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**ICANN Transcription**

**GNSO Temp Spec gTLD RD EPDP – Phase 2**

**Thursday, 16 January 2020 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. Attendance and recordings are posted on the agenda wiki page: <https://community.icann.org/x/VgVxBw>

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TERRI AGNEW:

Good morning, good afternoon, and good evening. And welcome to the GNSO EPDP Phase 2 team meeting taking place on the 16<sup>th</sup> of January, 2020 at 14:00 UTC. In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourselves now?

Hearing no one, we have listed apologies from Margie Milam, and joining us late today will be Georgios Tselentis. Margie has assigned Steve DelBianco as the alternate for today's meeting.

Alternates not replacing a member are required to rename their line by adding three Zs to the beginning of their name, and at the end in parentheses, their affiliation, dash, alternate, which means you are automatically pushed to the end of the queue. To remain in Zoom, hover over your name and click "rename".

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Alternates are not allowed to engage in the chat apart from private chat or use any other Zoom room functionality 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 invite e-mails towards the bottom.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand now or speak up. Seeing or hearing no one, all documentation and information can be found on the EPDP wiki space. Please remember to state your name before speaking. Recordings will be circulated on the mailing list and posted on the public wiki space shortly after the end of the call. With this, I'll turn it back over to our Chair, Janis Karklins. Please begin.

JANIS KARKLINS:

So thank you very much, Terri. Good morning, good afternoon, good evening everyone. So welcome to the 40<sup>th</sup> meeting of the team. We have agenda described in the screen. My question is, is there anyone who has some other idea what we should be doing today? So I see no requests. I take that everyone is comfortable with the proposed agenda. So I was told that Becky may be a few minutes late, so therefore, I would suggest that we would take agenda item 3 after talking about agenda item 4.

And agenda item 4 is about a CPH proposal. And if you recall, during the last team call, we established a small group of volunteers who tried to bridge the gap of positions in relation to possible model. So I would like to make an update on the status of

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the advancement of this conversation and then make a proposal for a way forward.

So the group met twice yesterday, two times, one hour, and had a very constructive exchange of arguments in relation to different possible SSAB models from, starting from the hybrid and also about a centralized model. So there was, I think, one clear agreement and understanding that when it comes to, I would say, initial steps related to accreditation, as filing a request and checking credentials at the gateway, that these functions should be centralized, automated to the extent possible and we should proceed describing them fully in the initial report as also was suggested by the contracting party house.

So then we had this very, very intensive conversation, whether CPH proposal is sufficient and whether that brings necessary improvement to the current status. And during this conversation, we clearly defined that the hybrid model, if we will agree on that, will be improvement in comparison with the current situation in many aspects. And the CPH proposal could constitute a good basis for our work.

At the same time, some groups and then mainly, GAC, BC, IPC, consider that CPH proposal is not going far enough and that the preferred option would be a fully centralized system with the argumentation what could be advantages of a centralized decision making system on disclosure in comparison with the hybrid. Nevertheless, there also have been identified some disadvantages of a centralized system. And also, we reach, kind of came to a kind of conclusion that most likely, 100% centralized system is not even theoretically possible.

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As a result, we started discussions of the possibility of a kind of a more dynamic approach suggesting that the disclosure could be done not necessarily only in one way. But there might be a combination of different ways of doing these things. But for the moment, the small group hasn't come to a conclusion what that would mean, what safeguards would be put in place, what legal relationship needs to be established between different involved parties including ICANN, contracting parties and so on. And we came to the conclusion that maybe today it would be premature to put some definitive proposal in front of the team.

But we agreed that the smaller group would continue deliberations online and maybe would run an additional meeting next week, most likely on Tuesday when legal committee meets, whether in parallel or another time. And the staff would try to put together some elements of a model that then could be discussed by a smaller team prior, putting this proposal to the team during Thursday's meeting. So that is where we get what we discussed and how far we got yesterday in this conversation.

When I observed this conversation, I came to the conclusion that there are some elements that maybe does not allow us to hear each other properly and I felt that the probability of enormous finds that are hanging over heads of contracting parties is one of the obstacles that does not allow maybe more freer thinking about alternative options or other options, but to keep control on decision making on disclosure within contracting parties for one side. And let's say it's a negative experience or some negative experience in dealing with the current state of WHOIS has left maybe other groups, other sides, BCIPC came to the conclusion

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that this needed to be completely changed, and therefore, only a centralized model is the way forward.

And this current negative experience also sort of influences thinking of those groups insisting more on a centralized model and not believing that contracting parties ever will come to a satisfactory level of service at all.

So again, these are my personal observations and I was trying to, by asking questions, make groups to think, maybe change their thinking. We found elements that maybe considered further, but certainly that is, we are not yet there and some further work needs to be done. So this would be my, maybe slightly longer than I would like, description of what happened yesterday. And of course, I am pretty willing to see whether those who were in the small group would agree with my description and update or if I was completely wrong, please correct me. But from the other side, I would not like to entertain a too long conversation about this because we cannot put forward for the moment a proposal from the team as a whole. So I saw Volker's hand was up but then disappeared. Volker, please.

VOLKER GREIMANN: Yes. Not trying to take too long. I apologize I couldn't make the call yesterday, but it strikes me that a lot of these concerns can be taken care of in the policy. I mean, at least everybody recognizes now that we are, this is a service that we're providing that's already a good step in the right direction. I also have no issue that, for example, law enforcement when they have a legal right to [inaudible] request information within their jurisdiction for the

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cause of investigation, can have some form of automated disclosure, of course, given if some requirements are met. But some automation that, at least I am perfectly willing to give right now that could be [inaudible] to the hybrid model.

The other requestors would certainly have the ability to rely on certain requirements and the [inaudible] would then have to be followed. I mean, currently, a lot of us are still having to make it up as we go along if we have a more centralized model that makes it easier to make those decisions. That's a flow chart maybe that has to be followed in the decision making process that would be helpful for all parties and that would give requestors a lot more reliability in the way that these requests have to be handled by the fulfilling parties. So I [inaudible] see having the model as a good way forward and I think we should not waste more time trying to build a centralized model unless we have legal clarification that this is absolutely a way we can go forward, not the wishy-washy we have now. Thank you.

JANIS KARKLINS:

No, you see. This was exactly, Volker, what I was saying. Yes, there is certain groups think that hybrid model is the right way forward and I agree that this is a position of certain groups. But then I tried to explain that there are other groups who think that hybrid model may not be sufficient. And if we're looking for consensual positions, so then we are trying to bridge those differences and understand whether there is a landing point which would allow us to make a policy proposal which would need these expectations from all sides and would not alienate anyone. But you can think of policy as a static.

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Let's say we can work on one model and nothing else. But we can think of policy also in dynamic terms that one model that is perceived today may be the only possible way may be transferred as we go, as we learn, to another model without changing a policy. See, that is what these elements that we depicted yesterday that potentially may help us in finding that landing point where everyone says, "Okay, we can live with this." So it's not easy but yesterday, I felt that there might be some chance arriving there.

So I have three hands up. As I see, it's Alan Greenberg, James, and Lauren.

ALAN GREENBERG:

Thank you very much. I guess I just wanted to repeat something that you said, Janis, maybe in slightly different words. One of the things that was discussed, and there was agreement among many parties that it might be a target that we could aim at, is a model which is neither fully centralized nor fully decentralized. That is, there could be some component of centralized decision making for certain types of requests and others would go to contracted parties. Clearly, we don't have agreement but pretty much, everyone at the table said that is somewhere where we could aim. The only question is how to get there. Thank you.

JANIS KARKLINS:

Thank you, and I see that there is the traffic on the chat about legal certainty. Indeed, today we have some legal certainty and then some unknowns. And we cannot exclude that maybe in two

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months, but maybe in one year, we will have some legal certainty that today we do not have. So what we do then? If we camp only on one option today, will we convene a new policy development based on legal certainty that may appear in one year? So that's the question. James, Lauren, and Mark Sv.

JAMES BLADEL:

Thanks, Janis. I appreciate your update over our several hours of conversations yesterday. I just wanted to put a button on that last point here. There's nothing about the hybrid model that precludes someday moving towards a more centralized model as we gain experience with the system and as we collect legal opinions and court decisions and greater regulatory certainty around these issues. So it's a good starting point. But really, what I wanted to convey to the group is that the proposal is essentially an exercise in risk management and that the proposal is put forward with two assumptions. And the first assumption is that a hybrid model is better than nothing, better than the status quo that we have today which is fully decentralized. And then the second assumption is that waiting for external parties, Strawberry team, ICANN or regulators, to give us answers is a risk to our work in that they could not come in anytime soon. It could be months or it could be months, and when it arrives, it could rule out the centralized model. There's certainly a non-zero of that type of advice coming.

So the idea that we would kind of continue to work on other things, like the financial sustainability, and accreditation process, and auditing and all these other things that we spend our time on, is in real jeopardy of being wasted work. And I think that's what we were trying to put forward. Now I remember during our



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conversation yesterday, I think it was Alan Greenberg and some other folks said if the contracted parties had simply just noted that this was not a final offer but a starting offer or something like that, that would grow and evolve over time, it probably would have been received better. So for clarity, I think we are extending that assurance now because I think the concern is that we are heading towards some deadends in our work otherwise and the reason we didn't include it in the original proposal is because we didn't think about it. But now that we're hearing feedback, I think it's important to clear that and say essentially what Janis said, that this is not carved in stone. This is something that can grow and evolve over time. So thanks.

JANIS KARKLINS:

So thank you, Jimson. And why we are not putting it today because we want to try to fine tune a proposal that takes into account all sensitivities and put that on paper and then as contracting party [house] did and then put that table for consideration of the team because one thing is listen, another thing is read. Lauren, please.

LAUREEN KAPIN:

I'm encouraged, actually, by this conversation and very appreciative of the constructive debates that are going on. From my perspective, the key points that I'm hearing that are very encouraging is that, one, this is not going to be a proposal that's locked down and in stasis, but that we can create policy that allows for the opportunity for things to allow for a greater degree of

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decisions, perhaps, to be automated over time as we gather more information. I think that's very important.

And then, two, that there's also current flexibility to explore what broad categories of decisions can be automated even under a hybrid and not fully centralized model. I think those two components are key and if we can flesh those out further, I think that at least makes me more optimistic that we could come to a point where we have an acceptable level of comfort.

JANIS KARKLINS:

Okay, thank you. And let me use this opportunity and remind GAC that we're awaiting your proposal for accreditation of law enforcement and public entities. Mark Sv, please.

MARK SVANCAREK:

Thanks. Yeah, I wanted to reiterate what a lot of people have said today. We had some very constructive meetings yesterday and on the agenda, I see we'll be talking about my slides and so that'll give me more of an opportunity to explain what I mean by that.

As James said, a modular approach can be a method of managing the risk in a software development project. So there is that to consider. There are many advantages to what I call the frontend module of this and then we can discuss the remaining risks that are in the back end, which is where the hybridization comes in. So I just wanted to kick off the meeting by mentioning the [good] meetings yesterday so we can proceed later today. Thanks.

JANIS KARKLINS: Yeah, thank you, Mark. Look. I would suggest that you present your slides together with a proposal that we will put forward hopefully next Thursday if you would accept that.

MARK SVANCAREK: That's fine.

JANIS KARKLINS: Thank you. Ben. Ben Butler, please.

BEN BUTLER: Yeah, thanks. Just, I'm really pleased to find that when SSAC was discussing the contracted party proposal, we very much arrived at the same type of thing that is being discussed right now. We support the hybrid model as being something significantly better than the current status quo and something that we can build a policy principle that we're going to come back and iterate on once we have real data. If the hybrid model goes into production as it were, we can come back and revisit it and once we know who's using the system, how is it being used, how is it potentially being abused and fix bugs and add features as we go. I think this is something that is a good path forward and it seems to be tending towards consensus policy dare I say.

JANIS KARKLINS: So thank you, Ben. The aim is to formulate policy in a way which would allow this evolution and transformation as we go. So but

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first, we need to agree on the outline of how that would function over a period of time because we can also imagine that we say, yes, it can be but then whether it needs to be, this transition should happen over a period of ten years or maybe it's too long. Maybe we are looking in the perspective of one to two years and so on. So these, there are different elements that we need to keep in mind and we were hoping to get the proposal out next week.

So Brian and I would like not to entertain discussion further. Mark Sv's hand is up. I will take him and then I would like to move on to the next agenda item with your permission. Brian, please.

BRIAN KING:

Thanks Janis. I think that's great. I'm happy to move on. I think a lot of this has been said. I would note that we continue to have a strong preference for the centralized model for the reasons that we've stated, but we're here to cooperate and collaborate and our contracted party house friends made a good faith suggestion and proposal that I think was well reasoned. And we're here to explore it with them.

As Matt Serlin noted in the chat, even if we agreed today to start exploring in earnest this decentralized model, we have a lot of work to do and there's a lot that we might need to work on within that model to make it viable for us. So I don't want to give any false impressions that we're going to say, "Okay, yes. We can agree to the decentralized model regardless of what it looks like." No, we have some serious concerns with that model that we're here to work on and address cooperatively and collaboratively. But that being said, we're here to do it so let's get to work.

JANIS KARKLINS: Thank you, Brian. Mark Sv, please. You're the last one.

MARK SVANCAREK: Thanks. Brian is right. There is a lot of work to do and we didn't leave the meeting yesterday feeling like all the work was done. There is still a lot of work to do. I just put my hand up at the very end because you were talking about things that evolve over ten years. As I mentioned, about a modular technical design being a good way to manage project risk, modular policy design is going to have to be part of the solution as well if things are going to be flexible and evolve over time. We have to make sure that the policy we create here today does not force us to go into repeated PDPs in the future in order for some party to accommodate some centralization in their approach. So that's something we need to keep in mind here. Thanks.

JANIS KARKLINS: Fully agree with you. That's the trick, to develop this policy in a way that would allow this transformation without going back to policymaking. Good.

So this is where we are and we hope next Thursday, to present an outline of the model and then we will take it from there and we will nail it down in Los Angeles during the face-to-face meeting, first day.

So I was told that Becky is on the call now and if I may ask Becky to give us an update on the work of Legal Committee.

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BECKY BURR: We, the Legal Committee has completed work on the second set of questions. They were circulated yesterday to the full group. We would very much like to get as many answers as we can from Bird & Bird prior to the face-to-face in Los Angeles, so we are going to ask for very, very quick responses. What we'd like to do is hear from people by close of business tomorrow via e-mail if there are major objections or concerns about the questions. We need to, they do need to be moved by the plenary, however. So if we have the sense that there are not major concerns, we will I think ask for a final, formal sign-off by the plenary on Tuesday.

JANIS KARKLINS: Thank you, Becky. The problem is that Tuesday, we do not have plenary.

BECKY BURR: Ah, okay. Well, then I guess we have...

JANIS KARKLINS: We have Thursday.

BECKY BURR: Okay. Then I guess we're going to have to wait 'til Thursday.

JANIS KARKLINS: Let me make a different proposal or suggestion.

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BECKY BURR:                   Okay.

JANIS KARKLINS:               We need to do sign-off by the plenary, but plenary could also decide to use method of [seven] procedure and I would suggest the following, that if by tomorrow, Friday, end of business... No, sorry. If, by tomorrow noon UTC, there will not be any objections from the team to modify those questions, then we will consider that they are adopted by the team as a whole and could be sent to Bird & Bird.

If there will be minor questions or objections or modification proposals, then we can extend. We can do a quick, or legal team could do a quick modification or discussion and then put out a proposal for second [seven] procedure on Monday, end of business in Los Angeles. And if then somebody objects, then we come to plenary on Thursday. But if not, then it goes out to Bird & Bird. So I can repeat.

BECKY BURR:                   That sounds terrific.

JANIS KARKLINS:               But we have three hands up and I don't know what does it mean. Alan. Alan Woods, please.

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ALAN WOODS:

Thanks, Janis. Don't worry. It's nothing about what you just said. I read the questions [inaudible] and first and foremost, I want to thank the work of the legal team because I know it's not an easy process. But with that, I just have two... Obviously, I have my concerns about maybe some implication within some of the questions that are being asked and that we already have answers. And that really brings to mind one thing. And that is that when we have received our legal advices in the past from Bird & Bird, I'm not going to put people on the spot but we have received a lot of pushback that question the very nature of the legal advices that have been received.

And I want to ensure that we are spending a lot of money on Bird & Bird and I just... I personally believe that they are very, very professional and I like their advices because they are comprehensive. But now is the time before we start expending a lot more money, that if people have concerns with Bird & Bird and the advices that they are giving, that that should be raised prior to us expending more money on it because once we get these advices in, we are out of time for anything more and we really need to just say those advices. We said this before every round, unfortunately.

Those advices that we receive are going to be that which must guide us. I really want this team to just, once and for all, accept that Bird & Bird are the professional services that we have chosen and that we should be [banged] at least by them. We can't just decide because we don't agree with what is written. I think that goes to the good faith in the entire process. So I said, I'm not saying who or whatever. I'm just saying that can we, as a team,



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just abide by that good faith procedure and I would really appreciate that and it would mean a lot more meaningful discussion once we get to L.A. as well. Thank you.

JANIS KARKLINS: Thank you, Alan. James.

JAMES BLADEL: Thank you. And similar concerns as Alan, just noting that Bird & Bird are our noted experts in this area, but also very, very expensive. So I want to ensure that the questions and that everyone reviews the questions with this in mind and that they will accept the advice that we receive and that it will be used and employed to settle debates rather than reopen or amplify existing debates. I think that's been a problem in the past.

I just wanted to also note my concern—maybe this is a question for Becky—one of the questions, and I haven't really done a deep dive, I just kind of glanced over it, but one of the questions involved this concept of reverse search where you could do a query into an SSAD and then hypothetically pivot from that query on other data fields to gather more information throughout on a registrant or domain name or organization.

One of my questions was since that was never part of the original WHOIS service that was offered by third parties and was also not, I don't believe, referenced anywhere in the Temp Spec, how did that roll into a set of questions that we would submit to our legal advisors in this PDP? I understand it's something that some folks find very useful and valuable and want to see that restored, or at

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least, considered. But we're under the gun here to do some very specific things in this PDP and we have very limited legal dollars and I just would hate to send them kind of on a wild goose chase or labor of love or whatever you want to call it for something that's really not relevant to our work. So I don't know if Becky can weigh in on that or I'm happy to take answers on the list too. Thanks.

BECKY BURR:

That's a totally fair question, James. And I suspect this is an element of religion as to whether that was a feature of the previous system prior to the Temp Spec given the external services that provided that. As the Chair, I was looking for consensus on the question. This was a question that was important to a number of members of the Legal Committee and was reviewed, modified some by the Legal Committee. I don't, I think that that is one of the questions that is probably not, that should probably not be first in line and if, of course, if the plenary determined as a policy matter that that was not a feature that they wanted to consider, then obviously, it would not be prudent to spend dollars on that. But to my knowledge, that has not been ruled out yet.

JANIS KARKLINS:

So thank you, Becky. Now actually, James, in one of the building blocks—I don't remember which one exactly—this reverse look-up was discussed, and actually extensively discussed. There was difference of opinion whether that should be included or not and then we, as a team, asked Legal Committee to look into subject and formulate questions to Bird & Bird to understand what would

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be legal implications and whether that would be completely legal or how that should be interpreted because for some groups, this reverse look-up was a good tool to do the job. And that's how it ended up on the plate of Legal Committee as a result of our own conversations and request to Legal Committee. I think that Caitlin can confirm and maybe give more details specifically which meeting that was, but it was only a few months ago that this was discussed and asked.

So I have Amr next in line. Please Amr, go ahead.

AMR ALJOWAILY:

Thanks, Janis. Yeah. Although I do appreciate the concerns raised earlier by Alan and Thomas, I think my more immediate concerns with the draft questions are more similar to James's. Excuse me. So yeah, I think the problem is a bit upstream here and I'm concerned with the nature of the questions, the actual nature, what they're trying to achieve.

Whether reverse look-ups are useful or not, a number of us have expressed concerns about whether this is within scope of the EPDP team to look into in the first place. We discussed this extensively. I'm quite certain that a number of us objected to this even being considered and if we do consider it as a team, we should at least have some direction from the GNSO Council to do so. I don't want to go into the details now, but we did reference parts of the PDP manual which explained why the EPDP, because of its nature, should not be addressing issues that are not clearly defined within the scope of our work. And I honestly don't recall us agreeing to ask legal questions about it because I don't see the

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sense in asking a legal question about something we don't agree we should be considering to begin with. This should probably be the subject of a subsequent PDP that's properly scoped to include it.

But some of the other questions, I have somewhat similar concerns on as well. We have questions on legal versus natural and territorial scope, and a lot of the concerns we raised on those are not simply legal concerns. Yes, there are legal concerns, and sure, it might be helpful to get answers to allow us to evaluate our legal standing in making recommendations, policy recommendations on those topics. But there are other practical implications as well. And [inaudible] are the NCSG have expressed whether, as a policy decision, not just as a legal determination but as a policy position, are these desirable or not. And so I'm worried that this set of questions seems to me to be really directed to try to achieve the goals of one's [inaudible] interests that conflict with the interests of another set of members of this EPDP team. Instead of trying to produce policy recommendations that are within the spirit of GDPR and protection regulation, we're trying to find legal means to circumvent data protection regulation to the extent possible and to try to replicate a system that is, again, to the extent possible, similar to the old WHOIS.

Something like territorial scope, okay, if there are data protection and privacy best practices that exist and are applicable to the territory like the European Union, why should we be seeking to deprive other territories of these same protections? There are business reasons why that shouldn't take place that we've gone

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over, involving allowing fair competition between contracted parties that exist in different territories and also there is the issue of protection for registrants. Just because a registrant is not legally protected in the territory they exist in, that doesn't mean that we shouldn't recognize that these are best practices of privacy and data protection and that we shouldn't recommend policy recommendations to that effect.

So I'm just worried that we're spending resources, human resources, time and then financial, on issues where we might not be able to reach consensus because of differing policy positions and I'm not sure what the wisdom in doing this is. We're going to waste a lot of time. We're going to get answers and some of the answers might tell us, "Yeah, okay, this is legally sound but there's more than what is legally sound involved in a lot of these topics," and we've phrased this over and over again, but for some reason, we're being ignored. So I'm very concerned about this and I don't think there's a single question within the draft document that we received yesterday that I would support sending out. Thank you.

JANIS KARKLINS:

Look, Amr, I do not know whether you have been ignored or your opinion has been ignored, meaning NSSG. So maybe I should ask Becky because I do not participate in Legal Committee meetings about the dynamic in the group and what type of objections, specifically, NCSG group raised during the conversation and formulating those questions.

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But before that, I have a number of hands up and so I will take Mark, Brian, Mark Sv, Brian, Hadia, and who else is in the line before going to Becky.

MARK SVANCAREK:

Thanks. My intervention is a response to Alan Woods earlier. Intervention, but actually, Amr has brought us back around so I think that was a nice segue.

Alan was concerned that sometimes we receive legal feedback from Bird & Bird and then people disagree with it. I don't think I've been in that category. If I have, I apologize because our review of the Bird & Bird feedback has been that it's all good.

On the other hand, the way that it's been written has led to different interpretations of it within the group and that's a totally different thing. It's sort of the blind man and the elephant if you know that parable where people can look at the same thing through different lenses of experience and perception and come to different conclusions. And I think that I've seen that in a number of cases with the Bird & Bird feedback where we received the feedback and then one person says, "Well clearly, we must now do X," and another person says, "No, no, no. Clearly, we must now do Y." And that was the crux of our argument about the Belgian DPA letter, for example. Some people said, "Well clearly, they are saying X," and other people said, "Clearly, we're saying Y."

So I do want to make sure that while we recognize that the feedback that we are going to get from them is going to be legally

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sound, professional, well thought-out feedback, that people may come to different conclusions about what that actually means in terms of our policy development and I think that's okay. It's inevitable regardless of whether it's okay. And I just don't want it to turn into sort of, well, now you're bad because you didn't listen to my interpretation of Bird & Bird, which I fear could be a result of this. So I think I want us to be careful of that. Thanks.

JANIS KARKLINS: Thank you, Mark. Brian, Hadia, and then Becky.

BRIAN KING: Thanks, Janis.

So the couple reasons why we're thinking about this reverse look-up concept here, one is that I don't think we are, or need to be constrained to what, how the original, how Port 43 WHOIS functions. What we're building here is something completely different and new and better in many regards, and it's up for substantive debate as to whether reverse look-ups would be better or not. I'm aware that some folks might not think so, but the folks in our camp that used to be able to more effectively and efficiently protect their brands and their customers are at a disadvantage now.

And so what we're looking to explore here is whether it is legally permissible so that that can inform our policymaking around whether we want to allow, require, prohibit reverse look-ups and so we need to get some legal insight on that. I understand that some folks just probably don't want it, but many of us do and

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whether it's legal or not will be a very useful input on whether it's legal based on a couple different factors.

Thomas is really smart and put together some suggestions to kind of feed Bird & Bird on if we have one confirmed infringing domain name or what would the threshold look like where it might make it more legally permissible. So it's a well-written question, I think, and we did debate it quite a bit in the Legal Committee. And I think that that input will be useful for our policy deliberations here. Thanks.

JANIS KARKLINS: Thank you, Brian. Hadia, please.

HADIA ELMINIAWI: To [inaudible] going to, with regard to legal versus natural person data which is one of the priority to ICANN, but actually, all our concerns in this regard are legal in nature. So we are afraid that registrants do not rightfully identify themselves. We are not sure about the accuracy of the data and we are afraid that legal persons data might include natural persons data. And basically, these concerns are concerns related to liability and the questions put forward through the Legal Committee try to explore those three specific areas that we, as a team, were not sure of. Thank you.

JANIS KARKLINS: Okay, thank you, Hadia. Mark Sv, and then Becky.



MARK SVANCAREK: Thanks. I loop back around again because we're still talking about reverse look-ups. I think it was in the L.A. meeting, James and I did some work on things like this and we had come to the conclusion that reverse look-up is possibly out of the scope of this EPDP and that it might not make sense for us to say in the policy that it's prohibited because it might simply be out of the scope of it. And so I think there's a reasonable concern from Brian that we might be saying, "You can't do it in the consensus policy because it's outside of the scope of the SSAD." I'm not explaining myself right.

James and I were talking about within the scope of the SSAD, which is the thing that binds us all under consensus policy, which is the purpose of this EPDP, we might not consider reverse look-ups. But outside of the scope of the SSAD, groups working bilaterally together to investigate a problem, it appears like a reverse look-up is just a really complicated 61F. You look at the merits of it and you figure out if it's lawful or not.

And it's probably helpful to get feedback on that from Bird & Bird to see if my opinion on that is correct. But as Amr says, we're talking about what's in the SSAD and what's in the consensus policy. And I think it's a good idea to make sure that we're not creating policy that is attempting to bind something that could happen outside of the policy. I hope that made sense. Thanks.

JANIS KARKLINS: Okay, thank you. Becky?

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BECKY BURR:

Yeah, so let me just say that what I can say unequivocally is that all parts of the community have been represented on the Legal Committee. Our participation level has been extremely high. We have had vigorous discussions and this is the product of those discussions, which the plenary, of course, is free to reject. On this particular question going back to the reverse look-up, I would agree that if this is truly out of scope for this EPDP, then it should not be a priority. It was not my understanding that that had been determined.

So I think that the bottom line is we could, and obviously, we need to hear all of the concerns that the plenary has about these but I just want to say as the Chair, this was an extremely active group with very articulate and conscientious participants from all parts of the community.

JANIS KARKLINS:

So thank you, Becky. Now look, if we look to the questions formulated on this reverse look-up is in order to inform the group discussion on whether reverse look-up by any accredited party be allowed and be part of our policy recommendations, we would like to understand better whether the reverse look-up can be compliant with GDPR in the following scenarios. So it is actually exactly because we could not agree whether that is compliant, whether we should or could even consider reverse look-up as was insisted or suggested by some groups as a useful tool in their legitimate activities, preserving integrity and [inaudible]. We

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decided to ask that question, a legal question, whether that is compliant with GDPR.

So if answer is yes, it is compliant, then we may further continue discussion that this is something we may consider for policy and seek consensus. If the answer, legal answer, is no, it is not compliant in any circumstances, then we simply drop the idea and strike reverse look-up from the policy recommendation text where, for the moment, it is bracketed. So that's why this is my recollection of why we asked Legal Committee to formulate those questions.

That said, so seems to me that we may not be able to agree on the text by [seven] procedure. So therefore, I would modify my proposal and I would invite members of the team to formulate their objections or reservations in relation to proposed questions by end of the day tomorrow, end of the day Los Angeles time tomorrow. That legal team could look at those reservations, objections during its next meeting which is scheduled on Tuesday, 3 P.M. UTC if I'm not mistaken. And then we would bring, again, these questions to the team meeting on Thursday. If no comments will be filed by Friday night, then we will consider those questions approved and will be sent to Bird & Bird on Monday. So that's my proposal and if you wish, [inaudible].

Okay. No hands up, so this is what we will then follow. Thank you.

So now, we have another hour at our disposal and I would suggest that we go through at least a few elements in the list of issues that has been sent to the team a few, maybe ten days ago, the document on 34 pages. And so we briefly addressed the issue

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of the first topic that is about how to reflect use cases in the final report. So there is a comment from ISPCP suggesting that use cases would give useful background information and they should be attached to the initial report. And if I understand correctly for the moment, use cases are referenced in initial report through URLs and my recollection from a very brief conversation we had before, last Tuesday, that there shouldn't be reference of use cases at all. This is what I recall but I may be mistaken. I was rather tired already at that moment and maybe made a mistake putting that for consideration of the group.

Anyway, the question is what shall we do with use cases in relation to the initial report? For the moment, they are referenced with the URL. But they are not attached to the document itself. Would that be a sufficient way forward?

Marc Anderson followed by Brian.

MARC ANDERSON:

Thank you, Janis. So the use cases, my recollection of the use cases is that they were intended to be a discussion tool and not a finished product. They were a discussion tool intended to aid our deliberations in helping us develop the building blocks. And to that end, they're fine as a discussion tool. But I am very concerned with including them in the initial or final report, for that matter, as I do look at them as a discussion tool and not a finished or fully fleshed out product.

And so I guess my preference is to not have them included at all as a hyperlink or otherwise. They are available on the EPDP wiki

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page. They are publicly available to anybody and everyone who can look at them. But including them in the report, I think sort of implies that they have a more finished, that they're more finished than they actually are. I could probably live with them being referenced the way the note there is. Note the use cases are currently hyperlinked as an illustration of the deliberations of the EPDP team. I think I could probably live with that. I think that's a fair characterization of them. But I would certainly object to them being included in their entirety in the language of the report itself.

JANIS KARKLINS: Okay, thank you. It's clear. Brian, please.

BRIAN KING: Thanks, Janis. I think for posterity, it would be good to include at least the link there to the use cases. So I want to support including that and if we're honest with ourselves and we're going through the use cases, we decided that they would not be the end-all, be-all and were not intended to constitute the policy or that they would be instructive and help our deliberation. So I'm not proposing that we need to include all of them in the report. I share some of the same concerns as Mark about representing what they are and what they represent to us.

But I do think that we need to reference them. I love the hyperlink idea and I think there's a lot of merit to what Thomas just said in the chat there, that we could grab a sample one, perhaps, that is complete and that we do all agree on and include it as part of the policy, the report. So I'd like to explore that further too. Thanks.

JANIS KARKLINS: Thank you, Brian. Franck?

FRANCK JOURNOUD: Thank you, Janis. And I apologize. I am having massive computer problems this morning and so I am not able to check what I am about to say, but if my recollection is correct, we haven't come to an agreement that we, IPC, are comfortable with on purposes. As we have made clear in the past, the issue of purposes for requestors is linked to the issue of user groups, user groups to use cases, etc. So not having use cases be finished, fully fleshed out and agreed to, and incorporated into the report and not having user groups be identified in the report, and possibly not having legitimate purposes identified and listed in the report, that's not going to work for us.

So at some point, we, IPC, are going to need to, are going to ask that we have satisfaction on one of these fronts and until we do, I think we are going in circles on interconnected issues.

JANIS KARKLINS: Thank you, Franck. Alan? Alan Greenberg?

ALAN GREENBERG: Thank you very much. I'd like to pretty much agree with what Marc Anderson said. We spent a lot of time on these use cases and then pretty well just dropped them. And we also determined that, in some cases, there were use cases that didn't apply to our work

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at all. They were valid use cases of information but not necessarily applying to an SSAD or something like that, and not automatable. So we pretty well stopped talking about it point blank. One day, we decided that's done, and therefore, a fair number of the use cases were left in states where we might not be fully in a position to be proud of them or to back them up. So although we can't hide them and we should say we did them, but we should make it really clear that it was not a finished product that we polished and have use to present as part of how we went forward. So I think if we point to them, and I believe we should point to them, we have to make it really clear that it was a tool we used. At one point, we stopped using that tool, abandoned it and they were left, in some cases, a questionable state. Thank you.

JANIS KARKLINS: Thank you, Alan. Alan Woods next.

ALAN WOODS: Thank you. So I agree with Alan, and I agree with Marc, obviously, and I'm not going to belabor the point. But I mean, it's somewhat slightly annoying to me is that when we were doing the use cases, this was exactly the thing that we said, that at this point, we must make sure that when it comes back around to doing the report, that these use cases are not going to be included in it in any way because we knew that they're a mere representative.

And I'm going to have one of those moments where I briefly disagree with Thomas Rickert. I don't believe that, he says about the European Data Protection Board not being able to assess

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GDPR compliance, period. They're going to assess compliance, yes, based on what we tell the SSAD, whoever it is, how we inform the policy. But at the end of the day, it's going to be based on the decisions that they make as the SSAD and not necessarily what we tell them to do. And I don't think use cases are going to add to that. I think we need to have the same policy. The use cases are not going to add to that. I think it's really up to the SSAD, whoever that is and whoever is making that decision to ensure that their decisions are correct and legal at the time. So slightly disagreement, but not full disagreement.

JANIS KARKLINS:

Yeah, thank you. No, look. It was very deliberate because remember we spent the few first meetings trying to find a way, how we could gain this understanding about SSAD, about different aspect, links, complexities. And I think this was Thomas who suggested and then wrote the first use case, and we agreed that maybe using use cases to inform, or rather to form our thinking about SSAD, about every aspect that we need to address. And then we got this drive to prepare a number of use cases, more than probably we wanted, and we ran out of time.

But certainly, discussing those use cases gave us a lot of ideas, how to structure SSAD, initial SSAD proposal, zero proposal if you remember. So obviously, that we dropped at one point, those use cases because we had to proceed because we felt that there was sufficient understanding generated by talking through those use cases. So therefore, I think that this was the aim of the staff to reference those use cases through URL in the draft initial report simply as an illustration of our method of work that brought us to



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the zero draft. And I think that should be, if we decide to leave those URLs, and I did not hear very strong opposition—people said we do not like them but we can live with them—so then it should be clearly stated that this was just part of the methodology, that these are not, as many folks said, these are not readymade products. They are not agreed by the team and so on, just put all the disclaimers in that.

But as illustration of our method work, I personally would suggest that URLs would not harm, but simply illustrate and probability that somebody will click on those URLs is not totally great, honestly speaking. So Franck, your hand is up. I'm not sure whether it's an old hand. No, it's not an old hand. So could we then agree that staff would see that the text prior and after URLs clearly reflects the position and feelings in this group, and clearly states that this was part of the methodology. These were prepared but not agreed, but they were used to formulate opinion and then fine tune thinking and so on, and this is just a reference that those who are interested can see what was used but it is not agreed, and all these safeguards.

So no reactions. I understand that this may be something we might follow. Okay. So let me now go to the next, and this is a little bit systemic issue that we need to maybe reflect, spend some time on. And that is so whether SSAD be the only vehicle to request private or nonpublic data, or the individuals could go directly to contracted parties. So that was a comment coming from ISPCP and so probably we need maybe to go through and discuss this issue.

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So anyone from ISPCP who would like to kickstart the conversation? No hands. Okay, so then let me try to formulate. So we discussed, we agreed that SSAD should be the primary vehicle of sending inquiries and should be used to send in requests. Whether we completely rule out any other possibility but SSAD, so that's the question. And I see Marc Anderson's hand up. Marc, please go ahead.

MARC ANDERSON: Thanks, Janis. I just want to comment. I'm not sure I understand exactly what ISPCP is going for in this comment, but I do note that they offer to propose language and so maybe that might be helpful if we asked to see that proposed language. So that might help us better decide if this is acceptable or helpful to our work, just a thought that helps us move on.

JANIS KARKLINS: Okay. But this is a bit of a systemic issue. So there is one concrete case or example, what is given. This applies particularly to public authorities who wish to obtain information from domestic contracted parties. So, but one may ask question, why do we build SSAD and invest so much money if we have a wide open possibility to go straight to contracting parties and ask the same questions without using SSAD? Mark Sv, please.

MARK SVANCAREK: Thanks. I thought that we needed an outside of the SSAD system, a [REC 18] system to persist for people who are non-accredited and I thought that was the purpose of this edit. Thanks.

JANIS KARKLINS: But we were discussing an accreditation building block that is very clear that only accredited users could use SSAD and if somebody sends in the request without being accredited, then he or she or it undergoes accreditation process before the request is treated. And the only thing that we do not have in accreditation policy is how the public authorities would be accredited. We started the discussion during the last time in L.A. Idea was that each country defines and declares one focal point per territory or country who is acting as a gateway and channel of all requests from law enforcement or public authorities of that particular country, to SSAD, and SSAD treats those requests coming from those focal points as they would receive a request from an accredited entity or an individual. But of course, we do not have modalities yet. GAC is working on them and hopefully will give us something.

So I have Thomas Rickert, then Alan Greenberg.

THOMAS RICKERT: Thanks very much, Janis. Hi, everybody. This comment, I actually wrote and let me try to shed some light on why I made it.

Even though it is a wish that the SSAD will work and that all authorities, all legitimate requestors will use the SSAD, there are two challenges. One is that as we put out our initial report, some of them might still think that we can revive the old, purely open WHOIS system will think that our recommendations fall short of what the needs of requestors might be. Therefore, it is helpful to make transparent that requestors, if they have the legal right to

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obtain data, can still approach a national contracted party or a contracted party within their jurisdiction.

The second point is that there is no way for us to prevent law enforcement and other authorities from working with contracted parties directly. We do know that some contracted parties do have arrangements with law enforcement authorities in their jurisdiction and I think we should be clear in our report that our work, or our policy recommendations, legally can but do not have the ambition to replace existing or potentially upcoming agreements between those parties.

JANIS KARKLINS:

Okay, thank you. That is now clearer but that's a very specific task, the local registries, registrars engaging with the local law enforcement on the basis of bilateral agreement. Alan Greenberg, please.

ALAN GREENBERG:

Thank you very much. When we decided that only accredited users could use the SSAD, and a one-off, someone who wasn't accredited, would have to go through an accreditation process, that's something that some of us accepted rather reluctantly. This is a complex process and WHOIS and RDS is a complex thing. And if someone has a one-off request that they feel is legitimate, to erect too many hoops they have to jump through and too many processes which may have significant time associated with them, is just not reasonable. And we can't lock anyone else out because they're not willing to follow our convoluted process. And trust me,

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by the time we finish, it will be a convoluted and difficult to understand process for someone who has never looked at this before. So I don't think we can stop people from doing it and we can try to make our system good enough and simple enough that we encourage people to go through it. But I don't think we have the ability or right to stop them and I believe that an alternate path is going to be necessary for some [classes'] requests. Thank you.

JANIS KARKLINS:

Yes, but also we agreed that for one-off requests, the identity check would be kind of light. And I think I recall mentioning the example of me applying for a Canadian Visa online and I thought that I would get an answer in a day or so, 24 hours. I got an answer in five minutes. I paid \$7 and it was done.

So I think we are looking to that type of light check, making sure that that's not a random WHOIS, simply going on phishing expedition, if I recall also terms we used.

But then here is a more systemic question. So whether we, I'll give you back Alan. Whether we say that this SSAD is a preferred vehicle and contracting parties can encourage use of those who are coming with requests, or contracting parties can decide whether they will serve individual requestors outside SSAD and that would be their discretion or something like that.

But I think we need to establish this clarity and put that very clearly in the policy. Alan, please go ahead.

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ALAN GREENBERG: Yeah, thank you. If we end up with a system like you are applying for a Canadian Visa, then we will encourage people to use it and that will be fine. On the other hand, if we end up with a system as we may well that some of my African colleagues faced in applying for a Canadian Visa, they're not going to use it and I think our policy has to be flexible. Thank you.

JANIS KARKLINS: Thank you. James, please.

JAMES BLADEL: Thanks. So look, I think we're overthinking this a little bit. If I may, I don't think that there should be any mention in ICANN policy that, for example, registries or registrars must respond to law enforcement requests in their jurisdiction. Trust me. Local law enforcement will have a way of making their authority known through various instruments, whatever is applicable. So I don't... So I think we're really talking about non-law enforcement potential users or requestors. And my concern there is I guess I'm okay with that under the caveat that then we're stepping outside of ICANN policy and we're essentially saying that you are free to offer your own processes and channels. Nothing in this policy prohibits that.

However, I think we should also be accepting the fact that many registries and registrars will simply refer those types of users to the SSAD process or just say no to those types of requests. So I think I'm concerned that we're building this and I think someone noted that we're building a very complex, very robust, very

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hopefully legally compliant system that navigates all of the regulatory pitfalls here and then we're also saying, "And by the way, you don't have to use this if you don't feel like it." I'm concerned with that approach.

And certainly, that would never constrain law enforcement. Any registrants who are doing bad things on the Internet and think that SSAD and its rules and policies are going to somehow protect them from local law enforcement are also daydreaming. So I would just note the concern here but I don't think we need to spend a whole lot of time on this. Thanks.

JANIS KARKLINS:

Thank you. So unfortunately, Thomas dropped from the call. So my feeling is that, so we should simply do not refer to any alternative but SSAD and let contracting parties to decide by themselves whether they want to accept requests outside SSAD or not and so either refer or request to SSAD and in that case, we would not entertain and we would not ask ISPCP to propose the language.

James, it's old hand or new hand? Old hand. Hadia, please.

HADIA ELMINIAWI:

Thank you. In this case, we should need also to update the diagrams because after the accreditation authority block, where the requestor is accredited and authorized, it says whether it is accredited or authorized, if not, if it is, if it's approved and the requestor submits the request to the SSAD, [inaudible] we have a line that says, "Every requestor can submit a request for

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[inaudible].” So we will need to update the diagrams as well.  
Thank you.

JANIS KARKLINS:

Okay, thank you. Berry, could you look at those diagrams in light of this conversation? Okay, thank you.

So good. Then I think we are not ready to talk about, not yet, about point number three on the list about contracting party house proposal. We will come back to that on next Thursday.

So number four, so that is about reporting and sequence of reporting. ISPCP suggests that next steps should include the publication of the second separate initial report and what will happen after that. If a separate initial report is going to be published, we’ll consider, a consolidated initial report will be published, we should be clear on the next steps. So if I may ask Caitlin maybe to explain what is feasible and so how we will proceed, just that we are all on the same page.

CAITLIN TUBERGEN:

Thanks, Janis. I did want to note for those that may have missed the message on this that the items highlighted in green either represent some textual changes that didn’t appear to be material that leadership is recommending that we can proceed with, of course, subject to the plenary team’s review.

On this one in particular, we’re noting that staff support would update the language to reflect that a separate initial report will be published for Priority 2 items, which will follow in its own timeline.



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I'm noting that the date that we're currently shooting for, which is February 7<sup>th</sup>, there wouldn't be adequate time for the team to go through all of the priority 2 items. But that doesn't mean that it won't and that the EPDP Team will not be going through those items, just not in conjunction with this initial report. And I think this is a point we've made throughout the EPDP process. I'm sorry, the Phase 2 process.

And I also wanted to note that as the members saw today, that the Legal Committee has already been doing some of the groundwork for going through the legal questions that have been posed with the Priority 2 items so that we can go ahead and already get some legal advice and see how to proceed with respect to some of those items.

JANIS KARKLINS:

Thank you, Caitlin. So what is in my mind, the moment we sign off initial report on Priority 1 that we are now working frantically towards, and I really hope it will be as a result of the face-to-face meeting in Los Angeles. So then we would address Priority 2 issues in a calm manner with meeting once a week during the period of public comment. And then we will see how far we get with the Priority 2 issues in terms of reaching consensus.

So, and that will determine further thinking when they would be ready to issue initial report on Priority 2 issues. And then once the public comment period is over, then we would go back to Priority 1 report, review them and would try to formulate a final report by June prior to the meeting in Kuala Lumpur. And then we will see where we are with the Priority 2 issues. Marc, your hand is up.

MARC ANDERSON: Thanks, Janis. So responding to what Caitlin said, specifically looking at item number four, I think what she described makes a lot of sense. This one specifically seems like just a no-nonsense, practical suggestion so I think it makes sense for staff to update the language. My intervention is just a request for staff. When you update the language, it would be useful to add in a comment noting where this update came from, just tying it back to item number four in this document. That'll be, at least for me, I would find that really helpful in keeping track of where all the changes are coming from and what drove them, especially as we get down to crunch time here. So it's just sort of a request that as you make a change like that, please sort of just flag where that change came from for tracking purposes.

JANIS KARKLINS: Okay. Thank you, Marc, for your suggestion. So Caitlin confirmed that this will be done.

Okay, so if we are clear on sequence and are in agreement with that. So can we take now item number six?

So the initial text in the report suggests that recognizing that the decision on the roles and responsibilities of the different parties involved may be influenced by both legal advice and guidance from the European Data Protection Board. In absence of this guidance, there is a proposal to delete this, the reference. So what shall we do?

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So NSSG suggests to delete the reference and the legal advice on guidance from European Data Protection Board as it adds no substance to the report and does not have any bearing on these three models that are described in the report so far. And ALAC is in favor of retaining. Brian?

BRIAN KING:

Thanks, Janis. This is tough to tell the whole context of this blurb from the snippet, but this concept is critically important. I think it's really crucial to note for the folks who are picking up this report and who aren't familiar with our work, to know that we really need guidance from the Data Protection Board, and I'm thinking in particular of someone from the Data Protection Board picks up the report and reads it, we should really be [inaudible] this out so I don't think that we should delete it. It's important to note that this whole thing really hinges on legal advice and guidance that we'd like to get from the DPP. Thanks.

JANIS KARKLINS:

Thank you, Brian. We are working on this blurb for one reason, because not all groups have put their comments of the initial report in a Google Document. As a result, we had to do this extract and put it in a Word document. So if all groups would put their comments on the Google Doc, we would work on the basis of Google Doc and that would [be] a broader context. At least, it would be on the screen as you see now.

Marc Anderson, please.

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MARC ANDERSON: Thanks, Janis. I would hope that once we choose a model and develop fully flushed out policy recommendations based on that model and making a decision on who is ultimately the disposer, that this language becomes overcome by events. So I would hope that as we get further along, it does become truly irrelevant and we can get rid of it. So I don't know, in the current state, that that's something we can say for sure. But my hope is that this does become overcome by events eventually.

JANIS KARKLINS: Yeah. So thank you. So is there any reason? The initial report, and this, I am simply asking because I'm ignorant how the final report will be written. So the initial report will be taken as a basis for the final report, and based on input coming from the community, the initial report will be edited and there might be some parts deleted, some parts changed, and some parts added. Is my current understanding right? And I'm asking either Caitlin, Berry, [inaudible]. Can you confirm that?

CAITLIN TUBERGEN: I'm very sorry. Can you repeat the question?

JANIS KARKLINS: So the final report, how it will be methodologically developed. We would take initial report as a basis and we would delete, edit, amend parts of initial report based on feedback from the community and then that would be the final report, right?

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CAITLIN TUBERGEN: Thank you for the question, Janis. So generally, what we do is we have a public comments tracking sheet where we will categorize all of the public comments received and we will go through the comments with the EPDP Team and we'll note, for example, if it was a comment that the team has already vigorously debated and agreed on, we might recommend not editing the text based on the comments. And similarly, if a comment, a new comment is received that the team would like to consider, and edit as recommendations, they would do that. But we document all of that and how all of the comments are treated as we go through them. So yes, some comments will warrant change. Some comments may not warrant change. But yes, there will be a methodology that we use.

JANIS KARKLINS: Yes. That means, simply thinking about what Marc said, we could delete that part. We could keep it now that describes that we are expecting or asking legal questions and expecting some guidance from European Data Protection authorities and if that becomes irrelevant in the final report, we can delete it then. Maybe that would be the way. We retain it for the moment and we delete it when we are doing the final report based on models that we are choosing. Amr?

AMR ALJOWAILY: Thanks, Janis. Since this was an NCSG comment, I just wanted to say that I'm personally behind with your proposal to keep this and at least in the initial report until we know what we will be doing with this section in the final report. Thank you.

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JANIS KARKLINS: Okay. Would Marc Anderson agree?

MARC ANDERSON: Yes, I dropped my hand because I had raised it to basically say the same thing you did. So yes.

JANIS KARKLINS: Thank you. Okay, so then let's try to go to next one, number seven. Though I have a feeling that this is linked to our discussion about the model, and therefore, we need to skip it. At least, this is what I would propose for the moment.

So then question about item eight, which suggests the centralized model may have variations with respect how data is returned to requestor. For example, a central gateway may return data via its system. Or alternatively, contracting party may return data directly to the requestor following instructions from the authorization provider. But that's in a centralized model where that is done at the central gateway. So comments from NCSG? I still do not recall ever discussing this or anyone proposing these issues raised regarding logs. [Inaudible] Logging is addressed below in terms of [inaudible] regardless of which party discloses data. I'm talking about [inaudible] can be worked out as in the other models suggested [BC].

So from one side, indeed, it depends how we will, what type of model we will choose. But actually, whether that is hybrid or not hybrid, if we are in agreement and we are in agreement, that the

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front end, as Mark Sv suggested, is centralized. So then in either ways, there might be two options how to send requests or requested data to requestor, either via central gateway even if decisions are made in decentralized way at the contracting party level or indirectly from contracting parties to requestor, no matter whether a decision is done at the central gateway or at the contracting party level. Maybe it makes sense to talk a little bit, these options, what would be pros and cons of how the information should be passed to requestor, just to foster our understanding.

Let me take Mark Sv, Marc Anderson, and Georgios.

MARK SVANCAREK:

Thanks. I think I was being a little too pedantic here when I responded to the NCSG comment. I still agree with what I said, that logging is done. We could do the logging however we want to, but having looked at the contracted party's hybrid model proposal and as you can see in the diagrams that I submitted afterwards, I think there's a lot of benefit to returning the data through the central request portal or whatever we're calling it, the portion that would remain centralized. I think there's a lot of benefits to doing that. I do think it makes the logging easier. I do think that it has fewer protocol implications.

So even though what I said there and my comment is factually true, I think it may be a distraction and so take it for what it's worth. I think now, upon further reflection, that we should try to return it through the central gateway as often as possible. Thank you.

JANIS KARKLINS: Thank you. Marc Anderson?

MARC ANDERSON: I was going to suggest that we maybe table this one. I'm not sure it's a great use of our... This is kind of a detailed item and I'm not sure it's a great use of our time to get into this level of detail until we have hammered down what model, ultimately, we're going to go with. Once we have that model agreed upon, it's absolutely a question we're going to need to answer. But I'm not sure this is... I think we have other, better things we can talk about at this time.

JANIS KARKLINS: Okay. Nonetheless, Georgios is in line. Please Georgios.

GEORGIOS TSELENTIS: Yes, thank you. One issue about these two options, who actually sends the data, where the data of the response are coming from is not only about logging but it's also about data transfers, personal data that are transferring from different jurisdictions which might have a legal implication in this sense. So I think we should not lose this. I'm not taking a position here, although my first thinking is that a central responder might simplify things. But I think there are more issues than just logging. It's also about legal implications of data, personal data that are crossing different jurisdictions. So I think we should dig a little bit more on the implications of the two options that are reflected there.



JANIS KARKLINS: Okay, thank you. Look. I think it was good that this issue is raised. We had this conversation and this indicates that this is important issue, [inaudible] legal, and let's reflect further on this. Maybe somebody may want to volunteer and give some thought and then put something on the paper. Again, I am just asking now abstract, asking for volunteers who could maybe think about this topic particularly and bring a suggestion to Los Angeles where we will be talking about it [inaudible] every circumstances. But I have Alan Greenberg and that will be the last speaker on this topic.

ALAN GREENBERG: Thank you. Just noting that if a response is returned through RDAP, even if it goes through the RDAP system at the centralized SSAD, it's not clear that it would be deemed to be processing. Remember with the Internet, when you send a message from Point A to Point B, you don't know where it's going. It may be crossing seven jurisdictions along the way and computers that are mad at running the network are moving the data back and forth, but generally, that's not deemed to be processing in those jurisdictions because it's a relatively transparent process. So the jurisdiction issue may be applicable, but I think we can't presume it just because the computer may be in one jurisdiction that it's going to be deemed to be processed in that jurisdiction. So just a note. Thank you.

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JANIS KARKLINS: Thank you, Alan. It may become complex in the sense that there might be jurisdictions which prohibit a transfer of personal data to other jurisdictions. And then this creates certain complexities. But again, probably this is a little bit overcomplicated for tonight. But the question is if somebody wants to volunteer to think about and that would be helpful. No immediate volunteers, but maybe someone will. [Mark] is happy to think about it. Thank you, [Mark].

And then I would like to put the last question to the team and that is in Point 11. So we are in agreement that the central gateway as well as accreditation would be run as a function by ICANN in the centralized way. So a question to the team is whether we can ask staff to edit draft initial report in a way that they would replace all references to entity accreditation authority and so on simply by ICANN. Can we do that? In other words, calling spades “spades”.

So no objections? Marc Anderson?

MARC ANDERSON: Thanks, Janis. Not an objection, just I’m not... Is this on the screen? I’m not able to follow.

JANIS KARKLINS: No, no, no. It’s Point 11, or 10. Sorry, sorry, sorry. Number 10. Look. I have a different... Let me see. No, no. Wait, wait, wait. SSAD description. It is Point 11 in the text on the screen.

So in the initial report, it says, “centralized model in which requestors of access disclosure are received through a central gateway which is a decision where the decision on whether to

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disclose data would be managed by the entity responsible for managing the centralized gateway”. So let me rephrase it. So I have a feeling that we have agreement that frontend functions, accreditation, the receiving request via portal, and dispatching that request to either relevant contracting party or making disclosure decision provided that it is automated in evolutionary model will be done by ICANN or ICANN contracted or designated entities.

So question is whether we should keep in the initial report, reference to accreditation authority or we replace systematically accreditation authority by ICANN. If we are in agreement that ICANN is the one who will do this function or will outsource this function through a contractual relation. Amr?

AMR ALJOWAILY:

Thanks, Janis. If I’m not mistaken, the NCSG comment here was meant to address whether ICANN outsources the function or not. If we’re talking about a centralized model here, ICANN can outsource the function but it can’t delegate the responsibility. So that’s kind of what the NCSG is getting at here. When we’re discussing the entity responsible, it doesn’t necessarily refer to the entity performing the actual function. So I think that’s why the NCSG comment is in there and if I’m not mistaken, our comment here is consistent with the response that ICANN received from the Belgian VPA. Thank you.

JANIS KARKLINS:

Yeah. Okay, but we do not have yet agreement on the model itself. But we have agreement on the front end. That is

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accreditation. That is running the portal where requests will be file and dispatching those requests to whomever for decision making. So we agreed that that would be ICANN or if ICANN decides to outsource it to some entity, so they would do it, retaining responsibility for performing that function.

So the question is whether in the initial report, we should systematically use the terms that we have them now accreditation authority, or central gateway, or we change those and say that the function of the accreditation authority will be performed by ICANN, or should be performed by ICANN. And then further in the text, everywhere we replace accreditation authority simply by ICANN. So that's the question. Simply that would ease or simplify reading of the report when we are talking not an abstract accreditation authority, for instance, but we are talking about specifically ICANN or its designated entity.

We have six minutes and three requests for the floor. Alan Greenberg, Marc Anderson, Mark Sv.

ALAN GREENBERG:

Thank you very much. Two quick comments. Number one, I'm not sure why you're referencing accreditation authority because where this comment was made, I believe it's talking about the models of the operational system and my recollection is this particular comment was made on the first model which is deemed to be the 100% centralized one and it's referring just to that one line saying why are we talking about the entity when we are saying this is the centralized SSAD and we've already said it's going to be run by ICANN, so why not simply say ICANN here? I think that was all

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the comment was saying. It was just clarity of language to not use an indirect reference when we already know the direct one. Thank you.

JANIS KARKLINS: Alan, this is because in either hybrid model or currently proposed centralized model, the front end, accreditation, central gateway and passing on information will be performed in centralized way in every circumstance, whoever makes the decision. And maybe I am running ahead of the cart. I am simply thinking about the whole report, not specific reference to that part and for the ease of perception to simplify and call, if you know which entity will be performing which function, we refer to those entities by name, not by generic, for instance, accreditation authority.

ALAN GREENBERG: You're making a good proposal going forward, but this comment was on a particular line on the centralized model. So thank you.

JANIS KARKLINS: Thank you. Marc Anderson, please.

MARC ANDERSON: Yeah, I think I'm agreeing with Alan. I have similar concerns with him. Certainly, doing a global replace of entity responsible with ICANN or its designees, I think would create problems. I'm fine with this where it is specifically stated, and certainly being more specific throughout the document on what entity we're talking

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about is beneficial but I think it's, I don't think we can just globally replace references of "entity responsible" with "ICANN or its designees".

JANIS KARKLINS:

Okay, so in that case, since we do not have a decision on the model, we cannot really talk about it because it may become irrelevant. Maybe I said I was running too fast ahead of the train and as sometimes it happens, was rolled over by the train. So thank you for rolling me over.

Look. We have two minutes before the end of the call. I think we have reached the limit, what we can do today. So thank you very much, all, for active participation and I think that the spirit that reigns in the group for the moment is very conducive to continue constructive engagement in a smaller group and next Thursday where we will be talking, and I'm maybe speculating, we need to reflect maybe more. But we will be talking exclusively about the model.

And in the meantime, we will be working in a smaller group aiming at putting something on paper that would serve as a basis for discussion of the model next Thursday. So with this, I would like to draw a conclusion to this call. Once again, thank you very much and I wish a very good rest of the day wherever you are. So thank you very much. This meeting stands adjourned.

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

**[END OF TRANSCRIPTION]**