ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Thursday, 27 February 2020 at 14:00 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the GNSO EPDP Phase 2 call, taking place on the 27th of February, 2020, at 14:00 UTC.

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

Hearing no one, we have listed apologies from James Bladel (RrSG), and they have formally assigned Owen Smigelski as their alternate for this meeting. Alternates not replacing members are required to rename their line by adding three Z's to the beginning of their name and, at the end in parentheses, their affiliation-alternate, which means you 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 then chat, apart from private chat, or use any other Zoom room functionality, such as raising hands, agreeing, or disagreeing. As a reminder, the alternate assignment form must be formalized by way of the

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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.

Seeing or hearing no one, if you do need assistance with your statement 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 public wiki space shortly after the end of the call.

Thank you. With this, 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 44th call of the EPDP team. Let me start with the traditional question. The agenda that has been circulated prior to this meeting – is this the one we would like to follow?

I see no objections, so we will do so. Let me take then the housekeeping issues. First is the meeting with the Belgian DPA. We have, I understand, on the call also Elena from the Strawberry Team. If there are any additional questions that team members would like to ask, that is an opportunity to do so.

I would say, from my side, I was participating in the meeting with only one aim: to brief the Belgian DPA representatives on the outcome of our work, which is in the form of an initial report. I did my part. I asked for any feedback they may give. Maybe they were not prepared to do so, but they took the document and listened very careful on my question of whether we may expect some feedback or participation during the public comments on the initial report. There was no conclusive answer, but the answer was more: most likely not. Basically, that was it when it comes to what I can tell you about their reaction to the initial report.

I don't know, Elena, whether you would like to add something, apart from what was written in the blog.

ELENA PLEXIDA: Yes. Hello, Janis, and hello, everyone. The blog was a high-level recap of the discussions, but it included all the points that we discussed during the meeting. Essentially, I'm here to take any questions you might have. So I will take questions [inaudible].

JANIS KARKLINS: Okay. Are there any questions?

I see no hands up – no, there is one. Marc Anderson, please? Go ahead.

MARC ANDERSON: Hi, Janis. Can you hear me okay?

JANIS KARKLINS: Yes, I do. Please go ahead.

MARC ANDERSON: Okay. Thank you, Janis, and thank you, Elena, for joining us today. On our previous call, Georgios provided us with a little more detail and color around the meetings, which I thought was very helpful.

I'm sure you both have seen on the list that a couple of people have posted asking for more detail on the meeting. I guess one of my thoughts or takeaways from last week's meeting, both after having read the blog post and listening to Georgios's recap, is I wasn't really sure what was actionable for us coming out of that meeting. There were a couple interesting things in the blog post, but I'm not sure how to take any of what we heard from Georgios or what we saw in the blog post and use that to improve or help or otherwise modify the work we've done so far.

So I guess this is for Janis, Elena, or Georgios for that matter. If anyone of you would have some input or thoughts or takeaways from that meeting that would be actionable for us, I'd love to hear it. So that, I guess, would be my one question. I'll leave it open for any of you.

JANIS KARKLINS: Thank you, Marc. I told everyone after the meeting that, for me, the meeting was very inconclusive. So I had exactly the same feeling as you had.

One thing that I took from it is that we should not rely on input of the Belgian DPA within the timeframe of our activities. I mean until the 11th of November. It is very unlikely that we will get any feedback on the initial report – I cannot speak about anything else but the initial report – until June 11th.

I mentioned in my presentation that we're working on the assumption that we are in the situation of joint controllership, and they took note of it. They said this is one of the models. There was a theoretical discussion on whether, in this circumstance, ICANN could be considered as a controller, and the contracted parties as assessors, if that is unified, centralized model. But even there, the answer was, if I recall correctly – Elena, maybe you can correct me if I'm not precise – "Yeah, maybe." So that was more or less very inconclusive, not clear-cut responses or reactions that we received from representatives of the Belgian DPA.

So my conclusion is that we need simply to await for feedback from the community and continue working on our own as we see fit and present our recommendations to the GNSO Council and subsequently to the Board.

Elena, would you like to add something?

ELENA PLEXIDA: Yes. Thank you very much, Janis. And thanks for the question. I also tried to give an overview of the discussion, to [Margie's] point. Let me start from the following. I'm not sure, "It was inconclusive," is the words that I would use, but that doesn't mean that I disagree with Janis at all.

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Let me start from a higher level, if I may. In my view, this meeting was a very, very, very good meeting, but that doesn't mean that we got actionable out of it. Why am I saying it was a very, very good meeting? You have to understand that the starting point, some time ago at least, [inaudible] was that the multi-stakeholder processes are not adequate to solve this problem. That was the attitude around here. But no one is saying that [is] a complicated law, and the need for guidance is absolute.

Now, being able to meet the Belgian DPA and make them understand that this is the problem is huge progress, in my mind. Nevertheless, during that meeting, we did not get something actionable out of it. We were able to explain to them what is the consequence of them sending a letter that said nothing in it. So, to that end, we now have an open door, I feel, with the Belgian data protection authority to help us with guidance if we need it going further.

Yes, there was a discussion about the controllership. That was, anyway, the key question we wanted to ask them. As Janis said, we did ask them, "Could that mean that the contracted parties are just the processors, and ICANN [is] in the role of making decisions for who is the disclosing … can be the controller?" They said, "Yes, that is also a possibility."

But, as we said in the blog, the thing that was a little bit disappointing, if I may so, is that they cautioned us that the data protection authority of Belgium alone is in no opinion to give us an authoritative opinion on the matter, like WHOIS, that has global repercussions. That is why—I think maybe Georgios told you last time—they mentioned that the European Commission under

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GDPR has the power to send [inaudible] send the issue to the level of the European Data Protection Board, which could give authoritative opinions.

JANIS KARKLINS: Is there something else, Elena?

ELENA PLEXIDA: No. I'll stop here with that. Thank you.

JANIS KARKLINS: Okay. I have three hands up. Let me maybe take first Georgios and then Alan G and then Chris Lewis-Evans. Georgios, go ahead.

GEORGIOS TSELENTIS: I will try to answer further to what I told you last time and what was the question of Alan this time: whether there is something actionable. We have to understand that the DPA was trying to answer and clarify—this particular meeting was a technical meeting—what was the initial questions and the answers.

They were clear about three things – first that they are not the authority to give us, as was mentioned, an answer as a judge would say so. They cannot dictate a preference towards a model. For me, these were a clear response from the DPA.

But they could say something about what could probably work, but this "could" is related to the detail of information that they had at

the table at that moment. So, as I told you last time, they mentioned something about not a central something versus a centralized or decentralized model regarding the disclosure and something regarding the automation. So the said, "First, the automation is not something we would object to. We have to see the details of how the automation will do. And don't forget that any automation cannot replace or abdicate the responsibility of the one who makes the decision."

So, to me, these were useful inputs, but, to answer your question about whether they were saying something that we could lead to an action from our side, it's us who have to take a decision on whether, given these responses, we want to go towards a direction or not. So it is, again, the ball was always with the EPDP. the EPDP is deciding the policy that is about the model that we are going to choose.

These were useful inputs, as I find it, but, no, there was nothing that was saying what we have to do as a next step in our work. We have to decide what we do.

JANIS KARKLINS: Thank you, Georgios. Alan G?

ALAN GREENBERG: Thank you very much. Prefixing, I don't know what happened in the Tuesday small group meeting. What I'm about to say clearly relates to the kind of discussions they had there and how they're going to be reporting. We heard that automation is not forbidden,

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but we can't give you any idea of whether it will work or not until you tell us what's your planning.

If, when we're looking at automation, we make only the safest of possible decisions—the ones that everyone is absolutely sure are okay, which is a pretty small set—we're not going to learn anything from that either. I think we have to be a little bit more aggressive and test the water; that is, make proposals, come up with some automation plans, which might not be acceptable but which might be acceptable, and use those to test the water. I think that's the kind of detail we have to provide them if we're going to expect any feedback as to how we can move forward and just how we can implement this.

So I think we have to change more of our operation a little bit— that is actionable—to essentially give them test cases that they can pass judgement on. If we only give them the safest ones, we're not going to learn anything from it. Thank you.

JANIS KARKLINS: Thank you, Alan. Chris Lewis-Evans, followed by Mark Sv.

CHRIS LEWIS-EVANS: Thank you, Janis. Thank you very much, Janis, Elena, and Georgios again for the updates. I think we've heard it from the European Commissioner and a couple of people now: that the DPAs are separate and make up their own decision. Really I think what we've heard is, with the amount of detail that we have, even within the initial report, we've not got enough detail there for them

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to even make a comment on whether it's legal or not and responsibility and that sort of thing.

What was good to hear, though, was that centralization is still possible. That's a bit more clarity around the matter which I think caused a bit of confusion within the groups. So that's still on the table. I think, within the initial report, we have that, with the step-by-step basis on how to move from a decentralized backend to a more centralized backend, where it's legally possible, obviously.

One question for those that were at the meeting is, is there something within the policy work that you feel we could concentrate on to give the DPAs more detail? Was there a feeling of anything in particular that we could concentrate on, whether that's who makes decisions, where responsibilities lie, or need for a DPIA? Anything that we could concentrate on and maybe try and get out sooner rather than later? Thank you.

JANIS KARKLINS: Thank you, Chris. Mark Sv?

MARK SVANCAREK: Thank you. This is probably a dumb question, but I'm a little confused. So please bear with me. It seems to me—now, did I remember this right—we attempted to contact the Data Protection Board, but the Belgian DPA stepped in and said, "I've got this," and then there conclusion was, "I'm not actually competent to discuss this. Eventually you'll have to talk to the Data Protection Board." So, if we attempt to talk to the Data Protection Board, what's stopping a DPA from jumping and [seizing anything]?

Hopefully I just misunderstood the chain of events, but if I didn't, how do we get out of that non-virtuous cycle? Thank you.

JANIS KARKLINS: Thank you, Mark Sv. There are no stupid questions. There are questions that people want to ask, and each question has its own merit. Maybe, Elena, you can answer that question.

ELENA PLEXIDA: Yes, I can take that. Thank you for the very good question. I wanted to mention it myself. It is exactly, Mark, the way you put it. So we asked the question to the European Data Protection Board. Then the Belgian DPA stepped in and said, "It is us." That's because, as you know, when it comes to the E.U., ICANN has one engagement office in Brussels. So they saw themselves as the competent ones.

Then, in discussing with them, they said that, because this is a global repercussion issue, "We cannot give you an authoritative [opening]. But the European Data Protection Board can give you one." So this is an interesting one, indeed.

They also pointed to the commission, saying that the commission [can't put it back] to the level of the European Data Protection Board. So this is something, again, to highlight for the group: we still have ways.

Now to please allow me to say something else along what Alan was saying before. I think Alan is right on the point. The DPAs and the European Commission has several times told us that, if you

want to get specific answers, you should give specific questions. That is what we tried to do with that paper we submitted: give them the very specific question.

Now, during the meeting, I realized the question we were asking, which was all about controllership and allocation on liability, based on allocation of processing activities, had not been understand. So what I got from the meeting—I've very happy it was clarified—is that they had understood that we were asking them to bless what was in the paper as the model of the community would go forward with. This is a little bit disappointing, I can say, because I don't how much clearer we could have made it that that was a hypothesis and that is the community that is making up the model. A very big thing. Thanks to Janis for being there at the meeting. It was one thing to be telling the community, and it is another thing to be actually seeing the community.

After this was demystified, they were very willing to discuss the very question, and they did discuss it. But, then again, as I said, they said, "We are the Belgian authority. We are not able to answer this question at our level."

Another thing that they told is that the European Data Protection Board is working on guidelines on controller/processor, and we should definitely take part in this consultation. But, again, they pointed to the Board. Thank you.

JANIS KARKLINS: Thank you, Elena. Margie, please. It's your turn.

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MARGIE MILAM: Thank you. I actually have a different question, and that is on the statement that the European Commission can ask the Data Protection Board for the answer. What is the process to do that, and when is it appropriate to do that? Because I think that it just seems like the confusion between the Belgian DPA and the Data Protection Board … It seems like there's hesitancy to actually provide an answer. But if the European Commission made that request, then it seems that there's a little more of an obligation to provide an answer.

So I guess that's really my question. What's the process? How do we expedite it? How much information is needed in order to present something to be asked by the European Commission or the Data Protection Board? Maybe this is really a question for Georgios. It sounds like it's something that is possible and, at this point, the sooner we can get that or understand what the parameters are for putting in that request, the better. Thank you.

JANIS KARKLINS: Thank you, Margie. It looks to me, from my experience here in Geneva, that, like in any E.U. intergovernmental processes, there might be a situation or method when one member state takes a lead—what in E.U. jargon is called burden sharing—and develops an issue and brings already-prepared proposals or acts on behalf of other member states on that given issue. So it seems to me that the Belgian DPA volunteered to engage with ICANN with that kind of work method in mind because the European Data Protection Board as such does not exist. It is a body which is made out of 27 data protection authorities of member states. Therefore, one is acting or at least preparing the topic for consideration by the

Board on behalf of the DPA. So this is how I see the role of the Belgian DPA in these circumstances.

But, Georgios, maybe you know more than I do, since you're working on the commission. Georgios, go ahead.

GEORGIOS TSELENTIS: I don't know much more. The way I knew the process was that there was a competent national DPA to deal with the issue. Then there was a technical committee which was presenting the issue to the Board. Then the Board was making a reply to whomever asked the question.

Now, this process that, in our meeting, they referred to was a direct request from the commission. I understood it is a direct request from particularly the part of the commission that is dealing with the GDPR DigiJustice, not for the drafters.

Now, I can, not saying things I don't know, ask further how the process is. That doesn't mean that we don't have to go and, if we have to make any question for any issue, we need to formulate it—this was always the case—very clearly so the people who will reply—the Board, in this case—will have all the elements to give a useful answer. But I can check about the process and tell you on the next call, if you allow me.

JANIS KARKLINS: Yeah. Thank you, Georgios. Anyway, if the question would be submitted to the Board, the Board will ask somebody to examine the question or prepare the answer, whether that will be [a]

technical committee or that will be one of the national authorities. Then the Board will discuss whatever will be presented by that preparatory board or entity, whatever that entity is.

Mark, do you really want to ask a second question?

MARK SVANCAREK: Yes, please.

JANIS KARKLINS: Please go ahead.

MARK SVANCAREK: Okay. I'll try to be quick. I was becoming concerned that the Belgian DPA, based on their communication, did not understand that the community makes policy and they thought that ICANN was the decider of policy and that their communication could be terse and abbreviated because they had had previous conversations and that they did not understand that the audience for their communications would be the EPDP itself and maybe even our larger community. It sounds like, in the meeting, this was cleared up, but only with the Belgian DPA.

So how do we ensure that, if this goes to this virtual board which, as you say, is not a fixed body, per se, but they allocate the responsibilities to the various member states, technical committees, etc., this misunderstanding does not occur again? Thank you.

JANIS KARKLINS:	I don't know. I think we simply need to communicate that clearly. The question is, are we really prepared to formulate questions to the Board or the Belgian DPA in the timeframe which is allocated to us? So that's my question.
	I did not have a feeling that we may receive any clear-cut guidance in the framework of our activity. So, if we decide to go for another year, then probably that would make sense. Then we suspend our activities until the answer is given, and then we examine the answer, and then either we go ahead or we rectify our proposal. But, since our attempt is to provide recommendations by June, I think we need to apply our best judgement and interpretation of GDPR and go ahead with the model that we have developed during the past year and have submitted to the community for consideration.
	Franck, please? You are the last one in the line.
FRANCK JOURNOUD:	Thank you, Janis. I've got to confess a little frustration—I don't think I'm the only one on this EPDP team—with how all of this has been unfolding. And I don't mean just this Belgian DPA meeting but the whole process of trying to get legal guidance from either that DPA or the EDPB overall. I think the frustration is that it's not clear that the EPDP team, its leadership, or ICANN org really ever had a good grasp on what questions can be asked, to whom, by whom, and what kind of kind of answer would we get under what kind of timeframe.

I don't know, Janis—I don't necessarily disagree with you—for a fact that we are not going to get the kind of legal guidance that would be useful in the [legal] timeframe that we have. I would suggest that maybe a call be made to the Chair of the EDPB or to the Secretariat to the EDPB asking that, explaining, "Listen, this is not ICANN org. It's a community process. Here's what we're developing. We want to be done by June. Here are the big issues on the table: automation, centralization, things like that, controllership. What kinds of questions in what kind of form with what kind of detail can we ask you that you will be willing to answer in a manner will be useful to us?" If their answer is, "I'm not your lawyer. Go hire Byrd & Byrd," then that's fine. If I were then, I probably would give that answer.

I feel like we're spending endless EPDP call cycles and a lot of acrimony because we're trying to pin the tail on the elephant with our eyes blind. I think that's not helpful to the EPDP process.

JANIS KARKLINS: We know that the European Data Protection Board meets not more than once a month. That gives you already one indication. So the second one: we know that the Board itself will answer a question without going through the existing procedures. The existing procedure is to examine the issue [prior to examination by] the Board by one of the technical committees or by whatever other procedures are. So that adds additional months. So for us to formulate questions, if we start today, most likely we will not be done before mid-March. So mid-March, mid-April, or mid-May. In the best case, we may expect something back from the Board—in the best case.

ELENA PLEXIDA: Janis, I'm sorry. Can I jump in here?

JANIS KARKLINS: Yes.

ELENA PLEXIDA: Thank you very much. I need to react to what I heard and other comments as well. Thank you very much for giving me the floor.

First of all, ICANN org knows very well who we are contacting and what we are talking about – very, very well. I can assure you about that. You also seem to be describing that, in all these processes, we also got advice on who to talk with and how to talk with by the European Commission itself, who has drafted the law. So please do not lose sight of that. We cannot just call up the Chair of the European Data Protection Board. That is impossible. It can never, ever happen. That's not something that can be done. There are processes there to be followed.

Now, with respect to whether June is possible, June is entirely possible to get an answer. The question is whether, as Janis said, we can have a question. Correct me if I'm wrong. Of the model I understand that is now on the table—the hybrid-hybrid?—the community intends to see whether in time it can be centralized in terms of automation. To my understanding, you still have questions with respect to who is the controller and where is the liability in that. So I think it is [valuable.]

Finally, about Goran and the misunderstanding of who is doing the work here, I want to share with you an incident that happened in front of my eyes when I was not working for ICANN at the time. Goran had visited the cabinets of the commissioner just at the time [inaudible] GDPR. I was there and he was getting screamed at by the head of the cabinet, being told, "I do not understand that you're telling me. You just go fix it through your contracts." Nothing to do with the ICANN community. ICANN and Goran were there saying, "There is nothing I can do. It is the community that will decide." Thank you.

JANIS KARKLINS: Thank you. Milton, please. Then we need to wrap up this conversation. Milton, please go ahead.

MILTON MUELLER: I just want to make it clear that I totally agree with Janis that this whole third-track interaction with the data protection authorities, however well-motivated, has just been a source of confusion and delay. The only thing we can do is develop our policy within the stated timeframe. We can read the law. We have privacy advocates and lawyers here on the panel, and we have people who can test their interpretation of the law. Everybody should know and should have known from the beginning that you're not going to get a definitive statement unless you litigate and test the law. That's just the way law works. So this idea that we have to figure out how to talk to the EDPB and they're going to actually understand the process fully by which we make policy and we're going to guidance for them? I've been saying for me than a year

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that that is just wrong. That's just not the way things are going to work.

We have to make the policy. We have to consult with our legal advisers and with the law itself and with our lawyers and our privacy experts and try to do the best we can to make it conform to the GDPR. Then we have to float the policy and implement it. If it actually isn't legal, which I doubt—I doubt that we will propose something that's completely violating the GDPR, and, if we do, certainly we will let you know in the comment period (you will be warned) … This is not some great mystery. This is just a process that we have to go through to develop a compliance SSAD. Let's do it. Let's not be distracted by this unauthorized third-party intervention coming from org. Thank you.

JANIS KARKLINS: Thank you, Milton. Do we have any other questions on this?

It seems there's none. Then let's move to the next … I would say let's take it both together: the virtual meeting and timeline review on Priority 2 worksheets. I think that that is all combined. We had a leadership meeting. We went through—

ELENA PLEXIDA: Janis?

JANIS KARKLINS: Yes?

ELENA PLEXIDA:	Sorry. This is Elena again. I will not follow [inaudible] of your meeting. Can I?

JANIS KARKLINS:	Yes, please.

ELENA PLEXIDA:	Thank you. Just to say thank you to everyone for hosting me. I'm very happy to be back any time you would like me to. Most importantly, a very, very big thanks to you, Janis, for traveling to Brussels for that meeting. Janis not only went to the trouble of traveling from Geneva to Brussels for that meeting, for which we could not choose the date and the time, but he also moved other meetings he had for this. Very, very big thanks, Janis, to you. Thank you.

JANIS KARKLINS:	Thank you, Elena. Coming back to the timetable, we looked at all the options and things, and the proposal now is on the screen. Basically, we need to find a way to recover eventually eight meeting that we would have in total in Cancun. We think that this would be possible by arranging or continuing the work two times a week and allocating maybe also time if needed to the Legal Committee on top of that. But, for the moment, we were thinking two meetings a week, normally on Tuesday and Thursday.
	That said, we also understand that there may be need for a period of more intensive work. We need to finalize parts of our work. The first deadline when we're working backwards was at the time, and

we need to publish the initial report on Priority 2 items. That coincides with the end of the comment period of the initial report around the 24th of March, if we want to give back feedback in 40 days and examine feedback and incorporate whatever Priority 2 item recommendations we may want and can into the final report that we intend to publish or we aim to publish on the 11th of June. So that's one deadline.

The second one is, clearly, we may need maybe some time to go through the comments received. For that, we may need either to have or think about another face-to-face meeting that we could potentially organize at some time in May. Or we need to plan the high-intensity phone conversations. Looking at what is happening with the coronavirus, I think that increasingly seems more plausible. Maybe this high-intensity work could be done between the 29th of April and the 3rd of May. That would maybe entail four hours or two times two-hour meeting every day for three days, for instance, in arrow. Or that would be sometime between the 13th and 17th of May – the same, more or less, intensity at the time when everyone can do it. If we know that this coming, of course we can arrange our schedules and plans around those dates and times. That would replace the travel to one place to finalize the meeting.

So this is the proposal that we have developed, looking to all alternatives and all options. Now I'm opening the floor for any discussions or reactions you may want to make, provided that no reaction has been posted on the mailing list by this meeting.

I assume, Milton, that's your old hand. Brian is next in line, followed by Alan G.

BRIAN KING: Thanks, Janis. I just observed that the GDD Summit, if it's going forward, will be in Paris. I think it starts on May 3rd. I note that some of the contracted parties will probably be going to that. So we should consider Paris, if GDD is going ahead, for that face-to-face at the end of April, if it runs right into it. Thanks.

JANIS KARKLINS: Thank you for mentioning that. Alan G?

ALAN GREENBERG: Thank you. I just want to express some disappointment that we're not talking about a face-to-face earlier. I really think there are issues that could have been addressed in Cancun that won't be. I just don't see a viable way of addressing some of those without a face-to-face much earlier in the process than we're talking about here. Thank you.

JANIS KARKLINS: Do you have any specific proposal and what those issues would be in your opinion?

ALAN GREENBERG: I think many of the issues associated with automation and what we can risk. That's related to my previous intervention, that I think we're going to have some serious discussions on just how we go forward and how we get to the point where we can present something. I would have looked at end of March. I understand

ICANN wants four months for preparing a meeting but these are exceptional circumstances. Thank you.

JANIS KARKLINS: Thank you, Alan. Marc Anderson?

MARC ANDERSON: Thanks, Janis. First, I just want to note, at the end of your introduction to this, you said nobody had provided feedback on the workplan. I did on Tuesday. So I just wanted to point that out, that I did.

JANIS KARKLINS: My apologies then, Marc. Sorry.

MARC ANDERSON: Sure. A couple things. As you said, we're losing a number of meetings at ICANN67. Replacing them with a smaller number of remote meetings is unfortunate. In my e-mail, I point out that we have an awful lot of work to do, and I'm uncomfortable with the amount of work we have to do and the time remaining.

I do see in the updated schedule that you added a meeting back in for March 5th, which wasn't on the previous schedule. That would have been a travel day for us. We have, from the ICANN 67 meetings, two two-hour meetings. So essentially we picked up three two-hour meetings to replace all the face-to-face meetings we would have had at ICANN67.

JANIS KARKLINS: No, we also have the 17th and 19th of March meetings because, after the ICANN meeting, we would not have the 17th and 19th of March meetings. So we have five meetings extra.

MARC ANDERSON: All right. Fair enough. But even with that, I agree with the previous interventions. I don't want another travel trip, but I'm concerned of not just our ability to close our all the public comments, all the remaining issues, but also our ability to agree on consensus or come to consensus on the final report would be greatly enhanced by a face-to-face meeting. We've proven time and time again to be more effective face to face. Really, I don't want to add more travel to my schedule. I don't but I think our work is important and it would be greatly benefitted by this.

So I think we at least need to already be looking at the possibility and see if it's even possible. I think we can't assume that coronavirus will make travel impossible indefinitely. I think that's no way for any of us to live. So I think w need to look into that possibility.

Brian already mentioned that, in May, there is the GDD Summit. Of course, we don't know if that will or won't happen. If it doesn't happen, that gives us another potential week of meetings. If it does happen, that certainly makes travel or even remote meeting time trickier for contracted parties. But obviously we'll do everything we can do support the process.

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I guess my point is I think we need to at least be looking into the possibility of having another face-to-face meeting to help us close our all our work. Also, I think it would greatly be beneficial to that final consensus [false] step that we still have looming in front of us.

JANIS KARKLINS: Thank you, Marc. Actually, I fully agree that, meeting in the room we are more productive and we can [quorum] agreement easier than by phone. So no question about it. As you see, we are putting in the plan a possible face-to-face meeting. So, at this moment, we do not know whether that would be ever possible or not or allowed because we are in flux with the cancellation of the Cancun meeting and we do not know what ICANN org policy ill be in terms of support for the travel and face-to-face engagement.

So, as you see, one of the ideas of having this face-to-face meeting is from the 29th of April to the 3rd of May. If that would be one option, then that would be in Brussels, where the ICANN office is and where technical support could be provided. Brussels is a two-hour train ride from Paris, where this GDD Summit is scheduled to start on May 3rd. So that is one option. Another option is to look at May 13th-17th alternative to April 29th-May 3rd face-to-face. Again, that probably be somewhere in the U.S., whether Washington or L.A.

But, for the moment, we keep that in mind. As soon as we will have any clarity—staff is in contact with ICANN org—we will let you know. But, for the moment, our options is either to follow the current schedule or increase the intensity or increase the lengths

of the call from two hours to three hours. But then we need to make about a ten-minute break somewhere in the middle. So that's where we are. Of course, we will update the schedule as we go. This will be a permanent topic for permanent review and discussion.

With this, can we move on?

Marika is correcting me. If the meeting is in the U.S., then the only option is in L.A. because D.C. offices to do not have the capacity/sufficient meeting space. Okay.

Shall we go to the next item? That is data retention. May I ask staff – Caitlin – maybe to kickstart the conversation on data retention?

Brian, your hand is up. You're first in line, or you have something [inaudible]?

BRIAN KING: Thanks, Janis. Yes, I would like to be in line. But I'm happy to listen to Caitlin first. Thanks.

JANIS KARKLINS: Okay. Caitlin, go ahead.

CAITLIN TUBERGEN: Thank you, Janis. As some of you likely remember, during our Montreal meeting, Karen Lentz from ICANN org had introduced

this topic and shortly thereafter distributed the communication that you see linked in the agenda.

As a quick summary of that document, I'll note that ICANN org noted that, apart from response to compliance matters and for the compliance purpose, it at this time doesn't see any other purpose for retaining data past what the EPDP team recommended in Phase 1, which is 15 months beyond the life of the registration, plus additional time to delete the data.

I will note that there are a couple of things in that communication apart from the transfer dispute resolution policy, which the folks that were involved in Phase 1 will note that that was the policy used to justify that 15-month time period. I believe that the paper provided by Karen Lentz and team had noted that, with respect to investigating complaints that deal with the renewal or expiration of a domain name—that would fall outside of the [T]DRP— Compliance would generally request data beyond the life of a registration and, without that data, would likely not be able to enforce those types of complaints.

So what you will note is that, at this time, the staff support and leadership team is noting that, unless there is an objection, that the EPDP would need to confirm its original recommendation, which is the 15-month period, plus three months to implement the deletion, which is 18 months beyond the life of the registration.

JANIS KARKLINS: Thank you, Caitlin. Now the question is, can we confirm the recommendation of the Phase 1 final report?

	[Brian], can we?
[BRIAN KING]:	Thanks, Janis. The short answer is yes.
JANIS KARKLINS:	Good.
BRIAN KING:	I haven't seen anything that changes the reasoning, and we got a lot of comments and considered those. So that's the long answer. The short answer is yes. Thanks.
JANIS KARKLINS:	Okay. Thank you. Now the question is, is anybody thinking differently?

I see no request for the floor. No hands up. So then maybe staff will propose the wording for our consideration to confirm the recommendation of Phase 1.

Good. With that speed, we will go through Priority 2 items very quickly. Ha-ha. Okay. Thank you. Then we will go to the next agenda item, and that is Purpose 2. We the same. Maybe let me ask Caitlin to introduce the topic. She has a light hand, it seems, today. Maybe we will get through this one also very quickly. Caitlin, please?

CAITLIN TUBERGEN: Thank you, Janis. As many of us remember, since this was a conversation of many hours during Phase 1, the EPDP team recommended a Purpose 2 after a long discussion, and that was contributing to the maintenance of the security, stability, and resiliency of the domain name system in accordance with ICANN's mission through enabling responses to lawful data disclosure requests.

As many of you remember, the Board did not adopt this purpose, noting that the EPDP team did characterize this as a placeholder, and would need to reconsider input from the European Commission. The Board noted that the purpose may require further refinement to ensure that is consistent.

In the agenda, we've pasted a link to the European Commission letter. I'll note that we did send a message about how to treat Purpose 2. I believe it was a couple of months ago. There was some feedback on that: whether we need a new Purpose 2 or not of if we could just proceed with talking about third-party legitimate interests.

And Brian King had proposed that the team consider a new purpose. So, without further ado, Janis, if you wanted to ask Brian to introduce his proposal, that might be the next step for this call.

JANIS KARKLINS: Yes. Thank you. That is my intention. Brian, you made the suggestion to the mailing list. Please, if you can walk us through it.

BRIAN KING: Thanks, Janis. I'd be happy to. If I remember correctly, the Board rationale for not adopting this purpose was because of the input we received from the EC letter in the intervening time before the Board voted on it. The rationale there was that it conflated ICANN's purpose with third-party purposes.

So what I did hear was de-conflate this and essentially looped off the end—the language that was responsible for the inflation—and left it at the ICANN purpose of contributing to the maintenance … You guys can read the rest. So we do need a purpose for ICANN. In fact, we've been asked to produce one. So I believe that this language was non-controversial and was where we landed before we insisted on trying to smush the third-party purposes in with it. Now that we have talked about third-party purposes in Phase 2, I think we're comfortable with having just this language for ICANN's purpose and would propose to go ahead with this. Thanks.

JANIS KARKLINS: Thank you, Brian. I was told, since I was not part of the first phase, that the team had extremely lengthy conversations about this topic. I was offered to listen to thousands of hours of recordings that I refused to do. All I would like to say is that maybe it would not be wise to repeat that exercise and restate positions but rather see whether we can find a way forward. Now we have one concrete proposal on the table, and I would like to see whether we can work on the basis of this proposal and adopt it as is or modify it in a way that would take into account the sensitivities of different groups.

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With this, I would like to open the floor for conversation. Hadia, Volker, and Alan Woods, in that order. Hadia, please go ahead.

HADIA ELMINIAWI: Thank you, Janis. I see Purpose 2 as absolutely necessarily because it establishes the reason for which ICANN is committed to allow lawful access to the registration data.

I do definitely agree with Brian's suggestion. This suggestion basically puts the purpose out there and does not talk about the [processing] [inaudible] that we would like to [inaudible] might be associated with it. [inaudible] disclosure of the data to third party [inaudible].

So I see Brian's suggestion, as is, as good. It refers to ICANN's mission and bylaws and stops there. Thank you.

JANIS KARKLINS: Thank you, Hadia. Volker, please?

Volker, we do not hear you.

VOLKER GREIMANN: Sorry. I was muted. I'm not fundamentally opposed to this. Obviously it's something that ICANN stands for and should be able to pursue. However, I feel that, as far as purposes go for data processing, this is woefully unspecific. If we present that to a customer in our data processing agreement terms, then there will be a lot of questions., and this might be returned for lack of specificity.

So I think we should be very specific in the purposes that we assign to ICANN for what reasons data may be processed. If we're not specific enough, then that may fly in our faces at some point in the future, which I don't want. Thank you.

JANIS KARKLINS: Okay. Do you have any specific idea of editorial character? You started saying that you are not fundamentally opposing to that, but it's still broad. Let's try to narrow down.

VOLKER GREIMANN: I think these are all concepts that we can probably agree on, but we should be more specific in what we mean with that and how this leads to a purpose for data processing. This is just a mission statement, not a purpose that normally be included in a data processing agreement. So I think we should expand on that. We should say what we want to process data for, not with an aspirational goal but more a practical proposal. So I don't have concrete language there because obviously this is not my purpose, but I think we can work on this and expand on this and make it better.

JANIS KARKLINS: Okay. Thank you. Alan Woods?

ALAN WOODS: Thank you. I'm [inaudible] Brian's admission in the chat. I'll also admit that I'm probably one of the people that had a lot of

discussion on this as well. So I do not wish to belabor this point greatly as well.

I agree greatly with what Volker has said. I will come at it quite simply by saying it exactly in a way that Volker was going there, and that is, if a registrant was to look at this as the statement of purposes, which really will be the statement that goes into most of our privacy policies because we're relating it directly to this particular policy, what would they understand? How would they know their data is being processed, by whom, and for what reason?

The problems with the statements that were contributed to the maintenance, security, stability, and resiliency of the domain name system is you're basically saying every single thing that ICANN does. For us, we have a fair idea of what that [inaudible] is, but for the average registrant, they neither know nor care, nor will folks be [inaudible] to look at this.

So I'm not you're thinking now, "So what is the option there? What is the additional point?" That to me is all the other six purposes that we have already written. They are all there for that particular point. We were [at length] going to them saying, "What are the reasons that we take this registration data? What is the reason that it is processed in this particular way so that we can register domain names?" I think all those other purposes, devoid of this particular one, still represents what needs to be done. And there is still scope within all of that to address the security, stability, and resiliency of the DNS in that.

So I'm just going to end at that point. I will just say—I know Brian said – about the .eu regulation: I get the point—I definitely get the point—but let's remember we're not comparing like to like here. The .eu is established within the laws of the European Union. We are not. So we need to be very careful about that. They're given the legislative right to do that. We are not. It's not a like to like situation. Yes, we could probably refer to that in demonstrating it, but I do think it probably we will still fall for being just over-broad and vague. We need to be very careful of that.

So that's [inaudible], and that's where I'm ending it. Thank you.

JANIS KARKLINS: Okay. So, if that is too broad, can we think of adding something like "including" and then listing other purposes? I would like to see this conversation more geared towards what is the possible way forward rather than the statement that it is too broad. Okay, it is, but we need to think of what would be the most rational way forward and work on the text specifically.

I have Amr's hand up, Hadia, and Marc Anderson, in that order. Amr, please go ahead.

AMR ELSADR: Thanks, Janis. I'm going to attempt to help specify this a little more by channeling Emily Taylor, who is no longer a member of the EPDP team. Back in the Barcelona meeting, which I think was the first time the EPDP team met face to face and did some work on this, Emily had mentioned that this purpose should really speak to the very first purpose in making registration data public back

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before there was even an ICANN. Back in the day, when they decided that WHOIS data was going to be public, it was to allow network operators to communicate with each other when there were technical problems with the DNS. To me, this is the core function of why ICANN should have a purpose where data is disclosed to third parties. So, if we could work on something along those lines, I would personally be very happy. Thank you.

I'll just also add that I very much agree with what Volker and Alan were saying. If we were going to provide specificity on what security, stability, and resiliency means, that to me would answer the question. Thank you.

JANIS KARKLINS: Can we think of, after the security, stability, and resiliency, putting asterisks and then, on the bottom of the page, give the explanation or formulation of the terms? Maybe that is something.

Sorry, Hadia, I seemed to have taken words out of your mouth. Please go ahead.

HADIA ELMINIAWI: Thank you, Janis. Yes, this is exactly what I was going to say. Again, I do reiterate that, without this purpose, we have nothing that says the reason for which ICANN is committed to allow lawful acts is [inaudible]. The obvious reason is to preserve and enhance the operational stability, security, and resiliency of the DNS. So, to Volker's point and Alan's point, we could put a disclaimer saying that this purpose may result in the disclosure of the data to third parties.

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To Alan's point about how would registrants understand that, well, the privacy policy that the registrar puts forward to the registrant should state clearly with whom the data could be shared and for what purposes. But, for the purpose of our report, putting a disclaimer explaining what this entails, what the processing activities associated with this purpose could look like, could be a submission. Thank you.

JANIS KARKLINS: Thank you. Marc Anderson, are you in agreement with that?

MARC ANDERSON: No, not at all. Hadia, [inaudible] trying to recreate the original Purpose 2 that wasn't approved. [She just] tried to restate third-party access as a footnote or as a description. That's exactly what we were told not to do: conflate ICANN purposes with third-party purposes. So I have to completely disagree with that.

Trying to get to where to go with Purpose 2 here, I agree with some of the previous commenters that what Brian has proposed is overly broad. I think it doesn't tell the data subject how their data will be used. We do have six other purposes. Our Recommendation 1 contains seven, now six, ICANN purposes. Just a reminder, these are all ICANN purposes for the processing of registration data. The other six purposes listed I think are pretty clear and cover the use cases that we've discussed. Amr talked about Emily's contactability purpose. I think that's already covered in Purpose 3.

So my question here is, what processing activity, what ICANN purpose, is not accounted for in the other six that still exist that we're trying to cover? Remember, Recommendation 1 is about ICANN purposes for a processing of registration data. What is the processing if that's not covered by the other six? Because I think we've covered them all.

JANIS KARKLINS: Okay. Maybe, Brian, you can think of the answer to Marc's question. In the meantime, we have Thomas and Margie in line. And Hadia. Thomas, please?

THOMAS RICKERT: Thanks very much, Janis. Hi, everybody. When Purpose 2 was originally discussed, we did not object to the inclusion of Purpose 2 because we sympathized with the wish of some groups represented at this EPDP that said, "Well, we want this as a catch-all so that we have a foot in the door for the next phase of our deliberations so that nothing gets forgotten or swept under the carpet."

Now that we're a couple of months down the line, I guess the questions is not how can we fix the broken and too unspecific language of Purpose 2 so we can make it work somehow? But the question is, for those who wanted Purpose 2 in the first case, what use cases, what scenarios, did we not cover in the other purposes and our report that justify keeping Purpose 2?

To me, the points that have been brought up are legitimate ideas for purposes. Some were covered in our report. So I don't see a

reason to be for Purpose 2 anymore. I think that we need specific proposals for language for purposes not to replace 2 but basically to fill the gap that Purpose 2 otherwise would leave. Thank you.

JANIS KARKLINS: Thank you. Margie? And I see that Alan G was in the line. For some reason, he disappeared. Margie first and then Alan G.

MARGIE MILAM: Thank you. A couple things. I think we're talking about things that we've talked about in the past. I just want to remind folks that, when we suggested that privacy policy be specific and that this policy address what goes into the privacy policies, we got a lot of pushback when we were talking about the third-party purpose. So it seems that we're talking in circles right now.

I do still believe that part of what this group should be doing is providing guidance as to what goes into this privacy policy as it relates to the RDS and the SSAD. I think that it applies not just in this case but in the third-party purposes case.

I also believe that we still need the Purpose 2 for ICANN. I don't think we did a comprehensive job of identifying every scenario where ICANN would be processing data under that purpose. I think that, given that it was in the initial report—it's been approved—we should keep it. If we need to provide examples, I certainly think that that's fine. But I do not support deleting it.

JANIS KARKLINS: Thank you. Alan G?

ALAN GREENBERG: Thank you very much. A number of points. First of all, I believe the claim that we are conflating ICANN's purposes with other entities' purposes was another example of the European Data Protection Board not understanding how we work. The concept of a third-party wanting some data and they can justify it indeed is not an ICANN purpose, but many of the third parties that will be requesting data are doing things in support of ICANN. We do not do cybersecurity work. It's effectively delegated to others, and it is an ICANN purpose to protect the resiliency and stability of the data of the DNS. So I believe that was an error in their part of not understanding how we work. Yet another error on their part.

Second of all, the operation of the SSAD itself, which may well, for logging or other purposes, include processing user data is one of the things that should be included in this purpose.

Lastly, I agree with Margie. We have not necessarily been definitive and we can't suddenly find we can't do something important because we forgot the purpose or didn't need it. So we do need a bucket that will catch all of these things, even if it is somewhat vague. Thank you.

JANIS KARKLINS: Thank you, Alan. Hadia, followed by Brian.

HADIA ELIMINIAWI: Thank you. I would just like to note that, actually, the European Data Protection Board [inaudible]. So they say in their [letter], "For this reason, we would recommend revising the formulation of Purpose 2 by [inaudible] part of the purpose, which is to enable responses to lawful data disclosure requests." They continue saying, "and maintaining a broader Purpose 2." Then they say, "to contribute to the maintenance of the security, stability, and resiliency of the domain name system in accordance with ICANN's mission." They continue saying, "as the core of the role of ICANN as the guardian of the domain name system."

So, actually, what Brian suggested is exactly what the European Data Protection Board also suggested: to keep the purpose and just remove the processing activities through enabling … Just remove that part. Thank you.

JANIS KARKLINS: Thank you. If I may ask Thomas and Margie to lower their hands. Brian, now it's your turn. Marc Anderson asked a question: whether this is needed and whether all other purposes have not covered already everything. So what's your answer? And, if your answer is not, then could you give me exact examples? What issues are not covered by other existing purposes? Brian?

BRIAN KING: Sure, Janis. Thanks. We're missing in the purposes—I just pulled this up from the Phase 1 report—anything about the SSAD at all, really, or anything that looks like it's within ICANN's realm of possibility to do an SSAD. I think the best one that is close is

enable communication with the registered name holder. But that's not always what the SSAD or the WHOIS system would be used for. Again, we don't want to conflate the third-party purposes. I think Alan Greenberg might be onto something about that they didn't understand how this works.

So enabling the SSAD in order to—I know folks don't like the word "identify" registrants, but "doing research" is another one – so the purpose for other OCTO or other folks to do research or anything else that contributes to the SSR independent cybersecurity people. So there just needs to be that hook for third-party purposes to connect to ICANN purposes. I understand that we don't want to conflate, and that's what makes this very difficult. That's why I wanted to just leave the language as the—who was it?—the EC suggested in that letter, just to get rid of the part the conflates and leave the rest as the CANN purpose. Thanks.

JANIS KARKLINS: Thank you. Georgios?

GEORGIOS TSELENTIS: I know that we had spent in the first phase a lot of discussion on this, and I don't want to repeat the arguments. I want just to hold that everybody agreed that what we had in Purpose 2 in the first part—nobody objected—because it was in the core and in the bylaws of ICANN.

Just to try now to see, I will go the other way around. As we have advanced our model and we see ICANN playing a role in the hybrid model, my question would—I think this is something we can

a little bit brainstorm here—be whether currently the role we want to see ICANN playing in the hybrid role is reflected in this Purpose 2. If so, maybe this is the right way to keep the language and give the meaning that we want and give the specificity that we want to give for this for ICANN in Purpose 2.

If you see, for example, the role that is played from ICANN in the hybrid model be in the central gateway as something that serves the security and stability of the DNS, then maybe this is the link that we are missing for specificity in Purpose 2, and we can keep the actual wording as is. Just a thought here.

JANIS KARKLINS: Thank you. [So I] would then repeat now what you see on the screen. The text is contributing to the maintenance of the security, stability, and resiliency of the domain name system in accordance with ICANN's mission. So you're suggesting that ICANN in the model acts as a central gateway. Do we add something to the text? What was your idea?

GEORGIOS TSELENTIS: My idea is that we have ICANN as a joint controller in the current model/the hybrid model. In this model, if we see that this role that they have as controller would with the data is to serve the purpose also of the security and stability of the DNS, then I think this is the missing link for giving more specificity because I hear from the other members of the PDP saying that, "As it is now, we cannot make it specific enough. In the beginning we had it specific enough, but it was conflated because we were saying ICANN

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cannot do it by itself. It needs other parties to the game." But now that we have the model more clear, we have given a role in ICANN.

I'm asking here whether the group considers that this role that we have there is a role that contributes to the security and stability of the DNS and therefore we could probably link it to Purpose 2.

JANIS KARKLINS: Okay. So then I understand you may want to add at the beginning of the sentence, taking into account the role allocated to ICANN org in SSAD in—

GEORGIOS TSELENTIS: I see what Brian is writing. I don't know. This is my question. [inaudible] contributing to the SSR [there].

JANIS KARKLINS: Okay. So we have already some contextual proposals. Marc Anderson, please?

MARC ANDERSON: Thanks, Janis. I'm trying to [inaudible] what Georgios said. I have to be honest – I'm having trouble following that. Maybe it would help if I [inaudible] now, but I didn't exactly follow that.

But I raised my hand to point out that this has to be taken in the context of the overall Recommendation #1, which is to identify ICANN's purposes for processing gTLD registration data. So I'll

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point out that one of my problems with this is, if you read the ICANN purpose for processing gTLD registration data, contributing the maintenance of the security, stability, and resiliency of the DNS dot-dot-dot. This reads in a way that's just overly broad and doesn't really tell [Ethan]. As others were saying, this is just too broad a category that doesn't tell a data subject how their data would be used. I'm just saying it's in ICANN's mission. This is their broader mission, not necessarily specific to what we're trying to accomplish here.

I thought, in Brian's earlier intervention, he had some interesting points, where he was getting to what he was concerned was missing. I don't know if Brian maybe wants a little more time to absorb all the feedback he has heard from this discussion and maybe try and formulate something more specific to what problem are we trying to solve. [inaudible]. He's concerned that something we're trying to do for SSAD won't be allowed because it's not listed as a purpose here. So I don't know. I know Brian's hand is up next. Maybe you can try and get to that, or maybe you want to take it offline and try and propose something to address the gap you're concerned about.

JANIS KARKLINS: Okay. I see a little bit of a contradiction, Marc, with what you're saying. You said that contributing to the security, stability, and resiliency is too broad, but then you also said that Hadia's proposal to explain what security, stability, and resiliency would mean in the context of this recommendation is not acceptable either. So, if this is too broad, we need either to explain or narrow down.

MARC ANDERSON: I was pointing out that Hadia's explanation was exactly recreating the conflated third-party purposes that was problematic in the first place.

JANIS KARKLINS: Okay.

MARC ANDERSON: So my objection was not adding more specificity. It was adding specificity that recreated the problematic language conflating third parties in the first place.

JANIS KARKLINS: Okay. Brian, you put up the proposal.

BRIAN KING: Thanks, Janis. I did. Wow, it was really impressive how clever Georgios was with that suggestion. I think that gives us specificity. "In exercising its role as data controller, ICANN contributes to the maintenance of the …" and the rest of the language there. I think that probably does double-duty that something that we want to establish pretty clearly anyway. We don't have to say "joint controller" or "sole controller." We can just say "As controller," and then add it there. It adds some specificity. It lets everyone know that we're talking about ICANN as the controller of the registration data and also gives us the maintenance to the SSR, which I think at least we could lean on as enabling then the SSAD and those

JANIS KARKLINS: Thank you. Berry, can I ask you to put this text on the screen instead of the … Either type it in or put an additional page on the screen where we can see the proposed text on the screen.

BERRY COBB: Yeah. Give me a minute.

JANIS KARKLINS: Of course. In the meantime, Milton, Margie, and Alan Woods.

MILTON MUELLER: Hello. I was listening to the discussion so far. Very hopefully, we might actually make progress. But I have to say that we have not moved one inch. We're a millimeter, [for] my metric colleagues, beyond the conflation of ICANN and third-party purposes. We're simply trying to find a way to reword doing that.

When Georgios is looking for some kind of wording or statement that would justify our creation of an SSAD, I don't see that that's necessarily to be a purpose. Our purpose is not disclosure. We have hashed over that issue from the beginning. It doesn't make any sense to say that a purpose of collecting data is to disclose data. The purpose of having an SSAD is to create an efficient mechanism for parties with legitimate third-party interests to be able to disclose the redacted data. That's not a purpose of ICANN

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in collecting the data or processing the data. It is something that we're going to have to do anyway to be legally compliant. We can have a very robust system for disclosing data to legitimate parties, but it's not part of the purpose. It's not a purpose of ICANN in having this data to begin with. I don't know why we need to pretend that it is. I don't think we're going to get anywhere with this. I don't see any wording that is based on a premise that this kind of an SSAD is a purpose of ICANN is going to reach consensus.

On the other hand, those people who want or are very interesting in having an efficient mechanism for disclosure can recognize that we're creating one and that the law describes all kinds of legal rationales for people to get disclosed data.

So why do we need this as a purpose? What are we accomplishing here? I think we can just kill Purpose 2 altogether and finish the creation of the SSAD. And we'll be fine.

JANIS KARKLINS: Okay. Your suggestion is to delete. Margie?

MARGIE MILAM: Hi. I actually disagree with Milton. I also wanted to point that a lot of the argument we're having is whether it's legal. The Data Protection Board or the letter said, "Just don't conflate." It didn't say there was a problem with the ICANN purpose.

So I think, to answer this question, we're all talking about, is it legal? Well, that's a question to ask Byrd & Byrd. I think, if we go

with Brian's suggestion that was linked to, I believe, the .eu language, that gives a framework for the legal discussion. And then we get the answer. If that's not specific enough, then we go back and provide the specificity.

But I do continue to believe that the purposes that we have for third parties plus the ones from Phase 1 without Purpose 2 is not sufficient. It doesn't cover all the examples of things that ICANN would be doing as a controller. So I still object to deleting Purpose 1 and want to find a way to do this, and to ask the Legal Committee, I think, is the right approach: to ask the Legal Committee to ask Byrd & Byrd, is this purpose specific enough to satisfy the obligations under the law?

JANIS KARKLINS: Thank you, Margie. Alan Woods?

ALAN WOODS: Thank you, Janis. Thankfully, Milton has taken most of the wind out of my sails. I completely agree with his stance on that and saying that we are operationalizing a disclosure, a means of processing that is a disclosure, that is not requiring a purpose in the SSAD. If it was such an issue, then we would have had a major crisis at the beginning of our deliberations of Phase 1 because the SSAD itself then would not have been based on law. But nobody raised that issue because it certainly isn't an issue because, again, we are operationalizing and making a much more stable and predictable means to operationalize that method for disclosure. So I completely agree with Milton.

I just want to then take on the point of what Margie just said there in relation to also what Alan was saying, as I slow-back up and make sure that I'm getting it right: the third-party conflation. That's simply not true, to be honest, in my opinion, obviously. [inaudible] to argue it. The third-party purposes are conflated, and that is making our purpose the problem. If a third party is there and to help ICANN in achieving the purpose of the security and stability of the DNS in some meaningful way, that is still that third party's purpose. It is their purpose alone and they're pursuing their own reason of being. If ICANN required them to be, then ICANN would enter into contractual relationships with them. They would be extensions of ICANN. Then they would have the same purpose. It would be the purpose of ICANN that is extended contractually and by relationship to those third parties. Anybody else who may be incidentally on the same path, parallel to ICANN? Great. That helps them. But that is still their own ring-fenced, third-party purpose, and we cannot conflate the two. That is the point. Our purposes for processing are not the same purposes as those people. Yes, there is a, as I said, a parallel, in the sense of, when they request a disclosure from us, we can look to their purposes and say, "Hey, that is definitely in our interest. And also it is in the interests of the DNS as a whole." But, again, that is their purpose, no ours.

So, again, I think we're probably shaving off an awful lot of very clear-cut lines here just so that we can get third-party disclosure back in again. Third-party disclosure is there. That's why we're doing the SSAD. So I'm a little bit upset by the fact that we're continuing down this road again, and I don't want another thousand hours on this as well.

JANIS KARKLINS: Okay. So it seems that there is disagreement on whether existing purposes cover all aspects. Can't we think of preparing a table where we would put existing purposes from the first phase on one side try to identify what are the missing gaps on the other side and see whether we can identify those gaps? Because it seems to me that, for the moment, just talking, we do not recognize that there is a gap. So at least one part, a few groups, do not recognize there is a gap and are saying that existing, described purposes from Phase 1 are covering. Then the BC/ICP says, no, they're not. So we need to put that table that is covered and see what is not covered.

I think Volker is next in line. Volker?

VOLKER GREIMANN: Like I said at the start, I'm not fundamentally opposed. I think this is a good starting position. However, we should add some specificity. For example, if we are saying that part of ICANN's mission is to enforce their contracts, then we should say that part of the collection of this data is required to allow ICANN to enforce its contracts. That level of specificity should carry forth for all uses that ICANN wants to put the data forward. Otherwise, they have no business collecting it. That's the kind of specificity I'm looking for. I'm not saying that we should do this now because this will probably take more time than we have on this call, but this is something that could probably very well be done on the list by A) collecting the purposes that we think ICANN wants to have that data for, [B)] specific in what ICANN wants to do with the data,

how ICANN wants to fulfill its mission with that data, why that data is needed for that specific purpose, and then we'll make language that fits that purpose. I think arguing about this on this call is just taking away too much valuable time. We have those lists. Let's use it. Thank you.

JANIS KARKLINS: Thank you. Milton, is that an old hand or a new hand? I'm not sure.

Alan, it's an old hand or new hand?

Stephanie is next.

STEPHANIE PERRIN: Thanks. I'm going to try to improve on what Alan Wood said a minute ago and also Volker. We spent an awful long time on this back in Phase 1, and it just seems clear that part of this is what Milton has frequently alleged. Some people are advancing a purpose of this exercise to recreate WHOIS. That's not actually what we're doing.

The conflation of the two purposes … You have to draw a bright line between ICANN's mission statement and a purpose for data collection. We are not collecting this data to create a repository that serves ICANN's purpose of promoting the stability of the Internet. That is way too broad. We are creating ICANN's purpose. The mission statement gets translated into its policy, and its policies and procedures reflect that.

So part of the reason we are building a centralized disclosure instrument is indeed to make sure that the policy is supported well by large and small operators and that accuracy is supported by such things as having a centralized accreditation mechanism to make it easier for those under contract which ICANN supervises.

But that doesn't make security and stability a purpose of collecting the information in this instrument. I don't want to contribute to the 999 hours referenced in debating this, but that's an important distinction: it appears people, even after we spent God knows how much time on it in Phase 1, either don't understand it or they're willing to try to argue it again. The creation of this instrument does not need a specific purpose to make it happen. It is the way we implement policies. Thank you.

JANIS KARKLINS: Thank you, Stephanie. There are no further hands up. There was a proposal to move the conversation on the list, taking into account the remaining time on the call. I think maybe that is right, but I want to see whether support staff has something maybe to say at this stage in light of all the conversation and being present also in Phase 1.

Berry?

BERRY COBB: Thank you, Janis. Perhaps a way forward—I'm not presupposing any kind of outcome … The general division lines about conflating purposes are still here, or there is agreement that we shouldn't be conflating the purposes but that it needs to be more precise

distinguishing between the ICANN purpose versus the purposes of third parties who are requesting the data. While the after effects of our data elements workbooks from Phase 1 I'm not thoroughly in love with, they did at least try to provide a tool by which we could further be more precise between the purpose and the processing activities behind that purpose.

So maybe as a possible path forward in that, there seems to be some hints of agreement about this first statement as a purpose statement but that we get into more definition of the processing activities in regards to the SSAD model that we have on the table now. It's going to be a complication of processing activities. [As said], processing activities are related to the accreditation and the users that would access the SSAD system, so we would want to document that. But then, secondarily, the actual functionality of the SSAD I think would warrant defining those processing activities when the requesters are requesting disclosure and how that data flows, at least as we have listed in the model, from the contracted parties back to the requester.

If you think about each of those processing activities, we at least made an attempt to define the lawful basis behind those processing activities. The worst part about the data element workbooks is how confusing we made it between optional versus required. I think we've learned a lot since then. We can then further define those processing activities, just like we did for Phase 1, which is mostly being implemented.

So there's the general processing activity of collection. Well, we don't need to identify collection because that's identified in other purpose. But then we have the processing activity on the transfer

of registration data. In this case, there wouldn't be a processing activity of transfer through the SSAD, but there would be needing to identify the processing activity of transfer for the contracted party back to the requester. I don't know if we'd want to go down the road about retention of any of those aspects of that data being processed. Of course, we don't have to worry about publication like we had to worry about other activities, but that starts to define the framework by which we get to documenting how the SSAD is going to be working. For anything else, it maybe be a useful tool down the road for documenting how SSAD works in the context of how a DPA might view it.

So just a suggestion. I don't know if anybody likes it or not. Thank you.

JANIS KARKLINS: Volker likes it. Milton and then Marika.

MILTON MUELLER: Again, I'm just not understanding why we are going down this road. But, actually, I think I'm beginning to understand why Margie and Brian are pushing what they're pushing, and that is that they seem to literally believe that we're going to pull a trick. We're going to go to all this trouble. We're going to create this SSAD. Then—I don't know—the moment you're about to turn on the switch, we're all going to jump up and say, "There's no purpose for this!" and we're going to just shut it down and its not going to operate. I think that scenario is self-evidently not likely.

This is what you've said, Margie. I'm not assuming your intention. You said, "If you don't have a purpose, we can't have an SSAD." I'm saying we're building an SSAD. We're working out the details of it. We're working out when and where and why it will disclose data in, frankly, what I think are very liberal ways. We're talking about automating some of the disclosures. I don't know on what legal basis somebody is going to say, "You can't do that." I don't know of anybody in any part of this stakeholders collection believes that you can't do that legally. Who is going to see you and say, "You can't ever have an SSAD that discloses data to legitimate third parties or law enforcement agencies"? Who has ever maintained that we can't do that? We don't need this purpose. It's self-evident that we don't need it. We're building the SSAD. We spent hours building it. We have done so without any agreement on Purpose #2. So why do we need to do this?

JANIS KARKLINS: Okay. I think Margie wants to respond, and then Marika. Margie, please.

MARGIE MILAM: Milton, I really think you need to stop mischaracterizing what we've been saying. If you've looked at the chat, what we're talking about is ICANN's purpose, not third-party purposes for this. I've given multiple examples of where it could apply: ICANN conducting research, ICANN implementing policies. These are things that aren't third-party purposes that are linked to the SSAD. But when ICANN, for example, implements the transfer policy and gets involved with how that's going to be processed, that involves

personal information. When ICANN set up the Trademark Clearinghouse, and the personal information is being used in order to send notices for sunrise period, that is not an SSAD obligation. That's an ICANN process thing.

So the point I've been making and I think others have made consistently on this call is that we haven't identified every single instance in which ICANN itself would be having access to this data. But we all recognize that ICANN's use of the data is limited by what's in the bylaws and what the mission of ICANN is. So that is what we're talking about right now. I really would appreciate if you do not mischaracterize what we're saying.

JANIS KARKLINS: Okay. Marika?

MARIKA KONINGS: Thanks, Janis. I think Margie's intervention confirms what I think I've been hearing: we are talking about two different aspects here. I think one is relation to the question of, does a purpose need to be specified to clarify or confirm ICANN's role in relation to SSAD? I think the other question is, are there certain purposes for which ICANN uses or can use registration data that is not covered by existing purposes?

I just wanted to flag as well, in relation to that second question, that it may also be something that the group wants to consider in the context of the OCTO question, where I think a specific question [when to ICANN asking], are additional purposes

necessary for ICANN to carry out its role? We recently got a response on that.

So I'm just wondering if it makes sense to take those two issues separately and, on the one hand, have those that believe that existing purposes doesn't cover all the use of registration data by ICANN and, as such, specific additional purposes are needed to focus on that. Separately, I think what Berry suggested— documenting the detail of the roles and responsibilities and the different processing activities and SSAD—we use as the guide for a potential purpose to describe that or at least clarify and document what is envisioned as part of SSAD.

JANIS KARKLINS: Thank you. I think we should draw the line today on the call, but, Stephanie, your hand is up. You will be the last speaker.

STEPHANIE PERRIN: Thanks very much. I would just like to stress something that perhaps I didn't stress enough in my last comment. ICANN's role as a data controller, in my opinion, has always been as the agency responsible for enabling the setting of policy by the multi-stakeholder community, and the Board being part of ICANN and the final controller of that, and ICANN administration being the administer of the contracts. That much is very clear that it has a controllership role in those activities. This SSAD is a mere instrument way down on the list, one of many instruments, that ICANN has access to in that capacity. It does not have to be called out specifically to have a purpose. By creating a purpose, it

destroys the limitation of purpose because all of these things are implied in its controllership role as the policy developer and superintendent, if you will.

So, honestly, we've been calling for specific co-controller agreements. I believe Thomas had an impassioned plea at our last face-to-face in Los Angeles about this. Had we done a DPIA, had we been working on these co-controller agreements, this would be more clear and we would not have to keep explaining where this bright line happens again and again and again.

So I would urge us to get on with that and possibly not waste more time debating this purpose thing. We're not going to get agreement and we don't want to waste 998 hours. Thank you.

JANIS KARKLINS: Thank you. I think we made big progress in Los Angeles by putting in the initial report the working exemption that there is a joint controllership between ICANN and contracted parties.

I see that there is still division, and one of the arguments that I heard from those who've said that Purpose 2 is redundant was that there is no gap and everything has been covered by existing purposes.

So maybe, for the way forward, we can make a very simple table, where we identify those purposes that have been covered by the policy and the recommendation in the first phase and then try to identify what gaps exist. Maybe that will bring us to more clarity and then precision in the formulation. That's the first suggestion. Maybe staff can help to initiate that table by putting existing

purposes, and then others can chip in at trying to identify/propose what are the gaps and what purposes are no covered by existing [ones].

The second: if I may ask Brian and Volker to lead the online conversation on the possible formulation and fine-tuning the one that Brian put forward and trying to make it more specific/narrow it down. Then we will see where we can get for the next call.

So that would be my suggestion for a way forward.

That would also bring us to the end of this call. We're exactly on the top of the hour. Thank you very much, everyone, for participating in this call. Our next call is next week—Thursday, March 5th, at 2:00 UTC. There will be another call on Tuesday, but that will be on the Legal Committee, if I'm not mistaken.

So thank you very much. With this, I adjourn this meeting. Have a good rest of the day.

[END OF TRANSCRIPTION]