
ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Wednesday, 01 July 2020 at 14:00 UTC

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

Attendance and recordings of the call are posted on agenda wiki page:

<https://community.icann.org/x/IINIC>

The recordings and transcriptions are posted on the GNSO Master Calendar

Page: <http://gns0.icann.org/en/group-activities/calendar>

TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the GNSO ePDP Phase 2 team call taking place on the 1st of July, 2020, at 14:00 UTC. In the interest of time, there will be no rollcall. 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 Volker Greimann, RrSG, and they have formally assigned Owen Smigelski as their alternate for this call and any remaining days of absence.

All members and alternates will be promoted to panelists for today's call. Members and alternates replacing members, when using chat, please select "all panelists and attendees" in order for everyone to see your chat.

Attendees will not have chat access, only view to the chat access. Alternates not replacing a member are required to rename their line by adding three Z's 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.

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

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 formalized by the way of the Google link. The link is available on all meeting invites toward 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 posted on the public Wiki space shortly after the end of the call. As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. With this, I'll turn it back over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS:

Thank you very much, Terri. Hello, everyone. Welcome to the 17th meeting of the ePDP team. So, the agenda is displayed on the screen. A question, as traditional: can we follow the agenda as suggested? So, I see no objections. So then, let us go straight to the topic.

Before getting in substance of evolutionary mechanism, I would like to come back to the discussion we had yesterday on contracting party authorization. So, there seems to be a reached agreement on

all outstanding issues, but appears that IPC, namely Brian, left the meeting 15 minutes before the end and he's seeking redress and asking to revisit the issue we discussed and made decision. And I'm referring to the ... Yes, thank you. Referring to the issues, that particular sentence that we deleted in point five.

So Brian, just before the call, sent an e-mail to the list. He's suggesting that the formulation that would replace the line or phrase that we've deleted. And maybe, Brian, if you could introduce that, your proposal? That would be helpful. Please.

BRIAN KING:

Sure. Thank you, Janis. And thanks, really, to the ePDP colleagues who have reached out to help me understand how the conversation went. I do sincerely apologize that I had to leave a bit early and have had to ask to reopen something that appeared to have some traction on the call.

So, thank you for understanding that this particular topic is of great importance for the IPC. And I appreciate the good-faith collaboration with that in mind.

So, I note that [Alan] didn't have any strong objection to the way that I proposed the language on the list. I think we are happy, and we certainly understand what our folks are saying about ICANN's remit and content. So, I certainly can appreciate the concerns that arose, there.

So, I propose the language that you see on the screen, and it's not drastically different, if different. It is a little different, but it's not, I'd say, substantially different from what we agreed in face-to-face in

L.A., and I think that striking that language about content is what the contracted parties had hoped to do in their comment to this language.

So, I hope that gets us there. And again, just thanks a lot to the team for being reasonable, and helpful, and accommodating. This is important. Thanks.

JANIS KARKLINS:

Thank you, Brian. So, let me see. I will give you, maybe, some time to reflect. And of course, it was unfortunate that IPC, yesterday, was not present on the team after Brian's departure, but it's exactly because of that I thought it would be just fair to come back, and then see whether we can accommodate this proposal.

So, I see no reaction so far. So, may I take that the language that Brian proposed, which takes into account the concerns that have been expressed yesterday by contracting parties, specifically by a registrar group, is something that we could all live with?

So, I see no reactions. I take that this is something we could accept and move, now, to Recommendation 19. So, thank you very much. Brian, next time when you need to leave 15 minutes early, make sure that you have somebody who replaces you. Recommendation 19.

So, we started discussion yesterday. So, everyone felt that it would be possible to stick with a model of GNSO Standing Committee. So, we started discussion of the scope, and I explained how we came to what is now proposed. And then, Amr also gave a slightly broader overview.

So, therefore, I think I would not ask Caitlin to formulate questions about scope. We started already, yesterday. It's still fresh on our minds. I would like to open the floor and to see whether a proposed way would be acceptable to all, or everyone could live with the text that is in the draft recommendation. Floor is open. Amr, please.

AMR ELSADR:

Thanks, Janis. There have been a number of comments inserted into the table in the Google Doc. I was wondering if we were going to address them one by one, or whether this was just sort of an open, free-for-all opportunity to discuss these issues. I think it might be a good idea to go through each one of them.

JANIS KARKLINS:

You see on the right-hand side of the screen, yesterday I asked staff, similarly, to other recommendations, to formulate outstanding questions. And we would follow the same methodology. We would talk about those questions and, on the other side, we would see the text of the recommendation and see whether any tweaks would be necessary. So, since we have not had a chance to discuss this recommendation in general, I think I would stick with this methodology. If you don't mind, of course.

AMR ELSADR:

Sorry, Janis. I'm not sure I understand the methodology you're proposing. Would you mind explaining it again? Apologies.

JANIS KARKLINS: So, on the right-hand side of the screen, you have outstanding questions that we need to discuss, and on the left-hand side of the screen, you see the text of the recommendation. So, we would discuss, in substance, the questions that we need to get on the same page and see whether the text on the recommendation reflects it. And if not, we would change text of recommendation. Otherwise, we will leave recommendation as-is and move on.

AMR ELSADR: Okay. Thank you, Janis. That's fine by me. Thanks.

JANIS KARKLINS: Thank you. James, please.

JAMES BLADEL: Hi. Good morning, Janis. Good morning, team. So, I'm ready to—perhaps I will regret this—put forward an idea for discussion on open question number one. It's something I was thinking about a few days ago, which was that one possible broad-based point of delineation or demarcation between policy and implementation for the scope of any Standing Committee would be to determine whether or not the changes were specific to the SSAD, and the SSAD operator, and the system itself, or specific to contracted parties that were using the SSAD.

So, going way, way back, are we talking about hamburger buns? Are we talking about a hamburger itself? It feels like anything that is defining how the SSAD operates, how people communicate with

it, how they submit requests, could potentially be considered, or at least by default be considered, implementation.

But items that flow through to contracted parties as obligations that are enforceable by ICANN Compliance would then fall on the other side of that demarcation and become fodder for the recommendations in policy development work.

And so, just using this list, here—and I understand it's not exhaustive, and the exception proves the rule, and I realize I'm setting myself up for a whole lot of criticism here, but this is just a starting point—it feels like number one, part of number two, and number four, and possibly number five on this list could be considered implementation.

However, part of number two, and number three for certain, would not – would be considered policy rather than implementation. So, I just wanted to put that out as a potential starting point of, if we do the line here, what would that look like in terms of scoping this GNSO Standing Committee? Would that give it enough to do, too much, not enough? And is that some sort of a yardstick that we can measure potential changes against?

JANIS KARKLINS:

Okay. Thank you, James. Yeah. Look, if you're talking about third-party purposes as the policy change, then you need to maybe know that, when we draw this list and discuss it in a smaller group, it was about populating the Dropbox with the standardized formulation of purposes that requestors may use when they file their application.

And again, that may become evident from the filings that we will receive, and suddenly, we discover that something is missing and we need, simply, to add a formulation of a third party purpose, which is not in this drop-down box because many people are using that.

So, that's just a comment. And also, what Amr was trying to say is that the scope is broad and the Standing Committee may look at every aspect of operation of SSAD.

And it may happen that it becomes a policy question, and this committee talks about it and identifies that this is a policy question, and then sends this recommendation to GNSO Council, and GNSO Council agrees this is a policy issue, and we, for instance, initiate the PDP to address the policy issue.

So, that's the difference between initial recommendation, that would have very limited scope of the mechanism, which will be purely operational, with the alternative proposal that Alan put on the table, that scope would be much broader, maybe even including policy elements. But then, the GNSO Council would be the one who decides what to do with those recommendations. Laureen.

LAUREEN KAPIN:

Thanks, Janis. I am agreeing with your last statement. I think one of the most pleasing parts of Amr's reconfiguration is that it has a broad scope of what the Standing Committee can consider. So, I would not be in favor of James' suggestion.

And now that the proposed changes are on screen, that was originally why I raised my hand. I wanted to make sure that our

suggestion about the Advisory Committees contributing to the charter was reflected in what we're discussing. Thanks.

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

MARGIE MILAM: Hi. I wasn't involved in any of the small team's activities, but this strikes me that it doesn't go far enough to address what we thought the evolution model was meant to apply to. As we negotiated it back in January, our understanding was that if, for example, there is a legal clarity received from the ePDP or from some other jurisdiction that has authority in this, such as the court ruling that the policy would be automatically updated to allow for that legal purpose to be reflected in the policy.

And the reason why that's important for us is, if you look at the comments that we submitted back when we did the public comment to the addendum, we insisted that section 4.2 of the addendum to the temp spec be included in this policy.

Because the section 4.2 of the temp spec—appendix A, I think it is—essentially said that, if there is legal clarity given from the Data Protection Board or the Court of Justice, whatever it's called in Europe, that clarifies some of the legal purposes, that would update the requirements to the contracted parties. And that's an important element of what we were looking for in the mechanism.

JANIS KARKLINS: Good. Thank you. But the third-party purposes are reflected there. They are now on the screen. They are part of a non-exhaustive list that mechanism would be looking at.

MARGIE MILAM: Right. But I understand James' proposal was not to include that.

JANIS KARKLINS: So, we will see where we end up with this conversation. Alan Greenberg, please.

ALAN GREENBERG: Thank you. I guess I have to support what Margie was saying. It's not an issue of whether the group can discuss it or not. The issue is, how can these things be resolved?

So, if the group can discuss it but it's deemed to be policy, and therefore, when it goes to the GNSO, the GNSO will have no choice but to create a new policy creation body, a PDP of one form or another, then that isn't doing what we believed we did when we came to the agreement on an evolutionary model.

And that's really the crux of it. As some of us have said a number of times, we're happy to say that the contracted parties on this group have to agree. They have to feel comfortable on behalf of their stakeholder groups that this is not going to create huge liability.

But there are use cases that will not create liabilities, either because of what we already know or what may come down the tubes in terms of legal decisions or legal opinions. And we need to be able to

automate those as they come about without having to start what is almost inevitably a one-to-two-year policy process. Thank you.

JANIS KARKLINS:

Thank you, Alan. Look, I think we need to be more nuanced. So, I heard repetitively, from many of the team, saying that we should not create a mechanism which would be bypassing the existing bylaws and Policy Development Processes.

And I took it really seriously, and in my view, every recommendation which we think needs to go through the evolution because we do not have sufficient information now is written in a way which allows that evolution without changing policy.

For instance, let's take the sticky automation case. So today, we have very few cases which could be automated from day one. But the policy recommendation suggests that everything must be automated, in terms of decision-making, if that is technically feasible, commercially feasible, and legally permissible.

Today, many things we think are legally impermissible. It may happen that, in a half-year, in one year, we will have either European Data Protection Board rulings or court rulings which would clear certain cases, would alleviate responsibility or liability of contracting parties.

And the policy says, if that is legally permissible, it should be automated. And it will, without going through the policy. And I think that this is what we agreed, at least in my understanding, and this is what I'm trying to accommodate within both Recommendation 19 but also in every recommendation that touches those areas where

evolution could be possible without going through the PDP process. Milton, please.

MILTON MUELLER:

Thank you, Janis. You've said some of the things I wanted to say, which is that we really cannot make a mechanism, here, that bypasses the Policy Development Process. And I'm sorry if this sounds confrontational, but what I heard Margie and Alan saying was that they wanted precisely that. They wanted major changes that would definitely qualify as policy changes, or something close to it, to be "automatically adjusted."

Those were the words that Margie used; that, based on some reading of some statement somewhere by the European Data Protection Board, or some other legal decision, this committee can then alter fundamental decisions about what is legally permissible, rather than just making recommendations to the council.

And surely you know that that's not acceptable? I mean, we can't be in the stage, now, where we don't know the parameters of what is and is not acceptable to different stakeholder groups. And we've gone over this many times, as Janis pointed out.

We simply cannot develop a process here that's going to shuttle in major policy changes, major changes in the nature of this whole system, without going through the council. And furthermore, without obtaining the consensus of the stakeholder groups on ePDP. I don't know what it means to say something should be "automatically adjusted." Based on what?

JANIS KARKLINS: Thank you, Milton. James, please.

JAMES BLADEL: Hi, Janis. I guess I'm confused. I thought the question at hand was, can we give this group, whatever it's called, some guidance on how to make a determination of which items were operational and implementation improvements for the SSAD system, versus what is new policy and subject to policy development?

Milton is right. Look, there are only two ways to get binding policy obligations into our contract. You can use a PDP, which is a GNSO process, or you can have direct negotiations between contracted parties and ICANN Org. That's it.

We can't create a PDP that creates a third mechanism. I don't know how to say that any clearer. That's not within the realm of authority that a PDP can make a recommendation that says, "Here's this third way of creating new, binding obligations."

That's not a complaint against me, or my company, or contracted parties. That's a complaint against how this model works. It works based on enforcing contracts, and those contracts have very formal ... And I'm sorry, Alan, that they do take 18 to 24 months or longer to affect those changes. The negotiations don't always go faster, as we found.

So, I really would like to understand what folks are asking for, because they say they don't want a mechanism to bypass the GNSO Policy Development Process, and then they're saying, "Well, you know, actually, that just takes too long, and we need to be able

to go around that.” That’s not within our powers to grant. That would be really overstepping the remit of any PDP, including this one.

JANIS KARKLINS:

Okay. Maybe this is the crux of the matter, where I see contracting parties really do not, maybe, fully understand, or do not want to understand one simple thing. So, we are working in abstract. We make many assumptions.

And in six months, we will have much more empirical evidence based on operations of SSAD, real operations of SSAD. And every number, or limitation, or boundary we set, we set it based on assumptions.

Therefore, the basic idea is to formulate the policy in a way which allows to adjust numbers within that policy. I will use, again, automation. That policy principle says that, if that is legally permissible [inaudible] automation is very limited. Hence, we have very little possibility of automated cases at the very beginning.

So, in six months, we may have much more information [inaudible] all those cases, and will make recommendation. But the policy allows that, and that’s the only way we can operate.

And I think that this is what you need to factor in your reflection, because policy allows adjustments of operational nature because policy is formulated in that way.

For instance, SLAs. We have, now, 24 hours. It may happen that, after six months, it will appear that 24 hours is simply unfeasible, that you need 72. And this mechanism will allow you to adjust those

24 to 72 hours without waiting two years and getting two years [slammed] by Compliance with not being compliant with SLAs.

So, that's the issue. We have identified those issues that may be adjusted based on experience, rather than going through the policy. And the beauty of Amr's proposal is that, if there is a policy consideration, then council will be launching PDP. Marc Anderson.

MARC ANDERSON: Yeah. Can you hear me okay?

JANIS KARKLINS: Yes.

MARC ANDERSON: I'm not exactly sure how to react to what I just heard. Your SLA example is interesting, but that's not what anybody else is talking about. Everybody else is talking about getting legal guidance and being able to, on the fly, adjust the contractual obligations of contracted parties. And, as James very eloquently put it, that is not something that we can agree to as part of this PDP.

That's a fundamental change to the bylaws. And saying it's okay to break this process because contracted parties have a veto, I'm sorry, that's not at all okay. That doesn't address the underlying concern that this circumvents the GNSO Policy Development Process.

And so, that is going to continue to be an issue. And further, I'm not sure I understand the use case that Alan and Margie have raised.

We've already established that contracted parties can automate. We very clearly drafted a policy where contracted parties have the ability to automate where things are financially and legally viable.

And so, as new guidance comes out, contracted parties can automate based on that new guidance, and they don't need policy in order to add that automation. So, based on that, I can only interpret their comments to mean they want to force automation, and I don't see how that can be interpreted as anything other than policy. Thank you.

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

HADIA ELMINIAWI: Thank you. So, to Marc's last point about forcing automation, actually, the policy does not allow for any kind of enforcement of automation. Footnote number 43, in relation to recommendation number 16, gives the contracted parties the ability to opt-out in case the automated disclosure of data puts them at a significant risk.

So, again, no one here is envisioning contracted parties automating a case that they see putting them at risk. And for the avoidance of doubt, we definitely think that any policy recommendations need to go through a GNSO PDP.

When we talk here, in recommendation number 19, about the evolution or improvement that could be introduced to certain issues, it's because the recommendations in relation to those issues allow for those improvements to happen.

So, as Marc rightfully mentioned, the policy does allow for contracted parties to automate, if they see that legally and commercially feasible. And this is also because, what the recommendation says, that cases that are legally and commercially possible to automate, then we should automate them.

And by the way, the recommendation could have stopped there. We could have provided zero examples to that because that recommendation sets the policy. So again, adding improvements or cases, this is, according to the policy we have already agreed on, a policy issue.

Again, to address your point about introducing changes to the contracts, maybe this is something we need to look into. So, definitely adding automated cases does not need a change in the contract, and many of the possible improvements that are going to be introduced through those issues do not actually require a change in the contract. So, if this is the concern, then let's look further into that concern in order to see how we can handle it.

JANIS KARKLINS:

Okay. Thank you, Hadia. I would refer to Becky's quotation in the chat where she suggests that, specifically on automation, "If one accepts the basic policy then automating something new that meets that standard is not a new policy." So, [policy] is a factor that, in your conversation ... Alan Greenberg.

ALAN GREENBERG:

Thank you very much. I guess I will go back a long time in ancient history to Mark SV's list of use cases, which we stopped working on

because we said, “Ah, we can handle them during the evolution.” Otherwise, we wouldn’t have agreed to stop working on them if they were, then, going to be delayed for years.

So, just a little bit of history. Maybe other people understand that, “Ah, ‘evolution’ meant a new PDP will have to be started.” That certainly wasn’t what some of us meant.

Let me give a use case that’s going to raise hackles, I know. But in one way, I think it’s a clear one. If, for whatever reason, the decision was made to go back and implement the ARS, the accuracy study, that would require releasing information to ICANN, who is a controller. It would not impact privacy because it wouldn’t be released anywhere else. And I don’t believe there would be any liability on control on the contracted parties for sending it in.

If we determined all of those things are true—and I’m saying “if” because I don’t know if it’s true—then that would seem to be a use case that we could automate without changing the policy. I mean, if it doesn’t violate the law and it doesn’t have any liability implications, then it would seem to be one that we can do.

And that’s the whole point that I think I, and a number of others, and I think Janis is making, that we have crafted a policy that, if we can find more use cases which meet that policy, and I’m willing to concede that have the agreement of the contracted parties in the group that it doesn’t increase liability, because that’s a judgment call, then we should be able to go ahead with it.

And it's not a change in policy. It's just an implementation of policy. That's certainly the way I see it and the way my group accepted the current model with evolution. Thank you.

JANIS KARKLINS: Thank you, Alan. Margie, please.

MARGIE MILAM: Hi. Yeah. I think when I first spoke and I used the word "automation," it sort of mixed it up. I didn't mean automatically without input of whatever this mechanism is, but I think our understand was that the mechanism would be the place where clarity or new developments related to the legal obligations would be considered.

And I understand, Janis, your explanation that we have policy recommendations already that allow for "if it's legally permissible," and whatever the language is.

And I'm merely saying that that isn't a policy change if the law evolves to a place where, perhaps, there would be another legal basis added, or perhaps identifying another legal purpose that is permissible to access data.

Both of those are things that we can imagine could be clarified in Europe, either by regulation or by court opinions. And so, that is why I shared in the chat the language from the temp spec, because I think if we track something along those lines ... Because obviously, it has to be precedent that relates to GDPR, and that's what we see in the language from the temp spec.

But that's the concept, that, once that sort of information or opinion comes in and clarifies issues that we just simply haven't been able to understand how it's going to be interpreted, you wouldn't need a whole new PDP.

And honestly, everybody knows it's more than two years. This is expedited. We've been on two years, plus implementation. You're talking about a four-to-five-year process, and that's why we're pushing so hard in getting an understanding that changes in the legal framework could be dealt with, because the policy framework that we have already adopted, or if this recommendation gets adopted, has addressed it.

That's why I don't really agree with James that this is going outside the bylaws and all of that, because it's just implementation of a very broad policy recommendation that we have already vetted in this group.

JANIS KARKLINS:

Okay. Thank you, Margie. With your permission, I see that Becky wants to correct my quotation of hers, and I will take Becky first. Becky, please.

BECKY BURR:

Oh, thank you. Sorry. I didn't want to correct it, I wanted to provide a little nuance. Because I did say that the conversation that we're having here, which is that things that can be automated, for which is commercially feasible, technically feasible, and legally permissible to automate, should be automated, is a statement of

policy. That said, I think part of why we're talking past each other here is that there are a lot of details, and the devil is in the detail.

So, just as an example, what if, six months from now, after this policy is implemented, the European Data Protection Board came back and said, "The uniform access model presented by ICANN Org to the data protection authorities and through the European Commission is absolutely compliant with GDPR, and the only controller with respect to the transfer of data to the third party is the central gateway," that, to me, suggests that a whole lot of new things can be automated.

But does that go all the way to saying "adopt the UAM"? Because I think that's what people are trying to preserve the space to do, and that strikes me as a ... You can say, theoretically, it's just implementation of policy, but it has to, necessarily, turn on adopting a whole bunch of other policy implications. So, if we could try to be concrete, we might understand where the rub is for all parts of this discussion.

JANIS KARKLINS: Okay. Thank you, Becky, for clarifying. Stephanie, please.

STEPHANIE PERRIN: Thanks very much. Basically, I am strongly in agreement with what Becky just said. I have been racking my brains trying to think of concrete examples that would be easy to automate, and I haven't come up with any.

The example that Alan Greenberg gave of, for instance, the accuracy requirements ... This is one of the reasons we keep speaking past each other. There's a lot more to data protection law than disclosing to third parties.

If ICANN took over managing accuracy reviews as discussed in the recommendations in the review report, the Review Committee WHOIS Review 2, or whatever the heck we called it, there is added risk.

And the data controllers, unless, of course, ICANN takes on entire controllership of the data, which in my view is legally impossible ... But the contracted parties are still responsible for handing their data over for accuracy processing, and what happens if ICANN gets a rogue employee?

What happens if ICANN gets hacked? All the data goes out. This happens all the time. They're still on the hook. I'd like to see the co-controller agreement that gets the contracted parties off the hook.

And I think that contracted parties have got legal guidance and they're well aware of these risks, and not everybody understands the depth of these risks and the fact that they turn on small points.

Now, getting back to the particular position that Becky hypothetically put forward, namely advice from the European Data Protection Board, this has happened in the past.

This was the basis of the Schrems case where the Article 29 Committee had its arm held well up behind its back to accept safe harbor. And it took, I don't know, 14 years, I believe, because I believe that decision was forced on them in about the year 2000.

But 14 years later, Schrems took the case and the European Court of Justice found that they had been in error.

It won't take that long the next time because of the provisions in the GDPR for civil society to take a case. And so, contracted parties will have to be in this awkward position where somebody has lobbied the European Data Protection Board to roll over and let ICANN do its automated thing.

And they have customers; they have reputation at stake. They could be put out of business by accepting glib advice that makes this thing happen. If I were them, I'd be fighting acceptance of something that doesn't add up. And the proposal that Becky put forward as a hypothetical, in my view, doesn't add up. Thank you.

JANIS KARKLINS: Thank you, Stephanie. Laureen, please.

LAUREEN KAPIN: I'm still feeling like we're all talking past each other and that the real issue is a disagreement about what may constitute policy and what might constitute implementation of existing policy.

And I'm wondering if it gives our contracted party colleagues any comfort to know that, at least as I understand the current proposal, there wouldn't be any automatic adjustment, for example, of categories of automation. But by permitting the scope to include expanding the automated cases under the proper circumstances—for example, if there is new legal advice and it's commercially and

technically feasible—that would be a subject that is within scope for the Standing Committee to grapple with.

There would still need to be discussion and agreement that it was appropriate and that, indeed, it fell within implementation of the existing policy. And I think that provides the safeguards and procedures we would need to make sure that there isn't a creation of new policy. So, I would love to hear a response to that.

JANIS KARKLINS:

Thank you. Actually, the scope as it is formulated now allows to discuss, also, possible new policy recommendations by the mechanism. And then, these recommendations will go to the GNSO Council, and GNSO Council will then decide whether to launch a Policy Development Process or not.

And if, by any reason, the recommendation that the Standing Committee would be considering as operational adjustment ... But council may rule differently and say, "No, this is not operational adjustment. It requires policy development."

So, I think that there are sufficient safeguards that would allow to take out any danger that our Contracted Parties House colleagues now are [inaudible].

[LAUREEN KAPIN:]

I was just going to respond. Exactly. There are two levels of safeguards, here. One is within the Standing Committee itself, and the second is within the GNSO Council. It looks like James and I are agreeing. That's always nice.

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

MARK ŠVANČÁREK: I'm sorry, I thought I took my hand down. Never mind.

JANIS KARKLINS: Okay. Brian, then.

BRIAN KING: Thanks, Janis. I'm going to ignore my misunderstanding in the chat, here. I think what we're really looking for, here, is not policy development. And I understand that the UAM has some key differences from what we've developed here, so that's not what we're looking for.

What we are looking for is the types of automation and centralization that we think are going to be possible based on future legal guidance. And for comparison, I would ask colleagues to look at the section 4.2 of the temp spec, in appendix A.

Essentially what that did was that said that, as soon as there is legal guidance from some competent body, then a registrar and registry operator must provide access to the data within 90 days of the date that ICANN publishes any such guidance. So, it's entirely within ICANN's control to publish the guidance, and contracted parties just need to start providing access. You get 90 days, and that's it.

So, what I think we're trying to do here is be more reasonable and accommodating, and to hear our contracted party friends when they say that there needs to be some kind of check and some kind of oversight into making sure that legal guidance received is actually on point and can be relied upon.

And so that, I think, is what we're trying to do with this mechanism, to kind of put in a check where the contracted parties have a voice and ICANN is not in a position to unilaterally just take legal advice that it deems to be on point, and then force new automation.

So, adding new automation use cases is not, per se, policy. I agree with Becky when she said that the policy is fully baked. The policy says, "For cases that are legally, commercially, and technically viable, those should be automated."

But that list is going to change, and that's what we're looking for. The list of things that are legally, commercially, technically viable is going to change over time, and we expect that.

And because we are more optimistic, I think, than some other folks about how likely that is, that's why we needed to have this in here, so that when that list changes, we don't need a new PDP and we don't need to wait for GNSO Council to prioritize this.

As Marc Anderson said, the contracted parties already have the option to automate. But some won't, and some intentionally won't, and we need to ensure that this becomes something that is automated, full stop.

So, that's what we're looking for, there. I hope that helps to address the issue. I think that some folks, maybe, started this conversation

or came into this thinking that the decision about whether to automate any particular use case is a policy matter, and it's simply not. The policy is baked without that level of specificity, and I think that's wise, and that's a good feature of what we're doing here. Thanks.

JANIS KARKLINS:

Okay. Thank you. If I may ask one thing at this late stage in the process, not to try to put in terms that do not have explicit mentioning in other recommendations? And I'm specifically referring to centralization. Indeed, we discussed centralization, but this is not the path we decided to take.

And automation is something that, at this moment, may replace centralization to a certain extent, because the automated decision could be made everywhere. And so, it is very difficult, already, to agree on automation.

But if we add additional complexity of centralization, I doubt that we will be able to conclude our work this week. With this, I would invite Hadia and Alan Greenberg, and then I think we need to move on. Hadia, please.

HADIA ELMINIAWI:

Okay. So, I thank Becky for the enlightening clarification. However, I do not agree that, through recommendation number 19, the model could change or evolve into a totally different model, like a unified access model or a central model.

That's not possible through recommendation number 19, because recommendation number 19 speaks about very specific topics and explicitly mentions that any policy changes need to go to the GNSO and, accordingly, will go through a PDP.

So, whatever legal guidance we receive that could result in a change in policy is actually not possible at all through Recommendation 19 as it is written now.

And also, to Stephanie's point where she was talking about accuracy, again, if this is to be put forward through recommendation number 19, most probably it would also be considered as a policy issue and would go through a PDP. However, who decides this is a policy or not would be the GNSO.

I would like to go back to James' point about contractual obligations, and maybe invite him to pinpoint the exact items where he sees that we cannot address, because those will lead to a contractual obligation. So if this is actually the concern, then let's address this, and try to solve it, and go ahead. Thank you.

JANIS KARKLINS: Thank you. Alan, please.

ALAN GREENBERG: Thank you, Janis. My hand was put up when you talked about the use of the term "centralization." Just to be clear, centralization is a reference, and maybe we should define it, but it's already implied in the written document, when it says that "automation might be human-assisted."

And “centralization” is the word that I and a number of others have been using for cases where the SSAD makes a decision but it is not necessarily purely machine decision. It may have human intervention.

In terms of GDPR, that makes a vast difference because it’s not fully automated by a computer alone. So, that’s why we have used that term. We can avoid the term, but the reference is still there because the automation policy does say that something that is automated centrally might have human intervention centrally.

So, just to be clear, using the term “centralized” would make it clearer because people tend to believe that “automation” means automation, whereas we’re qualifying it and saying it might not be. Thank you.

JANIS KARKLINS: Thank you, Alan. Brian?

BRIAN KING: Thanks, Janis. My hand was up to address the same point. I think to put, briefly, another way, just limiting the language to “automation,” I guess, is okay if we’re only talking about as far as the contracted party is concerned.

But like Alan mentioned, decision-making could be done at the central gateway that’s not fully automated, that’s manually reviewed, for example, at the centralized gateway. And we would prefer evolution in that direction, as well, so long as the law supports it. Thanks.

JANIS KARKLINS: So, for the moment, as far as I know, the process is the central gateway receives a request in an automated way and authorizes it [inaudible], contracting parties make a decision in manual or automated way and send the request to the requestor direct. [inaudible] centralization is not [inaudible].

[ALAN GREENBERG:] We seem to have lost Janis.

JANIS KARKLINS: Do you hear me?

[ALAN GREENBERG:] Janis, you're cutting out. You've cut out about five times in the middle of your discussion, so we've lost a good number of your words.

JANIS KARKLINS: Yeah. So, for some reason, my Internet connection is [inaudible] turn it on my mobile phone. And in the meantime, [inaudible]. Hello? Hello, do you hear me now?

[ALAN GREENBERG:] Yes.

JANIS KARKLINS:

Okay. So, I'm now on the phone. I hope that I will see something. Yeah. Okay. So, I hope I will be able to manage the conversation now. So, I think we had a long and substantive conversation, and I hope that we are on the same page understanding that, if we want to achieve consensus, evolutionary mechanism should be part of it.

And it seems to me that each group has something that they do not like in this proposal, and that is comforting because, if some groups like and some groups do not like, then it's not the right balance. But if everyone feels uncomfortable but it is kind of reasonable ...

And my personal judgment, since I have been involved in developing this and participating in a conversation from the beginning, is something that takes care of all concerns and may be put in place in a reasonable manner.

And I really would like to go further to the next items, but I would like to see whether there is, let's say, violent opposition to the text which is now on the screen, formulated under subpoint B scope; whether there is something that any of the groups on the team would say, "This will be a deal-breaker." And if that's not the case, then I would like to move on. Alan, your hand is up.

ALAN GREENBERG:

Yes. Thank you very much. The text on the screen is not the problem – in my mind, anyway. It is the unspoken the part, the part that we have been debating for the last hour, now.

If the contracted parties agree that there are some use cases which could be implemented because they have been demonstrated to be

legal and they do not believe there are significant liability increases for doing it, or that the liability will be borne by the SSAD ...

TERRI AGNEW: Alan, I do believe your connection [inaudible].

JANIS KARKLINS: I lost Alan. I do not hear Alan.

TERRI AGNEW: Correct. It appears that his line has been muted. Alan, if you could check on your side, please, and unmute?

ALAN GREENBERG: Can you hear me now?

JANIS KARKLINS: Yes, now we hear you.

TERRI AGNEW: Please check-in.

ALAN GREENBERG: I don't know who muted me. I certainly didn't. I got a pop-up on the screen saying that I was being switched to computer audio. I don't know who did that or how that happened.

What I was saying—I don't know when I disappeared—is, if we have agreement, the words on the document are fine. It's the implication that any change to what could be centralized/automated ...

And I'll use it to make sure it's not necessarily fully automated: partially or fully automated at the SSAD. If any such change or any such use case is going to be policy and will require, ultimately, a PDP, then the mechanism is not going to meet our needs.

If we agree that there may be some mechanisms which we have a high degree of legal confidence in and a high degree of increased liability to contracted parties, either due to law, or during controller agreements, or whatever, and those could be automated after that conclusion is reached, then we may have agreement here. It hinges on what is not said, but what people have been saying for the last hour. At least, that's how I see it. Thank you.

JANIS KARKLINS: Okay. Thank you. Amr?

AMR ELSADR: Thanks, Janis. I haven't really been engaging in this conversation because I believe a lot of it has nothing to actually do with this recommendation. I think a lot of the discussion and debate we're having is really on the automation recommendation. I think it's Recommendation 17 or 16.

But listening to Alan speak right now, what I think he's saying, but he hasn't explicitly said, is that this committee, or whatever

mechanism we do adopt, would, after doing its due diligence and determining that legal permissibility to automate additional use cases does exist and that legal liability somehow doesn't ...

I think what was missing from his intent—and Alan, please correct me if I'm mistaken—is that you want the output of this committee or mechanism to make it an obligation on contracted parties to automate use cases like that.

I see Alan has raised his hand, and I assume he's going to respond to that. But if that is the case, this is something I believe we should be debating in the automation recommendation, not here. Because the mechanism itself is, in a way, independent of that issue.

Although, I do understand that there is an interdependence between accepting this mechanism as well as having a desirable outcome to the automation recommendation itself.

Speaking for myself, and I hope on behalf of the NCSG, I don't see us agreeing to any recommendation that says there are use cases we haven't identified now, but they may be identified later, to meet these criteria of legal permissibility and no liability for contracted parties that would require them to automate in full or in part. I'm not sure what "in part" actually means.

Again, I think this is something that contracted parties need to determine themselves and need to be able to present to other stakeholders during a Policy Development Process, and I don't think it's a good idea for us to adopt a recommendation that says that this would be okay.

I understand the argument where we're saying, "Okay, this won't be developing new policy because we're going to wordsmith a policy recommendation right now that says that, if these conditions are met, then yes, we can automate these use cases."

But the thing is, I don't think we're going to actually agree on that. But again, I don't think any of this has anything to do with the substance of what we're looking at here. I understand this is what some folks want this mechanism to achieve, but that depends on what the recommendation, again, on automation will say, and I don't see us agreeing to that at all. Thank you.

JANIS KARKLINS:

Thank you, Alan. I saw Marc's hand up, but it has disappeared. For any reason? Marc?

MARC ANDERSON:

Hi, Janis. Sorry, I lost connection for a little while, there. I'm back now, but I missed a lot of what Amr said. Maybe I can just drop to the end of the queue and try and catch up.

JANIS KARKLINS:

Okay. I really want to go further. Amr said that a lot of things that we discussed belong to the automation discussion that we'll be doing tomorrow. So, certainly, what I would like to say in response to Amr is that I hope that we will be able to agree on a mechanism today with the understanding that we also need to agree on automation a bit tomorrow, and this would go together as a package. But my question to you, Marc, is, [and as] you wanted to

talk about whether the text on the screen is something you could live with when it comes to scope? Marc?

MARC ANDERSON: I'll lower my hand for now, Janis. I'd like to—

JANIS KARKLINS: Okay.

MARC ANDERSON: With my colleagues.

JANIS KARKLINS: Alan G, please.

ALAN GREENBERG: Thank you. With response to Amr, I agree, it is in the automation recommendation, and I thought we had crafted that carefully enough to say, "If it is legally possible, and financially," and "financially" implies liabilities in my mind, "then the thing must be automated."

So, I thought we had crafted that already. So yes, we have to go back to the automation one, but the whole point is people are saying that, although we crafted it to say that, it doesn't really apply if we didn't consider the use cases this year – that if we considered the use case next year, that automation recommendation doesn't apply anymore, and that's the whole crux of our discussion here.

Thank you. And I'll not there are other things in the evolutionary mechanism that have been ejected to other than just this particular one item. But nevertheless, you can proceed at your own rate.

JANIS KARKLINS: Okay. Thank you. Look, for the moment, I haven't heard explicit objection to the scope. But I see James' hand up, or ... "Contracting parties are in internal consultations and we can wait."

JAMES BLADEL: I've lowered my hand. Thanks, Janis.

JANIS KARKLINS: So, then I take that, in principle, there is no objection to the text related to the scope of the mechanism. And we can, maybe, then, omit the second question. The scope is open-ended but will include issues that are listed here, and we can probably go to point three. Caitlin.

CAITLIN TUBERGEN: Thank you, Janis. This was another clarification question that was asked about the voting threshold for the GNSO Standing Committee and what would happen to the recommendations once approved by the Standing Committee.

So, as you'll see in paragraph C, we added some text that was taken directly from the ePDP charter about addressing levels of consensus. But this was a question that was put out, and we need

to see if there is anything additional that needs to be added here, or if paragraph C is okay with this update in place.

JANIS KARKLINS: Okay. Thank you very much. So, any reaction on point C? Any objection to point C as formulated on the screen? So far, no hands up.

ALAN GREENBERG: Janis, my hand is up.

JANIS KARKLINS: I don't see it. But yes, please, go ahead, Alan.

ALAN GREENBERG: It's up on my screen.

JANIS KARKLINS: Okay. Not on my screen, but maybe because of the unstable Internet.

ALAN GREENBERG: Okay. The highlighted portion that was added doesn't seem to be addressing the question. The highlighted portion says, "The GNSO Council may consider inviting the ICANN Org organization liaisons ..." I'm not quite sure what "ICANN liaisons" ...

“To be members of the Standing Committee for the purpose of assessing level of consensus. Members are required to represent the formal position of their Stakeholder Constituency Group.” And I’m presuming that means to the Standing Committee.

JANIS KARKLINS: Yes.

ALAN GREENBERG: But the question was, when it gets to the GNSO, what level of consensus does the GNSO need, a majority or a super-majority?

JANIS KARKLINS: So that, of course, I do not ... No. We are talking about the mechanism itself, and mechanism requires consensus where contracted parties should be part of. So, definitely. Then it goes to council, and council has its own procedures.

ALAN GREENBERG: Well, you’re right. And I’m suggesting that we need to recommend to council what the threshold is. It makes a difference how strong a veto people have in council based on what the threshold is going to be.

JANIS KARKLINS: Okay. Let me take other hands that I have, now. James, Maureen, Amr.

JAMES BLADEL:

Thanks, Janis. Just to respond to Alan, the GNSO has very clearly established procedures for voting thresholds that are dependent upon the nature of the topic and where it originated, and it takes into account the bicameral nature of the GNSO.

And it is not our place within this PDP to recommend changes or to recommend exceptions to those rules. That is not something that is within the scope of a PDP to change GNSO operating procedures and voting thresholds, full stop.

My question here is that, as was said before, it's really regarding consensus-level testing within the Standing Committee. We mentioned how we test for consensus.

A couple of times it has been stated that, while contracted parties would clearly have the ability to object to any proposals that were deemed to be implementation, or automation, or whatever, and not be policy, but how is that reflected here?

I mean, is it possible that this group could say, "We've achieved consensus. The only dissenting views are coming from the registries and registrars who actually have to carry out this particular policy"? I feel like it needs to be clearer, here, that consensus requires support from contracted parties. Thanks.

JANIS KARKLINS:

Thank you, James. I read the sentence on the screen: "For recommendations to achieve consensus designation, the support

of the contracting parties will be required.” If that is not enough, then I don’t know how to say it stronger.

JAMES BLADEL: I’m sorry, is that in C? Where am I seeing that?

JANIS KARKLINS: Yes, yes. It’s in C [cross talk]. Could you highlight ...? It’s the fourth line. No, no, no. Next one. “For recommendations.”

JAMES BLADEL: Right before the red. Okay. All right. I’m good, then. Thank you. Lowering my hand. Thank you for that clarification.

JANIS KARKLINS: Sure. Laureen, please.

LAUREEN KAPIN: This is a question. I just want to make sure what the sentence preceding the one you just read, when we’re talking about consensus of the members of the Standing Committee, that that’s majority consensus rather than full consensus. I understand the proviso about the contracted parties, but I’m asking other than that. Can I get a clarification on that?

JANIS KARKLINS: So, we had the conversation about it and I think that, if we would go for a full consensus, in other words unanimity, maybe this would not be reasonable from an operational point of view.

Because we may have a situation where, for one reason or another, one group, for instance, one advisory committee, is not very happy ... But would not be able to block if everybody else, including Contracted Parties House, is okay with the recommendation. Therefore, I would suggest that it is a consensus [nation where] contracting parties should be part of. Amr, please.

LAUREEN KAPIN: Right. So, it's not full consensus. It's consensus, plus the contracted parties.

JANIS KARKLINS: I think that that would be the most reasonable level of consensus for the mechanism.

LAUREEN KAPIN: Okay. I just wanted to make sure I understood. Thank you.

JANIS KARKLINS: Thank you, Laureen. Amr, please.

AMR ELSADR: Thanks, Janis. I just have a question. If I'm not mistaken, ALAC introduced this – the idea of having ICANN Org liaisons to the

committee. I can certainly understand where it would be helpful to have input or dialog with the members of ICANN staff, depending on what the topic under discussion is within the committee.

But if we're going to include them as liaisons to this committee, I'm wondering if ... I think we need to be more specific on what the role will be. And my concern here is, really, because we've added this language under the required consensus section of the proposal, this suggests that the ICANN Org liaisons are going to be part of the consensus, and I don't really see a need for that.

As far as I'm concerned, if new policy is being developed, eventually it's going to find its way to the ICANN Board, where they will be able to either vote to adopt or refuse it, taking into consideration older, fiduciary responsibilities, as well, and their public interest responsibilities, and so forth.

But if it's an implementation issue, I don't understand why ICANN Org would need to be involved in a consensus call on the committee at all. So, I'm just asking for more clarification on what the role of the ICANN Org liaisons is going to be, and why we've added this text under the required consensus section of the proposal. Thank you.

JANIS KARKLINS:

Okay. Thank you. Probably, I need to ask staff to clarify. But while they're thinking, I will take Margie, Franck, Alan, and then staff. Margie, please.

MARGIE MILAM: Hi. Thank you. Thanks, Berry, for sharing the voting thresholds. As I see it, I think it falls into the “all other” category for the GNSO Council. I don’t know if, staff, you guys could look at it and see what you think, but it seems that it just doesn’t fall into the other categories until you get to the very bottom where it says “other.” So, it would be less than a super-majority.

JANIS KARKLINS: Not sure that I'm following what you're saying.

MARGIE MILAM: Sure. I was trying to answer the question as to what's the voting threshold at the council level once the recommendations come from the standing committee.

JANIS KARKLINS: Thank you. Franck, please.

FRANCK JOURNOUD: Thank you, Janis. I just want to register my puzzlement at the notion that the contracted parties should be given a veto. I'm sure they have and they can make a case that they may find very persuasive as to why they are in a special position that requires that they be given a veto role in the decision making process of the standing committee, but I can assure you that every other constituency, certainly mine, can make an equally persuasive case as to why our views need to be absolutely considered and our objections cannot be overruled as requestors and therefore representatives of victim

to one degree or another, certainly, the thought that we would have a decision making weight that is less than the CPs I think is very reflective of a lot of things when it comes to governance.

JANIS KARKLINS:

Thank you, Franck. I think that the general premise is that the mechanism or standing committee would work with the consensus in mind all the time. But why contracted parties would have special situation? So let me ask you, would you allow me to bet on your money in your pocket, without asking you whether you are happy about that? So these 4% are still lingering around, and that's why whatever decision is made, contracted parties need to be part. And if they do not feel comfortable, then there should be continuation of discussions until they are onboard with everybody else.

FRANCK JOURNOUD:

Well, to answer your question, Janis, I wouldn't allow you to place that bet any more than I would allow you to decide on how, as victims, representatives of either individuals or companies that are experiencing damages because of illegal activity online, I wouldn't allow you to place that bet any more than I would allow you to decide how our interest should be disposed or not even considered.

As I said, I feel that the case is equally strong for everyone to feel that they have essential interest that need to be addressed in this thing.

JANIS KARKLINS: Again, all I can say that the spirit or understanding should be that the mechanism would work for consensus or with consensus.

FRANCK JOURNOUD: A consensus that considers equally the views of all. But [inaudible]

JANIS KARKLINS: No, sometimes—again, because of the potential liability and fines. Let me take Alan and James in that order. Alan, please.

ALAN GREENBER: I'm afraid I no longer remember why I put my hand up, but I will respond to Franck. The council voting rules for policy in fact do allow a policy to be enacted against the wish of a contracted party. There have been PDPs which changed what registrars must do and the registrars did not support it. But it requires the rest of the council to very strongly support it.

Within our consensus rules, we do not have that power of authority, and I believe since we're asking contracted parties to follow these advice—and that's the whole substance of this discussion we've been having—that we need their tacit approval. Or if not, it has to go through a policy process to force the issue. But we don't have that kind of authority here, and I think we have to give the contracted parties the ability to back out on things that do impact them.

That's part of the compromise that I think we have to make if this is going to work at all. So, would I prefer to say you'll do it whether you like it or not? Council can do that under certain circumstances and

policy processes. I don't think this kind of committee that we're looking at should have that authority. And I wish I remembered why I put my hand up. It may come back to me, but not now. Thank you.

JANIS KARKLINS: Thank you. James, please.

JAMES BLADEL. Thanks. I think Alan covered it. I think Owen mentioned it in the chat. the fundamental, the source of all of ICANN's authority is contracts. Contracts require consent on both parties. Alan is mostly correct that some degree of consent from contracted parties is required because ICANN essentially is not passing laws or regulations but something that we agreed to. Something I say that's surprisingly controversial, but I do say it often, is that no one submits to ICANN's authority except voluntarily. And that is true here. So the consent is a required element. Thanks.

JANIS KARKLINS: Thank you. I understand that there is a difficulty, but I would plead to all members of the team to agree what we now see on the screen, and specifically on consensus determination that understanding is that the mechanism works with the aim of reaching consensus, and the contracted parties need to be part of the consensus in any circumstances. And again, consensus not necessarily meaning unanimity. Somebody may not like something but let it pass under consensus rule, but contracted parties always need to be [part of] consensus.

And I would like really to move on, that we can finally [inaudible] this recommendation.

ALAN GREENBERG: Janis, could I have one short minute? I do remember what I was going to say.

JANIS KARKLINS: Yes, Alan, please.

ALAN GREENBERG: The reference to ICANN liaisons was not mine. That, I believe, was ICANN's. What I did say is I believe the SSAD operator should be on this group and should effectively have a veto, because if the SSAD operator says something's not implementable, there's no point in recommending it to council to push forward. I think the SSAD operator has to be party to any recommendations of SSAD changes.

Now, we could restrict it, "shall not unreasonably reject things" or something like that, but I believe we need agreement of the SSAD operator. We don't want to go to council, then go to the board, then ICANN Org comes in to say "But it's not implementable." That's a real waste of time. So that's the point I was making there.

JANIS KARKLINS: Yeah. Thank you. But again, maybe not to complicate, I understand that Berry moved that ICANN Org liaison will be part of the mechanism to the place where that belongs on the composition of

the committee. And so if there will be something unimplementable, then that will be known.

ALAN GREENBERG: Yeah, it really should be the SSAD operator, not ICANN Org In that case. But anyway.

JANIS KARKLINS: But we know that ICANN Org will be operating SSAD in every situation. So, and with this understanding and no violent objections, understanding that there may be some unease, I would like to move to I think item five because four is covered already. Please, Caitlin.

CAITLIN TUBERGEN: Thanks, Janis. As Berry scrolls up to paragraph one, you'll note that there is a bulleted list of what would be included in the SSAD status report, and the Registrar Stakeholder Group proposed removing three of those items which are highlighted on the right by Berry, and there was just disagreement about the removal of that so we weren't sure how to proceed with that, if we should just keep it or if the Registrar Stakeholder Group wanted to provide further information as to why those should be removed.

JANIS KARKLINS: Okay. So, these are three now points that is requested to be deleted by registrar group, and that was objected by others. So, how shall we proceed? Any comments, any advice from the team members? Amr, please.

AMR ELSADR: Thanks, Janis. Just a clarification that this bulleted list was included in both the other two proposals, the one for the GGP and the one for the ICANN-chartered group. So adding it here was only intended to reflect that there are data points that are going to be fed into this committee or mechanism which will provide the committee with data to work with. I'm not personally married to any of the individual bullets. So I'm happy to listen to any objections or clarifications concerning any of them, but just want to clarify where they came from. Thank you.

JANIS KARKLINS: Thank you, Amr, for that. Hadia, please.

HADIA ELMINIAMI: Thank you, Amr. None of us are actually married to those bullet points. However, what's the rationale for removing those data points? I think they do provide insightful information with regards to the performance of the system, because processing disclosures automatically or manually does impact the performance of the system.

However, I do find two of the bullets quite confusing because the first bullet highlighted refers to the number of disclosure requests automated by the central gateway and I guess that one is referring to the automated use cases. However, it is not clear that it refers to those cases if it does, and I think the second bullet point will be referring to the automated disclosure of data, but again, this is not clear if it's actually referring to that. Thank you.

JANIS KARKLINS: Okay. Thank you. Laureen.

LAUREEN KAPIN: Yes. I had a similar inquiry to Hadia. I didn't understand the reason for removing these bullets, and I'm wondering if—I thought it was the contracted parties and I thought there was some perhaps confusion about who actually automates, whether it's the central gateway or the contracted parties and perhaps the phrasing needed to be tweaked. So I think it would be helpful if we can get a better explanation about the basis for removing this or if it can be corrected in some way, because generally speaking, I agree that these are useful data points. What percentage of requests are automated versus what percentage of requests are processed manually. And if it's just the other words about who's automating it, I think that's easily corrected.

JANIS KARKLINS: Okay. Thank you. And I think you're right, maybe we simply need to merge two first bullet points that are required to delete and leave them only as a number of disclosure requests automated, full stop, and number of requests processed manually might be the second data point. Margie, please.

MARGIE MILAM: Hi. I do think they're useful pieces of data because I think especially for the mechanism to examine what's being done on an automated basis voluntarily, so I think it actually feeds into some of the data

that could be examined by the committee or whatever you call it, the standing committee to address some of those issues. So I would encourage us to keep it in.

JANIS KARKLINS:

Okay. Thank you. Would this change that I proposed be acceptable to everyone? And also, please read that this is not exhaustive list, these are data points that need to be reflected as minimum in the status report, and SSAD, ICANN Org who operates the SSAD, will be able to put whatever other data they think needs to be added to the report according to their own estimate. But this is the minimum list of requirements. Amr, please.

AMR ELSADR:

Thanks, Janis. And thank you for that clarification. I think it was important to note, and then thanks for Berry's message in the chat. I just have one question since I didn't actually come up with this list. But I made this assumption, but I just want to be sure, the data we're talking about here will be produced by the central gateway manager, correct? So the production of data will actually be automated in some form and will not require contracted parties to actually intervene or manually prepare data or records as we were discussing yesterday to feed into here, right? Because I think that's important to clarify. I think that's what we're looking for: data that the central gateway manager generates and provides to the mechanism and the committee. Thank you.

JANIS KARKLINS:

Thank you. The frequency of the review is something we discussed, and probably at the beginning, this discussion needs to be much more frequent than in the second or third year of operation of SSAD, because we will be learning and the first steps always need to be made more carefully and with better care than the next one. So therefore, these three months came up and that is for the first review. And after that, we will see how frequently this review will be needed. Just for those who say that three months may not be sufficient time to see trends, in the beginning, they will be indicative. Later on, of course not.

So from what I can read in the chat, there's no objections to this list in principle. It seems there isn't. So, do we have anything else to discuss on this? Brian.

BRIAN KING:

Thanks, Janis. I think what we took comfort in in the language there that said no later than three months is that it ensured that this actually had to happen by some firm deadline, and I'm completely sympathetic to comments that there might not be enough significant or appreciable data by that point, but I don't think we'd be comfortable leaving it completely open ended. So perhaps we could put a cap on a wild opposite end of that and say no earlier than three months but no later than, I don't know, a year, nine months, something like that after the—I can't say that word. You get the idea. Thanks.

JANIS KARKLINS: Okay. So then [Mark] is suggesting 12 months. Would that be okay? Okay, so it seems that Laureen wants to shorten that. Let's put 9 months instead of 12. And that would give six months to catch the problem. Okay, it gets maybe too personal, some comments. Caitlin, do we have any other issue to discuss, or five issues are all we need to cover for recommendation 19?

CAITLIN TUBERGEN: We just had those five issues, Janis, and then the text that was updated as a result of the other comments. There were no disagreements on that, so I think we're good to go. Thank you.

JANIS KARKLINS: Okay. So, Daniel, your hand is up.

DANIEL HALLORAN: Thank you, Janis. I was just a little bit too slow. I wanted to raise a comment on that last text we were just looking at, if it's not too late, and suggest that it may be better, instead of specifying an exact thing called a status report and then the recurring periods of the status report having to be set, that instead, it might be possible to implement this as a dashboard that would show these statistics on a rolling basis so anyone could see at any time. And I don't know if it's important to the team to actually get a PDF status report or just that these statistics that you're asking for be made available. Thanks.

JANIS KARKLINS: I think initially, there should be a basis for conversation of the standing committee. So you may do dashboard which gives you sort of current status and how it operates and flashes and then colors, but when it comes to the process, I think that needs to be formulated as a report and that based on that report, standing committee is talking and doing whatever conversation needs to be organized.

Amr.

AMR ELSADR: Thanks, Janis. Could I ask where we landed on the consensus levels for adopting recommendations by the committee or the mechanism? I believe there was also a question on how the consensus would be determined, whether it would be consensus kind of like one determination per group or if there were multiple members per group, how that would work. I'm happy to describe how I thought of it, but I'm just wondering if we did actually—

JANIS KARKLINS: I Think that that is covered. So each group represented in the mechanism would have one sort of vote, if I may say, for the consensus, but in the committee, there may be more representatives of the same group. They would need to speak on behalf of the group and consensus would be determined one vote per group.

AMR ELSADR: Yes. Thanks, Janis. That sounds good to me. And I note here that it now says that the recommendations need to achieve a consensus designation without actually—or must achieve consensus of the members. Does that mean full consensus, or does it mean something else?

JANIS KARKLINS: No, consensus, but consensus plus where contracted parties need to be part of the consensus.

AMR ELSADR: Okay. I see.

JANIS KARKLINS: Not full consensus, but consensus, but contracted parties need to be part of that consensus.

AMR ELSADR: Okay. Thank you.

JANIS KARKLINS: I though that we could go further taking that we still have some 12 minutes to go. Laureen, please.

LAUREEN KAPIN: I'm not sure I understand the last sentence. Might someone explain that to me?

JANIS KARKLINS: Okay, I will ask Caitlin, Marika, staff.

CAITLIN TUBERGEN: Laureen, that sentence was taken from the EPDP charter, and I think when the charter was drafted—and others, please feel free to correct me—it was that there were certain membership slots given for each SG and C but there was a concern that some may not be able to fill that and that if they indeed were not, that they wouldn't be disadvantaged in the consensus process.

LAUREEN KAPIN: But that doesn't really make sense with the current structure because we're saying it doesn't matter how many people you have, it's going to be one group, one vote. So, shouldn't this be deleted?

CAITLIN TUBERGEN: This was just an additional assurance that folks wanted when we did the EPDP charter drafting. But if everyone agrees that it can be deleted, we can certainly delete it here.

JANIS KARKLINS: Okay, let me see, Alan.

ALAN GREENBERG: Thank you. I was going to comment on the same thing. Not only does it—can it be deleted, but must be deleted. There is no

membership allowance. We're saying you have one and you can add more. So it just doesn't make any sense in the context of the group we're talking about. I understand the context in the term of the EPDP. If you wanted to put a sentence in there that says something, it should say having more than one member does not give you more impact on decision making than having one member. It gives you more speakers, but that's all it gives you.

JANIS KARKLINS: Okay. Thank you. James.

JAMES BLADEL: Yeah. I guess I'm agreeing with Alan. I didn't quite understand. I sort of understand the intent that we're trying to cover for interests that weren't present, but then it also could be read to say that even if you don't participate on this, an SG for example doesn't send any members, that it still cannot be disadvantaged. And I don't know how you account for that. So I agree with Alan, I don't understand the problem it's trying to solve here.

JANIS KARKLINS: The suggestion then is to delete that sentence. Any objections? Amr?

AMR ELSADR: Thanks, Janis. No, I have no objections to deleting it. I think that would be a good idea. But I wanted to address another issue, so I'll wait until you're done with this one. Thanks.

JANIS KARKLINS: So then if no objections, then it is deleted and you can go and suggest other point, Amr.

AMR ELSADR: Thank you, Janis. I just want to note that in the original proposal that I put forward, I had proposed full consensus of the committee. And now that this is changed, it creates a bit of a sticking point which we often come up against when discussing representation and consensus designations and that sort of thing, which is that within the GNSO, at least the Commercial Stakeholder Group and the Noncommercial Stakeholder Group, have their representation done differently. So in a model like this one where we're talking about consensus not full consensus, so consensus means that there's a minority that disagrees, but an overwhelming supermajority that does agree.

This consensus designation puts the NCSG at a clear disadvantage, I think, and sort of shifts the balance of power towards the Commercial Stakeholder Group. This is an age-old problem. It's something that we've come up against for years and years, and part of my motivation for suggesting full consensus was to avoid having to deal with this problem on this recommendation. But I just wanted to flag that now this problem exists again and I'm not sure how we're going to deal with it. I think we'll have to discuss this internally within the NCSG. Thank you.

JANIS KARKLINS: But again, if the spirit of conversation is to reach consensus, so that would be up to the chair of the process to make it happen and try to accommodate every reasonable concern that members of the committee express on behalf of their groups. But also, that allows, avoids let's say a small minority vetoing something that everyone else thinks needs to be implemented, or unreasonably vetoing. In my view, it's important that the consensus is there and the requirements of contracted parties need to be part of the consensus there. So again, that is my proposal that I would really ask you to accept and move on. Stephanie and Alan, please.

STEPHANIE PERRIN: Amr has said much of what I wish to say. It's a very important point for us. We ran into it already. I was on the charter drafting committee. We had to, as the expression goes, wheel out the Milton to ensure that we got full representation. And frankly, the Noncommercial Stakeholder Group-has been the only group that has been pushing for data protection rights for registrants for the past 20 year. So definitely, this is a make or break issue for us. We cannot have the other side of our house, the Noncontracted Party House, having three votes and the Noncommercial Stakeholder Group being diminished to one vote. That's just not acceptable. It has implications on future GNSO voting balance. We cannot accept it. So line in the sand here. Thank you.

JANIS KARKLINS: Thank you. Again, the vote is simply a term—when you are working and achieving consensus, there is never voting. So again, I say that the spirit of the mechanism should be that every recommendation

is achieved by consensus without voting, discussing, tweaking, arguing and then putting on paper something that everyone can accept. So again, it's not up to me, it's up to all of us to find the right balance in this text. Alan Greenberg, please.

ALAN GREENBERG: Thank you very much. A number of things. On that last point, if we're going to insist on representation equivalent to what is in the council and in the EPDP, we're talking about a group of 25-odd people. I just can't see how that would work. I'll note that although we talk about the Commercial Stakeholder Group and Noncommercial Stakeholder Group, the Commercial Stakeholder Group has been very divided within this process as well. So even that distinction does not bear out.

In terms of full consensus, if we say full consensus, then understand what that means. That means the ALAC or the GAC can veto anything. Is that really the intent? And lastly, we may need a provision to say if one of the groups chooses not to participate at all, then they're waiving their ability to participate. We can't say we need their agreement if they're not participating.

Now, I can't imagine any group on the EPDP not participating in this, but I think the formal rules need to cover that. Thank you.

JANIS KARKLINS: Okay. Thank you. I hope that staff is taking notes on this and see if kind of clarifications need to be added to the text of these type of things that make sense. Look, certainly, this recommendation is very difficult and far from being ideal, but this is something that we

have been able to come up with after many hours of conversation. So I would say that at least seven or eight ours have been spent discussing about mechanism prior to our conversation now. So we are where we are, and I didn't hear anyone who is absolutely happy with the text. So I would suggest that all of us, we swallow the pill and see whether we can agree on automation. That would be the first item tomorrow. And if I may ask you to do as much comments as you can online before tomorrow's meeting so that staff can see whether any trend or agreement emerges that could be already put in and taken off the table without conversation.

So we have remaining two hours of work tomorrow, and I honestly do not see how we can finish automation recommendation yellow items in two hours. So my suggestion would be to add additional two hours to tomorrow's meeting, starting at two hours, then do maybe half an hour break and then go for another two hours, hoping that we would exhaust all issues and I could leave the group in peace that work is done. So, I hope that you would be understanding and accommodate my wish to spend additional two hours with you tomorrow, not to do it on Friday which I understand is a bank holiday in the United States and many of you would enjoy being free on Friday.

ALAN GREENBERG: Not to mention that today is a holiday in Canada.

JANIS KARKLINS: Sorry. So, objections? Thank you for expression of affinity. We're meeting tomorrow, we're starting at 2:00 PM UTC with automation,

and if need be, we will go additional two hours with a half-hour break in-between to finish the work, reading of the text. With this, thank you very much for efficient engagement and constructive approach. This meeting is adjourned. See you tomorrow. Have a good rest of the day.

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

[END OF TRANSCRIPTION]