ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Tuesday, 30 June 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 30th of June 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 no listed apologies for today's meeting. 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.

Attendees will not have chat access, only view to the chat access. Alternates not replacing a member are required to add 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 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 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 very much, Terri, and hello, everyone. Welcome to the 69th meeting of the team, which is one of the last ones. And my question is traditional, whether agenda that is now displayed on the screen would be the one we want to follow during the meeting.

I see no objections, so that's decided. Let me take you to the next agenda item, and that is plan for the remaining time of the work of the team.

We have met yesterday with the staff, leadership meeting, and we walked through. And maybe I will ask Marika to explain the timeline and Berry to tell us where we are with the project before I will take the floor. Marika, please.

MARIKA KONINGS: Thanks, Janis. Basically, what we did is kind of count back from 31st of July as the submission deadline for the final report to the GNSO council, factoring in the different aspects of review and deliberation that are still required, which basically takes us first of all to item I which is basically this week which we have time to finalize the review of outstanding "cannot live with" items. Recommendation 6, contracted party authorization, recommendation 7/16, automation, and recommendation 19, which is the mechanism where there's still some open questions and comments.

This would hopefully get us by the end of this week on agreement or direction on how some of the issues that have been flagged and need to be addressed in the final report for which we as a staff support team aim to distribute the updated basically almost final version at the latest by the 5th of July. This would give the group to the 10th of July as the so-called silent week, so this is the opportunity for you to review the report in one piece, and at that point, we don't expect any "cannot live with" items being flagged anymore, those should have been resolved by then, or clearly

labeled as diverging opinions. But it's really focused on catching any kind of minor edits or inconsistencies that may not have been caught as changes in certain recommendations may have also needed to be applied in other parts.

So by the end of the week, we hope to then get a list from all of you with those minor edits. We would have a tentative or placeholder meeting on the 14th of July. If there are any issues that are flagged where we may need further guidance or we're not sure how the group feels about it, we may want to have the opportunity to have a final conversation to iron out those items, which would then take us to the 17th of July by which date we hope to be able to distribute the final report and the chair consensus designation for the report and its recommendations. And as a reminder, as part of that consensus designation, the chair makes an evaluation of the support achieved for the recommendations and publish its designation for the group to review, following which then the group has an opportunity to respond to that consensus designation if you do not agree with the label that the chair has assigned either to all the recommendations or individually. I think that's something we'll still need to determine, or that's really, of course, up to Janis and Rafik to decide how to go about the consensus designation.

The team has an opportunity then to indicate if they do not agree with that designation, indicate why, and the chair is then able to either adapt or further explain why a certain designation was applied.

At the same time, in that same period, we would also hope then to have the deadline by the end of the period on the 24th of July, the

deadline for any minority statements that groups may want to submit, and that would get us, at the latest, by the 31st of July to the submission of a final report to the GNSO council. So that's basically the proposed next steps and timeline to get us to a final report at the latest by 31st of July.

JANIS KARKLINS: Thank you, Marika. You were not precise on one, the chair designation will be developed and stated by Rafik who agreed to step in my shoes since my initial intent was that 30 June is the last day of my voluntary service to ICANN and to this EPDP. I agreed to, since we're so close to the finalization of our negotiations, agreed to go on until end of this week, but not beyond. So as a result, that would be Rafik who agreed to do the rest of the chair's work in the leadup to end of July deadline.

And I understand from Rafik, from our conversations, that he is not prepared to go with the chairing but rather than following steps starting from point small Roman I. I see Brian's hand is up.

BRIAN KING: Thanks, Janis. Echoing Matt's sentiments on the list, thank you again for everything and all that you've done here. We're in a far better place than I think we would be otherwise. I can probably speak for the whole team on that.

I do have a question about the consensus designation. I want to kind of caution and ask a question. Caution being that a number of these recommendations are no brainers and the IPC and I want to come to a full consensus on the entire package. So let me preface

the comment with that. But I have a question about whether we'd be expected to come to consensus recommendation by recommendation and where the opportunity is to discuss consensus on the complete package. The example in my mind is the accreditation for law enforcement entities. Noncontroversial, I don't think there's a lot of concern for any group there, so we passed that. If we don't have consensus on the entire thing, are we going to send that recommendation to GNSO council and up to the board as the entire policy? Or how do we ensure that we have a whole SSAD here, not a couple of policy ideas that folks can agree to? Thanks.

JANIS KARKLINS: Thank you, Brian. There's no need to thank me because we're not done yet. You need to cope with me another three days. I will take other questions and then maybe Marika will be answering them all. Volker, please.

VOLKER GREIMANN: Yes, Janis. Thank you for all you've done so far, and thanks in advance for the rest of the week that you gifted to us. Just in response to Brian, it has been our impression and view that this is a package deal. So if we come to a situation where there would be consensus on some and non-consensus on others, then that would require a significant look again at what we agreed as Consensus, so I would urge that we maybe do those that might lack consensus first and then review the easy ones later. Thank you.

JANIS KARKLINS: Thank you, Volker. I think you're absolutely right. So basically, when it comes to this system, SSAD recommendation 1 to 19 should be seen all together. And either we agree with that and we are prepared to live with it, or we simply do not agree on whole package, because it's impossible to work on the system where we agree on 90% and 10% not. And what then?

So no, it's either all or nothing, and I think that this is where all groups need to think whether what we have, far from perfect, agree, actually, expensive, still is not better than what we have now today. And I think that that is question you need to ask, and all of us need to give something up and this is the only way how we can reach consensus. Consensus it's far from ideal, but consensus it's something that everyone considers is better than status quo.

I see no further requests and I believe that Volker answered the question of Brian, but unless Marika has a better answer or more technical answer, then you can say that. No. Okay. Berry, your chart, please.

BERRY COBB: Thank you, Janis. I'll just be very brief. As most of the people here are aware, the GNSO council earlier this year implemented PDP 3.0 types of recommendations to help better manage projects or specifically PDPs and working groups. One component of that is if a group starts to miss its stated deadline, that it must file a project change request, which as noted was reviewed by the council last

week. Going into that council meeting, the status of the project was downgraded to that target will be missed because our original deadline was 11 June, and as a part of that PCR, we asked for it to be until the 31st of July to provide as much buffer as possible.

I'll note that in the council's review of that project change request, there was consternation or some resistance to the granting, basically the acceptance of that change request, but by and large, we had already missed our target so we still have until the end of July. I think just to kind of emphasize here that with this proposed timeline that you see as part of the agenda, there's no slack here, and if there is no agreement as what was just discussed, I don't believe there will be appetite at the council level to extend this beyond the end of July.

So the last thing I'll say is just from a health status perspective, we're maintaining that this particular project is at risk and most likely if there aren't advancement of some of the differing positions on some of the key recommendations, we'll likely downgrade the project to "in trouble" which is a specific classification but that would be communicated back to the council as well.

And the summary timeline here of course has been shifted over to show that we're targeting the end of July to deliver the final report. That's all I have. Thank you.

JANIS KARKLINS: Thank you. If you could, Berry, only hold horses to designate "in trouble" until end of this week. So I hope that we will get out of this very uncomfortable situation.

BERRY COBB: Yeah. If I didn't state that correctly, that's what I meant. Thank you.

JANIS KARKLINS: Yeah. Thank you. So, in absence of questions, I think we need to go to work. As Volker requested, we will be looking at most difficult topics that we have, contracted party authorization mechanism. I hope that by tomorrow, we will have out the draft recommendation on automation and financial also is already on the table. So we will go through all these four, and the rest depending on the time. Otherwise, there are a lot of questions for clarification that in my view could be dealt by inside ICANN because this is mostly ICANN-ICANN discussion.

So with this recommendation 6, contracted party authorization, we had a rewritten recommendation based on our initial—the previous reading, and we have now outstanding questions that need to be discussed, and I would like to ask Marika to introduce those questions. And maybe we'll take one by one. And if I may ask team to stay really focused and talk about the questions that we consider rather than make general or philosophical statements around the topic. Marika, please.

MARIKA KONINGS: Thanks, Janis. And as you recalled, indeed, the "cannot live with" items in relation to the original recommendation as it was drafted in the initial report, were extensively discussed and were the basis

for a redraft of this recommendation that the staff support team carried out.

Then you all had another opportunity to review that and many of you provided input and suggestions, after which we went ahead and applied those that seemed noncontroversial and which provided helpful clarifications to the recommendation as drafted.

We then asked you to all have a look at that again and identify which of those changes resulted in “cannot live with” items or what open questions still existed that needed answering in order to ensure that this recommendation is clear and implementable.

So on that basis, we did another pass through those items, and you may have seen that the color-coded table is at the end of the document. And for some of the items that we had originally highlighted in yellow as discussion items, we have taken a stab at providing a proposed approach based on improvement provided by other groups or as a result of conversations that the group recently had, and we propose not to discuss those specific items today, but of course, all groups are encouraged to review those and if you are of the view that the proposed approach from staff, which is in bold for those items it applies to, have resulted in a “cannot live with” situation, we would encourage you to flag that by the end of today. It’s really just a handful of items if I recall correctly. So of course, those can then be brought back to the agenda. But again, from our perspective, they didn't seem of the “cannot live with” nature and as said, a number of groups did provide helpful clarifications that we believe hopefully address some of the questions.

So as a result of that, we think we've been able to boil down the open questions to the four questions that are on the first page of this document. And Janis, I think it's probably the right approach indeed to go one by one, because they're not necessarily related or connected to the same sections in the report, and we hope, by the way we've phrased these questions, we're able to get a kind of quick or rapid direction from the group on what in some cases the intent was or how concerns can be addressed to ensure that things don't turn into "cannot live with" items for other parties.

The first question asked here is in all instances where a request is approved or denied, does the EPDP team intend for the rationale to be documented and communicated to the central gateway manager? As you recall, I think an number of—and in other recommendations were very specific that that rationale needs to go to the requestor but were less specific about whether that also needs to be documented and communicated to the central gateway manager. So I think especially, I think this was a question raised by Org, so we're looking for a clarification here from the group on the intent.

JANIS KARKLINS: Thank you. Anyone want to start? Let me maybe remind that we have this feedback mechanism in case of recommendation by the central gateway is not accepted, then the feedback needs to be given back as well as we need to log all the actions, all the decisions, so logic would suggest that the answer is yes on all the questions. But I have three hands up: Volker, Mark, and Stephanie in that order. Volker, please go ahead.

VOLKER GREIMANN: My recollection was that it would be a yes towards logging and maintaining that reason for denial, but not necessarily uploading it to the central manager. That would be something that could be done if the request was found to be erroneous or abusively denied. So to reduce the load on the central gateway and the role of the central gateway as well.

My position would be yes to maintaining for future reference but no to having it automatically uploaded to the central gateway, only upon request.

JANIS KARKLINS: Okay. Thank you. Mark SV.

MARK SVANCAREK: Thank you. I disagree with Volker. I don't think you can have transparency or statistics unless it's uploaded to the central gateway manager. You just need to make sure that there's nothing confidential in it when it's uploaded to the central gateway manager. So if it's abuse, the rationale is there was abuse, or it was not well formed, or whatever.

During implementation, we would define how you communicate that to the central gateway manager in a way that is noncontroversial and contains nothing confidential, but it does need to be stored in the gateway manager. Thank you.

JANIS KARKLINS: Thank you. Stephanie, please.

STEPHANIE PERRIN: Thank you. I just wanted to note that I agree with Volker, and I'd like to explain the reasons that unless the central gateway manager is the dominant controller in this co-controller arrangement, they have no reason to have that data and invariably, when you get into the rationale—which is the word used—unless you're just going to have a category which I think would meet Mark SV's intervention there, abuse, badly formatted, insufficient power. Even a law enforcement official might not have the authority to get the data that they're looking for. The rationale could be poor. Etc.

Most of that information, it remains personal information, and mustn't be further processed absent a good reason. And I would submit that you don't have a good reason here to have the central authority doing this, unless there's a whole different co-controller arrangement than what we've been led to believe. Thank you.

JANIS KARKLINS: Thank you, Stephanie. Margie, please.

MARGIE MILAM: Hi. The reason that we originally came up with that concept was because there's the notion that the central gateway manager will be making recommendations on whether to disclose or not. Obviously, it's at the contracted party's decision whether they accept that recommendation, but this was meant to be a feedback

mechanism to help improve the recommendations so that theoretically, someday we might get to a place of automation.

So I think that's an important part of the whole recommendation process, and the only way the gateway manager can learn from it is by getting that information back. So that's why the answer from our view would be, yes, it would have to be every instance.

JANIS KARKLINS: Okay. Thank you. Mark SV, please.

MARK SVANCAREK: Thanks. Question for Stephanie, because I still don't understand why the rationale would contain any personal data. If you need a category called "other," then a category called "other," but there's really no way for us to know how the system is working, the system being the interaction between the requestors, the gateway and the various contracted parties if we don't know why things are being rejected. Is it because of bad inputs from requestors? Is it because ambiguity in the way that we've set things up? We just won't know.

Well, the nature of the questions is personal data. Maybe we need to go off to the list and discuss what this means, because I think we're talking past each other. So, sorry. Thanks.

JANIS KARKLINS: Thank you. Alan Greenberg.

ALAN GREENBERG: Thank you. As has been noted, at this point, if we can't come to agreement on some of the other issues such as the evolution mechanism, all we have here is a glorified ticketing system. And if we now are saying we don't even have the ability at the SSAD to produce really good statistics on how well this is working and what to do to improve it, we don't even have a glorified ticketing system because reporting is a clear reason that you want to do things through a central point of contact.

So we're almost saying that even what we're left with is not going to work properly here if we can't report fully on what's going on. I'm not quite sure what we're doing here if we can't even do reporting. Thank you.

JANIS KARKLINS: Thank you. Hadia.

HADIA ELMINIAWI: Thank you, Janis. Alan basically said what I was going to say. For the purpose of statistics, research, future improvements, we need to have those logs in one central place. And again, if the central gateway also is going to improve its recommendations and performance based on something, it would be based on these logs that again need to be in one central place. Thank you.

JANIS KARKLINS: Thank you, Hadia. Milton.

MILTON MUELLER: Hello. I think I'm going to keep trying to push us towards the fundamental agreements and principles that this whole system is based on. Regarding this particular problem of documenting rationales, let's remember that we are working with a hybrid system. That means centralized requesting and processing of requests, decentralized disclosure decisions except in a few cases.

Now, I have no problem at all with keeping track of what decisions were made. I do have a problem with the idea that this is supposed to be part of a recommendation system from the central gateway manager and that this recommendation will eventually replace the decentralized disclosure decisions that is critical to the hybrid model.

So the reason you're getting pushback here is that we're trying to subtly deviate from the agreed model, and we just can't do that at this stage of the game. Of course there should be tracking of what decisions were made, and we need that for accountability. And if by rationale you're simply saying you have a pulldown menu that says insufficient evidence or not legal under XYZ section of the GDPR, then fine. But this idea that it somehow feeds into a recommendation system and test against recommendations is completely unnecessary and not productive. So we've got to just give up on that. We're working with a hybrid model, we are having an improvement mechanism that will allow it to change, but we just have to accept the fact that this is a hybrid model and the decisions are going to be made by the contracted parties. That's all. Thanks.

JANIS KARKLINS: Okay. Thank you. Volker.

VOLKER GREIMANN: Yes, Janis. I'm not fundamentally opposed to having statistics uploaded, as in what Milton suggested, something that could be done in a dropdown menu. I have a problem with full detailed explanations of why we denied something that we would be having in our entire logs to be able to demonstrate the properness of any refusal that we might give or acceptance, whatever the case may be.

I am just a little bit reluctant to move ahead with this because it does increase bureaucracy overhead and the time spent on each ticket. The response times are going to be critical for the requestors as well as for the parties answering the requests, and every additional step that we have to take complicates our response process and drags it out. While it may not be much, maybe a minute or two to log into the system and inform them of why we did that, for each request, that adds up very quickly and that can be measured in response times very quickly as well. So I would be resistant to any cumbersome process. It has to be low maintenance.

JANIS KARKLINS: Thank you. I think we're spending too much time on this. And again, I would like to remind ourselves that the outline of model is the one that the central gateway manager receives request in automated fashion generates a recommendation, maybe not from

day one, but we'll start at one point. And sends the request and the recommendation to contracted party for decision.

So contracted party receives the request, examines it, reads the recommendation, makes a decision, and if decision matches recommendation, do not report back to central gateway but rather, send the requested information to a requestor and log data for what is needed to be logged.

But if the decision is different from recommendation in order to train the algorithm of the central gateway, sends back some information that would help to train that algorithm. And probably, that will be done in also automated way as Volker many times stated that contracted parties will be automating processes within contracted parties at their own risk and for their own convenience.

So all this will be part of the automation that will be done simply to be effective. And while we were discussing this thing, Marika made a proposal where instead of in text which is now 8.2 instead of reason for denial, to use—instead of rationale, use reason for denial. And it was supported in the chat by many.

So I would suggest that we follow that proposal that was made, that instead of communicate the rationale, simply to communicate the reason for denial to central gateway and move on. So that would be my proposal. Mark SV, please.

MARK SVANCAREK: Thank you. I support your proposal, Janis. I just wanted to clarify, because people are really making this sound too hard, and it's not. Volker suggested the idea of a dropdown box. That's literally what

I'm thinking of. It's just a category. You don't have to—this is not free text that you have to answer, it's not an essay question, you just need to tell the gateway what went on. I don't see that being extra bureaucracy or difficult function on top of the fact that you have to provide that same sort of information to the requestor. So I support Janis' proposal. Thank you.

JANIS KARKLINS: Thank you. Amr.

AMR ELSADR: Thanks, Janis. I had originally intended to follow up on Volker's last comment, which I agree with completely, but just to Mark's last statement, if we're talking about a dropdown menu, then sure, that might work, I guess. But that's not what I read in the recommendation right now. Right now, it says that contracted parties must document the rationale and that to me suggest sort of a customized documentation of the rationale for each individual case.

And when you look at this alone, it's not that big a deal, and this is where I get into what Volker was saying earlier, at least what I think he was. Across the board since we started trying to come up with recommendations on SSAD, I understand that the IPC, the BC, cybersecurity professionals, all parties that have an interest in accessing registration data have costs involved with the work they do, with their business models, with protecting their trademarks or with tracking down cyber criminals or whatever. And the way I see it is that the to and froing we've been having this whole time was

basically that set of actors trying to shift their costs onto contracted parties and registrants.

And it might be a little thing here now, a little thing somewhere else. I think the small team on automation has been discussing standardizing what constitutes financially feasible for all contracted parties irrespective of what kind of business models they have, what size operations they are. But trying to shift these costs onto other actors all the time when they have no interest in assuming these costs just doesn't work for us, and especially when you add them all up. And in many cases, these costs might not just be shifted but might be exponentially multiplied.

Many of those cases as well might not even be required. Why are we requiring that contracted parties document the rationale for every single case here? A lot of these might not even be contentious, a lot of them might not be looked at. We don't know whether they will be or not. But it's okay for contracted parties and registrants to still go ahead and pay for what is involved here. And the same would apply to other aspects of automation as well.

As long as the IPC and the BC and others keep pushing for these policy recommendations, I don't see why you would reasonably expect us to agree with that. Yes, compromise is required, but the SSAD in itself is a compromise on our part and it's going to cost a lot of money to develop, run and maintain and update.

If it were up to us, we'd be fine with a totally decentralized system, but like Milton said, we're willing to compromise and work with a hybrid model. And we're willing to compromise on a number of

other recommendations, but please, we do need to meet somewhere in the middle. Thanks.

JANIS KARKLINS: Thank you. Look, guys, I think before tomorrow's meeting, all of us, we need to reread from recommendation 1 to 19 an come to the meeting with very fresh memories what is in other recommendations. So for the purpose of record, auditing, logging, contracted parties will document positive, negative decisions, everything that is linked with the functioning of the system. Most likely, that will be done in automated way. And here, the question is only whether the contracted parties need to feed to central gateway all the information on both positive and negative decisions or only the negative decisions. So as a result, I would really plea here, stay focused and then try to answer the question and not speak about all system as such. Milton, please.

MILTON MUELLER: So, again, we have to stick to the fundamental structures that we have agreed on. And the problem we have with this rationale documentation is not really entirely based on the cost. It's more fundamental than that, unfortunately. I agree with Amr that the cost is a big issue. However, that could be overcome through the financial sustainability process by charging the requestors and appropriate amount for the requests that they make.

However, the more fundamental issue is that Janis, when you describe this as a training mechanism for an automated decision making, you are deviating or taking us in a direction which

deviates from the model that we've agreed on, which is not an automated centralized decision making.

So what you're telling us is let's add a bunch of costs and delays into the system in order to turn it eventually into a centralized decision-making process. And our response to that is no. We're not having a centralized decision-making process. We are having a hybrid model in which we centralize requests and the disclosure decisions are made by the contracted parties. If you're telling us build a bunch of junk into this system that is all intended to make it into eventually a centralized system, then why would we accept that?

JANIS KARKLINS: This is in the recommendation on decision making which has been already agreed.

MILTON MUELLER: The recommendation, as I recall, says that there may be a recommendation. We recall objecting very strongly to even having that, so again, we're dealing with a place in which we have compromised and you're telling us that every time we accept one of these compromises, we're putting ourselves on a slippery slope into the wrong model. And that ain't going to happen. It's just not. We cannot approve this documentation if it means that we are training an automated AI system that will turn into an automated decision-making system. We just will not accept that.

JANIS KARKLINS: Okay. Thank you. Loud and clear. Brian, please.

BRIAN KING: Thanks Janis. I think we've been in the weeds here for some time. I'd like to call everybody's attention to the part of the policy that we've agreed where the contracted parties have to provide the rationale to the requestor for requests that are denied. I think what we're just confirming here is that they would also need to provide some rationale to the gateway manager to help it get smarter. And I don't care if that ends up, frankly, in automation or not. So to Milton's point, I don't care. What we're trying to do is help the contracted parties with better recommendations, or as good as we can get. And help me understand, if the contracted parties are providing a detailed response to the requestor, presumably via the SSAD or even if not via the SSAD, is the hesitation the lift that it would take to provide a general—what Marika put in the chat, a stated reason for the denial to the central gateway manager? It doesn't seem like a big lift to me, and I think it does sound like we're starting to get some consensus that that could be done pretty easily. So just want to kind of focus on the real question here, is just the less detailed characterization of the reason for denial to the gateway in addition to the detailed characterization that we agreed will be provided to the requestor. Thanks.

JANIS KARKLINS: Thank you for helping me out. This was the proposal that I made 15 minutes ago, more or less, suggesting that in the sentence of 8.2, contracted party must document the rationale of the denial and must communicate the rationale to the central gateway

manager. So I suggested to change and communicate not the rationale but the reason of denial to the central gateway manager, which is much less, and document rationale, that is done for its own purpose and that documentation sites with the contracted parties for auditing purposes, the time which is defined by this policy.

So my question is whether this text as it's now on the screen is something that everyone can live with. Mark, you said that you can live with already, but your hand is up again. Please, be mindful of time. Stephanie, you cannot live with this proposal? Your hand is up.

STEPHANIE PERRIN: I am sorry to delay us. I note that nobody has followed up on my remark about further processing of personal information taking place at the central gateway, but that is one of the reasons why you do not permit anything but a near reason, such as, as I enumerated, insufficient data, insufficient power, blah-blah. You could construct such a dropdown menu.

Naturally, we are very leery of agreeing to vague, high-level language at this point, because every time we agree to vague high-level language, it gets filled in with precise, far too detailed language that destroys the intent of the compromise agreement, as Milton has pointed out. And we don't want that kind of interpretation of vague high-level language being tossed to the implementation group. So I think you have to be specific, precisely about who's making the decision here.

Now, the reason I raised my hand is that we are not hanging on to the rationale simply for audit, and I believe you're construing the word “audit” in the sense of GDD as in, are the contracted parties coughing up information to the maximum extent possible?

We actually have to retain the rationale and the fact that an inquiry was made about an individual’s file for the beneficial rights of that individual, if you're caught up in a child trafficking investigation, then you have a right to know, whether or not the data was handed over or not.

So that’s a very important reason for the contracted parties to hang on to the data about requests from third parties. And that should be included if we were—let’s pretend for a moment that we were trying to implement GDPR instead of trying to maximize data disclosure. Thank you.

JANIS KARKLINS: I can only repeat my question, or first of all, I would like to repeat my solicitation to you to be focused and talk about question that we’re discussing, not broader issues, because we do not have time for that any longer. But now, question is whether text that’s on the screen is something that we could live with.

Volker, your hand is up.

VOLKER GREIMANN: Yeah, I think I can allay Stephanie’s concerns for some part. I think we are all in agreement that the information that should be conferred to the central gateway is not a detailed essay like a

description but rather something that's from a pulldown menu that basically just states the reason in [factless] manner, and the detailed explanation resides with the contracted party that made the disclosure process in their files for any audit or other review that might come down the line.

So as long as we capturer that in the language properly, I think we're fine. Thanks.

JANIS KARKLINS: So the language is now on the screen. Proposal is contracted parties must document the rationale of its denial and must communicate the reason of denial—that excludes any personal data—to the central gateway manager and so on. So, is anyone who "cannot live with" this text? Daniel.

DANIEL HALLORAN: Thanks, Janis. Just to clarify or extend it, what Eleeza and I were really asking about was for example 8.2 specifies that it's a case where [inaudible] denied the request and it said in that last sentence, they must document the rationale and convey to the gateway manager. If you go down a little bit, like 9.2, it says they must deny the request but it doesn't say anything about documenting the rationale and notifying the gateway manager. We were just asking a simple consistency question: was the intent that every time the contracted party denies the request, they're supposed to documents it and notify the gateway manager, or not? Really, that was our whole question. Thank you.

JANIS KARKLINS: Milton, please.

MILTON MUELLER: Yes. The wording as it stands is really not in conformity with what people are agreeing to here. So, document the rationale really sounds like an essay to me. If we want to say that they're selecting a category from a pulldown menu, we need to use different wording for that. And particularly, communicate the reason for denial that excludes any personal data. Again, there's much better and more direct and less dangerous ways of phrasing this that say something like the contracted party must indicate the category or something of that sort for its denial and communicate it to the central gateway manager, period.

You can keep the language about no personal data, although again, I think if you're not writing an essay, if you're doing a pulldown menu, then there's no chance that there's going to be personal data in there anyway. So to my mind, that phrasing kind of creates a risk that people will overinterpret what we mean by documenting the rationale. I really don't want the words “document the rationale” in there. I think that’s sounding like an essay.

JANIS KARKLINS: Mark SV, please.

MARK SVANCAREK: Thank you. I think Milton’s on to something. We need to make it clear that we’re not writing essays. That was certainly not the way I ever read it, and it was not my intent. So I think that’s good.

I really had my hand up, though, because I was getting worried that we were starting to renegotiate the response requirements recommendation, which felt to make like it was a slippery slope. So I just wanted to make sure that we were being mindful of the way that these recommendations dovetail together. Thank you.

JANIS KARKLINS: Thank you. Marika, please.

MARIKA KONINGS: Thanks, Janis. I just posted in the chat, because I think [inaudible] focusing on not the question that is being asked. The rationale is already defined in another recommendation. It's already specified what the contracted party is expected to provide to the requestor. The question really here was about what of that would be shared with the central gateway manager in the case of the approval as well as denial, as Dan pointed out. And I think we got a sufficient guidance on how to clarify that what is shared is not—that rationale which goes to the requestor but it's a more simple reason for denial that is provided to the central gateway manager.

JANIS KARKLINS: Okay. Thank you, Marika. Brian.

BRIAN KING: Thanks, Janis. Thanks, Marika, and thanks, Dan, for explaining where this came from. Yeah, I think what we're agreeing here is that anytime there's a denial, that the gateway manager must be

given that category. So that probably does belong in 9.2 as well. And then just looking at 9.2, I think when we flipped from "permitted" to "prohibited," I think we need to get rid of the word "not" in that sentence just to make it factually accurate, or, "Is legally prohibited from disclosing" would make us get rid of the "not." And then to the end, I would add that part above, "And must indicate the category for its denial" so that we're consistent on any denial includes that give the category to the CGM. Thanks.

JANIS KARKLINS: Okay. Thank you. So with these amendments that made, Milton, which is now displayed on the screen, and suggestions that just made Brian, add the same thing at the end of 9.2, "Must indicate category of denial and communicate that to central gateway manager." So, can we say that this is something we can live, all of us would, and move on? Seems to be the case. Thank you.

So, the next question, Marika, please.

MARIKA KONINGS: Thanks, Janis. So the second question is also a clarifying question asking what is meant in 7.2.3 by whether further balancing or review is required and on what basis would a contracted party make this determination. Would further balancing or review be conducted in addition to the substantive review of the request in authorization determination requirements paragraph 7? In addition, it's unclear how to enforce authorization determination requirements 8.1 and 8.2 without further clarification on the intent of 7.2.3. And I don't know if the ICANN Org liaisons want to further

speak to this question. I believe this question came from them and if there's further clarification that might help inform the discussion, it may be helpful if they would state that.

My understanding, if I can just add [inaudible] reference to further balancing or review, I think, was used by the small team as kind of synonymous with the balancing test as required in the GDPR but in order to make this not too GDPR-specific, I think they chose to use the further balancing or review to indicate that equivalent [inaudible] may require a similar type of balancing the rights of the data subjects with that of the third party.

JANIS KARKLINS: Okay. Thank you, Marika. So, would Dan or Eleeza like to clarify the question? Daniel, please.

DANIEL HALLORAN: Thanks, Janis. Yes, this I think is a trickier question than that last one, unfortunately. But hopefully, there's a simple answer to it. I think if you start back up at on the screen what's identified as 2.2.1, which I think is supposed to be renumbered to 7.2.1, it ask—so the contracted party's going through its decision making and it has to ask itself here whether the contracted party has a lawful basis for disclosure. So that might mean they're legally required to disclose it, or it might be that they're going to do a balancing test here and determine if the legitimate interests of the requestor outweigh the interests of their data subject for example. So they're going to do a balancing test here possibly if it's a legitimate interest, and so in the 7.2.1, they're doing the balancing

test, they're deciding whether or not they have a legal basis to disclose, and then you get down to 2.2.3 which confused us, and that says “whether further balancing or review is required,” which we didn't understand what that meant after you’ve already done the balancing test required by 7.2.1, why would you need further balancing or review? So we were just unclear on how you actually apply this 7.2.1 and 7.2.3. Thank you.

JANIS KARKLINS: Okay. Thank you for clarifying. So I think Marika was trying to explain that there might be not only GDPR in play but also other legal requirements. And it may happen that this current 7.2.3 is not needed, but in case there is potentially other legal requirements that need to be taken into account, so then that’s displayed in the policy. Not to make it very GDPR or only GDPR-centric. Chris.

CHRIS LEWIS-EVANS: Thank you. Dan, I think the reason this was added was under 7.2.1, if the lawful basis wouldn’t necessarily require you to do a balancing test and then whether their lawful basis needed that. So this was just a catch-all for I think the circumstances where a balancing test wasn’t done in the first place. I think, I recollect, that was why we added that extra step, was just whether—sorry. Yeah, so I think this was just a catch circumstances where the lawful basis didn't require a balancing test and for them to consider whether they did need to do one depending on the circumstancing of the type of processing that’s being carried out.

But if you think that's already covered elsewhere, if we could see where ...

JANIS KARKLINS: Okay. Thank you. Daniel.

DANIEL HALLORAN: Thank you for that, Chris, and thanks, Janis and Marika. I think we could understand that maybe if 7.2.3 just meant additional balancing beyond what was required in 7.2.1. But then paragraphs eight and nine are tied directly into 7.2.3, and these are the key meaty requirements that you must disclose or you must deny, but it's tied only to whether further balancing was required beyond the balancing required in 7.2.1. So we went around and around on this trying to make sense of it, and we're really stuck trying to figure out how it would be implemented.

Hopefulyl, there's a simple fix. Maybe it makes more sense that 8 and 9 are referring to 7.2 generally or 7.2.1, but to tie them into 7.2.3 confused us deeply. Thanks.

JANIS KARKLINS: Okay. Thank you. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. Just a question. I'm concerned I'm looking at the wrong thing. Dan seems to be mentioning a balancing test in 7.2.1, but I don't see a balancing test. The only balancing test I

see is 7.2.3. So Dan, maybe you can help me out. Am I missing something or looking at the wrong version of something?

JANIS KARKLINS: We should look on the screen. That should be the right version. Daniel, please.

DANIEL HALLORAN: Thanks, Janis. I was talking about when you ask yourself if—if you're a contracted party and you have a lawful basis, and GDPR applies, one of those lawful bases might be legitimate interests and legitimate interest requires a balancing test. So there's a balancing test applied in some or possibly many cases in 7.2.1. already. Thanks.

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

STEPHANIE PERRIN: I cannot recall precisely how this thing got here, but I would like to remind people that our particular stakeholder group reminds people constantly that the GDPR upon which we are basing this policy, rests on the charter of fundamental rights and that we have insisted on reading in the charter in these tests.

So let me give you a specific example that we may or may not have brought up with reference to this particular phrasing. If you receive a national security agency request from a—that's assuming they haven't already got it through splitters in the like—

but let's say you receive a national security request from a country that your country does not have any kind of agreement to share data with or any kind of extradition treaty, or anything that would prompt you to comply with the request.

Then you would do a balancing test and decide whether or not to release your customer's data to that foreign power. And that's a perfect example of a further balancing test not to be construed narrowly in the context of the GDPR phrasing but in a broader context of the requesting party, fundamental human rights and the rights of your data subject.

JANIS KARKLINS: Thank you. Marika, please.

MARIKA KONINGS: Thanks, Janis. I think everyone is basically saying the same thing, and just want to note I think the reason why, at least from the staff perspective, we split it out this way is our assumption, our understanding, or to help us all clarify, the steps would be that a contracted party would look at the lawful bases for disclosure, and if that is determined to be a 6.1(f), then 7.2.3 would be part of that further consideration.

Of course, as part of 7.2.1, a contracted party may already decide or may already be able to start that balancing, but again, we're just calling out here that that is one of the aspects that needs to be considered and if it's determined that further balancing or review applies, then 8 and 9 come into play. But if it gives more sense of

comfort, of course, we can change the reference to section 7 so that it's clear that that can be done as part of 7.2.1 or 7.2.3.

JANIS KARKLINS: Okay. Thank you. So, the reference to the question to Daniel whether reference to section 7 would alleviate your concerns and answer your question. Daniel, please.

DANIEL HALLORAN: Yes, and I think also Chris suggested maybe deleting the word "further," which would probably help, "whether balancing or review was required," maybe. I'm not sure if that means "is required by some other law" or "was required in 7.2.1." So it's sounding a lot better, I'm just not 100% sure we fixed it all. We could probably work it out with like Marika trying to tweak the text if we have the intent of the team. That's all we're trying to do, is clarify what the team has in mind here. Thank you.

JANIS KARKLINS: Okay. Thank you. So then, is there anyone who has difficulty with these proposed changes? Then we can go t other next question. Marika.

MARIKA KONINGS: Thanks, Janis. The third question or concern relates to an addition that was made, I believe on the suggestion from ICANN Org who noted that a lawful basis may not always be required for a disclosure decision, was suggested to provide some edits to make

this clear, and as a result, we added there “must determine its own lawful basis if a lawful basis is required for the processing related to the disclosure decision.” And the ISPCP expressed a concern here or indicated that they do not support this addition, noting that we’re dealing with a global policy and therefore there should not be a distinction between the local laws that would erode the protection for the users and lead to fragmentation in the marketplace.

JANIS KARKLINS: Can we see that on the screen? Which paragraph are we talking about? Okay. So, any comments, any reactions? Daniel, please.

DANIEL HALLORAN: Thanks, Janis. If it would help, the reason we put that comment there was this is asking whether the contracted party has a lawful basis for disclosure, which we understood to be basically the GDPR requirement that if you're going to process personal data, you have to have one of the enumerated lawful bases. And if we put this in ICANN policy that the contracted party has to determine its lawful basis, that concept might not be applicable in Arizona or Mexico or Brazil or China or wherever else. So, we thought it was important to say if that is required, then you have to do that. But if I'm processing data in, let’s say, I don't know, New Mexico and they don’t have a requirement that I have to have a lawful basis to process personal data, then it would just be the ICANN requirement that I have to determine a lawful basis, whereas in New Mexico, it might be that you can do whatever you want as long as it’s not prohibited by statute.

So that was our concern, was that we were kind of making this GDPR concept global, but I understand now that ISPCP sees it differently, that that would be—I'm not sure I understand the concern. But thanks.

JANIS KARKLINS: Thank you for clarifying. That's helpful. So, with the explanation of Daniel, can we all live with this addition in the point three which is now on the screen? Thomas, please.

THOMAS RICKERT: Maybe just to explain, we are—or at least it was our understanding that we're creating a global policy that would treat all registrants equally. And if we release the contracted parties of checking whether a legal basis is available for disclosing data, then basically, we would erode the entire policy, basically meaning that with this little addition, we wouldn't even require a contracted party, and I guess the example of New Mexico was made where no legal basis is available. If they have a European customer, they wouldn't need to test this against any of the legal bases enumerated in Article 6 of the GDPR. And I think that basically is against one of the fundamental principles that we established at the outset of our work.

I may stand corrected if I'm reading this entirely wrong, but I thought that for each and any disclosure, we'd need a legal basis as enshrined in the catalog of Article 6. And in the absence of such legal basis, there would be no disclosure.

JANIS KARKLINS: Thank you. Daniel.

DANIEL HALLORAN: Thank you, Thomas, and thank you, Janis. I think Thomas brought back in a European customer there. If you are in a case where GDPR applies, clearly, the law says you have to have a lawful basis according to Article 6. What I was talking about was cases where GDPR isn't applicable, you don't need a lawful basis.

So let's say New Mexico, Arizona, whatever, these are just random examples, they might not even be accurate because I don't know about their local laws off the top of my head. But that concept of lawful basis, I think, is a GDPR concept and it might not be—let's say California, I don't necessarily need to have a lawful basis for everything I do. I can go about my business and do whatever I want as long as it's not prohibited by law. So I don't need a lawful basis to be on this phone call, I don't need a lawful basis to eat lunch, and I don't need a lawful basis to process personal data maybe in certain jurisdictions.

But this ICANN requirement would say you must have a lawful basis no matter where you are in the world, and like Amr brought an example, if you're in China—but we don't know if they have that concept in China of needing a lawful basis, and it might just be confusing in some jurisdictions to what does this mean, having a lawful basis to process the data? It's very clear in GDPR, I agree with Thomas. Thank you.

JANIS KARKLINS: Then what Thomas was also trying to say that when we initially discussed and then developed SSAD, of course, we were created to address the GDPR requirements, but very quickly, we came to the conclusion that for instance if there will be a new law in California, which would be either as strong as GDPR or even stronger, then ICANN would need to do a new PDP in order to address those issues.

So as a result, maybe we need to try to formulate points in our recommendations in a way that they would be GDPR-compliant but would also be more broad and address also all other existing and upcoming data protection laws in the world. So that was the rationale that Thomas was trying to explain, and maybe you can think in your argumentation how that could be factored in. Thomas, Brian, Margie, and then Dan.

THOMAS RICKERT: Thank you very much, Janis. And sorry for getting back into the queue. We have laws applicable to contracted parties, and then we have policies and contracts that govern the ICANN world, and what we've done is we've modeled the policy around GDPR. But having done so, GDPR and the legal bases required under the GDPR are sort of the minimum standard applicable to registrants throughout the world.

And if there are more strict requirements for example, or different requirements, then certainly ICANN can't force the respective contracted party to be in breach of local laws. But I think we can't erode at this stage one of the fundamental principles that we've established, namely modeling the policy after GDPR. Thank you.

JANIS KARKLINS: Okay. Thank you, Thomas. Brian.

BRIAN KING: Thanks, Janis. I think I understand Thomas' point and definitely understand Dan's point, thinking about this as perhaps a US-based registrar would look at this requirement and scratch their head a bit. If the concept of lawful basis does not exist in my jurisdiction, how do I know if I have one? I wouldn't want this policy to actually prohibit processing or disclosure in jurisdictions that don't have the concept of the requirement or the grant of a basis for processing data that's lawful. So I think it's appropriate to have this kind of carveout language to just make sure that this stays in jurisdictions where the concept applies. I don't see this as a get out of jail free card or anything like that. GDPR's going to apply very broadly to all kinds of registrants and contracted parties. So I don't see it as a carveout but I see it as addressing that concept that my jurisdiction might not give me one but we still need to be able to process data from there. As a policy matter, I think ICANN Compliance would be in an odd place to try to enforce this as it's written without that caveat there, because will this become a gotcha for any non-European-based contracted party or any contracted party that's based in a jurisdiction that doesn't dole out lawful bases for processing data? How would those contracted parties comply with this policy if they don't have such a thing?

So I think the carveout language there helps address a number of those concerns. So I'd like to leave it. Thanks.

JANIS KARKLINS: Thank you. Margie, please.

MARGIE MILAM: Hi. I also wanted to remind the group that in phase one, we have a recommendation number 16 that allows the registrars and registry operators to distinguish based on a geographic basis. So we want to be consistent with what the phase one recommendation is, should there be a registrar that perhaps has a customer base or is operating in a jurisdiction where it just doesn't have the same type of legal requirements.

JANIS KARKLINS: Thank you, Margie. Stephanie.

STEPHANIE PERRIN: All of this work we've been doing is to create a data governance policy that is complaint with the GDPR. So all contracted parties will be required through their contracts to meet this policy, just as in the good old days they were required by their contracts, by their accreditation agreements to meet a policy that did not comply with local law and they had to go through hoops that took them years to get out of complying with local law, namely the WHOIS conflicts with law procedure.

Now we are going to have a contractual requirement that meets the GDPR and we will have to figure out how they can get out of that policy when required. Now, the obvious one is if they're in a

jurisdiction where law enforcement comes at them, even if there is no adequate justification, they can come at them with whatever subpoena would violate a contract, would trump a contract. Seizing the servers usually applies as well. But the whole idea was not that this policy, by having language wrapped up in it—again, we're talking vague, this is why I totally agree this cannot remain in there—would allow contracted parties to forum shop so that they could dump their data. Contracted parties or contracted parties who don't care about complying with policy and law. Thank you.

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

DANIEL HALLORAN: Thanks. Just to wrap it up—and sorry, this has created a lot of confusion. We're just simply asking the concept of requiring a lawful basis is a GDPR concept and there are many places where GDPR doesn't apply. So, is it ICANN policy that everyone has to have a lawful basis everywhere around the world even if GDPR doesn't apply? And how do we explain to a registrar in China or New Mexico or Arizona or whatever what that means, to need a lawful basis for disclosure, if they don't need a lawful basis? How are they going to find that lawful basis under their local law? Thanks.

JANIS KARKLINS: So, seems that we are back in systemic conversation again. First of all, there may be some local laws, and increasingly, privacy

laws will be adopted in different countries, so GDPR is the precursor of those. Volker.

VOLKER GREIMANN: I'll make this quick. I don't really see a problem here. I think that in countries where GDPR isn't the law of the land, the lawful basis for disclosure is the legal ability to decide for yourself to make that disclosure. And ultimately, when building this system and providing advice to contracted parties who don't have that concept, I think can just be clarified by ICANN in their policy that is developed in the IRT or there's explanatory materials that will be published alongside this system what we mean by that. That is all. I don't think this is as big a problem as people are making it. This is just describing the registrar must be legally able to make that disclosure decision, and that's all that this means. Thank you.

JANIS KARKLINS: Okay. Thank you. So, Amr and Milton.

AMR ELSADR: Thanks, Janis. I agree with Volker. And Dan, like Thomas said earlier, this is not just a matter of compliance with applicable law but also compliance with the policy. And in compliance with the policy, I don't see any conflict between what we're looking at now and the recommendation from phase one on allowing contracted parties to treat registrants differently depending on their location, whether it's the contracted party location, the registrant location or both.

For example, if a registrar not based in the EU is servicing registrants not based in the EU, like Margie said earlier, the registrar might elect to not even redact the registration data at all. It might elect to redact the data but deal with disclosure differently somehow, depending on what the lawful basis is. I don't need to use lawful basis here as in the strictest meaning in GDPR, but just as generically meaning a lawful basis. But I don't think we need to run through every single potential scenario on how that would work operationally. I think the combination of this language with what we came up with in phase one allows contracted parties the flexibility they need to go ahead and process the data both consistent with the policy recommendations and applicable law. So I'm not sure why there's a sticking point here or a problem of any kind. Thank you.

JANIS KARKLINS: Thank you, but I see that Daniel already agreed with Volker's explanation, this requirement or this proposed addition may go. So we have an implementation guidance in this recommendation as well and maybe what Volker said could be formulated in one sentence either in implementation guidance or simply as a footnote. I see Daniel's hand up. Maybe you can help us formulate what would suit you based on what Volker said.

DANIEL HALLORAN: Thank you. I don't know if we need to wordsmith it here, but yeah, wanted to say what Volker said was okay. If we had language to that effect, explaining what that means, to have a lawful basis. And I think what Amr also said was helpful, that we weren't

saying—by lawful basis here, we weren't exporting GDPR worldwide, we were just saying it has to be legal for you to process the data somehow, which, what Volker said sounded fine to me. Thanks.

JANIS KARKLINS: Okay, so does anyone have a problem with what Volker said? So then we keep text as is, and either with a footnote or in implementation guidance, Volker will be quoted. Laureen, please.

LAUREEN KAPIN: Apologies, but I do think it's confusing to use the term "lawful basis." I don't disagree with what Volker said, but I think the ambiguity that Dan identified is unresolved if we don't have something after lawful basis, because that is a term at least that I associate with the GDPR, and my proposal would be, if a lawful basis is required, if that language is objectionable, that we replace it with "if applicable."

JANIS KARKLINS: But that brings us exactly back where we are at the beginning of this conversation. If applicable or if a lawful basis is required. So that, in my understanding, is the same.

LAUREEN KAPIN: I think then I need to have a better understanding of the proposal that Volker is making because right now at least, I'm not comfortable.

JANIS KARKLINS: Marika, please.

MARIKA KONINGS: Thanks, Janis. I think what we have in mind from staff perspective would be something either in the form of a footnote here or included in implementation guidance that would say something in jurisdictions where the concept of a lawful basis does not exist, a contracted party is still expected to determine that it has a legal basis or is legally permitted to make a disclosure decision. So I think we're just trying to explain that indeed even though the concept as such may not exist in other jurisdictions, there's still a determination that's expected to be made. And of course, after this call, we can update it, but that's at least I think what we heard people agreeing on as a useful clarification.

ELEEZA AGOPIAN: Yes, that's helpful and I look forward to seeing that language.

JANIS KARKLINS: Okay. Thank you. Milton, are you in agreement?

MILTON MUELLER: Just a quick comment that when you're writing that footnote, Marika, please be sure that you don't say anything that assumes that we will be geographically differentiating ICANN's global policy. The policy should be globally applicable, that's what ICANN is for and that's what we will insist upon. Thank you.

JANIS KARKLINS: Okay. Thank you. Noted, Milton. So, may I take that we have agreement for a way forward? Okay, let us move then to the item four.

MARIKA KONINGS: Thanks, Janis. The last question for this recommendation relates to a specific paragraph, and this is a part of the sentence that talks about "nor can a disposition of a request be solely based on the fact that the request is founded on alleged intellectual property infringement in content on a website associated with the domain name." The specific question or concern here relates to the in "in content on a website associated."

The Registrar Stakeholder Group had noted that that specific part should be deleted because issues related to content on a website should not be addressed with the registrar or registry and they're referencing an ICANN website here as well as a specific section in the ICANN bylaws. and in response, the Business Constituency has noted that the link provided in the Registrar Stakeholder Group rationale for deletion is actually related to abuse notices presumably leading to takedown requests, whereas the recommendation is intended for something completely different, requests for data disclosure.

So I think our question here is, does the clarification provided by the BC address the Registrar Stakeholder Group concern, and can this language be reinstated? Or does this concern still exist,

and is there another way to address it, taking into account the explanation that the BC provided?

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

VOLKER GREIMANN: Yes. We're not fundamentally opposed to the concept, we're just very cautious about allowing any reference to content into GNSO policy. ICANN is not involved in policy, does not make policy around content, at least not to my knowledge. Content is not something that we as registrars regularly deal with because we do not have anything to do with it, unless we are hosting providers, but that's outside of the ICANN remit. Therefore, any reference to content or any obligation towards contracted parties that has to do with content is an extremely visible red flag to us. So if this could be rephrased in a way that it doesn't refer to issues outside of the remit of ICANN, then we can probably be okay with it. Thank you.

JANIS KARKLINS: Okay. Thank you. Mark SV. Maybe you can help with the reformulation.

MARK SVANCAREK: Well, I'm not sure that I can. If you cannot say the word "content" within the document, then I think we're going to have a problem. This is going to be tricky if that's really the criterion for success here.

We're just simply saying you can't always say no for no other reason—if we're asking about something that's on a website. We're not saying if it's on a website you have to do it. We're saying that can't be your sole reason. So, how you capture that concept with different words, I don't know. But that's what we're trying to establish here, is that if you don't have a lawful basis, if the request is not formed correctly, if you're filing abusive things—these are all good reasons to reject a request. But if it's simply because you're saying, well, it's intellectual property-based—we already established in the response requirements that just being based on intellectual property is not enough to kick you out. No we're saying, well, what if that intellectual property is on a website? We've already established that simply having it be an intellectual property claim is not enough to reject it. What if it's an intellectual property claim based on content on a website? It's still an intellectual property claim which we've already decided it can't be the sole basis for a no vote. So, I don't know. I would like to keep this text. I understand Volker's concern about the word "content." I don't know, I'd like to have the additional clarity of this language. Thank you.

JANIS KARKLINS: Thank you. Brian, do you have an idea?

BRIAN KING: Thanks, Janis. I wish I did. My hand is up to just note the conflict here that we're not going to be able to live with, actually about the word "disposition" there. I know we had some conversation about that and we did not agree during that conversation, but I don't

want to derail us too much here but the word “disposition” causes a conflict between this recommendation and the recommendation that allows contracted parties to automate or approve request in their sole discretion, which can be revoked at any time for specific requestor purposes. And we’re not okay to have this language remove IP or IP on a website from the list of purposes that a contracted party could voluntarily automate. So that’s not going to work for us.

And for the content on a website that we’re talking about here, just as a reminder, we’re talking about not abuse or dealing with the contracted parties doing anything about a website, suspending a domain name or anything like that. This is merely a request for data, and what we’re saying here in language that is taken verbatim from the privacy proxy policy which was passed and is about to be implemented, hopefully soon, that requests cannot be denied only because the requestor’s issue pertains to content on a website. That’s it. If it’s website content and the requestor’s ugly, deny it. If it’s content on the website and you don't trust the request, so be it. We’re saying that can't be the only reason to deny a request. And I think that’s a reasonable ask, especially given that that is a commonly used reason to deny requests for data today and commonly used reason to deny requests to take action about sites that are engaged in DNS abuse. So I hope that’s helpful. Thanks.

JANIS KARKLINS: Thank you. May I call on Milton?

MILTON MUELLER: Yes. So I don't understand what the problem is here, really, in the sense that the distinction that James has made in the chat is that there can be all kinds of intellectual property claims associated with a domain name string, but we don't want this process to be used for things that do not pertain to domain names. And I think that distinction is pretty clear, it's a critical part of ICANN's bylaws. It came out of the accountability and reform process during the transition that ICANN is not in the business of regulating content. So by striking that phrase, all we're doing is making the policy consistent with that prescription. It doesn't mean that—we already have the other statement that you cannot deny a request because it relates to trademark infringement.

And of course, in many cases, the content on a website will be relevant to an infringement proceeding related to a domain name. For example, if I'm claiming to be Microsoft and I have a similar domain name and the content on my site really bolsters the case, then that's still a domain name case, not so much a content case. So I don't think there's anything risked here by getting rid of this language, and I think that there are risks created by keeping it in there.

JANIS KARKLINS: Okay. Mark SV, please.

MARK SVANCAREK: Thank you. I see a question in the chat. If we've already agreed that IP cannot be a blanket reason for denial, why do we need the content phrasing? I would just scroll up and see what James has

said. So he's saying as long as it's part of the string, then it's covered. But if it's on a website, I can unilaterally say no just for that reason, I can deny it. So really, what you're saying is that if I say I would like to contact the person who operates this website and ask them to take down my copyrighted material—it's not associated with the name, but I would like to contact them and ask them to desist, that a contracted party has the right to say, "No, that's not sufficient," just unilaterally say no? Is that really what's being argued here? Because this is the use case that we're trying to protect with this language, and the fact that we're questioning this here and now and in the chat tells me that we need to have this language, otherwise it will be ambiguous and inconsistently applied. Thanks.

JANIS KARKLINS: It sounds like I have heard this conversation already at least three times. And probably, there is a reason for that. This is [inaudible] issue. So if you would look on the screen, and those who have hands up, Margie, Alan and Volker, would see if you can either comment or agree with what is now proposed on the screen. Margie, please.

MARGIE MILAM: No, I don't agree with what's on the screen. In fact, I was going to give an explanation for why the content might be relevant. Again, what Brian said is correct: this is not talking about a registrar or registry taking action with the domain name itself. This is enabling the requestor to understand who's behind the website so they can pursue whatever legal remedies are available to them. So these

are two separate things. And the purposes are not limited to domain names that have the string in them. An example could be a domain name where there is no trademark in it at all, yet the domain name is being used for phishing. So the phishing website would have content like an intake form seeking personal information, and that might be the basis for asking who's behind the website in order to understand who's behind the phishing attack.

So it's not sufficient to just be able to contact the registrant as is indicated in the chat, because if you're dealing with a phisher, they're simply not going to respond to a request that's emailed to them. So this is enabling third parties to take advantage of the legal remedies available to them beyond just simply cases where the domain name has the string.

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

ALAN GREENBERG: Thank you very much. ICANN's mission notwithstanding, we have policies such as UDRP and URS that rely on content. We have to be able to enforce those policies. And it's not just about contacting the registrant for which there may be a form, for which the registrar may actually honor and pass forward, although current studies show that they don't necessarily do that. It's also about knowing who the registrant is so you can make other interactions other than sending them a nice message.

So the fact that content is involved here is directly involved with other policies that ICANN does have and does enforce, and we can't pretend they don't exist. Thank you.

JANIS KARKLINS: Thank you, Alan. So Volker, on the base what Alan said, that there is already clear reference in ICANN policy on content, would it be possible to maintain the language which was on the screen when we initially started this conversation? Volker, please.

VOLKER GREIMANN: I would be very reluctant to accept that. I think spelling out content as something where requests can be made is problematic in this case, as we're not content providers in any form or shape but this makes us out to be such. I don't think we are ready to move on that, but I have to consult with my partners.

JANIS KARKLINS: But if UDRP and URS, that is already referenced in the same paragraph are based on content ...

VOLKER GREIMANN: It's still different though. It's a consideration for the panelists to make a determination, but it's not something that relates to an obligation of contracted parties. That's the difference here.

JANIS KARKLINS: Okay. Amr, please.

AMR ELSADR: Thanks, Janis. I keep getting stuck following Volker, who I've consistently agreed with today. In UDRP and URS, the dispute, like Milton said, is not about the content. It's about the domain name string itself. The content is admissible in a UDRP case because it supports the claim that infringement is happening on the domain name. So for example if Facebook files a UDRP against the registrant who registered ilovethebeach.com because that domain name resolves to a website that has content that infringes on Facebook's trademarks, then no, the domain name is not subject to UDRP. UDRPs are not meant to solve the issues of content. The content is only admitted as evidence to support a claim over a domain name string. So to suggest that just because UDRP and URS exists in this provision here makes it okay, no, it's a little more nuanced than that and I think everybody on the call pretty much knows this. Thank you.

JANIS KARKLINS: Thank you. Margie in the chat room suggests that maybe way forward is to put full stop after UDRP and URS proceeding, deleting. So if the group which is most interested in the topic suggests deletion, maybe that is the nice way forward. Can we go with that? IPC, can you agree with that? You can. Margie, thank you very much. So you showed us a constructive way forward. [inaudible] deletion always is good. So, thank you.

That, I understand, brings us to the end of consideration of the contracted party authorization recommendation, and we can move in remaining 11 minutes to the next topic, which is

recommendation 19. So, let me maybe start by thanking Amr who was part of the small group and after lengthy discussion of two proposals how the mechanism would function, Amr came up with the one that seems gathered at least uncontested understanding in the small group. And now we have comments from the whole team, and we will start by asking Marika to walk us through outstanding issues. Or let's take one by one. Marika, please.

MARIKA KONINGS: Thanks, Janis. We didn't produce kind of a boiled down version of the input provided as I think many or most of the comments that have been made are similar to issues that have been discussed previously and the group is either still not agreed or not clear on what is intended. So maybe at a very high level, we can maybe address those.

I think there's some kind of minor issues that may be easier to fix, but I think there are some overarching questions that the group needs to tackle in order to come to an agreed approach. I think those issues are the scope of the standing committee, which issues can it work on, and I think especially the question around what aspects of automation and further guidance on that are part or not part of the scope for the standing committee.

And again, I think that also links to the delineation between policy and implementation issues, how that's expected to be addressed and further clarified. I think there's some concern around the decision making process where I think some have argued that all decisions should be made by full consensus where others I think are advocating that it should be a consensus-based approach but

where consensus for those decisions or recommendations that have a direct impact on contracted parties or affect their legal risk in the SSAD would require the support of, at the minimum, contracted parties for it to meet the threshold.

I think there's still some concern as well around involving or how to guarantee that ACs are also involved in the scoping of the effort, and I think those are the high-level, the main issues. As said, there are some more. There are minor issues that have been flagged on whether some of the data that has been suggested to be included in the report that's provided by ICANN Org, whether that's necessary, the timing of that, and I think those were some of the other points raised.

JANIS KARKLINS: Okay. Thank you, Marika. I think that for tomorrow, it would be useful to formulate very clear questions. And what I would suggest now is the following: so we have some sort of systemic issues here, so my question is whether suggested standing committee as a method raises any difficulty, and is there anyone who cannot live with GNSO standing committee model? Alan Greenberg, please.

ALAN GREENBERG: Thank you, Janis. I don't believe you phrased the question properly. The problem certainly from my side is I can certainly live with the GNSO standing committee, depending on what the rules are associated with what that standing committee can do and how their recommendations are handled.

So it's not that it's a GNSO committee that I have a problem with, it's understanding the scope and the rules of engagement that are going to be associated with it. Thank you.

JANIS KARKLINS: Thank you. So let me ask then the next question, if everyone can live with GNSO standing committee. So now on the scope, we have initially determined and then pursued narrow scope, and that narrow scope would include five topics, general topics such as response time, automation, third-party purpose list, financial sustainability, in other words, tariffs rather, and operational and system enhancement.

And the only sticking point among those five when we initially discussed that was around automation. So Amr suggested in his proposal not limit this scope of the group only to those, but rather, approach in rather flexible way. And that was supported by those who were not comfortable with the limited scope. But of course, there were a number of groups who felt that there should be more precision in that.

As a result, we decided, or I proposed, that while formulating the scope of activities as the standing committee in a rather broad way, which you can read in subpoint B1 and B2, we would also list [in exhaustive] way the issues that would fall in the scope for those who wanted more precision. And that is kind of classical way to try to reconcile different opinions that are not really contradicting each other and trying to get by [inaudible].

Please, Amr, go ahead.

AMR ELSADR: Thanks, Janis. I think you captured my intent perfectly well. There were several motivations behind the proposal, how I structured this proposal. One, having a GNSO standing committee as opposed to an ICANN chartered group, because especially things that touch on GNSO policy or implementation, they really do need to go through the GNSO first for guidance. But part of having it as a standing committee was to really make sure that this committee's work is not under the knife in terms of a deadline to complete its work, especially considering we have no idea the speed with which data that this committee could use will be produced by the SSAD. So this gives it more of an open-ended mission.

But Alan's question is a good one, and this is where I think Janis did a really good job responding. I was hoping with this proposal to sort of separate the scoping issue out of here, and that way we could focus on the actual disagreements we have on policy recommendations elsewhere. And also to create a very low required threshold to introduce topics into the committee for formal consideration.

I don't mind there being a few examples listed here. I don't think it really does anything. It doesn't say that—or at least my initial reading of these examples, there's nothing here that says that the committee's work is limited to this, or when I made the proposal, I certainly envisioned that these issues would come up, but again, the whole purpose of this evolutionary mechanism is to review the operational issues that emerge out of SSAD and really figure out

what to do with them. And this is the second part of what I believe Alan's question is: what this committee will be doing.

At least the way I envision it, part of this committee's work will not only be identifying issues and bringing them to the committee but also trying to figure out whether these issues fall under the umbrella of implementation guidance and changes that can be directly made, or whether they require policy development. And to me, that's a big output from this committee, and it would then go to the GNSO and be able to work it out.

But I think if we spend time now trying to narrow down the scope and trying to debate the different aspects, then we're never going to get past it. I think this is something that this committee could do with the consensus levels that I proposed, very low threshold of consensus to introduce topics and a very high one to adopt them. I hope that's helpful. Thank you.

JANIS KARKLINS: Certainly, it is. Alan, please.

ALAN GREENBERG: Thank you. I'll be very quick. I appreciate what Amr has done and I understand the motivation. The problem is we had some specific objections to a GGP. By leaving a number of critical issues unspoken here, and perhaps saying they'll be resolved during implementation, means that this process could end up having the same problems as the GGP did, but we just don't know at this point. So being vague is helpful in getting agreement, but it's not sufficient to get support for it because we have no idea at this

point whether it will evolve into something which we consider acceptable or evolve—and I hate to use the word "evolve" at a meta level, but evolve into something or be implemented as something which is totally unacceptable. That's why we're in the quandary we have now.

So as much as I understand the motivation, I don't think we can sidestep those critical questions. Thank you.

JANIS KARKLINS: That's why, Alan, we have the non-exhaustive list of critical questions that need to be addressed by the committee but not limited. But look, we have reached the limit of our call today. It is 6:02 here in Geneva. We have made, as you see on the agenda, not to the end but we progressed and we will continue tomorrow with mechanism. And I hope that we will be able to post later today recommendation on automation for team's review.

So, we will continue tomorrow with recommendation 19 and yellow items, and hopefully you will be able to make your comments on automation recommendation for review then on Thursday.

So, thank you very much for engagement today, constructive attitude, and I hope that this will stay with us until Thursday. With this, I would like to bring this meeting to the end and wish you all good rest of the day. This meeting is adjourned.

TERRI AGNEW: Thank you, everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines and have a wonderful rest of the day.

[END OF TRANSCRIPTION]