ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Tuesday, 26 November 2019 at 14:00 UTC
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TERRI AGNEW:	Good morning, good afternoon, and good evening. Welcome to the EPDP [inaudible] call taking place on [inaudible] at 14:00 UTC.
	[inaudible] time, there'll be no roll call. Attendance will be taken by the zoom room. [If you're only on the telephone, would you please let yourself known now?]
	Hearing no one, [inaudible] RrSG [inaudible]. They have formally assigned Theo Guerts [inaudible] as their alternate [inaudible] required to [inaudible] at the beginning of their [inaudible] at the [inaudible].
	I do apologize [inaudible] on side, but not useful as of yet. If you're an alternate in Zoom, please remember that you are not allowed to engage in chat, apart from private chat, or use any other Zoom room functionalities, such as raising hand, agreeing, or disagreement. As a reminder, the alternative assignment form must be formalized by way of the Google assignment link. The link is available in all meeting invites towards the bottom.

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[inaudible] to date. If anyone has any updates to share, please raise your hand or speak up now.

Seeing or hearing no one, I would like to remind all to please state your name before speaking for recording purposes. All documentation and information can be found on the EPDP wiki space. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call.

With this, I'll turn it back over to you, Janis. Please begin.

JANIS KARKLINS: Thank you, Terri. Good morning, good afternoon, and good evening. Welcome to the 31st call of the team. My traditional question about the agenda: we have an agenda consisting of eight points – are we willing to work accordingly?

I see no hands up, so I take it that we will follow this agenda. The first item here is building block [inaudible]. That's on the screen.

Thank you, Berry for sharing. As we now see on the screen, we have a number of building blocks in green that we can consider being stabilized. There are a number of building blocks in yellow. Four of them are our agenda today. Then there's a few [inaudible] that I suppose we still need to address. So that's the current status of our work. I hope that, after today's meeting, we will have a few more greens on the screen.

Any reaction? Any comments?

I see none, so let us then move to the first substantive item. That is the financial sustainability building block. What I can say at the moment is that, as agreed to during the last call, I sent an e-mail to Goran, asking some questions and suggesting that ICANN org could run some numbers and provide or guide the working group with those numbers. For the moment, I have not heard any particular reaction from [their] side. I imagine that that would take some time.

Sorry. There is a bit of a technical issue. Nevertheless, I think we could maybe make some projections ourselves, thinking that this system would be run by a team of probably a dozen people if we are talking about a centralized model and a few thousand people, but not a daily basis, if we're talking about a decentralized model. I would put forward some number of two to three million dollars a year for running the system. I think that this is, of course, an off-the-cuff estimate, but this would be the projection that I would put forward simply as a reference for our conversation.

With this, I would like to go to the building block [on] language. We have discussed it in the previous meeting. As a result of that, staff has made some adjustments to the text. I would suggest that we go now paragraph by paragraph and see whether we can agree with the current version of the building block.

Let me take—

MILTON MUELLER: Do you have the Zoom room going?

UNIDENTIFIED MALE: We're going to mute for just a second.

UNIDENTIFIED MALE: There's so many ways to take that.

UNIDENTIFIED SPEAKERS: [inaudible]

JANIS KARKLINS: Sorry. We are eight in this room and there's some giggling on. Apologies for that.

Alan Woods, your hand is up.

ALAN WOODS: Thank you, Janis. Perhaps I misheard. You mentioned something about estimating off the cuff the price of the SSAD. I just want to be certain where that's coming from. I know you said it was off the cuff and [inaudible]. I don't understand where that's coming from and I think we can't even just do an off-the-cuff like that. I missed the [inaudible] of where that came from. So I just want to be careful of what we're putting on the record here because I don't even know if three million is going to cover what we're talking about at this moment. So I just wanted to be sure that we're all on the same page here. Thank you.

| JANIS KARKLINS: | Thank you, Alan. As I said, for the moment, we do not know exactly when the cost estimate may be made. Based on a very rough version of my own calculations, I would put forward a number. That is where it comes from. I was thinking that, based on what we are discussing, the operation would involve some dozen people, if that is the centralized model. If that is a hybrid model or central gateway and then decision-making is done at the registrar level, then the cost structure might be slightly different. But if that is a centralized model, I would put forward an estimate of three million. Again, this is simply just to have this number as a reference for our own thinking about financial models that we're putting forward.

Greg?

Greg? Greg, your hand is up.

Okay. While Greg is unmuting, let me take Beth. |
|---|---|
| BETH BACON: | Hi, folks. I'm alternating in for Marc Anderson today, for those in Phase 2 who don't recognize my voice. I just wanted to revisit just one more time the question of the estimated number. It's a very high number. If we are asking for a realistic picture of the financial [inaudible] viability of a system, I think that we need to put a little more due diligence into a developing an estimated number on which to build that future estimate so that we can understand the financial building blocks. Otherwise, we're building this on a foundation of sand. |

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Perhaps we look into what registries and registrars have received to date, understanding that many feel that that number is depressed because of the current lack of a system, I guess. But then also we could look into historically what IP folks have requested and what registries and registrars received previous to that with regards to court orders and sort of thing to the extent we can do it. I just think this needs to be built on something more than a back-of-the envelope guesstimate. Thanks.

JANIS KARKLINS: I agree. The thing is, this calculation may not come very soon. As a result, I thought that it would be possible to take a wild guess and base our conversation with that. So, if that will be less than three million, fine. Maybe more. Of course, we need also to assess this against the purpose of this exercise. If the system we're building is needed for the security and stability of the Internet, probably there will be a way to fund that system. If that will turn out unfeasible, then probably our recommendations will not be accepted at the end. Again, simply not to spend time on discussing this, I would invite you to look at the text.

Greg, your hand is still up.

GREG AARON: Yes. Thank you. They've unmuted my phone. Can you hear me now?

JANIS KARKLINS: Yes, we can. Please go ahead.

GREG AARON: Okay. Thank you. Let's please be careful of our scope in this discussion. In our charter, we're supposed to be doing a certain bit of research. I don't know the exact state of that, but bandying about numbers at this point probably is out of scope, and [back behind the rope], is not helpful. Let's stick to figuring out some policy principles, which is our job in this phase. Then there would be some things which would be more appropriate for the implementation phase.

The SSAC team will be discussing tomorrow the letter that went to Goran. It wasn't quite what we had expected and [shitted] the conversations in some ways that we weren't entirely comfortable with. Thank you.

JANIS KARKLINS: Thank you, Greg.

UNIDENTIFIED MALE: [inaudible]

JANIS KARKLINS: Look, okay. Please forget about the three million. Let's look at the text of the building block and see whether we can converge on what is now proposed.

The first paragraph: The EPDP team foresees three categories of costs to develop and deploy SSAD – the technical development of

SSAD, the technical integration of contracted parties to the SSAD, and any ongoing operation of SSAD.

Any issue with this part?

I see none, so next paragraph: The EPDP experts expect—

MILTON MUELLER: A point of order. Can we highlight that in purple? It's very difficult to read on a small screen. Can we make it yellow or something?

JANIS KARKLINS: [Thank you]. Daniel, your hand is up.

DANIEL: Thank you, Janis. I'm sorry, but I think that's new language we hadn't looked at before. Just reacting to it quickly, I'm not sure exactly what "technical development" means and I think there'd be broader costs beyond just technical development, if that means coding and stuff. There's going to be operational costs, communications. I don't know. It's broader than just the technical initiative. Thanks.

MILTON MUELLER: What paragraph are we on?

JANIS KARKLINS: We are on Paragraph 1 with the three sub-bullets, 1, 2, 3.

UNIDENTIFIED MALE: I can't do it.

JANIS KARKLINS: Technical development – so we need to develop the system, so that would be that cost associated. Then we need to make sure that everyone can use the system. Then we need to operate the system. These are three costs. Why do you think, Daniel, that there is an issue with that?

DANIEL: I don't know if "technical" was meant to be a limitation on then overall development and implementation costs. Like you said, there's going to be user training, HR operations, communications – more than just technical in my mind. Thanks.

JANIS KARKLINS: Yeah. We can then maybe simply use "development costs." That would encompass everything, not just technical.

DANIEL: Perfect. Thanks. Caitlin?

CAITLIN TUBERGEN: Hi, Janis. I just wanted to note that the text that we're currently looking at appears to be proposed text from the contracted party house. While it looks like it's meant to capture some of the

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conversations from our last meeting, the text that support staff endeavored to edit is actually below this text. So I just wanted to be clear with everyone on what the team is looking at, which is not the text that has all the strikethroughs and proposed edits from support staff. But rather it looks like the contracted party house may have proposed this text shortly before the meeting, so the team may not have had a chance to look at this yet.

JANIS KARKLINS: Thank you, Caitlin. Sorry for – yeah, indeed. I opened the building block from what is the wiki page and this is what I saw. My apologies for the confusion. Can we scroll down the … yeah. We'll look into the text which is proposed by staff.

Sarah, your hand is up.

SARAH WYLD: Thank you. Hi. I do also want to apologize for any confusion that just occurred. The CPH team just wasn't quite able to get our comment any earlier than we did just this morning. So that's why you just saw it a few minutes before our meeting started.

Just to answer what I think Dan was asking about the three different categories, I just wanted to speak very quickly to what we see as the difference there. The way we are trying to explain it to split out these costs is that, first, there is development of the SSAD overall. So this is building the system, the platform, that is used for this purpose. The second is the integration for each contracted party into that SSAD system so that the request and responses can go from the system to the appropriate contracted

party. Third, we have the ongoing operation. So that's the long-term use of the service. Thank you very much.

JANIS KARKLINS: Thank you. Of course, it's not now easy to integrate immediately completely new text in our conversation. So may I suggest that we work on the basis of the staff proposal that has been put forward already for a few days? We can make adjustments to the staff text based on the proposal of the contracted parties, rather than look to alternative text at the same time.

Would that be okay, Sarah? Would you agree with that?

Okay. The first sentence in paragraph we have already on, and actually that does not really contradict what the contracted parties suggested, that we maybe add one element, that "development" means also the incorporation of registries and registrars in that system, as suggested in the proposal of the contracted parties.

Georgios?

GEORGIOS TSELENTIS: Hello, everybody. Just for my understanding – apologies because I'm not in this type of business – as we are talking about this business block, can somebody at least give me an estimation of what level of magnitude of costs are we talking about here? Just to put everything in context and understand. I see all these points about splitting this to fixed cost and operational costs or between ICANN and contracted parties, just for my understanding, what order of magnitude are we talking about here? Apologies again

because I'm not in the business so I cannot make a good estimation for that. Thanks.

JANIS KARKLINS: Thank you, Georgios. Again, I tried to do it and this was not accepted. Better not to do it again. We can take it offline and I can explain where my estimate came from.

Margie, your hand is up.

MARGIE MILAM: Hi, everyone. In terms of the addition of focusing on the costs to the contracted parties, I think that's only part of the equation, as we have to think about this also from the users of the system and what the costs are there. In particular, I think there's one function that isn't included in the discussion: the accrediting bodies (the accreditors, I guess) – if there's a trademark accreditor, like WIPO, how they integrate with the system and then how the users going through that accreditation system would integrate with them.

So I think that the analysis is probably incomplete, and that's one of the reasons why I think it doesn't make sense to try to break it only looking at the contracted parties because there's a whole ecosystem that's affected by this.

JANIS KARKLINS: Okay. I get your point. Can we then say the distinguish between development, deployment, and operationalization of the system? So there are three elements: development itself, then deployment,

which would include everyone getting on the system, and then running then system.

Alan? Alan Woods, Alan Greenberg, in that order.

ALAN WOODS: Something that Margie just said there just [twigged] for me. Let's be honest. I think that are biggest problem here is that we still haven't decided who or how or what is happening here. We're going through building blocks. For each building block unfortunately we still haven't really asked the basic question of, who is the person that these building blocks will eventually turn into. We've got an entire Lego set of 25 million blocks, but we don't know what then picture on the front of the box is. I think that's a big, huge issue at the moment.

So the reason why we put this in – I'm just taking from what Sarah said in the chat here – is we thought this was a cleaner way of seeing what was done before and where we believe that the costs should be broken down. But we can't see the finished final product, so it's very hard to say that these are just the concepts that we believe it should be built on and it intended to replace what was in N.

So I'm just trying to clarify that, but I think that the biggest here is that we still don't know what we're trying to create. I think that is causing this unfortunate back-and-forth because it could be something small. It could be something that is manageable. It could be something really huge at the moment. I think we need to be very, very careful on that. Thank you.

JANIS KARKLINS: Thank you, Alan. Alan Greenberg?

ALAN GREENBERG: Thank you very much. I'm not quite sure what Margie was talking about, but I don't think we've ever discussed – we've discussed a lot the cost of the integration of the system into the contracted parties' system – the cost to the possible requesters of data, the users of the system. We're not talking about a web interface here, although their may be a web interface. We're likely to have development costs to feed things into the system as well as development costs to respond to the queries in the system.

So, again, I think that's one of the line items we haven't talked about, but I agree with Alan. We're trying to cost out something that is just such an unknown at this point. How rigorously we have to figure out how to cost it out and distribute the costs over the various parties will depend just on what the magnitude of the cost is. If it's something that ICANN can just eat because it's a cost of maintaining Internet resiliency of the DNS, fine. If it's something that's way, way above that that'll have to be distributed, then I think we're going to have to look at differently. I'm not sure we can put principles on it without understanding what some level of magnitude is of the overall thing. Thank you.

JANIS KARKLINS: Thank you, Alan. We will not know the magnitude until we will operate the system, most likely, because we do not know how many requests we will be dealing with daily. So we can only make

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a wild guess. This is what I tried to do on the back of the envelope, as some team members said. Again, we're now facing this situation where we need to talk about the cost of the system that is not built and not deployed and not run. So either we simply adopt a wild-guess number or depart from that or we simply need to say that this building block will never be completed until we will start running the system. So that's the dilemma here.

Beth, please?

BETH BACON: Thanks very much. I think of this as we're having a chicken-and-the-egg conversation a little bit, and I don't think we need to. I want to perhaps suggest that we get away from talking about the number at this moment, just for a second, so we can focus on … We're talking about building a system, but we need to understand more fully what the system is, how it would interact, who perhaps is running it, and what would go into building that.

We had Alan Greenberg, who said there's no web interface. Isn't there? Do we know that? I think it's extremely difficult to say … This is like putting out an RFP, saying. "We want a system. We don't know for how many users, we're not really sure what it'll look like, we don't know who the back end is going to be, and we don't know who the recipients are going to be. Can you build it?" Someone will come and say it's going to be [inaudible] billion dollars.

So I think that we need to maybe take this in smaller bites and in a more practical approach because we can't say, "Build it and they

will come," and we also can't say, "We won't know who's coming until we build it." It's just not practical. Thanks.

JANIS KARKLINS: We know more or less what we're talking about. We're talking about basically two options here. I think we are in agreement that there will be a central gateway, which will be operated most likely by ICANN as a central gateway. What we have not discussed and we have not agreed is where the disclosure decision will be made. The disclosure decision is going to be made either at the central gateway, by the operator of central gateway – that would most likely be ICANN, if we agree on that option – or that will be at the level of contracted parties, where every registrar and registry will have somebody who will make these determinations.

So this is how the system will work. Most likely there will be a user interface online, where requesters will file their request. So there will be probably a few, maybe not more than ten, identity providers who will b charging for services. So, if that is ICANN that operates the system, I would say there would be probably a dozen people working in that department or unit that will be operating that system. They would be technically running the system but also making the determination, if that the model we are talking about.

Putting all that together, I came up with more or less three million – two or three million. So this would be a magnitude that I would suggest that's somehow reasonable to start with.

We will not get much wiser anytime soon before we will start running the system. So that's the issue. It is indeed a chicken-and-

egg problem. We simply make to a determination on what more or less would be the most likely scenario and then park from that and talk about principles.

Let me take Alan. Maybe we need simply to park from the moment and also try to integrate the new proposals coming from the contracted parties and text and look into other building blocks since we have spent already 30 minutes talking about this one.

Alan, please?

ALAN GREENBERG: Thank you. I think you actually just introduced this subject that I was going to bring up. You earlier said that we may not know what the cost is until we actually start running it and turn it on. That I don't agree with. I think the key question that we're looking at is to what extent the authorization provider can be ICANN. You gave two scenarios. I suspect we're going to end up with a combination of the two.

I suspect we're going to find, when we start looking at actual implementations, that it's not going to practical for having ICANN be the authorization provider actually having people on staff making those decisions. We're going to end up with, depending on what level of automation is going to be allowable for certain kinds of requests … Once we have that – that hinges on the Data Protection Board's response – then I think we can make some reasonable cases of just how this work is going to be distributed and come up with costing.

Right now, the unknowns are the critical parts that I think will make it from a million dollars to a ten-million dollar one. That I think is going to change completely whatever model we use to do the funding. Thank you.

JANIS KARKLINS: Thank you, Alan. Maybe we need to reflect a little bit further on this building block and, as I said, see whether we can integrate the language which is proposed by the contracted parties into the text before we go into the next reading. With your permission, I would propose to park this discussion until next time -- next time might be either next Wednesday or Thursday – and move on to the next agenda item, which is response requirements.

We have now text on the screen. This has been already modified based on our previous conversation. Let me take it sub-paragraph by sub-paragraph.

Sub-Paragraph A: The entity receiving the access disclosure request must confirm that all required information as per Building Block A [inaudible] is provided. Should the entity receiving the access request establish that a request is incomplete, the entity receiving the access disclosure request must provide an opportunity for the requester to amend its request. It's a straightforward suggestion.

Any comments?

Daniel?

DANIEL:	Thank you, Janis. I'm not sure about this. It seems like a strong policy requirement on top of an undefined technical process. Yet it might be complicated and I defer to more technical people about amending requests. Say you submit a request. It might be simpler just to approve it or reject it and give a reason why it's rejected and then let someone submit a new request rather than [inaudible] the complexity of having an amended request. So I'm not sure that needs to a must at the policy level at this point. Thank you.
JANIS KARKLINS:	Thank you, Daniel. I think that the meaning of the sentence is that, if there is an incomplete request filed, then there should be a possibility to complete that request. In practical terms, most likely there will be a user interface where you will have certain fields to fill in. If one or two fields will not be filled, then you will simply not get an activated [Send] button until all fields are filled. So that most likely will be technical implementation of this policy recommendation.

Let me listen to Brian. Brian? |
| BRIAN: | Thanks, Milton. I believe Alex Deacon was the one who drafted this. What we were thinking is that, if the requester made some error or some inadvertent omission here, they would have an opportunity to amend the request and that that must be included. I know some of us are thinking that we would live here and on a paper request basis and it doesn't make sense to charge the requester again just because there was something missing. |

I don't know why we struck the language here about telling the requester which data was missing. Whoever struck that, it'd be helpful to know what the rationale was there because I think that is a really helpful control that, if we're going to be denying requests, we should do that with an explanation about what's missing. Thanks.

JANIS KARKLINS: Thank you, Brian. Mark Sv?

MARK SVANCAREK: I think it might be helpful to change the line "requester" to "[amender's] request" to requester to amend and resubmit its request," just to be clear that it's not on the deciding party to hold onto the thing. You come back and you submit it again. Thanks.

JANIS KARKLINS: Thank you, Mark. Can we accommodate Mark's suggestion?

[MILTON MUELLER]:   [Yeah].

JANIS KARKLINS: Okay. Staff, [took] note of it. Brian?

BRIAN: Thanks, Janis. I'm happy with Mark's suggestion. I think we should just be clear that this remains the same request. I think, if

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you say "resubmit, that sounds like a new request. Again, if we're paying per request, it needs to clear that that's what we're talking about there. I'm still not clear why that rather important language was struck there. So that needs to be in there unless there's a good reason why we've decided to take that out that I'm not aware of. Thanks.

JANIS KARKLINS: Again, from a practical implementation, I don't think that the requester will be writing a handwritten letter to ICANN asking to disclose private data. Most likely that will be a web interface where the requester will be typing in some data. Most likely, there will be also options for multiple choice, where you could click simply on things. If every field will not be complete, the Send button will not be activated. You cannot click on it.

So I think that that is how it will look like in reality. As a result, the point is that, if the request is not complete, then it should be completed before submission. So that's the policy recommendation, ultimately.

Daniel, are you in agreement with that?

DANIEL: I'm still stuck on the concept of amending a request. It sounds like people are imagining I could submit a request and say, "My legal basis for the request is to be determined. I'm not sure yet," and the request gets rejected because of that and then the gateway has to leave the request open for some indefinite amount of time so that a requester can come back and amend it? If we're just

talking about that the fields aren't blank or it's not in the right format, that, like you say, could be handled technically. But it seems strange to have this rejected by amendable complaints that will live on for who knows – months or something – that the system has to keep track of. It seems much clearer to me to be able to reject a request. If they want to have a new request, which is going to have new costs associated with the evaluating it, they should submit a request and, if there are fees, a new fee. Thank you.

JANIS KARKLINS: Thank you. Caitlin?

CAITLIN TUBERGEN: Thank you, Janis. Berry, if you wouldn't mind scrolling down in the building block. I just wanted to address Brian's previous question about why that text was removed. Per our last conversation, there was some text that the team noted as implementation guidance. So the text wasn't removed. It was just moved down to implementation guidance. So we'll get to that further in the discussion. You can see in B it notes "Must reply with an incomplete request response to the requester detailing which data required by the policy is missing and providing an opportunity for the requester to amend its request." Thank you, Janis.

JANIS KARKLINS: Thank you, Caitlin. With that explanation, I want to see if A would be acceptable.

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ALAN GREENBERG:	Sorry. I was muted. My guess is there will be a web interface for low-volume users, but at a policy level, I think we have to resume there'll also be an API for higher-volume requesters. Therefore, we do have to consider what happens if a request is malformed or incomplete in the judgement of the system.
	From a costing point of view, that decision is going to be made completely automatically by a computer. I don't think it's reasonable to say we have to charge a full fee again for resubmitting a request that's rejected at that level.
	So either we need to say that there's no cost for a malformed request that gets rejected through automation, or that there has to be a way of attributing a ticket number, as it were, to say you can resubmit and you already paid the cost. Thank you.
JANIS KARKLINS:	Thank you, Alan. Milton?
MILTON MUELLER:	There is a cost if you submit malformed requests, and particularly if you're talking about automation. You need to disincentivize people from feeding a bunch of sloppy things in there. So, while you may not want to charge the entire fee, I think a resubmission

should be an additional charge, particularly when we're talking about scalability.

JANIS KARKLINS: Thank you. Any further thoughts?

Brian?

BRIAN: Hey, Janis. I think we just simply disagree. An error in a request that can be captured by an automated review of "all are the boxes filled in?" or "are all the checkboxes checked?" doesn't seem to cost anything besides processing and computing power. So we're not getting to a manual review at that point, and an error there doesn't seem to warrant a full repayment to amend the request. In fact, that's exactly what we're trying to get at here in this point. So we don't think that there needs to be a full additional submission with an accompanying cost with that. Thanks.

JANIS KARKLINS: Okay. Let me ask the question differently. I understand that there is a disagreement on whether a resubmission or the amendment of the filing of request would entail additional costs. But, apart from the cost issue, can we agree on what is now in Point A?

MILTON MUELLER: [And] with Mark's amendment.

MARK SVANCAREK: My amendment amendment.

JANIS KARKLINS: So Mark's amendment was to amend and resubmit this request. So that is now captured. Then I will ask staff to simply put in brackets for the moment just so we remember the costing issue. We will revisit that at one point, probably when we'll completely close the building block.

Beth?

BETH BACON: Thanks. I just want to note the question about having an incomplete entry. In Recommendation 18 of Phase 1, it's not an actual qualified entry or request unless you fill out the certain information. So I would think that that would still carry through here. I certainly understand that, if you submit a request and the registry or registrar that's evaluating request further information to understand the request, that's perfectly fine. But you have to fill out the fields. You have to submit a complete entry or it's not a reasonable request. I just wanted to flag that as it's conforming with Phase 1 recommendations that we've already agreed to. Thanks.

JANIS KARKLINS: Thank you. But I don't think it contradicts what you're saying is written or suggested in Sub-Point A.

With that understanding, can we move to Sub-Point B? Following confirmation that the request is syntactically correct and that all required information has been provided, the entity receiving the access disclosure request must immediately and synchronously responded with an acknowledgement response.

That is a new hand or it's still an old hand?

BETH BACON: I'm very sorry. It's a new hand.

JANIS KARKLINS: Please, go ahead.

BETH BACON: Sorry, guys.

JANIS KARKLINS: No need to apologize.

BETH BACON: I don't want to hold us up as we make a little bit of progress, but I do want to note that providing an opportunity for the requester to amend and resubmit its request notes that it was not a complete request. If you're saying that, should the entity receiving the disclosure request establish that it's incomplete, then you reject it and they would have to submit a new one because, within Recommendation 18 – again, I know I'm harping back, but it's

because it's going to be consensus policy, hopefully soon – the requester needs to fill out the full information in order for it to be a request. I don't think that it's splitting hairs. I think that it's managing the backend resources because folks are going to have to review it. If half their time is spent saying this isn't a full request, then that's a lot of wasted time for all the parties.

However, if you submit a fully-formed request and it comes to you and you know that you're going to be able to evaluate it, that's a lot more efficient. So I'm not saying now, but I'm just saying that I do think that A is in contradiction with Recommendation 18. But, if folks want to move on, that's fine.

JANIS KARKLINS: Okay. We're going back to A. Mark Sv, please, followed by Brian.

MARK SVACAREK: First, we're talking about a different system than Rec 18, so I don't know why we keep bringing that in. The intention of the amendment of "amend and resubmit" was to recognize that this is another request. It's a full request. It has all the characteristics of a well-formed request. There was a mistake made on the first one. Now you have to submit another good one. I'm not really clear on what it is we're debating here right now. I thought the wording was pretty clear. You submitted something bad. Now you have to change it and resubmit it. And it's a fully submission. Thank you.

JANIS KARKLINS: Thank you, Mark. Brian?

BRIAN:　　　　　　　Thanks, Janis. Just to address Beth's point, I think what we're envisioning here is, if it's an incomplete request, that never gets to the human who's going to be asked to deal with it. The system would catch the fact that not all the boxes were filled in or the boxes were checked and would kick it back to the requester before a human is either bothered by it. So that, I think, hopefully addresses Beth's point. Thanks.

JANIS KARKLINS:　　　　Thank you. Milton?

MILTON MUELLER:　　　Well, I just wanted to ask Beth whether she was saying that somebody who submits a bad request can't resubmit it.

UNIDENTIFIED MALE:　　I don't believe she said that. I hope she didn't.

MILTON MUELLER:　　　I hope she didn't.

BETH BACON:　　　　　Certainly not. I think Brian's response was very helpful. That's clarifying. I think some of the confusion here is that we're all envisioning different things. So, Brian, I think that's helpful. If the system is kicking it out because you didn't fill out all the forms in

the web form, great. But right now it says "the requester to amend" and "the request receiving party." So let's make it a little more clear, perhaps, that it's the system and it doesn't make it to the party. Thanks.

JANIS KARKLINS: Can we, for instance, make a footnote or an implementation guidance clarifying that most likely the application will be filled through a web interface and that the Send button will not or should not be switched on until all requested fields are completed? Something along that line. That would make absolutely clear what we're talking about here. It suggests that the entity receiving the disclosure request, meaning the central gateway, must provide an opportunity to the requester to amend. We can also say that we'll not accept until the request is fully complete. Something like that. I would suggest that we formulate this understanding in implementation guidance, if that would be acceptable to all.

Greg, what's your feeling?

GREG AARON: Hi. Can you hear me?

JANIS KARKLINS: Yes, we do.

GREG AARON: Okay. I think the ambiguity is going to come when there is a request that has all the fields filled in but the recipient wants more

information, for example, because they're going to make a 61F determination. In those cases, you may end up basically in a dialogue, saying, "I need some more information so I can consider this," and you're going to have a single case. You may go back and forth on a little bit. What we haven't figured out is how you're going to do that functionally. Is it going to be through continual requests, tracking an individual case? Or are you going to take it offline? Or how are you going to do it? I think that's the case that we haven't figured out yet. Thanks.

JANIS KARKLINS: [Thanks, Greg]. Berry?

BERRY COBB: Thank you. I'm noticing some traffic in the chat. If you have a specific line item or edit to make or to suggest, please do that vocally. Janis really can't watch the chat and see that particular solution or possible solution. So that'd be helpful. Thank you.

JANIS KARKLINS: Yeah. Mark Sv?

MARK SVANCAREK: Maybe Greg is onto the disconnect that we're having. When I'm reading "is incomplete," I'm thinking that it is not to policy, it doesn't contain all the right stuff. But there is another interpretation of "is not complete," namely that the decider requires additional information. So the request was correctly

formed but, within the context of that particular request, additional information was required. I had been thinking that that was falling more into conditions of B, but I guess it doesn't. So, if that is clarifying to this, I guess we need to define what it means to be "request is incomplete." Maybe that's what it takes to move on and finish A. It's the definition of "incomplete" perhaps. Thanks.

JANIS KARKLINS: Thank you, Mark. Hadia?

HADIA ELMINIAWI: Thank you, Janis. I raised my hand to agree that what Greg is referring to is not actually an incomplete request. That actually comes after you have a complete and full request and where further information is required for determination. To me, this is not an incomplete request but this is a complete request that needs further information for determination. So that's just a second step. Thank you.

JANIS KARKLINS: Thank you. Actually, this type of information or this notion that Greg was referring to most likely should be in the building block on authorization providers, which is now in the making. Greg, we will take your suggestion into account. This will be captured in this building block on authorization providers, where we describe the sequence of actions of how the disclosure decision should be made. If there is additional information needed, then there should be an exchange of information established between the requester and the disclosing entity. But that should not be seen as an initial

request which is submitted. So they're two different things. One is to get the initial request in and it cannot be done if not all windows are filled. And, if they are not filled, then there should be a possibility of filling them before submitting, pressing the Send button. This is what says A. Then, if additional information is needed, then there should be a mechanism for how this should be done. That would be captured in a different building block describing the procedure of the disclosure decision.

With that understanding, can we agree with A?

I see no objections, so let's go to B, which says that, if the request is correct, then there should be a message back on acknowledgement of receipt or response.

Any problem with B?

I see none. C: The entity responsible for responding to the request must provide the disclosure response without undue delay unless there are exceptional circumstances. Such exceptional circumstances may include the overall number of requests received, if the number far exceeds the established SLAs. The SSAD request that meets the automatic response criteria must receive an automatic disclosure response. For requests that do not meet the automatic response criteria, a disclosure response must be returned within one day for urgent requests and seven days for other requests.

Sarah?

SARAH WYLD: Thank you. We in the registrar team are very surprised to see this text appear after the last time we looked at this building block. I was not clear on where the one-day and seven-day timeframes came from. I'm really not sure that this is in any way doable. I think also we should not try to commit ourselves to a timeline like this without having much more information about how this system operates.

Also, although I know we are developing a system that is different than what we had discussed in Phase 1 Rec 18, I think we should still make sure to not ignore the agreements that we have made in that phase. This is not at all in line with Rec 18 from that phase either. Thank you.

JANIS KARKLINS: Thank you. If I may ask staff to tell where this proposal came from – one and seven days. Caitlin?

CAITLIN TUBERGEN: Thank you, Janis. I believe Alex proposed these changes and added them in brackets. It looks like—

JANIS KARKLINS: Ah, now we know who to ask.

CAITLIN TUBERGEN: Thank you.

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JANIS KARKLINS: I have now Margie and Brian in line. Maybe, Alex, you can also think how to respond to the question of Sarah. Margie, please go ahead.

MARGIE MILAM: Actually, when we were doing Phase 1, we talked about the fact that that timeline would be different than the timeline would have for the SSAD because the SSAD was intended to have automated responses wherever possible. So I think that the timeline for one day to seven days is appropriate, and I think that 30 days is simply not an acceptable solution for something like this, where we're taking out a lot of the manual elements that were related to Rec 18: identifying the requesters, identifying what kind of information needs to be submitted. There's a lot more things in here that can facilitate an automated response. So that's why I think this timeline works.

JANIS KARKLINS: Thank you, Margie. Brian?

BRIAN: Thanks, Janis. I also think this works and it helpful. I'd encourage my contracted party colleagues to make believe with us and please stay with us on the leap of faith here, even if you'd like a placeholder or a footnote to feel more comfortable on this. Please – pretty please with a cherry on top – pretend that the contracted parties aren't going to have anything to do with this. We're working toward the SSAD. We're trying to get clarity that ICANN can be the sole centralized decision-maker. Please, if we need a footnote

that says this is different, if we're asking the contracted parties to do it, then I think that'd be okay. But let's try to build this in a way that's centralized and that works. Thanks.

JANIS KARKLINS:　　　　　Thank you, Brian. Volker, Sarah, and Beth, in that order.

VOLKER GREIMANN:　　　　　Thank you. I think I have nothing against having a placeholder in there, if that placeholder says, "To be determined." "Must be returned within (to be determined) for all other requests." I think something that we can live with at this stage. But it will still have to be discussed before it's implemented.

If we are looking at the historic turnout for disclosure requests, every time before an ICANN meeting, Facebook will send 100 requests to even the smallest registrars. I'm spit-balling here. That will have to be met. Sometimes, when these [two] things come in bulk, then they will just not be able to respond in that time, especially for smaller registrars.

So that timeline will have to have some leeway. It needs direction. If you have a small registrar that usually handles one a week and they suddenly get 100 to 200 in a day and they suddenly have to respond to that with the same team in the timeline that's just not doable, then I'm sorry – that timeline doesn't work. So we have to get rid of these definite number of days. If we want to have a placeholder, that placeholder should be as neutral as possible.

JANIS KARKLINS:	Maybe we can use "return preferably within one day for urgent request and seven days for all others." Please think about that.
	Sarah, Beth, Milton, Mark Sv, Margie. Sarah, please go ahead.
SARAH WYLD:	Thank you. Regarding the request to build this system in a way that is centralized, I would instead implore this team to build a system that is legally acceptable under data protection requirements from around the world. I do have to point out that this specific timeframe is for non-automated responses. We simply don't know enough about how this system operates to commit to a remarkably short response time as we're apparently looking to do today.
	So I can certainly agree that urgent responses should have a timeframe less than 30 days, but I certainly support Volker's suggestion to include neutral language here. One day is a really good goal to achieve, but I don't know that it can always be appropriate in every circumstance. Thank you.
JANIS KARKLINS:	Thank you. Beth, please?
BETH BACON:	Hi, folks. I have a slightly larger concern. I will say that, Volker, yes I support the idea of, if we're making this a proposal and it's going to be a principle or a question, then, yeah, let's do it from a

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neutral point of view as opposed to saying, "Well, if this doesn't work, we'll do this."

More broadly, if we are submitting this as principles, which are essentially a recommendation, there's no way to change that. What's the mechanism to come back and revise this once we actually understand what this unicorn of a system is going to look like?

I have a lot of concerns with us locking ourselves into some "if this, then that"s. If you remember back to Phase 1, the recommendations were very lengthy, very complicated. There's a lot of things that were left for implementation. That, as we knew, was going to get messy. The IRT, I will say, is doing a great job and we are working together really well, I think, trying to go through those things. But this is leaving a lot to chance. I think that, from a PDP's perspective, that's very inefficient and, quite frankly, is just going to lead to a lot of angst and delay down the road. So maybe if we could think towards, again, doing neutral, lightweight principles getting us to some sort of a disclosure system.

I will say that, Brian, I also fully support being on a team and trying to get to a really mutually helpful solution, but we can't ignore things that we've already gotten, like certain parts of the advice that say, "ICANN might not be able to do this." So I think we need to take those things into account and try and find a compromise that works in light of our needs, the technical requirements, and a shared understanding of what the system is going to look like. Thanks.

JANIS KARKLINS: Thank you. Again, if we would say "preferably," that would be an aspiration. That would not bind "that should be one day or seven days," but that would be a target.

Let me take further comments. Milton?

MILTON MUELLER: I wouldn't want to delete this language completely. I don't think it belongs in there. I think "without undue delay" is sufficient at the policy level. I think that people who are promoting this particular set of deadlines are convincing me ever more strongly that we don't want the decision to be centralized in the hands of ICANN because I think the not so implicit and increasingly tacit and explicit assumption is that ICANN is going to rubberstamp everything it gets and that you're going to be able to automate most of your requests. From our point of view, most requests are going to be involving a balancing test to say, "That's going to be done in one day. Make that a requirement on the contracted parties, who are the ones who should be making a decision," is going to put pressure on them to just throw information out indiscriminately.

So we don't want the SSAD to create the old WHOIS for accredited parties. We want it to truly be a case-by-case consideration of the merit of each request. This kind of language is an indication that we're going in an opposite direction. Thank you.

JANIS KARKLINS: Thank you, Milton. Margie?

MARGIE MILAM: I think what we should build in here is a concept that there's an SLA so a certain percentage of the requests are satisfied within this period is at the normal requirement in these types of systems. I think that that would give the predictability that we're looking for.

The problem with "undue delay" is that that's just not defined. I know that, as I sat in on the IRT sessions, ambiguities like this are just not helpful because the implementation teams don't know what to do with it. So we need to provide the guidance as to what the expectations are. I'm sympathetic to the notion that not all of them can be satisfied within the period, but if we build in certain percentages, it gives them an expectations of when a response should be received.

JANIS KARKLINS: Thank you. Chris Lewis-Evans?

CHRIS LEWIS-EVANS: Thanks. I've been having a little bit of think about how we classify this. I'm hearing the contracted parties' concern around this, especially around the one day for urgent request. I think in F – yeah, F – we classify what urgent is – threat to life, imminent danger – and I'm just wondering whether we want to limit that maybe to public safety organizations because having different people say, "Oh, yeah. This is a threat to life. I need to have this straightaway," would certainly have a volume impact to the

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contracted parties, whereas we've certainly heard from the contracted parties – I can vouch for it – that the number of requests from law enforcement where this is properly assessed to be at that level just might make that more [variable]. Obviously, in this system we will have accredited users, so we will know who are definite public safety people rather than just someone classifying themselves.

So I just wonder whether we want to detail that and whether that'd be acceptable to contracted parties. Thank you.

JANIS KARKLINS: Thank you, Chris, for your proposal. Brian?

BRIAN: Thanks, Janis. I guess the thing I'm not clear on is … I hear contracted parties' concerns and I certainly can appreciate where they're coming from if they're going to be on the hook for the disclosure decision of involved in making that decision. But I guess I'm just not clear – I'm just asking for help here – on why do the contracted parties care what the SLAs look like from the SSAD system if the contracted parties' scope of involvement and legal liability is limited to the storage of the data and responding when they receive an RDAP query for ICANN? I don't understand where the concern might lie for the contracted parties in that world.

I know that we're not all certain that world exists today or that we'll have that world, but we're not interested in making a policy that assumes that that's not the case. So we need to understand what remaining concern there is. Thanks.

JANIS KARKLINS: Thank you. Volker, could you answer Brian's question?

VOLKER GREIMANN: That took me by surprise. I wanted to go more into the proposal that you made earlier, Janis, to craft the language. However, there's still that "must be returned in there," so I think we could do better if we use "should endeavor to be returned within," and then have in brackets, "Timelines to be determined." That would probably be a compromised language that we could live with.

Ultimately tough timelines make for sloppy decisions, and we do not want a system where we are ultimately forced to make decisions that are not based on all the facts that we could have gotten for that decision just because we have to meet a timeline that has been artificially set.

I understand completely and I like the idea from Christ that certain requesters should have a fast lane. Maybe by making the urgent requests only available to law enforcement and similarly-sanctioned government agencies of competent power might be a very good idea for that. But even then I am a bit hesitant about the one day and would rather say that we move to what we have proposed [down – an F] business-day pattern that would be more achievable for contracted parties. Thank you.

JANIS KARKLINS: Thank you. Mark Sv?

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MARK SVANCAREK: Hi. A couple of points. I think, if we want to have some specific language here, we'll have to qualify it. We'll have to qualify that, assuming a centralized system is created, then these timelines apply so that Sarah's concern, which makes sense, doesn't apply. She says, "If I don't know what the system I, how can I say that these times are reasonable or not?" So I think, if we qualified this with saying, "assuming such a system," or something along those lines …

The second point is to Volker because you made this comment a couple times, Volker. From what I've learned about PDPs and IRTs, I'm very concerned that we would be setting binding policy based on the capabilities of the least capable and most poorly staffed of the contracted parties, the ones who really can't produce any sort of a reasonable SLA because they can't afford to be properly staffed. I don't know how you resolve that issue, but it just seems like, if that's how we set the binding policy – based on the lack of capabilities of some people in the ecosystem – I would be very concerned about that. Thanks.

JANIS KARKLINS: Thank you. Beth?

BETH BACON: Thanks. Just quickly to comment on Mark's intervention, it's not as if we are legislating to the lowest common denominator. We are acknowledging that there a lot of different types of business models in this ecosystem. Understandably, not everyone is big.

Not everyone is small. Even us folks with resources may not have at this point or would have to ramp up to have even the human capacity to do reviews if we do hit some number of three [billion] requests. So I think that it's an acknowledgement of different needs.

Quite frankly, if we do acknowledge those different business models, the response and the efficiency of the system would be better for those requesters. If we don't acknowledge the different business models and those folks who may perhaps have different resources, then you're going to get really frustrated as a requester when you don't get responses or you don't have the right interaction with a contracted party because we assume that folks would be able to ramp this up. So I think it's not necessarily the guiding post that we should be looking at, but we certainly need to acknowledge it.

Then I just wanted to just quickly respond to Brian's comment. I think, even in your own argument, you noted that this may not actually be the reality. Right now, the evaluation of our liability has a lot of different ideas worth rising right now. There's several different sets of advice and also scenarios that would change the way that that advice becomes true or not. Again, in this particular effort, let's go towards a neutral and description so that we don't pigeonhole ourselves into one system that dictates the way the liabilities are and really reduces our options. That's my ask. Thanks.

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JANIS KARKLINS: Thank you, Beth. I understand that the first sentence of what is bracketed text does not represent any difficulty. The SSAD request that meets the automatic response criteria must receive an automatic disclosure response. So I understand that that is fine because no one has spoken on it.

When it comes to the second question, there is a proposal to use neutral language. I see that maybe, if we change "must" to "should" to "be returned preferably within one day and seven days," that would identify the target but would not create any obligation. So that would be one option.

Let me see if that type of tweak could be seen as a possible way forward as a compromise: replacing "must" in the last sentence with "should" and "should be returned preferably within one day and seven days." Can we go for that?

No hands up – Margie?

MARGIE MILAM: Thank you. I think this goes a long way in addressing the concern. But "preferably," the language, I think is problematic because, at the end of the day, that means there's no compliance ability on ICANN's part if the response doesn't come for a month. So that's my worry. For "should," I think, if you use the definition from then IETF, that's workable because it has some caveats in it, if you will. It's different than "must." But "preferably" takes another level way of being something enforceable.

Having come back from the ICANN meeting, where ICANN Compliance is telling us they need clear language, I would think

that this would be a particular area where we would want to make sure that there's clarity.

JANIS KARKLINS: Thank you. Volker?

VOLKER GREIMANN: Maybe ICANN staff should hire some German or European lawyers for interpreting some contracting language because European laws are full of that [undetermined] language that has to be ultimately filled up by the parties that have to apply those laws. "Without undue delay" is one of the most basic principles in certain aspects of German laws. I don't see that that kind of language would be problematic for ICANN Compliance to do because you still have to demonstrate that you did everything with that goal in mind. So I think having that would be helpful.

If we change the language, I still think we need to get rid of the concrete terms that we have proposed here because they will give an indication of what we were looking [in any fora]. I still think we are not quite there.

I think changing "must" to "preferably" is a good way, but we still need to get rid of those times that we have spelled out here.

JANIS KARKLINS: Thank you. Mark Sv?

MARK SVANCAREK: So many things to intervene. I still want to go back to the idea of qualifying language. It seems like we're splitting down on the middle on, if it's one way, we get one SLA, and, if it's another way, we get another SLA. If we crafted some language that had two options and then had some specificity for each option, I think that would be maybe a little bit better than the compromise that we're trying to make now.

I do have a similar concern with Margie. After the last ICANN meeting, and hearing multiple times the phrase "My hands are tied," to the point where – well, I'm not going to say it – it made me very concerned about this progress from policy recommendation to implementation to contract structure to "I can't enforce it." I don't understand how you get from one place to the other, and I would be concerned about reproducing that situation.

So "should" – you're right. I should, ought to, work, but [inaudible]. I think it won't. "Undue delay" – I do like that phrase. I've discussed it with Thomas Rickert in the past. And I agree with Volker that, in Germany, it is a well-defined term that is enforceable. I am not aware that it is of similar enforceability in then United States or the rest of the world. So other attorneys could speak to that. I agree that, if we had a bunch of lawyers who I think are paid by the syllable, this could be a pretty good system. But, since that's not the case … And I say that with great honor, having worked with many German attorneys. My concern remains and I still request some qualifying language and maybe talking about this down two different paths. Thanks.

JANIS KARKLINS:	Thank you. I will take Laureen and then I will make another proposal. Laureen, please?
LAUREEN KAPIN:	On the very narrow issue for urgent requests, for these types of request, which are narrowly defined further down and below where there's the harm, injury, death, and very severe consequences, I think we do need to be very specific in our definition there. While I understand the discomfort that folks have expressed, particularly with different providers with different resources, these particular requests, which I don't anticipate to be in large number, need to have a very specific timeframe. And the one-day timeframe is what we [and] public safety and law enforcement would urge.
JANIS KARKLINS:	Thank you. Let me try another suggestion. If we would retain the first sentence [inaudible] on the automatic response and then, on the second sentence, [put], "For requests that do not meet the automatic response criteria, a disclosure response must be returned within time to be determined," and then add asterisks. In asterisks, we say that some groups …
	Sorry. Do you hear me?
UNIDENTIFIED FEMALE:	Hi, Janis. Yes, we can hear you.

JANIS KARKLINS: Okay. Our line was disconnected, so I'm [only] on my phone. My suggestion, while we're waiting to be reconnected on the [polycom], is that the response must be returned within time to be determined. With asterisks, we would say …

Now it's something on hold. It is on hold.

Do you hear me now?

UNIDENTIFIED FEMALE: Yeah, we hear you, Janis.

JANIS KARKLINS: So then, with asterisks, we would say that some groups propose that he response must be returned within one day for urgent requests and seven days for others. And the contracted parties, on whatever we formulate, thought that that may not be implementable. Or something like that. So it's simply to indicate that there was this conversation on there was no agreement on what would be the feasible time.

Can we think about that type of way forward?

Beth?

BETH BACON: Thanks, Janis. I just wanted to move us back to Chris Lewis-Evans' comment, which I thought was helpful. Let me paint you a picture. If we are talking about a system where the law enforcement entity is already accredited and the system is going

to make this decision and we've already worked out legally that that is fine with regards to liability for all the parties – contracted, ICANN, requester, law enforcement – and that's going to be an automated request, which is unclear at this point and unclear from this document (but let's pretend that that's the situation), I would say that one day for urgent requests for law enforcement, if it's fully automated and all of those things are worked out, that would be understandable. But I think the concern here is that, again, we're operating with different visions of what this is going to be. So, again, fundamentally, I think we have an issue with that. But, if that were the case, then I would say, sure, Chris' idea is great. Limit it to law enforcement or public safety authorities of some kind, assuming they would be accredited, assuming this would be no eyes on anything.

However, I don't know that we're there yet. So perhaps we need to do "if this, then that," language or a footnote or something.

JANIS KARKLINS: Thank you. But with the automated disclosure, that should be basically almost in real time if that is just [inaudible] system. I can tell you that, when I applied for my Canadian visa, I got a response in five minutes. I assume that that was automated processing. I was charged seven dollars and my response in five minutes. I was surprised. I was thinking maybe 24 hours. So, if that is law enforcement falling in the category of without a balancing test, then they would get an answer even before one day.

My point or suggestion is simply that I want to get further than Sub-Point C and capture the situation where we are now, where some groups insist on one and seven days as a target for operation of SSL return of information by SSAD, and the contracted party house is cautioning us that that may not be implementable.

So that's the reality of where we are now. I'm looking at whether we can reflect that in the document. We'll move on to the next principle.

Beth, your hand is up.

BETH BACON: Thank you. I think that you sort of captured what I said, which was, can we do a footnote or something to denote that, assuming this the reality we're in, this makes sense – that reality being a fully automated system, much like you say. You as an accredited user have a passport and that system is recognized in Canada. You were able to get that quick response, much like this one. If you are an accredited user and all of these legal liability things are worked out, then this makes sense if you're a law enforcement or public safety entity. Then you could get that automated response.

However, we haven't really agreed that that's the reality. So I think that's where the caution from the contracted parties is coming from. We just want to acknowledge that, if this is the reality, this is fine. If not, we will need to revisit this.

Does that make sense? Can we can capture that in a footnote or something? Would that be fine?

JANIS KARKLINS: We will try. Beth, let me ask then. If we will say that the disclosure response must be returned within a time to be determined and then asterisk and a footnote, which suggests that some groups prefer that the return of information or disclosure data should be within one day for urgent requests, including from law enforcement and public safety authorities, and seven days for other requests, and that the contracted party house cautioned that that may be difficult to implement or something like that, staff will put together the language of the footnote but following this logic that I'm trying to present.

Margie?

MARGIE MILAM: If the notion is that we would return to it after we received the answers from the Data Protection Board, I think that makes sense. What I'm trying to get at is that this group determine the timeline, not leave it to implementation. If that's the understanding, then I think that probably makes sense.

JANIS KARKLINS: We certainly will return to the document as a whole and we will try to endorse the document as a whole once it will be ready for that. As a result, we will return to every preliminary agreement we have reached during this process of team meetings

Beth, your hand is up. Is it an old hand or new hand?

BETH BACON: It's a new hand. I just wanted to say that, yes, that sounds very reasonable and appreciate that. I'm looking forward to looking at what staff cooks up as the footnote. As Margie said, we'll have time to review it again. So I think that's great. Thanks a lot. It's been a good discussion.

JANIS KARKLINS: Thanks. We are also removing brackets from this text.

Let's now move to D: The entity responsible for responding to an access disclosure request will provide a report to ICANN org stating a number of request for access disclosure on a regular basis so that ICANN org can assess the reasonableness.

So that probably should be understood, that this would be valid if ICANN org is not the disclosing organization itself.

Brian?

BRIAN: Thanks, Janis. Suggestion for a friendly amendment. I think the footnote is pretty clever and maybe makes its way up into the actual text as just a clarifying point. The friendly amendment here is that ICANN org would probably want to do some more analysis besides just reasonableness here. So feel free to shut this down if this is going to open Pandora's Box, but do we want to leave this a little more open or maybe enumerate a couple more things that ICANN could do with these reports that don't even need to

necessarily have personal data in them so that ICANN can do some analysis or audits? Or, if that bleeds into the audit footnote, then shut that down pretty quickly, please, so we don't get carried away. So the thought is that, is there more that we should be enabling ICANN to do here? Thanks.

JANIS KARKLINS: Thank you, Brian. Maybe we should put a full stop after "regular basis" and then let it open what ICANN Does with that information that they receive on a regular basis.

Elise, please?

ELISE GERICH: Hi. Thanks, Janis. I hope that you can hear me. Responding to that, it's not quite clear as to what "reasonableness" means. Does that mean reasonableness in the response time or in the nature of the request? It's a little bit muddy – what that phrase means. Thanks.

JANIS KARKLINS: But if we delete it, then it means nothing. Then there's not that phrase. It seems like we're saying that the entity responsible for responding to the disclosure request should report regularly to ICANN org. That would be probably valid if ICANN decides to outsource the disclosure decision-making to a contractor.

Volker?

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VOLKER GREIMANN: I'm a bit uncomfortable with the entire concept of the … It feels like we're creating a reporting function just for the sake of reporting, adding more bureaucracy to an already cumbersome process. If these reports can be generated in automated fashion, that would be another thing. But ultimately I think we don't have something similar for current WHOIS. We don't have something similar for RDAP. We don't have something similar for abuse complaints – anything where ICANN mandates that we provide a certain support function. This is no different. None of these have this forced reporting that would enable ICANN to assess the reasonableness.

I think ultimately we need to move this to the same principle that applies for everything within ICANN. If the requester is not happy with the response they got or is feeling that the response is not timely, then they have the avenue to ICANN Compliance and can complain. ICANN compliance will look into those complaints and then they can do an audit, which might include certain reporting functionalities. But having that report on a regular basis just to have it I think is unreasonable.

JANIS KARKLINS: Thank you. You're suggesting to delete it. Let's see what Brian is saying.

VOLKER GRIEMANN: Correct.

BRIAN:

Hey, Janis. Thanks. I think this could be an important part of keeping the contracted parties honest if this is something that the contracted parties end up doing. I feel like a broken record, but so many contracted parties today are just ignoring or issuing a blanket denial without reviewing well-founded, well-delivered requests for reasonable access. So the requirement to report to ICANN on a regular basis on how many requests have been achieved and either approved or denied is a key part of keeping contracted parties honest if they are going to be the ones doing the assessment. So that's the value of this from our group. Thanks.

JANIS KARKLINS:

Thank you. Actually, listening to you, I remembered that we have a logging obligation. Logging will capture every request which is filed and every response or rejection that would be decided. So we need to take that logging requirement also in. Basically, from logging, I assume that we can generate – or everyone can generate – automated reports of all sorts.

Alan Greenberg?

ALAN GREENBERG:

Thank you very much. I don't want to reopen the discussion on response time. I just wanted to note for the record, though, that there is already an RA provision that all registrars must have a 24-hour contract available for things like law enforcement, consumer protection, quasi-governmental and similar authorities, and they must review the request within 24 hours by an individual

empowered to make decisions. So, when we go back this and reopen this, let's note that that's already an existing RA requirement. Thank you.

JANIS KARKLINS: Thank you, Alan. Coming back to D, we have a suggestion from Volker to delete D. Let me see. Beth, your hand is up.

BETH BACON: Thanks very much. I think that we are, once again, already having a discussion that we already had in Phase 1, and I don't think that we should recreate the wheel. I would support removing this or rewording it simply because it changed the role of Compliance. We can certainly report/provide the logging, as Alan Greenberg noted. We do this already. We will be doing it with regards to Recommendation 18 . Whether folks think that's applicable or not, we will still be following it because it will be consensus policy and contracted parties will be bound by it.

So we can certainly provide information as to what's going on, but ICANN Compliance would not have a role in arbitrating or coming back and saying, "We dispute your decision to disclose." I think that, if that's the question and that's the goal there, then we need to talk more about the expectation of the role of Compliance. So I think that may be an underlying concern, and that's a question back to Brian with regards to keeping us honest to the CPHs. We can show ICANN what we've done, but if this is the way the system is set up, I'm not sure they could arbitrate and ask us to reexamine a decision. Thanks.

JANIS KARKLINS: Thank you, Beth. Again, I'm reminding ourselves that there is a logging obligation. Through that, we will have full information as to how the system functions. I personally would suggest that, following Volker's proposal, we would delete D.

Any objections?

[inaudible], please?

UNIDENTIFIED MALE: Does the logging also have to happen on Recommendation 18 requests that don't run through the SSAD?

JANIS KARKLINS: That I cannot answer. Caitlin, can you answer that? Or Berry?

UNIDENTIFIED MALE: [inaudible]. And if not, [inaudible].

JANIS KARKLINS: Okay. Mark Sv, please.

[MARK SVANCAREK]:   [Same question as to you. You just have to use an alternate. You're not allowed to speak.]

JANIS KARKLINS: That I did not know.

UNIDENTIFIED MALE: [My apologies].

JANIS KARKLINS: So anyone can answer the question of Mark Sv on whether Recommendation 18 requests which are not going through SSAD would be also captured through logging?

CAITLIN TUBERGEN: Janis, this is Caitlin. As the team is likely aware, Recommendation 18 has not been implemented. The logging building block and the text within that is specifically designed to be directed at whatever the SSAD comes out [with]. So that text isn't part of Recommendation 18, as far as I'm aware.

JANIS KARKLINS: Okay. Thank you for clarification. Would that change the opinion of team members on the proposal of deletion of D?

I see that's not the case, so D is deleted.

Beth?

BETH BACON: I apologize. I'm a little confused at this moment. So, within Phase 1 requirements, there is a logging requirement. It may not live in 18. I'm just trying to look at the text of 18 again because, like

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Caitlin, I'm not sure. I don't think I have it memorized. I think Caitlin has it more memorized than I do. But there is a logging requirement for requests and disclosures in Phase 1. It may not be in 18, but it's in there. I just wanted to note that. So it's not as if it doesn't exist.

CAITLIN TUBERGEN: Janis, if I may, Sarah Wyld kindly put into the chat what the logging requirement is in Recommendation 18. So what I was speaking to in logging building block is different than what is in Recommendation 18 and it has a little bit more detailed requirements. But, yes, as Sarah noted, there is a requirement for logging in Rec 18, and anyone who's interested in reading that text can look at the chat. Thank you.

JANIS KARKLINS: Thank you. Then D is deleted. Let's move to E: The responses where disclosure of data has been denied should include rationale sufficient for the requester to understand the reasons for the decisions, including [inaudible] analysis and an explanation of how the balancing test was applied, if applicable. Additionally, in a response, the entity receiving the access disclosure request must include information on how public registration data can be obtained and indicate that the requester can also reach out directly to the data controller.

Alan Woods?

ALAN WOODS: Thank you. I have an issue still with the [indication] that a requester can also reach out directly to the data controller. One, we haven't decided who the data controller is. I'm going back to the chicken and the egg. But, that aside, I definitely don't think we should be talking about having a second bite of the cherry in our responses. If, for some reason, the SSAD decided not to disclose something to somebody, well then that should be enough. You can't just say, "But you never know. There might be a chance of the controller themselves or another controller will be able to give you access in that." It's all second-guessing another person's decision and it's also second-guessing our own decision or whoever the SSAD's decision is. So we should not even be contemplating stating that. It should be obvious to any disclosing requester that there is another controller. But, again, that's not really decided either. But, again, we should be staying as far away from that type of suggestion as possible, in my opinion.

JANIS KARKLINS: Okay. So then you're suggesting to put a full stop after how public registration can be obtained. Full stop. And the rest would be deleted. So that's Alan's proposal.

I see no other requests for the floor. I take that as that we would follow Alan's suggestion and I would retain the text as is, except we would delete the last part of the sentence and put a full stop after "can be obtained."

Now you can lower your hand, Alan.

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ALAN WOODS: Oops.

JANIS KARKLINS: Let us move to F: A separate timeline of less than X business days will be considered for the response to urgent SSAD requests – those requests for which evidence is supplied to show an immediate need for disclosure. The criteria to determine whether it concerns an urgent request are limited to circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure, or child exploitation.

Here the question is what would substitute X.

Beth?

BETH BACON: Thanks. I just have a clarifying question. This sounds as if it would be actually captured under the urgent public safety requests in B. Can someone clarify maybe why we need this twice? Not that I'm against responding to these items, because I think these are very important. I just think that I would read them as captured under B.

JANIS KARKLINS: This is what Chris Lewis-Evans was alluding to in his intervention. So it's simply that it's a separate point specifying those extremely urgent circumstances. Probably that would be one that would require one day, as Chris suggested himself.

Chris?

CHRIS LEWIS-EVANS: Thanks. Maybe, as per my suggestion, to tidy up – because, as Beth said, it's all included (I think it's in C, not B) – do we want to put "for accredited public safety entities," or something like that in there [inaudible] that extraction out.

JANIS KARKLINS: So you are suggesting to start the sentence as, "For accredited public safety authorities, a separate timeline of one business day (or not more than one business day) will be considered," and so on?

CHRIS LEWIS-EVANS: Yes, it is.

JANIS KARKLINS: Okay. Thank you. Milton?

MILTON MUELLER: I would want to change the wording here. First, again, to avoid the overly specific problem we ran into earlier, the X business day thing could simply be deleted and we could say, "A separate accelerated timeline will be recommended for the response to urgent requests," blah, blah, blah.

JANIS KARKLINS: Okay. Thank you, Milton. Can I ask Berry to type that, to start with, "For accredited public safety authorities"? "A separated expedited timeline will be considered.

MILTON MUELLER: I said "accelerated." [inaudible]

JANIS KARKLINS: "Accelerated." Then we can put in the footnote the one day if there's some kind of specification that needs to be done.

MILTON MUELLER: I said "recommended" as well, instead of "considered."

JANIS KARKLINS: Then it will be "recommended." Can we consider this type of text?

                    Brian?

BRIAN: Thanks, Janis. For two reasons I think we should rethink the first couple words here. One is that it looks like a user group and we agreed not to do that. Two, I think they might be unnecessarily limiting. I think we all agree, including myself and the IPC, that this needs to be for limited cases. So this isn't intended to make this overly broad.

                    But I would note that law enforcement and public safety authorities are not the only folks that might need to make a request like this,

so I think the policy should not unduly limit it. I think we can do a really good job in explaining what we mean here by saying the type of subject matter that's at issue here. I think we've done a pretty good job of spelling those out. So I don't think it's a good idea to limit this to the public safety authorities. Thanks.

JANIS KARKLINS: Okay. Thank you. Beth?

BETH BACON: Thanks. I know it's very difficult to look at the chat also, but we did note that – I have two questions. Maybe F could become the definition in the footnote for C, but also noting that I did ask if this is duplicative or different.

I'm also noting some questions that my CPH colleagues have noted. In C, it says, "unless exceptional circumstances," as well as "urgent." So my question is, are C and F different, or is F part of C. If it is part of C, can we make it that definition in the footnote for C? I think that's a fundamental question.

JANIS KARKLINS: Thank you. Let me ask Chris whether Chris considers that F is part of C.

Chris?

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CHRIS LEWIS-EVANS: I'd need to have a look at the document and consult with the others before. [We] would definitely need to agree with that, but, off the top of my head, I quite like this being spelled out separately rather than in a footnote in the moment just because the others have already detailed [inaudible]. There may be some other situations where someone else might want to make a request. So I think this is a separate one for accredited public safety authorities. So I quite like that [being] outside of C.

JANIS KARKLINS: Okay. Would you mind if we would take our "For accredited public safety authorities," but leave for the moment text [inaudible], Chris?

CHRIS LEWIS-EVANS: For the moment, I'm [inaudible].

JANIS KARKLINS: Okay. So then we will take out public authorities and we would formulate for the moment this paragraph: "A separate accelerated timeline will be recommended for the response on urgent," dah, dah, dah, as it is now on the screen. So we would also delete "less than X business days" [in brackets]. We will keep that for the moment with the understanding that, once we will have a full picture, we may consolidate F and C if there will be really strong feelings about it.

Caitlin, your hand is up. You're saying that our time is up?

CAITLIN TUBERGEN: No, Janis. I was just going to respond to Beth's earlier question. And we should check with inconsistencies. Essentially, C was to capture the timeframe and get the team to think about any timeframe they wanted to recommend, whereas F was to define what "urgent requests" means, since the concept of urgent requests is discussed in that there might be a different timeline. But later in F it explains what urgent was. We pulled that from the definition in the Privacy Proxy Services Accreditation Implementation Team, just as an example of what the team could consider. So that's the difference between C and F. Again, I agree with the previous comments that we need to make sure that the language isn't inconsistent. Thank you.

JANIS KARKLINS: Thank you, Caitlin. We have reached the top of the hour – actually, the top of the third hour – and most likely we're not allowed to venture into the third hour of conversation. I would consider for the moment that we could live with what is now on the screen. G is already agreed to, which would mean that we have accomplished something. But we have not finished the full building block. So staff will reword the point, which was in D – right? – as a result of our conversation, and we'll put in green color everything else. We will start our next call on Wednesday in December with a continuation of a reading of this building block.

With this, I would like to thank all for active participation. Those who will celebrate Thanksgiving, I wish you a very happy Thanksgiving. I have a surprise for you. And this will not be a

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turkey but this will be the draft initial report that staff and the leadership team is preparing to release on Thanksgiving Day, making sure that you have things to do when your stomachs are full with turkey. You can also do some reading.

More seriously, indeed the draft initial report with the [samples] in the form of placeholders has been prepared and will be shared with the team as a whole at the end of this week. So this simply to give a chance to look at it and think whether, at the end of the first week of December, we can make a determination to release the initial report for public comments on the 15th of December or not. So I think that eight days of reflection would be good enough to make that determination for ourselves.

With this, I would like to bring this conversation to the end. Thank you very much. I wish all of you a good rest of the day. We will meet next time on Wednesday, December 4th?

MILTON MUELLER: Yes.

JANIS KARKLINS: Wednesday, December 4th, as a team. Thank you very much. The Wednesday is very exceptional because we do not have a meeting on Thursday, the 28th of November.

Thank you very much. This meeting stands adjourned.

[END OF TRANSCRIPTION]