ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Thursday, 02 July 2020 at 14:00 UTC

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TERRI AGNEW: Good morning, good afternoon, and good evening and welcome to the GNSO EPDP Phase 2 team call taking place on the 2nd of July 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 Julf Helsingius of NCSG and Marc Anderson of RySG. They have formally assigned Yawri Carr and Sean Baseri.. In addition, joining the first portion of the call will be James Bladel and Matt Serlin on behalf of RrSG and then replacing them for the second half of the call will be Theo Geurts and Owen Smigelski. These alternates will remain in place until those listed 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 the chat.

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Attendees will not have chat access, only view to the chat access. Alternates not replacing a member are required to rename their lines by adding three Zs at the beginning of their name, and at the end in parenthesis, 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. The link is available in all meeting invites.

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 multi-stakeholder process are to comply with the expected standards of behavior.

Thank you, and 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 71st meeting of the team. Traditional question, agenda displayed on the screen is the one we want to follow? See no objections, so we will do so. So the idea of today's meeting, which goes until it is needed, is to first review outstanding recommendation on automation, which is one of the most important, also to get us to consensual conclusion. So we will take as much time as needed and I hope that we'll be able to do it in less than two hours. So then we will continue with the outstanding items on "cannot live with" list and go until the end of that list. So we will make a 30-minute break after two hours of work and then we will resume and we'll continue for maximum another two hours.

And if we will not, by any chance, reach the end of the list, then the remaining items most likely will be needed to work online and the agreement need to be reached online. So that's the game plan for today. In absence of comments at this stage, I will then invite you to examine recommendation on automation and ask Marika to walk us through that recommendation because it was worked by a smaller group and smaller group has made some advancements but did not manage to get fully on the same page. Marika, please, the floor is yours.

MARIKA KONINGS: Yeah. Thanks, Janis. What you see on the screen is the recommendation or the language that we've circulated earlier this week. This was a draft that was developed by the staff support team after the last discussion that the EPDP team had on this topic which was on the 18th of June. As you may recall, we ran through a number of the "cannot live with" items that were

identified previously and had some discussions around that. As Janis said, a small group volunteered to work with staff on further refining or updating the recommendation in line with those conversations. They did have several meetings but they actually did not come to agreement on any changes to this version which is again the staff's attempt after that call that took place on the 18th of June to address some of the concerns and points that were made during that meeting.

So I'll just very briefly run through those or the changes that we made as a result of that meeting as a reminder of some of the changes that were discussed, but again, this is not the end, the outcome of the small team deliberations, but I'm sure they will comment on their perspectives on this draft.

So the first thing we did was to number the different paragraphs here because it became kind of difficult to refer to some of these aspects and allowed as well for a bit better organization of the section. If you see 16.2, we changed language back there that had originally been changed at the request of one group but following converastions, as you may recall, it was greed to go back to automating of the processing as that is basically the broader concept that covers all aspects of automation, including automated processing of disclosure decisions. And as another reminder, you see here as well the footnote number three that basically explains what the EPDP team means when it refers to automation as a guide there.

Similarly, in 16.3, we also made it clear—I think someone pointed out it's not automatically processed but processed in an

automated manner. So that was also kind of a minor update that we made.

Then if you scroll a little bit down, Berry, you'll see that in 16.4, we basically lifted in the original footnote that described the process by which a contracted party that would determine that the automated processing of disclosure decisions would bring with it significant risk that was not previously recognized, how they would be able to basically notify ICANN Org of that situation. So that is basically—I think there were some minor changes that we made in the language where we basically lifted up that footnote, as I think several pointed out that was an important aspect and should not be hidden in a footnote.

Then we made some further changes because as you may recall, there was some conversation on the call around as well what would need to happen after notification, and some had expressed the view that there should be some kind of notice and comment process to allow affected stakeholders to provide input on this exemption, of which ICANN Org would have been notified, and noting that as a result of that process, ICANN Org might then facilitate a subsequent conversation between affected stakeholders and the contracted parties to make sure that that would be a mutual understanding of the exemption and the supporting information that would have been provided by the contracted party.

It also makes clear that as soon as the contracted party becomes aware that the exemption is no longer applicable, it must inform ICANN accordingly and so that automated processing can resume again. And that’s also covered in 16.8, that that will then

immediately restart again. And of course, I think that's also [in—I'm sure it is there] but of course even though automated processing would be halted, those requests would still be manually submitted to the contracted parties and of course all the other requirements would still apply for the review and the process for dealing with that disclosure request.

So then I think in the next few paragraphs, we didn't make any updates apart from the numbering changes. In 16.11, we had a conversation as well around this ability for requesting further information by the central gateway manager which the contracted party may provide, and we added a clarification there based on the feedback that was provided that there's no expectation that any personal data would be transferred in response to such an information request.

So then we made as well some additional updates to the implementation guidance section. There were minor edits to the first bullet point here to make the flow of that sentence further clear. And then as you may recall as well, there was some conversation around how—as you know, in this specific recommendation, there are only four use cases that have been identified [through the legal guidance that was obtained through] Bird & Bird of cases for which it deemed that there is no or very limited legal risk or liability involved, and those are the cases that have been included here. As you know, there's a reference in this recommendation about potential further evaluation of use cases through the mechanism of recommendation 19 for which legal permissibility may be determined at a later stage, and there was

some conversation around how that could or should be determined.

So this is a paragraph that was added to kind of clarify how that would look, and I think this language was inspired or maybe even copied from suggested language that Becky provided in the chat that basically states that legal permissibility, unless there is clear guidance in absence of authoritative guidance that is provided either through the EPDP or the European Court of Justice or new laws, legal permissibility would be determined by the parties that would bear the liability for the automated processing of disclosure decision. And I believe that's something that was also confirmed in the conversation around recommendation 19. The mechanism yesterday were I think [the group] agreed that as part of any consensus, contracted parties would need to be incldued and as such be able to give their thumbs up or thumbs down if any additional use cases are to be added to this implementation guidance section.

So I believe that is it for the changes that we made based on that conversation, and I hope that refreshes everyone's mind on what was discussed during the previous call. And as said, the small team which consisted of Brian and Matt and Sarah reviewed this as well, but as I understand, they didn't agree on any updates or changes and as said, I'm sure they will talk to what they discussed or have concerns about.

JANIS KARKLINS: Thank you, Marika. So, from my side, I would like only to add that this is also part of the sort of compromise that we reached, and we

have to find a solution here. So there's no other way to get to potentially consensual report. So therefore I would plea all parties to exercise utmost flexibility and hopefully we will get agreement on the text which is in front of us. So I have a number of hands up already. Let me start by Brian, followed by Amr and Alan G.

BRIAN KING: Thanks, Janis. I just would note that looking at that footnote three, the language doesn't look familiar. I don't know when that was added. It conflicts with—if you go down, the recommendation that says that there may be some non-automated something or other in a part of the rec that's a little lower. Yeah, wherever it says it could be potentially not entirely automated. So we would suggest probably to scrap that footnote. I don't think it's needed and it does conflict with—I don't see it now. it's the one that says that there may be some manual review. Yeah, may involve, that's 16.11. So that conflicts with footnote three, so I think we would scrap the footnote three since the rec says what we needed to say. Thanks.

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

AMR ELSADR: Thanks, Janis. I have two questions. On 16.4, I'm wondering why this provision here which addresses a waiver of sorts if I can call it that, or if I may call it that, it only addresses the legal permissibility issue, doesn't address the technical or commercial feasibility. Both these factors are quite important as well, especially because this

might vary from one contracted party to another. So I would personally feel more comfortable if those were also incldued here. So if a notification from a contracted party could be sent, not just based on the fact that it believes that it is not legally permitted to automate decisions to disclose but also if it determines that it's not commercially or technically feasible for it to do so.

And I have a question on 16.5 as well, because if I'm reading 16.5 correctly, all that's required for a contracted party to get this waiver is to basically just send a notification to ICANN. I'm wondering practically how does the small team envision this would work. And in the spirit of automation, I think it would be a good thing if this was automated as well so that the process—it seems here from what I'm reading is that all that is required is a notification, so there's no actual review process by ICANN that says that the notification has to be reviewed and approved. So if all that is required here is a notification, then I believe this should be probably automated as well and done quickly as opposed to previous waiver processes that we're more used to at ICANN that are difficult and very slow.

My last question here is regarding a data subject's right to object to processing based solely on automation. How would that fit into all of this? Let's say that a contracted party has determined that it is legally permissible as well as technically and financially feasible to automate a certain category of use cases, what if individual registrants decide that they don't want to allow automated decision making in the processing of their personal information? How and where would this fit into the recommendation we've got here? Thank you.

JANIS KARKLINS: Thank you, Amr. On your first question, why legal permissibility is outlined in 16.4, not financial and technical, so most likely, that legal permissibility may have different—or they may differ from jurisdiction to jurisdiction. Financial and technical most likely will be kind of standardized since we're talking about cost recovery of SSAD in general and technically probably there will be technical cooperation possibilities. But when it comes to legal, that certainly will differ from jurisdiction to jurisdiction. So that would be my explanation.

AMR ELSADR: I really do apologize, but if I can interrupt, I didn't mean in terms of financial and technical feasibility in terms of the SSAD system itself, I mean on the contracted party side, different contracted parties will also need to implement on their ends their different processes, their human resources, a number of things to deal with automating the processes they already have. So this is apart from the cost that we know will be involved in development and maintenance of the SSAD itself. So this is where I see the sort of distinction from one contracted party to another, because each contracted party will likely have its own set of circumstances in terms of technical and commercial feasibility as well. And again, I do apologize for interrupting you. Thank you.

JANIS KARKLINS: Alan Greenberg.

ALAN GREENBERG: Thank you. My first point is similar to the one raised before on automation and the footnote. I understand the footnote was added in response to people making comments, but right now we seem to have a conflict that is the footnote says there will not be any human intervention and the text—and I can't remember what section it's in—says that it may be subject to human intervention. So that's my first point. I think we have to resolve that conflict. We can't just say the footnote was added because someone asked for it. There is a conflict right now.

The second related comment is if we can go to this place where it does say human intervention is allowed—

JANIS KARKLINS: 16.11.

ALAN GREENBERG: Okay, sorry, I don't memorize all the numbers. That one, I find a little bit troublesome the way it's worded because the "may" is not clear under what conditions that "may" may be invoked. And as I envision it, if we ever have an evolution mechanism that can cover use cases, I would envision that a use case could be approved subject to there being human intervention. In other words, a specific use case, it will be allowed at the SSAD if there is human intervention and it's not fully manual. And our wording doesn't seem to allow for the fact that for some use cases, the human intervention must be required. And I think that is an important issue. It just gives us—and again, another tool in our case to allow

us to move things to the SSAD but not have it fully automated. So I think we must consider that.

The last point I'll make is on section 16.5 to 16.8. The last sentence of 16.8 seems to belong in 16.5. Am I missing something? Because 16.5 is talking about the exemption and it says unreasonable exemption notifications may be subject to review by ICANN, whereas 16.8 is talking about the removal of the notification. Can you still hear me?

JANIS KARKLINS: I think now everyone is trying to understand your concern.

ALAN GREENBERG: Okay. The last sentence in 16.8 says unreasonable exemption notifications may be subject to review by ICANN or ICANN Org. Unless I'm mistaken, that section. 16.5 is talking about requests to remove it and the contracted party must resume automated processing. So I think the exemption request is referenced in 16.5. 16.7 talks about “becomes aware the exemption is no longer applicable.”

JANIS KARKLINS: Marika, can you talk about this?

MARIKA KONINGS: Yeah. Thanks, Janis. I think from our side, we’re happy to place this where the group thinks it’s best. I think we had placed it here as kind of the previous paragraphs all kind of describe this whole

exemption process and what happens. So this was kind of at the end, if there's unreasonable exemption notifications, they may be subject to review. It's kind of applying—that may become apparent once you've gone through the process. It may not become apparent when they've actually submitted the first notification but potentially through the comment and notification process that takes place, maybe that will lead to information that may be subject to further review. So again, I don't think we have strong views whether it belongs here or if it fits better somewhere else. I think we can definitely look at that.

ALAN GREENBERG: Okay. And my last comment is I would want confirmation from ICANN Org that they were willing to do that. That sounds like the kind of thing that ICANN Org has not been willing to do in the past, so I would like confirmation from ICANN Org that it in fact is applicable and we will be able to refuse requests that are not deemed to be reasonable. Thank you.

JANIS KARKLINS: I think that this, in the first version, was one paragraph and then this paragraph was split in different steps, and on this specifically, unreasonable exemption notification, I think that that can be simply separated as additional or separate paragraph or separate step for sake of clarity. Margie, please, you're next.

MARGIE MILAM: Hi. I'm confused as to how we ended up with processing of disclosure decision as opposed to automated disclosure decision

which is what we used to have. And I see a difference in the language because what we'd really been talking about from the beginning is certain use cases would result in automatic disclosure decisions, and by changing it, by saying processing of decisions, that leaves the opportunity for the contracted parties to for example say no in scenarios where it had already been deemed appropriate that the answer be yes. So that's the concern, that that changes fundamentally what this section means at this point. And I'd suggest maybe you do something like automated disclosure decisions and related processing to address that issue, because otherwise, there's nothing enforceable here. This is simply a voluntary step where our understanding was once you have the mechanism for evolution and it identified based on legal principles and others or law that certain processing had no legal ramifications, that that would simply evolve the system once that was concluded. And remember that obviously, contracted parties are part of that evolution process so it's not going to happen outside of involvement with the contracted parties.

But to me, that change fundamentally changed the section in a way that is not workable for us.

JANIS KARKLINS: Thank you, Margie, though let me push back. I think from the very beginning of our work, it was very clear that there will not be automatic disclosure. It will not be anymore WHOIS when everything is on display. So we were talking about automated reply where human is not involved, it is done by machine, by algorithm basically instantaneously, but that there may be also negative answer. It does not mean that if cases is automated, that

there is automatic disclosure. At least this was my understanding from day one. Volker, please.

VOLKER GREIMANN: Yes. Thank you. A couple of points. 16.3, I think if I've read this correctly, there is one part missing to the question of technically, commercially feasible and legally permissible, and that is who makes that determination. I think it's essential that this determination must be made or at least confirmed by the contracted parties affected.

Second point to that is the legal permissibility must obviously apply to the jurisdiction of the affected contracted parties. So a blanket legal analysis by ICANN would probably not suffice for all contracted parties as the contracted party must look at their own legal and jurisdictional background as to whether that applies to them or not. So I think there we still need some tweaking, although that could probably be put into a footnote to make s you're that these questions are properly taken care of in the implementation phase.

The second part is if you move down a page to 16.4, you have the word "demonstrates." That conflicts with 16.5 because 16.5 requires only a notification, not demonstration. So I would suggest that 16.4 be changed to "Notifies ICANN that ..." and so forth to make s you're that the wording is correct.

In closing, to 16.5, I think we found a very good solution here. the solution that we had a problem with was to have a process that would mirror the waiver process back in the day for data retention

which was a nightmare, took months of negotiations with ICANN where it should just have been notification to ICANN and then implementation and the granting of the waiver. This way, the notification triggers the exemption directly and then everything else follows from that and there's no legal uncertainty for the contracted party. So I like that very much. Thank you.

JANIS KARKLINS: Thank you, Volker. When it comes to 16.3, so the first batch of automated cases are determined by this report by the team, and the rest will be determined by the mechanism that we discussed yesterday where all the determination will be done in a consensual way where contracted parties need to agree. So therefore, I think that how this will be done is very clear. So when it comes to 16.4, the demonstration and the notification, I think we need to be here careful because this is the legal exemption you need to prove, not just notify, you need to analyze based on jurisdiction. And then you need to notify ICANN about that, that you did this legal analysis. [And the same, if that helps—]so I think that this "demonstrates" belongs here, I mean it's justified there. And again, many of this text has been discussed several times also when we just started to develop this recommendation. But let me take next question.

VOLKER GREIMANN: Can I just come back on one thing? the "demonstrates" is problematic because of our experiences that we had with ICANN with the data retention waiver process. ICANN suddenly didn't like the demonstration how we did it, they didn't like the law firm that

we used. It was a mess. By having it in the form that we must prove to ICANN that we have a legal issue, it puts the onus on us, and the onus to prove that something is legally permissible should always be on ICANN, not on the contracted party to prove the opposite. Thank you.

JANIS KARKLINS: So then might I suggest “determines” instead of “demonstrates?”

VOLKER GREIMANN: “Determines” is good.

JANIS KARKLINS: Yeah. Okay, so then we can maybe go to “determine.” James, please.

JAMES BLADEL: Hi. The conversation has moved on a bit. I just raised my hand for a couple of issues, one of which was to confirm by understanding of 16.5, and I think I have that confirmation now, so I won't belabor that point.

Forgive me for trying to read through some of the comments, but one of my questions now is, if there's been an exemption request that’s been determined and notified, and that exemption request is granted, there seems to be a need for a mechanism that similarly situated contracted parties would have an expedited access to that same exemption so that for example if ICANN determines that contracted party in Japan has a particular legal risk associated

with an automated process, then other registrars located in Japan would have the same exemption, that we wouldn't have to do that iteratively for each registrar or registry, that we would apply the precedent broadly.

I think this is one of the problems that we got into with the previous process where a registrar would file for a data retention waiver, ICANN would consider it and then you would have to do it again and again for all of the contracted parties, even affiliated contracted parties that were in the same jurisdiction. It's very tedious and seems to be unnecessary. So just want to put that out there.

My main question was around 16.5, and I think I got that answer. Thanks.

JANIS KARKLINS: Thank you, James. Actually, it would be ideal because we're talking about standard. And if in one jurisdiction something is not legally permissible, that should become kind of a standard for that jurisdiction for all registrars working in that particular jurisdiction. So that would be maybe something worth considering whether it's in a footnote or some implementation guidance mentioning. Mark SV, please.

MARK SVANCAREK: I have a bunch of comments. As James said, things have been moving fast. Janis, when you were explaining, I think it was to Margie about automated disclosure, automated processing, things like that, I think you redefined a bunch of terms and then you sort

of threw in there something that sounded a lot like publication under the old WHOIS system, and stuff like that.

So I don't want to spend too much time on that, but I think that maybe you confused things a little bit in just the way you explained it. I am concerned that we are lumping—and I think these are two different footnotes, so maybe they don't seem like they're lumped together, but they are here. So when we talk about legally permissible, technically feasible and commercially feasible, I think that commercial and technical need to be broken out. Volker has made a good argument that areas of jurisdiction could vary so the legally feasible could be happening on a per-CP basis, but I think there other things that could be done on a more universal basis and I think we ought to make a distinguishing thing between them.

I don't know how many other things contracted parties do in the standardized way. I can think of port 43 and RDAP for instance as something that the community has decided across the board that it's commercially and technically feasible. So I wouldn't want to lump those things together. I think that they're very different, and since we are trying to build a standardized system, we don't want something that is virtually guaranteed to create differences between the contracted parties. So legally, I think that has to stay in. Technically and commercially, I think we need to reconsider that.

I like James' idea that somehow there's some standardization, that an exemption process is broadcast, that everybody knows they can use it, they don't have to do it one at a time and each go through the process.

I have an overall concern about Org's agility on any sort of a waiver process. I don't see how you mandate that within a policy, but the policy is dependent on it. So if there's any guidance on how that works, I am pretty worried about that. If we create something here that is unacceptably slow to the contracted parties, it's just not going to work. But that's a dependency on Org, I think.

I had another comment but I think we've moved on, so that's it from me right now. Thanks.

JANIS KARKLINS: Thank you. Mark, though, I would really ask not to reopen those terms that we have agreed a year ago. Technically and commercially feasible and legally permissible as a principle for automation was agreed a year ago, and now starting to [twiggle] with that, we simply do not have time any longer. Then we need to—

MARK SVANCAREK: Okay, could I comment on that? Well, a year ago we weren't talking about allowing every single contracted party to make their own unilateral choice on what is technically and commercially feasible in all cases. I don't think that that was what we agreed on a year ago. So I do think I'm not redefining terms, I'm saying that in the context of automation as currently written on the screen right now, I don't think that is something that we discussed a year ago any more than the need for legally permissible to be separated by jurisdiction. I think Volker's comment was applicable

in today's conversation and I think my comment is as well. So thank you for your consideration.

JANIS KARKLINS: It's not my consideration, it's consideration of others, but I do not read this sentence the way you do. I read the sentence that contracted parties must process in automated manner disclosure decisions for any category of request for which automation determined pursuant implementation guidance below and in recommendation 19 to be technically feasible and legally permissible, full stop.

So everything that is technically, commercially feasible, legally permissible, and is agreed through the mechanism, must be automated. And then we have the safeguard on legal side because it may be simply that in one jurisdiction, same provision is legally permissible, in some jurisdictions, not. So there is no determination that each contracted party will do but the legal bit, because the jurisdictions differ. Brian, please.

BRIAN KING: Thanks, Janis. I think we're on the head of something here with this language about technically, commercially and legally, and we spent a little time in the small team on this and I thought we made some good progress on consensus on one of the areas, and I think identified where we might be looking at it differently. On one of the other areas on the third one, I thought we could have done better with more time together. So just as an observation here, I think from where we sit, automation is technically feasible, full

stop. And the TSG has shown us one way to do it. I'm sure there are other ways.

So I think for the avoidance of doubt, it is technically feasible for any contracted party to automate—in fact, it must be, if we're going to have an SSAD. Legally permissible, I think we're on the right track here with kind of a jurisdictional opt out. I think the policy needs to presume that automation is legally permissible and put some sort of onus on the contracted parties to show why they're not going to comply with the policy. I think being reasonable about what that looks like is probably a good thing for us to do.

But I think a policy that allows contracted parties to merely assert without any form of notice or rationale why it might not be legally permissible would be too much of a cupcake policy, let's call it. And then when we get to commercially feasible, I think that's really our opportunity here to improve this and remove some ambiguity.

And I think that leaving commercial feasibility up to the sole discretion of contracted parties is asking for trouble because if any given contracted party could say unilaterally that it's not commercially feasible for them to automate without any check, then I think there's nothing really that would require automation in any particular case.

And what we started to suggest in the small group before we unfortunately ran out of time was, what types of scenarios would make it not commercially feasible for a contracted party to automate. Would it be the number of domain names that is managed by their family of registrars or that's in their registry?

What other circumstances would make it not commercially feasible?

I think we have expectations of contracted parties and ICANN requires for example registry operators to be technically, operationally and financially able to operate a registry for the security, stability and resiliency of the DNS. We don't just let anybody with $5 run a registrar or registry. So there's some minimum level of commercial soundness that we require of contracted parties. And if they're not commercially able to connect to the SSAD, I think that's perhaps a bigger problem. So let's put some guard rails around that commercial feasibility. Thanks.

JANIS KARKLINS: Thank you, Brian. I can only repeat what I said, and Marika walked us through provisions of this recommendation, how it works. We in this final document or report will determine a few areas where automation or automated disclosure must be done. And then the process 19 kicks in where mechanism will determine every other potential step of automated disclosure in a consensual manner where everyone will be at the table and there will not be opportunity for a contracted party unilaterally declare exemption on commercial grounds because that is not provided in the policy. Policy provides this unilateral opting out only for legal which is fully justified. So all the rest will be discussed in the mechanism, and as you said, technical is out of basically [doubt.] And commercial, if there will be any commercial issue, it will be discussed in the mechanism. There is no other way of opting out based on commercial feasibility.

So adding something in here, it is simply to adding additional layer of complexity and potential failure. Just think about it. I do not see any place how contracted party may opt out on commercial feasibility according to this recommendation. James, please.

JAMES BLADEL: Hi Janis. Thanks. Just kind of following up with your comments and then some of the exchanges in the chat. To Brian's last question, I actually agree that if you aren't up to the task to either technically or commercially be a contracted party, there's a pretty broad ecosystem set up to convert folks like that for example to a reseller of a wholesale-based platform. There are commercial services that can kind of step in and fill that gap between those who aspire to or need to provide those services and don't have the technical or commercial wherewithal to do it.

But to answer your question about why a registrar would not find this commercially reasonable, the simplest scenario is a registrar that doesn't have any domain name registrations that is created either as a business requirement for a registry or to provide some element of local language support, or even a corporate registrar for example that has only one client or a small number of corporate clients. It doesn't expect to see any traffic.

I just think that we need to be a little open minded and imaginative about not all registrars just throw up a website and have the general public register domain names using a credit card. The retail model is not the only game in town, and a lot of these businesses have a different approach and really just—and surprising to me as I talk to folks, just do not see this level of

request. And it would be very much onerous to say, hey, that function that you never do, you're now required to go out and build and deploy and maintain this very expensive system for something that really is not a type of request that you ever receive.

So I think that it's important to have this as an out for those edge cases, and again, I also am very confident that the wholesale providers will step in and close that gap between those folks who must have this requirement and just lack the technical and commercial capability to deploy it. Thanks.

JANIS KARKLINS: Okay. Thank you. So we have spent 45 minutes talking about and I think it was useful conversation, but we need to focus now on the recommendation itself and I would like to propose [go over that] cluster of para and then try to close or agree on text in that fashion. So 16.1 and 16.2 clustered together. Any problem with the text as displayed now on the screen?

I see no hands up, so I take that this is acceptable. So 16.3. Amr, please.

AMR ELSADR: Thanks, Janis. I think I would have no problem with 16.3 if we added commercial and technical feasibility to 16.4. I think that that would work, but as it is, I think the must in 16.3 is problematic for the reasons that I explained in the chat and my previous intervention. Thank you.

JANIS KARKLINS: Okay. Thank you. So the proposal is to extend the opting out option not only for legal but also for technical and commercial feasibility.

AMR ELSADR: That is correct, Janis, and I would also add to that cases where registrants are allowed to object to automated processing of their personal information. Thanks again.

JANIS KARKLINS: Thank you. Reactions? Brian, please.

BRIAN KING: Thanks, Janis. I think what Amr is asking for in the first one's going to look a lot worse from where we sit. It might not actually help. So I would like to not just reject that out of hand but understand and think about it with our colleagues here. Doesn't that first sentence in 16.3 do what it sounds like Amr wants it to do in that, doesn't that already cover scenarios where it's not technically or commercially feasible? I think repeating that, while it might seem like it's just being detailed, is going to look a lot worse here. I think we would prefer the obligation to be about the legal to demonstrate that there's some legal reason why automation can't be done. So I'd react that way and see if that helps. Thanks.

JANIS KARKLINS: Okay, thank you. Hadia, please.

HADIA ELMINIAWI: To me, what Amr is asking for is covered, as Brian said, through 16.3. And when we mention 16.3 recommendation 19, well, recommendation 19 allows for contracted parties to actually reject any cases that are not commercially or technically feasible as well as not legally permissible. So to me, I think what Amr is asking for is already covered through this recommendation and through other recommendations as well.

And then I would like to go back to Margie's earlier comment and ask for the disclosure about the mention of automated disclosure of data, and I was wondering if maybe we could add "to process in an automated manner disclosure decisions including automated disclosure of data" or something along those lines.

JANIS KARKLINS: That's the same. This is already said, that the contracted party must process in automated manner disclosure decisions, which is automated manner.

HADIA ELMINIAWI: Yes, but then the disclosure of the data itself, like the spelling out of the automated disclosure of data.

JANIS KARKLINS: We do not know what will be the process after—this is about the decision, not about further steps in the process. So decision will be done in automated way and then whatever mechanism will be

put in place to execute that decision, retrieve necessary data and send it to the requestor. Let's not overengineer the language here.

HADIA ELMINIAWI: Okay. So again, to Amr's comment, I think it's covered through 16.3 and in recommendation 19. And I don't think we need to add anything else. Thank you.

JANIS KARKLINS: Thank you. I also have the same feeling, that the opting out on legal grounds is justified. On technical and commercial grounds, that will be part of the overall discussions of the mechanism on any additional things to add. But Amr also asked about notification or opting out, if data subject, individual do not want to disclose data in potentially automated fashion.

So here, I wonder how process works, and this is something I don't know. So contracted parties, according to this policy, will notify all data subjects that their data may be disclosed to third parties according to policy, but in line with GDPR requirements. And that notification will be part of the contract between registrars and registrants.

So whether there is even theoretical possibility for registrant to say okay, but only if it is done in a manual way, and no if it is done in automated way. I'm not sure whether that is something we could even sort of factor in. What we could factor in is that it is done according to GDPR or data protection laws in place. So then yes. But otherwise, I have really doubts whether what Amr is requiring is implementable. Brian, what do you think?

BRIAN KING: Thanks, Janis. We took a temperature check among our group and I think we can live with Amr's suggestion on making 16.4 include commercially and technically. On the opt out of automated processing, unfortunately I think we're going to have a difference of opinion and the law at this stage is unsettled as to whether the type of activity that's happening in the SSAD constitutes automated decision making about a data subject. So I don't think we're going to be able to agree to that part. Thanks.

JANIS KARKLINS: So the individual may opt out that the data is disclosed if it is automated process, right?

BRIAN KING: That's right, Janis.

JANIS KARKLINS: Okay. I understand. Thank you. Chris, please.

CHRIS LEWIS-EVANS: Thanks. On Amr's second point around the right to object around automated decision making, covered I think under article 21 of the GDPR, that is actually only viable if the processing is based on 6.1(e) or 6.1(f). So I think as you say, Janis, the decision-making tree gets very complicated if we were to just put that in.

And to be honest, my view on it is it's covered by legally permissible. If individuals come to a contracted party that holds their data and exercise their right to object and it is under 6.1(e) or (f) and the processing isn't overridden by the other interests, then it's under that legally permissible banner for me.

So I think it's already covered. I completely understand the reasons for wanting to put it in there, but it does make life very complicated and I think we could get into a situation, so I would suggest that we leave the language as it is. Thank you.

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

ALAN GREENBERG: Thank you. On that issue, I support what Chris just said. I raised my hand for a different issue though. The footnote three is actually a footnote to the overall title to the section. Are we going to get to it when we come to it in line, or should we have already talked about it? It's the chair's call.

JANIS KARKLINS: Yeah, so I think there was number of suggestions that footnote three should be deleted because it is in contradiction with 16.11.

ALAN GREENBERG: I support that, but it isn't deleted yet, so that's why I raised the issue.

JANIS KARKLINS: Yeah. Thank you. Maybe take a mental note and we will delete that once we will get to 16.11. So I take that 16.3 may stand as displayed on the screen, provided that we find a way in 16.4 to add something on technical and commercial feasibility. So here is systemic question, whether it would apply in the same way as if contracted party demonstrates that automated processing of disclosure decisions are not technically and commercially feasible, they notify ICANN Org, or there should be something else. So if it is just a notification, then I think we need to do 16.4 [B] related to technical and commercial feasibility and that's it.

So, let's move now to 16.4 for commercial permissibility. Question is whether 16.4 for legal permissibility is acceptable in the way it is written there. Matt, please.

MATT SERLIN: Yeah. Thanks, Janis. Just to point out, I know Marika said we're not editing here, but if the "demonstrates" becomes a "determines," then yes, I think it's okay.

JANIS KARKLINS: Yeah, I think we agreed on "determines."

MATT SERLIN: Yeah, then I think it's okay. Thank you.

JANIS KARKLINS: Thank you. Milton, please.

MILTON MUELLER: Yes. On 16.4, I'm wondering, just for the sake of clear [inaudible] language, could we say instead of “the contracted party must notify ICANN it requires an exemption from automated processing,” can we simply say the contracted party can get an exemption from automated processing but must notify ICANN? In other words, the current language sort of implies that ICANN is going to decide whether the exemption applies or not. And this could introduce delays and uncertainty into the process which I heard I think James invoking the previous conflict of laws policy regarding WHOIS, which really was not something that worked. So I think that that language should not really change what most of us see I think as the meaning of this, but would make it clearer in case this does get disputed later on.

JANIS KARKLINS: Thank you, Milton. May I suggest that you read 16.5 which suggests that upon reception of notification, the ICANN Org must halt the transmission of the cases as required automating processing. So there is a link between 16.4 and 16.5.

MILTON MUELLER: Okay. That’s good. Thanks.

JANIS KARKLINS: So, I hear no objections on 16.4 when it comes to legal. We are now coming to commercial and technical. Brian, you're about commercial technical, or still with legal?

BRIAN KING: Thanks, Janis. Probably both. Did you want to tee it up a bit more? I can jump in after.

JANIS KARKLINS: No, tell your [story.]

BRIAN KING: Sure. We have some real heartburn on changing “demonstrates” to “determines.” The right to unilaterally determine whether they're going to follow the policy or not is probably going to be unacceptable without some guard rails, at least the word “demonstrates” looks like ICANN could disagree or could act in cases where that determination is wrong or otherwise not going to be acceptable.

So before we can agree to change “demonstrates,” I think we’re going to need some guard rails. I'm less concerned about the legal permissibility, because I think that’s going to be either factually legal or not to automate, but I am concerned about the technical and commercial which could be so subjective and really leaves the door wide open to this policy being ineffective.

So we can't say “determines” at least for the technical and commercial right now without some guardrails. Thanks.

JANIS KARKLINS: Okay. So you have a guardrail, very serious one, at the very end which would become now 16.8 [inaudible] which says unreasonable exemption notifications may be subject to review because ICANN Compliance. So there is a redress mechanism.

Okay, but I hear you. So which means that we would need to formulate a paragraph which would address that if contracted parties demonstrate that automated processing of disclosure decisions for the use cases specified in this recommendation or through the process detailed in the recommendation 19 is not technically or commercially feasible, it notifies ICANN and requires exemption from automated processing of disclosure decisions. Would that be something that would address issues? Though I still believe that commercial and technical feasibility or unfeasibility is very hypothetical. We heard many affirmations that registrars will automate everything which is automatable because that is simply commercially necessary. Not even feasible, it is question of commercial efficiency.

James, please, what do you think?

JAMES BLADEL: Yes, agreeing with your last part, Janis. The incentive is clear and large and obvious for registrars that receive a high volume of traffic to develop as much automation wherever possible, simply just to cut down on the costs associated with processing.

My concern—and I understand where Brian is going. The potential for abuse here is not negligible. But I am very uncomfortable with

any policy language that would have ICANN, either directly or through a process of public comment, determine what is commercially feasible for a contracted party and what costs they should be willing to bear and what costs their business can absorb. I understand that's a slippery slope. I feel very—it starts to go beyond stewardship of an industry and starts to look like ICANN is picking and choosing winners and losers here in a commercial setting, and I'm very uncomfortable going down that path. Thanks.

JANIS KARKLINS: Thank you. Honestly, I think what Brian is asking is actually working in favor of contracted parties rather than users of SSAD, because contracted parties may have an avenue to explore commercial argument not to automate. And I really don't understand why this technical and commercial bit has popped up in literally last month of our conversation and was never mentioned as a major obstacle at the very beginning.

So I would like to keep this conversation focused, and my suggestion is that we would do copy paste of 16.4 including "demonstrates" for commercial and technical bit, and of course, we would not take all the for example DPA and whatnot, but would retake the same text as it is and put commercial and technical feasibility and contracted party must inform ICANN Org if requires exemption from automating processing of disclosure decisions for identified use cases, full stop. And we have agreement on 16.4, with the "determines," but on 16.4 [B] will be "demonstrates" technical and commercial upon request of Brian. Hadia, are you in agreement?

HADIA ELMINIAWI: Yes, I can agree with keeping the commercial and technical feasibility if we do have demonstrates, but with determine, contracted party determines, no, I don't agree to that. And honestly speaking, I don't know why we're actually adding this commercially and technically feasibility here in 16.4.

And to James's point, James said "I don't feel comfortable ICANN determining what's commercially and technically feasible for the contracted parties." Actually, ICANN is not doing that, because through recommendation 19, if it's not commercially or technically feasible, the contracted party would object, and if they object, then it won't happen.

So they do have their say through recommendation 19, but once they determine in recommendation 19 that it is technically feasible and commercially feasible, it doesn't make sense that afterwards, they opt out because it's commercially not feasible or technically not feasible.

So again, I can live with your proposal if we do have demonstrates, but otherwise, no. Thank you.

JANIS KARKLINS: Thank you. Brian, please.

BRIAN KING: Thanks, Janis. I'd like to echo what Marika put in the chat. I think we're probably in agreement maybe that we can live with

determine for legal feasibility but for commercial and technical, the threshold's going to be demonstrates because of the subjectivity there. I think that's probably something that we could live with.

I do really agree with James that we might be at a problematic place here with the way that we're currently addressing the commercial feasibility. I'd like for us to kind of think on what kind of guard rails we could establish here and if the minor details need to be worked out in implementation, I think that would probably be okay, but a policy principle that could provide some guidance for how the commercial feasibility would be established or determined I think would be helpful here.

And to your earlier point, Janis, I think if I'm reading this correctly, initially we, or at least I, had assumed that in implementation, it would be determined that however the SSAD looked would be commercially, legally and technically feasible, full stop, objectively for all contracted parties. And I think when we got a little closer to the finish line here, some other folks thought all along that that had meant that as to each contracted party's interpretation. [inaudible]. So just in case that helps understand how we got to this conversation now. Thanks.

JANIS KARKLINS: Again, I still don't see why you insist that there is in each contracted party determination in general. Policy does not say that, and you're asking for another exemption which allows contracted parties to do individual decisions. But if you want that, you'll get that.

BRIAN KING: Thanks, Janis. If I could respond, that's not what I want at all. In fact—

JANIS KARKLINS: This is what you're asking for.

BRIAN KING: No, Janis, I would rather we just decide that it is legally, technically and commercially feasible and that they all have to do it. We're trying to be accommodating to what the contracted parties want, which is the ability to do some of this decision making unilaterally. So just for the record, that's not what we want to do, but we are trying to come to compromise and consensus.

JANIS KARKLINS: Okay, because contracted parties at least to my recollection never asked any exemption on technical and commercial side. On legal side, yes, and they got 16.4 which is agreed with determined is there. And I did not recall contracted parties asking exemptions on technical or commercial feasibility. It was IPC who was asking for exemption on that one. Also in the small group. Alan Greenberg, please.

ALAN GREENBERG: Thank you, Janis. I tend to agree with I think what you just said, that we decided that the technical legal feasibility, sorry, technical and financial feasibility was a global thing. We're allowing an

exemption on legal grounds when they can show specific legal grounds for not doing it. if we allow each contracted party to say “it’s not feasible for me,” then I think we’re whittling this whole thing down and it comes close to disappearing, the whole automation concept.

All contracted parties support some level of automation. They communicate with registries in an automated way, they do escrow in an automated way, there are protocols to do this. We’re asking them to add a few more protocols because of this automation request. If they can't do that and say “it’s not feasible for me to change our system at all,” then I think we’re spending an awful lot of time for nothing. Thank you.

JANIS KARKLINS: Okay. Thank you. I stand corrected on my remarks who is asking for commercial and technical bit. Apparently, it is contracted parties. But my proposal here is the following: I understand Marika said that we do not edit on screen, but it would be extremely useful if we could add this 16.4 [B] on technical and commercial feasibility somehow mirroring the text of 16.4 as I mentioned. So let me try to reformulate again.

Contracted parties demonstrate that automated processing for disclosure decisions for the use cases specified in recommendation or through the process detailed in recommendation 19 is not technically and commercially feasible. The contracted party must notify ICANN Org. it requires exemption from automating processing for disclosure for this specific use case. And we would have—this would be new or

additional paragraph. Don't delete this one, just do a copy paste. Copy and then 16.4 [B] paste and then we can edit as appropriate.

And so, may I take then, with these two paragraphs together we have resolved exemption part and we can move on. Eleeza, please.

ELEEZA AGOPIAN: Thank you, Janis. With this new 16.4B, which if I'm understanding correctly, it's that the contracted party demonstrates that it would not be technically or commercially feasible, we're wondering who they would demonstrate to and how. There's some unanswered questions there for us that would be difficult to untangle in implementation. Thanks.

JANIS KARKLINS: So in the same way as they demonstrate or determine that this is not legally feasible. So they would make a case and they will notify ICANN Org. But again, in my mind this is really a marginal case, so all we hear is that contracted parties will automate their own pleasure whenever it is possible and as much as possible. And if we need a specific reference to make sure that in case there is an edge case, then it is envisaged in the policy.

On legal part, I fully understand, but on technical and commercial side, really doubtful. But Hadia, plus.

HADIA ELMINIAWI: Thank you, Janis. So I hate to be saying this again, but again, the technical and commercial feasibility is determined in 16.3, it's determined in recommendation 19. It doesn't make sense after agreeing that those things are technically and commercially feasible to just say afterwards that something happened and it's not possible anymore.

And again, I'm not sure, why are we adding this whole paragraph? And to Eleeza's question, I guess they will need to demonstrate to ICANN. Who else will they demonstrate to? Again, I don't think this I a good addition, and it's not good for anyone, by the way. Not even the contracted parties, because, will this apply to all of them, or only to one of them? And then if it applies to one of them, can the other also say because that one found it commercially and technically not feasible, so I'm also not going to do it because now he has an edge over me? I don't know. I don't think it works. Thank you.

JANIS KARKLINS: So Hadia, we may have some doubts, but if that is not question of life and death, I think we need to show flexibility and let it go. If that is something that somebody really needs and others can live with, I think this should be an attitude if you need it and if we can live with it, it's not against our principles or is not ruining things, let it go.

And this new for clarity should be labeled as 16.4 [B.] It's not the same paragraph, it's a new paragraph. And then if we start editing, then maybe we can change "demonstrates" to "determines" in 16.4 simply for consistency. Brian, please.

BRIAN KING: Thanks, Janis. I think a couple things that we need to address here. One is that the technical feasibility needs to do because it is going to be technically feasible, full stop. So that's got to get out of there. And then for the commercially feasible, we really need guardrails. I feel like we might be mistaken here or misunderstood. Before we can agree that there is some reason that it should be commercially not feasible for a contracted party to automate. There's got to be some real teeth in this or some firm guardrails around what that means, because the potential for abuse, as James mentioned, is real and a problem. At the end of the day, we're talking about a policy here that needs to be uniform and apply to all contracted parties equally. I'm concerned, as Hadia mentioned, about how that could be gamed and could give an advantage to one contracted party.

So our whole appetite for going along with this is contingent upon those guardrails, and we don't have them now. So please don't mistake our willingness to engage in this conversation for consensus that we can have an opt out of the policy essentially based on commercial feasibility. Thanks.

JANIS KARKLINS: Okay. But then we need—today's the day when you need to put on the table that proposal what these guardrails are. If we cannot determine now, we can say that this exemption will be further specified during implementation phase. So then that's the always way forward. Volker, you certainly can have advice on that.

VOLKER GREIMANN: Yeah, I'm hearing all of this with quite an amount of horror because this kind of means that we'll probably be here until the early hours of dawn, German time, and I hope we don't have to go through that. I think those terms were agreed and discussed again and again for months now and starting to demand to get rid of them at the final hour I think is unreasonable. I'm not going to ascribe motive, but it reeks.

It is not the removal—as Brian suggests, it's not something that we can live with. I think automation is nice to have. The ultimate question is, do you get the data or not? Now how will you get the data. And I don't think we should make any determination now on what is technically or commercially feasible for any given contracted parties because those circumstances may vary from party to party.

For one party that never gets certain requests, why should they put engineering hours and waste money on automating a type of request that they've never gotten or might receive one or two or ten requests in a year? That certainly does not make any economic sense and is not feasible.

I think that getting rid of these guardrails that we have in place right now is unreasonable and I would certainly stand against what Brian has suggested. Thank you.

JANIS KARKLINS: Milton, you always have good ideas.

MILTON MUELLER: Well, I think I'm sympathetic to the idea, actually, surprisingly, Brian, that we have a problem with having unilateral determination of commercial feasibility, but I think there's also a very important point that we may be overlooking here since we're all coming from fairly advanced western economies, which is that smaller registrars in developing countries may in fact have commercial issues. So I'm wondering if we could find a resolution here where we create some kind of a reference to a special exemption based on economic hardship in less developed countries.

I hate these kinds of distinctions. I really don't want to see the policy become more complicated. But it is not impossible to imagine a scenario in which a registrar in Africa who has 1300 domain names under management, it would be extremely burdensome for them to pay attention to and implement code that responds to a changing set of automated requirements.

So I'm not saying this is a deal breaker for me. I think that in practical terms, this is something that's very complicated but it's not something we can dismiss. I'm sorry.

JANIS KARKLINS: Okay. So let me ask our contracted parties groups. Would you really need—insist on 16.4 [B?] Maybe we can live without it. And we clearly determine the exemptions based on legal grounds but simply do not determine any other exemptions. Would that be something you could allow us to do?

MILTON MUELLER: I think you're going to raise more questions that way than trying to work with what we have.

JANIS KARKLINS: No, but look, for the moment, James, I'm not proposing, I'm asking whether you really need exemptions on technical and commercial feasibility. That's my question. James, please.

JAMES BLADEL: Yes. I think there needs to be some path. I've been listening for a while and I think I said at the outset that I agree it can't be abused and it can't be used to give someone a competitive advantage. I wouldn't want one multi-million-domain registrar to use it as an advantage over another multi-million-domain registrar, but we have to consider the long tail of small registrars who don't receive these requests and won't be expecting these requests, either because of the customers or the language they serve, or because they just don't have any domains under management.

So there has to be something. Even if it's a high bar, it can't be a closed door in my opinion. Thanks.

JANIS KARKLINS: Thank you. Brian, excuse me, I will ask Matt to speak first before you.

MATT SERLIN: Thanks, Janis. Just to echo what James said. And to be clear, I think it goes without saying but I'm going to say it anyway that the

objections we're raising aren't specific to my company or Volker's or James's company. I think our issue is that if we remove technically and commercially from this and the final report goes to the entire stakeholder group to review and approve, I would be very concerned that the vast majority of the members would not sign up for this, and then we really run the risk that the whole thing is for naught, because to James's point, there's smaller registrars that need to be able to raise their hand and say, "I do not want to allocate technical resources to automate a function in which I will never get a request for." That's really what we're trying to address. Thanks.

JANIS KARKLINS: Now I understand. Thank you. Finally I got it.

MATT SERLIN: In your final hours. That's great.

JANIS KARKLINS: It took a while. So in that case, before Brian speaking, I would say maybe we need to add in 16.4 [B] after contracted party in the first line, especially small in size, operating in developing economies. That would be what Milton suggested. Brian, please, now finally your turn.

BRIAN KING: Thanks, Janis. I hate to disappoint you. I was optimistic that going after James and Matt would put me in a position to agree that we

have some good guardrails here, but I think, again just being—these aren't guardrails. Small in size, how small? Or developing economy, how's that defined? And I think we also have unaddressed questions about, like Eleeza said, according to who and what's going to be the threshold or the standard for compliance to assess this? And really, I'm not comfortable with this. I thought I was agreeing with Milton three quarters of the way through his intervention, but I thought the solution was that the SSAD operator should publish API documentation that's easy to read in multiple languages that shows contracted parties how to connect to it. And this is going to be a part of the DNS. It's going to be just like port 43 or RDAP, it's going to be something that contracted parties need to do.

And I'm really uncomfortable with where we're going here at the exemptions based on commercial feasibility. If you can't do it, if you can't commercially do this, it's a key part of the DNS so you can't be a registrar if you can't uphold the basic obligations that come along with that. So I don't think we're there yet on the guard rails and I don't think we can live with this loophole here.

JANIS KARKLINS: Just make a proposal. I made mine. You don't like it, fine. I'm not dying for it. Tell me how you see it.

BRIAN KING: Yeah, so the proposal would be to delete the language that the contracted party can—that whole 16.4 [B.]

JANIS KARKLINS: You just said that something we need to work on this, and now you're asking for deletion.

BRIAN KING: That's right, Janis, because I don't think we have any firm guardrails here and I think we have more questions now that Compliance doesn't know—I don't want to read that wrong, but it sounds like ICANN's not clear about how they might assess this and we don't have any indication what the thresholds would be. And if we're going to move on past this conversation, then I don't think we can live with this so I would scrap it.

JANIS KARKLINS: Margie, please.

MARGIE MILAM: Hi. I think one of the things that people are forgetting is that the small registrar has the option of automating it, so they can ask the central gateway to automate it. So they don't have to expend the cost to develop automation processes. They can simply voluntarily ask the central gateway to do it for them. So I'm not as concerned about that because I think we've already built that option into the system.

And then there's the other aspect which James had raised, that there's a lot of commercial software that gets developed out there to help registrars automate. So there's already people out there doing this. You've got the WIPO model, you've got the PWC. So I can envision a scenario where it doesn't require a smaller registrar

internationally to hire software engineers but it'll simply either choose to automate it through the gateway or use one of the commercially available services that I imagine will be developed. Thank you.

JANIS KARKLINS: Thank you. So I would like to ask registrars to think what addition to 16.4 [B] is needed except I'm recalling the small in size, so I'm not insisting on that. Just to alleviate concerns of BC/IPC. James, please.

JAMES BLADEL: Yeah, I actually agree with the folks saying that small in size is not the right number, because there could be a large registrar that serves a corporate market with a very large portfolio of names that just don't receive these kinds of inquiries. So it seems burdensome to impose that requirement on them as well.

And we're not talking about—to Brian's point, yes, I think connecting to a port 43 system is something that—I don't want to say it's trivial but it's something that a decent developer can knock out as a relatively small project. But we're talking about automating a disclosure request or processing of disclosure request that could be very complicated, involve machine learning and all types of algorithms that need to be trained.

I agree with Margie, I think someday there will be services, but they don't exist today and I'm not sure how we close the gap between the day the policy goes live and the day that we hope that someone releases an open source AI. So I think we need to

think about this one a little bit harder here. I'm not sure 16.4 [B] is the answer. But I think that there needs to be a release valve for folks who are absolutely just caught between the economic realities of complying with this policy and the fact that they're just not the subject or target of it.

JANIS KARKLINS: I do not see way forward if—either we do not mention it at all, and if that's—we're certainly talking about edge cases as I hear James saying. So once one to ten requests per year, not automated. But ICANN or central gateway sends "this needs to be answered automated fashion," meaning immediately. So then what that small registrar will do? They will immediately assign a person to review and make a determination. And that would be cheaper than invest in automation.

So again, increasingly, I feel that we are overengineering this one. And time is ticking. It's 20 to 4:00 PM UTC and we're still on 16.4 and 14 [B] and we still have some 12 to go only on this recommendation plus the next one. Alan Greenberg, please, help us out with a way forward.

ALAN GREENBERG: I'm not sure I can, because I'm getting exceedingly confused. When people are talking about we may need artificial intelligence and sophisticated systems, that's a decision whether to disclose or not that the contracted party will make. We've already decided the contracted parties may or may not automate their own decision processes on whether to disclose. That is, when it goes

to the contracted party, they may use manual methods, automated methods, whatever they're comfortable with and want to invest in.

I thought we were talking about disclosure of the information where the SSAD has made the decision. Am I completely wrong? Because that's what 16.2 is talking about. So I don't know why we're talking about artificial intelligence and things like that. This is not the decision on whether to disclose that the contracted party must make for things that are not automated. This is for things that are automated. And e seem to be talking across purposes, and I've gotten completely lost at this point.

JANIS KARKLINS: Me too, Alan. But we need to get somehow over this hurdle.

ALAN GREENBERG: Janis, if I may interrupt, I'd like to understand from the people who are talking about automated decisions and artificial intelligence why that even comes into the discussion we're having here. That seems like a different discussion completely. So I'd like someone to outline what it is we're talking about so we all can be speaking on the same grounds. I agree with Milton that if it's really small economies and they're a small registrar, then maybe there's some reason that they can't even implement an EPP request to send the information out. But those are going to have to be really edge cases.

JANIS KARKLINS: This what I'm all the time insisting.

ALAN GREENBERG: I know, but we seem to be talking about something completely different. And I've lost.

JANIS KARKLINS: We're talking about edge cases here in general, so unfortunately, instead of talking bulk cases, normal sort of operations. Look, I would like to suggest here—we're spinning wheels, and I would like to suggest for the moment leave the 14 and 14 [B] and in the meantime, please think whether there is any sort of guardrail that could be put in 16.4 [B] to determine what are these contracted parties who would have an opportunity to opt out based on commercial considerations. And in the meantime, I would suggest that we go on and see whether we can accept other parts of the text, starting with 16.5. And in that case, I would like to ask to lower your hands and we're now on 16.5. Hadia, your hand is up.

HADIA ELMINIAWI: Yes, I just wanted to ask if—because all that the contracted parties are asking for is a path or an open door, nothing else. I don't see them asking for 16.4 that we decided actually to keep. So, what about having this path or open door through implementation? And allowing for this opting out for those very edge cases through implementation or recommendation 19 and just remove this 16.4 that speaks to the—

JANIS KARKLINS: Hadia, we're now in 16.5.

HADIA ELMINIAWI: Okay, thank you.

JANIS KARKLINS: Thank you. We'll come back to 16.4 and [B.] Brian, please.

BRIAN KING: Thanks, Janis. I think this goes along with the other one, but if this is for a legal reason, I think this is probably the only reasonable way to do this. We would prefer, and certainly for the commercial or technical—forget technical because it is technically feasible, but for the commercial one, this might be different. But if we're going to come back to it, let's come back to it. I think this is probably going to be okay for the legal one. Thanks.

JANIS KARKLINS: Okay, thank you. For legal one it's okay. Anyone is not okay if we're thinking about legal exemptions? Okay, thank you. 16.6, again, in light of legal exemptions. Any issue? Eleeza.

ELEEZA AGOPIAN: Thank you, Janis. So we had a question here. The language in 16.6 seems to contemplate this notice and comment process for the stakeholders and that they would be provided with supporting information. We're not really clear on what that supporting information is. Is that a reference to—there's a for example in 16.3 of the DPIA that the contracted party may conduct. Is that what

would be included here? And sort of what is envisioned in this process?

JANIS KARKLINS: That is, again, probably the common sense. So if contracted party determines that there is a legal nonpermissibility, and if this is disputed, so then they need to provide whatever supporting documentation. And certainly, we cannot here say more than it was said, that once this case come out, there will be some kind of logical sequence and then logical requirements, what I can say.

ELEEZA AGOPIAN: Janis, can I add a question to that then? So that supporting information, if it is the DPIA which I note in 16.3 as just a for example that must be provided for the public comment procedure. We don't see that included in this language here and we weren't sure how it would work.

JANIS KARKLINS: So probably I would say that the contracted party needs to provide documentation that led them to determine that there is a legal issue. Again, I don't know what we can say more. Please, if someone sees the answer to question of Eleeza, please help me out. Stephanie, please.

STEPHANIE PERRIN: Thank you. I've been concerned about the language in the context of getting this so called exemption, particularly the language about

doing a DPIA. This is sounding like the WHOIS conflicts with law procedure that contracted parties had to go through previously. And we don't need to overwork this. We haven't done a DPIA to figure out what is permissible disclosure, so we shouldn't have to do a DPIA to stop disclosing. All the contracted party needs is some text, very short. We're not talking a ten-page legal opinion or a court case, but a sound argument, explanation saying in our jurisdiction, XYZ, here's the clause in our law that leads us to believe we can't release this.

We don't need to overcomplicate this, I don't think. And if ICANN Org is willing to perform a mediation process, that's fine, but they have to remember that the burden is on the contracted party to comply with law, not the other way around. So this should be entirely at their discretion how they manage this and what kind of evidence they need to provide. Thank you.

JANIS KARKLINS: Thank you. Laureen, please.

LAUREEN KAPIN: I'm agreeing with Stephanie that we don't need to overthink this, and I put a comment in the chat that this is simply the information that supports the contracted party's claim that the automation is no longer legally permissible and the contracted party will determine what information backs up their position. So I don't think it's any more complicated than that.

JANIS KARKLINS: Exactly. Honestly, this is so straightforward that it couldn't be straighter. Amr, please.

AMR ELSADR: Thanks, Janis. I think I pretty much agree with everything that Stephanie and Laureen have just said, and also note that according to my reading of this, this also only kicks in in the event that a determination by the contracted parties is actually challenged during the course of the process that ICANN Org is holding as a result of the exemption that has been provided in paragraph 16.4. So I think it goes to reason that the contracted party that sought the exemption has their supporting rationale and it also goes to reason that once a discussion is taking place, facilitated by ICANN pursuant to 16.6, that the contracted parties would provide this rationale or supporting information that is referenced here.

So I don't read this to create an obligation for contracted parties to submit the information as part of the notification seeking the exemption. It's just something that makes sense for the contracted party to do once it engages in this process that ICANN [inaudible] as a result of the exemption being granted. Thank you.

JANIS KARKLINS: Thank you. Can we move on? So I think that this 16.6 is self-explanatory and if input needs to be replaced by supporting information, so be it. Eleeza, would that help you?

ELEEZA AGOPIAN: Thank you, Janis. A bit. And I'm sorry to belabor the point. You're right that the language is pretty straight forward, but it leaves out a number of important questions that we just aren't sure how we would go forward with in implementation and we don't want to kick the can down the road on some things that might be vague. So for example, must the contracted party provide the supporting information to ICANN? We don't see that in any of the recommendations here. May ICANN publish it, may the registrar or he contracted party mark it as confidential? What happens if the affected stakeholders don't come to a mutual understanding? We're not really sure what the outcome of this process is except to perhaps get to 16.8 which we could talk about when we get there where we talk about unreasonable exemption notifications that may be subject to review by ICANN.

So those are just some of the questions that we have and it's not really spelled out here. I think it might be helpful to at least document where and what must be submitted to ICANN for this process. I hope that helps. Thank you.

JANIS KARKLINS: Thank you. Can we add that details of the process need to be further developed in implementation phase? Would that be helpful?

ELEEZA AGOPIAN: I suppose we could handle it that way. I think it would be helpful to at least indicate that the documentation should be provided to

ICANN, perhaps in 16.4, because I don't think that that's very clear in 16.4 right now. Just that it is documented that there's no—

JANIS KARKLINS: Okay. We are talking now 16.6 and then instead of input, we can replace supporting documentation on this exemption.

ELEEZA AGOPIAN: Okay.

JANIS KARKLINS: And then at the end, further details will be developed during implementation phase. Daniel, would that be right way forward?

DANIEL HALLORAN: That's confusing me, sorry. It's not that the affected stakeholders would provide supporting documentation but from this, 16.6, the affected stakeholders are going to expect that they're going to get to see the contracted party's supporting documentation. It seems to be implied here, but like Eleeza pointed out, there's no clear obligation for the contracted party to provide that to ICANN or to enable ICANN to publish it or share it with the affected stakeholders. Thank you.

JANIS KARKLINS: Now with the text on the screen, can we live? Daniel.

DANIEL HALLORAN: Thanks. Just to be clear, this is saying that the affected stakeholders could provide supporting documentation. We were talking about the supporting documentation that the contracted party must supply with its exemption notification and whether that would be available to affected stakeholders or the public.

JANIS KARKLINS: So, can we then add at the beginning, before "ICANN Org must provide," if we would simply say "in case of challenge," and then comma, "ICANN Org must provide a notice and comment process to allow affected stakeholders," and then affected stakeholders are those who are involved in dispute or in case of dispute, not challenge. So then affected stakeholder are [both] and we do not need to spell and then maybe other requestor also may provide some or need to provide some documentation based on which the challenge is made. Brian, please.

BRIAN KING: Thanks, Janis. I think, no on that language, "in case of challenge," because I think ICANN providing the notice and comment process is how the affected stakeholders would become aware of this. So I think that'd be incorrect to add there. And I know we're not in 16.4 anymore, but I think what Dan and Eleeza are saying is that we need to cover the fact that the contracted parties are going to submit the documentation to ICANN Org. I think that's still not clear and it could be cleared up in 16.4. And as a point of order, just wonder when or if we're going to take a break. Thanks.

JANIS KARKLINS: In one minute. Maybe we'll be able to finish this one. Marika.

MARIKA KONINGS: Thanks, Janis. Just to add to I think what Brian and Eleeza already noted, at least our intent I think was under 16.4, agree that may not have been clear enough that as part of notification, the supporting information would be provided. And of course, we think there are questions that may need to be worked out in implementation if there's indeed confidential information or how that can be presented as part of 16.6, because indeed, the way the process is kind of expected to run, that ICANN would then provide a notice and comment process in which it would basically say, "We've received this notification on these reasons. Is there anyone that has any concern or wants to kind of provide other information about this?" And that would kind of kick off that conversation.

So if it is acceptable, maybe we can clarify in 16.4 that the notification would include the supporting information, but I think we have already added that further details will be determined in implementation where it then can be discussed, what if that information is confidential, is there then a way that between ICANN Org and the contracted party they can agree to what is published as part of that notification process? And maybe that's a way of moving forward on this one.

JANIS KARKLINS: Okay. So we are at the top of the hour. We will now take a half-hour break. In the meantime, please think whether 16.6 as

displayed now on the screen is acceptable. And this'll be my first question coming back in 30 minutes from now. We will resume exactly at 4:30 PM UTC. Thank you very much. The meeting is suspended.

TERRI AGNEW: Thank you, everyone. You're more than welcome to stay connected. I will stop the recordings and start them fresh for the next session.

[Part 2]

TERRI AGNEW: Phase two team meeting part two on Thursday, July 2nd 2020. As a reminder, this meeting is being recorded. Please state your name before speaking. And with this, I'll turn it back over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS: Thank you, Terri. So we have two hours remaining for our deliberations, and we were looking at recommendation on automation. We had extensive discussion on 16.6, and I would like to see whether the text which is now on the screen would be acceptable to all, that we could move to the next one.

I see no hands up, which means, Daniel, please.

DANIEL HALLORAN: Thank you. I'm sorry, I'm not trying to go around and around, but it still says that this specifies affected stakeholders and they provide supporting documentation, but we don't see it specified that—it seems to be implied that contracted parties must provide supporting documentation to ICANN. Our only interest is to see if we can clarify this now so there are not fights about this in enforcement or implementation later. So, must contracted parties supply supporting documentation? May they mark it as confidential? Does ICANN publish that information or make it available to the concerned stakeholders? And then further, what's supposed to happen with this discussion and the mutual understanding between the stakeholders and the contracted party? What's supposed to be the outcome of that? Is ICANN supposed to be able to overrule the exemption, or the affected stakeholders? What if we can't reach mutual understanding? Thanks. There's some words here, but it's just ripe with disagreements later about what this is supposed to mean. Thank you.

JANIS KARKLINS: [Wouldn't—the further details will be determined in implementation, does not cover that.] So here then we need to spend additional, I don't know, three, four hours talking it through and then developing it. So this, in a sense, is a technical matter. So if the document is confidential, you cannot publish it. It's just common sense that suggests that. So you need to find a way how this is communicated to others if it's not confidential it could be published. So if there is now—the whole idea here is acting in good faith in order to reach kind of common understanding. If

there is not, probably, there is a kind of dispute resolution mechanism within ICANN which then could be invoked if there is further dispute. If not, there is always a court.

Again, we have exactly two hours to finish our work and these are the details that we simply cannot do today. That's why is there reference to further details will be determined in implementation. I really do not want to entertain discussion on this one, but I have three hands up and I have to do it. Alan Greenberg, please.

ALAN GREENBERG: Thank you. I'll be very quick. I was happy with what was said before, that it would be published and there'd be an opportunity for comments, and that implies it can't be confidential. If we leave completely silent and say implementation—this is going to be a ten-year implementation. Thank you.

JANIS KARKLINS: So it says that "must provide notice and comment process to allow affected stakeholders to provide supporting documentation." Stephanie, please.

STEPHANIE PERRIN: I typed this in chat before our break. These are details that would be pounded out in the co-controller agreement. and I'm sorry to say that I think a lot of this might be confidential information, so I would resist any language in there that says it will be published for public comment. This is between the responsible registrar, his customer who has rights, whether they're commercial, confidential

or personal. And also, you might not be automating because of other existing law in that jurisdiction. We haven't talked about the jurisdictional mess, but that's what complicates this and makes it really difficult and unaffordable.

So I think we have to make sure that there's no understanding here that there will be a public process of examining a contractor's decision. Thank you.

JANIS KARKLINS: Thank you. Amr, please.

AMR ELSADR: Thanks, Janis. And this isn't really a big deal or anything, but I'm just wondering about the changing input to supporting documentation. My understanding is that when Eleeza raised her question the first time, it was about what the contracted parties would be submitting, not the affected stakeholders. And I'm not sure if that change was made in error or not. But to me—and again, this isn't really a big deal, I just thought I'd flag it—I would think that supporting documentation is a little more restrictive than inputs, and if there are affected stakeholders by a decision to not automate, then they should be allowed to provide input, including supporting documentation if they have any, but I don't think we should preclude any other form of input in this process. thank you.

JANIS KARKLINS: Thank you. So then I would like to hear very concrete textual proposals that would need to be introduced here in order to move forward. Marika, please.

MARIKA KONINGS: Thanks, Janis. I think I made the same suggestion earlier, and I made it in the chat as well and I think someone indicated that that might work. I think the easy solution is in 16.4, make clear that the notification to ICANN Org also includes the supporting information and move 16.6 back to its original state, "Provide input," because that is expected as well, to include supporting documentation and leave the "further details will be determined in implementation," and if it helps people, it could even add such as what information can be published or needs to be kept confidential, so that it's clear what kind of considerations will need to be addressed.

JANIS KARKLINS: Okay. Thank you. So then staff's suggestion is to add in 16.4 that we still need to agree on, together with the notification, adding supporting documentation. And here, in 16.6, to maintain the original language on input but maintain added sentence, further details will be determined in implementation, including on confidentiality of the process. With these changes, could we land on the same page? I repeat, we come back on 16.6 on input instead of supporting documentation and we, at the end of the sentence, further details will be determined in implementation, we add "including on confidentiality of the process."

So we maintain input instead of supporting documentation. So text on the screen, would that be one that everyone can live with? And here we're talking about legal exemptions or exemptions on legal grounds only. Brian, please.

BRIAN KING: Janis, I'm not sure I understood the question there on legal feasibility only.

JANIS KARKLINS: This is just related to 16.4. This relates to exemption on legal grounds. For the moment, we're not talking about exemption on commercial grounds, because there is a logic in the text in the recommendation. It was written for the legal exemptions on legal grounds

BRIAN KING: Right. Thanks, Janis. If I could respond. If there's going to be this control for legal grounds, we have stronger concerns about the other grounds. We would absolutely need this, if not more, for those other grounds.

JANIS KARKLINS: We will get there, Brian. Okay, so I see no issues with the edited text. We'll remove brackets, and then we'll go to 16.7. Any issue with 16.7? I see no issue here, so 16.8. Eleeza, please.

ELEEZA AGOPIAN: Thank you, Janis. I wanted to come back to the last sentence in 16.8 that we have talked about a bit. We'd like to understand a little bit better what was meant by subject to review. What exactly is subject to review? What is the recourse or action that ICANN Org could take after reviewing what may be an unreasonable exemption notification? It just seems to be missing some clarity on what exactly this review would entail. Thank you.

JANIS KARKLINS: Okay, thank you. Look, I think based on our discussion at the beginning of the previous session, this last sentence, unreasonable exemption, should be separated from 16.8, because this does not belong here. So let's just do it as a new paragraph 16.8 [B] for the moment. Now, any issues with 16.8? Okay. No issue.

Now, this is this 16.8 [B] now. Question is, what is the unreasonable exemption notifications may be subject review? Is there anyone who wants to speak on that? In a smaller group, we were discussing that there may be situation where somebody is abusing this clause. And if that is identified, then ICANN Org may simply talk to contracted party and try to influence their decision, thinking. So this was attempt to create that opportunity or the process. But Brian, you probably will describe it much more eloquently than I did.

BRIAN KING: Thanks, Janis. I'm not sure about that last part of your comment there. But as just one structural drafting matter and then a

substantive point, this probably belongs up higher and closer if it's going to be a [B] which is something I just learned about today. If it's going to be that, it should probably attach on to the part about contracted parties providing the notice to ICANN Org. And then the substantive point is that the "may" language here I think is not doing what we mean. I think we need to be quite clear that this is an exemption to ICANN consensus policy, and that's a big deal. I think we'd been very accommodating about how that can go and so long story short, I think the language needs to be ICANN Compliance must review exemption notifications and do what it does from there. So we've got to have a "must" language there and it should be "ICANN Compliance must review" on an ex post basis, after it's submitted, just to make sure there's no fraud or incorrect exemption notices. Thanks.

JANIS KARKLINS: Thank you. Hadia.

HADIA ELMINIAWI: Thank you, Janis. I have a problem understanding what's unreasonable exemption notification. So, who determines if the exemption notification is reasonable or not? I suppose it's ICANN. and then based on what does ICANN determine if it's a reasonable or not exemption?

Of course, having put up there in 16.4 commercial and technical exemptions, that could relate to that part, but then again, I'm not sure how this will be determined. Thank you.

JANIS KARKLINS: Thank you. Alan Greenberg, please.

ALAN GREENBERG: I agree with Hadia that that might not be an implementation issue, it might be far more complex than that. That notwithstanding, Brian said ICANN Compliance. I believe the wording says ICANN Org and I also believe that it's typically GDD that addresses these issues, not Compliance. So the current wording is correct. But if Brian thinks it should be ICANN Compliance, then he needs to get back on. Thank you.

JANIS KARKLINS: Thank you. I think Owen who used to work in ICANN Compliance has indicated multiple times that ICANN Compliance will not do that. So that's why it was changed to ICANN Org instead of ICANN Compliance, providing much more flexibility in addressing those issues.

ALAN GREENBERG: Yeah. I see there's a chat comment that everyone's agreeing with each other, so not a problem.

JANIS KARKLINS: Thank you. Amr, please.

AMR ELSADR: Thanks, Janis. I think I had the same sort of thought or I was wondering the same thing Hadia was wondering. I think this

sentence probably needs to be restructured. We probably need to think a little more about under what circumstances a review because ICANN would take place. And if ICANN is going to be the party determining that an exemption notification is unreasonable, I'm guessing that this will be a conclusion of that review. So the way the sentence is structured now doesn't really make sense because ICANN wouldn't make that determination until the review took place. So I think we need to do a little more work on this and figure out under what circumstances ICANN would conduct the reviews and what the outputs of those would be, including a determination that an exemption notification is unreasonable and then again your question—I think Eleeza's question on what ICANN would be in a position to do was as a result of that. I hope that makes sense. Thank you.

JANIS KARKLINS: And again, I think in normal circumstances, this will be evident whether that is unreasonable exemption or not. If the registrar will notify that there is exemption based on shaky legal grounds, so then that would qualify as unreasonable. And of course, now we can spend an hour trying to restructure this one sentence, but in a smaller group, the issue was identified that maybe there need to be some process if there is a kind of challenging of the exemption and then the solution was to ask ICANN to intervene and moderate. So this is not the end of the world. But I'm not sure that I'm prepared now on the fly to provide any further drafting. If unreasonable is not well understood, maybe abusive is better understood in ICANN circles. So maybe that is the way forward,

that abusive is more known or understood than unreasonable. Eleeza, maybe you have a solution.

ELEEZA AGOPIAN: I wish I did, Janis. I guess I have more questions. I think the trouble we're having is—I understand what you mean by determining that it's unreasonable or abusive, but based on this policy, it's not really clear what ICANN should do if it makes that determination. Do we then have to force the contracted party to automate? What if we disagree? How do we come to a resolution on that? It's not really clear to us from the language that precedes this what the outcome would be of this review. That was really what we're asking about. Thanks.

JANIS KARKLINS: So, is there any chance to delete this provision at all? Can we delete it? No, we can't. Margie, please.

MARGIE MILAM: I don't think we should delete it because I do think if it's an unreasonable notification, there should be some remedy. So I think leaving it is important.

JANIS KARKLINS: So, now we have a situation. We want to keep something that ICANN Org suggests is unimplementable. So, how will we deal with that? Brian, please.

BRIAN KING: Thanks, Janis. I took Eleeza's comment to mean not that it was unimplementable point blank but that it needs some more detail there, and I'd be happy to give that a shot. I think what we're trying for here is that ICANN Compliance must review these exemption notifications and reverse the exemption if ICANN—I shouldn't say Compliance—finds them to be incorrect, abusive, or a third thing that sounds good there. Thanks.

JANIS KARKLINS: Okay. Thank you for suggesting a way forward. Incorrect, abusive ... And what else? Brian, what was the first one?

BRIAN KING: Thanks, Janis. I didn't have a third one. I thought I passed that off but you called me on it.

JANIS KARKLINS: Okay. Alan.

ALAN GREENBERG: Thank you. I think what was asked is how does ICANN enforce it. And once it is a policy, it is enforced by Compliance. The SSAD, I presume, will be collecting information, feedback from the contracted party that the information was actually released, and if information is not being released in a timely manner, then it's a compliance issue. I'll note, by the way, that we don't have an SLA for how long it takes to release the information once a decision is made.

JANIS KARKLINS: So, Alan, I'm very attentively listening those folks who have on ground experience, and Owen has a decade, as I understand, with ICANN Compliance. And he said many times that Compliance will not do that.

ALAN GREENBERG: I didn't say that Compliance will evaluate the rationale. That's not a compliance issue. But if an exemption is not granted by ICANN, I heard the comment of how does it get enforced. And the answer, I presume, is if they are not granted an exemption, they are supposed to be releasing information automatically. I hope our logging will track that. And if they're not meeting the requirements, then enforcement will have to be taken. It's not the decision on whether to accept the exemption that I'm talking about, it's the enforcement of it.

JANIS KARKLINS: So, thank you, Alan. Now, we have suggestion from Brian which is now displayed on the screen which may be part of 16.4, would read, "Unreasonable exemption notification may be subject to review by ICANN Org, and ICANN Org must reverse the exemption recognition if it finds the contracted party notification incorrect or abusive." Would ICANN Org be comfortable with this type of recommendation? Brian, what do you think?

BRIAN KING: Thanks, Janis. I think the third thing I meant to add to that sentence is no longer applicable and I'd like to know what ICANN thinks about it. Thanks.

JANIS KARKLINS: So, may I call on Eleeza or Daniel?

ELEEZA AGOPIAN: Just a second, Janis. We're thinking. I'll let [Dan] know.

JANIS KARKLINS: Okay. Daniel, please.

DANIEL HALLORAN: Thanks, Janis and thanks, Brian. I think, to make it very clear, we have no interest in the outcome of this, we just want clarity what the team expects ICANN is supposed to do if we review it and find that it's unreasonable or incorrect. This would provide clarity. If the team is okay with it, I think we could implement that.

JANIS KARKLINS: Okay. Thank you. Amr, now ICANN Org can implement this. Can we accept that?

AMR ELSADR: Hi Janis. Yeah, I had raised my hand because I was a little confused by Alan's question, but I think Dan actually cleared it up because my understanding, yes, if ICANN's going to look at the

exemption after it's been recognized following a notification from a contracted party, then there is something for ICANN maybe to do there. But the exemption itself is recognized just as soon as the notification is provided. So I think Dan answered my question. Thank you.

JANIS KARKLINS: Okay. Now, question is whether these two sentences which would be added potentially to 16.4 is something we could live with. [inaudible]. Thank you. 16.9. Any [inaudible] 16.9? I see none. 16.10. No issue with 16.10. 16.11, I remember Alan said that we need to delete footnote three when 16.11 is endorsed. With that understanding, can we do that? I see no requests for the floor. Okay.

So then we have a bit related to automation. Unresolved issue is still a bit on exemption on the commercial grounds. And during the break, Marika has proposed maybe a way forward what would substitute 16.4 [B] and I would like to give a try without spending too much time discussing current 16. [B] because clearly, we need to. There is no agreement on that. So Marika has now put that proposed text in the chat, and it would be maybe good to take and first of all delete 16.4 [B] from the text and then try to put in what you're suggesting in your comment. Hadia, please.

HADIA ELMINIAWI: I'm still reading Marika's chat. I was basically going to suggest to actually handle this issue about the commercial and technical feasibility after the SSAD first report is issued, like after nine

months when we have the report out. Then we can discuss based on the report if this is something that needs consideration or not. But let me read Marika's comment. Thank you.

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

ALAN GREENBERG: Thank you. When we're talking about 16.11 earlier, I pointed out that the wording that says the disclosure decisions which may involve automated review at the central gateway, that allows the SSAD to have discretion on whether to allow such manual review or not. It is conceivable that we might have use cases, disclosure decisions that the evolution mechanism says we can automate but we can automate them only with human intervention at the SSAD. That is, they will not be fully implemented but they must have human review before being disclosed.

And I would suggest that we add a footnote to 16.11 which says the SSAD may use human review for any automated SSAD decisions. But there may be specific classes of disclosure requests approved for automation where human review must be included. So in other words, we're saying that the evolutionary mechanism may or can specify that something is eligible for automation but only with human intervention. It doesn't require anyone to do it, it just allows more flexibility to the automation, to the evolution mechanism. I can put that in the chat if you'd like.

JANIS KARKLINS: Yeah, please, if you could type your suggestion in the chat. But I would like to say we will come back to this, to your suggestion, but let's now address the point that we just started to replace 16. [B.] So can I get rid of it on the screen? Can you delete it? Just not to see it any longer.

Thank you, and now the footnote, Marika, you typed in. Can we get that on the big screen that it is permanently in front of our eyes?

MARIKA KONINGS: I've actually put it in the section footnote two 16.3. So if Berry scrolls up, it should be visible as a new footnote.

JANIS KARKLINS: Okay. So we have a footnote after commercially feasible. And footnote suggests the following: during implementation, further consideration will need to be given to commercial feasibility for registrars who may receive a very limited number of requests that will meet the criteria for automated processing of disclosure decision and whether the financial burden of enabling this automation processing is of such a nature then exemption may need to be provided. As a part of this consideration, central gateway manager also should consider how it can facilitate the integration of contracted party systems with SSAD to reduce the potential burden of automated processing to disclosure decisions.

So reaction to this proposal. Would this be a way forward in relation to commercial feasibility? Amr, please.

AMR ELSADR: Thank you, Janis. I actually had my hand up on something else, but yes, I do find this [inaudible] makes the consideration of financial feasibility much better in my view. Thank you.

JANIS KARKLINS: Thank you.

AMR ELSADR: But I do have another question for Alan on the previous topic.

JANIS KARKLINS: Wait. We will get there. Let me see if we can close this one. So Contracted Party House colleagues, BC, IPC colleagues, is this something we can accept? Brian.

BRIAN KING: Janis, if this is going to get us there, I think we could live with it. Thanks.

JANIS KARKLINS: Thank you. Is here anyone who cannot live with this? Okay. Good. So then we're done with the commercial bit. Now let's see whether we can address issue of concern of Alan. Amr, please.

AMR ELSADR: Thank you, Janis. Yeah, I'm looking at the text that Alan proposed as a footnote to 16.11 and I think I understand what he's saying here. He's talking about automated SSAD decisions, and I'm assuming here by automated he means automated on the contracted party's side. But then he's talking about human review and that would be through the central gateway manager. But I'm not clear on—looking at 16.11 and I'm looking at this as a footnote. I'm not clear on what purpose this is meant to serve. Why do we need—if automation is already taking place, why is the SSAD going to conduct a human review—and there's a "must" in there as well. So I'm just a little confused on what [inaudible] achieve.

JANIS KARKLINS: Okay. Thank you. Let me see if Alan can clarify his intention. But also, if you could answer to other Alan's comments. Alan Greenberg, please.

ALAN GREENBERG: I would be glad to. The ALAC put a comment in supported by a number of other groups saying we should allow for centralized SSAD but not automated decisions. The implementation of that that staff put in was a clause in 16.11 saying that automated decisions may involve human review. I don't remember the exact wording of it. And I think—

JANIS KARKLINS: You have on the screen 16.11 now.

ALAN GREENBERG: Okay. Met the criteria for automated processing of disclosure decision, which may involve non-automated review at the central gateway. So we are taking the word “automated” and saying, oh, but it may have human intervention. I didn't think that was a particularly clear thing to do because redefining common words is going to be inevitably confusing. But that was the staff implementation of our suggestion, not to introduce a new concept of centralized but not fully automated decisions and cover it with this wording. And that addresses Alan Woods’s statement. And he's right, it is confusing. But that is what staff suggested and I was willing to accept it.

I'm now saying that for what I would have called centralized but not automated decisions, that the evolution mechanism may specify a new centralized but not fully automated decision process. That is, we will allow the SSAD to make a decision but there must be human intervention and review at the SSAD in doing that. I'm not saying they will do it, but I'm giving them a tool to be allowed to do it. That is all.

JANIS KARKLINS: Okay. Thank you, Alan.

ALAN GREENBERG: And I apologize for having a confusing use of the word “automation” but that is what the staff suggestion was. Thank you.

JANIS KARKLINS: Thank you. Amr, please.

AMR ELSADR: Thanks, Janis. If Alan's right, then me being confused by his proposed footnote is probably compounded by additional confusion of what I interpreted 16.11 to mean. I didn't read 16.11 to suggest that the central gateway manager would actually involve itself in the automated disclosure. I thought that this was just a sort of review activity that the central gateway manager would conduct every now and then at its own discretion as part of a sort of review process or data collection process. This might be data that feeds into the recommendation 19 mechanism for example. But I did not read 16.11 to mean that the central gateway manager would in any way intervene in the disclosure process itself. But I think the footnote that Alan is proposing may suggest that, and so it may mean that I've misunderstood the intent of 16.11 altogether. I'm sorry, I think I need to reread [inaudible].

JANIS KARKLINS: Yeah, let me maybe ask Marika for clarification. Marika, please.

MARIKA KONINGS: Thanks, Janis. I think the confusion here might be over the word "making a decision." The way at least we envisioned it—and I think maybe using a specific use case might be helpful here—is for example the use case on UDRP and URS provider verification. I thin the legal guidance said that as there is a legal implication for the data subject, it's not something that can be automated with no

human intervention. So the thinking is—and again, of course it's something for the mechanism to decide, that maybe a way to address that concern is that the central gateway manager would actually check whether the request that is received from the UDRP provider is really a legitimate request. It's no bogus data, they can see that it's a provider with which ICANN has a relationship, and after that, they can say we have done that manual review to confirm that the criteria are met, and on that basis, we can then direct the contracted party to automatically disclose that data.

So I don't think it's necessarily about making the decision but by allowing a human to review whether the criteria for automation have been met. That's at least how we envisioned this. And again, as Alan said, I think the footnote is just trying to make clear that as part of that further conversation in the mechanism, that could be a potential use case that that is added where basically indeed—and again, maybe automation is confusing here, where the frontend part, there is a manual intervention, but the actual disclosing of the data once the central gateway manager has confirmed that the criteria that the mechanism has set are met, then that part is directed and automated. So I'm hoping that that makes clear what at least we understood the intent of this action is, and I think as well what Alan is trying to achieve with the footnote.

JANIS KARKLINS: Okay. Thank you. Stephanie, your hand is up.

STEPHANIE PERRIN: Thank you. I think what is confusing here is that we are not actually spelling out who is accountable for the disclosure decision in these kind of hybrid decisions. So at the end of the day, the controller or co-controllers have to pound this out in a co-controller agreement as to which parts each party is accountable for. And what you're talking about here is—in the example that Marika just described—agreeing that if the following criteria data elements have been requested, that it meets the parameters of a legitimate UDRP request, then the relevant question legally is, okay, who's the controller that made this decision? Does it require intervention from the contracted parties? And with respect to—I don't think 16.11 helps us at all. It's quite confusing. I thought we had ditched it, but apparently not.

What you need to do is spell out who's making the decision and document that. Thank you.

JANIS KARKLINS: Thank you, Stephanie. Alan.

ALAN GREENBERG: Thank you very much. My understanding is that it is SSAD making the decision, whether it's through a computer or through a person. And SSAD is run by ICANN, therefore it's ICANN making the decision. Now, I can't disagree that we need a joint controller agreement or some sort of controller agreement that makes that really explicit and make it clear who has the responsibility for the decision, but I'm assuming that everything we're doing presumes there will eventually be a controller agreement and without that,

the whole thing falls apart. So yes, we're assuming the controller agreement. Yes, we're assuming that if the contracted parties are willing to allow the SSAD to make decisions, that it's the SSAD and ICANN that bears the liability for those decisions. Now, we can't assign liability on third-party to third-party liability, but we have words somewhere that say we're going to cover that with insurance or some other [inaudible] mechanism. So yes, of course we need a controller agreement. If we don't have that, the whole thing falls apart.

JANIS KARKLINS: Hadia please.

HADIA ELMINIAWI: I just want to note quickly that this recommendation 16.11 in addition to Alan's suggested footnote makes it very clear, and the use case that actually Marika also described is one of the use cases that are possible through 16.11 in addition to the footnote. And the process here does not differ much than the process for the automated cases where the central gateway basically checks if the case meets the criteria and then passes the recommendation to the contracted party who actually takes the decision to disclose the data.

The only difference here that we have some kind of human intervention, and it's not only the machine that's doing the process. that kind of human intervention is necessary in order to meet the legal requirements. So again, this is a useful

recommendation whether we ultimately decide to use it or not. Thank you.

JANIS KARKLINS: Thank you. Look, this conversation makes me suggest that maybe we need to stick to what we already agreed in form of 16.11 and not to provide any further explanation to that because then that creates much more confusion. And I would ask Alan G not to sort of push for the footnote but rather accept the text as is, with understanding that footnote three which contradicts 16.11 would be deleted. And then we could happily move to a quick reading of implementation guidance and other outstanding issues. We have exactly 70 minutes remaining for the conversation today. Alan, would you be in agreement?

ALAN GREENBERG: I just want clarity for what version you were talking about in reverting to. Are you talking about with the mention that there may be human intervention, or without that?

JANIS KARKLINS: I'm talking about text we already approved on the screen which is now highlighted in red on my screen, which says central gateway manager [sees] whether disclosure decision has met criteria for automated processing for disclosure which may involve non-automated review at the central gateway.

ALAN GREENBERG: We will accept it but we will likely put a comment in in our overall review of the report.

JANIS KARKLINS: Thank you, Alan. Can we move on? We have 69 minutes left. Brian, ps.

BRIAN KING: Thanks, Janis. Just wanted to be clear what we're talking about here with the last sentence that was added there, no expectation of personal data. Is that a prohibition of personal data being transferred to the gateway? I don't think we could live with that if that's a workable option. We wouldn't be okay with a prohibition on that. So, what does that mean about the expectation there?

JANIS KARKLINS: That, you need to read with the latter part of the sentence which suggests that central gateway may request contracted party [the] further information that may help central gateway manager to determine whether or not the criteria for automated processing of disclosure has been met. A contracted party may provide such information if requested and there is no expectation that personal data [transferred to the response] in such information request. So that is what you need to read together.

BRIAN KING: Thanks, Janis. I guess the issue then is that my expectation is that there could be personal data transferred in order to do that. So I don't have no expectation. I do have an expectation there.

JANIS KARKLINS: So Marika is suggesting that this is not a prohibition but it is expectation.

MARIKA KONINGS: If I can maybe add, and this was added I think to address a concern from contracted parties that may provide further information that that wasn't an expectation that that would include personal data, and this is just saying that it doesn't have to. And again, it's a "may" and at least I don't see anything here that would prohibit a contracted party to send over personal data if they choose to. Again, this is a "may," not a "must," and it is just about an expectation but it doesn't prohibit a contracted party to send whatever they want. At least that's my understanding.

JANIS KARKLINS: Okay. So Brian is in agreement, which means that we have concluded consideration of the main part of the recommendation on automation, and we need to walk through the implementation guidance. And so I would like to start doing that. So let me suggest that we go paragraph by paragraph here. First paragraph. Any issue? Doesn't seem to be the case. Second paragraph. Any comments? Go ahead.

BRIAN KING: Thanks, Janis. I don't know how much we're supposed to care here if it's just implementation guidance, but again, the first paragraph seems to conflict with 16.11, the no human intervention. So that parenthetical should probably be removed.

JANIS KARKLINS: Okay. Any objections of removal of no human intervention? Which was just a clarification. Okay, let's try to remove. So, comments on the second? On the third? So I see no hands up. Amr, please.

AMR ELSADR: Thanks, Janis. I'm actually wondering about the second bullet. And sure, we want data protection authorities to be able to investigate cases in which there is alleged infringement of privacy and data protection rights, but I'm just wondering, would this qualify as legally permissible for full automation or not?

JANIS KARKLINS: It is, because this comes from the Bird & Bird legal memo specifically on this question.

AMR ELSADR: Okay. I'm going to go ahead and take a look at that again. Thank you.

JANIS KARKLINS: Sure. Margie, please.

MARGIE MILAM: Yes. We had made some comments previously that this language should be up in the policy section and not the implementation section. So I'm just wondering if we can make that change.

JANIS KARKLINS: Let me ask of the rest of the team, is there any issue moving this particular paragraph to the recommendation part? Can we? We shall, because no objections have been raised, seems to me. Okay, it will be moved to the main part of recommendation and placed in appropriate place. Next paragraph please. Yeah, staff will do that, Daniel, what you requested. Amr, please.

AMR ELSADR: Thank you, Janis. I'm not going to object to moving that last section to the policy section as opposed to implementation guidance, but I just wanted to flag that for any reason if—again, as part of implementation of recommendation 19 if in the future we discover that there are nuances to these use cases that we haven't considered or a lot of what we're proposing in terms of an evolutionary mechanism depends on additional legal guidance being provided. So the legal guidance could suggest that more automation is permissible. It could also suggest that automation that currently exists isn't. If that section is moved to the policy as opposed to implementation guidance, it's going to be a lot more challenging to deal with in the future in terms of process, so I just wanted to flag that. Thank you.

JANIS KARKLINS: Okay, thank you. Brian, please.

BRIAN KING: Thanks, Janis. Are we on the language that's highlighted on the screen now?

JANIS KARKLINS: Yes.

BRIAN KING: Okay. Excellent. Thanks. I think we should say what we mean here. I think if I'm reading the room correctly, plenty of folks might think that that last part about the party/parties bearing liability, that's a substitute word for contracted parties. And I think if that's what we mean, we should say it. I don't know if that is what we mean because I think the legal permissibility, if we do have that legal guidance, it would cover liability. So I don't know what we're trying to do here or what this means. Thanks.

JANIS KARKLINS: Okay. Maybe staff can help us out in giving guidance.

MARIKA KONINGS: Thanks, Janis. Actually, maybe Becky wants to speak to this because I think it's actually language that she originally suggested in one of the chat conversations. But at least our understanding is that when that conversation happens on potential additional use cases, the party or parties that would be responsible or bear the

liability for any challenges that would be made in response to those data disclosures that would happen, those are the ones that would need to say yes or no, and again, of course, I can't put words in Becky's mouth, but I don't know if [inaudible] trying to foresee that in certain cases or there may be a determination that the central gateway manager would be liable. So in that case, it may be the central gateway that needs to decide whether or not it's an acceptable risk or liability it takes on by automating that use case. In other cases, maybe it's joint liability that would be in place. So I think that is what it's trying to say. But I'm very happy that Becky has raised her hand so I can start talking and she can—

JANIS KARKLINS: Thank you, Marika. Volker, with your permission, I will ask Becky first and then you will go.

VOLKER GREIMANN: Right.

BECKY BURR: Yes. So just to be clear, the point was simple. Whoever is going to be liable for the determination that the processing is legally permissible would be the decisionmaker with respect to whether that is in fact permissible. As Marika suggested, I suppose that there is some circumstance under which we could get guidance that says that central gateway is solely liable, and then that would make a difference. But right now, we're in a situation where it's likely to be the contracted parties who are liable so that the

individual registry or registrar receiving the request would make that—I mean here, we would just have to leave it to the contracted parties until there's definitive guidance.

JANIS KARKLINS: Okay. Thank you. I think that this is not “cannot live with” question. But Volker, what you wanted to say?

VOLKER GREIMANN: Yeah. Basically what Becky already said. We are looking at evolving this model, and if it evolves into a model where more decisions are mandatory automated disclosures, then obviously, the party that mandates the disclosure is also legally liable and therefore I think our policy should already have that baked in. Thank you.

JANIS KARKLINS: Thank you. Brian, are you convinced now?

BRIAN KING: Thanks, Janis. That really helps me understand I think what we’re trying to do here. What I'm not certain of though is if the contracted party is the one here that’s understood to bear the liability today, is this trying to say that they in their sole discretion get to determine if automation is legally permissible? Because I think we spent a lot of time up above trying to put some language around how that works in the actual policy. I just wouldn’t want the

implementation guidance to conflict. Or again, I don't know what this is supposed to do.

JANIS KARKLINS: So we can completely delete, actually, because this is describing what is written in 19. But certainly, it is not contradicting what is written in 19 since in the mechanism, every decision should be made by consensus and other contracted parties need to be part of it. And specifically on automation cases, that always will be the case. Again, party/parties reference here is either to contracted parties or central gateway manager. For the moment, there are only two options in that.

I really do not see that this is an issue worth time spending. But Margie, your hand is up.

MARGIE MILAM: Sorry. I don't agree with the way this is couched, because I thought the purpose of the mechanism was to address this. So if you think about what we talked about yesterday, the contracted parties as a group would decide whether or not they go along with the change for automation, not an individual contracted party. So this language makes it seem like one party can decide on its own outside of the mechanism, and that's why I think this language doesn't make sense.

Unless I'm wrong, I thought the mechanism was intended to look at the law, determine whether there's a use case for automation, and then if the contracted parties as a whole as represented on the mechanism agreed that that interpretation was correct, that

that would stand. So that's why this language to me is incorrect and should be deleted.

JANIS KARKLINS: Okay. Can we delete this? Because it is repetitive to determination of recommendation 19. When this particular language was drafted, recommendation 19 was in infancy and only in outline. Now when we have recommendation 19, then what is written here is exactly what is written also in recommendation 19. May I suggest that we simply get rid of this paragraph? Alan.

ALAN GREENBERG: Thank you. Yesterday when we talked about recommendation 19, Amr made the comment that it's really not a recommendation 19 issue, it's an automation issue. We can't keep on batting it back and forth that says it's the other one and then we get the other one, it says it's this one.

In my mind, it's very clear. The automation recommendation says that if we meet the various criteria, it must be automated. So, should allow the evolution mechanism to make changes without going back and changing policy. The policy already says if it meets the criteria, it will be automated at the SSAD.

Obviously, other people don't agree because we've had this discussion an infinite number of times. So we can say yes it's a recommendation 19 issue, we don't need to discuss it here. But if we're not going to go back and discuss 19, then clearly, we're leaving this room today with different people having different opinions of what we're saying. Just pointing that out. Thank you.

JANIS KARKLINS: All right. It's not, because 16.4 very clearly suggests what are these legal issues that need to be taken into account for new cases. And 16.3 links automation and mechanism, and mechanism itself describes how new cases will be discussed and decisions made within the mechanism.

So these two paragraphs have been drafted more or less together by staff knowing in which direction discussion goes and on which recommendation.

ALAN GREENBERG: Janis, I agree with you 100%.

JANIS KARKLINS: Let's delete then.

ALAN GREENBERG: But I believe, if we went to contracted parties now, they would still say that new automation cases are policy. And I'm willing to leave it like that. And again, we'll address it in comments. But I'm not sure we are all in agreement on what this means. But I'm lowering my hand.

JANIS KARKLINS: Okay. Thank you. Marika.

MARIKA KONINGS: Thanks, Janis. From our perspective, this is not the same as what is in 16.4. 16.4 is really about individual contracted parties having concerns or issues for which—that they no longer meet the legally permissible test. This language was added as the policy recommendation says you must automate where it's determined to be legally permissible, and there was conversation around how is that legally permissible determined or defined and by whom. And that is what this language tried to address or clarify, how legally permissible should be interpreted when those conversations are held in the recommendation 19 group. And maybe that language belongs better there, but for the moment, it is not there. So just wanted to clarify that at least that was our intent with this paragraph, to provide that clarification. It was one of the open questions.

Of course, with the contracted parties having a determining say in any additional use cases, that may already be addressed or it may have the same effect, and therefore this may no longer be necessary. But I just wanted to clarify where this originally came from.

JANIS KARKLINS: Thank you, Marika, for clarification. We have 50 minutes remaining. Volker, you're next.

VOLKER GREIMANN: Thank you. I think Marika is absolutely right. This clarifies again that there has to be a certain backstop for the parties that ultimately bear the liability, and therefore, I would have very big

problems with removing that language. It doesn't hurt anything. I think it's good clarification. It doesn't remove anything of what we said, it doesn't contradict anything. It's just something that is good to have in there. even if we say it in another place, it's worth saying again.

JANIS KARKLINS: Okay. Thank you. So, can we then leave it in as it is displayed on the screen? Hadia.

HADIA ELMINIAWI: I would answer yes, because again, those four lines have the same exact effect that recommendation 19 is already doing. In my opinion, those actually add nothing. But if you're comfortable with leaving them in, fine.

JANIS KARKLINS: Thank you. So, is there anyone who objects leaving this as is, after this conversation that we had? Thank you. Next paragraph, [further to] legal guidance. Any issue with this? My only comment is just a technical nature. Reference to recommendation 19 should be more or less same everywhere. Daniel, please.

DANIEL HALLORAN: Thank you, Janis. Just one minute please. We're having a side discussion about the category about local law enforcement and comparing that to the Bird & Bird memo which we thought advised that the first bullet on the top there was something that was

marked in red as something that couldn't be automated. And we're just double checking that the team understood that and was going against Bird & Bird advice. But we're double checking. We're not sure we have this right. So, sorry.

JANIS KARKLINS: Yeah, no, I think GAC reps can talk or Marika can relay GAC message, this was communicated to the team. Marika, please.

MARIKA KONINGS: Yes, Janis. Just confirming that indeed, that was correct. I believe that the GAC reps provided some further clarification on what was needed for this to be automated, and I think the additions of the confirmed 6.1(e) lawful basis or the Article 2 exemption were added as further clarification, and I believe that was accepted by the rest of the team.

JANIS KARKLINS: Thank you, Marika. Daniel, please.

DANIEL HALLORAN: Thank you, Marika, for clarifying that. And one other medium concern about this is—and I might let it go if it was just implementation guidance, but if we're moving it up to the policy, this is referring to 6.1(e) without any context that we're talking about the European data protection regulation. I think everyone will understand that, hopefully, but if it's part of the policy, it should

probably be a bit more formal and specify that we're talking about GDPR here. Thanks.

JANIS KARKLINS: Okay, so that's a technical adjustment that could be made, confirmed, GDPR 6.1(e) lawful basis. Okay, can we go back to the paragraphs, the one before last? Any issue with this? No hands up. And the last one? Okay, so thank you. So I then understand that we are done with the review of recommendation on automation, so thank you very much. That is a fundamental piece in our puzzle, which allows us in next 45 minutes to move to items that need to be reviewed. And since most likely we will not be able to review all of them, I would like maybe to ask staff [think and] present it in a way which are most difficult first or most important first, and the ones that could be reviewed online afterwards, those move down the list. So we will follow your guidance, you can present the first case.

MARIKA KONINGS: Thanks, Janis. If I can maybe suggest if we first go to the recommendation 8 which is the end of page 12, it's basically the last one in the list of items that we flagged for discussion. As you may recall, some of the items where we believe there was already sufficient guidance provided as a result of input provided or previous conversations, we put those to the end and put forward a proposed path that you all had a chance to look at and react to, but there were a couple that still required further conversation.

The one here, I think page 12 of the document, recommendation 8 is something we've already discussed a while back. There is a sentence in a footnote that currently says ICANN Compliance will not be in a position to address the merits of the request itself or the legal discretion of the contracted party making the determination. Objection was flagged, a concern was flagged by the GAC team in relation to this specific language and Laureen had an action item to come up with alternative language that would address the GAC's concern but also factor in some of the input that others provided. And although I think the language has been in the Google doc for a while, we're not sure whether everyone had a chance to look at this so we want to put this back on the screen and just make sure that everyone can live with this before we put it into the document.

JANIS KARKLINS: Thank you very much. So, language which is now displayed on the screen is provided by Laureen. So, any issue, any comments? Daniel.

DANIEL HALLORAN: Sorry, I'm trying to shift gears and catch up here but it seems like we're still leaving it vague, seems like the team has decided that it's up to the sole discretion of the contracted party to decide whether or not to approve or reject each request, and now you're putting compliance in here in this kind of vague position. We can address the allegations, but what are we supposed to do about it? If it's the contracted party's sole discretion, would they be violating some provision? Is there a provision that says somewhere that it's

a violation to deny a request unreasonably and therefore—or to do it repeatedly? So anyway, I just want clarity from the team on what they want Compliance to do exactly and how it's supposed to work. Thanks.

JANIS KARKLINS: So, thank you. I stand to be corrected, but I recall that this might be in the context of abusive similar type of determination. One registry, registrar, to all requests, sends no. And then that raises somebody complaints and this kicks off the process. But Laureen, please.

LAUREEN KAPIN: That's exactly right, Janis. We had actually discussed this in detail at the time that we wanted to preserve a role for ICANN Compliance, not for the individual complaint about a disclosure that a single entity may disagree with, but rather, the systemic situations where for example you have a registrar that never agrees to disclose any information. And granted, that might be appropriate if they get 100% flawed requests, but at least it should spur a duty to investigate and decide whether they are in fact complying with the policies.

JANIS KARKLINS: Thank you, Laureen. So with that explanation, Daniel.

LAUREEN KAPIN: Thank you, Janis and Laureen. I think where I'm still stuck is ICANN Compliance can only enforce obligations that are in the policy or in the contract, and the only obligation here is for the registrar to review the request and decide. Does it even say somewhere that the decision has to be reasonable or that there's any—I guess, [the provider] has to be reasonable. But let's say a registrar does deny it 100 times. What exactly have they done wrong under the policy? They looked at the request, they evaluated it and they decided not to disclose it, in their discretion. What is Compliance supposed to do about that? Thank you.

JANIS KARKLINS: Alan Greenberg, please.

ALAN GREENBERG: Thank you. I think the problem is that there may well be [an inherent] conflict between the first sentence and the second. If you can't do the first sentence, how do you do the second? I suspect that's what the troubling part is.

JANIS KARKLINS: But also, we heard very clearly that ICANN Compliance cannot evaluate the merits of each decision, but from systemic point of view. So that is where the question lies. The probability that all requests should be denied is probably not overly high. It may be, but not high. So in case there is kind of a stand that we will not disclose information, is there any redress that could be put in the policy? And this suggestion at least tries to show a way how it would be discussed. Stephanie, please.

STEPHANIE PERRIN: Thank you. I actually think there's plenty of things that ICANN Compliance could do in the line of metrics that might be useful. Someone has to have some oversight as to whether the system is running. We have already decided we're going to have metrics on how many requests are being denies, and they could do a rationale check on that and then they can report through to, for instance, the body that will be set up. So I think we're reading this very narrowly in terms of can, does ICANN Compliance have the power to reverse a decision? And I think we're pretty clear there. But that doesn't mean that there isn't a use in having ICANN Compliance keep an eye on things. And depending on how speedily they act, we could correct these situations where there is actual abuse. Thank you.

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

ALAN GREENBERG: I guess I agree with Stephanie if Compliance is willing to do that. If a contracted party is foolish enough to automatically have their system deny a request within a microsecond given, then it might be easy to demonstrate that they're acting in bad faith. But if they put a random time delay of one minute to one hour in it, then you can't catch them on that. So ultimately, it is conceivable they receive 100 requests and they're all deniable, but presumably they have to be able to provide a reason why they're denying it. And you ultimately need someone who is going to be willing to judge

whether those reasons are acceptable, are credible, and act on it. If no one is willing to look at that, make that decision and take some action on it, then it's not enforceable.

JANIS KARKLINS: Thank you. Volker.

VOLKER GREIMANN: Yes. I think complainants have the ability to make such cases to Compliance and Compliance will, in my past experience, [inaudible] as an example, usually look at such cases as well. If you for example have a reporter that regularly makes reports of a very similar nature and they find that one registrar in one jurisdiction always grants those and one registrar always denied those, then I think Compliance will at least have the ability to use that evidence to go to that registrar who always denies the requests and ask them, look, what's wrong? Another registrar in your same jurisdiction is accepting those very same requests with the very same formatting. Please provide us the reason of how you did the balancing test and thereby help the contracted party to produce better results, or maybe the opposite is true and they are able to convince Compliance that they are right and then Compliance could go to that other registrar and say, "Hey, look, you might be leaning too far out of the window and accepting too much, so have a look at that again."

So I think there are statistics that are being gathered even without personal data by the system, but also by the complainants themselves, how they can make a case to Compliance. And

Compliance usually takes a well founded case and runs with it even if nothing is there. Where there's smoke, there might not be fire, but best look at that. And I don't think Compliance will turn away from that.

JANIS KARKLINS: Okay. Thank you. But fire will never be without smoke. Brian, please.

BRIAN KING: Thanks, Janis. Thanks to [Laureen] for proposing this, and I understand where Dan is coming from. To address Dan's point, which is that we don't have anything in the policy yet that Compliance can say, "Look, you must do this and you didn't do this," that's what we need, I think. So rather than reinvent the wheel on what that could be, I'm all hesitant because Compliance did not enforce this under the temp spec, but the temp spec said contracted parties must provide reasonable access. And if we added that sentence to the top of the contracted party authorization recommendation, I'm curious to know from Dan whether Compliance could enforce that in cases like this.

JANIS KARKLINS: Thank you. Chris, please.

CHRIS LEWIS-EVANS: Yeah, thank you. To Dan's point, I think we do have a couple of things in the recommendations that Compliance should be able to

act on. If a request is turned down solely based on a lack of legal process, and I think there were a couple others and it's getting late and I can't remember the exact recommendation. So there are a few circumstances that have already been listed, and maybe that's one that could get added to as we have more understanding of how the system works. I think as we said, if they always reply "no because you didn't put out the form properly" when the form has been filled out properly, then that's really one for Compliance.

JANIS KARKLINS: Thank you, Chris. Daniel, are you convinced now?

DANIEL HALLORAN: I think this is implementation guidance so I don't think we need to keep fighting about it too much longer, but yeah, I am still concerned that t eh language that's highlighted is kind of of two minds. The first sentence says we will not address the merits and the second sentence, we will address unreasonable denials. So I don't know how to reconcile those two. If you get a case where we think that one denial was unreasonable or improper or whatever, are we supposed to send a notice of breach to the registrar that they violated the policy? And what exactly did they violate? All they did was look at it and make a determination. And if they make 10 or 100 determination, what, still, have they violated in the policy if they keep denying the requests?

JANIS KARKLINS: Daniel, we had a conversation. Volker explained how it could be that similar type of requests, one registrar in the same jurisdiction

gives 100% yes and another registrar in the same jurisdiction gives 100% no, systematically, there should be an issue. So it's not each individual request, and that is what first sentence says. It's not Compliance thing, but systemic things, Compliance may examine against overall adherence to the policy. Laureen, please.

LAUREEN KAPIN: Thanks. First, I'm also pointing out Brian's question to Dan in the chat about whether ICANN could enforce a "must provide reasonable access" obligation. And then two, would it help if we said ICANN Compliance will not typically address the merits of the request itself?

JANIS KARKLINS: So again, we're talking about implementation guidance.

LAUREEN KAPIN: I'm just trying to move the [inaudible] forward.

JANIS KARKLINS: Yeah. Thank you, Laureen. I was hoping when Daniel said "okay," I was hoping to say "Let's move on."

LAUREEN KAPIN: I'm ready to move on.

JANIS KARKLINS: Brian.

BRIAN KING: Thanks, Janis. I'd like to move on too, but I'd like to move on with a policy that ICANN can enforce. So we have that question. I understand Dan's concern with this language, and we could work with that. But what do we need the policy to say? Because this is a very real concern for us, that in a given case, sure, the contracted party is going to be expected to use discretion, but there should be some kind of check on that to make sure that that's actually happening. And does the language that I proposed cover that? If that were in the recommendation itself, would that address this concern? Or would other language address the concern? Thanks.

JANIS KARKLINS: Which language you proposed?

BRIAN KING: In the chat. Just very short, "contracted party must provide reasonable access to RDS data when it does the balancing test" or whatever. Something like that, and then just park that up at the top of the contracted party authorization recommendation so that Compliance has something that they can point to and say you're required to do this, it's in the policy and you're not doing it.

JANIS KARKLINS: I'm not following. But maybe Volker does. Volker, please.

VOLKER GREIMANN: Yeah, I'm following and I don't like it. I don't think we have the ability to say that we must provide reasonable access. I think we must provide access where reasonable, but that's a different thing. I'm not very convinced by what Brian has said and I'm very cautious into accepting any new language into what we've already agreed. I think we are already very far in how we have to operate as disclosing parties.

JANIS KARKLINS: Okay, thank you. So my proposal would be then we accept Laureen's proposed alternative language and replace it in the implementation guidance. And Laureen is now editing with adding "typically" in the first line. "ICANN Compliance will not address typically the merits of requests." And we would move to the next outstanding issue.

LAUREEN KAPIN: Just a quick correction. "Will not typically address," not "address typically."

JANIS KARKLINS: Sorry, Laureen.

LAUREEN KAPIN: That's okay.

JANIS KARKLINS: English is not my mother tongue.

LAUREEN KAPIN: No worries.

JANIS KARKLINS: Okay, so I hope that everyone can live with that and we can go to the next issue.

MARIKA KONINGS: Thanks, Janis. I propose that we just go further up from the bottom to the top there. Two questions in relation to recommendation 2, accreditation of governmental entities. This one as well, there were a number of other questions or clarifications that were suggested and we got input from different groups and no further responses, so we will apply those. But on 86, there was a suggestion from ICANN Org to replace data controller throughout the recommendation with the relevant contracted party or the central gateway manager as applicable. And we just wanted to flag this because this is the change we originally made, but I believe the GAC team was not happy with that and had suggested to move it back again to data controller. So I don't know if we want to discuss this again or whether we leave it as data controller or whether we go back to naming the parties. And just for consistency, in other parts of the document, we do speak about contracted party or central gateway manager. I don't think we use anywhere else data controller as such. So from a consistency perspective, it might make sense to use similar terms. But the GAC colleagues may have specific reasoning why

they prefer to use data controller here. So I think that's the first question. Do you want me to hold there?

JANIS KARKLINS: Let me see if GAC representatives are tired enough that they could say, "Okay, let's keep consistency in the document." GAC representatives, please. Can you live with the proposed change to replace data controller with contracted party or central gateway manager? Chris.

CHRIS LEWIS-EVANS: As long as it's got both of those parties, then yes.

JANIS KARKLINS: Yes. Done. Thank you, Chris. Next one, Marika.

MARIKA KONINGS: So the next one is 87. There's a footnote in there that says—and you may recall that we had a conversation around what to do with IGOs and whether or not or how they could get accredited. So the wording says—again, I think this is language that the GAC team edited. I think it read slightly different originally following the conversation. So now it says that any country that ratifies an IGO's treaty may accredit that IGO.

ICANN Org understood from the team's previous discussion that IGO accreditation would be conducted by the IGO's host country. Abd we just want to confirm, is everyone fine with how that's worded now? Because indeed, originally the conversation was

around the host country being the country that could accredit an IGO, and this has made it, I think at the suggestion of the GAC team, broader to allow countries that have ratified the treaty to be able to accredit the IGO.

JANIS KARKLINS: I would argue with my now hat of ambassador to the international organizations that the most logical thing would be that the host country would be the one who accredits the NGO, because there is a host country agreement and the host country always has very good knowledge of every international organization that operates on its territory.

So otherwise, there is no consistency, so then we will not know which country accredits which IGO. So for instance, UN, 193 member states all ratified convention or charter. So then UN can be accredited in 193 countries. Doesn't make sense to me. US is a host place and it should provide this service. So I would argue in favor of host country. Amr, please.

AMR ELSADR: Thanks, Janis. And again, this is not a really big deal to me personally, but I'm just thinking, wouldn't the current wording allow for the host country to go ahead and credit the IGO? And if we change it, wouldn't we be restricting the IGO's ability to be accredited to only the host country as opposed to the host country as well as other countries that are ...

JANIS KARKLINS: Where is the point being accredited in three, four, five countries at the same time? You need only once.

AMR ELSADR: Yes, you only need it once, but I'm just thinking if we restrict the IGO's options to only being accredited via its host country, I'm not sure that's helpful to the IGO. I'm thinking if the accreditation is an option—of course, the accreditation only needs to happen once, but if accreditation is an option across all the countries that are signatories to the treaty, then the IGO could have the host country accredited, or any of the other countries. So I'm just wondering what we're actually solving. Thank you.

JANIS KARKLINS: No, we're creating unnecessary confusion. So if system functions if there is one point of reference, and the point of reference would be host country, if you say every country that has ratified the charter of that organization, then in UN case that could be one of 193 countries, or now 195. So, do we really want uncertainty where UN would be accredited? Look, let me make a chair's ruling here—it's not worth spending our time—that IGO should be accredited in the host country, full stop. Any violent disagreement? Chris, please.

CHRIS LEWIS-EVANS: Yeah, sorry. I'm trying to find in our notes the reason behind this. Georgios had a very good reason. It seems unfortunately he's disappeared. I know he's got connection issues at the moment.

So, can I ask that we provide this to the list, the reason why? And failing that, we revert.

JANIS KARKLINS: Look, I'm giving up. This is not worth time, honestly. So let me then make a suggestion. If GAC really insists on that, let's go and then create this uncertainty, but also provide absolute freedom to IGOs. So we will have only two IGOs using SSAD and that is Interpol and Europol. And maybe if there is any other law enforcement organization on other continents. So I don't believe that any other UN organization or any international organization will use SSAD. So it's no issue. Laureen.

LAUREEN KAPIN: I'm just going to suggest that we take a pause, because I'm sure we don't want to create a disadvantageous construction here either. So my suggestion would be to revert to your suggestion and then after conferring, as Chris suggested, if we feel so strongly about it, we will transmit it to the list. That would be my suggestion.

JANIS KARKLINS: Thank you. Would everyone accept that one? Good. Then we have a deal on this particular point. We still have 16 minutes to go.

MARIKA KONINGS: Yeah. Thanks, Janis. the next minutes of items overlay to the logging section, so that's starting with 80. I think we have three

questions in this category. The first one is, if you see up here, under each of the bullets, there are kind of a number of details that are provided for what logging needs to be conducted, but there's nothing there for the identity provider. So I think the question is, does it mean that there are no requirements [raised to the logging for an] entity provider, or is it something that is to be determined in the implementation phase? Or does anyone have any suggestions on what needs to be added?

JANIS KARKLINS: Okay, thank you. So, any opinion that we need for identity provider? Can we say, to be determined in implementation phase? So we can put kind of a footnote that specific requirements will be determined in implementation phase. Objections? Okay. Next one.

MARIKA KONINGS: Yes, so for 81, there's a question here. There's a bullet there that says rates of disclosure and nondisclosure, use of each rationale for nondisclosure, divergence between the disclosure and nondisclosure decisions of a contracted party and the recommendations of the gateway. And the question here is, how do these requirements relate to logging? Are the rates related to disclosure, nondisclosure by requestor, by the contracted party? And finally, the guidance contemplates that rationales would be captured. Have these rationales been compiled somewhere, and does the EPDP team anticipate that the central gateway will be categorizing rationales? Noting that this might be challenging to do. And the suggestion here is, could this be implementation

guidance related to capturing rationales, either in this recommendation or in recommendation 6 if that was the intention?

JANIS KARKLINS: Okay. Thank you. So, question is, can we again refer it to implementation? Any further clarification? Brian.

BRIAN KING: Thanks, Janis. If this is going to complicate things, then my backup answer is we could probably leave it to implementation. But I thought we talked about this the other day where the general category of the denial was sent to the gateway in addition to the specific rationale to the requestor. So if that helps—I thought we came to agreement on that. And if we did, maybe that answers this. Or if not, then I'll withdraw my question or concern. Thanks.

JANIS KARKLINS: Thank you. So, shall we then leave it for implementation? Okay. Decided. Marika.

MARIKA KONINGS: Thanks, Janis. Next one, 82, and again, maybe it's a question for the BC [inaudible] wanted to get a better understanding of the rationale here. I don't know if this is of the nature of a "cannot live with" item, but this was a change that was made originally that says disclosure decision, including a written rationale, must be stored. And I think Registries Stakeholder Group noted that [inaudible] wasn't clear and noted that rationale just by itself

should be sufficient. So I don't know if the BC still would like to hear for the rationale or whether this is one that can stay as is.

JANIS KARKLINS: So the proposal is to keep the original language, disclosure decision including rationale must be stored, without written, because if it is stored, it certainly will not be oral, it will be some kind of documented in a readable way, no? Marika.

MARIKA KONINGS: Yeah, and apologies, I may be getting tired here as well, because I think actually, the issue was not about the written part but I think it was about the notion that rationales might contain personal data and why that should be logged. And I do know that I think we already have a clarification on not including personal data in logs where possible and applying appropriate protections where personal data may be included. So I don't know if that's addressed In that way already or whether there's still a concern, because I think the BC suggested reverting to the original language because to add, I think the Registries Stakeholder Group added as well "Access to such rationale however will be subject to applicable law and shall be strictly limited with due regard to the necessity or review and any and all access itself should be appropriately monitored and logged." So I think that was actually where the BC concern was addressed at. And apologies for getting that wrong the first time around.

JANIS KARKLINS: Okay. Any comments? So there is a proposal then to change to the language which is in the middle section, in the middle column. Matthew, your hand is up.

MATTHEW CROSSMAN: Yeah. Hi. I think just to clarify, I think our concern was that rationale was intended to mean something like an explanation of how we performed the balancing test or the analysis that we did. But I think based on the conversation yesterday we had where rationale really just means reason for decision, I think that probably alleviates our concerns here.

JANIS KARKLINS: Okay. So then we can keep the original language, I understand.

MATTHEW CROSSMAN: Yeah. And I don't recall, did we make the change in the other language to change it to reason for decision rather than rationale just so it's consistent, or did we keep rationale in the other section as well?

JANIS KARKLINS: Marika, please.

MARIKA KONINGS: I believe rationale is in both versions. So the original language is what's on the left. It was changed to what's in the middle. And the BC I think expressed concern about the adding of that second

part. So they were suggesting going back to what's on the left-hand side so it would say disclosure decisions, including a rationale, must be stored. That's it.

MATTHEW CROSSMAN: Yeah, and I think we'd be okay with that, considering the conversation we had yesterday where rationale means something like "did not pass the balancing test" rather than something like an explanation of our analysis.

JANIS KARKLINS: Good, then we have agreement, we revert to the existing test. And I think we have reached the limit of today's meeting. So if Marika starts making mistakes in presenting, that means that all of us, we're tired. We have not reached yet the end of the list. Nevertheless, we have reached significant progress, and all those remaining issues that need to be addressed, I would suggest that you do online further. It is also agreed with the person who will take over responsibilities of managing the process or moderating conversation, Rafik, and so the proposal would be to provide further input to outstanding issues that will be circulated by staff simply for clarity where further inputs are needed by Friday night, and then Marika will explain further calendar of actions that will lead the team to the consideration of the final determination of the final report. So Marika, please, if you could speak on item six.

MARIKA KONINGS: Thanks, Janis. And just to flag under five, the homework is to provide written input and hopefully really be focused on what you

cannot live with, which, what is still outstanding, there are quite a few items that relate to the financial sustainability section. There are some suggestions for changes where some have concerns. So please have another look at that, see if the things you feel really strongly about, provide your input and on that basis, we're hopefully able to make some suggestions for that specific section based on the input provided. And similarly, there are still two items that were outstanding on query policy, so please provide your input there and really focus on, is this still of a "cannot live with" nature that needs to get addressed in the report?

That takes us to next steps. We hope by Friday, close of business, we have your input on those outstanding items. We of course have all the notes from today's meeting and previous meetings. We'll start applying all of those changes to the record and hope to get that to you at the latest by the 5th of July, which is this Sunday.

So then the 6th [to] the 10th of July will be the silent week, so this will be the opportunity for you to review the final draft report and flag any minor edits. This should not be about reopening of previously discussed and addressed issues, although of course we recognize that we still have a handful of open items, but hopefully we'll be able to resolve those online. We'll probably do it in a serious manner as we've done previously where we'll provide you with a PDF with line numbers. So hopefully, it'll be easy for you to identify specifically where there are minor edits that we should fix or inconsistencies or things that we may have overlooked. As you know, there have been many changes that have been considered. We'll probably provide you as well with a

redline version, a clean version. So again, whatever you feel easier to review, but the focus should be on providing very specific identification of where there are still issues.

We'll schedule then a tentative meeting for the 14th of July to address any issues that may require your input and guidance. As we plan to, like we've done for other reviews, have a public page where everyone can file their input. So of course, if groups see anything in there that's being suggested that's of concern, that should be flagged. If not, we'll go ahead and apply minor edits. Following that, we'll distribute the final report and at that point, Rafik will be making a consensus designation on the report that'll probably be informed as well by anything that's flagged after the silent week as "cannot live with" items that may still be present.

Then you'll have an opportunity to respond to those consensus designations and work on any minority statements which are due by the 24th of July, and then at the latest, by the 31st of July, we'd be submitting the final report to the GNSO council. So that's it.

JANIS KARKLINS: Okay. Thank you, Marika. So this is then the moment when I need to thank you for your cooperation, very constructive engagement of course. The circumstances of past four months prevented us to get together, and probably, if we would have had face-to-face meetings, the report might have been better, or at least we would certainly exhaust all issues. But unfortunately, we are in circumstances that only video conferences are at our disposal.

Nevertheless, actually, I am happy that we managed to get almost to the end of the list, and those remaining issues will be dealt online and we have a result. So result is not perfect. Far from that, because it is a compromise. And I know that each of you may have some, I'd say, bad feeling about certain provisions in the recommendations. Nevertheless, you need to probably evaluate whether what we agreed is worth implementing and is better than status quo, or status quo is better than what we agreed.

And you should not take it piecemeal. It is a package. Whether you go with the package or you reject the package. And I would encourage you to think in favor of package because I was the one who said at the beginning that I do not have a dog in the game except one: to succeed. And for me, success is consensus recommendation or report.

With this, once again, thank you very much. It was a nice journey of more than a year. Enjoyed it enormously. Thank you. I see a few hands up. Laureen, Thomas.

LAUREEN KAPIN: Thank you, Janis. You know I always hate to disagree with you, but I'll make an exception. We can't quite finish without giving you a well-deserved thank you. your leadership has been key in helping us get to this point, and we are extraordinarily grateful. I suspect I speak for everyone when I say that, and I have here a certificate that I will transmit to you, suitable for framing [in your] new position, just recognizing the skill and dedication and devotion that you've shown to helping us come to consensus where we can and identify our differences and move forward.

You've been extraordinarily skillful and patient, and we are deeply grateful for all your efforts on our behalf.

JANIS KARKLINS: Thank you, Laureen, for kind words. Thank you. Thomas, you're next.

THOMAS RICKERT: Janis, I just wanted to say thank you for all the sacrifices that you've accepted chairing this group for such a long time. The group has been difficult, the topic has been difficult, and I think your patience has been outstanding, and also, your professional skills in navigating a group.

This would typically be the point in time where we all stand up and give you a big round of applause and have drinks afterwards. I suggest that we all try again to unmute and continue with a little bit of applause. Thanks so much.

JANIS KARKLINS: Thank you, Thomas. You can always send me that bottle of wine that you're referring to. Franck, please.

FRANCK JOURNOUD: Thanks, Janis. I just wanted to join everyone else in thanking you for your leadership, for your incredible dedication over all these months. It wasn't easy, but you've really been putting in an incredible effort with incredible skills. And we can only be immensely grateful for your dedication.

JANIS KARKLINS: Thank you, Franck. So with this, really, I already feel that some wings have started to grow on my back, and [a light member] on my head. So, thank you very much. I really appreciate and wish you luck with the finalization of the process. And remaining to say, this meeting is adjourned. Have a good rest of the day. Bye all.

[BRIAN KING]: Thanks, Janis.

VOLKER GREIMANN: We're envious. You get to go away. We still have to stay.

[END OF TRANSCRIPTION]