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**ICANN  
Transcription  
EPDP – Phase 2**

**Thursday, 06 June 2019 at 14:00 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. The audio is also available at:

<https://gns0.icann.org/sites/default/files/policy/2019/audio/audio-epdp-gtld-registration-data-specs-phase-2-06jun19-en.m4a>

**Zoom Recording (includes visual and rough transcript. To access the rough transcript, select the Audio Transcript tab):** [https://icann.zoom.us/recording/share/ldzcb-EYtEWP4-56mGz4aeklci4O0N3yAYup8\\_xmtOewlumekTziMw?startTime=1559829615000](https://icann.zoom.us/recording/share/ldzcb-EYtEWP4-56mGz4aeklci4O0N3yAYup8_xmtOewlumekTziMw?startTime=1559829615000)

Attendance is on wiki agenda page: <https://community.icann.org/x/6YSGBg>

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TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the fifth GNSO EPDP Phase 2 Team Meeting taking place on the 6<sup>th</sup> of June 2019 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 Julf Helsingius of NCSG, James Bladel of RrSG, Greg Aaron of SSAC, and Amr Elsadr of NCSG. They have formally assigned [inaudible] of NCSG, Sarah Wyld of RrSG, Tara Whalen of SSAC, and Tatiana

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

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Tropina of NCSG as their alternate for this call and the remaining days of absence. Joining us late on today's call will be Chris Disspain, the ICANN Board liaison.

Alternates not replacing a member are required to remain on their line by adding three Z's at the beginning of their name and as alternate-affiliation at the end 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 or agreeing or disagreeing. As a reminder, the alternates assignment form must be formalized by the way the Google assignment form. The link is available in the meeting invite e-mail.

Statements of Interest must be kept up to date. If anyone has any update to share, please raise your hand or speak up now. 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. Recording 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:

Thank you, Terri. Hello, everyone. We are now at our fifth meeting and I would like to see whether the proposed agenda consisting of

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eight points will be acceptable to all. I see no objections, so we will proceed accordingly.

As you recall last week, we agreed on the text of corporate inputs to AC/SOs and the subsequent letters have been sent out with the deadline of 21<sup>st</sup> June, which will allow us to at least have a first glance at inputs during the Marrakesh meeting. So, this was simply a point of information and I was not planning to entertain discussion, just see whether there is anyone who would like to speak on the point. I see none.

Working definitions. After our conversation last time – and if I may ask to get Working Definitions file on the screen – we got some inputs on the proposed text and namely on the part of access and legitimate interest. So, we took into account provided inputs and it is obvious that there is no consensus or no agreement on access definition. Some groups think that the definition that they tried to propose as a compromise would be acceptable. Some groups said that did not make any sense. So, as a result, I would propose that this working definition remains in the text as Chair’s proposed definition with the clear indication that this particular text was not agreed by the group as a whole.

The text on legitimate interest was modified according to proposed edits, and now I would like to open the floor to see whether we could take note on those working definitions with understanding that there was no agreement on one of them and use them for the purpose of our exercise moving forward.

The floor is open. I see Chris Lewis-Evans from GAC. Please go ahead, Chris.

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CHRIS LEWIS-EVANS: Good morning, good afternoon, everyone. Yeah, thank you. Chris Lewis-Evans from the GAC here. We had a meeting within the GAC yesterday just looking at the document that got sent around with the updates and really add one extra comment which might make the one the wasn't agreed a little bit more palatable for people. I'm sorry it's not coming up on my screen. Is it on there? What we wanted to face was the –

JANIS KARKLINS: Sorry, Terri could you put up on the text on the screen? Or Caitlin?

CAITLIN TUBERGEN: Sorry, Janis. We're putting it up right now. Thank you.

JANIS KARKLINS: Yeah, please go ahead.

CHRIS LEWIS-EVANS: Okay. What we discussed in the GAC was replacing the parts around the portion of the datasets that was provided and the wording around that. So, the recommendation – and I'll place it in the chat in a second – is provision of a dataset appropriate for the purpose. Scroll down to ... okay, thanks. Replacing the section that says, "A full set or subset of non-public data with a provision of data appropriate for the purpose." Within our group, we just thought that probably answers some of the concerns we had last

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time and that might a little bit better. So, Alan, I'll put the words in the chat now and see if [inaudible]. Thanks.

JANIS KARKLINS: Okay, thank you. Thank you, Chris. Margie, please.

MARGIE MILAM: Hi, it's Margie. Can you hear me?

JANIS KARKLINS: Yes, please.

MARGIE MILAM: Okay. Thank you. With regard to the new second bullet regarding third party access, I would suggest that we change it because the definition is dependent on GDPR but the policy is meant to be a global policy. So, I think it should read something like, "The request of third party that's fully compliant with applicable law as opposed to being specific to GDPR." That would be my suggested change to that bullet point.

JANIS KARKLINS: Okay, thank you very much. I think that can be accommodated easily. Alan, please. Alan Woods.

ALAN WOODS: Thank you. Alan Woods for the record. I just have a request more so. I fully understand there has been a lot of discussions back and

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forth on this particular bullet point and I fully accept that as Chair, you have to move things along and except to that point. However, because there were such polarized views on this, I think it might be helpful as well, instead of just saying that there was divergence and that this was chosen by the Chair, I would like to understand as to why we chose this particular one. Certainly on the call, I think it would be worthwhile to [inaudible] as to why this was the preferred one and then we can move on. But again, there are strong feelings on this because it is fundamental. So, I think I would make that request of the Chair that if you're choosing this, to give the reason why this was the preferred one in your estimation and then we could move on [inaudible]. So, thank you.

JANIS KARKLINS:

Thank you, Alan, for the question. Because during the last week or during the last meeting some groups said that they could accept that formulation as a compromise and that no other formulations have been proposed until now. So, now two amendments, the edits basically to this formulation were proposed and I'm accepting them. Since this is simply a point of reference, nothing more than that. So there is no agreement on that. I accept that. I still felt that this is important to reflect something that some groups feel also strongly about. Hence, I am proposing to keep it with the clear indication that there is no agreement on this particular working definition.

I see Alan Greenberg. Alan, please go ahead.

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ALAN GREENBERG: Thank you. I can't see it because it's not quite scrolled up on the screen. Was the SSAD one changed to incorporate ICANN? And if not, when are we going to discuss ICANN's access? Currently it says, third parties and ICANN is not a third party.

JANIS KARKLINS: Okay. So, you suggest that we put third parties including ICANN?

ALAN GREENBERG: It's plus ICANN or wording to that effect. ICANN by definition is not a third party. We're probably a controller, although we haven't definitively said that. We're certainly a processor. So I don't think we can be a third party, but somewhere we have to talk about access for ICANN and I see no reason to do it in a completely parallel process. So, I would suggest we include ICANN here.

JANIS KARKLINS: Okay, thank you. Alan, is your hand up again? Thank you.

So, with these suggested amendments, may I take we can take note on these working definitions and use them for the purpose of our exercise, not beyond that. Thank you.

The third sub item on this was Legal Advisory Group. So, it seems that the proposal that I put forward last week was not either fully understood or accepted. The meaning of my proposal was to create a subset of the team, a small one, not representative one but a small one which would make a first cut of all legal issues that we need to address and looking to those issues with a

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professional eye and then propose something that team could discuss and potentially endorse. So, I did not propose representative group and I proposed a small one.

After I made the proposal, a number of team members volunteered and with understanding that that would be a representation of their respective groups in the Legal Advisory Group. Basically, the whole idea was kind of undermined and I see no real difference between representative group consisting of one representative per group of a team or three or more. So, as a result, I withdraw my proposal to create this small legal team and I'm suggesting that as we have done so far, we would look at all legal questions during the plenary meeting.

I see Thomas. Thomas, hands up. Please, Thomas.

THOMAS RICKERT:

Hi, Janis. Hi, everyone. I'm so sorry but I wasn't quick enough to raise my hand. My comment is actually related to the previous discussion that we had. Chris made a suggestion and that Chris had confirmed in the chat that he liked my proposed amendment, and Sarah +1, so I was just wondering whether in your final remarks that we accept the document as is whether you had included that exchange in the chat. So, I just want to make sure it doesn't get lost.

JANIS KARKLINS:

Yeah. First of all, I suggested that we take note, we do not agree because there is something which is not agreed in the text. As result, we cannot say that text is agreed. We take note on the



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deck of the working definitions and then we will follow them for [inaudible]. We'll use that understanding for the purpose of our exercise. And those suggestions will be incorporated after the meeting as we speak. With that be okay? Alan?

THOMAS RICKERT: Thanks very much, Janis.

JANIS KARKLINS: Yup. Alan, please. Alan Greenberg.

ALAN GREENBERG: Sorry, too many things to unmute. Thank you. I would suggest that you have perhaps given in too easily. I agree with you that starting to have too many representations is problematic and I think you should put to the group that either we accept your proposal or revert to the plenary as a whole to do legal decisions. If those are the only two options, your proposal may well be accepted.

Although I understand why people ask for representation, if you're not willing to accept that then I support that position because I think the group would become unwieldy. Then perhaps your original suggestion is preferable to the EPDP as a whole doing the work. Thank you.

JANIS KARKLINS: Thank you, Alan. No. It's rather easy. I make suggestions, I withdraw suggestions. That does not change anything in the methods of work we are following. If the suggestion is not

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accepted, so then we simply continue as we do usually. Of course, one can imagine another formula of representative group which is small one where every group is represented by one, and then we delegate all decisions on legal questions to that group, and that small but represented group takes full responsibility on legal issues and informs the whole team when they have reached agreement and that is automatically the opinion of the group. But again, I do not want to really spend too much time on these procedural discussions because ultimately at the end of the day, the team will take decisions collectively as a whole.

I see two requests for the floor. Georgios is first and then Volker.

GEORGIOS TSELENTIS: Yes, hello. Am I audible?

JANIS KARKLINS: Yes, loud and clear.

GEORGIOS TSELENTIS: Yeah, thank you. On this issue, I think small group, big group – I'm not a fan of this question to debate. Now, what I'm more interested is that we get the support we seek from the legal counsel at the end, and we get it without having any type of censoring on the questions and we get it fast. So, I think I'm for any solution. I want to highlight that what we want to do with this type of clarifications and questions with the legal counsel and I hope you confirm this, Janis, is that we want a first reading of compliance and background information that the group might not have at hand. So,

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I find that this is quite useful for our discussion. It can accelerate our discussions but I would not like to lose too much time about the formalities and I definitely don't want to lose time about how this will not work. I'd rather try to find out how this will work. So, if the people who are participating in a bigger group and representative group or whatever, can do so by asking those questions and getting fast and efficiently the report from the legal counsel, that's fine with me. Thanks.

JANIS KARKLINS:

Thank you. Now, the meaning or the task of this group or team as such would be to formulate the right questions, to see whether legal advice has not been given already to those questions and as well as to see whether questions are relevant for the work of Phase 2. So, in order to avoid situation where we're asking question which is good to know but not really necessary for the Phase 2, taking into account that the legal advice apparently is rather costly. Volker is next please. Volker.

VOLKER GREIMANN:

Yes, thank you. I appreciate the need for small group to do exactly that which you just said. I just think that this group needs to be balanced and all interest needs to be represented there, even if for every stakeholder group needs to be present there. I don't want a group that makes decisions for the entire group, that's something that we've already discussed in Phase 1 and abandoned as a concept, and I don't think we should go back to that.

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If we want a small team, that's fine. However, it should be clear that this team is not stuck to one certain interest or one certain direction of positions to make sure that the questions that are formulated are balanced and do not presupposed a certain outcome. Therefore, a balanced group is necessary.

JANIS KARKLINS: Thank you, Volker, and I think that you confirm my proposal. What can be more balanced than the team as whole? I would make a ruling that every legal question will be dealt in the team and the staff and leadership will propose a work on all the background documents for consideration of the group.

Kristina. Do you want to challenge me? Please, Kristina, go ahead.

KRISTINA ROSETTE: Yes, actually. I am. Kristina Rosette for the record. I'm just a little baffled as to why we seem to be so quickly not even considering the option for the Legal Committee that we used in Phase 1, namely a smaller representative group which was primarily, if not exclusively composed of lawyers. I think there may have been one or two lawyers. But the idea of that group and that group itself seems to function fairly well. Obviously, there were some participants in that group who did not continue on to Phase 2, so it would be only fair I think to allow whatever stakeholder group or constituency had their member leave to nominate a new one. But quite frankly, given all of the things that we need to fix and all of the things that we need to invent, I am puzzled as to why we

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aren't just sticking with something that seemed to be working and generally didn't need to be fixed. Thanks.

JANIS KARKLINS: Thank you. Alex. Alex Deacon, please.

ALEX DEACON: Yes, thank you. This is Alex. Yeah, I just wanted to agree with Kristina. I think it is a little premature to abandon the subteam concept. I wasn't around yesterday, so I didn't get a chance to respond to Marc Anderson's e-mail to the list which basically suggest that we keep it in and explains I think all of the good reasons why it's important that we do so. So, I would support continuing to have this as a separate sub-group to allow us to be more efficient in our debates and to allow us to focus on Thursday's call on or plenary calls on matters of substance of course with the backing of background of the information that the Legal Subteam is going to be providing to us. Thanks.

JANIS KARKLINS: Okay. Good. Thank you. So then I insist that my proposal is withdrawn. But based on Kristina's proposal, my I suggest that each group nominates one person for the Legal Committee that we would constitute on the example of the first Phase and if you could let me know until next meeting your nominees and those nominees will be representatives in the Legal Committee which would do the job for the benefit of the team and will present the outcome of their activities to the team as a whole for endorsement. So then by next meeting we will have a

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representative Legal Committee based on proposal of Kristina. Will that be okay? Any objections? I see none. Good. We'll proceed that way.

Let us move on to the next item and that is clarifying questions on the decision of the board to modify two of the recommendations from Phase 1. So, we have received three – if I'm not mistaken – proposals. And we did not have time to consolidate them. Let me maybe suggest the following method. If I may ask each group which put forward proposal to briefly speak about it, and after each presentation I will ask whether somebody is not in agreement completely with what was said. Because then we would then try to consolidate those proposals unless there is a violent disagreement on something, what have been said by others in order to meet tomorrow's deadline for submission.

Please, who will start? Any volunteers or shall I call? Sarah, please.

SARAH WYLD: Thank you. Hi. Just to confirm, you're looking for us to speak to the feedback that we've sent for the board?

JANIS KARKLINS: Yes, indeed.

SARAH WYLD: Okay, thank you.

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JANIS KARKLINS: Briefly, the essence.

SARAH WYLD: Absolutely. Yeah. Thank you. This is Sarah Wyld from the Registrar Group. For the Recommendation 1 Purpose 2, we do not have concerns with the board's decision, so we support that choice.

For Recommendation 12, as you can see, we provided a significant amount of background information. I will just focus on our proposed solution. The board had a concern that deleting the org field will result in a domain that did not have a valid owner. This is of course an important concern that we should make sure we've addressed. We have already considered this same problem with regards to the admin field for admin contact which we are removing entirely and there is a requirement in recommendation 29 to ensure that of each registration contains a valid domain owner when the admin is deleted. So, we could add a similar obligation for recommendation 12 such that prior to deleting the org field data, the registrar can assure there's a valid name. I do believe it is important to be able to have a blank organization field for domains where that is the most appropriate way to indicate ownership, and so as such we should have a way to do that. Thank you.

JANIS KARKLINS: Thank you, Sarah. Marc Anderson?

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MARC ANDERSON: Thanks, Janis. This is Marc Anderson. Can you hear me okay?

JANIS KARKLINS: Yes, loud and clear.

MARC ANDERSON: Alright. Great. I guess the Registry Working Group members' feedback was similar to the registrars. I looked a lot at the impact of removing Purpose 2 from the list of purposes and from an implementation standpoint, I don't think it effectively changes how the Phase 1 recommendations would be implemented, especially when you consider Recommendation 3 and Recommendation 18. Both of those recommendations were adopted by the board, and I think from a practical implementation standpoint, that's what we care about. And considering we have an agreement to consider Purpose 2 in more detail in Phase 2, I just think it's not worth our time to get then around the axle on the decision by the board not to accept Purpose II. That was, I guess, the gist of the registry's comment on Purpose II.

On the second one, on the organization field, we had some concerns about what that modification means from an implementation standpoint and that there may be some sort of unintended consequences. Maybe the implication that if there's incorrect data in that field, inaccurate data, or there's data that registrars don't necessarily have consent published, the implication that they can't delete it is maybe a bit troublesome. So I think there we should take an opportunity to provide more information to the GNSO Council by extension the ICANN Board about why that recommendation was made the way it was.



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I also think the registrar's suggestion for how to deal with deleting data without creating a situation where contactability is lost. Obviously contactability is important, so I think the registrar's suggestion was very practical and can be handled as a matter of implementation. So the registry's feedback just sort of supports the registrar's suggestions on the matter. Thanks.

JANIS KARKLINS: Thank you, Marc. Alan Greenberg is next.

ALAN GREENBERG: Thank you very much. I'm a little bit confused about Sarah's comment. She ended saying she thinks it's important to be able to have a blank organization field. My understanding is that was not the issue raised by the board. The issue raised that I thought was raised by the board was – well, the process was we give the registrant the ability to set the field the way they want and that could include blank, but that if they didn't take that action, we gave the registrar the right to either continue to redact it or to delete it. And I believe that the board was objecting to the option where you were giving the registrant to at their discretion delete it, that if we simply said if the registrant doesn't do anything then it stays the same and is redacted. If they choose to blank it, they can blank it. I think that all they were objecting to was the option we were giving registrars to at their discretion choose which way to go, not the overall process. Thank you.

JANIS KARKLINS: Thank you, Alan. Next is Margie.

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MARGIE MILAM: Hi, can you hear me?

JANIS KARKLINS: Yes.

MARGIE MILAM: Thank you. On Recommendation 1 Purpose 2, I think we agree with the board or questioning regarding Purpose 2 that I think we disagree with our colleagues about how to address it. The European Commission letter didn't say, "Delete it." It said, "Don't conflate it." So our proposal – and I sent an e-mail about this yesterday – was to split it into two separate purposes, one for the ICANN purpose and one for the third-party purpose. I think that simply saying that the EPDP agrees with the board on this is probably not enough because I think "we" as a collective group are in a better position to address that particular issue as opposed to leaving it to the GNSO who doesn't have the background on this issue. So our proposal is that this group, the EPDP Group, come up with a revised version of Purpose 2. So, that's on Purpose 2.

With regard to Recommendation 12, I think we came about from a different perspective. As I recall, the discussions in Phase 1, part of the concern was that there was a lot of inaccuracies in the org field. So I think when we were talking about deletion, our understanding was that that related to inaccurate records, not as a general concept that should apply across the board to any org field. That's why our suggestion is that the recommendation be

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modified to allow the contracted parties to update any inaccuracies. And if it turns out there is no organization, for example, and I think that was the discussion that we had, then obviously you'd be deleting the org field but that's part of cleaning up the inaccuracies. So that's our suggestion for how to deal with Recommendation 12. Thank you.

JANIS KARKLINS: Thank you, Margie. I see Milton. Milton, please go ahead.

MILTON MUELLER: Hello. Yes, I'm just reacting to the proposed modification of Purpose 2 where we split it into an ICANN one and a third party one that Margie proposed. I just want to point out that we had incredibly long discussions of creating the purpose that specifically mentions consumer protection, cybersecurity, intellectual property, etc. This was never accepted. This was, in fact, explicitly rejected. This was the only reason we got consensus on Purpose 2 was we discarded that list and came up with the formulation that we came, so I'm really warning us not to try to re-litigate issues and go backwards in this way. That's simply not going to be a viable reconstruction of Purpose 2. Now, I don't think it actually addresses the board's comments that well. I think it's just an attempt to get something back in that was rejected during Phase 1. So, I hope we don't try to do that. That's all. Thank you.

JANIS KARKLINS: Thank you. Welcome, Brian.

BRIAN KING: Yeah. And at the same time, that's exactly what we have to do because we tried to get explicit recognition of intellectual property, consumer protection, and those purposes in Phase 1, and it was rejected. You're right but I don't know how we would do it then. The guidance from the EC is clear. It says don't conflate ICANN purposes with third-party purposes, so we're trying to list them all. So I don't know how else we're supposed to do that. Thanks.

JANIS KARKLINS: Thank you. Milton again.

MILTON MUELLER: Yeah. Again, I think you're missing the point of the EC advice. The EC advice to clear import of that is that you don't have a Purpose 2, that that is by its very nature conflating ICANN's purposes with third-party purposes and that we do create a system for disclosing redacted information to third parties that have a legitimate interest. But this is not a purpose of ICANN and this is very clear from the EC advice and from the data protection law, and we were told this during the process. Again, I just cannot fathom why Brian is saying that we have to do this because if we do that, we are again conflating ICANN purposes with third party purposes. We're doing exactly what the EC is telling us not to do.

JANIS KARKLINS: Okay. Thank you, Milton. Please remember that we were asked by Keith to ask or to formulate questions or concerns that would

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allow council to engage with the board. In that spirit, we need also to conduct this conversation. Probably answers or position statements may follow after those first questions or expression of concerns. So with that in mind, I am now turning to Thomas.

THOMAS RICKERT:

Thanks very much, Janis. To be quite honest, I'm not too concerned with both reactions to Purpose 2. We had lengthy discussions about the validity and legality of Purpose 2 in the first phase, and I think that we will need to go through each and every scenario of potential normal disclosure in Phase 2. So I think probably time is better spent on working on Phase 2 and potential disclosure scenarios rather than trying to rewrite and all that the purpose that was controversial in the first phase. In a nutshell, I think we're not going to lose anything by just doing our work in Phase 2, I think we would pick those scenarios in which a disclosure is lawful. But trying to fix Purpose 2 will not add any lawful disclosure scenarios to our overall work product.

With respect to the organization field, I think it would make sense for maybe a small drafting team as a subset of our group to write up how our original recommendation was meant to be implemented. I do have some concerns with the board just stating that what we came up with should be rejected because there is an issue that we did know that our policy needed implementation work. And as with WHOIS reminders to which if you don't respond, you are at the risk of losing your domain name. If you carefully craft information to the data subject about making up their minds about the organization field and the change in the registrant field if there is a need to do so, then I think you can also

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have that data field deleted. Because in legal terms, if the data subject does not populate the registrant field, if it does not consent to the publication of the organization field, the contracted party doesn't have any other choice than to delete that data. The ICANN Board input that this is to be rejected will potentially cause legal trouble for the parties involved.

JANIS KARKLINS: Thank you, Thomas. I see Alan's hand is up. Alan, please.

ALAN GREENBERG: Thank you. I disagree with Thomas. The only option is not to delete, the option is to continue to redact that field if the registrant has not weighed in and said what they want to do with it. So that is an option that it can be a field that is published unless the registrant has been silenced since we've enacted this new policy, in which case, it's redacted. So I don't see why we're saying there is no option.

JANIS KARKLINS: Thank you, Alan. Time is going and we're spending maybe more time than we initially planned for this. I think this conversation is informative and I would like to propose the following taking into account the timeline which is given. Based on this conversation, within the next two to three hours, after the call, we will try to propose a one pager synthesis of concerns and questions that you may wish to provide GNSO Council, and we will annex all submissions to that synthesis page. We will post that synthesis page for silent procedure until tomorrow, and hopefully that will

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allow us to submit at least the essence of conversation that we have but also with the full submissions of different groups that have been provided so far. Would that be okay?

I see Marika is asking the floor. Marika, please go ahead.

MARIKA KONINGS:

Thanks, Janis. I'm just wondering because if the original ask or the initial ask from the council at this stage should be focused on any clarifying questions, concerns, or comments that the council could consider for its dialogue with the board, which again is really focused on trying to understand the board action asking any clarifying questions or would share any kind of concerns. And following that dialogue, the council is then expected to start thinking about or considering what to do. I think there are various options here the council can accept. With the board's non-adoption, it can resubmit the recommendations as they originally were or can modify as a recommendation.

I think as Keith has shared, in its consideration of the path to take, it will likely consult with the team for its input. So I'm just wondering if it's worth for this first document that goes back to the council if we actually separate out those parts that are more focused on either explanatory background on why a recommendation was as it was and clarifying questions and share those at this stage with the council. But for that second part of what should happen or how should the council deal with the recommendation that we may have a separate [inaudible] on that. Some groups may have just focused on the first part and not yet on the second, and that's likely a second question that will come

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from the GNSO Council once they've had their dialogue with the ICANN Board.

I'm just wondering if we've taken our approach in separating it out, we already shared with the council the clarifying part but continue further work for those that want to provide further input on for the council may want to consider on how to deal with it. And when the time comes to have that conversation with the council, hopefully the group is in a good position with either of the sub items or has a consensus approach or agreement on what to recommend to the GNSO Council.

JANIS KARKLINS:

Thank you, Marika. Would that approach be acceptable to all?  
Marc Anderson.

MARC ANDERSON:

Thanks, Janis. I guess what I took Marika's suggestion to be is that we [bifurcate] our feedback to the GNSO Council. I think we should certainly leave the window open to provide additional feedback or commentary to the GNSO Council but I think at this phase, the GNSO Council Keith has asked for feedback by Friday, by tomorrow, as I recall. We have feedback from various groups. I think the more information we give the GNSO Council now, the better. So we should provide the GNSO Council with everything we've discussed now. Clearly, we haven't come to consensus as a group. There's divergence but that in and of itself is valuable information to the GNSO Council. What I'm trying to say is I prefer your initial suggestion, Janis, where there's a distillation of the



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views and commentary that has been received so far and that that information is provided to the GNSO Council.

JANIS KARKLINS:

Thank you, Marc. We will try then to make this one pager or one and a half pager within next two to three hours, and then we will submit that for your consideration with the silent procedure or any comments. If I may ask to react to whatever will be proposed only if you are violently in disagreement. So not edit words and if conceptually you agree. We will of course use as a basis all submissions that have been provided as well as conversation that we had right now, and hopefully we will be able to provide this first input and I understand that we will be also engaged with the council after this first input as the council progress in conversation with the board. So may I take that this is the way how to proceed further? Thank you. We will do that.

Next item, if I may get back to our agenda. Next item is the SSAD Priority 1 worksheet. We had the conversation last time. A number of inputs have been provided. If I may ask Marika to kick-start this conversation. Marika, please go ahead.

MARIKA KONINGS:

Thank, Janis. I'm just putting the link in the chat. I can also share my screen but it's a pretty lengthy document with a lot of comments. It may be easier for you to review this on your own screen.

And as you noticed, we ran through the documents during the last call and had a specific ask for the group to focus on the basics of

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the document trying to review or a need to review the topics that we've identified, the order that we've proposed, the objectives that we've identified, and focusing the group's input on those items and they will really underpin the next steps of our work approach taken. I want to say thanks to everyone that has gone in and reviewed the document. I do know that we, I think, even well this call was on people were still making edits and comments and it seems that in a number of areas, I think the group has kind of moved on from the original ask of really focusing on – do we have everything listed here as we have the right order, have we properly captured the objectives? So, actually diving into the substance of the conversation in that there are a number of back and forth on some of the topics, and of course it's good conversation probably not necessarily specifically related to suggestions to update the worksheet that at this point in time.

What staff would like to propose – probably all will have had time to look at all the comments that either we take a couple of minutes now for people to see if there's anything in there you cannot live with, and again you should focus on any specific changes that are being proposed. I think there are a couple of suggestions to rework some of the topics to make them more high level. I think there are some suggestions to change some of the references, for example, to use policy recommendations instead of referring to rules and requirements. And I think also the questions on whether certain topics are in scope for the group to review. I think those are all items that probably fit within the consideration of changes to be made and staff would like to suggest that following the call, we actually go ahead. And for those changes that seem an improvement to the document and not controversial items that we

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go ahead and apply those in a red line format so you can see what we have updated. By that we do not include at this point any of the more substantive items where people have started conversations but that will be brought back at the moment of – when we get to the different topics.

So I think our ask is to review the document and flag are there any issues that you think you cannot live with if those are changed or you can also [inaudible] to be applied to change, make it an opportunity to flag if we've made any changes that you think require further discussion. As I said before, I think a lot of the comments were very constructive and helpful. But in certain areas, I think the conversation has gone into a dialogue between the participants, which again, it's helpful but not necessary for the purpose of updating the worksheet.

So, Janis, we want to give everyone a few minutes to look at this or do you prefer us to have a first stab at making the updates that'll be some of our perspective and shouldn't be controversial, and then giving the group an opportunity to look at that and flag if they do believe there's something in there that requires further conversation?

JANIS KARKLINS:

Thank you, Marika. I don't think that you can review a 32-page document in a few minutes. Let me maybe suggest that please review document by end of tomorrow and then staff will make a first cut based on every comment or suggestion that will be made by end of working day tomorrow and will present the updated version also with how you said – red lines with clear indications of

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changes for the next meeting. In other words, on Tuesday you will get the document already edited by staff based on inputs and comments received.

Would that be acceptable? The floor is open. If no one is taking the floor, I will take that that is acceptable. No one is asking the floor, so then we will proceed that way. Thank you.

Let us move now to the next item and that is the first substantive discussion on the first building block that we will look at and that is definition of groups, criteria, purposes/lawful basis per user group.

I would like maybe to ask Marika to kick-start the discussion and maybe at the beginning focus exclusively to the definition of groups themselves because there have been a number of comments already, provided their initial proposal. Before giving the floor to Marika, I see Sarah is asking for the floor. Sarah?

SARAH WYLD: Thank you. I'll defer to Marika.

JANIS KARKLINS: Okay. You'll then be first in line after Marika. Marika, please, the floor is yours.

MARIKA KONINGS: Thank you very much, Janis. I'll go ahead and share the document. This is also the document that was circulated by e-mail and [inaudible] you to look at your own version to be able to scroll independently from my activity.

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So with this document, staff kicked off the conversation on the user groups. I think you may have seen the e-mail questions that we received. We looked at various documents that have touched upon on this topic. And based on our collective conversation, the discussion on that, we came up with a list of user groups that you see here up on the screen. I want to emphasize again that is really a starting point for the group to start deliberations. We thought through all the potential instances in which third parties might request data and for which purposes. Again, that links as well to a number of the charter questions that have been identified in relation to this topic. So we thought it might be helpful as well to create a template that we could use and again through deliberations, update, modify I believe as needed. That's what you really see up on the screen here.

We'll, first of all, try to define the user group by giving it a label. And again, the label that [stuck] on it, you're free to change that label. We try to provide a definition of the group, a description of what we believe is in that category and some thoughts in some of the cases for criteria that could be used to determine whether someone would belong to such a user group. We tried to identify as a high level and the purposes that this user group would have for requesting data. Then also we tried to identify that the lawful basis for requesting a data that this really comes back to I think some of the conversations we also had in Phase 1 on that topic.

Another part that will need to be answered, but again from our perspective that was more appropriately done at the stage when the group has broad agreement on the user groups will be to look

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at what data elements are typically requested or necessary for the purposes that had been identified for that specific user group.

This is what staff has put on the table as a starting point. We're pleased to see as well that many people have already started commenting. So I think it's probably the moment to get back to you, Janis, to manage that conversation and for the group to deliberate how we can take this to a recommendation on this topic that we can capture.

JANIS KARLINS:

Thank you very much. We have a number of requests now, starting with Sarah.

SARAH WYLD:

Thank you. Hello. I want to thank you, Marika, for clarifying further where these groups came from and also for putting together the template, which I do think is a useful way to approach the different possible users for the system.

That said, I'm not sure that this starting-from-groups is the correct approach. I would suggest instead that we start from the purposes for processing data, which we have already agreed to as a team and figure out from there who the users would be as well, as it says on the sheet, the data elements typically necessary. Once we know who the users would be, then we can, to Farzaneh's point, address whether they should be grouped together or if there should be some other way to manage them. But I'm not sure that approaching it from the starting point of having a list of groups is the correct way to deal with this. Thank you.

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

ALAN GREENBERG: In response to that last one, I assume that we are calling them groups because it was a convenient way of bunching similar things together, not necessarily because there was a formal group that would be representing them.

In any case, I have a question, though. If we are going to be looking at things down to which data elements are applicable for which requester, how is that going to play out in the long term if we end up having a new class of requesters? Does that mean the GNSO will have to reconvene a PDP? Because, if making the decision at the level of the data element is a policy issue, then that would mean a PDP would have to be reconvened. That doesn't seem like a practical way for the process go forward. Thank you.

JANIS KARKLINS: Thank you. Milton?

MILTON MUELLER: Partly I'm going to echo what Sarah said, that this really has the whole thing backwards. Some of these categories are just bizarre. Let me just give you some background here. The RDS Working Group, which tried to deal with some of these [WHOIS issues] over a course of two or three years prior to the EPDP, fundamentally wasted almost all of its time because they started

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from the idea of use cases or user groups instead of with purposes.

All that did was everybody wanted to define their own particular user group as having some kind of right to access, and nobody was paying attention to the actual legal requirement of purposes being defined and data collected and disclosed, being narrowly tailored to those purposes.

Now we're making the same mistake. This is really something we just have to cut short very quickly. Sarah is right. We have to define what are legitimate purposes for disclosure first. Then we see which groups fit into those. I'm just astounded that anybody would propose a group called End Users. What? Who is not an end user of the Internet? And why is this even put forward as a category?

Some of the comments in the list have already pointed out the point about law enforcement. Law enforcement agencies are certainly a specific category that have particular kinds of legitimate interests. But again, the point is the purpose, not whether they're E.U. law enforcement or non-E.U. law enforcement. We don't really need to set them aside a user group so much as we need to understand when law enforcement has a legitimate interest under the law of getting disclosure of certain data elements.

So I would assert very strongly that we need to set aside this discussion of user groups until we have defined the purposes that legitimately require disclosure. Thank you.



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JANIS KARKLINS: Thank you, Milton. Ashley?

ASHLEY HEINEMAN: Hi. Thanks. This is Ashley with the GAC. I would take a slightly different tact here and first thank whoever put this document together because I think it is a good attempt to try to structure out conversation and is very proactive in getting us to think about things, rather than us spinning our wheels, which we sometimes find ourselves doing.

That being said – this is probably more a point of order – having these documents and maybe clearly articulating that this is being thrown out for discussion purposes, that this is the first reading, that this is intended to give you an opportunity to react, I think that’s essentially what Janis and Marika have already stated.

So I don’t see anything here that’s binding us to what is on this paper, other than triggering a conversation. I think that’s what we’re starting to have, and I think this is a good conversation to have. I hear some coalescence around the idea of: let’s look at the purposes and go from there. I think this document starts to frame things for us. Whether we agree to it or disagree to it is another story. But I appreciate having this conversation and I think it’s a conversation that needs to continue to be had, whether or not we stick with the actual groups identified here or not.

To sum up, thank you. I think this is a good first reading opportunity and discussion opportunity. I hope it continues. I think we probably all agree that we’re not bound to this construct as currently presented, but it’s helpful.

JANIS KARKLINS: Thank you, Ashley. Exactly. Its intention is just to trigger discussion. I think the negative result also is a result. As Milton said, maybe we need to go through the thing to start from something else. I cannot exclude simply – since, in the worksheet, the user groups have been identified as a starting point, we followed the SSAB worksheet priorities. We will draw conclusions after this conversation. Since we still have about 45 minutes to go, let's use that time usefully and see how far we will get.

Next on my list is Marc S.

MARK SVANCAREK: Mark Sv, actually.

JANIS KARKLINS: Oh. Sv. Sorry.

MARK SVANCAREK: There are many Mark Ss, but only one Mark Sv.

JANIS KARKLINS: Mark Sv, please.

MARK SVANCAREK: Thank you, thank you. I had a few comments on this document. Thank you to staff for making it. I do think it's a great start, and I

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can tell that a lot of thought went into it. I don't think there's anything bizarre or astounding in it. So that's my feedback on that.

I think there are two challenges related to a document like this. One is that we're using it as the basis of designing an engineering system at the end of the day. On the one hand, it is very common to start with user groups and profiles and personas in order to build an engineering group, so it's not unreasonable to start on this basis. I think the failure of the previous PDP to use that information is because I don't think they were actually trying to design anything. I think it was just sort of a ... I'm not going to say it.

So it would be valid to start with these user groups and stuff like that. It's probably equally valid to start with the bases that attach the user groups to it. Both of them seem valid to me, as long as it's just an order of operation thing and not a way of disenfranchising certain groups by making sure they don't get attached to certain purposes.

The other thing is, though, that, within the document itself, I do think we are starting to conflate the bases and the use cases with the ultimate implementation of the system. There are some concerns that I've seen on the list and within this document about how would that be implemented. I grant you there are some interesting challenges about how some things are going to be implemented, but that doesn't mean that a user group isn't a user group. They are a user group if they have a legitimate interest in the data or a legal basis for the data.

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The implementation is just a tricky complication based on that. We wouldn't argue a group out of existence simply because we haven't figured out how to pass along consent or deal with synchronization of different display surfaces for data that's in the same database, to touch on some of the examples that have been out there. Those are real issues but not a reason to disqualify a particular user group or their individual basis. Thank you.

JANIS KARKLINS: Thank you, Mark. Alan Woods?

ALAN WOODS: Thank you. Just a few initial comments, I suppose. The first one is just what Marika put into the chat there. I actually think that the best way – well, first things first. Thank you, Marika, for the work on this, and the staff. We need to start somewhere and ultimately definitely appreciate that we have to start somewhere. And this is a good start.

So the first thing is – I think it was Volker put into the comments as well – that, in reality, there are two users groups. There's law enforcement and everybody else. I think that actually is probably in this particular moment in time as close we can go. There I would just 100% agree with what Sarah was saying, that we probably need to look at the types of data that we're looking at as well.

Most importantly, I think we need to stop looking at and trying to define the purposes of user groups because, if we're going to be – this is why I agree with Volker that it's law enforcement and

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everybody else – starting looking under 6.1F, for example, which will be – this is probably one of the reasons I got into a little bit of a back and forth on the last document. Apologies, Marika. If we keep using 6.1F – and 6.1F is going to be the majority of these purposes – it’s not about the legitimate purpose or the legitimate business interest of the user group. It’s the legitimate interest of the group in relation to the data that they are trying to see and what is the individual purpose of that particular piece of data in the context of that particular instance.

I’m coming to a very key issue that we’re going to have to discuss at length. It’s going to be heated and there’s going to be arguments in this because that is the key thing. You can’t define the release of data based on who the person is. It’s more so on what they’re asking for in what circumstance. I think that’s the first thing that this document is skipping over.

With saying that particular little bombshell, what I will also point is I just want us to be very careful as well. If we’re looking at the first in there as registrants, I do have an issue with specifically saying that the lawful basis for requesting the data is a 6.1B. Remember, the registrant is the data subject they don’t need a legal basis. They own the data, so they don’t have a legal basis. The legal basis for them is in fact the entire GDPR that is protecting their rights.

So, again, I think we’re just starting a little bit too much ahead of ourselves. We have a lot more basic legal questions that we need to ask and get answered as well before we can move into this particular aspect of it. I think we need a bit more clarity throughout

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all the teams as to what exactly we're looking at and ultimately going to be able to end up with in this particular instance.

JANIS KARKLINS: Thank you, Alan. Stephanie?

STEPHANIE PERRIN: Thanks very much. I think it does matter where we start in this business because I think that we have a great danger of having things all elided together. If you start with the concept that you are building a unified access model – I'm using the old language here deliberately – then you are building from an engineering perspective a system to provide access. That's where you get use cases and that's where you get user groups.

However, what we are actually doing, as Alan was trying to point out there, is that we are trying to implement GDPR in a series of procedures and processes and management practices that give effect to the legislative intent. Quite frankly, as he pointed out, if you approach it from a user group, it will vary, as the DPAs have pointed out to us, on a case by case basis. You can't say that all cybercrime researchers, for instance, need the same data elements from everybody. It just doesn't work. It isn't proportionate and on and on and on.

So, if we start by figuring out tasks and address what Thomas wrote in the chat a moment ago, first we have to figure out who is requesting third-party disclosure – disclosure to a third party. Somebody has to figure out who that is and authenticate them before they get to the next step. Then the request has to be

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limited and specific and all the rest of that. So somebody has to parse that request and determine whether there is a legitimate interest, and then somebody has to figure out how to actually provide the data and make sure that nothing goes awry in the passage from the door that they came in with their request to the disclosure of the data.

So those are tasks, and it seems to me that we should be looking at this from a task perspective. Thanks.

JANIS KARKLINS: Thank you, Stephanie. Alan, I think you have forgotten to take your hand down. Next is Brian.

BRIAN KING: Thanks. I'll make sure that it's not Alan's turn.

Okay. I want to say thanks to staff for putting this together. I think it's a great starting point and we need to look at it this way. I think it's clear we're talking about third-party purposes now and access that third parties need. So thank you to staff for doing that.

I think we need to bake in here the registrant user group because it seems to me that registrants need to be guaranteed in the policy that they're able to access the data. The law requires that, but why wouldn't the policy require that the registrants be able to access data that's being processed about them in the system where it's being processed. It seems to be legally sound to me. So I think we should require that.

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I may not be as familiar with the registrar accreditation agreement as the Registrar Stakeholder Group is. I don't know that it's in there, that registrants must be provided with their WHOIS data in the registrar portal, so it'd be great if we can fact-check and see if we need to do more work there or if that's already required.

We submitted comments to the list, too, about why this is a good idea. We think it's important for standardized access to be able to do as much as this verification and authentication and all that ahead of time so that the data can be accessed based on minimal additional submissions at the time that it's requested.

I think that's probably it for IPC. Thanks.

JANIS KARLINS: Thank you, Brian. Mark Sv, please?

MARK SVANCAREK: Thanks. To Alan Woods, I don't think what you said was a bombshell at all. I thought it made good sense, and actually I agree with a lot of what Stephanie says, too. So please let me clarify my previous remarks.

When we talk about use cases, I think your concept of tasks maps into that. I think, when you design a large online system and you have to accommodate various compliances with regulations like the ISO27,000 suite or something like that, you do have to design a system that understands who will be doing what and what controls there are within the system to ensure that not only are



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you compliant but you can be proven to be compliant with auditing. So I don't find that that's a contradiction at all.

To Alan's point, it is true that, if you define some large aggregate user group and then just willy-nilly sprinkle in a bunch of interests that they have, that is not going to be helpful and you are going to wind up creating subgroups within the group. So, again, whether you start with, "Here are the bases and here's how groups map to it," or if you start with the groups and say, "Here are the subgroups within them that have access to various fields," either way you're just solving the problem slightly differently. You wind up in the same place. So, as long as we recognize that, I could accept either method.

That said, we already have this document. Introducing greater granularity into it is fine with me. We could flip it on its head. I don't think that actually helps or not. But if people are more comfortable with it, certainly. I could work with it either way. Thanks.

JANIS KARKLINS: Thank you, Mark. Next is Chris from the GAC.

CHRIS LEWIS-EVANS: Thanks, Janis. I quite like a couple of the suggestions made by different people. Stephanie suggested looking at it from a task focus point. That's maybe a good way. Or just focus on natural purposes for third parties and their process and activity.

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I also quite like the idea of reducing some of the groups down, but recognizing but what Mark's just said, I think we need to be careful of – I think some of this is the advice we got from the European Commission – in the first phase is making sure we don't use different people's purposes to conflate doing so. I just think you need to be careful of that.

So I think maybe a starting point [is to] come down to the two groups. I think it was Volker who suggested initially that we all [inaudible] everyone else and then look at the purposes or the tasks and then split them into groups where the policies [inaudible] fit.

One maybe slightly in-the-weeds comment from me on law enforcement. We just need to be a little bit wary that a lot of definitions of law enforcement is people with a badge and a gun. I think that's not necessarily how it [inaudible]. There's lots of governmental agencies that have a lawful purpose for investigation of crime, and that comes down to the second point, which is – we just mentioned cybercrime here – the data is used for more just investigating cybercrime. I think that's a point Benedict raised a couple of times in Phase 1. So I'd like certainly for that to be reflected, I think, [to the Board]. Thanks very much.

JANIS KARKLINS:

Thank you. I will take now Alan Woods and then Alan Greenberg and then I will maybe make a suggestion. Alan Woods, please.

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ALAN WOODS:

Thank you. I'll be very brief. It's just that we seem to be coming back to the concept of the data subject request for the registrant as if to make it an easier process for us in this. Let's be very, very clear. I think [inaudible] some of this stuff was put into the group chat there as well. By adding this concept of another place where a person's data is being held is not making it simpler. You're adding a third party to which we'll need to answer requests because, in this instance, they're going to be a controller as well. But a data subject can go to any controller and ask then the same question, and we can't really turn around [inaudible] to them and say, "Well, actually, I'm going to defer this to another data controller." You have to answer it. Is your job and your legal obligation to the data controller. They can go to all three of them and ask exactly the same thing and they will get the answer.

So it's not actually making it easier. We're actually making it more difficult on ourselves and we're increasing the liability. It's not this concept of a problem shared is a problem halved in this particular instance. It's a problem shared. It's just another person who's going to get just as badly liable in this. So, again, be careful when we're talking about data subjects here. It is not a unifying reason for this. It doesn't help us. It just complicates matter. I think we need to be careful of that.

JANIS KARKLINS:

Thank you. Alan Greenberg, please?

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ALAN GREENBERG:

Thank you very much. When Stephanie had her intervention, she pointed out that one of the first things in actually addressing any request is you're going to have to authenticate the person, and they have to obviously have been authorized to get certain data or to be part of this overall process. So, ultimately, we're going to end up coming up with categories or something.

Now, there seems to have been a presumption in some of the people's comments that everyone in a single category gets the same data. That is definitely not going to be true. So I think this is just a convenient way of starting to have the discussion. Authentication, authorization, and accreditation methodologies will likely be somewhat very close to how these are identified here. They may not be exactly the same.

I'll point out that the legal basis for access is going to vary. We know that legal basis for E.U. law enforcement is under laws that are not even GDPR. So we're conflating all of the various purposes and rationales for access into this discussion because ultimately we're trying to build a single mechanism that will work for all cases and not have to build parallel mechanisms.

So I think this is a fine way of going ahead. There will be lots more granularity. What people end up eventually getting access to, if they get access, is not going to be solely determined by what group or category they're in. It's just a way to start the discussion. Thank you.

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JANIS KARKLINS: Thank you, Alan. Milton, and then I will propose something. Milton, please?

MILTON MUELLER: Thank you, Janis. I haven't heard anything in the discussion that pushes me away from the original comment that Sarah made, which is that we start with purposes and we see how different users fit into those legal purposes.

I thought I heard some progress from Chris, the GAC representative, in which he recognized basically the same point, saying that, fundamentally, the only useful starting point we have here is law enforcement versus everyone else because law enforcement have fundamentally different legal bases.

But I have to disagree with Alan that this is a good starting point. This is not the right starting point. This is the second step – the starting point or the purposes. As Alan and everybody else who likes these user groups have to admit, they're not uniform. They won't provide a solid basis for actually designing a system.

So what are they for at this point? They are ahead of themselves. We have to define the legal bases in which data will be disclosed. It is the relationship between the requester and the data elements, which is the point Alan made repeatedly, that matters here. So we can't use this as a starting point. This is Step 2 or 3. It's not Step 1.

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JANIS KARKLINS:

Thank you, Milton. I hear you. We will, in one minute, try to see how that may work. Let me suggest something. Many people said that we need to identify, first, purpose, and then we see who would be falling within the scope of that purpose who could then make a request. In any case, we will get to the questions of who very quickly.

This proposal that was put forward for our consideration today was simply an attempt to cluster those “who” or requesters according to very broad lines which follow common sense and the nature of conversations we have had before. But we can also go start by looking at basis for request and then try to identify who, as a requester, would fall under that basis.

But since we’re not prepared for that type of exercise, let me suggest that we take one of the proposed user groups. There is a split into E.U. law enforcement and non-E.U. law enforcement, but let us look to one of them.

If you could put on the screen the row down where there is law enforcement as a group of [researchers], let’s take first E.U. and then we can see also non-E.U. In this table, you have an identified purpose for that, and then you have also the basis. Let us start with the lawful basis from GDPR 6.1E and 6.1F. Would this be a legal basis for law enforcement to request information?

Alan? Alan Greenberg, please?

ALAN GREENBERG:

Sorry. That was an old hand.

JANIS KARKLINS:           Sorry. Volker?

VOLKER GREIMANN:       I would have to give that a no because the purposes for requesting the data are not the same as the purposes that we've discussed under the GDPR. The purposes of the GDPR are purposes for the processor and for the controller to handle and process that data. The purposes for requesting data for law enforcement are from their law enforcement, and the lawful basis is based on the local law that gives them that right to access that data. So, if we look to the GDPR as a basis for requesting the data, then we're looking at the wrong place.

Same for the purposes for requesting the data. The only purpose under the GDPR that we can look at for these is where they actually process the data. But that's outside of our realm because that's how they process the data. That's nothing we really have to concern ourselves with, other than that we have to make sure that they process it in a legal way.

So the legal basis has to be something that they can point to under law, and the purpose for requesting the data is something that has to be defined under the GDPR but is not something that flows out of our purposes necessarily.

JANIS KARKLINS:       Thank you. Chris?

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CHRIS LEWIS-EVANS: Sorry for that. Couldn't find the mute. [inaudible] obviously concerning law enforcement data, I need to have a little bit of a think of what Volker just said to process that properly. If we look at this 6.1F, obviously that very much depends on the purpose, so law enforcement are not able to use 6.1F within the E.U. if they are carrying out a statutory function. So the only time that an E.U. law enforcement person would be able to use 6.1F is if they were protecting the ground of the law enforcement. So, if someone was to use the FBI's website fraudulently or [inaudible], that's the only time that – sorry, the FBI is not a good example because they're not E.U. – they'd be able use 6.1F. So it depends upon purpose, and realistically, all local bases needed to be considered, and it needs to be linked to the purpose. So it definitely needs to be linked to that. So I think they're both relevant, but it depends on the purpose. Thank you.

JANIS KARKLINS: Thank you. Alan Woods?

ALAN WOODS: Thank you. Chris, thank you for that, but I was actually trying my hardest to find that particular reference about, if you aren't public authority, you can't use 6.1F. But you actually made a very good point and I understand where that's coming from. That's one of the reasons why user groups is an issue there. Just because you're law enforcement and you may be able to use 6.1F under that, I don't think that was necessarily what [inaudible]. I think law



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enforcement here is in the context of the prevention of the commission of crimes, etc. This is where the problem is coming in defining user groups.

My actual point, however, is that we are making it so much harder on ourselves because, again, it's not for us to decide the legal basis for a third party use or request for disclosure of data. It is up to the party requesting disclosure of the data to state their legal basis and for us to accept or not that legal basis. So, by us creating this task for ourselves, where we're trying to put into nice little boxes everybody's potential purpose, is, I think, a crazy thing. Again – this goes back to my original point – it's about the requests specifically of what data for what purpose because, again, it – actually, Chris, you pointed it out in a perfect way there. It's the sense of, just because it's coming from law enforcement doesn't mean it's a law enforcement-related [task]. There was a myriad of purposes, and depending on the request itself, it may have a different legal basis that they will then apply as being a very legitimate purpose. Again, it just seems a bit difficult [with] where we're coming from. Thank you.

JANIS KARKLINS: Thank you, Alan. Matt is next.

MATT SERLIN: Thank you, Janis. I just want take a step back here for a minute. Actually, I think it was Margie who earlier made the point that we're supposed to be developing a global policy here. It feels like we keep going back and forth between a global policy and a

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GDPR-specific policy. If we're creating a global policy, it makes zero sense to have user groups that are broken into E.U. law enforcement and non-E.U. law enforcement.

I think, actually, what we should be doing is creating user groups that are jurisdictional in nature so that you would have law enforcement from the jurisdiction of either the registrant or the service provider, the registry, and the registrar, and law enforcement that was non-jurisdictional.

So I don't think this distinction between E.U. law enforcement and non-E.U. law enforcement makes any sense in the discussion and the policy we're trying to draft here. thank you.

JANIS KARKLINS: Thank you. Brian?

BRIAN: That's a great point, Matt. I would definitely second that. I think that's a key distinction. I'd say to the group that, guys, we have a lot of work to do here. We need to think about a lot of different third-party purposes and spec those out. The investment now in doing that is really going to cut down on the 6.1F requests down the road if we can anticipate as many possible and define which ones have a legal basis and what is and to really do all that homework that we need to do. There's probably a lot of groups with a common purpose and probably more than were on this user group document.

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So we're totally on board with starting with the purposes. It seems like a good starting place. Let's establish the purposes that people might have with a lawful basis. Let's group as many of those together as possible and get some clearance that doing that is legal. I think that's really going to cut down the 6.1F requests if people can get that in a standardized way. Thanks.

JANIS KARKLINS: Thank you. Volker?

VOLKER GREIMANN: Just a brief one. While we are at it, we should be making use of the wisdom and the ideas of those people that we believe are actually in those groups that have those purposes. [Alan], why don't we go and ask the Public Service Working Group what they think the purposes for law enforcement would be and what the legal basis for making a request would be instead of us thinking what it might be when they deal with on a day-by-day basis and have to make justifications for request with other providers in other areas of the world where they need data, whereas we would have to suck it out of our funds and maybe make an erroneous assumption that we would have to revise down the road? So Let's go to the experts and ask them. Let's ask the people that have the legal expertise on that.

JANIS KARKLINS: May I ask everyone who wants and who can to put down 1,2,3, or 10 purposes that you see that we need to look at? In other words, to create this basis for initiating this conversation so we can try

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another approach. So we identify purpose, and then, after that, we identify who might be the requester, and then we will take it from there. Would that be sensible?

Marika?

MARIKA KONINGS:

Thanks, Janis. I'm actually very happy to report that a lot of work has been already been in a number of different initiatives, including the RDS PDP Working Group. I'm just posting here in the chat as well. I think, at the outset of the work that ICANN org did – on I think that was on the [inaudible] model or maybe an already temporary specification – actually went out to the community and asked everyone to identify for what purpose. Certain groups needed data. That is actually something we used as well as inspiration to build the table that we did, where we looked at all the purposes that were identified here. We had to take them up to a slightly higher level as well and approve them then to all requesters.

So I think the group should consider that one of these can be used instead of all three [inaudible]. I can just share as well, at least from the experience of the RDS PDP Working Group that that group struggled, I think, for months to define where it started. Do we start with purposes? Do we start with users? Do we start with data elements? We took a lot of time to actually, I think, come to terms with the fact that they're so interlinked that it's really difficult to do one without thinking about the other. Again, I think that's where we try to use the approach with the table, to do it at the same time because, for each of the user groups, we tried to flag

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the purposes for requesting the data and align those two. Obviously, maybe we've missed purposes or maybe we missed the lines/groups of users. That was a little of the thinking behind doing that in a collective manner instead of doing it separately.

So I just want to put that on the table [inaudible] the document, and I've put it in the chat [as an accumulation] of a lot of different groups that put forward their specific purposes. I think they also went into details of the data elements needed. Again, I think this is also a resource that we could use for the further or next steps of our work. A lot of thought has already gone into this. I hope we could find way not to reinvent or redo that work but use what has been done and where a lot of people have already put a lot of thought in moving this conversation forward.

JANIS KARKLINS:

Thank you, Marika. That means that we have already a list of purposes, I understand, from your intervention. If so, maybe we will put down those already-existing lists of purposes, which have been identified and compiled in the previous exercises to a Google Doc and see whether that may be complemented by team members. Then we would try to match the purpose and the identity of requesters and see where that would bring us any further in the conversation.

I also tend to agree that probably we need to think at the same time in three dimensions and create that matrix, first and foremost, based on [un]common sense and on our experience in the real world and how that may work if we get to that unified model or standard. But of course, we are at the beginning and we need to

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try different ways and see which would bring us to the conclusion that all of us expect.

Probably, at this point, we need to stop this discussion here. As I mentioned, we will publish the list of purposes. We will ask the team to look at them, and we will try to redesign tables based on those purposes. We will come back to that during the next meeting.

Would that be acceptable?

Okay. We will give it a try. So thank you very much. Also, probably we will stop using E.U. law enforcement. As was suggested, we'll use the jurisdictional term.

Let us now move to the next agenda item, which was Any Other Business. We started reviewing Priority 2 worksheets. We had the first call with the team members who could join us. We went through two worksheets which probably are posted somewhere now. Marika, they are posted somewhere?

MARIKA KONINGS: Sorry, Janis. What is posted?

JANIS KARKLINS: Those two worksheets that we worked on in the first call.

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MARIKA KONINGS: We didn't want to distract from what we're discussing today, so they're going to be posted immediately after the call for people to review.

JANIS KARKLINS: Okay. The next call to review worksheets on [inaudible] and data retention is scheduled for the 12<sup>th</sup> of June, as you see on the screen, and then the 17<sup>th</sup> of June for two other worksheets. These dates have been suggested based on also my availability and the availability of staff, so that's why they're not strictly scheduled on Tuesdays and Thursdays only. But I took note of the remarks on the chat that we need to stick with Tuesdays and Thursdays as the days for calls, and we will try to accommodate that to the extent possible.

Any comments on this? If not, then I will ask Caitlin to recap the action items that we agreed on during the call.

CAITLIN TUBERGEN: Thank you, Janis. I captured the following action items. First, the support staff will update the working definitions based on the input received from the EPDP team during today's call. Second, each group is to nominate one representative for the representative legal committee and let the Chair know the nominee by the next meeting on June 12<sup>th</sup>. Within two to three hours after this call, support staff will work with the Chair to produce a one-page synthesis of concerns and questions the team wishes to provide to the Council regarding the GNSO/Board resolution. All [full] submissions will be annexed to that synthesis page. We'll post

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that by tomorrow, Friday, the 6<sup>th</sup> of June, and the team will react only if there's violent disagreement with the concepts rather than editing the document itself.

The team is to review the Priority 1 worksheet on a standardized system for access and disclosure by tomorrow, Friday, June 7<sup>th</sup>. Support staff will edit the document based on the suggestions and provide it to the team by Tuesday, June 11<sup>th</sup>. Lastly, support staff will put the previous list of purposes into a Google Doc, and team members can add to it. Then we can take the list of purposes and match it to requesters. We'll revert to this at the next meeting.

Thanks, Janis. Back over to you.

JANIS KARKLINS:

Thank you, Caitlin. Any disagreement?

I see none. I also want to say that, for personal reasons, Steve Crocker couldn't make a presentation during this meeting, but I contacted him and he would be ready to make a presentation during the next meeting on the 13<sup>th</sup> but at the second part of the meeting. So I will factor that in and will propose that presentation on June 13<sup>th</sup>.

With this, I thank you very much for your inputs in the conversation and wish you a good rest of the day. This meeting stands adjourned.

**[END OF TRANSCRIPTION]**