
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP – Phase 2A

Thursday, 26 August 2021 at 14:00 UTC

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. Attendance and recordings of the call are posted on agenda wiki page: <https://community.icann.org/x/g4gmCQ>

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TERRI AGNEW: Good morning, good afternoon, and good evening. And welcome to the EPDP P2A Team Call taking place on Thursday the 26th of August 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 Melina Stroungi, James Bladel, Margie Milam, Chris Lewis-Evans, Matthew Shears, and Becky Bird. They have formally assigned Owen Smigelski, Steve DelBianco, and Ryan Carroll 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 Panelists and Attendees or Everyone in order for everyone to see your chat. Attendees will view to the chat only.

Alternates not replacing a member are required to rename their lines by adding three Z's to the beginning of your name, and in parenthesis at the end 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:

Thank you very much, Terri. Good morning, good afternoon, good evening, everyone. Welcome to the EPDP Phase 2A meeting #39. We're just going to go ahead and get right into the agenda. We have a lot to get through today. Thanks to everybody who contributed to the document and the table that we have, noting the "cannot live with" items.

And we have about 10 topics or 10 issues to get through today, so we're going to try to keep this moving quickly. To the extent possible, we need to get through each one of these today. And if there's anything that we need to circle back on, if there's anything that looks like it's going to take a significant amount of time to work through, we may need to take that to the list or look to have separate conversations.

So let's try to be concise in our input and make sure that if there are things that we can fairly quickly say, "Yes, that's easily resolvable," let's do that. And if there are things that will require a little bit more time and discussion, then we'll park those separately. But we do need to get through each one of these items today.

And I'd like to also thank our staff colleagues, Marika, Caitlin, and Berry for all the excellent work that they've done to compile all of this and to keep us organized. And with that, Marika, I'm going to hand it over to you directly to kick things off. And let's get things started. Thanks so much.

MARIKA KONINGS: Thanks, Keith. Hi, everyone. So maybe very briefly, just running through the timeline on where we're at. Today we hope to run through the "cannot live with" items that were flagged and identified by those submitting that by the deadline yesterday, and hopefully agree on how to address those. Then tomorrow and we're expected to publish the integrated draft final report for a final review.

At that stage, of course, it's more focusing on, did we miss something? Are there any inconsistencies, any grammar issues that needs to be addressed as well as a statement on the consensus that has been achieved?

By the 30th of August, request those of you that have minority statements to submit those if you're able to. And then that still gives us the 31st of August to finalize the report and address any outstanding items, if any. We still have a call scheduled for that day.

And then, on the 2nd of September, it's our deadline to submit the final report to the GNSO Council. Depending on how we make progress today, I think there's still the ability to have a call. And maybe we need to put a placeholder in for that on the 2nd of September for another call, as a final opportunity to resolve any outstanding items.

And then we have, as well, the 10th of September for those that are not able to meet the 30th of August deadline. As you may recall, we got a specific request from the GAC Team to have

some additional time. So those that are not able to meet the 30th of August deadline can submit their minority statements and by the 10th at the latest. At which point we would then produce an updated version of the final report, similar to how that was done for Phase 2, and submit that to the Council in time for the document deadline so the Council is able to consider the report during its September meeting.

So with that, I think we're probably ready to dive into the items that were flagged. You may have seen, we sent out a document just prior to this call that you see here on the right-hand on your screen. So what we've done is basically take all the items that were flagged and kind of group them together because there were a number of comments that pertained to the same sections or recommendations in the report. So we're hoping that considering dose together will facilitate working through these.

So if we start off with the first items that are listed here on the screen. And as said, there are three comments that were flagged that relate to the same text in the report that concerns the proposal to the GNSO Council with regards to considering keeping an eye on future development and work that may need to be undertaken.

There are two specific proposals here that you'll see basically on the right-hand side in the table that have been proposed. The first one is the deletion of a section of the text that refers to implementation plans. And as you may recall, there was a conversation, I think in one of the mediated conversations, that some felt once proposals were adopted was a moment to review.

Others said maybe it needed to wait until implementation plans were clear.

The way it was phrased was that both of those were mentioned. I think the GAC Team here has flagged, and ALAC as well, that they cannot live with the reference to the implementation plans and are proposing deleting that reference in two places.

And then in addition, there was a suggestion both from the Registrar Team and the Registry Team—and I think also supported by ALAC—that the language in the second part should be more specific than it was. I think we originally had something that the Council should consider, but I think the change that is suggested here expects that it's changed to “recommends” so it's clear what the team is putting forward here.

So those are the two changes that would be applied if the group agrees to accommodate these "cannot live with" items. So the question here for the EPDP Team really is, as we've explained I think previously as well, this a recommendation to the Council. It doesn't create any kind of obligation to the Council, and it really remains up to the Council to decide if, how, and when it would undertake any kind of scoping work. And of course, there are different mechanisms by which each of you or each of your groups can, of course, trigger certain actions by to Council.

So having that in mind, I think the question here is, would any of these changes that are being proposed result in "cannot live with" items for other groups?

KEITH DRAZEK: Thanks very much, Marika. Would anybody like to get in queue?
Marc Anderson.

MARC ANDERSON: Thanks, Keith. This doesn't result in "can't live with" items for
Registries. We can live with the proposed edits from staff here.

KEITH DRAZEK: Thanks very much, Marc. Volker, you're next.

VOLKER GREIMANN: Yes. In general, I see it's a way. There's nothing in there that
would result in "cannot live with". However, I think the process
here should be looked at for future occasions because when we
make changes to previously agreed, or at least discussed,
language, then the default should be that it's not agreed unless
everybody agrees, not the other way around, simply because
some groups might not have had the time to analyze any changes
as deeply as they might want to and had enough time to see all
the implications that those changes may bring.

So future changes should probably be defaulted to "everybody
cannot live with it" unless they explicitly say that they can. Thank
you.

KEITH DRAZEK: Thanks, Volker. I think it's a fair point. And obviously we're in a
compressed time frame right now in terms of responding and
reacting to the "can't live withs" that others have noted. So your

point's noted. But thanks for both the Registries and Registrars indicating that the proposed change does not result in new "can't live with" issues.

Would anybody else like to get in queue or are we good to go on this one? All right. I'm not seeing any hands, so for the time being let's move on to the next one.

Marika, back to you.

MARIKA KONINGS:

Thanks, Keith. And just to clarify that the edits that you see are the ones that were proposed by the groups and that flagged this. And of course this a conversation, and we appreciate that it has been, of course, a short time for people to review this. But indeed, this a moment. If this does result in "cannot live with" items for other groups, then of course further conversation is needed. And they're not applied by default just because someone flag it. I just wanted to make that clear.

So the next one relates to intro text that precedes Recommendation 1. This is a reference to the Phase 2 Recommendation 9.4.4, [another thing] the group has spoken about on a number of occasions that also has this concept embedded that there should be a way for a contracted party to flag or indicate or reference that it doesn't concern personal data. So that is provided more as a kind of context here that both the Registry and the Registrar Stakeholder Groups have flagged that they have concerns about including it here, I think, especially in

relation to the description that's provided or the interpretation that's included here about what this might mean.

So their proposal is to delete that whole sentence. The staff support team has made a suggestion here, as SSAD is referenced in the recommendation itself. And this would maybe at least provide a pointer to those reading this section to maybe just leave the first part of the sentence that just refers to that and delete the last part of that sentence which is indeed a bit more the description or the interpretation of that recommendation which, again, from our read seems to be what is causing the problem.

So the question here, I think, is—especially to the Registry and Registrar groups, and of course also others—would the "cannot live with" item be resolved by deleting that last part of the sentence. Or instead, should the group consider removing that whole section from the text?

I do believe we need to double check that. I think 9.9.4 is probably referenced somewhere else as well. And of course, SSAD itself is mentioned in the recommendation. But again, we've put something here on the table that maybe provides a compromise, but we'd love to hear from the groups if that's indeed the case, or whether there's a preference to consider removing that whole sentence altogether. Again, having in mind this introductory text. This not part of the recommendation itself.

KEITH DRAZEK:

Thanks very much, Marika. I've noted in chat that both Sarah Wyld and Marc Anderson have indicated that they'd still prefer to

remove the sentence entirely, but would be okay with removing the half as depicted.

I see Brian has said, “Would prefer to keep it entirely, but can live with the compromise to strike the part.” So it sounds like we have at least agreement from the IPC as well as the Registries and the Registrars.

Would anybody else like to get in queue or provide some input here? I see that Hadia has noted “removing the second part is fine as well for ALAC.”

Mark SV on behalf of the BC says, “Okay as well.” So I think we are probably good to go on that one. If anybody disagrees, feel free to weigh in now. Going once. Going twice. Sold.

Okay. Marika, back to you.

MARIKA KONINGS:

Thanks, Keith. I really appreciate everyone being so accommodating here and allowing us to make good progress.

So the next one here also pertains to the same introductory text. This a section that, as you may recall in the initial report, we did have a number of places where we kind of outlined the different positions on issues. On the one hand, some people felt this. Others preferred something else. And this is one all of those sections.

There are some specific changes that have been proposed here by the GAC and ALAC to better reflect the one view on this. But at

the same time, the Registry Team has noted or suggested that in other places we've actually removed that type of language. So I think the question here for the group is would the group be okay just basically removing this section and leaving opinions to minority statements where people can basically explain what their perspectives are on a certain issue? Or is there a preference to keep this? And in which case, then we may want to consider the edits that the GAC and ALAC Team suggested.

And I would like to flag here as well, in the table that's underneath which are kind of the minor edits, there were a couple of other places where people flagged that it seemed to be either initial report language or where specific opinion was stated of a certain group.

So our proposal is here. Whatever we agree here, if there's agreement that indeed any kind of opinions are to be removed, we would of course apply it in the same way to those other items that were flagged as being more opinions that maybe better belong in minority statements.

KEITH DRAZEK:

Thanks very much, Marika. And I have quite a queue, and I've noted that Milton has also put into chat that he agrees that it makes most sense to include it in minority statements only.

I'll get to the queue here in a moment, but I do want to just remind everybody that if there's hangover or leftover language from the initial report that was originally intended to generate feedback or input from the community where it laid out a range of views, that

was certainly appropriate and I think helpful for the initial report. But as we look to finalize the final report and to really focus in on the recommendations or guidance, then I think we should, again, try to keep it as concise as possible. That's my thinking at this point, but I would like to hear from others.

So Hadia, Alan Greenberg, Jan, and then Sarah. Hadia.

HADIA ELMINIAMI:

Thank you, Keith. Just to note here. The report is the document that is actually read by everyone. Not everyone is interested in looking into minority statements and seeing what group wanted what or what were the different positions. In the end the report is the document that counts and is the document that is read.

Having said so, I think it is important to point out that some of the groups think that the common data element should be obligatory, not only for those contracted parties that decide to differentiate, but for all contracted parties. And the common data element, actually, that was suggested allows for that. So one of the values that it takes says that the question was never asked. And that value is good to be used by contracted parties who do not differentiate as well as those who differentiate. But for some reason, the differentiation has not happened. Maybe because it was an old registration, or for any other reason, the question was not asked.

So again, the importance here lies [in that] the report is the document that is read and the data elements that we actually ... I'll stop here. Thank you.

KEITH DRAZEK: Thank you, Hadia. Let's keep going with the queue. Alan, Jan, and then Sarah.

ALAN GREENBERG: Thank you very much. We do not agree, to be quite clear, in removing this. That constitutes whitewashing the report on the last day or second-to-last day of meetings. There's just no ...

People in general do not read the minority reports when they're trying to figure out what it is that happened in the PDP or what was recommended. These are important aspects. There's no agreement on many of these things, and trying to remove them all from the report ...

I'm sorry to use the word "whitewashing," but I think that's what it does. And I think it's really important that our positions be represented. We haven't succeeded, but the record has to show how we got to where we are right now.

And I'll note in the chat that Milton agreed to remove them, but Stephanie afterwards said no. So you don't necessarily have agreement from NCSG unless they'd like to restate publicly that all of the statements including NCSG ones could be removed. But there are too many things embedded in this report and we can't start major editing right now. It's just not acceptable. Thank you.

KEITH DRAZEK: Thank you, Alan. Jan, you're next. And then Sarah.

JAN JANSSEN: Thank you, Keith. I think I can echo what Alan has been saying. And I also would like to draw ...

There's a huge difference between what is in the report and what is in the minority statement. Here, the report should be accurately reflecting the context in which a recommendation is given. That is why you have a preamble before the recommendation—introducing the recommendation, showing what the discussion was. And that is what the report now does in lines 87 to 91, and the lines before, obviously.

It merely reflects what the sentiment was within the group. It says nothing about what is going to be possibly in a minority report. It is very concise and I agree, Keith, that we should be concise. But being concise should not leave make us end up in a position where we're so concise that we are, to echo Alan, whitewashing parts of the discussion that took place.

It's merely a reflection of the discussion that took place without any details on the reasons behind it. So really, I don't see any problem for people to keep this in.

KEITH DRAZEK: Thanks very much, Jan. And you're right. It is a concise statement. It is, I think, factually accurate. It represents the current situation. And so I take your point on that.

Sarah, Stephanie, then Marc. And then we need to draw a line under this one and move on.

SARAH WYLD: Thank you, hi. I noticed that there's a really significant change in the intent from the original version on the left to the updated version the right because the left side version says the use of the field is obligatory for those contracted parties that differentiate. So if I am differentiating, then I must use the [set out] fields.

But the new version says, the use of the field is obligatory for those that do not differentiate. So I acknowledge that this is somebody else's opinion. This is not my opinion being represented here and this not the actual recommendation text, but it does seem like a very significant change to be making at this stage. And that just gave me pause. Thank you.

KEITH DRAZEK: Thanks very much, Sarah. Stephanie, you're next. Then Marc.

STEPHANIE PERRIN: Thank you. And Sarah's raised an important point that I had missed, so I think we should take that seriously. However, I disagree with Milton on removing the elaboration. I think it's important in the preamble here to let people understand that there was considerable contention in our working group, and there wasn't agreement. A nice, polite way of saying "you might want to read the minority reports" would be a good thing because whitewashing this just going to get us into people's interpretation of loosey-goosey words which is dangerous. Thank you.

KEITH DRAZEK: Thanks, Stephanie. Marc, you're next.

MARC ANDERSON: Thanks, Keith. All right, so I am still supportive of removing this section. I think it really detracts from what the actual recommendation is. And we do have other parts of the report that detail the discussions we had, how we had those discussions, and in the process went through. I don't think removing it here is whitewashing it. I disagree with that characterization.

All that said, I do want to point out that if we do land on keeping this section in here, it needs to be clear that that sentence or that paragraph—I guess it's a paragraph and a sentence—does not belong in the previous section with proposal to GNSO Council which starts at line 53. There's no indication that this is part of a new section that is associated with Recommendation 1 that starts online 93. So structurally it doesn't work. Especially to an uninformed reader, it's not clear that this paragraph belongs with the below Recommendation 1 and not with the above proposal to GNSO Council.

So structurally there are some issues with this that would need to be cleaned up if, ultimately, we land on keeping this in here. As you said, Keith, I think this is text that was in there for the initial report to inform readers of the initial report and help generate comments and feedback. It's not necessary for the recommendation itself, and it's just background information that readers, if they truly want to find it, can get it elsewhere.

KEITH DRAZEK:

Thank you, Marc. Milton, you're next. And then I'll make a couple of comments, a suggestion. Then we'll probably draw a line under this one and we may have to come back to it. And I'll ask folks to think about concrete recommendations that can get us to a point where we can agree on this.

But Milton, go right ahead. And then I'll come back into the queue.

MILTON MUELLER:

Yeah. Sorry to prolong this, but because I disagree with my own stakeholder member, I thought I needed to elaborate. First of all, I agree with Marc that even if you keep this language, it's in the wrong place. And I'd also like to say that you need to be consistent about this.

So for example, if you agree with me that these kinds of things should not be in the report at all then, yes, we need to get rid of the NCSG suggestions as well as this one. But if we keep them, then we need to put them both into footnotes indicating that they are some kind of an elaboration of the process and not part of the actual recommendation or policy. I think that's the way to be consistent about it.

But minority reports are, as I understand it, officially part of the record whether somebody reads them or not. Who reads any of these things after the fact in any detail? What matters is how they're implemented, and we have to provide clear guidance for what the policy is and not so much a record of the debate which is recorded in all kinds of ways. Thank you.

KEITH DRAZEK:

Thanks, Milton. And thanks for the concrete suggestion. So I've noted the point that if the language is kept, that it's in essentially the wrong place; that it needs to be reordered or reorganized. The suggestion of including and incorporating this into a footnote might be the path forward for us.

And there's also the opportunity for me as the chair in our, as we develop the statement on consensus designations, that we can include language that would make it clear in the communication itself that there was a divergence of views on this particular point. So I think there's a way to make sure that the record is clear, to make sure that the context is provided, but to do it in a way that keeps the report as concise as possible and makes sure that we have it at least in the proper place.

So let me ask if anybody has any concrete suggestions or any violent opposition to what I've just suggested. Go ahead and put up your hand. Otherwise, let's draw a line under this and we can come back to it. We need to get through everything on the agenda today.

Alan, go right ahead.

ALAN GREENBERG:

Yeah. I'll just note that the two prime GAC representatives who have been participating and who commented here are not at this meeting, unfortunately. So don't take their silence as agreement.

KEITH DRAZEK: Understood. Thank you very much, Alan. I appreciate that. Okay. So please ponder or think about what I've just suggested as a possible path forward and we'll come back to that one, hopefully by the end of the call.

So Marika, back to you.

MARIKA KONINGS: Yeah. Thanks, Keith. Just a notice. I put in the chat as well, and I think in the minor edits, some already flagged that a heading would be good to kind of separate that section. So [inaudible], and that seemed to be a minor edit. So that will definitely be applied.

So the next couple of items flagged relate to Recommendation 1. And I think, as you may recall, there was a lengthy conversation about that during the last meeting. There were some further edits that were then considered by the small Team. But of course, there was relatively little time to consider that, and there has been an item flagged here by the Registry and the Registrar Stakeholder Groups that evolves around this—does this belong in the RDDS or not?

And I think most of you, hopefully, recall the conversation where it originally mentioned RDAP. I think then there was a suggestion that referring to RDDS might solve it but, at least from the Registry and Registrar perspective, it seems that hasn't completely addressed the issue. So they have suggested wording. There are a couple of different versions that they've put forward. Staff has taken one of those that seems to maybe align most with what was discussed in the meeting earlier this week.

So you see here on the screen that, basically, the proposed update here is that it would read “a field or fields **MUST** be created that **MAY** be used in the RDS and **MAY** be used by contracted parties to differentiate. So we just flagged here as well because, as you may recall as well, there was also an agreement to add a footnote that would clarify that this optional. So that means that the contracted party is able to either leave it blank, or “may not be present.”

So that does seem to align with the ability to use it in RDDS but not a requirement to have it as part of that. And is that in line with what the group has considered? Or would this change result in a "cannot live with" item for other groups?

KEITH DRAZEK:

Thank you very much, Marika. I see a hand for Brian. Go ahead. Brian, if you're speaking we can't hear you. I think you might be muted. Okay. Let's go to Hadia next. And Brian, we'll come back in a moment. Thanks.

HADIA ELMINIAWI:

Okay, thank you. Again, the intention here wasn't just to create a data element, but actually was to create a data element that can actually be used by those contracted parties who wish to differentiate. And again, we have two options here: one, the contracted party, [for] those who choose to differentiate; and the other option is that they may or may not use this data field.

So we have two options here. But again, the intention was never to have a standalone data element created that is difficult to use

or its way of usage is actually unknown. So currently we have the RDDS and we have the SSAD—possibly the SSAD. Those are the two ways, RDAP and SSAD. Those are the two technical means through which data could be displayed or disclosed. So to have a data element that does not relate to those two technical tools that we have makes no sense. And it makes even its usability doubtful.

So, no, it must be created for the RDDS, for the RDAP, SSAD—for the technical tools that we do have. Thank you.

KEITH DRAZEK:

Thanks, Hadia. Sarah, I'll come to you next but I wanted to note that I seem to recall that the discussion centered around the need for a trigger to allow ICANN Org or to help ICANN Org initiate some of the processes related to developing the standards or the extension for RDAP. And then that was changed to RDDS. I may have some of that wrong, but I just want to note some of the context for, I think, how we got to the language, or at least in previous conversations.

But let me turn to Sarah. I saw Volker's hand go up as well, and I think Brian King will get back in the queue when he rejoins. Sarah.

SARAH WYLD:

Thank you. Just to Hadia's point, I think it's really important to maintain the option that a contracted party can create this field within their own platform which is separate from RDDS or RDAP or SSAD. They could create this field only within their own platform. That is what we talked about in the past. As my team

said in this comment here on screen, it is also described in line 255 of the report where it offers that option. I really think it's important not to write out that option by limiting it here, and so that's why I think this change is essential. Thank you.

KEITH DRAZEK: Thank you, Sarah. Brian, are you back? Would you like to get in queue?

BRIAN KING: Keith, I'm back but I think Jan has his hand up.

KEITH DRAZEK: Okay. Yours was up earlier and I wanted to give you the opportunity.

BRIAN KING: Thank you.

KEITH DRAZEK: So let's go to Jan, Alan, Hadia, Milton, Volker.

JAN JANSSEN: Sorry. I thought I was a bit later in the queue. No, I agree with what Hadia was just saying. And to respond to the point that was just made by Sarah, of course registries and registrars are free to do in their system whatever they want and whatever is permitted by their local law. But we're here trying to create policies and to

make systems user friendly for the benefit of the Internet community.

And the fact what internal systems are doing, that is not what we are concerned with here. [So really, what this change from the “must” into a “may” is doing] is actually changing the entire concept of what was being discussed. The purpose is indeed that when these fields are created and that there is a policy recommendation to do so, that other policies that build further on this one—like the SSAD, for instance—that they can use this field which is optional, unfortunately. But that's the entire purpose.

KEITH DRAZEK: Thank you, Jan. Alan, you're next.

ALAN GREENBERG: Thank you very much. It's coming back to haunt us that we have chosen to use completely different language for the creation of these fields than we did for all of the other fields in Phase 1. And the intent here, certainly from the ALAC position, is that were creating a new field that is used among other places in the RDDS and it will be included in the specifications that are attached to the various contracts. It's subject to the consistent labeling rules. That's the kind of field we're talking about.

I think we may be able to fix the problem by simply referring back to that and saying, “This is equivalent/comparable to the fields that were discussed in Recommendations X, X, X in Phase 1 and is subject to the consistent labeling rules.” And I think at that point, it will be very clear what we're talking about. Otherwise we're getting

into a philosophical discussion that I think will just get us more into the weeds. Thank you.

KEITH DRAZEK: Thanks, Alan. And thanks for the concrete suggestion. Definitely interested in hearing feedback from the Registries and Registrars on that.

I have a hand from Hadia, Milton, Volker, and then Mark SV. And please be concise, everybody. And at some point we'll need to draw a line under this one. If we need to park it for further discussion, we can do that.

Hadia.

HADIA ELMINIAMI: Thank you. Just to respond to Sarah. Actually creating this element in their own platform does not allow for the data element to be passed or used across the industry. And that was the whole logic behind the creation of such a data element. Thank you.

KEITH DRAZEK: Thank you, Hadia. Milton, you're next.

MILTON MUELLER: Okay. Well, I'm just confused. So I missed a couple of meetings and I thought that ... I'm surprised to see that there has been an agreement that the field "must" be created. And I'm wanting the contracted parties to clarify for me whether they are agreeing that

this field must be created and we're just debating whether it's in their internal systems, or whether it's in the RDDS.

If it's the former, if it's only in their internal systems, how do they respond to the compatibility issue related—that I think was just raised by Hadia? And if they're agreeing that it must be created, why would they care whether its internal or external? I'd just like to have that clarified.

KEITH DRAZEK:

Thank you, Milton. Good questions. Volker, you're next. I think your hand was up before Milton asked his question, so if you have a point to make, go right ahead. And if you can respond to Milton, that would be great. Or others can get in queue. Volker.

VOLKER GREIMANN:

Yes. Thank you, Keith. And also thank you, Jan, for reminding us what the PDP process is for. I sure would have forgotten that if you hadn't reminded us of that.

But I wanted to make a different point which was that the question of "must" [inaudible] "may" and where this field has to be. I personally see that there's value in having that field available somewhere in some form of public place—be that SSAD, be that RDDS, be that somewhere engraved on the moon.

However, I don't think we had consensus on that from the perspective. We had consensus that the field be created, but we never quite got to the point of where this field would live. I agree that a lot of parties assumed that it would be in RDDS. Other

parties assumed that it would be in their own systems, and yet other parties such as myself assumed that this would be an SSAD feature.

But I don't think we have reached consensus on this question, and therefore the “may” is probably the best solution that we can have to achieve consensus on this. Yes, we wanted this field to be created. Yes, we have a certain purpose for this field in mind. No, we weren't able to agree yet where this field would live.

If you want to [create] that field, you can put that in the RDAP, you can put that in SSAD, you can put it on the moon. However, we do not have consensus on that, so contracted parties could use it in their system but also could put it in these others. But they're not forced to do that. But they are forced to make it. They are forced to create it, and I think that's a benefit. That a progress.

KEITH DRAZEK: Thank you, Volker. Mark SV, Marc Anderson, Alan Greenberg.

MARK SVANCAREK: Thanks. It was my understanding that the most recent text came out of the small group meetings of the last few days, so it's not surprising that people can't remember it because we really didn't discuss it in plenary. It came out in the small group. So that was my understanding, and [that's why I] understand any confusion that might arise.

All the texts are pretty confusing. It's who must create and where it must be used. And honestly, I think a table is the only way to

express how this if then/if not—the chained logic of the thing. It's important that the thing must be created. When you say “may be used in RDDS,” now you're talking about an implementation issue that I don't want to get into about how JSON fields are used in RDDS and RDAP.

So I'm not sure that we can actually explain all these different permutations without a table. And that would be a pretty big change at this point, but I'm going to continue listening to this conversation here. But if everybody's saying “I don't understand how this works or who has to do it and what ‘may be used in RDDS’ means,” then we may need to resort to that even if it is a pretty large last-minute change.

For me, having it be created is the crucial part. Once created, it has to be usable in RDDS. What it means to be usable in RDDS by those people who may want to differentiate, this might be confusing for IRT. So I'm keeping an eye on the language that we [land with], but I think you can understand my concern about this.

I see that Brian has his hand up with a constructive suggestion, so I'll hand over the mic to other people in the queue. Thanks.

KEITH DRAZEK:

Okay. Thanks very much for that, Mark SV. I want to get to the rest of the queue here, Brian, so I will come back to you. But I've got Marc Anderson, Alan Greenberg, and then yourself. So Marc, go ahead.

MARC ANDERSON: Thanks, Keith. Volker said most of what I raised my hand to say. I'm honestly not entirely sure I understand why there is opposition to the proposed changes from staff. I think it accurately reflects what we agreed to and also to the extent that we are likely capable of agreeing. It recommends that the field or fields "must" be created and that they "may" be used in RDDS and "may" be used by contracted parties that differentiate between legal and natural persons in registration data.

I think this is what we agreed to. It is an accurate reflection of the discussions we've had, and I actually think it is in line with most of the comments that I've heard people say. So I'm quite unsure why there is opposition to this proposed language. And maybe it's just that people haven't had time to read and digest the edits, but I do think that the proposed change is an accurate reflection of what we've agreed to.

KEITH DRAZEK: Thanks, Marc. Alan, you're next. Then Brian. Then I'm going to put myself in queue.

ALAN GREENBERG: Yeah, thank you. In a number of meetings, I've commented on just how amazing I thought the results of the small team were and the actions of the small team and the level of cooperation we haven't often seen. I'd hate to have to retract those statements now.

It may be addressable. I mean, Marc's original comment, if I understood, was saying that it's not used just for the RDDS. And maybe this a place for a footnote saying "RDDS is one of the

things but may not be the only instance.” The concept that is not raised in the edit but was raised in these discussions that it may be created solely within the registrar’s fields and never see the light of day outside of the registrar’s own systems, I think it goes very much against what we said.

I believe that what we agreed to was the creation of a new field comparable to the other RDDS fields. Optional use, but creating the field with the same level of formality as the other ones. Maybe we just need a footnote or something making that real crystal clear so that we're not talking about different things.

If we're talking about something which is private only to the Registrar’s systems, that's akin to a card credit card number. We have no control over it. We have no knowledge of it. And it's none of our business. And that's not what we were debating here, so I think we need clarity at this point. Thank you.

KEITH DRAZEK:

Thanks, Alan. I agree. We need some clarity. And thank you for the comments. Brian, I'll come to you. And then, Jan, I'm going to put myself in queue if you don't mind, and then I'll come to you after. But Brian, go ahead.

BRIAN KING:

Thanks, Keith. Constructive suggestion since we did agree that the field should be created in the RDDS and normalized. To Marc’s question, it's ambiguous the way that this drafted now because it says a field must be created, but it doesn't say where

and it doesn't say who's going to do that. I don't know how do you enforce that without saying who's going to do it.

So the suggestion is that we change this language to be clear that this updates the RDDS specification in the RAA and the Consistent Labeling and Display Policy to establish this as RDDS field. And it will be treated in that way, the same as the org field. Well, not the same. Very similarly to how the org field is, in that it would be optional for the registry or registrar to use but that it be established as part of the official RDDS or RDAP profile or whatever you wanted to call it.

So that's the suggestion, that we update those specific contract provisions, be it the RDDS spec and/or the Consistent Labeling and Display Policy, as the case may be. Thanks.

KEITH DRAZEK:

Thanks, Brian. I'm seeing some reaction to your suggestion in the chat that you could take a look. Jan, I will come to you next. And then I'll put myself in queue. I'd like to hear from Team members before I interject, so go right ahead.

JAN JANSSEN:

It's as you wish, Keith, but also just to react to what's happening in the chat. I'm really wondering what the concern is because the recommendation goes further, and the final text is that SSAD "must" support the field or fields. If there is no standardization whatsoever and if every registrar or registry operator can use the field in whatever form or system they would like, that would truly

complicate the SSAD implementation policy development's [effort].

So really, I'm wondering what the concern is to have the obligation that the field is created for the RDDS and then make it optional. Really, I'm wondering what concern there can be because it would facilitate rather than make things more complex.

KEITH DRAZEK: Thank you, Jan. Marc Anderson, go ahead.

MARC ANDERSON: Thanks, Keith. I know you tried to draw a line in the queue, but I just raised my hand to try and respond to Jan.

Jan, as I understand your statement, you sort of said two different things. You talked about the value of the field for SSAD and then pivoted to using it for RDDS. As Sarah points out, our proposed changes do not prohibit the field being created in RDDS. And frankly, that was a compromise for us. To be quite frank, I don't think any members of the CPH Team see value and are supportive of using the field in our RDDS at all. Just being frank here.

On the small team, it was advocated that there shouldn't be anything about this field that prevents its use in RDDS. And so the CPH members on that small team agreed to not have a prohibition on using it in RDDS, but we do not see value in using it in RDDS. But do, as Volker said, see value in having a standardized field

that can be standardized across our systems, in particular for use in integration with SSAD.

And so having a standardized field that can be used in a standard way across our systems and used for integration with SSAD, we do see value and we're willing to support the field for those purposes. And as agreed to in the small Team, we're also willing to not have language that prevents its use in RDDS. But that is not a selling point for us or why we're interested in using that field or agreeing to this language.

I hope that helps clarify the questions.

KEITH DRAZEK:

Thanks, Marc. Appreciate that. So, look, let me just interject here with a few observations, and then we'll move on from this one. We'll need to come back to this, clearly.

So Mark SV was right in noting that this language and this text came out of the work of the small team that took place last Friday and this Monday. Right? So it's very new. It's recent. And folks may not have had a chance to fully absorb it.

The terminology around RDDS here was something we discussed during our Tuesday call. And it was originally a reference—as I recall, as I noted at the outset here—to RDAP and that it was included in their suggested text originally so that there was a clear trigger for ICANN Org to be able to initiate the process outside of ICANN in the standards bodies in developing the RDAP extension so they could essentially go and begin the work to create the field

where we have all agreed that it is a “must.” Right? That it is a “must” that the field would be created.

The language to, previously RDAP and now RDDS, seems to be causing us some challenges here, so I’m wondering if we simply say in this recommendation that the EPDP Team recommends that a field or fields “must” be created and that it “may” be used by those contracted parties that differentiate; and possibly to include a footnote that is the trigger for enabling or initiating the process for ICANN to begin the standards work needed to create the new extension.

So that's just my observation from where I sit at this point. We’re going to need to circle back on this one. But Marika, if I could hand this one back to you at this point. Any thoughts that you'd like to share from a staff perspective on that possible next steps here?

MARIKA KONINGS:

Yeah. Thanks, Keith. I wish I had a good suggestion here, but it may be worth looking as well at the same item because it is closely linked, as I mentioned before. And there have been some comments made on that as well where the footnote wasn't tended to indeed clarify that this is really optional for contracted parties to use. And it might mean indeed that even if it is in RDDS, that it is not displayed or left blank. And there has been an additional clarification added here that it's not required to be included in an RDDS response.

I don't know if these clarifications help, to a certain degree, address the contracted party side concern about this being a field in RDDS. Indeed, if it is made very clear that even though that field exists, there's no requirement to use it—even if it's used, it may be left blank or it may not be present and it's not required to be included in an RDDS response—could those be sufficient assurances that this is really optional to use or does that still create the same concerns that have already been expressed before?

KEITH DRAZEK: Thanks, Marika. I see a hand for Brian. Go ahead.

BRIAN KING: Thanks, Keith. I'm in helpful suggestion mode today. Can we not have a "must" and then also a couple "mays" in the same sentence? Is it easier if we say "a field must be created" and then perhaps tie that to the language that Marc just helpfully put in the chat about who's going to do something with it, and then have a separate sentence that clarifies that the contracted parties may use it? I feel like just having that all be part of one long sentence is not doing us any favors. Thanks.

KEITH DRAZEK: Yeah. Thanks, Brian. I think you make a good point, and that might be the path forward. So thanks for the constructive suggestion there.

Look, I think, fundamentally, we have agreement that a new field must be created and that the use of that field will be optional for contracted parties, for those that differentiate. And so I think the following question around the specificity or the prescriptiveness about the language, about the RDDS, is causing us the problem.

And in the small team discussion on Monday, I recall that there was discussion about wanting to have language that is permissive rather than prescriptive in terms of the text. And while RDDS may be one option for the use of such a field, there may be others as well—including in internal systems, including in SSAD.

And so I think what I'm going to do on this one—I see Berry has his hand up, I'll turn to Berry here in a sec—is to ask for some suggested text from folks, either before the end of the call today or shortly thereafter on the list, making a recommendation as to how we can move this one forward. And perhaps a footnote and a reordering of the paragraph into separate sentences, as Brian noted, might be helpful.

But Berry, let me turn to you. You were helping to run the small team discussions. If you've got any input on this one, go right ahead.

BERRY COBB:

Thank you, Keith. I definitely suggest that Brian's suggestion about breaking this little paragraph apart could help. And that way, we have clear delineation between the “must” and the “mays.”

But I do want to note, from an earlier intervention, I think that it may have been also Brian, and possibly Alan. My impression

about the “may be used in RDDS”—and this is connected to the footnote here which is basically stating “which means that if a contracted party decides not to make use of this field, it may be left blank or may not be present.”

So we know that, in RDAP, if there is no value in that field, it never gets transferred and then it becomes a question of what does that look like? When there's a query against a domain name, how would this field be shown? And my impression about the “may” here is that if a registrar chose to display this in a query response from RDAP, if they chose to publish it, that it would mimic more like our Phase 1 recommendations about the additional data element.

I don't have the text in front of me, but the use case was if I had a .medical TLD and, as part of the registration requirements we collected and processed the ID of a doctor and they wanted that to be published in the directory, it would fall in as one of these additional data elements that the contracted parties could choose to publish as part of the minimum public data set; but that it would fall in line with consistent labeling and display, meaning that it's not a part of the minimum public data set but essentially would be published at the bottom of it.

So to Volker's point, they may choose to use this data element within their EPP systems to help manage their own processing of their customers' information and it never sees the light of day outside of their system. They may choose, assuming that an SSAD or some kind of closed restricted system, to use this data element to manage requests for disclosure or trying to automate those disclosures.

Or they may choose to also publish that data element as a part of their query responses; but, again, would be kind of pushed towards the bottom of that. And I suppose they could choose to still redact it or keep it blank so that it doesn't appear, or choose to disclose. All of those options fall under the umbrella of “may.”

And that was my impression about how the contracted parties would choose to use that field. So I hope that's helpful.

KEITH DRAZEK:

Thank you very much, Berry. Helpful as always and very constructive, so thanks for that.

Marc Anderson, to you. And then we will draw a line under this one and try to figure out a path forward.

MARC ANDERSON:

Thanks, Keith. And thanks, Berry, for that. I do want to try and restate this again. The original proposed language from the small team was that the EPDP recommends that “a field or fields must be created that may be used” by those contracted parties. I'm reading from the small team working document in Google Docs. That was the first draft and what we originally discussed.

That was later amended to be “a new field or fields must be created or extended in RDAP that may be used for those contracted parties.” And then finally that was changed to “The EPDP Team recommends the field or fields must be created for the RDDDS that may be used for those contracted parties.” So those successive set of edits, in our view, changed the meaning.

When we agreed to have a standardized data element, we were not agreeing to having a standardized data element in RDDS. We were agreeing to a standardized data element, and we agreed that it could be used in RDDS.

And so that may seem like I'm splitting hairs, but that's I think really an important point to understand for getting the contracted parties on board with accepting this recommendation for a standard data element. That is super important. Without that clear distinction, I think this going to remain a "can't live with" item for us.

KEITH DRAZEK:

Thank you, Marc. And thanks for the specificity and clarity there. I think we need to move on, on this one. And I note that the next item focuses on the related footnote. It was just mentioned, I think by Berry. So let us move on to that. Let's try not to restate or rehash comments that we've just made. But if considering this footnote gives us some path forward, maybe that's an opportunity we should grab.

So let me stop there and hand it over to Marika. Thank you.

MARIKA KONINGS:

Thanks, Keith. I do wonder if, based on the conversation, it makes sense to indeed try to break out the recommendation, potentially also see if the footnote can be integrated in the text to further clarify what the intent is here. And maybe that addresses some of the points raised. I don't know if that provides a solution, but

again, it may be a way of making further clear what the expectation is.

So I don't know if it's helpful to discuss now. Or, of course, if someone has a specific suggestion on the footnote or concerns about moving that food note into the text. We can discuss it, but there's still actually another item that's also linked to this same recommendation. So maybe it's worth first looking at that one.

KEITH DRAZEK:

Sounds good, Marika. That's sounds just fine. Yeah. Look, on this what we'll probably end up having to do is the staff and leadership team will take this offline to come back with some proposed text based on the conversations that we've had today. But if anybody has any recommendations or suggested text that they'd like to provide, please do so, and do so as quickly as you can.

So, Marika, back to you. Thanks.

MARIKA KONINGS:

Thanks, Keith. So another item that was flagged here by the ALAC as a "cannot live with" item is an option that report must make clear that the values that are stated on lines 105 and 113 are the default values. So their proposal is to basically and after those bullets, in brackets, "default value". So I think here, the question is, does this edition result in a "cannot live with" item for other groups?

KEITH DRAZEK: Thanks, Marika. Marc Anderson, go ahead.

MARC ANDERSON: Thanks, Keith. We didn't have a chance to fully discuss, on at least the Registry side, if this will result in a "can't live with." Maybe we're on the fence, shall we say, on if this a "can't live with" or not. But we are unclear on why not having default values is a "can't live with" item for ALAC.

So I'd like to ask ALAC to jump in and, if they could provide some clarity why they feel they need "default values" and why not having them is a "can't live with" item, I think that would be helpful for us in considering their suggested change.

KEITH DRAZEK: Thanks very much, Marc. I see hands from Steve and Alan. Alan, I'm going to turn to you first to respond to Marc's question. I assume your hand went up to respond. And then Steve, I'll come back to you. Thanks for your patience.

ALAN GREENBERG: Yeah, thank you. I'm happy to have Steve go first.

KEITH DRAZEK: Okay. Thanks, Alan. Steve, go right ahead.

STEVE CROCKER: Okay. So just clarity about what we mean by “default value.” As the small group proposed, the possible values for these things are, in the case of legal, it would be legal or natural or unspecified which means that the registrant specifically said. “I’m not going to tell you.” And yet there’s an additional situation in which the question has never been asked and no data has been provided. And similarly for the personal thing.

And the default value necessarily has to be “no data has been provided.” And that has to be treated as a legitimate value in the system for which you then make decisions about what you want to do with that registration. But it’s not the same as, “Well, we didn’t get told so we’ll just assume that it’s a legal person” or “we didn’t get told so we’ll just assume something else.”

You have to have an explicit representation for the fact that the question was not asked, not answered. And that’s the default value.

KEITH DRAZEK: Thank you, Steve. Alan, you’re next. And then Stephanie. Alan, if you’re speaking, you’re muted.

ALAN GREENBERG: Sorry.

KEITH DRAZEK: No problem. Go ahead.

ALAN GREENBERG: Somehow I got muted instead of unmuted. I think the rationale is very simple. We're defining a field with four distinct values. It has to have one of the values. I think we want clarity as to which is the default. That's it.

I don't understand how you can have a field with four values and not specify which value does it result in if it doesn't get filled in and we've already said registrars are free to not use it. So the concept of a field with no value when it only has four values doesn't make any sense to me.

KEITH DRAZEK: Thanks, Alan. If you could take a look at the chat. I think Sarah has some follow-up questions for you. But let me go to Stephanie next, and then maybe we can come back to you, Alan. Thanks.

STEPHANIE PERRIN: Yes. And I raised my hand because I'm not sure that I agree with Steve Crocker. As I said earlier when we were debating creating the field when we're not requiring a response, it's complicated. And were I advising a registrar on their privacy obligations, I might, in certain jurisdictions, advise them—bearing in mind I'm not a lawyer, but I am a practical implementer—I might advise them to ignore what the registrant says if it's unduly complicated, if I'm not sure of their geographic whereabouts, if there are federal, provincial, municipal, or state and federal implications of the designation of, for instance, a gig worker or a sole contractor. It varies state by state in the U.S., province by province up here.

So I think it is entirely possible for that field to be blank. They [can delete it] even though a question was asked if the company that holds the liability decides that they don't want to trust the data that they've been given. Thank you.

KEITH DRAZEK: Thank you., Stephanie. Steve Crocker and then Alan Greenberg.

STEVE CROCKER: Thank you. So this is a matter that I consider to be basically tradecraft as opposed to policy. Knowing what the value of that field is does not necessarily translate into what you do based on that because you may do things that are based on other factors. So I'm in strong agreement with Stephanie in the sense that you may want to ignore that value. But I'm in disagreement that, therefore, you must not feel in or you must not record that value accurately.

And my prior point is that the default value is that you don't know anything there because you haven't asked, and therefore that's the default value. How that translates into your actions following that is an entirely separate discussion, not to be tangled up with the fact that there is a specific value there.

KEITH DRAZEK: Thanks, Steve. Alan and then Stephanie. And I'm going to draw a line under this one. We're running short on time, folks.

ALAN GREENBERG: All right. In answer to Sarah. She asked why is this one the default. Well, in some other universe, I might prefer another one to be the default. But I don't think we can say it does not contain personal information or does contain personal information as the default, as an example on the personal one. And we cannot say unilaterally that the registrant didn't specify.

So of the four values we defined, the first one is the most innocuous and the reasonable one to use as the default if, indeed, we're not being any more specific about the legal status or presence of personal data. All I was looking for is clarity so when the implementation people start working, they're not in some other nebulous state. I thought it was a no-brainer. I'm learning.

KEITH DRAZEK: Thanks, Alan. I guess the question here is "noted as a 'can't live with' item." Is there something that we can address here that will help move forward? And we're going to have to draw a line under this one and probably come back to it.

But I see I have a hand ... Alan, sorry. Did you want to respond?

ALAN GREENBERG: Yeah. I haven't heard a lot of argument against having that as the default, so maybe I'm misunderstanding what other people are saying.

KEITH DRAZEK: Okay. All right. Thanks, Alan. Stephanie, and then we need to move on.

STEPHANIE PERRIN: Just briefly responding to Steve. The problem with data protection is that you're better off, as Sarah pointed out, minimizing data. If you're not sure of the validity of your data, then don't put it in because, remember, the registrant has a right to correction, and you will be judged on your bad data. So if it's impossible for you to really get good data, then leave it blank. Thanks.

KEITH DRAZEK: Okay. Thanks, Stephanie. And I'll note that Sarah has typed into chat. She says, "I'm okay with setting these as the defaults. I have not intended to argue against them at all. I just wanted a clear reason to be presented."

So I'm hoping that presents us a path forward. Thank you, Sarah, for the input.

Let me draw a line under this one, and let's move on to the next item on our agenda, or the next item on the table.

MARIKA KONINGS: Thanks, Keith. So I think, as part of the rewrite or reorganization of this one, indeed it seems that there's no violent opposition to adding this. So we'll include it as is. And of course, the group can still then look at that.

So next one we're going to is Recommendation 2 which is the guidance section, as you may recall. There's first a suggestion here that in the intro, or the recommendation part, it currently says, "The EPDP Team recommends that contracted parties who choose to differentiate based on person type SHOULD follow the guidance."

But this has been flagged as a "cannot live with" item by the Registries Stakeholder Group. And there are a few that should be "may." So I think here the question is that "should" was already used in the initial report, but there are changes proposed here as a result of a "cannot live with" item. But does this change the result in "cannot live with" four other groups?

KEITH DRAZEK:

Okay. Thank you, Marika. I see a hand from Melina. Melina, go right ahead. Welcome.

MELINA STROUNGI:

Hi, everyone. Good to find everyone here. Long time no see. Yes, so we were a bit surprised by this specific proposal because it seems to almost undermine the work that we have all been putting together all these months now, and almost undermined the guidance itself. I mean, already it is a completely voluntary guidance. We compromised on not naming it best practices.

At the very least, to honor our own effort, contracted parties who choose to differentiate should follow these guidelines which, in its majority, simply states that GDPR principles have to be respected and contracted parties have to inform the registrants of the

consequences of such a designation. I mean, it really doesn't say anything unreasonable and we don't see any reason why to water down and diminish the value of the report by changing the word "should" to "may."

So we strongly object to this change. And I hope everyone will agree that it will remain, to the benefit and the value of this collective effort, for the language to remain "should." Thank you.

KEITH DRAZEK:

Thank you, Melina. I see other hands going up as well, but I'm going to suggest if we're really wrapped around the axle here on the terminology of "should" versus "may," is there an opportunity to use alternate language?

And I've put in chat: Could we use "are encouraged to" instead of "should" or "may"? In other words, "The EPDP Team recommends that contracted parties who choose to differentiate based on person type are encouraged to follow the guidance below and clearly document all data processing steps."

So that's a suggestion from me. I'm going to turn it to Marc and then to Milton.

MARC ANDERSON:

Thanks, Keith. When you take a stab at trying to explain the hesitation on "should," I get that this this optional guidance. And we do think "may" more accurately reflects that the guidance is optional. "Should" is a little more prescriptive than suggesting that it's actually optional to follow.

But to answer the question why Registries suggested this, one of the areas—when we were discussing it in our stakeholder group—that we got feedback from was that the guidance itself is very GDPR-centric. And having a “should” suggestion for guidance that may not be applicable in all jurisdictions, in all cases—or, for example, for contracted parties that are operating outside of the European Union primarily—creates a suggestion that may not be applicable or appropriate in all cases.

We’re seeing various and, in some cases, differing privacy laws pop up that may make that “should” inappropriate for some contracted parties or for some registrations. And so I hope that helps explain why we suggested a word differently than “should.”

I hope you appreciate that this isn’t an attempt to water it down, although I realize it could look like that. We feel that it still maintains the optionality, and that this still useful guidance for contracted parties that choose to differentiate. We just heard some pushback around the word “should.”

KEITH DRAZEK:

Thanks, Marc. I’ve got hands from Milton and then Alan. And I have a follow-up suggestion because I’ve heard no reaction to what I said in terms of “are encouraged to” instead of “should” or “may.”

But Milton and then Alan.

MILTON MUELLER: Well, I pretty much agree with Melina that if this guidance, the whole idea of guidance tends to imply a “should.” But “should” is not a “must,” so I don't think that Marc's concerns or the Registry's concerns have that much merit in the sense that if we wanted to somehow make this totally prescriptive, then we could have put “must” in there. But the point is that you should follow it in a way that conforms to the privacy protections that we're trying to establish here. I don't see anything wrong with that.

And I think one of the reasons that some of us in the NCUC supported guidance in the first place was that we don't want contracted parties to implement differentiation in a way that violates privacy rights and giving them too much latitude. Although there are, of course, legal remedies, we think that ICANN should simply establish a normative direction here.

So I don't see anything wrong with “should.” I don't think it's overly prescriptive. I could live with “are encouraged to” if that would be more acceptable to the contracted parties, but fundamentally guidance is sort of a norm. It's “here's how you should do it,” and I don't see anything wrong with that in this case.

KEITH DRAZEK: Thank you very much, Milton. Alan Greenberg, you're next.

ALAN GREENBERG: Thank you very much. My understanding is that we're using these capitalized terms in line with the IETF definitions. And the IETF definition for “should” is “this word or the adjective “recommended” means that there may exist valid reasons in particular

circumstances to ignore the particular item, but the full implications must be understood and carefully weighed before choosing a different course.”

It does not prohibit it. It does not say you can't do it. It says you should have a valid reason for doing it. And if your valid reason is, “I have a much better way of doing the determination,” so be it.

KEITH DRAZEK: Thank you, Alan. And thanks for the reference to the definitions. Volker, you're next. And then we're going to draw a line under this one.

VOLKER GREIMANN: Yes, thank you. I must admit I was on the fence between “should” or “may” previously because this being guidance doesn't really make much of a difference to me whether it's either or the other. However, having just heard Alan's comments that “should” now puts the onus of justifying the choice on the contracted parties, I now tend to fall more in the camp of “may” than “should” simply because of the interpretation of the word “should” that diverges from my standard linguistic interpretation of it. Thank you.

KEITH DRAZEK: Thank you, Volker. So I'm going to ask again. Please consider it because it seems like we're fairly far apart on the terminology of “should” versus “may.” I'm going to ask folks to at least consider my suggestion of using the term “are encouraged to” in place of “should” or “may” as a possible step forward.

The alternative I was considering would be to replace the word “follow” with “consider,” but I’m not sure that’s going to gain traction either.

So let’s draw a line under this one. Please think about this one. Please consider my suggestion about “are encouraged to” as an alternative to the two words that we’ve otherwise considered.

Marika, back to you. Thanks.

MARIKA KONINGS:

Thanks, Keith. We’re still in the same Recommendation 2. This a point that was made by both the Registrar and the Registries Stakeholder Groups. In one of the steps it currently says “such flagging would facilitate review of disclosure requests.” And they’ve noted that is speculative here, and it seems that “could” is more appropriate. So that it would read “such flagging could facilitate review of disclosure requests.”

So I think the question here is, is there anyone who cannot live with this change from “would” to “could” in the guidance section?

KEITH DRAZEK:

Thanks, Marika. Would anybody like to get in queue? Okay. Melina, go right ahead. Thank you.

MELINA STROUNGI:

Thank you, Keith. And thank you, everyone, for your comments. We will take some time to consider this proposition of “encouraged

to.” Just as a first reaction, “encouraged to” implies by whom? Encouraged by whom. I don't know. I find this formulation a bit strange and also a bit inconsistent with the rest of the guidance.

I mean, I don't see any problems or causes for alarm with using the term “should” because it is consistently used in various instances of this document. This is normal because it's guidance. It's purely voluntary. It doesn't bind anyone who doesn't want to follow this guidance. So my preference could be to stick to the term “should.”

Also, because I don't hear any very, very strong objections from the side of contracted parties.

And to the point of Marc that the guidance is GDPR-centric, I hope this doesn't imply that the value of this document then stays relevant only within the EU. I mean, should we then consider making it a “must” for EU? I think this is not the intention of this exercise, so hopefully we can [merit] some compromise there. But we'll definitely think about it. Thanks.

KEITH DRAZEK:

Thank you, Melina. And thanks for the consideration. Okay, so we just have a couple of minutes left and some folks have to leave at the bottom of the hour. So Marika, back to you. I think we have two issues remaining.

MARIKA KONINGS:

Yeah. Thanks, Keith. I didn't hear any objections about the “would” to “could,” so I think we can probably go ahead and make that

change. So I don't know if you just want me to kind of summarize the remaining items and maybe we can post this document as a Google Doc and use that to trigger further input. Or maybe we can update. Maybe that's a better idea. We update Section 3 in a redline format and flag the outstanding items. From our side we can make some suggestions. For example, based on the conversations we had on what is, I think, Recommendation 1, if I'm not mistaken, and use that then again for a further exercise of "cannot live with". [It will] basically clean up, I think, what we have now or produce a new table.

So there are two items here remaining. One relates to Recommendation 3 and the reference to the Code of Conduct. There have been suggestions here from the Registrar Stakeholder Group and the Registries Stakeholder Group in relation to adding wording that would note either within ICANN or by ICANN, in the one instance, also removing by the relevant controllers and processors.

So the question here is, does this result in a "cannot live with" item for all the groups if this change is applied? And a question here from the staff side. "What does it mean 'within ICANN or by ICANN?'" What does that mean or imply?

And just flagging, as well, that work on a Code of Conduct was not part of Phase 1 or Phase 2 recommendations, although I believe that contracted parties mentioned that they were planning to work on that after Phase 1 Implementation.

And then we have, as I think the last item here, Recommendation 4. There's a suggestion here, I think, for clarification in the

language by the Registrar Stakeholder Group to be more specific on what this benefit relates to. And I think the question here is, as well, does this change result in a "cannot live with" item for anyone, or can this change be applied?

As noted, there are, as well, a couple of items that are minor edits. I think we flagged in the table the items in green that seemed to be minor and we can go ahead and apply. Of course, if there's anything in there that is concerning, groups should flag that.

Items in yellow are basically addressed as part of the other items that we discussed. And there's one item here that we flagged that's still in white where it seems to be a minor edited. But as this a change that's suggested in one of the recommendations, we did at least want to flag this to everyone so you can have a look at it and see, indeed, if this is a minor change or whether this has resulted in any kind of concerns.

So that basically, I think, wraps up everything that is in here. As said, our suggestion would be that we produce a redline version based on today's conversations, applying those changes where we seem to have agreement, maybe flagging it a certain color. Those were for other input as needed and where we can maybe make suggestions on how to potentially resolve or address those.

And then we probably need very quick input from everyone on that to be able to finalize things, at the latest by Tuesday.

KEITH DRAZEK:

Thanks very much, Marika, for that overview of the remaining items. And I agree and support your suggested path forward.

I see a hand from Marc. Marc, I'll turn to you. And then we're going to need to close the call today. We're out of time. So Marc, over to you.

MARC ANDERSON: Thanks. Quick question for, I guess, Marika, staff leadership, realizing time is short, what is the best way for us to provide feedback between calls here?

KEITH DRAZEK: Thanks, Marc. Marika, do you want to take that one?

MARIKA KONINGS: Yeah. I think from our perspective, what we've used now is the "cannot live with" items, I think, has worked well and is the easiest for us to kind of keep track. As said, we'll create a clean table so people can also see what is the new input that has been provided.

And again, the more specific you can be with suggested changes and having others then weight in whether or not that's acceptable, if anything, so we can already resolve just by going to that Google Doc, that will be helpful. As said, we will do our best to already producer redline version so everyone can see what the updates are, as well as some of the things that are still open but that needs further discussion.

KEITH DRAZEK: Thanks very much, Marika. Okay, any final questions or comments here before we wrap up today's call? We do have more

work to do this week, today, and tomorrow. And so please, everybody, focus on the documents, focus on the text. Please provide concrete recommended changes if you see a path towards consensus. But we've got to get through these "can't live with" items so we know where we stand going into next week.

So with that, I don't see any hands. Let's go ahead and wrap up today's call. Thanks, everybody, for your input, for your continued work. And we will be communicating online here shortly. So thanks, everybody.

TERRI AGNEW: Thanks, everyone. I will stop recording and disconnect all remaining line. Stay well.

[END OF TRANSCRIPT]