EN

ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Tuesday, 14 January 2020 at 14:00 UTC
Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record.
Attendance and recordings of the call are posted on agenda wiki page:
https://community.icann.org/x/DoEzBw
The recordings and transcriptions are posted on the GNSO Master Calendar
Page: http://gnso.icann.org/en/group-activities/calendar

TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the GNSO ePDP Phase 2 team meeting taking place on the 14th of January 2020 at 14:00 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourself now? Hearing no one, we have no listed apologies for today. However, joining us late today will be Chris Disspain and Becky Burr, as they have a conflict for the first hour and will join as soon as they can.

Alternates not replacing a member are required to rename their line by adding three Z's to the beginning of their name and at the end, in parenthesis, their affiliation, dash, and the word "alternate," which means you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click "rename." Alternates are not allowed to engage in chat, apart from private chat, or use any other Zoom room functionality such as raising hands, agreeing, or disagreeing.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

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

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing or hearing no one, if you need assistance updating your statements of interest, please e-mail the GNSO secretariat. All documentation and information can be found on the ePDP Wiki space.

Please remember to state your name before speaking. Recordings will be circulated on the mailing list and published on the public Wiki space shortly after the end of this call. Thank you. I'll now turn it back over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS: Thank you, [Clarie]. Good morning, good afternoon, and good evening, everyone. Welcome to the 39th meeting of the team. As usual, we have a proposed agenda which is now displayed on the screen. My question is, are you in agreement to follow this agenda during today's call? Chris Lewis-Evans. Chris, please go ahead.

CHRIS LEWIS-EVANS: Thanks, Janis. Just a quick question. I thought in the last call that we said we were going to go through all of the building blocks. I see item four is "further discretion of the contracted parties proposal" and some of the discussions we had last week. I thought we were discussed this next in the face-to-face. Can you just talk about that for me and why that's on there? Thanks.

JANIS KARKLINS: Thank you. Indeed, we had the initial conversation during the last call. But then, after the call, there was, in my view, a very constructive exchange between registries, registrars, and Mark SV. I thought that maybe we need to reflect and maybe build on that constructive engagement and see whether we can bridge those differences, also, by taking into account the charts that Mark SV developed. Maybe it would make sense to look at them and then see whether we can get any further in clarifying the common landing space. That's why I propose that we devote some time to talking about the CPH proposal. And Mark SV comments, also, the charts that he put forward. Thomas?

THOMAS RICKERT: Hi, Janis. Hi, everybody. I should have mentioned this on the list earlier but I do think that this particular point is best for our discussion in L.A. It's such a convoluted topic. And I think that during our last call the discussions were quite high-ended at times. I guess part of that was because the Belgian VPA letter was not quoted accurately. Pardon us.

I think that it might even need some visual aid for the different roles and responsibilities that the registries, registrars, and ICANN might have in this. Look at the liabilities implications and then try to slice and dice the discussion to come to a conclusion of what model is preferred. I think this is very difficult to follow and discuss during this call.

JANIS KARKLINS: Okay. Would you be agreeable to maybe let, once again, a CPH talk about the proposal and Mark SV outline his ideas? Simply, that that allows a little bit more time to think about it and with a better understanding.

THOMAS RICKERT: Yeah. Janis, certainly. That's your prerogative. I think it makes sense for our positions to be heard. But I think that both the written as well as the oral interventions that we could digest on this very topic would probably be better handled if we got some charts to go along with it. And since I also raised my voice during the last call, I feel responsible for trying to make sure that we discuss this in the best possible fashion. I will actually volunteer to prepare that part of the session in L.A. and come up with some visualizations of the components that need to be considered.

JANIS KARKLINS: Okay. Thank you, Thomas, for volunteering. Let me take Marc Anderson.

MARC ANDERSON: I appreciate the feedback. I guess I'm a little concerned that Thomas is raising concerns that talking about the hybrid model, one of the three models that we've been talking about for most of the time we've spent on the [CPDP], is considered too convoluted for us to take up on this call. This is one of the models. And if we're unable to talk about one of the models that we've been discussing all along on this call, it leaves me rather concerned about the state of our work so far and the progress we've made to date.

I guess I disagree with Thomas's feedback. I think it would be great to talk about this when we get to L.A. but I'm also very concerned about our timelines. If we don't have these conversations now, talking about this when we get to L.A. leaves us precious little time to finish our work before we get to our day for publishing the initial report for comment.

JANIS KARKLINS: Okay. Thank you. Chris, then Jim.

CHRIS LEWIS-EVANS: Thank you, Janis. To Marc's point, I think what I was really asking for here with highlighting this is that we've not, as a GAC small group, had a chance to properly talk about this and come up with the possible alternative approaches. I think we couldn't really do this justice. And as James and a few others said, it's a very well thought-through proposal that was put forward. What I don't want to do is do reactionary statements, which felt a little bit like what happened on the last call. Maybe any move back until Thursday, when we've all had a chance in our groups to consider this further, might be more appropriate.

JANIS KARKLINS: Okay. Thank you, Chris. James?

JAMES BLADEL: Thanks, Janis. I guess I kind of want to agree with Chris's last statement. My concern was that this was a pretty significant effort

and a sincere attempt at bridging some of the differences. I felt like, on the last call, it was dismissed out of hand without receiving a fair and appropriate vetting by the group.

If the concern is that folks haven't had enough time to review the proposal, I think that is a fair criticism and we should defer this either another week or until we are in L.A. But if we do so, I'd like to propose that we put together a small team. I volunteer. I heard Thomas volunteer. I probably would like to conscript Mark SV and some of the other folks to potentially work on fleshing out the idea a little bit better to present and allocate a significant, dedicated portion of our agenda in L.A. to address this.

And really, to address the criticisms of the model and highlight the benefits that it provides over the status quo and over the current situation, and really showcase why we believe it is a step in the right direction. If not a total resolution to everyone's problems, at least it's an important step along that path.

If we are going to defer this to L.A., I would ask that we do some work in parallel, to Marc Anderson's point, so those two weeks are not wasted.

JANIS KARKLINS: Thank you, James. Brian?

BRIAN KING: Thanks, Janis. I appreciate the CPH proposal and the step in the direction toward building consensus. I really appreciate you guys doing that. The reason that I've been silent on the list is because

I'm checking, here, internally, my gut reaction to it. I do want to give it the full thoughtfulness that I think it warrants. I'd be happy to join the small group to work through that. I checked my gut reaction on this because I will admit that there are some key facets of the proposal that I think are objectionable to many within the IPC.

And so, I need to wrestle with some of this in my own mind and to think about how we could make some of those facets of the proposal palatable to the IPC and to what we're looking for in light of the Data Protection Board guidance, GAC advice, and all kinds of other inputs I think we should think about. The silence is not that I haven't been looking at this or paying attention. I really have. I've been analyzing it. I'd like to join that group, I think, to work through it. Our thoughts are being formed now.

I support Thomas's suggestion that we give this some time and work at this, maybe, outside of the broader plenary, where we can be a bit more effective or efficient at working through those thoughts. I admit that we're probably not ready to do that today. Our thoughts are probably not fully formed on every aspect of the CPH proposal. I've rambled for a while now, but I hope that's clear. Thanks.

JANIS KARKLINS: No, thank you. Look. I hear you and probably, based on these comments, we should postpone the conversation to a later date. The question is, how late? And if we look to what comes next for us, it is a meeting on Thursday and then a meeting on the subsequent Thursday before departing. I would like, also, to remind ourselves that our objective is to deliver the initial report after the

face-to-face meeting, which means that we need to be, in L.A., as productive as possible. From one side, as constructive as possible. From another side, there is a need for technological time to prepare and maybe to correct or modify some parts of the draft as a result of this conversation.

My worry is that there may not be enough time if we're going to L.A., let's say, not fully prepared. We will miss that deadline and that entails other missing deadlines. And then, we are really in the weeds.

I recall that many groups at the very beginning of the process urged us to be as swift as possible because the current situation is not sustainable. SSAD was seen as a means to considerably improve the current situation.

Let's just remind ourselves that we are a little bit under time pressure and at least I would not like to see us failing to meet reasonable deadlines that we have established for ourselves. Therefore, my suggestion would be that we do not talk today but make an effort to re-read the CPH proposal, study Mark SV's tables, and maybe find the way how we could convene a small group of those who volunteered. There was Thomas, there was Brian, there was James, working, maybe, tomorrow, in order to thrash out a proposal that would already take into account certain sensibilities of different groups.

I understand that we were talking about differences of opinion and appreciation of the models, whereby one part of the team thanks that a hybrid model would be the right way forward and another part of the group thinks that the only way to move forward is centralized.

Having seen these types of situations, I think there is always a reasonable way forward. Maybe we can also consider whether both approaches are completely opposite. Maybe there is a way to make sure that there might be, also, transformation in the system as we go and so on. Again, I do not want to pre-judge this conversation but I have a feeling that there is still a possibility of finding a common solution to that and that, of course, requires flexibility, a constructive approach, and an open mind.

With this, I am taking this particular topic off the agenda. But I see that Volker's hand was up. Volker, the floor is yours.

VOLKER GREIMANN: Okay. Sorry. I just heard that you were taking it off the agenda. Just briefly, maybe. It is not our intention that this proposal is the be-all-end-all of everything. We foresee, certainly, that in time changes may come to this proposal. It's just what we see as the most common-ground situation that can be influenced that can be implemented right now that we will be able to implement. The [IPC] needs to move to a centralized model for some parts of it later on. Let's just focus on getting it done, getting something done, and having some result to present by the end of the meeting in L.A. And then, we'll move forward on that. That, at least, is my view.

JANIS KARKLINS: Yeah. Thank you. Look. I would suggest that we see whether this small group could find the time tomorrow to meet for an hour or so. Certainly, I can commit on behalf of the staff to make necessary arrangements. We would put that on the agenda of Thursday's call.

We would devote around an hour, if you would agree to talk about whatever comes out of this preliminary conversation. I think it's essential to go to L.A. with a good understanding of different options and that we can have time to reflect on all of them and try to get them on the same page in L.A.

With this, I see that there are plenty of volunteers. I hope that this will not turn into a fully-fledged team effort. But of course, volunteers are volunteers.

Let me then move to agenda item five, which is the audit. I have some list of volunteers: Thomas, James, Marc Anderson, Brian, Mark SV, Hadia, Franck, Alan, and Chris. If I will be able, I will also join, if that will ever be possible depending on time. Anyway, let's go to the audit building block. Actually, in all the building blocks we have made good progress. We have only a few outstanding issues. I would suggest that we do not talk about everything that we have already agreed but address only those issues that are outstanding. And those outstanding issues are seen, now, on the screen with the comments.

Since we did this effort already, a while ago, maybe it makes sense to remind ourselves. Actually, I had a preliminary conversation with staff and I'm not sure that we came to the same memories of the first point.

Here, we're talking about the audit of accrediting authority. We came to the conclusion that the accrediting authority could be ICANN. We also came to the conclusion that ICANN can do this function by itself. But equally, ICANN can outsource the accreditation function to a contractor, either one or a few. This

section, or this chapter, reflects the auditing of accrediting authorities.

And the first three paragraphs relate to the audit of accreditors outsourced by ICANN. And the fourth speaks about if ICANN serves as the accrediting authority. I think that we had this conversation: what happens with the accredited entities if ICANN is in an unrepairable breach of policy? Sorry, I see some comments. Is something wrong with the sound?

TERRI AGNEW: Janis, we just hear crackling every now and again from your line. However, everything you're saying is heard perfectly clearly.

JANIS KARKLINS: I am sitting at my desk and not banging my head against the wall, that I can tell you for sure. Okay. I will not move at all. My recollection is that we were discussing – and here, I'm speaking under the control of all of you – what happens if ICANN is in breach of policy. What happens with those accredited entities? But I may be wrong. I call on everyone who remembers what the issue was why we couldn't agree on this topic, prior to turning to the IPC for outlining their concern. No one remembers? Brian.

BRIAN KING: Thanks, Janis. I remember. Do you want me to talk through what I outlined there in the comments? In short, this was because this language was really vague and problematic because of how broad it was.

EN

JANIS KARKLINS: Yeah, please go ahead.

BRIAN KING: Okay. I guess we'll start at the beginning. The first thought here that made us think that we need to clean up this language is that the first problem is "any breaches." It's not clear as to whether that's a data breach or a contract breach. These could both be very different things. That was a problem I think we need to address, there. I added some language there that I thought could be a replacement language that would clear this up. It's at the bottom part of my comment, there.

The second thing is, what happens if, in those breach scenarios, the language just says "requirements for other entities involved in SSAD may be temporarily lifted"? That's far too broad, too, because it doesn't say what requirements. Is that all requirements? Is that a requirement to pay for a data request? Is that a requirement for the contracted party to provide the data or a requirement to audit and logging? Just saying "requirements" is far too broad. This is why people hate lawyers. I understand that and I apologize.

It says "other entities" but it doesn't define which entities. And "temporarily lifted" doesn't say for how long, under what circumstances they might be reinstituted, who gets to decide when that's temporarily lifted, and it doesn't say who gets to define when a breach occurs.

There are a lot of problems there with the language but I tried to fix it in the chat. I think we as an ePDP team should try to understand

EN

better what we're trying to address, here. And then, I'd be happy, if this language doesn't do it, to work with a small group or to take individual homework to draft some language that does address it. I think this is a friendly amendment. This is not a policy point. We just need to be clear about what we mean here and then say it clearly. Thanks.

JANIS KARKLINS: Thank you, Brian. Look. Again, it is important to understand what we're talking about, here. I think that you really amendment suggests or addresses the issue if there is a breach of data security or that type of thing. We're talking about an audit of accrediting authority and we're talking about auditing of accreditation policy or implementation of accreditation policy.

There was a conversation. If I'm not mistaken, that was Marc Anderson who was talking about it. What happens – or giving examples in other circumstances – with accredited entities in the case that an accrediting authority is n breach of policy? One way is that nothing happens and they still have valid credentials. Another way could be that accredited entities are temporarily suspended and cannot use their credentials until an investigation is in place and breach of implementation of policy is remedied. Or, everything that has been accredited in breach of policy is nullified and accreditation needs to be repeated following the policy.

I think that this was the meaning of this, or an attempt to capture what happens with accredited entities if ICANN – who serves as an

accrediting authority – is in breach of policy. Again, this is my recollection. I have Alan Greenberg and Milton on the line. Alan. While Alan is unmuting himself I would like also to say that we have an audit of disclosing data on contracting parties at the bottom of the document. Alan, please go ahead.

ALAN GREENBERG: Thank you. Can you hear me?

JANIS KARKLINS: Yes.

ALAN GREENBERG: Okay. Thank you. Certainly, the word "breach" is confusing here because "breach" has very specific meanings, both in contracts and with regard to data privacy. The real question, I think, is, what mechanisms do we have that would preclude breaches or force their remedy quickly if we have them? We have the ICANN accountability measures. We have the threat of action from the data authorities/the privacy authorities within various countries.

There are a lot of things here that are going on that will say, "These things have to be fixed and they have to be addressed quickly." We're not in a position, I don't believe, to simply say, "Oops, there was a problem. We're going to revoke all authorizations and start from scratch. We'll put everything on hold for the next six months while we do it."

I don't think we can revoke. If ICANN is the authority, ICANN can't revoke its own accreditation and its own privileges. But there are going to have to be measures taken to remedy them quickly. I think we need to identify those. I just don't see any way other than that because there's no higher authority we can go to that could take action on our behalf. Thank you.

JANIS KARKLINS: No, that's exactly the point, Alan. In the first three paragraphs, we're talking about a situation when ICANN outsources the accreditation function. Then, the procedure is clear. We are in agreement. But if ICANN serves and performs this function itself, then what do we do? First, we have existing accountability mechanisms and we agree that they should be used.

But what happens with the accredited entities when it is discovered that ICANN is not in compliance with the accreditation policy? What do we do with those issued credentials? Do we revoke them? Do we maintain them? Do we suspend them? That's the question, at least in my mind. Milton, please.

MILTON MUELLER: This is Milton Mueller from the NSCG and Georgia Tech. Janis, you made a point I was making. I remember discussing this. The breach that we had in mind was clearly some kind of breach of the accreditation policy by ICANN. The point of this paragraph was simply to call upon existing accountability mechanisms within ICANN and then the requirements for other entities. I would suggest that all we need here is some kind of modification or elaboration of

the notion of breaches so that it's clear what we mean. Brian is certainly right that that's unclear in the current language. Thanks.

JANIS KARKLINS: Can we simply add "address any breaches in accreditation policy"? Alan Greenberg.

[CLARIE:] One moment, Alan. There, Alan. Your line is unmuted. There is some echo coming from it so we unmuted it to help. Please, go ahead, Alan.

ALAN GREENBERG: Okay, thank you. I think it will be helpful to come up with an understanding of what we're talking about. The kind of scenario I think we're imagining is that perhaps a new person took over responsibility, whether it's within ICANN or some sub-contract, and is no longer following the policy. Therefore, we have a number of recent accreditation where these people may not actually validly have the appropriate accreditation. Well, look at it just from a purely operational point of view. What one would do is identify the period of time, revoke or put on hold those accreditations, and remedy the problem.

These are likely to be operational issues. Now, if we find out through an audit that ICANN has never followed its procedures and we have thousands of entities accredited that shouldn't have been, that's a really serious problem. But hopefully, we'll be monitoring this on a better basis than that.

I think a lot of this is going to be handled on an operational basis to remedy the problems as identified by the audit. To say we're going to use ICANN's accountability mechanisms, well, those may take months to invoke. If we have an operational problem, they're going to have to be addressed operationally. I really don't see a major problem, here. We're going to have to use good management practices. And presumably, the audits will catch things on a timely basis. Thank you.

JANIS KARKLINS: Thank you. I don't see a big problem, either. Let me take Brian. Brian, my proposal stands. You can add breaches of the accreditation policy as suggested by Milton. And maybe, think of deleting the rest.

BRIAN KING: Hey, Janis. Did you call on me?

JANIS KARKLINS: Yes, I did.

BRIAN KING: Okay, thank you. I didn't want to speak out of turn, there. Yeah, I agree. I would agree with Milton any time I can. I totally think that we can define this, and should, as breaches of the policy, here. Then, we just need to get to work a little bit on the contract drafting that would follow, here, and say who gets to determine when there's a breach and which requirements for which entities may be lifted for

how long, according to whom, and who gets to decide when the breach has been remedied such that everybody needs to return back to normal. We have a little work to do there.

Again, I propose some language in the comment there that can get us started. That's not a policy position, it's just intended to help try to check some of the boxes that you need in contract drafting when you talk about what happens in the case of a breach. All of that is up for discussion and debate. I don't particularly care. But we do need to be clear about it if we're going to give some folks what looks like a get out of jail free card, even if that's the folks that we represent. We just need to be clear about how that can happen, when, and things like that. Thanks.

JANIS KARKLINS: Thank you, Brian. Look. My reading of your proposal, and please correct me if I'm wrong, is that you are talking about breaches of registration data, which is on the second line. Here, we're talking about breach of accreditation policy. If you can scroll down this document to the last section, where there is the audit of the disclosing entity? We put a placeholder there saying that, depending on the model, we would develop an audit policy for the process of disclosing and the breach of data. I would argue that it belongs to this section rather than the section we're now looking at, which is purely an audit of accreditation policy.

Again, I speak for those who currently are silent but who argued about it during the first reading of the document. The question is what we do with those accreditations that have been issued not in compliance with the policy. I think that this is what we need to look

at, this paragraph, and identify, whether we temporarily suspend them or we simply let them continue, or what. I would like to hear some comments and suggestions for what we'll do with those whose credentials are issued in breach of accreditation policy. Stephanie Perrin and then Hadia.

STEPHANIE PERRIN: Yeah. I'm sorry. I'm likely going to over-complexify this situation. I understand that we're talking about a breach of accreditation policy but in the event of a large-scale breach of registrant data, if it surfaces, for instance, through a customer complaint or a civil society complaint under the GDPR, it will not be immediately apparent, I would suggest, as to the scope of the data and whether it came through the mechanism that we're talking about in this ePDP – the WHOIS replacement, let's call it that short form – or whether it came through private arrangements that a large player, such as a very large registrar, or a very large registry, might have with their own accredited internal partners and data processors. So a security company, for instance, that has a private arrangement with one of these large, contracted parties.

I think we need to be precise about the kinds of data breach that we're attempting to address in this policy and restricting it very seriously to a breach of policy. And that's hard to do when we don't know how and who is going to be running this system yet. Thank you. I hope that's helpful and not further muddying the waters.

EN

JANIS KARKLINS: No. Actually, we know, Stephanie, who will run the system. This was written at the beginning of the sentence: "If ICANN serves as an accrediting authority." We're talking about accreditation policy, which is developed and described in the accreditation building block, which is completed except for one element. I'm using this opportunity to call on the GAC representatives to provide input on accreditation of public entities. I hope that you are close to conclusion. We need it, at the latest, at L.A.

And this particular paragraph says that if ICANN, who serves as accredited authority, ignores the policy that we have adopted for some reason and it is discovered, we use existing accountability mechanisms to remedy that breach. But what happens with those entities who have been accredited during that period when ICANN, as accredited authority, was in breach of the policy? That's the question about data.

Once again, I think that belongs to "disclosing," the next chapter that is not being developed yet because we do not know who will be the data disclosing entity. In my view, what is proposed by Brian fits perfectly here if there is a data breach, and how, then, that should be addressed. The proposal is there. I have Hadia and then Marc Anderson.

HADIA ELMINIAWI: Exactly. This is the problem. If we do have one accreditation authority and that one accreditation authority is ICANN, and then we discover that there were some policy breaches in relation to the accreditation provided to some of the entities, what do we do?

EN

If we decide to revoke the accreditation of all the accredited entities based on that, we will end up with no system and an accreditation authority that is still trying to fix itself. Basically, we end up with no system and no mechanism to rebuild the system again.

To me, what makes sense is maybe revoking the accreditation of the entity that was involved in this policy breach but not de-accrediting everyone else. The other thing may be that we can avoid getting into those details now and leave it to implementation and [alteration], and now just say that if such a breach happens then we should refer to the already existing compliance mechanisms within ICANN to address this and leave the operational part of how to address this to be decided later by implementation.

My thought would be not to get into those details now and just refer the breach through the existing accountability mechanisms and stop there. Thank you.

JANIS KARKLINS: Thank you very much, Hadia, for your proposal. Marc?

MARC ANDERSON: Thanks. You know, I've been silently following this conversation. If we're trying to follow this conversation, it's surprisingly complex. We're touching on a number of issues related to this. I've noticed from listening to the conversation that not everybody is talking about exactly the same issue. That's making the conversation a little more complicated.

I think Brian has raised a lot of good and fair questions to tee off this conversation. And Janis, I think you asked a really good question: "When the accrediting authority is found to have been in breach, what happens with the entities that have been accredited?" I think there are some instances where those accreditations would need to be revoked. I can also envision some instances where they wouldn't But I think, just to maintain the legitimacy of the system, we could need to err on the side of revoking credentials if there is the appearance that the entity that had accredited them had been going something wrong.

But I guess, to try and help this move forward, I have two thoughts. I think there's probably an opportunity, like Hadia said, to leave some of these things to implementation. But I will say that, from my experience on implementation teams, where we expect things to be worked out by the implementation team, we need to clearly spell that out in the policy: "We expect X, Y, and Z to be determined in implementation because the implementation team will implement exactly what the policy recommendations say and no more." If we do expect things to be worked out in implementation, we need to clearly state that here in this building block.

And then, just one more thought before I stop talking is that maybe there's an opportunity to take this to a small team. Like I said, Brian and others have raised some very good questions, here, that I'm not sure are best solved in a plenary environment. Maybe this is an opportunity to hash out some of these more nuanced issues in a smaller team.

JANIS KARKLINS: Okay. Thank you, Marc. I will take Georgios, and then I will make a proposal.

GEORGIOS TSELENTIS: Yes, thank you. I want to take from what Marc said. I think part of the problem is that we try in this type of description to put ICANN as the accreditation authority. But at the same time, we are talking before that about even authorizing third parties to perform some of the functions of the accreditations. This makes things complicated when we talk about policy breaches. Because, as I mentioned several times in the past, when we are talking about problems in the policy we have to refer exactly to who does what, what exact processing activity we're talking about, or sub-processing activity in the accreditation.

Here – and I get all the threads of the discussion – we have doubts about what any breaches mean and what policy breaches mean. And the difficulty of describing this at this level, where we have the descriptions of the policy, is because we don't go to the detail of what exact processing activities we describe, and performed by whom in the accreditation.

If we do so, then I think it's logical to say that the one who performs the activity – and there is a breach in this processing activity – then is responsible for the breach. And therefore, if it's covered by any mechanism, accountability or other, then the whole thing will be treated.

I think the proposal to have it in the IRT could cover us but only if we make an extra effort, now, to describe how exactly we expect

the accreditation model to work. We have not done so. It's, again, in an abstract level so far. Thanks.

JANIS KARKLINS: Thank you, Georgios. No, it's not in abstract. We have closed in consensual agreement a building block called "authentication authorization and accreditation." We did it, probably, two months ago. It seems that we do not remember this any longer. We have agreed to an accreditation policy. Here, we're talking about audits of the implementation of that accreditation policy. We also agreed that accreditation could be entrusted to ICANN. We agreed that ICANN could decide to outsource that function and establish a contractual relationship with entities who perform accreditation policy functions on behalf of ICANN.

In here, we agreed how to treat a situation with audits if we find out that this entity who has been tasked by ICANN, through the contract, to perform an accreditation function is in breach of the contract. That's described in the first three paragraphs.

Now, the question is, "if ICANN decides to perform its function itself." Then, we agreed that we do not need to invent anything else because ICANN has well-established accountability mechanisms and procedures for how to remedy any breach or misalignment with existing policies.

For me, the only question here is, what happens with those accreditations and credentials which are issued during the time when ICANN, as accredited authority, is in breach of the accreditation policy? I would like, simply, to suggest that we

reformulate this sentence in the following manner: that, "If ICANN serves as accreditation authority, existing accountability mechanisms are expected to address any breaches of the accreditation policy, noting that in such extreme cases the credentials issued during the time when ICANN was in breach of the policy will be reviewed. Modalities of this review should be established in the implementation phase."

This is my proposal. This is rather simple. It's common sense and nothing else. And then, what Brian is putting forward in the breach of data is something that we need to look at once we will have the decision of who is the data discloser and how data travels. Then, we address the issue of a breach of data and put that in the last chapter that still needs to be written.

If, there, you could type what I said on the screen so that people see that, that would be helpful. In the meantime, Alan Greenberg and Eleeza.

ALAN GREENBERG: Thank you very much. I think we're mixing two different issues, here, and it's causing significant confusion. If there was a breach of policy and we have accredited people improperly, that has to be remedied, perhaps by revoking accreditation. That's true regardless of whether ICANN is the accreditation body or it has subcontracted to someone else. If credentials have been issued improperly, they have to be fixed. It doesn't matter who's doing the work.

The second issue is, what if the accreditation body is doing something improper, a breach? Then, if it's subcontracted, then

ICANN will attempt to fix it via its contractual terms or will revoke the contract, cancel the contract, and contract with somebody else. If it's internal, then it is internal, normal business practices which will address it, backed up by the ICANN accountability measure, should ICANN refuse to or not be able to actually fix the problems properly.

The revoking of credentials is something which has to be addressed regardless of who's doing the work. How you fix a breach operationally will depend on whether it's subcontracted or done internally. But I think we need to separate the two because they're not really connected. Thank you.

JANIS KARKLINS: They are not [an own]. But the breach of subcontractor is described on the first three paragraphs of this chapter. And the fourth paragraph of this chapter describes how to remedy it if ICANN is not subcontracting but does it itself. If a subcontractor is in breach and if that is caught by an audit, then it is referred to ICANN and ICANN decides how to remedy the breach of the policy by sub-contractors. Full stop. We know it.

ALAN GREENBERG: Janis, my point is that if there have been credentials issued improperly, regardless of who is acting as the authority, that needs to be fixed, operationally. There's [inaudible] a problem of making sure that it doesn't happen again.

JANIS KARKLINS: Agreed. And that's why ICANN should remedy as a contractor of this or the one who assigns the task. But if ICANN itself performs a function and then accountability mechanisms will fix that … But then we say that those credentials that have been issued during that time should be reviewed and the modalities of review should be established during the implementation phase, stuff like that. I think we're talking about the same thing and we're simply spinning our wheels on a rather simple issue, honestly. I don't understand why we're spending so much time on this. Eleeza, please.

ELEEZA AGOPIAN: Thanks, Janis. Hi. I don't want to belabor the point if the discussion is coming to a close. I guess I just wanted to add in from Org's point of view. When we were reviewing this language to flag any implementation details for the team, one of the challenges for us has been in clearly identifying who was doing what. Who's determining that there is a breach? Who is disclosing the data? And so, for all of these questions that obviously have not yet been answered by the team … And I think there is some language further down in this recommendation.

I think it was with the audit of the [hedge] to disclosing the data that suggests that this will all be revisited once you've made those determinations. That may be helpful in all of these instances because there are a few different scenarios, particularly as you determine who the identity providers may be, whether they may also be an accreditation authority, and so forth. I think a few team members have echoed this point. I just wanted to lend our voices to that, as well. It would be a lot easier to provide input with a bit of

a clearer understanding of the roles. I hope that's helpful. Thank you.

JANIS KARKLINS: Not really. Sorry, but I'm saying this. Look. We're talking about auditing. Somebody will audit, whoever that will be. If the audit determines that there is a breach, then in case a function is performed by a subcontracted entity, ICANN needs to fix the breach and decide what to do with those credentials that have been issued during the time when the breach happened. All of that probably should be described in the contract between ICANN and an entity that ICANN hires to perform the function. It is as clear as day and night.

But what happens if ICANN performs this function? Whoever is auditing says, "You are in breach of policy. We need to remedy that." The existing accountability mechanisms are invoked and ICANN fixes things. Now, my proposal is that in that case, those credentials issued during that time, when ICANN as accreditation authority was in breach of the policy, should be reviewed. How they should be reviewed will be established in the implementation phase. This is just common sense, in my view. Or I am not understanding something, honestly.

And what Brian was suggesting is, what happens if there is a breach of a policy? How should a disclosure decision be made if there is a breach of data of some kind? That will be described in the chapter that still needs to be developed, once we will know who will be the entity disclosing data.

Look. I would like to suggest that my question is, can we live with the proposal that I put forward, and move on? I agree that there may be some wordsmithing. English is not my mother tongue. That could be done. But the idea … Would some object to the principle that I described? Amr.

AMR ELSADR: Thanks, Janis. I don't object. I actually like where you're going with this. I just wanted to propose that, the four questions that have been added at the bottom, I want to propose adding a fifth one. I know that I have commented a little earlier in the chat about mixing between breaches of policy and breaches of data. But it has been pointed out to me that you can't have one without the other, really. If you do have a breach in policy, then it will ultimately lead to some measure of breach in data because disclosure will be taking place of registrant data to SSAD users who should not be accredited.

This speaks to a comment that Franck just posted into the chat, as well. I think there should be an additional question where … In the course of the audit, identification needs to take place of what data was disclosed improperly as a result of the breach, and who was affected by this data improper disclosure? I think that includes both joint-controllers, processors, and data subjects or registrants. Thank you.

JANIS KARKLINS: Yes. But that is when we will be talking about auditing the data disclosing process. This chapter still needs to be developed. It is not developed yet.

EN

AMR ELSADR: No. I don't think so, Janis. In that chapter, where we're discussing audits of data disclosure process, we're going to assume there's something wrong with the process. But in this context, there's nothing wrong with the process. The problem is with the accreditation. You might have some sort of breach in the accreditation policy by whoever the accreditation authority is. We're assuming it's going to be ICANN. But the process beyond that is progressing normally. Or at least, I'm assuming that's the assumption that we're working under.

There's nothing wrong with the process. The problem here is in a breach in the accreditation policy. And so, you will have some SSAD users who should not have been accredited but were accredited and took advantage of the disclosure process, which is functioning as it should be. I hope that makes the distinction a little clearer. Thank you.

JANIS KARKLINS: Yeah, I understand that. But look; we assume that the audit is not a completely new thing that nobody knows how it should be done. I bet that ICANN is audited on a regular basis on other things that ICANN does and functions ICANN performs. I think that we need to assume that there will be a determination of how this audit will be done. And the policy question is, what should be audited? We're saying that the accreditation process should be audited and other things. But then, implementation will suggest how this audit will be performed, and by whom. Do we really need to go into details that saying this audit should be performed by an entity who is chosen

EN

by competitive bidding and blah, blah, blah? No. It's not our task, at least as I see it.

Okay. Look. I would put my proposal on the table. We will discuss whether there are any other fixes needed based on … Please don't delete what is now written, here. Maybe put it in italics or move it somewhere so that we can remember these elements and we can come up with a solution or proposal in the initial report.

But we have further elements that we need to discuss in this same building block, and that is that we are now at the audit of accredited entities and individuals. Here, we have one issue. My computer is not working anymore.

Here is one issue with the sentence, "Should the accredited entity and each individual be found in breach of the accreditation policy and requirements, it will be given opportunity to cure the breach. But in the case of repeated non-compliance or audit failures, the matter should be referred back to the accreditation authority for action." Here are some questions from ICANN Org, Eleeza, if you want to explain where the problem is?

ELEEZA AGOPIAN: Sure, happy to. Hi, Janis. Thanks. The question here was really that if the issue is with the requestor, would it go back just to the accreditation authority or would the identity provider also have a role in ensuring compliance? This is assuming that the accreditation authority is also the identity provider, or if there was both an accreditation authority and an identity provider, would there be a

role for the identity provider to play in ensuring compliance in this instance? That was the question that we raised.

JANIS KARKLINS: Okay. Thank you. Marc, do you have an answer?

MARC ANDERSON: Thanks, Janis. Hopefully, I do. Probably a fair question by Eleeza. We can probably just address this by updating the text to say, "Referred back to the accreditation authority and/or identity if applicable for action."

JANIS KARKLINS: Thank you, Marc. Can we get the reflection of this proposal on the screen? "And/or identity provider, if applicable." After accreditation authority. "And/or identity provider, if applicable." Come on. Any comments? Objections? Eleeza, can you agree with this?

ELEEZA AGOPIAN: Absolutely.

JANIS KARKLINS: Okay, good. Thank you. May I take that this is something we could stabilize for the moment? Okay. According to my notes, this is the last point, except that we need to develop this chapter on the audit of entities disclosing data/contracting parties as soon as we will have the agreement on how this business with disclosure will be done, and by whom. We have agreement of how disclosure should

be done. We do not have agreement on by whom. I refer to the building block describing procedure on disclosure that we agreed on.

With this, I would like to suggest that we close, for the moment, the accreditation building block, and we go to the financial building block and see whether we can get agreement on outstanding issues that we have. We have about 50 minutes to agree on funding and agree on, maybe, some other things.

Here, we have a reflected outcome of our previous conversation. A proposal is to delete the … And this is the proposal of leadership. We discussed this and then tried to accommodate what was unclear and what was discussed in the previous call. Here, we would take out the last sentence of the second paragraph and we'd put it separately as a paragraph: "When implementing and operating SSAD, a disproportionately high burden on small operators should be avoided." Would that make a trick? Brian.

BRIAN KING: Thanks, Janis. Yes, thanks.

JANIS KARKLINS: That was quick.

BRIAN KING: I have further comments but you asked about this one. The answer's yes, Thanks.

JANIS KARKLINS: Yeah. We will go one by one. Can we remove all brackets and then leave it as it is on the screen? "When implementing and operating SSAD, a disproportionately high burden on small operators should be avoided." Okay. So then, we will keep that. Now, let's go to the next one.

We discussed this cost causation thing. I think that clarified unnecessary elements. I wonder whether we are in agreement with this paragraph? "The PDP team recognizes that the fees associated with using SSAD may differ for users based on cost causation." I don't know whether Brian will want to speak on this paragraph or the next one.

MARC ANDERSON: Janis, can I interrupt?

JANIS KARKLINS: Marc, yeah. Do you want to speak on this one?

MARC ANDERSON: Actually, I have a question on the previous one.

JANIS KARKLINS: Okay.

MARC ANDERSON: I think my question is directed at Volker. At our last meeting when we discussed this, Volker, if I remember correctly, was concerned

that "unreasonable" was, from a legal perspective, a clear and better-understood term than just "disproportionately high." In general, I think the language is fine. But I'd kind of like to put Volker on the spot to make sure he's okay with replacing "unreasonable burden" with "disproportionately high," if I could.

JANIS KARKLINS: Okay. Volker? Please say yes.

VOLKER GREIMANN: Sorry, I had myself on mute. The problem with the word … I just think that "unreasonable" is better defined in the legal sense than the alternative. I think "unreasonable" would be easier to implement than the other alternative. That's my only concern but I can live with both options, yeah.

JANIS KARKLINS: Okay. I hope we will not spend too much time arguing "disproportionately high" or "unreasonable," which would be better. I think we intuitively understand both of them. But Brian's hand is up. Brian, is it on this or on the next one?

BRIAN KING: No, Janis. The next one. Thanks.

JANIS KARKLINS: Okay. Can we go with "disproportionately high?" Volker said that Volker can live with it. Okay. So then, no new hands and Volker's

hand is old. Then, we stay with the "disproportionately high." Thank you. Now, on cost causation. An issue, Brian?

BRIAN KING: Hey, Janis. Thanks. I think that the "cost causation" term has become loaded. We agree, here, with the principle of this sentence. Fees associated with the SSAD may differ for users, that's fine. I think that could differ based on a number of factors, including query volume and including the type of requestor. Maybe we want to give a break to law enforcement, consumer protection, or whoever. I just think that the term has become loaded and I think that we don't agree with the meaning that some folks attribute to that term.

We want to agree, and we do agree with the rest of the sentence. That's probably too limiting. There are probably lots of factors that could change how the fees differ for users. If we could either strike "based on cost causation" or replace that with "a number of factors," or something along those lines. That we want to agree with the … I think is the most important part of this sentence, which is the rest of it. Get rid of that term which I think has become too loaded to be useful. Thanks.

JANIS KARKLINS: Okay. Can't we do something with a footnote explaining what we mean by cost causation? Just a question. James?

JAMES BLADEL: Hi, Janis. Thanks. I think if we make the changes Brian suggested, we essentially gut the meaning of that sentence. "The ePDP team

EN

recognizes fess associated with SSAD may differ for users" is more of an observation than any kind of a recommendation. I think we need to highlight that.

I would push back on Brian's suggestion and ask him if he can think of equivalent language that doesn't have the loaded connotations that he's concerned about but still captures the idea that some users are going to drive higher usage, higher costs, and higher utilization of scarce resources of SSAD and should bear, therefore, a proportionate burden of absorbing those costs. I don't know how to say that in a way that doesn't sound like an accusation but is also true. I'm open to wordsmithing this, I guess. Maybe we don't need to do it on the call. But I don't think that we can just take it out and go forward because then it doesn't say anything at all.

JANIS KARKLINS:	Okay. I see that Matt is favoring the footnote idea. Maybe we could think of putting asterisks and then putting a footnote on the term where we would describe what we mean. The volume, the frequency, what else? Maybe Brian can also think of what these elements are that could be put forward as part of the explanation. Would you agree?

BRIAN KING:	Thanks, Janis. I don't like the footnote but I hear what James is saying about neutering the sentence if we don't have "based on what?" there. A couple of the examples I provided are volume, the type of user … Maybe we finally found a reason to talk about user groups, here. Yeah. Volume, frequency, purpose or user group,

however you want to call it. Things like that, I think, would be helpful. But the term "cost causation," even with a footnote, is not helpful. In fact, it's problematic because, again, it has become such a loaded term. I'm happy to define and make the sentence say what we mean it to say. But I don't think that … Yeah. Let's just leave it at that. I'm happy to define this better. Thanks.

JANIS KARKLINS: Okay. Maybe you can think and come up with a suggestion, either as we go further or as homework that we can think of a possible way forward. It seems that we need to revisit it. Let's put, for the moment, "cost causation" in square brackets and have the homework for Brian.

Let's, now, move to the next paragraph, which also was requested to put in brackets. Probably, we need to change "foot the bill" with something more simple. "Pay." Otherwise, I open the conversation on this paragraph. Amr.

AMR ELSADR: Thanks, Janis. I would prefer something more like, maybe, "bear the cost burden," here. Because what we don't want to do … And I've noted several comments from the IPC on this that I'm sorry to say that I wholeheartedly disagree with. We should not be creating a financial sustainability model which will result in registrants bearing the cost burden, whether directly, such as in paying, or indirectly, either, such as these costs being shifted from one actor to the next until they're finally borne by the registrant. "Pay" only addresses a registrant directly being linked to the cost of use of the

SSAD, but I think also making sure that they're not directly linked is as important so I would prefer something more like "should not bear the cost burden." Thank you.

JANIS KARKLINS: Okay, thank you. Any other comments? Brian?

BRIAN KING: Yeah. Thanks, Janis. I'd like to work with Amr and others to find some common ground, here. I can tell you that where we're coming from and where we can work from is that a prohibition on ICANN funding any of this doesn't seem reasonable. We see WHOIS registration data as a feature that's important to the DNS for limited purposes, the folks that need it, and all of the things that we're working on here.

And so, a blanket prohibition on any of this being funded by ICANN or a centralized payer, with the understanding that requestors are going to pay for accreditation and then potentially pay per query, and we're happy to do that, the overall prohibition that none of this could ever flow through ICANN to pay for it isn't immediately palatable.

Again, we can work toward that. But we have to note disagreement in principle here with the note that we're happy to work out how we can agree, here. Thanks.

JANIS KARKLINS:	Okay. Homework for Brian and Amr. But I still have a few more hands on this one. James, followed by Alan G.

JAMES BLADEL:	Thanks, Janis. Just to point out to Brian, maybe we just need to clarify that I don't think that we are calling for a blanket prohibition. My understanding was that we were essentially saying that ICANN would foot the bill for the development of SSAD. That was fair game. But I think we were talking about ongoing or operational and maintenance costs. I think we were trying to make that distinction.
	Those were the only concerns. Maybe we just need to wordsmith it so that that's clear. I think that we definitely don't want to charge data subjects any kind of a fee for the ongoing access to the system. Thanks.

JANIS KARKLINS:	Thank you. Alan G?

ALAN GREENBERG:	Thank you very much. I support what Brian said. I think that if we make anything resembling a blanket prohibition, what we're actually saying is that for anything the registrars or registries do … And if you look at the proposal they made, there were proposing that the contracted party be the authorization provider who decides whether to release data or not. That would mean that they have to bill-back somebody and be reimbursed for those costs. I don't think the intent was that registrars and registries were going to be asked to be reimbursed for the costs associated with their part in the decision

process, if and when they have a part in that. I think we have to be very careful about blanket prohibitions. Thank you.

JANIS KARKLINS: Thank you. Brian, your hand is up. Is it a new or old one?

BRIAN KING: Old hand, sorry.

JANIS KARKLINS: Yeah. I recall that in one of the public interventions Göran was speaking about the role of ICANN in maintaining stability of domain name systems and that WHOIS, and the operation of WHOIS, is considered part of the effort to run the DNS. And in the letter or e-mail that he sent in response to my e-mail on financials, he stated that the cost should not be a reason not to do something, because it is important for the stability of the Internet, which is one of ICANN's roles; maintaining stability of the Internet.

I think that in one way or another, ICANN will be involved and will be contributing to the operational costs of SSAD. But of course, today we do not know at what level and what form that will take, and how, then the costs will be distributed between all players. That would be helpful to make these calculations. But for the moment, we need to simply live with the assumptions.

If I may suggest that Brian, Amr, Stephanie, and Franck, who have volunteered, try to identify a possible formulation that would be agreeable to all? And if I may suggest …? Okay. If there is anyone

volunteering to join this small group, it would be helpful to get a proposal for next Thursday.

Let's move to the next paragraph. I think that, here, we had a conversation last time that SSAD should not be considered. Based on the conversation, the leadership proposal is that we formulate the first sentence in the way you see on the screen, which is clear. I think that Alan G was speaking convincingly about it, that the SSAD should not be considered a profit-generating platform for ICANN, which means that ICANN can decide to outsource the operation of SSAD. We're talking about at least a central gateway to somebody else. That's the proposal that we came up with. The rest is on the screen.

"[Maybe] operation costs should be shifted onto ICANN, which then falls to the contracted parties, thus the registrants, or directly to registrants or contracted parties. A funding of SSAD should be sufficient to cover costs, including for subcontractors at market cost and establish a legal risk fund. It is crucial to ensure that any payment in the SSAD are related to operational costs and are not simply an exchange of money for non-public registration data." That's the proposal. Volker, Paul, and then Brian.

VOLKER GREIMANN: Yes. Just one comment to the profit generation. I think it wasn't just the profit generation of ICANN that we were concerned about, but also one concern the IPC and BC raised earlier was that it also shouldn't be profit-generation center for the contracted parties. I understand that we've now gotten rid of the concept of reimbursing the contracted parties. But it may still be helpful to leave it more

general that, of course, somebody is supposed to make profit but not one of the controllers, maybe, of the data. Contracted parties, ICANN, and whatever else might be in considerable control in that context should not be able to make profit from [the distorted decisions].

JANIS KARKLINS: Can we say, then, "should not be considered as a profit-generating platform for anybody"?

VOLKER GREIMANN: Yeah, sure.

JANIS KARKLINS: Brian?

BRIAN KING: Thanks, Janis. My comment was on the second part of that sentence.

JANIS KARKLINS: Let's, then, do a sentence, or part by part. On the first part. Alan G? Just on the first sentence.

ALAN GREENBERG: Yes. Thank you. I agree with what Volker said. It certainly shouldn't be profit-making for any of the contracted parties or any of the principals involved in this. If ICANN subcontracts the actual work,

that may well be a profit-making venture for whoever it subcontracts with. But that's a separate issue. But I agree that the contracted parties and ICANN should not be profit-making. I think his addition is good.

JANIS KARKLINS: Then, we formulate that a profit-generating platform neither for ICANN nor contracting parties, nor anyone else? Or we leave at no ICANN?

ALAN GREENBERG: No. If you add "nor anyone else" then it can't be subcontracted to a for-profit company. A for-profit company is likely to be the only one that bids on such a project.

JANIS KARKLINS: Okay. So then we maybe stay with "a profit-generating platform neither for ICANN nor contracted parties."

ALAN GREENBERG: I would support that.

JANIS KARKLINS: Thank you. Any objections? Volker's hand is old. Alan's hand is old. Okay. So then, let's see whether … I take it that this might be a solution? Though, it's not reflected on the screen. The second sentence is, "Neither should operational costs be shifted onto ICANN." Brian?

BRIAN KING: Thanks, Janis. I think this is the same concept as we have above. Maybe we want to strike it here, pending we do better with the language up above from our small group when the plenary signs off. It would have the same kind of comment, here. Thanks.

JANIS KARKLINS: Yeah, I think so. That is logical. I think this is redundant. If we delete this part of the paragraph and refer to this or describe it in the paragraph above, that would be, I think, neat. I would suggest the deletion of this one with the understanding that the costs of … No, not all, but only this sentence: "Neither should operational costs be shifted to ICANN." Only that. Because we're talking about the same concept in the previous paragraph. That will be phrased by the smaller group.

And now, a sentence is, "The funding of SSAD should be sufficient to cover costs, including for subcontractors at market cost and to establish a legal risk fund."

This is Thomas's formulation that he proposed in the previous conversation, that clarifies what we're really talking about here. Marc?

MARC ANDERSON: Hi. Sorry. I lost track of where we are. Can you help me get unlost?

JANIS KARKLINS: We preliminarily agreed that the first sentence should read that "SSAD should not be considered a profit-generating platform, neither for ICANN nor contracting parties." Then, we decided to formulate financial involvement of ICANN in operations of SSAD, in conjunction with the previous paragraph. As a result, I suggested, in this particular paragraph, to delete reference to ICANN's operational costs.

Then, the next sentence in this paragraph is what we are discussing now: "The funding of SSAD should be sufficient to cover costs, including for subcontractors at market cost and to establish a legal risk fund." And then, I think, the agreed paragraph is that "it is crucial to ensure that any payments of SSAD are related to operational costs and are not simply an exchange of money for non-public registration data." Marc, do you understand, now, where we are?

MARC ANDERSON: I think so. Thanks, Janis.

JANIS KARKLINS: Any comments? Any objections?

MARC ANDERSON: Sorry, I'm still trying to wrap my head around this. I think [inaudible] see the text in its final form. I'm trying to follow.

EN

JANIS KARKLINS:	Okay. Look. If I may ask Berry to edit the first sentence as we agreed? On "profit-generating platform neither for ICANN nor contracting parties."
BERRY COBB:	Janis, you're going to have to repeat what you want me to do. I'm getting bombarded 15 different ways from chats and everything going on so it's hard to focus just on this. Can you restate what you need, please?
JANIS KARKLINS:	Yes. After "profit-generating platform," please type "neither for ICANN nor contracting parties." Thank you. That is, for the moment, the status of this paragraph. Since we will revisit this building block again next Thursday, I would suggest that we leave it at this moment as-is. It will be posted as a Google Doc and everyone can have another look before the next meeting.
	In relation to the next paragraph, A and B, I think we agreed last time that with the insertion of "may" we have agreement on this paragraph. Now, we have still square brackets … Berry?
BERRY COBB:	Thank you, Janis. I just wanted to note for the team that in this extract, in the Word document, you see a bunch of sidebar comments that were carried over from the Google Doc. Staff will be resolving many of these comments as these building blocks or these specific statements are agreed upon by the team to start to

clear up clutter. Just recognize that those will have fallen off as we make continued updates. Thank you.

JANIS KARKLINS: Yeah. Thank you, Berry. Then, we still have three paragraphs in square brackets. Let me see whether we can do something with them in the remaining time of the call.

"The fee structure, as well as the renewal period, is to be determined in the implementation phase following the principles outlined above. The ePDP team recognizes that it may not be possible to set exact fees until the actual costs are known. The [CPDP] team also recognizes that the accreditation fee structure may need to be reviewed over time."

I think this is a fair statement. But of course, I'm happy to entertain discussion of it. As well, "the ePDP team will further consider whether resubmission of request will be treated as a new request for a cost/fee perspective."

And then, we have implementation guidance: "The [CPDP] team has requested input from ICANN Org concerning the expected cost of development, authorization, and [measurements] of three different models based on the feedback received. The ePDP team may develop further guidance in relation to financial [inaudible]." That sounds to me like a placeholder. I think that at least the first paragraph is something that we could talk about. Marc. Marc Anderson, please.

MARC ANDERSON: In reading that last paragraph, you said it was a placeholder. I agree with you. This doesn't read to me like implementation guidance.

JANIS KARKLINS: No, no. It's not.

MARC ANDERSON: I think that header is misleading.

JANIS KARKLINS: "The fee structure as well as renewal period is to be determined in the implementation phase following the principles outlined above. The ePDP team recognizes it may not be possible to set the exact fees until the actual costs are known. And the ePDP team also recognizes that the accreditation fee structure may need to be reviewed over time." Is there anything that could unbracket this specific paragraph? Marc?

MARC ANDERSON: Thanks, Janis. I'm fine with that language. I think that language sounds more like implementation guidance. I think maybe it would be more appropriate to have that there under implementation guidance.

JANIS KARKLINS: Okay. Thank you for the proposal. Marc is proposing to unbracket this paragraph and move it as implementation guidance or label it as implementation guidance. Does anyone object to that? Brian?

BRIAN KING: Hey, Janis. No, I don't want to object it. I think that's great. I thank Marc for pointing that out. My question was about the language up above. I'm a little confused about what we're doing now because we were going through things that maybe we're not anymore. But I think we're probably close to getting that language that's slightly highlighted just up above. We can probably come to an agreement on these last couple things.

JANIS KARKLINS: No, I think that this is what we agreed last time. I said, "The rejected applicant may reapply but the new application may be subject to the application fee." We had that rather lengthy conversation last time and we changed "will" to "may." It was agreed.

BRIAN KING: Okay. Thanks, Janis. Thanks. I thought that's where we were. Okay. I was wondering if we were still talking about this but it looks like maybe it's highlighted because I had highlighted it on my notes. Sorry about that. I think we're good.

JANIS KARKLINS: I asked to highlight that in green as agreed. This should be green. It is green, at least on my screen. Anyway. What about this other paragraph? "The ePDP team will further consider whether the resubmission of a request will be treated as a new request from a cost/fee perspective." That also sounds like a placeholder for the moment.

I recall that there was a conversation that if by any … And that is linked with the building block on submission of request and treatment of request. If there is a need for clarification or something in that context, the question is when it should be considered as a new request and counted as such or when it is just a clarification or filing additional information that was requested.

Also, we need to take into account in this context that, most likely, we are looking at an interface where, if some of the fields will not be complete, the submit button will not be active. As a result, when we're looking at how this will work in the real world, there will not be, really, a resubmission. Simply, submission will not happen until every field which is required for submission is filled. I have a few hands up. Chris and Volker.

CHRIS LEWIS-EVANS: Yeah. Thanks, Janis. I think with the edits on the above, the placeholder for consideration probably doesn't need to be there anymore because I think that covers it, for me. I'd be fairly happy with where that is. And then, obviously, it's down to implementation exactly how that gets applied. I think with the change in language, I'd be happy just to get rid of that. Thank you.

JANIS KARKLINS: Okay, thank you. Volker?

VOLKER GREIMANN: Yes. Just one comment. Just the presence of text in all of the fields meaning that the submit button can be pressed does not mean that

that text is of any quality, even to the question at hand. Even if you fill out all fields, it may be very well the case that the submission is not complete. I wouldn't discount that point quite yet. Thank you.

JANIS KARKLINS: Okay. Thank you. Marc Anderson?

MARC ANDERSON: Thanks, Janis. Just a quick response to Chris. Chris, I just want to point out that the "rejected applicants B" that you're referring to is for accreditation. That's dealing with the accreditation framework. Whereas, that paragraph at the bottom is dealing with the fees associated with a disclosure request. These are two different things referring to two different cost items.

JANIS KARKLINS: Yeah. Thank you, Marc. Look. Let me suggest the following. If, Berry, you could highlight "the ePDP team will further consider whether resubmission," and move that text either before or after another placeholder? Just move it down. Control, delete, and then control, insert. Put the title "placeholders" so that we remember that these are placeholders. These two paragraphs, including the one above: "EPDP team has requested input from ICANN Org." That also is text for a placeholder.

And since we will revisit this building block once again, these placeholders will remain as a reminder that we need to look into those specific topics, as well. Stephanie, your hand is up.

STEPHANIE PERRIN: Oh, thank you. I was just going to suggest that under that implementation guidance, if you put an opening line, something to the effect of "many of these policy decisions will have implementation impacts and vice versa," because some of the implementation decisions definitely have cost implications that rise to the level of policy. I'm saying this backwards. If you said something like that and then collected them all, they could remain under a persisting section called "implementation guidance and impact on policy." I hope that's clear. I didn't say it very clearly. Thank you.

JANIS KARKLINS: Yeah. Thank you, Stephanie. Could you type your suggestion in the chat so that we can capture it?

STEPHANIE PERRIN: Sure. I'll do that.

JANIS KARKLINS: Thank you. Alan Greenberg, please?

ALAN GREENBERG: Thank you very much. This may be a [nip], but isn't it true that …? I'm looking at the last sentence in the paragraph, "The ePDP team also recognizes that the accreditation fee structure may need to be reviewed over time." Isn't it true that every fee structure may need to be reviewed over time? I'm not quite sure why we need to note

that here. I don't much care whether it is or not but it seems to be a gratuitous statement.

JANIS KARKLINS: I think that we came to an agreement that this should be the case when we specifically talked about accreditation fee structure. But I agree that maybe we should broaden this, suggesting that accreditation and SSAD fee structure … Or instead of accreditation fee, put "SSAD fee structure may be reviewed over time." "SSAD fee, including accreditation fee structure, may be reviewed over time," simply capturing this idea. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. Just responding to Alan's point. I think it's worth having this language in the policy recommendations to make it clear to the ICANN team that's implementing this that we do expect that there will be some future periodic review of the fee structure to make sure that it continues to make sense. I think it's very likely that it'll change over time as volumes go up or down, or needs and demands change. I get your point, Alan, but I think it's worth being clear. I think it's helpful to have this additional implementation guidance.

JANIS KARKLINS: I think Alan didn't question whether we should keep it or not. He simply suggested that not only accreditation fee structure but also the SSAD fee structure may be reviewed over a period of time. And I think that this is very logical. My suggestion is that we can say the last sentence in the implementation guidance, that "the ePDP team

also recognizes that the SSAD fee structure," and if we want to say "including accreditation fee structure, may need to be reviewed over time." That's the proposal. Berry, could you type it, please? Alan, it's your old hand, right, as well as Stephanie's?

"The ePDP team also recognizes that the SSAD fee structure," if we want, "including accreditation fee structure," or simply delete "accreditation fee structure" because accreditation is part of SSAD. Okay. Can we agree with this? Thank you, Alan G, for spotting that. Okay. We will leave, for the moment, this building block. We will revisit it next Thursday. Sorry, not the coming Thursday but the Thursday after, in one week.

I would like to ask the last question of today, since we have five minutes. In the overall comments, [ICPCP] raised a question: "What do we do with case studies in an initial report?" Here, if I may ask … Caitlin, I think that we had this conversation, that use-cases are not attached as annexes of the initial report but they're referenced in the form of URLs. And whether that would be sufficient or not, that's the question. Thomas, your hand is up.

THOMAS RICKERT: Thanks very much, Janis. Since I was one of those making the comment about the use-cases, I think, for me at least, the Belgian DPA letter was an eye-opener that we may have not done enough work in this regard. I'm not saying that we didn't put a lot of thought into all sorts of scenarios, but I think we really need to flesh them out.

The reason is that if you look at the DPA letter it basically says, in polite terms, that what ICANN has suggested is not ready for prime time and that it's lacking details not allowing for the DPA to actually conduct a legal assessment of the scenario proposed. The Belgian DPA is asking for explanations, exactly, on what is being done, which I think makes it a task for us to talk about how the SSAD is actually going to work.

What we've done, if you read the report at the moment, is pretty much say, "Okay, you need a legal basis to follow certain rules," but then it stops there. It basically leaves all the legal assessment and all the guidance as to how to deal with disclosure requests to the entity taking the decisions at the end of the day. Therefore, I think we need to shed some light on what is being done. That will hopefully also allow for a legal assessment, including another response from the European Data Protection Board or the Belgian DPA at some point.

But just linking it somewhere, I think, doesn't make it clear enough for those who have to implement the report as well as those who wish to comment on the report during the public comment period.

JANIS KARKLINS: Thank you. The question is, as I understand, whether we annex use-cases to the initial report instead of referencing them with the URLs in the initial report. That, I understand, is the question. Because the reference is there. The only thing is, they are not physically attached to the document. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I see that people are dropping and we're at the end of time. Maybe we can pick this up later. But I have concerns with including the use-cases in the report. I do not think we should include them as an annex or as a link. Maybe we can pick this topic up in more detail on a future call or on the list.

JANIS KARKLINS: Okay. Thank you. Indeed, we are at the top of the hour. Thank you very much for your active participation in this call. We will meet in two days' time. After this call, a Doodle poll will be circulated for volunteers for tomorrow's call to identify the most appropriate time in order to prepare material for discussion about a possible model on the coming Thursday, the 16th of January. I would suggest that on the 16th we devote maybe half of the time to talking through the model and another half of the time talking through the outstanding issue that we have in the report from the document which will be recirculated to the team. I see Caitlin's hand up, and that's the last speaker today.

CAITLIN TUBERGEN: Hi, Janis. Thank you. I just wanted to kindly remind the members from the IPC/BC and the ISPCP to please enter their comments directly into the Google Doc because we are going to start reviewing from the Google Doc. And rather than referencing multiple documents, it would be a great help to support staff as well as the other team members if all of the comments can be in one place.

JANIS KARKLINS: Thank you, Caitlin, for the reminder. I add my plus-one to this request. Thank you very much. Today's meeting is adjourned. We will see you in 48 hours. No, 46. Thank you very much.

[CLARIE:]   Thanks, all. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]