
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP – Phase 2

Tuesday, 16 June 2020 at 1400 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the GNSO ePDP Phase 2 team call taking place on the 16th of June, 2020, at 14:00 UTC. In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room.

If you're only on the audio, could you please identify yourselves now? Hearing no one, we have listed apologies from James Bladel, RrSG, and they have formally assigned Owen Smigelski as their alternate for this call and any remaining days of absence.

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

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.

Alternates not replacing a member are required to rename their lines by adding three Z's at the beginning of their name and at the end, in parentheses, your affiliation, dash, "alternate," which means you are automatically pushed to the end of the queue.

To rename in queue, 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 functionalities such as raising hands, agreeing, or disagreeing.

As a reminder, the alternate assignment form must be formalized by way of the Google link. The link is available on all meeting invites toward the bottom. Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now.

Seeing or hearing no one, if you do need assistance with your statement of interest, please e-mail the GNSO secretariat. All documentation and information can be found on the ePDP Wiki space. Please remember to state your name before speaking.

Recordings will be posted on the public Wiki space shortly after the end of the call. As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. Thank you. With this, I'll turn it back over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS:

Thank you, Terri. Hello, everyone. Welcome to the 64th meeting. So, we will start today, the final reading of all recommendations and addressing outstanding issues according to suggested agenda.

May I take that this is the agenda we want to follow? I see no objections, so we will do so.

Let me update you on a little progress that has been made in the small group on evolutionary mechanism recommendation. So, the small group met yesterday.

So, we discussed two topics/two clusters of issues, one related of the scope of activities of the mechanism. It seems to me that—this is what you see now on the screen—there is a fairly good understanding on four out of five, and the stumbling block is a question on automation, how that is possible, and how that could be framed.

And the second cluster of issues was about the method, how this evolutionary mechanism would fit in in the overall structure and who would look at the recommendations – they would come up after the review of the report.

And here, as you recall, there are two options on the table. One, since we're talking about, essentially, not policy development but operational aspects of policy that has been adopted by this team.

So, one initial option was use the framework of GGP, and another alternate proposal was to go straight with the recommendations of the mechanism to ICANN Org for implementation after a period of public comment.

So, unfortunately, the group is split according to party lines and there is no way to reconcile those both. So, for the moment, we're looking into two things. One thing is Amr suggested, maybe, a

second alternative, which would involve the Cross-Community Working Group, if I understand correctly, if that was correct.

And for the next meeting of the group, which most likely will take place next Monday, this alternative option will be reviewed. And I, myself, proposed to merge two alternatives that we have, now, on the table—GGP and ICANN Org—and alternate them until we identify which of two methods is the most effective and productive.

So, I didn't gather many reactions to my proposal. I understand the group was in shock hearing that. So, maybe it will sink in and we will come up with something next Monday.

Of course, there is always the alternative, as suggested by Volker, that we simply push our can down the road and put the recommendation that these modalities of the mechanism should be developed while the implementation team is putting together SSAD.

So, there we are. So, we're progressing, but much slower than I hoped we would. Nevertheless, as we know, hope always dies the last, and I'm still optimistic that we will find a solution.

So, with this, and in absence of any requests for the floor, I will go to the next item, which is the reading of outstanding issues. So, maybe, if I may ask Marika to talk a little bit about suggested methodology that we understand how we will proceed. Marika, please.

MARIKA KONINGS:

Yeah. Thanks, Janis. So, we circulated, prior to this call, the document that you see here on the right-hand on your screen, in

which we, basically, included all items that staff had already flagged as so-called “yellow items,” items for which further ePDP team input or guidance is needed to provide direction to the staff team in relation to how recommendations need to be updated, as well as additional items that have been flagged where either groups didn’t agree with the proposed path by staff or where further questions have been raised as a result of changes that were suggested.

So, those have all been incorporated into this document, which, again, is intended to facilitate our review on today’s call. We do understand that some groups may not have gone through all of the recommendations yet, so we would appreciate if you could flag in the chat which ones you’re still going to finish, hopefully, later today, so at least we know where we may still see additional comments.

Those that have reached out, indeed, asking what additional time, if any, would be available, we’ve kind of shared with them that the plan would be to run from the start of the recommendations down to the end, with the ask of focusing, indeed, in that same order on the review. And I think most groups that have provided input have done so.

So, what we’ve done, again, is kind of a list, here. You first see the relevant section that the comment, or edit, or clarification focuses on. And then, underneath it, we have listed the group that has flagged the item, the text or rationale that they provided, and the specific question for ePDP team consideration.

You will see here, on occasion, as well, different color codes. It just gives you a bit of a background to where the issue comes from. The issues that were green were from a staff perspective. For that, we

applied the change as was suggested. But in response to input that was received, it seemed that either there was no agreement with the change that was made or further questions around the change.

So again, we flagged that in that right-hand column, what the specific concern or question is. I think you haven't gone through all these items. The level of contention is probably fairly different. I think a number of items where we're merely looking for clarification, others are probably more substantial and may trigger more reactions.

As you may have seen, we have a pretty long list of items, so I would like to encourage everyone to ... If you agree with a point that has been made, no need to repeat it. Just state your support in the chat as we are trying to, I think, run through these as fast as we can. Although we have calls scheduled for tomorrow and Thursday, as well, we do hope to get as much as possible done during today's meeting. So, if that was all clear, I would propose we just get started, Janis, if that's all right with you.

JANIS KARKLINS:

Yep. Thank you. Yeah. Thank you, Marika. Which means we will concentrate on yellows and reds. Nevertheless, if there is an issue with the green, please let me know. But I hope that, if we want to reach the end of this table in reasonable time, we really need to address issues that we cannot live with, not try to repeat, and then renegotiate what we negotiated already for many hours. Amr, your hand is up. You have a question?

AMR ELSADR: Yeah. Thanks, Janis, I do. Thanks, Marika, for the description of what the [constant] document. But I was wondering if you'd maybe walk us through how the inputs that the different groups provided made it into this document? Because, to be honest, I'm not personally very clear on that.

So, if we start off from the first of the input we were asked to provide on the draft final recommendations, there were a couple of iterations along the way. So, if you could just explain to us what inputs made it through to this document, what didn't, and why, that would be great. Thank you.

JANIS KARKLINS: Okay. Marika will introduce each topic that we need to discuss and, to the extent possible, she will do what you are asking, Amr. But some of the issues have gone through several iterations. So, Marika will do the best that she can.

AMR ELSADR: Janis, I wasn't asking for each recommendation or for a specific one. Just generally, a general overview of the comments that we've been providing since we were asked to provide them on the draft final recommendations. So, no need to point to anything specific, I'm just wondering how these comments were dealt with along those different iterations. Thank you.

JANIS KARKLINS: Okay. Thank you. Marika, please give it a shot.

MARIKA KONINGS: Yeah. Thanks, Janis. I'll try to do so. Berry is already thinking ahead of me. So, basically, what you see on the screen, that was the homework that we assigned during homework week, and that is really the focus of where we're at now.

So, the document you see up on the screen is the homework we asked groups to do on the different items. We basically included the recommendations with updates that were made as a result of the review of public comments. So, we asked groups to review those recommendations and identify what items they could not live with, as well as any minor edits they had identified.

The staff team, together with the leadership team, basically went through all those comments. And for each of those, we proposed a path for how to address them. We discussed that during last week's meeting.

So, items that were green, we basically applied the change as the group that had proposed it put forward, as, at least from a staff perspective, we didn't think it would upset the balance or create a change that would create a "could not live with" item for another group.

We had orange items where we made the change that was suggested but with a modification, and we kind of explained why we changed it, the rationale for that. There were proposed reds, where we proposed not to apply the change that was suggested and included, as well, a rationale for why we thought it wasn't appropriate to make that change.

We identified yellow items in which we said, “These are items where we need further guidance because either it’s an item where clarification is sought and we don’t feel in a position that we can give that clarification, because it’s not necessarily clear to us,” or it is a change that was proposed where we’re not really sure if that could, potentially, create “cannot live with” items for other groups.

A couple of white items where we responded to questions or clarifications that were asked, and then blue items for which we asked a group to clarify what they meant. It wasn’t always clear where they wanted a change or why they wanted a change, so we just asked, “Can you just be more specific so we can make a better assessment for how to deal with it?”

So, that was put out all last week, and then every group was asked to review that and indicate whether or not they could live with what was proposed by the staff support team.

So, that is, then, if we can now switch back to the document, Berry ... Or maybe scroll to the top of this one, if you haven't gone yet. So basically, if you see here, on the top, for each of the recommendations we had included a separate table, again, in which groups were asked to flag. If you can just scroll a little bit further up, Berry?

Oh, you’re already back in the yellow items. But basically, on the Wiki page, in the Google Doc, we had created, as well, a table at the top where all groups were asked to review the recommendations that we had made and, basically, indicate if they could live with that or not.

So, basically, the list that we are going through now is a compilation of items that the staff support team had already identified as being yellow items needing further input or discussion, as well as items—and Berry has now pulled it up—that groups flagged as saying, “Well, actually, this has created an issue for us,” or, “we’re not exactly clear why you decided to make that change.”

So, those items have been added to the compilation that we’re going to run through now, which should be, basically, all the items that groups have flagged, as part of the homework, as needing further input or consideration. So, I hope that is clear.

And Milton, “Staff has basically decided whose suggestions are taken seriously and whose are not,” that is not correct, as said. Based on the homework, staff support, together with leadership, made a suggestion for how to approach certain comments, and every group has been asked to put in the Google Doc which suggestions or approaches they could not live with, and those are the ones we’re going to be discussing, because we’re not making, here, unilateral decisions.

That’s definitely not our role. So, I hope that’s clear to everyone, and we can, maybe, start going through it and it will become more obvious how [cross talk].

JANIS KARKLINS:

Yes, thank you, Marika. Actually, this is exactly the same method we used to get to the initial report, prior to the publication. Amr, your hand is up. Please, go ahead.

AMR ELSADR: Thanks, Janis, and thank you for that, Marika. You answered most of what I was asking, but the one part I'm still not clear on is how some comments might have gotten dropped off. Some of the comments ... I think there was one in particular for the NCSG that was color-coded red, and I don't see it here in this document at all.

But there are a few other comments from other groups that are color-coded red, so clearly, even though they are color-coded in that manner, they're still making it through to this document. So, I'm just wondering what distinction was made. Okay, I see a question from Marika in the chat that NCSG flagged it in the Google Doc. I do not believe so, but I thought it was already there from the first round of inputs.

JANIS KARKLINS: Look, there might be some small things or some omissions. We are just humans. Something may have just fallen through the cracks or, by mistake, was not put in. So, that's why we're going through the document. Every issue that we want to raise, we will discuss, and there is no issue. So, if something is missing, please let us know and, if it is not on the list, it will be put on the list and we will go through it.

AMR ELSADR: All right. Thank you, Janis. That's very reassuring. Thank you very much.

JANIS KARKLINS: Alan Greenberg, please.

ALAN GREENBERG: Thank you. My understanding was, the homework that was due yesterday, our task was to go through staff's assessment and, for anything where we did not like what they decided, whether they colored it green, yellow, red, or purple, we were supposed to identify.

And now, we're going through the ones that have been identified, plus the yellows where staff said, "We're not sure what to do, we need more input," we're going to be going through today.

And then, I presume, we're going through anything else that anyone has identified as "we can't live with the staff assessment." Am I correct? Because the questions that are being asked don't seem to acknowledge that that step existed. So, I'm a little confused.

JANIS KARKLINS: Marika, could you reassure Alan?

MARIKA KONINGS: Yes. Yes, that's exactly correct, Alan. That's exactly what the homework was and what is in the document, here. So, basically, the homework was for the group to go through the staff-proposed approach on all the items that were flagged and kind of indicate which ones it could not agree with.

For example, for a number of the red items, they were not flagged by groups that made those comments. So again, our assumption is that, if they did not flag it, they can live with the rationale that was

provided on why the change should not be applied or why it should not be further discussed.

Of course, if groups have ... It looks like the NCSG ... I know the NCSG has made comments in certain documents, although not in others. So, you may want to double-check that your input was provided, and I'm hoping that, at least, now it's clear what the ask was.

Because as I said, I think the NCSG probably did provide ... For example, in the financial sustainability, I think you did flag a couple of items for further discussion. Maybe that didn't happen for others. So, that is it. Alan is exactly correct in what this represents.

JANIS KARKLINS:

Okay. Thank you. Alan, is it old hand or you still have doubts? Okay. Let's, then, start going through the document, and we will take item by item, starting with item one. Marika, please.

MARIKA KONINGS:

Yeah. Thanks, Janis. So, starting on Recommendation 1. Berry, if you can scroll slightly up so people can also see the actual language? This relates specifically to section 1.7 of that recommendation. That relates to accredited non-governmental entities or individuals, and then has a "must," and a couple of provisions, here.

So, there are two questions that relate to this specific section. The first one is a comment that ICANN Org made where 1.7a, so the section with "must agree" and the small v2, they note that this

seems to be redundant with the policies that have been outlined in the combined Recs 10, 13, and 14, which cover terms of use, disclosure agreements, and acceptable use.

“Would the ePDP team consider referencing those recommendations instead, to provide greater clarity during implementation and, presumably, also to avoid duplication?”

So, we weren't 100% sure if that would be acceptable to the group, so we just wanted to check on that. We note that Registrar Stakeholder Group already indicated that they don't have any concerns about making this change.

So, we're looking to, here, if anyone has any concerns about removing, basically, small A, and instead reference to the requirements that can be found in Recommendation 10, 13, and 14. Janis, I don't know if you want me to cover the second one, as well, or you prefer to go one by one.

JANIS KARKLINS: No, let's go one by one. Let's go one by one. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I guess for registries, we're not okay with just removing it. It seems to cover, in comparing this side by side with 10, 13, 14, it does not seem to overlap with those.

We are split on whether it's better to leave it where it is or move it to Recommendations 10, 13, and 14, but we are in agreement that

it should not be deleted because there are items not covered elsewhere.

JANIS KARKLINS: Okay. Thank you, Marc. So then, probably, we need, simply, to leave it where it is. And even if there is a feeling of redundancy, repetition is the mother of knowledge, as we tend to say. Milton, please.

MILTON MUELLER: Same point. So, yeah, at worst, it's redundant, which doesn't do anybody any harm. At best, which we think is the case, it makes things clearer and includes things that are not clearly specified in the other recommendation. So, let's leave it where it is. Thank you.

JANIS KARKLINS: Thank you. So, anyone objects to leaving where it is? Okay. So then, we do not do any change. Daniel, please.

DANIEL HALLORAN: Thank you. I think it would just be good to make clear that, if there are items that are missing here that the team wants for everybody else's terms and conditions, terms of use, privacy policy, etc., we should maybe think about incorporating, there.

It would be good if there's some clarity that we don't want two sets of terms and conditions and have different classes of users with different forms of agreement, or something like that. Just thinking

through the implementation, how we'd handle the separate section with different requirements. Thanks.

JANIS KARKLINS:

Of course, they should not be contradictory. That's for sure. But here, as we read ... So, this is the section about accreditation. At the moment, accreditation, the entities or individuals should undertake certain obligations, and those obligations are listed in this bullet. And this is at the accreditation.

So then, they are using SSAD, so they probably agree on terms of use as well. And of course, terms of use, these undertaken during the accreditation should not be in contradiction. And if they, then it should be, certainly, flagged. But I understand that they are not in contradiction. Maybe staff can simply check and see if any copy/paste thing needs to be done for terms of use recommendation? And here, we retain as it is. Okay. Good. Next one. Marika?

MARIKA KONINGS:

Yeah. Thanks, Janis. So, the next one, we made a change in response to a comment that was originally made by the Registries Stakeholder Group, basically adding a parenthetical, here, noting that this is about the number of SSAD requests that can be submitting during a specific period of time will not be restricted, and the addition was made that, "Except where the accredited entity poses a demonstrable threat to SSAD or where there may be otherwise permitted under these recommendations, eg. as part of graduated penalties."

And the BC has a concern that the parenthetical is too broad. So, I think we are trying to hear what, if anything, can be done to address that concern. I don't think a specific suggestion was provided.

JANIS KARKLINS: Okay. Thank you. Brian?

BRIAN KING: Thanks, Janis. I know the BC submitted this but I was looking at the document and I think Marika's right. It did not make it into here, but there was a specific suggestion provided, and the thought was that we could agree to this in principle but that we have it be limited to "otherwise permitted under Recommendation 1.4d."

I think if Berry or folks from staff go back to the Google Doc, they'll see that proposed language. So, just to keep it to that section that is intended to do that. Going so broad as to say "anywhere else in the policy" really makes this uncomfortable. So, I think we can agree, in principle, just with that specific add. Thanks.

JANIS KARKLINS: Okay. Thank you. So then, a suggestion is to be more specific and, instead of broad scope, to put very specific reference to 1.4d. Alan.

ALAN WOODS: Thanks. Yeah. I mean, it's already limited to "as is permitted under recommendations." I mean, I don't have a major issue with limiting it specifically to those where is it put but, if it's already limited under the policy, I think it's just argument for argument's sake, to be

honest. I don't have majorly strong opinions on it but I think "under the recommendations" should be a ring-fence that we should all be accepted.

JANIS KARKLINS: But you are willing to accept specific reference to a very precise point in the recommendation, which basically is referenced in the broader formulation?

ALAN WOODS: Yeah. I mean, I'm happy with that as long as that is all the ones that are permitted. I will admit that I didn't go through the entirety of the document in order to pull out the individual recommendations. If there are other ones in there, I just don't want that to be absolutely prevented by an incompatibility within our own recommendations.

So, in principle, yes, if we can pull out all the ones where that would be permitted, absolutely, and making sure that that's in there. So, if we can say that that is 100% all the places in which it is permitted, then yeah, absolutely.

JANIS KARKLINS: Okay. Thank you. So, staff will maybe verify for the moment and will flag if there is a broader issue. But for the moment, then, we will follow suggestion of IPC and BC to change to specific reference to 1.4d of recommendation. Good. Thank you. Next one. Stop. Stop, Marika. So, Milton. Milton, you are not in agreement.

MILTON MUELLER: We don't have a problem with the statement in the proposed updated text, but there's another thing that says the parenthetical is too broad. In other words, they would prefer not to have any example of when limits would be allowed, which, I think, is just really picky and kind of asking too much. So, I don't understand. Are we deleting that parenthetical or not?

JANIS KARKLINS: So, Berry, could you put this on the screen? Roll down where it is. No, no, not this specific point but what we're talking about, 1.7b. So, maybe a way forward would be, "Or where they may be otherwise permitted under these recommendations," and then, in the brackets, "specifically in 1.4d." Would that be something we could—

MILTON MUELLER: The point I'm making was simply that the language, as it's in there now, is fine. I can't understand. Are we deleting the parenthetical or not? If we're not, we're fine. If we are, we have a problem.

JANIS KARKLINS: So, okay. Let me listen. Mark.

MARK ŠVANČÁREK: The feedback makes sense if you see the language that we proposed. So, what we're saying is that if the policy language is, "Search through the entire document and find any potential places where this might conflict or where there's some possibility where

there's an exception that's not listed in Recommendation 1.4, then, hey, gotcha! That also applies." That's not really good language.

So, we suggested that you replace, "Where they may otherwise be permitted on these recommendations," parenthetical, what. So, the feedback "the parenthetical is too broad" would be clarified if the language that we had suggested had made it into the document, but there was a mistake.

So, what has already been suggested is that staff will go through the policy and see if there are any examples within the rest of the document that are not in 1.4, and then we can discuss whether they belong in 1.4, and then the language we proposed will make sense.

And speaking of argument for argument's sake, I think I'm hearing a lot of it at this [point]. So, if you imagine the language that we proposed, and if you conceive the proposal from staff that they'll search through here and make sure that there's nothing missing, I think that this is fine. Thanks.

JANIS KARKLINS: Thank you. Milton, please.

MILTON MUELLER: Yeah. First of all, our willingness to trust staff to go through some of these details and make changes is declining. So no, I don't think there's ... I remember discussing that, as part of graduated penalties, there may be great limitations. And so, sticking that example in there is not a problem.

Now, speaking of argument for argument's sake, saying that it will not be restricted and changing it to "must not," again, that is a change in tone that is the sort of thing that we have asked for and the staff has dismissed out of hand. So, if you're getting flack about that now, again, it's a question of balance.

You're changing this from a permissive regulation that says, "Yeah, you don't have to restrict how many requests can be submitted," to an order that they cannot restrict, and that's leading to this question where you have to, then, enumerate exceptions.

So, you just keep asking for so much and demanding that you get exactly what you want, which is totally automated and indiscriminate disclosure. And then, when we try to limit that, then you're getting all technical and getting lost in the details.

And so, you just don't trust that process. There's nothing wrong with the language now. Willing to give you "must not," even though, obviously, there's no reciprocity here and there never will be. But let's just stop quibbling about this kind of stuff, okay?

JANIS KARKLINS:

Okay. So, I think it is, indeed, the best way would be to see if there are—and probably there are a few—really unresolved systemic issues. And these minor details that we're spending time, it's not, maybe, the best way of doing it in using this method that we're using, a teleconference.

If that would be a face-to-face meeting, probably it would be different. But here, we need, really, to be even more restrained than we would be in a face-to-face. Mark SV, please.

MARK ŠVANČÁREK:

Thanks. I don't know why we're mixing in the "must not" language. This is very specifically a different part of the language. I don't even remember where the "must not" language came from. Did we submit that? I don't even remember at this point. But that's not what we're talking about, here.

What we're talking about is the language, "Where they may be otherwise permitted under these recommendations," and then an example is given. And we requested that that phrase, "Where they may otherwise be permitted under these recommendations, eg. as part of graduated penalties," be replaced with, "as shown in Recommendation 1.4."

Regrettably, that proposed language isn't here. And so, we're sort of debating whether or not that language would be good without actually being able to see it.

But again, I do have a concern that, until we scrub through this thing at the very end and find all the possible places where things may be otherwise permitted, we're likely to have a surprise at the end, unless we change that language to point to Recommendation 1.4. So, that's what I'm thinking.

Whether staff goes through the document or not, or whether we do it under some other method, that's really the only way to know whether "where otherwise permitted under these recommendations" covers 1.4 or not. Thanks.

JANIS KARKLINS: So, Milton, it's your old hand or new hand? So, I would suggest that we retain language it is and, instead of, "Eg. as part of graduated penalties, etc.," we put, "for example, as Recommendation 1.4d," and that is a very specific reference illustrating what are these limitations. Would that be acceptable? Okay. Let's try that. Brian?

BRIAN KING: Hey. Thanks, Janis. Just to be clear, I wish that, perhaps, the BC had categorized that differently. The objection is not to the parenthetical. Actually, it's now broad the language is, "Where they may be otherwise permitted under these recommendations." That's what we're hoping to narrow to 1.4d. And if staff can help us out and make sure there's nothing else that we're missing there, what we don't want is for the burden to shift to us to have to go look for every single "gotcha!" and every single part of the policy.

I think we can do exactly what the registries want, here, if we just have this, instead of being so broad as it is now, to being specific to 1.4d. That's where we agreed that we could go. I hope that's helpful and constructive.

JANIS KARKLINS: Yeah, okay. Then, not "for example," but specifically. We would specifically point to 1.4d. Not "for example," but, in brackets, "Specifically Recommendation 1.4d." And then, you have a direct reference of that one. And staff, of course, can go through and see if something else, but already, in this formulation, you would have the general kind of affirmation, "Unless it is part of the

recommendations,” and specifically point to 1.4d, where these limitations are set.

BRIAN KING: Thanks, Janis. If you’re asking for me to respond, I put language in the chat that I think will do it for us. Thanks.

JANIS KARKLINS: Okay. So, can we get, again, the language on the screen, Berry? 1.7d. So, a suggestion is replace the “or where they may be otherwise permitted under these recommendations” to “where they may be otherwise permitted under 1.4d.” “Of these recommendations,” probably. So, can we accommodate this request? Marc?

MARC ANDERSON: Thanks, Janis. When I read this, what it says to me is that, even if somewhere else in the recommendations they are allowed to be throttled, they’ll be disallowed here because this language restricts it just to 1.4d. And so, that seems to create a potential conflict within the policy. Maybe we can just table this.

To your point, we’ve already spent too much time here, so maybe we can just table this and go back, and look, and see if there are other instances within the policy where this applies. I think, maybe, there are some more, and you can take that offline and try to discuss that further.

JANIS KARKLINS:

Okay. Thank you, Marc. So then, in that case, let's do so. Staff, please mark that this is not resolved. But in the meantime, if you could scroll or go through the whole recommendations and see whether there are any other places where limitations are set in the policy, and then we will come back and you will tell us whether we could easily reference only one specific point where we need to keep a broader recommendation. And we will do it at the end, when we will have outstanding issues. Amr, your hand is up.

AMR ELSADR:

Thanks, Janis. Brian, thanks for the alternative language, because that did actually clarify what the BC was asking, here. I have a question to, maybe, Brian, or Marc, or Margie, or whoever could answer this. The way I read the current recommendation ...

And again, my understanding, now, is that the problem is not with what is in the parenthetical but with the few words right before that. So, you're looking to replace "permitted under these recommendations" with "what may be otherwise permitted under Recommendation ..." What was it? 1.4d.

But the way the current language reads, it includes what is in 1.4d as well as any other instance which, now, we have homework to go check up on, to confirm whether that exists or not. So, if it doesn't, then the current language still refers to what is in 1.4d.

If it does, then it covers both that and whatever else is in the report. But I don't see the harm in retaining the current language as-is. So, I'm trying to understand why you're trying to replace it with something else. If you could answer that, I'd be grateful. Thank you.

JANIS KARKLINS: Thank you, Amr. Mark?

MARK ŠVANČÁREK: Thanks. Thanks, Amr. Yeah, the real point is that, I think, the list should be in 1.4d, and if there are things elsewhere in the document we are going to miss them and we are going to be surprised by them when we are in IRT.

And you're right, it does give us a homework assignment, because otherwise there is a potential for a contradiction within the recommendations. So yeah, unfortunately, it does give us more homework to make sure that there aren't any contradictions, because otherwise, there will be surprised.

And you're right, if there are no other things listed in the recommendation then I've just given you homework for no reason. That's true. But the way this is written, it's implying that there are.

JANIS KARKLINS: Let's advance. So, we will not resolve it now. We need to see whether there is any other point where this would apply to. Staff will do the homework. Marc Anderson already indicated that this may be 12b. So, let's go to the next one, and we will revisit point number two at a later stage. Marika, please.

MARIKA KONINGS: Yeah. Thanks, Janis. So, we're now on point number three. There was an original comment from the ALAC that made an edit to a

footnote talking about the thoroughness of verification and how that may vary with the type of applicant. And the RySG has asked you for clarification on what actually is intended with that.

The question is, what does it mean that the level of verification may vary depending on the type of applicant? Would a level of verification be communicated to the disclosing entity? Would it also be a factor in determining if the requested data should be disclosed?

Having different levels of verification hasn't been fleshed out and seems problematic to add now, and they are suggesting to remove the text that was added, which is, "The level of verification may vary dependent on the type of applicant," from footnote 12.

JANIS KARKLINS: Okay. Thank you. So, proposal is to remove footnote 12, I understand. Right, Marika?

MARIKA KONINGS: No, not the whole footnote, just the sentence that has been added. So, on the left-hand side, you see the redline. That is the text that was added in response to a suggestion from the ALAC.

JANIS KARKLINS: Okay. So, any reactions? So, no reaction. So then, we can remove the added sentence. It is removed. Thank you. Number four.

MARIKA KONINGS: Yeah. Thanks, Janis. So, the next item relates to two different sentences, 1.2c and 1.3e, that both talk about a privacy policy. The original addition here in 1.c was in response to a registry comment noting that there should be a requirement that accreditation authorities have terms of service for accredited users.

And ICANN Org flagged, here, that this seems to revisit the language that was replaced in 1.2c, and a question of what is the difference between 1.2c and 1.3e, or are these duplications of each other and one of them should be removed? So, I think that the question is probably specific to the Registries Stakeholder Group on those two sentences.

JANIS KARKLINS: Okay. So, proposal is to retain one or another. Which one? So, any comments? No comments. So, we need to choose one or another. Shall I ask staff to choose? Marc Anderson, please.

MARC ANDERSON: Hey, Janis. Sorry. I think you're hearing a little bit of a pause because we're trying to wrap our heads around this one. It's not, maybe, a quick yes or no answer. I just saw Matt had his hand up. Maybe he's wrapped his brain around it more than I have.

JANIS KARKLINS: Matthew, please?

MATTHEW CROSSMAN: Yeah, hi. I guess I'm having trouble seeing what the conflict is that's being flagged. To me, the existing language deals specifically with a privacy policy, whereas what we've suggested being added is terms of service for the accreditation authority, which seems to be two different things. So, Marc's exactly right. I'm trying to wrap my head around where the conflict is between those two different provisions.

JANIS KARKLINS: Berry, could you scroll up to the 1.2c? Just please, once again, see the difference. With the heading, that we can see also heading.

BERRY COBB: Just to note that Marika has posted the conflicting language above each one of these tables over here on the right. I'm just trying to guide us on the left-hand doc, just for overall context. But to get into the specifics of what we're trying to resolve, she has included this language from the report on the right-hand side.

JANIS KARKLINS: Marc Anderson, please.

MARC ANDERSON: Maybe I'm still confused here, but yeah. The 1.2c and 1.3e do seem duplicative, but those do not seem to directly relate to the comment from the RySG about terms of service. Both of those are about privacy policy, which, as Matt pointed out, are two different things. So, maybe I'm just confused. And so, I apologize. But we seem to

be talking about two different issues, here, which may be part of why we're having trouble responding to this one.

JANIS KARKLINS: Okay. Let me ask ICANN Org liaisons to clarify what is their issue, here.

ELEEZA AGOPIAN: Hi, Janis. I can try to explain. If you scroll down a bit, Berry, on the right-hand document, you could see more of our comment. That's in the green square.

So, I think the issue that we saw when we were reviewing this is that the language in 1.2c was replaced to clarify what was meant by a specific privacy policy, because our question was what that meant and whether it would refer to the privacy policy that was developed in Rec 13.

I understand that, in the other line – is it 1.3e? There's also a reference to ... I think that the RySG was suggesting to the terms of service. So, if you look in the language that Berry has highlighted here, on the right, we suggest updating 1.2c to cover the reference to the privacy policy, as outlined in Rec 13, as well as the terms of use. That way, it could be a very specific reference, rather than leaving it open. I hope that's helpful.

JANIS KARKLINS: Yeah, thank you, Eleeza. Amr, followed by Chris.

AMR ELSADR: Thanks, Janis. Okay. I think I need to process what Eleeza just said, but I was going to ask ... Because I was wondering what the problem was, but clearly what I was thinking is not what Eleeza had in mind. But my reading of 1.2c is it's referring to two different privacy policies, if I'm not mistaken, and one is developed in accordance with the other.

But my understanding was that they were both the same privacy policy, but again, clearly, that's not the problem. I was going to just suggest that we delete one reference of privacy policy in 1.2c, but no, I have no input right now, at this time, on including the terms of service in 1.3e. So, I'd like to hear from others on that. Thank you.

JANIS KARKLINS: Thank you. Chris.

CHRIS LEWIS-EVANS: Yeah. Thank you, Janis. Yeah. So, a little bit like Amr, maybe these relate to slightly different bodies, but I need to have a reread of it, probably, to ascertain whether that's right or not.

But in the comments provided by ... I think it was the RySG, wasn't it? They do reference the terms of service in their proposed text that says "privacy policy." So, maybe a question to the RySG is, should their proposed text maybe say "terms of service"? Thanks.

JANIS KARKLINS: Thank you. Stephanie, please.

STEPHANIE PERRIN: Thank you. I'm a little concerned that, if the accrediting authority is a processor in the terms of the GDPR, then they won't be developing a privacy policy. We will be setting a policy and they will be following it, with, of course, local provisions added on.

So, I'm a little uncomfortable with this specific privacy policy that they're free to develop. No. If they're a processor, they will be told by the controller what they need in their privacy policy. Thanks.

JANIS KARKLINS: Thank you. Marc Anderson.

MARC ANDERSON: Thanks, Janis, and thanks, Eleeza, for the explanation. That was helpful. In the interest of moving on, can we have an action item to review this offline and respond to the list on this one? Eleeza's explanation was very helpful but I think we really need a little time to just go back and look at this and make sure that addresses our concerns and doesn't cause unintended consequences.

JANIS KARKLINS: Okay. So then, let's do it this way. We will wait for your review and response online and see if there won't be any negative reaction, and we can maybe resolve it just by a written procedure. Thank you. Thank you, Marc. So, let us take the next one.

MARIKA KONINGS: Thanks, Janis. So, that actually completes the items for Recommendation 1. Just to quickly note, as you recall, we

discussed Recommendation 2 during last week's call. We have revised text in consultation with Chris that we'll be posted after this call, and request you all to have a look at that and see if there's still anything remaining that requires further discussion, and we'll add those items to our list, here.

So, that brings us to recommendation number three. There was one item flagged, here. This refers to the intro section, which states that, "The ePDP team recommends that each SSAD request must include all information necessary for a disclosure decision, including the following information," and then it has the list of items that are required.

And there's a question here from ICANN Org to clarifying for implementation purposes whether a request could refer to a signed assertion, which may provide all of the required information that is listed in B, C, and D, or is it the expectation that this information is provided in a separate form in the request?

So, this is more implementation guidance that Org is looking for. There was already some input provided from the Registrar Stakeholder Group who noted that, yes, it may refer to a signed assertion. And I do see, also, "agrees" with that approach for implementation. So, I think the question, really, here, is, is there anyone that does not agree that a signed assertion may be used to provide that information.

JANIS KARKLINS:

Thank you, Marika. The question is very clear. Is there anyone who cannot live with this proposal that B, C, and E could be submitted

in one go with a signed assertion? So, no reactions. Then, you have an answer, Marika. We can move on, then.

MARIKA KONINGS:

Thanks, Janis. So then, we're moving onto Recommendation 5, and this seems to be where we have some differences of understanding of what is expected when information is relayed to contracted parties, and specifically with the question, "What if anything is relayed to the contracted party when it concerns a request that meets the criteria for an automated disclosure decision?"

And we had originally noted here that it was our understanding that, even for disclosure requests for which it is confirmed that the criteria for automated processing of the disclosure decision apply, the disclosure request and related information would still be provided to the contracted party for its records and to allow it to review the central gateway manager determination.

This relay, as we had put in the footnote, could be provided at the same time as the contracted party is directed to disclose, but this could also be provided at another time.

And we basically asked the group to confirm whether this was a correct understanding or not. There was some different feedback, here. The Registrar Stakeholder Group expressed a support for our understanding.

The IPC is of the view that it's not a correct understanding as, from their perspective, for disclosure requests which are automated or centralized, contracted parties do not need to have the request

information and that could, actually, open them up for more liability to even have that information.

So, I think their suggestion is that that reference is not needed. The ALAC also noted that there should be a separate step of having a contracted party considering the requests that are deemed eligible for centralized automated decision, and the Registries Stakeholder Group is of the view that it should not be changed.

The central gateway manager does not hold the data. The request must be only forwarded to the disclosing party in full and the current language is sufficient.

So, it really centers around this question of, in the case of automated disclosure decisions, those criteria have been confirmed. Is the actual request still shared with the contracted party, or is that not necessary? Or, is that optional? I guess those are probably the three options, there.

JANIS KARKLINS:

Thank you. I think that this will be a bit of a hard nut to crack. Brian, please.

BRIAN KING:

Thanks, Janis. I hope it won't be difficult. Allow me to please elaborate a bit on what we're thinking, here. So, keep in mind that, for decisions that are centralized and/or automated, those are decisions for which we are clear that the contracted party does not have liability for the disclosure. That assumption has been kind of

baked-in from the beginning, and perhaps we should have said that more often and repeated that.

So, for those types of requests, ICANN is able to centralize liability with the central gateway manager, and the central gateway manager is the one deciding on the requests.

In that world, it's unclear why the contracted party would want to try to get more potential liability by having that data where that would conflict with the point of doing the centralization in automation, which relies on the contracted party not having liability.

So, that additional perspective, I think, would be helpful. So, I'd love to know why the contracted party, in this case, would benefit in any way from increasing their liability. Thanks.

JANIS KARKLINS: Thank you. So, any reaction? Amr, please.

AMR ELSADR: Thanks, Janis. Well, I'm not a contracted party but nobody else has raised their hand, so I figured I'd just take a stab at this. But, Brian, what you just said is that we're working under an assumption that there is no liability for contracted parties under certain use cases.

Whether that's true or not, okay, we are making that assumption, but we don't know for a fact whether it is accurate or not. At least, I don't believe we do. And I don't see how providing the data to contracted parties on disclosure requests that are automated and centralized increases their liability in any way.

Again, I'm not a lawyer. I may be wrong about that. But in the event that something does go wrong, or in the event that we discover that, well, actually, this disclosure request should not have been centralized and the decision to disclose should not have to be automated, I would assume that the contracted party involved would want records on the disclosure request, as well as the decision to automatically go ahead with the disclosure.

I don't see how this slows the process down at all. It's just a matter of keeping records with a stakeholder or a party that's directly involved, even though not involved in the actual procedure itself.

But this is one of the controllers, and the controller that actually holds the data, and the data is going to be processed. So, is this an objection to them just having records of this processing, or is it something more? Anyway, I see Alan has his hand up, so I'll let him go. Thank you.

JANIS KARKLINS: Yeah. Alan, please.

ALAN WOODS: Thank you. I love the way that Amr said there that, "I'm not a lawyer, but I'll try," and then said exactly everything I wanted to say. Yeah. I mean, the two simple things for me in here is that the central gateway manager does not have the data. It will have to come from the contracted party. Actually, I say three simple things.

The second thing is that I think we should all reread that legal memo again we got from Bird & Bird. It doesn't say the contracted party

has no liability. It says there is less liability in that instance – that we still will have liability.

And exactly as Amr said, as we are the controller in this instance, and the data will be emanating and disclosing from us, we should be able to, if asked by a data protection authority, or even by the data subject themselves saying, “Who has my data been disclosed to and for what reason?” we need to have that information. And if it’s coming from us, it simply needs to be with us.

Again, this is more a question of the liability of the contracted parties and our ability to control our risk. And I’m not particularly sure why the BC and the IPC do have an issue with this, because all we’re saying here is that we need this data in order to control our risk and to deal with our legal obligations as they fall due. So, I don’t see why this is an argument.

JANIS KARKLINS:

Look, I’m not sure. So, maybe we simply need to remind ourselves how the current system is envisaged to work. So, when a request is filed, central gateway determines whether that request is eligible for automated response or not.

And if it is not, then central gateway sends back acknowledgment of receipt to a requestor and sends the request, together with an automatically generated recommendation, to the contracted party.

And the contracted party examines the request and either confirms recommendation or decides otherwise, and, they decide otherwise, apart from sending or not sending data to requestor, sends

feedback to central gateway to train the algorithm that provides this automated recommendation.

If the request falls within the scope of automated decisions, then the central gateway sends to contracted party a request and indication that this request falls within the scope of automated decisions and sends its recommendation. And basically, contracted party generates a response in automated fashion.

So, this how the system currently works. And so, the question is whether we are in agreement, whether we all understand that it is how it works or we have different ideas about it. Brian, please.

BRIAN KING:

Thanks, Janis. I guess I should be clear about what we're trying to achieve, here. So, I do have the Bird & Bird memo up on my screen. I'm looking at the way that they suggested that the contracted parties might not have the joint and several liability, one of which is if the contracted parties are not involved in the "same processing" as the disclosure to the ultimate requestor.

And the contracted party, in that case, would provide the data to ICANN or to the central gateway manager, and would be able to satisfy that information requirement to the registrant by saying that they provide the data to the central gateway manager.

And if the registrant then wanted to know who the central gateway manager sent the data to, if anyone, then they would be free to do that, as well. So, that's the concept, there. What's going to be key to the contracted parties not having that joint and several liability,

as Bird & Bird outlined under the micro approach, is that they're not involved in that same processing.

I think having the data about the requestor live with the central gateway manager only is good evidence that the contracted parties are not involved in the "same processing," because they have no reason to know and no need to know anything about the requestor in these specific, limited contexts where the central gateway manager is making the decision or the decision is automated without liability to the contracted party. So, that's the rationale there. Thanks.

JANIS KARKLINS:

Thank you, Brian. At the moment, when we discuss how the data should travel and the following principle of data minimization, we decided that the contracted party will send, in case of a positive disclosure decision, the required data directly to the requestor.

So, that's why the proposal that a central gateway manager does not make automated decisions but just indicates to contracted party that the request falls within the scope of automated decision-making. So, that is why this contract is made. And then, basically, the computer of contracted party gathers all the data and sends it in a secure way to the requestor.

And one can argue that, since automated decision could be made ... I mean, there is no distance in cyberspace, and whichever computer does this automated decision, then it could be also considered as a part of the central gateway-making decision.

So, I'm maybe not very eloquently explaining this, but this is now, currently, what is in the recommendations, and we need to stick to them and not to contradict ourselves. Stephanie, please.

STEPHANIE PERRIN: Thank you. I would draw your attention to Becky Burr's remarks in chat. I was going to say that you don't lose joint and several liability magically by not being involved in the process.

Then, you have identified a data processor that you have transferred all your registrant data to, whose control you have transferred your registrant data to, in order that they can make mistakes.

So, yes, it decreases liability, but somebody has to assume that liability in that data transfer. And my earlier question as to the status of the central gateway/certification authority hasn't been answered.

Are they processors? Are they data controllers? Are they joint controllers? That makes a big difference in terms of the controller agreements that you're going to draw up to establish who has got the liability.

At the moment, I don't think it would be advisable at all for contracted parties to agree to this automation. I've said this before, but we haven't established anything that makes that objection removed in my view. Thank you.

JANIS KARKLINS: Thank you, Stephanie. So, we are working on the assumption that SSAD is operated as in the joint-controllership mode, and the liability will be defined in the joint controller agreement. This is our working assumption and it hasn't been changed, to my knowledge.

So, I see no other way that central gateway needs to send the requests to the contracting party. So, how shall we proceed? So, I would say that we do not change anything in the recommendation and the one we're looking at. Marika, please.

MARIKA KONINGS: Yeah. Thanks, Janis. If I can, maybe, immediately link this, as well, to comment seven, specifically with this is currently worded as implementation guidance, but it was a suggestion from the IPC that this should actually become part of the policy recommendation, as in both the Registrar Stakeholder Group agreed with that move and ...

In the Registries Stakeholder Group, comment may be specific, because there's also a comment in relation to changing wording. But I think we've clarified what the route of data disclosure is, so I think that that change is not supported, or at least not aligned, with how it's currently worded in the report.

So, I think the question is, is there any disagreement about keeping the language of the footnote or the implementation guidance as-is, but instead of having it as implementation guidance, move it into the policy recommendation?

JANIS KARKLINS: Okay. So, can we agree to elevate from text which was marked on the left-hand side of the screen—this one, yes—as the one recommendation point, not as implementation guidance? So, no objections? Marc Anderson, please.

MARC ANDERSON: Sorry, Janis. I can't read the text on the screen, so I'm quickly trying to find my own version.

JANIS KARKLINS: That is footnote number 23.

MARC ANDERSON: Okay, thank you.

JANIS KARKLINS: On page 30. "The central gateway manager is expected to relay the disclosure request, as well as relevant information about the requestor, to the contracting party. In the case of disclosure requests for which automatic processing of disclosure decisions applies, see recommendation 'Automation.'

The relay of the disclosure request and all relevant information may happen at the same time as the central gateway manager will direct contracting party to automatically disclose the requested data to requestor."

MARC ANDERSON: So, Janis, if I could continue, this language really reads like implementation guidance. We're saying what is expected, not adding our normative "must" language. I don't see harm in putting this in the recommendation itself, but this really does seem more appropriate for implementation guidance. I think this came from ... Sorry, I'm looking for who this request came from. Maybe the IPC.

JANIS KARKLINS: [BC, IPC], and ALAC.

MARC ANDERSON: Maybe we could ask why they think they think this needs to be moved to the policy language. Ah, yeah. Marika's clarifying that this would be changed from an "expected" to a "must," which makes this a material change. So, I think that's, maybe, a little more significant.

JANIS KARKLINS: Okay, thank you. So, maybe somebody from BC, IPC, or ALAC can talk about the reason why you suggest that this should be related to the recommendation level. Hadia, please.

HADIA ELMINIAWI: Thank you, Janis. To me, there is nothing in the original recommendation in that part that speaks to what happens in case of automated cases. And for that, I don't see it only as an implementation guidance, though it's definitely an implementation issue. But the recommendation, again, itself, doesn't refer at any point to automated use cases and what happens in this regard. So,

if it's just in the implementation guide, it's not really part of the policy, right? Thank you.

JANIS KARKLINS: Thank you, Hadia. So, look, we also need to see what we are talking about, here. So, we are talking about acknowledgment, and receipt, and relay of the disclosure request recommendation.

So, it is simply supporting information, what is happening at the time when central gateway sends out acknowledgment of request, and that does not speak about what to do without request, which could be replied in automated fashion.

So, again, I see that we can simply stick to whatever language we have, and this is not a critical issue. Because the critical issue is in the recommendation on automated response, and I think that all our energy needs to be put in that conversation. Alan Greenberg, please.

ALAN GREENBERG: Thank you, Janis. When you say "stick with what we have," do you mean what was in the original document or what is in the staff's recommended change?

JANIS KARKLINS: Can I have the text on the screen? Could you move a bit higher? Yes. The whole recommendation.

ALAN GREENBERG: I'm just not sure what you're referring to staying with.

JANIS KARKLINS: So, the text which is now on the screen, because that is what was ... It is simply moved out. This is exactly the same text, with just a few edits which are simply editorial edits. But the text is unchanged. See, it is moved up from which is now new, small B, relay of disclosure request. So, from there, it is moved slightly higher without any change.

ALAN GREENBERG: I'm sorry. The writing is really small and I'm trying to read it.

MARIKA KONINGS: Janis, if I may, maybe, clarify. We're actually talking about footnote 23, the implementation guidance. There was a suggestion to move that as a policy recommendation. We did not apply that change yet, as we were unsure if there was support from the group.

And as noted, if we would move this to policy language, we would change the "is expected" to a "must," kind of consistent with how we've dealt with that in other parts where this in, on the one hand, policy recommendations, and on the other hand, implementation guidance.

I think the specific question is, is there concern about moving this to the policy part of the recommendation, or will people feel comfortable leaving it as implementation guidance – as-is?

ALAN GREENBERG: Okay. I guess I'm having trouble understanding what you just said, Marika, compared to what is in the document. My concern, when we flagged it in the document, was the phrase that I don't see in the footnote, but maybe it's there, "But it also could be provided at another point."

That is, it may be provided at the same time as the contracted party is directly disclosed, but it may be provided at another point. And I don't see that last phrase in the original text. That was my concern. Just at the top of the next page, there's a phrase, "But it could also be provided." That "but," I don't see in the original one.

My concern was that, for a request that is automated, there should not be a separate request going to the contracted party, essentially asking them, "Do you want to remove?" because then we have two people making the decision in parallel.

JANIS KARKLINS: Look, Alan, with due respect, I think that this is the wrong place where you're trying to put the automation bit in. This is the part we're talking about, sending acknowledgment of receipt and sending the request itself to the contracting party. So, automation is the recommendation, I think Recommendation 6, where everything related to automated decision-making should be reviewed and put in.

ALAN GREENBERG: All right. I'll back down because I'm really confused. I thought we were looking at what is on the screen on the right, right now, which does have that phrase, and I don't know where it came from.

JANIS KARKLINS: Which phrase?

ALAN GREENBERG: it is highlighted on the right-hand side of the screen right now.

MARIKA KONINGS: If I may just explain—

ALAN GREENBERG: Please.

MARIKA KONINGS: This is the rationale, our explanation. The actual language of that is in the last part of the footnote. The relay of the disclosure request and all information may happen at the same time as the central gateway manager would direct a contracted party to automatically disclose the requested data to the requestor, saying “it may.” It doesn't have to. It could also be provided at another point. That's really an implementation question.

ALAN GREENBERG: Sorry. Go ahead, Marika.

MARIKA KONINGS: And as I pointed out in the chat, and as Janis also said, this is really about sharing the disclosure request for the contracted party's

records. This is not intended to be about a contracted party reviewing that request and then agreeing to automated disclosure. That's not what this is about. This is purely about the disclosure request that is relayed for the contracted party's records.

ALAN GREENBERG: And to be clear, I was happy to have it silent. Saying, "It may be sent at this time," that implies it could be sent at some other time. But the explicit statement is saying it may be provided at another time, and the logical time is before the decision is made, and that, I have a problem to. So, I was happy to have it silent. Having explicitly called out for, I had a problem with. I see Brian has his hand up. Maybe you should go to them.

JANIS KARKLINS: Brian, please.

BRIAN KING: Thanks, Janis. I was going to clarify what we were looking for in moving this implementation guidance up to be a part of the policy. It's actually, I think, captured pretty well on the bolded language in the right-hand screen, there, that Berry has.

So, what we're looking at is the fact that B is lacking any reference to the fact that automation might exist. I think the policy would benefit from clarity that, while this section says that requests must be routed to the contracted party or the registry operator, it doesn't say anything about any potential for automation. So, that carve-out would be necessary and appropriate, here. Thanks.

JANIS KARKLINS:

Again, the whole structure of the recommendation is to go bit by bit. So, what happens first? First, you get accredited. Second step is, when you're accredited and you are curious to get some materials, you file the request.

So then, you have how you file request. So then, you send the request. That's the next step. And then, the next step is the central gateway receives the request and sends the acknowledgment of receipt, automatically generated, "We got your request."

Then, the next step is gateway manager evaluates the request based on criteria, whether that is request for manual review or request for automated review, and sends the request with indication to contracting party.

So, these are step-by-step, and for the moment we're talking about the acknowledgment of receipt, and relay, and then sending the request to the contracting parties. And this is just an explanation which indicates that there is automation possible, and this is exactly what you are looking for.

And then, one of the next recommendations is on automated disclosure. Again, I think we're spinning wheels on the issues which are not "cannot live with" issues. So, for me, a much more important issue is to see whether we can agree how to deal with the automation and get over automation.

So, of course, we can still continue beating this dead horse and spend another 20 minutes, but I would say let's keep as-is, as now on the screen, with this implementation guidance footnote, which

refers that there is automation recommendation, and simply move on. Brian.

BRIAN KING: Thanks, Janis. I would like to do that. I just am afraid that this language conflicts with the recommendation on automation. We have to look at these things recommendation by recommendation, and as this stands we can't live with a recommendation that says, "By default, the gateway must send it to the registrar, or in some cases may send to the registry operator."

That is silent as to the most important in our preferable use-case for processing. So, I understand that, as part of the package, we are talking about automation, but can't live with this unless there's a carve-out that says that, per request, they're not automated. And I don't think that's a big ask. Thanks.

JANIS KARKLINS: So, you are not asking that these steps are only for manual review. So, you're asking to elevate what is now in footnote 23 to the level of a recommendation in Recommendation 5. And I don't see that this is a place, here. Again, maybe we're talking past each other, but really, I don't understand what you're trying to achieve, here.

BRIAN KING: Thanks, Janis. If I could respond to that?

JANIS KARKLINS: Please.

BRIAN KING: I'd be happy to leave the footnote where it is, but what Rec 5 is lacking is just six words that say, "For requests that are not automated." Seven words, whatever. "The central gateway must relay the disclosure request to the registrar." That's it. Just a little lead-in language in front of that that acknowledges the fact that automation is a thing that's possible in some cases, so that this recommendation, standing alone, does not say that there are two options for the request routing; one is the registrar, and the other is the registry. Thanks.

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

ALAN GREENBERG: Thank you. I support what Brian said. And if someone is objecting to that, I would like to understand what the purpose of relaying the request to the registrar or registry is if it is one authorized for automated disclosure by the SSAD. I'm not questioning whether they should be informed after the fact, but the question is, what is the purpose of relaying it to the registrar/registry immediately? And that is what this is saying. Thank you.

JANIS KARKLINS: Noted. Again, it would be good to have a visual, step-by-step. So, central gateway does not possess registration data. So, in current policy recommendation, we are talking about, when request comes in, all central gateway does is to evaluate whether a request should

be reviewed manually or it should be reviewed in an automated way.

So, if manually, then it sends request and the recommendation to the contracting party and gives the order to evaluate. So, if automated in the automated way, then it sends request to contracting party anyway, but with indication that this request falls within the automated disclosure bucket and the contracting party computer discloses data because it falls within that category.

But the contracting party needs to receive the request because they are in possession of data that they need to disclose. It is how it is now, and I think that this is how process works. Marika, maybe you can help us out, here.

MARIKA KONINGS:

Thanks, Janis. I can definitely try. So, I think one of the issues I heard Brian talk about is the reference, here, to “registrar of record,” and that, maybe, causing some heartburn.

And I think it’s probably something that we overlooked on our side because, everywhere, we’re actually referring to contracted party, and we explain in another recommendation how the relay is typically to the registrar but there may be instances for which it may be the registry.

And we come to that discussion later, because that is an item that also has been flagged. So, at least as a, maybe, minor change here, and maybe that, at least, reduces a little bit of heartburn for Brian, that we change the reference, here, to ... A little bit up, Berry, to the

reference ... Instead of “registrar of record,” use “contracted party,” like we’re using everywhere else.

Maybe that goes a little way in making that clear. I think, as you said, the other recommendations deal with automation and make very clear what needs to happen in those circumstances, and this purely speaks about relay of the disclosure requests, which, as we understand from the input, is necessary in both cases where [there is working with that] contracted parties and in those instances where there is automated disclosure. It’s still provided for the contracted party’s records.

JANIS KARKLINS:

Okay. Why don’t you, Brian, put a marker in your notes and revisit your own marker after our conversation, or after we’ve finished the conversation about automated disclosure request, and then see whether you still insist on any change in this particular recommendation—five—that we can see, move on, and then to take the next question.

BRIAN KING:

Thanks, Janis. That sounds good. Thank you.

JANIS KARKLINS:

Okay. So, the outcome of this conversation is that, basically, we maintain the language of Recommendation 5 as was displayed on the screen, and we do not change the footnote. The footnote stays, as well, as-is. And if something is not right with the automation, then we can revisit that upon a note of Brian. Next one, please, Marika.

MARIKA KONINGS: Thanks, Janis. So, with the next one, we move into recommendation number eight. The first here relates to what is now bullet E, which talks about if the contracted party determines that disclosure would be in violation of applicable laws or result in inconsistency with these policy recommendations, the contracted party must document the rationale and communicate this information to the requestor and ICANN Compliance if requested.

And ICANN Org has requested a clarification, here, whether the “if requested” ... Does that only apply to ICANN contractual compliance so that the rationale must only be supplied to ICANN’s contractual compliance should they request it?

And I’ve already got some input, here, from the registrars, who confirm that “if requested” only refers to ICANN Compliance. So, I think we’re looking for anyone that may not agree with that interpretation.

And I think if that is the understanding, maybe we need to make that further clear, or place a comma somewhere, to make sure that is understood, that this relates to ICANN Compliance.

JANIS KARKLINS: Okay. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I think I agree with the registrars’ input on this one, but I maybe want to make sure I understand ICANN Org’s question.

Do they have an alternative in mind if it isn't intended to refer only to ICANN Compliance? Do they have something else in mind or are they just looking for a clarification? So, yeah, I'll stop talking.

JANIS KARKLINS: Eleeza, could you clarify, please?

ELEEZA AGOPIAN: Sure. No, we didn't have an alternative in mind, Marc, to answer your question. We really were just trying to figure out if "if requested" only applies to Compliance, or if it also meant the requestor could request that rationale, as well. Thanks.

JANIS KARKLINS: Okay. Thank you. So, with this explanation, I think we can move on. Right? Marika.

MARIKA KONINGS: Yep. We now move onto items nine and ten, which are both related. I think I just referenced to that, before. As you may recall, we discussed in one of the previous meetings the relay of the requests by default to the registrar of record, but identifying in which circumstances it would also go to the registry.

And I think, at that time, they were of the view that it should be at the requestor's discretion to either request relay to the registrar or registry, or have kind of a second attempt with specific information for why it should go to the registry.

And I think we outlined some scenarios in which the request might be relayed to the registry, and I think, already, there, we basically made it at the discretion of the central gateway manager or we identified a couple of scenarios in which such a relay to the registry operator might be warranted.

And here, we have a couple of comments from, I think, the BC/IPC, who were under the impression that it was up to the requestor to elect where to direct a request, and they are asking to refer to the original language.

But I don't believe there was ever original language that had that option for the requestor to make that selection. The change we made in response to the registry comment was more focused about taking out specific examples.

Because I think they had some concerns about those that really made clear that the central gateway manager might be aware of certain circumstances in which they would relay the disclosure request to the registry operator, and I think we also make clear in this section that, of course, nothing in this section or recommendation would prevent a requestor to go directly to a registry to request disclosure of that information through, basically, Recommendation 18, as was developed in the Phase 1 discussions.

So, I think the questions, here ... I don't know if the BC/IPC want to speak more to their concern, whether support for, again, changing it back to the previous version, that was still at the central gateway manager's discretion.

We just provided a bit more clarity around the possible scenarios in which this would apply, but I don't think it had any option, there, for the requestor to make that choice of where they wanted to relay the request.

JANIS KARKLINS: Okay. So, Milton, please, your reaction.

MILTON MUELLER: Yeah. I think this is a good example of why we're not making progress. So, we thought that we had agreed on a hybrid model in which disclosure requests were sent to a centralized point.

And we know there was a debate and there are people who wanted the central point to make the disclosure decision, but the idea that the central gateway manager can issue recommendations is one of these unworkable and kind of silly halfway-houses between people who are not accepting the fact that we are in a hybrid model in which the disclosure decision is made by the contracted party.

I don't understand. We're tangling ourselves up in knots, here, trying to figure out, "Well, I can send a recommendation, but it can be also disregarded, or it may be followed," and we're "maying," and we're "musting." The whole thing is pointless.

It's a hybrid model. Central gateway manager receives requests unless there are specific use-cases in which it is automated. This whole business of a recommendation in areas that are not automated just should go away. It's a pointless, trouble-causing

wrinkle in the whole model. It just doesn't make any sense. So, let's get rid of it.

JANIS KARKLINS: Yeah. Thank you, Milton. Mark SV.

MARK ŠVANČÁREK: Actually, this one isn't about the recommendation. This is about the routing of the request. So, by default, it goes to the registrar. We would like to make sure that a requestor can request for it to go to a registry. How that's decided by the gateway, whether or not accept that request, is worth discussing, but this actually isn't about recommendations. Thanks.

JANIS KARKLINS: Okay. Thank you. Chris.

CHRIS LEWIS-EVANS: Yeah. Thanks, Janis. I just wanted to remind Milton, I think the idea behind making recommendations was, if we were to have a mechanism to evolve this, then knowing that the centralized gateway had already got the decision right and agreed with the contracted parties would surely make for an easier evolution and/or a smaller change, and not making something that is new policy.

If we can see that the contracted parties and the central gateway manager agrees on those decisions, that makes for a lot smaller change. And a lot of what you've been arguing for is we don't want to be making massive, great, big jumps. We want to be making

small, iterative steps. And really, this is a way of making nice, small steps, rather than having to take big leaps in the future. Thank you.

JANIS KARKLINS:

Thank you. No, again, I know that Milton does not like the recommendation bit, but we're not talking, now, about the recommendation bit, here.

So, we're talking about whether a requestor is entitled to decide whether he wants the request to be sent to a registrar or registry, or a requestor sends to the central gateway and, behind the central gateway, it is a black box for requestor, and requestors should not know where central gateway decides to send the request.

I think that that is the issue, here. And so, I think, after hours of discussion, we said that, predominantly, or in most of the cases, a request will be sent to registrar. In some circumstances, the central gateway knows, as joint controller, it may decide to send it to registry, and this is what is reflected in the recommendation, now. Milton, your hand is old or new?

MILTON MUELLER:

It's new. So, I guess I don't recall these hours of discussion in which we agreed on allowing the requestor to decide whether it goes to the registry or the registrar. I thought it was by default to the registrar.

JANIS KARKLINS: Yes. Then, in certain circumstances, that is what is requested. This is what is written in the text. “The central gateway manager must make it so an assessment, whether identified circumstances necessitate to provision of the [inaudible] request to relevant [GT] registry operator.”

MILTON MUELLER: So, can I understand better what value is added? Can somebody explain to me what value is added by giving this option to the requestor, other than an attempt to gain, centralize, and bypass the actual controller?

JANIS KARKLINS: So, if someone wants to answer Milton? In the meantime, Amr, and Alan G, and Mark SV.

AMR ELSADR: Thanks, Janis. I just have one question, here. My understanding is, as Matt put in the chat, right now where we’re at with this recommendation is that the “flagged for discussion” bit in the column on the far right ... So, right now, where we’re at is that a requestor could choose to ask the central gateway manager to direct the disclosure request to the registry.

But if that is the case, I'm assuming the requestor has a reason. And if the central gateway manager agrees to this request, then the CGM will have its reasons, as well. But in situations like this, I think it's still very important that we're clear that the records, again, of the disclosure request, have to go to the registrar, as well, even if the

request is being processed by the registry. I just want to flag that and make sure that that stays in there. Thank you.

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

ALAN GREENBERG: Thank you. I have no problem with what Amr just suggested. My understanding is this is not a request that the contracted party be bypassed. It's not a request that the request be handled by the SSAD.

It's a request that it be passed onto the registry instead of the registrar, and the SSAD could override that and ignore the request, and I think that's all it is, if I read the words properly. Thank you.

JANIS KARKLINS: Yes, it is. Mark SV, please.

MARK ŠVANČÁREK: Thanks. Yeah, I'm agreeing with Amr and Alan. It's still, by default, to the registrar. The gateway is still making the determination. It can be valuable in some cases when the registrar, for example, doesn't have a working SSAD connection.

We know that there are some registrars who don't even have RDAP connections. So, there always needs to be some sort of a fallback. How the request is made and how the gateway makes the determination is not defined here, yet. I guess we're saving it for

implementation. I'm not so scared about that one being in implementation. So, that's my explanation of this.

JANIS KARKLINS: So then, we are in agreement. Brian.

BRIAN KING: Thanks, Janis. I think we're in agreement in principle that, of all the things that we've always been in agreement on, the request by default goes to the registrar, that the requestor can specifically ask, if they want to, that the request goes to the registry, and that there be some kind of oversight or control with the central gateway manager that makes sure that that serves as some kind of check on that.

Just to be clear, I think we're not in agreement with all the language that the registries submitted, here, like giving the registry discretion about whether to do the request based on their own assessment of what the gateway manager sends to them would be a no-go from the IPC camp.

But I think we are in agreement, largely, with all this stuff, and maybe we leave to implementation the types of things that the gateway manager could consider as far as controls on the use of routing requests to the registry. Thanks.

JANIS KARKLINS: Okay. So then, I understand that we can live with the text that is now displayed on the screen and move to the next item, but that will

be during the next meeting because we are now at 4 PM UTC and we have exhausted two hours allocated for this call.

So, once again, I would like to reiterate that we need to, using this method of work, be more flexible and indicate really systemic “cannot live with” issues, rather than small things.

With this speed, we have 70-plus points to cover. In two hours, we covered nine. And out of those nine, one is not resolved, which means with this speed we will need about seven or eight meetings, and we have only three at our disposal. So, please, think about it and show flexibility. Amr, your hand is up. I wanted to wrap up the meeting.

AMR ELSADR:

Yeah. Sorry about that, Janis. I just wanted to be clear on something. We’re agreeing to what we discussed right now based on the fact that there is an understanding that there are, for one reason or another, going to be disclosure requests that are directed to registries, without getting into the details of how that happens.

But I just want it to be clear that that does not mean that the NCSG agrees to all scenarios where this may happen, as we’ve tried to explain in our comment on this, particularly where there are jurisdictional issues that prevent a registrar from granting a disclosure request.

So, in situations like that, then we would have a problem with the principle of these requests being sent to registry operators to begin with. So, I just wanted to be sure that we’re clear on that, and that

we're not leaving an impression that we're agreeing to something that we haven't. Thank you.

JANIS KARKLINS:

Thank you. But again, I think that this is a bit of an implementation issue, as I would like to see that, from the requestor's point of view, SSAD is a black box. And so, what happens inside is between joint controllers, ICANN Org and Contracting Party House.

How they run the SSAD, what is important is that, if there is a legitimate request for private data disclosure, this data is disclosed. How it happens, it should be inside this black box. And if something is not working, then there should be a remedy, how to challenge that. And so, this is what we're working on.

So, with this, thank you very much. We will start with item ten tomorrow. Meeting is at 2 PM UTC. I wish you all a good rest of the day. This meeting is adjourned.

TERRI AGNEW:

Thank you, everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and stay well.

[END OF TRANSCRIPTION]