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

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TERRI AGNEW: Good morning, good afternoon, and good evening. Welcome to the EPDP Phase 2 team call, taking place on the 14<sup>th</sup> of May, 2020.

In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. If you're only on then telephone, could you please identify yourselves now?

Hearing no one, we have listed apologies from Matthew Crossman (RySG), Julf Helsingius (NCSG), and James Bladel of RrSG. They have formally assigned Beth Bacon, David Cake, and Sarah Wyld as their alternates for this call and any remaining days of absence. All members and alternates will be promoted to panelists for today's meeting. Members and alternates replacing members, when using chat, please select all panelists and attendees in order for everyone to see the chat. Attendees will not have chat access [but can only view] the chat. Alternates not replacing a member are required to rename their line by adding three Z's to the beginning of your name and, at the end in parentheses, your affiliation-alternate, which mean you're

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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 way of the Google link. The link is available in all meeting invites towards the bottom.

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now.

Seeing or hearing no one, if you do need assistance updating your statements of interest, please e-mail the GNSO Secretariat. All documentation 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 this call. As a reminder, those who take part in the ICANN multi-stakeholder process are to comply with the expected standards of behavior.

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

JANIS KARKLINS:

Thank you, Terri. Welcome, everyone, to the 57<sup>th</sup> meeting of the EPDP team. The first question, as usual, is on the confirmation of the agenda. The agenda had been circulated a few days ago. No comments have been received so far. May I assume that this is the agenda we would like to follow today?

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I see no objections, so it's decided.

Point 3: Housekeeping issues. Let me start with one of the issues that has periodically on our agenda. That is the updated timeline and schedule of work. We are still trying to meet the deadline that has been set by the GNSO Council—the 30<sup>th</sup> of June—to finalize work on SSAD. In that vein, staff has prepared and leadership discussed this proposition that the timeline for has been posted in front of you. We clearly understand that this is very, very challenging, but nevertheless, it is my plea to all the team members to make the [inaudible] effort and to cross this last mile with good intentions to finalize the work.

I know that there is a lot of anxiety in the team about a number of issues. One is that very intensive work. Second is that some issues may be left behind and not addressed in SSAD. As you recall, from the very beginning, we separated Priority 1 and Priority 2 issues with the understanding that SSAD is [inaudible] for the team and that Priority 2 issues should be addressed as we go because they're also important but they are not, let's say, critical for the operations of SSAD. So we have still managed to get a Priority 2 issues addendum to the initial report out. We will examine the comments received. Nevertheless, we are realistically looking on the horizon of the 30<sup>th</sup> of June. There may be not a sufficient will to find the solution. That would be up to us to see whether there is another way forward.

With that in mind, I, as you know, engaged with the Chair of the GNSO Council, Keith Drazek, who is with us today as well for this agenda item and this conversation, to see whether there is any way how council could help us with Priority 2 issues or at least

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some of those: those that we would not be able to finalize to the satisfaction of all. I hope that Keith can speak with us on possible ways forward and see whether that would be a comforting message that would help us get moving towards the 30<sup>th</sup> of June deadline.

With this introduction, I would like to invite Keith to take the floor. Keith?

KEITH DRAZEK: Thank you very much, Janis. Can you hear me okay?

JANIS KARKLINS: Yes, we do hear you.

KEITH DRAZEK: Excellent. Thank you. Hello, everybody. Thank you for giving me a few minute here today during your call to discuss the road ahead. Obviously, with the new timeline—the proposed timeline that has been shared with the council and council leadership—it's obviously crunch time for you all as an EPDP team. I just wanted to take a brief moment to thank you all for all of your time and effort and commitment on something that has obviously been complex and challenging during challenging times. So thank you very much in advance for all the work that you will do over the next several weeks to try to bring the EPDP Phase 2 to a successful conclusion with consensus policy recommendations that the council would then consider.

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As Janis noticed, we understand fully that there are the recommendation that you're working on related to the SSAD. And there are other issues that, as Janis noted, are perhaps not on the critical path for the SSAD policy recommendations but are still important, including the topic of data accuracy that we have discussed previously and had communication on, the ongoing question of legal versus natural, the concerns around privacy-proxy implementation, and, importantly, I think, the question of the evolution of the SSAD. I think that fourth bullet is really something that is important as it relates to the SSAD discussion. That's, I think, on the critical path: to figure out how you can come up with recommendations for the evolution of the SSAD that are respectful of GNSO PDP requirements but also provide some predictability as to how the evolution of the SSAD would take place, subject to further input or guidance from data protection authorities, for example.

So I guess I'm here today to say that the GNSO Council has a meeting next week, on the 21<sup>st</sup> of May. We at the council level will be discussing each of these issues in terms of how we might be able to establish a process for dealing with these Priority 2 issues or those issues that are not on the critical path for the SSAD. I want to assure everybody that the GNSO Council will be taking these very seriously and that we will ensure that, in one fashion or another, we will have a venue or a mechanism to address these outstanding issues. I would say that, at this point, the council has not had a discussion in concrete terms of how we might do this. I know some have suggested an EPDP Phase 3. There are other suggestions that each of these items may be dealt with in a range of fashions. So those discussions will be taking place at the

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council level next week on Thursday. I hope to have further input for you or feedback for you as an EPDP team following those discussions. They will be the initial discussions about how the council might handle these, but we recognize that, in order for you to be able to focus on the critical-path items related to the SSAD, there needs to be some clarity around the path forward on the outstanding issues. We take that to heart.

Maybe I'll stop there, Janis, and see if you have any questions for me or if anybody else has questions. I'm happy to field them. Thank you.

JANIS KARKLINS:

Thank you, Keith. Is there anyone who would ask a question to Keith or make any comment?

I see one hand up, and that's from Laureen from the GAC. Laureen, please go ahead.

LAUREEN KAPIN:

Thanks so much for that update, Keith. You had mentioned specifically the possibility of a Phase 3, which I'm sure gives tremors to the hearts of brave men and women everywhere, but I'm wondering if there are any other options that have been discussed or suggested other than a Phase 3.

JANIS KARKLINS:

Thank you. I will take another comment or question from Margie.

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MARGIE MILAM:

Hi. I guess I'm a little confused as to what the urgency is to get the SSAD done now without these critical components. The issue of legal/nature person has been an issue from day one. We've been very patient in waiting for legal analysis and waiting for then opportunity to properly address it. So I'm just confused as to why all of a sudden now we're saying it's not going to be part of our deliverable when, if you take a look at the SSAD as its currently envisioned, there's very little automation that's even accepted at this point across the various stakeholder groups. So I'm just wondering, from the council's perspective, why it's so important to have this SSAD wrapped up by June 30<sup>th</sup> when it's just a partial solution and doesn't really address the issues that we were chartered to address.

JANIS KARKLINS:

Thank you, Margie. Volker, you're next in line.

VOLKER GREIMANN:

Thank you. I'm a bit stumped, actually, by what Margie just said because I thought it was always the intention to have something deliverable as soon as possible and then work out other details later but have something that the community can use and access this so-dearly-needed data that's needed for all these various purposes as soon as possible. Now you're saying, "Let's wait another year. Let's discuss another couple of topics before we have our first output ready at all." I don't buy that. I don't support that. I think we should go ahead as fast as possible ad have the first deliverable of the uncritical issues out so that we have a

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system working that we then can build upon. That is the only way that I concede as working in the future.

I also think that the natural versus legal person issue is still a red herring. We will be debating that for months because that is a topic that will delay us. I don't think that we will end up with any compromise that both sides will be happy with. By putting that back on the table, you're basically setting us up to fail right now. I'd rather have a deliverable that is worthwhile and that works, maybe not for everyone but for a lot of people in the community, and that improves on the status quo as soon as possible. Thank you.

JANIS KARKLINS: Thank you, Volker. Let me take Brian first before going back to Keith. Brian, please?

BRIAN KING: Thanks, Janis. I'd be happy to jump the queue here. I support what Margie said. Yes, we do need something, to Volker's point, and we need something sooner rather than later. We were chartered to handle the question of how to treat legal versus natural persons' data, and we haven't done that. We have been patiently waiting for that conversation. Frankly, I'm not convinced that we can't get to consensus on how to do that. We haven't discussed it. We received legal advice on this with instructions on how contracted parties can do that with several options. I frankly don't know if anybody has read it because we haven't had the opportunity to talk about. So we don't know what each other are



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thinking. I think we're clear, based on the Phase 1 deliberations, that contracted parties have some concerns about legally if or how they could make that distinction and how they could rely on representations made by the registered name holder. But we haven't given it any deep since then, and it's important. I think the last thing I read was that upwards of 40% of all RNH data is legal-person data, which we have no grounds to redact. So it's really an important thing for us to tackle, hopefully sooner rather than later. Thanks.

JANIS KARKLINS: Thank you. Keith?

KEITH DRAZEK: Thank you, Janis. I'll try to take the comments/questions in order. Laureen asked, in reaction to the concept of a Phase 1, are there any other alternatives? I think there are alternatives. By no means are we at the council level discussing or having any sort of movement towards a Phase 3, but I think that is one of the options. On each one of the items that come out as Priority 2 or those that are not on the critical path for the SSAD, we're going to need to look at each one of the items and try to figure out how best to address them and how best to facilitate the process for the community to engage on them. That could be an extension of the group with a new chair. As we all know, Janis is no longer available starting in July. That would take some time: to go through the process of identifying a new chair and getting a new chair up to speed. That, of course, has implications for this current Phase 2, as well, that I think we're all aware of.

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So I think, at the council level, we will be undertaking an effort to look at each one of these issues that are not on the critical path for SSAD and trying to figure out how best to deal with each one of them. Could that be a Phase 3? Yes. Could it be something different? Also yes. I hope that answers the question, Laureen. I don't have any specifics to share there. I think the message here is that the GNSO Council will undertake a careful and cautious review of the issues to try to figure out what the most appropriate way to deal with them might be.

I think, in terms of Margie's question and Brian's comments about legal versus natural, I understand that this has been a topic of discussion since Phase 1. It has been discussed quite extensively: it is an issue that is important to resolve, but it's not, in my view, on the critical path for the development of the SSAD. So I understand it's important, and it is important for the council to figure out how best we can address that question, but I don't see that being resolved within the EPDP team before the end of June. I think the focus now for you all needs to be on delivering the SSAD recommendations and defining the process for the evolution of the SSAD, so, to the extent further guidance is received, there's an opportunity, in a fairly efficient way, initiate further work.

I think that answers the questions that were posed to me. Again, I'm looking at this from a process perspective. The substantive work and the discussions that you all have been having are your discussions, and I don't want to interfere in those. But, from a process perspective, the GNSO Council is looking at this in terms of trying to have a deliverable by the end of June, as we expected

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and agreed to. The urgency for this effort has come largely from those who are concerned about access to data. The SSAD ... We're on a timeline right now in part because of that urgency, in part because of Janis' availability. There's a pretty serious negative impact if we don't deliver by the end of June on these policy recommendations because we would lose Janis, we'd have to find a new chair, and we'd have to get that chair up to speed on a process that's been going on for a year. I just think that that would unnecessarily and unfortunately delay, significantly, the work of the implementation of the SSAD and finalizing those consensus policy recommendations.

So I hope that's helpful. Janis, back to you.

JANIS KARKLINS: Thank you. I do not really want to prolong this conversation, but since I have two hands more, if you could be brief as possible, Alan G and Franck.

ALAN GREENBERG: Thank you very much. Keith, thanks for the comments. Your words are comforting at some level, but I'm afraid I'm still very troubled with the fact that most of the proponents of saying we need to address this issues are not formally represented on council and certainly don't have a vote on council in making the decisions. That is really troublesome because, if you just look at the chat here, you can see that there's a super majority of the council that says, "We did the work already," or, "We don't need to do the work." That's bodes a bad outcome.

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I agree with you, however, that these questions are not critical to starting the development of the SSAD. Getting these policy recommendations out, I think, is important, but they are absolutely critical to the deployment of the SSAD. They need to be addressed in a timely manner. That can't be counted in years with an "S" on it. Regardless of who is going to address the issues or how, we are going to need a very good chair to handle it. It's a contentious issue and it's not something that can be tossed away. So, yes, it's unfortunate that Janis is leaving and we're going to have to replace him, but we're going to replace him anyway, no matter what the mechanism is that we use to decide these issues. Thank you.

JANIS KARKLINS: Thank you, Alan. I can tell you there are no irreplaceable people. That is fair. Franck, please, your turn.

FRANCK JOURNOUD: Thank you, Janis. "There are on irreplaceable people" is what irreplaceable people say.

My comment to Keith is that, yes, we wanted a timely, as-soon-as-possible solution to the issues that the EPDP was chartered for, but we also wanted a meaningful, effective, reasonably effective, or not-to-ineffective solution. I think it's striking that the IPC and the BC and other stakeholders that, as Alan Greenberg just pointed out, are not, in fact, [present] on the GNSO Council are saying, "Wait a minute. We're leaving considerable issues aside." As Brian, my fellow IPC representative, said a few minutes ago,

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maybe as much as 40% of the data we're talking about is not natural-person data. It's legal-person data. If the very people—us—who are pushing to have a solution to these issues are saying that we're not, in fact, going to solve them and we need to and we need to take the time—not years—that will be required to effectively solve them, that should people pause and wonder.

So to have owners of the status quo say, "Oh, but we're solving this. Let's claim victory and go home," feels like the weird answer we're getting whenever war is lasting too long, whenever a pandemic becomes inconvenient. "Let's just pretend that we've solved it and go home."

JANIS KARKLINS: Thank you, Franck. Keith, last word.

KEITH DRAZEK: Thank you very much, Janis. And thanks to Alan and to Franck for the comments.

Alan, I think you made a good point, and I really welcome it: the acknowledgement and recognition that, while something like legal versus natural may not be on the critical path for SSAD, it's still important before it's implemented or as it's being implemented before it's launched/before it's finalized that, I think, it's going to take some time for whatever policy recommendations are approved by you, the EPDP team, approved by the council, and approved by the Board for that implementation phase. So I think there is an opportunity, once these policy recommendations that

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are on the critical path for SSAD are finalized, for that implementation phase where these other issues can be dealt with.

So I take your point. I think it's a very good point. There's an opportunity at the council level for us to figure out how best to address these issues in terms of moving forward in a very timely fashion so they can be addressed prior to, I guess, the launch of the SSAD, for lack of a better word. So I think that's helpful. Look, I understand that particularly the issue of legal versus natural has been a long-discussed issue here. I don't want to get back into the substance of this, but from a council perspective and the process, I think I as the council Chair, working with the leadership team and the rest of the council, will commit to figuring out how to deal with these outstanding issues that are outside the critical path.

I'm just going to wrap up by saying that the key here, I think, is for you as an EPDP team to focus in this crunch time on the critical-path items related to SSAD policy recommendations that can reach consensus and include the evolution of the SSAD as part of that. Then the council will undertake our efforts and our commitment to deal with these other issues and to find a way for the community to best deal with these other issues.

Janis, back to you.

JANIS KARKLINS:

Thank you. Though I have two hands up, I would like to draw a conclusion to this conversation at this stage. We still have a chance to visit it later, closer to the end of our time of activities in June.

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What I would like to suggest is to move on to the next subitem with the understanding that we would have two additional meetings on Tuesday, the 19<sup>th</sup> of May, and Tuesday, the 26<sup>th</sup> of May, prior to going to the final month of consideration of the report—all the revised recommendations. So we are unlucky that the face-to-face meetings are not possible. It would be probably easier to reach final agreements on site, but we have to work as we do online. So, for the moment, it is suggested that we would have the week of the 15<sup>th</sup> of June as the high-intensity week with two-hours meeting every day, trying to end up our work prior to the final consideration and decision on the submission of the reports to the GNSO Council.

So my plea to you is: do your homework. Try to review every document that has been posted and has not been reviewed so that we have views of each of the groups prior to the meeting. I understand that it's time-consuming and demanding, but, please, this is the best way of moving forward. For the Tuesday meetings, it would be good if all groups could provide feedback by Monday, 6:00 P.M. UTC so that there is still a possibility of providing additional input by staff for our consideration on Tuesday.

With this understanding, I would like to move to the next subitem, and that is cost estimate. It's very brief.

Berry, your hand is up, I see.

BERRY COBB:

Thank you, Janis. Just to put a little bit more of a precision on the workplan ahead, of course these topics are set up in a way that

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does require homework, as Janis said, and that we get through these agenda items per the schedule that is laid out here. The good news is that a lot of these topics in our subsequent weeks, minus the financial sustainability, are rather small in terms of the discussion drafts in this format that we've been presenting. So that is a hint of good news. In a short amount of effect, you can see the Thursday, 28<sup>th</sup> of May, is a placeholder. So we do have a little bit of ... I don't want to use the term "slack," because, from a project management standpoint, we don't have slack, but, in terms of trying to be able to have cursory review of the public comments and our discussion on these policy issues, we do have a little bit of spillover or available time for this Thursday, the 28<sup>th</sup> of May.

That said, the high-intensity week for the week of June 15<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, and 18<sup>th</sup> all depends on how much work we get done up above. So, the more we can get done in the month of May, the less requirement we'll have during this high-intensity week. As it looks right now, it would essentially be at least one two-hour meeting every one of those days to work through the final resolution of these policy topics.

One other thing that I'd like to mention here is that, on Tuesday, May 26<sup>th</sup>, there's also a review of the Priority 2 items. I just want to give a small update that we do have all of the public comment review tools posted on the wiki from the addendum report. We also had the discussion documents completed as well. However, we're having a small technical issue to get those uploaded into the Google Docs for your review. But, if your groups do have extra time, there's nothing to prevent you from working ahead through some of these items and reviewing the comments and trying to



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distill down what are the key items that groups can't live with. We're still following the same approach.

I think I'll stop there. Thanks.

JANIS KARKLINS:

Thank you very much, Berry, for these precisions. Let me spend half-a-minute talking about our meeting on Tuesday, where we received a presentation of the cost estimate of SSAD, which was done by ICANN Org. Berry has circulated very succinct answers to questions that have been raised during the meeting. Therefore, I would not like to go into any details but say just two things. One thing is that this cost estimate should be seen as a guiding point for our policy development. This is not a price tag because it has been developed based on certain assumptions. Depending on the final shape of the recommendations, there might be changes in those assumptions. Nevertheless, that gives a certain indication of what we're talking about plus/minus probably about 50%. So that is the one thing.

The second thing is up to us to do: the policy work and deciding what path we would like to pursue in terms of financial elements of the SSAD, whether that would be pay-per-demand or that would be a participation fee and so on. So that was not the intention of the document: to provide any specific input in our thinking. Therefore, [in] the meeting where we will be discussing financial sustainability, we would need to make our best judgement and propose policy recommendations of this kind.

I see Alan's hand is up. Alan, please?

ALAN GREENBERG: Thank you. I just wanted to point out that the high-intensity week is the week before the virtual ICANN meeting. Since the virtual ICANN meeting for many of us is held in the middle of the night, that's going to be effectively two weeks in a row that people are being asked to divert themselves from their normal lives and normal day jobs. That's going to be really, really difficult. Thank you.

JANIS KARKLINS: I understand, Alan, but since we know it already a month in advance, maybe we could all plan our lives around 2:00 P.M. UTC meetings, which is during the workday. So that's all I can say.

ALAN GREENBERG: To be clear, that's the point. People are going to be away from the workday [inaudible] and the ICANN week, and we're asking to take time out of the work day in the week before. That's why it's going to be really difficult for people to participate fully and do homework. Just noting it. Thank you.

JANIS KARKLINS: Thank you. Volker, please?

VOLKER GREIMANN: I fully agree with Alan. The remote ICANN meetings are difficult on all of us. I don't think that adding something to the schedule at normal times as well is a very good solution that's conducive to

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good work being delivered. So we should probably have a look at what our options are and how to best make sure that we can provide some quality work here as well.

JANIS KARKLINS:

Thank you, Alan. Thank you, Volker. I'm very open. If you have any better suggestions, please come forward and we will follow them. So nothing is carved in stone, but we need to get through all the recommendations.

Shall we move now to Subpoint C unless there are questions about the presentation of Tuesday?

I see none. Recommendation 6. Caitlin, if I may ask you to brief us on where we are with Recommendation 6.

CAITLIN TUBERGEN:

Thank you, Janis. As you may remember, we didn't complete the discussion items list for Recommendation 6 last week, but in an effort to move forward, what we did is that support staff went through the remaining questions and took a stab, based on the feedback we received from the group, on answering them.

As you can see, where Berry is highlighting, we've color-coded the updated recommendation to let you know where it specifically has been updated. The yellow highlighted text represents changes as a result of public comments or plenary discussions, whereas the blue text represents just a reorganization of the recommendation, grammatical edits, and readability edits.

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If we can scroll down a little bit, Berry, there is a table at the end of the recommendation which catalogues all of the edits and explains where they came from. For example, if it was in reference to something mentioned in the discussion table, you can go to the discussion table and see exactly which edits were proposed and exactly which concerns they were trying to address. That way, you can keep support staff honest. If you don't agree with the change, we can go ahead and reverse the change.

Similar to how we've been working for the initial report and also the public comment review, at the end of the document, you'll notice those two familiar tables [that you] cannot live with and proposed minor edits. You're welcome to apply them there.

I will note that, as the team is going through the recommendations and all the discussion drafts, support staff has been updating the wiki page with recommendations that have been updated. So we've been doing that regularly. I know there's a lot of homework, but, for anyone who is wanting to work ahead or take a look at how the recommendations are changing as a result of the discussions, you're welcome to go to the wiki page, particularly for those recommendations that you may have had concerns over and see what changes are being made and get a head start.

I think that's all for Recommendation 6, unless anybody has any questions about how we're handling the changes.

JANIS KARKLINS:

Thank you, Caitlin. I see Volker's hand is up. Volker, please?

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VOLKER GREIMANN: I'm a bit confused about that. So this is all changes that were made in public comments but not discussed by the group? I think that's a bit critical. I think any recommendation that's coming from the comments should first be discussed before it's incorporated into the text. I think it would also be helpful if we had the original language side-by-side with the changed language because that would make our reviews much faster and easier to do. Thank you.

JANIS KARKLINS: Thank you, Volker. It's not all. We got through something like twelve out of, what, 19 different topics? And all those that we went through have the input of our discussions. So only the latter part of the table was not discussed.

Marc Anderson, please?

MARC ANDERSON: Thanks, Janis. Can you hear me okay?

JANIS KARKLINS: Yes.

MARC ANDERSON: Great. I guess my request is for staff. It doesn't have to be answered now, but I'm having trouble keeping track of where all the documents are and what document is which. I think it would be useful, at least for me, if staff could provide a little bit of an overview or maybe a summary as to where documents for the public comment review versus where the documents following

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public comment review are kept. I see Berry is throwing some links out, but I'm having trouble finding what's where and the current state of each of these documents. So it'd be helpful if we got a little of explanation as to where we should be looking for each of these and what the state of each of these documents are.

JANIS KARKLINS: Thank you, Marc, for the question. Berry, could you help us out?

BERRY COBB: Thank you, Janis. There's really only two wiki pages that contain all of the information. The first is, as we started from our initial report and we're reviewing each of those public comments by the recommendations that we're loaded within it ... Of course, the PCRT is just a readable version of all of the comments that were submitted as categorized by the level of support.

From there, we went to discussions draft, which are essentially a distillation of those comments and highlighting the key points of concern or questions that staff had in terms of reviewing those comments to help facilitate our discussions that we're having now.

As we review each one of those recommendations, there's a second page, which is this draft final report Phase 2 on the wiki—this particular page.

As we exit out of the complete review of a particular recommendation, staff is taking the input from the call, and Janis is giving the staff the green light to take that information and create a next version of those recommendations.

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As you see on this particular page, each recommendation where there's link will take you to another Google Doc. For example, "Recommendation 6: Contracted Party Authorization" is the one that Caitlin just reviewed through and talks about how we're using this color-coding to highlight the changes from the original text in the initial report and then of course, using the yellow text, which are significant updates, whereas blue text are just minor updates in terms of readability, grammar, and those kinds of aspects.

So it's a fairly short chain of custody. What makes it complicated is the number of recommendations that we're reviewing and that, basically, for each recommendation, there are about four docs: the review tool, the discussion document, and then revised recommendation for import into the draft final report. Thank you.

JANIS KARKLINS: Thank you, Berry. Marc, is it clear now?

MARC ANDERSON: Thanks, Janis. That's very helpful. That was previously not clear to me. So that is helpful. Seeing the links there also helps me know where to look on the wiki page. I had trouble finding stuff there.

Just perhaps another follow-up suggestion. Maybe it would be useful if staff would update the working group on the e-mail list as they work through these documents and post them or update them so we can follow along and try and keep out in front of some of these edits.

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JANIS KARKLINS: Thank you. That may be done, for sure. Berry, please?

BERRY COBB: We'll be happy to send out a notification, but the cadence is pretty much ... My nickname now is called "The Crank" from a project management perspective. You guys don't see it now, but if you paid attention to PDP 3.0, that's where I'm advocating the crank. The crank is the same here as the group. As the group reviews the recommendation, immediately staff is taking the next iteration of that recommendation document and, typically within 24 hours, we're already posting the updates to this draft final report Phase 2. So we're trying to turn these around as expeditiously as possible to allow the represented groups to begin to review those in preparation for when we get to the beginning of June, when we start compiling these all back together into a draft final report and looking at them and reviewing them holistically with the next round of can't-live-with items. Again, we'll happily send out a reminder, but, by 24 hours after the call by which a recommendation is discussed, it will be posted on this page. Thank you.

JANIS KARKLINS: Thank you, Berry. In absence of further requests for the floor, I would like now to move to the next agenda item. That is Recommendation #7 and 16. #7 is authorization automated and #16 is automation.

Let me maybe kickstart this conversation before giving the floor to Caitlin with a few reminders or points. First of all, in the initial



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report, we have two separate recommendations, one dealing with authorization for automated disclosure requests, and then the recommendation on automation. The initial report referred to a few cases of possible automation. There was also a request for further legal guidance. This legal guidance from Bird & Bird was received. The Legal Committee reviewed the legal guidance and provided with EPDP with an update during one of the previous meetings—I think it was the end of April—following which I asked the staff support team to make an attempt to update the recommendation in light of legal guidance that was provided by Bird & Bird as well as comments made during the public comments forum during the EPDP team review. The rewrite combines the two recommendations and also contains some reorganization. The team may want to consider whether two separate recommendations are still the best way of going forward or if there might be one recommendation with the two sub-headings.

I would also like to say that, when I ask staff to do something, I assume ... This is also the case that the staff, who is following our conversation, will use the best judgement in updating the language in line with the EPDP teams' expectations and the input that is received during the deliberation so we then can review those updates and rewrites. Always they are brought back for consideration of the EPDP team. Sometimes it happens that staff does not capture fully what has been discussed. Then the correction is made during the conversation. Therefore, it is a normal part of the process. Also I would like to say that, probably without staff's support, at least from my perspective—it has been very effective and instrumental—we wouldn't be so far as we are here in our deliberations.

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With this, I would like to ask Caitlin maybe to walk us through there. I understand there are seven items that we need to discuss today. Let me ask Caitlin to kickstart the first one. Caitlin, please?

CAITLIN TUBERGEN:

Thank you, Janis. The first cannot-live-with item on the automation recommendation is that, you'll notice, a change from "should" to "must." As noted on the document on the screen, based on the legal memo and the accompanying discussion, support staff was under the impression that groups were comfortable changing this from "should" to "must" in those very limited cases, but [that] the legal memo said would not have a significant effect on the data subject.

That said, based on the feedback we received from the team, that was not the understanding. Therefore, if there's no agreement on "must," we can definitely change this back to "should."

I just did want to flag one item, and that is, if the policy recommendation has this as a "should," then the mechanism would not be able to change this to a "must." It could develop the tables and provide further safeguards, but it wouldn't be able to change this from a "should" to a "must." So we just want to flag that before updating the recommendation to a "should."

JANIS KARKLINS:

Thank you very much. I have two hands up for the moment: Hadia, followed by Brian.

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HADIA ELMINIAWI: Thank you, Caitlin, and thank you, Janis. My question is actually to those who do not agree with “must.” We did have legal advice that, in two particular cases, automation is possible. So why wouldn’t we have “must”? So I would like to know the reason for that. Thank you.

JANIS KARKLINS: Thank you, Hadia. Brian?

BRIAN KING: Thanks, Janis. Same question.

JANIS KARKLINS: Bird & Bird, in its table, suggested that there are cases when automation would be possible. There are cases out of those that we provided them where automation may not be possible. Then there are some cases where further information is needed to make a final determination. Based on that understanding, I think staff made the proposed changes.

But, Caitlin, maybe you can answer the question that Hadia and Brian raised.

CAITLIN TUBERGEN: Thank you, Janis. I think the question was raised to the EPDP team, not the staff support team.

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JANIS KARKLINS:                   Okay. I have Alan.

ALAN GREENBERG:               Thank you. I also don't understand why it shouldn't be "must." Now, I'll add a qualifier to that. Like any other rule associated with contracted party obligation, if there is a legal reason why the contracted party believes they cannot comply, there are provisions for handling that. If the contracted party gets the request from the SSAD to release information, and it feels there is a compelling legal reason why it cannot do that, then they cannot do it and they have a case they have to be able to make to Contractual Compliance as to why they are not complying in a particular case. So that escape is there for anything that is in the various contracts, and it would apply here as well. So there is an escape hatch for extreme circumstances. Therefore, I think it is reasonable to put the "must" in the contract, the "must" in this recommendation, as use the extraordinary-circumstances clauses that are available to contracted parties to handle the edge cases. Thank you.

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

VOLKER GREIMANN:               In response to Alan, these clauses are very near unusable. We've experienced that when we needed a different policy or different way of doing data retention. That took us over a year to get the data process started. it's just not something that we are enjoying. That's not a process that we are very happy with using because

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it's basically not helping us. Having to use that for a single case or a single subject in this process would mean that we would have to get legal advice from a lawyer that ICANN likes. It's just not a workable process.

So there should be a "should here," and that indicates basically to all contracted parties what the expectation is. But having a "must" here is going too far because it just takes away all our ability to comply with local law in a way that is workable. Thank you.

JANIS KARKLINS: Thank you, Volker. Alan?

ALAN WOODS: Thank you. Again, this is one of those instances—Volker put it well in that particular instance as well about the difficulties of what Alan was saying there as well ... This is a question that I posed way, way back in L.A. and which I posed post-that as well. It always comes down to this question of, when the categories of automation were first raised, there was an agreement here. We never answered the question. The agreement was that automation is a great idea and it's wonderful for us to put these into the actual recommendation as long as it is at the option of the contracted party at that point. We can suggest these automations and that we can say, "These are available and can do be done via the SSAD at the option of the contracted party, if they're willing to take that risk as the controller." That was the question.

We would have saved months—maybe not; that's a bit of an exaggeration—but definitely weeks of discussion on this if we had

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just always just answered that question at the beginning and saying, “Is this about having categories of automation that are definitely insertable into the SSAD but are still at the option of the contracted party?” There’s still SLAs involved, are there not? There are still all these things. At this particular point in time, it’s getting patently ridiculously because this is just about people wanting instantaneous access to everything now. At the moment, coming to a reasonable consensus on this would be: make it at the option of the controller but allow the SSAD to take into account this. I think that’s where we were, and that’s why we’re pushing back hard on this: it was never a “must.” It was always a “may.” And that was on the record.

JANIS KARKLINS: Thank you. Mark Sv, please?

MARK SVANCAREK: Thank you. I just wanted to learn more about something that Volker was saying because I hadn’t realized that the exception process had been so very difficult. Are you saying that, if we could resolve that exception process so that it would be more practical for you to—what’s the word Alan used? A safety recorder or something like that. If that were a more practical process, would it be more acceptable to contracted parties to make some of these uses cases “musts” as opposed to “shoulds” or “mays”? Or is that just one detail on top of others that would prevent you from doing it? Thanks.

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VOLKER GREIMANN: Just coming back to this, it's a major part, but Alan also indicated the other reasons why we are very reluctant to suddenly move back on what was originally agreed to. So, yes, we would like to have a more workable process there, but our experiences in the past of trying to figure out ways to make processes that exist more workable in a consensus way or in a discussion with ICANN have always been very negative. So, if there's a way to make this magically happen, then, yes, give it to me. But this won't all solve the problems. But it's a factor, yes.

JANIS KARKLINS: Thank you. Amr?

Amr, we do not hear you.

AMR ELSADR: Oh, [sorry]. I didn't hear you call on me. As a disclaimer, to be honest, I'm not clear, on the context, on which "may" versus "must" we're talking about, but I wanted to remind folks that the first legal memo we got from Bird & Bird—I think this was reiterated in the second one we received in April—was received, I think, in September of last year. Bird & Bird listed three bullets where Article 22 would not be applicable to the processing. One of those was necessary for the performance of a contract. We're discussing 61F here, so that isn't the case. The other two were authorization via a union or member state of the European Union and laws from that member state. The third was based on the data subject's explicit consent. Bird & Bird went on to explain why these are not suitable in the SSAD context.

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If I recall correctly as well, the second legal memo, which we received last month, which did a breakdown of each of the use cases that Mark Svancarek had come up with, I think I recall only one, should we call it, sub-use case where Bird & Bird said might be permissible. This was where the data subject itself would be involved in a complaint where its data was being processed in a way that was in conflict with their protection regulation. To my knowledge, this is not a feature of the SSAD that we're talking about, so I'm a bit confused because a few of the members of this team earlier said that Bird & Bird said there were some use cases where full automation would be okay.

Again, I'm not sure what we're talking about with "may" versus "must" here, or "should" versus "must," but I just wanted to point these things out and would be glad to hear responses to them. Thank you.

JANIS KARKLINS:

We're here talking about that, in those identified ten cases that we put forward for Bird & Bird, where Bird & Bird answered that it would be legally permissible, the question is whether, in those cases where it is legally permissible and then, of course, technically feasible, we would use "must" or we would use "may." This is basically the question that we need to resolve here—if that is legally permissible, if that is technically possible, whether that must be automated in SSAD, taking into account that it should be also scaled and work properly, or it may be. So that's the crux of the issue.



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AMR ELSADR: Thanks, Janis. In that case, then I would say that, for almost all the use cases, except for the one that I pointed out, I think Bird & Bird came back and said that automation should not be permissible. I think it even went so far as to point out the use case where contracted parties and law enforcement [were] in the same jurisdiction. Even in that case, they said that there would need to be a meaningful manual process of the disclosure request. Thank you.

JANIS KARKLINS: Bird & Bird came with the two cases where they thought that it would be legally permissible. Then there were, I think, four or five cases where additional information would be required prior to when the final determination could be done. Then there were a few cases, including one you mentioned on law enforcement and local jurisdiction, where they said the opposite [of] what we thought would be legally permissible.

Stephanie, please?

STEPHANIE PERRIN: Thank you. I do regret that my colleague, Milton Mueller, is not here because this particular instance we're talking about is something that he warned about when we went for the use cases and in all discussion on automation. So only a fool attempts to speak for Milton. I'm speaking for myself here.

However, there isn't a gigantic difference between something that is legally permissible, which nobody ever argued about really, that we now have ratification from Bird & Bird [on] that, indeed, these

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particular disclosures could be automated, but that does not mean that it automatically changes the policy to a “must be automated.” You need to do a decent risk assessment here.

I’ll bring up the points I made earlier. The folks that are sitting on this EPDP are comfortable in English. They understand the document that we’re coming up with. They might not expand that “must” over to other areas outside of the use case, but there is a significant risk to the rights of the registered name holder by putting a “must” in a policy. One of our goals is to continue to defend the rights of the individual in the protection of their data. If you don’t like that goal, then how about legal liability? There is a big risk when you start putting a “must” in the policy here just because it is permissible in some instances.

So I would like to push back pretty firmly on this. You can’t change it. Thank you.

JANIS KARKLINS: Thank you. Margie?

MARGIE MILAM: There’s so many things to say here. Honestly, the recollection of how we got here is markedly different from our perspective. Remember where we started. We started with a centralized system. The only reason that we were even willing to consider decentralized because we believed that there would be reasonable use cases that would be automated. Well, by changing it from “must” to “should,” it completely reverses the consensus that we reached early on in Phase 2.

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The thing that I think people are confused about is we're not talking about the cases where Bird & Bird said there was some risk. We're only talking about the cases where Bird & Bird said that it was fine. Throughout this PDP, we've been told that we need to follow the Bird & Bird advice. And we've certainly done that. We've given up on issues that we felt were perfectly valid under GDPR because of what Bird & Bird memos, and we're asking our colleagues to do the same. So, when people are talking about things like opting in and such, I totally get it for the things that aren't legally clear, but the memos from Bird & Bird are legally clear. And those need to remain as "musts" or there's simply no benefit to this system. So the way I look at this is we're building a system that just isn't going to be helpful for the intended purposes if we don't even have a "must" instead of a "should."

My final point is that I don't believe that ICANN Compliance is willing to enforce something that has a "should," so, effectively, if it we switch it from "must" to "should," there will be no Compliance activity. That's simply not a situation that our stakeholder group can support.

JANIS KARKLINS: Thank you, Margie. Mark Sv?

MARK SVANCAREK: Thanks. Now that we have additional information, I think it's okay to reconsider whether our original position that everything should be opt-in, which, as Alan, said, where we started in L.A., if I recall correctly. I always go back to the use case—I think it's Use Case

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3; pardon me if I'm wrong—which is that, if you know there's no personal data in the record and it hasn't changed, the disclosure should be automated. I think that one should be a "must." I think everybody should be able to agree to that one. That's not about risk at all. That's something that could be coordinated in some centralized fashion, if that's how you want to implement it, or it could be implemented by individual contracted parties. That one is clearly not about risk at all. If you know for a fact, however you know it, that there's no personal data in the record, just release it automatically to subsequent requesters.

I do think that there are probably more use cases that could be safely turned into a "must." That wasn't where we started this conversation. That's okay. Now that we have additional information, I think we should reconsider. Again, I will always put up that use case as one I would really like to see become a "must." That would be very helpful [inaudible]. Thanks.

JANIS KARKLINS:

Okay. So we heard each other. Certainly, there I no consensus on this. It sounded to me a little bit like discussion in the U.N.: "should" versus "must." So I'm thinking of if there is any way forward in what we could do in order simply to strengthen the understanding. One way would be to think about a clarification statement with a footnote or something like that. Or maybe now restating and then listening to each other's argument on whether, in those cases where it is legally permissible, we should "must" as a matter of principle. So if there is any forward that team members would like to indicate ...

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Brian, do you have a solution?

BRIAN KING:

Thanks, Janis. Well, it's not my solution, but I think we may have come to one as a team. I think it may have taken us some time, but it seems that we've clarified, based on what I've seen recently in the chat, that we're not talking about all cases here but for the cases that Bird & Bird have said there's no risk—for example, where there is no personal data—that we can use “must” language for those. I think, if that's what we can get consensus on—currently it seems that we have that consensus—perhaps we note that and move on. Thanks.

JANIS KARKLINS:

Thank you. Can we use [this] formulation in the recommendation as a policy matter, which would allow, for this team, the evolutionary mechanism to consider the new automation cases when the legal advice is received? So, could we put something along the lines of, when the legal authoritative legal opinion is received on different cases (and if that is legally permissible), these cases must be automated? Something along those lines very explicitly. Then it would allow the mechanism to continue to develop those cases also based on experience. The formulation would allow then to put those cases which [inaudible] is legally permissible in that bucket without changing a policy. Something along those lines. Could we think in that direction? Any reaction?

Brian?

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BRIAN KING: Thanks, Janis. Yes, I think that's exactly what we're looking for. Thanks.

JANIS KARKLINS: Alan?

ALAN GREENBERG: Thank you. My concern is, how do we actually do that? Once we don't have a budget for legal advice anymore, does that mean external legal advice? Is ICANN's legal counsel sufficient? Whose opinion are we going to trust, and how does the ongoing evolution mechanism access that kind of thing? I don't understand how it's implementable. It's a nice set of words, and we know, in many cases, lawyers will not give a definitive yes/no answer. Thank you.

JANIS KARKLINS: This is exactly what diplomats do. They formulate the way that allows [them] to move forward. So the implementation is figured out at a later stage.

But, again, the formulation needs to be encompassing the principle. The principle is that, if the authoritative legal opinion is received on specific automation cases, these cases must be automated. We can imagine that, at one point, the European data protection authority will provide some input. We do now know, but we can not exclude it. If there will be a question, they may answer. If they say, "Yes, from our perspective, that is legally permissible," then kicks in this policy decision that must be automated. But,

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without authoritative legal opinion, these cases may be automated at the risk of the contracted party.

Laureen?

LAUREEN KAPIN:

I actually do like your proposal, Janis. I think, in terms of the issue identified about getting appropriate legal guidance, which could compromise both legal advice or a definitive precedent from the European Data Protection Board or some other binding authority, that actually points to something that should be folded into our evolution mechanism: there should be a budget provided for continuing legal advice, and, I would say, likely from the same legal firm for consistency, although that's just an idea. I think that that's an important issue and we need to have that flexibility so things aren't in stasis. But, certainly, as a minimum level, as a floor, not a ceiling, we should start with these use cases for automation that have been given a green light by the law firm.

JANIS KARKLINS:

Okay. So you see on the screen what is currently proposed. Basically it is more or less what I said—maybe better formulated.

Stephanie?

STEPHANIE PERRIN:

Thank you. I'm a little confused. Who's going to take on the liability from the shoulders of the co-controllers here? Is that going to be ICANN?

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I'd just like to reiterate that a policy is an awful more than the legal guidance. Don't get me wrong. I wish we had legal guidance at the beginning. I wish we had a decent budget for it. I wish we had been able to ask all the questions and not just specific ones.

However, just because something is theoretically possible doesn't mean it's practically doable. That is one of the problems with automation. So who's going to bear that risk? You can't ask the European Data Protection Board to take on your risk for you.

JANIS KARKLINS:

I think we have discussed in Los Angeles—you were present as well—that there may be situation when contracted parties are overwhelmed with the number of requests and all of them are of a similar type and that they themselves would like to go the way of automation, whether that is legally permissible or not, simply to get through the number of requests. Here we're talking, very clearly, that the legal guidance suggests that there is no risk involved. So, as a result, risk is not a factor. In the evolutionary mechanism that is proposed, every decision will be taken by consensual agreement of all members of that mechanism. As a result, there is no specific risk involved. So, if everyone is in agreement that that may be automated, it will be.

Alan Greenberg, followed by Alan Woods.

ALAN GREENBERG:

Thank you. Janis, I like your proposal and I like the words that Laureen said, but what you just mentioned now is probably then problem: we're going to need agreement and everyone has to



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agree. Currently, as Stephanie pointed out, we have not been able to ask legal questions on some things because not everyone agreed to even ask the question. If you don't ask the question, you can't get a ruling.

I'll use the example I've raised before of giving information out to Contractual Compliance in pursuit of a Contractual Compliance action. Contracted parties must comply with that according to the current rules, and yet we couldn't get agreement to even consider that for an automation.

So I wonder about—I'm tempted to use the words "good will"—how we're going to move forward when we have situations like that that are relatively clean but we can't get agreement on and we can't even get agreement to ask a legal question about it. So I'm a little bit at a loss. Thank you.

JANIS KARKLINS:

If you have differences of opinion, you try to bridge them by providing a compromised solution. A compromise is never ideal, so that is something we need to understand. The SSAD is far from ideal because SSAD, as it is designed now, is a compromise to get every party on board and agree on that. So we need to accept them. All I'm doing is trying to find that compromise that would allow us to move forward because also I'm conscious of time. There are 35 minutes remaining during this call.

Volker, please? Do you have a silver bullet?

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**VOLKER GREIMANN:** Yes. Maybe I can find what Alan lost there. Yes, we do have an obligation to provide certain information to Contractual Compliance, but that does not necessarily extend to personal information. We are quite able to redact that information from our response to Compliance, and we regularly do. If personal information is included and ICANN is unable to guarantee the security of it, which, so far, they have not been able to, then they are perfectly fine with accepting redacted data. Therefore, the argument that that [is an] automation case simply does not fly because it doesn't match the actual facts. Thank you.

**JANIS KARKLINS:** Okay. So what are we going to do? Shall we try to go the way I proposed, which is actually now reflected on the screen? If, Berry, you could highlight the whole paragraph, this is the best we could.

So no hands up.

Okay, Sarah is asking to discuss in groups. I assume that you have a way to discuss. I can break for five minutes. Okay, let's break for three minutes. Terri, please, if you could check three minutes.

**TERRI AGNEW:** Perfect. Timer started. Thank you.

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JANIS KARKLINS: For those who do not understand what we're thinking, Sarah asked for time to discuss the highlighted part of the text [and] whether contracted parties could agree or not.

TERRI AGNEW: Okay, Janis, three minutes is up.

JANIS KARKLINS: Thank you. Alan, your hand is up.

ALAN GREENBERG: Thank you. I'm going to go back to what I started this conversation with. When I mentioned that contracted parties have an option to not disclose in a particular case, I was not referring to what Volker was talking about—that is, asking for a waiver from an overall policy—which is what Volker was referring to in terms of retention policy. That is not what I was talking about. I wasn't asking for a contracted party to ask for a waiver from this "must" in all cases. I was saying that, on a case-by-case basis, if they choose not to release the information and if there is a complaint to Compliance that they are in violation, then they have a viable excuse [and] could [document] why they are not releasing the information. That is the case I was talking about, not an overall waiver. I believe that applies to any sort of action. If Compliance calls you on something and you can explain why you did it for a good reason, that's not the same as an overall waiver that Volker is referring to. I think that is the out that gives contracted parties the ability of making a decision on a case-by-case basis, should they believe it's important. Thank you.

JANIS KARKLINS: Thank you, Alan. Thomas?

THOMAS RICKERT: Thanks very much, Janis. Hi, everybody. Maybe a way forward could be to make it not “must,” just to avoid that word, which seems to be very contentious, because it also suggests that, if something goes wrong, then ICANN Compliance could still contractually force a contracted party to disclose. But why don’t we make it a best practice: to automatically disclose? Which basically means that following the best practice would be the requirement for contracted parties. So that could be the default, but, if there’s an issue, the contracted party could explain why it does not follow this industry best-practice. Then it needs to be reviewed. We can discuss exactly in what shape or form. Then we would have something which is slightly less contagious than “must,” but still we would have the best practice of making the disclosure the default.

TERRI AGNEW: Janis, it’s Terri. We’re unable to hear you.

JANIS KARKLINS: Oops. Sorry, I muted myself. It seems that the best practice equals “should” or even weakens that notion.

Lewis-Evans? Chris, please go ahead.

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CHRIS LEWIS-EVANS: Thank you, Janis. Sorry. Just for clarity here, I've been trying to get my head around—there's lots of things that have been thrown up—where we are now with only half-an-hour left. We will still be discussing the rest of this recommendation? Because there's lots of parts here that I think we had issues with because I know a lot has been thrown up. So that one is on clarity.

I agree with not particularly liking best practice. It's [in fact, a] weaker "should." Thank you.

JANIS KARKLINS: Thank you. Volker?

VOLKER GREIMANN: I think "should" [or] "best practice" would probably be a way forwards. I know that, with the chat, some want enforceability, but that is exactly the reason why we cannot have a "must" in there: if the default is that, if we are not complying with that "must" we are facing enforcement by Compliance and then have to argue our way out of [that] path forward, that simply does not work. That simply exposes us to too much risk and therefore is not acceptable to us.

I think we are perfectly happy with automating everything we can, but prescribing what we have to automate on issues that have not been fully baked out is something that we cannot agree to. "Best practice" or "should" we can agree to because that is something that we can probably make work in some form or shape. But, if everything we do is just leading to another Compliance action, then they're sometimes as bendable as a brick and therefore

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that's something that we simply do not want to live with. Thank you.

JANIS KARKLINS: Thank you. So we haven't gotten any closer to a solution. If there is a disagreement, then, of course, I do not know how that works in the community. So, in this way, I don't think that we have an option of "agree to disagree," which we would do normally in diplomatic circles, and then each go our own way without arguing any further.

Margie and the Mark Sv.

MARGIE MILAM: "Best practices" is simply a non-started for us. It's not even within scope of the PDP to talk about best practices. The whole point of a PDP is to create binding consensus policies that are enforceable under contracts. So this is a marked departure from what we are doing here as an EPDP, and I would suggest that we take a different approach, perhaps identifying what are the circumstances where there would be some sort of concern and deal with it on an exception basis rather than a blanket refusal to have enforceable contract language.

JANIS KARKLINS: Thank you. Mark Sv?

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MARK SVACAREK: Thanks. Margie stole my point. If we never have anything that ever leads to a Compliance action, then it's pointless to do the whole thing. You might as well strike all the language out and deal with the optics of that situation.

So working towards figuring out what are the specific cases would be the way to go. I know it's a lot of work and things we haven't necessarily talked about or we're rehashing things that we have already talked about, but we already know that, if it's a "should," it'll just be ignored in the implementation. If it's a "may," it'll automatically be ignored in implementation. Even if it weren't, it would be Compliance-enforceable. I did think that that was the point of a PDP: to get binding agreements from all parties. So working on specificity is really the only way forward. If this is too broad, then make it more narrow or break it down. [By breaking it down], that's a lot more work. Thank you.

JANIS KARKLINS: Brian?

BRIAN KING: Thanks, Janis. I agree that we need "must something." Without a "must," everything is voluntary and we don't need ICANN for that. We don't need a policy. So we need "must something."

I would like to understand better, I think, what the concerns are from folks that see risk here and have concerns. I genuinely would like to understand. I haven't yet. I thought that the language here about requiring these to be legally permissible certainly, in my view, was intended to address any concerns about remaining risk.

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So, if I could call on my colleagues to help me understand what the remaining risk is, I'd be happy to work on some language here that lets us have a "must." I think we were on to something when we were talking about carving out or addressing specifically any concerns that still exist. Thanks.

JANIS KARKLINS:

Thank you, Brian. I do not have further requests, and certainly we need to move on this.

So what I would suggest is the following. Again, of course, that will not be my wallet with the 4% [that] is in it. I would be taking a risk. But, for me, if there is a legal certainty that has not entail any risk, then, as a policy matter, that would be "must."

As Thomas suggested, there may be situations where contracted parties may argue against "must," but that would be very clearly defined and there should be a possibility of intervention by Compliance. Then maybe we could think of a footnote or clarification based on what Thomas said: if the default position is "must," [and] "best practice" consideration in the industry needs to be explained, then that explanation could be brought to Compliance. If Compliance agrees, then the contracted party must implement the policy. So maybe we could think of this way and move on to the next point. If you have any suggestions that you may want to make, please do it online. I would see that staff would maintain the current language and would think about a possible footnote that would comfort contracted parties in very specific circumstances.



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With this, I would suggest that we move to the second issue that we need to discuss today. I'd like Caitlin to introduce the issue.

CAITLIN TUBERGEN: Thank you, Janis. If I could ask Berry to scroll up on the right-hand document, to the top of Recommendation 16, I wanted to note that there was some confusion about how this recommendation was written in terms of what automation means, where it comes to the receipt of authentication and transmission of SSAD requests. Specifically, the issue was that it's confusing about what applies to whom. So, if the EPDP team could agree, support staff could take another shot at rewriting this. I think part of the confusion is that we tried to combine two recommendations—Recommendations 7 and 16—and that led to a little bit of confusion. But we could take another stab at trying to make it more clear instead of having that discussion now unless anyone has concerns about that proposal.

JANIS KARKLINS: Thank you, Caitlin. Anyone who would oppose staff trying to clarify what automation means in the context of SSAD?

Okay. No ... Marc Anderson, please?

MARC ANDERSON: Thanks, Janis. I'm thinking about that question. Does staff feel like they understand what the working group means when we talk about automation in this context? What I'm trying to get to is I'm not sure that everybody in the working group has the same idea in their minds when they talk about automation in this context.

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Maybe I'm wrong. So I guess my question is for staff: if they feel comfortable that they have enough information on what the working group means here to be able to take that.

JANIS KARKLINS: Thank you. Brian, your hand was up and then disappeared.

BRIAN KING: Thanks, Janis. I agree with Marc. I think we should be careful with that definition. We agreed with the registrars' comment in the chart below what we're currently seeing on the screen on Berry's right-hand side. I just think we need to be careful that we're not making this more difficult for ourselves if we're not understanding each other's understanding of the word "automation" correctly. So I just want to note that there might be some misunderstanding there. Thanks.

JANIS KARKLINS: Okay. Caitlin, can you answer Marc's question?

CAITLIN TUBERGEN: Thanks, Janis. I think what we were trying to get at is that we would have a description of what different aspects of automation are from our understanding. However, if there's confusion among the group, then any additional guidance could be helpful in that formulation. But, alternatively, we could take a shot at trying to make that more clear based on previous discussions. Then the group could take a look and see if they agree or not.

JANIS KARKLINS: Thank you. I think we have no choice but to follow the staff suggestion for the moment. There is some traffic in the chat. Staff can also take that into account.

Let me go to Item 3. Caitlin, please?

CAITLIN TUBERGEN: Thank you, Janis. Similar to Item 2, there seems to be some confusion because there is a residual part of a leftover recommendation that may have caused this confusion. Some of it doesn't belong in the recommendation. So staff can take a better stab at reorganizing this to make it less confusing.

JANIS KARKLINS: Okay. So let's entrust staff to make this work. I understand that that will be, as Berry said at the beginning of the meeting, done in the next 24 hours. So then we can review while it's still fresh in our minds.

Item 4.

CAITLIN TUBERGEN: Thanks, Janis. Item 4 is in reference to Footnote 1 about who determines what is commercially feasible. That might be that we can clarify that more in a footnote. We—sorry, the text is moving ... In the footnote, it notes that the financial feasibility of automation will be addressed by ICANN Org and the implementation review team and subsequently by the mechanism

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for the evolution of SSAD. We wanted to note that this was something that was included in the initial report and hasn't changed. Either way, if it's ICANN with the implementation review team or the mechanism, the registrars would be a part of that. So we're wondering if they could provide some guidance as to why that's a cannot-live-with item.

JANIS KARKLINS:

Thank you. Anyone from the registry community who would like to speak on this topic? Or from the GAC, who also indicated [inaudible]?

Chris, go ahead.

CHRIS LEWIS-EVANS:

Thanks, Janis. I think all comments were based on the first use of the commercially feasible, where it was related to the automation of the input of the request effectively. So that was the central-gateway-side automation. Realistically, if it's not commercially feasible, then we're not going to have an SSAD. That was our view. So we didn't really see it being necessarily in that section. So I think we were just saying it should be removed from there, but, if that's getting all reworded, we'll have to have a look at that then. Thank you.

JANIS KARKLINS:

Thank you. Volker?

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**VOLKER GREIMANN:** I'm not from either of those groups, but I can imagine where this is coming from. "Commercially feasible" is probably a term that is very much relative in the eye of the beholder. So whether something is commercially feasible or not probably depends on who's making that determination. If the contracted parties are looking at it, it's probably going to be a different determination as opposed to if someone who is looking at the data is making that. Therefore, I think the question is, is this yet-undefined body the right instrument to make that determination of commercial feasibility, or should there be a more objective or neutral process that has to be defined to make that determination? Like I said, it's not our comment, but I can relate to some form.

**JANIS KARKLINS:** Thank you. Brian?

**BRIAN KING:** Thanks, Janis. As a point of order, I've noticed in the SSAC comment that they pointed out that financial sustainability or financial feasibility is not in our charter. I took a look and I didn't see it in there anywhere either. I don't know that it's not. I took a brief look. We have a lot of important work to do. Certainly, I think it makes sense, just generally speaking, to think about the financial feasibility of this, but I don't want to waste time on this if this is not work that we're not chartered to do. So, if we could think about that and maybe ask staff for some review or guidance on if this is even something that we should look at further in light of the SSAC advice, that would be helpful. Thank you.

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JANIS KARKLINS:

Thank you. I have been advised that the financial issues or budgetary impact is part of the GNSO PDP manual, and the budgetary impact of recommendations is one of the aspects the working group is expected to consider. Again, we're not talking about the price tag here. We're talking about principles. Therefore, this financial sustainability is part of the policy development, whether somebody will pay for it or the system should recover the costs and so on. So whether that is financially feasible is, I think, either the task of the GNSO Council or, certainly, the task of the ICANN Board to determine because they are the ones who make these systemic determinations. They may come to the conclusion that the cost to develop the system and operate the system is unreasonably high, but they come to the conclusion that, even though the costs reasonably high, it is part of ICANN's mission, and that function should be performed despite the costs and they'd see whether there any ways for how to make the system more, let's say, efficient and cost-effective.

So up to us is simply to understand what we're talking about and what would be policy recommendations that we would want to put forward for consideration by the council. As a result, I think it is not our direct task to count pennies, but we need to see a bigger picture and then put forward policy proposals related to financial sustainability.

I have Alan's hand up—Volker, your hand is new or old?

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VOLKER GREIMANN: New.

JANIS KARKLINS: New. Then you are first, and then Alan after you.

VOLKER GREIMANN: Thank you. You are absolutely right, Janis. I do disagree with the SSAD comment that financial sustainability is not part of our mission. I think it very much is. We should consider whether the thing that we're building is even remotely financeable and can be made in a way that it's sustainable. Therefore, luckily, just because SSAC said so is not a conversation stopper yet. I agree with everything you said, Janis. Thank you.

JANIS KARKLINS: Thank you, Volker. Alan?

ALAN WOODS: Thank you, Janis. I agree with everything you said as well. It just seems like a common-sense approach. Thank you.

Just in relation to the registry comment there, it's not one of the ones that I myself wrote, so it's probably not the best place to discuss that. But I think the explanation provided, as is written there, I can't really see a major issue with. [I think I'm overruled] by my teammates, but, as far as I can tell, I think that actually answered it. So thank you.

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JANIS KARKLINS: Thank you. I think that then we have found a solution for here. We may want to reformulate it once we will examine the financial feasibility thing, but, in principle, we're done with this.

Now we can move to the next item, which is Item 5. Caitlin, please?

CAITLIN TUBERGEN: Thank you, Janis. This was an item put forward by the IPC, noting that use cases referenced in the recommendation should also include requests for RDS data [that] does not contain non-personal data per the legal advice. We note that the support team overlooked this use case in the rewrite, but we can go ahead and add that.

JANIS KARKLINS: Okay. Any issues with the explanation of staff?

I see none, so then staff will add the missing parts.

Now Item 6.

CAITLIN TUBERGEN: Thank you, Janis. For Item 6, this was a concern expressed by GAC, noting in the document that it says, "the following types of disclosure requests." GAC would like us to add "at least the following types of disclosure requests."



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JANIS KARKLINS: Can we see where that is on the screen, in the text, Berry?

CAITLIN TUBERGEN: Janis, it's right under the implementation guidance. "Per the legal advice obtained here, the EPDP team recommends that the following types of disclosure requests"—yes, right there. Thanks, Berry.

JANIS KARKLINS: So the GAC is asking to insert "at least." Where?

CAITLIN TUBERGEN: I think they want it to be "recommends that at least the following types of disclosure request must ..."

JANIS KARKLINS: Okay. Any issues with that?

Laureen, your hand is up, but you will argue in favor of your proposal.

LAUREEN KAPIN: Of course I will, but I also just want to add—I don't know if we're going to be able to get up to it—that the crossing out of "requests from law enforcement in the same jurisdiction" is very problematic to us as well. So perhaps we can tee that up for discussion next week because we think that was crossed out based on a misunderstanding.

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JANIS KARKLINS: No, that was crossed out because of the Bird & Bird legal advice.

LAUREEN KAPIN: Right, which we think actually is implying that these requests are made under 6F and require a balancing test when, in fact, requests from the same jurisdiction would be under 6E, which does not require a balancing test.

JANIS KARKLINS: Okay. So staff noted that, but let me see, on Item 6, that “at least” is added after that in the line which is ... Now Berry is typing in.

Any issue with that?

It could be that it’s the wrong place. “recommends that at least”—right there; that “at least the following types.”

VOLKER GREIMANN: Contracted parties [are okay].

JANIS KARKLINS: Volker?

VOLKER GREIMANN: I haven’t talked to the registry side, but the registrar side seems to be okay with it.

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JANIS KARKLINS:

Good. Hopefully, the registry side is also okay.

It is the top of the hour. We have exhausted the time of our meeting. One issue remains for the next meeting as well as minor issues. Let me suggest that, for Item 7, which Laureen just raised, we will try to find a way, and then propose consultations in the meantime, for how to settle this issue of the law enforcement [in] local or otherwise applicable jurisdiction. We will return to this list's minor issues at the beginning of the next meeting and other topics that we didn't manage to examine during today's meeting. Our next meeting is on Tuesday, the 19<sup>th</sup> of May. We will continue with the recommendation of non-considered by the EPDP, the third-party justification, data retention, and whatever was proposed for the next meeting as well: acceptable use, query policy, terms of use. I hope that next Tuesday we will be faster than today. But today the automation part is tricky and important, and we saw that there is still divergence of opinion that we need to breach.

With this, I would like to thank all of you for your active participation but also staff for helping us in these difficult circumstances with the best professional advice that can give us. So thank you very much. In absence of requests for the floor, I adjourn the meeting. Have a good rest of the day.

**[END OF TRANSCRIPTION]**