ICANN Transcription

GNSO Temp Spec gTLD RD EPDP – Phase 2

Thursday, 28 May 2020 at 1400 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the GNSO ePDP team call taking place on the 28th of May 2020 at 14:00 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourselves now?

Hearing no one, we have listed apologies from Matthew Crossman, RySG, Margie Milam, BC, Matt Serlin, RrSG, and Georgios Tselentis of GAC. We have formally assigned Beth Bacon, Steve DelBianco, Sarah Wyld, and Olga Cavalli as your alternate for this call and any remaining days of absence.

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

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Alternates not replacing a member are required to rename their lines by adding three Zs to the beginning of your 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 Zoom, hover over your name and click "rename." Alternates are not allowed to engage in chat, apart from private chat, or use any other Zoom room functionalities, such as raising hands, agreeing, or disagreeing.

As a reminder, the alternate assignment form must be formalized by the way of the Google link, which is available on all meeting invites toward the bottom. Statements of interest must be kept up to date. If anyone has any update today, please speak up or raise your hand 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 61st meeting of the ePDP team. My traditional question, the agenda that has been

circulated yesterday – is it acceptable to guide our work during this meeting? Any objections?

In absence of objections, we then proceed accordingly. The housekeeping issue, we are approaching the grand finale. It is the final, final reading of the recommendations in [cannot live] mode. I will ask Marika to walk us through the preparations that need to be done before grand finale. Marika, please.

MARIKA KONINGS: Yeah. Thanks very much, Janis. As Janis said, we're approaching homework week. The official start of that is Saturday, although I think we already have some work you could get started on, for those that want to work in advance.

We do hope, of course, that all respective groups have already carved out time during next week to have sufficient time to look at the updated recommendations as well as the discussion tables that we've prepared on the input that was received on the addendum and the priority two items.

Berry is showing now, on the screen, the status of the updated recommendations. As you can see, nearly all of them already have an updated version posted in the form of a Google Doc. Berry, maybe you can click on Recommendation 3? I think 1 may not be a good example, yet, because we're still waiting on the updated language for Recommendation 2, which may have some impact on the current language for one.

As you may recall, we integrated one and two and we're waiting to see the GAC feedback on whether or not those two

recommendations can be integrated. So, there may be some changes that need to be made, depending on the feedback I've received.

But this is what you get to see if you click on Recommendation 3. As you will know, there are actually three recommendations combined in this Google Doc because the group discussed that 3, 5, and 8 should be combined for consistency and to avoid a duplication.

I think, at some point, we need to consider whether or not the recommendations as such remain separate or they become one with separate headings. But at least for the ease of reading and making sure that similar recommendations that have an impact on each other are grouped together.

We have incorporated those in the same Google Doc. So, at the top of the document, as you saw, we'll have the familiar tables in which, again, we ask you to focus on "cannot live with" items. Please focus on those aspects that have changed. Do not reopen issues that have already been extensively discussed and where the group came to a solution, but focus on those issues where your group will not be able to sign off on the report if that issue is not addressed.

Very important, as well. If you flag those issues, please also provide a specific proposal for how your concern can be addressed, of course factoring in your previous conversations, positions of other groups. Having concrete proposals on the table will make it much

easier to discuss those items, and hopefully find a path forward that's acceptable for all.

Of course, if you find minor issues, things we may have overlooked, editorial comments, you can provide them here, as well, in the minor edits section. Everyone is able to review those, so if something is put in there that is more substantive, for some you can, of course, reflect that, or flag that, too, as well.

For ease of reading, Berry, if you scroll a little bit down, you will see first up a clean version of the recommendation in which we basically accepted all changes and all highlights. But if you scroll a little bit further down, you'll see what we're calling a "track changes" version where, through color-coding, you're able to see the changes that have been made compared to the initial report.

So, green language is identical to what was in the initial report. What has been highlighted in yellow are those changes that have been made in response to the public comment review.

In some of the documents, you will also find a blue highlighting, and that's more the result of editorial changes as a result of bringing different recommendations into one section. So, SSAD may be a bit more challenging to read, this, because it has the color-coding and strike-through language, but we do want to make sure that you are able to see and review what was changed compared to the initial report.

For some of the recommendations, as well—not this one in particular because this was one of the earlier ones, but from some of the later ones—we've even included a tracking table where we

have kind of documented for each of the changes where they were derived from and referring those back to either a specific meeting at which it was discussed, or items in the discussion table, or the PCRT. So, again, there is a way for you all to trace where changes have come from.

So, the deadline for doing that is Friday the 5th of June, so please work with your groups and get us that input at the latest by the 5th of June. I see Sarah's question. I think that the versions are final on Saturday. We are still making some cleanup changes. There are still a couple of recommendations that we're discussing today, for which we're finalizing the versions.

So, if you give us at least until Friday close of business, we can also send you an e-mail when we're done with our cleaning up and finalizing the changes. We'll send a notice to the group. That should be, at the latest, by Saturday morning, wherever you are. We aim to finish that on Friday so everyone can get started.

I do want to note that the discussion tables for the addendum have already been posted for a while, so, there, definitely no changes will be made. So, what happens after the 5th of June?

The staff team, together with the leadership team, will review the list of "cannot live with" items. And of course, depending on the nature of those, the specific proposals being put forward, we'll think about an order and an approach for considering them.

We aim to share that list at the latest by Thursday the 11th of June, when the next plenary meeting will be, at which time we also hope to have the first draft of the final report, where we can already

integrate those parts or recommendation where, hopefully, there are no "cannot live with" items or any minor changes.

It may result in additional meetings in the week of 15th of June. I think we want to try and think through how we can best do that, as having plenary meetings every day may not be feasible for all, and not productive either, so I think we will think about, are there other ways in which we can move forward on the discussions?

But of course, it will also depend on the number of issues that are flagged. Just to be on the safe side, we will send placeholder invites for meetings, but, SSAD, we hope that those are not necessary or may take a different kind of shape that may not require everyone to be on the call.

So, I think that's, in a nutshell, what we wanted to share. And SSAD, it's really key that all of you have an opportunity and take the time to review the recommendations. Please take in mind all the conversations we've already had and progress that has been made.

For those that may not have had a chance to follow all the conversation, we keep pretty good track of agreements and paths forward in the notes, so you're always able, as well, to look back at those to see how we ended up where we're currently at.

So, this is where we're at, SSAD. There are two or three recommendations that we're still discussing, or two that we're discussing today, one that we're about to finalize. And for Recommendation 2, we're waiting on the GAC to submit its homework on that one. But we're almost there, hopefully.

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JANIS KARKLINS: Thank you, Marika. I think it is very clear. We would still meet next Tuesday to review outstanding issues from today's meeting, including the priority two issues. And then, after the high-intensity week, we need to see if any meetings during the ICANN Kuala Lumpur meeting week we should organize. And again, it all is geared toward an attempt to finalize the final report by 30th June.

So, any questions to Marika? I see none. Thank you, Marika. Then we can proceed to further examination of comments on Recommendation 18 on audit. So, we reviewed, first, three recommendations. Actually, two, but the third is the one that is very similar to a log-in question, and I think that that is simply part of the operations of SSAD. Unless there is a violent disagreement with that, we can move to question four. So, Marika, if you would introduce the question.

MARIKA KONINGS: Yeah. Thanks, Janis. So, question four. There was one suggestion whether this recommendation should only include requirements that are not already included in the RA or RAA, or order the obligations that do not already exist under relevant data protection laws.

We did incorporate or include the relevant sections at the end of this document but I would like to note that, if you look in the recommendation itself, of course, the RA and RAA focus on audit requirements for contracted parties, registries and registrars, and those are actually not specifically called out here. They are, of course, a part of that process, and I said there already requirements for those in the relevant agreement.

So, the first part may have already been addressed as to prove … Did not duplicate those requirements. But I think, maybe, the second part is worth discussing: are there any obligations listed here that are already required and, as such, do not need to be called out, or is this appropriate and provides sufficient guidance for the implementation of this recommendation?

JANIS KARKLINS: Okay. Thank you very much, Marika. Any thoughts? Any comments? Marc Anderson, please.

MARC ANDERSON: Yes, Janis. I guess I kind of agree with Marika. In my understanding, or my recollection, I should say, when we did the auditing recommendation, is that we were focused on auditing requirements for the SSAD system. I certainly don't think our intent was to overlap or include requirements that were already included in the RA or RAA.

I think, to the first part of that, my answer is yes, we should only include requirements that are not already included in the RA or RAA, but I thought we did that. So, I guess, unless somebody can point to a specific instance where we didn't, I think we can move on.

And to the second part, ordering obligations that do not already exist under relevant data protection laws, I think, again, going back to what I said before, when we drafted this recommendation we focused on what we thought the minimum auditing requirements should be for the SSAD system.

Yeah. I think, like most other recommendations, we were trying to define the minimum that we thought should be required under a policy. In other cases where we've overlapped with existing law, we've noted that that's probably redundant but not necessarily a problem. So, I don't know. Unless somebody has specific concerns they want to flag, I think this has been pretty well-addressed and we can move on.

JANIS KARKLINS: Yeah. Thank you, Marc. Berry, if you could scroll down, the text related to "auditor for accredited entities/individuals"? I actually fully agree with you, Marc, in that these are very tailored to specificity of SSAD. So, I would suggest, unless there is opposition, that we maintain the text as was developed in [the present] recommendation. I see no hands up. So then, we'll keep the text as-is. We can move to question five.

MARIKA KONINGS: Thanks, Janis. So, the text already foresees that. In cases of repeated non-compliance or audit failure, the matter should be referred back to the accreditation authority and/or the identity provided, if applicable, for action. I believe this appears in the "audits of accredited entities and individuals."

There was one suggestion in the comments noting, "Should contracted parties be allowed to use past abuse to deny future requests from requestors?" whether that should be something that should be considered here, and there wasn't necessarily

agreement on whether that was a good idea or not. So, I wanted to bring that to the group.

JANIS KARKLINS: Okay. Thank you. So, the question is, in case of previous non-compliance, should the offenders, or offenders in the past, be denied using SSAD in the future? Hadia, Brian, and Volker, in that order. Hadia, please.

HADIA ELMINIAWI: Thank you, Marika. Thank you, Janis. So, definitely, system abusers should be denied from accessing the system or using it. However, it's not the contracted parties who allow or deny access to/usage of the system. It's the accreditation authority.

So, in case of systematic abuse of the system, the contracted parties should, and must, actually identify this to the accreditation authority, who in turn will take action in order to deny the usage of the system by those abusers. But again, it's not the contracted parties who would actually deny or allow. Thank you.

JANIS KARKLINS: Thank you, Hadia. Brian, please.

BRIAN KING: Thanks, Janis. I agree with Hadia. I think the way that we've already addressed this is that each request should be evaluated and then approved or denied on its merits. I completely agree that an abusive requestor should not be allowed, an abusive request should not be

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allowed, and that that should be captured by the central gateway or however the requests go before they get to the contracted party. But I wouldn't share in this concern. Thanks.

JANIS KARKLINS: Okay. Thank you, Brian. Volker?

VOLKER GREIMANN: Yes. I can see those points and I don't necessarily disagree. I mean, looking at what we deal with on a day-to-day abuse platform, which can be compared in some ways, we do get requests from certain requestors every day that [record] domain names that aren't even managed by us. And it's very beneficial for us to, then, be able to filter them out, just to be able to get to the requests that are actually of value.

But I agree, we have implemented an audit. We have implemented a greater response to abuse, and as long as we can report this kind of abuse of the system to the system, and the system then takes action to prevent that kind of abuse going forward, I think we're settled, we're done, and we don't need to take the matter into our own hands and shut off requestors. Thank you.

JANIS KARKLINS: Okay. Thank you. So, are there any who disagree? Alan? Alan G, please. So, Alan's hand disappeared. Marc Anderson, are you in disagreement?

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MARC ANDERSON: I guess I'm not sure what I'm being asked to disagree with. Maybe you can help me out there.

JANIS KARKLINS: That offenders should not be allowed to use SSAD.

MARC ANDERSON: Yes, I agree with that.

JANIS KARKLINS: Okay, good. Do you want to make a point, or …?

MARC ANDERSON: I think Volker covered what I was going to say, so I'll go ahead and [recover] my hand.

JANIS KARKLINS: I would say let's move on, but Stephanie's hand is up in the meantime. Stephanie, please.

STEPHANIE PERRIN: Thanks. I'm sorry to slow us down, but in a way it's kind of a distinction without a difference. Because the contracted parties are still obliged to say no to an abusive request, so they are denying it, and they will recognize patterns. It seems to me the most useful part of this is the recommendation that repeat cases be referred to the accreditation authority.

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Presumably, it will take the accreditation authority a while to investigate and decide to de-accredit them. After which time, they can still put in random requests because at no time do we ban someone completely from requesting data, right? So, maybe this is an implementation detail that we can iron out satisfactorily, but it's not necessarily clear yet.

JANIS KARKLINS: Okay. But in principle, we are in agreement that those who systematically abuse the system should not be allowed to use it further, whether that is through withdrawal accreditation or any other way. That will be ironed out during the implementation phase. So, that's our agreement, and we can move to the next question, which is question number six.

MARIKA KONINGS: Thanks, Janis. So, this question has asked whether there is a need to revisit this recommendation as it may have been written before the group agreed on the model. For example, if ICANN Org is the accreditation authority, does the ePDP team still foresee auditing as a requirement if arrangements would be in place with third-party vendors that could use commercial agreements to enforce requirements? Or does the ePDP team envision that additional audits are required as a result of the model it has chosen?

JANIS KARKLINS: Okay, thank you. So, any views? So, I would argue that ICANN Org, in the model, is an accrediting authority. If authority decides to hire a third party, nevertheless, the audit requirement of the third

party should exist. Whether that is envisaged in the contract that ICANN Org will sign with the third party or that is something separate doesn't matter. The point is that there should be audits if that is necessary. Alan Greenberg, please. Alan, we do not hear you.

ALAN GREENBERG: Sorry about that. You've captured, I think, what I was going to say. ICANN will be the accreditation authority. There is no doubt in my mind, anyway, that it will outsource it. Whether it is through this requirement or through a contractual term, there obviously have to be audits, periodically. So, I don't think this recommendation hurts.

JANIS KARKLINS: Thank you. Any different opinion? I see none. So, decided. Number seven. Marika, please.

MARIKA KONINGS: Thanks, Janis. This was a suggestion that the ePDP team might want to revisit the use of "shall" requirements in this recommendation and consider whether some of them should be restated as a "shall" or some as "must." I don't know if that's something the group wants to do now, or maybe that could also be part of the review of the overall recommendation.

Staff could, maybe, already have a look at this, as well, to see if there is any kind of inconsistency or obvious changes for consistency reasons, potentially. So, I don't know if anyone has any specific views on this one at this stage.

JANIS KARKLINS: Okay. I think we spent some time on "shall" and "must" in this recommendation in Los Angeles when we developed it. But again, I am in your hands. Is there anyone who would like to speak? [inaudible], please.

UNIDENTIFIED MALE: Yeah, I'll speak, and I'll echo what Sarah said in the chat. I think "shall" and "must" have the same meaning. If they have a different meaning, can someone explain it?

JANIS KARKLINS: No. I think that, legally speaking, they are the same effect. Not being a native English speaker, I think one is more referred to future and then one is just an affirmation.

UNIDENTIFIED MALE: I think we should use the same word throughout and be consistent, otherwise, if you use "shall" and "must" in two different places in the same sentence or in the same recommendation, people are going to presume they have different meanings. And if they don't, let's make sure the language is clear. Thank you.

JANIS KARKLINS: Okay. So, if that is the common understanding, then probably, since we are using "must" throughout the text, I would suggest that we would ask staff to replace "shall" with "must," unless there is a really serious reason why not to do so. Would that be okay? No

objections? Staff will do it. Thank you. Number eight. Marika, please.

MARIKA KONINGS: Thank you, Janis. So, this is a comment—I think, actually, the previous one was also from ICANN Org—suggesting that everything should be placed under implementation guidance after the first [sentence]. Otherwise, this section may lead to confusion during implementation, as there are no mandatory requirements.

These are guidelines for ICANN Org, should Org decide to audit entities and individuals. So I guess the question here is, are there any concerns about moving most of this recommendation to implementation guidance instead of having it as a policy recommendation, as it currently is?

JANIS KARKLINS: Okay. Thank you very much. So, any objection to ICANN Org's proposal to move most of the recommendation, except the very beginning, to implementation as implementation guidance? Marc Anderson, please.

MARC ANDERSON: Janis, I don't think I'm okay with that. I think there are parts there that should be part of the actual recommendation and aren't necessarily appropriate for implementation guidance. As part of the first paragraph, the parts about "these could," for example, that to the end of the first paragraph, that reads like implementation guidance. So, I don't know if, maybe, the feedback was intended

just for that paragraph. I can see that. But the other two paragraphs, I think we want those as part of the recommendation itself.

JANIS KARKLINS: Okay. Thank you. So then, it looks like we will stick with the Recommendation 17 as-is, as opposed to recommendation rather than implementation guidance. Any objections? So, I see none. So then, we will keep as-is. Thank you. So, that brings us to the end of our consideration of outstanding issues on auditing recommendation, and we can move to the next item. That is implementation guidance, which is fairly short. Just one question. Nevertheless, needs to be considered. Marika, please.

MARIKA KONINGS: Yeah. Thanks, Janis. As I just said, this relates to implementation guidance, small "i," that was included in the initial report. This was a fairly short one. There are a couple of assumptions and takeaways that we had, looking at the input provided. We noted that there seemed to be agreement that the reason for the request must be identical for each domain in such a bulk request.

And just as a reminder, this implementation guidance goes to the point that multiple requests can be submitted at the same time or together. But as noted, it needs to have the same reason and they still, of course, need to be considered each on their own merits, but it cannot be having multiple, for example, trademarks listed stating that those might be infringed in the domains. There was agreement on that.

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As noted, the requirement to consider each request on its merit still applies. Priority designation needs to be respected regardless of how many domains are in the request. We can look at some edits to make sure that this is clear. There were a couple that pointed to automation concerns. As we noted before, they have been addressed in Recommendation 7 and 16 and should be considered there.

So, the remaining question here is – and I think, actually, already took a stab at integrating this, while it would make sense to actually integrate this into Recommendation 12, query policy, as was already mentioned of this specific requirement. I think we've made a suggestion to actually add it as an implementation note in that specific recommendation. So the question here, really, is, is there any concern about bringing those two together?

JANIS KARKLINS: Thank you. It would be useful to get the text of this implementation guidance [for lines] on the screen. Here it is. And the question is, would it be okay to implement this part of implementation guidance in Recommendation 12 on query policy? Marc Anderson, please.

MARC ANDERSON: Hey. So, first, to the specific question on moving it to query policy, I think that's fine. I think that's better than having it sort of orphaned as a standalone implementation guidance. So, I support that.

On the assumptions and takeaways, I have a little bit of a pause there. I just want to make sure I understand staff's suggestion. So, on the third bullet point there, "Priority designations need to be

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respected regardless of how many domains are in the request. Consider edits to make this clear," I'm not sure I know where you're going with that one.

For example, if you submit ten requests and one of them is a priority one and the other nine are not, is that the edit you're considering making clear, like how that would be handled? I guess I'm trying to understand what you mean by that.

And then, on the first bullet point there, I agree with the second point. It's not acceptable to simply [compile the] list of trademarks. That might be infringing in the domains. That, I think we've talked about multiple times.

But I'm not sure … So, "The reason for the request must be identical for each domain in such a bulk request." I guess, is that accurate? It seems like this is maybe an implementation issue that we might want to leave for the implementor. I could imagine a way to implement the system to that that is not necessarily true. And so, I think, maybe, that's flexibility we might want to leave up to implementation. So, sorry, I know that was a couple of items, but maybe staff might want to respond to them.

JANIS KARKLINS: Thank you, Marc, for questions. Marika?

MARIKA KONINGS: Yeah. Thanks, Marc. So, basically, the way the implementation guidance reads is that it should be possible for a requestor to enter multiple domain name registrations in the same request form, but

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the same request information applies. So, that's at least our understanding. And again, this is implementation guidance so, if there are other ways, that, of course, can be considered.

So, for priority designations, our understanding would be that the same priority designation applies for all of the domain names in that request, because all the information is the same. So, for example, if we're talking about urgent requests, life or death, the same reason would need to apply to all those domain name registrations to then qualify or be granted that status.

I don't think it's foreseen that there would be 20 different domain names and ten, maybe one, to maybe two, and the rest, maybe three. So, at least, that's what we tried to say with number three, that just because you may have 100 domain names in the same request, if they meet the qualifications of a priority or an urgent request, it doesn't matter that there were 100 domain names in that same request because the criteria were a match.

That was, at least, what we're trying to convey, and at least we understood the implementation guidance to say we can have multiple domain names listed but the rest of the request should be the same for that disclosure request. I hope that makes sense.

MARC ANDERSON: That does. Thank you. You can't see my face but I'm nodding. So, I agree with what you've said. That clarification helps a lot. Thank you.

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JANIS KARKLINS: Thank you, Marika, though it sounded to me like an edge case. Nevertheless, Brian, please.

BRIAN KING: Thanks, Janis, and thank you, Marika. That answered one of the questions that I had there, and I think that's good, then. I agree with what Marc said about the first bullet, there. I have seen in practice the kind of spray-and-pray-type requests that I know the contracted parties hate where the demand letter will be sent that says, "We own these seven trademarks and there is some bad stuff on a website that infringes one of them." So, I think we would be agreeable that a request should state clearly which trademark is being infringed. I think that's a reasonable request.

The first part of the bullet, though, I have a bit of heartburn about because there might be a slightly different—this gets into the nuance of trademark law—reason for the request for one particular domain name versus another.

I think a less-nuanced version … Just more generally speaking, we wouldn't want to preclude the requestor from submitting multiple requests at the same time into the system that said, "I have these eight domains being infringed. Four of them infringe this mark and four of them infringe this other mark of those last two. A couple of them are counterfeiting and a couple of them are a trademark issue."

I don't think we'd want to preclude that, given that the SSAD will kind of do its magic and then route those to the right contracted party and put together those allegations accordingly. So, for those

reasons, I think we're okay with everything after the semicolon, there, but I just want to be careful about what we're trying to do with the first part of that bullet. Thanks.

JANIS KARKLINS: Thank you. But you do not object that this implementation guidance, small "i," is incorporated in Recommendation 12?

BRIAN KING: Thanks, Janis. If I could respond, I don't object to move it over to 12. I think that's a good idea. I would strike the first sentence, though. We probably couldn't live with that, the reason for the request being identical for each domain. I think what the commenter was after is probably pretty well addressed with the part after the semicolon, if I understand the concern correctly. But we could agree with everything except that first sentence. Thanks.

JANIS KARKLINS: Okay, but we're not talking about or editing assumptions and takeaways. But thank you for clarification. So, you do not object to moving this text to the recommendation. So, thank you. Alan Greenberg, please?

ALAN GREENBERG: Thank you. I was going to say something similar to half of what Brian just said but not the other half. Again, I'm not a trademark person. I don't submit these requests. I would think it's reasonable to say they almost reply to the same trademark, and that is you're

providing the same single piece of documentation to show you have the trademark.

I have a problem, however, with the word "identical," because I can imagine, as Brian said, that the rationale might be counterfeiting versus phishing or something like that. So, I would use a word like "comparable" or "related"—I'm not going to try to pick the right word—as opposed to "identical." I think "identical" might be too stringent a requirement, even if they're all applied to the same trademark. Thank you.

JANIS KARKLINS: Okay. Thank you. Can we stay focused, because time is running, to the questions that we need to answer, rather than commenting on text, which is assumptions?

ALAN GREENBERG: I have no problem with moving it but if we have problems with the text we have to address it sometime. Thank you.

JANIS KARKLINS: Yeah, but these assumptions will not appear in the report. So, only recommendations will appear in the report. This is what staff is indicating to me. Milton, your hand is up. Please.

MILTON MUELLER: Yeah. I'm having trouble understanding this. So, we're saying, accordant with a preliminary recommendation, that an SSAD

request must be received for each domain name registration for which disclosure is requested.

And at the same time, we're saying that there is something called "bulk requests." I really don't get that. I may have missed something here, but what exactly is a "bulk request"? Are you saying that we have a trademark XYZ and there are 400 domains that infringe that trademark, and they're all at the same registrar? They all go to the same registrar? Or does the SSAD sort out which registrar they go to?

It seems to me that we are really working at cross-purposes, here, trying to square a circle. Either you're making a request for each disclosure for each domain or you have bulk requests. Tell me what it is, please.

JANIS KARKLINS: So, I understand Marika is answering your question, Milton, in the chat. Mark SV, please.

MARK ŠVANČÁREK: Thank you. On the one hand, I feel like we're spending an awful lot of time trying to design a web form that really should be put into implementation guidance. We have the implementation guidance. I think we should move on.

On the other hand, there is that text in the assumptions. I know it's not going to be in the recommendation but I don't want the concept to be lurking out there when we do get into implementation. Okay,

yes. So, to Milton's concern, I guess, maybe we do have to define the web form right now. Here's what I'm thinking, Milton.

It's the, for convenience's sake, I could manually enter, here's a domain name, here's a mark, here's a domain name, here's a mark, here's a domain name, here's a mark, here's a domain name, here's a mark, four times into the web form.

Or the web form could be structured in such a way that all of that could be typed in at once and then submitted to the SSAD, and the SSAD would evaluate it and route it to the same things. Each of those things that get routed is an individual request to be determined on its own merits.

So, hopefully, that explains, Milton, what we're going for, here. It's very unfortunate that the term "bulk" got moved into here again because that is a tainted term. Yeah, please. It's not a bulk request. We defined what a bulk request is and we already disallowed it.

There's a convenience function that allows you to do the data entry of your requests more effectively. That's what we're talking about, here, and what we're starting to design, even though it should really be implementation. So, yeah. I agree with Milton; we should get rid of that word. The concept must remain. Just get rid of the word.

JANIS KARKLINS: The word is not in the recommendation itself or implementation guidance itself.

MARK ŠVANČÁREK:	Yeah. "Batch" is a more correct word. I'm seeing that in the chat. Thank you.
JANIS KARKLINS:	Yeah, okay. Thank you. Hadia, please.
HADIA ELMINIAWI:	Thank you, Janis. So, I see the only addition this implementation guidance is adding to the initial recommendation, recommendation number 12, is the part where it says, "If the same request information applies."
	The point Milton was making, recommendation 12 actually says, "The ePDP team recommends that the SSAD must support the ability of a requestor to submit multiple domain names in a single request," so that's what you're talking about. You're not talking about "bulk" or even "batch." It's the ability to submit multiple domains in one request.
	And to here, we could add this implementation part by saying "if the same request information applies." And we do also mention in the following bullet that the SSAD must route each domain individually to the entity responsible for the disclosure decision. And between brackets, we say, "This may require SSAD to split a request into multiple transactions." So, we are definitely not talking about "bulk," or even "batch."
	And again, I see the part that the implementation guidance adds is the "if the same request information applies," and it could be added to an already existing bullet. Thank you.

JANIS KARKLINS: Thank you, Hadia. So, we then ask staff to move implementation guidance, small "i," to Recommendation 12 without changing a meaning of it. Thank you. So, that is our decision and we can move to the dessert, or one of them. Financials.

Financial sustainability, Recommendation 15. Before I will give the floor to Marika to introduce the topic, I would like simply to remind that ICANN Org provided us with a cost estimate which is, or should be, seen exclusively as an indication rather than a price tag.

So, as a result, our thinking about these policy recommendations should keep that … Let's say not "amount," but the scale in mind, but not take it as a carved-in-stone number. So, as a result, please try to look at this recommendation keeping in mind the scale but not referencing nine million as a price tag. With this word, I would like to ask staff to introduce the topic.

MARIKA KONINGS: Thanks, Janis. So again, here, we have a number of assumptions, takeaways, or clarifications based on the input that was received, starting off with noting that I think you all know that this recommendation was discussed extensively and a lot of thought went into the different aspects of this recommendation.

So, we have not called out any comments or suggestions that are related to items that were hotly debated and where compromise was reached on this. There was a general agreement that it should be reconsidered or discussed again.

I think what we will do, because there were a couple of areas where it seemed that there was, maybe, confusion or not specific wording enough to be clear on what was intended, I think we'll definitely have a look at what we can do to clarify some of those items.

There was a comment or a question in relation to a corporation that has subsidiaries and affiliates, and whether accreditation is necessary – one is sufficient, or there should be multiple, and that that, of course, wanted a question of, do you need to pay once or multiple times?

There, we noted that I think it's something we already clarified in the accreditation recommendation, where it currently reads that the accredited entity is expected to develop appropriate policies and procedures to ensure appropriate use by an individual of its credentials.

Each user must be accredited but a user acting on behalf of an organization must have their accreditation tied to its organization's accreditation. At least, our assumption is that, of course, that will also be reflected, then, in the accreditation fee that may be applied to accommodate this scenario.

There were a number of comments or questions in relation to the fee structure for disclosure requests. I think we do have a specific question on that further down, as well, but there was a concern that a subscription model might not be one of the ones that would be considered. Our understanding, at least, is that that's still open for consideration, so we can include that, as well, as a potential model to be reviewed.

And there was a suggestion that fees should be reimbursed if a request or accreditation would be rejected. This is an area where we think it may benefit from clarifying the text to make clear that the fee that would be charged is not associated with the disclosure of data.

It's not you don't get data so you don't pay, or get accreditation permission itself, but the fee that is paid is specifically associated with the costs that are related to the processing and considering the disclosure requests or the accreditation application.

There seemed to be confusion around that and, at least, staff hope that in this way we clarify that the fee is related to the cost incurred, and it's not that you're paying for the data that you expect to receive.

There were some suggestions that we should clarify what "smaller operators" means. It is not clear what it's referring to. I think everyone agreed that it needs to be clarified, although I don't think we got any specific suggestion. So, staff will take a stab at making that more specific.

We also wanted to clarify that, currently, it's foreseen that the mechanism for the evolution of SSAD would also review and assess possible updates to implementation guidance in relation to financial sustainability, as there were questions about how review of this would take place.

We noted that the recommendation already foresees that fees may differ based on volume or user type. There were a number of commenters that suggested that a certain type of entities should pay different fees, as well. I think that's already foreseen.

There were a couple of comments that kind of went to the overall model that the group is discussing, and that's probably not the place to look at that, here, but it should be considered in the overall recommendations.

And there was also a comment that asked about whether this was in scope for the working group to even consider, and I think Janis already said a bit, the parameters of this conversation. But at least from a staff perspective, the GNSO Working Group guidelines specifically request working groups to consider the budgetary impact of their recommendations and, as such, at least from a staff support perspective, we think it falls within the responsibility of the group to consider.

So, that brings us to the questions where either we didn't have sufficient guidance from the group on how to move forward or where there are different perspectives on which direction to go. I think, on the first few questions, we've made some specific suggestions on how to potentially address those.

So, in the first one, there was a proposed edit to change that accreditation applicants, instead of "may," must be charged a to-be-determined non-refundable fee proportional to the costs of validating application.

Some know that "may" provides more flexibility here in case there are issues identified during implementation with charging a fee for accreditation. We noted before potential confusion on whether we're paying to get access to data, while others also noted that, maybe, a fee accreditation may not be considered trustworthy.

I think we just want to point out that, at least from our understanding, just because it's "may," it doesn't necessarily mean this is going to be free, and I think the information that ICANN Org provided has indicated, as well, that, of course, there's a price tag associated with this. So, I think the question is, here, should "may" change to "must" or should it remain as-is?

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

ALAN GREENBERG: I'm troubled by "must" here because I can certainly see there may be cases where the accreditation should be free for a given class of entity based on who is actually doing the work. So, I would not feel comfortable saying "must be charged" unless there's a note that the charge could conceivably be zero for certain classes of accreditation, and, moreover, I think there needs to be assurance that whatever the fees are are being applied consistently and not capriciously.

JANIS KARKLINS: Yeah. Thank you. I think that's a sensible approach. Chris Lewis-Evans, please.

CHRIS LEWIS-EVANS: Yeah. Thank you, Janis. I think when we discussed this the first time around we really pushed for the "may" here because of the difficulties some governmental agencies may have in paying for

things. And obviously, if the accreditation agency wants to provide a service free for governments, then this must be a "may," just to throw in more "mays" and "musts" into the pot. So, yeah, just to allow for governments not to have to pay, and for the payment to be done at the accreditation agency end, we really need this to be a "may." Thank you.

JANIS KARKLINS: Thank you, Chris, but with the caveat that Alan G suggested, that there may be a fee; for certain categories of accreditation applicants the fee may be zero. Would that be something you could accept moving to "must," if "must" will be the prevailing opinion? Chris?

CHRIS LEWIS-EVANS: Yeah. Sorry, I'm just thinking that through. That really doesn't make sense: "A fee must be charged, but you may be able to charge zero." It makes a mockery of the "must," almost, I think. So, I'd rather a "may." Thank you.

JANIS KARKLINS: Okay. Thanks. James, please.

JAMES BLADEL: Hi, Janis. Thank you. So, put me down in favor of retaining the word "must," and let me explain. Because I don't disagree with Alan and Chris, but I think that, for the SSAD, the costs associated with vetting and accrediting and applicant and also operating the system

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don't go away depending on who is using it. And so, those costs have to be tracked and allocated appropriately.

However, I am in favor of some kind of a subsidy program, either by SSAD or by ICANN, that would take those types of users that Chris and Alan mentioned and either reimburse them partially or fully or subsidize their use of the system.

But I think that for the SSAD, and in the scope of this recommendation, the costs should be tracked accurately and completely, and that means that even those worthy users would have to cover those costs, even if they were being reimbursed somewhere else. Thanks.

JANIS KARKLINS: Thank you, James. Amr is next, please.

AMR ELSADR: Thanks, Janis. I think James pretty much covered everything I wanted to say. I just really wanted to point out that the costs exist, irrespective of who the requestor is or who the entity or person seeking accreditation is, and will need to be paid by someone.

So, even in the scenario where there is some sort of centralized coordination of how the costs are recovered, whether it's the contracted party or the registrant who is paying for it, whether it's the other requestors who are covering the costs for some entities seeking accreditation, someone else will need to pay for it.

So, I just want to be sure that we're all clear on this and understand what the implications of changing "must" to "may" may be. Personally, I'm also in favor of retaining "must," here. Thank you.

JANIS KARKLINS: Yeah. No, actually, the current recommendation suggests "may," and it is proposed to change to "must" because of expenses associated with review of the application. So, I think that the closest way forward was suggested by Alan, where we would go for "must" and put a footnote saying that certain SSAD users may be either subsidized or charged zero fee, something like that, which would put everyone in the same position.

That would be a systemic approach saying that there is a fee associated with accreditation and that is non-refundable, but it may happen that that fee is zero. And also, in the evolutionary mechanism, one of the topics that mechanism would review, based on experience, is financial sustainability, including a fee structure, and then fee volume. Therefore, it will be reviewed on a regular basis based on experience and running the system. But of course, that is a consensual decision of the team. Alan G, please.

ALAN GREENBERG: Thank you very much. I get the feeling we're almost violently agreeing with each other but looking at things from a different perspective. Amr is right. This is not free. Someone has got to pay. But we shouldn't preclude the ability of some central group to subsidize the whole process.

That is, somebody comes up and says, "I'm going to be providing the accreditation service, and I have funds from other sources, and I'm not going to charge the applicants, specifically this class of applicants."

It's not free but the wording that we have there says the applicant will be charged, as opposed to someone's got to pay the bill. I'm not really sure I want to open the can of worms that James suggested of ICANN doing the subsidization because I'm not sure that's our business at all, but there may well be entities that are willing to subsidize certain classes of accreditation and we shouldn't prohibit that.

That's the problem I have with "must." That is, it implies that each applicant will receive a bill and we even need to cover that by saying the bill may be zero or some other words. That doesn't assume it's free. That simply says the bill isn't going to the applicant. Thank you.

JANIS KARKLINS: Thank you. Brian, please.

BRIAN KING: Thanks, Janis. I recall that we've discussed this before and we landed on "may." Initial reaction as a change to "must" is that it's probably not a good idea because law enforcement government agencies often have strict contracting requirements and a lot of red tape that might preclude their use of the SSAD based on what they're allowed to spend money on and how they have to negotiate and show what they got for the money.

So, a blanket "must" as a knee-jerk reaction here is not a good idea. I am sympathetic to the concerns raised by James and others, though, that we might need to unpack this a little more and to have more clarity.

I think that we were going to do that in implementation. If I remember correctly, that was the beauty of leaving this at a "may." Groups like IP owners, I think, expect to pay a fair share. But we're requiring, also, that everyone that might use the SSAD gets accredited in some way.

And accreditation for a one-off individual user might just be, "Validate your e-mail address. Okay," and that accreditation might not get you much weight in the request but that other accreditation types would be more expensive to do and might carry a higher fee. Maybe those individual one-off requests are free because the accreditation process could, in fact, be automated and, therefore, basically free to provide.

So, if we're going to change to a "must," we're going to really need to be clear about what the asterisk and the footnote looks like with some of those other cases. My preference is really still, at this point, to stay with "may" and then note some of the other exceptions. So, I hope that's helpful. Thanks.

JANIS KARKLINS: Okay. Thank you. Milton? It's your turn.

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MILTON MUELLER: Yeah. I'm still in favor of "must." But first of all, I think the question or the example of governments not being able to do this is kind of a strawman, really. Yes, there is going to be bureaucracy involved. I work for a state university. Purchase orders are complicated, and irritatingly so, but they can happen.

The issue with governments is particularly fraught because we don't want anybody claiming that they're a government when they're not. So, there has got to be some kind of an accreditation there, and we all know how complicated that issue is going to be when we're doing law enforcement agencies or the ministry of public security in China or Iran. What exactly are we doing here?

So, I think that what we're asserting is the principle that accreditation is costly and the applicant is somehow responsible for meeting that cost. I could bend on "may" versus "must" if we have additional language that makes it clear that this isn't a generally applicable "may," that maybe just some accrediting agency decides that they're going to not charge money and accredit anybody who asks for it without doing any actual work.

We want to avoid that. So, if you can add to your "may" some language that makes it clear what specific kinds of exceptions you have in mind, and make sure that those exceptions are not creating serious loopholes or problematic loopholes, then we can move forward on this.

JANIS KARKLINS: Okay. Thank you, Milton. So, what's, then, a way, as Milton suggested, to put additional explanation in the footnote? Maybe a

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non-exhaustive list of accreditation applicants whose fees may be waived as a result, something like that. Would that be a possible way forward? Chris.

CHRIS LEWIS-EVANS: I just wonder if we're going to tie ourselves up in knots doing that. We did have "may" agreed, but obviously, listening to what James and Sarah have been putting in the chat, I wonder whether we can just change the accreditation applicants wording at the front of this—that's some of the part that has given us heartburn—and whether we can tie it up with, "Accreditation applicants may be charged but the cost must be met by the accreditation authority," or just tying it up with the accreditation authority and the applicants would be my preferred way forward. But yes, that's quite a bit of a change to the wording at this stage.

JANIS KARKLINS: So we could be, as a policy, a suggestion, very general, suggesting that an accreditation application must be funded by a to-be-determined non-refundable fee proportional to the cost of validation application. So then, it is clear. And to leave how this funding is organized, that could be then defined in the implementation phase.

Would that be something we could consider? I repeat, the accreditation application must be funded by a to-be-determined non-refundable fee proportional to the cost of validating an application. Alan G, please.

ALAN GREENBERG: Thank you. I hope it's something simple. Saying "the accreditation applicants must be charged a to-be-determined non-refundable fee proportional to the cost," so on, "unless the accreditation agency itself bears the cost," implying it's funded through somewhere else.

JANIS KARKLINS: Yeah. It might be like that, as well. So, I don't have any reaction, neither to my proposal nor to Alan's proposal. Chris, please.

CHRIS LEWIS-EVANS: Yeah. I'm more comfortable with both but, to be honest, I'd need to double-check that.

JANIS KARKLINS: So, now you see Alan's proposal is on the screen.

ALAN GREENBERG: To be clear, that's not my proposal. That says "the accreditation authority." I'm talking about "the accreditation agency." I don't know what word we're using. The group that subcontracts accrediting IP lawyers or whatever, the subgroup that actually does the accreditation, not the overall authority, which is ICANN.

JANIS KARKLINS: Identity provider.

ALAN GREENBERG: Identity provider, thank you.

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JANIS KARKLINS: Brian, please.

BRIAN KING: Thanks, Janis. I don't think that addresses all the concerns that we mentioned about changing this to a "must." I don't know what law enforcement agency or group representing governments would fund that, or how. I don't know if we could do this on the fly, Janis. There is a lot that went into this "may," and if we need to do some more thinking on this then, okay, but I'm not comfortable that that addresses all the issues that we raised.

JANIS KARKLINS: Okay. Volker.

VOLKER GREIMANN: Yes. Thank you, Janis. I'm not really convinced that it needs to be a "must," here. I mean, I can imagine many scenarios where, indeed, as Alan suggests, there is a scenario where the application fees for accreditation or for verification validation of the requestor are baked into some membership of a larger organization.

Say, for example, Interisle now offers to be an accreditation authority and they bake their processes into their membership fees and, therefore, don't have to charge an extra fee. So, that way, they wouldn't be charged a fee for the validation because they are already being validated as part of their overall membership. So, I

can imagine various scenarios where "maybe" may be appropriate. So, I don't necessarily think it must be a "must."

JANIS KARKLINS: Okay. Thank you. Maybe Laureen?

LAUREEN KAPIN: Yeah, just briefly. This had been the subject of a lot of discussion. I don't think that the "unless alternatively funded" language covers it. As an alternative, we could say, "It must be charged a to-be-determined non-refundable fee except under certain circumstances to be specified during implementation, including for the following scenarios," and then come up with a few examples. We've already given the law enforcement one. That, at least, would apply some flexibility.

I think the key concept is retaining flexibility, which "may" does in a simple and straightforward manner. If you want to get more complicated and there's a real desire to use "must"—which I disagree with, but if there is—then I think we need to let it be dealt with during implementation but provide some guidance.

JANIS KARKLINS: Okay. Thank you. Look, I think, since we have many other things to discuss, if you have any more specific proposals, specifically for examples, please send them to Marika, Caitlin, and Berry. Otherwise, they will try to formulate to end the sentence with those examples themselves. We will review this proposal in the final, final reading. Will that be okay? So, thank you. Number two. Marika.

MARIKA KONINGS: Thanks, Janis. So, on question two, there was a suggestion that it should be being made more specific that registrants should not be subject to explicit additional charges for SSAD but that, at the same time, some noted concern over removing the original language that stated that data subjects should not bear the cost.

So our suggestion is, here, would it be acceptable to instead, basically, state both? So, basically, retain the reference to "data subjects must not bear the costs for having their data disclosed to third parties," and add, similarly, "A registrant should not be subjected to explicit additional charges associated with the operation of SSAD."

JANIS KARKLINS: Okay, thank you. Can we accept staff's proposal? Amr?

AMR ELSADR: Thanks, Janis. I think the staff proposal is good, but if possible I'd like to remove the word "their" from the first sentence. So, "Data subjects must not bear the costs of having data disclosed to third parties," because my concern here would be that, okay, data subjects are not directly paying for their own data being disclosed but the costs of this disclosure is being evenly spread out across all data subjects. So, that's something I would prefer to not see, as well. So, yeah, I think it's fine, as long as we just cross out the word "their" from that sentence. Thank you.

JANIS KARKLINS: Thank you. Brian, are you in agreement?

BRIAN KING: Thanks, Janis. I'm not sure. I didn't think we were talking about that sentence. I thought we were talking about the second sentence, so my comment was about that, the additional sentence. I don't think I would agree with removing the "their" in the first sentence but I'll limit the rest of my comment to this second one.

What are "explicit additional charges"? That's not clear to me. I think I understand "similarly, a registrant should not be subjected to charges associated with the operation of SSAD," and again, in general, I don't want this addition because I don't know what it adds to the sentence before.

I'm not sure what the intent is and, therefore, I'm worried about it, and I also don't know what the explicit additional charges are or who would be charging those charges. So, if we get a bit more background on what problem we're trying to address here, that would be helpful. Thanks.

JANIS KARKLINS: So, probably registrars, when they develop a fee, they put certain thinking in that, and the fee would cover A, B, C, D, and then, suddenly, in the next review, an additional sub-item appears to cover the costs of operation of SSAD. That is an explicit additional charge, in my understanding. Alan Greenberg, please. You're next.

ALAN GREENBERG: Thank you very much. My recollection is that was put in because the reality is that we said ICANN may subsidize the SSAS and virtually the only money in any great extent that ICANN gets is through registry and registrar fees, which indirectly come from the registrant, just as the registrant pays for the registrar and registry operations associated with evaluating requests and releasing data.

So, the registrant is paying for part of this. There is no way to get around that. They're the only source of money into this big funnel. But what that was saying is you can't add on a new fee to cover the cost of SSAD or cover the cost of requests against your domain.

And similarly, I have a problem with Amr's change of removing "their" because, again, the registrants are the source of money and we cannot pretend that it doesn't exist, but we don't want a registrant to be charged because someone asked for their data. That was what that was trying to protect. Thank you.

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

VOLKER GREIMANN: Okay, thank you. I must disagree with Alan, here. I very much like Amr's addition and I disagree with the interpretation of the subsidies. It was, at least from the registrar side, always a concern that ICANN might pay for this by adding one or two cents to the ICANN fee because, otherwise, their budget wouldn't probably be able to produce this.

That would be a concern because they would be indirectly paying for this. We were envisioning something much more like the UDRP, which ICANN is not funding. It's providing guidelines, and rules, and compliance oversight for that system but, ultimately, the requestors who are filing those cases would be parties that are providing the UDRP services. They are paying for that.

And yes, there is a small part that ICANN pays for in the manner of their compliance function, and I think we're fine with that bit. But everything else, the operation of that system and the accreditations and everything, that has to be borne by he who orders the music. Thank you.

JANIS KARKLINS: Thank you. Brian, please.

BRIAN KING: Yeah. Thanks, Janis. I think the IPC view is along the lines of what Alan expressed. We wouldn't strike the "their" in the first sentence, either, because I don't think that sentence is really even what we've been asked to talk about today.

So, in the second sentence, there, what are we trying to do here? Should we say that contracted parties must not charge registrants for charges associated with the SSAD or disclosure decisions? I think that would be a good registrant protection mechanism. I don't know if any of our other colleagues would agree with that or if that's what's intended, here.

But yeah, if ICANN funds this thing, that's where ICANN gets its funding from. To be clear, this SSAD is not a "nice to have." This isn't like an optional, "It would be cool if the good guys could access domain registration data." This is key to the DNS and to trust in the DNS. This has got to be baked into budgets and to how this whole thing works.

So, if what we're trying to get at here is that ICANN can't fund this or this can't be centralized, then we need to come around and say that, but we don't have agreement on that. So, I think we were okay with the compromise language here that data subjects must not bear the cost for having their data disclosed, but if we mean something different then we should say something different. Thanks.

JANIS KARKLINS: Yeah. No, thank you, Brian. My recollection is that the, specifically, first sentence, "Data subjects must not bear the cost of having their data disclosed to a third party," was discussed extensively in Los Angeles as a customer protection measure. And again, we are, basically, repeating that discussion, more or less, that we had already in length, and this is kind of a hard-worked-out compromise that we could arrive to.

So, when it comes to the second sentence, it's simply that, in my view, it simply strengthens that customer protection or data subject protection thing. At least, this is how I read it. But ultimately, if we think in real terms, somebody needs to fund the system and it will not be 100% funded by requestors.

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It simply will not work because there are also some functions that are functions of public interest and that need to be borne by the whole ecosystem, if you wish. There will be indirect costs incurred by contracting parties and these indirect costs will be covered by what? By fees that the contracting parties are charging from a registrant.

So, yeah, we simply need to make sure that there is no abusive behavior and that suddenly an additional fee is not charged for registrants because we are working and somebody needs to fund the SSAD. So in my view, that's all we need to do. Amr, please. Your hand is up.

AMR ELSADR: Thanks, Janis. The way you just described financial sustainability is very different than how I understood it since we first started discussing this issue. I thought the whole idea of the financial sustainability discussion was to determine a cost-recovery sort of situation where the costs would be recovered from the fees paid by requestors, or entities seeking accreditation, not by registrants.

And when you say that there was some sort of compromise reached in Los Angeles, I'm not aware of the NCSG ever being in agreement of a compromise which required that these costs be borne in part or in full by registrants, either. So please, until we figure otherwise, I think the NCSG needs to be left out of that consensus call for now.

But something Volker said earlier, I think, made a lot of sense. There are some hidden costs in this, such as cost of compliance by ICANN, and we accept that these are costs that will, eventually, be

borne or included in ICANN's budget. That comes from the money that accredited registrars, for example, paid ICANN, and that's fine.

But what we're really looking at here are the costs involved in operating SSAD and those, I think, from a cost-recovery perspective, need to be covered. If not initially, obviously, because there will not be funds from requestors when the SSAD is being developed and launched, but at some point these funds need to be recovered from the fees paid by SSAD users. Thank you.

JANIS KARKLINS: Thank you, Amr. Actually, my recollection is that this first sentence, "Data subjects must not bear the costs for having their data disclosed to third parties," was an NCSG heavily protected sentence in these conversations in Los Angeles. That is where we landed with this text in initial recommendation. In part, I am surprised that we're revisiting this conversation today.

Anyway, where we are now. I'm a little bit lost. I see that there is no ease to add this sentence and there is a proposal to delete "their." Let me see if we could simply delete "their" from the existing sentence and not add a sentence that our staff is suggesting. So, would that be something we could accept and go forward to move to the next question? Brian.

BRIAN KING: Thanks, Janis. I'm trying to channel my inner Becky Burr, here. I saw in the chat she asked a question and it's kind of something that I'd rather not leave unaddressed, here. I think we need to square the two concepts, here, that we have that ICANN operationalized

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this and that requestors and accreditation fees will go toward some of this, but we're not precluding ICANN from funding this explicitly. And so, how do we reconcile that with that first sentence? Especially with removing the "their," which I think makes that a more difficult concept to reconcile. Thanks.

JANIS KARKLINS: Volker, please.

VOLKER GREIMANN: Yes. I think this ultimately results from different interpretation of the same language that was read differently. I mean, there's this joke where the people say that punctuation can save lives: "Let's eat grandpa" and "Let's eat, grandpa" are totally different sentences.

And in this case, I think it's people that are putting the emphasis on "their data" have a different interpretation of the same language that people that say "must not pay for their data." So, ultimately, even if there was agreement on the language back in L.A. then we probably need to figure out what we actually mean by that language. And therefore, our position was always that data disclosure should not be paid by registrants, period, directly or indirectly.

And therefore, it's not the individual requests that must not be payable by the data subject but, all in all, the data subject should not be forced to pay more, just because we have an SSAD where the data subject couldn't care less and could say what is he getting from that because you could just go to the registrar directly, as you have in the past.

So, that's, I think, our position; ultimately, the focus is not on the "their." The "their" is only linguistically there to make sure that … Yeah. We have different interpretations still.

JANIS KARKLINS: Yeah. No, look. I think, maybe, we could find comfort if we read the whole paragraph. Not only what is on the screen but the whole paragraph. No, no. Don't move it. Just highlight all paragraph.

"The objective of SSAD is financial self-sufficiency without causing any additional fees to registrants. Data subjects must not bear the costs for having their data disclosed to third parties. Requestors of SSAD data should primarily bear the costs of maintaining the system and ICANN may contribute to the partial covering of costs of maintaining the central gateway.

So, that was a kind of package that we came up with after hours of conversations about protection of registrants and how the system would be financially sustainable.

I really think that in the current version there is all balances and then, somehow, different aspirations are captured in this language. So, my plea would be, maybe, not to reopen this particular paragraph and keep it as-is. Alan Greenberg, please.

ALAN GREENBERG: What you said, Janis. We spent a long time crafting this and none of us were all that happy with it in its detail, but we were willing to accept it. Reopening it now will have caused that to be redone. We're not face-to-face. That makes it that much harder.

I could say, "Fine, we can accept the change that is proposed on the right-hand side but we need to know explicit charges for they must not bear any explicit costs for their thing," and then we'll have a bunch of people saying why that's not acceptable.

I think we either need to live with this or decide that this is a do-or-die one and we'll spend the next three meetings talking about it. We wasted enough of our lives on this, already. Let's just go take it as it's written and go ahead with it.

JANIS KARKLINS: Yeah. Thank you, Alan. Milton, would that be okay?

MILTON MUELLER: Yeah. Pretty much coming in with agreement that many of the concerns that have been expressed are already accounted for in the current language. The impression I got is that ICANN may spend money to this thing up but the ongoing usage and accreditation fees are supposed to recover that. That's why we talk about historic costs.

I think this does preclude this notion that ICANN is going to be subsidizing certain people to become accredited. I don't think that is permissible under this and we don't want it to be permissible. There may be other sources of those subsidies but they're not going to be ICANN, which means they're not going to be registered.

So, yeah: the SSAD is financially self-sufficient, doesn't cause additional fees to registrants, data subjects would not bear the costs, requestors should primarily bear the costs. I think we've

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pretty much addressed all the concerns, so let's move on. Thank you.

JANIS KARKLINS: Okay. My proposal is, as Milton suggested, to keep the existing language and not attempt to rewrite, at least specifically, this part. So, I hope that everyone can deal with that. Thank you. Question three?

MARIKA KONINGS: Thanks, Janis. So, question three, there was a proposed edit to be more specific regarding which types of governmental entities might have their fees waived. The recommendation currently says the ePDP team also recognizes that governments may be subject to certain payment restrictions, but some noted that the proposed language might be too specific and limiting.

So, we've suggested here … Would it be acceptable if we would add something along the following lines? "Further consideration will be given during the implementation phase regarding which types of governmental entities or organization fees may need to be waived. I think it partly goes, as well, to the conversation we had previously, so I'm not sure if this even requires for that conversation in light of that.

JANIS KARKLINS: Yeah. Thank you. I think that it will be covered by addressing the first question that we discussed. We were talking about footnotes and a reference to a non-exhaustive list of examples of … Oh, no.

This is a different … It's not accreditation. So, it's a bit … Operations. Yeah. Okay.

A question is whether we can accept staff's proposal, as outlined now in bold, in the sentence which is now also highlighted in blue on there.

So, Marc Anderson's proposal is simply to add at the end, "The ePDP team also recognizes the government may be subject to certain payment restrictions, which should be taken into account in the implementation phase."

Okay. No objections? Even expressions of love? [inaudible]? Good. So then, we're done with three and we can move to four. Milton, you can lower your hand, otherwise you will get tired. Thank you.

MARIKA KONINGS: Question four, there is a reference in Recommendation 2, the creation of a legal risk fund. So, the question was raised, can the group provide more specific … And why is such a fund necessary? It was noted that all businesses and systems that operate are subject to some legal risk, so it's not clear why the system necessitates a special fund for its legal risk.

I think staff note here, as well, that that reference may have been included when there were still conversations where decisions might be taken centrally and that it would still create risk for contracted parties. So indeed, the question is, is that reference still relevant? If yes, some further details may need to be provided. If it's no longer relevant in view of the proposed model, maybe this can be stricken.

JANIS KARKLINS: Thank you. So, any reaction? Again, it was a lengthy conversation and I think that this came out from an insurance idea or risk fund, similar to one for new gTLDs. Alan Woods, followed by Marc Anderson.

ALAN WOODS: Thank you. Yeah. I don't think we should strike this at all. Again, what we're doing here is we're forging a path forward based on what is still quite an uncertain area of law. I don't need to remind us all that there is currently a process in place. We're looking at Recommendation 18. We're looking at things that … We can do this without enhancing any risk in this.

By us doing this, we are adding to the potential risk. We're adding speed. We're adding importance, apparently, in certain things. We're adding an awful lot of potential errors and pitfalls in this.

I think it's just prudent as any business, not just speaking as a contracted party, but definitely from ICANN's point of view, where, again, joint and several liability, things like that, may come into play, depending on how this is going to be looked at from a joint controllership point of view, from a sole controllership point of view.

These are all very valid things that I think it would be only prudent for us as a policy-setting team to add into the concept of this. If we are going to be creating some sort of a budget for this, it needs to include those risks, such as a legal risk.

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

VOLKER GREIMANN: Yes, I completely agree with Alan. We need to make sure that it's understood that this is not the contracted party at risk, per se, but also the risk of ICANN being sued if they are deemed as data controller and somebody directs their complaint toward ICANN.

We would probably not want that, ICANN as an organization suddenly under fire, or the SSAD operator, whoever that may be, is suddenly under fire, and the entire system breaks down because of lack of funds to pay for any fines that might be coming down that way. So, I think the legal risk should be managed for all parties. I mean, contracted parties manage their own legal risk and ICANN should manage its, as well. Thank you.

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

ALAN GREENBERG: Thank you very much. I agree with everything that has been said. I'm not sure the word "legal risk fund" is the correct wording here because it may well be handled through insurance, and I'm not sure that's classed as a fund. But other than that, I think the concept is there and has to stay.

JANIS KARKLINS: So then, the question was whether we can add more detail on that. So, either we need to add the sentence that the outline of this legal

risk fund, or whatever mechanism we're talking about, will be developed further during the implementation phase, or we need to put some additional elements in that.

ALAN GREENBERG: Capture Alan Woods' comment in a footnote.

JANIS KARKLINS: Staff, could you capture Alan Woods' comment in a footnote? And then put that footnote … So, staff will capture that and we will put that footnote for consideration for the final, final reading.

ALAN GREENBERG: Yeah. If you could just have someone check whether insurance would be classed as a fund and whether that word needs to be changed? I don't think we need to debate it here.

JANIS KARKLINS: Okay. So, Alan Woods, if you could maybe type something in the chatroom, that would help staff. Thank you. So, we will … Unless there is opposition to that way forward? So, I see no hands up. Then we can go to the next question. Marika, please.

MARIKA KONINGS: So, question five, I think all those that provided input agreed that there should be more specificity in relation to the reference to historic costs, but no one actually provided further guidance. So, I think the question to the group is, what, if anything, needs to be

further included in relation to the reference that's made to historic costs?

JANIS KARKLINS: Thank you. Somehow, I have a feeling that this "historic costs" refers to setup costs of the system, but I may be wrong. Brian.

BRIAN KING: Thanks, Janis. I'll always look for a good shortcut. In the first sentence of the paragraph just above that, it references cost for developing, deployment, and operationalizing the system. That might be what we're talking about here. Thanks.

JANIS KARKLINS: Yeah, that's what I was referring … Developing, deployment. This was what our setup cost. Volker?

VOLKER GREIMANN: I seem to remember that part of historical cost was also the costs that we are currently also incurring as contracted parties in providing output for any requests that we already received. So, the staffing on our end will probably be part of the historical costs. The operationalizing of a [ticketing system], whatever. So, everything that goes into already providing these answers outside of the SSAD. So, that's historical cost, at least in my interpretation. Thank you.

JANIS KARKLINS: Okay. Thank you. Alan Greenberg.

ALAN GREENBERG: Yeah, my recollection maps Volker's exactly, that we were talking about the fact that there are costs, they're going to be costs, and we're not going to try to do charge-backs or whatever to factor in those charges which were historically already on there to address requests. Thank you.

JANIS KARKLINS: Thank you. Mark SV.

MARK ŠVANČÁREK: Thank you. To Volker's point, I was just a little bit concerned that some of the historic costs, presumably the system that we're defining here will remove some of those? I mean, hopefully, the amount of junk requests coming to you for domains that are not even under your management would go away.

So, I think we should be cautious about looking at the costs related to the existing processes in cases where those existing processes will be replaced. So, how you capture it in this language, I don't know, but that was my concern when I flagged this language as undefined. Thanks.

JANIS KARKLINS: Okay. So, can't we simply remove reference to historic costs? So, the first paragraph, above the one which is outlined, suggests that the costs for developing, deployment, and operationalization of

system are similar to the implementation of other adopted policy recommendations, would be initially [borne or run] by ICANN Org, contracting parties, and other parties may be involved.

And then, subsequent running cost of the system is expected to happen on a cost-recovery basis, full stop. And because, after, we do not refer to any historic costs in subsequent sentences. Alan Greenberg, please.

ALAN GREENBERG: I think the sentence that the commenter was commenting on is the first sentence of the next one, the historic costs there, and those are different costs in the development costs. I think we can address what they were asking. They said, "Could you please elaborate?" and the elaboration is these are the costs currently being borne by the contracted parties prior to the building of an SSAD, prior to the SSAD being developed, and prior to it being put into operation.

JANIS KARKLINS: Okay. Thank you, Alan.

ALAN GREENBERG: Sorry. If we exclude that sentence, then we're going to have someone during implementation say, "But the registrars are going to have costs after the SSAD and we have to recover those because the registrant should not be paying." We're saying the historic costs are not part of the calculation.

JANIS KARKLINS: Okay. So then, you are saying that we should not change anything?

ALAN GREENBERG: I believe that if we change anything we should address the comment of being a little bit more specific of what we mean by "historic costs," and that is specifically those currently being borne by the contracted parties in the absence of an SSAD.

JANIS KARKLINS: Yeah. Brian, please.

BRIAN KING: Thanks, Janis. I would just like to be clearer. I see some questions in the chat, too. Maybe just be clearer about how that will be calculated, or how that would work, in effect? Thanks.

JANIS KARKLINS: So, Marika, please. Maybe you can help us out from here.

MARIKA KONINGS: Yeah. Thanks, Janis. I can at least try, at least explain, I think, what our understanding is, that this sentence specifically said that the subsequent running of the system is expected to happen on a cost-recovery basis whereby historic cost may be considered.

Our understanding was similar, I think, to where you started off, that that means that the costs of developing, deployment, and

operationalizing the system may be factored in in the cost-recovery basis as a way of recuperating some of those costs.

So that's, at least, our understanding, if that aligns with what … And it says "may," so it's not that it will or it must. It may be considered as part of the cost-recovery basis that's established. So, if that is indeed the common understanding, or others agree, it might be easily fixed by referring those historic costs to that previous sentence. But if it's not, I guess we need to discuss it a little bit further.

JANIS KARKLINS: Okay. Thank you. My feeling is that, maybe, we're over-engineering, here, and if we would, for instance, keep only first … Not that one. Just the first sentence of the next paragraph, or first line of the next paragraph. First line of the next paragraph. And then, we would delete the rest.

And then, where logic is? First paragraph, we're saying who will bear the costs of development. In the second paragraph, we're saying that running costs are expected to happen on a cost-recovery basis, full stop. And then, we are saying that smaller operators should not be overburdened disproportionately.

So, there is kind of a flaw of logic, and since we are now lost, ourselves, referring to historic costs where probably the sentence … For example, if SSAD includes an accreditation framework under which user and SSAD could become accredited, the costs associated with becoming accredited would be borne by those seeking accreditation and, similar, costs of running SSAD may be

offset by charging fees to users of SSAD. Of course, we're charging. This is already said in other sentences, that users predominantly will be covering the running costs of SSAD. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I don't like your suggested edits. I do agree with what Marika said earlier and her suggested clarification. So, I think that addresses the concern. I'm also noting what Becky raised in chat in the discussion that followed. I think that also addresses a conversation going on in chat. So, my recollection is the same as Marika's and I support her suggested way forward.

JANIS KARKLINS: Okay. So then, let me finish today's call with the following proposal. I would ask staff, based on Marika's explanation, to fine-tune the notion of historic costs and we would start the conversation next Tuesday by looking to the staff proposal on further guidance of historic costs, what that means. Hopefully, we will get quickly to the rest of the … I mean, to agreement. And then, we will continue with number six. So, Marika, your hand is up. Marika?

MARIKA KONINGS: Yeah. Thanks, Janis. Sorry, I had trouble finding the unmute button. If we can maybe, as well, encourage members of the team to look at the remaining questions, and maybe really weigh-in on the mailing list, and maybe also review, indeed, the language as a whole to see, of course, the context of these sentences, as they don't stand on themselves?

JANIS KARKLINS: Okay. Thank you. So, next time we need to finish financial sustainability, which is important. But equally, even more important is the evolutionary mechanism that was developed by a small group, a representative group, and also all outstanding issues related to addendum. In other words, priority three.

So, may I humbly suggest that, exceptionally, we would reserve three hours next Tuesday? Because these are issues that are of extreme importance to finalize the report. And if you would be kind to agree with that, I know that this is difficult.

We may make a five-minute break after 90 minutes of work, but I would ask your understanding and try to finalize our reading of the comments next Tuesday by using up to three hours of our time. So, I don't see hands up.

So, I thank you for your understanding and I would also like to thank for active and constructive participation in today's meeting. We're meeting next Tuesday for up to three hours and, hopefully, we will go through all outstanding issues. Thank you very much. This meeting stands adjourned. I wish you a good rest of the day.

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

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