
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP- Phase 2

Thursday, 26 March 2020 at 1400 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening. And welcome to the GNSO EPDP Phase 2 Team Call taking place on the 26th of March, 2020 at 14:00 UTC. In the interest of time, there will be no role 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, joining us a little later in the call will be Thomas Rickert and we have listed apologies from James Bladel, the RrSG. And as a side note, Matt Serlin will join the first portion of the call on behalf of RrSG and then the second half of the call, Sarah Wyld will take over for Matt. In replacement of James will be Owen Smigelski. They will remain as alternates for this call and any remaining days of absence.

All members and alternates will be promoted to panelist for today's call. Members and alternates replacing members when using chat, please select "All Panelists and Attendees" in order for

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everyone to see the chat. Attendees will not have chat access, only view access to the chat.

Alternates not replacing a member are required to rename their line by adding three Zs to the beginning of your name and at the end, in parentheses, your affiliation, dash, alternate, which means you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click "Rename". Alternates are not allowed to engage in chat apart from private chat or use any other Zoom room functionality such as raising hands, agreeing or disagreeing. As a reminder, the alternate assignment form must be completed prior to today's call if needed. 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, please e-mail the GNSO Secretariat. All documentation and information can be found on the EPDP Wiki space. Please remember to state your name before speaking. Recordings will be posted on the public Wiki space shortly after the end of the call. Thank you. With this, I'll turn it over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS:

Thank you, Terri. And hello, everyone. Welcome to the 49th call of the EPDP Team. As usual, the question is whether we can work on the basis of the agenda that has been circulated yesterday. And I will see if that's the case. No hands up which means that we will proceed accordingly.

So housekeeping issues. Yesterday, the Legal Committee met and if I may ask Becky to brief us on the outcomes of yesterday's committee meeting. Becky.

BECKY BURR:

Thank you, Janis, and hello to all. We had a very productive meeting yesterday. We agreed on a summary of the Bird & Bird advice regarding accuracy and reliance on registrants to demonstrate consent in legal person registrations. That has been circulated by Caitlin to the full plen- EPDP earlier this morning. We also agreed, as a representative group, on a series of questions related to the automation use cases that were developed. So those will be going to Bird & Bird for their guidance.

JANIS KARKLINS:

Okay. Thank you, Becky. Any questions to Becky in relation to work of the Legal Committee? I see no hands up. So it is clear. So the questions on automation will be sent to Bird & Bird and as soon as the answer is received, will be shared with the team as a whole. That's how I understand that. So thank you very much.

So Amr is asking to share the draft questions to be sent on the list. I think it is done already or ... Yeah, will be shared. Good. So with this, we can move to next agenda item and that is finalization of addendum to initial report.

On Tuesday, we went through [end] links to all Cannot Live comments. I think we have settled all those. And where we slipped, that is on small edits. And so it was flagged that some of the small edits were not so small and not so friendly. And there

was a request to walk them through. So that is my intention, or was my intention, when I said that we would continue today.

In the meantime, there has been exchange between interested groups and if I understand correctly, we basically have found, or those who were participating in this online conversation have found consensual agreement. And I would like simply to verify with them whether that is the case. Alan Greenberg, your hand is up.

ALAN GREENBERG: Thank you, Janis. I'd just like some clarity on where we are with regard to the BC point on legal versus natural because the ALAC has had a discussion on that and it may be relevant depending on where we are. Thank you.

JANIS KARKLINS: Okay. So how then we will do BC. Would you like to tell us where you are on the question, legal versus natural, Brian?

BRIAN KING: Sorry, Janis. I was ready to speak to the language that's highlighted on the screen. I'll defer on that. Thanks.

JANIS KARKLINS: Look. Today I am working on my mobile phone so I have a little bit difficulty juggling between different screens that I need to use, participants and the text on the screen. So Alan, maybe you can clarify which, what recommendation or which number in the Cannot Live document you're referring to. Alan?

ALAN GREENBERG: Sorry, I was muted again. If staff can scroll to the first one, I believe that's the one we were talking about. That's correct.

JANIS KARKLINS: So that is Recommendation #20.

ALAN GREENBERG: That is... Whatever the very first one is, line 267 to 71.

JANIS KARKLINS: 267 to 71.

ALAN GREENBERG: The position that was taken that I understood it was left at, is as in the addendum that we were saying we could not finish this and we were deferring it back to the GNSO to take action in the future. The BC had said they cannot live with that and the ALAC is in a similar position. We believe the addendum should not be deferred, should not be delayed. It should be issued. But the text must be changed to "We have not reached closure on it, legal natural, and we will go back to it within this PDP," that we are not agreeing that it be deferred to the GNSO to make a decision at some unknown time in the future.

JANIS KARKLINS: Now, look. What is now on the screen is the following. So we acknowledge that... Sorry, legal [research], I am just now trying to... So what you are now seeing on the screen is what agreement that we reached on Tuesday. So there was a discussion that a small group of interested team members could be formed to work further on those issues that we could not finalize and there were two of them. One is legal versus natural and the second is on accuracy.

And that during on... During the comment period, this group of volunteers could work out something and then put that as a comment, and then the team, we would examine that proposal during the consideration of, and preparation for the final report. So that was where we landed. But for the moment, the agreement on legal versus natural, and then if also there you could show agreement on accuracy, my understanding was that we landed on this text.

ALAN GREENBERG: Janis, to be clear, I was asking what the status was because I wasn't sure. That status is acceptable to us. Thank you.

JANIS KARKLINS: Okay, good. Can we then see where we are on minor changes, minor edits? Whether we have, in this online, during online discussion, have reached agreement and whether that agreement is properly reflected in the initial report? Margie?

MARGIE MILAM: Oh, actually my hand was up for the earlier discussion. My question is, does the addendum mention the fact that we will have a small team working on this after the addendum is published?

JANIS KARKLINS: No, but this is on the record of our meeting and then it's up to volunteers to create that group and then the work further, and submit comments during, as commentaries to the initial report.

MARGIE MILAM: Is there an objection to including it in the addendum?

JANIS KARKLINS: I think that there was objection of creation of that smaller group in principle. But again, if no one can prevent a group of volunteers to work further on topic and submit that as a comment. But I recall that there was reluctance to formalize a small group as the team. That's my recollection from the last meeting.

MARGIE MILAM: Okay, sorry. I missed the second half of the meeting so I apologize for not understanding where we landed. Okay, thank you.

JANIS KARKLINS: But again, it does not prevent volunteers to getting together, and that would be important that this would not be just one-sided, sort of the group, we represent one side of the argument, but to get

also representatives from the other side of the argument together and then try to work out something that potentially may fly because if that would be just one side of the argument, then we also heard yesterday that it is unlikely that there would be buy-in from the other side of the argument.

So we have two further hands up, Alan G. and Marc Anderson, in that order.

ALAN GREENBERG: Thank you very much. I can live with no comment, no notice in the addendum that a small group will be formed. I'll point out, however, that since it is possible that that may change the result, I think we really should be serving notice to the wider community that this may change and they may want to comment on where otherwise they wouldn't. That's not to my advantage based on my position, but in terms of openness, I think we should. But I can live with what you're proposing. Thank you.

JANIS KARKLINS: Thank you, Alan. Marc.

MARC ANDERSON: Janis, my comment's on Preliminary Rec #20, the next step.

JANIS KARKLINS: Okay, let me finish this one. Milton, your hand is on this one?

MILTON MUELLER: Yes. I am just speaking against this idea of a small group. It's... I just don't understand what that accomplishes. I think we know that we don't agree and the only way a small group gets us out of that is to avoid having representation from people who disagree. And the people who are proposing this small group are all coming from one side of the argument, as you said, Janis. And that's because, I guess, they don't want the GNSO Council, which is the appropriate mechanism to resolve policy issues, they don't want the GNSO Council to do it. So no, there's not going to be a small group. We are not going to participate in it and it's not going to change the recommendation, which basically, the wording you have there is an accurate reflection of where things stand. We cannot agree. We are not going to agree. The Council is going to have to resolve it. Thank you.

JANIS KARKLINS: Thank you. Volker, please.

VOLKER GREIMANN: Yes. Thank you, Janis. I'm basically on the same side as Milton here, even though it's for different reasons. I don't think the small group will be anything but a big waste of time. We have little time left. Let's use our resources for the parts and the issues where we can reach an agreement. Ultimately, the question of legal versus natural is red herring because it doesn't ask the right question. It asks for a quality of the registrant, which may not be, which likely is not the relevant question to ask because of the points that we've made over and over again. So using our time for a small group, it's just going to have the same stalemate again. We're not

going to end up in a good place there. It's wasting our time. Let's not do this.

JANIS KARKLINS: Okay, thank you, Volker. So can we move [inaudible] [small]...

ALAN GREENBERG: Janis, a point of order. Could I ask a question, please?

JANIS KARKLINS: Yes, and then Amr. Yes, please go ahead.

ALAN GREENBERG: What is the deadline for submitting a dissenting comment for this addendum? Given that we've just been told that there will not be a small group because people will not participate in it, that changes the situation and the ALAC will submit a comment to this addendum. What is the deadline? I presume it's sometime today.

JANIS KARKLINS: Yes. I understand that the report is supposed to go out, I would say, as soon as we have finished, finalized the meeting. But also, I understand I have been advised by the staff that, and also by the Council Liaison that there is no tradition of submitting dissenting opinion on initial report. So you have a comment period where you can raise an issue of this and dissenting opinions, apparently, are going into final report.

But again, I would suggest that if there is a group of volunteers to contemplate, for instance, the legal advice from Bird & Bird, on the topic that certainly may be a new element. And if that group wants to submit something during the comment period by May 3, then the team will be reviewing those comments by 11 June when we are supposed to release the final report. So that's the... We cannot form a formally small group within the team because of opposition, but that does not prevent team members to work outside the team and submit comments for that. So that would be my suggestion.

ALAN GREENBERG: Okay, for the record, I'm objecting to dissenting reports and no comments added. But why don't you go on to the queue?

JANIS KARKLINS: Okay. Amr, Margie, and Lorraine.

AMR ELSADR: Thanks, Janis. I just wanted to voice my agreement with Milton and Volker's previous statements and to add something that I mentioned on Tuesday's calls but there were a number of EPDP Team members, I think, who were not on the call at the time when we were discussing this, and also to address a point made by Brian and by you, Janis, just now.

One of the... If there was new input to provide on this topic, then I think it might have been worthwhile to form a small team or a small group to address it. To me, the legal advice that came in

from Bird & Bird does not qualify as significant input because the issues that we disagreed on Phase 1 and that we continue to disagree on now are not legal issues so much as they were policy issues. I don't... And I think we've really exhausted every aspect of trying to resolve them and we haven't been able to achieve this. So I see ourselves going around and having the same discussions we had in Phase 1 and more than likely, reaching the same conclusions. So I just wanted to add that because it wasn't, this view wasn't expressed today. Thank you.

JANIS KARKLINS: Okay, thank you. Margie, you are next.

MARGIE MILAM: Yeah, I'd like to raise a point of order. I want staff to confirm that it's not possible to include minority opinions in initial reports because I contest that. I do not believe that's in any document that guides the GNSO PDP process. So please point me to that specific statement because I believe that it's our right to be able to submit dissenting opinions where we feel strongly about it. In this case, I think this is an area where the BC would like to submit a dissenting opinion.

And second, with regard to the small teams, I'd also like to understand where in the GNSO PDP guidelines is it required that there be consensus to create a small team. That is a new statement. I've never heard that before. I've been involved in the ICANN community for over 20 years and honestly, I think that it's a disservice to the group. I think if we at least try to examine the

legal opinion that we just received that gave very concrete examples on how we could address this issue, at least we know we've tried. Now whether we'll convince our colleagues on the contracted party house or the NCSG is another issue, but at least we've gone through the exercise. So I'd like staff to please point me to the rules where it says that that's not possible.

JANIS KARKLINS: Okay, thank you, Margie. Can I have clarification from staff or Council Liaison?

RAFIK DAMMAK: So as I think I tried to explain, I believe it's unusual to submit a dissent for initial report. I think the practice is when we have a final report or if those who are having any dissent, they can submit their comments to be added as an annex to the final report. We can double-check if needed, but that's my recollection.

I mean, we are forgetting. I think this is just an initial report. We are submitting [first] draft or plenary recommendation to get input on them, so.

UNIDENTIFIED MALE: Janis, you may be muted.

JANIS KARKLINS: Sorry, I was. I was coughing. Let me read something that may clarify the situation and I'm now quoting. I understand that these are GNSO Working Group guidelines.

The manner that these statements go with the consensus designations in case of consensus strong support but significant opposition and no consensus, an effort should be made to document that variance in viewpoint and to present any minority view recommendations that may have been made. Documents with the minority view recommendations normally depends on the text offered by the proponent as very clearly linked to consensus designations in the working group guidelines. Minority views are related to consensus designations and these are not included in addendum.

So in relation to forming of a small group, as I said, I see no reason why small group of team members could get together and work. Staff will provide technical support [where] substantive in terms of Zoom meetings. And certainly, that should not be done at the expense of our planned activities on Thursdays when we are working towards examination of comments received on SSAD initial report.

So I have two hands up, Volker and Marc Anderson.

VOLKER GREIMANN: Yeah. I mean, ultimately, everyone can probably do a small group but what's the value in a small group that's only representing one side of the argument? I think that's a waste of time and money. But if you want to get together with everyone that has the same opinion, then of course, you can form a small group. But there is no point in that.

And the second issue is with regard to the consenting opinions, I think we should have the ability to have dissenting opinions in the final report. However, as you said Janis, these, the report should present the divergence of opinions. So any dissenting opinion should have the opportunity given to the other opinion that is prevailing to explain their position as well. So if you're... And that is simply not possible in the short time that we have left to provide this initial report.

So I think for the final report, we could probably have an agreement to dissenting opinions will be possible provided that the other side of the argument also gets to present in the same space given to the dissenting opinion, their opinion, and therefore, display the entirety of the argument, not just one side of it. Thank you very much.

JANIS KARKLINS:

Okay. So I have another three hands up, but I would like to point to the screen and see whether we could land then in case of legal versus natural to the following designation in preliminary conclusions, that there is persistent divergence of opinions on if and how to address this topic within EPDP Team. As a result, the EPDP Team consults the GNSO Council on if and how to expect... it is expected to consider the findings and address the topic. So just please consider in light of this rather bitter exchange that we have, so whether we could lend on actually factual statement that is also similar to one we have on accuracy.

I have Marc Anderson, Alan Greenberg, and Margie in that order please.

MARC ANDERSON: Thanks, Janis. First up, to answer your question, I'm fine with the current language on legal versus natural. I think it's a factual and accurate statement of our current situation within the working group.

I do want to remind everybody of the conversation we had on Tuesday on this topic. If you may recall, there was, essentially, language in the addendum from NCSG that [amounted] to divergent opinion on the Purpose 2 recommendation. And Steve DelBianco, who I believe was filling in for Marty at the time, pointed out that this was unbalanced treatment as other groups were not able to put divergent opinions on other preliminary recommendations. So after discussion on this, it was agreed that NCSG's dissenting opinion would be removed from the Purpose 2 recommendation and that everybody would have an opportunity, of course, to submit public comments and everybody would have an opportunity to provide dissenting opinions in the final report. But in the interest of time, it was agreed that we would not put dissenting opinions in the initial addendum report.

So this conversation seems to be doubled-back on that discussion we had on Tuesday, so I just wanted to take a moment to remind everybody that we had this discussion on Tuesday and we did come to this agreement already.

JANIS KARKLINS: Thank you, Marc, for reminding us. Indeed, that was the case and the dissenting opinion of NCSG was taken out. But also, there is a

fundamental also difference in that. My understanding was that on Purpose 2, the rest of the team, that NCSG, was in agreement. Here on other topics, there is much bigger division of opinions and so that's... there is a slight difference on one situation. Nevertheless, I think you summed up very well where we are now.

Alan Greenberg, and following that, Margie.

ALAN GREENBERG: Thank you very much. I'll point out the... what we decided last week is the EPDP Team would not insert language like that. That's very different from a group putting in, under its own authorship, a different statement. That's a very different thing and I don't understand. The guidelines say that if there's a consensus decision which you don't agree with, you have a right to make a comment. I don't understand how anything is getting into the addendum if it wasn't a consensus decision of this group. So I am raising my objection, but I suggest if that's the ruling, then so be it and we'll handle it from there. Thank you.

JANIS KARKLINS: No, but current text suggests that there is a persistent divergence of opinions.

ALAN GREENBERG: Yes, but it also says we are deferring to the GNSO to make a decision at some time in the future after we conclude our work. I believe it is a policy issue that the GNSO has already given to us. If we cannot agree with it, we should be putting in "We can't

agree”, not asking the GNSO to make a decision. The GNSO can do what it wants going forward. How we handle something this group couldn’t deal with is different than simply giving it back to the GNSO. Thank you. But I don’t want to belabor this argument.

JANIS KARKLINS: Yeah. But again, formulation suggests that we are simply informing GNSO Council in a timely manner, that there is a divergence of opinion or at least, this is how I read the text. So Margie.

MARGIE MILAM: I agree with everything that Alan Greenberg said. What I understood is that what we agreed to in the text of the addendum is different than what can be submitted as a minority statement outside of the text and from Volker’s concern, he was concerned about timing. We would be willing to submit it today, so that it would not affect the timing of the addendum. But I do find it quite unusual and objectionable that the rest of my colleagues would not allow dissenting opinions to be included in this report. We understand we don’t have the support of our colleagues, but that doesn’t mean that we don’t have the right to express our opinions in a separate document attached to the addendum before it gets published for public comment. And so I still think this is a point of order that is unusual and I object to it.

JANIS KARKLINS: Okay. Lorraine, you haven’t spoken yet.

LORRAINE TAY: Thanks, Janis. I know you're on the edge of the seat missing the sound of my mellifluous tones. I have a small edit to suggest building on Alan Greenberg's point which is instead of saying "The EPDP Team will consult with the GNSO Council and if/how it is expected to consider the findings and address this topic", I would suggest given the disagreements here that we edit the language this way. "As a result, the EPDP Team will consult with the GNSO Council on potential next steps," and leave it at that because the way it's phrased now on if, how, it – I don't even know how "it" refers to if that's us or the GNSO Council – it's vague and it seems to imply that we're deferring to the GNSO Council when I'm hearing the real intent here is just to notify them and discuss it with them but not make a decision necessarily on who is going to continue to own this.

JANIS KARKLINS: Okay, thank you. So could you repeat that Berry can insert that on the screen?

LORRAINE TAY: Sure. It would just be "The EPDP Team will consult with the GNSO Council on potential next steps."

JANIS KARKLINS: Okay.

LORRAINE TAY: Again, my intent here is to just eliminate any indication that somehow we've made a decision to bounce this back to the GNSO Council. So if it's 11 [inaudible].

JANIS KARKLINS: Okay. So let me see. So Milton's hand up. But let me ask before giving the floor to Milton, others to reflect whether Lorraine's proposal could be one that would meet everyone's consensus. Milton, please.

MILTON MUELLER: Yes. I think Lorraine's amendment, really in terms of its actual meaning, is not different from the language that she replaced, at least not in any significant way. So it would be acceptable to me.

I do think that the GNSO Council, if we can't agree on this – and this is something that's just fundamental about ICANN and its PDPs – if we can't agree, if we can't come to a consensus, we don't do anything, we don't have a policy. And if we can't come to an agreement on legal versus natural, it is, in fact, not going to be decided by this EPDP. So with that understanding and understanding that however we word this doesn't get around that basic fact, I would be happy to support Lorraine's amendment.

JANIS KARKLINS: Thank you, Milton. So it is interesting that how old wounds are opening up once we are touching them and actually not [inaudible] very closely associated with ICANN for the past ten years. Nevertheless, I feel that these are issues that have not been

resolved for decades and so disagreement in the team is not surprising to me. So we need to, simply, find a way how to push [inaudible] down the road and not destroy the constructive spirit in the team to finalize the main objective or to reach the main objective or work to finalize the SSAD that is so impatiently awaited by many, including members of this team and their constituencies. Hadia? And I would really like to close this conversation. Hadia, please.

HADIA ELMINIAWI:

Thank you, Janis. I think Lorraine's suggestion is fine. I just wanted to note Milton said that we have no policy with regard to legal versus natural. Well, I think we do have a policy right now that says that conducted parties may, if they like or they wish, differentiate between legal versus natural. We don't have a policy that says the differentiation has to happen, but we don't have a policy also that says that differentiation cannot happen. And this is just what I wanted to note. And maybe if this is not clear, maybe we can point it out somewhere in the report. Thank you.

JANIS KARKLINS:

So thank you, Hadia. So let me see if we can land on the proposal that was formulated by Lorraine on preliminary conclusion on legal versus natural which states the fact that if there is no agreement, there is persistent divergence of opinion on the topic, and we will simply consult the GNSO Council on possible next steps.

So at that set time, at the same time, all groups can submit their comments, their opinions on the topic during the comment period

and addendum and certainly, in case of not finding consensual text for final report that each group will be able to submit their dissenting opinions on this particular, this or any other particular topics that will be [inaudible].

So may I conclude this part of the conversation and see whether we can agree on the rest of the text? There's minor opinions that have been voiced during preparation of the previous call. Margie, your hand is up.

MARGIE MILAM:

Sure. The statement that was still incorrect in the sense that it doesn't recognize that we have legal advice that hasn't been considered, so I would recommend that we add a sentence that references the fact that we do have advice from Bird & Bird on the legal natural person distinction, and then finish with the statement that Lorraine said. It's an accurate statement and it describes the amount that still needs to happen.

JANIS KARKLINS:

So I didn't get what is, who is laughing and on what. Amr.

AMR ELSADR:

Thanks, Janis. Yeah, as I indicated in the chat, I am totally fine with Lorraine's proposal here. I don't know if we want to spend too much additional time on this topic. I'm guessing we don't. But if every group starts trying to bring its personal issues to the language we're going to include here, then by all means, every group should do so. Margie is suggesting adding a pointer to legal

advice that we haven't considered yet. That is true. It's not untrue. But then in that case, then maybe we need to also point out that the legal advice is not the determining factor in this conversation and policy issues as opposed to legal issues are. Personally, I would prefer to include none of them. I'm happy with the language Lorraine proposed. But if we start wordsmithing the language here, then every one of our stakeholder groups and advisory committees starts taking a stab at it, we're going to spend a lot more time on this than we actually need to, at least for the purpose of the initial report. Thank you.

JANIS KARKLINS:

Good. That's true and I understand that there is a part in the initial report which describes the activities of the legal committee. And so the legal committee inputs are covered by the report, including with the links to the [relevant] document.

So that is now on the screen as you can see highlighted, the full text of the questions in order of last received and response to questions can be found here. And everywhere else, all legal memos.

So can we move on? Okay, I think... Lorraine, I think your microphone is open and I see you have a lot of fun there. Margie.

MARGIE MILAM:

I'm sorry. I think that not being clear about the legal [ATRO] person memo is a problem here. I thought we, in the accuracy discussion, also referenced the memos and so if we could scroll back up to the accuracy discussion, I propose we treat it the same

way. If it's not there, then I'll drop it. But I thought that in the accuracy section, we actually did talk about the legal memos.

JANIS KARKLINS: So can I get on the screen, the accuracy?

MARGIE MILAM: Yeah. See right there, the EPDP Team also took note of legal guidance provided during Phase 1 here. And so I think that some similar statement in the natural legal person distinction paragraph is important because it points the people that are reading the report to the legal discussion. And I actually don't have a problem including a statement like Amr said, about that there's still policy issues to be resolved. That is exactly the point, that the work needs to be done to analyze the legal memos and have the policy discussion. So I'm perfectly okay with including a statement to the effect that Amr suggested and then I'll be satisfied with the section.

JANIS KARKLINS: Okay, let me see if the team would be fine by mirroring the text and then, from the other section to this one, on legal versus natural, with a factual statement that this legal opinion was received but it was not reused. Milton and Marc Anderson.

MILTON MUELLER: Janis, surely with your tremendous experience in moderating these kinds of discussions, you know that we are wasting time and

we are... You're entertaining modifications that simply are intended to deny the fact that our preliminary conclusion is exactly correct. Let me repeat it. There is a persistent divergence of opinion on how to address this topic.

Okay, so when you talk about adding the reference to the legal opinion, one of those divergences of opinion is that many of us don't believe that that is relevant. We believe entirely that it's a policy issue and we want to consider it as a policy issue. Other people consider the legal opinion to be determinative or somehow helpful in this conversation. That is a divergence of opinion. We are not accomplishing anything by sticking language in and trying to wordsmith it in ways that are designed to slant the discussion in one way or the other. We have a persistent divergence of opinion. We are going to consult with the GNSO Council on next steps. That's all. I mean, let's just face reality, folks. Why are we doing this? What are we accomplishing? My opinion is nothing. I'm appealing to our Chair to basically recognize that we are at the end of a dead end road and we just move on and try to accomplish something constructive.

JANIS KARKLINS: Thank you, Milton.

MILTON MUELLER: You got the message.

JANIS KARKLINS: Yeah, I got the message. I think that others too. Marc Anderson, please.

MARC ANDERSON: Yeah, I don't disagree with what Milton said. This is... We're reopening an issue that we had closed. That said, I would not object to adding that note as long as it's above the preliminary recommendation text, similar to how it's done in the accuracy section. In accuracy, it was not part of the preliminary conclusion. It was above it in the background section. Just noting the EPDP Team took note of the legal guidance provided and then a link to it. I wouldn't have an issue with that. I would not object to it going there.

JANIS KARKLINS: Okay. So then let me use, as Milton suggested, my Chair's authority and suggest that we insert a factual statement in the description per the preliminary conclusions that the legal guidance on legal versus natural was received from Bird & Bird, and could be read here, whatever this formulation would be. And then we submit as a preliminary conclusion, the text that you're seeing now on the screen.

So may I take that this is a wish or let me put it differently... Is anyone objects Chair's ruling? I see Milton's hand up.

MILTON MUELLER: If you refer to the legal advice, you have to also say that there are groups that believe this is not a legal issue, that it's a policy issue. So let's spend another 20 minutes doing that.

JANIS KARKLINS: Okay. Would anyone have difficulty to add additional sentence saying that some members, or some groups of the team consider that legal versus natural is a policy issue, not a legal issue? Marc Anderson, your hand is up.

MARC ANDERSON: I do not object to that. Edit from Milton. I'm concerned that the text that's provide has not been reviewed. It was given to the full working group to review and my understanding is that it was reviewed and discussed in the Legal Committee who is authorized as a representative group to discuss on behalf of each group. So I believe that's not... Correct me if I'm wrong here, but I believe that's not an accurate statement to say that it's not going to be reviewed.

JANIS KARKLINS: It was not reviewed by the team. It was received but it was not reviewed by the team. And I would not go... I think that the accurate, factual statement is that the EPDP Team took note of the legal guidance provided and recently received guidance during Phase 2 that could be read here or see here without, but not has been reviewed by the full EPDP Team. It is received. And then if the small group wants to review and then present during the

comment period, that small group can do that and see what will come out of it.

But then we need to add additional sentence that Milton suggested that some members of the team consider this being policy issue rather than legal, policy rather legal issue.

So with these modifications, can we move on? Can we move on to the minor edits? So thank you.

On minor edits, so as I mentioned, there was online conversation on those outstanding issues and my question is whether text that staff can put on the screen is the one that is consensus. So we have, where we have it, we have... So Berry, if you could show on the screen and point to those few issues that, again, discussed online, just making sure that we have a correct reflection of the agreement.

BERRY COBB:

Janis, I'm kind of lost. I don't know exactly what you're looking for here.

JANIS KARKLINS:

Just to show on the screen, the text of the addendum, initial report, just making sure that those two issues on page nine and then another one now are correctly reflected after online conversation that took place.

BERRY COBB: Yeah. I think we tried to tell you we don't have those added to this yet because they weren't formally agreed by the group as edits in this working redline draft. That's why we're still working from here.

JANIS KARKLINS: Okay. So then let me ask the team whether following the online conversation, whether we can consider that the agreement reached by IPC and CPH on those few topics are acceptable to all and that they will be reflected accordingly in the final report. The other small edits that have not been contested would find a way in the report as suggested by those who asked those minor edits. Marc Anderson and Brian in that order.

MARC ANDERSON: Thanks, Janis. Yeah, Brian and I had a chance to talk yesterday about this and I canvassed some of my colleagues and I think there's no, I did not see any issue or hear any objection to the latest change that's removed the "also" from the highlighted sentence and changed the capital "May" to a lowercase "may". I think this is fine and if that addresses IPC's concerns then I support it as well.

JANIS KARKLINS: Thank you. Brian, please.

BRIAN KING: Thanks, Janis. Nothing substantive to add, just thanks to Marc for taking the time to chat about this and having a reasonable discussion. Thanks.

JANIS KARKLINS: Okay, so then we change capital “May” to small letters “may” and we delete “also” and then this recommendation is adopted, right? Any objections to that? I see none.

So on the rest, there weren’t any objections and the edits, they will be reflected in the initial report of addendum. So with this and I take that the document is ready to be submitted for public comments during the, immediately after our call. And I would like to thank all team members for showing flexibility and making this decision. I understand that this would not be easy and there are still unresolved issues. I understand that. The comment period will allow us to address them and we will move on now to review of standard issues and comments for initial report itself. Marc Anderson and Margie in that order.

MARC ANDERSON: Thanks, Janis. I suspect, Margie, you raised your hand for the same thing. BC did object to one of the proposed minor edits that I submitted. I think it’s the second to last one and I suggested we, in view of the BC’s concerns with this and the time, I stated that this is not a “can’t live with” edit and so I suggested we just skip that edit. So it’s from page 17 to 18, the second to last one on the addendum form.

JANIS KARKLINS:

Okay, thank you. Margie, are you satisfied? Your hand is down. Thank you.

So with this, Margie, you want to speak? No, okay.

With this, I consider conversation on addendum closed for the moment. We will submit it for the public comments and public comment period ends on May 3. And after that, of course, we will take it up and we will consider in our group.

So with this, we can move to next agenda item and that is on May 5. I was corrected by staff. May 5 is the end of comment period. So with this, we are moving to next agenda item and that is public comments received on initial report. So here, we will listen as you, to your remarks by staff who are now working and compiling all comments provided. But I would like, before giving floor to staff, to Berry, I would like to ask those groups from EPDP Team, which have not submitted yet their comments, to indicate either by taking the floor or in the chat, when they intend to submit their contributions, their comments.

So we had the conversation that not each individual, because of different reasons, were in the position to or may have been in the position to submit comments on initial report. With that understanding, we indicated that the comment period would not be extended. But together with the comments on addendum, those individuals who have not had the chance to submit comments on the report as such could do so. So my understanding was that we are not talking about massive influx of comments on May 3 or by May 3, but rather than all comments on

SSAD would come in by 23rd of March and that would kind of be only exceptional cases.

But I understand that not every group has had the chance to submit their comments and it would be important for us, since we're launching the analysis and conversation on all the comments submitted in the comment period of the report, to know when we can expect the input from those groups. And I see a few hands up. Amr, you're first and then Alan. Alan Woods.

AMR ELASDR:

Thanks, Janis. Well, it is my hope that [inaudible] finalize its input to the Phase 2 initial report, not the addendum, by the end of next week. But we do have an internal process in the NCSG which should hopefully not take more than two to three days to adopt it as formal NCSG input. So I'm hoping, again, that we'll be able to submit within that timeframe.

I don't predict that there will be much delay past that on submitting input on the addendum. It's considerably smaller than... It's considerably shorter than the initial report for Phase 2 and I think we've already done a lot of it recently. Thank you.

JANIS KARKLINS:

Okay, so we can expect then end of next week. Thank you. Alan?

AMR ELASDR:

Janis, sorry. No, not the end of next week. End of next week, I'm hoping the drafting will be done. Like I said, we'll need a few more

days past that to get formal NCSG adoption of whatever we come up with, so possibly halfway through the week following that. That's what I'm hoping we can aim for.

JANIS KARKLINS: Okay, but before Easter, we start [inaudible].

AMR ELASDR: Yes, I do hope so.

JANIS KARKLINS: Yeah. Okay, thank you.

AMR ELASDR: Yes. Definitely before the end of the first week of April. And you know, we're just as keen to get this over with as you are to receiving it from us. Thank you.

JANIS KARKLINS: Okay, thank you. Alan. Alan Woods.

ALAN WOODS: Thank you. Yeah, so I'm not going to add anything extra to what Amr is saying. It's roughly the same. We have been working on the comments and we did note that there's a few other things going on at the moment that, unfortunately, took a lot of the people who are doing efforts on these notes on our comments at the moment, so we are, we find that we are finding it difficult to

reach that particular deadline on that, and therefore, we are happy to accept trying to get a little bit more time towards that. It is not our intention at all to aim for a May date for the production of these comments, but we are working on them as we speak at the moment. I can't say as to exactly when we will get them in, but we have had meetings regarding that and we are going to get those comments in as soon as we possibly can.

I think, for the registries, of course, as it is with the registrars, we're very happy to see their comments, but at the same time, this is a very, obviously, a very important comment period for the Registry Stakeholder Group as well and we do have a disparate number of members, and again, we are all dealing with things at the moment as well. So again, we need to ensure that we get a proper canvas of them. So I can't actually commit to an exact date, but it's certainly not our intention to hold out until the end of May. We are getting them in as soon as we possibly can. Thank you.

JANIS KARKLINS:

Thank you, Alan. Anyone else? Okay. Are there others? Those who have not submitted the comments, please inform staff, support staff, when we may expect. It is really important, also for the timing of our activities. So one needs also to understand that we will not have face-to-face meeting opportunity until end of June. I think that this is obvious. So as a result, we will not have this luxury of having dedicated sessions, face-to-face sessions nailing or ironing differences that we potentially we may have. So therefore, we need really to be very good in planning and also disciplined in the calls.

So maybe I will now invite Berry to walk us through the current state of comments before maybe indicating how we would take them and work them through. Berry, please go ahead.

BERRY COBB:

Thank you, Janis. So since we opened up the public comment period, we have been paying most attention to priority two items. However, you will recall we did start discussions around the cost estimate questions that would go into the financial modeling recommendation. We touched on briefly SLAs and now we're fully back to our critical path work which is reviewing the public comments. So just briefly going to take you through the procedure on how we propose to do this. It's very similar to what occurred in Phase 1 which seemed to be a fairly positive outcome. These types of public forums are challenging in that we're dealing with very complex topics and the like. So we're trying to build on the successes that we got in Phase 1 in terms of trying to expedite review of all of the comments, but in a manner that we have, that we can defend that we actually reviewed all of the comments.

So you'll notice over here on the right, the typical public comment forum, and when you view the comments, you see that it's deposited into a non-user friendly way to see the comment submissions. And I recognize that this platform for submitting comments is somewhat challenging, but I'll also reiterate, I can't tell you how many staff hours are saved by going through this approach in terms of preparing the comments for the group to be able to review them and deliberate on them.

But ultimately, this is not, while this version is publicly available so that the community can see what comments were submitted by which groups and what they submitted, it's obviously not in a very good user interface.

So what do we do with that? Well, we basically export all of that information and put it into... I love Excel so I prefer to work in Excel. But this is the mechanism by which we can organize and normalize the data, both from a quantitative perspective and a qualitative perspective so that we can try to expedite getting this information into a consumable format.

I'm not going to go through the details of this, but essentially, you can see each row is an individual comment that was submitted. As you move left to right is the quantitative component of choosing your level of support for the recommendation and then the recommendation text itself. And it goes from Recommendation 1 through all the way to 17. And of course, we're developing pie charts for each of the recommendations. As you'll recall in our public comment review tools that I'll show you in a minute, these are a thumb in the wind indication on the level of support. It is not to be construed. It is anything to do with consensus levels or anything, but it's just to give us a rough indication about where that will help us determine where the biggest challenges are with our recommendations.

So the last thing I'm going to talk about here is kind of normalizing the data. This is ultimately about quality, not quantity here. And we did receive some duplicates. So ultimately, to develop these pie charts, there was essentially a kind of a filtering exercise to try to narrow down what is substantive versus what is duplicate.

So in essence of the main data set, we have, essentially, nine groups that have or will submit comments. As Janis noted, we have three groups that have yet to submit so we have a placeholder here. So that's nine groups. We essentially had 26 organizations, meaning a company or an association or something to that effect that submitted comments. We had one individual that makes up a total of 36.

Now we also did have a couple of duplicate submissions from two organizations where they were duplicative to either another group's comments or to that same actual company, but because there was a separation or a difference in the qualitative comment, those will be pulled into the public comment review tool, but they aren't considered in terms of being developing the rough level of support in the pie charts.

And then we also had two comments where the only thing that was submitted is, essentially, marking entries at the tail end of the survey or the form which outlined kind of a free form text and those will be pulled into the PCRT as well. What I'll also point to you down here is this includes a record of these exact duplicate submissions from these groups, meaning that they were identical matches to either somebody else in their respective organization or a copy of a particular group submission meaning ultimately that there was nothing meaningful in the qualitative components that were added. So there's no point in just adding these into our review tools just to duplicate text. We're trying to narrow this down and to, as a small amount to be consumable.

And then, of course, we have an incomplete submission, a few of those that were there, where essentially, there was no content

submitted or there was one entry where there was a lot submitted but it didn't appear to have anything to do with the topic under policy discussions here.

Once I get this finalized, we will post a version of this sheet so that you can keep me honest if I made a mistake and if you care to even spend the time to go into the details. Everybody is human. Sometimes I might make a mistake so please call me out if you happen to look at it.

So what does all of this mean? Ultimately, it means we're going into the form that most of you will be familiar with, which is kind of our standard template within the GNSO to review the comments. Top section is just a quick summary statement of what the recommendation was and then we have it broken out by support, support with intent and wording change. You get down into the middle where there needs to be a significant change required for comments related to whether the recommendation should be deleted.

And then of course, we have a couple of areas where no opinion was provided which was an option offered on the form. And in the case of a few, there was no response to that qualitative – I'm sorry, quantitative – example and so we just labeled this as no response.

Ultimately though, in column three, which is this middle column, you'll see who the contributor was and then there's an area over here which tries to allocate was there support, were there concerns for the comment and the like. Ultimately, this is just going to be a quick reference in this last column four because

where we're really going to be heading is, I think what was the key element that allowed us to quickly review through the comments was the aspect of the discussion tables. So as soon as I turn the crank on busting out a public comment review tool for each one of the recommendations, the rest of the staff team will then take those and start to compile these particular discussion documents. Ultimately, these discussion documents is just a different version on how to organize the topmost concerns as provided by feedback from you.

So once we have compiled all of the comments and we get an indication on what order seems the most rational to move forward with and which we should have available to you by Tuesday and what kind of order we anticipate moving forward, essentially, these discussion templates or documents will be out on a Google form. We'll give you the schedule and the groups will start to review those and populate each of the discussion documents so that they can be reviewed.

So in general, when you're reviewing the comments, each group is going to be requested to focus on the following. Do the comments contain any new information that the EPDP Team did not already consider in its prior deliberations? Or secondarily is considering that there is new information and changes that may result from it, do they rise to the level of your group not being able to live with them? And again, we're stressing about the not being able to live with. And then if so, of course, provide the rationale on why that's the case.

So then ultimately, each group will provide this input into the discussion table as I just mentioned. And leadership and staff

report will compile this and prepare for the follow-on meeting when these are going to be reviewed on the plenary.

So in general, the rhythm here. There's one plenary meeting per week which will be on Thursdays but that is with the commitment that the groups deliver on their homework by close of business on Tuesday. So as of now or after next Tuesday's meeting, so really, moving into April, there is no scheduled plenary call for Tuesdays but we're expecting the groups to spend that time to review through the comments from the public comment review tool and make their entries into the discussion documents and then staff can turn that around so that we can collate and organize the most pressing issues to be discussed at the plenary on Thursday. And we'll try to have that reorganization back to the group on Wednesday so that you'll have at least a little time to kind of organize your thoughts and be prepared to speak to the specific comments.

We should have all of the public comment review tool things posted on the Wiki for you to review through these comments and start to read through them in advance by the end of the weekend. As I noted, we'll have a full-blown schedule to review with you next Tuesday. But we think what the next three topics are going to be is first is the mechanism or evolution of the SSAD which is obviously already on the agenda, and possibly talk about SLAs and reporting requirements which, in addition to the comments, can probably also use a little bit extra work.

So the only caveat, and there's always a caveat or a disclaimer, is we still have an aggressive time schedule. There is a lot of comments to review here. So it's going to be important for the

team to not only be prepared for their homework, but to come prepared for the calls to discuss the most pressing issues and I guess the leadership team will reserve the right to amend the schedule through April if we really start to fall behind or get tripped up on particular comments. So I'll stop there, turn it back over to you, Janis. Happy to answer questions, but hopefully I prefer that we spend the rest of the time to review through the mechanisms so that that tees up our discussion better for next Tuesday. Thank you.

JANIS KARKLINS:

Okay, thank you. Thank you, Berry. From my side, I would like to stress again how important it is to get all input prior our starting our review of them because it may happen that groups who are submitting input later, so then we need to come back to issues that we potentially would have over the reviewed and that would be not the most rational way of conducting business. So therefore, prior launching the review of comments, our idea was to address some of the issues that have not been addressed maybe in full during the preparation of initial report. And as Berry indicated, so mechanism is one of them. Then SLAs at one point, probably also we will, we need to talk financials. There, of course, input of ICANN Org would be essential that if we would get some hint on financial estimates, that would be helpful for us to put our head around that particular topic.

As Berry suggested, we would work once a week, allowing groups to meet on Tuesdays for the homework. But I cannot exclude that the first step, if we will start falling behind the schedule, would be extension of the meeting time on Thursday from two hours up to

three hours. And then if things will go really not smoothly, then we will seek your indulgence to propose a time or time period of intense work which would entail daily meetings as we would be in face-to-face mode. But hopefully, we will be showing enough flexibility and we shall agree and listen to each other that we can proceed swiftly.

With this, I would like to open the floor for any reactions, comments on the proposed way forward. Margie followed by Mark Sv.

MARGIE MILAM:

Thank you, especially Berry, for all the hard work you did on pulling that together. I can see it was an enormous amount of work and we really appreciate it. I do have a concern though about the notion that public comments coming later can affect our work. And I understand that we do have these outstanding issues, but in my view, what that means is when we start talking about something, like say the mechanism for evolving the policy – that's one example – we will have discussed this as a group collectively, reached some sort of agreement on change, and then a week later or two weeks later, we get something else from the other stakeholder groups. I don't understand how it's fair to now pause and go back and revisit everything we already negotiated based on what comes in through the public comment. So I think in a sense, we would be going over each topic twice under that scenario. And that, to me, just seems like a waste of time.

What I would suggest is that our colleagues, since obviously they know what their comments are going to be in some form, bring

those comments to the discussion even if it hasn't been formally submitted yet so that at least we have the ability to address the concerns from those parties in our discussions and not have to revisit it two weeks later or however long it takes because otherwise, we're just going around in circles. So that's my ask to our colleagues, to please, as you know what your comments are going to be with respect to each topic that we're talking about, to bring them to the table so we don't have to revisit them later.

JANIS KARKLINS:

Thank you, Margie. I think it is a very logical suggestion and I hope that that will be also the case when those, on topics where submissions have not been received, representatives of those groups will be speaking as they would have been received, and that we know what they would be. Mark Sv followed by Volker.

MARK SVANCAREK:

Thanks. My comments are substantially the same as Margie's. This sounds like a logistical nightmare and I guess the best that we can hope for is that in the cases where the feedback has not been submitted, that at least a portion of the feedback applicable to that day's discussion be brought forward in advance of the discussion so that we can have a reasonable conversation about everybody's viewpoint. If we are going to have to reconsider late feedback and then have the discussion again, I don't see how we can possibly meet our deadline so I'm very, very concerned about this. Thank you.

JANIS KARKLINS: Yeah, thank you. There are comments or reactions to my three-hour session suggestion. Indeed, there would be a break. Three hours is not humane for intensive engagement. So I know that. We would have 90 minutes, then five, ten minutes break, and then we would reconvene. Volker followed by Alan Woods.

VOLKER GREIMANN: Yes. First of all, thank you for all this great work that went into preparing this so far. I must admit I had my doubts about this new format when asked to respond because, obviously, the freeform response format that we are used to is very much easier for the commenter to use whereas this requires a lot more research going back and forth and hard work on the drafting part. But I appreciate that it makes the review and the creation of the overview and the actual review on our part very much easier. So I'm warming up to the new format and I appreciate the hard work that went into it. It's amazing how good this looks and I think we will be able to make swift work of the comments this way compared to the way that they have been handled in the past. So thank you and kudos to the staff here.

JANIS KARKLINS: Thank you, Volker. Alan Woods.

ALAN WOODS: Thank you and thank you, Margie, as well. Absolutely understand the concerns in that. Again, I just want to stress that I think Amr just said this in the chat ready as well is that let's not labor under the misapprehension that this is the three of our, myself, Marc's

and Matthew's comments. This is the Registry Stakeholder Group comments. We had agreed that we could push the boundaries on this. This was a discussion that we had, absolutely, and it is the registry stakeholder comments that we told them that they could take this extra time. Yes, we are [inaudible] enough, but at the same time, this is something we need to take into account.

We will, of course, put in our thoughts into this process at the same time. But at the same time, can we just point out that this... We are working under extraordinary circumstances here. This is not about upmanship. It's not about getting in our comments before or after our holding our cards to our chest here. This is us working under a circumstance and we're trying to do the best of it and we're very grateful for the extra time that was provided to us to do this and we will go by that. We will try our best to give indicators of where we're going in this, but at the same time, our comments will be our comments. And we must give an expectation of that as well.

JANIS KARKLINS: Mark, thank you. Alan. Volker, your hand is up. No. Marc Anderson, your hand was up.

MARC ANDERSON: I defer to Alan.

JANIS KARKLINS: Okay. Mark Sv.

MARK SVANCAREK: Thanks. It might be admission of the unusual circumstances. It's certainly reasonable. We did give a time extension. It's reasonable for people to take advantage of that time extension. I just don't want this to be something that backfires on my constituency because everyone gets a chance to look at our feedback first, change their feedback later, and then we are forced to discuss our feedback and then later... You know what I mean? It seems like a disadvantageous situation to us. So I am hoping that as the circumstances come up – maybe this will never come up – but if they do arise, were we in such a situation, that we will be given the opportunity to have a full discussion when the new feedback comes in and not some sort of artificial “Hey, we're running out of time. Sorry you guys. You had your chance to talk” kind of thing that sometimes it feels like we trap ourselves into. So I'd just like to mention that right now. Thank you.

JANIS KARKLINS: Okay, thank you. So no more requests for the floor. I take that the proposed way forward is something we could live with and then follow. So next Tuesday, we have the last meeting of the team which should be considered to catch up with the non-face-to-face meeting in Cancun. And then Thursday will be ordinary meeting and then from week after, we would enter into this rhythm of one meeting per week.

So with this, let me now move to next agenda item. We have about 25 minutes to talk conceptually about a mechanism for the evolution of SSAD. This is something we put in initial report, but

we did not have a proper conceptual discussion. We had some input from public comments and if I may ask somebody from staff, Berry or Caitlin, to kickstart and then maybe to give overview of input received but also overview of the previous conversation that we had on this mechanism during the face-to-face meeting in Los Angeles. Caitlin, please.

CAITLIN TUBERGEN:

Thank you, Janis. Before I dive into this document that you now see on your screen, I wanted to give two quick disclaimers. The first disclaimer is that we reviewed the public comments that were received. Most of the comments came in on Monday or Tuesday so I wanted to note that if one of the options proposed in the public comments does not appear in this draft, it is not a qualitative assessment on the support team's side of any options proposed. And it certainly doesn't foreclose the opportunity for anyone to propose additional options during this discussion or following this discussion.

And secondly, I wanted to give the disclaimer that our internal ICANN Org and additionally, the ICANN Board colleagues have not had a chance to review this document. So I, again, wanted to note that anything proposed in this document is just for discussion purposes but it would probably need additional scrutiny from ICANN Org and ICANN Board before we proceed with anything.

That said, at the top of the document, you'll notice the general themes that we heard or received in the public comment forum in response to the question dedicated to the mechanism. The first concern expressed is, "Is a mechanism actually needed?" kind of

the first question. Some commenters believe that a mechanism is really unnecessary and they have concerns about it circumventing the current processes detailed in the ICANN bylaws and the GNSO processes and procedures.

The next big theme that came through in the comments and was also discussed during the face-to-face is that all directly affected parties should have a voice or representation on any sort of body that would be making decisions, specifically that it shouldn't just be limited to GNSO stakeholder groups and constituencies but that all members of the EPDP Team or all groups represented in the EPDP Team should be able to participate.

There were some options suggested as Berry is highlighting now. Some of those options were similar to a GNSO Council Standing Committee, possibly a Cross-Community Standing Committee, like the Customer Standing Committee. The Empowered Community structure was also suggested or something similar to a Standing Implementation Review Team that could be called on to discuss implementation advice.

We note that another concern expressed or idea is that the focus should be on implementation only. You all probably remember that this was also discussed during the face-to-face session that the EPDP Team couldn't create a mechanism that would define new contractual requirements because it would have to go through the traditional policy development process or the contractual negotiation process. And again, there are some different perspectives on how the decisions would ultimately be made, again, noting the concerns that any sort of mechanism cannot

circumvent the policy development process or contractual negotiation process.

So if you can scroll down a little bit, again, some of the support team observations is that similar to the feedback that we've received from our ICANN Org liaisons is that any policy recommendation that the team makes should be clear and make the policy requirement clear. And this, of course, includes any sort of mechanism the team would recommend.

Additionally, the EPDP Team cannot recommend a mechanism that would create contractual requirements as this, indeed, would be circumventing or improperly bypassing bylaws and GNSO procedures like the policy development process. But pending further guidance, the team might be able to consider some sort of mechanism that would deal with the implementation of a policy requirement.

We also note that some of the comments received that the development of policy and requirements on contracted parties is the remit of the GNSO. If we could scroll down a little bit, the EPDP Team, when we were discussing this during the face-to-face noted that there might be some limited cases, such as SLA review and review of the proposed automation use cases that may need a more rapid or flexible mechanism to allow for the review since as many of you are aware, the traditional PDP and contractual negotiation process can be quite lengthy.

So again, some of the options that were explored in the public comment process are the following. Some sort of GNSO Standing Committee, a Standing Implementation Review Team, the

traditional contractual negotiation process, and the GNSO guidance process. But we did want to note that the team would still need to discuss these options and see if any of them are suitable.

Later in the document, if we scroll down, the support team went ahead and outlined the main mechanisms that were proposed in the public comment. We provide a little bit of background on those particular suggestions as well as what the triggering mechanism would be, what the remit would be, and our initial assessment of the suitability of that mechanism. So you'll see that we talk about the four main options and provide a little bit more background reading for the team's review.

Janis, I'm happy to go through this at a high level if you'd like. Or if you wanted to open up the discussion, I would defer to you on that.

JANIS KARKLINS:

Yeah, thank you. Thank you, Caitlin. Let me also remind why we have this mechanism in place because we have during, at one point in our work, we had the contracting party house proposal, how disclosure decision should be made. And it was received but was said that it is not enough. And we came to a conclusion, consensual conclusion, that the SSAD, the operation of SSAD may evolve over time because we are venturing in completely unknown. We do not know scale. We do not know many things that will happen within SSAD and so therefore, we thought that we should create something that would review the work, the

experiences, and suggest kind of improvement, but within the limits of policies that have been defined by EPDP.

So that is the trick to create something that would allow improved functionality of SSAD without getting into policy development which may be lengthy. So a few examples were, that may happen, were already outlined. That may be level of automation. That may be response time. That may be fine tuning the logging requirements or frequency of auditing and so on. So that is, and when we initially discussed this mechanism, we slipped on the conversation on composition.

And the... what I think that there are three clusters that we need to think about. One is what this mechanism would do, what would be the terms of reference and then [inaudible] report. And the second is modus operandi, how that mechanism would work, how frequently they would meet, and so on. And then the third cluster would be composition and seems to me that already from initial reports, the representativity of the different interests and groups will be mentioned and that will be the key in agreement.

So with this, I would like to open the floor for any comments of conceptual nature probably we should start and devote remaining time of the call to that. Alan G is the first. Please, Alan.

ALAN GREENBERG:

Thank you. I know we really have to do this before we finish, but I would like to point out that we still have not really addressed the controller issue, and therefore, until we know who is going to bear liability for decisions, we really can't decide who's in a position of

authority and responsibility to help make those decisions. If it's only the contracted parties that have liability, then clearly, they have to have an approval process by which they can say they're comfortable with changes in what's done with automation asset.

On the other hand, if we can establish through a joint controller agreement or something that ICANN has the liability because ICANN would make the decision, then it changes the decision completely. So at some point, we really have to come back and we or ICANN Org has to come back and give us some guidance as to how to proceed in this area. Otherwise, we're talking about a complete black box. Thank you.

JANIS KARKLINS: Alan, we are working on the working assumption that there is a situation of joint controllership and that is something that is reflected in the initial report. Isn't that enough for us to continue working?

ALAN GREENBERG: No.

JANIS KARKLINS: No?

ALAN GREENBERG: Maybe it is but Thomas says I'm doing a good job imitating him. I suspect a conjoint control... Assuming we are joint controllers, and I'm willing to accept that for the moment, then the details of

the joint controller agreement, I believe, can assign responsibility, and therefore, liability or not, or can say it's joint.

I'm not an expert on these areas and others around the table are. But I think the words in the agreement can end up influencing this kind of thing significantly and I'm not sure we can avoid it just by saying there are joint controllers, therefore, everything is clear. Thank you.

JANIS KARKLINS: Thank you. Brian?

BRIAN KING: Thanks, Janis.

JANIS KARKLINS: Please go ahead.

BRIAN KING: Okay, cool. Thanks. I agree with, I think everything that Alan just said, that we do need to decide that. It was a very nice Thomas Rickert impression which I agree with. I'm a little hesitant to have this conversation before we have the input of half of the contracted parties house because I think we need to be... Maybe we want to set some kind of perspective or parameters for this conversation.

And the view of the IPC, as we noted in our public comment here, whatever this mechanism does should not be construed to be

polycymaking. We have picket fence considerations which might be surprising to hear [aside]. But I think this mechanism, if we need it at all, which the IPC isn't convinced that we do, because I think the centralized model is a preferable one for us, it can't be polycymaking. So we should think about that.

I'm interested in the idea of an implementation review team, a standing team that does that. We're also interested in the policy, having our policy finish the policy development for this such that however the SSAD needs to involved would be in detail that's sufficiently minute that it would not be considered polycymaking or problematic for the contracted parties. So the vision that we have for this is that anything this mechanism can do or change would not be objectionable to contracted parties. So that's kind of where our thinking is now. I know that we're early in opening this conversation, but it high [level] some principles that we had in mind. Thanks.

JANIS KARKLINS:

Thank you, Brian. But look, we know that there will not be 100% centralized model. That, even theoretically, is impossible. So we will start with the higher or big level of decentralization of disclosure decision making at the contracting party level and as we go, potentially, where it is legally permissible and technically feasible, there will be bigger level of automation or there will be delegation of disclosure decision making authority from contracting parties to the central gateway.

So therefore, this mechanism should be the one who will monitor and advice, that process of bigger centralization as we go, and

again, maybe we do not need something specific. There may be something existing already that could be used, but the whole point is that this transition over a period of time when system will learn, will be trained and then scaled is the one we are talking about. Mark Sv followed by Marc Anderson.

MARK SVANCAREK: Sorry. I'm going to take my hand down. Thanks.

JANIS KARKLINS: Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I raised my hand sort of in response to Brian. I want to say this, Rec 19 is a particularly difficult one for the registries where that's one we have not finalized our comments on and are struggling with finishing those comments. Brian rightly raises the challenges on this one and I think we want to find a way to be flexible and reasonable about this, but at the same time, we have to protect ourselves against creating a mechanism to change or create policy outside of the existing established mechanisms.

And threading that needle is difficult. I'll tip my hat to Brian who mentioned... We said the challenges associated with creating such a unicorn, and his comment made me chuckle because I think he's right. This is a real challenging one and it's been one of the stumbling blocks for the registries in creating our comments for the initial report.

So we do want to find a way to be reasonable here and just say, just not respond with a no. But this is a particularly difficult one because it really cuts into a sensitive topic for us and we do have to guard against the picket fence and make sure we're not creating mechanisms that avoid or get around the established processes.

So I do think Brian makes some really good points and we are working on those comments and trying to get them submitted to the group as quickly as possible. But this one has been a particular challenge for us.

JANIS KARKLINS:

Of course, Marc, it is because Brian said that the IPC would prefer a centralized model and this contracting party house did not offer centralized model but offered decentralized model. We are talking about compromise and potentially gradual transition where the decision making or disclosure decision making would be delegated from contracting parties to central gateway.

So we heard also from, for instance, Volker that there may be situations that some decision making at the contracting party level would be automated because they will see that otherwise that is not feasible to answer and there is a sufficient assurance that the automation would be sort of reasonably safe in comparison with other issues. So we may see that suggestion.

And then how we will do. If all contracting parties say we think this is ready to go to central gateway, how it will happen? Whether there is a need for kind of a mechanism who will examine whether

that is the case or not and then make adjustments in the functionality of the system without changing the policy because policy says the system potentially will evolve based on experience and acquired sort of knowledge how a system could be operating the best. Again, this is, of course, we are talking about compromise and that's why it will never be perfect.

Alan Greenberg, please.

ALAN GREENBERG:

Thank you very much. I do regret opening this Pandora's Box at the start. At this point, I think we have to agree that contracted parties may well have liability of the decisions made by the SSAD, and therefore, contracted parties are going to have to have a significant, effectively veto, to say no, they don't feel comfortable, presumably by a representative group.

On the other hand, as we evolve, as we go forward, we may end up with a joint controller relationship which makes it clearer what the responsibilities are. As Thomas points out, we may find we can get insurance that gives, protects the contracted parties and that may change the situation. And I think what we have to do now is build for the current world but understand that it may change as the situation becomes clearer and go forward from there. Thank you.

JANIS KARKLINS:

Thank you. Mark Sv, your hand is up and down, and up and down. Are you hesitant to comment?

MARK SVANCAREK: I am trying to find the exact words that I want to say as the conversation proceeds. It's very difficult so thank you for your patience.

JANIS KARKLINS: Okay, so I do not have any further requests for the floor. Margie.

MARGIE MILAM: Hi. I wanted to give an example where I think this concept of evolution could really play, follow what has happened in the past. And if you take a look at the consensus policy that created the new gTLD program, it was pretty high level. There were a set of, say, a dozen principles that kicked off the new gTLD process and then ICANN went through a very long process in actually going through the implementation iterations. And I think that that model is something that we might want to consider here.

JANIS KARKLINS: Okay, thank you, Margie. Thomas.

THOMAS RICKERT: Thanks very much, Janis. I just wanted to get to one point that I made in the chat that Alan Greenberg picked up on, and that's the question of insurance. And I think that, at the moment, we have basically two fronts. One camp is in favor of going more to the joint controller situation, finding insurance for that and all that. And

the other camp sort of wants to retain the decision making power with the contracted parties.

Nonetheless, I think the point of coming up with a liability scheme and how to identify each other and how to back up financial risks for the parties, and that includes either insurance or financial risk front that we've discussed earlier, is not only relevant to the decision making part of it, and potentially errs in connection with that. It's also important with respect to aspects of collection where the parties are most likely joint controllers already, aspects of informing the data subjects about what's been done with the data.

So we are already in a multi-faceted system of areas where ICANN and the contracted parties may be held accountable by third party for the wrongdoings of another party. And therefore, I think it's high time that we actually come up with a scheme or at least with a way forward to put that in writing and put that in front of the parties concerned so that everybody knows what they're up to when this is actually coming to consensus and being operationalized.

And I read a comment that this might take another year. I think I'm most likely optimistic on this. I think as we see more and more detail of what we're trying to achieve, I hope it will become easier for all parties to put in writing what the arrangement could be. And you might remember that in Phase 1, we said that contracted parties in ICANN should sit together and come up with a proposal for this. I think it's not too late for that to happen, only we can't put them to a virtual [room] at the moment until white smoke comes out so we each come up with a Zoom room and wait for white smoke to come up. And if there's anything that I can offer in terms

of help to document this and get it through the door, I'm more than happy to do that.

Sorry for taking up that much time, but we're getting back to this topic over and over again. And I think we really need a task force, small team, or whatever you might call it to put pillars of that in writing because then it's going to be increasingly easy for the other recommendations that are linked to that, to be accepted. Thank you.

JANIS KARKLINS:

Okay. Thank you, Thomas. So I understand that this will be one of the difficult nuts to crack and so good that we had started this conversation. And what I would suggest staff will put this particular document in a Google Doc format and I would invite everyone who has bright ideas, so to chip in and provide comments and work on this shape of the mechanism, so in light of our conversation, certainly that this is not the last one. This is just the beginning and we will continue with the conversation during our next call.

And actually, we have already one minute over the time assigned for this call and I would like to bring this call to the end. But before doing that, I would like to thank staff for helping us to reach agreement on addendum as well as all team members for flexibility in this agreement. And with this, I would like to close this meeting and we will meet next time on Thursday. No, on Tuesday next week. With this, meeting stands adjourned.

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

UNIDENTIFIED MALE: Thank you. Bye-bye.

[END OF TRANSCRIPTION]