
ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Thursday, 19 March 2020 at 14:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, good evening, and welcome to the GNSO EPDP phase two team call taking place on the 19th of March 2020 at 14:00 UTC.

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

Hearing no one, for the first hour, Matt Sirlin will join as the RrSG member and then he will need to drop off and Sara Wyld will remain on as the RrSG member for the remainder of the call.

All members and alternates will be promoted to panelists for today's call. Members and alternates replacing members, when you sign chat, please select all panelists and attendees in order for everyone to see the chat. Attendees will not have chat access, you will only have view only access.

Alternates not replacing a member are required to rename their line by adding three Zs to the beginning of their name, and at the

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end in parentheses, their affiliation, dash, the word “alternate,” which means they 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 chats or use any other Zoom room functionality such as raising hand, agreeing or disagreeing.

As a reminder, the alternate assignment form must be formalized by way of the Google link. The link is available in all meeting invites.

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now.

Seeing or hearing no one, if you do need assistance, please e-mail the GNSO secretariat. All documentation and information can be found on the EPDP Wiki space.

Please remember to state your name before speaking. Recordings will be posted on the public Wiki space shortly after the end of the call.

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

JANIS KARKLINS:

Thank you, Terri. Hello everyone, welcome to the 47th meeting of EPDP team, and as usual, the first question is, can we approve the agenda of the meeting?

I see Amr's hand up, and then James. Amr, please go ahead.

AMR ELSADR:

Thanks, Janis. I don't have a question or a comment about the agenda. It was mainly about the use of the Zoom webinar which we're using for the first time today. Just a quick question, I hope the answer might be helpful to everyone. I followed the link in the ICS file, the invitation for the call, and I got in as an attendee, not as a panelist and was then upgraded to a panelist, I'm guessing by the hosts, probably by Terri.

I was wondering if I did something wrong and if there's a link that I should be following that gets me into the webinar as a panelist immediately so we don't have to bother staff with this. Thanks.

JANIS KARKLINS:

Yeah, I followed the same procedure, but Terri, could you answer that question?

TERRI AGNEW:

Certainly. Amr, you should have received a separate e-mail invitation from Zoom. Do you recall receiving that?

AMR ELSADR:

Yeah, I did, Terri, and there were invitation files, calendar files that I downloaded from that e-mail, and I followed a link from my calendar to join the Zoom meeting. I thought that was what I needed to do in order to join as a panelist immediately.

TERRI AGNEW: Okay. Amr, do you mind sending me the Zoom information that you received? And I'm going to go ahead and follow up with it. And Milton, I see you have the same issue as Amr as well. So as soon as I can get that resolved, I'll send out information to everyone as well. Thank you, everyone.

AMR ELSADR: Thanks, Terri.

JANIS KARKLINS: Thank you. But it is nice to be promoted, right?

AMR ELSADR: Always, Janis.

JANIS KARKLINS: James.

JAMES BLADEL: Thanks, Janis. I'll be brief. I just wanted to make a statement for the record that last week, Stephanie asked for an extension to the public comments. Or this was Tuesday, not last week. It seems so long ago. I didn't have any strong feelings one way or the other. however, I wanted to note that I was personally disappointed with some of the responses regarding the impact to our timeline. I thought Stephanie made a good faith request, and I think it's

important to keep some perspective that what people are going through.

I don't know Stephanie's situation, I don't know anybody's situation, and pushing folks hard at a time like this, if we jeopardize our schedule by missing a comment period, just imagine if half or two thirds of our members were to suddenly disappear or resign.

So I just want to point out some perspective and a little bit of sensitivity to requests like that in the future would be great. Thank you.

JANIS KARKLINS:

Thank you, James. I think we agreed last time that we would keep original comment period, 24th of March for initial report, but we would allow those who would like to provide comments on initial report together with comments on addendum to initial report. They can do it by May 3. I think this was much more than Stephanie was asking. And we would review all those comments to the extent possible, but we would try to keep our suggested timeline and work towards 11 June as publication of final report.

So, can we confirm this understanding?

JAMES BLADEL:

Yes. Thanks, Janis. I'm fine with all of that.

JANIS KARKLINS:

Okay. So I maybe will consult with the staff what would be the right way of doing it to make it clear to everyone, whether in form of blog or just explanation. So it will go up this week. Good, so no amendments to the agenda, so we will follow agenda as suggested.

Housekeeping issues, update on the work of legal committee. Becky, the floor is yours.

BECKY BURR:

Thank you very much. The legal committee met yesterday. We reviewed the advice that we got from Bird & Bird which will be on the question of accuracy and reliance on representations regarding consent of individual data subjects whose information may be contained in the registration data of a legal person. The memo laid out a variety of approaches that might be taken and the risk associated with each of those approaches. So that will be coming around.

We also reviewed the other accuracy issues, and Matt and Brian are doing some slight modification on that, and that will be coming to plenary as well. And finally, we discussed the benefit of perhaps getting Bird & Bird's review of the automation use cases that are under consideration. We did not have full representation yesterday during the meeting so we were unable to conclude any of our decisions, but we are attempting to get everybody up to speed via e-mail so we can move these things forward to the plenary.

JANIS KARKLINS: Thank you, Becky, for this update. Any questions to Becky in relation to update on legal committee activities? So I understand that legal committee next time meets on 25th of March. Am I right?

BECKY BURR: Yes. We have a contingency date penciled in. if we resolve all of the issues and move them to the plenary via e-mail, then we may not need to have that meeting on the 25th.

JANIS KARKLINS: Which means that we can expect deliverables for consideration of the 26th March meeting.

BECKY BURR: At the latest.

JANIS KARKLINS: Good. Milton, your hand is up.

MILTON MUELLER: This is a question for Becky. My understanding is that the GNSO council has decided that the accuracy issue is out of scope for the EPDP, but we still have questions about accuracy in there being sent to B&B. Is that correct?

BECKY BURR:

Not necessarily, Milton. We did have a question regarding the ability to rely on representations about consent. This was a question originally posed by SSAC. That was sent to Bird & Bird a while ago. We received the input, and so what we'll be circulating is that advice plus a summary and the various options that they laid out with the associated risks.

It's accuracy at some level, but it's really more about consent with respect to personal information about natural persons contained in registration data for a legal person. There were some other accuracy issues and we noted that the GNSO has determined that this is out of scope. They had indicated however that they wouldn't mind having the answers to the question. And we were not able to reach closure on this, Milton, because we didn't have an NCSG rep at the meeting yesterday so we did not take any final action, obviously. But the view was, given the GNSO's interest in having the answers to those questions, it might make sense to send them out to Bird & Bird anyway and that it's possible that NCSG's in principle opposition would be modified given the clear understanding that this is not in scope for the EPDP.

MILTON MUELLER:

Okay. Yeah, we never objected to the question about the consent in legal-natural. I thought that was a good question. And again, as long as there's an understanding that sending the other questions, the accuracy questions, does not bog the EPDP down in those issues, that that is for future reference, that's fine. Just wanted to make sure that that's clear to everybody.

BECKY BURR: Thank you, Milton. That's absolutely right.

JANIS KARKLINS: Yeah, and also, I see Berry's comment in the chat room in relation to GNSO council decision. Please read that. So thank you, Becky, for the update. Looking forward to receive the input from legal committee for 26th of March.

MILTON MUELLER: Sorry, Janis, so Becky just said that the council did declare it out of scope and Berry says that they did not. Can we clear that up?

JANIS KARKLINS: Rafik, could you clarify?

RAFIK DAMMAK: Yes. The GNSO has decoupled it from the work currently [inaudible] the EPDP and it will work on that later on. The council acknowledges it's an important topic, but it needs more work at the council level and to see what's the best approach to deal with it. [inaudible] out of scope. It will work on the scoping anyway.

JANIS KARKLINS: Thank you, Rafik. Brian?

BRIAN KING: Thanks, Janis. I can clarify, but I think Rafik just did. I would like to clarify though that the question on accuracy should be sent to

Bird & Bird but that council has asked us not to continue further work on that once we receive the answer. Thanks.

JANIS KARKLINS:

Thank you, Brian. So with this clarification, can we move on to the next housekeeping item? And that is answers to ICANN Org questions on cost estimate. So maybe I will ask Berry to walk us through. From my side, I can say that the small group met twice and reviewed the initial draft proposal, and so Tuesday we went over half an hour and we reached the end of the text. No further changes or comments have been submitted. From my side, I take that as well taking into account that we are not giving nothing more but our best guess or estimate. So for me, the answers are ready to be sent out to ICANN Org for cost estimate.

Berry is not willing to have a minute or glory, he said that I said already everything for him. Good. So here we are, the document has been circulated, no comments have been received. May I take that this is the document we would wish to submit to ICANN Org for further reflection and processing? Marc Anderson.

MARC ANDERSON:

On this, I think time is of the essence so we need to send it to staff, ready or not, and I'd like to request that we encourage staff if they have follow up questions to send it to us and that we should [inaudible] respond to staff as quickly as possible. Thank you.

JANIS KARKLINS:

Thank you, Marc. Your sound was not overly good. Maybe you can check. But indeed, yes, if we will receive any follow up questions, we will review them and would discuss and provide further input. But for the moment, I think the document is ready to be sent out. Good, so then let us move to next agenda item, and that is purpose two.

Where we left last time, we heard from board liaisons about board consideration of the issue, and then we had a brief conversation and there was prevailing support to follow board input. And since some time has passed, maybe I can ask again, is there any need for clarifying what's the board input? Based on board input, we have developed preliminary recommendation. That is now displayed on the screen, that reads that EPDP team recommends that following purpose be added to phase one purposes, which formed the basis of the new ICANN policy, contribute to the maintenance of security, stability and resilience in domain name system in accordance with ICANN mission.

So in the meantime, we have received two inputs, one from NCSG and one from IPC, and maybe we would start by asking these two groups to talk about their input. Brian?

BRIAN KING:

Thanks, Janis. I would encourage us to stick with the language that we I think all can probably live with in the plane SSR language there. I think that gets several of us equally unhappy and maybe that's where we have consensus. I think if we can live there, I'd rather not snatch defeat from the jaws of victory here on purpose two.

However, if we have to for some reason do something different, I proposed an option there. But I would really just encourage us to take the language that we all can I think kind of live with. Thanks.

JANIS KARKLINS: Thank you, Brian. I have Amr's hand up from NCSG. Please go ahead.

AMR ELSADR: Thanks, Janis. As suggested in our contribution to the Google doc, the NCSG is not happy with this formulation of purpose two. It seems far too vague. I think we're basically being asked to sign a blank document where contractual provisions will be added after we sign it.

We don't have a common understanding of what is SSR within ICANN's mission, and so just wording the purpose in this manner could result in disputes over what it means when it comes to implementation time. And technically, if that does happen, then it will have to be referred back to the GNSO council. The GNSO council might refer it back to the EPDP team and we're going to get caught in some circular sort of scenario.

I think if we want to, as an EPDP team, make this recommendation, we need to have this common understanding of what is involved in SSR within the ICANN context. And like I said, on Tuesday, we need to nail down what the specific processing activities are and who the responsible parties for each one may be. Thank you.

JANIS KARKLINS: Okay. Thank you. Alan G.

ALAN GREENBERG: Thank you very much. The ALAC policy group discussed this yesterday and we're willing to live with the language that has been proposed. I will point out the irony of the fact that the IPC pointed to the .eu statement which uses accuracy as its justification. But that is providing accurate data. But irony notwithstanding, we're happy with the wording proposed.

JANIS KARKLINS: Okay. Thank you, Alan. Volker?

VOLKER GRIEMANN: Thank you. While I still have my misgivings about the specificity on this, we have said from the beginning that this is a purpose that not us should be defining but those that actually have to live with that purpose, i.e. ICANN Org. If that is the board's impression of what this purpose is, we're happy to accept that. If it turns out that this lacks specificity and is an invalid purpose that cannot be relied upon, then that's a problem that ICANN Org will have to deal with down the road, but it's not our problem anymore. Thank you.

JANIS KARKLINS: Thank you. Becky?

BECKY BURR: Thank you very much, and I appreciate all of the input. I understand the concerns that people are expressing, but I just wanted to say security, stability and resiliency are at the core of ICANN's mission and there are provisions in the bylaws that will help us be precise when those issues arise.

JANIS KARKLINS: Thank you, Becky, for clarification. Amr, please.

AMR ELSADR: Thanks, Janis. Speaking for myself, not on behalf of NCSG, I think if ICANN Org would basically do what Volker just said, if they would explain to us—in principle, I agree, they're the ones who need to be identifying what the scope of their activities in the context of SSR need to be, and if ICANN Org could brief us on this, then we could formulate a more well informed recommendation in terms of purpose two. That would be great. I think that would be fantastic. But we haven't received that input.

If ICANN Org is willing to provide this in a timely fashion so we can move forward, I think that would be an elegant solution to this and we might even possibly reach full consensus on a purpose two recommendation which we've, so far, since the beginning of phase one, failed to do. But again, in the absence of more specificity, I just think this is really too vague for us.

I think if you asked any one group within this EPDP team what the meaning of this recommendation is, you might get a different answer. So moving forward to implementation, that's going to be a nightmare, and I can only guess what that will mean for contracted

parties and registrants trying to figure this out in the future as well.
Thank you.

JANIS KARKLINS: Thank you, Amr, though I just understood from Becky that all three terms have been clearly specified in bylaws and bylaws is the constitution of ICANN. It shouldn't be difficult to say what that means if that is in the constitutional provision.

AMR ELSADR: My understanding of the use of SSR in the bylaws is that the bylaws are clear that security, stability and resiliency-are part of ICANN's core mission. But I don't recall any part—and I might be missing this, but I'm pretty sure I looked over this more than once. I don't see any actual scoping of what SSR means in the bylaws. I think probably the most comprehensive explanation of that in the bylaws might be the explanation of the scope of the SSR review, but that's a different section in the bylaws. And even that seems kind of brief to me. But the sections of the bylaws that stipulate that SSR is a core part of ICANN's mission, SSR DNS that is, I think it's just a mention, just something that is in the bylaws. It says that, yes, SSR is part of ICANN's mission but doesn't go into too much detail explaining what that means. Thank you.

JANIS KARKLINS: Then I understand that if ICANN Org would provide clarification, for instance next Tuesday, and then if that clarification would be satisfactory, then NCSG would go along with the recommendation?

AMR ELSADR: Well, I would say that that would be an important step towards us nailing down what we need to recommend very clearly in our final report. So yes, I think that would be a great step forward in terms of reaching this consensus. Thank you.

JANIS KARKLINS: Thank you, Amr. So I have four hands up at the moment, and I would like to ask ICANN Org whether that would be feasible, what Amr is asking. and for the moment, I have Brian, Milton, Hadia and Becky.

BRIAN KING: Thanks, Janis. I only raised my hand to note that Becky wanted to get her hand in, and she's probably the best one to answer that question anyway. So I'll yield to Becky. Thanks.

JANIS KARKLINS: Yes. Becky, please go ahead.

BECKY BURR: Thank you. I just want to be clear, security, stability and resiliency of the Internet's unique identifier system is not a mission, it is the mission of ICANN. And I understand that the bylaws are not a task list, but there are a variety of different ways in which that comes up. It's not security, stability and resiliency-of the world, it's not security, stability and resiliency-of the internet, it is security, stability and resiliency as that term is understood within ICANN's

mission. And I'm not entirely certain that that will—the precise use of that data may change from circumstance to circumstance and from time to time, but in every case, ICANN would be called upon to make the case that the use of the data—and ICANN as a controller would be responsible for defending the use of the data consistent with its security, stability and resiliency mission and also not disproportionate to the individual rights that may be affected.

So it could be research, it could be investigation, it could be any number of things, but I think that we spent, I don't know, two years in the transition process making sure that ICANN's mission was narrowly tailored, enumerated, and not exemplary. And that is why the board feels that the manner in which this purpose is expressed, as was suggested by the commission, is appropriate.

JANIS KARKLINS: Okay. Thank you, Becky. Milton, followed by Hadia, Stephania and Thomas.

MILTON MUELLER: Yes. So the mission of ICANN is about the security, stability, not, as Becky said, of the Internet. It is not about the security, stability and resiliency-of society, god knows. It is about the security, stability and resiliency of the DNS in particular. And what you have to do, the mission does not give you a sweeping mandate for any kind of data collection that you like. And also saying that that's your mission doesn't mean that you don't have to conform to the law.

So what data needs to be collected in order to fulfill this mission and collected by whom? By ICANN or by third parties? So most of the people that I hear wanting this expansive definition of purpose two are actually talking not so much about SSR of the unique identifier system or even about ICANN's mission; they're talking about protecting their own intellectual property rights, which actually don't necessarily have anything to do with the SSR of the unique identifier system. Although they may be legitimate and lawful purposes, they're not related to the SSR of the DNS.

Or I hear the cybersecurity things in which people may be talking about stability or security of the overall Internet. And again, those are good and laudable purposes, but they're not ICANN's mission, nor are they necessarily justifying any kind of data collection that you like. We all know that you can collect and expose data in unlawful ways that actually are quite helpful to certain legitimate purposes. If law enforcement can randomly break into people's houses, they will probably find certain kinds of criminals, but we have rights protected in certain ways so that they can only do that under certain circumstances.

So when we are pushing back against this broad definition of mission as somehow justifying third party access to data, that's our main concern, is that we're simply—this is not really related to ICANN's mission, this is related to third-party purposes. And we have to be very clear about that. That's all.

JANIS KARKLINS:

Thank you, Milton. Hadia followed by Stephanie and Thomas.

HADIA ELMINIAWI: Thank you, Janis. I just wanted to note that I cannot see the logic behind Amr's question. I don't know really what he's asking for. The SSR, as Becky mentioned, is ICANN's core purpose for existence. And what that means is specified in the bylaws.

Section 1.1(b) of the mission says ICANN shall not act outside its mission. So if we're afraid that ICANN gets involved in something it shouldn't get involved into, well, the bylaws also say that it cannot do that.

Amr I think maybe is referring to a list of tasks or something like that, and I don't think we did that for any of the purposes. Maybe we can try identifying some processing activities, but then again, this really adds nothing. Thank you.

JANIS KARKLINS: Thank you, Hadia. Stephanie followed by Thomas and Alan G.

STEPHANIE PERRIN: Thanks very much. I actually want to pick up on Hadia's last point. The NCSG has been fairly vocal all along that we needed a privacy impact assessment for all our processing activities that we are within scope of this project. And the reason that we have been pounding the table for that is not to be a broken record simply but to get ICANN to put on the table the precise nature of its responsibilities with respect to the data.

Now, [inaudible] always gets annoyed when I say that ICANN is a regulator or a quasi regulator, but in fact, ICANN was set up to be the regulatory oversight for an industry, namely the DNS industry. Right? And that constitution is too vague to be relied upon to describe the actual roles and functions that ICANN has as a quasi regulator.

So I fully support Amr's request for more specificity. Unfortunately, we are so far down the track now that we will have to take some considerable time to review that if they do emit a precise statement of its role, because the vagueness about ICANN's role as a data controller/data processor has hounded us since the beginning of this exercise. So quite frankly, they are very much a controller if they're the only body that has access to the escrow data, and they are supervising the transfer of that data to another registrar, for instance in the event of a collapse of an entity.

They are very much performing that role if they are looking at personal data in the context of reviewing accuracy, but none of these things are clear and set out. The constitution is deliberately vague, and the fact that there's a line in there saying that they cannot act outside of their narrow remit is helpful in terms of keeping the remit narrow, keeping them out of content for instance, but it's not very helpful for data protection purposes. This is why you do the PIA. Thank you.

JANIS KARKLINS:

Thank you, Stephanie. Thomas followed by Alan G.

THOMAS RICKERT:

Thank you very much, Janis, and hi everybody. As I wrote in the chat, let me be clear: this is not something that we would die in the ditch over. However, we do have concerns that there's a lack of specificity as others have pointed out earlier. I think that we should be cognizant of the fact that if we leave the language as it is, it might be illegal/invalid to be included on an as is basis in the privacy statement to be presented to data subjects. But it is exactly what needs to happen when this is operationalized. i.e. the data subject needs to be able to understand exactly what's going to happen with their data.

So I think that the points that have been mentioned by Becky and others, research or other concerns, need to be spelled out, and I think that it's for those who want to preserve this purpose, that they should actually break down what is missing. As I've said in earlier calls, I do think that we've covered pretty much everything that we need to cover in the other purpose, so the question is what is missing. And if we can specify what's missing, let's draft that into a purpose that is probably much narrower than what we have on the table at the moment. Then I think that many of us will be able to support it.

If that is not a suitable way forward, then I think we should understand that this language actually says, "Shall be added to phase one purposes which form the basis of the new ICANN policy."

So this is the way that I understand the European Commission's comment, that this is not verbatim the purpose that shall be used but that it is the basis for a new policy spelling out the purposes. So I think that the commission—but I'm not here to speak for the

commission—would expect us to go to a greater level of specificity and granularity when writing down the purposes. And that, I think, can be done if those who want to preserve this purpose actually want to put flesh to the bones and come up with narrower suggestions.

And again, we're not going to die in the ditch over this one, but we would much appreciate more narrow purposes that we can for sure support. Otherwise, I think we're making this entire report vulnerable because we might get criticism for lack of specificity. Thank you.

JANIS KARKLINS:

Thank you. I think we have tried already in the previous exercises to specify, and every time, we couldn't reach consensus on the specificities because someone argued one way, someone argued another way. So in those circumstances, the best way is to zoom out and then to be as general as possible, and so this is the way that board sort of is suggesting.

Maybe it would be useful if Berry could put on the screen different formulations that we have worked on while we will be listening to other interventions. I have Alan G, Margie, and Georgios, in that order.

ALAN GREENBERG:

Thank you very much. Janis, you just said part of what I was going to say, that we're going around in circles. I think going back to our first or second meeting, or certainly the first face-to-face meeting, we were arguing over whether you should have a specific list. We

can go back and put a specific list in. It's going to have to be as examples because it can't be exhaustive, we can't predict exactly what's going to happen next item that we need to address issues that are critical to ICANN.

The European Union proposed these words, if I understood it. Maybe Georgios can clarify that. And I think it's as good as we're going to get. And as much as we want unanimity, I think we have to move on. Thank you.

JANIS KARKLINS: Thank you, Alan. Margie followed by Georgios.

MARGIE MILAM: Hi. Yeah, Alan said a lot of what I way saying, is that we've already gone down that road to try to be specific and got extreme amount of pushback. But the main objection I hear from Thomas and from Milton and Amr is the legality of it. So if that's the question, let's send it to Bird & Bird and ask them whether it's specific enough to suffice under GDPR. Once we get that answer, then I think we can reassess whether anything needs to be done. But I suspect that Bird & Bird is likely to support what the European Commission has said in their letter, so I think if the question is a legal question, let's make it a legal question but let's not assume it's illegal simply because we don't like the way it's worded.

JANIS KARKLINS: Thank you, Margie. Georgios.

GEORGIOS TSELENTIS: Yes. I want to, just one more time, repeat the reason why we suggested this wording. The reason is that we didn't believe that there was an issue regarding the first part, which was whether ICANN has a role according to the bylaws. It was because of the second part that was initially suggested and was conflating the purposes of ICANN with the purposes of the third parties.

Upon removal of this, we don't have an issue—and I'm speaking here as European Commission—on whether ICANN has a role in this. I understand that other members of the group want now to go dig down to more details. This is not exactly what we—because we have agreed to a level of consensus at this time, if all the people want to reopen the discussion from the beginning, we can do so, but I wanted to clarify our position regarding how the purpose is written now, the suggestion which is on the table. Thanks.

JANIS KARKLINS: Thank you, Georgios, for clarifying commission's position. So I have two further requests for the floor, and maybe then we could draw the line and I would make a proposal. Amr followed by Mark SV.

AMR ELSADR: Thanks, Janis. I just wanted to track back to something Margie said a little earlier. Margie said that we had already tried to go through this exercise and we didn't come up with anything in the past, but that is not my recollection at all.

My recollection is that when this was being discussed as part of phase one—and this was relatively early in phase one, I think it was possibly around October or November of 2018—I recall the NCSG holding the same position, and at the time, Kurt who was chairing the group opted not to go down that road and not to try to investigate the details of what that means.

We brought it up on calls, we brought it up on the mailing list, and if I recall correctly, Kurt did send a long e-mail explaining his rationale on this. So I'll try to dig that e-mail up in the archives and share with the rest of the EPDP team, but I just wanted it on the record that I don't think it is correct that we tried to do this in the past and failed. I think we opted not to try, and again, you're opting not to try again now. Thank you.

JANIS KARKLINS:

Thank you, Amr. Hadia, is it an old hand or a new hand?

HADIA ELMINIAWI:

It's a new hand. It's a quick comment. I just wanted to say that actually, what happened during phase one, we wanted actually to put the—not only the ALAC, but the ALAC and some other stakeholder groups wanted to put the paragraph that the EC sent that it's conflating purposes.

And actually, during phase one, what NCSG and other stakeholder groups agreed to was the [first part,] and most of the negotiations were with regard to putting the second paragraph or not. And now that we're willing—so I want to say that the BC, the IPC, the ALAC, and maybe some other groups as well, wanted

more specificity. And during phase one, we negotiated a lot and spent a lot of time on purpose two because we wanted the specificity. But now we are all willing to compromise and not get the specificity in order to go ahead and have the purpose, [and we assure you] that the processing activities related to the purpose would cover the requirements of the end users, the BC, the IPC, though they're not specified.

And [we assure] also that certainly, no processing activities not within ICANN's remit will happen, because also, this is covered by ICANN's mission and bylaws. So actually, [inaudible] Margie's suggestion of sending this to Bird & Bird, I don't see the reason for wasting such a time and sending it out for legal advice. We had the EC saying this is what [we have commented,] and I don't think the European Commission would comment something that is actually legally not permissible. Thank you.

JANIS KARKLINS:

Thank you, Hadia. I thought that you're the last one. Brian in the meantime has raised his hand. Then Brian is the last one. Brian, please go ahead.

BRIAN KING:

Thanks, Janis. I also think that we're on pretty sound legal footing here given that this came from the European Commission after analyzing what we put together in the first phase, and I think we don't need to send it to Bird & Bird, but certainly, if there's doubt as to whether this is going to hold up legally, I absolutely would support Margie's suggestion to send it. Thanks.

JANIS KARKLINS:

Thank you. I think European Commission would not put out any suggestion which would not be cleared by the commission's legal department, so that's clear. I think that the statement of European Commission is something that should be considered as legal by default.

Look, what I see is that all but one group can live with the text, and one group is not satisfied for the moment because it's not specifically detailed. So I understand that there has been a number of attempts in the past to negotiate detailed list of tasks and it appeared to be impossible, at least until now, to agree on that type of list. But maybe the kind of clarification that would be provided by ICANN Org would more comfort NCSG, and I would see that we should not try to negotiate that clarification, but if ICANN Org could provide clarification, that would be added to the report simply as ICANN Org clarification. So that would be statement from ICANN Org and that would be drafted under their responsibility.

So this is what I would like to see happening here for next Tuesday. And if that will not fly, so then I do not see any way but to put the proposed text in initial report, and we would put very clearly note that NCSG did not agree with that. And then since for the moment NCSG does not provide any specific wording that would satisfy them as a group but also would address all the specificities and sensitivities of other groups, so then probably NCSG would have time during the comment period to work out and make a proposal for the final report that we could then

examine. But this is only if clarification of ICANN Org would not comfort NCSG.

So that would be my proposal, and I see that there are two hands up, Eleeza and Becky, in that order.

ELEEZA AGOPIAN: Thank you, Janis. We're happy to answer any questions that we receive in writing. I just wonder if you can clarify, because I'm not quite sure we caught what you meant by a statement from ICANN Org. Is that on how SSR is defined in the bylaws or on the purposes? I'm sorry, it was a bit hard to follow.

JANIS KARKLINS: Yes, this is unclear, this is too general, and what does it mean from ICANN Org perspective since this is the proposal coming out from the board. Becky.

BECKY BURR: Yes. I think perhaps the best way that we can do this is to provide some more information on the meaning of security, stability and resiliency within ICANN's remit, and perhaps to provide a few examples of circumstances in which that data processing by ICANN would be within its mission.

JANIS KARKLINS: Yes. So with that understanding, then would that be possible to provide that clarification by Monday, end of business, that we could address it during Tuesday's meeting since Tuesday meeting

is the last one before we put out the addendum for public comment? Eleeza, would that be possible?

ELEEZA AGOPIAN: We will certainly try to get it to you by then.

JANIS KARKLINS: Okay. Not to me, to the team.

ELEEZA AGOPIAN: I mean to the team.

JANIS KARKLINS: Thank you. Okay, so then we will do— so let me repeat once again, we will try to—by providing additional clarification from ICANN board on the meaning of SSR that potentially could comfort NCSG and NCSG could join other groups in this broader statement of purpose. So we will try to get that next Tuesday. If that will not be possible and NCSG will not be able to join other groups on this proposal, then we would put the current proposed text in the initial report—addendum to initial report, and NCSG will have—and we will put a note that NCSG did not join or did not agree with this draft recommendation, and NCSG will have until May 3 to propose alternative that we would examine as a part of the comments to the addendum of initial report. So that is what I'm proposing. Amr.

AMR ELSADR: Thanks, Janis. Could I ask for you to clarify again what it is we're being asked to do by Tuesday of next week? Thank you.

JANIS KARKLINS: No, not you, ICANN Org.

AMR ELSADR: Oh, I thought you said NCSG needed to do something by Tuesday.

JANIS KARKLINS: NCSG for the moment do not propose any wording, and this [what you'll write,] and I said that you will have until May 3 to propose wording that would in your opinion satisfy you but also others.

AMR ELSADR: Okay. Thanks, Janis. I appreciate that.

JANIS KARKLINS: Sure. Okay, so let us move then to next agenda item, and that is addendum to initial report. We have something on the screen, and I will ask staff to walk us through.

CAITLIN TUBERGEN: Thank you, Janis. I wanted to note that the addendum that you see on the screen follows a very similar structure to the initial report, however, of course, it's much shorter in length, but it does include similar language in terms of the summary of the group's

working methodology, their use of the legal committee, the charter questions implicated, etc.

The main body of the addendum includes the text from the worksheet that we've been going through since the initial report has been out for public comment. So as a reminder, that includes the topics listed in the addendum, but city field redaction, data retention, feasibility of uniform anonymized e-mail addresses, etc.

I'll note that that text has been previously signed off on all of the topics except for purpose two which we've discussed today and might need to be amended following the receipt of additional information on Monday, and also, there's a status summary of the legal versus natural issue, so we'd ask that the team take a look at that text.

In terms of the next steps for this addendum, we'd ask that the team review the text, and similar to how we have operated previously, we'd like groups to flag any text that you cannot live with for the purpose of publishing the addendum.

And again, I'd like to remind everyone that the majority of the text except for purpose two has been text that the group has signed off on during the time that the initial report's been out for public comment.

We'd like to request that the group flag any items they can't live with by Monday close of business, that way the team can review the cannot live with items during the next meeting on Tuesday March 24th before publishing the addendum. And we were planning on publishing the addendum on Tuesday Marc 24th.

JANIS KARKLINS: Thank you, Caitlin.

CAITLIN TUBERGEN: One more quick note, Janis, to address one of the comments in the chat from Sara. We will provide the PDF document in Word format for ease of the group's review, but we'd like to note that the PDF document will have the line numbers, so please reference those because that's the authoritative reference in terms of the line numbers. Sometimes the PDF messes up those numbers when we do the conversation. Thank you.

JANIS KARKLINS: Thank you, Caitlin. If it is clear, I think there shouldn't be any cannot live with because all items except purpose two have been agreed in past ten days, so should be fresh in memory. But anyway, any questions on the homework?

So I don't see any. In that case, it is so decided, and staff will publish or send both versions to the mailing list as soon as we're done today with the call.

Let us now move to next agenda item, and that is clarification for proposed SLA processes. So before going to Volker and Mark SV, maybe I will ask staff to refresh our memories why this agenda item is on the agenda.

CAITLIN TUBERGEN: Thank you, Janis. I'd like to note that during the last face-to-face meeting of the EPDP team, Mark and Volker worked together to propose an SLA process to be included in the initial report for public comment. They walked the team through that and there were no objections to putting that proposal in the initial report for public comment.

However, based on some subsequent conversations, there seemed to be some confusion about what was included in the initial report, and Mark and Volker had agreed to provide a little bit more context in terms of what was suggested being that they were the originators of that text.

JANIS KARKLINS: Okay. Thank you. Mark SV, Volker.

MARK SVANCAREK: I nominate Volker.

VOLKER GREIMANN: Happy to answer any questions, but I think we have nothing more to add at this point. Right, Mark?

MARK SVANCAREK: That's correct. We think that this document is comprehensive and represents both our groups. So if you have any specific questions about what's in it, we're keen to answer them but I think the document stands alone as it is. Thank you.

JANIS KARKLINS: Yes. I understand that. Nevertheless, for the sake of clarity, it would make sense to maybe in a few sentences explain the rationale and proposal.

MARK SVANCAREK: Okay. I'll go ahead.

JANIS KARKLINS: Please.

MARK SVANCAREK: Previous SLAs that you may have seen in agreements are of the form, "Something shall happen at such a rate," 90% of the time or 80% of the time, or something like that. And when Volker and I looked at the problem that we're effacing here, namely a lack of concrete knowledge about how many requests there'll be, how complex those requests will be, and the various capabilities of different contracted parties, we didn't see a way to get to a consensus using the old format of 90% of things will have this timing and 85% will have this other timing. We just didn't see a way to come up with something in that format that everybody would agree with.

So we're trying something really new, and the fact that it's new, I think, raises some concerns. "Why is this new?" And also makes it harder for some people to get their heads around it because they're accustomed to a previous format.

So what we're doing here is looking at mean times of requests, and the idea is that over some period of time, some cadence of review, each contracted parties will attempt to achieve a mean time level of response. So if you're able to answer most of your responses—and remember, these are yes or no responses, this is not a quota for yes answers versus a quota for no answers or something like that. This is just about how fast are you able to give the answer, regardless of what the answer is.

So if someone is able to respond quickly in most cases, then whatever the outliers are will have only minimal impact on their mean time responses. And if someone is always slow, then a few really long outliers will kick them over the line. So that's the intent that we have here, is to incentivize as much quick response as possible while not penalizing in cases where some requests are more complex than others.

So we decided that this would roll in in two phases. One would kick in six months after implementation, the other one would kick in six months later, so 12 months after implementation.

In the first phase, it's very informative. The gateway will send out an alert when a contracted party is not achieving a five-day target, and that alert indicates that they should work with ICANN to determine what are the root causes and determine if there's some sort of a systemic problem or whether this was an unusual collection of events.

And there are similar concepts in the other SLAs in the agreements, I think, already, this concept that you work with ICANN to figure out what is the root cause and how to resolve it.

So there's considerations like my entire compliance team quit or somebody attacked Dyn and now there's a million requests or something.

So you can have these discussions with ICANN and determine whether this is a systemic problem that is going to happen again or whether it's an outlier. And this continues to happen over the six month period, and then at the 12-month period, a second form clicks in, and that's a second target which is a ten-day target.

So you're still working towards the five-day target. That's what you're always trying to achieve. But if your times start drifting into the ten days, now you might be subject to some sort of a sanction. So things to keep in mind: in the first form, the first six months, there's no sanction, there's just discussions. In the second six months and thereafter, you still have that five-day discussion period, but now things start getting serious if you can't achieve the ten-day goals.

I used a random number generator and just generated a bunch of numbers. So these are just made up numbers. Ten contracted parties, the ones on the left are the most responsive and the ones on the right are the least responsive, and I just picked a random number of 22 requests during the period of time. That was simply because I dragged down the rows in an Excel spreadsheet and it stopped at 22. So that could be any number at all.

So you can see what the mean times are for the various parties. In the first form, where we have a five-day target which leads to a discussion, you can see that contracted parties one, two, three and four have all achieved their five-day target so there's no

further action required. The gateway doesn't issue any alerts, nobody has to contact anybody.

For contracted parties in this example, five, six, seven, eight, nine and ten haven't been able to achieve their five-day target, so now they need to have a conversation with ICANN to figure out if this is an unusual set of events or whether this is a systematic problem that needs to be resolved.

And you'll notice in this case that contracted party ten can't even make the ten-day target, but in the first phase, the ten-day target is not treated any differently.

So that's what happens in the first six months. In the second six months, here's another set of random numbers. You can see contracted parties one, two and three are still achieving their five-day target, so there are no alerts, no one needs to talk to anybody. Contracted party four, five, six and seven, they're over their five-day mark so they still have to have that conversation with ICANN to determine what is the root cause, and then we see that eight, nine and ten can't even achieve the ten-day target, so now there's some consequence to that, to be determined.

In all of these cases, there are escape clauses similar to other SLAs for extenuating circumstances, and hopefully that verbiage is clear and acceptable to everybody. So there should be some level of accountability in the system, I hope, but there are also escape hatches for when things are just out of the control of the contracted party. And we expect that we will learn more about the system over time and whatever oversight committee that we put in

place here will have the ability to reevaluate whether five and ten are even the right numbers.

Okay, I see some questions here. Please go ahead.

JANIS KARKLINS: Thank you. The first is obviously this is the guidance for implementation rather than policy, because that is based on policy proposal that we have put in the initial report.

MARK SVANCAREK: Well, I've only been through one implementation, and I have concerns about anything this complicated being left to implementation. So if we don't have a pretty strong agreement on this in the policy recommendation phase, I can't possibly imagine that I'll get anything back that I could agree to in the implementation phase. I have strong concerns about that.

JANIS KARKLINS: No, but I mean that this would be not as a policy recommendation but the implementation guidance.

MARK SVANCAREK: How binding is that? Well, again, I've only been through one implementation. I would have concerns about that, so I'm open to discussion from other people who have more experience. I guess I would leave that question to Volker. Why don't I hand it over to Volker?

JANIS KARKLINS: Yeah, let's take Volker now. Volker, please.

VOLKER GREIMANN: Yeah, okay. First, one general point, then I'm going to answer the question as good as I can. One thing that is, I think, [inaudible] point for us here is that this is, in all stages, still a cooperative project, because the extenuating circumstances may lie within the registrar but also may lie without the registrar.

For example, if you have two registrars of equal size and one gets double or triple the amount of requests, then naturally, they might be a bit behind and that's because that's something that Compliance might look at as a reason. That's why we also had in there the recommendation that statistics be created and looked at across registrars, so Compliance has a tool at hand to see how natural certain issues are and what they may lead to.

Ultimately, I saw this as implementation advice as in a recommendation how an SLA could or should look like, but of course, there might be some deviations as ICANN Compliance looks at how to operationalize this and have some of their own input there depending on how Compliance works and how Compliance would see themselves addressing this.

So I think while this is a directional hint, there might be variations in certain details that might be ironed out in the IRT. Same to the second question, simply because there may be so many factors that we have not taken into account yet. This was basically spitballed in an afternoon and then refined in another e-mail back

and forth over the course of less than a week, so there might be some use cases that we've dropped or that we haven't seen. So basically, it's something that we would leave up to the IRT to see how this SLA can be operationalized.

Potential modifications, we don't know how many requests we're going to get, so if we find that the request numbers are simply too high from the perspective of registrars' ability to respond in a timely fashion, then we might have to look at changing the time periods that we currently looked at. These five and ten days, they're basically numbers that we drew out of thin air just to have some numbers in there that makes this something that we could look at and analyze, because otherwise, it wouldn't be very concrete. But we might find out that these numbers are either way too high or way too low, and that's something that could be part of a later review process that might flow into this SLA as a process that we haven't defined yet. Also up to the IRT.

Breach of the SLA would not necessarily be a breach of the RAA. That just means that this SLA might carry different penalties than the breach of the RAA might carry. That's the only thing that we meant by that.

And the propose collaboration is basically ICANN reaching out to the registrar, "Look, you're not meeting your five-day target, what's going on? Can you tell us what's going on, or is this a temporary thing or are you expecting to come back in line with the expected targets? And if not, how can we help you do that?"

It's supposed to be a cooperative process to help the contracted parties to come into line with the expected output so they can

meet their targets, and if they're not meeting it, finding out what's going on and how that might best be changed.

For example, Compliance might have some hints from other conversations that they had previously. They might see that none of the registrars are meeting their targets or this registrar being the only one not meeting their targets, and depending on that, their response might vary.

We haven't looked at any possible sanctions or how this process might look like, we just wanted it to be a cooperative process, not the standard, "You're not meeting your targets, here's your penalty." That's not what we're looking at. We want to have this as a process that's workable and that can be fixed and made workable if there's some indications that parts of it might be broken. That's what we intended when we drafted this.

JANIS KARKLINS: Okay. Thank you, Volker, for this explanation. Clear, at least to me. Marc Anderson, Alan G and Mark SV.

MARC ANDERSON: Thanks, Janis. Again, I want to thank Mark SV and Volker. As I said before when they came up with this at our LA face-to-face, I think this is very innovative and clever approach to dealing with SLAs. I think it provides tools for Compliance to deal with bad actors but is not overly restrictive that good actors making a good faith attempt to meet SLAs will be penalized by this. So again, kudos to Mark SV and Volker for this. I think this is good work.

I do want to note, the numbers are—so there is some work remaining for us on this, and that is that the actual SLA numbers for the wave one and wave two SLA [inaudible] have not been agreed to by the group. I believe those are just placeholders that Volker and Mark SV came up with, and there's also, I think, one of the questions that was included in the initial report. [And maybe Mark SV is in here, he can] confirm that my understanding is correct there.

As much as I like what Mark SV and Volker came up with, this is the one question in the initial report that I had personally gotten the most questions on from people not understanding. So without having Mark SV and Volker to explain it, I think this one's a little bit difficult to understand from somebody just picking up the report and reading it with no background. So it is a little difficult to understand, so I think it's worth us trying to spend a little bit of time here, especially as we consider whatever public comments we get for feedback on how to make this clearer, particularly for the implementation team. So I think that's worth us spending a little bit of time on.

And just to note, of the questions that I've gotten, for a number of people it was not clear that the wave one and wave two SLAs are cumulative, so a number of people thought that the wave two replaces the wave one rather than them being cumulative, which is confusing and not clear.

So just my two cents on that one, but generally, I think this is a good proposal from Mark and Volker, so thank you both for your work on this.

JANIS KARKLINS: Thank you, Marc. Alan G, please.

ALAN GREENBERG: Thank you. To start, I would like to say I strongly support this and thank Volker and Mark for putting this together. Although this is an innovative way of measuring performance within our environment, it's not particularly uncommon to use means and medians, and even standard deviations as a measure of performance and how the systems are working in general. So I think there's good background behind it even though it's innovative in our environment.

To answer specifically the question, should this be policy, I would strongly object to this being put in as policy. As we move forward, we may well find that a more traditional SLA is in fact what we need once we understand the dynamics and understand how this is working, and I would not want to have to go back to a policy process to change that or even to make a tweak in this, have three tiers instead of two.

So I think we need to lock this in right now and not make it subject to implementation other than operational things that may prove to be difficult to implement going forward in the actual implementation. But I think we need to essentially say the concepts and overall thing we're describing here is as if it was policy. It's not going to be arbitrarily changeable by the implementation group, but it needs to be changeable going forward without reopening policy development processes.

So I think we need a new concept, strong implementation guidance or I don't know what the right word is, to say this is how we're going forward. To address one of Mark's points of the five and ten were not agreed to, I don't think we're going to have the basis for knowing that five and ten is worse than four and nine or 12 and three, or whatever the right other numbers could be. So I think five and ten is as good a place to start at this point. Unless the contracted parties have a visceral negative reaction to it, I would say go ahead with these numbers and be nimble enough to adjust them as we go forward. Thank you.

JANIS KARKLINS:

Okay. Thank you, Alan G, and thank you for supporting that. That may get entrance in the final report as implementation guidance. Mark SV, your hand is up.

MARK SVANCAREK:

Thank you. Thanks, everyone, for the great feedback. I've been hearing a lot of great ideas, both about how this could be adjusted or what the concerns are that we could maybe explain better. So thank you all for that. I just wanted to make two points. One is that the numbers that are in here right now, yeah, they're arbitrary. I really don't like them, I wish they were shorter. Volker felt like we could probably work with them, so I accepted them. That's okay. I don't think the exact numbers that are here or the exact numbers that come out of implementation are really the important part. I think the important part is that we have a way of objectively measuring performance within the gateway and that there is a level of transparency to those numbers. Like I should be able to

see my own numbers, Volker should be able to see his own numbers.

I think there should be some sort of aggregate public database where everybody can see the aggregate numbers. So objective, transparent, and some level of accountability. So when we say, "Might not be a breach of RAA," that's where the escape clause is because we don't know everything that's going to happen yet.

On the other hand, there will be some sort of consequences, otherwise, what was the point? And that brings me to my second question, which is as we go through this, we will need to work very closely with ICANN Org to develop something that they can work with. So when we say work with ICANN Org because you can't achieve the five-day target, I was under the impression that there was already similar language in like the WHOIS Port 43 SLAs. Maybe I misunderstood that.

But if such a concept is impossible for ICANN Org, then a lot of this has to be reconsidered, so we're looking for ICANN Org to be a collaborator in these proposals because we can't put something forward that they—we can't say they're going to participate if they can't participate.

So we would like to get feedback from them both in terms of, "It would be more practical if you adjusted it like this," or, "I simply cannot perform that function, you have to go back to the drawing board." It would be good if ICANN Org should provide that information sooner than later. So ICANN Org has already been giving us some feedback that this is new, we need to adjust this, stuff like that. We need to keep having that conversation, and as

we get through policy recommendation into IRT, we want to make sure that we have an agreed upon role for ICANN Org in this, otherwise it will be unworkable as intended. So thank you.

JANIS KARKLINS:

Okay, thank you. And once again, Volker and Mark SV, thank you for putting this together. I think this conversation today was very informative and certainly helpful for all of us, and I hope that staff may use the transcript, and once we'll be working on the draft final report, we can use the transcript to put also the explanation that was given during the call in the text apart from the one that you have provided in writing.

So with this, I think we could move to the next agenda item, which is the last one, and that is confirmation that our next call will be taking place next Tuesday.

We have homework. I also would like to remind about evolutionary mechanism. Please think about it, and if you have something, some ideas, please come forward. We discussed last time that there might be three kind of clusters of issues that we need to address, and that is terms of reference, modus operandi and composition.

So please feel free to submit whatever you want if you wish so. Otherwise, I ask staff to put something in writing for our convenience to kickstart the conversation next Thursday on this topic.

So with this, I would like to thank all of you for active participation. The document addendum to initial report will be circulated as soon

as we're done with the call, and please feel free to provide any input if you wish so.

Thank you very much, and in absence of further requests for the floor, I would declare this meeting closed. Have a good rest of the day. Thank you.

TERRI AGNEW:

Thank you, everyone. Once again, the meeting has been adjourned. Please stay safe and remember to disconnect all remaining lines.

[END OF TRANSCRIPTION]