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## ICANN Transcription

### EPDP on the Temporary Specification for gTLD Registration Data

Thursday, 11 July 2019 at 1400 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. The audio is also available at:

[https://icann.zoom.us/recording/play/WQn3W79fykZT69cu2yO1jqLpdf6apYB\\_pz1NBE\\_9\\_-\\_O3pm2KIUEhav801i8vAylb](https://icann.zoom.us/recording/play/WQn3W79fykZT69cu2yO1jqLpdf6apYB_pz1NBE_9_-_O3pm2KIUEhav801i8vAylb)

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The recordings and transcriptions of the calls are posted on the GNSO Master Calendar page:

<https://gns0.icann.org/en/group-activities/calendar>

TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the 10<sup>th</sup> GNSO EPDP Phase 2 Team call taking place on the 11<sup>th</sup> of July 2019 at 14:00 UTC.

In the interest of time there'll 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 Alex Deacon IPC, James Bladel RrSG, and Chris Disspain of the ICANN Board. Chris did note that he may try

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to join a little later into the call. They have formally assigned Jen Gore and Sarah Wyld as their alternate for this call and in their remaining days of absence.

Alternates not replacing a member are required to rename their line by adding 3 Zs at the beginning of their names and then at the end in parenthesis, add your affiliation dash alternate, which means you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click "Rename." Alternates are not allowed to engage in the chat apart from private chat or use any other room functionalities such as raising hand, agreeing or disagreeing.

As a reminder, the alternate assignment form must be formalized by the way to Google Assignment doc. The link is available in each meeting invite e-mail.

Statements of Interest must be kept update. If anyone has any update to share, please raise your hand or speak up now. Seeing or hearing no one, all documentation and information could be found on the EPDP wiki space. And if any assistance is needed updating your Statement of Interest, please e-mail the GNSO Secretariat.

Please remember to state your name before speaking for recording purposes and recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call.

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

JANIS KARKLINS:

Thank you, Terri. Hello, everyone. Welcome to the 10<sup>th</sup> meeting. So let me start by asking whether agenda of the meeting as proposed would be acceptable for today's conversation? I see no objections, so then we will follow proposed agenda.

So, let us go to the first item and that is very brief recap of ICANN65 for those who didn't join us or they're not in the position to join us in Marrakech. I would say we started examination of use cases, which is agreed methodology how to try to extract trends and commonalities and build the standardized system of access and disclosure. We examined two cases and we also agreed on the work forward until our face-to-face meeting in Los Angeles in September.

We also finalized establishment and modalities of the work of Legal Committee. We selected a Chair of Legal Committee, Leon. The Legal Committee is set for the first meeting next week. So, this is probably, in essence, what happened in Marrakech. And I see that Amr is seeking the floor to confirm that. Amr you have the floor.

AMR ELSADR:

Thanks, Janis. This Amr but I'm happy to wait until you're done with your recap of ICANN65. If you are now, I can go ahead.

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JANIS KARKLINS: Basically, I'm done with the recap of 65 and I just wanted to seek whether everyone is in agreement or want something to add for the sake of those who didn't participate in ICANN65.

AMR ELSADR: Okay, thank you. I'll go ahead then. I just wanted to note that the agreement to stick to the agenda that we specified in Marrakech show with the deadlines that we agreed to in September, we're contingent on the fact that we would have no more than five or six use cases to deal with, but now we have a considerable number of them.

JANIS KARKLINS: 20.

AMR ELSADR: Yeah, exactly, 20 of them. So, I'm not sure how we're going to deal with all of these and still stick to that schedule. So, we either have to agree to eliminate a number of them very quickly or to extend the September deadline, which I'm guessing is not a very appealing idea. So, I'd like to hear some thoughts from you, Janis, on this and from others as well. Thank you.

JANIS KARKLINS: Yeah, thank you, Amr. This conversation we have under agenda item 5, and I think we should not run ahead of train but let's revisit this conversation or your question once we will have that particular agenda item if that's okay.

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AMR ELSADR:                    Yeah, it's fine. As long as we get to it, that'd be great. Thank you.

JANIS KARKLINS:            Yeah, we will. Good. So then the second point under this agenda item is just a reminder that we are planning to have our next face-to-face meeting from 9 to 11 of September. It is also envisaged that on Sunday, 8<sup>th</sup> of September in the evening we will have informal get together and then we would work intensively Monday, Tuesday, Wednesday, until early afternoon, and we would have late lunch. And those who would like to catch the plane would be free to go around 3:00 P.M. which means that please do not plan departure before 5:00 P.M. from LAX.

For the moment we do not have a specific agenda but intention is to have a first reading of these commonalities that we hope to extract from examination of use cases. And to do that, we also think to invite mediators with the same company that did mediation of our conversations during the first phase. So, for the moment I cannot tell you more than that. Everything depends on the speed our work and then the understandings that we will reach during examination of use cases.

With this, unless somebody wants to speak on face-to-face meeting, we can move to next item that is early inputs. And if I may ask Marika to walk us through the status of these inputs and then we will discuss how to proceed with them. Marika.

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MARIKA KONINGS:

Yes, thank you very much, Janis. Terri, if you maybe can give me control of the screen, I'll just share the latest status. Thank you very much. I'll just pull it up. As you know, we asked prior to ICANN65 SO/ACs, SGs and Cs to provide early input in relation to the Phase 2 charter questions and the original timeline was to receive that input prior to ICANN65 but several groups requested a bit more time, so the group agreed to provide until the 8<sup>th</sup> of July as the deadline and we did get one shortly after that as well.

So, we now have – you can see here on the screen – the wiki page where we posted all the input of the received. So, we have five groups that have submitted their inputs: the Registrar Stakeholder Group, the Registries Stakeholder Group, the Business Constituencies, the Non-Commercial Stakeholder Group, and the Internet Service Provider and Connectivity Providers Constituency.

Staff has gone ahead and – let me just share that with you as well – and populated the early input review tool, and for most of you this should look familiar. I think my Zoom room has closed down on me. Oh no, hold on. I'm trying to find my way back.

We've organized the comments received in accordance with the common review tool to facilitate your review of the inputs and we've basically broken the comments received in line with the different charter questions and grouped those together, so that it will hopefully be easier for the group to consider the inputs. Let me just try and pull that up. Here we go.

As you can tell, we do have the document doc cover, 17 pages overall, and we've broken it down into six different categories. So

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the first category is focusing on all the input that was received in relation to the charter questions on purposes for accessing data and the section that focuses on the charter questions related to prevention and also a section relating to terms of access and input results received on the topics that have been identified in the Annex to the Temporary Specification that's also part of the scope of work for the EPDP. And then as well a category that focus on items deferred from Phase 1 as well as – our last category input that was provided that didn't really fit in [inaudible]. I'll just show you and I think for most of you this should look familiar because of course we use the same tool in Phase 1 to review comments. So, basically, staff has gone ahead and copy/pasted the input information to the different questions that you will see on the screens is, for example, the registry input on question A1.

As you go through the document, you'll see as well that some input has focused on considerations in relation to the actual questions or possible direction that could be taken in relation to the question. While others have focused on potential reframing of questions or potential additional questions that should be considered in a certain category. So, when you see on the right side – again, it's kind of tool that staff has developed to facilitate the groups review which would be to mark what the group's view is on the comment that has been provided. Again, these are some categories for your considerations but the group is of course free as well to come up with others or formulate a different kind of response. So, the group is really expected to kind of respond to the question as well as indicate what type of action, if any, was what's taken in response to the input provided.

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So, that's what we basically have at the moment and available on the wiki. It's probably helpful for the group to consider now what is the best way to review this input received and make sure it timely slotted into the conversations the group is having, and I think as you all may recall, in Phase 1 there were a number of small teams that were used to review the comments and basically come back to the group with recommendations in relation to how to deal with the input provided. Of course, it's also something that can be done collectively but instead there's quite some [inaudible] that has been provided here. So, Janis, it's probably for the group to discuss what will be the most effective way to review this information and do with it accordingly.

JANIS KARKLINS:

Thank you, Marika. So, now the million dollar question is what we will do with this input now? We have to review it as a team has to review it and now we need to decide how to do it. I see a few options. One is to ask staff to review it for us and then present recommendations. I'm not sure that is a something that the group may want. Marika already mentioned another option would be to constitute a small team. We tried once with the small didn't work. I would propose that we think of representative team where each group may if they wish so nominate a representative, and that representative group goes through the old inputs and prepares options for team consideration and decision. And the third is to do it collectively as a team but here I expect that or suspect that it may take too much time and we will not be able to complete this work in reasonable time.



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So, these are options. I see number of hands up. I will ask Alan to kick-start this conversation. Alan Greenberg, please.

ALAN GREENBERG: Thank you. I'm not going to actually answer your question but just to point out the ALAC did make a submission. It wasn't a very substantive one but there were a few points in it and it doesn't seem to have been included.

JANIS KARKLINS: Marika, could we check that please? Marc Anderson is next.

MARC ANDERSON: This is Marc, can you hear me okay?

JANIS KARKLINS: Yes. Loud and clear.

MARC ANDERSON: Excellent. Thank you. I thought the small group that was used to deal with the input received for public comments worked well, but in that situation we were dealing with public comments on work that we'd already done, recommendations that we'd already deliberated on. So, the small groups were tasked with figuring out how to change or modify recommendations we'd already deliberated on.

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This is a little bit different. This is an early, early input to sort of guide or provide input on deliberations that have not yet occurred. Sort of my thinking on this one is what might make the most sense is to take the early input we've received and incorporate that into the workbooks, maybe add a section in the workbooks for early input, and then when we deliberate on the specific topics that the SO/ACs and other groups have provided input on. Then we have that input on record and available to us in the workbooks to help inform our deliberations and discussions.

So I'm not opposed to small group approach. I thought it worked well in Phase 1, but I think here I think a better approach might be to incorporate them into the workbooks and use the early input as a guide when we get to deliberating on those items.

JANIS KARKLINS: Thank you, Marc. Amr.

AMR ELSADR: Thanks, Janis. I'm actually leaning more towards having the full team review these comments but there are ways we can make this more efficient and try not to use up too much of our time on calls doing it. One way might be to – if staff is agreeable to this idea to have them populate these comments or fill them in to our public comment review tool, similar to ones we've used in the past and maybe put that up on a Google Doc where the different Stakeholder Groups, Constituencies or ACs and such can comment on them online as opposed to doing it during calls. And then once we have these sorts of responses come in then we can

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collectively discuss them, but then hopefully use up less time during calls to do that than we would if we went through each response in detail. So I think it will be a combination between doing some of the work in between calls and some on calls, but I think having everyone review them and making sure that some of the answers to the specific questions by different groups that are similar are listed next to each other, so we don't have to review them separately, and just try to find the most efficient way to address each question and the responses received. Thank you.

JANIS KARKLINS:

Thank you, Amr. Would you agree with Marc's proposal that we would put relevant or staff would put relevant parts in the worksheets and we would review them as we go – every specific issue?

AMR ELSADR:

Yeah. I guess we could also try that, it's a different approach. I don't recall us ever doing anything like that before, so I can't really give an informed response on how well it might work having been no precedent. But I'm open to new ideas of course. But I thought I just offer my thought as well and see how it plays out with the rest of the team. Thank you.

JANIS KARKLINS:

Okay. Thank you. Marika, I see your hand up.

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MARIKA KONINGS: Yes, thanks, Janis. I just noted in the chat as well, I just want to point out that of course the SSAD worksheet we have the charter questions up front but we've actually gone into some more detail in organizing the different topics and order in which they should be addressed. So it's not as straightforward as just copying/pasting over the content unless we just want us to add it on the charter questions. In that case, of course it's easy to do but then it doesn't necessarily directly align with the way the group has discussed having that conversation. So I just want the group to be aware of that it's no issue to move that to the worksheet, if that is a group desire and approach.

The question I do have is, is the idea that it's moved over in a similar way as its currently in the input review tool or the people only want to see the comments and there's a different way in which the group will then address how it has considered the inputs? I'm just trying to get some clarity on what are the expectations.

JANIS KARKLINS: Okay. Marc, could you elaborate more on your idea?

MARC ANDERSON: Thanks, Janis. Yeah, I'm sort of thinking on the fly. In answer to Marika's question, I think we'd make the most sense to put over in a form of a charter questions. I guess the first option. That would be the responsibility of the groups when we deliberate on the specific topics, to make sure that the applicable feedback is considered when we deliberate. Because I agree – I mean the

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SSAD worksheet is large and complicated but it's a large and complicated topic that we're covering, so that's I think by necessity.

To your other question, I guess they'll pulling it over the way is in the Summary document is probably going to make it a little more usable if you take the entire input then they're all already unwieldy SSAD document we'll get more so. And we already have the full documents for early input. Those are available, they're on the wiki so we could always refer back to the full documents as needed, but using the format that staff did in Summary document, I think that would work on either of those. I don't think I feel strongly either way. I think both would work. Those are just sort of my first fresh thoughts on how to incorporate them.

JANIS KARKLINS:

Okay. Thank you, Marc. Kristina, you wrote something. You also had a proposal. Kristina.

KRISTINA ROSETTE:

Sorry, I need to unmute on both places. Yeah. I think just picking up on a theme that Amr had put forward, I do think it's important that each group review the early input but we don't necessarily need to allocate call time to it. My idea was that each group would be responsible on its own for reviewing collectively all of the early input. Staff would create a Google Doc into which each group could, if they have any clarifying or follow-up questions about another SO or ACs early input, those questions could be entered.

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We would then after two weeks or whatever time we decide and allocate an hour of one call to go through those questions.

So if, for example, the VC has questions about a particular response in the Registries Stakeholder Group early input, we would go over that question and the registries would provide a response to ensure that everybody has a chance to kind of fully consider it. I do like Marc's idea of adding the early input into the worksheet so that we're reminded of early input that's relevant when we get to it, depending on what our timetable would be might. Thanks.

JANIS KARKLINS:

So, thank you Kristina. So, let me then maybe try to propose the following methodology. Staff will compile all inputs received in the wiki document, which then would be reviewed by each group. And in case of questions on inputs of other groups then that particular group will formulate those questions, and once we have completed that sort of peer review of inputs of others, we will see how much time we need to allocate for conversation as a team on the topic. Will that be okay?

So, I would ask staff to do compilation maybe sometime next week and then groups to review within seven days, which means that in two weeks' time we could see whether there is a need to put the early input on the agenda of the team. Would that be okay? I see no requests. I take that we may proceed in this manner.

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So then we can move to next item. Next item is the use cases. I'm trying to open my computer. We have received probably more use cases than we thought we would, which is good from our side. That indicates the interest of the team in putting forward, let's say, real life situations as what they are confronted on daily basis and inform better our consideration. From our side, of course we did not expect that we will have so many of them, and now we need to decide how to proceed with examination of these use cases.

As you see now on the screen, I try to put together. We have received inputs from GAC, Business Constituency, Intellectual Property Constituency, SSAC, and ALAC. Total is 20 because ALAC sent in one file too. And so, we have eight meetings remaining to review use cases prior to our Los Angeles meeting and if we want to extract the commonalities, so probably we need to also leave some time to digest whatever commonalities will be proposed to examine during the face-to-face meeting. Relative means we have probably seven meetings to go through these cases. So, that is the issue.

Secondly, probably we also need to understand that the examination of use cases does not mean that we need to agree on every word and every comma in the text. Maybe we can go to the next slide.

Out of those 20, we have four cases related to criminal law enforcement national public security. We have eight cases submitted for non-law enforcement investigations, consumer protection, abuse prevention and network security. We have three cases on intellectual property, two commercial, and two domain name maintenance.

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If we go to the next slide – and after we'll return back to questions. So, if we go to the next slide, maybe we could proceed by using the following methodologies. First, we would confirm the order of reviewing of use cases and propose it to group. And then we would go with the two readings. The first reading of any case we're examining would be very short, typically 30 minutes, followed by second and final reading during the next call and that would take probably around 60 minutes. So, that would be the task for the first and second reading.

For the first reading, groups would be invited to indicate their concerns and provide brief description of the nature of those concerns. And if there are no concerns then no interventions are expected. And after the call then each member who expressed concerns would provide maybe slightly more elaborate description in writing by Friday. Staff would incorporate and produce updated version of all inputs received for the second reading and will disseminate it, the updated text of the case by Tuesday. And then on Thursday we would spend an hour to examining the case. Then here comes also the important thing in my view that the aim of readings is to reach the broader understanding of members of different aspect of the case, rather than reach agreement or seek agreement on each word and every comma in the case.

So, that is suggested methodology, how we could get to the result we're expecting. The big question is, how to now select or distill of those 20 proposals which would examine or not – if we can go back to the previous slide – and then to put them in order.

I already saw an e-mail from Milton who started this triage, if I may use the French word, and suggested that some cases could be



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merged and some cases could be – maybe would not be even stand for examination. But I'll open the floor and seek your advice on how we could now proceed with the selection of most typical cases and then we would start their examination.

I see Thomas Rickert is first. Thomas, please go ahead.

THOMAS RICKERT:

Thanks very much, Janis. Hi, everybody. I think that as far as the criminal law of use cases are concerned, I guess what's required – and that might be commonality that can allow for our group to use synergies – is that balancing test will likely produce safeguards that can be useful for our cases. So maybe the criminal law cases can be discussed in combination with a focus on establishing safeguards. What do I mean by that?

It's not going to take long but I think that we will see something which I would describe as a beer belly. You see a guy with very thin legs and then there comes the beer bellies and above the beer belly everything's thin again. So, we will likely have minor breaches of law that do not justify that personal data has revealed. So, that would be sort of the legs. That area no data can be disclosed because the preempted or anticipated balancing test will show that the interest of the data subject outweigh the interest of the authority. And then there will be the beer belly area where data can be passed on and that would need to be defined in the more or less in the abstract, and then it becomes narrow again. That would be cases and I'm intentionally moving through the area of the throat. Let's say, there's death penalty involved for a certain crime, then we would say, okay, in that case again the interest of

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the data subject outweigh the interest of law enforcement to use a standardized process rather than manual review. I think it may make sense to find commonalities in these cases and look at cases pertaining to a particular class of use cases together and find commonalities that can be applied throughout. So I hope that this is seen as a constructive way forward.

JANIS KARKLINS: Thank you, Thomas. Milton.

MILTON MUELLER: Hello. Can you hear me?

JANIS KARKLINS: Very clearly.

MILTON MUELLER: Very good, thank you. Welcome, everybody. I'm going to quibble with your categories a bit. I think one of the things I noticed is that when you're dealing with criminal cases, essentially you're dealing with law enforcement agencies that are acting under a particular kind of law. From my reading of those use cases, it really doesn't matter very much what the case is that is whether it's copyright or murder or some kind of a crime. It's basically the same motivation and the same type of agency. That's why I would've grouped together – when the IPC proposed criminal copyright and infringement, I would just lump that in with other criminal cases.

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National or public security, on the other hand, is actually very different because it may not actually involve a specific crime and a specific targeted individual. It may involve more of an investigative thing. It depends on what people have in mind for that, so I wouldn't put that in the same category. It may be that certain kinds of national security issues are in fact criminal investigations. For example, for certain forms of espionage that are literally capital crimes in the country and certain kinds of public security may indeed be criminal law enforcement but some of the other things that were classified as public security sounded more like general investigations. I think we want to maintain a distinction there.

I don't know what you mean by commercial. Maybe you could elaborate on that when I'm finished. On domain name maintenance, it sounds like really scratching my head about some of those but I guess that's a conversation for when we get to it. Those would probably be ones that I would throw out.

Again, I agree with what Volker said in the chat, that some of these very strange use cases involve just people saying like a BC9 was in particular sort of saying if you're a customer of a social media, if you're an advertising customer, we have a right to look at your domain name, just redacted information. And that's an incredibly broad claim and it seems really a strange and unnecessary claim because if I'm buying advertisements from you, you can demand any information you want as a condition of the contract. What is the need for WHOIS in this kind of a situation?

So, I think we could easily eliminate – I mean these categories are a good start and I was quibbling with a bit of them and I'm not

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clear what you mean by others but I think we are going to end up with four or five categories and a set of use cases within each one of those categories that we'll considerably narrow our workload on these use cases. Thanks.

JANIS KARKLINS:

Thank you, Milton. I tend to agree with you. For the moment we do not probably want to eliminate anything at this stage. So, what we want to do we want to see whether some of the cases could be merged or rather which cases we would look up first. Then I believe that as we go, the consideration of the case will accelerate because there will be already commonalities and then we could use the simple method copy/paste for identifying those commonalities and putting it there in the worksheets. Marc Anderson, please.

MARC ANDERSON:

Thanks, Janis. First, I have to compliment Thomas on working a beer belly analogy into our working group deliberation. Well done, Thomas.

On a more serious note, I think I'm largely agreeing with what Milton and Janis have said. I think we need to find commonalities and merge them. I think we need to avoid trying to deliberate on every use case that has been submitted though. I really want to caution against that. I think without even trying very hard, we quickly as a group develop over 20 use cases and I think given the next week we could double that number without breaking a sweat.

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So let's not turn this into an exercise of trying to identify every use case. I still think that this use case approach can be a useful tool in helping inform our deliberations and getting to our end goal, which is of course policy recommendations on being able to access non-public registration data, right? Let's remember our end goal, the use cases are a means to an end, not the end goal themselves. So I think we should try and focus on a handful of use cases. And in particular, there are some use cases that have been submitted so far which I think we could all recognize are bound to be controversial and will cause us to get bogged down in discussions over whether they're legitimate or in scope or relevant. I think we can focus on a handful of well understood and accepted use cases to help inform our end goal developing policy recommendations.

JANIS KARKLINS: Thank you, Marc. Mark Sv. Mark Sv?

MARK SVANCAREK: Sorry. Failure to unmute. Regarding the number of use cases, we apologize. I mean there's a lot of use cases. We were really going for specificity because we have been trying to be specific in our previous meeting and there was a concern that if we were not specific that later on we would discover that there had been some sort of assumption about something that had not been mentioned. So we decided to do it that way and probably when we look at it, you will see that this is 90% the same as the other thing and we can discuss whether or not the 10% delta is meaningful or not. Certainly the law related to copyrights and trademarks is different

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from the law related to IP infringement, and so to the extent that that might question the legitimacy, that's an issue.

I would be cautious about lumping law enforcement and none law enforcement together because there are many cases where law enforcement actually relies on third parties to do investigation. Certainly, we can't bring a case to them without having done our homework because they simply don't have the resources to do that for us.

Finally, I do agree that we are going to wind up with a small number of categories with a certain number of use cases in them. I don't know if we're going to organize those by legal basis within the category or what. Whether you slice them horizontally or diagonally or something, I don't know. And I agree with Milton. I don't actually know what commercial means but maybe I just should've been inspected. Was there any explanation of commercial sent in advance of the meeting? If there was, I apologize. Thanks.

JANIS KARKLINS: Thank you. Now, next is Georgios.

GEORGIOS TSELENTIS: Yes, hello. Hello, everybody. I just want to highlight something regarding the way you propose to deal with the examination of the use case. When we were in Marrakech, we provided a sort of workflow diagram for any request that can be made. The purpose was that the template that we have so far with the use cases is static template in the sense that it has some of the elements

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particularly for the requestor side, and some other elements are mixed up from the one who responses and who has a legitimate interest, who has a legal basis, etc.

So I was wondering and I put this – I don't know if it is too early now but I think it's a useful exercise to start thinking also about the processing of this type of information when somebody makes a request. So that's why we put the diagram in Marrakech where we have [inaudible] regarding request authorization and response, each one of those we said that it has its own legal basis. So I think it would useful in our exercise that we will do when we go to the discussion also to take into account the processing workflow of any type of request in order to reveal the legal basis that related to those processing activities. Otherwise, I think we will find out this type of question later on down the road because now I think we go with the number of use cases, we go to big number of potential scenarios that we try to exhaust the details but we are missing some very crucial parts of the process by doing so. We don't enter to questions regarding the process of when somebody is requesting non-public data.

So, my suggestion would be, Janis, in this case that in some of those use cases at least we'd take into consideration a sort of workflow diagram, maybe ours – I mean I'm ready to receive any critics. It's not the best one but we need to see how the process of requesting is dealt with. Thanks.

JANIS KARKLINS:

Okay, thank you Georgios. We look at and see what we can do. I think that you have a point. Next is Farzaneh. Farzaneh, please.

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FARZANEH BADI:

Thank you, Janis. I hope you can hear me. Basically, I think that we received so many use cases because we are not actually asking a lot of specific questions, or when we are asking these specific questions the responses are not very specific. And I have mentioned this before in an e-mail.

For example, when it is asked that why is the data necessary? It is not just enough to say the data is necessary to do this and that, there should be like a policy, a law, a court case that has required the data to be provided especially for the legal action. And I'm not saying that or does not require such data but I'm saying that at least you need to mention those cases or those circumstances. For example, for the botnet mitigation that Microsoft has done, various Microsoft versus John Doe court cases in the U.S. and we actually studied those in a paper and they went through difficulties because they didn't have access to WHOIS data. But there were other ways to actually be able to get the subpoena or not have to identify the domain name registrant who fight with botnet. Now, Marc from Microsoft is here, I'm not going to give more details on that but I would very much like to discuss the necessity and which law and court case or policy or best practice necessitates you to have access to this data.

The other one is that when we input the legal basis. When you invoke 61B and F and C and E and D and all those, you need to provide the rationale. How and why you think that these are the appropriate clauses. If it says 61F, which is a valid legitimate interest of third party and I believe in my opinion and that most of the third parties requests are based on 61F. If it's 61F, you need



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to discuss the legitimate interest and you need to also discuss whether it is necessary, whether the request is reasonable, and whether there are no other alternatives to do your job other than having access to WHOIS data. I think we need to really focus in more detail on how these cases, how you really need data. In botnet mitigation cases, in law enforcement cases, we need specifics.

The last thing that I wanted to say is I really don't understand criminal investigation by non-law enforcement. I find it a little bit worrying and I really think to the outside world, if we mention investigation by non-law enforcement, it sounds like we are talking about who is Miss [Markle]? I think a lot of these use cases have to be much more specific and provide more details. Thank you.

JANIS KARKLINS:

Thank you. We're really spending too much time on this. I have further Alan Greenberg and Matt Serlin online and then they will close the speakers list on the topic and then they will propose a way forward. If you can speak also on the questions that are now on the screen and also methodology that I proposed. Alan, please.

ALAN GREENBERG:

Thank you very much. I'll be very quick. One of the benefits of the large number of use cases we have is that when we come to talk about accreditation and the different types of accreditation, we may need to be considering the larger number of use cases I think will be helpful in that it's identified the various parties or classes of parties who may be making requests. So it may not be exhaustive

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but it's going to be close to exhaustive for that. I think that will be very useful.

With regards to Farzaneh's comment of we need more details, I would think that she is describing what we need in the individual requests that is you have to justify exactly why, how, what alternatives there might be. A use case is the general summary of it and I don't think we need the details at that level. Thank you.

JANIS KARKLINS: Thank you, Alan. Matt Serlin?

MATT SERLIN: Yeah. Thanks, Janis. I'll be brief as well. In terms of the methodology, I think what you outlined is good. Similar to what other folks have said, I think there's some work we can do to expand on what some of these meetings are certainly I think we need some understanding what that commercial one is. I so think that there's one that potentially overlap and maybe we can reduce them down.

The thing that I would caution against though and someone I forget who it was in the chat reminded us that we spent almost 10 hours going through one use case. So I think the timeline you have in terms of I think it was 60 minutes to discuss one and then 30 minutes for the next call, I worry that that is not going to be nearly enough time to really go through these use cases in detail.

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In terms of the path forward, I think we need to be cognizant of that as we look to get this done before the face-to-face. Thank you.

JANIS KARKLINS:

Thank you, Matt. Of course, the proposal is a little bit abstract. It is not carved in stone. If we will fail in 60 minutes, we will examine it further in the next call. The point being is, I do not think we need to try to agree on every word on the use case document itself. So we need to agree on broad lines on common understanding because ultimately, we're not negotiating documents of use cases but we are preparing rounds for the drafting of the policy proposals, and then we will be negotiating every word in the policy proposals and then try to reach a consensus on those.

Brian and then Mark quickly. Brian, please.

BRIAN KING:

Sure. Thanks, Janis. I think it might be premature that to categorize use cases and I caution that categorizing use cases starts to look like user groups which we want to avoid especially at this point when I think folks probably haven't read all the use cases that we have yet. So I don't know how we can categorize what everyone may not have read. I do think that it will be wise to find some efficiencies and commonalities and identify opportunities to merge any together that makes sense to do so as we go. But I think we're a little premature for this conversation side implore us to move on. Thanks.

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JANIS KARKLINS:           Actually category was just a way how to cluster more or less those cases and put them on buckets. It's not anything with very deep meaning, actually. Mark Sv, very briefly please.

MARK SVANCAREK:        Thanks. I just wanted to mention that if there is ongoing interest in learning more about these criminal cases, we have a single digital crimes unit that covers all the criminal IP trademark copyright but also phishing, malware, etc. They're very busy, of course. If there was any interest I could bring in, Richard Boscovich who is the head of that group, you could address any questions that anyone have. So if there is an interest in that I could put that together. It would take time for another meeting. So I put that out cautiously. Thanks.

JANIS KARKLINS:        Thank you. Finally, last, Thomas Rickert.

THOMAS RICKERT:       Sorry, I have to get myself off of mute. I think that this discussion shows that we might not have a common understanding of what the projected outcome of this exercise will be. Farzaneh is asking for more details. Alan Greenberg is saying more details might be necessary for the individual request but not for the accreditation as such. So I think it would make sense for us to maybe have a discussion within an hour or so, to discuss how we envisage the outcome of our work to look like.

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I think that at least my understanding would be that these use cases would be sufficiently detailed to describe standard cases have a balance task have the legal rationale in it that would be applicable to such standard case and that every request that is made that is 100% congruent with the requirements of this use case would automatically lead to the disclosure of data or to the permission for the contracted party in question to disclose the data. So there wouldn't be manual interaction required or more details on a case to be reviewed.

But that might be my personal view on things. I think that we are not aligned on what trouble we're trying to solve or what the system at the end of the day shall achieve. I think that we need to have a common understanding because otherwise, we're going to work on sorts of directions when analyzing the use cases. Also, that was one of the reasons why I suggested to look at the safeguards more, the beer belly idea so that we know what the minimum threshold would be where the rights of the data subject outweighed the rights of the requestor and where the middle ground is where automated access or semi-automated access is possible and then the cases where it's not possible anymore.

If I may suggest, let's maybe have such discussions for a few minutes before we split the two subteams or with the plan to review the proposed use cases.

JANIS KARKLINS:

Thank you. I don't think that the situation is so desperate or bad. What we are trying to do, we're trying to build the building blocks that may constitute the standard system of access and disclosure.

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Of course, there are two elements of that. We will be working on policy recommendations and then there will be implementation phase. As far as I understand, implementation is not really our task. From other side, we cannot put forward policy or policy proposal which is not implementable. So we need to always keep that implementation on the back of our mind but our task is to provide the policy recommendations on each of those boxes. So charter questions may constitute the skeleton of our policy recommendations. So we'll see.

Again, for the moment, we need to simply build this common understanding and safeguard. You mentioned it was introduced or were introduced predominantly in Marrakech and they are part of the template and will be discussed on every use case. But I read that at one moment we will need to start drawing the outline of the policy recommendations.

Let me maybe draw a conclusion to this conversation and say the following. First, it is not intention for the moment to eliminate any of the proposed use cases but rather to identify the order in which these use cases need to be examined or could be examined. In that respect, if I maybe may suggest that staff will send to each group separately a list of all cases, and if I may ask you to each group to do the prioritizing of cases on the list and send back to staff. That will maybe guide us a little bit the average mathematical in making our proposal. Would that be okay?

The second, I didn't hear anyone objecting that the proposed methodology that we would start with the very quick rough reading where everyone who has concern with outline that concerns during the meeting on each case, then we'll put those concerns

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more specifically in writing by Friday, and we're talking about one meeting a week on Thursday. So then staff would put those concerns and would modify case for the second reading and we would go then through the modified case already with the full knowledge of concerns of members of the team. So if 60 minutes will not be enough, of course we will not drop it. We would continue the conversation during the next meeting.

This would be my proposal. I see Marika is seeking the floor.

MARIKA KONINGS:

Thanks, Janis. In relation to your suggestion of a ranking. I was just going to suggest that we could maybe send that even off as a Survey Monkey tool or each group can just go in and automatically rank and will give us an automatic score of which use cases have been indicated as the priority cases. That may be an easy way to do that.

The one question is [inaudible] and we can even add as well common boxes if there are certain cases that need to be merged as suggested, whether that would need to happen before the ranking is done or whether something that people can indicate in their comments and then can be factored in as having an order established.

JANIS KARKLINS:

But certainly, please rest assured that the survey or ranking would not automatically determine the order of examination. So we will also look to other elements that no category is left outside and that

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we really get full sense of complexities that we're addressing here and that all interests are taken into account in one way or another.

Objections? I see none. So then we will proceed that way and then we'll see how it goes.

Next item is item 6: Trademark owners requesting data in the establishment, exercise or defense of legal claims for trademark infringement." That is the first use case that we have been looking at already for a while. There have been a number of inputs received in Marrakech. If you wouldn't mind to walk us through those inputs and see whether we can close this case and then proceed to the next one. Marika, please.

MARIKA KONINGS:

Yes. Thanks, Janis. What everyone sees on the screen is the latest, clean version that's also posted on the wiki and which was shared shortly after the group's face-to-face meeting in Marrakech. So basically, this version aims to address all the inputs and comments that were discussed during that meeting. We send out that this version that said they were straight after the Marrakech meeting and we also asked everyone to review it again and flag any issues that were deemed not satisfactorily addressed or whether they needed further discussion. But as far as I recall, I don't think anything was submitted to the list or I may have missed it. But I don't think I saw anything.

There is still, however, an outstanding action item. I'll just scroll to that. I think there's lots of comments in there and potential sort of action by the group that said it may not necessarily be to have



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every word at this stage resolved. But there was a specific action for Georgios to look at the safeguards that were identified for the data subject and see how those could or should be allocated to some of the other categories. I see Georgios has his hand up, so I'm sure he wants to that. That's all I have.

JANIS KARKLINS: Thank you, Marika. Any hands up? I see Georgios. Georgios, please. Your hand was up.

GEORGIOS TSELENTIS: Can you hear me?

JANIS KARKLINS: Yes.

GEORGIOS TSELENTIS: I wanted to clarify my comment also from Marrakech regarding the safeguards. The point I made was that the way the template is structured, the safeguards are referring to things that are not really safeguards. I saw that there was also the requirements in the parenthesis but safeguards according to the GDPR referred to the safeguards for the data subject. That's why I provided the list as it was given to me by my colleagues, they were more appropriate to this. So for me, all the items that are under safeguards has to be again seen from the point of view of the data subjects and only from the data subject.

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So if we have, for example, safeguards related to the system, I think this is more about the how, it's not applicable to the who, and we said that we should more first identify what are the broad categories of the safeguards for the data subject. This is what I tried to put there with some examples that I had, and then go to answer these two other questions – the who and the how. The who – who is responsible. And the how – how those safeguards will be dealt with. I think for the moment, the way we have the template is not appropriate to answer those questions and I cannot do this for each one of the use cases particularly from other groups. We tried to do this with a layer of use case. But still I think if we want also to go to the discussions as you said with the next use cases in more details, I think the major point here is we put safeguards for the data subject then we say how and who is responsible for those safeguards. I don't know because also Thomas was referring about the importance when we discuss those safeguards case by case, but it's something that I cannot do for each and one of the use cases. It's a question of template how the template should look like.

JANIS KARKLINS: Of course we can modify template based on the examination of law enforcement case where the safeguards, if I recall correctly, were already part of the template, right? Georgios?

GEORGIOS TSELENTIS: Yeah. Even for the layer case, I think we need to go and more to the details about the who and the how. But broadly, I think some of the safeguards are captured in the layer case, yes.

JANIS KARKLINS: That's in your hands, Georgios. Next item is layer case and we will come back and we will talk about safeguards. But I agree, safeguards are important and I think that safeguards will be the ones that will give us some sense on policy recommendations. Thank you. Marc Anderson please.

MARC ANDERSON: Thanks, Janis. I just want to quickly plus one Georgios. I think at the end of the day, being able to demonstrate those safeguards as Georgios has described will be critical to demonstrating that we have a GDPR compliance solution at the end of the day. I just want to agree with everything he just said. We really need to button that up in the template for one of these use cases before we start going down the path with the other use cases. I think that introduces the risk of having to do unnecessary rework. So let's make sure we get that right here.

I actually raised my hand though to say I think on this use case we've done so far is in this document, trying to understand the use case or demonstrate the use case on paper so that everybody has a common understanding of it which I think is a great important start. What I'm a little unclear on though is how do we take the work we've done so far and bring it to the next step? What did we learn from going through this use case as far as what policy recommendations are needed? Where do we need policy? Where do we not need policy? What are those policy recommendations?

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I think we've done a good job coming to a common understanding of the use case itself, but I think we need to spend some time or at least understand what the steps are to take it closer to our end goal of developing policy recommendations.

JANIS KARKLINS:

Thank you, Marc. I maybe can tell you that I have asked staff to start capturing every bit of outcome of discussions that may be useful for policy recommendations. My intention is that after examining during the next meetings the number of cases, staff would propose a zero draft, a very preliminary – just for team's consideration. If that will live, fine. If not, it will be reworked based on team's input. But this is what I ask staff to start doing while we're going through these cases. I think we still need to be patient for three or four meetings and then talk through these use cases to get closer to common understanding.

With this, any other comments on proposed changes in this use case? If not, then we would preliminary put this case aside and would – I see Marika. Marika?

MARIKA KONINGS:

Yes, Janis. I noticed and I just pointed out that – I don't know if people had a chance to look at this because there are a couple of action items in here where people volunteer to look at language and suggest alternatives. The no response means that they're actually happy with what is there, which is of course is perfectly fine too. I noted both Georgis and Marc talking about the category H and how that may need to be done. I think Marc using that, it

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used to be bottom-up but I'm not clear on whether there's an action there for staff to do that, whether the group is going to do that or what that would look like. So I just want to get some clarity on whether there's any kind of expectation that this section is going to be further reworked by someone, and if so, by whom?

JANIS KARKLINS: Any answer to Marika's comment and question? Georgios?

GEORGIOS TSELENTIS: I would suggest that in order to get this part of the template right, it needs a little bit to sit down with the author of the specific use case and go to these questions that I just said before. We need to see the safeguards from the point of view of the registrant and we need to answer the questions who is responsible for those and how exactly those safeguards will be implemented. As I said, the answers to those questions for each specific use case are very difficult for me to reply. I would be happy if the authors of the templates of the specific use case. We can sit together and try to put this in a better shape. So I don't know who was the initial author for this one. Was it Thomas? Thomas?

JANIS KARKLINS: Yes. Thomas acknowledged the paternity. So your suggestion, Georgios, is to ask Thomas to see whether he can expand on safeguard chapter. You sometimes need to make some jokes in this serious conversation. Otherwise, it doesn't work.

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So, Thomas, if you could then look into your case and in light with Georgios's suggested maybe consulting with him and see whether current text is sufficient and we will continue this conversation as needed during the next meetings or we will take it offline and then do it by wiki.

I see two further requests but that would be it. Amr and Brian in that order. Amr, please go ahead.

AMR ELSADR:

Thanks, Janis. This isn't the safeguard for the data subject part. But in Section E, there's a bit that I know came up when we were in Marrakech. I've been having a little trouble with it and I just wanted to flag it for the time being and I'd like to take some time to look into it a little more. But in Section E of this use case, it says that in view of the alleged involvement of the registrant infringement, it cannot be assumed that in these cases, the interest of the registrant protection of his /her data outweigh the interests in the protection of IP rights.

That might be true but I don't think the assumption should be that the IP rights also outweigh the data subject's rights and personal freedoms. So, I don't know what to do about this right now but I would like to just flag it at the time being and maybe take some time to think about it and come up with a proposal of some kind. Thank you.

JANIS KARKLINS:

Okay. Thank you. Brian?

BRIAN KING:

Yeah. Thank you. I'm lucky I'm next in the queue. I can speak to Amr's point and I can confirm that, Marc Anderson, I will take a look at that other language. I apologize that I missed that. It's a takeaway for us.

Two points. One quickly is that I'll volunteer to team up with Georgios and Thomas on this since it's the IP use case, IPC. I'm more than happy to help. And to Amr's point, Thomas's side in the case law there. I think a close reading of that case law combined with one of the Article 29 Working Party documents on whatever the predecessor 61F was [named 71F] from the directive actually does say that with these types of cases and sufficient safeguards that the rights of the intellectual property owner or the requestor of the data do outweigh the data subjects interest and anonymity I guess. So that's what we're working at here is to get that kind of finality that comes with the assertion plus the safeguards equal that the data subject's rights are not weighed. So that what we're working toward legally speaking so that the case law plus that Article 29 Working Party document add up to that. So I'm happy to explain further if anybody wants to.

JANIS KARKLINS:

Thank you. With this, for the moment we will ask Thomas with the assistance of Georgios and Brian to fine-tune the case specifically also thinking about putting more expand on safeguards. If need be, we will revisit this use case at a later stage.

Marcus, were you in agreement?

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MARK SVANCAREK: I just had an observation that as a listing to this, we're looking for a lot of specificity regarding what potentially could go into the request, be it case law or whatever. But we've also established or at least attempted to establish that the native controller has final discretion overall, which means that no matter what you assert in the request, it could still be overruled. Certainly I know there could be an activist registrar who will fight against even subpoenas. So I'm not sure how far down that rabbit hole we need to go or what's appropriate because at the end of the day, if the data controller still has the ability to say sorry, in my opinion, based on my assessment of liability or whatever, I reject this balancing testing. I hate that they might do that but I think that's where we're at right now. So I'm not sure how much specificity we need to get into here because at the end of the day, it's a decision by somebody else. Thanks.

JANIS KARKLINS: Thank you, Mark, for this remark. You need to fix your microphone. The sound was not overly good when we were talking. We did understand you but it was not very clear.

MARK SVANCAREK: I apologize. [Inaudible].

JANIS KARKLINS: No, no. It's just a technical issue. Let us move to next item and that is the case on investigation of criminal activity which we



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started in Marrakech and we didn't finish it. So can we put this material/case on the screen?

I think it would be useful since we do not have too much time today. We spent little much than expected on the previous topics. Why don't we look in the safeguard section to better understand how the safeguard section could look like from different aspects as well as how those safeguards could be implemented and who would be responsible for that. That may be based on that conversation. Other cases could be fine-tuned for our further conversations. So can we get to the safeguard part?

Maybe I will ask Georgios to again walk us through this part specifically of the case.

GEORGIOS TSELENTIS: Yeah, if I can ask Chris because he is the one who drafted the whole thing to take the floor please.

JANIS KARKLINS: Yeah. Okay, Georgios. I will first ask Milton. Did you have some procedural issue?

MILTON MUELLER: No. I have the point about the opening sections of this use cases that I wanted to make, tighten up the purpose.

JANIS KARKLINS: Okay. Would you mind to wait?

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MILTON MUELLER: Not at all. That's why I didn't answer during the first –

JANIS KARKLINS: Okay. Thank you, Milton, for your patience. Then Chris, please.

CHRIS LEWIS-EVANS: On the safeguard sections, I struggled a little bit with the new form. For me, personally I found it became very implementation-focused. It depends on the access disclosure system what safeguards are required. As under Section I, depending on the type of disclosure system, it would require maybe some different safeguards and – safeguards is probably the wrong word here. You've got User Agreement or MoU or whatever we decide to call that. This is where I started to struggle applying it with the policy focus on it because realistically, the disclosure system, what sort of disclosure system are we talking about? Is it a manual, is it automatic? I very liked touching this because of that issue. Going forward, I've seen a number of different use cases that have pretty much said that automated requests are allowed. I think that comes with its own different types of safeguard. As said in Marrakech – I think Georgios said already on the call – concentrate on this might be a good piece of work to separate out. I did look at doing a number of other use cases. But to be honest with you, they were pretty much the same. Anything that really changed was the legal basis.

Certainly from a law enforcement point, safeguards can be pretty much the same. Just obviously considering Thomas's point where

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you got different aspects such as if there is a death penalty then that required different safeguard but obviously they're just the edge cases. So 90% of use cases we're going to find, safeguards are all going to be the same. That's what I tried to do here. I did struggle with it just because it became very implementation-focused.

JANIS KARKLINS: Okay. Thank you. Any comments or reactions on what Chris just said? I see no one is asking ... yes, please, Georgios.

GEORGIOS TSELENTIS: At this point, the question also is to what sort of detail do we want to go when we go in each use case about the safeguards? As Chris pointed out, it depends very much on the use case for some types of safeguards. And in the case of the law enforcement, one of the main issues is about the automated or non-automated use of a system that might abuse or refuse the access.

This is a more general question. Are we going to detail in each use case the specific safeguards that are relevant for this use case or are we trying now here to elaborate on more broad categories of safeguards and we consider that by doing this, our job for policy purposes is good, it's okay? That's a more general question about how deep do we want to go to the safeguards. Because we said that they're important in order to prove that rights of the registrant are preserved. That's a question that we have to decide now I think if we go to further analysis with the rest of the use cases.

JANIS KARKLINS: Georgios, I think we do not know whether the system will be automated or manual. We agreed that we will decide when we will have that system. For me, the difference is that manual system will be slower but it should work in the same way as automated.

What type of safeguards? Chris just said that in mainstream law enforcement cases, 90% safeguards will be exactly the same. Hence, conclusion is probably we would need to identify what those safeguards would be, who would be responsible for implementing them, and that would provide us with better understanding how that part of the system could standard system could work. Does that make sense for you?

While you're thinking, I have to request on this topic. I understand that one is from Hadia, others from Alan. Hadia?

TERRI AGNEW: Hadia, it's Terri. I see you're not muted on the Zoom side. Can you check mute on your side?

JANIS KARKLINS: While Hadia is trying to mute, maybe Alan can go. Alan?

ALAN GREENBERG: Thank you very much. I guess I'm a little bit confused here. If we are contemplating at some point that we may have an automated system and that I thought is one of the ultimate goals of these deliberations to decide whether we can or not. I don't think we are

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envisioning an artificial intelligence engine which is going to analyze paragraphs of legal justifications and try to decide as a human would, whether this is indeed justified under GDPR or not.

I'm assuming the only alternative is that when someone is accredited, they have to understand what the kinds of rules are that will apply and certify in their request that they meet the standards that apply to that kind of group. If that is not correct then I'd like someone to explain how we contemplate this actually working, what the process will be for the request to be processed if we don't have a human being exercising value judgment on each and individual request. Thank you.

JANIS KARKLINS: Thank you, Alan. Mark Sv?

MARK SVANCAREK: I think Milton may have been ahead of me.

JANIS KARKLINS: No. I understand that Milton is willing to speak about heading the top of the case.

MARK SVANCAREK: Oh, okay. Just a brief comment on what Alan said. I think the value of accreditation exists even if you don't have an automated system. To be clear, I would love to build an automated system but I think that the reputation of the requestor is important in this

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case, and accreditation provides at least one more data point, the reputation of the requestor.

JANIS KARKLINS: Thank you. Georgios, would you like to comment on what Alan said?

GEORGIOS TSELENTIS: Can you hear me?

JANIS KARKLINS: Yes.

GEORGIOS TSELENTIS: I want to say that what Alan said is that we are getting into the discussion about what specific process. It's like taking the decision that we go with a specific automated system and the question then is, if I understood well, whether this automated system includes a human in the loop or not include a human in the loop that we provide or not the safeguards about possible use or misuse of the access disclosure procedure. I think this is not something that we have decided yet, but I think the question about putting a safeguard on this is still valid and should be there. This is what I think what Chris was insinuating in his first intervention. So I don't have an answer and I think this is to be debated still.

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JANIS KARKLINS: But it probably would be better to debate, Georgios, on clear examples. Can I ask you to think and put additional information in this template on two assumptions? Assuming that system is fully automated, so what type of safeguards could be followed and how they could be enforced. The second is if that is not automated and how that system would look like. That would inform better our concession because for the moment, at least for me, that sounds very theoretical.

Hadia, please?

TERRI AGNEW: Hadia, unfortunately we're not able to hear you.

JANIS KARKLINS: Hadia, we do not hear you. Okay, I would suggest since we are not overly far from the end of the call, let us for the moment put aside safeguards and hoping that Georgios will bring maybe a few examples for the third conversation and I will go to Milton on concerns related to the purpose. It was about the purpose I think. Milton, go ahead please.

MILTON MUELLER: Okay. Thank you. You remember when we were talking about categories. I had flagged the national public security as being somewhat different from criminal law enforcement. Upon rereading this over purpose I see really a gigantic bundle of different overarching purpose here. I think this whole use case will be much cleaner and easier to deal with if we just eliminated the

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broad claims of national public security and stuck to criminal law enforcement.

So I'm proposing specifically to make the title "criminal law enforcement" full stop. Delete "national public security." Then in the text below that to put a period after including the "not limited to terrorism" period and delete everything after that. It's not like everything after that doesn't belong somewhere. It's just that it's fundamentally a different use case with criminal law enforcement you have a particular suspect and a particular crime that you're investigating. These forms of public safety/public health, a national security are often used as broad overarching rationales for generalized surveillance that would not necessarily pertain to a particular person or crime. Therefore, I think it really is not part of the same use case. It's to be separated out and discussed as a separate form of use rather than bundled together with criminal law enforcement.

Also I want to say that I had a conversation with Chris about the meaning of – I had raised some objections in Marrakech about the concept of secondary victims. He explained that to me to my satisfaction. So I think I know what he means by that and pretty much okay with some of the particular approaches he's taking to that.

JANIS KARKLINS:

Okay. Thank you, Milton. I hope that staff has captured your proposals so we would then look through them for the next addition of the case.



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I will now try again with Hadia. Hadia? You're not lucky today, Hadia. Chris, your hand is up. Chris, go ahead.

CHRIS LEWIS-EVANS: Thanks. Do you want me to respond to Milton or would you prefer to do that another day?

JANIS KARKLINS: No, please do.

CHRIS LEWIS-EVANS: Milton, I can see you're trying to increase the specificity of the purpose. But what I tried to do there was have an overarching purpose that would include a number of activities that could all come down to some form of criminal outcome in the answers. That's why it was quite so broad. And then obviously the use case underneath it is going to be a lot more specific. If we were to get to the national security thing and [inaudible] use case for that. What I probably didn't want to see ends up in the group have is almost as many overarching purposes as use cases, which can certainly happen quite quickly. That's the reason why we started off at broad and it gives you a good idea of the reason for it being that broad or whether you agree with that or whether your previous comments still stand. Thanks.

JANIS KARKLINS: Thank you, Chris. Let me try again with Hadia. Hadia? There are some sounds, Hadia.

HADIA ELMINIAWI: I had actually two comments.

JANIS KARKLINS: Please go ahead. Now we don't hear you again. Sorry, Hadia. We do not hear you. Sorry.

Let us then maybe stop discussing this case. I think we still need further refinement, and if Georgios and Chris could provide us with as two examples of safeguards and then possible implementation of these safeguards in case of automated system and manual system, if you could do it and they are two that others can review. And if other members would like to add something or provide any input to this particular case, please do it by Tuesday next week and we will go back to it as a main case still during the next meeting. We will take up another case to start and that will be proposed very soon.

With this, I would like to move to next item and that is a policy question. In Marrakech, Marc Anderson and Georgios volunteered to start putting together policy questions that we could pass the Strawberry Team which then could be raised with the European Data Protection Authorities. So I would like now to call on either Marc or Georgios to tell where are you with your volunteer work? Marc, I see your hand is up.

MARC ANDERSON: Thanks, Janis. Thanks [inaudible] item. First I want to say that what I suggested in Marrakech was not that we work on policy

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questions for the Strawberry Team. Perhaps I misspoke in Marrakech or it wasn't clear. So let me try again to explain what I was suggesting.

We got an opportunity here from the Strawberry Team in Marrakech, and that was great. We also have a letter from Goran offering to collaborate with our Phase 2 Working Group on interactions with DPA. I think this is also a great offer and opportunity. We know from what we heard in Marrakech that ICANN has the TSG report, and they commissioned the TSG report with an eye towards being able to present something more concrete to DPAs to get clarity on what is and isn't workable under GDPR. In particular one of the things we keep hearing is on the question of liability. Can a model like the TSG be used to reduce the liability on contracted parties?

Now, one of the critiques – and I think this is something we discussed and I've heard from a number of groups of the TSG proposal is that it's a technical solution that presupposes policy. I think a number of people have questioned the assumptions that went into creating that and whether that work is parallel and separate from what's going on in our work group in our deliberations.

So my proposal was not that we submit more policy questions to Strawberry Team. I think we know what our policy questions are. They're in our charter and I think the Strawberry Team has plenty of questions. What my proposal was is that we reach out to the Strawberry Team and offer to work with them on what their policy assumptions are as they put together the material that they're

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going to DPAs with and make sure that their policy assumptions and the work that they're doing is in line with the work we're doing.

We have an opportunity to get feedback from DPAs to the work they're doing that can inform and help our Phase 2 deliberations. I think it's a great opportunity we should take that, but hopefully that clarification makes sense and I hope that's something that this group can support. If it's just me, Georgios and I think this is a good idea then we shouldn't do it. This has to be something that has the support of the full working group to think it's a good idea to reach out to and take Goran up on his offer to collaborate the Strawberry group and work together on whatever it is that they're going to send to the DPAs.

That's what my proposal is. I hope that's clear to everybody. I guess I'll turn it over to Georgios. I've exchanged e-mails with him on this topic.

JANIS KARKLINS:

Yeah, Marc. Thank you. I think that you have support of the team. At least this is my recollection from Marrakech. What we need is we need to start somewhere. If I recall correctly, one of the questions that potentially could be asked to DPAs is whether contracting parties are in any way liable for the misuse of disclosed information by requestor. So the logic would suggest no, but just to make sure.

I understood that you or that Georgios would generate that type of questions for consideration of the team and then we would pass those questions to Strawberry Team and they would in turn to ask

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them to Data Protection Agencies. That was my understanding. Georgios, would you confirm that?

GEORGIOS TSELENTIS: I would like to state exactly how I believe things were when on Marrakech and what was the intervention. If you remember, after ICANN org presented what they called the basic assumption and question about eliminating liability of the contracted parties if they take some assumptions. My intervention was that when you talk to the DPAs, you don't talk about eliminating a liability. On the other way around, you talk about who takes the responsibility. Data Protection Authority is interested about who's responsible, not who is shifting responsibility from one side to the other. In this sense, I was not saying I was suggesting not to ask possible questions but you first have to frame those questions to the right way towards the authority you are addressing those questions. What I think is useful is that – and this is what we discussed with Martin between us. And by the way, I was contacted meanwhile also by Elena from ICANN. They are not expecting from us to dictate questions that then we pass to the DPA. So this is not I think also what they are expecting from us.

As Marc said, what we have to do here is that as the work of the EPDP [inaudible] and we are getting more close to what a possible implementation – I mean the TSG has several types of possibilities to get implemented. But as we get the more specific idea, what our crucial issues regarding this type of implementation, for example, if we are talking about centralized or decentralized scheme regarding authorization or identification or access of disclosure, then we can see that they are more concrete

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options and then put the right questions to the DPA. ICANN org can do that or we, at a certain point, we said we would like to probably interact with the DPAs in order to have an informed opinion about how the policy should go.

That's the way I think it should go. I think it's premature in a sense to get a specific assumption, preference towards another assumption at this stage and we are happy to sit down with what we said with Marc is that they happen to sit down with the Strawberry Team and see what they see as emerging from our work. Then to have also legitimization of the EPDP Team to come back with you and confirm that and then go to the DPAs with the proper type of issues that we want to address. I have to highlight also that the DPAs have a certain fatigue of receiving questions from this file and we know that. We don't have too many bullets in our gun when we go to the DPAs. We have to use them wisely.

JANIS KARKLINS:

Okay. Thank you. Then I conclude that the issue was put to the agenda prematurely so we continue then rely on your and Marc's proposal. Please indicate when you think it's the right time for the team to discuss your possible conversation or approach to Strawberry Team. Then we will put that on the agenda.

We are two minutes before the end of the meeting. Alan, would you please, very quickly.

ALAN WOODS:

Thank you. Very quickly, I just wanted to say I really, really appreciate what Georgis just said there. I think that something that

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we've said many times during Phase 1 as well that we have to be very clear and I welcome that being on the record and I welcome being on the record so very strong. I think we should listen to that and be very, very clear when we do go to the European Data Protection Board. In our interactions with the Strawberry – whatever, I can't remember – that we should be clear that we do not want them to go guns blazing in there, so I really want you to appreciate that.

JANIS KARKLINS: Yeah. Thank you. Since we have a minute before the closing, may I ask Caitlin to restate the action items that we agreed?

CAITLIN TUBERGEN: Thank you, Janis. This is Caitlin Tubergen from ICANN org. The action items I captured include support staff to compile all early input received into the worksheet by next week. Then each group will be responsible for reviewing it within seven days of receipt. Support staff will create a Google Doc where groups can include any questions on the early input received and based on the questions populated into that document, the Chair will determine the time dedicated to go over the questions. With respect to the order of use case review, support staff will send a survey to the groups to prioritize and rank the use cases submitted.

Thomas and Georgios to work together on fleshing out the safeguard section of the trademark use case by Friday, July 19.

Georgios and Chris to work together on fleshing out the safeguard section of the LEA use case and consider the implementation of

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safeguards in the context of a manual and automated system by Monday, July 15. And if any team members have feedback on the updated text provided by Georgios and Chris, please provide it by Tuesday, July 16.

Thank you, Janis. Back over to you.

JANIS KARKLINS:

Yes, thank you, Caitlin. Unfortunately, we have to skip Any Other Business. I only would say thank you very much for your input. Next meeting next Thursday, we will continue examining law enforcement case. We will go through section by section. Hopefully, we'll be able to start another case that will be indicated in the proposed program.

On Tuesday, 16<sup>th</sup>, there is a meeting of Legal Committee. Invitation will be sent to members of Legal Committee, and of course everyone is invited to listen in if they wish. With this, thank you very much. This meeting stands adjourned.

TERRI AGNEW:

Thank you, everyone. The meeting has been adjourned. Please remember to disconnect all remaining lines and have a wonderful rest of your day.

**[END OF TRANSCRIPTION]**