
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP - Phase 2A

Tuesday, 18 May 2021 at 14:00 UTC

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TERRI AGNEW: Good morning, good afternoon and good evening. And welcome to the EPDP P2A Team Call taking place on Tuesday the 18th of May 2021 at 14:00 UTC.

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

Hearing no one, we have listed apologies from James Bladel of the RrSG; Brian Beckham, the co-chair; Lorraine Kapin of GAC, and Mark Svancarek of BC. They have formally assigned Owen Smigelski and Velimira Nemiguentcheva-Grau as their alternates for this call and any remaining days of absence.

Note: The following is the output resulting from transcribing an audio file into a word/text document. Although the transcription is largely accurate, in some cases may be incomplete or inaccurate due to inaudible passages and grammatical corrections. It is posted as an aid to the original audio file, but should not be treated as an authoritative record.

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 your chat. Attendees will not have chat access, only view to the chat.

Alternates not replacing a member are required to rename their lines by adding three Z's to the beginning of your name, and at the end in parenthesis your affiliation "-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, please e-mail the GNSO secretariat. All documentation and information can be found on the EPDP Wiki space.

Please remember to state your name before speaking. Recordings will be posted on the public Wiki space shortly after the end of the call. As a reminder, those who take part in ICANN multistakeholder process are to comply with the Expected Standards of Behavior.

With this, I'll turn it back over to our chair, Keith Drazek. Please begin.

KEITH DRAZEK:

Thanks very much, Terri. Good morning, good afternoon, and good evening, everybody. Welcome to the EPDP P2A Meeting #23 of the 18th of May. So, I appreciate everybody joining. We're going to jump right into the substance on legal and natural to start with. I hope everybody has had a chance to review the text in the agenda. We're going to focus on the questions that are posed here in our agenda document, specifically, today.

And I'd like to just remind and encourage everybody to focus on the questions. Please provide your input, but let's try to avoid restating or reopening discussions that we've had in the past or heard in the past. We're really trying to focus on these concrete and specific questions so we can finalize the text for our initial report that will go out for public comment by the end of the month.

As we head into, this I'll note that the leadership team and staff have been working on sort of a framework or a timeline for the next couple of weeks to get us to the end of May that we will share and go through briefly at the end of the call and then circulate to the list shortly afterwards. We've got another leadership team call in a couple of hours after the conclusion of this meeting, and once we get through that, we'll post that. That'll map out the next steps, deliverables and deadlines, through the next two weeks.

So, with that, let's go back to the agenda. Thank you. And we're going to get right into the questions of the consensus policy

question write up and the questions to be considered by the EPDP team.

I'm going to hand it over to Caitlin here shortly, but I want to note that the first question here focuses on possible triggers or possible milestones or points for consideration for the GNSO Council to reconsider at some point in the future whether consensus policy recommendations are required.

And I think the question here for the group is going to be, should the EPDP team consider adding a more explicit trigger that would require the Council to reopen consideration of the topic, and what should those triggers be?

And I think the question here is, should we be thinking in terms of a timeframe—12 months, 18 months—for a review by the GNSO Council? Or should we be considering specific triggers of events, whether it's a further action or movement on the SSAD regulatory developments, whether it's NIS 2 or something else? So, I'd like to hear from folks. In the event that we don't have a consensus policy recommendation coming from this effort at this time, what would the triggers be and how should we recommend that the GNSO Council consider next steps in a review or a reconsideration of the question of legal and natural?

So, let me stop there. Caitlin, I'm going to hand it to you if you've got anything else that you'd like to add at this point on this question. And if not, I see a hand from Steve.

CAITLIN TUBERGEN: Thanks, Keith. Nothing to add, for me. I think you covered it well. So, you can go to Steve. Thank you.

KEITH DRAZEK: All right. Thanks very much, Caitlin. Steve, over to you.

STEVE CROCKER: Thank you very much. So, at the risk of banging on the same drum too often, you mentioned SSAD, which I'm glad you did. As I've said before, I think there is an interplay between the focus that we've had here on legal vs. natural and the question hanging in the background as to whether or not SSAD or some other form of differentiated access is going to come along, and is going to come along in a timely and effective fashion.

So, if everyone would agree, I would like to see some wording in here—and I don't know where exactly you want to put it in the document—but related to this idea of trigger; of having a high level of attention and concern about forward progress there. Because if there isn't, then it really changes the way one has to interpret the output from this working group.

KEITH DRAZEK: Thanks, Steve. If I understood you correctly, and I do recall your comment on this previously, is that it was a combination of SSAD or another differentiated access approach, I think is how we sort of agreed to consider it—or at least discuss considering it—during our previous call. So, it's not specifically tied to SSAD alone, but that there's a recognition that SSAD or an alternative or alternate

tiered access model was—and I'm probably not getting the exact terminology correct—a recognition that we might end up with different alternatives.

But I think the key question here remains that, are we as a group thinking of, or considering, recommending a timeframe for GNSO Council review—a concrete timeframe of 12 months, 18 months, 2 years, whatever? Or do we want to incorporate and include specific triggers of events that might have the GNSO Council relook at the issue? So, a question of timeframes or events, I think is sort of the binary question that I'm asking folks to contribute to.

STEVE CROCKER:

I think that's a very, very well-phrased question. I don't have a crisp answer, precisely. Maybe it'll come out quickly in discussion. But I would say, if one focuses on timeframes, for example, that if in, let's say, six months there is not clear forward progress and confidence-building events, that would be very bad news. A year and two years would be too far off, so I would put it ... In terms of timing, I would want to see something that would confirm and established confidence and forward progress in there. And as I say, I would set six months as an outer limit on that.

KEITH DRAZEK:

Thanks, Steve. I've got a queue building. I've got Margie and Alan. Margie?

MARGIE MILAM: I think I would suggest it be event-based to have review by the GNSO Council. And in particular, if the NIS 2 directive is adopted, then at that point we know that the language is firm, if you will. I understand it needs to be implemented in the member states, but I think it's probably sufficient to give the legal basis the clarity that I think a lot of folks were looking for. And that's why I think that would be an important event to go back to the GNSO Council.

KEITH DRAZEK: Thanks, Margie. I'll turn to Alan and Hadia and next. But I just want to note for the record that what we recommend as the PDP Working Group to the Council is that. It's a recommendation to the Council that they review and consider or take whatever action. Ultimately, it would be up to the GNSO Council, and the Council as it's composed at the time of the review, to make that final determination or decision about next steps. But certainly, I think as a PDP Working Group recommendation to the Council and to, essentially, the Community that it would set some expectations of a review. And I think that would be helpful.

Alan, and then Hadia.

ALAN GREENBERG: Thank you very much. In terms of should there be a time trigger, we are spectacularly unsuccessful at estimating times. You will recall that the EPDP estimated, I think, five or six months for implementation of Phase 1. We're two plus years, and we're not quite sure when it's going to end. So, if we do a timeframe, I'm happy with things like every six months. But if we say, "Do a

review in six months or in eight months,” whatever that is, I think there's a good chance we will have proven that the review will say, “Nothing's happened. Okay, we're finished.” So, a review every something-or-other, maybe. But just a single time? I wouldn't buy that.

But one of the other triggers, I think, that we want to look at is ... We're pretty sure at this point that NIS 2 will be adopted in some form, and as Margie said, once it's adopted by the Council and Parliament, there's an implementation. And that may vary slightly from state to state, but certainly we know the direction that we're going in.

We have put a lot of effort within this PDP and other PDPs on uniform treatment of registrants and registrars. And I think one of the critical triggers is, if indeed NIS 2 passes with regard to those subject to European law and ... As, I think, Alan Woods said—and I agree—it's not clear that we need a PDP to address NIS 2. Because there's nothing in our current policy which forbids the implementation of what we think will be in NIS 2.

However, it would result in a very uneven playing field, and that's something that we've tried to avoid much over the last number of years. And I think the fact that some registrars will be subject to that kind of legislation which changes the overall picture significantly and others will not is something that should be [through] GNSO action to make sure that we have uniform playing fields across everywhere. Thank you.

KEITH DRAZEK:

Thanks, Alan. Much appreciated. I agree with your intervention, and I think that the points about a recurring review is probably spot on. I think if we're going to consider specific triggers, we need to enumerate those for the purposes of our initial report to get feedback from the community.

So, I'm going to turn to Hadia next, but I think what we have here is ... We need a little bit more work here and input from folks in terms of coming up with the text on this question. And if that's a combination of a recurring timeframe review or tied specifically to triggers, we need to, I think, enumerate, at least as a starting point, what those triggers might be and whether that's a passing or acceptance of NIS 2; and then, possibly, the ODP on SSAD or, as Steve noted, some possible development on an alternate mechanism or structure. I think we need to get those words on paper, have everybody react to them, and make sure that we can come to a consensus that that's appropriate for putting out for public comment.

So, Hadia, I'll turn to you. And then I'll probably draw a line under this one and keep us moving in the interest of time. Hadia.

HADIA ELMINIAWI:

Thank you Keith. So, [I'd like to mention] that I think it needs to be a combination of both—event-triggered, and we should also have a time frame. So, whichever happens first. For example, the timeframe is set to a year, but if one of the specific identified events happens before that, then we could actually reopen the subject for deliberation.

So, again, as you mentioned we need [now] to focus on the events that would trigger the reopening of the PDP and then decide on the time frame as well. Thank you.

KEITH DRAZEK:

Thanks very much, Hadia. And I'll suggest, as I'm thinking out loud here, that as we refer to triggers, NIS 2 is, I think, but one example of a regulatory development that could be a trigger. Right? And so, while it, I think, is significant and directionally important, I think it probably would behoove us as a group to cast the net a bit wider to begin with and refer to impactful regulatory developments.

And we could use NIS 2 as an example under that header or that heading, but I want to make sure that we as an ICANN GNSO policy development effort—that it's not tied uniquely or specifically to one regulation in a particular jurisdiction. But that it's broad enough to recognize that there may be other triggers.

Alan, I saw your hand go up, so I'll turn it to you. And then we should probably move on. Thanks.

ALAN WOODS:

Thank you. So, two very brief points. The first thing is just in reaction to the questions and things that have been said today. I still don't see how what has been discussed and the triggers that have been discussed are any different to the actual GNSO process itself. That is the point of the GNSO—the point in the policy development process that we look out for these things and we ensure that when something comes that needs a policy to

guide it, that that is triggered. And be that, if it is [inaudible] in a very small time frame, there is the possibility of an EPDP.

So, I think the question that we need to think about is how are we going to actually and scope such a process. How are we going to ensure that it is cleanly scoped so that a policy development can come from that? Because if we're suggesting that we should just keep open a perpetual EPDP based on this, I think one of the problems and one of the stresses on the MSM at the moment is simply that people are adding too many things that are stretching the boundaries of the rules as they are written.

And I think we need to be very clear that there should be straight, bright lines between processes. I think it would be much stronger for us to be able to say, "Okay. This is a distinct process." And, yes, we can absolutely recommend to the Council that they should continue to monitor, as they do, as is their call. And I think we can provide that information. But actually keeping the EPDP open is something I think we should be all very, very wary of because of other weight that comes with that.

The second thing, and I will be brief in this one. Just in relation to Alan's point there, I understand where Alan's coming from there about the uniformity, and I appreciate the uniformity. I will, however, point out that there is a niche difference between the uniformity that applies to the rights of our registrants as opposed to the uniformity that applies to creating a process by which was are saying registrars must apply a certain interpretation of a law.

So, yeah, I agree that uniformity should be there. That's why we were focusing and things such as guidance and guidelines, but

again, that does somewhat go against the concept of ensuring the flexibility on the registries and the registrars in order to interpret the laws as well because [as it has been] pointed out, this is going to be slightly different in all the areas of which it is implemented. I know for a certain places like Ireland, we have a track record of beings slightly obtuse in our application of law, especially European directives. So, again, uniformity is good, but I think we need to draw a line between those different types of uniformity, again, when we're talking about a registrant versus how we implement that particular policy. Thank you.

KEITH DRAZEK: Thanks, Alan. Margie, last word on this. Then I'll put myself in queue and we will move on.

MARGIE MILAM: Thank you. I wanted to respond to Alan's concerns about the process issues. The reason why I see this as part of the EPDP is because it creates the legal basis—or not creates, but supports the legal basis to address some of the uncertainties that have been raised by the contracted parties. It's also a law that the community has been involved with in providing feedback, including ICANN with its many discussions with the European Commission. And this a little different than a regular policy process. Which, I agree with Alan in the sense that we don't want to have some open-ended PDP that never ends and can potentially be reopened for changing laws because [this is] specific to the issue at hand and we will not have implemented it by the time the NIS 2 directive actually gets adopted. So, we'll be

in this weird limbo land where the policies haven't been implemented yet. The Board may not have even acted on our recommendations. And so, there'll be that one window.

And if you have to ask for a separate policy, you have to start all the way from scratch. I just want to remind everyone that that means an issue report, and it'll set back any new changes to policy for four years if we have to start from the very beginning. So, that's why I think, in this particular case, it makes sense to call out the NIS 2 Directive and perhaps not other changes in [regulation].

KEITH DRAZEK:

Thanks, Margie. Volker, I'm going to myself in queue here, and I'll come to you afterwards if I haven't covered any of what you were going to say. But we do need to move on.

Look, folks, I think one of the questions here ... We're going to take a homework assignment, or I should say assign a homework assignment, here on this question of timing and triggers. So, looking for concrete, specific input and language and text that would cover what we've discussed here today, ideally finding the middle ground that would cover the range of views and the range of concerns.

So, I'm just going to draw a line under that in terms of time frames and triggers/events. I think a reference to NIS 2 is completely appropriate. It's been a topic of conversation. It's obviously an important consideration for this group and has been. But I think limiting it to NIS 2 is probably a bit too stringent. I think we need to

be a little bit cautious there in terms of limiting it to one particular regulatory development.

That said, I think that Margie has raised a good question, and I think Alan as well, about how do we approach this moving forward as a community, this issue? If we're going to provide some guidance. Not come up with new consensus policy recommendations, but acknowledge that there could be changes in the ecosystem over the course of the next 6, 12, 18 months, whatever it is, that we would need to basically reengage.

The question is how do we re engage? And that question is ultimately going to be up to the GNSO Council as far as a chartering process and a chartering exercise. I think whether the EPDP is paused and basically put on a hiatus until such time that the time frame or the triggers reactivate, it's still going to be a GNSO Council decision as to whether to wind to this group down and then consider starting a new effort.

I understand the question or the concerns of time frames and having to, as Margie said, "start from the beginning". But if we're 6 months, 12 months, 18 months down the road, we're probably going to have to go through a process as a community of identifying new participants for the group, refocusing and rechartering the group—moving forward regardless—finding a new chair, etc.

There are reasons, I think, to bring this EPDP experience to a close while noting that there could be triggers for the GNSO Council to reengage and to reengage the community in reviewing these developments. But I think there's a good argument for

bringing this group and its Phase 1, Phase 2, and Phase 2A iterations to a conclusion and then giving the community sort of a fresh-start opportunity when the time comes, whether that's based on time frames, GNSO Council action, or specific triggers. So, that's sort of my take on that.

Volker, and then Stephanie. And then we really do need to move on. Thanks.

VOLKER GREIMANN: Yes. Thank you, Keith. I agree with your comments there. Just entering NIS 2 as possible trigger is risky because we do not know what NIS 2 will ultimately contain. I mean, it's still very much in flux. As we have seen, there is still a lot of editing going on. And until it is formed into law and then transposed into national laws, I think saying that we have to reopen this if NIS 2 comes around, then probably we might be faced with a situation where NIS 2 doesn't change too much [actually and is in total compliance] with what we have already, which is in many ways already ...

So, we should probably rather focus on certain decisions that are currently proposed within NIS 2 that if they come to pass would trigger a renewed look at the questions. NIS 2 as it stands is too vague to be a good trigger here.

KEITH DRAZEK: Thanks, Volker. And I'll note that Alan Greenberg in chat is right that what we're proposing here is for the GNSO Council to consider "at certain time frames and/or triggers". So, thanks, Alan for that.

Stephanie, last word briefly, please. And if you have anything concrete or specific or explicit in terms of suggested text or suggested approach, that would be great.

STEPHANIE PERRIN: Apologies. I came in a couple of minutes late, so maybe we already dealt with this question. But why do we need this as opposed to, do we not already have the WHOIS Review Team procedure continuing along? I understand that reviews are being reviewed—pardon that—at the moment, but could this not be picked up in WHOIS Review 3?

And if you are going to insist on putting a specific reference to NIS, I agree with Volker on this. But if you are going to insist on putting it in, then you really have to put a reference to data protection law changes because it was steadfastly ignoring the GDPR that got us into this mess in the first place, if you recall. We were well into 2018 before anyone at ICANN recognized that there was a data protection law that applied to us. Thank you. Bye.

KEITH DRAZEK: Thanks, Stephanie. Alan, we really do need to move on. 10 seconds?

ALAN GREENBERG: Yeah. I just want to respond to Stephanie on the review issue. The Board has chosen to ignore its six months rule on the second RDS review and has not acted on any recommendations made. And ATRT3 has recommended that we hold reviews until we

reconsider an ATRT4, so I don't think we can rely on an RDS review.

KEITH DRAZEK:

Okay. Thanks, Alan. And thanks, Stephanie. Thanks, everybody, for the conversation on this one. Homework assignment, to come up with some proposed text with the specific triggers whether it's an event or a time frame. So, please, everybody contribute some text. Let's work on that text. Let's come to some consensus language for our recommendation for GNSO Council consideration on the evolution of this process as it relates to potential changing ecosystem.

With that, let's move on to the next item. And that is the question of standardized data elements. And again, this, I think, referring back to the term "flag" that we've used in past discussions, but—I'm just going to read from the screen here—"Some have indicated disagreement with the inclusion of Recommendation 2 that ICANN Org must implement the capability for contracted parties to use a standardized data element in the registration data."

And I think, really, we need to focus in a little bit here on the terminology that's being used and where the various groups are. So, on this one, the questions that we're trying to answer now—here and in homework— with additional text is:

If the PDP team will agree that a standardized data element must be added, how would this work in practice? Is this an ICANN Org responsibility? Would it require changes to existing policy

recommendations—for example, the Consistent Labeling and Display? Would this require work by other bodies including, for example, the IETF in terms of standards development?

And secondly, if the EPDP Team agrees that a standardized data element must be added, what would the data element table look like for this data element—required to be transferred from registrar to registry, redacted/non-redacted? And specifically calling out the Phase 1 Recommendations 7, 8, 9, and 10.

So, I'm going to pause there. Caitlin, is there anything that you would like to add on this particular one as we tee up the discussion? And I see Steve has his hand up. So, Caitlin.

CAITLIN TUBERGEN: Nothing for me. Thank you, Keith.

KEITH DRAZEK: Okay. Thanks very much. Steve, over to you.

STEVE CROCKER: Thank you. "ICANN must implement the capability for contracted parties ..." It's really not an implementation, exactly. It's an addition to the data dictionary, and I want to say some words about the data dictionary. Whether or not there's an implementation issue depends upon whether or not a registrar chooses to collect or designate anybody in terms of legal vs. natural. So, there's a big split here between simply defining the

concept of that field versus requiring or imposing, or anybody spending any energy actually implementing it.

And so, I would change the wording up there to say something closer to “ICANN Org must define the capability” but not necessarily impose the implementation.

Then, the reference to the IETF is interesting. It turns out that there is no place, so far as I know, in which the list of data elements—which I call the data dictionary—is actually laid out and made explicit from top to bottom. That’s an oversight, and it’s something to be cleaned up one way or another. Ideally, I would imagine IANA protocol parameter registry would be the natural way to do that.

Whether or not that has to or should be passed through the IETF is ... I guess it should be, but that’s another topic entirely. And I would recommend strongly that, since this is right in the core of what ICANN does, that ICANN would take the lead on that.

KEITH DRAZEK:

Thanks very much, Steve. That’s really helpful context. And, look, I’ve got a queue building, so I’ll turn to it momentarily—to Margie.

But I do want to note here that what we’re talking about is a standardized capability, I think. Right? In other words, in this particular case, for those registrars that choose to differentiate between legal and natural, that there is some standardization, and that there’s at least a recognized or a recommended capability to differentiate in a consistent way so that, down the road—whether it’s more and more registrars choosing to differentiate or if, at

some point, there's a new requirement based on changes to the ecosystem—that there's a spec that folks have been ideally following when they choose to differentiate, and that there's something that they can work towards when that differentiation either is required or becomes more standard.

And so, I think that's what we're trying to get to here, is some standardization ... And then the question is, how do we go about doing that? And then that drives us to the specific questions in the bullet point, the sub-bullets 1 and 2 here.

So, with that, Margie, Alan Greenberg, Chris Lewis-Evans, and Marc Anderson. Margie?

MARGIE MILAM:

Sure. As we were looking at this in our homework over last week, it raised a lot of questions, the whole optional nature of it, because if a registrar decides that it wants to make the distinction and it has a flag, there's nothing that requires the registry to do anything about it, or vice versa. If the registry decides that it wants to make the distinction, there's nothing that requires the registrar to do anything about it.

So, to me this doesn't make sense in an optional sense. I mean, clearly, I agree with Steve that having standardized fields for the legal/natural person distinction is important. And that's why we think it needs to be mandatory. But I just want to flag the disparity when you're when the choice can go both ways. It can go on the registrar side. It can go on the registry side. And so, I think this just needs a lot more thought.

KEITH DRAZEK: Thanks, Margie. Alan, you're next.

ALAN GREENBERG: Thank you very much. In regard to what Margie was saying, we have a situation today where the contents of the RDDS field for thick registries may vary considerably between what the registry shows and what the registrar shows. That's the life we made. It's dumb. It's confusing. But it is, and I don't think we can change that—not, certainly, in the short term.

I don't know why we are agonizing over how to word this. Phase 1 very clearly, in five recommendations, said the fields ... And I believe the data dictionary that Steve is referring to is currently sitting in contracts because the contracts list what the fields are that must be transferred in various places.

And so, I don't understand why we don't just go back and revise the Phase 1 recommendations that said which fields are [there], and how are they treated because that's all we're doing. We're just adding a field which we neglected to mention during Phase 1.

KEITH DRAZEK: Thanks, Alan. Chris and then Marc Anderson.

CHRIS LEWIS-EVANS: Yeah. Thanks, Keith. In the GAC small group we also had a quick discussion over this, and we were slightly confused around the language about "ICANN Org must implement ..." So, maybe we

could hear why it's that language? And as Alan has just said, there in Phase 1 we removed admin fields and such without having to have this language. So, we were just wondering why this language is here for this when all we're doing is updating the fields necessary. Thank you.

KEITH DRAZEK: Thanks, Chris. It's a good clarifying question. I will turn to our staff colleagues if they'd like to provide a response to that. But let's go to Marc Anderson first, and then come back to the question that you just posed. Thanks.

Marc.

MARC ANDERSON: Yeah. Sorry. I was talking on mute. Can you hear me okay?

KEITH DRAZEK: Yep. Sure can.

MARC ANDERSON: All right, great. Thanks. Yeah, a couple things I want to respond to. Steve Crocker was mentioning that there wasn't a data dictionary anywhere, and Alan Greenberg correctly noted that, really, for all practical purposes, the data dictionary for WHOIS is in the contracts. It's kind of ugly in how it's done, but Alan is correct. The data dictionary for WHOIS in the contracts for our RDAP which is the replacement.

That's defined in a profile. I'm linking the profile just so it's in chat. That profile was developed jointly by ICANN staff and contracted parties, and put out for public comment. But that clearly defines all the fields. It provides a very clear table in Appendix D that has the data element mapping. So, that does exist and that can be referenced.

That said, I want to also agree with what Margie said that, as drafted, it's not ... There are a lot of questions in here that just make this so it doesn't work. It's not really implementable. There are too many questions about what this means and how it would be implemented.

I do want to note the registry comments to this. We are not supportive of adding this field to the RDDS output. Staff asks in their comments on the document, or notes in their comments to the document, that this could be useful in making an automatic disclosure determination. That does not need to be in the public RDDS output—to make an automatic disclosure determination—at all. It just needs to be stored on the system itself. In fact, having it in the RDDS public output, to my understanding, wouldn't affect that at all.

I think, for a contracted party that chooses to make a legal vs. natural determination, they're going to have to store that in their system in one way or another, whether that be a flag or some other mechanism. And I don't know that it really matters, but they're going to have to store that in their system in one way or the other.

Taking that flag and then including it in the public RDDS output, I don't think that makes sense and it could add confusion and also opens up data subjects to having additional data disclosed about them which doesn't necessarily make sense.

KEITH DRAZEK:

Thanks, Marc. I've got Alan and Brian in queue. But I just want to note that I think one of the distinctions that you flagged there or noted there is the difference between a standardized data element that is essentially data collected and a standardized data element—whether we call it a flag or something else—that registrars and, presumably, registries would have or use.

And then the alternative or the next step would be to have that be an output. Right? Something that is displayed or disclosed as a data element itself rather than a data element that is used internally by the registrar to make the distinction or differentiation in the decision to disclose legal persons' data versus natural persons' data. Right?

So, I think the key here is, is there a standardized approach that we can recommend for registrars that choose to differentiate that would somehow create a more consistent approach now and down the road in the event that there's some sort of a requirement that may come upon us.

And then the separate question is whether it's something that needs to be explicitly disclosed on its own. Right? So, I think that's an important difference.

Alan and then Brian.

ALAN GREENBERG: Thank you, Keith. Keith, you mentioned part of what I was going to say. Whether a field in the RDDS is displayed publicly is one of the characteristics that I've been harping on that we specified in Phase 1 for the other fields and we would have to specify in this one. So, I happen to believe it should be displayed publicly. It's simply one of the binary decisions that we have to make.

But I'll point out that there is value in having that field accessible to the SSAD. And conceivably it could be not a public field, but registrars would be obliged to tell the SSAD—[provide] this field to the SSAD. That allows the SSAD to make a determination that something should be released and not make it a registrar decision which adds a significant amount of time to the process because a registrar may choose to do every such request manually. So, it could reduce very significantly the number of requests that the registrar needs to consider and speed up that overall process.

So, whether it's part of the public RDDS is a decision that we have to make. I personally think it should be. But we also could have a non-binary value to that. That is, it's not public but it is revealed to the SSAD.

KEITH DRAZEK: Thanks, Alan. That's a really helpful clarification and I think brings the focus to this question of the utility, the benefit. And does this become something that SSAD might need/would use at some point in the future. And I think the challenge or the opportunity for us as the group here is to set some expectations, or if we're going

to call it a standardized data element that would maybe save us some time and work in the event that those requirements are placed upon us as a community. So, thanks, Alan.

Brian, you're next. And then Marc Anderson.

BRIAN KING:

Thanks, Keith. I had a couple of points I hope folks will find helpful and then a clarifying question. A couple points are, 1) we haven't said how this field is going to be generated and what it could be. I think our contracted party friends might feel a bit more comfortable with the concept here if we call this field an output of whether the registrant has self-designated. Right? And that could be yes or no. Or it could be yes legal, yes natural, or no. And that could just be it.

And that type of data would be useful. It would be useful to be public, especially for analysis, for research, for transparency around how many registrars were making the distinction that could serve as data for future policy development. That might be necessary or useful, and there's a lot of good that could come from having that be public even if it wasn't a requirement for at the contracted parties to make the distinction. Just to have to field public for reporting purposes would be useful.

I'm curious about the question to ... I saw on the screen, and I think Marc mentioned as well, that it may be doing harm by exposing additional information about the data subject. I don't think so. I don't understand the point. What specifically—if folks could help me understand. What harm would be done and,

specifically, I guess, what additional information about the data subject are we talking about here? Thanks.

KEITH DRAZEK: Thanks very much, Brian. I'm going to keep the queue going. I'm going to turn to staff after Marc speaks for a response to Christ Lewis-Evans' question earlier. And then we'll come back to Brian's question.

Marc, go ahead. Marc Anderson.

MARC ANDERSON: Sorry. Talking on mute again. Just responding to Alan G. I think from a contracted party house perspective, if I can presume to speak for them, I think there is room to consider standardizing a flag for those contracted parties that choose to make the differentiation. But I think there's a lot of discomfort with making that flag public.

Standardizing the flag, I think that there's some value in that. And having that flag available to the SSAD for making any SSAD related disclosure determinations, I think there's value in that. But on the point about making that public, I think there's a lot of concerns with that on our side, especially when we're considering guidance. And from our perspective, we don't consider that to be good guidance. Quite the opposite, actually.

KEITH DRAZEK: Thanks, Marc. Brian, I saw your hand go up. Did you want to respond?

BRIAN KING: Thanks, Keith. I would like to respond. What's the problem? Sorry. I've heard concern and issues, but I don't understand what the problem is with making the field public, especially if there's no obligation to actually fill it in or to have the registrant report the distinction. I don't think I've heard any argument. Thanks.

KEITH DRAZEK: Thanks, Brian. I'll let anybody from the contracted party or anybody else get back in queue for a response if you'd like. Alan Greenberg, go ahead. And then I do want to turn back to Caitlin for a response to Chris Lewis-Evans' point.

ALAN GREENBERG: Yeah, thank you very much. Marc, thank you. That's the first I've heard from a contracted party that you're willing to even consider a field that can be filled in at the choice of the registrar. So, nothing's going to be ...

Even if it is a public field—and I said even if it is a public field—nothing's going to be disclosed if the registrar doesn't want it disclosed because they don't have to fill it in at all. All we're doing is future proofing the RDDS to make sure the field, if we later on want to use it or must use it ...

That's all we're doing. Because as we pointed out, NIS 2 may not require a PDP. But if we don't define the field now, adding that field so the SSAD could use it would require a PDP. And we're hopefully avoiding the need for a PDP just to add that field. And that's what it's all about.

And as I said, if we want a third category, which we didn't use during Phase 1, but a field that is only displayable to the SSAD—the SSAD can't pass it on, but it can use that content—that's better than not having it at all. Thank you.

KEITH DRAZEK:

Thanks very much, Alan. And I want to seize on Alan's observation and the conversation that we've had here. I want to separate the questions of the development of a standardized data element from the question of display for the moment.

It sounded like, to me, that there's some movement towards consensus on at least recognizing that there's some value or some potential value in having some standardization around the question of the standardized data element so that, looking ahead, whether it's an SSAD requirement or something else that we've got some standardized capability. Right? The capability and the opportunity for registrars to choose to differentiate by using a standardized approach. And I think there's some clear benefit to that, and I want to make sure that we're focusing on that as the first question related to consensus for our recommendations.

And then there's a secondary question of whether that data is disclosed. And I think some reasonable questions have been

asked. I think there's also a reasonable question about what's the benefit of displaying that flag determination in the RDDS output, provided that flag is triggering the display for those registrars that choose to differentiate.

I understand there are questions of “what's the harm”, and I think there are also reasonable questions about what's the direct benefit. But I think that's a separate question. I want us to focus now on this question of standardized data elements in a voluntary manner. So, if anybody would like to get in queue, please go ahead and do so.

Actually, before that—sorry—Caitlin, can I turn to you for a response to Chris Lewis-Evans on the question of why ICANN Org is referenced explicitly.

CAITLIN TUBERGEN: Yes. Thank you, Keith. And I'll note that my colleague Amy posted in the chat kind of what we were getting at, which is that there had been this discussion back and forth [about] if a new data element should be added, if it should be standardized, if it should belong to contracted parties, only if it should belong to ICANN Org.

And so, in prepping the text for discussion, staff added the current text so that the group could ponder over it. But essentially, for implementation purposes, ICANN Org would need to know whether the team intends for a new field—whether it's required or optional, public or redacted—should be added as an update to [consistent labeling] a display in the RDAP profile, or if that's not what the group intended.

And so, we just put some draft language to consider and respond to, but that's essentially why we had ICANN Org implicated in the text. And if that wasn't what the group meant for, then that can obviously be changed. But we just wanted to ensure what the group's expectations were and try to document them. Thank you.

KEITH DRAZEK:

Thanks, Caitlin. Very helpful. And, Chris, if you and your GAC colleagues have a follow up, feel free. But I think that's helpful, Caitlin. It's sort of a starting point for reaction, and let's take it from there.

Alan, your hand is up. And unless anybody else would like to get in queue on this one, I suggest we move on. Alan.

ALAN GREENBERG:

Thank you. I didn't understand what Caitlin was saying about whether the field belongs to ICANN Org or belongs to registrars. A data field is defined. Period. Now, we then define who fills it in and whether they're obliged to and who displays it and under what conditions and all of that.

And again, those are the various recommendations that Phase 1 did. Is it transferred to a registry? Is it put into escrow? Is it displayed? Those are decisions that we have to make as part of the policy. That was policy in Phase 1. It's policy in Phase 2. And 2A if we choose to go that way.

But I didn't understand the business about who owns the field. Who fills it in? Yes. And my understanding is that ICANN doesn't

fill in any fields. They're all filled in by the registrar or by automatic processes, depending on how they're defined. Thank you.

KEITH DRAZEK: Thanks, Alan. Berry, I see you put your hand up. Go ahead.

BERRY COBB: Thank you, Keith. At the risk of repeating what Alan just stated and a little bit of what Marc stated earlier, I would suggest that the whole group, as part of your homework for Friday around this specific part of the write up, is to go back and look in detail at the Phase 1 report, starting there,

First, you'll recall, it was purpose 3, loosely defined as contact with the data subject or the registered name holder. Go to Appendix D and review that data element workbook which, in essence, defined what the Phase 1 Team was referring to as the minimum public data set.

But specifically, there you will see not only the purpose but then how we methodically mapped or walked through the specific processing activities of whether it was going to be collected or generated, whether it would be transferred from the registrar to the registry. Specifically, there were processing activities that I believe we referred to as "publish" which may or may not be the appropriate term, but in essence is what data elements would be displayed in this minimum public data set.

And there's an outline for what a registry would be required to display versus what would be required for a registrar. All of those

aspects of that data element workbook, as noted here, translated back up into Recommendations 7, 8, 9, and 10. And Recommendation 10 specifically, which is also under discussion currently with the Phase 1 IRT, is outlining the “minimum public data set” that will be publicly available in this minimum public data set.

And it goes on further to define—which we considered an additional processing activity—which of those data elements that are considered personal data that would ultimately need to be redacted.

And then the last part of the homework assignment is to necessarily go back to Phase 2—although I don't know that there's a specific recommendation to discuss—but as Alan noted, the group needs to make a distinction here. If this new field were to be a required field as part of the minimum public data set yet still optional for registrars to use if they chose to differentiate between legal vs. natural or used the self-designation option, that field would still.

The distinction or decision that needs to be made is, indeed, is this going to be part of the minimum public data set as defined in Phase 1, or is it secondarily only going to be processed via the SSAD as defined in Phase 2?

And so, that's the clarity that we're looking for. That's the policy change that may be required if the group would agree to it that would, in effect, amend the recommendation—or maybe two recommendations—from Phase 1 as part of this work here. So, I hope that was somewhat helpful.

KEITH DRAZEK:

Thanks, Berry. I think it was very, very helpful in terms of tying us back to the pre-existing policy development work that's taken place in the environment that we're trying to work here. So, thanks for that.

And I guess that's a call for everybody to focus on your homework and to come back and to input some suggested language in here that takes what Berry just covered into account. But let's see if we can get some text that folks can react to. I think staff will take the discussion today and propose some new text for everybody to consider. But folks, please spend some time thinking about this one because I think this is a critical component of the output of our group.

With that, I don't see any other hands in queue, so I'm going to move on. Let's move to item #3 on our agenda. And noting that there were two questions above, and so please make sure that you focus on both of those.

But question #3 is that, in the draft initial report language, some have expressed concerns about the use of the term "unknown" that indicates whether the registration contains legal person data, natural person data, or the third category of unknown. Some have suggested it should be replaced by the term "empty" or the term "not specified". Others have suggested that there should only be two options—either legal or natural. So, a binary choice rather than multiple choice.

And there's some ongoing discussion on this. But this one where we need to, I think, bring this one in.

And I'll note, just for the benefit of framing this, that if we're going to have an optional treatment of this choice as we make recommendations or guidance to registrars that choose to differentiate, there's this distinction between new registrations and existing registrations. And I think, for existing registrations, there's no way to have a concrete decision about one or two. Right? It's not something that we can ...

Let me rephrase that, sorry. We need the ability to retrofit. Right? We need the ability to, over time, update the existing registration base for those that choose to differentiate in this case. And so, I think that's one of the reasons we acknowledged, in previous discussions, the need for this third category. And, yes, we can look at this in different ways of only focusing on new registrations for these recommendations, but I don't think that gets us to where everybody wants us to be.

So, let me stop there. I have Alan in queue. Go right ahead.

ALAN GREENBERG:

Thank you very much. On thinking about it, I realize that "unknown" is in fact a perfect word to use if the RDDS was a sentient being because you're asking the RDDS, "Is this a legal/natural?" And the RDDS says, "I don't know. It's unknown."

But the RDDS is not a sentient being. It's simply echoing information that was put in by the registrar. And the registrar may well know whether it is a legal person but has chosen not to

differentiate in the public RDDS or even in the private RDDS. So, “unknown” is not the proper thing to display, although it would be in some different, surreal universe.

I think we simply have to say that it can be left empty, unspecified. So, if it were displayed, then you’d get a display field of legal, natural, and blank. We have plenty of other blanks. Phase 1 explicitly said that the technical contacts do not have to be supported by the registrar. There can be registrars who do not ask the registrant what the technical contents are, and they do not put them forward. It’s just empty fields.

The exact way in which ... Does the registrar have to have an XML field when it transfers the data that is empty? I don't know. I suspect not, but that's a technical issue of how the data is moved around. I think simply having the field empty addresses the issue. We can't specify anything else because we know, for the installed base of 200 million—roughly— registrations, they're not all going to be filled in correctly immediately.

Even if we were to have a policy saying that differentiation had to be done, we would have to have a phase in period of some sort. So, let's just leave it empty. Thank you.

KEITH DRAZEK:

Thanks very much, Alan. Very helpful. I’ll note also that Berry has typed into chat an example of the way that it could be captured. And one would be a response of “not specified”. Right? And there's different terminology that we could use there, but “unknown”—as I noted in chat—does raise questions of, “Well,

unknown by whom? Is it unknown by the registrar? Is it a known by the registrant? Etc. So, thank you for that.

Brian, you're next.

BRIAN KING:

Thanks, Keith. My hand is up to thank Berry for the suggestion and to agree with it. I think, also, strategically "unknown" could imply some failure on behalf of whoever was supposed to know. Whereas, something like "not specified" I think more appropriately puts the onus on the registrant to have either specified or not. Whether they were given the opportunity to is a different story. But strong preference for that language. Thanks.

KEITH DRAZEK:

Thanks, Brian. And plus one for Berry. And, Berry, you're next. Go ahead.

BERRY COBB:

Thank you, Keith. Just to slightly correct what Alan had stated. The Phase 1 report does not specifically state the aspect where a value of a data element should be left blank. The intent of what was occurred through the data element workbooks and basically that minimum public data set across the Recommendations 7, 8, 9, or 10 was that we were not going to change existing requirements. So, maybe an additional homework item ... And this also being discussed in the IRT.

And, unfortunately, this a complex thing we're tackling because the existing requirements are obviously based on the WHOIS protocol. And as everyone knows, we're in the midst of transferring to the RDAP protocol. Now, RDAP protocol, without trying to get too technical, does not pass blank values as defined in the protocol. That's not to say that a data element that has no value can't somehow be displayed from a human readable perspective. That's kind of a different story.

But just to make clear that the intent of the Phase 1 Working Group was not to change that existing requirement. And so, the additional homework assignment would be to go specifically review the RDDS specifications of the registrar and registry agreement, starting with the registrar agreement. And you'll get into the fine details of a footnote that will basically allow for the understanding that if a data element contains no value, the data element for WHOIS—the key—must still be displayed.

However, it even gets further complicated with the fact that there's a WHOIS advisory out there that provides for the option that the contracted party may not pass an empty value at all. And that's something that is, again, being worked on in the IRT.

But again, just a long way of saying that the Phase 1 group did not specifically state that blank values must be displayed. It was deliberated on and discuss, but it's not a part of any recommendation. Ultimately, the intent was not to change the existing requirement and we've got to work through the technical challenges of moving from one protocol to the next. Thank you.

KEITH DRAZEK: Thanks, Berry. I have Velimira in queue, and also Alan Greenberg. Alan, I saw your hand go up, so I'm guessing it's a response to Berry. If Velimira doesn't mind, I'll go to Alan and then come back to Velimira.

ALAN GREENBERG: Thank you very much. All I was getting at by talking about unused fields is that we explicitly ... Phase 1 said, "The technical contacts were fields that did not have to be collected or used by registrars if they chose not to." And I was simply saying that is effectively the same characteristic as we were talking about in this new field. It is a field that exists. It is defined. How it is dealt with is defined. But there is no obligation to fill it in or to collect it or fill it in.

And that was the comparable part that I was talking about, not the details of just how the processing is done and how the WHOIS differs from RDDS and whether there can be blank fields in RDAP. So, just saying it's comparable. It's a field which exists, but the registrars are under no obligation to use it. That was the equivalence that I was looking for. Thank you.

KEITH DRAZEK: Thanks, Alan. Appreciate that. Velimira, back to you. Thanks for your patience.

VELIMIRA GRAU: Hi, everybody. So, for those who know me less, I'm a GAC alternate. I just wanted to come back to the "unknown" wording raised by Keith and in our homework. Basically, my main concern

is that if we keep the wording “unknown,” this would give the possibility to people to identify, to say that ...

Hello? Can you hear me?

KEITH DRAZEK: Yes. We can hear you. Go ahead.

VELIMIRA GRAU: Hello?

KEITH DRAZEK: I can hear you okay, Velimira.

VELIMIRA GRAU: Yes. Sorry, Keith. I had an issue apparently with my mic. So, what I was saying is that our concern is that we don't want to inadvertently encourage registrants to choose “unknown” because this would be easier for them. Right?

So, from that perspective, while agreeing that there should be two different categories you're looking into, which would be the new registrants and the existing registrants, I think that for the new registrants, we definitely want them to identify as natural or legal.

Whereas, for existing registrants I would think, indeed, that the wording “not yet identified” such as was brought forward by another representative would possibly make sense. So, I was just

wondering whether this concern could be taken on board when we are considering the word “not yet identified”.

I was just not quite sure, based on what I have just heard, that “not yet identified” would be only used for existing registrants, or we'd like so far to keep it also for new ones.

KEITH DRAZEK:

Thanks, Velimira. Thanks very much. So I think, if I understood your suggestion, is that for new registrations that there would be—and, again, this for registrars that choose to differentiate but in the context of trying to develop some standardized approach for those that do in anticipation of possible future requirements, whether it's a SSAD or something else—that there be a binary choice presented to new registrants. But that there would be an allowance for a null set, whether it's “unknown” or “not specified” or whatever, in the registrar's collection and determination itself with its own records.

So, I think I got that right. If not, please correct me. And then I have, I think ...

Velimira, is that a new hand or an old hand? I think it's probably an old hand.

VELIMIRA GRAU:

It's an old hand. Sorry, Keith. And, yes, you have properly understood what I wanted to say. Thank you.

KEITH DRAZEK: Perfect. Thank you so much for confirming. Alan, you're next. And then we're going to need to start moving on. Thanks.

ALAN GREENBERG: Thank you very much. Although I strongly agree that this should be a mandatory field filled in for all new registrations, that's a separate decision that we, so far, have gotten pushback on as a policy requirement. So, at this point, I thought we were just debating the existence of the field.

Once we agree that we're going to recommend that the field now exists within all of its gory details, then we can put back on the table whether we're going to mandate that it must be used. I suspect I know the answer to that, sadly. But let's not confuse the issue of the existence of the field with the mandated requirement that it be used in some conditions. They're linked, certainly, in my mind and I'd love to see it. But let's not confuse the issue in our discussion. Let's keep our orthogonal and debate the points one by one. Thank you.

KEITH DRAZEK: Thanks, Alan. And you're right. We are currently talking about, for the purposes of inclusion in our initial report for public comment, the recommendation for registrars that choose to differentiate that there's a standardized data elements. And then we've got the specific questions.

At some point, some of this turns into implementation questions, but I think the key question here is what's the top line, either policy

recommendation or guidance, that we're coming up with as it relates to the treatment of this distinction?

So with that, I don't have anybody else in queue at this point so we probably should move on to our question #4 which will be the last one that we get to, or the last one that's on our list today. We have just over 20 minutes left, and I do want to spend the last five minutes of our call today focused on the timeline for the rest of the month.

But let's turn to question #4. Some have suggested that the use of "standardized data element" is vague and have suggested using "standardized mechanism" instead. However, the discussions to date seems that a standardized data element has been clearly understood, meaning adding a data element to RDDS or a registrar's internal system that would allow the indication of personal versus non-personal data or legal and natural.

So, the question here for the group is should the EPDP Team refer to the term "mechanism" instead? And if so, how can a mechanism be further described to make clear what is intended to mean, and who would be responsible for developing and implementing it?

So, again, this is trying to help us focus and hone the language that's in the document where there has been multiple different pieces of input and we're trying to find some consensus path forward on this particular language. I expect that some of this will be informed by our previous discussion now, but I wanted to make sure that we covered it.

I have Hadia and then Alan.

HADIA ELMINIAWI:

Thank you, Keith. So, I don't think we need to focus on the term "mechanism" because mechanism refers to how actually this differentiation would happen, and this could happen in different forms.

But what we are looking for is a standardized data element, [and as] previously discussed, a field in the RDDs. And that could be defined easily as we have already done during Phase 1 fields. As for the mechanism, it could be the SSAD. It could be some other way of disclosure. It doesn't really matter. The mechanism doesn't really matter. Or maybe if we're talking about "mechanism", maybe we are talking about, for example, the steps through which the differentiation should happen. And even the steps ...

I don't think we can really standardize those steps. So, no, we are not looking for a mechanism. Thank you.

KEITH DRAZEK:

Thanks, Hadia. Alan, you're next.

ALAN GREENBERG:

Yeah. My comment is very similar. I guess I'd like to hear from whoever recommended "mechanism" what they were envisioning. "Mechanism" normally would be a process. It could be the field if the field was dynamically created. If this is a field like you find in some databases that doesn't exist in the database but it's

calculated from something or other when it is queried, then perhaps the term “mechanism” would fit.

But I think we should stick with the terms we used in Phase 1 and not confuse the issue here. Thank you.

KEITH DRAZEK:

Thanks, Alan. I think that's a good point, again, in tying it back to existing language. And I think this question has been informed by the conversation that we've just had over the last 45 minutes or so on the previous question. So, I sort of feel, at least from where I'm sitting, that “standardized data element” is sufficient and sufficiently clear with the additional work that we're going to spend in the homework in providing some additional text here.

So, I guess from where I sit, unless somebody disagrees—and if whoever suggested “mechanism” as an alternative to “element” is happy to speak up. But I sort of feel like the “standardized data element” is sufficiently clear and that we can probably take some steps to help make it clear rather than transitioning to the use of the word “mechanism” which I think carries some additional, perhaps, baggage with it, to use a technical term.

So, anyway. Anybody like to get in queue on this question? And I noted that the agenda was scrolling there. If we could scroll back up. Thanks.

Okay. Anybody like to comment further on this question of the distinction or difference between a standardized data element and a standardized mechanism? All right. I'm not seeing any hands, so

I think we'll take that on board. Staff will develop an update based on the conversations today on this document.

But the next steps are going to be for the team to review an updated version of the write up and flag any comments or suggested edits in comments to the document by this Friday. So, look, folks. This really, really important from a timing perspective. You'll see, as we get to the timeline in a moment for concluding our work in the initial report phase, we really need folks to spend the extra time this week—in the next couple of days, the next few days—to really drive these things to a conclusion so we can have an assessment and decide that it's ready for a public comment period as the initial report language.

So, anyway, I'll get off my soapbox there. If we could go back to the agenda document briefly. Sorry. Thank you. I just want to focus on the next question which is the feasibility of unique contacts. We won't have time to get to this today in a lot of detail or substance, but there are some questions here switching gears on the feasibility of unique contacts.

The question to be considered by the EPDP Team is that we note in a number of instances that suggestions were made by some members that were objected to by others. Those items have been flagged as changes not applied in the redline version.

So, here, #1. "At the moment, the write up refers contracted parties who would like to provide a registrant-based or registration-based e-mail address to the Bird & Bird memo. Some have suggested that more specific guidance should be included or called out. Should more specific guidance be included, or is it

sufficient to refer to the B & B memo which will be included in full in the annex to the initial report? And if more specific guidance is to be included, what should this include?"

Okay. So, that's a question for folks to consider. Marc, I see your hand. Go ahead.

MARC ANDERSON:

Hey, Keith. I'm really sorry to do this. This going back to the previous discussion. You made the point that we need to have comments on this, but will staff be updating the current Google Doc based on today's discussion to facilitate that feedback? For example, I'm looking specifically at Recommendation 2 in the legal vs. natural question 1. And, for example, it has "personal data, non-personal data, and unknown". I think there was agreement that should be "personal data, non-personal data or unspecified".

So, I guess it's maybe just a process question we'll be getting updates to react to, or will we need to respond to the current draft taken into account today's discussion?

KEITH DRAZEK:

Thanks, Marc. It's a good clarifying question, and the answer is that, yes, staff will circulate a new version based on today's conversation by close of business today. So, a good clarification. I think I noted that there would be a new version circulated, but I wasn't specific in terms of time frames and what to expect.

So, hold off on making any comments to the existing document that we've just spoken to until our staff colleagues circulate a new

version by COB today. And then that will be the document in which everybody should continue providing input. And thanks, Marc, for that clarification. Very helpful.

Alan Greenberg, you're next.

ALAN GREENBERG: Thank you, Keith. I think you were asking whether we should include the B&B memo in the report or extract what we believe it says. Did I get the question right?

KEITH DRAZEK: Thanks, Alan. I think the question—and I'll turn to Caitlin for clarification here—but I think the question is, is it sufficient to refer and reference the Bird & Bird memo, or is some other or additional specific guidance included or called out? Is that something that we should try to include? And if so, what is that?

But let me turn to Caitlin real quick just to make sure I've got that right.

CAITLIN TUBERGEN: That's correct, Keith. Some members noted that additional guidance should be pulled out of that memo. We're just looking for some volunteers to come up with what that guidance should be.

KEITH DRAZEK: Yep. Thanks, Caitlin. And Alan, I'll turn back to you in a moment. But, again, this underscores the point that when, especially at this

stage of our work, if you're putting comments or input into the document, if you're contributing to the document—whether in a comment or whatever— please provide a specific suggestion in terms of text. Don't redline. Don't overwrite. But rather than simply making a statement or an observation, please, please, please provide actual text as a recommendation. Thank you for that.

And Alan, over to you.

ALAN GREENBERG:

Yeah, thank you. Legal memos, by their very existence, provide options. They provide pros and consensus. They give perhaps some insight. But they don't make specific recommendations. So, I think in our report, we can reference the Bird & Bird memo saying, "This is what we used as the basis for making a recommendation."

But I think we have to be crystal clear which of the options the letter may have used as the ones that we're recommending going forward because any of those memos provide options and provide insight which as the client then have to evaluate. A good lawyer doesn't tell you what to do. A good lawyer tells you the implications of it and your options, and then you as the entity running the business has to make the decision.

And so, I could include letters as references but we have to be really clear on what we are recommending going forward, not just rely on the memo. Thank you.

KEITH DRAZEK:

Thanks, Alan. So, I think the follow up, then, is for those who would like more specificity in the language of the initial report on the specific points in the Bird & Bird memo need to come up with those recommendations. In other words, we need to see some concrete suggested references and those clauses cited if we're going to be calling them out in the initial report. And we need to do that quickly because everybody's going to need to make sure that we're in agreement and on the same page as to what clauses to cite or to reference if we're not going to just simply link or reference the full memo.

So, that's some homework. And if we don't have folks contributing to that, then we may end up in a situation where we simply reference the memo itself. So, a homework item.

All right. With that, I'm going to turn now to ... We're going to have to skip over the rest of the Bird & Bird/unique contacts discussion. We'll come back to that later at another meeting, but I want to turn to Berry for a quick overview of the timeline for the group. We're not talking about the GNSO summary timeline or the GNSO Council document as much, but more specifically the document on the left-hand side of our screen which is our internal EPDP Team timeline for bringing our initial report to a public comment period by the end of this month.

So, Berry, over to you.

BERRY COBB:

Thanks, Keith. The only reason I have the summary timeline visual here is that May 31st is our target to publish the initial report

for public comment. That's been communicated a while and is not changing. To get us to that point, though, is a very aggressive next couple of weeks, which is also nothing new in EPDP registration data land.

So basically, as noted, we've got two aspects of homework assignments. Actually, there'll be several action items coming out of today's call that Caitlin will apply to the notes That'll will also be wind up in the Google Doc. The table you see before you will also show up in our Google Doc that has the action items and the work plan. We just didn't get a chance to put it in there yet.

But by this Friday, you're essentially going to have three documents. There will be ... Well, I'm sorry. There's going to be one document sent on Friday which is the actual initial report that has the things that you're familiar with—the title page, table of contents, the appendices, and all of that stuff. It will not contain the core substance of what we've been deliberating on, on the two primary topics.

But you'll be working on the suggested edits to both of those documents up until this Friday. And over the weekend, staff will publish the two new revised versions for legal vs. natural versus the feasibility; at which point we'll bring together into a whole document. That will occur on Monday, the 24th. By Wednesday the 26th, after our call on Tuesday but even prior to that, we'll set up a mechanism where groups can start to flag any cannot-live-with items in the initial report. By Thursday the 27th, in the EPDP team meeting, we'll aim to resolve any of those can't-live-with items.

By Friday we consider the document stable, and we're really only looking for edits like typos—small edits that don't necessarily change the substance of the report. We'll circulate that final draft by close of business on Friday, and then there will be a deadline by Monday at 16:00 UTC to flag any of those final minor edits.

And then later that day, publishing out for initial public comment. The initial public comment will be for 40 days. And like usual, we'll take a pause between the public comment period. Once that closes, staff will compile the public comments, and then we start working towards a final report.

So, that's the tactical work plan between now and the end of the month. And I'll turn it back to you, Keith.

KEITH DRAZEK:

Thanks very much, Berry. I've got Alan and then Margie in queue. But, again, just to note, folks, that we are in ... I've used the term before, but it's really true now. We're getting into crunch time.

So, Alan and then Margie.

ALAN GREENBERG:

Thank you very much. A couple of questions. Berry answered part of what I was going to ask. I find, given that we have three more meetings, based on our past experience and based on where we are on making decisions at this point, I don't see any way that we can meet that timeline. Just honestly, three meetings is not enough. And the two meetings next week are not going to be able

to do what we want. So, I just don't see how that is going to work. If you can pull it, off you're a master at this. But I question this.

My next point is, are you allowing minority reports or whatever we want to call comments from individuals or groups? There's been some question before of whether these are allowed in interim reports or not.

KEITH DRAZEK:

Thanks, Alan. Just a quick couple of responses. We're running short on time and I want to get to Margie as well. Look, just a reminder to everybody, this the initial report for publication—for public comment. It is not the final report, but it is essentially where we as a group feel we have gotten to in terms of some consensus recommendations for either guidance or new policy, etc.

Just keep that in mind that this is really putting our foot forward as to where we've come to agreement, where there may be some differences; documenting those and getting public comment and feedback. And so, I am determined to bring us to a timely conclusion of this work. If there's an extra day or two needed at some point, that's one thing. But in order of extending week or weeks, that would require going through a project change request with the GNSO Council, and I'm not prepared to do that at this point.

And so, I think that we need to buckle down. Part of the reason that we are in a crunch time—which is, of course, the way things normally transpire—is because the homework assignments have been slow in coming over the course of many months, and this

where we are. So, I think we've made some real significant progress, including during our call today, and I think that we need to drive this language in this text to a point where we can put it out and get feedback from the community.

I think, also, that minority statements are typically, as I understand it, reserved for the final report. And so, I'll certainly put that on the table for discussion, but my understanding is that minority statements are those who disagree with the consensus as put forward by the group [and] are really reserved for the final report where that would be fully appropriate.

So with that, Margie, you're next.

MARGIE MILAM:

Hi. Yes, actually, I believe there were minority with the prior phases, and we intend to submit one. So, the BCs working on one because we think it's important to have the public comments consider the points of view that the BC has raised on some of these points. And that might actually help in the next phase as we get to the final report. So, I just want to put that on the table that we're preparing one and would like to have it submitted.

The other point about the timing. Many of you may know that in the United States, it's Memorial Day weekend. So, I think it's something that would be hard for us to get our groups together to provide comments by the timeline. That's referenced in various documents, so I would ask that we have at least an additional week, given the big holiday in the United States. Thank you.

KEITH DRAZEK: Thanks, Margie. And I'm noting that we're a couple of minutes over, so I'm going to thank everybody for your time. I will circle back with staff.

Again, on this question of minority statements in initial reports, my understanding is that minority statements are really intended to be included in final reports after the whole consensus process is concluded. And so, if groups want to submit comments or their views individually, then it can be submitted during the comment phase. But I'll circle back with staff just to confirm I've got that right. And we can tee it up again, but that's my understanding at this point—is that minority statements are really intended for the final report.

With that, thanks, everybody for your time. We do need to wrap this one up. I think we made good progress today. I'm encouraged, but it is going to be a busy couple of weeks ahead of us. So, please apply yourselves. Watch for the staff update coming out later today. And we'll talk again on Thursday. So, thanks, everybody.

ALAN GREENBERG: Keith, if you can look at my question on whether the 40 days counts the ICANN meeting or not.

KEITH DRAZEK: Thanks, Alan. I'll circle back with you on that as well. Thanks, all. Bye.

TERRI AGNEW: Thank you, everyone. I'll disconnect the recording and disconnect all remaining lines. Stay well. The meeting has been adjourned.

[END OF TRANSCRIPT]