Thank you, James. Margie?

MARGIE MILAM: One of the things I think we can do—there's two things I think that affect the timeline, one being the conclusion of the survey, and I think that's the one that extends the time out, but the other one is the natural legal person memos we have in our hands and we can analyze and see whether we can make some advancements on the policy recommendations based on the memos. And I think it's a mistake for us to pay for the memos to receive the advice and then to not take the opportunity to explore whether we can have consensus. Maybe we create a small group. We've been effective in doing that on some of these issues. Create a small group that

looks at the memos from Bird & Bird and see whether we can include a few policy recommendations that relate to what the Bird & Bird memos have advised.

Otherwise, we've wasted the money, so I feel that at a minimum, we can at least pull that into the report now and not wait for the conclusion of the survey for anything on legal natural since we do have some guidance we can deal with right now.

JANIS KARKLINS: Okay. Let me take Amr and then Volker.

AMR ELSADR: Thanks, Janis. And again, I'm just responding to what Margie just said. The disagreements on the legal versus natural issue was never a legal one, it was more of a policy one, and we've said this multiple times. We explained our reasons for this in phase one exhaustively. We can do so again, and I don't see the value in trying to have a legal memo from Bird & Bird on this compel us to agree to one recommendation or the other. As far as I'm concerned, the legal memo or what's contained in it is not the issue, there are more considerations that we've voiced repetitively over the past year and a half over the distinction between legal and natural persons. There are multiple issues, and I just wanted to up front say that, no, we do not agree, we will not be compelled to agree to a certain recommendation because of what Bird & Bird said on this. Thank you.

JANIS KARKLINS: Okay. Thank you. Before giving floor to Volker, I would like to ask staff, probably Berry, to think and enlighten the team what it means from practical terms if we continue work on addendum for another two weeks for instance, hoping to find solution on this particular issue based on legal advice received from Bird & Bird, and then how that impacts all timelines. But before that, Volker followed by Eleeza, and then Berry.

UNIDENTIFIED MALE: Janis, I'll just note that Volker said in the chat he needs a minute and he'll be back.

JANIS KARKLINS: Okay. Eleeza.

ELEEZA AGOPIAN: Thanks, Janis. So I just touched base with my colleague on the study question. The timeline we're on now is actually deliver the full final report on the study by early May. I understand we've gotten more than 190 responses to the questionnaire so far just to give you a picture of what the research looks like so far, and I believe in a previous conversation the team had expressed a preference for getting the full report by May, so we weren't planning on preparing any interim conclusions before then. And I'm happy to take back any more questions if there's anything else I can answer. Thanks.

JANIS KARKLINS: Thank you. I also recall that we asked for a final report or let's say unedited final report, not kind of preliminary where we would not have sufficient information. So early May, now we know. Volker, please.

VOLKER GREIMANN: Yeah. Amr is absolutely correct. I had been warning the team right from the start when the question of legal versus natural came up first that we would be wasting our money, but I didn't want to stand in the way of if it's really a question that's so dear to the heart, then it deserves to be asked, but the question ultimately will not change our position on the question of legal versus natural and how they should be treated.

That being said, just because even if we explore this further and get more information, waste more money on this, there is this old saying that just because you can doesn't mean you should. So we can debate the topic of legal versus natural for another two years, four years, five years. I just doubt that we will find a different resolution. So I would say table this, move on, let's be content with what we have achieved already, and fight this fight another day even though I regret to say that already.

JANIS KARKLINS: Don't cry, Volker. So we have at least two groups, if not three, insisting that the policy work on this should continue, and that is BC, IPC and ALAC as I understand. So Berry, what are the consequences of not finalizing addendum to the report and not publishing it for the comment for another two weeks?

BERRY COBB:

Thank you, Janis. Extreme consequences. If we don't publish the addendum report today, we have zero slack in the timeline. As originally stated, priority two items were never considered a part of the critical path to deliver a final report on the SSAD. Given some of the circumstances or dependencies for bringing conclusion to some of these topics, like what we went through with accuracy or what we're going through now with legal versus natural, if we delay publishing the addendum report, then it won't make our final report for delivery in June in terms of trying to explore this topic and even over just a couple of weeks in parallel. The problem with that is that it draws attention away from what is our critical path, which is reviewing through the public comments on our tracks to get through to the final report.

So short of the long, we have zero slack to meet the June delivery date for the final report on SSAD. Thank you.

JANIS KARKLINS:

Thank you, Berry. In that case, can we note persisting disagreement on the topic? But equally, what is already written, that the input from the study is not coming on time, and put that in the initial report of the addendum.

Then with understanding that in the meantime we would create a small group of interested team members, as suggested by Margie, who would separately from the rest of activities would examine Bird & Bird's advice and would come up with a proposal, and then whatever will be developed by the small group of interested team

members would be tabled as a part of comments to the addendum and would be examined by the team as a comment for the final report. Would that be something we could agree on? Lauren.

LAUREEN KAPIN:

Thanks, Janis. I just wanted to make sure that the record reflected that the GAC also supports further work. I do find that there's a lot to like about your proposal, because I think that further work could continue in parallel. I understand Berry's concern. I used to litigate government contract cases and I'm well aware of critical path concepts. However, I do think that for those who have self-selected to join a small group, that there is sufficient bandwidth to move forward and see if there is yet to be identified some areas where we can get agreement. And as long as it's still considered in the context of a comment that could then be considered for the final report and perhaps even some sort of modest recommendations, I still think that would be a path worth pursuing and one that we'd be able to achieve. So that's my two cents.

JANIS KARKLINS:

Thank you, Lauren. I understand you're the first volunteer for that small group.

LAUREEN KAPIN:

Count me first.

JANIS KARKLINS:

Alan G followed by Steve.

ALAN GREENBERG: Thank you very much. To be clear, this is not an SSAD issue. There's no reason to defer the report for this reason. We still have, however, a whole bunch of other items in the list that we haven't gone through yet. I believe all we have to do is say in this report we have not reached closure on the legal natural issue, period, and go on, get this report issued so the SSAD work can proceed. Thank you.

JANIS KARKLINS: Thank you. This is part of what I'm suggesting. Steve.

STEVE DELBIANCO: Thank you, Janis. The addendum itself includes narratives and it includes conclusions that become part of the record that would guide if and when these things are taken up after the June report is out. So the BC looked at the words in that narrative and conclusions for each of the recommendations and tried to determine, was there anything in here we couldn't live with because it would not actually reflect the record?

We did not look at this as if let's take one last shot at something. We said let's make sure the record is accurate. So the legal and natural persons for instance, the narrative about that doesn't really reflect where we are. Where we are is that the legal advice is that we may draw a distinction between a legal and natural person, but as James and others have said, it might be that the majority of this EPDP doesn't want to do it for a variety of reasons. And if that's the case, the BECAUSE is suggesting that the narrative in this

addendum reflect what the actual status is in June when we put this out to provide a foundation to decide whether and how any further work goes on.

So I don't think it's accurate to characterize relitigation. It is accurate to say that the way that the addendum was written—and staff did a great job on it—it skirted some of the actual narrative of how we got here, and this is what all of the BC and IPC points lay out, that we don't believe that the narrative in there accurately reflects where we are and the decisions the team [inaudible].

It may be that the small team ends up concluding that while we may do distinctions between legal and natural persons, that the majority of the EPDP doesn't want to do it. Well, if that's really where we are, I think that's what the addendum should say as opposed to pretending that there's something more coming down the pike. Thank you.

JANIS KARKLINS:

Thank you, Steve. Actually, I'm reading what BECAUSE is suggesting, and specifically on the screen in the column "proposed changes" is written green on white, "delete the conclusion and replace with policy recommendations to be determined after full discussion in the EPDP."

STEVE DELBIANCO:

That's exactly what I'm saying, Janis, is that if the chat is correct, the full EPDP is going to have a significant majority position saying we may do it but we don't want to. Just like we went through on purpose two earlier on today's call where one group

didn't agree and we move on. And I applaud you for taking that decision. If we're going to reflect in this addendum where was the EPDP on the in-scope question of legal versus natural, then let's do that. Instead of pretending that there's more to come, let's make a decision on that and have the addendum reflect that.

JANIS KARKLINS: So then you're suggesting that it's not any longer needed to try to achieve something but we simply state that there is an ongoing or persistent disagreement on this topic and that's it? So that would be a factual statement.

STEVE DELBIANCO: Yes, but I think the factual statement reflect the legal advice makes it clear that we may require a distinction between legal and natural, but the parties in the EPDP decide they don't want to do that and that there's a minority position noted by IPC, BC and others, but let's reflect what the actual score is and not suggest that this is something that will prolong the publication of our June report. I don't want to do anything to slow that down.

JANIS KARKLINS: Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I guess there's been a lot of things said, both at the mic and in chat, and I'm not sure exactly where we're leaving things, but I guess my intervention is that the GNSO council as the

managers of the PDP process probably needs to be notified of where we are with this. Certainly if we're going to do anything that extends our timeline, we should notify the GNSO council.

And I think depending on where we go with this one, notification of GNSO council should happen in a similar manner to what we did with the accuracy issue. So this may be a situation where we ask Rafik as council liaison to notify the GNSO council of where we are and ask them to weigh in on the topic. It seems like we're at a bit of a deadlock here if we're not sure how to proceed. We have different suggestions being made, but we don't seem to have agreement on what to do on this topic.

JANIS KARKLINS:

Indeed, we're really consuming too much time. So I'm a little bit torn here. From one side, I would love to say that there is no agreement on this topic and that GNSO council has been notified and the group will make attempt to reach this agreement, but unlikely. So something along the lines, just to reflect what I heard in this conversation. But I'm not sure whether that is recommendation, so that is simply a factual statement.

So recommendation, if we do not have recommendation of factual, substantive nature, then we only need to recommend that council should consider what to do next in light of persisting disagreement. And in a sense, the last sentence of the preliminary conclusion suggests that EPDP team will consult with the GNSO council on if and how it is expected to address the issue of legal versus natural.

And I'm tempted to suggest that in the first sentence of conclusions, we simply make a statement that there is persistent divergence of opinion or views of the team on the topic and that team will consult with GNSO council on if and how it is expected to address the issue further.

So, would that be something we could live with in terms of conclusion? And then we may pursue the proposal that was suggested by Margie to create a small group of volunteers and work completely separately from the consideration of the rest of the report and comments. And if there is any conclusion to propose the version for the comments during comment period, then the team would consider it during the consideration of the comments on the addendum to the initial report.

So once again, my proposal is to change preliminary conclusions in the first sentence to acknowledge that there's a persistent divergence of opinion on the topic, and the second is that EPDP team will consult with GNSO council on if and how to consider issue further. That's the first element.

The second element is that we form a small group of volunteers who works on the topic separately from the rest and makes proposal through the comment procedure and the team examines that proposal when examine comes. Would that be something we could live with? Amr, please.

AMR ELSADR:

Thanks, Janis. Your proposal sounds good to me except for the part on the small team. If there was something new to consider

that we haven't in the past, then that might be worthy of a small team or even a full EPDP team discussing it, but to my knowledge at least, no one's brought anything new. We've been through this so many times. What would the mandate of the small team even be? To revisit old arguments?

JANIS KARKLINS: No, the small team would examine the advice provided by Bird & Bird on the topic.

AMR ELSADR: Yeah, but what difference would that make? That's what I'm asking. we've all looked at the advice from Bird & Bird and we've all acknowledged that this isn't a legal issue, or not in full at least, but there are also policy considerations to take. I don't want to go through everything right now, but there are a number of policy issues. There was also a question of potential liability in case mistakes are made, which is possible, but again, we've been through all this. So even if we look as a group together at the advice from Bird & Bird on this, it won't change anything. So why are we doing it? Thank you.

JANIS KARKLINS: Because Margie proposed it. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I think Amr makes some good points. I think I raised my hand though because I don't want—time is short, and

the letter to the GNSO council [shouldn't be future text.] If we're going to notify or write a letter or contact GNSO council, let's do it now, and that note in the report should be we have contacted the GNSO council on this and are awaiting their guidance, feedback or direction on this.

JANIS KARKLINS:

Okay, so there is no support for constituting small group, but then of course that does not prevent those who are interested to form that small group since that would be outside the mainstream of the work anyway. Let me then rephrase my proposal and maintain only first part. The recommendation would read something along the lines that the divergence of opinion on the topic persisted and the EPDP team consulted with the GNSO council on if and how to proceed on the topic. Something along those lines. [Berry is good at formulating.] And Rafik is already contacting GNSO council and informing that on also on this topic there is persistent divergence of opinion. Can we end on this? And we will end on that. So the preliminary conclusion will be changed accordingly, and that covers first two topics.

Let's now move to 15, OCTO. So now when purpose two is adopted in preliminary recommendations, would you be in a position to withdraw your concern on 15, on OCTO? Steve.

STEVE DELBIANCO:

Thanks, Janis. Yeah, the BC is couching all of what we couldn't live with in the conclusions because of the ongoing discussion on purpose two. and if we can stay where we wound up this morning

after Becky's intervention, I believe that that would put us into position to say we could live with that.

JANIS KARKLINS:

Okay. Thank you. That's what I wanted to hear. So that covers 15. For the rest, I think there's no problem. Now, on a team, that is on accuracy. So again, I think on accuracy, we had a lengthy conversation and we received guidance from the GNSO council. So again, here is a persistent divergence of opinion on this, and so the BC is suggesting to add the text which is now displayed on the screen and colored in blue to the conclusion. Steve, please.

STEVE DELBIANCO:

Thank you, Janis. This is exactly the same principle we did on legal and natural persons. We're not looking to prolong or to relitigate, but the narrative that's in this addendum should reflect, as it did for a few other recommendations, the fact that there was disagreement. It should reflect the fact that some elements believe we should go one way with the policy decision, and others disagreed, and here's what the majority conclusion was. So the narrative that we pasted in there is drawn from going back to the earlier transcripts and chat and trying to say what is the story, what is the narrative of how we ended up with regards to accuracy.

And that is so much more informative and truthful and accurate with respect to if and how this gets taken up after the report is done. It also might suggest that nothing is going to get resolved on policy because there's no majority in the EPDP or council to do

anything and there had to be other ways to pursue it. Let's just be accurate at telling the story of where we are. Thank you.

JANIS KARKLINS: Thank you, Steve. There is a proposal to add the text to the narrative part of the report without changing conclusion. Milton, Volker, and Marc Anderson.

MILTON MUELLER: Steve, how are you doing? Hope everything is good in Washington. In terms of this language you want to add, I think the first sentence is fine. That is an accurate statement of what actually happened. What you have next is like three or four sentences stating your position and things that support your position. That's kind of one side of it, isn't it?

So let's not get into a blow by blow recounting of the debate, let's just put the first sentence in there and say that we did not agree, we did not achieve consensus, and we don't need your persuasive statements about the opinion of the GAC representative which some of us are contesting, and we don't need—if we're going to have a statement of the BC, IP position, then what about the other position? DO you think that should be in there, and should that be another paragraph? I don't. I think we should just stick with the first sentence. Thank you.

JANIS KARKLINS: Thank you, Milton. Volker?

VOLKER GREIMANN: Milton basically ate my lunch here. This is entirely a one sided position statement, and I think we can agree on the first sentence because it's neutral, but if we are to include the positions of every group, then every group's position should be included, not just one side of the argument. And we cannot support the full language as it's written. Adding our own language there would add to confusion and require more time which we don't have, so the only solution if we want to publish this today is strike everything after "treated."

JANIS KARKLINS: Okay, thank you. Marc Anderson.

MARC ANDERSON: I was going to make a slightly different comment, but Milton and Volker persuaded me. I think I could agree with the first sentence if the rest was deleted.

JANIS KARKLINS: Okay. Hadia?

HADIA ELMINIAWI: Thank you, Janis. I think what we agreed upon with regards to accuracy is quite different. What I understood from the GNSO council, that accuracy is within scope, it's not out of scope, but they would like to pursue it through a different PDP. So I'm not sure that saying it is not within scope is correct, and for that reason—I think Berry said we can go ahead with the questions,

because it is within scope, but we won't be able to actually act on the answers and that would inform some other kind of work. So that was my understanding to where we ended up with the accuracy issue.

JANIS KARKLINS:

Okay. Thank you, Hadia. So the proposal is to maintain the first sentence which suggests basically that there is a persistent divergence of opinion and reflect that in the report without touching the recommendation as such, which suggests that EPDP team will not consider this topic further. Instead, GNSO council is expected to form a scoping team to further explore the issues in relation to accuracy and so on. Would that be acceptable? Mark SV.

MARK SVANCAREK:

I think it's acceptable to me. I actually had my hand up for a different comment. If we're looking at things that are one sided positions, I think we also have to look at line 662. So we could come back to that. Thanks.

JANIS KARKLINS:

Thank you. I see no hands up, so I take that that's something where we could land. And again, nothing prevents the groups or constituencies to provide comments on the draft recommendations during the comment period.

Let us move to 17 now, and that is on [preliminary] recommendation 22. In all honesty, I didn't understand that comment, but let me ask BC to introduce it. Mark.

MARK SVANCAREK: Thanks. Looking at the first paragraph, 544 through 548, it says wide publication of masked e-mail addresses not currently feasible under the GDPR as disclosure would in certain instances require meaningful human review. So this is a mixing of publication and disclosure, and also, it's talking about saying that balancing tests always require human review. So there's really a bunch of problems in this and you can fix them by just deleting everything after "Under the GDPR." Wide publication of masked e-mail addresses is not currently feasible under the GDPR. I think that's it. Thanks.

JANIS KARKLINS: Okay. So that's proposal. Even the group, based on advice of legal committee, agreed on the current preliminary recommendation. So, can we live with the deletion of the last two sentences that are now marked in blue? Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I'm still, I think, trying to absorb what Mark just said, but my reaction is that this isn't necessarily a recommendation anymore. If it is, it's a recommendation to do nothing, and so the change that Mark is suggesting I think changes this to a preliminary conclusion and it's no longer a recommendation. If it is a recommendation, there's certainly

nothing to implement, and I think that would be my initial reaction to what he suggested.

JANIS KARKLINS: Okay, so you would suggest that we call it preliminary conclusion instead of recommendation, but you're not opposing deletion of the last part of the sentence as suggested by Mark SV. Amr.

AMR ELSADR: Thanks, Janis. Yeah, I didn't read this recommendation the same way Mark SV did. And looking at the memo on this as well, to me, that last part of the recommendation, the part that's highlighted, is the justification for why masked e-mail addresses cannot be published. If you look at the memo and then look at—they basically identify or the memo mentions how even masked e-mail addresses could make a data subject identifiable, and in cases like this, a balancing test would be required when disclosing these masked e-mails. That's the justification for why they couldn't be published in the first place. So there is a correlation between the two and I don't see it to be strictly conflating two separate issues, but would be happy to be corrected on this if I'm mistaken. Thank you.

JANIS KARKLINS: Thank you, Amr. Steve.

STEVE DELBIANCO: Thank you. As Mark SV indicated, the words “publication” are what this conclusion is about. And Marc Anderson is right, it’s a conclusion, not a recommendation. And if the conclusion is that you can’t publish in the public registrant data, you can’t publish these pseudonymized e-mail addresses, then that’s our conclusion, period. Mixing it up with the word “disclosure,” which is the second word in the blue text, is only going to confuse people because disclosure is something that happens different than publication, disclosure is something that happens in SSAD or a request for disclosure.

And it is conclusory and not even accurate to suggest that all balance tests require human review. They may or may not. And I think that if we are going to conclude that we can’t publish these pseudonymized e-mails under the GDPR, it’s not feasible, then end it there and that’s our conclusion. But I don’t agree at all that you need to add something regarding human review or balance test, because that isn’t actually what drives the decision. We just suggested that the e-mail addresses would be identifiable as PII, and that was it. So therefore, it’s not feasible to disclose them under the GDPR. Thank you.

JANIS KARKLINS: Thank you, Steve, for this clarification. At least for me, now I finally got it, where you're coming from and what you're suggesting. So thank you for that. Hadia.

HADIA ELMINIAWI: Thank you, Steve. I raised my head to say what Steve was saying. I totally agree with Mark SV and Marc Anderson, and again, here you're mixing too many things together. So you're saying meaningful human review, i.e. balancing test under GDPR. Well, that's not necessarily true. So in case you can actually do a balancing test without human review, would that change anything?

So yes, I do agree we need to delete the last sentence. It has nothing to do, actually, with the [actual] conclusion that we reached. Thank you.

JANIS KARKLINS: Thank you, Hadia. Mark SV followed by Volker.

MARK SVANCAREK: I think my points have been made so I'll put my hand down. Thank you.

JANIS KARKLINS: Thank you. Volker, please.

VOLKER GREIMANN: Yes, just one further comment. I agree with what Steve said, obviously, because disclosure is the wrong word here. I just have one further problem with the sentence before that, when you say wide publication of masked e-mail address is not currently feasible, that's not quite correct. We were just confirmed about the uniform masked e-mail addresses, not masked e-mail addresses in general, because you can still mask them if that is not uniform. I

think that was [inaudible]. So if every e-mail address and every domain name had a different masking, that would be fine, whereas using the same mask for every e-mail address that you have, then that would probably be a problem. So that was at least what I took out of the discussion. [inaudible]

JANIS KARKLINS: Volker, the current text suggests that noting that the publication of uniform masked e-mail address results in publication of personal data.

VOLKER GREIMANN: Exactly, but the second part, line 546, [inaudible] uniform should be used there as well.

JANIS KARKLINS: Okay. Can we then land on the following changes? So we call it preliminary conclusion, and then we stop at the GDPR, feasible under the GDPR and we add uniform before second masked in the line 546. That would be our conclusion. Okay, thank you. Alan G, please.

ALAN GREENBERG: Thank you. Just a question. Aren't we really modifying a recommendation from phase one here? Which I believe said that e-mail addresses can't be published but masked ones or encrypted ones or weblinks could be. So I think in fact, we're modifying a recommendation for phase one that probably should

be documented somewhere. I may be wrong on that, but that's what it sounds like to me. Thank you.

JANIS KARKLINS: Thank you, Alan. What is staff's take on this concern or question?

BERRY COBB: I think we'll have to get back to you on that one. We don't have an immediate response.

JANIS KARKLINS: Okay. So then preliminary—we have conclusion on this point, preliminary conclusion number 22, and we can go to next point, and that is from registry group. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I think this comment has been overcome by events. We spent most of the first hour talking about exactly this. Maybe we can recap exactly where we landed, but I think we did agree on next steps and also to consult with the GNSO council on this topic.

JANIS KARKLINS: You mean legal versus natural?

MARC ANDERSON: Yes.

JANIS KARKLINS: Yes, Rafik is already contacting as we speak.

MARC ANDERSON: Okay, then—

JANIS KARKLINS: I'm joking, but of course, that is what we agreed. Rafik is to inform GNSO council on persisting disagreement and with a question what shall we do. so hopefully, we'll get some guidance from GNSO council before publishing the report.

So with that understanding, let us move to next minor edits. Taking into account time, can I ask team's permission to task secretariat or staff to review those minor friendly amendments and incorporate them in the text? As they are not really of substance but rather editorial, and that would allow us to use remaining 20 minutes to discuss a little bit the situation with the comments on SSAD initial report. I see Steve's hand up and then Marc Anderson's. Steve, please.

STEVE DELBIANCO: Thank you, Janis. I have no objection to deferring the minor edits as you indicated, but I figured I better get this in now: if you're able to scroll to page 20 on preliminary recommendation 23—thank you, staff—you'll see what the BC was getting at earlier in this discussion where one particular member of EPDP, the NCSG, expresses in an articulate way an entire paragraph about why they

disagree with the preliminary recommendation, explain the rationale.

Some of what you struck earlier with respect to accuracy is the BC's attempt to also be able to include its rationale for why it did not support what came out as a majority recommendation. So let's try to be consistent, and if a party wants to add its rationale for disagreeing, then party should be able to do that. I don't think everybody should be required to, but we shouldn't do it in only one instance and in no other instance permitted.

The instance I'm speaking of is right on page 20 where the NCSG explains why they disagree. Thank you.

JANIS KARKLINS:

I think it is fair comment, Steve, and I would say yes provided that no one objects, and the only thing is you need to react quickly and provide the language within next hour. Marc Anderson—let me check with those who have raised their hands. Marc Anderson and Milton to follow.

MARC ANDERSON:

Thanks, Janis. Reacting to your question about how to proceed with the minor edits, I was going to suggest that groups be given a chance to review the minor edits and flag any they might have issues with. Sometimes minor edits can have not so minor consequences, so having not had a chance to read everybody else's minor edits, I'd like a chance to review and flag any that I think are not so minor edits. [inaudible].

JANIS KARKLINS: Okay, then we'll go through them now, but let me take Milton's comment.

MILTON MUELLER: I totally agree with Steve's comment that we need to be consistent with respect to lines 662 to 666. However, we could make even better progress if we make it clear somehow in this preliminary recommendation that along with what Becky said today, that this new purpose, make it very clear that it's an ICANN purpose and that it does not apply to third parties or does not justify disclosure to third parties. Otherwise, we don't have consensus on this. We don't need to stick our rationale for that in there, and I believe that we already have kind of agreement that the NCSG is going to discuss this, but I do believe that we need to make clear that this is an ICANN Org purpose that applies only to them and their processes.

JANIS KARKLINS: I think as a general sort of rule, I would suggest that if any of groups in the team would like to express their specific opinion on the recommendations as it is the case on 23, that should be possible. And then if—

MILTON MUELLER: Sorry to interrupt, but just to make it clear, the problem with the earlier thing that we struck was that it was part of the report, that is, it was supposedly the EPDP speaking. And if it's very clear in a

footnote or something that it is only the stakeholder group speaking and it's not necessarily the report or the EPDP as a whole, then I think there's nothing wrong with having these kinds of notes in there.

JANIS KARKLINS: Yeah, but here on this purpose two, your stakeholder group was not in agreement or expressed disagreement. I understand that BC is talking about their disagreement on other recommendation related to legal versus natural. So they're pushing hard, so I think that's it simply, that would be fair.

MILTON MUELLER: What would be fair exactly, To delete both of them?

JANIS KARKLINS: Either delete both of them or allow both of them.

MILTON MUELLER: Yeah, okay, but the point I just made was that if you want to have an asterisk that says the IPC and BC disagree with this and believe the following, that's fine. But that wasn't how the previous case was playing out. It was part of the report in which we were supposedly summarizing the debate and it was only presenting one side of the debate.

Line 662 through 666 do not purport to be summarizing a debate, they only say this is why NCSG disagrees. So there's a very clear distinction there, and I think it's cleanest to just leave this out, 662

to 666. I'm happy to delete that, and I'm happy to delete the stuff we've already agreed to delete. The point however is, do we need to reformulate or add language to preliminary recommendation number 23 that makes it clear that this is an ICANN purpose? Because everybody assured me of that, that it was, and I think we can get the agreement of NCSG if we make that clarification.

JANIS KARKLINS:

So then you're suggesting not to delete this one which is now displayed and not add any other explanation, and leaving stakeholder groups to provide their opinion during the comment period for general knowledge? That's what you're saying?

MILTON MUELLER:

I'm sorry, no, it's not. I would prefer to just delete this paragraph, 662 through 666, and I would prefer to add explanations that we seem to all agree on already to preliminary recommendation line 658 which says that this is an ICANN Org purpose, not a third-party purpose. That's all.

JANIS KARKLINS:

No, I don't understand. Maybe I'm already too tired after two hours of trying to put together some differences in opinion. I thought that we agreed on this, what is written here, and that's what happened after [first hour.] And now Steve is asking to have a chance to clarify in the same way disagreement on legal versus natural and now we're back to modification of our agreement an hour ago. Let me take those who have raised their hands. Amr, Marc Anderson, and Becky.

AMR ELSADR:

Thanks, Janis. I have a slightly different take on this than Milton. I don't mind this paragraph being deleted now as part of the preliminary report as long as it's clear that NCSG is not currently part of the consensus on this recommendation. But Berry spoke to my reasoning and why I raised my hand on this in the chat.

There's a difference between this recommendation and what we're doing with accuracy. On the accuracy issue, there's clearly divergence within the group. Here, this is just one group that is dissenting from this recommendation, so I saw the NCSG's view here as a minority statement which is normally included in the reports coming out of PDP working groups.

So when I say I'm fine with this being deleted now, that is with the understanding that once we do a review of the public comments and we reach a final recommendation that's going to be included in the final report, if the NCSG is still dissenting from this recommendation, it's still going to be put forward as an EPDP recommendation and the council will likely adopt it and recommend it to the ICANN board. But in that case, at that time, I think it is important to include the NCSG's minority statement or position on this recommendation.

So if we do delete this now and nothing changes between now and the final report, we're still going to need to put something in, so I'm wondering what the wisdom is in deleting it at this point anyway. It seems okay to me to just have it in here. And like I said, this is a minority statement. It's not the same thing as the issue of the narrative and all the views being expressed among

the diverging parties on the accuracy recommendation. Thank you.

JANIS KARKLINS: Okay. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I think we're having a good discussion about what the content and narrative of these recommendations should be, and I think in order to be consistent, the NCSG is willing to be okay dropping their note there on line 662 to 666, and I think that's a very reasonable path forward. I think that's also the one that's going to be the quickest one to closing this out.

If we open up all these preliminary recommendations to people putting in their minority views or disagreements or issues, then we're not going to finish on time. So I think that's probably the quickest path for us to move forward. As Amr said, there's an opportunity to file minority positions or statements at the end and also submit comments to this, and I think that's probably sufficient.

One more reaction though, I'll note that purpose two is a part of EPDP team recommendation number one which states the EPDP team recommends that the following ICANN purposes for processing gTLD registration data form the basis for the new ICANN policy. Milton, I don't know if that helps you with your concern, but just reminding you the context for which purpose two is framed. And I note Milton does say "it does" in chat.

JANIS KARKLINS: Okay. Thank you. My understanding from Milton was that he would agree to delete this minority statement but then adding in line 658, something about ICANN purpose rather than third party purpose, and then we're back in the ditch. Becky, please.

BECKY BURR: Thanks. I want to be really clear here because I don't want to be accused of being cute or anything like that. The board is very clear about the statement of the purpose itself. I've said repeatedly—and I don't have a problem with a note that says—that purpose two articulates ICANN's purpose for processing personal data about domain name registrants and is designed to avoid the conflation problem that the commission identified in the EPDP phase one.

But I am not saying—and I will not say, because I don't think it's appropriate in connection with any purpose—that there might not be a circumstance in which ICANN, in pursuing its mission, might share information as a controller with third parties. I think the same is true of every single other stakeholder and every other purpose. This is not an attempt to route around the conflation problem, it is intended to address the conflation problem directly.

But I would object to something that says ICANN would be prohibited from disclosing information, as I think any other purpose stakeholder would.

JANIS KARKLINS: Okay. So then I understand that we could delete the note on 662 to 666 which states specific opinion of one stakeholder group,

which would automatically mean that at this stage, no minority opinions of other groups would be put in the document and that all groups will be able to make their views known through the comment period and comments would be reviewed by the team as a whole.

And then as it is custom, if the final recommendation will have dissenting opinion, then in the final report, these dissenting opinions will be clearly stated and published. Is that our conclusion? Amr.

AMR ELSADR:

Thanks, Janis. I think what you're proposing is reasonable, and hopefully we can move on after agreeing on this course of action. I actually just raised my hand to seek one clarification from Becky and her explanation, which I largely agree with, by the way. But I just want this clarification. I'm pretty sure this is what she's saying, but for our own reassurance, Becky, when you're talking about disclosure to third parties as part of this purpose, I just want to be clear that this would be disclosure as a processing activity as part of a purpose of ICANN. So if ICANN requires disclosure to a third party to satisfy one of its own purposes, that this would be made possible via this recommendation and the consensus policy resulting from it, but under no circumstance would this purpose be used to disclose registration data to a third party for that third party's purpose. Correct?

JANIS KARKLINS:

Becky?

BECKY BURR: Disclosure to a third party would require a third-party purpose. ICANN is not asserting the conflated purpose that the commission identified. But if ICANN has to disclose information to a third party in order to fulfill its purpose, then that would be permitted.

AMR ELSADR: Okay. Becky, I think we're saying the same thing. I hope we are. But let's just move on. Thank you.

JANIS KARKLINS: Yeah. We're two minutes before the end of the call. Milton, your hand is up.

MILTON MUELLER: Very simple, just want to know, did we get to modify this in the way that Marc proposed?

JANIS KARKLINS: We will delete the—

MILTON MUELLER: I know we're doing that. It's the addition of something related to it being an ICANN purpose.

JANIS KARKLINS: I see Berry's hand up. Berry.

BERRY COBB: Janis, yeah, I think as Marc noted, the text in the phase one report specifically denotes that these are ICANN purposes. We will update the preliminary recommendation number 23 with a footnote that has a link back to the phase one report and recommendation one to draw that connection.

JANIS KARKLINS: So that was our conclusion. Stephanie, are you in agreement?

STEPHANIE PERRIN: Thank you. I think I'm more concerned than many of my colleagues about the potential for abuse of adding this. In other words, I see this as an exceptional disclosure provision, not as something that for instance could become the basis of processor and coprocessor agreements for this purpose with outside third parties that might include additional sharing of the data beyond the processor. Cybersecurity leaps to mind.

If that is envisaged, then I think you need more specific language that permits that, because it's not clear with this very sparse language just exactly how far you're planning to go with registrant data. Thank you.

JANIS KARKLINS: Thank you. So we are on the top of the hour and we need to conclude. Unfortunately, we haven't examined minor edits, we ran out of time, and I have no other choice but to say that we will

continue at the beginning of next call on Thursday. In the meantime, if I may ask those groups with very specific concerns, please contact staff and outline those concerns.

No, we're not publishing today, Marika. We are publishing it on Thursday. Sorry, we haven't finished the job. And so we will continue first thing during Thursday's call.

So with this, I thank all team members for active participation, and our next meeting is on Thursday where we will finalize this report and we are starting reviewing of the recommendations from comments. So with this, thank you very much, and this meeting stands adjourned.

TERRI AGNEW:

Thank you everyone. Once again, the meeting has been adjourned. Please stay well, and chat with everybody on Thursday.

[END OF TRANSCRIPTION]