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**ICANN Transcription**

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

**Thursday, 23 January 2020 at 1400 UTC**

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TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the GNSO EPDP Phase 2 team meeting, taking place on the 23<sup>rd</sup> of January, 2020, at 14:00 UTC.

In the interest of time, there'll be not 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 Chris Disspain (ICANN Board), Julf Helsingius of NCSG, and Tara Whalen of SSAC. They have formally assigned David Cake and Rod Rasmussen as their alternates for today's meeting. Alternates not replacing a member are required to rename their line by adding three Z's to the beginning of their names, and, at the end in parentheses, their affiliation-alternate, which means you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click Rename. Alternates are

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not allowed to engage in the chat, apart from private chat, or use any other Zoom room functionalities, such as raising hands, agreeing, or disagreeing. At a reminder, the alternate assignment form must be formalized by way of the Google link. The link is available in all meeting invites towards the bottom.

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

Seeing or hearing no one, if you do need assistance with your statement of interest, 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 circulated on the mailing list and posted on the public wiki space shortly after the end of the call.

A quick side note before I turn it over to Janis. I did hear it's James Bladel's birthday today, so happy birthday, James.

Thank you, everyone. I'll turn it over to Janis Karklins. Please begin.

JANIS KARKLINS:

Thank you very much, Terri. Good morning, good afternoon, good evening, everyone. Let me join everyone in congratulating James on the occasion of his birthday. I hope that, at the end of the meeting, we will be able to give you a birthday gift, James, in the form of the agreed-to model for SSAD.

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Wishful thinking aside, let me ask whether the proposed agenda that has been circulated to the list would be acceptable with the understanding that the purpose building block discussion that was suggested by the BC group would be taken under Agenda Item 6.

I do not see hands up. I take that as this is decided. Let us move to the third agenda item. That is housekeeping issues. I will start with asking Becky to brief us on the outcome of the Legal Committee meeting and see whether we have agreement to submit a bunch of questions to outside legal counsel. Becky, please go ahead.

BECKY BARR:

Thank you, Janis. We received comments from NCSG and from the Registry Stakeholder Group. The EPDP team met on Tuesday and went over the questions and discussed the input, which was questions and objections to the questions. There was one question that had no objections, but, otherwise, there were objections to all of them.

We went through each of the questions, and the conclusion of the Legal Committee was that I probably hadn't done a very good job of explaining exactly why we thought that the questions and the answers at this point would be useful. So we've circulated internally – and we'll circulate to the entire team after this group – an explanation. We have a summary of the questions regarding each question, the rationale that was provided to the EPDP legal team, and the conclusions from our discussions on Tuesday.

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With respect to the reverse lookup, the Registry Stakeholder Group queried whether this was out of scope, and NCSG suggested that this was. The Legal Committee thought this was still relevant because the question of reverse lookups is in – it's bracketed ... There's a proposal to prohibit reverse lookups in the draft report. That is bracketed. So we still think that that is a relevant question.

We suggested two proposals for moving forward on this question. The first is that I believe Thomas Rickert raised a point of order with respect to whether this was in or out of scope. Our understanding that it is in the Chair's authority to rule on that.

The alternative – if the plenary just decided to remove the bracketed language and leave the subject open for further discussion – would also be a way forward.

Janis, do you want to discuss these substantively or do you want me just to run through the explanations on each of these?

JANIS KARKLINS:

I want us to know what is the recommendation of the legal team. Are you recommending that questions as formulated by the Legal Subcommittee should be sent out?

BECKY BURR:

We do recommend that it be sent out, but we note that there is a point of order that needs to be ruled on. The Legal Subcommittee also says, if the plenary agreed to remove the bracketed language, then we could wait and get [inaudible].

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JANIS KARKLINS: Okay, thank you.

BECKY BURR: Umm—

JANIS KARKLINS: So – yes, please?

BECKY BURR: Go ahead.

JANIS KARKLINS: No, no. I wanted to know if you have finished. Then I would take it from there.

BECKY BURR: I'm finished on Question 1.

JANIS KARKLINS: Okay. So please continue then.

BECKY BURR: Okay. Let's go to Question 2. Again, the Legal Committee did not – this is the privacy proxy and pseudonymized e-mails – receive any comments on that. So we proposed to send that to Byrd & Byrd for review.

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Question 3 is the legal versus natural persons question. NCSG objected to this because, on the grounds of the outstanding policy question should be decided and answered before seeking further legal advice on the topic ... In particular the issue is that Recommendation 17 permits but does not require the contracted parties to differentiate. It calls on ICANN to undertake a study on the cost feasibility and incidence of such differentiation. NCSG's position is that, until that study is done, we shouldn't pursue this.

The Legal Committee actually thinks that, in order for ICANN to carry out the recommendation in Phase 1 regarding cost and feasibility, it is actually important to understand the answers to the questions that we've asked. So we continue to support sending this forward.

We just note that we've tried to narrow the scope of these questions to the maximum extent. We've asked specific questions and we point specific aspects of the existing legal advice. Just note that all of these questions really are focused on clarification of the existing and it's necessary to understand that to move forward.

Moving on to Question 4—

JANIS KARKLINS: Yes, please. Then we will take all of them together.

BECKY BURR: Okay. Question 4 is on the territorial scope. Byrd & Byrd provided some legal guidance on the territorial scope of GDPR during

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Phase 1. We note that two significant events have occurred. One, there has been a major European Court of Justice opinion that has language that could be interpreted as being relevant here. Two, the European Data Protection Board finalized its guidance on the territorial scope, although we do note that there were not major changes in that. It is now finalized.

We acknowledge that the Phase 1 recommendation permits but does not require the contracted parties to differentiate and note that the Board, in accepting Recommendation 16, directed the CEO and org to discuss with the Phase 2 team the merits of a study to examine the feasibility and public interest implications of such distinctions. The Legal Committee believes that, given the Board's note on accepting this legal advice, we think that a confirmation about what the implications of these two events would be is important. We note that we have asked very specific questions highlighting the specific sections of the guidance that we are seeking clarity on.

Question 5 ...

JANIS KARKLINS: Yes, please. Go ahead.

BECKY BURR: ... is on WHOIS accuracy. The NCSG objected to seeking further guidance on the grounds that previously-provided advice, along with the [ICO] guidance cited in the memo, were sufficient to have a clear understanding of the accuracy principle.

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The problem is that there is confusion and a request for clarity regarding some very specific language in the Byrd & Byrd memo relating to relevant parties relying on third-parties to confirm accuracy. This goes back to the fundamental question that we have about who's entitled/who the accuracy principle is intended to be for the benefit of.

The conclusion here was that we could use additional clarification on Byrd & Byrd's recommendations or language regarding relevant parties and that we need to understand who might be included in the group of third parties on whom a relevant party could rely on and what would their role be under GDPR. In other words, would they be processors or controllers? Finally, we concluded that it would be useful to have concrete guidance from Byrd & Byrd on what practical steps should be taken in order to meet the reasonable standard that was identified.

We note that, while Recommendation 4 did not propose to change the accuracy requirements under the current ICANN contracts and consensus policy, the Phase 1 Working Group noted that the topic of accuracy, as related to GDPR, was expected to be considered further.

In light of that note, as well as the earlier discussions on liability and responsibility and the question of who's implicated by the accuracy principles, we still think that the answers to these questions would facilitate resolution of open issues.

Question 6 ...

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JANIS KARKLINS: Yes, please.

BECKY BARR: Oh, that was it, I guess.

JANIS KARKLINS: That was it. Okay.

BECKY BARR: Yes. So we did go over all of these. We considered the objections that we received. The conclusion of the Legal Committee was that it was worth asking these questions.

JANIS KARKLINS: Thank you, Becky. The Legal Committee meeting was in full, right? Everyone was present?

BECKY BARR: Yes. All of the—

JANIS KARKLINS: All groups.

BECKY BARR: All groups were represented.

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JANIS KARKLINS:

Okay. With this explanation, I would like to see whether the team as a whole is in a position to endorse the recommendation of the Legal Committee and send all five questions to Byrd & Byrd for comments.

When it comes to the first question on reverse lookup, I understand that we do not have agreement on that particular topic. I think, since we're talking about releasing an initial report, it would be wise to indicate that, on that particular topic, we do not have agreement within the team and we would seek the guidance of the broader community to comment on the initial report. So that would be my feeling, but it's not yet a ruling.

I have two hands up: Amr and Alan Woods, in that order. Amr, please go ahead.

AMR ELSADR:

Thanks, Janis. Becky, thank you for that summary. I think Becky did a really great job of summarizing where our view is coming from. So thanks for that as well.

If we're going to deal with these topic-by-topic, I'll just address reverse lookup from now. Speaking for myself, I think Option B presented here is the more reasonable one. Believing that this topic is out of scope of the EPDP, I think that applies equally to whether the EPDP recommends that reverse lookups be allowed as well as prohibiting them. So I think either/or is out of scope of what we're doing. That's why I think Option B would be a more appropriate option for us to take. So I think our initial report, and,

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subsequently, our final report should not include a recommendation allow it or to prohibit it.

If this is something that we believe that a future PDP needs to deal with, then this might be something we might want to mention. We could say that the EPDP team considered this issue and determined that it was out of scope to provide a recommendation. Just a note to the GNSO Council that any future policy development process that kicks up the number of different policy issues – for example, [DNS] generation RDS PDP, which was suspended or terminated; whatever PDP picks up the many issues that that terminated PDP was meant to address – address this as well.

So I think that would be the most appropriate approach. I also think it would be the most sufficient one since we're already really tight on time and getting bogged down in something that we don't believe is in scope of our work. It just seems like a terrible waste of time to me. Thank you.

JANIS KARKLINS: Thank you, Amr. Alan Woods, please?

ALAN WOODS: Thank you very much. First and first, I think I would like to, I suppose, echo what Amr just said there in relation to the first question. I think that B is a correct choice in this one, just purely because – I must somewhat disagree with just putting that question out to the community – I think that the whole point of this is saying it's not in scope. Therefore, if we put that question out for

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the community, the response we're going to get is going to be very clearly those are in favor of this additional, non-existent thing of reverse WHOIS lookup [than] those who are not. So I think removing it completely and leaving it for, as we said in our submission, future policy work is probably the most prudent way. We can probably close down a rather contentious issue on that one as well.

I have two other, I suppose, very brief questions. Obviously, I just want to say thank you to the legal team. I know – I want to preface this about everything I say – we always appreciate that it is a difficult time and the time that is spent on that is important. One of the outcomes of this and, again, seeing this document and seeing the wonderful [inaudible] that you have done, Becky, is that I'm still not sure as to why we're asking these questions. For instance, when it comes to the policy that we've already stated, we may differentiate between legal and natural people. That is a policy, and I don't understand how something – a confirmation of a legal question which we all know to be true ( that GDPR does not apply to legal persons – is going to affect the policy that we're creating. I just seems like we're thinking more with our wallets and not with our head in this. We do not have unlimited resources here. There are better things that we could be doing.

I will just [inaudible] by saying, of course, that we're never going to get a legal opinion where they say, "Is this correct? ... Yes, this is correct." It'll always have some element of that there are ways and means in which this could be interpreted in A and interpreted in B. Again, I said this the last time (again, it's probably good to put it on then record): we do not necessarily want Byrd & Byrd to feel like

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we're questioning their legal advice. There is that one element where [we're] saying, "In light of certain ECJ rulings." Fair enough. But again I ask the question as to, what is this going to add to our deliberations? Or is it just going to be another legal opinion which we just don't agree on? Again, that's my caution. I accept that you've gone through this effort. I just wanted to get it on the record that I still have some misgivings in relation to [601 numbers]. Thank you.

JANIS KARKLINS: Thank you, Alan. Should I understand that you're objecting to submit Point 1 and Point 3?

ALAN WOODS: To be honest, we've done our objections with relation to our comments. If we've been overruled, we've been overruled. As long as it's on the record that we find some issue with that, that's fair enough.

JANIS KARKLINS: Okay, thank you. James, please?

JAMES BLADEL: Thanks, Janis. I guess I agree with Alan and Amr on Question 1. I question the utility of putting something like this out for public comment because I think what we're going to get is a lot of responses on, for example, how useful reverse search is for conducting research or espionage or whatever people are using

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this tool for. So, if we do put it out for public comment, I think we should focus the comment not on the utility of such a function but on whether or not it is determined to be in scope or not.

I guess I agree with where Amr and Alan were going, that out of scope is out of scope. That means endorsement and that means prohibition. If we're going to not include it in this discussion, then that means we would remove the prohibition and essentially just note that it's out of scope for this PDP and we'll reference it for future work. Thanks.

JANIS KARKLINS:

Thank you. But we can think also from the other side. There are groups in the team who argue in favor of reverse lookup because it is a useful tool to do research and tracking criminal or elicited activities through domain name registrations.

What the Legal Committee is asking, in essence, is whether reverse lookup is compatible with the provisions of GDPR. If reverse lookup appeared to be not compatible, then we have a very clear argument saying maybe it is good, too, but it is incompatible with GDPR. Hence, it should not be put in the initial recommendations or final recommendations.

But, if the answer is it is compatible or it is compatible under certain conditions, then we can engage on whether this should be considered further within the scope of this activity or as suggested within the scope of a different PDP sometime in the future.

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So, personally, I would see no harm to ask questions on the compatibility of reverse lookup with the GDPR. But it's not my decision. It is the decision of the team.

Alan Greenberg, please?

ALAN GREENBERG:

Thank you very much. First of all, I want to thank the legal team for the effort and care they've put into not only drafting the questions of Byrd & Byrd but answering the questions from this group. I'm a little bit overwhelmed with the detail and care that they've put into this. So thank you.

In terms of the reverse lookup, Janis, you captured part of what I was going to say. This is a function which used to be provided by third parties. It is no longer possible for third parties. It, as you've described, has certain utility. I think it would be foolish to not get clarity on the law to the extent we can at this point. We have legal counsel retained. They are people who are expert in this area. It may not be as high-priority as some of the others, so we don't need an answer for next Monday, but I believe we should take the opportunity to do this.

I believe it's really disingenuous to say a future PDP can address it. We know, with the load on the GNSO, we're not likely to have a PDP on this one subject. The next PDP on RDS is likely to be a long time from now. So I think it's rather foolish to not take the opportunity to get some clarity to the extent we can at this point. Thank you.

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JANIS KARKLINS: Thank you. Becky, your hand was up and I do not see it any longer.

BECKY BURR: This was just a general point in response to Alan. I think the point that is being made is that, if we're just searching for a different legal answer than the one that we've already gotten, that is probably not a very effective way to spend the legal budget here. But we did talk about this very specifically, and the view was, in each question, what we were really looking at was clarification and very specific questions about the advice we have already gotten. That's not entirely relevant to this, but just as a general matter, we do agree that just trying to take another bite of the apple is not a useful way to proceed. Our conclusion was that what we were looking for was specific clarification on specific points of the advice we've already received.

JANIS KARKLINS: Thank you. I understand Alan G's hand is the old one. Amr, please?

AMR ELSADR: Thanks, Janis. Just a quick response to Alan's last comment. I appreciate that there's likely not going to be a PDP coming up dealing with the RDS issues anytime soon. I never imagined that that would be the case, but I am hoping that there will be one eventually, not just limited to this issue but a number of other issues that I believe are very important, including, in my opinion,

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issues pertaining to, for example, internationalized registration data, which we have not touched upon in our work here.

There's a bunch of RDS issues that we're not scoped to deal with, but, to me, taking advantage of the opportunity of having access to Byrd & Byrd right now is not enough of a reason to go ahead and do so. Again, I don't think we should be working outside of what the GNSO Council has mandated us doing. I also don't believe that we should be wasting our time dealing with issues that we can't eventually provide meaningful recommendations on. But also I would like to see the resources we have dedicated to this process remain dedicated to issues that are important to our immediate mission.

So, with whatever comes up in terms of RDS policy development in the future, I can't imagine that they will not also deal with issues of addressing legal questions. This could very well be one of them. When the time comes, they should take charge of this, as well as identify it within their own budget as requiring to deal with it, not ours.

JANIS KARKLINS:

Thank you. I do not have further hands up, as far as I see. We did not hear anyone commenting or objecting to the submission of Question 2 on privacy proxy and pseudonymized e-mails, Question 4 on territorial scope, and Question 5 on WHOIS accuracy. So may I take it that the team is in agreement to send at least those three questions out?

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Okay. On the first question in relation to reverse lookup, I still feel that there is no consensus. Therefore, I don't see a need to spend further time in trying to convince each other to and some kind of common platform. There is disagreement, both on form and on substance. Therefore, I would not pursue even questioning about this any further. I'll leave it on the table for the Legal Committee if circumstances will evolve. Then we may come back to this question.

On the third question on level versus natural, I would like to see whether, in light of the discussion that we had and commentaries and the information provided by Becky and commentaries during the conversation, I can take that this question – legal versus natural – also can go to Byrd & Byrd for legal advice?

No hands up, so this also goes. So Caitlin – Amr, your hand is up?

AMR ELSADR: Yeah. Thanks, Janis. Sorry. Late hand.

JANIS KARKLINS: Yes, please.

AMR ELSADR: Before I address this, I just wanted to note on Question 1, because I'm not sure if you're keeping track of the chat, that I think there is a growing consensus to proceed with Option B. At least both the IPC and the BC, I think, have actually expressed support

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for Option B. So I was just wondering if it's being considered in your determination of consensus.

On the legal versus natural issue – I think my comments for that topic are the same as for the geographic distinction topic – I'm just wondering how wise it is to send questions. Okay, they are relevant legal questions that would be nice to have answers to, but, from a cost effectiveness perspective, again I'm just wondering whether getting the answers to those questions is going to help us or not because, to me, the determining factor on these questions or not legal. They're more policy issues. So, even if we get responses from Byrd & Byrd saying, "Yes, it's all well and good. It's all compliant with GDPR. You can go ahead and do this," I still think we have outstanding policy issues that the answers to these legal questions are not going to resolve.

So, again, is it worthwhile to spend the time and the resources getting answers to these questions, or would it be a better use of our time to work on reaching consensus on issues that we can? Thanks.

JANIS KARKLINS:

Thank you. No, I'm not tracing the chat because I'm on my phone and not in my office where I can do multiple screens. Addressing your concerns about the legal budget, if my memory serves me well, we have spent 30% of the funds allocated to legal questions. We are hopefully have reached about two-thirds of the road or time necessary to develop policy recommendations. So I think we have funds to ask those questions and to pay for it, but whether that is needed or not, of course, is up to the team to decide.

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The Legal Committee, which is representative and consists of representatives of all groups here represented on the team, recommended to submit those questions. That's why there's also my question on whether we should or not. In any case, policy recommendations that we're working on will be better informed from a legal point of view if we will get that legal advice from Byrd & Byrd.

I have now Laureen's hand up. Laureen, please go ahead.

LAUREEN KAPLIN:

Just briefly, since you don't have the benefit of the chat, I wanted to echo the comments that are being made, while freely admitting that I'm a lawyer and perhaps biased in this regard. The whole point of asking these questions is to help us be more efficient in our policy discussions. That is the very reason we want to ask them. So, while I well understand that the legal advice will not resolve the policy question, it certainly will help us be more informed and considered in our deliberations.

JANIS KARKLINS:

Thank you, Laureen. Milton?

MILTON MUELLER:

I think we're not fully appreciating the relevance of what Amr is saying. Certainly, if there is doubt about whether a policy decision we want to make is legal or not, we need legal advice.

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On the issue in particular – geographic differentiation – we don't have any doubt about what the law tells us, really. What we want to know is, is it our policy to differentiate or not? If we decide that we don't want to differentiate on policy grounds, I don't see what any legal opinion is going to tell us what would prevent that. At the most, it might tell us that we cannot try to geographically differentiate, but I doubt that that would be the case. It certainly cannot tell us that we must differentiate geographically. So why do we need a legal question to decide this policy issue? I think that the point Amr is making. And that could be the case with other ones.

I think what we're afraid of is that people are trying to find some kind of a legal rationale to tilt the policy decision one way or the other. I think that that's a stalling tactic which is increasingly inappropriate in what is supposed to be an expedited PDP. We just need to come to grip with the basic policy decisions that we have to make that we know that there is not agreement on some. We're not building agreement by hunting things off to lawyer and pouring over legal details that really, in the end, don't affect the policy decisions. That's all. Thanks.

JANIS KARKLINS:

So then I understand that you're not objecting only to Question 3 – legal versus natural – but also Question 4? Am I right?

Amr, could you confirm that?

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AMR ELSADR:

Yeah, Janis. Thanks. I can confirm that, yeah, this argument is applicable to both the territorial scope issue as well as the legal versus natural one, for different policy reasons. But there are policy reasons why the NCSG at least would not support the recommendations being proposed in terms of differentiating based on territorial scope or a legal versus natural scope. In that case, irrespective of what responses we get back from Byrd & Byrd, I don't think that will change our position because the legal question is not then issue for us here. Thank you.

JANIS KARKLINS:

Okay. So that leaves us with the two questions. I do not want to entertain further this conversation. We're 40 minutes in on the first subpoint. There is opposition. There's no consensus. The [world] is not ending. We still have a few months to go. The Legal Committee can, again, review those objections and recommend taking it off the list.

So, for the moment, I hear that we can send, as a team consensus proposal, Question #2 on privacy proxy and pseudonymized e-mails on #5 on WHOIS accuracy. The rest still needs further conversation in the Legal Committee or during the face-to-face meeting, where then we need to decide whether we entertain further discussion and the Legal Committee on those topics. So that would be my proposal. I hope that everyone can live with that.

So, Caitlin, please then send out Question 2 and Question 5 to outside legal counsel. Thank you.

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Let us move to the next subitem. That is the ICANN follow-up on the Belgian DPA response to the Strawberry letter. The issue was raised by Marc Anderson. He asked two questions: is ICANN expecting an additional communication on the Strawberry letters, and would ICANN like feedback from the EPDP team before it meets with the Belgian DPA?

My – Amr, your hand is up. Is it an old one?

AMR ELSADR:

No, Janis. This was a new one. I actually wanted to ask, before moving on from the legal questions, whether we're going to discuss the question on accuracy or not. I don't think that we have. Thank you.

JANIS KARKLINS:

The floor is open to discuss every issue. If you want to discuss accuracy, please go ahead.

AMR ELSADR:

Thanks. Apologies. I thought we were taking them question by question. I just wanted to point out, because I felt like Becky's summary of the NCSG's views were really spot-on, except maybe on the accuracy question, that I wanted to clear that the NCSG's concern with this question is that the way we read GDPR, the way we read the legal advice we've already received on accuracy, and and the way we read the guidance provided by the ICO is that accuracy is really a right of the data subjects. It's also very much

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linked with the right to rectify the data subjects' information, which is held by controllers or processors.

But, in the ICANN context, accuracy is more of a burden on the data subjects, not a right. In the ICANN context, accuracy is something that a registrant might be penalized for if the registrant doesn't provide accurate information.

The NCSG's concern is that all the questions and then the responses we received and now the follow-up to these questions is all directed towards seeing whether third parties can be a tool to enforce accuracy requirements to which contracted parties and registrants are obliged. So the questions aren't so much directed towards establishing the rights of the data subjects and how the data controllers or processors might fulfill those rights. It seems more geared towards how third parties may benefit from this and to what extent registrants may be punished as a result of it.

So I think the whole way the questions are phrased – the desire for follow-up questions – is really inappropriate and a waste of time. Thank you.

JANIS KARKLINS: And you are objecting to the recommendation of the legal team?

AMR ELSADR: Yes, I am. Thank you.

JANIS KARKLINS: Thank you. Alan Greenberg, please?

ALAN GREENBERG: Thank you very much. GDPR makes it very clear that data must be accurate for the purpose for which it is being processed. That includes the third-party access. We provide third-party access to be able to contact a registrant. Therefore, accuracy is required. We are significantly reducing the number of possible contact bits of information we have from before, and the work we have done in the past indicated that accuracy is a problem and contactability is a problem. I think this question is completely relevant to our work. Thank you.

JANIS KARKLINS: Thank you, Alan. Laureen?

LAUREEN KAPIN: Thank you. I would like to echo Alan's comments and also point out that even the information commissioners' guidance – here I'm quoting – talks about third parties. The more important it is that the personal data is accurate, the greater the effort you should put in to ensuring its accuracy. So, if you are using the data to make decisions that may significantly affect the individual concerned or others, you need to put more effort into ensuring accuracy. That's also consistent with the GDPR provision that Alan was citing and referencing.

So I think this really points out that we can benefit from legal guidance on this point. I would hope to be able to persuade my NCSG colleague that these questions, which actually have been drafted and redrafted as a result of discussions within the legal

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team to make sure we are not re-asking questions but rather following up on the advice that was given where there are still open issues, would be productive. I actually can't state this strongly enough. I think this is a vital question, and we are not serving ourselves and our deliberations if we do not get this guidance.

JANIS KARKLINS: Thank you, Laureen. Georgios, please?

GEORGIOS TSELENTIS: Thank you. I have to disagree with what Amr said because I don't think that it is a burden for the data subject in this case to have accurate data. A typical example is to have contactability, also mentioned by Alan, in case of a problem.

So I think we make here a problematic distinction because automatically we want to assign for who the data should be accurate. What are the interests that are served? We are questioning: is it the third parties or is it the data subject?

I think the issue here is that accurate data are there to serve the purposes. I said this several times in the past. Inaccurate data cannot serve any purpose sufficiently or good enough. If we have collected data and we say that these are for specific purposes, having inaccurate data? To my mind, it's logical to say that the purpose cannot be served well.

So I think the clarifications ... Particularly I would mentioned the question about when we say "reasonable accuracy." What do we

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mean If we have indications that we don't have accurate data? So we have to clarify a little bit more what we mean by "reasonable" so, later on, when we do want to make implementation in a later stage, we have more clear guidance for what we are looking for. Thanks.

JANIS KARKLINS: Thank you, Georgios. Margie, please?

MARGIE MILAM: Hi. I agree with Georgios and Alan and Laureen, but I also wanted to raise a point of order that the NCSG was represented in the Legal Committee. We did a lot of work – hard work – there to craft the questions so we weren't repeating things that were already addressed, either in the Byrd & Byrd members or even in the ICO statement.

So I find it's frustrating that we're reopening things that were already dealt with in the Legal Committee. We received consensus on there on how to present these questions. So I feel that you've heard enough from the rest of the stakeholder groups to know that this is an issue that's vital for continuing our policy work. I just think it's time for us just to make a decision.

JANIS KARKLINS: Thank you, Margie. Hadia?

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HADIA ELMINIAWI:

I thank Georgios for his explanation, and I agree with what Margie and others said in this regard.

I would just quickly mention that I don't know how we ended up deciding not to send the legal versus natural question. This is very different than the territorial question because, for this one, actually the questions that we have are all legal of nature with regard to that we are afraid that the registrants roundly identify themselves as legal persons while they are natural persons. We are afraid that legal persons' data contains natural persons' data. If we're asking ICANN to conduct a study in this regard, it does make sense to have some kind of legal certainty before we proceed with other policy decisions.

So, again, I'm not sure how we ended up excluding the legal versus natural question. Thank you.

JANIS KARKLINS:

Thank you, Hadia. Because of the objection of one group. It was not excluded but it was simply sent back or will be considered further by the legal sub-team. We are working on a consensus basis. If somebody is not willing to listen to others and insist that there's a need for doing this, then we need to further entertain discussion and to try to create this common understanding.

I have now ten hands up. Time is ticking. We have many issues to discuss on today's call. I have Brian. I will take Matthew. I'll take those who have not spoken first and then others. Brian, please go ahead.

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**BRIAN KING:** Thanks, Janis. I was a part of the Legal Committee, and I would just echo some of the comments that I've seen in the chat for the purpose of getting it on the record here – in particular that the Legal Committee was representative and agreed that we would send these questions to Byrd & Byrd, pending, obviously, input from the plenary here, which we expected to go better than this call has gone, frankly.

I would say, too, that the questions are nuanced. I haven't heard many objections to the structure or the substance of the questions as we've proposed them. I don't mean to pick on anyone in particular. Certainly, I'd say that Amr in particular has been very well-reasoned with the points that he's made. But, in addition to those points, I've also heard some points here that are regurgitated talking points on legal versus natural and geographic distinction.

I'd say to read the questions. We're asking a nuanced topic here that will help inform our policy decisions. I would just note that it's inappropriate to stop this. Consensus is not unanimity. It's really not appropriate to say that we don't have consensus if there's only one group that doesn't want to proceed or that feels differently about a particular topic. Thanks.

**JANIS KARKLINS:** Thank you, Brian. Matthew Crossman, please?

**MATTHEW CROSSMAN:** Hi, everyone. I'm just going to try to maybe clear up a little bit of confusion. I think the key issue that Laureen, Alan, and I think Amr

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as well have flagged is this disagreement that some of this believe that, when we talk about the importance of data and how that matters to accuracy, we're talking about the importance of the data subject or the controller versus whether we should consider the importance to the third parties as well. That question actually isn't posed under Question 5, having to do with the WHOIS accuracy. It's actually perhaps confusingly posed under the legal versus natural. I think that is actually a gating question. I think it is more squarely a legal question and something that we have clear disagreement about within this group. That is, again, perhaps in a confusing way, raised under the legal versus natural rather than accuracy here.

So, given the conversation that we've had and that this is clearly a key sticking point for folks, I don't think we can ask Question 5 without including, either in Question 5 or going forward with the legal/natural piece, that sort of gating question. So I think we need to decide either that those two questions go together, or we set both of those aside and figure out what our strategy is going forward with those questions. Thanks.

JANIS KARKLINS: I think now we're even deeper in the forest, not to say in the ditch. Stephanie, please?

STEPHANIE PERRIN: Thanks very much. I just wanted to add in on the accuracy discussion that, from a data protection perspective, one of the problems with going down this road of what level of accuracy is

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required for disclosure purposes is that most requesting parties want more data, not just accurate data.

Let me give you an example. I have two addresses and three phone numbers. User control is important in data protection. I don't have to give every address I have and every phone number I have and every e-mail I have for each service. I make the choice of which one I give, and that should be sufficient.

However, requesting parties (I'm not restricting this to the DNS) – every blessed company – wants every phone number you have. They want your cell phone number. Your determination in not giving it to them is probably based on your lack of trust of their ability to defend against breaches, given their breach records.

So this issue of user control also has to be factored in when we're talking about data accuracy, and I don't see it in here. I'm sorry I wasn't on that legal call. Our representative was. I do support the concept of getting clarity about what accuracy means. But let's not ask leading questions. Let's ask all of them then. Thank you.

JANIS KARKLINS:

Thank you, Stephanie. So that was the recommendation of the Legal Subcommittee: to ask all of them. It seems that the plenary cannot agree on that.

I have Milton, Alan Greenberg, and Laureen. It seems to me that we will not be able to conclude in any reasonable way this conversation and we will need to continue it either in the Legal Subcommittee or in the plenary during the face-to-face meeting. Please, Milton, go ahead.

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MILTON MUELLER: Janis, I'm shocked that you don't believe that what I'm about to say is going to change everybody's mind and make us all agree.

JANIS KARKLINS: I'm hopeful. Please go ahead.

MILTON MUELLER: I'm actually orthogonal to this debate that we're having. I actually think it might help, but maybe I don't understand something. I don't understand the relevance of this debate or this question because ICANN already has a fairly stringent accuracy policy regarding the data that goes into WHOIS. You get notifications from your registrar. Your domain registration can be taken away if your data is proven to be inaccurate. What exactly are we angling for here? This is an example of what I said earlier: people are using these legal questions as proxy wars for what are really policy disputes. Since we already have a fairly stringent accuracy policy, what do people think they're going to gain by clarifying this legal issue on third-party versus data subject accuracy? I think that may be an interesting legal clarification to have, but how is it relevant to our task? How is it going to change what we do with the SSAD? Can somebody explain that to me? Because maybe we can just drop this.

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

ALAN GREENBERG: Thank you very much. Two things. In response to Milton, we do have a question of data accuracy and whether ICANN has the right or the requirement to try to ensure the data is accurate, knowing, from our past history, that there are accuracy issues.

I put my hand up, however, in regard to the issue on consensus. The GNSO definition of consensus is not unanimity. We do not need unanimity in this group to make a decision. I just wanted to point that out. Thank you.

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

LAUREEN KAPIN: Thanks. I think Alan makes an excellent point, as well as Rod in the chat, about trying to get some clarification here. I'll just express a bit of exasperation because, Janis, the Legal Committee has actually grappled with these issue and been very responsive to concerns that have been raised to try and clarify and refine these questions. Candidly, I don't know that more discussion among the legal team is somehow going to magically allow us to arrive at unanimity.

But I do think, if you'd take a poll, you would find – perhaps some wrong ... I would request actually that we should poll the group to see who's in favor because, if we have sufficient folks in favor of posing these questions, that would be the path that I would urge

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we move forward on so we can get this information. I don't think we need to unanimity.

JANIS KARKLINS:

Thank you, Laureen. I am not familiar with everything that GNSO has in terms of policy making. It is not good practice to force something down the throat of somebody because it be swallowed at the moment but then it may come out at the later stage. I'm trying to wait for whether insisting on sending those questions out versus continuing the conversation and seeing whether land where everyone would agree that these are the right questions to be sent out.

So what would be the best way forward? For the moment, I certainly would not like to do any polling or voting on this. I see that there is one group that is arguing against sending them out but partially for budgetary reasons, partially because sufficient clarity is already there. And this is just policy decision-making rather than legal questions. So that's why I'm hesitating to say, no, let's stop this and send this out: I do not want to alienate anyone from this conversation and not have a consensual recommendation I can process.

Thomas, you are the last one.

THOMAS RICKERT:

Thanks very much, Janis. Hi, everybody. I think, to try to bring this accuracy discussion for the EPDP 1 [inaudible]. The reason for that is this. If it's accepted as [inaudible] already answered

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[inaudible], then accuracy means that a [inaudible] received them [inaudible]—

JANIS KARKLINS: Thomas, sorry to interrupt you. Thomas, we do not hear you well. The sound is not good. Could you try to fix your microphone?

THOMAS RICKERT: I will [inaudible] the microphone now, hang up, come back in, and open the [inaudible].

JANIS KARKLINS: There is some kind of echo as well. You're just breaking up and then there's a little bit of echo. Okay, try, please.

THOMAS RICKERT: [inaudible] don't wait for me, please, Janis. Just go ahead.

JANIS KARKLINS: I think that the Legal Committee should further. Or, if not, I will discuss that with Becky. Then we will devote some time during the face-to-face meeting in order to understand how to proceed with those questions that have been formulated in the Legal Subcommittee with participation of all groups. So my proposal would be to leave the issue open. Since there is not point of sending one question. We always use this approach that we're not sending one by one but we're sending a bunch of questions. So

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maybe we'll be able to agree on more than one in the very near future. So that would be my proposal.

Thomas, are you back online? Or not yet?

THOMAS RICKERT: I'm waiting for a dialout.

JANIS KARKLINS: Okay. So, if you're in agreement with what I said – that we will continue this conversation, either in the Legal Subcommittee or in the plenary – then we could proceed to the next item. Would you?

Okay. We will revisit the legal questions in one of our next meetings, either face-to-face or in the Legal Subcommittee. I would like to proceed, taking into account that we have spent one hour and five minutes on this issue.

Let me now go back to Marc Anderson's questions about further interaction with the Strawberry Team. If I may ask ICANN org liaisons: do you have any information that you would share with the team on next steps?

THOMAS RICKERT: Janis, I apologize for cutting in. I'm on the phone line now.

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JANIS KARKLINS: Okay. We will listen to your arguments, Thomas, but I already suggested that we revisit the legal questions in one of our next meetings.

THOMAS RICKERT: Okay. I will make this very brief. Some of you will remember that there has been extensive discussions around the data accuracy question. [Or it was] a data validation question when the RAA 2013 was deliberated. At that time, a solution was found that the stakeholder committee agreed to and that the contracted parties were happy with and ICANN also subscribed to. So I think this is not the forum to revisit how this entire industry works.

I'd like to ask everybody for patience because examples with other registries have shown that, once they have made less data publicly available, data accuracy went up because a lot of registrants that have used inaccurate data because they wanted to protect the real data didn't see a reason to provide wrong data after the dissemination of the data was limited. So we might see that in the gTLD space as well.

Also, there was no single database that contracted parties could just ping against to verify whether data for registrants at the global level is accurate. So that would be a massive [start] if we include additional processing activities and additional contractual relationships with third-party providers of such data, which I think would unnecessarily our task of getting to closure with our recommendations.

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Thanks so much, Janis, for bearing with me. I apologize for the bad line.

JANIS KARKLINS: Thank you, Thomas. Let us now see whether ICANN org has any information to share on the possible next steps in engagement with the Belgian data protection authority.

ELEEZA AGOPIAN: Hi, Janis. This is Eleeza. I can jump in if you'd like me to.

JANIS KARKLINS: Yes, please. Please go ahead.

ELEEZA AGOPIAN: Thanks, Janis. As Marc noted in his e-mail to the team last week – I think he quoted from Georgios; there is it right there on the screen – the European Commission has been helping us to facilitate a meeting with the Belgian DPA. We had been hoping that one would come before your face-to-face meeting next week, but the timing and the scheduling hasn't worked out so far. So we're still hoping that that will work out in short order. Certainly, we'll keep the team up to date. Of course, we're very grateful to the European Commission for their help in arranging this. Certainly this is a unique opportunity to be able to engage with the Belgian DPA on this topic. As I think Goran has said to this team several times, we're always happy to take your questions and

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comments as well to any meeting. So I just wanted to reiterate that as well. Thank you.

JANIS KARKLINS: Thank you. Georgios, please?

GEORGIOS TSELENTIS: I wanted to say that, for us, as I said also in the first intervention when we had the response from the Belgian DPA, we read the letter as an encouragement for ICANN org to continue their efforts to design a comprehensive system for access and control that takes into the requirements of the GDPR. So we believe that it would be useful to have this technical meeting. As said, my colleagues, particularly the colleagues from DG Just, who are close to the Belgian DPA, are trying to see whether this technical meeting is feasible.

Now, we also understand and we take into account that, from the discussions we had inside the EPDP that it is the policy that should lead any type of implementation model. Therefore, we believe that it would be good that the current state of the policy is presented, if possible, to this type of discussion.

As I said in my previous intervention, the Belgian DPA, who is our contact point, has also changed the person who is there. So I think it needs also to be aware clearly of the policy which is underpinning whatever model without giving a preference to a certain type of model. Therefore, our idea is that it would be good if somebody – in particular, I would think that, if it's possible, you,

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Janis, as the Chair of EPDP – could give this update and say where we are with the policy.

Now, with regards to the timing, we would have liked to have this type of information in advance of the L.A. meeting. But still, hopefully, if we have some advancement during our meeting with the policy now in L.A. and we have a little bit more streamlined our options about the implementation model, it would be still good to have a meeting, if possible, before the initial report public consultation. I think it would be very useful in this sense.

So that's what I had to say.

JANIS KARKLINS:

Thank you, Georgios. Our aim is to publish the initial report on the 7<sup>th</sup> of February. So I understand from Eleeza that meetings in early February will not be arranged.

Also, I think that we need to make a distinction between two things. One is engagement with the Belgian DPA on the UAM model as per the letter of ICANN org submitted to the European Data Protection Board and an update on the policy development process, which probably is something useful, provided that we have a common position on that model.

Eleeza, your hand is up.

ELEEZA AGOPIAN:

Thank you, Janis. I just wanted to clarify. I think you said I indicated that February would not be possible. That's not my

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understanding. There's not date confirmed yet. My understanding is, with the help of the EC, we're hoping for early February, but there's no settled date.

Georgios, you can correct me if I'm wrong there.

JANIS KARKLINS: Okay. So then I misunderstood.

GEORGIOS TSELENTIS: Yeah. I can confirm that there is no set date yet, but we are trying with my colleagues to find out whether it is possible to set, as early as possible in February, such a meeting.

JANIS KARKLINS: Okay, thank you. Any comments? Marc, are you satisfied with the explanations or information provided, since you asked the question?

Marc, please go ahead.

MARC ANDERSON: Thanks, Janis. I guess I was trying to understand if future discussions were going on and if we might expect, in the future, additional information that could help our work.

So what I guess I took as a takeaway is that, yes, there are indeed ongoing discussions going on and that there may be, at some point in the future, new information coming out of those. But, for

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the short term, we should not expect anything and we need to proceed on the information that we currently have. So I guess that was my takeaway from that. Hopefully that's an accurate and fair assessment. If that's a fair assessment, then thank you.

JANIS KARKLINS:

I share your assessment. So work is ongoing, and no new information is available yet. It may come in the future.

In absence of further comments, let me maybe also indicate that we received an e-mail from Goran via ICANN org liaisons with the additional questions in relation to financial sustainability and the cost estimate. There is a proposal or invitation to arrange a meeting and conversation on financials while we are in Los Angeles. Goran is willing to come, I understand, and talk with us about those issues.

I would like to see whether there is support for that proposal and if we can plan for a session with Goran on financials and the cost estimate of SSAD.

I see no hands up, so I take it that that might be useful. Marc, are you in agreement with me?

MARC ANDERSON:

Thanks, Janis. Eleeza sent out an e-mail with a document on the financial assessment. It was pretty detailed and asked a lot of questions. My takeaway from that is that, in general, ICANN doesn't have enough information to do a cost estimate.

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So I'm wondering. It sounds like you're saying that Goran would like to come talk us about the financials, the costing, of it. Is he going to be able to provide something concrete for us, or will this be a discussion about the outstanding questions around financials?

JANIS KARKLINS:

I think the latter. We cannot – at least I do not – see the way how we can provide answers to the detailed list of questions that we received because we do not have yet agreement on the model. So my invitation, also in an e-mail that I sent Goran, was that maybe one way of looking at it, at least to get the range of funding or cost, would be to look at the UAM model which was submitted or developed by ICANN org in much more detail. There is a very clear vision, if that model is accepted, on how much that would cost. Therefore, I always think that talking is better than [guessing what] the other person may think. I would suggest that we meet with Goran and talk through cost issues as well as any other issues that we may want to raise with him. But, of course, I am in your hands and will not do anything against the will of the team.

No further requests for the floor. No comments. I take that that may be useful. We will see at what point Goran could come and talk to us on every issue, including cost estimates and financials.

Good. Let's then now talk in the remaining time about three further questions that we have. Let me suggest that we start with the proposed model of SSAD – the [inaudible] model – that was submitted for consideration of the team prior to the meeting. There was already an exchange on the proposal online. Nevertheless, I

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would like to see whether there is any chance that we could use it as a model to work as a basis for further work. It is based on previous conversations and the Contracted Party House proposal on the hybrid but also takes into account expectations of other groups to go beyond that. Simply, staff and leadership tried to take all these elements into consideration and made that proposal.

Before giving the floor to Brian, who is first in line, I would like to call on staff, whether that is Marika or Caitlin, to maybe talk about this model and also provide some information on the reasoning behind some of the elements that have been proposed.

MARIKA KONINGS:

Thanks, Janis. I can take a first stab. As you know, this was an attempt from staff and leadership to follow on the conversations that the group had following the submission of the Contracted Party House hybrid model proposal that was then followed up as well by some work that Mark Sv did in the form of slides and how the model could potentially look as well, as well as the subsequent discussion that a small team had in the form of two calls, where I think there was general sense that the Contracted Party House proposal would be good starting point but that some adjustments would need to be made to make it acceptable as a starting point for further conversation. At least what we understood is that one of those would be a clear commitment in the policy recommendations that ultimately automation of responses would be the goal, assuming that confirmation would be received that that would be legally permissible and technically feasible, as well as having meaning SLAs in there to allow for timely responses.

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Taking those two concepts in mind, as well as a number of other underlying principles that we've listed in the documents, we basically took the recommendations that were in the draft initial report and started thinking about what that could look like, providing, as well, more [specificity], which I think is what the different groups have said as well: for the initial report, to be really useful to its fullest, of course, it would be helpful if the different roles and responsibilities can be identified, which currently are left open.

As I said, this is a very high-level and not a very sophisticated diagram of what we believe [inaudible] the group ... The basics of the model: the receiving end would be the requester. [inaudible] accreditation following that happening. The accredited requester submits his disclosure request to the SSAD central gateway, which would be a role performed by or overseen by ICANN org, with the central gateway responsible for reviewing the request for completeness and determining whether or not that request meets criteria for an automated response or whether it requires a contracted party review. Based on that assessment, the request would be routed in the appropriate way.

I think something that several of you have commented on the list is that there is some understanding or assumption that, at the outset, the bucket of #4 would be substantially larger than what would be in Bucket 5. But the hope and the desire is that, over time, with experience gained, as well as potential further legal guidance that is received, more of the request could be shifted to Bucket 5 in the form of an automated response.

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As I said, we tried already here as well to further define the different roles and responsibilities. Several of those were of course already defined in the recommendations, but some of those are a new refocusing of the previous discussions, such as the central gateway manager being on the receiving end.

Another new concept we introduced ... Again, I think Janis has already said let's not focus, maybe, on the details of the steering committee, especially composition because I know that several of you are not convinced by the way that looks, but more think about the underlying idea of what we're achieving to achieve. The idea here is, does there need to be a mechanism to allow for the evolution over time? If there isn't, I think some of you have suggested that maybe we are able to incorporate that evolutionary element as part of the policy recommendations. Obviously, if that can be achieved to everyone's satisfaction, that is, of course, the preferred outcome there.

But, if that is not the case, is there a type of mechanism that allows for that evolution without requiring a PDP every time change is made when new information is received that automation for certain types of request is possible or experience gained, [meaning] that a certain request can be automated or certain information that is provided to requesters is handled in a different way? Is there a way to allow for that without requiring a PDP, but, of course, at the same time, respecting ICANN's processes and procedures and, of course, bylaw requirements and agreements that ICANN has in place with contracted parties?

So I think that we'd like the group to think about and see and not necessarily get hooked on the steering committee in its current

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model, which is kind of modeled on what some of you may be familiar with: the Customer Standing Committee in the IANA context, where, basically, direct customers have a seat or a role in working with IANA and PTI to follow SLAs and the performance of PTI and enhance those over time, not as an ICANN community representative but, as I said, more of a customer-focused entity. But, again, it's important not to get hooked on that but think about the concept. Indeed, is it necessary or is there a way that, at the outset of the policy recommendations, the evolutionary nature of the model can be captured?

What we then did is basically go through the preliminary recommendations as they are in the latest version of the initial report. I do want to point out – I think already mentioned this – that, in the e-mail as well, some of the other comments that have been raised we've removed from this document for now to really focus the conversation on the model. It doesn't mean that those are not going to be dealt with. They're separately on the issue list. Of course, we will get to those, but we really wanted to focus on what would the recommendations look like if there would be support for this kind of approach so that you could also see in more detail what the recommendations and requirements for the different parties would look like.

In certain cases, those are just minor changes. It's more a question of identifying the specific or the specific entity that would be responsible for something. But, in certain cases, it requires new recommendations or additions to existing recommendations. For example, one of those is that now we have two preliminary recommendations that deal with authorization – one for contracted

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parties for requests that would go directly to contracted parties, and another one that is focused on the requirements in case of automated disclosure requests. So, again, it's to accommodate the two branches that you saw in the diagram beforehand.

Again, here you see a bit more as well, spelling out in the response requirements what the central gateway manager would be required to do and what requirements contracted parties would have for requests that would come their way.

Another big chunk that we added here is in relation to SLAs. I think there was also discussion on the small group, which discussed the need for [specificity] around what that would look like. But, at the same time, at this stage, it's not known how many requests are going to be received, [nor] the complexity of those requests. As well as for contracted parties, what kind of time or resources are needed with those? So something we thought about is whether you could have a kind of staggered compliance rate, where you accept that, as you start, there will be a certain timeframe where everyone will need to learn and get accustomed to requests coming in. Over time, with experience gained, efficiencies increase and, of course, returns can meet that SLA that is set up here. Again, that's probably also something where, if it's not a steering committee, some kind of group or body may need to be involved in assessing if the SLAs that were set at the outset are really reasonable in light of the requests that are actually coming in? Again, somebody has a good estimate or assessment of what may come in that makes this even more accurate or realistic. But, I think, at this stage, at least we're guessing a little bit and are in the dark.

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So that's something we put in, and also, of course, this notion that I think was already in the recommendation of distinguishing between urgent requests and other types of requests and also again looking a bit at SLAs that are in place in the context of other policy requirements – for example, UDRP types of requests.

As I said, I think some of the other changes are more specificity around who would be doing what. I think, at the end, there is this additional section that covers the steering committee. As I said, please don't get hooked on the details that we've suggested there. [inaudible] ...

JANIS KARKLINS: Marika, I think we lost you.

MARIKA KONINGS: ... type of [inaudible] committee, or does that need to be ... I think someone referred already that it might be a standing PDP that is needed. As I said, it's also, of course, something that will need to be reviewed against the PDP rules, as well as the contracts that ICANN has in place, because this is definitely not intended to circumvent policy-making or break the rules. It's, again, trying to find if there's a way to have an evolutionary model and have a group that would assess experience and information that's provided that could allow for adjustments and course corrections as needed.

So I think that, in a nutshell, what we've tried to do here with the proposal. I really appreciate the input that we've already received from various groups. I think – Janis may do the same thing – that

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it is very important for the input you're providing or suggestions you're making to really provide concrete examples or language that you think should be added. I think we've got some comments saying automation should already be in the proposal from the outset. So please bring specific language with that for how that can be achieved and what that would like that because I think that would really help making the proposals stronger as well as more specific for everyone to review and consider during next week's discussion.

So I think that's all I have in a nutshell. I see a large number of hands up, so I'll give it back to you, Janis. Thanks.

JANIS KARKLINS:

Thank you, Marika. I would like to also stress that the notion that the SSAD should be automated as much as technically feasible and legally permissible and, for the rest, it's standardized was one of the first agreements that this team reached in the early stages of the work. I think it would not be good to question that fundamental agreement that we reached. Otherwise, we need to go back to square one and start from the beginning.

I have many hands up. If I may ask you to concentrate on essentials and non-system issues and whether you think that this evolutionary model could serve as a basis for further discussion. If that is not the case, then I do not see any way how we can submit an initial report but to provide a description that we work on a decentralized, hybrid, and centralized model and seek input from the community on each of them and then see where we land.

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Brian, Alan G, James, Milton, Stephanie, and Marc Anderson, in that order. Please, Brian, go ahead.

BRIAN KING:

Thanks, Janis. Good grief. What an effort here. So much appreciated, you guys – staff and our contracted party friends who kicked off this concept. As we mentioned before, the IPC is working on our policy position on this, and we have a meeting later today. So it's probably good if we're not super substantive right now on this call.

In general, I think this is great. I think the concept of bulleting out what we need in order to make this hybrid model is a good thing. I think that we'll probably need certainty around how we get from Day 1 – the policy is implemented – through a position where we have lots of learnings and legal certainty and can know precisely what can and cannot be automated. Having that roadmap and certainty around that is going to be a really good thing, whether that's a standing committee or whether that's clear policy guidance to ICANN or that's in the form of what happens either in administrative law, where, if you're selling a new drug, you don't go to Congress. Congress creates the FDA. The FDA does that. So we can make a policy here and perhaps a function or a group that can evolve this thing as we get more of that legal certainty. That's the way it's done in the real world. No reason to think that that can't be done here.

So, really, kudos to staff on how they've done that. I expect that we will probably have some differing opinions on how that should work in practice, but just in general, thanks for reading our mind

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on some of the things that we're thinking about already if we're going to make this model work. We look forward to more productive conversation on this. Thanks.

JANIS KARKLINS: Thank you. Alan Greenberg, please?

ALAN GREENBERG: Thank you very much. I generally support everything that Brian just said.

A couple of points. First of all, I strongly support the model. I think we're getting very close to something that most of us can agree on and may actually be able to work, which is sort of critical.

I noted three things in my e-mail and I'm going to repeat them very quickly. We coined the term "authorization provider" for a reason, and I think we need to use our defined terms in these kind of things. It gives us a level of preciseness to make such that other people can understand what we're talking about.

Some of us ... It was strongly supported by the GAC statement we just got. We probably have the ability to automate stuff from Day 1 that we can get agreement on. We should not ignore that because I believe that's critical, both for reducing the work of the contracted parties and addressing the issue of SLAs and response times.

Thirdly, the document talks about shifting liability. We've been told multiple times we can't shift liability. We have to decide how liability is assigned legally. I believe we do have the basis for

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saying that some of the things can be assigned to ICANN and the SSAD, and legally. So we should not be talking about shifting. I have as much frustration, I think, as the NCSG does in that we still are not talking about who the controller is and talking about what the joint controller agreement might have in it. I think that can address a lot of these problems.

In terms of the standing committee, I strongly support the concept of a standing committee, but I don't see it doing any policy. I have not seen anything that I think falls into the category of policy. There will be operational details that will have to be settled and things like parameters of what we can automate. We'll have to get agreement from the contracted parties that they are satisfied that they are not going to have hidden liabilities there. But I don't see any of that in terms of policy.

Lastly, I don't know where the idea came from that the CSC has a jointly-appointed ALAC and NCSG person on it. That is not the way the Customer Standing Committee is structured. Thank you.

JANIS KARKLINS: Thank you, Alan. James?

JAMES BLADEL: Hi. Thanks. Lots of unpack here. I'll try to be brief. I agree with some of the statements that Alan and Brian have made. I definitely thank staff for putting this together. It's a lot of work and it's certainly innovative.

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Now, getting pleasantries aside, I just want to note that, under the current model, the only legitimate way to create contractual obligations for contracted parties is a PDP and not some other type of body, organ, or committee.

I think Alan made a good point, that this group wouldn't be wading into policy waters. It would be focused only on implementation/automation, which I think [is] generally supporting the ability of this model to evolve over time. That's great, but this group can't self-determine what is and what is not a policy-impactful decision when it comes to looking at automation or improvements or enhancements to SSAD. That's got to go somewhere else. It's got to go to the GNSO Council, etc. So they can't self-determine what is and isn't in bounds.

Stepping back a little bit from that and just taking the broader view, I'm trying to view this through the eyes of parties and groups that are critical of the ICANN model. I'm concerned that this proposal is an admission by the community and by ICANN itself that the PDP is not fit for purpose in addressing these critical issues in a timely manner. Therefore, we need to invent ways around it. [We need] the PDP to sanction other groups to do its work.

I feel like that's the wrong approach. First of all, I think that the right approach is to fix the PDP, which I know the GNSO Council is looking at under PDP 3.0. But also – this goes back to Brian's analogy with the FDA – if the proposal ultimately ends up being that there's this group that exists outside of a PDP that makes decisions that could impact our contractual obligations, that is just too big of a loophole punched in the model for, I think ... Maybe

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I'm just speaking personally with my personal reaction here, but that is too much of a loophole or a wildcard or a variable in the [future] business landscape for contracted parties to accept because who knows? It could be a minor decision today but it could be the exception that swallows the rule later.

So I would encourage us to think very, very carefully about the implications to the ICANN model that we're considering here. We're poking at a very low brick on the Jenga tower here, and I would just caution folks before entertaining that to think about how critics of the multi-stakeholder model will pounce all over this as an acknowledgement that this is just not working.

Thanks, on that note.

JANIS KARKLINS:

Thank you, James. The proposal in essence is to develop a policy based on the evolutionary model. Evolution is not taking place by itself. These are events and knowledge that we gain by running a system that we will determine whether evolution will be there or not, or it will always remain a hybrid model, where all the disclosure decisions are made at the level of the contracted parties, full stop. A kind of a steering committee who is composed from all interested parties who can assess whether some things could be automated or not could be set up to discuss in a collegial way and then to move this percentage of decision-making on disclosure from the contracted parties to the more centralized or automated way.

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So, if that is not the steering committee, do you have anything in mind on how this evolution could be assessed and guided/steered? Please. This was also the meaning of my comment on Milton's input. So please come with alternatives. The steering committee proposal is something that came to the mind of us when we discussed it. If there is something different/better, let's talk about it. To criticize is very simple, but put something on the table.

JAMES BLADEL: Janis, can I respond to that?

JANIS KARKLINS: Yeah. Please go ahead. And Milton is next.

JAMES BLADEL: Nothing in my previous statement says I don't support the ability of this model to evolve over time. I do, but I'm concerned that a standing committee is not the right approach. Let's have a standing PDP. Maybe that's the answer, channeling all of those evolution [inaudible] to the right channel is the right approach.

JANIS KARKLINS: Okay. A standing PDP. Good. Staff, please note that this is maybe an alternative to a standing committee. Then we need also to think of how the standing PDP could work. Of course, GNSO members are the best because they know all the modalities of how a PDP should work.

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Milton, please? You're next.

MILTON MUELLER:

I am obviously not happy with the whole idea. I understood what you're trying to do with this, Janis, and I think it's almost a sign of desperation, where you try to find these middle grounds. So you think that we can't decide between a centralized model and a hybrid model and, instead of getting us to agree on one or the other, you're trying to create some middle ground in which you have a hybrid model that evolved or a decentralized model. What you've done in that case is you have told any supporter of the hybrid model to not support this because not only is it going to move in a direction that they don't like but the decisions as to how and why and when it moves is going to be made by an external committee that is deliberately designed to exclude non-commercial registrants and policy advocates from the decision-making process. It's just unconceivable to me of how anybody came out with that idea.

If you're thinking that the Customer Standing Committee is a precedent, I've got news for you. The Customer Standing Committee is for the customers of the IANA function. Every stakeholder group in the GNSO is a serious participant and stakeholder in how this SSAD works. Not everybody is a customer of the IANA function. So you don't exclude users from this standing committee based on the precedent for a completely different kind of model.

Now, I'm questioning this need for evolution. I think that we can come up with a hybrid model that automates or prioritizes certain

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disclosures, and that is what the policy should be. And it should stay there. There can be evolution of procedures and technologies, and there could be oversight of that through the GNSO Council, which is where that kind of oversight authority is supposed to be. We do not need to create a new standing committee. Indeed, when I read this, I thought I had woken up from a nightmare because this expedited policy development process, which was supposed to be expedited, is now in its second year. Now somebody is proposing, in effect, to make it permanent. I thought that maybe it was a bad joke, but it wasn't April Fool's Day yet, so it wasn't.

No, you cannot take this concept of a standing committee seriously, particularly if you're talking about evolving from two polar-different policy solutions – that is to say the hybrid versus the centralized model. So you got off on the wrong foot when you said we want this to evolve from one to the other. We are happy with a hybrid model. We think it is the best model to work with. We think that it can address the concerns of people who want a more centralized model in certain ways. But those should be built into the system as we conceive of it. You don't say, "Go onto a slippery slope supervised by a standing committee from which you are effectively excluded." How could expect us to accept that?

So I would urge us to bite the bullet, to make a decision. We're going with a hybrid model. We have an interim draft report that could say that. Just get rid of the standing committee and keep the prioritization stuff that's in there now. We should be able, after the face-to-face meeting, to publish a report for public comment on what we really want to do. Thank you.

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JANIS KARKLINS: Thank you. So you're suggesting that the GNSO Council could be the one that determines whether some further automation or when and then how much automation could be done in this evolution. But you are actually, I understand, not—

MILTON MUELLER: It's fundamentally that policy and law should determine how much automation should be done. But, in terms of implementation, yeah, I think the council could.

JANIS KARKLINS: Okay. Thank you. Stephanie, please?

STEPHANIE PERRIN: Thanks very much. I just wanted to say what I have been typing in chat, that there are models for oversight of these kinds of functions and evolution in electronic services in government – plenty of them. I would recommend that ICANN consider having a privacy oversight committee to which changes to the SSAD would be referred. A normal way of treating changes to an existing system is to do a privacy impact assessment. If you've already done a fairly comprehensive one, then all you have to do is a quick review and see how the proposed new automation feature or change fits with the existing PIA. That's how it's dealt with in many governments. It's been around for, in the case of [inaudible] years and works fairly well. Then your changes can be submitted to whoever the oversight officer is. We seem to be beating a path

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to the door to the Belgian DPA. You could send the announcement of the changes prior to making the change and getting the complaints of “We’ll see you in court.”

I’d like to stress that there’s a whole lot more in ICANN that ought to be subject to GDPR, shall we say, inspection and application. Therefore, ICANN needs this [broad] community committee to look at all the other things. I don’t see how we’re going to deal with some of the previous decisions that need to be reversed, such as thick/thin and privacy proxy, unless we have some kind of committee that would have oversight of it all.

That does not preclude a kind of permanent standing EPDP that would address these issues when they arise, but you need committees that these issues can be referred to and you need a screening instrument such as a PIA to figure out the impact. Thank you.

JANIS KARKLINS: Thank you. So I will check once again. This is a privacy impact committee as a way where we things could be reviewed and the evolution of SSAD could be discussed and determined.

STEPHANIE PERRIN: Yes.

JANIS KARKLINS: Thank you. Good. We have a third option on the table.

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We have about five minutes until the end of the call. If I may suggest – this is an important discussion – can we go another 15-20 minutes further? I can, and I hope that it would be possible also for us to continue [inaudible].

Marc, please? Marc, followed by Chris Lewis-Evans. Marc Anderson?

MARC ANDERSON:

Thanks. Keeping in mind where we are timewise, I'll try and keep my comments very high-level here. Janis, I want to thank staff and leadership for the work they've done here. At a high level, my take is that this new draft gets us closer to something that I can feel we can publish for initial comments than we've been before. There are aspects in here that I think are problematic, and we need to [inaudible]. I think we have an opportunity to do that in the face-to-face in L.A.

So, Janis, I think, when you teed this up, you asked the question: is this something that we can agree that we can work on and move forward with? I think, from perspective, it is. I think the previous comment just made a lot of good points. On the standing panel, there are a lot of implications for that that we need to unwrap. A number of people have commented on the need for automation, but we don't have any language in there for how that could be accomplished. So I just want to echo what Marika said. If you have ideas on language for that, I'd love to see it and how it could be incorporated into this model. But, at a high level, I think this draft presents a good starting point for deliberations as we [head] into L.A.

JANIS KARKLINS: Thank you, Marc. Let's agree. Chris, Mark Sv, Alan Greenberg, Amr, Thomas Rickert, and Franck. That's all the list. I'm closing the list. Chris, please go ahead.

CHRIS LEWIS-EVANS: Thanks, Janis. I just wanted very quickly probably echo a lot of the points already made. It's a massive piece of work. As I said in the e-mail to the list yesterday, I think it's a massive step forward towards something that is possible. Really, the points we tried to make is that, as you said at the start of this, Janis, one of the first points that we all agreed on – where it's legally permissible and technically possible, we would automate that to the greatest extent possible, basically – I would really like to call out in this document because I think that certainly for us goes a long way to, one, reducing cost but also reducing some of the burden on other parties as well.

With regard to the steering committee, which is probably the biggest new item on this, really, for me, I feel like, as we get greater clarity, whether that's through law findings or experience, that determines the amount of automation that can be carried out. For me, that feels more like an implementation issue rather than policy. I think Alan Greenberg agreed with that. How that gets consistently applied across this hybrid model, which obviously has a number of decision makers, I think is something we need to definitely think about – and how we get language for that – which really goes to what Marc just said as well.

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One last point, just considering the time. In this hybrid model, I think, for law enforcement, the greater concern is confidentiality. So that was the GAC's reasoning for that second point that we put in that thing. I look forward to more discussions face to face. Thank you.

JANIS KARKLINS: Thank you, Chris. Mark Sv, please?

MARK SVANCAREK: Thanks. I'll go quick. I'd like to praise everybody for creating this new draft. I do think it moves us forward and sets us up for a great discussion in L.A. I regret only that you did not choose a food-based codename. I thought that was a miss.

I have a bunch of other comments here, but, in the interest of time, I noticed that we've now on the call discussed the standing committee, a never-ending PDP, a privacy committee, and an operational oversight by the GNSO Council. I guess I would throw in some sort of an IRT implementation committee. That seems to me like the only that fits within the existing ICANN structure. As James pointed out, the existing structure, which goes from policy to implementation to contracts, doesn't seem like it accommodates any of those other concepts very well, although I might be just misunderstanding that.

I guess my main comment right now is that, at the beginning of the document, it says that we need concrete SLAs and we need to future-proof this for automation. Actually, I think there's one thing that was also missed. It was future-proof regarding other forms of

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controllership. We had been talking about joint controller agreements.

So I think, rather than considering this as that we're trying to force an evolution in one direction to another, we just need to make sure that, for a contracted party, when they want to automate, the policy better not stop them from doing it. If a contracted party want to enter a joint controller agreement with somebody, the policy should not prevent them from doing that. That's the kind of future-proofing that I would like to say.

I had a couple other points, but I'll move on in the interest of time. Thanks.

JANIS KARKLINS: Thank you. Alan Greenberg?

ALAN GREENBERG: Thank you very much. Just very briefly, again, on this steering committee, I think a committee like this is essential. I think, in fact, modeling it after the Customer Standing Committee is really good because it should be something akin to a customer standing committee. The membership, however, will be very different from the CSC because the customers are very different and the function is very different.

When I look at the functions that were attributed to the steering committee, it says "Review and revise the SLA matrix. Review and confirm the categories of disclosure that are automated [inaudible] subject" – which essentially is, again, the contents of a table –

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“Review the implementation and look for other categories” – again, contents of a table – “and make recommendations to the GNSO Council on policy issues.” I read that as telling the GNSO Council that we need to look at a policy issue and they should do something about it, not making recommendations on the policy.

So, in terms of the short list that’s there, I think it’s spot-on right now. I think it all has to do with either telling the GNSO Council there might be policy work or updating and evaluating whether the contents of specific operational tables are correct. So I see no policy work in this group. I think what we’re talking about here with different words could address all of our problems. Thank you.

JANIS KARKLINS:

Thank you, Alan. Volker, please?

VOLKER GRIEMANN:

Thank you, Janis. One thing that I’ve been thinking about when I was talking about the evolvability of the model was rather something that the controllers will have in their hands when they see that they have a certain comfort with expanding their automating of certain response types. Then the system should be able to do that. So a kind of a modular system where, as time goes by, more and more things could be automated at the choice of the contracted parties and controllers that have the actual controller with the data would probably, in my view, make the sense.

There could be even something like an amendment process, like in the RAA, where contracted parties could come together and

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unify that approach so it's not everyone for themselves but rather a more unified approach that would also more reliability to the requesters as well. Thank you.

JANIS KARKLINS: Thank you. Amr?

AMR ELSADR: Thanks, Janis. I've only had a really quick look at this document, so I probably need to read it more carefully. In general, I want to address the concept of the SSAD steering committee. I think this committee might end up being quite useful, but I am having a little trouble [with] something Alan Greenberg said a little early and then something Matt said in the chat. On Page – oh, there are no page numbers in this document. I think it's Page 16. Is it 16? Yeah. Well, right above where Preliminary Recommendation #9 begins, where it says that the steering committee will identify categories of requests that could be fully automated, like for UDRP, as one example ... But then reconciling that with the fourth responsibility listed for the committee, where policies identified will be referred to the GNSO Council ... I'm not exactly sure if I'm reading this incorrectly, but it seems to me that the committee will have the responsibility of identifying the types of disclosure requests where the decision-making for whether the information is disclosed or not can be done through automated means. If that is the case, I think we need to reconcile this with that responsibility of referring policy issues to the council because, to me, that seems like a clear policy issue. If it weren't, we wouldn't be discussing it at length on the EPDP team. We'd be leaving it up to

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the IRT to eventually work out, but any determination of automation in the decision-making on disclosure requests [need] certainly a policy.

I won't be in L.A., but I hope you all take that information and try to figure out how that fits in with the stated responsibilities of the committee. Thank you.

JANIS KARKLINS: Thank you, Amr. Thomas and then Trang. Then that's the end of the list. Thomas?

THOMAS RICKERT: Thanks very much, Janis. When we had the small team discussions about the CPH model, I had suggested that we need some sort of group that also looks at how to deal with objections, for example, and how to deal with particularly difficult cases. So I do hope that our group is in agreement that we need some sort of committee that oversees how the SSAD is working.

I think that James' point is spot-on, that we need to make sure that this group doesn't do policy and therefore doesn't put the multi-stakeholder model at stake.

Then there's another aspect that I think we haven't discussed at all in this context, although Mark Sv has touched it slightly. I do hope that our group still has on the radar that we discuss that. The safest way to get legal certainty with the SSAD in the long run is to get this approved as a code of conduct under the GDPR. If we do that, I simply do not know how a fluid practice of decision-making,

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and accordingly, processing of data would work in such a scenario. Therefore, I think that this is maybe a point that we could add to the list of questions that's been asked to [inaudible] team because I guess that might guide us in how such a group might need to be shaped so that we would still be eligible with such a fluid system that's saying adjustments can be made over time and still have it adopted as a code of conduct according to Article 40 of the GDPR. Thank you.

JANIS KARKLINS: Thank you, Thomas. Franck, you're the last.

FRANCK JOURNOUD: Thank you, Janis. Just overall, without commenting on any specific aspect of this new paper, I think I would disagree with some who have expressed doubt about whether we really need to go this way. I do think we as an EPDP team were headed towards settling on a model. I think we're heading toward a wall which we're going to slam. I think we're all supporting our own separate models.

So, to the extent that what's on the table we can in fact and work out and figure out compromises that make sense from a policy and from a legal perspective, I think we really need to give it very serious consideration because I don't think it is – there's an expression we use in French – the marriage of the carp and the rabbit. You put two things that are different together and you get a monster. I don't think this is the kind of compromise we're talking about. I think this is something that can work. It'll be hard to figure

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out, but I think the likelihood of alternatives that we'd settle on is not very considerable.

JANIS KARKLINS:

Thank you. Actually, unlike the beginning of the conversation, I think the latter part was, in my view, very constructive and gave me a lot of hope that we could continue working on this evolutionary model.

I also heard that some kind of committee is needed. Of course, maybe the proposed steering committee is not the right way to go, but many referred to different types of committees. I think it doesn't matter what we call the committee. I think probably the most important thing is that the committee needs to have certain functions.

If I may ask those who would like to to give a try to put a list of functions that that could committee with a very clear understanding that that would not be anything related to policy-making but rather implementation and follow-up and lessons learned from running SSAD. That may be helpful. Who would then be validating the proposals of the committee? That would be the governance structure and decision-making structure within that committee performing those functions. Probably that would be helpful for us going to the face-to-face.

Please also – that's another note – review the GAC proposal on accreditation of public authorities. That is something we need to look at and see whether that is something the team could buy into.

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Staff and me and Rafik will think through again the discussion we had here and try to prepare our conversation [inaudible] in the best possible way. We will certainly start by continuing discussion of this model, hoping that we would agree on elements. Then we would go in the mode of a smaller group, developing those elements of the model because this is a pre-condition for the continuation of any further work on other elements.

So this is my conclusion. I am rather optimistic. I think we are on the right way, as many have already said that. Please think further. If you want to put something on paper while you're flying, please do so. Share it with the rest of the team as an input on an ongoing conversation. We will meet now on Sunday at 6:00 P.M. at the cocktail party and we will work on Monday, Tuesday, and Wednesday, hoping that the initial report would get in final shape.

With this, I would like to thank all of you for very active participation. My apologies for running over the time of the meeting for 14 minutes. Safe travels to everyone. See you all in Los Angeles on Sunday evening.

With this, this meeting stands adjourned.

**[END OF TRANSCRIPTION]**