ICANN Transcription

GNSO Temp Spec gTLD RD EPDP – Phase 2 LA F2F Day 2-PM

Tuesday, 28 January 2020 at 18:00 UTC

JANIS KARKLINS: Welcome back. I hope you had time to look through Section 4 of the initial report. Some feedback has already been given, I understand, to the Secretariat.

MARIKA KONINGS: I need to send it now.

JANIS KARKLINS: Yeah. Please, if you have not submitted, do it now. We have about 20 minutes. I would suggest that we try to close down those three outstanding issues that we had in the morning and then break for lunch. During the lunch, probably around 12:20, we would then have a presentation of Karen Lentz on the study of legal versus natural. After that presentation, at 1:00, we would start looking into the text of the report.

ALAN GREENBERG: Who do they go to?

JANIS KARKLINS: Who?

ALAN GREENBERG: Who do we sent it to?

MARIKA KONINGS: You can send it to me.

JANIS KARKLINS: To Marika, yeah. Let's now take them one-by-one.

MARIKA KONINGS: [inaudible]

JANIS KARKLINS: Yeah. Maybe we can start with the last one. So question to the group: Would the text on the screen in relation to purposes – can we live with this? The change that has been is that one of the purposes has been deleted – contacting registrants, if I'm not mistaken. In the second it is framed as two bullet points of the same paragraph. A word is added in the second bullet point – "assertion." This has been discussed, I understand between CPH

and the BC/IPC. It seems that that is a compromise that everyone could live with.

So the question is, can we put that in draft?

Thank you very much. This will go in the draft.

Now, Issue 58, in relation to query policy. Brian and Mar[c], you—yes?

DAN HALLORAN: I'm sorry. I'm imagining fight when we get to [inaudible] about contacting registrants. Just to clarify, in that last clause, it's still permitted to use SSAD to contact registrants. We're just not listing it as one of then grounds because it says "including but not limited to." Thanks.

JANIS KARKLINS: Yeah. So a question to Brian and Marc. What's the outcome of your conversation?

MARC ANDERSON: We have text that I think is finalized. I've been desperately trying to multitask and have not sent it around. So I'm trying to get that finished and sent to the group.

JANIS KARKLINS: Okay. Then can we look at 63? Thomas and Laureen, do you have something to – sorry?

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[BRIAN KING]: [inaudible]

JANIS KARKLINS: You are still working on it. Okay.

LAUREEN KAPIN: [inaudible]

JANIS KARKLINS: Good. So then let's wait. A question to Laureen, Franck, and Thomas. When do you think you'll be able to give us a proposal?

FRANCK JOURNOUD: 8:00 P.M.

JANIS KARKLINS: No, no, no. Just to find the meeting. [How we do].

THOMAS RICKERT: We do have draft language to cover – indemnification in the carveout – which needs to be read by Franck. So that might be good to go in a short while.

Franck has asked for an additional scenario to be covered. So far, we have talked about the requester indemnifying the operators of the SSAD. Franck raised the issue of the requester doing nothing wrong but the SSAD messing things up. As a result, [inaudible]

requester is exposed to third-party claims. So Franck wanted to mimic the language for the requester indemnification to cover that additional scenario. Once we have that, we will share with the entire group.

LAUREEN KAPIN: Just for clarity, also to at least tentatively loop in Stephanie scenario covering the data subjects, just because it's the other side of the coin, so to speak. Since Stephanie had raised it, it's all there for people's consideration.

JANIS KARKLINS: Okay. Then after lunch, probably. Marc, can you read that, or you're still working on the phrasing?

MARC ANDERSON: Working on it now.

JANIS KARKLINS: Okay. So then I would suggest that we break for lunch. Lunch should be already in place.

UNIDENTIFIED FEMALE: [inaudible]

JANIS KARKLINS: There is no lunch. Then we break anyway because there's no point of starting the bigger chunk of work for ten minutes. So

UNIDENTIFIED MALE: Karen is coming?

UNIDENTIFIED MALE: Right.

JANIS KARKLINS: Yeah, Karen is coming at provisionally 12:20. Provisionally.

Shall we start? Karen, I understand you will brief us on the state of play with the study that is commissioned to be made on legal versus natural issues. Without any further delay, please. The floor is yours.

KAREN LENTZ: Thank you, Janis. I have two items to touch on today. One is a follow-up to the conversation and an update on the legal and natural persons study that we discussed at the meeting in Montreal. Then there's a follow-up item from the Board regarding Recommendation 16 from Phase 1. I had drafted some notes to the team on both of these, but, since you're all here, I can speak to you in person.

The first item is Recommendation 17.2, where we were requested to undertake a study on differentiation between legal and natural persons in terms of feasibility, costs, and risks. We shared the

please keep reading the initial report. We will reconvene after the lunch.

draft terms of reference you and discussed that in Montreal. We've been working with that feedback to advance and complete that report.

I promised you an update and timeline for planning purposes. Where we think we are in terms of being able to deliver this and with the current plan is to be able to give you a baseline report in March. What I mean by "baseline report" is that that would contain the considerations on what's been done in terms of legal analysis and what information is available, without the third-party outreach and input component. So that would be baseline report which is informational in nature.

One of the things that was asked for in the recommendation was to look at other industries that might have analogous or example or service case studies. So that's the type of material would be available for this baseline report in March.

In parallel with that, you'll recall that we discussed the idea of a survey. We've developed a questionnaire and would propose to do this outreach period getting the qualitative inputs from the stakeholders to help in form this in the March timeframe as well, which would leave us being able to deliver the report in May.

The alternative to that path, if it makes more sense to your planning, is to skip the interim deliverable, which is the baseline report, which is the information and analysis without the third-party inputs. So there is another path to forgo the interim deliverable and proceed to deliver the full report.

So that is the first question I guess I would pose to this group. I'll pause for any questions or comments there. Then there's a couple other points on this.

JANIS KARKLINS: Thank you, Karen. I have Brian in line.

BRIAN KING: Thank you. And thanks for coming. Thanks for the update. We appreciate it.

One question I had was I didn't think I caught what the timeline looks like in the potential Path 2, where you skip the interim deliverable.

I guess a follow-up question is, would the interim deliverable still be included in the final report when that happens? Thanks.

KAREN LENTZ: Thank you, Brian. I think there probably wouldn't be a whole lot of difference because we would be doing the work for the baseline report and have most of that already. So we could potentially save a little bit of time if weren't looking to package that and potentially have discussions on that interim milestone with the team. But I don't imagine that it would have a huge impact.

To the second question, yes, it would include all of the same information.

JANIS KARKLINS: Thank you. Any other questions on the report?

Then we can expect the report itself in May, right? So early May? Mid May? End May? Because we're thinking about the releasing of the final report sometimes in early June. So, if we can receive something in late May, then of course there is no even theoretical chance to look at it and then somehow use it for the final report on Priority 1. Of course, this is a Priority 2 issue, and we're still hoping that some of the issues may go to the final report.

KAREN LENTZ: Thank you, Janis. That's part of what we've taken into account in trying to plan this: the workplan that this team has in terms of finishing up the Priority 2 issues. I think the best estimate that we have would be the middle of May. But, again, we can look at ways to be more aggressive to hopefully meet your needs better.

JANIS KARKLINS: Okay. Thank you. Any other questions?

So it seems it's clear, so you can go to the second issue.

KAREN LENTZ: Okay. Before I leave Rec 17, I'll make a plug that, when we undertake the questionnaire and outreach, we'll be looking to [Justine] to help publicize and distribute that to your respective groups and to those that would be relevant in terms of providing their perspective.

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In addition, if you have any suggestions or nominations for case studies in terms of entities that you believe would be useful to sit down and talk to in more depth, we would welcome that as well.

The second point that I wanted to bring up is a follow-up item regarding Recommendation 16. Recommendation 16 is about geographic differentiation. The recommendation says that contracted parties may differentiate on a geographic basis but are not required to do so. This was one I recall that had some divergence in the team but it was approved as a recommendation.

When the Board approved the EPDP Phase 1 recommendations, it noted that the Board was still getting requests for studies on that topic of geographic differentiation. So the resolution asked for ICANN org to discuss with this team the merits of a study on geographic differentiation, which would be from the perspective of feasibility and public interest implications.

I think it's been a while since that recommendation was issued and since the Board approved the recommendation, so I'm not sure if there's any kind of new information or perspectives among the team at this point in the work on the topic of geographic differentiation. But, if there is interest in a study on that, I think there are some synergies with the work that I described before Recommendation 17. But it wouldn't cover exactly the same topics, since it has this feasibility and public interest suggestion there. If we were to undertake to incorporate some of that, it would certainly affect the timeline, which I know is a concern. So I realize it's difficult to bring this up at this point, but I wanted to make sure it was raised here so that we had a chance to discuss it and take any feedback on this potential study. Thanks.

JANIS KARKLINS:	Thank you for raising this. Any reaction?
	Stephanie?
STEPHANIE PERRIN:	Thanks very much for your update. Forgive me if I'm losing my memory, but I thought we had agreed on a uniform policy which would more or less dictate against geographic differentiation. Our argument has always been that the headline is going to be "ICANN denies human rights in jurisdictions without enforceable data protection law." So we would discourage geographic differentiation that did that.
	So I'm just wondering. Have we gone past that by now?
UNIDENTIFIED MALE:	I—
UNIDENTIFIED FEMALE:	There's a queue.
UNIDENTIFIED MALE:	Oh, sorry. There's a queue. I would note I don't think that's a question for you. If that's a question for us, I think that geographic differentiation is on the table as far as we're concerned. But that's not then top priority that we're discussing right now. It's hard. It's not an easy answer, but I don't think we've ruled it out.

JANIS KARKLINS: Margie?

MARGIE MILAM: Actually, the Phase 1 report allows geographic distinction at the contracted party level. So it's actually consistent with her Phase 1 report. Although we don't necessarily talk about it at this meeting, I do think it might have implications on some of the scenarios where we might want to do automation. So that's why I think the study would still be useful.

JANIS KARKLINS: Okay. Any other reactions? Opinions?

Alan, please?

ALAN GREENBERG: Just, I guess, a comment, and certainly not aimed at people in this room. ATRT3 has a recommendation about contracted timelines for PDPs' specific reviews and everything. One of the issues raised is the difficulty of actually doing that when the work that is requested of ICANN gets delivered late. The answer of some of the participants of ATRT3 is, "Well, that's just going to have to be fixed." But I guess the timing of this discussion and the delivery brings home the point that it may not be really easy to fix. How we can contemplate an important report that would be delivered, if we're lucky, two weeks before we publish our final report is just a little bit mindboggling.

JANIS KARKLINS: Brian?

BRIAN KING: Thanks, Janis. Karen, just for your information, we have a legal committee in the EPDP and we're thinking about geographic distinction there. I just wanted to make you aware if you weren't already. You probably are. But, just so you know, we're thinking about that and there's been a couple updates recently – one guidance document published by the Data Protection Board in Europe about the geographic applicability of GDPR. That's something that we're thinking about. There was a recent case from the E.U. Court of Justice about, I think, the Google case – right? – that had some good precedent on geographic applicability of GDPR. So that's just so you know. It's just something that we are thinking about here and in the Legal Committee. It might be useful for you to know.

JANIS KARKLINS: So what shall we do? Certainly the study, if that hasn't been started yet, will take some time. If it is done in parallel in conjunction with the one on legal versus natural, as Karen said, that may delay the delivery of that report.

So the geographic issues are on the table for Priority 2, and it seems to me that it is unlikely that we will get resolution of all five topics that we have in Priority 2 – five? six? – for the time of the release of the final on Priority 1 on SSAD.

Now, I'm just thinking aloud. If we think of work on Priority 2 issues, we have two options, in my view. One is to use the next 45 days for determining how far we can find consensus on any of the topics and present that as an outcome and the acknowledge that, for the rest, this EPDP is not well-suited to go to the end and submit basically an acknowledgement of failure for the consideration of the GNSO Council. So that's how I see the first option.

The second option is simply to ask for an extension of the EPDP mandate for another six or nine months and then work on Priority 2 issues, hoping that we would find consensus. But, again, no funding is available after June and there's not clarity on what the council would decide.

Yeah, Caitlin, please.

CAITLIN TUBERGEN: Thanks, Janis. I just wanted to make a slight clarification, and that is that geographic differentiation is not a Priority 2 item. However, the Board did ask ICANN org to inquire about the study, which is why Karen's team is doing this now.

Legal versus natural is a Priority 2 item, and that is why the Legal Committee has been drafting questions in reference to legal versus natural.

JANIS KARKLINS: Okay. Brian, your hand is up? Or is that an old one?

BRIAN KING: [inaudible]

JANIS KARKLINS: Okay. James?

JAMES BLADEL: Thanks, Janis. I think it was pretty clear yesterday that we're not going to get an extension, or at least it would be very difficult to get an extension, and that we were going to lose you. So maybe, if we're going to go the route of pursuing an extension, perhaps your personal assurance is that you would stay on as Chair for another year might help that go over because I won't be here for Phase 3.

UNIDENTIFIED MALE: [2].

JAMES BLADEL: But I think there's another option. I wanted to put it on the table. I know it's going to go over like a lead balloon. It is the idea that I think we've identified that there are no obligations or prohibitions against geographic discrimination or natural versus legal. Some registrars may only serve corporations and therefore have confidence in making that determination. Others are less confident. I think, if we continue to pursue this in parallel in Phase 2 as leaving it as neither an endorsement nor a prohibition on these two topics, I think we can continue on taking it off the critical

path work to getting Phase 1 but still continuing the momentum on it.

I think the other note is, just on a personal level, I would really have to bake something, especially geographic, which I know you said was not a Priority 2 issue, in policy, given that, every morning, we're waking up to a new headline about privacy legislation being adopted in some market that we serve or would like to serve somebody or have an office or would like to have an office. It makes it very challenging to say, "No. We've carved these countries in stone and these countries our," or something like that. I think a more dynamic approach to that question in particular is valuable. But I don't think we have to go down the route of asking for an extension to our sentence – I mean timeline.

JANIS KARKLINS: Brian, please?

BRIAN KING: Thanks, Janis. James, I don't think that's a lead balloon, but maybe it's a stone balloon.

I think the geographic distinction is hard, and it's going to get harder as time goes on. If we have a limited amount of time, I think we would be wise to focus on what we do have in scope as a Priority 2 issue and what I think we could probably accomplish by the time we need to get the final report out, and that's the natural versus legal person distinction. That's going to be an important one for us and maybe ultimately something we're going to need if we're going to be able to agree ultimately to a decentralized or

hybridized model. So that I think is worth exploring, and worth exploring very quickly, as quickly as possible.

With that in mind, I would suggest, of the two options that you outlined or the potential paths forward, to not pause and take the time to spin up an interim. Let's get the hold dang thing done, and let's get it done quickly so we can use that to inform our policy recommendations. We'll try to get those Legal Committee questions together, too, if we need those to get that certainty.

So that's my shooting from the hip here. So I half-agree with James' stone balloon.

JANIS KARKLINS: Alan G, please?

ALAN GREENBERG: I think I pretty well agree with Brian. I would be a lot more inclined to say we can leave it in June to some future whatever if we had a flag in the RDS information to say "legal." Right now, we don't even have a flag, even if someone wants to fill it in. If we had a target to get that populated over the next ten years … In other words, let's get to the point where, someday, we can use it. Right now, we don't have a field to use and no way of ever getting there. So I'd like to see more of a plan of how to get to a point where some of us feel more comfortable, even if we're not doing something in the very short term. Thank you.

JANIS KARKLINS: James?

JAMES BLADEL: I actually agree with Alan. There's no flag to set that says whether or not the registrant of record is a natural person or a legal person. I agree we had that, which is one of the reasons why I was tying myself in knots that we were going to treat any data in the org field as if it were that flag.

So I would say, yes, let's have a flag, but let's add to that. Let's have a flag that we can trust to be accurate and real and not just an error or a mistake or "I thought it would be cute to put my dog's name in this org field. No one stopped me, so now I have a legal person and not a natural person (or whatever). I've reassigned this registration." So let's do that.

JANIS KARKLINS: Berry?

BERRY COBB: Thank you. I just want to note that, in terms of when this group is concluding its final report and getting ready to package it for delivery to the council, it will be best that this group also puts together a status of what's not done because it's not really for this group to decide whether you get to keep working or not. It's ultimately the council's decision. It really goes back to the message we had at the beginning of Day 1: there are serious resource constraints going on at the council, and there's really

tough conversations happening about what happens next and how we get below our 130% rate and those kinds of things.

It's not to say that any undone work won't get done in the future, but I think this group will have to put together a case to help the council make that decision about what the priority is about this work. Is there a chance of getting to consensus on some of these? A few of these have been very divergent in terms of getting to levels of consensus. So that's going to be a big factor in what happens in June and certainly moving into fiscal year '21. Thank you.

JANIS KARKLINS: Okay. Brian, your hand is up? Yeah.

BRIAN KING: Yeah. Thanks, Janis. I meant to make this point earlier. Before I do, I agree with Alan and James. Let's do that. Thanks, Berry, for that perspective.

I might notice that, if the geographic distinction concept is hard and weird and likely to change in the future, perhaps that's a candidate for the standing whatever we create that helps guide additional automation type things into the future. If those geographic rules are going to change all the time, that's something we need to keep an eye on. Let's think about if that should be something that that group or body or person could be tasked with.

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JANIS KARKLINS: Volker?

VOLKER GREIMANN: Just one historic anecdote. Back in the days of yore, we set our own system from the start to support two types of handles – the ones that we called P handles, for personal data, for personal registrants, and O handles for organization registrants. Our learning over the years has been that these have been used interchangeably by our customers. So, even if you have a flag that says, "I am a legal person," or, "I am a private individual," it doesn't mean anything if it's not properly used by the individual that has to make that choice. So ultimately having a flag may be helpful, but it will not be the ultimate information of what that data subject actually is.

JANIS KARKLINS: Matthew?

MATTHEW CROSSMAN: I just have a quick question to maybe better set expectations among the group. Hopefully someone who knows GDPR procedure better than I do can answer this.

Let's say we do decide we're going to focus on the legal versus natural person question. We come up with recommendations based on the work that we're doing and perhaps of the results of this work that ICANN org is doing. Are those recommendations then something that need to go out for public comment? Or is that something that can go into our final report? Because I think that

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should us help set the expectations among this group about timelines and how and what we prioritize.

JANIS KARKLINS: Berry will respond to that.

BERRY COBB: As I think we've been communicating this in the poor man's Gantt chart and when you look at how the Priority 2 items are listed on there, it has never been a part of our critical path because we just never knew if we could get to it or not. But we do recognize that the work is still there.

While the Priority 1 will have gone through public comment and we're moving towards final, then, yes, if there is time before we submit the final report but we're ready to launch a public comment on initial findings, we will do that. I'm not sure how the formation of the EPDP will work because that would be an additional [in-flight]. But it essentially would be its own separate track. Then somehow the group would have to reconvene to review comments, put together another final report just on that smaller scope, and then ship that separately to the council.

JANIS KARKLINS: I was listening very carefully and I was trying to understand whether we should go for this additional study on the geographical, and honestly I didn't get the sense of the room. So maybe your body language will say. If everybody will stay like this, then I would say don't do that. So this is the question.

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For the study of legal versus natural, please, as soon as you can. So that would be the request. If you can in early May, that would be much better than in mid-May. If you can shoot for the end of April, that would be even better. But, again, you have the determination of this group. So as soon as feasible.

So, on the geographical study, Brian, please?

BRIAN KING: Thanks, Janis. My gut says our answer should be "not now." I don't want to say we should never do it, but not while we're trying to push an initial report out on the Priority 1 items. Thanks.

JANIS KARKLINS: Okay. Then the answer of this group would be: please take your time with the study on geographical [names]. So we would not request that for our work on Priority 2 issues.

Becky?

BECKY BURR: I just want to remind people that the Legal Committee does have a question on natural versus legal. It's the SSAC question. It is quite narrow in that it really is asking the question of if and when you are entitled to rely on somebody's representation about whether something is organizational or not. I just want to remind people that that question is on the table. We didn't get past it but it strikes me as something that would be valuable input.

JANIS KARKLINS:	Provided that we will agree to submit that question [to the] [inaudible].
	Anyone else?
	Karen? Reaction?
KAREN LENTZ:	Yeah, I think that makes sense. I appreciate the dialogue. It's certainly sensitive to the timeline for the legal/natural work. We are aware of the Legal Committee question that's being discussed. I think it would be very relevant if the group decides to pursue that. I appreciate the dialogue and we will continue full speed ahead. Thanks.
[MARC ANDERSON]:	Sorry. I'm [Alan now]. Sorry. I'm not in Zoom. Apologies. I don't want to insult staff here, but can I ask that you summarize – I'm sure you'll put this in notes or whatnot – what we agreed upon in this discussion? I was multitasking a little bit. I think I caught the gist of it, but if we can just make sure what we decided here is captured [inaudible] for the group, I'd appreciate it.
JANIS KARKLINS:	We heard that the study is ongoing and that, if we would require an interim report, which would contain certain elements which would be useful for us but is not all that we need, then that may delay the delivery of the final report for some time.

So, upon Brian's suggestion, we would shoot for the final report because then that will contain all necessary information. The request was to release that or submit this final report on legal versus natural as soon as possible. The timeline mentioned was possibly mid-May but maybe slightly earlier. So, on the study on geographical application, the decision was not to push on it, and we would not request that this study would be done in the lifespan of this team.

So that's the summary as I understand it.

MARIKA KONINGS: [inaudible]

JANIS KARKLINS: Yeah. Mid-May is the timeline for the release of the report of the study on legal versus natural. So we would take that and would see whether or when we would be able to release the initial report on Priority 2 issues. So [it's] whether we will be able to agree on any of the issues or narrow differences on any of those issues in the time between the release of the initial report on Priority 1 and when we will reconvene for an examination of feedback received for the community. In other words, we have a window of 45 days that we can use to [trash] out Priority 2 issues and also talk about elements that we need to iron out on Priority 1 issues – for instance, the list of potential automated decision-making use cases that Mar[c] put forward for our consideration. So those elements.

The bad news is that we have only 45 days. The good news is that, among those 45 days, we will have a full day in Cancun, which basically gives us four meetings of two hours each. Plus, if we will have additional meeting in Cancun, we will be able to really drill on Priority 2 issues in face-to-face mode. If we will not be able to agree in the face-to-face meeting, then probably a chance to agree in online meetings on these controversial issues is rather slim.

Berry now will correct everything that I said [inaudible].

BERRY COBB: Only to add to it that, if we do deliver an initial report by the 7th, we will give you one week after that.

UNIDENTIFIED SPEAKERS: [inaudible]

JANIS KARKLINS: Berry is very generous. So we have Hadia and Alan G.

HADIA ELMINIAWI: Thank you for being with us today. I just wanted to note that we are looking forward to the natural versus legal study. We are hoping that you are able to conclude this as soon as possible, of course, before March. That's almost impossible – right? – before the Cancun meeting. But hopefully we are looking forward to being able to produce recommendations with regard to this Priority 2 item with the initial report maybe a short time after that.

As Becky said, we also have some legal questions that I think will inform us. Hopefully, we get those out also soon. Thank you.

JANIS KARKLINS: Thank you. Alan?

ALAN GREENBERG: Thank you. I guess a request for Karen. Having authored just a few papers in my time, one generally knows where it's going a fairly long time before you have it all neat and tidy with a bow on top to ship. To the extent that you can give us a heads up as to what conclusions you're coming from, even if they may change or even if they're not completely tidy, that would be immensely helpful. Thank you.

JANIS KARKLINS: It's good that we had this wrap-up. Thank you for asking to make a sum-up of what we decided, Mar[c]. That led us to additional requests to Karen maybe to share with us something you think you could share that would facilitate our conversation on the topic.

With this, and in absence of further requests for the floor, I will thank Karen [and] Dennis for briefing us.

You still have another seven minutes to grab a coffee, and then we will start drilling our report.

Marika?

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MARIKA KONINGS: The issue is that I've only received input so far from the ALAC and the NCSG. I need some time to pull everything into the compilation. So I'm assuming groups may need a little break for me to do that after we get sheets.

JANIS KARKLINS: Yeah. We still have [inaudible]

MARIKA KONINGS: How time do [you] need to finish your sheets? Because we need that.

JANIS KARKLINS: Let's see if we can pick up and close two issues that were outstanding from the sheet we were working on yesterday and this morning. We have two issues there. One was one query policy. It was Mar[c] and Brian who worked out a proposal which is now seen on the screen. That is replacing the text which was in the draft initial report with the new text which is, in my view, clearer and better formulates the recommendation, namely that the EPDP team recommends that SSAD in whatever form it eventually takes must not support bulk access, wildcard, reverse, or Boolean search capabilities. In brackets: This is not intended to prohibit parties from providing these types of services outside of SSAD at their own risk. Support the ability of a requester to submit multiple requests at the same time, with a clarification in the footnote that the working group expects implementation to reasonably determine how many would be submitted at the time and consistent with the query policy. Route each domain individually to

the entity responsible for disclosure decisions. In brackets: This may require SSAD to split the request into multiple transactions. Consider each request at its own merits. Have the capability of handling an expected number of requests in alignment with SLAs established. Only support requests for current data. No data about the domain name registration history.

So this is a proposal which is on the table to replace the text above. I would like to see if this proposal would be acceptable.

Margie?

MARGIE MILAM: Hi. I thought we were talking about not expressedly prohibiting it. The reason why I thought that was okay because it was out of scope. We've gone back now to saying this is in scope by saying it's not allowed in the SSAD.

One of the things we didn't talk about earlier today was that Thomas and Volker and I spent a fair amount of time on the reverse lookup issue and identifying areas where it might be potentially feasible, especially in the context, for example, of a UDRP, where, in a UDRP, you can bring a claim for all of the domain names that are associated with that particular registrant. So, by putting this in the policy, it makes it sound like you could never do that.

Now, I'm not saying that, right now in this group, we need to flesh out that concept, but, by having that language here, we're basically prohibiting that from every happening. It could very well

be, for example, that the committee might come to a conclusion that that might be a scenario that would be worth supporting.

So my recommendation here would be to not have an explicit prohibition in the SSAD for reverse lookups.

JANIS KARKLINS: Brian and Marc, how would you respond, since you were proposing this language?

MARC ANDERSON: I'll take a first crack. Brian and I did walk out the door understanding that we're going to remove the language all together. When we put pen to paper, we found that to be a lot more difficult than we expected. So I know that is a little bit of a departure. We're talking about removing it all together.

What we discussed was that the intent of that language, when we first put it into the draft, was to make it clear that all of that functionality was not being prohibited outside of the SSAD. So the original intent of the language was making it clear that our policy recommendations weren't changing that.

We also wanted to make it clear that, in the SSAD, each request was expected to be a one-to-one (one request per one response) with the understanding that multiple submissions would be accepted.

So we tried drafting language that did that without just saying you can't do those things, and we ran into a wall. So, remembering

what Marika said about how this isn't out of scope, at least in your read of the policy, we went back to that.

If I could circle back to, I guess, the second part of what Margie was saying, we're also not intending to preclude future policy work. I think, as all of us have experienced firsthand, future policy work can change existing policy. But, if we give a comfort level, I think we could add something in parentheses saying this doesn't preclude future policy work. But I don't think this is something we can tackle here in this work.

[MARGIE MILAM]:   No.

MARC ANDERSON: I'm hearing no over there.

[MARGIE MILAM]:   I'm I could reply, it's too hard to change policy. You have to go through a whole PDP. It'll become the default. And I thought this group agreed this was out of scope. So, if it's out of scope, don't preclude it. That's the problem I have with the language. Again, we made reasonable discussions in the Legal Committee about why a reverse lookup might actually be useful, especially in the UDRP context, which is an ICANN policy, for sure.

So I really have a problem with being explicit and saying you can't do it and you have to go through a new PDP to change that particular policy. It's actually probably better to leave it in the

hands of the … silent or have it be something that can be dealt with [in] the standing committee or whatever we call it at a separate point.

JANIS KARKLINS: Okay. Chris?

CHRIS LEWIS-EVANS: Thanks very much. Probably along very similar lines to Margie on this – I hate to say this – it just doesn't make sense when I read it as well: "Must not but you can if you want to." For me, it just reads wrongly.

If we see a benefit to centralization or automation, one of the ways that we may be able to do this is through a Boolean search that restricts the data you're getting. We talked about that Boolean searches don't necessarily give you more data. Sometimes they can give you less data. So, if that's a way of automating that that comes through the review process based upon legal papers that come out and experience, then why can't we allow a mechanism that is reducing the data that people get and providing in a more consistent manner.

So I think it just needs to be out of the "must not." I'd be very happy if it said, "At the start, it shall not, and future iterations may, dependent upon legal advice," and la, la, la, la. So that would be where my comfort zone is. "At the beginning, it won't be there, but may if legal advice and experience shows that this will improve the system."

JANIS KARKLINS: Just please consider that proposal that Chris just formulated.

Volker?

VOLKER GREIMANN: Just two points. First of all, reserve lookup and some of these proposed search qualities were never part of historical WHOIS. So this is actually a new service that would be provided that was not part of the original service. I know there were third parties that were offering such a service, but this was not of the official WHOIS. So that's one thing. So adding this would actually be something new for the contracted parties.

Secondly, for some of these, I wonder how they would actually work under the proposed distributed system, where the contracted parties continue to hold that data. You send a wildcard request to the system and that would have to be distributed to all registrars, all contracted parties, would then have to look up whether they have that data in their system and then return a "No, we don't have it"? It sounds like a lot of work for our end of the table that is currently quite unfeasible.

JANIS KARKLINS: Okay. Matthew.

MATTHEW CROSSMAN: Thank, Marc and Brian, for putting some thought into this. I think Chris's suggestion is a good one: maybe we can work in some of

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that language about how the system may evolve. But I think it's really important, looking at this now, that we aren't silent about this, especially in terms of what the system looks like on Day 1 because I think we need to look at this from the perspective of what we need to tell the implementation team about what functionality needs to be part of the SSAD on Day 1. If we're saying that the SSAD on Day 1 will not have this functionality, I think we should just tell the implementers that instead of leaving it silent and essentially opening the door for the implementation team to then have that argument again. I don't know if the implementation team is going to necessarily going to go back and parse what was in scope and what was out of scope.

So I support the new language that we have. I think it's important that we're not silent on this. But perhaps we can work in some of Chris' language about the potential that it could evolve in the future. Thanks.

JANIS KARKLINS: Okay. James is next, followed by Marc Anderson.

JAMES BLADEL: Why, microphone? Also, for full disclosure, I contributed a little bit, although Brian and Marc did the heavy lifting on this language.

I just want to point out that, similar to what Volker was saying, this was never a function of WHOIS. Third parties were offering these services, and they were offering them differently. They wanted to differentiate themselves versus their competitors who were offering similar services, so they may have had different

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performance, different capabilities, and different functionality in their tools. I think that's what we're trying to capture in the parenthetical about this not being intended as a prohibition on third parties continuing to offer these services at their own risk because they can still exist where they've always existed, which is out in this ecosphere of companies and services and tools that are built to parse this data.

I think what we're trying to say is now is not the time to bolt those into the SSAD itself but rather to leave the door open for those parties to continue to develop those services.

JANIS KARKLINS: Okay. Marc, followed by Alan G.

MARC ANDERSON: Thanks, Janis. Matt and James pretty much covered what I was going to cover. We certainly understand … *mic echo* Did I do that?

UNIDENTIFIED MALE: No. James did it.

MARC ANDERSON: Okay. Thanks, James.

UNIDENTIFIED MALE: [Probably muted].

UNIDENTIFIED MALE: [inaudible]

MARC ANDERSON: Chris' point … Boolean reverse, wildcards … We absolutely get why this functionality is beneficial *mic echo* … Hey, everybody. You can see Volker. We absolutely get that this is useful functionality. Nobody is saying it's not. I think the stuff we're doing just for the one-to-one lookup is hard enough.

On understanding the legal and technical ramifications of expanding the SSAD to support this additional functionality at this time, we have a time limit and I don't think it's realistic that we can come to agreement on any of that functionality at this time.

I think Matt covered the rest there. I think I'll leave it at that.

JANIS KARKLINS: Okay. Alan G, then Margie and Brian.

ALAN GREENBERG: Thank you very much. How we got here is that, a few days ago, we started discussion on that, if something is out of scope, we shouldn't mention it all. Not prohibit it. Not allow it. It's not mentioned because it is out of scope for discussion.

I think it's very clear from what we've written so far, but maybe we need to clarify it: the only thing you can search for in the SSAD is based on the single identifier – the domain name – and no

wildcards. Any of those any other searches requiring searching on other fields.

So, as long as it's clear that we are searching on domain names with no wildcards – maybe batched in this new thing, but that's it – then none of these things are there. You can't read them into being there because they don't exist. Moreover, RDAP doesn't have the capabilities right now, although there is IETF work going on. So, as the technical capabilities change, maybe there will be an interest in making these changes.

I really don't think we should be mentioning them here. I think we should go back to what we said: if it's out of scope, it's out of scope, negative or positive. We have to make it really clear we are searching on a single key – the domain name – no wildcards. No one can presume the other things are there because they have other keys that we're not searching on. So let's keep our life simple. Thank you.

JANIS KARKLINS: Margie?

MARGIE MILAM: I agree with taking it out, if that's the option. I also agree with what Chris suggested: evolution over time. We're rehashing an argument we had several times ago. The statements that WHOIS doesn't support it now in ICANN is not true. There's actually new gTLD agreements that allow it. There's also IETF work that's going to make it more possible.

The only thing I'm really putting my foot down on is a prohibition. If we all agree it's out of scope, take it out. But let's not have a policy that really limits the ability for the system to evolve should there be technical changes in the RDAP protocol and legal clarification.

JANIS KARKLINS: Brian, followed by Volker.

BRIAN KING: Thanks, Janis. I agree with Margie. We've walked out of the room thinking that we're going to do one thing. I think, as we tried to put the language together, that evolved. I regret that we've made this more of a challenge than we intended to.

I also think that we're better off if we don't eliminate those things now. I'd make a constructive suggestion that, if what we want the SSAD to accommodate right now, if we're giving guidance to implementation, is that today the requests need to be for a fully qualified domain name without any asterisk or things like that, I think that might be the way to propose that the SSAD needs to operate today. It needs to take request for fully qualified domain names.

I think, with that said, we can be silent as to these other features that may develop over time with technical and legal knowledge. I think if we're silent as to the rest of it, that gets that done. Thanks.

JANIS KARKLINS: Can we think of putting another asterisk? We refer to not supporting bulk access and we describe with asterisk what we understand with bulk access. Then we put another asterisk and a footnote saying that the services that were developed in WHOIS may be, alongside with what Chris said, may be considered for inclusion in SSAD at the later stage, or something like that, without mentioning specifically what are these wildcards or reverse lookup. We're just saying that services which were developed on WHOIS may be considered for inclusion in the system at a future date. Something like that, but as a footnote clarifying. Just please consider that option: deletion of everything that is after the wildcards but is after bulk access and putting a footnote that services that have been developed in WHOIS could be considered.

UNIDENTIFIED FEMALE: [inaudible]

JANIS KARKLINS: The wildcard, reverse lookup, and Boolean search in WHOIS [were developed.] These services existed. These services could be considered for inclusion in SSAD at a later stage. Something like that.

MARIKA KONINGS: [inaudible]

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JANIS KARKLINS: Volker?

VOLKER GREIMANN: Well, I think, to me at least, the suggestion Alan makes makes absolute sense because, if we drill this down, a request may only have domain name [as] for the string that is requested, and there's no wildcards. That takes care of most of the problem for me. Whatever may happen down the road is something for another team to decide. I would be perfectly fine with that suggestion.

JANIS KARKLINS: Which one? If you could repeat which suggestion.

VOLKER GREIMANN: Basically stating that a request may only be for a domain name – no wildcards – thereby excluding the other formats without naming them. I think that absolutely makes sense to me.

ALAN GREENBERG: It even replaces the bulk access one.

JANIS KARKLINS: Who will then attempt to formulate the replacement of the first bullet point?

VOLKER GREIMANN: I think Alan already put something in the chat which makes sense. Yeah.

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ALAN GREENBERG: I didn't put wording in, but I'm glad to. I will now.

JANIS KARKLINS: Okay. Alan, please do so. We will replicate that language on the screen. But for the rest, we are fine, right? For the rest.

UNIDENTIFIED MALE: [inaudible]

JANIS KARKLINS: Sorry?

UNIDENTIFIED MALE: [inaudible]

JANIS KARKLINS: I don't see you in the queue.

[DAN HALLORAN]:   I was waiting until that issue was resolved before I jumped in the queue.

JANIS KARKLINS: We're fine with the proposed replacement language, except the first bullet point, which Alan G will propose for our consideration. The rest is considered.

Yes, please, go ahead.

[DAN HALLORAN]: Thanks. I had questions about some of the other bullet points. I'm confused about the relationship between a request and a domain name. It says requesters can submit multiple requests. Does that mean multiple domain names or multiple requests, each of which may contain multiple domain names? Different bullets seem to vary in how they're talking about the relationship between requests and domain names.

Especially it got confusing to me thinking about, let's say, if there's a request for 100 domain names spread about 15 different registries and 20 different registrars. It seems like a mess on your hands to figure out then, well, is this request approved or rejected, and how do you manage that if that's one request, really, with all those different domains? Or was it intended that one request would be for one domain name only and you could submit lists of requests, like 70 requests, at once? Thanks.

JANIS KARKLINS: Here probably a clarification needs to be provided by Mark Sv on the multiple requests. We had this conversation. Actually, one of the bullet points says that each request will be reviewed by its own merits. From the previous conversation, I understood that there might be multiple but not bulk requests or domain names submitted at the front end, but then, on the back end, they will be split and treated one by one. So that's simplifying the submission of the request. But, again, I stand to be corrected by you, Mark.

MARK SVANCAREK: No, that's right. But, if there's any confusion, we can make it explicit that, if you are the disclosing party, you will only see single-name requests. So, regardless of how the front part is implemented, at the discloser they will only request for single names. So if that makes it more clear. I just wanted to avoid a situation where we can't implement some convenience function at the requester end.

JANIS KARKLINS: Okay. Marc, are you in line?

You don't need to be. I'm just asking.

MARC ANDERSON: On this specific issue?

JANIS KARKLINS: Your hand is up.

MARC ANDERSON: Okay. I raised my hand because I was actually reacting to Alan G's feedback. What we're trying to accomplish is clarity for ICANN org that they know what to implement. I was going to react to what Alan said and ask, if it's clear to you that what you're implementing for this is just support for a one-to-one single domain single response … I recognize the convenience of those other features – Boolean, reverse, bulk, batch, and all those other

fun buzzwords – but there's a whole lot of unknowns with that. That adds an awful lot of complexity. So I want to make sure here, with this system that we're recommending be implemented now, that we're talking about a one-to-one relationship.

Alan said that he think it's clear that that is the case with other language, and I just want to confirm with you that that's your understanding as well.

[DAN HALLORAN]: I think it's somewhat clear to me just from the conversation. I'm not sure that, if it was some other lawyer or a programmer trying to interpret that bullet point, that's what would be clear to them.

MARC ANDERSON: Yeah. That was my concern. That's what Brian and I tried to solve for. I want to echo what Brian said earlier. We had homework, and obviously we didn't succeed on our homework. So I apologize to everybody for that. We were trying to make it clear while still capturing the spirit of everything that had been discussed here. It sounds like we didn't get there. So I don't know. Maybe Brian and should be fired on this one.

JANIS KARKLINS: I think we're reaching—

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UNIDENTIFIED SPEAKERS: [inaudible]

JANIS KARKLINS: We're reaching the stage where all of us want to be fired because we're fed up already with this conversation.

Let me also say that this is an initial report. We need to let the community catch those bugs. Believe me, if we will produce the initial report in an ideal state, then the community will be angry with us because then they will not be able to provide input. So, as a result, we should not strive for ideal. We should strive for "as clear as possible." But it's not the end of the world. So we will catch those bugs and then get clarifying questions or suggestions and can work them in during the phase of looking at and analyzing community input, again, simply to try to move forward. Certainly you haven't failed with your attempt.

In the meantime, we have Alan G's proposal that the first bullet would read, "Receive requests keyed on fully qualified domain names," and, in brackets, "without wildcards," in replacement of the first bullet as a whole.

Can we get that on the screen? Or that's not …

MARIKA KONINGS: [inaudible]

ALAN GREENBERG: That first word could be "support/[accept]". Your choice. Instead of "receive," it could be support, which is line with the next one, or some other verb.

JANIS KARKLINS: While you're thinking, a question to Dan. If we put in the second bullet "Supportability of the requester to submit multiple requests of domain names at the same time," would that be more clear?

You questioned the multiple requests. You said, what does it mean?

DAN HALLORAN: But it's still confusing. If you say [sentencing in] multiple requests—

JANIS KARKLINS: Of domain names.

DAN HALLORAN: Of domain names. So is that multiple requests for multiple requests, or one request for multiple domain names? Multiple requests of one domain name each.

JANIS KARKLINS: Brian?

BRIAN KING: I think that's a fair point, Dan. I think what we should have done there – I follow your thought there – is say what a request is. I think the way we intended this is that a request can contain many domain names but you wouldn't then need to submit request at a time. I think what we should have said there is submit multiple, full-qualified domain names at a time in a single request, to be clear. That's the concept. It's a good catch.

JANIS KARKLINS: So the language would be, "Support the ability of the requester to submit multiple domain names in a single request at the same time." So this is what you want to say, right?

CHRIS LEWIS-EVANS: [inaudible]

JANIS KARKLINS: Please say again?

CHRIS LEWIS-EVANS: "At the same time" doesn't make sense on the end of the sentence, I think.

JANIS KARKLINS: So now we have a proposal where the first bullet point would repeat, "Support requests keyed on fully-qualified domain names," and in brackets, "without wildcards." The second line would read, "Supporability of the requester to submit multiple domain names in

a single request," and then, with asterisks, "The working group expects implementation to reasonably determine how many to be submitted at a time, consistent with the query policy."

Alan?

ALAN GREENBERG: This is essentially a FedEx tracking search, where you put multiple tracking numbers into the same request. So it's a convenience for the user not to have to hit Enter multiple times.

You may want to qualify, or add a parenthetical perhaps, to say, "All other request fields identical," or something like that to make it really clear that everything is identical except for it applying to multiple domain names.

DAN HALLORAN: Just to extend that, you wouldn't have multiple packages with one tracking number. One tracking numbers wouldn't have multiple packages going to multiple addresses. That's what I was trying to clarify here. It's confusing.

ALAN GREENBERG: I was simply referring to the fact that you can type in multiple tracking numbers in that little square box and hit Enter once and it maps to, "Please tell me what's happening to these n packages," or these n shipments.

DAN HALLORAN: But then what we're building is a way to submit one tracking request with 100 different packages that are going to different registries and registrars.

ALAN GREENBERG: We can debate the analogy later then. I don't think we want to confuse this situation.

DAN HALLORAN: If you have a single request with ten different domain names, three might be in progress, two might be rejected, and four approved, all in one request.

UNIDENTIFIED FEMALE: Yeah.

JANIS KARKLINS: Brian?

BRIAN KING: I encourage us not to take the FedEx analogy too far, or any farther than that you could submit three things in a box on the website.

I think, to your point, Alan, we have the language elsewhere in the policy about that, if everything matches up – the exact same legal basis and all those boxes checked – then you can do multiples together. I think that's elsewhere.

JANIS KARKLINS: Dan?

DAN HALLORAN: Sorry. I still my hand up on another bullet, if that's the time to do that.

JANIS KARKLINS: Please go ahead.

DAN HALLORAN: "Consider each request on its own merits" seems like it snuck in from some other section and is more about what the contracted parties are supposed to do in, I think, the query policy. "Each request on its merit" is somewhat confusing to me when we're talking about possibly automating some cases. I don't know why it snuck into this section. Thank you.

JANIS KARKLINS: The idea here was to say that, if you have multiple domain names submitted in one request, then each of those would be considered according to its own merits, one by one. So one domain name, one response. There will not be, let's say, one response to a request containing ten domain names. There will be one request with ten domain names and ten responses corresponding to each of the domain names. So this is the spirit or philosophy that we are putting in the system.

DAN HALLORAN: Okay. I thought we used that wording somewhere else. "Consider each request on its own merits," in another section to mean something different, I think. Maybe Caitlin or Marika might remember where.

UNIDENTIFIED FEMALE: [inaudible]

DAN HALLORAN: In the authorization section. "Contracted party must review each request on its own merits and must not disclose on the basis of user category alone."

JANIS KARKLINS: But that's different. This is the same thing. Each request is considered on its own merits, and not because it is submitted by, for instance, law enforcement. If it's submitted by law enforcement, still it will be considered on its own merits. That was the context of that statement.

With these clarifications, can we put this text in the initial report for consideration by the community?

Okay. So decided.

Let us go to the next one, and that was on – if we can get that on the screen …

MARIKA KONINGS: [inaudible]

JANIS KARKLINS: That was the indemnification piece. Franck submitted the language, right? The language now is displayed on the screen. I understand that the proposal is to take out the bullet point from the terms of use and create a new recommendation in relation to indemnification.

It reads, "If the requester has filed disclosure requests or used non-public registration data in violation of these rules and policies, the requester shall indemnify and hold harmless the entity involved in the operation of SSAD – ICANN, registries, registrars, operators, [inaudible] directors, officers, employees, and agents – from and against any and all claims, damages, liabilities, costs, and expenses, including reasonable legal fees and expenses arising out of or related to disclosure requests at the resulting use of disclosed non-public data." Should be "lawyer" as the office of this text. "Any damages or costs will be apportionate on a pro rata basis if the wrongdoing is not exclusively caused by the requester but also by the operator of the SSAD." No offense to lawyers.

UNIDENTIFIED SPEAKERS: [inaudible]

JANIS KARKLINS: It's the first time I'm reading this. I feel, like, in first grade. "If registrars/ registries violate SSAD rules and policies, ICANN/registries/registrars shall indemnify and hold harmless," dah, dah, dah.

FRANCK JOURNOUD: If I may, Janis, the first two paragraphs are supposed to be mirrors of each other. The first one is about the requester indemnifying. The second one is about registrars, registrars, and ICANN indemnifying. So we see the actions that give rise to potential liability and therefore potentially indemnification plays differently. In one case, it is something bad that was done by the requester, specifically request and use of registration data in violation of SSAD. In the other case, in the case of the registries, registrars, and ICANN, it's a violation of the SSAD rules and policies. So then it specifies what would be indemnified. As you can see, there's no concept of negligence versus or intentional whatever. It's just a factual "If it happens, you indemnify." Then both paragraphs end with this sentence about that basically you hold your own back. If three-quarters of the damage or costs are because of you, that's what you're liable for. So the attempt was to make those two paragraphs balanced and mirror each other.

The third paragraph was intended to address the concerns that our colleagues from the GAC, which include Laureen, raised about the fact that public authorities can generally not indemnify. We had to wrestle with that we're not trying to say they're never liable but rather that we're not affecting liability law as it exists in this or that jurisdiction, etc.

Hopefully, Laureen, I represented the intent and the effect of the third paragraph accurately.

JANIS KARKLINS: Thank you very much. So a moment for reflection.

Volker?

VOLKER GREIMANN: I think you want to keep us here all night because at least the second part of this wholly unacceptable. I think we are providing a service here. If providing this service now exposes us to an incalculable risk, then we'd rather not do it at all.

FRANCK JOURNOUD: I appreciate and I'm not so surprised by that perspective. It's something that we've also discussed both in the EPDP and in a small group with Amr and a couple others: the issue of cost – d who's paying for what.

The IPC's position is pretty simple. No, you're not doing this as a favor, as a service for us. WHOIS is an inherent part and should be an inherent part of the entire lifecycle of domain name registration/use, etc. It's similar to real estate registries or corporate registries. When you want to buy a piece of land, there has to be some sort of publicity and registration of this. Same thing for companies, etc. Your domain name is where you live in cyberspace as opposed to real estate or being where you live in physical space. There needs to be a number of cases – the SSAD

is going to specify those cases – [of] legitimate access to that data. You're not doing that as a favor for us. It is really fundamentally part of your business.

I've got to say I'm happy to make the [claimant aware] that we're not requesting this data for fun. We're requesting this data – I'm speaking for IPC, not for other requesters – for the common good, particularly cybersecurity researchers, etc. We make those requests because individuals or entities – registrants – are registering domain names so that they can break the law and steal our stuff. So, when we do that, we act as victims. We are pretty confident of our record in going after those bad actors. So, no, we don't think that, on top of that, we should pay for everything and indemnify everyone, etc. This is not a service. This is a service victims, which we consider ourselves to be. I realize how antagonistic that might be to make that and say, "Therefore, I don't want to pay for anything under this new SSAD." But I'm happy to make that case if, in return, what I hear is, "No, you should pay for everything." We need to come to a reasonable compromise in the middle.

VOLKER GREIMANN: If I may [come back] on that, it's disturbing to hear this false analogy of public regist[rars] coming up again because those are public regis[trars] mandated by law. This is a voluntary service that we are providing. Under a policy by ICANN, yes, but it's a voluntary service that we have at some point agreed to provide. There's no law mandating this. There's no legal backing for this if we mess up our services there. Land regis[trars] have a wholly different legal basis for that.

If this proposal stays, we will not reach agreement tonight. We will better bring our sleeping bags and roll out for a long night here.

JANIS KARKLINS: I understand the conversation about that, let's say, legal liability is an [indication]. Ultimately, this is, I would argue, an edge case when the SSAD will be intentionally abused and will create damage. So what's the probability that registrars will go against the agreed-to policies? Probably it's not overly big. That's why I'm saying, do we really need to spend too much time and be that legalistic in this? Honestly, when I read it – I'm not a lawyer – I had difficulty in understanding what is written there because this is very legalistic language. So the policy should be written in a language with is understood be everyone.

UNIDENTIFIED SPEAKER: [inaudible]

JANIS KARKLINS: Yeah. I have Stephanie, Thomas, Georgios, and Brian in line. And now Laureen as well.

STEPHANIE PERRIN: Thanks very much. I just maybe would like to clarify. I don't want to add to this liability burden that is going to make Volker stay overnight with his sleeping bag. And I don't blame him. Just a joke.

There's no mention of damages for the registrant. There's indemnification all around. "It wasn't our fault. We're not getting blamed. We're held harmless," and all the rest of it. But somebody got hurt here, and it's going to be the registrant. Yes, we all like crooks to be hurt, but, if it isn't a crook, then we have a different story.

Now, I understand that those registrants may or may not have rights under data protection law, but this is where the geo stuff actually makes an impact if they are no in a jurisdiction that has a court they can apply to. They will not get any damages under GDPR. There, relevant data protection law may require them to go through a huge process and then go to federal court, as in Canada, for instance.

So I think there at least has to be a [knob] in there, if only for public interest reasons, to the fact that there is a registrant potentially being harmed here in three paragraphs on who we're going to indemnify from any damages against that individual.

So the proposed language I don't have in my head. You're going to hold the data subject harmless, but that wasn't my issue. It's, where the damages for the individual who was harmed?

UNIDENTIFIED FEMALE: [inaudible]. You can indemnify the data subject for damage, liability, costs [inaudible].

JANIS KARKLINS: If I may—

STEPHANIE PERRIN: But not apply damages.

UNIDENTIFIED FEMALE: [inaudible]

JANIS KARKLINS: If I may make a suggestion, we're talking about a bullet point in a recommendation of terms of use. The recommendation itself stands that the EPDP team recommends that appropriate agreements, such as terms of use of SSAD, privacy policy, and disclosure agreement are put in place that take into account the recommendations from the other preliminary recommendations. These agreements are expected to be developed and negotiated by the parties [inaudible] taking the below implementation guidance. We're talking about implementation guidance here. So implementation guidance on terms of use suggests that the EPDP recommends that, at the minimum, the terms of use shall address. Then we have five bullet points, one of them being, as it stands now, indemnification of the disclosing party [in] ICANN.

So my suggestion is, since this initial/chapeau sentence say "at the minimum," we simply delete this indemnification thing and leave it open. If, during the implementation phase … There will be probably must more points on the use policy that this contract will contain. Let those who use SSAD negotiate what type of indemnification they want to put, if they want to put it in place. So, ultimately, we just recommend that this may be discussed but not necessarily agreed on. So I would suggest simply deleting the

indemnification bullet point, leaving the data request requirements and logging requirements and the ability to demonstrate compliance and applicable prohibitions. That's it.

FRANCK JOURNOUD: Just to be clear, I never wanted indemnification in the document in the first place. I don't think it was actually ever discussed, let alone agreed, within the EPDP that there should be indemnification. So I'm entirely happy to take Janis' recommendation and nuke this bullet. That's fine with us. We're not asking to indemnify people.

JANIS KARKLINS: This indemnification thing was the sticky point. Let's take it out and not talk about it.

No? Yes or no?

UNIDENTIFIED SPEAKERS: [inaudible]

JANIS KARKLINS: Okay. We have Thomas, Georgios, Brian, and Laureen in line. Then we will break for five minutes to let the registrars talk among themselves.

THOMAS RICKERT: First of all, Janis, it saddens me that you don't appreciate the beauty of that language. But seriously, what we tried to is use

exactly the language that is in the RAA and just tweak it so that it would our purpose.

What I mentioned to Franck – so this doesn't come as a surprise to him – is that we were tasked with refining or coming up with a proposal for the language in the report, where the requester indemnifies the other parties. Then he said, "Well, then I want it for the other scenarios." I raised my concerns with that conceptually. I think that's a challenge to do.

I think what we're going to see … This is no allegation or suspicion towards this part of the table, but I guess there is a general fear that there might be rogue requesters that just walk in, take data, and do whatever they want with it, regardless of what the safeguards are that are on paper.

Therefore, I think it is important to have language in the terms of service that have at least a deterring effect to say, "If you're not playing by the rules, you're going to be punished." The requesters would not, per se, indemnify for everything that might come there way, but, number one, they have to be in violation of the terms of service and, number two, the third-party claims that have been raised must have been triggered by their wrongdoing. Then we even soften that by saying, "If then the SSAD operators also make mistakes, then that will be deducted from what you have to indemnify against. I think that's a pretty fair approach to be taken.

Therefore, your suggestion to just throw it out of the window just because we have an additional idea introduced here I think is maybe too quick. If everybody wants to abandon it, that's fine, but I think we need to make sure that requesters play by the rules and

that we have contract language to increase the probability that they will do so.

The other thing is that I do appreciate that, if requesters do everything right but, at the same time, if the SSAD folks do everything right, they might be exposed to unjustified third-party claims. But I'm not sure whether this part of the report is the correct place to address that. So we've discussed that in the funding area. We would have a legal risk fund to cover losses that might be suffered by the parties involved. I think that we could use that to maybe address that concern and also address that concern so that we have a war chest that can help compensate those who unjustly from the system, being either attacked or [from] the output of the system harming data subject whose data has been disclosed. So maybe that could be considered middle ground.

So we would take out the middle paragraph. We would have the indemnification. We would have the government carveout, which we haven't discussed at all, I guess – I hope that this is language is uncontroversial – and take a big marker and say, "When we get to the legal risk fund section, we introduce language when we address those two concerns."

JANIS KARKLINS: So your suggestion is to delete the first bullet point from the implementation guidelines and replace it with the first paragraph, which is now on the screen, and the third paragraph on the screen.

THOMAS RICKERT: Sorry. Plus keep a note on our to-do list that, when we discuss the funding and the legal risk fund, we would come up with language to cover losses or damages suffered by aggrieved data subjects and by requesters that are unjustly exposed to claims because the SSAD isn't working properly.

JANIS KARKLINS: So that's the proposal. That takes care of the objection of the CPH?

VOLKER GREIMANN: Sorry. I was typing in chat. I didn't hear all of Thomas', so if you could provide a summary of the proposal.

JANIS KARKLINS: The proposal is to delete or not to take into account the middle paragraph but address the concept of indemnification, if SSAD is not properly, in the financial section when it comes to legal risks.

VOLKER GREIMAAN: We can postpone that part of the discussion. I think that will move us ahead. However, I think the only venue for a contracted party not performing his duties under these rules is Compliance. That's the only venue where redress should be made. So, if it just leads to us having to discuss this at another time, then I'm happy to do that because it means I get out of here sometime. But it will not address the problem in the long run.

JANIS KARKLINS: Can we live with the proposal of Thomas?

FRANCK JOURNOUD: Just speaking for myself, not for the IPC, as I said earlier when I presented the two paragraphs, they're fairly extensive in what they cover. There's no concept of negligence, let alone intentionality. You covered not just for damages but also for attorneys' costs, etc. I would never put the first paragraph in if I didn't have the second paragraph. You should look at the instructions that I had from my own attorneys. If there's no balance like that … Even if the insurance fund or whatever were to address the second paragraph, I don't think providing massive indemnification on my end … And there's nothing in return.

So maybe we should park the whole thing – indemnification – and come back to it later. I'll yield to Brian, who actually is an attorney and knows what he's talking about. I just feel like there's a grave imbalance that I think goes to the heart of the matter.

JANIS KARKLINS: I do not feel that we can agree on this at the moment. Maybe we need to take it off the table for the moment. We will have some coffee breaks or a night between today and tomorrow. Maybe something could be worked out in an informal way. Or, if we cannot reach agreement, either we simply put a note in the initial report that the topic of indemnification was discussed and no agreement was reached. Or we simply keep silent and see what the community will provide as input and then continue the conversation when we will work on the final report.

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Once again, we're talking here about implementation guidance. We're not talking about the recommendation itself. We're spending far too much time than we need on this topic. We're trying to resolve an issue that needs to be resolved by every party involved in running SSAD when the SSAD will become operational. So that's what it is. So we're just giving guidance to the implementation team. So we cannot agree because we're trying to resolve the issue that falls outside the scope of our activity, just a recommendation of the policy, in the same way we're not writing any agreements here: it's not our task to write any agreements. That will be written based on policy recommendations by those who need to write those legal agreements.

Can we postpone it, or we just decide on letting this go completely?

Brian?

BRIAN KING: Thanks, Janis. I like your second suggestion. This whole concept to me right now makes me very uncomfortable. I don't know that it's our job, that we should be doing this, represent[ing] a party who is going to agree to this or not. There's a lot of reasons why I'm unconformable with doing this now. So I think we could note in the report that we had some discussions and we suggest, in implementation, that the concept is considered. [I see] this as being influenced by the joint controller agreement between org and the contracted parties. It's a lot. I don't think it's a good use of our time. Thanks.

JANIS KARKLINS: I have many hands up here. My proposal is very simple: deletion of the bullet point on the indemnification of the disclosing party of ICANN. Who cannot live with that?

UNIDENTIFIED MALE: [inaudible]

JANIS KARKLINS: I am suggesting the deletion of the first bullet point in the implementation guidance. That bullet point reads, "Indemnification of the disclosing party in ICANN." Just delete. [inaudible].

No? Okay. Then I'm parking this question. Please, during the coffee breaks and after [the] meeting, please find interested parties coming together and [coining] out a suggestion for implementation guidance, not for a solution for indemnification in legalistic language. So, failure: it happens.

Now, are we ready to consider the updates report itself?

MARIKA KONINGS: Not yet. I just want to see who is still sending in information. Additionally, I got input from the GAC. And I got the registry comments. But I haven't received anything yet from other groups. So just to know who's still working on it because I'm compiling the list.

UNIDENTIFIED MALE: [inaudible]

MARIKA KONINGS: So how much time does everyone need to finish?

JANIS KARKLINS: In that case, my suggestion is the following. Those who are not involved in the formulation of the numbers from the initial report and are interested in furthering discussion/implementation guidance on indemnification go to Room …

TERRI AGNEW: 312.

JANIS KARKLINS: 312. And, in 15 minutes, try to find a solution. For the rest, please submit, in 15 minutes, your concerns about the draft initial report. We break now for 15 minutes, and we reconvene in 15 minutes the plenary.

Welcome back. If I may ask you to pay attention, colleagues. On Question 63, we will park the topic for the moment. We had a conversation, and I think that we're heading towards deletion of one line in the implementation guidance: indemnification of the disclosing party in ICANN. Instead, we would introduce a new policy principle related to responsibilities of everyone involved in the operations of SSAD. The text will be circulated at a later stage today, and we will consider that tomorrow. I wouldn't say first thing in the morning. [How swiftly we will move through the issues depends on how we proceed now.]

I would suggest the following while Marika is compiling all the "cannot live with" inputs from groups. We could talk about Preliminary Recommendation 9 on SLAs. For doing that, I would maybe ask Caitlin to introduce the topic. I don't know whether we could put something on the screen or—

UNIDENTIFIED FEMALE: [inaudible]

JANIS KARKLINS: Okay.

UNIDENTIFIED MALE: I prefer the dark, but do most want lights?

CAITLIN TUBERGEN: Thank you, Janis. What you see on the screen is a matrix that leadership and support staff compiled in response to the initial reactions to the contracted party proposal, which, if I remember correctly, was a 30-day SLA. The small team had met a couple of times, and a few members on the team noted that 30 days would be a "cannot live with" SLA.

So what we did was categorize three types of SLAs. The first is urgent requests, which is an SLA of one business day. You can see in that box that it notes what an urgent request would be. The second would be court orders [and] administrative proceedings [in] response to UDRP or URS filings. That would be categorized as Priority 2. We put that as a two-business-day SLA and just wanted

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to note that that is the current SLA that is in the UDRP rules, which is why we put that. All other requests would be Priority 3. We have that as five business days. Again, this was just an initial proposal for discussion.

You'll also note that there's a sliding scale for the SLAs. That's to accommodate the learning curve. So we have it as that six months would be 85%, 12 months as 90%, and 18 months as 95%.

We also note in the intro text that, while a requester might categorize their priority as a 2, it might actually need to be changed or shifted to a 3. So there's some text that accounts for that, in the event that it's a miscategorized request.

I think that sets up the discussion, Janis, if we want to open it up for questions.

JANIS KARKLINS: The floor is open. I have a few hands up now. Let me start with James, followed by Franck, Mar[c], and Volker.

JAMES BLADEL: Thanks, Janis, and thank you, Caitlin. James speaking with a question. I will wait until … Staff is conferring—

CAITLIN TUBERGEN: Sorry. Just so everybody is clear, what is currently on the screen is part of the clean version of the Chameleon proposal. We are on Page …

UNIDENTIFIED FEMALE: [inaudible]

CAITLIN TUBERGEN: Oh, sorry.

JANIS KARKLINS: 22.

CAITLIN TUBERGEN: Oh, I'm sorry. It's the clean version of the chapter of the initial report.

JANIS KARKLINS: Page 22.

CAITLIN TUBERGEN: Page 22. Thank you.

JAMES BLADEL: Just a quick question. It's possible that I missed this before or this was settled in a meeting that I didn't attend. On Category 2 – court orders/administrative proceedings/URS or UDRP – it's not that I'm arguing with the SLA that we've established or the performance target, but are we expecting that those would be folded into SSAD? Because currently that information exchange is occurring outside of SSAD. So I'm just curious. Did we decide that we were

going to absorb those requests and the attach an SLA to them, or would they continue to be … We don't use SSAD right now for court orders in UDRP and we can respond within those timeframes, so I'm just curious as to how they got into this. I almost feel like Category 2 needs to go away because it already happening.

Anyway, maybe I've got that wrong. Maybe that was decided when I wasn't around.

JANIS KARKLINS: This is the attempt to capture what has been discussed, and not necessarily is that agreement. So thank you for the question and for raising this.

Let me take other interventions. Franck's hand disappeared. So you're not in line, right?

Okay. That was an old hand. Mark Sv, followed by Volker, Brian, and Alan G.

MARK SVANCAREK: Thanks. Volker and I did sidebar on this, so I will try to represent what we talked about. Then Volker will say whether I did it right or not.

There are a whole bunch of SLA topics, mostly related to automated parts of the system, which are not in this table. I provided feedback on them separately in the issues documents. I

had actually shared those with Volker, and they mostly made sense, with some caveats.

The way that we were looking at this table – we really didn't dwell on Category, so I don't have an opinion on that either way; I defer to other people who are smarter – was that urgent requests looked pretty good with two considerations. One is that we think that just the nature of urgent requests means that it should be measured in calendar days rather than business days. So what the numbers are in the box we could talk about, but we think that that should be calendar days. Also, we should clarify that urgent requests are not solely limited to law enforcement. It's implied but not necessarily clear.

On the third row, we have a copout because there are really two issues here. There is latency and throughput. I'm sorry to be technical, but it would apply to this. Latency is how long it takes something that goes into the pipe to come out of the pipe. But, if we are in a period where there's very high volumes or things are unexpected, you might be able to clear a lot of items in fast order but maybe never catch up to the latency. So, if you're six days behind and then clearing one per minute, you're still missing your SLA.

So there was some discussion about just various unknowns like that, whereas five business days/85% to me seems like we could probably improve that. Volker had many concerns about it just simply because he hasn't been exposed to the types of request that I'm anticipating because we haven't been submitting them.

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So that was where we wound up on our initial discussion, with the point that we should talk about Priority 3. But, if we find ourselves stuck here, it could be a more focused, subsequent small group meeting where we try to come up with some sort of language that fits in there.

So his consideration is, "I would like to make sure that we're not signing up to be obliged to do things that are unknown and unknowable." Mine is I would not like to be in a situation where we can objectively measure something but nobody is held accountable for it being bad. So that was where I think we landed. I'll hand it over to Volker for his opinion. Thanks.

JANIS KARKLINS: Thank you. Volker?

VOLKER GREIMANN: I'm sorry. I'm chewing. Just a second. Thank you. SLAs are very easy to do when you're talking about things that can be automated. Things that work through machines are usually very easy to define in SLAs. If you look at things that have to be done by people, there are factors that enter into it that have to be taken into account. People get sick on the team that's assigned to it. You might have higher requests that are not as scalable as automated requests would be. If you, in one week, get 100 requests and then, in the next week, get 1,000, you're not going to do them in the same kind of turnaround time.

Therefore, my statement has always been, "We'll get to it when we get to it," which is not to mean that we'll leave them lying

around and, when we have nothing better to do, we'll deal with them, but rather we put your requests in the queue and we'll work through that queue as fast as we can. When we get to your request, we'll answer that. That's been my position, but it's hard to say that this will be done in five business days. Sometimes our abuse queue on Monday that it takes us until next Monday or next Friday even to work on that just to see the bottom of the queue again. This is not because we're understaffed. Usually in normal weeks we work through the staff very quickly.

So having an SLA that says that we have to provide a substantiated response within certain time is problematic because we cannot guarantee that, unless we hopelessly overstaff the function, which would add additional costs that somebody would have to bear. I'm looking at the registrants there.

Therefore, we need a solution for all other requests that creates an expectation of turnaround and diligence in turnaround but not of a certain timeframe. I'm not quite sure yet how to best phrase that, but I think that would be probably the best solution.

Something that Mark and I discussed was that, as the SSAD system would see the throughput and the speed of delivery of responses, they would almost always be quite quick to notice any drop-off in that throughput. If, in one week, we answer 200 requests, and next week 200, and suddenly we only answer 50, then they would know that something is wrong and that could be addressed, whatever the reason for that might be. It might not be something that triggers Compliance action but something that could be investigated by Compliance at some point.

I have difficulty attaching a number of business days to Category 3. The other categories are fine because you can always prioritize certain requests and take them out of the queue and handle them directly. But Category 3, which is everything else, just cannot be on a certain timeframe there.

JANIS KARKLINS: Thank you, Volker. I have Brian, Alan G, Chris, and Eleeza.

BRIAN KING: Thanks, Janis. I want to applaud our colleagues who put this together. I think it's creative and clever. We want to make sure that the SLAs are obtainable. I think that's important. We want them to be fast. I think we're all sympathetic to what Volker is talking about as far as staffing. In fact, the SLA concept is intended to capture that. I think the expectation is not that every single request will be responded to within the target SLA but that a significant percentage will be and that there is some variance built in for long holiday weekends or floods of requests at a time. I think we need to reasonable about that. But I think we're in the right ballpark here with the number of days that they should take.

I do like that we're leaving open here that nothing in the policy recommendation explicitly prohibits the development of new categories [in] defined SLAs. I think that'll be a nice feature to get realistic expectations around the types of requests, especially if we figure out which ones could be automated and which ones need to be manual ones, if there are manual ones that will always

need to be answered more quickly or manual ones that can always typically wait a little longer.

So I think there's a lot to like here, and I'd be happy for this to go out for public comment in the initial report. Thanks.

JANIS KARKLINS: Thank you. Alan?

ALAN GREENBERG: Thank you. Just two points, one a very quick one. I thought that we had already said that this may have not included that UDRP and presumably URS will be automated responses. So those clearly will be a lot faster than two days.

I'm sympathetic to Volker's comment. On the other hand, we've all called up customer service lines and you get an automated message saying, "Our call volume is higher than expected," and you wait an hour. And you always wait an hour except for the times that you wait two hours. So the question is, how do you phrase these not to address Volker's case of "This was a bad week. Normally, we're much better," but the ones where they're just always bad? If they're not doing it deliberately, then certainly it's part of how they handle their business. So I don't know how to word it but I think that's what we're trying to get to.

JANIS KARKLINS: [Go ahead, please].

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CHRIS LEWIS-EVANS: Thank you. First of all, I probably agree with James said around court orders. I think we said the SSAD is not the place that we do this. So I think that needs stripping out of there.

On urgent requests, I still struggle a little bit with this and agree with Mark around that it doesn't want to be just law enforcement. Do we maybe replace 2 with non-law enforcement and do it that way? Obviously, threat to life is something that we can quite easily make a proper assessment, whereas a security researcher is probably more along the critical infrastructure side and everything else. So I just wonder if we split it that way for 1 and 2. So, urgent requests (LEA) and urgent requests (non-LEA). So that would be my first suggestion.

I also agree with Mark on changing business days to calendar days. I prefer calendar hours, if I'm being brutally honest. But I also understand that that's … yeah. For the record, Georgios said, "Seconds." I think we covered that ability from a law enforcement perspective. We have ways of finding people's telephone numbers and stuff like that. So we cover that there. Generally, most contracted parties, when they get a request like that, if it is that Priority 1 and it is only law enforcement, they will deal with it a lot quicker. I think we got that language in there and methods of contact and everything else. So I think, if we have that with one calendar, it still needs sign-off from the whole group. But it gives me some level of comfort. And then #2 priority for non-LEA urgent requests.

To Volker's point, we all have requests. You can probably wait two weeks for if you're doing some research piece around some thematic. Whether we want a [4,] as in a best-efforts junk box that

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we automatically go for and that just sits at the bottom of the contracted parties thing, I'd be quite happy with that. Thank you.

JANIS KARKLINS: Thank you, Chris. Eleeza?

ELEEZA AGOPIAN: Thank you. I had a couple questions about the central gateway manager's recommendation. I think it's Lines 848 and 849. Would this be based on human review? And how quickly would it be expected, or would this be expected to come with the recommendation on whether to disclose or not, which is in reference in Recommendation 8 in Line 776 or 782? And what data would the central gateway manager use to recommend the priority level?

JANIS KARKLINS: Could—

CHRIS LEWIS-EVANS: Sorry, Janis. Are we just doing the [former] or are we doing the whole SLA section. Sorry. Just a point of order.

ELEEZA AGOPIAN: Oh, I'm sorry. Did I jump ahead?

JANIS KARKLINS: No. We are, for the moment, discussing systemically what would be common landing ground, but not in details yet the text of Recommendation 9. Maybe if you can hold your questions until we will get bigger clarity on systemic issues.

Mark Sv followed by Matthew and then Volker again.

MARK SVANCAREK: Thanks. There were a few clarifications and then some comments. One, we think, when we discussed that, that those percentages are applicable to the overall system. We wouldn't tell if it was the overall system or whether it was to the individual contracted parties because that does change the calculus a little bit. So we were wondering if staff could clarify that.

I did want to make a point that, because of the whole staffing and the volumes changing all the time, that is a great incentive for people to centralize, to pool together the resources or to hire processors or enter into joint controller agreements because that allows them to smooth out the resourcing, which is why it's very important to me to make sure that our policy allows them to do that.

Similarly, you can see why we would like to move as many automatable decisions to the automatable category: it solves the volume issue. From my side, a lot of the requests that I'll be doing appear to be automatable, so we'd like to have that considered.

Finally, we're just looking forward to working together on this to come up with something that works for everybody. Thanks.

JANIS KARKLINS: Matthew?

MATTHEW CROSSMAN: Mark actually touched on my point a bit. I think we've been really good throughout this process to try to make sure we're building something that can fit all the various parties and business models that operate within our community. So I think we'll probably be able to agree at some point on these day thresholds for when we have to respond.

But I do have some concerns about a percentage threshold because I think, if you think about that from the perspective of a smaller contracted party, especially when we're talking about urgent requests, which, by definition, should be very rare, if I'm a small contracted party and I receive five urgent requests and I miss my SLA on one of them, I'm now out of compliance. So I think we need to be careful and think about this when it comes to using percentages to make sure that this works for everybody in our community. Maybe there's a volume threshold before that percentage kicks in, but I just think, especially when it comes to the urgent requests, we've got to account for the variability in volume between different contracted parties.

JANIS KARKLINS: I think the philosophy behind this proposal is that, at the beginning of the operation, we will not have sufficient experience. That's why the percentage of compliance with the decided days may be lower than once we will have this experience and certain patterns and

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maybe even automated processes. So that we can maybe think of as indicative, but it certainly needs to show progress in the implementation in SSAD: that the further we go, the faster the system should respond to the queries. So I think that this was the philosophy behind it.

But what I hear now is that, if, in principle, all groups like the philosophy, then certainly what I heard from the contracted parties is that they cannot agree on the proposed business days.

Now, whether we will go to negotiating business days like in the Oriental market, or … I don't know how to deal with that. So the initial proposal was 30. Now here it is 5. Then we'll meet somewhere in 15. No, I'm joking. I'm just asking questions. So please think also, both sides, of how to bridge the difference and whether there is any way of how we could formulate a policy recommendation which would be acceptable to all.

Matthew's hand is old. Volker, followed by Margie, Mark Sv, and Alan G.

VOLKER GREIMANN: Thank you. Yes, Janis, you are absolutely right. We will probably need some time to figure out how the request volumes work, how we need to staff this function, and how this can be implemented in the best way from our end. It's a manual task, so the scalability is very limited. The percentages don't really help because, once the first request is delayed due to capacity, all others that come in after that will also be delayed due to the same backlog that still

exists until that backlog is worked off. So I don't see that as helping.

One thing that I could imagine is that we leave this blank for now and have that negotiated between ICANN and contracted parties down the road as part on overall SLA for providing WHOS-related functions or RDAP-related functions that would also tie in this. I think that might work for us.

Other than that, it's really hard to commit to that. One thing that I could see scalability in is … In most registrars, currently the response to WHOIS inquiries are done by the same team that does abuse. We could, of course, take away people looking at phishing and spamming and all kinds of abuse to respond to that because we don't have an SLA on responding to those. So, essentially, you are forcing us to look away from serious confirmed abuse cases to respond to these cases because we have an SLA to fulfill there. I don't think that's something that's really in the community's best interest. But it would be in our best interest because we have an SLA to fulfill.

So we need to really weigh what we want to achieve by this. Do we want to have a workable system that fulfills the expectations of all parties, or do we want something that compromises our effectiveness in other areas as well? Something to consider as well, maybe.

JANIS KARKLINS: Thank you. Margie?

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MARGIE MILAM: Hi. I'm definitely sympathetic to the compliance issues, but I think saying that there would be no percentage or that it's going to be decided by ICANN and the contracted parties won't work for us. We need some certainty, but we also need to find some flexibility, I think, so that, at least in the beginning, Compliance is working with contracted parties. If there's problems, they're finding ways around it. So I think flexibility is important, but, at the same time, that doesn't mean there shouldn't be an actual percentage. That's why I like the idea of the increasing percentage.

A couple things to remember. As part of this SSAD, there will be a recommendation from ICANN on what the disclosure decision should be. So, to the extent that there is work that needs to be done, the contracted parties we would hope would perhaps give some deference to the ICANN recommendation because ICANN, over time, will be developing an expertise that maybe not even the small contracted parties would have. That's certainly something that would help meet the SLAs.

One thing that I think we're missing here on the SLA definition is we've identified the start time – I think it's when the request is made to the contracted parties – but it doesn't say what the end time is. So we have to be very specific on what we're measuring and when we're measuring it. I know this says six months, but it strikes me that we should probably be taking a look at SLAs on a monthly basis, just to see what's happening. That may help actually educate the community and the contracted parties on what needs to change rather than wait until six month later to find out that there's a problem. So I just think that building in some sort of recommendations maybe on implementation to ICANN

Compliance to be collaborative and not be penalizing, if you will, would be useful because we want to give the contracted parties the time and ability to adjust as the system rolls out.

JANIS KARKLINS: But there are provisions which are already addressing your concerns, specifically that the SSAD Advisory Panel reviews the SLA matrix and makes necessary recommendations or adjustment.

Again, for the moment, of course, we are talking in abstract. We do not know how many requests we will have in SSAD. So what we're saying that SSAD should be able to handle all of them. So that's the only thing we can say. We may have 100 – we may have 10,000 – a month. We do not know. Of course, that will require different resources allocated to that. We will probably learn by doing it.

Here we simply wanted to indicate that there should be progression as we go. So that's why this percentage is there. So that's the intent behind.

Let me take now who's next on the list: Mark, Alan G, Brian, and James.

[MARK SVANCAREK]: [I'm sleeping].

JANIS KARKLINS: [Oh, no]. Mark, please?

MARK SVANCAREK: I can be trained. Some of the things were from earlier in the conversation. I think it was Matt who suggested something that was related to the size of the contracted party. This is something that Volker and I discussed: the names under management ratio to volume consideration. I think that's definitely worth looking at, as long as we're not building a system that's built on the weakest link. We know that abuse will go away from where it's looked at. It'll spread out across all the thousands of parties. If we're just pushing it to the least capable parties, we don't want to have a system that encourages that drift.

I think we've already covered the whole SLO/SLA percentage changing over time thing, so I don't need to belabor that. Thanks.

JANIS KARKLINS: Alan?

ALAN GREENBERG: Thank you very much. We started with the contracted parties' proposal, where the only SLA type thing was a statement saying, "30 days and Compliance can take action." We're now on something closer to a true SLA, other than the rules on when your hand gets slapped. Compliance methodology is such that, when you are found in violation of something, you are served notice and given some time to correct it. So you're not going to be killed because you had a problem last week. It's next week that it's going to account.

But the reality in this kind of business is that these things follow a curve. If we set an SLA that's reasonable, you're going to need it most times. Occasionally you won't. Sometimes occasionally in a series of days you won't because that's the nature of distributions.

I think what's missing here is some concept of, "Fine. This is the SLA. Let's hope it's realistic." Now, if Volker is having backlogs, it's not likely to go lower with the SSAD unless we automate a lot of requests quickly. So that's an issue we have to contend with. But really we need almost a methodology of what happens if the SLA is not met regularly. What kind of action can Compliance take?

So we need to have the business model of how we address making sure that we're getting good response, not just the numbers. So I think there's a bunch of work to be done. It can't be done around this table, but I think, once we look at distributions, once we look at how Compliance will react to missing SLAs and what kind excuses will be valid if an SLA is missed so it doesn't count against you, all of that can be ended up with an operable model to do this. We still need to get the right numbers there, and these may or may not the right. But I don't think it's, "I'm missing it. I'm going to lose my accreditation business." Thank you.

JANIS KARKLINS: Thank you, Alan. Brian and then James.

BRIAN KING: Thanks, Janis. One point I'd reiterate for the record here that I put in the chat is that these are going to be very good requests.

They're guaranteed to be complete and accredited requesters. That should help the contracted parties manage these efficiently. I'm not saying that five is too many or too few or business calendar or whatever, but we're going to have better requests for you than some of the garbage that you might be used to or expecting.

With that said, I think, if we can answer the question that we started trying to answer with this conversation, we've heard a lot of the usual talking points and, I think, the policy positions on this. It's all good for us to talk about and to get it out in the public comment and our deliberations on this, but it sounds like nobody hates this concept, that we can all agree that we're in the right ballpark here about how we want to structure the SLA conversation. So I'm encouraged by that. I think we're ready to maybe wrap this up and get going.

JANIS KARKLINS: James?

JAMES BLADEL: Thanks. I was taking furious notes on some of the speakers just to capture everything. I think my biggest issue is the business-days calendar thing because, Becky, how many weeks [did we spend] on the RAA talking about this? Everybody looks at a different calendar. Everybody operates their businesses differently. In some cases, the person writing the code, the CEO, the Chief Marketing Officer, and the person who's going to be responding to these requests are all just one person. We had a registrar – I think

Volker remembers – that broke his leg and ended up in the hospital and was in breach by the time he came out of his coma. These things are unfortunate.

So here's what I'm noting. Small registrars we're going to compel, if we go to calendar days, to become 24/7 operations, whether they're staffed for it or not. I think that is an unfair and inappropriate business burden on these small business. I think, when you say "business days," you can account for long holiday breaks. I think the fear is, "Well, what about Chinese New Year? It's two weeks these folks aren't answering their phones for." Well, we can account for that by setting the shorter of the two: three calendar days or one business day or something like that. We can account for that. But going to just flat-out calendar days tells me, "I want this, and therefore you need to restructure you business around my wants. And by the way, I'm not your customer." So that's concerning to me.

Unfortunately, to Brian's point, this is one of those things where I was totally in agreement on when we started the conversation. I find myself agreeing less and less as we go along.

The second point: be careful what you incentivize. I think if we start holding some hard SLAs, including some stiff penalties, and someone is in a position where they're having a very, very difficult evaluation, evaluating the merits of a particular request, and they're right up against the deadline, they're just going to deny it because it's safer and it's easier. "This way, I don't break my SLA. I gave you a response and it was one time. It was just a rejection. With a little bit more time, maybe I would have given it a more thorough review and possibly release the information." So just be

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careful we don't make the SLAs the stick that we hit people with because they will duck and cover and reject a higher percentage of requests.

The final thing is that I'm totally on board with the idea of increasing the targets as we go along and gain experience with the system. However, I don't think it's appropriate to attach them to dates – six months, 12 months, 18 months. It feels arbitrary. Instead, I'd like to attach this escalating scale of percentage targets to automation of the SSAD. So, as the SSAD gets better, we get better. But, if the SSAD is unable to automate something – let's say the 12th-month milestone – but our target goes up anyway, I think that, again, puts the burden back on contracted parties to find a way to solve a problem that SSAD was unable to solve. So I think that, instead, we should identify which areas which we want automation improvements to trigger some increase in the SLA as opposed to just tying it to an arbitrary calendar.

Otherwise, generally, going back to Brian, I think we're all circling the same general idea here. We just need to hammer out some of these details so that we're not inadvertently [catching up] the wrong folks. Thanks.

JANIS KARKLINS: Thank you. Mark Sv, Volker, Alan Woods, and Chris.

MARK SVANCAREK: I guess I'll change a little bit because I wanted to respond more to James. I agree. The whole situation here is one of incentives, and that's why it's so tough, I think. We don't want to be incentivizing

bad outcomes just because we structured it wrong. I think the idea of changing the percentage targets based on some different criteria might be interesting.

We do keep coming back to the example that some people are less capable. We should build our system to accommodate them to make them not have to do rushed and bad decisions. I'm really worried about that. I'm really worried that we're building a least-common denominator system. So making this about maybe domains under management is the way that we need to think about it. But I think if our default I always to say some people are small, I'm really worried that that will just lead to bad outcomes. I don't know that that's a good approach to take necessarily. So maybe if it's demands under management or some sort of a metric like that. I'm open to a lot of possibilities.

I had another point but I've forgotten it. So thanks for now.

JANIS KARKLINS: Volker, please?

VOLKER GREIMANN: I think one thing that will probably help is if we do not create an expectation of answer for every single ticket or every single request. If the response times are averaged out over a long period – say a year – the questions of capacity and the bursts of requests will probably even out. The peaks will be taken care of by the less frequently used times. So, if we say, for example, 15 business on a yearly average, that would probably be much more workable than having the same on every single ticket.

JANIS KARKLINS: Mark? Reaction?

MARK SVANCAREK: Thanks. In the feedback that I submitted to the document earlier, I mentioned that there are a lot of SLAs in there that are mostly automated things. I tried to express those with two things: what is the worst case – like a two-hour worst case – but what is the mean case? We could express that as 95% of something like that. I think it's good to think of it that way. That was also part of the question about are these aggregate numbers? Are these the per-contracted-party numbers? And should they all be applied identically? The idea that not every request has to be exactly some number but it is some percentage of them … And over what period of time we look at them over a course of a year, what was your throughput? What was your latency? I think those are all good concepts that we should be thinking about. So I support that.

I think we have a lot of flexibility, really, in how we approach this. We just have to make sure we wind up with something that is predictable for all the parties and practical to put into implementation and improvable over time. Thanks.

JANIS KARKLINS: Thank you. Alan?

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ALAN WOODS: Thank you. First, one thing that I'm [inaudible]. I'm just going to be that person and say you were talking about how you can guarantee that you're going to give those good requests. You've said that to us many times: "You can guarantee that you'll give a good request, but you can't guarantee anybody else is going to give that good request as well." So that's two sides.

One of those things that I just want to ask, I suppose – apologies if it has been asked; I don't think it has been – and that is jut to get ICANN Compliance. They may get an awful lot of work from this at this point because we're trying to set a level that could trigger an awful lot. How are ICANN Compliance … Are we going to have to canvas them and see, "Is capacity is coming in through in this for you?" How are [we] going to react to that? So I would like to get their, obviously, input and involvement on this because they're the ones who are going to be picking up an awful lot of work [per task], or not, obviously, on this. So, again, we just need to be careful that they're aware that this is coming down the line to them.

Finally, again, from a registry point of view, I'm not really going to make a huge difference forcing this because I have a feeling it's probably going to go squarely on the heads of my registrars colleagues more than the registries. All I can say is that such SLAs in my mind are almost punitive at this moment. They're so high. They're difficult for me to even swallow. I'm worried for them.

So, again, I think we need to be balanced in this, that we're trying to aim to get those bad actors that don't respond or respond very badly to these. And we're creating a huge expectation on those people who are not. Let's not forget that this is a broad spectrum

of good to bad. Let's not forget that the good people are going to be well affected by this as well.

So can we just [have] good faith on both sides – that would be helpful on that one – and not make this to be punitive?

JANIS KARKLINS: Chris, please?

CHRIS LEWIS-EVANS: Thanks. I just wanted to highlight something that James said really. [I agree] with another point. I'll go with the [agreed-to] one first because its always easier. I quite like the idea of one business day or three calendar days. That's quite a good point we can probably come to quite good agreement. So I think, when we do discuss that, to have that in mind would be really good. So one business hour or three calendar days – whichever.

The other thing is I think we discussed – I can't remember if it made it into a recommendation or an implementation note – that a substantive response doesn't have to be the data. If you're struggling with doing the balancing test because it's a real difficult one, a substantive response might be, "Hey, you've asked for this data. It's really difficult for us to balance this. We need some more information." That's a proper response. You can do that a lot quicker than you would be able to do a full balancing test.

So I think that just because some requests are more difficult than others shouldn't really affect an SLA. You should be able to say, really, "Sorry. This one request is really difficult. You've chucked in

10,000 domains to request," or whatever then issues is with it. I think a substantive isn't necessarily the data. It's, "We've got your response. We're working on it as quick as we can. We need this more information," or, "This needs some other method for us to do it." So I'm just pointing that out because I think that'd be good to capture in this section as well.

JANIS KARKLINS: Mark Sv, Volker, and James.

MARK SVANCAREK: Thanks. Alan, just how you hate to be that guy, I guess now I have to be that guy. I know that the whole Compliance issue is going to be a hard one, but if we don't have something that is impacted by Compliance, then there was on point to the whole exercise. So, yeah, we do need to get them onboard immediately so that there are no surprises on either side. But there does need to be some sort of Compliance consequences. Otherwise, we didn't actually accomplish anything. We just built this beautiful measuring machine that had no consequences for anybody. That is a step forward. At least we have a measuring machine. But it doesn't necessarily lead to good outcomes.

I do recognize the idea that you are very worried about the bad requesters who are not at this table. We are likewise worried about the bad disclosures who are not at this table. It's okay to say that. We don't necessarily trust each other's constituencies. That's fine. We don't take that personally. It's a problem that we

both have to solve on both sides. I recognize the challenge. Thanks for your patience. [Bye].

JANIS KARKLINS: I will take two more interventions and then probably we need to decide how to proceed on this topic. Volker and James?

VOLKER GREIMANN: Yeah. Just a question maybe to the group. Taking away the priority one and two groups, what is the expectation or the goal of creating the SLA for Category 3? Is it really the expectation to have a response for the average ticket after that amount of time or is it more to have some facility or some mechanism to force the so-called bad [Nick Cages], bad actors, to comply with the policy? So to have a bat to swing in case you're faced with a bad actor, to compel them to answer at all?

Because, ultimately, there may be better ways that have an overall SLA that creates an obligation to respond in X amount of days. If the real focus is actually just dealing with the bad actors to compel them to answer at all, there might be better ways than having this fixed amount of days. What is the goal here? What are you trying to achieve? Or is it both?

It sounded like the real goal is actually to have something to be able to go after the bad actors and there might be better ways for that.

JANIS KARKLINS: James?

JAMES BLADEL: Hi, thanks. I think a couple of comments. We previously talked on the idea of penalty structure. Usually, SLA violations are measured n fines, financial penalties. Usually, it's either a payment that you would have to make to a counterparty to an agreement. In this case, I guess, ICANN. Or it would be some payment that you are expecting would be reduced by your performance level, or lack of performance level.

If we're talking about a penalty structure that doesn't use payment, that instead refers things over to compliance, then it's also something that needs to be invented—maybe not at this table but some table—because we really don't have a recipe for that. And I don't know if Dan or Eleeza, if you guys have any thoughts on this. But maybe there is some existing prior work that we can borrow from registry or other DNS providers. So, thanks.

JANIS KARKLINS: In the meantime, Alan G and Margie. But, look, we need really to somehow come to some kind of conclusion on this.

ALAN GREENBERG: Yeah. I was going to ask a question. I guess I'd like to hear from the registrars at the table what number they believe they could meet two-thirds of the weeks or something like that. What is your typical response? Not the worst case and not the best case, but what could you typically meet? And I think that information feeding

back to us would really give us a hand at how we have to set it, and then it comes down to, as I said before and as James said, understanding what kind of action compliance will take and how many infractions before they get really something back to you.

I think real information fed back from the registrars as to what realistic expectations are—not guarantees but expectations—most of the time, two-thirds of the time, would really help.

JANIS KARKLINS: Yeah. Pleas.

UNIDENTIFIED MALE: Just very quickly, we don't know. We don't know what the volume is. But let me take a swing at it, as long as you're not taking this to the bank. The closest analog we have right now is, in terms of a high-volume system like this that's under pain of compliance, is invalid WHOIS reports. And those can come from ICANN or third parties or they can come through a tool that we have on our website.

Now, that's a steady stream of reports that require investigation and follow-up and processing those can take anywhere from … I'm guessing here but I would say something like five business days, seven calendar days before … That's worst case and that's if we get a boatload of them. And by the way, ICANN has this really great thing of turning over a whole spreadsheet full of reports right before they close for Christmas, so thanks. They do that all the time. And right before ICANN meetings, of course, as well. They kind of clear their queue on us.

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But that's the best thing … But there's so many variables here in terms of these are going to take a heck of a lot longer, individual cases to examine. They're almost going to be almost like mini little discovery things here and we could get a lot more of them because not just invalid WHOIS reports but reports of I want to know what the WHOIS data, formerly WHOIS data, is. We could see a factor of 10X of a jump in that and we have people that do this pretty much full time. So, I keep coming back to my statement of how many folks do we need to go out and hire to make this work?

VOLKER GREIMANN: And Margie.

MARGIE MILAM: Thank you for the interesting concept of incentives for people that … I think that's, Alan and James, we should think about how to build that into the process because that's certainly something that would help.

I want to kind of share our perspective. [We] do submit a lot of requests and the frustration that I've shared at ICANN meetings regarding non-compliance, I think there's just big buckets that ICANN Compliance can do something about. For example, registrars that never respond at all. It's not even the SLA thing. But let's talk about clear-cut examples of no responses or you'll get a response saying, "Request received. We'll get back to you." Then there's never a follow-up.

I think that we should, at least initially, make sure that ICANN is focused on getting those folks up and doing … And give flexibility to the ones that are actually trying and are doing … Staffing up and learning their processes and stuff. So, I don't know how we build that into the policy but I would encourage a statement that really invites ICANN to take action in obvious cases of non-compliance and to work with registrars or contracted parties in a cooperative, collaborative way so that we get to SLAs that are actually achievable and not being punitive.

JANIS KARKLINS: I think it was worth listening to all these comments. On systemic side, I think that there is an understanding that the system needs to be … That the response time needs to be improved as we go, provided that the volume of requests remains steady. And we need to correct or adjust the SLAs or the response time based on [inaudible] experience. That's kind of a systemic issue that we covered in there. There's no disagreement with that.

In relation to specific numbers, what I understand is that it may be very difficult to agree today because there are so many variables from one side, but from other side, I fully appreciate the concern of Business Constituency, based on prior experience when no response is given at all. So, there is expectation that SLAs would resolve this issue.

So, my question is would that be feasible to identify, let's say, two people from most interested groups—meaning totally four—and Caitlin would assist and these four people would go out in room 213 and work on this part, trying to read an agreement that we

could put in the initial report, while others start working on the list of cannot live issues that have been submitted so far. Can we sort of decide to split and then try to expedite the conversation?

Okay. So, who would be the lucky four? [Mark], Matt. You'll probably, one of you two would like to stay in the room. Okay.

MARIKA KONINGS: Can we give instructions already?

JANIS KARKLINS: Sorry?

MARIKA KONINGS: Can we give instructions before they take [inaudible]?

JANIS KARKLINS: Yeah. Look, [Mark], Matt. Who else is volunteering?

UNIDENTIFIED MALE: We definitely need five minutes or ten minutes.

JANIS KARKLINS: Okay. So, we break now for ten minutes.

MARIKA KONINGS: If I [inaudible] can give groups instructions, so those that are not considering this can already get started. So, Terry will be handing

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out … Volker? Attention. Thank you. So, we'll be handing out the list. Don't get scared. It's a list of 63 items. But going through them, I think there are quite a few where it's more clarifications. Many groups have said, "This is not a live or die issue for me but I think it's important to clarify."

So, the question for you is go through that list and mark those items if we make that change, you cannot live with it anymore, so we know which issues we need to discuss, and those that are not flagged, we assume you're fine with the change or the clarification that is proposed.

Also note, of course, some of the issues we're already discussing. SLAs were on the list. I also note there were some comments on the graphic that is in there. That's also a topic for tomorrow. So please focus on those that are not on the list for conversation, either today or tomorrow. So when you come back, we expect to hear from each of you, again, numbers of which of the topics you think needs to be further discussed because your group will not be able to live with the change that's being proposed by someone else. Thanks.

JANIS KARKLINS: So, for the moment, we are breaking for ten minutes and then you'll continue working on those cannot live and then Matt, [Mark], and one or two others together with Caitlin go to room 213 and continue working on this SLA part. [inaudible] break.

So, where we are and how we will proceed. My proposal is the following. Marika will make an overview of issues that have been

flagged and then provide some clarifications and then we will go item by item that have been identified must discuss or cannot live with.

Now it is 5:00 and I would suggest that we go in chunks of 100, meaning one hour and 45 minutes and then we do 15 minutes break and then we go one hour and 45 minutes and then 15 minutes break. Whoa, whoa, whoa. Wait, wait, wait. Until we exhaust all issues that have been flagged. And let me explain the rationale.

Then, after that, staff will adjust the text and we'll send the text to the team and we will start the final reading of the document tomorrow morning. Otherwise, we will not get anywhere and we will not meet the deadline of 7th of February.

So, what I would suggest, for those who flag issues, let's try to be as constructive as we can, and if somebody covers already your concern, please do not ask for the floor. Then we will try to go through as swiftly as we can. Tomorrow morning, we will do the final reading and then we will determine whether we will meet the 7th of February deadline or not. That's the proposal. With that, Marika. Julf, your hand is up.

JULF HELSINGIUS: Thank you. Unfortunately, some of us have blood sugar and dietary issues. We just can't go on that long without eating something, for health reasons.

JANIS KARKLINS: That's why I'm suggesting one hour and 45 minutes and then 15 minutes break to get some sugars that will be outside the room.

UNIDENTIFIED MALE: We're ready to order food, to have it delivered.

JANIS KARKLINS: So, staff says that food will be delivered if we will see that our stay here is prolonged.

UNIDENTIFIED MALE: What kind of food and how much?

UNIDENTIFIED MALE: If there is sushi, I'm in.

UNIDENTIFIED MALE: Maybe negotiate over [food].

JANIS KARKLINS: Please. And this is the way how all of prolong our stay here. I understand that this is not easy but I would suggest that we follow that and see how we go. Certainly, we can work until 7:00. This is not exaggerated request. Stephanie, please.

STEPHANIE PERRIN: I don't mean to be disrespectful at all, but there are quite a few mistakes in this document and we are taking our time to try to

catch them because we missed some the first time. And they may not be hills we're going to die on but we cannot release a dog's breakfast for a consultation document. And some of the deletions we're going to propose are going to require more negotiation with our colleagues.

So, we are not trying to hold things up. And to say that we're being difficult and making everybody go through the torture of staying here all night is I think unfair. We're trying to focus on a quality product that respects the law. Thank you.

JANIS KARKLINS: Marika, please.

MARIKA KONINGS: Yeah. Thanks, Janis. So, before we start going through the issues that have been flagged, I just wanted to not a number of corrections that came in as a result of people looking at the document.

For item 31—and that's one that the Registry Stakeholder Group flagged, so you may just want to check if it's still an issue after I [inaudible] a change. There's actually concerns, language in line 638. I can quickly scroll there so you can see what that is.

So, there was a suggestion here to change "processing" to "considering". I think there was not a live or die change. It was just a clarification. The original change didn't make any sense but we found the right spot. Is it still an issue for you or we can take it off the list? Otherwise, we come back to it later.

So, if it's still an issue, we just leave it. I don't think we should discuss now but if it was just because the language was originally wrong in there. [inaudible].

Then there was another, item 41, that has been flagged by quite a few groups. I'm just going to scroll there as well. The change that IPC suggested was not to the first "may" that was in the document but it was to the second "should". It may still be a concern but just so you're all clear that the recommendation is not that contracted parties must follow the recommendation of the central gateway but the contracted party must communicate reason if they do not follow the central gateway manager. May still be an issue. No, I know it may still be an issue but I just want to clarify that that was … The original change was not [what was] being proposed.

UNIDENTIFIED MALE: But we had all these swear words all ready to go and now we don't need them.

MARIKA KONINGS: Another one. That one is completely my mistake on 46. I actually … Let me see. One below. 46, I deleted—[inaudible] deleted the wrong sentence. It should have been the second sentence and I thought that was the last one. So, this has already been flagged by several parties as well, but just so you are clear on what was being proposed.

Lastly, I think that's an item that we get to. In any case … Let's see what those are. Items 14, 15, 16, and 17, they talk about the authorization credential. I think from [inaudible] understanding that

is no longer being discussed, and as such, should be deleted. I should have marked those items as proposed text for deletion but I think some are flagged that maybe these items are still relevant, so that's something that probably should be discussed. But I'll just mark so you can see that this is text proposed for deletion as it's no longer, or at least [inaudible] at least part of the authorization credential doesn't seem to be in place anymore in our new model. So, maybe with that, we start going through items that have been flagged.

JANIS KARKLINS: The first item is number two.

MARIKA KONINGS: That has been flagged by IPC, BC, and ALAC.

JANIS KARKLINS: So, the proposal is to replace contracting parties with registrars where applicable throughout the report. Brian?

BRIAN KING: Is it still me or did somebody have their hand up?

MARGIE MILAM: Go ahead, Brian.

BRIAN KING:	Okay. Sure, I can start. So, I think he concern here is that we wouldn't expect that you can only get this data from the registrar. That's a wild departure from what we've been discussing since the beginning. We've always used the term contracted parties and we have thick WHOIS for the very reason that—well, for lots of very good reasons. But it would not be appropriate. I don't think we'd be able to agree that only the registrar is able to provide us with the data. Thanks.
JANIS KARKLINS:	Alan?
ALAN GREENBERG:	Basically, the same thing. We know registries currently get requests, so we either need to make a decision that if someone wants to request something from a registry, they can't go through the SSAD or we need the SSAD to be able to give you the option of saying, "Where do you want to go?" It's one of the two.
	So, if they can't go through the SSAD and you can only contact registries directly, bypassing this whole work we're doing, then yes, we can change registrars to registries. But I've never understood that that is the intent.
JANIS KARKLINS:	Marc?

MARC ANDERSON: A couple of reasons for this, and it goes back to a statement Volker made at the last LA face to face. The registrars are authoritative for the data that's being requested. They have the relationship with the data subject. They're in position to be authoritative for the data that's being requested and they're in the position to perform the balancing test if needed.

So, I think it was Brian who mentioned we have largely used the term contracted party and we've not corrected that previously, but this is something we need to correct. The registrars are authoritative for this. It's not the registry's job to provide a backup for the registrars. Data escrow provides that function. And we want to avoid issues of venue shopping where you get to pick who you want to go request the data from. The registrars are the authoritative source for this data. That is where the SSAD should go to get the data, period.

JANIS KARKLINS: So, with this explanation, would that be acceptable?

ALAN WOODS: Also, nothing in the SSAD prevents somebody from going to the registry as well, in the sense of we will still do our duty as a data controller. So, there's nothing stopping [you]. We're just saying the SSAD makes much more sense to go to the registrar. And again, the registrars are more comfortable with that as well.

JANIS KARKLINS: Margie?

MARGIE MILAM: I think an example by this doesn't work. Unfortunately, there's a lot of bad actors in the industry and there are registrars who just simply don't respond. So, we have to be able to go to a registry if the registrar is just simply not responding and that is … It's the current case right now. This is what we see day in and day out. So, we have not as a group said that thick WHOIS is gone. That's not in our recommendations and there are recommendations in Phase 1 that talk about the flow of data from the registrars to the registries. From the very beginning, we've been assuming that we can go to the registries, and in fact it's probably more efficient at times to go to the registries instead of the registrars. So, this is an area that is a concern for us.

JANIS KARKLINS: Volker?

VOLKER GREIMANN: Yeah. Marc said it very correctly. The registries in most cases do not have the necessary information that would be required for a balancing test. In some cases, the registrars even don't have the registration but we're [making that] concession that we will still try our best to do that.

In many cases, the registries don't really have a purpose for collecting that data other than being required to do so under the ICANN agreement. Many registrars are sending dummy data to the registries when they don't have a purpose and there are data transfer issues also affected, so basically the registries, in many

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cases, already only have redacted data or partially redacted data in their databases. So, the usefulness of the data also is in question.

I think by making it clear what the best address to get that data actually is and the best address to get a balancing test done is I think reflected in this proposal by making it clear that the registrar is the entity responsible for that.

That means for us that registrars are taking on this entire burden on themselves, that we are freeing the registries from having any implementation requirements on that area in that regard but that's something that we are willing to do.

I think it would be wise to make that change, even if we haven't said before that this would effectively mean a move back to thin registries, ultimately, unless there is a purpose for collecting their data which some registries obviously have. I think it would be the wise way to go forward, simply looking at the facts and the realities of the [matter].

JANIS KARKLINS: Alan Greenberg, please, followed by Chris.

ALAN GREENBERG: Thank you. Two points. I'll be very quick. Number one, for what it's worth, the thick WHOIS PDP did determine that the registry was the authoritative source. It doesn't matter if we agree or not.

And number two, this is an awful late time to be trying to make this change and get agreement from this group, and this is a substantive change and a very significant one, certainly to some people around the table. I think it's just not advisable to try to have this discussion right now.

JANIS KARKLINS: Chris?

CHRIS LEWIS-EVANS: Thanks. Just a clarification question for the registries and registrars. If you have a number of small registrars, would they ask the registry to do the process and activity needed from the SSAD on their behalf, obviously as a cost savings thing, and in which case we stick with contracted parties?

VOLKER GREIMANN: Ultimately, this would also be a liability issue. I mean, outsourcing this SSAD function, this disclosure function, for registrars always carries the risk that the other party that you're outsourcing it to is not performing it correctly while still having the obligation towards the data subject directly. This is also the reason why many registrars redact the data that are there [sending] to the registries because they are not confident that all the registries around the world are correctly implementing the GDPR because they might think it wouldn't affect them.

Therefore, we think it's advisable to make that switch but I can appreciate that this is something that we probably shouldn't be

discussing at this late hour. Otherwise, we might be sitting here until Friday if ICANN is agreeable to postponing our flights back but I doubt that. I think this is still something that needs to be discussed but probably not now.

JANIS KARKLINS: Becky?

BECKY BURR: Well, if we're going to agree not to discuss it now then I don't need to say what I need to say. But the fact that some registrars may be sending dummy data to registries is a little worrisome because I think that's probably a violation of the thick WHOIS policy if it's a new gTLD.

I just want to repeat that the Board has been very clear—it was clear—in its acceptance of the Phase 1 recommendations, that if the recommendations are intended to overturn existing consensus policy, they have to do that in a transparent way through a formal process. So, the Board does not believe that the Phase 1 PDP revoked, repealed, or undid the thick WHOIS policy.

JANIS KARKLINS: So, James and Brian.

JAMES BLADEL: So, let me see if I can talk everybody back from the ledge a little bit. I'm going to try. I'm probably going to fail. It doesn't … First of all, I agree with Becky. I don't know anybody that's sending

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dummy data. I don't know even by dummy data if they're sending redacted data, then they should be smacked, okay? We send the right data or we send privacy-proxy data but we don't send dummy data. And that's …

So, this doesn't undo or [return] the thick WHOIS policy because it doesn't change the fact that we're still transmitting data from the registrar to the registry. Alan, I am searching for that definitive conclusion. There's a lot of discussions about who is authoritative and who isn't in thick WHOIS policy. But I don't believe they reached that conclusion because we collect the data. We are responsible for the data being accurate and we are responsible for giving it to the registry. How that translates into the registry being authoritative is a torturing of the word "authoritative".

But let me back up a second. I understood this to mean not a late addition but a clarification. If this is a hybrid model and it's distributing requests, how does it know which of the two parties to send that request to if it's not specified by the requestor? Which is probably 90% of the cases. The default setting should be to send that request to the registrar.

Now, we can put in mechanisms to send it to the registry if it is requested or if the registrar fails to respond and you still need the data and while compliance does their thing and the gears of ICANN are [inaudible]. But you need to give it a default.

And we, even amongst ourselves, registries and registrars, had a tense meeting a couple of weeks ago to talk about this issue as well, and I think what we're saying is it should start with the registrar, the person who has the contractual and commercial

relationship with the data subject. We can build all kinds of safety procedures and guardrails if that doesn't work but most people are not going to care when they ask that first question. And SSAD should say, "If you don't care, then I start with the registrar," and wait until that fails.

So, I don't know if that gets us any closer. Stephanie says no. I don't think it changes. I'm sorry, if I could and I'll … I don't think it changes. I think it was a huge miss on our part because even registries and registrars, it took one of our internal people to say, "How did you miss this?" If you are creating a hybrid model that sends it to the contracted party, which contracted party [inaudible]? We don't think of that.

JANIS KARKLINS: So, look, let me make a proposal. We do not change throughout the text of the … We keep throughout the text contracting parties, but then there is in the [inaudible] line—please look at line 93 which defines main SSAD roles and responsibilities. Under this heading, contracting parties responsible for responding to disclosure requests that do not meet the criteria for an automated response, we would provide the clarification that the responses as a default should be sent to registrars but that does not exclude that queries could be sent also to registries … Something along the lines. And I think that staff is capable of providing that input, clarification. And that would address your …

VOLKER GREIMANN: One thing that concerns us about this is that it invites venue shopping. Get a negative from the registrar? Ask the registry.

JANIS KARKLINS: First of all, you, Volker, told yourself that it is too late to discuss this one. I am suggesting that the constructive way forward, we do not change throughout the text but we clarify that, as a default position, queries will be sent to registrars but that does not exclude that in some circumstances queries could be sent also to registries, full stop. And then we have the default position. This is exactly what you're asking. But that does not exclude that in some circumstances they could be sent also to registries, though some circumstances will be defined by real-life situations. Laureen, are you in agreement?

LAUREEN KAPIN: I am in agreement as to the concept but not the placement because the placement is almost like a defined term and I don't think you could say contracted parties means "use this mechanism" so I'm just quibbling with where you want to put this, not the concept. It's not my issue. I'm just adding an organizational point that I don't think that's where this should live, but conceptually, to me, it seems to move us forward. But it's really for my colleagues to weigh in substantively.

JANIS KARKLINS: Okay. If you agree conceptually, then staff will think throughout the night and [now] we will propose it immediately. Alan?

ALAN GREENBERG: You said also send to the registries, which implies, could be inferred that you're sending it to two places at the same time. That is not, I don't think, was the intent. I would suggest that it could be sent to the registries at the requestor's request. Sorry, that's redundant but …

JANIS KARKLINS: I said that, in some circumstances, could be sent also to … I'm not saying in parallel. I'm saying could be sent to registries [inaudible] also. In some circumstances, could be sent to registries. Stephanie?

STEPHANIE PERRIN: Just a point of order. Are we following the queue? And if so, I had my hand up a while ago. My second point, of course, is we have noted in our comments—you'll see them shortly, I hope—that the failure to make determinations on who's the controller, who's the co-controller, who's the processor leads to this kind of confusion. It's very, very clear to me that the registrars are the primary controller. That's not a word necessarily used in the GDPR but it's one used in practical terms. They are the primary controller—but we haven't agreed that yet. And these disclosure decisions that are in the SSAD, we have no clarity on who is the primary controller for those decisions.

So, quite frankly, while this is last minute, it's necessary because we have made these clear decisions. Thank you.

JANIS KARKLINS: On the point of order, I had seven hands up. I am just trying to speed up the consideration and I proposed something that may meet—bridge this gap. And I understand that this would be something staff would propose, the placement where it would explicitly explain where priorities will be sent as a default and where they will be sent in certain circumstances. So, objections? Please lower old hands so I can see for the next. Now, anyone objects to this proposal?

UNIDENTIFIED MALE: I don't necessarily object to it. I just want to point out that I think it's fine for the initial report but I think between the initial report and the final report, we'll need to flesh out what those situations and circumstances are. I think for the purposes of our time here tonight, what you proposed, Janis, is fine.

JANIS KARKLINS: Thank you.

UNIDENTIFIED MALE: But whether we note that in the text or not but, as long as we're all in agreement, that's fine.

JANIS KARKLINS: And you will always have a chance to provide a comment. So, what are the next ones?

MARIKA KONINGS: Next one is number six. This one was flagged by the registrars, IPC, BC, Registry Stakeholder Group, and ISPCP. And this is an edit that was proposed by the GAC to add clarity to the specific section, so what was added was the word "directly" which is in bold. Let me scroll there.

JANIS KARKLINS: So, Matt, followed by Brian and James.

MATT SERLIN: Sorry, old hand.

JANIS KARKLINS: Brian?

BRIAN KING: Yeah. Thanks, Janis. We were okay with "directly" but what was missing here was the what gets sent to the centralized portal in this case. So, it makes sense that if the answer is no, then the rationale needs to go to the SSAD or the centralized gateway, and if the answer is yes and the data is provided, while the data itself doesn't need to go to the centralized gateway, for tracking and logging purposes, the centralized gateway needs to know what fields were disclosed. So, postal address or email address. So, that was the clarification that we need to add there.

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JANIS KARKLINS: James?

JAMES BLADEL: So, I'm going to plus one what Brian said, that rejections can go to the gateway but disclosures can go to the requestor, plus notification to the gateway. But I still … I don't know that we've fully fleshed out the mechanism or the method that we will send that to the requestor, particularly if we don't know who they are and the gateway doesn't want the data. That's a little bit of a pickle that we need to flag for the final report, if not implementation.

And I think some of the data protection laws say things about making sure it can't be an unsecured channel, like email. So, we've got to come up with something.

JANIS KARKLINS: Alan Woods?

ALAN WOODS: What James said.

JANIS KARKLINS: Okay. So, staff captured that and will be edited in the next iteration. Next?

MARIKA KONINGS: So, the next one that was flagged was number 7 but I would like to propose that that is [part] for now because these comments are

related to the very basic graphic that we included that is a placeholder. Berry has actually developed a very nice and sophisticated swim lane version that I think he'll be sending out soon, so that you can look at it and we can discuss that hopefully tomorrow with those interested. So, it was the contracted party, I think the registrars that flagged that one. Are you okay with leaving that for tomorrow?

UNIDENTIFIED MALE: Sorry, which one?

MARIKA KONINGS: Number 7. That was basically the ugly graphic that's in there now.

JANIS KARKLINS: So, Berry is sending out the swim chart as we speak. And we'll discuss it tomorrow.

MARIKA KONINGS: On the next one, this one was flagged by ICANN Org—number 10. Actually, I think it was just a question of maybe clarifying language because I had the same comment from the ALAC. Maybe I can make a direct suggestion here for clarifying this language, that it would be something like responsible for managing and directed automated request to contracted parties to release data consistent with the criteria established based on the recommendation of … Established by this process or based on the recommendations of the advisory group. That seems to clarify

better what was intended here, and we can of course write that into the version you'll get tomorrow. If that works for everyone, I don't think we need to look at that one.

JANIS KARKLINS: So, if that works for everyone, then we can go to the next one. Can you repeat, please, maybe for the clarity of everyone?

MARIKA KONINGS: So, the language would read—and that's the second sentence. It would read: responsible for managing and directing automated requests to contracted parties to release data consistent with the criteria established by this process or based on the recommendation of the SSAD Advisory Group.

ALAN GREENBERG: I think you need an adjective before automated requests. Accepted. Not accepted. To indicate you're only doing that for ones that the SSAD has decided to release data for, as opposed to all ones handled automatically. Agreed to automated requests. Needs an adjective or an adverb or something there.

JANIS KARKLINS: Stephanie, please.

STEPHANIE PERRIN: Given that we haven't agreed exactly what this SSAD Advisory Committee looks like yet—it's only a concept and I don't think we

have agreement on it—could we square bracket that? SSAD Advisory Committee or equivalent. Or however constituted. Because the more we put it in as if we've already developed it, the more then we have to turn around and come up with a model. Thank you.

JANIS KARKLINS: Okay. For the moment, we put Advisory Committee in square brackets and we'll see [when] we will get to the advisory committee part.

MARIKA KONINGS: So, the next item is number—

JANIS KARKLINS: Sorry.

MARC ANDERSON: Sorry, I had a hand up. I guess this is for ALAC. What's wrong with the policy recommendation? Why change the policy recommendations to process? I'm not sure what this process refers to, taking out the policy recommendations and replacing it with process.

ALAN GREENBERG: We don't think that we're actually making … We're not making the decisions here, although we have suggested two specific types of requests, that is law enforcement in the same jurisdiction and

UDRP/URS. We're not defining all the other ones here. We're setting up a process by which they'll be defined.

JANIS KARKLINS: So, Marika is typing now the proposed language on the screen.

ALAN GREENBERG: Marc, if I can give you further elaboration. If this was a mathematical thing and we had brackets around the whole first part of the sentence, and then as agreed to by these policy recommendations modified the whole thing, I'd be happy. But the way it reads otherwise, it sounds like the recommendations of the SSAD Advisory Group are being agreed to by this policy process, and that's not the case.

MARC ANDERSON: Okay. I see what you're saying. I mean, I'm trying to set the bar at what I can't live with. I think it should refer to the policy—that's what we're doing here—not the process because I don't know what the process is. But I don't want to die on a hill over this at 5:30.

ALAN GREENBERG: I'm sure we could rephrase it to say this whole thing is policy, but by definition, the PDP is policy so …

JANIS KARKLINS: Okay. We will still have a chance to look at it tomorrow. So, the next one.

MARIKA KONINGS: Yeah. So, the next one is just right here under … Actually, it goes into two pages. So, it's number 11. The change here that was suggested by the ALAC is in point two instead of "should changes [proposed]" to make it "will". So, categories of disclosure requests which will be automated. And I think the registrars and the ISPCP flagged this one for discussion.

JANIS KARKLINS: Marc? Oh, that's an old hand. On 11.

MARC ANDERSON: Old hand, sorry.

JANIS KARKLINS: Alan Greenberg, on 11.

ALAN GREENBERG: Sorry, the was up. But since we find this one—

JANIS KARKLINS: No, no. You don't need to speak if—

ALAN GREENBERG: No, since we flagged this one, I'll identify it and may withdraw it. I may have missed something yesterday. I thought when the SSAD Advisory Group comes to a conclusion that a specific type of request, a model, fits and everyone agrees on the SSAD Advisory Committee, including the contracted parties, that it would simply be put into the SSAD table.

If indeed there is now a process that follows that that I missed, that it goes to somebody else to make the decision, then the "should" stays and I withdraw the comment.

JANIS KARKLINS: So, then the comment is withdrawn and text stays as is.

MARIKA KONINGS: So, we're going back to "agreed [inaudible] policy recommendations".

JANIS KARKLINS: No, we maintain "should" instead of "will" on 11.

MARIKA KONINGS: Oh, okay.

JANIS KARKLINS: Okay. So, we're done with 11.

MARIKA KONINGS: Next is number 12. This has been flagged by ICANN Org and IPC and BC. The change or the update that has been made here is staff proposals as a clean-up item, as we no longer talk about the authorization provider. But I think this also goes to the question that comes down later, that authentication credentials, are those still relevant? But I want to note as well that in this comment there is a more general comment from the NCSG but for which they have not provided any specific language, so that probably should be discussed. And I guess if there's support for that specific language, it will be provided by the NCSG. So, there are two items basically in this one.

JANIS KARKLINS: Stephanie, please.

STEPHANIE PERRIN: Just to explain this. We find, basically, that the failure to make determinations as to the controller relationships, particularly when we're getting down to the nitty-gritty about who makes decisions in this SSAD, is … Well, it's counterproductive as we've said for months and months. We need to know that in order to figure out where the "shoulds" and the "shalls" go because in no way should a contracted party, like a registrar that is the primary controller, be told what to do by an instrument that we have developed, such as the controller of the SSAD, because the accountability of that entity … I mean, it's a data processor as far as I can see right now. You don't have the data processors giving policy decisions to a data controller to implement.

So, we believe that all the way through the document there are should and shalls that need to be, in the very least, square bracketed, and in many cases, changed. And I offer you this recent discovery of the contracted parties, that they don't mean registry; they mean registrar, as an example. When you start unpacking this, it unpacks a lot of the language that we are nailing down here and I do believe we will have a confusing report to release if we don't square bracket this stuff and give an adequate explanation of the implications of controllership. Thank you.

JANIS KARKLINS: Stefan?

STEFAN FILIPOVIC: I'm just wondering, have you received NCSG's input on the document? Because also we have comment on item number 11.

MARIKA KONINGS: I just saw your email. You sent me the whole Google Doc. It would be really great if you can just send me the numbers of the items you want to discuss. That will be easier to flag.

STEFAN FILIPOVIC: Okay.

JANIS KARKLINS: Margie?

MARGIE MILAM: The change we wanted to make on this, at the end where it says the decision will reside with the registrar and ICANN. We would also include the registry per the discussion we were talking about earlier, if the request goes to the registry. So, we recommend inserting registrar, registry, and ICANN.

JANIS KARKLINS: So, Alan?

ALAN WOODS: An initial reaction to what Margie just said there. We have to be really careful that we've just said three people will make the decision there, based on what you are drafting and that's impossible, obviously. I mean, I'm just saying we have to be careful.

And I just wanted to give a plus one to what Stephanie is saying. I mean, it is clear now that we have decided the model that we do have to go through the entire document again with a fine-toothed comb with that in mind. It becomes more difficult. We need to ensure that it is an appropriate—that the words are used are appropriate and the controllers are the ones that have to be given a lot more deference in certain instances because it is their decision and they can't be told what to do in certain instances as well.

Personally—and I flagged this for the team—things like recommendation 6, there are certain things in there that makes

my head kind of spin because you're telling what the controller should be doing, even though it is what the controller is doing based on their own free will, basically, and we have to be very careful.

So, it's a plus one for what you're saying. I think it is definitely something we need to flag. I don't think it's stopping us now but it's something that we will have to do. I mean some [inaudible] were saying that this needs to be cleaned up now that we've chosen that level, if that helps.

JANIS KARKLINS: Certainly. Actually, this is what we're doing. We're cleaning it up. And tomorrow we will do another reading and probably, after tomorrow, we will do another reading before releasing the document.

I'm a bit confused that there isn't clarity about the model and who makes the determination. Let me try to say it again, that the determination ultimately is done at the level of contracting parties by the registrars or registries.

So, registrars, registries may delegate the decision-making to an automated process. In that case, on certain circumstances or for certain things, we discussed law enforcement request, UDPR [automated] request. So, these are delegations of decision-making authority to automated process, right?

So, in that case, automated process will say, "Please release that data that you possess," and if that is what is acceptable, then of course automation is not working from that concept.

So, this is what you were asking, to be in the control of decision. You are in control of decision unless you delegate decision power to the automated process.

ALAN WOODS: [off mic].

JANIS KARKLINS: Of course. That's your decision. And this is a policy. If you said that you can delegate to automated process the decisions and disclosure on the queries sent by law enforcement, specifically in national jurisdiction. So, it is your decision. You did it. But then this automated process will ask you to release data and that is processor is asking controller to do something, but this is because you delegated that authority. Does it make sense to you? We will have a beer after this session and then we will go further than that.

Look, let me try to move further, and hopefully tomorrow will be better day than today. What is the next one?

MARIKA KONINGS: So, we're just making these changes and nothing else at this stage?

JANIS KARKLINS: Stephanie and then Dan.

STEPHANIE PERRIN: As I said, we need to be explicit about the decisions that are inherent in that language. Yes, they can decide that the ruleset in this policy in the search engine are sufficient for them and they're willing to take the risk and the process and they will trust the determination because, remember, the SSAD is making the decision as to what can be automated and what can't based on whatever templates we come up with. And they'll be easy for some and very difficult for others.

But he still has the risk. He's still a controller. So, that has to be explained in this language. And it still impacts the "shoulds" and "shalls" throughout the document because we're not … That SSAD is not the controller and we're acting in much of the subsequent language as if it is—and it isn't. Okay? That's what I'm trying to make clear. And we're happy to go through the document again and find the areas where the language has to be bracketed.

JANIS KARKLINS: Okay. Dan?

DANIEL HALLORAN: Thank you. I think it might be cleaner just to delete [inaudible]. I don't know why it's in the accreditation. It's talking about who is making the disclosure decision in this section about accreditation policy. If it has to be there, I don't know why we have ICANN in there still. What resides with ICANN? The decision to disclose resides with ICANN? Thanks.

STEPHANIE PERRIN: May I just jump in and say that deleting the entire section doesn't make me any happier because this is the first language we've seen where there's any clarity about controllership and we've been screeching about it for two years. So, deleting it only muddies the waters further because anybody who understands data protection law is going to be reading this report and going, "Okay, who's the controller? Who's thee processor? Who's the co-controller? What's the relationship?" And we need to answer those questions.

JANIS KARKLINS: Look, this is [inaudible] and intention of this [inaudible] was to explain before going to the recommendations how system works from systemic point of view broad brush. So, it seems that this particular part—lines 15, 20—need to be reviewed. So, they will be reviewed for the next iteration tomorrow. So, we will have a look on this and we will come back. Let's move on to the next item. Yes?

UNIDENTIFIED MALE: And I still [inaudible] why it would say ICANN, the decision to disclose resides with ICANN in D there?

JANIS KARKLINS: Look, I said we will review that. We will review that for the next iteration. Thomas?

THOMAS RICKERT: Thanks very much, Janis. I'm making this point not based on your question, Dan, what ICANN's role is. I think that we have forgotten one point in our report. I've double checked with my neighbors and they also don't have any recollection that we have it somewhere.

I think we do not have a requirement for the contracted parties to store the disclosure decision, including the rationale, and we need that. They need to report about what they've been doing but the actual decision needs to be stored. And we also need to protect that against loss because there may be cases where the data subject objects against that processing and they can go after all the joint controllers and the joint controllers must then be in a position to verify what the parameters for the decision have been and also to be able to defend the case.

So, an idea—and I'm just thinking out loudly here—could be that ICANN keeps repository of all decisions, but for data protection reasons, the contracted parties might not want to send the PII to ICANN. So, we can agree on a mechanism where the decisions are being encrypted with an [inaudible] key pair, so that ICANN has the data but it can only be deciphered if the contracted party also gives its private key for decryption. I mean, that's maybe too far down, too much into the weeds. But I hope that you get the idea. I think we need to have a mechanism to ensure that the decisions are not lost. Or that contracted party could say, "I refuse to help the other joint controllers, my assistance in defending cases," because that might jeopardize the entire system. I rest my case here.

JANIS KARKLINS:	Isn't that covered in login requirements?
THOMAS RICKERT:	Maybe it is, but then it is not explicit enough.
JANIS KARKLINS:	Could you check, please? Now you have the text. But you captured the idea, right? So, we will look at it. But please … Yes, please, if you want, that would be helpful. Thank you. So, the next.
MARIKA KONINGS:	So, the next item is 13—let me scroll down a bit—which is just this was flagged by NCSG. There was here an addition I think to clarify the language from the GAC. I think the NCSG has concerns about that issue.
JANIS KARKLINS:	So, that is the definition. Stephanie, please.
STEPHANIE PERRIN:	We objected to this because the set of safeguards is broader than performing legitimate requests. It's a set of safeguards that covers registrant rights. So, they're not necessarily all contained in the context of performing legitimate requests. So, you have to remove that language.
JANIS KARKLINS:	So, that is just a definition.

STEPHANIE PERRIN: Right, but it's the safeguards go further than … You have obligations under data protection law. The accreditation serves the release of data under data protection law but the safeguards surrounding this need to be broader.

JANIS KARKLINS: So, the proposed changes to add for performing legitimate requests. Is that …

UNIDENTIFIED MALE: [off mic].

STEPHANIE PERRIN: Yeah, drop it. There's nothing wrong with just a prescribed set of safeguards. Given that we are not down in the weeds and understanding completely what safeguards we need such as audit, such as oversight, such as regular quality measurement. That's not necessarily done in the context of performing a legitimate request.

Again, the safeguards are there to guard against illegitimate requests. So, by even specifying that the safeguards are for legitimate requests, oh well, let's forget about the illegitimate ones, you know? It's unnecessary language that clouds the meaning and the obligation.

JANIS KARKLINS:	Okay. So, question to GAC. Can you live with the definition? Georgios.
GEORGIOS TSELENTIS:	The intention here was not as Stephanie says here. It says it was to provide a little bit more clarity about what safeguards we are talking about. I'm happy to add things but not to … And I understand where you are coming from. You are saying that it's not only those types of safeguards—
STEPHANIE PERRIN:	This narrows [inaudible].
GEORGIOS TSELENTIS:	It narrows, okay. But what I want is a little bit more specificity what sort of safeguards we are talking about here. So, if we can enumerate, because as it is now, prescribed set of safeguards for me is not clear what exactly are we talking about.
JANIS KARKLINS:	Look, we're talking about definitions.
GEORGIOS TSELENETIS:	Yeah, but for me, it was a question of clarity. It was not an issue for living or dying in this document. It was how can we be more clear about what sort of safeguards we are talking about. If NCSG wants to elaborate a little bit more on those, I'm happy to delete the text and not spend a long time on this.

JANIS KARKLINS: Okay. So, I would suggest that we leave the definition as it was coined already three months ago and then we closed the accreditation section really three months ago. I would plea, for the moment, to leave as is. So, what is next?

MARIKA KONINGS: I think 14, 15, 16, and 17. We said we would look at that and make sure that is consistent with what we're recommending, so the group can look at that tomorrow to see if there are still concerns.

Then the next one 18. This was flagged by the ISPCP. So, basically, this was an addition that was proposed by the GAC to provide further transparency that is also necessary to add to the list that's provided here complaints received.

JANIS KARKLINS: Okay. Hadia, your hand is up.

HADIA ELMINIAWI: Thank you. I just wanted to make a comment about the authorization credentials but this will be discussed tomorrow, right?

JANIS KARKLINS: Yeah, it will be tomorrow. Yes. Let's now look at 18. Who objected GAC's proposal?

MARIKA KONINGS: Just to note as well, this isn't a section. That's the accreditation authority "must" … So, this is a responsibility of the accreditation authority and the GAC has suggested that it should also report on complaints received. I think the ISPCP flagged this as having a concern with this item.

JANIS KARKLINS: So, what's the concern? We are on 18. Thomas?

THOMAS RICKERT: I think that, on the public reporting, we should include any disputed disclosure decisions and successful objections, so that all contracted parties know in which cases objections have been made successfully so that they can take that into account in their own decision-making practice. Can't follow?

JANIS KARKLINS: I cannot follow it. Look, the GAC suggested to add in on line 296 in the section. This is still accreditation, what accreditation authority must do. So, apart from what we agreed previously that accreditation authority must report publicly on a regular basis on a number of accreditation requests received, accreditation is approved/revoked, accreditation is denied/revoked, complaints received. And the complaints received was not in the text. GAC is suggesting to add also, for transparency, complaints received. For whom that is a problem?

THOMAS RICKERT: I have suggested an additional set of words to be included there, so I'm okay with this particular amendment.

JANIS KARKLINS: Okay and what's your suggestion [inaudible]?

THOMAS RICKERT: That in the public reporting, successful objections should be mentioned.

JANIS KARKLINS: Successful objections of what?

THOMAS RICKERT: Sorry, it's getting too late. So, this is just the reporting of the accreditation author.

JANIS KARKLINS: Yes.

THOMAS RICKERT: Okay, sorry. I'll withdraw the comment.

JANIS KARKLINS: Okay, 18 is fine. The next? Which is next?

MARIKA KONINGS: The next one is 19. The next one on the list is 19.

ALAN GREENBERG: Stephanie had her hand up on the last one.

JANIS KARKLINS: Stephanie, please.

STEPHANIE PERRIN: Thanks very, Alan, but I was jumping in on 19, actually, because we had a comment on it. I thought we were done with 18.

JANIS KARKLINS: We are done with 18.

UNIDENTIFIED FEMALE: She's ahead of the game.

STEPHANIE PERRIN: I'm anxious to [inaudible]. How can you tell?

MARIKA KONINGS: On 19, there's an edit here that was suggested by the GAC to clarify the section by adding a verified complaint received, so that [number A] would read "a third-party-verified complaint received".

JANIS KARKLINS: Stephanie?

STEPHANIE PERRIN: Yes. We're just looking for a parallel construction to B, which is results of an auditor investigation by the accreditation authority. We also need results of an auditor investigation by a data protection authority because you will get them in the event of a data breach.

JANIS KARKLINS: We are on accreditations.

STEPHANIE PERRIN: Yes, but if you have an accredited party that a data protection authority has investigated and found to be actually not … I give you Equifax selling data to criminal gangs. It's probably … I'm sorry. You're going to need to examine this. So, it is important that you pay attention to the investigations and audits of a data protection authority whether they show up at your front door or not.

It speaks to what Thomas—and that's why I threw my hand up, because what you were looking for was recording of decisions that impact and educate the controllers. That's very important. But we can't blissfully ignore what's going on in the data protection world when they're auditing and investigating on a regular basis. Thanks.

JANIS KARKLINS: So, my request would be, Stephanie, if you would send in the language that you want to be—

STEPHANIE PERRIN: We did.

JANIS KARKLINS: You did?

STEPHANIE PERRIN: Yeah. It's in our Google Doc that we sent to you. It's just basically B with "accreditation authority" replaced by "data protection authority".

MARIKA KONINGS: Okay. We can look at it but having different documents out there with suggestions, they should have come in already here in this one.

STEPHANIE PERRIN: Sorry.

MARIKA KONINGS: Okay.

EN

JANIS KARKLINS:	Okay. Staff will look at it. The next is 20? No?
MARIKA KONINGS:	23. The next one is number 23. There is an edit here that was proposed by the BC to basically change "not more than two hours from receipt" to "in a mean time of TBD seconds and not more than two hours" and I think the registrars flagged this one.
JANIS KARKLINS:	James?
JAMES BLADEL:	Yeah. Registrars did flag this one. First of all, building measurement in seconds. I think some of us noted that this is the SSAD's problem, so why do we care? But I think this is just an unnecessarily pedantic development of an SLA. I mean, measuring something in seconds is …. When you can set a maximum of two hours I think … I fail to understand what we're trying to achieve here. Measuring mean. Mean for what? Mean for that registrar? Mean for all registrars? Mean for the SSAD? Can BC help me understand what we're going for here? Because I feel like it's being written like it's aimed at one particular service provider but we need to remember that it's—
MARK SVANCAREK:	This is acknowledging the receipt from the gateway. So, this has nothing to do with any disclosure at all. This is the gateway. And we already have a number in there for two hours.

Now, we could take out all the numbers or move them to a different section or [inaudible] section or another time. But right now it says not more than two hours.

Now, this is infrastructure that we're all going to jointly be accountable for, right? It's not any particular contracted party at all. So, this isn't targeted at anybody.

JAMES BLADEL: What's wrong with two hours?

MARK SVANCAREK: This is an automated response. Two hours is … I mean, remember the thing about your abuse thing—

JANIS KARKLINS: Look, Mark—

MARK SVANCAREK: Did I get this wrong?

JANIS KARKLINS: No, I understand. I think we discussed this one and that's why we wrote not more than two hours. So, that means from millisecond to but not more than two hours. And if system is backed or something, that may not be in a second. But this system should be up and running, and if there is an issue, it should be fixed and this reply should be given in two hours.

So, again, we may write one hour, we may write three hours. We settled for two hours, and after two hours or not more than two hours. So, this is really nitpicking at least at this stage. So after two hours is also millisecond and not more than two hours.

So, please let this go. It's not really fundamental.

JAMES BLADEL: No, it's not fundamental. I agree. It's not fundamental. It's just I don't understand why automated systems would ever have times of two hours.

UNIDENTIFIED MALE: Can I respond? Please, James, I'm sorry.

JANIS KARKLINS: There is without undue delay.

JAMES BLADEL: We said a maximum of two hours. I don't understand why we also have to measure the average. And then if I were to be on the high side of that mean requirement, inside of the two hours, am I out of compliance?

MARK SVANCAREK: This is not you.

EN

JAMES BLADEL: In the SSAD … This is for Dan. If I'm the SSAD and I am exceeding the mean number of seconds but I am delivering notifications within two hours, I'm not in compliance with this requirement.

DANIEL HALLORAN: No, no. This is just specifically about the gateway, the part that you don't operate.

JAMES BLADEL: I'll say it again. I'm speaking [inaudible] the SSAD.

DANIEL HALLORAN: The SSAD doesn't have compliance.

JANIS KARKLINS: Let me exercise my right of the chair and stop this conversation. Please take it outside the room after we finish the meeting so then you can talk until tomorrow morning. Thank you, Mark, for showing flexibility at this stage and let us move to 27.

MARIKA KONINGS: So, 27, this was one where the BC has suggested specific language to be added. So, basically, clarification, first of all, that the third-party provider could be a processor. And a note is added: "note that joint controller scenarios may also be considered and this report makes no statement on the authorization responsibility

of the parties engaged in such agreements." I believe this was flagged by the SSAC.

BEN BUTLER: In the interest of time, I am perfectly willing to defer judgment to those much more versed in law than I am, but it just seems like it just made this unnecessarily complex, the third party that they might use could be a processor, they could be a controller of some nature. I don't know why we need to change provider which is generic to processor but then have a sentence saying "but we're not limiting it to processors".

JANIS KARKLINS: Mark SV?

MARK SVANCAREK: Yeah, because the rest of it says that you're ultimately responsible for the requirement. So, if that provider is a processor, then you are ultimately responsible for it because they're under contract to you. But if the provider was a joint controller, then the responsibilities are different. So, I think from the legal perspective, you have to make that distinction. If the responsibility all goes to the contracted party, that means that the provider is in fact a processor.

JANIS KARKLINS: Alan Woods?

ALAN WOODS:	Thank you. What we're talking about here is the decision of the controller, and really we're going far too much into the weeds here. If I am a controller and I want to outsource, that's my decision and we'll deal with that on our own time. I don't think this needs to go into this policy.
MARK SVANCAREK:	Well, then could we just remove the "remains ultimately responsible for"? That's the thing. If you have multiple controllers, you may not be ultimately responsible for it. So, that's the part that was confusing me. If you take that part out, then it doesn't matter if it's a processor or a controller.
JANIS KARKLINS:	I think that there was this—no, there is this understanding that even if contracted party or registrar would outsource the decision-making on disclosure, the liability will remain with the contracting party, from ICANN perspective. Yes?
MARIKA KONINGS:	If I may add, I think staff added this language because I think indeed the concept here is that even though someone else may be performing functions for the contracted party, from an ICANN and the contractual obligations they have, it's still the contracted party that's on the hook and it's not related to anything. The controller/processor relationship is purely saying someone else may do it, but if they will do it wrong, you're on the hook—not them. Although you may go after them if they don't perform.

UNIDENTIFIED MALE: [off mic].

MARIKA KONINGS: Yeah. I think that was the idea.

ALAN WOODS: And this is of no disparity to Mark at all but are we really adhering to the level of can't live with at this particular moment? The last two are not can't live with. Can't we just …

MARK SVANCAREK: I apologize. It's not a can't live with.

ALAN WOODS: Yeah. So, that's what we're—

MARK SVANCAREK: I apologize.

JANIS KARKLINS: Okay. So then that is off the table. Next one is?

MARIKA KONINGS: So, on 29, maybe just briefly, on the previous point, we did include … Some of our groups did say this is a minor thing but we want to make it just for our sanity check. We did include some of those to

make sure that, indeed … Like in this case, it wasn't something that was supported.

So, on 29, this is an edit that was proposed I think by both the IPC and BC. They've added here if there is no personal data in the request, the non-personal data must be disclosed. And this is something that was flagged by Registry Stakeholder Group, SSAC, and NCSG.

JANIS KARKLINS: So, who cannot live with this? Alan?

ALAN WOODS: I'll start then. Yeah. This is effectively a back door into the legal versus natural conversation, number one. We've had this conversation and it should not be in here. The fact of the matter is … Oh, I've lost my brain. Maybe Stephanie.

STEPHANIE PERRIN: There's a number of issues here. First of all, everything that is not personal data is not free game. We're not reconstituting WHOIS wide open access. It still has to be a legitimate request to come [through this] instrument.

Secondly, the determination of the personal information involved in a request in a legal person's data has to be made in a careful way because here's where geo comes into play because, for instance in Germany, staff have rights and you can't just give out

the contact data. So, I believe it is a backdoor into that but I don't think …

If this is going to be a solid, pure disclosure instrument for everything else, then you'd better say that up front. That's why we collided.

JANIS KARKLINS: So, look, I would recommend that when it comes to recommendation six, which was really negotiated lengthy in Montreal, I would … If there is no something that is illegal not to touch it because this is what we agreed after hours and hours of consultations and discussions. This was fundamental piece of work, and now putting inside of small things. I would recommend withdraw every comment that is on recommendation six, unless it is not what we agreed in Montreal. And I think that it was copy/paste from Montreal decisions. Can we agree on that, please? Brian?

BRIAN KING: Yeah. If I can address that, Janis. I think what this does is it fills in a blank. I don't think we disagree with anything that's in recommendation six. What recommendation six doesn't say is what happens if the data is not personal data. So, it says what happens if the data is personal data but it's silent as to what happens if it's not. We need to be clear about what happens. This isn't a backdoor around the natural/legal person distinction because when we were talking about that, we were talking about what's published and we're not saying that this should be

published here. We're saying that if a requestor comes to the SSAD and has a valid purpose and a reason—a legal basis—and goes through ll those hoops, there is no basis for withholding that data from the requestor. You would need to be very clear about why you're shielding someone who is alleged to have done whatever the requestor says that person has done. That could be a real problem for someone who's willfully hiding that in the face of that request.

So, all we're trying to do is fill in the blank and what happens if the data that's requested is not personal data because if there's not legal basis, if there's not a legal reason to withhold that data, you're going to have a problem if you're withholding it. Just trying to fill in the blanks there. I hope that's helpful. Thanks.

JANIS KARKLINS: Laureen?

LAUREEN KAPIN: I'm just having a problem understanding why there's debate on this reference that's basically saying if there's not personal data involved, then you should release it because GDPR only protects personal data and we're not talking about natural or legal. It's the technical contact but the email reveals the individual's name. That would be personal data. This is clearly saying if it's not. So, I'm a little … I'm struggling to understand why this is controversial.

JANIS KARKLINS: And again here comes my appeal. Not touch recommendation six as we agreed in Montreal. Let me … Okay. Let's talk very, very briefly how the system works. So, if there is personal data, then balancing act is performed, and if decision is positive, then requested personal data together with non-personal data would be released to requestor. So, this is what must be released.

We had this conversation that non-personal data … That the system should not be bugged twice for personal and non-personal data. So I think we agreed on that, right? So, if there is no personal data involved, then system should give non-personal data automatically, no? So, hence, your concern is not really valid here.

BRIAN KING: But the policy doesn't say that. It doesn't say what happens if the data is not personal data. And we're redacting all data. That's the problem is that all data is being redacted, not just personal data. So, we make a request and there's no reason to go through this whole exercise. We need the escape valve that you get the data. It's not personal data. There's no legal. There's no GDPR concern. There's no risk. There's no reason not to give up the data. You have to.

JANIS KARKLINS: Okay. So, then probably that does not belong here because here we're talking about the procedure how the personal data will be released. What are the steps and requirements? So, maybe we can think of—and that would be, as staff has noted, maybe in

[Chap 4] somewhere to say that if the requestor requests the data and it is not personal data, then it should be released. Again, let's use the same maybe proposal but not in this place. And let's see where it fits and then we will think about it and tomorrow it will be—staff will propose placement. Okay? Thank you. So, what is next after 29?

MARIKA KONINGS: You still have a hand up from James.

JANIS KARKLINS: James?

JAMES BLADEL: I'm sorry. I had a question on this one and because I truly don't know. When you think about a domain name, it has certain things. It's basically a contact object. It has host objects which are name servers which have to work whether they have personal information or not. The DNS doesn't work otherwise if they're not published and shared.

Then the other part of it is status, messages, flags, dates, timestamps. I assume that all of that stuff is available in any kind of a zone file. It's not necessary to go through SSAD.

So, my question is, for example, are we supposed to go field by field through the contact record? So, if we have a contact record that says my name and my address, natural person, and not a

legal entity, does that mean, well, I can't give you this. It's all personal information. I'll give you the zip code

I mean, I don't understand. Do I have to go field by field now? Because it's some of the personal information and I'm looking to the privacy experts. Some of the personal information only becomes personal when you start associating it with me and each other. I can tell you I live in Arizona. That doesn't tell you anything personal until I give you my street and my zip code. You know what I mean? And then it starts to build a personal profile.

So, I'm a little confused. I mean, a lot of that stuff that's not personal is available already. But if it's personal, is it all or nothing? Maybe that's the way I should say it. Is it an all-or-nothing proposition for the entire contact record?

JANIS KARKLINS: Okay.

UNIDENTIFIED MALE: Again, I sent out … We built a balance test framework. I can't remember. I think, Matthew, you did the last version of that. And I believe that's more or less accounted for in there, that you get to a point when you're doing the balancing test of looking at those individual fields and there's a decision there that says: Is there personal data, yes or no? If not, disclose it. If so, then continue on down the thread of scrutinizing that particular request.

Now, that may not match exactly what's being written here, so we should square them, but I thought we already addressed this. Thanks.

So, it's page three. I put the new graphic in there that has all the text of the PDF that I sent earlier with the graphics. Thank you.

JANIS KARKLINS: So, I have four hands up. I'm not sure whether … Dan, you're first.

DANIEL HALLORAN: Thanks, but I see Marika just made my point in the chat which is, to answer James, I think we're only talking about disclosing non-public data. So, the stuff you talked about I think was all included in what has to be published already—the status, the name servers.

MARK SVANCAREK: Status and name servers are already in the—

JAMES BLADEL: They are. They are. So, we're talking about non-public. So, that clears up half my question. I think the other half the question was if I determine that a contact record was personal information, does that essentially mean I don't disclose or I apply all of it to the balancing test or do I give you the pieces that … Like a zip code.

[DAN HALLORAN]:	I think it might … I have a vague idea that everything that's redacted would be … It's like a [inaudible] decision. You have all the stuff that's been redacted and you're balancing whether or not to give that all to them. Or the subset of that, that they've requested and it's warranted by the request. So, you look at the stuff that's redacted and decide what of that you're going to disclose.
UNIDENTIFIED MALE:	And let's remind ourselves, we came up with the minimum public data set in Phase 1. It's being implemented in the IRT and it shows what that minimum public data set is along with a column of what fields are redacted. And if they're not redacted, that's already public information that's available out on a query.
MARK SVANCAREK:	So, the contact data in the WHOIS record for gmail.com, that is all redacted. It's non-public. But there is no personal data in that record. That's non-public, non-personal data. And that's actually a very common thing. So, in my automation examples about DotBank, we look at a lot of DotBanks. We know that those are all legal people because they have rules to get a DotBank. But it's non-public. And so we will make a request for that data.
	I know it is a weird thing, James, but that is what we're up against is that there's all this non-personal data that is also non-public, so we're going to make our request and we hope that those will easily pass a test because they don't contain any personal data.

JAMES BLADEL: So, it doesn't sound like we're talking about the thing that I'm concerned about, which is splitting up contact records and giving out pieces of it.

MARK SVANCAREK: Yeah. I think it's not what you're worried about. Thanks.

JANIS KARKLINS: So, we will think about it but I would say that recommendation six is about the process considering release of personal data. So, we would find the place to make a statement on release of non-personal data. So, let's give a try to that. Alan, your hand is up.

ALAN GREENBERG: I was just going to point out just to James that zip codes and streets are deemed to be personal and there is specific wording they had here, if I could find it, was, "If no personal data is in the request, then ..." So, I think we're completely clean. Thank you.

JANIS KARKLINS: Okay. So, next is?

MARIKA KONINGS: So, the next one on the list is number 30. And just to flag here the were a number of comments or concerns raised where no specific language changes were suggested. But just for your ease of understanding the context, staff has provided the language that the comment related to.

In this case, the GAC flagged a question or a concern that didn't suggest any specific language changes and I think this was something that the Registry Stakeholder Group flagged.

[ALAN WOODS]: It's more of an answer possibly then to the question, and that is that obviously not all governments … The question here, just to give other people the thought. {LEA] requests would like to be viewed as having potential to trigger legal proceedings. Yes, but not in all cases would it b a negative thing. But in certain cases, we do have to consider it because it might be considered negative.

Again, for instance, human rights abuses in a particular Middle Eastern country or something like that, that that would be a consequence of legal proceedings that we have to take into account because it has a substantial impact on the rights of the data subject in that instance. It's just a complicated world we live in that we have to take that into account.

LAUREEN KAPIN: That's actually a very helpful example. I'm wondering in light of that if there needs to be some small statement. This isn't necessarily going to be a negative factor or this depends on context. Something like that because, when I read it, it seemed to me to assume that this will always be a negative.

And what I'm hearing you say is that just because there's a legal proceeding doesn't mean that that's going to weigh against disclosure but we need to actually look at the particular context to

figure that out. And that's what I just want to be sure of because if I look at it baldly, then I'm thinking, oh, we're screwed because we're always going to probably potentially be thought of as triggering a legal proceeding and we don't want that always to be a negative mark against our request if it actually is subject to a balancing process in the first place.

ALAN WOODS: I completely understand where you're coming from on that one, and unfortunately that's just how different the balancing test can turn out to be. But it's certainly not a sole consideration. It would be in the context of a specific request that we would have to make that decision. I don't know how to fix that.

UNIDENTIFIED FEMALE: Maybe [off mic].

ALAN WOODS: Yeah. Again, it comes down to the decision of the controller again. We're coming back to this thing. What would the controller take, for instance, in that position? It's a really difficult one. I don't know how to—

JANIS KARKLINS: Again, I can only reiterate my appeal not to touch recommendation six unless there is a fundamental mistake and I don't think what we're discussing are fundamental issues here. Again, we are talking about initial report. We are not talking about

final report. We need to also leave things to comment on and to propose. Alan G, Mark, and then Stephanie.

ALAN GREENBERG: That's an old hand.

JANIS KARKLINS: Then Stephane.

STEPHANIE PERRIN: If I could suggest that maybe triggering legal proceedings is the wrong terminology here because, obviously, there are legitimate legal proceedings. Perhaps triggering undue risk to life and safety of the individual. I mean, I'd like to say human rights, implying charter rights but we'd get a lot of comments on that. So, we could come up with better language.

I agree … I'm with Laureen on this. Triggering legal proceedings, well, that's a day-to-day business, right? Yeah. So, it kind of … Yeah. There's got to be better words and we can find them.

JANIS KARKLINS: Please look for them and come up with a concrete proposal. For the moment, we are again repeating discussion e had in Montreal.

ALAN WOODS: Very quickly. This is only of course a guidance for the controller in making the decision. So we could just take out "example, legal

proceedings." Just literally take it out because there would still be a consideration from me as a controller anyway. But I don't have to specifically state it in the guidance.

LAUREEN KAPIN: Well, if you take it out, I'm happy with that.

ALAN WOODS: Yeah.

JANIS KARKLINS: Done. Next is 31.

MARIKA KONINGS: No.

JANIS KARKLINS: No? 32.

MARIKA KONINGS: Yes. Next one on the list is 32. This is also still in the same recommendation. There's language added on the suggestion of the BC, so to the beginning of that sentence they've added "where GDPR 6.1(f) is decided legal basis." Then the original language remains. This was flagged by the Registry Stakeholder Group and NCSG.

EN

UNIDENTIFIED MALE: What number?

JANIS KARKLINS: 32.

MARIKA KONINGS: 32.

ALAN WOODS: I would just like to go with Janis's suggestion of [inaudible] recommendation six and let's not change it.

JANIS KARKLINS: BC, could you explain your rationale for [inaudible]?

MARGIE MILAM: Yeah. It's basically talking about the balancing test and other parts of six talk about there could be other legal bases. You're not going to do the balancing test in all cases, so I was just clarifying that. I thought it was just a clarification, [inaudible] recognize that there may be other legal bases.

STEPHANIE PERRIN: If I may, the NCSG concern was not that the rationale for the approval should be documented but that it must be documented. That's a requirement under the law. It also has to be available for [audit], etc.

JANIS KARKLINS: Okay. So, with the explanation that this is just for clarification, can we accept the proposal? Would this explanation … This is simply for the clarity and this does not add or change meaning of the proposal.

ALAN WOODS: Again, I'm just going to agree with Janis and say we discussed this at length and throwing it in at this point … It's literally not changed. I don't see why this is a big change. I know there are other … And this is what the controller will do. These are just guidances for the controller in this situation. It's not a roadmap. It's a guidance.

STEPHANIE PERRIN: You do agree that it must be documented, though, the rationale.

JANIS KARKLINS: No, that was a [inaudible]. So, let us then stick to agreed language and move on. Next is …

MARIKA KONINGS: Next is 39. So, this is an addition that was proposed by the ALAC, adding at the end [inaudible] automated day one. This was flagged by the registry, ICANN Org, and NCSG.

EN

JANIS KARKLINS: So, ALAC, could you live without day one? What added value that gives?

ALAN GREENBERG: First of all, I just realized "day one" was put in the wrong place. It should be "fully automated" at the end of the first sentence. It's incorrect where it is. I hadn't noticed it. My apologies. So, all we're saying is that the EPDP team will further consider disclosure requests and specifically the ones that Mark submitted but perhaps others, to consider things that could be fully automated day one, in addition to the URS, UDRP, and law enforcement ones. That may change the objection. I don't know.

JANIS KARKLINS: Yeah. That changed the objection. I see that. Okay. Thank you. So, that is … Did you capture that?

MARIKA KONINGS: Yeah.

JANIS KARKLINS: Okay. Next. Yes, Laureen, please.

LAUREEN KAPIN: I apologize for going back to this, but 32, I'm wondering if it's just a disconnect. I'm not trying to reopen something that's already been decided but it seems to be that, as I'm understanding it, there's a mistake here because the language in 701-705, that assumes

there's always going to be a balancing test. And for some legitimate purposes—for example, a request from a public authority or it's pursuant to a contract obligation. I don't think every legitimate purpose has to require the balance …

Basically, it's a 6.1(f) balancing test here and that's why I think the clarification makes sense. All this does is clarify you only do a balancing test where a balancing test is required. But a balancing test is not required for every legitimate purpose. I think this is just a sensible refinement and it is not going back on what's already been agreed. I think it's just adding some clarity. Sometimes the balancing test applies under the GDPR and sometimes it doesn't under the GDPR. And we can look at the provision together if you like under Article 6.

UNIDENTIFIED MALE: But again, that's if it's cited in the request, but the balance test framework behind there is … When you go through the model and you get to that point, the contracted party is going to start the initiation and they're going to make a determination before they actually do the balancing test whether they need to or not.

STEPHANIE PERRIN: Under Section 5, you've already made the determination that this has to go to the contracted parties. So, at that point, these are all the things they have to evaluate. So, it is not a case of an automatable decision. It's one where it has to go to the contracted parties for determination.

LAUREEN KAPIN: Right. I'm not disagreeing with that. And if I'm misunderstanding something, educate me. But what I'm seeing this language here about a balancing test, not a determination, not that you don't have to figure it out, so to speak. But when I'm seeing the language referred to describe what to me seems the 6.1(f) balancing test, then that to me is wrong because it doesn't apply all the time. But that's different from what I'm understanding you to say, Stephanie, which is just an individualized consideration of each request, which yes, of course you need to do that whether it's under a 6.1(f) request or whether it's from a public authority or whether it's saying my request is pursuant to a contractual obligation.

JANIS KARKLINS: No, Laureen. Look, the point five is about balancing test. So, the beginning of point five says if data requested … So, what needs to be done. The question: does the data requested contain personal data? If no, then further balancing is not required. All the rest is about 6.1(f), how to perform 6.1(f). What are the issues that need to be taken into account making this balancing test?

And then comes other consideration and this is important consideration from the personal point of view. If there is legitimate concerns, determined that requestors [inaudible] legitimate interest is not outweighed by interest of fundamental rights, then data is released. And when data is not released.

So, everything in point five is about how to perform balancing test under 6.1(f). So, as a result, it is logical because we're referring to

[inaudible] factors which is about balancing test, which is about 6.1(f).

LAUREEN KAPIN: So, [doesn't it say that]? That's my sole question. [Where does it say that]?

JANIS KARKLINS: Look, is this again … I'm coming here. Is this fundamentally important to you to spend now 15 minutes only on a question of clarification?

LAUREEN KAPIN: I think it's wrong [inaudible].

JANIS KARKLINS: So, staff will look at it once again and then we'll see how it is. And if that is something that GAC cannot live with, I think that this would be time when GAC would write a specific opinion in the initial report as suggested by Keith. But we will look at it and then see what can be done.

So, we have about 15 minutes to go. We will stop working at 7:00. So, let's try to get as far as we can.

MARIKA KONINGS: Thanks, Janis. Sorry about that. We're just going a little bit up, number 37. I overlooked that previously. This relates to the

proposal for automation from day one, I think as we've agreed. It said there originally, "Law enforcement …" I think it had different language. The GAC I think suggested clarifying it this way: "Law enforcement in local jurisdiction request …" So, there was a clarification provided and I think there was also a question from ICANN Org that might need further clarification. And IPC and BC flagged this as well.

So, I think the question is with the edit from the GAC, is it clear or does further clarification need to be provided to make this clear what is intended here?

JANIS KARKLINS: Laureen, your hand is up.

LAUREEN KAPIN: Okay. Thank you to my colleague, Stephanie. So, when I'm looking at 670, I do see that there's some qualifying language here that says, basically, you have to make a threshold determination about what 6.1(f) being applicable, which I think then would satisfy my concerns because who could decide that it's not applicable and some other justification applies. So, I appreciate everyone's patience and I withdraw that comment.

JANIS KARKLINS: Thank you.

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LAUREEN KAPIN:	I'm wondering if my BC colleagues see it the same way. On 670, line 670 of the report, I'm going to read it. "The applicable …" This is what the contracted party would need to look at. They're going to look at whether the requirements under 6.1(f), as descried in paragraph six below, is applicable and proceed accordingly, which to me leaves the question open that you could decide based on the nature of the request that it's not applicable. For example, a request from a public authority or a request pursuant to a contractual obligation. So, it's whether it's applicable, which to me leaves open the question of it not being applicable. So, thank you for guiding me through that.
JANIS KARKLINS:	Thank you for withdrawing your—
LAUREEN KAPIN:	I withdraw.
JANIS KARKLINS:	Thank you. So, 37. I think that in this case, in implementation guidelines, we were talking about law enforcement in local jurisdiction could be automated from day one. I think that could be accepted. And while we're talking about this [inaudible].
MARIKA KONINGS:	I think some suggested that it may not be clear what is meant, so I think the GAC made this edit that is in bold. So, the question is, is

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that clear enough for everyone or does further clarification need to be made with what is intended here?

JANIS KARKLINS: Is somebody objecting GAC's proposal? Please, James.

JAMES BLADEL: Yeah. I'm sorry, just to be clear, it's the GAC that's adding the word "local"?

JANIS KARKLINS: Yes.

UNIDENTIFIED MALE: No, they're looking for some clarification.

JAMES BLADEL: They're asking for clarification of local.

MARIKA KONINGS: No they suggested to add it.

JAMES BLADEL: So, just speaking as a company that responds to different law enforcement requests from different jurisdictions that may not be local but may be applicable to us, I think we can broaden this to be applicable jurisdiction. If you send us the jurisdiction, and we'll

determine if it's … Like, UK is not local to us but we have customers there and we believe it is applicable.

UNIDENTIFIED MALE: Applicable is good as well. It didn't have local before. We don't think it was clear enough. We made an attempt with local. Applicable is better. Thank you very much.

JAMES BLADEL: instead of local, we would say [inaudible] in applicable jurisdictions.

UNIDENTIFIED MALE: ICANN had a bunch of questions [inaudible].

JAMES BLADEL: Well, I wasn't fixing ICANN's questions. I was fixing GAC questions.

JANIS KARKLINS: Please concentrate. Another ten minutes to go.

UNIDENTIFIED FEMALE: So, in relation to that, how would you automate which one is applicable? How would you determine that?

JAMES BLADEL: Very quickly, what we would do is we're expecting SSAD to send us some kind of a jurisdiction attribute with the request.

UNIDENTIFIED MALE: The gateway will automate.

JAMES BLADEL: So, the gateway will automate?

UNIDENTIFIED MALE: Yeah.

VOLKER GREIMANN: Basically, the way that I envision it is that US registrar could send which jurisdictions you attribute as applicable to you. For example, if we have a registrar that's based in the US but also processes data in Germany, then we would probably do the checkmark in US and the checkmark in Germany and attribute to both of those as applicable.

Once there is this jurisdictional exchange program for Europe to where foreign European law enforcement agencies also can make requests of [inaudible] companies we'll probably mark all of those as applicable, too. So, that's something that we could just select in accordance with ICANN, probably, in some form or shape. So, self-selection with some [checkup, backup].

JANIS KARKLINS: Dan?

DANIEL HALLORAN: That sounds like you're just thinking about national basis, like is Florida in applicable jurisdiction? Maricopa County? And how do you automate that across thousands of registrars and thousands and thousands of law enforcement agencies?

VOLKER GREIMANN: [Implication issue].

[JAMES BLADEL]:   And I think we were thinking not going below the national [level].

JANIS KARKLINS: Marc Anderson?

MARC ANDERSON: Thanks, Janis. Yeah. Registries had this similar question. We had submitted it but it didn't seem to make it onto the list. We were looking for clarification here on exactly this. We weren't sure … Law enforcement and jurisdiction requests. We didn't know what jurisdiction this is talking about. Is it the jurisdiction of the registrant, the registrar, the requestor, the SSAD system? That's not clear at all.

To Dan's point, how do you determine what's applicable, Volker had some interesting thoughts there. But this is not at all clear in the language.

JANIS KARKLINS: No. I think I recall from conversation in Montreal Volker was referring all the time when German law enforcement sends a request to German registrar, then response is basically automatic. There is no further consideration. So from there, this notion of automation is here. So, maybe at this stage we could accept local as suggested by the GAC, which indicates that local is national. Then we will see … Sorry?

VOLKER GREIMANN: How about local or otherwise applicable?

JANIS KARKLINS: Local or—Hadia, please.

HADIA ELMINIAWI: So, I was thinking maybe, to Dan's question, that authorization credentials may be of benefit in this regard in the implementation because you are asking how to differentiate or disclose based on applicable law or jurisdictions.

My answer to this is through authorization credentials. So, you would have certain authorization credentials linked to applicable jurisdictions or local. Maybe that would be a solution.

JANIS KARKLINS: So, proposal is local or otherwise applicable. And jurisdictions is already here. So, local or otherwise applicable. Can I have your last minutes of your attention please? So, suggestion was local or otherwise applicable. Okay. So then we will put that in here, in 37. So, 39, [inaudible] read already.

ALAN GREENBERG: Can I make a comment, please? Sorry, I've had my hand up for a while.

JANIS KARKLINS: Please.

ALAN GREENBERG: Let's try not to get down into the roots of the weeds, never mind the weeds here. And this is something that can be refined. And a lot of other things can be refined. We could start of with just local, wherever your jurisdiction is, so we wouldn't catch them all in the SSAD. We can refine it. We're trying to build an implementable system, not a perfect system.

JANIS KARKLINS: Thank you. And maybe that will be the last conversation, the last point that we will [inaudible].

MARIKA KONINGS: So, not this one?

JANIS KARKLINS: Next one. Yeah.

MARIKA KONINGS: So, the next one is 41. I did make a clarification on this one as we had one of the words in the wrong place. The two changes that are proposed here is that in relation to the recommendation that the central gateway manager provides, that was originally a "must". It has been suggested that that should be a "may". So, central gateway manager may provide a recommendation to the contracted party whether to disclose or not.

And the other change was, as we also discussed yesterday—I think it was a suggestion from Volker that it would be helpful for contracted parties to respond if they would deviate from the recommendation from the central gateway, to allow the central gateway to learn or see why different decisions were made and help inform those recommendations. So, that was originally a "should" but it has been recommended that that should be a "must". So those are the two changes. Several groups flagged this [inaudible]. I don't know if that was—

UNIDENTIFIED MALE: Withdrawn.

MARIKA KONINGS: Okay, withdrawn.

JANIS KARKLINS: Volker?

VOLKER GREIMANN: This is a typical you offer a finger and then you get taken by the arm. But ultimately, I will die on a hill for this one.

JANIS KARKLINS: Thank you. And I think that on 42—

MARIKA KONINGS: It's withdrawn.

JANIS KARKLINS: 42 is withdrawn.

MARIKA KONINGS: Just a note that the BC has withdrawn their proposed change for 42. This was I think flagged by the registry, so we don't need to consider that one.

JANIS KARKLINS: Okay. So, we're now on 43?

MARIKA KONINGS: Yeah.

STEPHANIE PERRIN: Pardon me, but can you explain what happened on 41?

MARIKA KONINGS: On 41, there were no objections to the changes that were proposed. So, let me just scroll back. So, the changes were that the central gateway may provide a recommendation to the contracted party, and if the contracted party does not follow the recommendation of the central gateway, the contracted party must communicate its reasons for not following the central gateway manager's recommendation, so the central gateway manager can learn and improve on future response recommendations.

STEPHANIE PERRIN: Okay, so the must follow the recommendation is gone?

MARIKA KONINGS: Yes.

STEPHANIE PERRIN: Okay, good. Thank you. Ah, perfect. Great. We're watching you all the time.

JANIS KARKLINS: Okay. So, I think we have reached the limit of possible today, so I would like to thank all of you for patience. So, what will happen tomorrow? Staff will start working in cleaning up text on these

changes that we have decided. But you will not get tomorrow morning new text—not yet—because we have not exhausted all the cannot live objections.

UNIDENTIFIED MALE: Can we just do financial sustainability real quick?

UNIDENTIFIED FEMALE: Oh, my God.

UNIDENTIFIED MALE: Always the comedian.

JANIS KARKLINS: So, if you want to mark which points we will be discussing tomorrow, just numbers.

MARIKA KONINGS: Yes. And maybe I'll mention who the objection is, so those people can already talk to each other. So, 43, change suggested by the BC concerned by Registry Stakeholder Group. 44, language flagged by the GAC and concern noted by the SSAC. 45 flagged by the … Change suggested by the Registry Stakeholder Group and is flagged by the registrars.

                            46, changes suggested by the Registry Stakeholder Group, flagged by IPC, BC. 47, changes suggested by GAC, flagged by registrars, SSAC, and ISPCP.

49, this is the SLAs. And 50, SLAs as well. So, there's a separate recommendation I think in your inbox, or at least a proposed approach. So, please review that as well and come prepared with that.

Then, we have 54 proposed addition by the IPC, flagged by the Registry Stakeholder Group. 55 is actually proposed change by the NCSG but also flagged by the NCSG. So, we can discuss tomorrow.

56, flagged by the Registry Stakeholder Group. Proposed edits by the Registry Stakeholder Group, flagged also by registrars, BC, IPC, and SSAC. I think this is the financial sustainability section.

57, proposed addition by the IPC, flagged by SSAC and ISPCP. 58, proposed change by the IPC, flagged by ISPCP, registrars, registries, SSAC, and NCSG.

59, proposed change by registries, flagged by IPC, BC, and SSAC. Then number 61, proposed change by the Registry Stakeholder Group, flagged by the IPC and BC.

Then last but not least, there is number 63. Proposed change by the ALAC and flagged by NCSG.

JANIS KARKLINS: So, quite things to do. So, we will go through those tomorrow morning, then after going through and agreeing, then staff will work on clean text. While staff will be working on clean text, we will address outstanding issues that we need to talk though, including financials.

And after that, we will have about an hour break to look again to the whole report and then we will go through hoping to come to kind of closure by 2:00 tomorrow and when the late lunch will be served.

And there will be also one part which will be devoted to discussion of flow charts.

UNIDENTIFIED MALE: So, I was just going to say there's a lot to review, so if you do your homework tonight or early in the morning and you're happy with how the model looks and other minor cosmetics, then maybe we don't need to do a small team. But else, if you've got problems with it, then maybe we do need to form it.

JANIS KARKLINS: Tomorrow. It's [inaudible].

LAUREEN KAPIN: What about the examples that I gave for possible automation?

JANIS KARKLINS: That is noticed and we will talk about that list after submitting report for initial comment. So, they will be … This [is in] pipeline. I think that is …

UNIDENTIFIED FEMALE: That actually might affect our constituencies quite a bit. We thought there was going to be more possibilities of automation beyond those two. Can we talk about it tomorrow?

JANIS KARKLINS: Okay, look, we can talk about it tomorrow as well. And the last request which comes to surprise to everyone, may I ask that we start tomorrow at 8:00 AM? That we start at 8:00 AM just to get half an hour additional because we will need that half an hour.

UNIDENTIFIED MALE: And for those that weren't paying attention, 8:00 AM.

UNIDENTIFIED MALE: In the morning.

ALAN GREENBERG: I just wanted to point out I have a 7:00 AM conference call but I'll try to make it as soon as I can.

JANIS KARKLINS: Thank you.

UNIDENTIFIED MALE: Please leave your badges here.

JANIS KARKLINS: Thank you for your input today. Have a good evening.

[END OF TRANSCRIPTION]