ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Tuesday, 21 July 2020 at 14:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the GNSO temp spec gTLD RD ePDP Phase 2 call taking place on the 21st 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 are only on the telephone, could you please let yourselves be known now? Thank you.

Hearing no one, we do have apologies today from Julf Helsingius. They have formally assigned David Cake as their alternate for this call and for the 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 the chat. Attendees will not have chat access, only view chat access.

Alternates not replacing a member are required to rename their line by adding three Z's to the beginning of their name and add, in

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parentheses, affiliation, dash, “alternate” at the end, which means you are automatically pushed to the end of the queue.

To rename in Zoom, hover over your name and click “rename.” Alternates are not allowed to engage in the chat, apart from private chat, or use any of the other Zoom room functionalities, such as raising hands or agreeing and disagreeing.

As a reminder, the alternate assignment must be formalized by way of a Google assignment form. The link is available in all meeting invite e-mails. Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Thank you. Not showing anyone.

If you need assistance updating your statements 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 multi-stakeholder process are to comply with the expected standards of behavior. Thank you. Over to our ePDP Phase 2 chair, Rafik Dammak. Please begin.

RAFIK DAMMAK: Thanks, Andrea, and thanks for all for attending today’s call for the ePDP team. It’s clear we are now in the last calls and we have to work toward the goodwill to work together in finalizing recommendation and delivering the final report.

So, saying that, we'll go first with, as usual, the first agenda item, and that's about the confirmation of agenda if there is no objection. Okay. Seeing no objection. Oh, can you hear me better right now?

ANDREA GLANDON: Rafik, I'm hearing you okay. Why don't you keep going and we'll see if it's better?

RAFIK DAMMAK: Okay. Yeah. Sorry. Okay. So, I was asking about the confirmation for the agenda, and seeing no objection. So then, we can move to the next item, and that will be an explanation or recap of the proposed approach for this call and the call tomorrow.

So, what we are going to do, as you can see in item number four, is we will go …

ANDREA GLANDON: One moment please, Rafik. We are not hearing any audio from you now. One moment.

RAFIK DAMMAK: Through those items one-by-one, and I …

ANDREA GLANDON: One moment. We're going to try to dial out to Rafik.

RAFIK DAMMAK: Okay. Sorry, Amr. That's not going to happen soon. So, we have to do the three-hour calls. Okay.

ANDREA GLANDON: I'm dialing out now, Rafik. Okay, Rafik. It looks like the line has connected, now. Can you hear me? Can you hear me, Rafik?

RAFIK DAMMAK: Okay. Yes, I can hear you now.

ANDREA GLANDON: Okay, great. You can continue.

RAFIK DAMMAK: Okay. Sorry for this technical [breach]. I hope it will be the last one today. Okay. So, to the confirmation of agenda. We were just about to summarize the approach. So, do not waste time. Just to remind that we will go from the top to the bottom. Marika will introduce each item.

So, we have a proposal and question. For proposal, we will ask you to just … That we were not going to discuss at the time of the item is introduced, but we will do. So, I will ask you to take note, and then we will cover that later.

But for the question, we have time for discussion. And we will also be mindful about the time management, here. So, we'll have this timer. And so, I ask you, I ask everyone, just that we need to be mindful about that, and for each group to have one to one person,

a representative, to intervene so we can hear and we try to reach agreement if possible, as soon as possible. Okay?

So, maybe trying to move quickly to the next agenda item. I don't see anyone in the queue, so that's good. Okay. So, let's move with the review. I will ask Marika to start the introduction of the first item.

MARIKA KONINGS: Thanks, Rafik. I'm just posting in the chat the document that's up on the screen. If it's not big enough, what is being displayed, maybe you can follow along yourselves. Hopefully, you all had a chance to already look at this document. I know that several of you have already gone in and provided some input and comments.

And I think, as Rafik noted for other proposal items, we're not expecting to discuss those today unless we have time at the end, but we're going to focus on the questions in the document.

And as said, hopefully some further conversation can take place on the proposal on this in the Google Doc. And Berry, we're actually on the other Google Doc in a bit, not this one. If you can switch over to the one …? I think I sent the link in the chat, the "Category One Proposed Approach" Google Doc.

So, as said, the first one, it's a proposal. So, we're just going to introduce it and not discuss it at this time. As said, some people have already provided some input. I apologize for some of the background noise here, but I think the neighbors are remodeling their house.

So, the first comment relates to the executive summary in the draft final report, which highlighted some of the conclusions in relation to priority two items. The GAC noted here that that executive summary part did not address natural and legal persons, and we basically noted the executive summary is just a reflection of what is in the report itself.

And as, those items, no agreement was achieved on those, they're not reflected in the executive summary. But I would like to note, here, that there are some further comments on the priority two items further down in this document where we have made a proposal to at least provide some further clarifications on what was addressed and what wasn't addressed. So, we do hope that that at least addresses the concerns that we're not being specific about which topics are not covered in this report.

And as said, of course, if further changes are made in other parts of the report, we'll make sure, as well, that those are reflected back in the executive summary.

So I think, then, we move onto the next … It's basically items two and three that are related to, I think, the same comment or input, and this relates to the introductory section of chapter three, which contains the recommendations of the group.

But to be specific here, this is not part of the recommendations, as such. This is the introductory section to that. And currently, it just references that the ePDP team considered various models but agreed to put forward the following model, in which we then, in more detail, describe what it looks like.

The NCSG has put forward, here, some additional language that they suggest should be included here that goes into a bit more detail of the different models that were considered and were, in their view, agreement ended up.

The comment three, then, from the ALAC and the BC, has suggested some additional wording that should be added, [but I really] want to know that I think we received a couple of comments or input from different members that they do not necessarily agree with the way the comment has phrased the agreement or positions of a different group.

So I think, from our side the question really, here, is, are there any concerns about this addition? And again, please keep in mind that this section is part of the introduction and not part of the actual policy recommendation. So, it doesn't change anything from the perspective of requirements or obligations on different parties. It's just a description of what was agreed.

So, I think I'll hand it back to you, Rafik, for leading the conversation. And Berry has started the timers that will run for ten minutes, and after that, hopefully, we've come to a conclusion on how to address it. And if not, we either come back to it at the end of the call or we'll encourage groups to continue the conversation online or come back to it during tomorrow's call.

RAFIK DAMMAK: Okay. Thanks, Marika. Okay. So, I see we have Alan Greenberg in the queue. Alan, please go ahead.

ALAN GREENBERG: Thank you. I don't see the need for the change suggested, but I can certainly live with it if we make the change or the addition that was suggested. The rationale is that it says, "Typically, decisions will be made by contracted parties."

That implies the vast majority of them will be made by contracted parties, which is certainly the case to start with. That may not be the case as the SSAD evolves, and I don't want to set expectations that it is only going to be an edge case that decisions are made by SSAD. So, this simply says that, going forward, there may be additional cases, and the word "typically" may no longer be the operative word. That's all I was trying to say. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. Chris?

CHRIS LEWIS-EVANS: Yeah, thanks. A similar point to Alan. I think, certainly, all parties were in disagreement around the decentralized model, but I think there was a bit more nuance around why we weren't pushing forward with a centralized system.

So, if we are going to add this, I'd just like that to be reflected accurately, to say that some aspects believed that it wasn't technically or legally possible within the timeframe given. However, we're happy to push forward with the hybrid until we could gain a greater legal certainty, or something along those lines. Thank you.

RAFIK DAMMAK: Okay. Thanks, Chris. So, now we'll hear from Brian, then Milton. Brian, please go ahead.

BRIAN KING: Yeah. Thanks, Rafik. I put this in the comment on the Google Doc, so I'll be brief. I think all groups except the NCSG actually preferred the centralized model if we can get clarity that ICANN can centralize the liability away from the contracted parties.

So, the language here is factually inaccurate, and so it can't go into the report. We have certainly not rejected the other options. It's a disagreement on the likelihood that we'll get legal clarity or what the legal clarity might someday say, but the language proposed here cannot go in. Thanks.

RAFIK DAMMAK: Okay. Thanks, Brian. Milton?

MILTON MUELLER: Yeah. This is kind of a test case for the kind of day we're going to have. So, as Marika pointed out, this is actually not policy. This is a description of what happened. If Brian and Chris do not understand that we did reach a compromise on the hybrid model, we're going to be in a lot of trouble for the rest of this session.

To say that not anybody but NCSG oppose the centralized model is demonstrably false, and I will simply let the contracted parties who did not object to this word change speak up on that. But there was a lot of concern about the centralized model and, Chris, it was

not just … Well, it was ultimately about the legality of it, but also about the practicality of it and the whole idea as to whether the liability could indeed be shifted.

So, to say that the hybrid model is some kind of a temporary step along the road to a centralized model, that is what is inaccurate, and that's what we're trying to clear up here. We have to understand that we're working with a hybrid model in which requests are centralized and disclosure decisions are decentralized.

Alan's quibbling with the initial versus long-term issue is a little more reasonable. Although, again, you're trying to build, essentially, policy expectations into a description, which is not appropriate. So, I would say that we really have to go with this because it clarifies what our expectations are going to be, going forward.

We have accepted the idea that some decisions may be centralized down the road. The question of whether most of them, or not all of them, or a tiny amount of them will be centralized is not something we're deciding here. That's down the road, right?

So, I'd be happy to strike the word "typically" if that is causing the problem that Alan has. But again, I think we need a clear statement and we need to face reality square in the face and say that we did not have agreement on a centralized model. We did not have agreement on a decentralized model. The only thing that we could do to move forward was to have the hybrid model. So, if we can't do that, we're really in trouble. Bye.

RAFIK DAMMAK: Okay. Thanks, Milton. So, I see the queue is getting longer and the time is ticking. But on the other hand, I think Marika has put a possible compromise, here, regarding this language.

So, I would ask those in the queue just to express if they are fine with that approach or if they want to make another proposal. We need, really, just to keep moving. We are just at the beginning, here. We didn't go to the recommendations themselves. So, let's go with Brian, Volker, and then Alan. Brian?

BRIAN KING: Thanks, Rafik. It's Brian, for the record. Let me be clear. We only agreed to discuss the hybrid model as a step to get us to as much centralization and automation as possible. We did not prefer the hybrid model. We never wanted the hybrid model. So, let me be very clear about that.

I'm looking at Marika's suggestion about the language. I think that's okay. But the question remains about whether this language would remain as part of the proposed suggestion. We couldn't live with characterizing this report as something that is the result of consensus, and everyone agreeing to reject the centralized model is just simply not true. Thanks.

RAFIK DAMMAK: Okay. Thanks, Brian. Volker?

VOLKER GREIMANN: Yes. I mean, Milton is absolutely right. It's not about a question of what we prefer, it's a question of what we were able to agree to as a compromise position. I would prefer that people in the street gave me a million dollars but I make do without it because I know that's not a reality. It's never going to happen, and the same thing is for the centralized model.

Some people might see the centralized model as very desirous, very good to have, but it's never going to happen. It's not a position that has any chance of compromise. Let's face facts as they are. We have agreed that the hybrid model is the compromise solution, and there may be centralized elements to it but it's always going to be a hybrid model, and we should not indicate otherwise. So, I support what the NCSG has proposed.

RAFIK DAMMAK: Okay. Thanks, Volker. And closing the queue, here, because we are already over time. So, we are closing the queue with Margie. Alan, and then Margie.

ALAN GREENBERG: Thank you. Removing the word "typically" makes it much worse. It would make it totally unacceptable because that would say that all decisions were made. I'm happy with Amr's suggestion of a parenthetical in the initial implementation. I think that says exactly what I was saying with my additional sentence.

And I would suggest that we might be able to fix the problem that was raised which, with the statement, rejected both of these options

by replacing that with, “The team could not come to agreement on either of these options.” Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. So, we have this proposal. Okay. Margie?

MARGIE MILAM: Oh, hi. I was going to say something similar to Alan, so I agree with Alan. I think if you take a look at the room, we are fairly divided. So, saying that there is consensus for one view versus another view I’m not sure is correct. So, maybe using the language that Alan Greenberg suggested would accurately describe the situation.

RAFIK DAMMAK: Okay. Thanks, Margie. So, maybe, just to close this discussion, we have the proposal or suggestion from Alan. And so, maybe the staff can help to put forward language, and that can be done after the call. So, we take note of the comments made now.

So, we’ll keep going and move to the next item, but just asking the staff to take note of that action for this, to suggest language based on the comment and suggestion from Alan. Okay? Okay. So, Marika, can you move to the next item?

MARIKA KONINGS: Yes. Thanks, Rafik. And just to note that we have taken note of the different suggestions and, after this call, we’ll put the proposed compromised language for that section in the Google Doc so

everyone can have a look at it. Hopefully, it aligns with the views that the different groups have expressed.

So, on the next item, which is item number four, this is a comment from the Registries Stakeholder Group. We added some language after the last call to kind of indicate that at least—and I think it's something that Janis stated, at that point, aw—it's the understanding that the group considers the recommendations in this report interdependent, and kind of a package, and, as such, would request the council to consider those as a package.

The Registries Stakeholder Group noted that they do not recall the group agreeing to this. Some may have assumed this based on their entire support for the report, but it's not something that I think the RySG feels that they have signed off on, and they are suggesting removing this particular section.

In the question itself, we've provided a little bit of clarification, as well, where this comes from, and why the group could potentially make the statement, if it would want to.

There is a specific section in the PDP manual that notes that, although the GNSO Council may adopt all or any portion of the recommendations contained in the final report, it is recommended that the GNSO Council take into account whether the PDP team has indicated that any recommendations contained in the final report are interdependent.

The GNSO Council strongly discouraged from itemizing recommendations that the PDP team has identified interdependent

or modifying recommendations wherever possible. So, that statement would be linked to that.

It's not linked in any way, for example, to consensus designations; whether or not the group decides to consider this as a package or not, that does not affect whether consensus designations are done by individual recommendations, or groups or recommendations, or all recommendations together. That is really a separate conversation.

So, I think the question here for the group is really, if this all makes you uncomfortable, should this language be removed? Of course, it doesn't change the fact that there are obvious interdependencies as there is a lot of cross-referencing in the recommendations. But if this conveys something that the group believes shouldn't be conveyed, this can, of course, be removed. So, I think with that I'll turn it back to Rafik.

RAFIK DAMMAK: Thanks, Marika. Okay. So, we have, on the queue, Alan. Please, go ahead.

ALAN GREENBERG: Thank you very much. I suppose I could live with it not being said, but there is an implication that, if they're not linked, that they are unlinked and separable. And clearly, that is not the case.

If the GNSO Council, for instance, were to decide to pass onto the board everything except the evolutionary mechanism, the Standing

Committee, that would change the complete nature of the report from our perspective.

So, I don't know what the implications of not saying it are but, clearly, there are very strong reasons why we cannot pick and choose. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. I don't see … Oh, sorry. Now I just see Amr in the queue. Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. Not to argue for one point or the other, but I'm not sure that the ePDP team can instruct the GNSO Council on how it considers the final report coming out of the PDP Working Group, or ePDP team.

So I'm wondering, apart from how the ePDP team considers the interdependencies between the different recommendations, whether the last sentence is factually correct or not. Can we tell the GNSO Council that it must consider the report as one package, or is this a decision to be taken by the council? Thank you.

RAFIK DAMMAK: Okay. Thanks, Amr. Just to clarify, this is a question for the team, or for me, or …?

AMR ELSADR: Well, it's just an observation on the last sentence. Basically, we're telling the GNSO Council that it must consider the report as one package. I saw Marika's comment in the chat about that the council is strongly discouraged from splitting different recommendations coming out of a PDP Working Group.

And yes, that is my understanding, as well. But it's not at all an absolute rule and, on many occasions over the years, the GNSO Council has considered parts of a final report, and sometimes deferred recommendations to later proceedings or negotiations. So, I'm just wondering whether the sentence that we're discussing now is actually factually correct or not. Thank you.

UNIDENTIFIED MALE: Have we lost Amr?

AMR ELSADR: Oh, no. You didn't lose me. This is Amr. Sorry. Did my audio stop coming through?

RAFIK DAMMAK: Sorry, can you hear me?

AMR ELSADR: Yeah, I can hear you.

RAFIK DAMMAK: Oh, okay. I was saying that we go first with Volker, and then Marika.

VOLKER GREIMANN: Thank you, Rafik. Normally, I wouldn't disagree with my registry friends. But in this case, I am a bit taken aback because all of the recommendations are in their whole compromise position, and there are some recommendations that some groups prefer and some recommendations that other groups prefer, some recommendations that we don't really like but accepted because there were other recommendations that we did like.

And if we now give the council any option to pick them apart and cherry-pick between them, then I think that we would have to advise our councilors that, if certain recommendations are pulled, other recommendations would cease to see our approval, as well.

The compromise has to stay. I don't think we can pick the fight, and to suggest otherwise in any form or shape is just doing our work a disservice and risks the entire work that we've done.

[ANDREA GLANDON:] Rafik, are you still there?

RAFIK DAMMAK: Oh. Sorry. I was saying that we'll close the queue with Marc, since we have two minutes, and we go first with Marika.

MARIKA KONINGS: Thanks, Rafik. Just to confirm what Alan said in the chat, as well, the "must," here, is a small "must." The PDP manual is clear that this is a suggestion to the council and the council is discouraged

from itemizing if a group says it's a package, but it's not a requirement or a mandate.

The council can still decide to do whatever it wants to do, but there is an ability for the group to at least indicate whether or not it should be considered as a package and puts some responsibility on the council to at least factor that in, even though they may decide to do differently.

RAFIK DAMMAK: Thanks, Marika, for the clarification. So, we have Alan, and then Marc. Alan?

ALAN GREENBERG: Thank you very much. My recollection is that the only times … Council is supposed to be managing the process and verifying that we did our job properly, not evaluating the specific aspects of the recommendations.

My recollection is the only time council has picked and chosen which recommendations to pass onto the board and which not to is when the PDP team assigned a consensus level to each recommendation, and that they were radically different. Some had strong consensus, some had not.

So, if council is going to start doing that here, regardless of what we recommend, I think we have big problems with this process. So, I strongly support the wording just to reinforce what council should be doing anyway. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. Marc?

MARC ANDERSON: Rafik, can you hear me okay?

RAFIK DAMMAK: I hear you. Please, go ahead.

MARC ANDERSON: Great. Thank you. First, I want to say registries raised this. Our main concern wasn't necessarily around treating this as a package or not. It was that we were surprised to see this show up in the language.

As you pointed out, I think, at the top, some people may have assumed this, some people may not have. But we do not remember discussing it or agreeing with it, so it was a little bit of a surprise for us to see this language in there. So, maybe our concern was around procedurally.

I do want to point out not all of these recommendations are interdependent. Recommendation 22 deals with purpose two from Phase 1, and addressing that, for example. And there are others that clearly are not interdependent.

This isn't, strictly speaking, all one package. I do agree with the points others have made about the recommendation specifically to the SSAD itself, but not all these recommendations are specifically

about the SSAD. So, that was one of the reasons why we are prompted to make this point.

I also do want to agree with the points many others have raised about how the GNSO Council treats these and remind everybody that, in Phase 1, the GNSO Council treated those recommendations as a package deal without any suggestion from the Phase 1 ePDP to do so. So, I hope that adds a little color and clarity around why the registries chose to raise this. Thank you.

RAFIK DAMMAK: Okay. I hope it's not late for someone. But this is late for me. I'm [inaudible]. Okay. So, Marc, if I can ask here, you are suggesting or you are supporting what was proposed by others, that, adding language, that will be a package? Marc?

MARC ANDERSON: Sorry Rafik, I didn't quite follow or understand what you said there.

RAFIK DAMMAK: Okay. So, I was trying to understand your last comment. So, you were okay that the language just describes this as a package? Okay. In the meantime, I see that Marika made a suggestion that we make the interdependencies for the SSAD recommendations. Okay.

So, we're already over the time, here, but I just want to be sure that we have some proposal that will get support. So, it's really a question if it's something you cannot really live with. I mean, is it

something that you have a strong feeling about? And then, we're asking the Registries Stakeholder Group.

MARC ANDERSON: Rafik, I'm not really sure what you're suggesting but you've heard our points on this one. I think we can move on.

RAFIK DAMMAK: We can move on? Okay. Thanks, Marc. Okay. So, we take a note of that, and we can move to the next item. Marika?

MARIKA KONINGS: Yeah. Thanks, Rafik. I just raised my hand, as well, I think similar for the other one. Well, we can put in some language here that seems to reflect the input received, and that will hopefully be acceptable for all.

So, we move onto item five. I'll just repeat this for those that have missed it at the start. For those items where there is a proposal, staff is just going to introduce a proposal but there is not going to be any discussion at this stage.

What we're going to ask groups is to make a note for yourselves which of those proposals you cannot accept or where you think further conversation will help you get to a different outcome.

And we'll ask you, once we've gone through all the items, to basically note down, or speak up, and give us the numbers of those items that you think we should discuss further as a group. Either we come back to those at the end of this call, once we've gone through

all the questions, or those are going to be the topics for tomorrow's conversation.

And we hope that, between today and tomorrow, you can all work on list and in the Google Doc to come to a position where you can find common ground on some of these items.

So, item five. This is actually one where I already had a little bit of back and forth in the Google Doc with Laureen on the GAC, and I think it's also a BC comment, here. As you know, in the introduction—and Berry has highlighted that on the left, as well—there were a number of principles or concepts provided that underpin the development of the SSAD.

And the original suggestion here from the GAC was, shouldn't these also be in the policy recommendations, or part of that? We kind of respond in saying this was kind of used as an illustration, as a kind of an introduction for readers to better understand what the recommendations aim to achieve and, at least from our understanding, each of those can be traced back and found in the relevant recommendations.

And in the other Google Doc I provide, as well, the specific linkage to each of those principles and which recommendations they can be [found back]. So we hope that is a sufficient response and as such, we think no change may be necessary. As said, these principles are translated into a number of recommendations and can be directly linked to those.

So then moving on to item seven, and again, this is a proposal where already a number of comments have been made, and again,

we hope that some further conversation takes place in the Google doc on how to potentially address the concerns, but this relates to a footnote that can be found in the document, or I believe it actually was originally a footnote and has been upgraded to be part of the language of the recommendation that basically talks about what ICANN Org can do—and actually, I'm mistaken here, this is still a footnote linked to section 5.3. So ICANN Org has provided this language and I think has been very clear from the start that based on the recommendations, these are the different aspects it can enforce, and it was also stated very clearly that it cannot address the merits of the request itself or the contracted parties' conclusions if applicable in balancing the rights of the data subject with a legitimate interest of a requestor. And I think as some of you may recall, this was also a footnote that was discussed on the last call where some further information or edits were made I believe at the suggestion of Laureen.

So the BC and IPC have suggested here deletions of a number of sentences and in particular the notion that ICANN Compliance will not address the merits of the request itself or the contracted parties' conclusions. And we've indicated here that—or the proposal is that this footnote has been extensively discussed and ICANN Org has stated clearly that based on the policy recommendations, it cannot address the merits of the request or the contracted parties' decision to disclose or not.

Removing this from the footnote may create the impression and the expectation that ICANN Org can create the impression and expectation that ICANN Org can and will investigate the merits of the request or the contracted party decision, and as a result, the

proposal is to leave this footnote as it was and not apply the proposed changes and deletion to it.

I would also want to point out that ICANN Org here has suggested some further edits to this footnote as part of the category two proposed changes to further clarify that ICANN Org does not have a basis to challenge a contracted party's decision as long as it has followed the requirements of the policy.

So again, we're not discussing this at this point, but I would encourage especially the IPC and BC colleagues to maybe provide further input or ideas on what they think is missing here and what is potentially not reflected in this footnote, and have others respond as well as look at the text or edits that have been proposed by ICANN Org on this one.

So the next one is also a proposal and that takes us already to recommendation 6 that deals with priority levels. There was a proposal here that I think is both 8 and 9 make the same proposal in relation to priority three requests. And to provide you a bit of context, you may recall that there was some conversation in the group at some point on whether there should be a separate category for consumer protection issues. But I think there was a lack of agreement on what would fall in that category, what the criteria would be, and on what basis a contracted party would conduct that categorization.

So [where it] at the time was left at, contracted parties may prioritize such requests over other priority three items, and the thinking was as well that the experience gained with that could then help inform further review on SLAs either through the standing committee or

through a future policy development and a potential new category could be created that addresses this specific category of requests or further guidance could be provided to contracted parties on how to identify and deal with those types of request.

So the proposal that was made by both the GAC and BC and IPC was instead of having the contracted parties may prioritize those types of request over other priority three requests, the suggestion was to change that to “must” to recognize the higher priority of requests that raise consumer protection concerns.

And as said, in our proposal we've highlighted again kind of the background to this proposals and we also flagged that we did reach out to the GAC, BC and IPC to provide some further details on if there would be a change from “may” to “must,” how that would be enforced and implemented. There are no criteria or definitions contained in the report on how to flag phishing, malware or fraud, how could Contractual Compliance check whether a contracted party has prioritized over other requests as the SLA for priority three requests is the same. So I think from an implementation perspective, we had a number of questions on how that would work in practice.

I know that we did get input from the GAC that noted when contracted parties review requests, which they likely must do to assess whether or not to disclose, they would need to flag requests that relate to consumer protection, including phishing, malware, fraud, and then prioritize these requests of other priority three requests, and noting that BC, IPC may have additional thoughts.

So I think, again, this is one where it would be helpful for others to weigh in, and I think especially contracted parties, whether this is something that they believe is feasible or if this would change to a "must," whether that would provide them with sufficient guidance on what this would look like and how to address that, and I think similarly from an ICANN Org perspective, if this would change from a "may" to a "must," if that would provide sufficient guidance on what would need to be enforced.

So again, I think this is one where we most likely will come back to, but for now—and I see a number of hands up—we're not going to go into discussion now. I would encourage you to provide your input in the Google doc and we'll come back to that either at the endo f this call or at the next meeting.

MILTON MUELLER: Excuse me, I want to raise a point of order here. May I be recognized? I don't want to interrupt Marika, but I don't understand what's happening here.

MARIKA KONINGS: Rafik?

RAFIK DAMMAK: Yes, Milton. So the idea here, as explained in the e-mail, is to go through all the proposal. We know that there are a lot of comments and people want to—

MILTON MUELLER: Rafik, let me just make it clear. I can read, okay? Everybody on this task force can read what is there. I don't understand the point of having ours spent having Marika reread these to us and then not be able to discuss them or resolve any of the outstanding issues. To me, that strikes mem as a very inefficient way to proceed. If there's something about this I don't understand, I'd be happy to be corrected. But as of now, I see this as a complete waste of time.

RAFIK DAMMAK: Okay, Milton, understood. Maybe what we can do here to kind of optimize, we can skip the proposals, and that means that everyone needs to read them and [to make comment,] and then we focus on the question. Because the question is really where we need some input. So I think that's something that can work and respond to your concern.

Okay, I understand there is maybe no objection here, so we can ... Okay, so what I was proposing is that we will skip the proposal. As we said, we are trying to introduce them and explain the rationale for those proposals, and for now, we will focus on the questions because for those questions, we are expecting input and we need a discussion with the team members. So we will go through the questions first and then we'll come back to the proposal.

Okay,

MARIKA KONINGS: Rafik, do you want to go to others in the queue or do you want me to continue on questions?

RAFIK DAMMAK: Trying to catch up in the chat. Sorry for that. I'm kind of concerned if we will spend time in terms of procedure and process and method, because the comment was made that we short time, so we are trying to optimize as much as possible. But I see Volker's in the queue. I'm not going to open the queue now, [inaudible] more people, but just to let them [inaudible] they are expressing concerns, to hear them, but the approach we are proposing here is just to focus on the questions, try to resolve them and we will go through the proposal anyway. So trying to manage time here to ensure that we are resolving things.

Okay, so Volker, I think you [lowered] your hand. Milton, is it an old or new hand?

MILTON MUELLER: It's a new hand. I just don't understand what you're proposing that we do. There are issues on this list, there are things that people want to change. As far as I can understand, what you're doing is Marika is reading them and explaining them, and then we're not discussing them. We're going on to the next thing and reading and discussing it, which as I said, we have all read this. There are multiple comments on this. We need to go through these one by one and resolve them.

RAFIK DAMMAK: And that's what we're trying to do. So [inaudible] we'll try first with the question, and we will go back to the proposal. So we are covering things. Okay, so we will skip anyway the introduction of

proposal and we will just try to order here. We'll start with the question because we are looking for input and when we will go back to the proposal, we go directly on the discussion. Okay?

So Marika, please go to the next item, the question.

MARIKA KONINGS: Thanks, Rafik. Just to maybe close off the last conversation, the idea behind the proposals was as well that hopefully some of them could be accepted as is and no need to further discuss. And in certain cases, no matter how much longer we discuss, there may not be a resolution. And I think as Rafik pointed out as well in his e-mail, there may need to be agreement to disagree on certain items.

So then we'll move on to the next topic that was flagged for discussion. That's actually a grouping of items 12, 13 and 14 that relate to contracted party authorization. They all sort of focus on the same kind of question or issue which comes down to whether the same requirements apply when it comes to review of disclosure requests by contracted parties and how that should be reflected in the recommendation. I think in number 12, the NCSG comment, there's a proposal to remove a number of sections to make clear that there's only one path that is followed, if I understand that correctly. The registry and registrar stakeholder group have submitted similar proposed addition here, I think there's a small nuance here that I think the Registries Stakeholder Group language narrows or focuses more on the scope of the comment that all natural registrants' data must be treated equally, making it specific for the purpose of disclosure to third parties where I think the registrar language was broader.

So we're suggesting to maybe consider these three together for the conversation. so I think the overall question is, are there any objections to adding this language? Or of course, alternatively, following the NCSG's path of deleting a number of sections. And our question from the staff perspective as well, what does this mean for the current sections 8.8 and 8.9? Is it the expectation that a contracted party either follows 8.8 or 8.9 for all disclosure request that it receives, or just does 8.9 disappear and every request is expected to be subject to balancing and review and we would need to modify the recommendation accordingly? And also wanted to point out that ICANN Org noted here that this seems to conflict with the phase one recommendation which states that registry and registrar operators are permitted to differentiate between registrars on a geographic basis but are not obligated to do so. So I think we're also trying to understand whether this addition would override that requirement or how those two relate. So I think that's where we're at. I would encourage, especially registry and registrar and NCSG, if I've of course mischaracterized anything or not properly introduced what they're proposing here, to speak up. But I think that's the question around these three comments.

RAFIK DAMMAK: Okay. Thanks, Marika. So we have Alan, Chris and Amr in the queue. Alan, please go ahead.

ALAN GREENBERG: Thank you. Several points, and I'll try to be quick. Number one, this is directly counter, as Marika pointed out, to a phase one recommendation without explicitly saying it's removing phase one

recommendation. Second of all, as admirable as this might be in protecting people, it's not part of our charter to do this and we have been repeatedly told that we can't add things just because someone wants them, unless it's actually part of our charter. And that's been a line that's been given to us many times.

And lastly, given that the contracted parties are still saying they cannot differentiate between legal and natural persons, to say we're now going to treat all natural persons the same, which implies we're going to treat legal persons all the same, I think is just pushing it far too far to introduce this on the last day or second to last day of deliberations of this EPDP. I just don't think we can do that.

In terms of the NCSG suggestion of removing various sections, those sections were crafted after hours and hours of deliberation. I just have no idea what the implications of it are and it's not something I could agree to at this point. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. Chris, Amr, and then Stephanie. Chris.

CHRIS LEWIS-EVANS: Thanks, Rafik. We don't support the removal of 8.9 either. And just to give you a little bit of why, I remember these being in here is if you're processing data subjects' data under different legal bases, you have different provisions or different sets of protection that you need to afford them. 6.1(f) which is the majority of requests, you need to do a balancing tests. But there are other legal bases that don't require a balancing test.

And 8.9 was, as Alan says, crafted after many hours to reflect cases where we have to protect a data subject's data but balancing test isn't required. So that's why this language is really key in the overall processing. I do note CSG's concerns, and realistically, I think my suggestion of a way forward here, if NCSG can't live with this, is whether there's some extra safeguard that could be added to ensure that there are some protections for different jurisdictions. But this is not about removing protections for data subjects across jurisdictions, this is just to apply proper data processing rules for the different legal bases. So that's what this covers and I really can't support the removal of the language. Thank you.

RAFIK DAMMAK: Thanks, Chris. Amr.

AMR ELSADR: Thanks, Rafik. I'm going to try to respond. I think responding to Chris and Alan's previous comments will effectively allow me to say what I originally wanted to say. But Chris added something there which was not our intent at all, and Chris, the NCSG never proposed that a balancing test is required for every single case of disclosure. The sections that we specifically pointed out were only focused on geographic distinction. So if a legal basis is being used other than 6.1(f) which doesn't require a balancing test, then it won't require a balancing test. And I don't think any of the sections that we've pointed out as being desirable to remove, I don't think any of these suggest otherwise. So I'm not sure what the issue is with that.

the sections we did point out, all we were trying to do is trying to have an ICANN policy that is globally consistent and doesn't provide any competitive advantage to both contracted parties or registrants in terms of what protections they are offered based on where they're located, granted that not all countries or territories in the world have the same privacy protections that the GDPR provides, but that doesn't mean that ICANN shouldn't have a globally consistent policy that provides, for better or for worse, what we find to be the best practices in privacy protection. And I think it would be really interesting to hear arguments from the GAC or from ALAC or from anyone else on why you think registrants are not worthy of these privacy protections. I think that's really sort of the heart of the matter, I think.

As far as Alan Greenberg's earlier comments are concerned, I'm not sure why you're surprised. Like you said, and as Marika said in terms of ICANN Org's note on the conflict between this recommendation and the recommendation phase one, the NCSG has been consistently advocating for nondifferentiation between registrants based on their geographic location. So if this is something you see us coming in at the last minute, I'm afraid it's not our fault. It's just that you haven't been paying attention, which I'm sure you have been. So I'm not sure why you're surprised or why you think this was a last-minute addition. The NCSG never agreed to geographic differentiation. This has always been—in phase one, it's been a "cannot live with" item if geographic differentiation was going to take place, and continues to be so in phase two.

Like I said, having this geographic differentiation creates competitive disadvantages between contracted parties for one

thing, which I believe is not even consistent with ICANN's mission and promoting competition and consumer trust. And second of all, like I said, registrants, there is no reason to believe that registrants are not worthy of the protections that GDPR provides, and if they're not provided these protections by applicable law, then there's no reason why they shouldn't be provided by ICANN consensus policy. And this is something, like I said, we've been advocating for consistently for over the past two years. Thank you.

RAFIK DAMMAK: Okay. Thanks, Amr. So I want to make some points clear here. I asked in the beginning that we need one speaker by group, so we ask each group to coordinate. So sorry, Stephanie and Milton. It will be hard to also have you speak unless you are going to add something that was not said by Amr.

Also, regarding the time limit, we needed it and it's something to help us in terms of time management. There are so many topics to cover and limited time. If we are going to spend like 30 minutes by topic, we are not going to make it. We already passed one hour. And I think you can assess by yourself the level of progress we made.

I know that many people are not going to be happy. That's, I think, expected. Just I ask you to be helpful on this and try that we can move on. So for now, I ask you to really have one speaker by group, and also, it's not about rehashing what was discussing before. We are trying to get to the soul of the issue. If we are going to open what was deliberated, we are going nowhere. So, the thing here is

what can be said will be done or proposed to fix or to solve that comment. So I'm asking you kindly to focus on that.

Okay. So I will ask Mark and Alan to speak, and then Chris.

MARK SVANCAREK: I had suggested not in the “cannot live with” but in “would really like to have,” some sort of clarification on this one. To Chris’s point, the comments seem to be focused very much on the natural-legal—I'm sorry, the geographic distinction, whereas I was concerned about what Chris was saying, that there are other lawful bases.

But I do want to maintain the philosophy from phase one that a registrar may apply a geographic distinction if they so choose, even though it is not required. Thank you.

RAFIK DAMMAK: Okay. Thanks, Mark. Alan.

ALAN GREENBERG: Thank you. To Amr, yes, we heard you over the last two years, but it was not agreed upon. Just because you’ve said it repeatedly or some contracted parties have said it repeatedly, does not make it agreed upon. Otherwise, we would have agreed upon a lot of other things that some other of us have said repeatedly.

This may be a valid thing to do and to consider, but it’s not part of our charter, it’s not part of this PDP. I suggest you go back to the GNSO and have them charter a PDP on this. Thank you. Which is

exactly what other people have been told on other issues that they want added in. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. Chris.

CHRIS LEWIS-EVANS: Thank you. Just to respond to the clarification that was raised by the NCSG, I believe the language doesn't make a geographic distinction. Under applicable law, which I think is the point that Amr was making, that does reflect geographically, is the language I believe actually ties it down, so it's geographically, you can restrict the data, but geographically, you can't release the data. So it is the contracted party's decision to determine whether the data protection as defined in the policy is correctly determined and applied, and it's only under applicable law it may further restrict the data released.

So that's the way that I read 8.8 and 8.9, and really, I think that's going to the point that the NCSG really wanted to make, is an overarching policy that provided some data protection to the data subjects. And I was hoping that's what we'd achieve with this language. And like I said, I think as a way forward, if Amr and the NCSG don't believe that this counts, maybe we can add something to say that that's the purpose of this recommendation, is only to restrict, not to further open up. Thank you.

RAFIK DAMMAK: Thanks, Chris. I think the queue was closed after you.

MILTON MUELLER: Hold on. No. We're not doing that. You've let Chris speak twice.

RAFIK DAMMAK: Milton, let me speak first, please.

MILTON MUELLER: I'm in the queue, man.

RAFIK DAMMAK: Milton, you should wait. I was going to speak and explain what we will do. Please wait. So, I understand and I said and stated that we want one speaker by group. I understand also that Stephanie and Milton want to make a specific point. So I was going to allow, for now, that can happen, but please, for the next discussion item, please coordinate. We have so many things to go through. Okay? So Stephanie, and then Milton, and please be brief and concise. Thanks. Stephanie.

STEPHANIE PERRIN: Thanks. Amr has said much of my point. With regards to Chris's latest intervention, unfortunately, the language does not say what the consensus was. The agreement was that we would have a global policy that applied, and this nukes that by saying there has to be a lawful basis to refuse to disclose. And if there is no law in a given country, there will not be a lawful basis to refuse to disclose.

The other point that I raised my hand over is we have repeatedly, over the past two years, brought up the issue that the GDPR rests upon the fundamental charter of rights and the recent decision basically throwing our privacy shield has proven our point that a court will look at the charter and that the administrative bodies that are administering the data protection law have to look at this in the broader perspective of the charter.

Now, this is of particular relevance with respect to our policy, because the charter provides human rights, and if we fail to do it when we come up with a policy, we will be in court quickly. Thank you.

MILTON MUELLER: Yes, so I guess I'm next in the queue. I will make this brief.

RAFIK DAMMAK: Yes, Milton, please go ahead.

MILTON MUELLER: Because Stephanie said part of what I wanted to say. But I think what we need to emphasize here is that the specific—8.9 in particular is not what was agreed. The idea was that we were going to have a global policy and the problem is that the language now seems to apply that a contracted party is required to disclose in all cases unless local law prohibits it. So all you have to do is change that language and we'll be okay, because what Chris was saying was okay, but that's not what's in the language now. Right now, the language says if it's not prohibited by local law, you are required to

disclose. You don't have any option. And that has to change. That is a "cannot live with". That is a deviation from what we agreed and it is a deviation from the fundamental mission of ICANN, which is to come up with a globalized DNS policy, and probably as Stephanie suggested, illegal under the GDPR.

And a final word about time management. We have to come to an agreement or resolution of these issues. That's more important than how much time we take. The orientation of staff and management of this working group has to be oriented towards getting agreement or understanding where there's disagreement and not on arbitrary time limits.

RAFIK DAMMAK: Okay. So I think we spent time on this topic. So I guess we'll have to come back later to this one and we need to move on to the next item. Marika.

MARIKA KONINGS: Thanks, Rafik. And just on this last item, and it may be helpful for people to further review what is in there. I noted as well 8.9 does have a limitation in it. It may not be sufficient for some, but again, maybe focusing on the language and what is of concern there may be a helpful path forward on this one.

So the next one we have a question for is on recommendation nine, so it's item 20, the Registries Stakeholder Group has suggested here some additional language that states all necessary agreements relating to the processing of data requests via the SSAD must include clauses relating to cross-border transfers

ensuring a commitment by the parties where applicable to ensure and provide for an adequate level of data protection. So I think the question here is, does anyone have any concern about this addition to this recommendation?

RAFIK DAMMAK: Thanks, Marika. Volker, please go ahead.

VOLKER GREIMANN: No concern, just to say that the recent [inaudible] decision has made it clear that the cross-border transfers are a very important topic that probably will need some refining down the road, and therefore making this a requirement is very much in our interest as well.

RAFIK DAMMAK: Okay. Thanks, Volker. Checking the queue, there is nobody there. Okay, so I guess there is no issue with this one.

MARIKA KONINGS: Thanks, Rafik. I think that means we're moving on to the next question, which is on recommendation number 10. It's comment 25. There's a proposal here from the Registrar Stakeholder Group in relation to urgent requests. As you may recall, we discussed on the last call the requirement of one business day and some concerns were expressed that one business day might be problematic if it would cover, depending on where contracted parties would be located or potentially overlap with public holidays that might not be

known. So a compromise that was reached during the call was to basically say to one business day but not to exceed three calendar days as a kind of compromise and to provide some flexibility there.

The Registrar Stakeholder Group has come back now that they're of the view that three calendar days is insufficient, particularly for many smaller registrars who do not operate 24/7 and they are suggesting changing this from one business day not to exceed three calendar days to one business day not to exceed five calendar days. So the question is, are there any concerns about this change?

RAFIK DAMMAK: Thanks, Marika. So we have Mark, Brian and ... Okay, we said just one by group so it will be Mark and then Brian. Mark.

MARK SVANCAREK: I think it goes without saying that I have a concern about this, and I would like it to go back to three. There's really nothing to debate here. Three is better for us than five, and I thought we had an agreement. Thanks.

RAFIK DAMMAK: Thanks, Mark. Brian.

BRIAN KING: Thanks, Rafik. I agree with Mark. These are urgent requests, and three calendar days was, I think, a concession on our part and that it should be a business day. I understand there are times when there's holidays and long weekends and things like that, but what

we tried to capture here with three calendar days was to address those kind of outlier scenarios.

I'm not buying the argument there are smaller registrars who do not operate 24/7. I'll concede that it's a different concept, but the RAA already requires registrars to have folks on staff and available 24/7 for certain things. I understand that's a different scenario, but I'm sorry, I'm not buying that there are smaller registrars who do not operate 24/7. They're all required to operate to some extent 24/7. I think three calendar days is a reasonable concession and five is just getting out of hand. Thanks.

RAFIK DAMMAK: Thanks, Brian. So we have Volker, Laureen, and then Alan. Volker.

VOLKER GREIMANN: Yes. Thank you. Seeing that our basic compromise position was always one business day, I think five is already stretching it for many members. We have had comments from members that said, oh, that would mean that I would never have a free weekend anymore and always have to be somewhere where I have my phone with me. It's something that many registrars feel very strongly about, and even amongst the team, we have discussed this very passionately, and three is felt by most registrars simply as something that we cannot live with. That is make or break. That is not acceptable. And nobody requires Brian to buy anything. This is three, five business days offered. That's on the table. If it's not taken, we're happy to go back to five calendars. We'll have to go back to one business day. It's simply not doable for many of our

members, and therefore, what we are offering is the best we can do.

RAFIK DAMMAK: Thanks, Volker. Laureen.

LAUREEN KAPIN: Brian echoed many of my comments. These were already [inaudible] what was the initial ask from some of our stakeholder groups, so even going from calendar day to business day and then to three calendar days were compromises, and now asking us to stretch out this period is not something that we can live with. What I might suggest to move the ball forward is for what I suspect would be the relatively limited number of circumstances where you have a very small registrar faced with an urgent request that cannot be dealt with in five calendar days. Perhaps there could be some implementation guidance about the process to ask for a waiver. That might be a way to handle what I hope would be a very rare occurrence. But to change it to five calendar days as the requirement, that is not something that we can live with.

RAFIK DAMMAK: Thanks, Laureen. Okay, Alan, please go ahead.

ALAN GREENBERG: Thank you. I just have a very brief comment. I wish someone had told us at the start of this process, a week or so ago, that we were allowed to reopen issues we didn't like the answers to or add new

things that had never been decided formally by the group. We would have had a lot of things we could have put in also. Thank you.

RAFIK DAMMAK: Okay. Understood . So this topic seems disagreement from the registrar about this, and I'm not seeing how we can find consensual agreement here. So my guess is that we need to take note of the registrar disagreement, and that I think will reflect the level of consensus.

So just raising this because [as I'm during] all discussion saying that what can be the level of consensus, and then for each recommendation. And so I'm hearing the disagreement and so on. The intention is really we try to find or to solve, not to rehash the same discussion, same argument. So we'll do this for now. Okay, sorry, Laureen, maybe I didn't capture well what you were suggesting.

LAUREEN KAPIN: What I suggested, Rafik, was that there could be perhaps in the implementation process a way for a small registrar faced with an actual urgent request that it cannot fulfill within five days, which I would think would be a rare case, for them to seek a waiver of this requirement rather than have the five days be the standard rule. My assumption is that this isn't going to happen very often, and in those rare cases, perhaps there could be a mechanism to take care of it.

RAFIK DAMMAK: Okay, so you're suggesting [this as] compromise, this waiver. So let's see if there is any objection or disagreement with this suggested approach. And so the staff is also taking note of the proposal [so that] that can be shared later.

Okay, so what I understand is that you are not supporting this compromise, so disagreement is still there. Okay. I don't see for now what we can do for this, so we just, as said, we take note of the disagreement and [inaudible] proposal. Marika, maybe you have another suggestion.

MARIKA KONINGS: Thanks, Rafik. Maybe to give it a go, I think on the one hand, we can maybe write up what Laureen suggested, and if I understood Volker's concern, I think the concern is around as soon as someone has flagged that something is a priority one request, the clock starts ticking, and even if it's then recategorized, it'll still require someone to look at it. So maybe another way of looking at it would be if indeed a priority one request comes in but it's immediately obvious to a registrar that it's not and it needs to recategorize, even if it does that after that one business day, not to exceed the five calendar days, there is a way to kind of flag, yes, this was an urgent request, but it was recategorized for these reasons, and that is why this one business day did not apply. So maybe there's something else that could be looked at if that is a specific concern, that as soon as that flag of "urgent" goes up, it triggers some kind of alarm down the path and that requires action that at that point it's kind of maybe a quick look, and retroactively, a registrar can say, well, yeah, we didn't meet the one business day not to exceed five calendar days, but because we recategorized it because we immediately saw that

it did not meet the criteria of critical, life death situation. But as said, we can work on Laureen's compromise proposal and maybe the registrars can have another look at that, and maybe also think about if there's another way of addressing the concern of having that flag and what it could potentially trigger or the concerns it could raise for smaller operators.

RAFIK DAMMAK: Thanks, Marika. Okay, so we have that action to work in proposal, and Registrar Stakeholder Group review it later. Okay.

MARIKA KONINGS: So the next one is item 26 in relation to the query policy. The Registrar Stakeholder Group-has proposed some additional language here that reads, "However, contracted parties must also have some means to report this behavior back up to the central gateway manager, SSAD. The SSAD must provide a mechanism for contracted parties to report perceived abusive requestors' requests and provide a determination regarding the request or requests within the time frame allowed for the contracted party to provide a response.

Alternatively, the contracted party shall be permitted to delay providing a response until such time that the SSAD operator has reviewed the report of abuse and made a determination. So I think the question here is, are there any concerns about adding this language to this section? And ICANN Org has noted here as well when it's referred to SSAD operator, the assumption is that that's

referring to the central gateway manager as I think were the terminology used elsewhere in the report.

RAFIK DAMMAK: Okay. Thanks, Marika. No comment on this one and nobody in the queue, and this is question asking for clarification. If there is no objection ... Okay, so [if it's yes,] we need clarification here.

Okay, so if we don't have any input on this, I'm not sure how we can handle this question since it's asking for clarification. So if there is no comment or something, maybe we can stop here for five minutes since it's a three-hour call. So five-minute break and then we come back to continue our deliberation. So let's do that. I think that might help to [change] some mindset. So five-minute break and then we come back to continue for the rest of the call.

ANDREA GLANDON: Thank you all. We'll now have a five-minute break.

Okay, you can continue.

RAFIK DAMMAK: Okay. Thanks, everyone. So we are back in our deliberation. I think we're moving to the next item. That's the question again. Marika, please go ahead.

MARIKA KONINGS: So the next item I think we have on the list is item 28, which relates to the financial sustainability recommendation. There's a proposed

edit here by the Registrar Stakeholder Group in relation to the sentence, “Similarly, the cost of running the SSAD may be offset by charging fees to accredited users of the SSAD.” They’ve proposed changing this to “must.” So I think the question is, are there concerns about this change? And I think we already have some people that put in the Google doc that they have concerns about it. ICANN Org also asked a clarifying question here: does this new requirement mean that all costs of running SSAD must be charged to accredited users of SSAD? This comment seems to mean that accredited requestors must be charged a fee, but this proposed wording may be read more broadly that ICANN must account for every cost incurred in operating the gateway and must charge that to the accredited requestors.

And ALAC notes the statement in the report, ICANN may contribute to the partial covering of costs for maintaining the central gateway was long-debated and agreed upon.

RAFIK DAMMAK: Thanks, Marika. So we have Chris and James in the queue, then Alan. Alan, please go ahead.

CHRIS LEWIS-EVANS: I think we were at a “may” because there's difficulty for law enforcement especially and governmental agencies to pay directly, and the reason for the “may” was to allow [whatever it is] accrediting body to stump the cost. So that’s why we had the “may,” so I think a “must” brings up those same concerns that we had before around

the difficulties for governmental bodies. So that's the problem we have with a change of this language. Thank you.

RAFIK DAMMAK: Sorry, [Chris, I had hard time to hear. Can you] please repeat briefly what you were saying?

CHRIS LEWIS-EVANS: Yes, sorry. So the reason for the “may” was governmental agencies have troubles paying for data and items like that, so if an accreditation authority wanted to bear the costs for government agencies, that should be allowed. So we have trouble with a “must,” would prefer a “may” and wouldn’t be able to accept a change to a “must.” However, obviously, the reason for that, we totally agree that the registered name holder shouldn’t bear any cost. So don’t accept the change, but maybe extra wording around that, we could support. Thank you.

RAFIK DAMMAK: Thanks, Chris, for the clarification. James.

JAMES BLADEL: Thanks, Rafik. Chris, I'm not trying to—I think recognizing that that is an issue for law enforcement and other public sector users of the SSAD, and I think we’re not trying to revisit that issue with this change, what we’re trying to do here is avoid a situation where we have 1000 accredited users of SSAD and 995 of them have a good reason why they shouldn’t have to pay for anything. So if you can

help me with the language that says that generally, operating costs will be borne by charging fees to accredited users with some exceptions, or something like that. If we can capture this in a way that doesn't open the flood gates in one direction or the other, I think we can get there. I think the concern is we're looking at this as a potential loophole that goes in two different directions. So I think we need to establish the expectation that for the most part, in general, on the whole, these operating costs will be borne by the accredited users and not completely on the tab of ICANN, which indirectly of course lands on the registrants. Thanks.

RAFIK DAMMAK: Okay. Thanks, James. So just to capture what you were proposing as compromise, it's just maybe to make clear about some of these exceptions and I do take note of that.

JAMES BLADEL: Sorry to interrupt, Rafik, I'm having difficulty hearing you.

RAFIK DAMMAK: Sorry. So I was trying to say that you are suggesting a compromise here that just to state some exception. Did I capture that correctly?

JAMES BLADEL: I think that's correct, is that generally will be borne by charging fees to accredited users with some exceptions or something. I think we don't want the exception to swallow the rule and become the norm. Thanks. Okay, so we can try to rephase and work on some

language around this proposal. Thanks, James. So I see Alan and then Margie. Please go ahead.

ALAN GREENBERG: Thank you. I have no problem with that, subject of course to the wording. As long as it makes clear that it's not a prohibition from ICANN funding part of it, and it's not necessarily the users that pay. As has been pointed out, perhaps the accreditation body will put a block funding in for something like that.

So yes, the bulk of the fees will be paid by those who benefit from the service, and if we want to say something like that, that's perfectly reasonable. It should probably be in the implementation guidance for the implementation team when it's setting fees. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. Margie.

MARGIE MILAM: Hi. I do have concerns with making the change, because I think that what we're really saying here is that the victims of DNS abuse have to bear the brunt of the fees, and honestly, that doesn't sit well with our stakeholder group. And I do recall the SSAC raising this issue as well, that in fact it isn't even appropriate for us to be making these recommendations from a policy perspective, that that's something that ICANN does outside of the policy process.

So my suggestion would be, leave the language as is. I'm not saying that we wouldn't be willing to pay some accreditation fess. Certainly, that's appropriate, but to bear the brunt of it I think is not what we had agreed on and at this point, I think is objectionable for us.

RAFIK DAMMAK: [inaudible]. Milton.

MILTON MUELLER: I think that we have agreed on this very watered-down language, because I certainly wanted much stronger language that meant that the users of the SSAD would definitely be charged fees to defray most of its operating costs.

The compromise was that the registrars got stuck with the bill of bringing themselves into compliance with or connection with the SSAD and that the ongoing operating costs were to be defrayed by user generated fees. And there's already language in there about how there might be subteams in certain cases. I can't remember exactly where it is, but it's there. And some of the cost of running the SSAD and not all of them? Let's be reasonable about the nature of this compromise.

Yes, there it is, 14.8, fees associated, users based on different request volume or user type and the governments. So you've got all of the language that you would reasonably need in there to hash out during the implementation phase, and I think any objections to this language simply have to be set aside at this point in recognition of the fact that this was indeed a compromise in which stakeholder

groups who don't like fees got almost everything they want. Thank you.

RAFIK DAMMAK: Thanks, Milton. Okay, so we'll go with Volker, close the queue here, and try maybe to come up with some suggestion or compromise, or at least our kind of next steps. So Volker, please go ahead.

VOLKER GREIMANN: Yes. if I recall the time of making the compromise, I think the position of the registrars has not changed since then. We do not want the registrants to pay for this, and some of the comments that Alan and Margie made reconfirmed the need for this change in the language to make it clear that neither ICANN nor registrars nor registrants should be made to pay, because if ICANN pays it, where does that money come from? It comes from the registrants. If the registrars pay for it, where does that money come from? It comes from the registrants. So ultimately, it's always the registrant that pays, unless it's made clear that the requestors pay all of it. And that has been the basis of the compromise that we've made.

if you want to have music on your wedding, you pay the band. That's the way that it works. Nobody else is going to pay for that band. And that does not preclude you from recovering that money as part of a lawsuit against the infringers that you are the victims of in case that your requests are actually well based and founded.

So there's no obligation for the SSAD to allow requestors to freeload of their services, I think unless it's explicitly foreseen in what we proposed, for example for government and law enforcement. I think

it's important to make sure that it's recognized that if your rights have been violated by a registrant and you are forced to go through this process and pay certain fee, there are legal means to recover that and you should make use of those. Thank you.

RAFIK DAMMAK: Thanks, Volker. So let's try to find how we can resolve this and attempt to do that. Of course, there is some disagreement about using the word "must", but at the same time, I think there was a proposal in the chat if we can use "should" as a compromise here. And also, I heard another suggestion is that we make clear about the exception. I think that [probably will] respond to [inaudible] Chris's explanation. So, can this be a solution or compromise that won't have a strong objection? Using here the word "strong objection." I know that many of what we are going to end up, it's not something everyone will like, but is it something really disliked? So just maybe if staff can help me here to write down the proposal. I'm just asking. So let me check if there is any strong option to use "should" instead and to [list] exception.

Okay, so I close the queue since I think we're done, but I think we can hear from Alan and Amr and that's it. So [inaudible] really is to move toward resolution. So if they can help us on that, that will be good. So Alan, and then Amr.

ALAN GREENBERG: I put my hand up before the suggestions made. certainly, I can live with "should" as long as it doesn't remove the statement that clearly says ICANN may contribute some of the costs. I heard two different

statements from James and Volker, one saying we're looking for the bulk of it paid by users and Volker said all of it had to be paid by users, and the "all" is just a nonstarter. Thank you.

RAFIK DAMMAK: Thanks, Alan. Amr.

AMR ELSADR: Thanks, Rafik. I don't think "should" satisfactorily solves the problem here. I think there would need to be further context developed around it. The use of the word "should" here suggests that if the fees being charged aren't offsetting the costs of use of the SSAD, then there needs to be some sort of justification of why that is, but right now, still this recommendation reads as something that's pretty wide open and almost any kind of justification may be used. And it isn't even clear in situations like this who would decide whether the costs would be covered by the accredited user or by ICANN for example, meaning also contracted parties and registrants. So just replacing "must" with "should" here strikes me as a bit of—not even a half solution, it's just something that's vague and unclear and doesn't really solve anything, it just raises a bunch of questions. Thank you.

RAFIK DAMMAK: Okay, so the term "should" I guess can be [confined by—as you asked about the context, and that's the exception.] I think if we list the exception, that will make it clear when it can happen, and to avoid that it's open. So, is this something workable?

AMR ELSADR: I'm sorry, Rafik, if you're asking me the question, I didn't hear you very clearly. If you could repeat it.

RAFIK DAMMAK: Okay. So you said you have a concern with “should” because it can be open and anyone can raise an exception. But I think one of the previous suggestions, I think from James, is to [list] the exception. So for example, it’d be for, I think, like law enforcement agencies and so on, so as to make it kind of clear and limited in terms of exception. So, “should,” and that list of exception together. So I guess that can give some safeguard, if I may use this term. So, does it work?

AMR ELSADR: Rafik, yeah, that would actually work if this was spelled out clearly. That’s what I'm trying to say; if the exception is clearly defined in our report, whether in the implementation guidance or the recommendation itself, then that would be fine by me. But I'm pretty much saying that what you're suggesting right now is required to make this work. Thank you.

RAFIK DAMMAK: Okay. Thanks, Amr. So let me check with the other members of the team. Is this something you can accept as a solution? You can express that in the chat. I see [inaudible]. Okay, so if I don't see any objection, I think we can go with this. Yes, Brian, we will put the language anyway to make things clear. Okay, so let me restate the

proposal. So changing from “may” to ”should,” but that would be also with the list of exceptions.

MARIKA KONINGS: Rafik, maybe in the interest of time, we’ll update the Google doc as well with what we believe are the agreements reached, and of course, groups can flag then if that was not in line with what they understood. Berry has displayed the language here as well, but as said, groups may want to kind of check back in the overall context of the language. But I think it’s important to keep in mind as well this was a “cannot live with” item that was flagged by the Registrar Stakeholder Group. They seem to be happy with that change. Of course, others need to assess whether this change turns it into a “cannot live with” item for them, but I don’t think we need to go hopefully broader than that.

RAFIK DAMMAK: Thanks, Marika. So I guess we have the compromise here. [Hearing] no objection, I think we can move to the next item.

MARIKA KONINGS: Thanks, Rafik. The next item is 29 in relation to recommendation 15 on logging. The GAC and BC have proposed a language change. They were unsure the original language was agreed to as opposed to for the use of transparency reporting. So you see here the proposed updated language here on the screen. it originally read, “Logs may be made publicly available as long as any personal information has been removed, see also the recommendation on reporting requirements.” And the proposal is to change that to “Logs

may be used for transparency reports which may be publicly available." Just to remind everyone that there is already a separate recommendation that makes clear as well that any personal information should be removed if any information is to be published, I believe in one of the other sections.

RAFIK DAMMAK: Thanks, Marika. I think [inaudible] question. So, any concern with the change? Okay, nobody in the queue and no comment in the chat, so we can assume there is no concern. Okay, I think that's [a deal.] So maybe we can move to the next item.

MARIKA KONINGS: Thanks, Rafik. The next questions relate to recommendation 18 which is the review of implementation of policy recommendations concerning SSAD using a GNSO standing committee. First proposal is here from the ALAC and the BC to add a new sentence that would read, "For the purposes of determining the level of consensus, each of the nine groups' compromising consensus must have equal weight." So the question here is, is there a concern about this proposed addition? We did also want to flag here that this language does seem to contradict a requirement that to achieve a consensus designation, the support of contracted parties will be required, which automatically gives it presumably a different weight, so we're not sure how those two would be aligned. So again, I think the question is, is there any concern about adding this? And if it's added, does that contradict what it says elsewhere about the weight of contracted party input?

RAFIK DAMMAK: Thanks, Marika. Okay, so we have Alan, Amr and then Mark. Alan, please go ahead.

ALAN GREENBERG: Thank you. There was no intention that it be a contradiction, and my understanding was the requirement to have contracted parties agree to some of the decisions—and there's a question on which decisions they must agree to. That's another point somewhere else. So I didn't think there was a conflict when I proposed that wording. If there's a perception that it is a conflict, we could add after the word "equal weight" "subject to the requirement to have contracted party support for specific decisions," whatever the right wording is there based on how the next question comes out. But there certainly was no intention to override that, and we can add wording that covers that if necessary.

RAFIK DAMMAK: Okay. Thanks for the clarification. Also, if you can suggest that clarifying language, that would be helpful. In the meantime, we'll go with Amr and then Mark. Amr.

AMR ELSADR: Thanks, Rafik. And yeah, I didn't read the ALAC comment here to suggest that there was a problem with the requirement for contracted parties to be part of the consensus, so I completely agree with everything Alan just said, and I think the intent was that each group would have one vote that is equal to every other group.

So again, just agreeing with what Alan said and with his proposal to add something to clarify the requirement for contracted parties being part of the consensus. Thank you.

RAFIK DAMMAK: Thanks, Amr. And I think you can notice that some clarifying language was added to the Google doc, so asking everyone to check it. Okay, Marc.

MARC ANDERSON: Thanks, Rafik. I guess I feel like I'm not sure I understand the issue that Alan Greenberg is raising here or what the edit is trying to accomplish. But I raised my hand because this point was raised in section A, composition, but section C further down is the section that deals with required consensus. So that seemed to me the appropriate place for Alan to be making the point. I'm not sure—maybe I'm just not understanding what Alan's concern is and what he's trying to accomplish with the edit. I'm sort of further confused by the fact that it's in the composition section and not the required consensus section. So I think maybe I'm asking for Alan to further clarify what his concern is and what he's trying to accomplish with his edit.

RAFIK DAMMAK: Okay. Thanks, Mark. So first, [let's maybe] hear from Volker and then we'll go With Alan if there is any other comment. Volker, please go ahead.

VOLKER GREIMANN: Yeah, the standing committee is kind of a strange animal because it's basically chartered by the GNSO or at least structured under the GNSO, includes members that are not part of the GNSO also. Maintaining the requirement that contracted parties must support anything that suggests that policy changes are made and certain implementation issues that require us to make certain investments into our services, into our systems, I think is warranted and therefore I think the addition that's proposed here, "Subject to the requirement that certain recommendations must be supported by the CPs" is absolutely reasonable and must be in there.

RAFIK DAMMAK: Thanks, Volker. Alan, please go ahead.

ALAN GREENBERG: With respect to Volker, as I said, there was no intent that we remove that, and if adding the explicit words makes people happy, that's fine. The reason that this was raised to begin with is there have been innumerable discussions, both within the EPDP and within the GNSO, on voting proportion and weight of different groups. And there are established things within the GNSO council. There was a different set of rules that was used within this group, although they were disputed regularly, and there are no written rules for how one factors in the advisory committees which don't participate within the GNSO. So we felt it was important that we put our stake in the ground and say, make it clear what we believed was being proposed by this group. So it was just a clarification, it wasn't trying to change any rules in any subtle way. Thank you.

RAFIK DAMMAK: Thanks, Alan. So what we have here is this clarifying language, and so the question here to the contracted party representatives is, [are they still having] concerns here, and if this new language makes things more clear.

ALAN GREENBERG: Rafik, if I can add one more thing, in response to Mark, if this is the wrong place to put it but it should be 12 lines later, I don't much care. That's where it made sense to me when I wrote the comment.

RAFIK DAMMAK: Okay. Thanks for adding this. Okay, so let me check. Not seeing anyone in the queue. Okay, so the clarifying language I see here also [inaudible] is to move it or to add it to section C so it can be [moved just to] make clear what we are suggesting. Okay, [seems it's] to add it to section C instead of A. Okay, so are we okay with this? Seeing nobody in the queue and nothing in the chat, I will take this as an agreement, and that language is added to the [inaudible]. Okay, so let's move on to the next item.

MARIKA KONINGS: Thanks, Rafik. Next item is number 31. There's a proposal here from the IPC and BC to add to the scope a statement which [inaudible] may include the word "centralization" in addition to all the other topics that were already included there. So I think the question here is, is there any concern about adding the word "centralization"

to that sentence that talks about topics that it may include but is not limited to as topics for consideration by the standing committee?

RAFIK DAMMAK: Okay. Thanks, Marika. Let's check here if there is any concern about adding that language. Okay, Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. I don't specifically object to adding centralization to the language there. The scope of the standing committee was meant to be very flexible and to allow many topics, including centralization, to be included.

What I am concerned with is the rationale of the IPC and the BC and their use of the word "ensure" in it." There is no certainty that use of this mechanism will eventually result in centralization. And not to be a party pooper or anything and not to rain on potential consensus on this recommendation, but that isn't our understanding at all. And if further legal guidance suggests that even the level of centralization we already have is not consistent with applicable law, then it might need to move in the other direction, although I do doubt that that will necessarily be the case, because the level of centralization we have now seems pretty reasonable to me.

But I just wanted to flag that and make sure that there wasn't any perception that there was some sort of guarantee that this mechanism would result in further centralization. I'm just sort of preemptively offering that thought now so that it doesn't come up during implementation. Thank you.

RAFIK DAMMAK: Okay. Thanks, Amr. James, please go ahead.

JAMES BLADEL: Thanks. So I don't disagree with Amr. I think that the language in the column there, update the scope as follows, and that quoted language, is probably okay. The only place I see the word "ensure" is in a previous column which, if I'm understanding this table correctly, will not necessarily translate into changing the language of the recommendation.

So again—and this goes back to a comment I made I don't know how many hours ago that as long as we go into this evolution process with eyes wide open that things could become more centralized and more automated, but the regulatory environment could become more hostile to centralization or automation.

I think it's important, I think as Amr was saying, not to set the expectation that this is a guaranteed outcome and we're just walking this path towards this known destination. Our destination is not known. But as long as we're sticking to the language there under "update the scope as follows," I'm okay with that.

RAFIK DAMMAK: Thanks, James. I think it's important to make it clear that maybe the disagreement was the word "ensure," but "ensure" is in the rationale. So what we are discussing here is the update and that language in the fourth column. So if I'm not mistaken, I don't hear any objection to that updated language.

Okay, so nobody in the queue and no objection in the chat, so I think we can accept the proposed language.

MARC ANDERSON: Rafik, I raised my hand. If I could.

RAFIK DAMMAK: Okay, Marc. Yeah, Please go ahead.

MARC ANDERSON: So just a suggestion based on what James said. Maybe the way to address what he was raising is update the text to say “this may include but is not limited to topics such as service level agreements, centralization, decentralization, automation ...” I think that would capture his point that this could swing either way and is not a deterministic evolutionary mechanism but rather reactive to what the realities of the regulatory environment allow or don’t allow.

RAFIK DAMMAK: Okay, Marc. So if I got what you're suggesting, it’s just we need to add centralization, maybe [slight] decentralization or just [inaudible] decentralization—just to add so we are not, I’d say, precluding what can be—the kind of direction that can be taken at the standing committee. Okay, so let me check, and I see support. No objection. Okay, so we will add then this updated or revised language. Thanks all. Let’s move on to the next item.

MARIKA KONINGS: Thanks, Rafik. So the next item is 33. That also still links back to the recommendation 18 on the standing committee. There's a suggestion here from the GAC and the BC to add some additional language to clarify that the ability to second must come from a committee member of another group, not the same group as the suggestor, and that relates to getting topics on the agenda of the committee. So the proposed addition is, “And shall be placed on the committee’s working agenda if seconded by at least one other group’s committee member.” So the question is, is there any concern about this addition?

RAFIK DAMMAK: Thanks, Marika. [inaudible] procedural suggestion, [I mean about procedure.] So let’s see a reaction here. I don’t see [inaudible]. It seems support, no concern. We have Alan and Amr in the queue, so let’s hear from them. Alan, go ahead.

ALAN GREENBERG: Thank you. I'll just note that the ALAC made a similar comment. I think it was under the “nice to have” ones. Just pointing out that we really needed clarity whether it could be from the same group or a different group. We’re happy with this outcome. Thank you.

RAFIK DAMMAK: Okay. Thanks for the clarification. Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. I think this is a really good clarification. Apologies for not including the original proposal. But generally, the idea was that if only one group wants to talk about a specific topic, then that is the really low bar of not allowing that topic to be introduced. So obviously, it would need to be two groups, not two indivudals, on the committee if they both come from the same group. So, thanks to the GAC and BC and ALAC for that suggestion.

RAFIK DAMMAK: Okay. Thanks, Amr. Thanks for the comment. Okay, so we are, I think, all in support of this clarification proposal, so then it's accepted, and with that, we can move to the next item. Over to you, Marika.

MARIKA KONINGS: Thanks, Rafik. We've worked our way through a first pass of all the questions that we had flagged, and I think you know we didn't resolve all of them but we resolved quite a few, and staff will document in the Google doc what we at least believe the agreement is that has been reached. And of course, if we got it wrong, you can flag it. Definitely need to come back, I think, to the conversation in relation to the contracted party authorization, because I think there's still some lingering question and hopefully, further ability to work on a potential compromise that addresses the different concerns.

But I think what we want to try and do first—and I'm going to try and restate this again because it was obvious from the start of the conversation that it was not clear to everyone what we've tried to do. There are a number of "cannot live with" items that as several

of you indicated you've all reviewed, for which we've put forward a specific proposal. These proposals were basically inspired by conversations we've had to date, whether it concerns issues that have already been discussed before, where there may not have been provided sufficient information on how it would work in practice, or potentially additions that seem last-minute proposals that come in at a very late stage and it's not clear how the group at this point of the game can still consider those.

We of course accept that not everyone will be happy with those proposals, and that is why we're basically going to ask all the groups now to basically flag which of those proposals you want to discuss further in a plenary setting, and again, really focused on getting to a compromise solution. We've already indicated as well that in certain cases, the group may have to agree to disagree. It may not be possible to find a compromise for all of these. But at least the hope is that maybe some of the proposals that we indicated there, you will find acceptable and there's no need to discuss those further.

So as you start all preparing your list, as said, I think the next ask is for you to all just basically state the number of the items o the proposals that you want to see further discussed. I think we may have some time left on this call to touch on some of those, but all the others will move basically to tomorrow's meeting, which will also allow you for some additional time to kind of, on the list, hopefully work on a kind of compromise position that also factors in previously expressed positions or comments that have already been made in the Google doc.

Also for tomorrow is the category 2 items. We already circulated, I think, on Saturday the list of those that has been reorganized, aligned with the recommendations in the report which will hopefully facilitate your review of those. As Alan I think already characterized those, those are the kind of “nice to have,” but people have indicated that those are not “willing to die in a ditch for.” So I think if we have time left on tomorrow’s call, we’ll try to touch upon those where the groups have expressed concern about applying those and we can talk about whether there's a way to find a path where groups can come together. But as said, as these are not flagged as “cannot live with” items and not willing to die in a ditch, if there are concerns expressed, we may end up not applying those proposed changes as we’re running pretty close to the deadline.

So I think having said that, I'll just invite—and again, if we can just have one representative from each group, and basically just, again, state your numbers. There's no need to provide a rationale at this stage for why you want to discuss it or why you think that the proposal we made is not appropriate or incorrect or not fair. But I think we just want to get a sense of which items and how many of those need to be further deliberated upon in either today’s call or tomorrow’s meeting.

RAFIK DAMMAK: Thanks, Marika. So we have 40 minutes left in the call. I know that there's a lot of information, maybe, so I'll give one or two minutes for everyone to think. Or let’s go even with five minutes to get each group to coordinate and you can list the proposal that you’d like that we start reviewing and discussing. So let’s go with five minutes, starting from now.

FRANCK JOURNOUD: Hi Rafik, can you hear me?

RAFIK DAMMAK: Yes.

FRANCK JOURNOUD: I apologize for jumping in. So in the next five minutes, you want us to do that starting at item what? I ma little unclear. And also, I apologize, I was listening to Marika, I was slightly unclear about the purpose ... what is it that we're supposed to do? [Point out of] starting at item number X, for the rest of the document, only for the "cannot live with"—like what it is that we want to discuss today versus tomorrow. I apologize, I'm not really sure what our next five minutes are going to be spent on.

RAFIK DAMMAK: Okay. No problem. I think Marika is going to clarify, but just maybe quickly here to say we are now working on the category one. That's all the "cannot live with" items and how we try to respond is by two types of response. One is there were questions so we're asking if you're okay with this or can you clarify and so on, and other is a proposal and to discuss about the proposal if people are fine with that. So we went through the question trying to respond as much as possible, and now we are going back to the proposal. So what was suggested is that each group to have caucus for five minutes and they make their list of proposals they would like to start discussing.

So this is my explanation, but I guess Marika maybe will do better than me.

MARIKA KONINGS: Thanks, Rafik. I think you did it very well. Just for clarity, I posted in the chat, so it's really about items one to 41 for today's call, focus on those where it says proposal, and for those where you don't agree with the proposal that was made and you think plenary discussion will result in a different outcome or you'll be able to convince others of a different path to resolve "cannot live with" items or maybe where you have previously stated objections you've actually changed your mind and you want to share that with the group, which again may result in a different outcome, flag those. I see that Tara has already done that in the chat. You can do it as well in the chat or state it, and then the idea is that for items that are not flagged, you're going to assume that you can live with the proposal that has been made, which in certain cases is either to apply a change or not do anything. But again, we're assuming that you're willing to live with the proposal that has been flagged.

Then by the end of today, you're also expected to have reviewed the category two items and flag there which of the proposed changes, which are the kind of nice to haves that have been suggested by groups you think result in a "cannot live with" item for your group. And then if we have time left on tomorrow's call because it's likely that we'll not be able to cover all items that will be flagged where we have proposals, we'll also try to cover those as much as we can. And of course, if any online work can facilitate resolution of some of those, I've noted that a couple of groups have already gone into the Google doc and expressed reasons for why

they have concerns about it. So again, fee free to engage in dialog and see if it's possible to come to a resolution. So I hope that makes it clear.

FRANCK JOURNOUD: Thank you.

RAFIK DAMMAK: Thanks, Marika. Okay, so I hope that everyone now understands what we are going to do. So we will have five minutes. Time is ticking, but Amr, if you want—I hope it's just a quick comment or question so that we can start the process. Please go ahead.

AMR ELSADR: Thanks, Rafik. Just a very quick question. So if I'm understanding Marika correctly, for items that we need to have addressed that don't currently have a proposal in the right-hand column, we need to make a proposal and then it would qualify as fitting into the list of topics that we're going to address over today and tomorrow? Is that correct?

MARIKA KONINGS: If I can respond, I don't think so. So each comment has either a proposal or a question. For all those that had a question, we've already deliberated, and I think in most or many of those, we have come to an agreement or identified an approach, and staff will record that in the Google doc so everyone has a chance to review that after the call. I think there maybe one in particular that the

contracted party authorization where I don't think we've really finished that conversation and I think we'll try to come back to that, either at the end of this call or during tomorrow's meeting to try and see if there's a way to resolve that.

So for now, the focus should be on those items where it says proposal and basically flag which of those you "cannot live with" the proposal that has been made and you are of the view that further conversation will help to resolve the "cannot live with" item that has been identified, and hopefully you come as well with a constructive proposal for how to do that.

AMR ELSADR: Thanks, Marika. That's perfect.

RAFIK DAMMAK: Okay, so I think now it's clear, or I hope so. We have 32 minutes left. We will go with five minutes, so please coordinate, discuss, and as mentioned, you can share it in the chat so you don't need to wait until the last minute. Andrea, please start the timer.

ANDREA GLANDON: Thank you, Rafik. It looks like the timer is going. I'm going to leave the recording going, that will the chats will be recorded.

Rafik, the five minutes is up.

RAFIK DAMMAK: Thanks, Andrea. I guess we can resume the meeting. Thanks, everyone. I see that already some groups shared the items they want to discuss. Okay, so [we have time left, so] we need to decide which one we can start with. Marika, I saw a question here, [inaudible]. So we have the different lists from the groups, so how should we pick up the items to start with? Do you have any suggestion that we can follow for now?

MARIKA KONINGS: Thanks, Rafik. I'm happy to make a suggestion. I know that we still have comments coming in and I think there's as well some overlap in some of the items flagged, so it's at least good because groups want to discuss the same topics. I think it may be helpful, as we're focused on SSAD, mainly to maybe first talk about those remaining items. I think for example, 1 as well as 39 to 41 I believe are all related to priority 2 items, so maybe we can leave that for tomorrow, which I think— and in the context of those questions and proposals, I think the major issues are what we started discussing earlier today around the contracted party authorization and whether or not there's differentiation for registrants or a similar approach. And at least based on the conversation, I think there's at least—speaking maybe personally, there's still a lack of clarity on what some of the proposed additions are trying to achieve or what impact it would have on other parts of the recommendation or whether there are other ways to address the concerns. I think in the conversation, some indicated that proposed changes seemed to have a different intent that they maybe had set out to do. On that one, I don't know if it's maybe worth asking for a couple of volunteers to caucus after this call to try and see if there's a better way of framing the issue as

well as possible approaches for addressing it so there's more clarify for the group to look at that issue ahead of tomorrow's meeting. And again, I'm hoping that there may be some volunteers, especially those that have advocated for it, but maybe also those that expressed strong disagreement against it, if some of those could maybe come together and consider that topic further to see if it's possible to bridge the gap on that one.

I think then the next one that we touched upon—and I think it has been flagged by many in the chat I think is in relation to response requirements number five. It's comment seven, I think, the same comment is repeated in another place where that same footnote appears in relation to ICANN Org's ability to review complaints that relate to the merits of the request or the contracted parties' conclusions. I think many of the groups have flagged that one, so I don't know if it's worth having a conversation around that.

As we noted, from our perspective, ICANN Org has stated on various occasions that based on policy recommendations, it is not able to address the merits of the request or the contracted parties' decision to disclose or not. Removing that language may create an impression that it can. As we noted as well, ICANN Org has provided further input on that one or further language changes to further clarify that it cannot do that. So maybe that is one to start with as it was flagged and I think it comes up as one of the first items on the list. And then we can just maybe work our way through.

RAFIK DAMMAK: Thanks, Marika. Mindful about time, just 20 minutes left, so let's [inaudible] of what you proposed, [then we] can go into details. So

were getting the list from the groups, and that also will help us for tomorrow meeting.

Okay, so which one? I think we can start [inaudible] the contracted party authorization.

MARIKA KONINGS: I think on that one, that's 13, 14 and n15. Groups may speak to it. Is there anything further that can be achieved on the call here? We had to cut that conversation, but I think most groups made their point heard. I think the real question is, how can we move forward from the concerns that have been expressed, the objections that have been noted to a place where everyone is able to live with it, or is this an area where there's agreement to disagree? So I think the question is really, how can we move forward on this? Is further discussion on the call today going to get us somewhere, or is it helpful if a couple of people are willing to look at this and come back for tomorrow's call with hopefully a specific proposal that addresses the different positions that have been expressed?

RAFIK DAMMAK: Thanks, Marika. That recommendation I see it's in the different lists, so it seems there is interest, but as you asked, we need to make clear what's the best way to resolve this. And you have the question, if people can work after the call or we start right now. Amr is in the queue. Maybe he has some comment on this. Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. I have one proposal which I think would only solve a very small part of the problem, not the disagreement on the substance. But listening to Chris earlier today, I tried to reread the recommendation and figure out where he was coming from. And I can actually see where he might have reached the conclusions he did, looking at the input that the NCSG provided, and maybe even the registries and registrars, because I know they also commented on this recommendation.

And maybe it's just that the recommendation is worded in a way that would allow for multiple types of interpretation. And Chris, I assure you that it was not our intent to require a balancing test for every single type of disclosure request. Of course, those are only required for disclosure requests where 6.1(f) is the legal basis.

But I'm trying to think of altenrtive solutioons to what the NCSG had proposed and to make sure that we addressed at least Chris's concerns. But again, those won't address the disagreement, I think, that we have with ALAC and the BC and the IPC.

So where there are mentions of applicable law—but I think I need to do some work on this offline where there are mentions of applicable law here and references to the balancing tests or the review, I think it might be solvable, at least from an NCSG perspective, where we say that that needs to be consistent with the policy recommendations as opposed to applicable law, just to make sure that we maintain the requirements to perform the review and the balancing test only where 6.1(f) applies but to also eliminate the geo differentiation aspect and make sure that this applies in all cases irrespective of where the registrant is located. So as far as a quick proposal or fix to this—and in principle, as I'm sure more work

needs to be done, I'm just curious if this is something Chris and the GAC might be agreeable to or not. Thank you.

RAFIK DAMMAK: Okay. Thanks, Amr. My feeling here is we need more time. So You've already shared some of your thought, but probably, different groups, they kind of need to work offline and we'll try to cover that in tomorrow's call, but it will be helpful also to kind of [give] the discussion in the mailing list and try to use that between the calls. So we should not wait until the call to try to solve that if there is any proposal or solution to try to move forward.

[So that's it,] and really, we need to resolve that. So we need everything that can help us for that target. So what maybe we can do for now is trying to achieve something, to solve something [inaudible] time left, and one suggestion is maybe to go to recommendation 7 and have a ten-minute and see if we can resolve it today. But still, we have to work on the other recommendation in recommendation 8. Okay?

So Marika, I'm seeing no objection here. I hope that's not just because everyone is tried and exhausted, but we go to recommendation 7, have 10 minutes to work on that.

MARIKA KONINGS: Thanks, Rafik. I don't think any further introduction form my side is probably necessary on that item, if we can scroll to comment seven. I haven't had a chance—because I think I said this one is repeated somewhere else, so I think probably the question is to the IPC and BC to maybe provide some further explanation on by removing this

language, what is that intended to achieve and how can that be achieved in the context of the policy recommendations as they currently exist, as ICANN Org has already stated what they believe they can enforce based on the language that's currently in the report.

RAFIK DAMMAK: Thanks, Marika. Margie, and then Brian.

MARGIE MILAM: Sure. Essentially, what we're trying to do is develop a policy that can evolve over time and as legal clarity comes in and laws change. So the concern that ICANN Org has raised is really a current position as opposed to what could be done in the future. The policy has some concrete requirements that, should there be case law in Europe or clarification of regulations, or even new laws that could give further guidance on some of these issues, that ICANN Compliance should not be giving up its ability to enforce those obligations.

So what we're simply doing here is by removing the words "procedural requirements," we're allowing ICANN to enforce the contract. Now, ICANN will make the policy that's reflected in the contracts eventually. What ICANN Org actually does based upon the current state of the legal requirements is up to ICANN Org, but I don't think a policy recommendation should limit their ability to enforce simply to process. So that's what we're trying to do here, is eliminate a policy recommendation that says that ICANN Org can't enforce.

RAFIK DAMMAK: Thanks, Margie. Brian.

BRIAN KING: Thanks, Rafik. I think the way that Marika kind of phrased the intro here is what we're getting at. So ICANN has told us that based on the language in the policy, they're not going to be willing or able to say that the contracted party did the balancing test wrong. And that's the problem, is that I don't see why we should be expected to agree with a policy that ICANN says that they can't or won't enforce. If the language in the policy itself is the issue, then that's what we need to address. So we tried to do that by striking this point here.

I'll note that I really appreciate what Org did in providing the language that they proposed in item 76. I think it's an improvement over the language in the policy here, so I really do appreciate that. I'll note that it probably doesn't go far enough to resolve our entire concern about this—it's further down there, Berry. Actually, it's in the other doc since this one's only the category one. But probably doesn't eliminate the entire concern. I think what we're lacking is the concept that I remember Laureen was working on where at the very least for systemic issues or failures to carry out the balancing test correctly, that ICANN would say that their hands are tied. So we appreciate knowing that up front about the policy. Unfortunately, what that does is make something that is going to be unacceptable, frankly, to the IPC.

RAFIK DAMMAK: Thanks, Brian. James, go ahead.

JAMES BLADEL: Just a question or clarification on Brian's last comment. And I'm mainly raising it because I won't be able to join the call tomorrow. But when you say that something's not acceptable to the IPC, are you saying essentially that the IPC intends—your constituents are instructing you and Franck to oppose for example the entire report based on this principle? Because I think we need to get that out in the open now. We're making a lot of concessions here, I think, as an industry to the potential users of SSAD on the assumption that while they may not be fully satisfied, that it goes to some lengths to address the concerns and pain points they're experiencing currently.

And I just want to make sure that we're all on the same page here, because we've invested a lot of time and effort into this and I think we just need to get that out now and not have a surprise on the table.

RAFIK DAMMAK: Okay. Thanks, James. Marika, please go ahead.

MARIKA KONINGS: Thanks, Rafik. We're running short on time and I'm guessing this is a topic that may need to be further discussed, but I just want to have kind of a follow-up here because I don't think necessarily that that first deletion is—that doesn't seem to be a big deal, it doesn't change—ICANN can only enforce what's in the policy, but I think Org—and I don't want to speak for liaisons here, I'm sure they will raise their hands if I'm saying something wrong here, but I think

they've outlined here quite clearly what it is that they can enforce. And just by removing the language that's proposed to be deleted, that doesn't change what they can enforce. They can still only enforce what's in the policy, and the policy doesn't dictate how a contracted party is expected to review or how it makes a decision. So again, there seems to be a disconnect between those two aspects. So again, just removing this in itself, if that is problematic language, maybe that's acceptable to all. But I don't think that changes that ICANN can only enforce what's in the policy recommendations and they've stated on numerous occasions what they believe is in there and what obviously isn't.

RAFIK DAMMAK: Okay. Thanks, Marika. Seems Margie follow up with a comment. Please go ahead.

MARGIE MILAM: Sure. And I think where I disagree with the ICANN interpretation is that the policy does have things that can be enforced, that are beyond just procedures. So for example, if a record only has the information of a legal person and there's no natural person's data in there, that can be enforced. There's a lot of other areas. And so I think by putting in the words "procedural obligations," that applies that the policy only has process that's enforceable, and that's simply not the case.

Now, I know that there may be areas that are gray and ICANN Org can choose not to enforce it because they feel that it's gray, but that's a different thing than saying that ICANN Org can only enforce

the procedural elements of the policy. The entire policy as a whole can be enforced, and we should not be putting limitations on ICANN Org's ability to do so.

RAFIK DAMMAK: Okay. Thanks, Margie. So before moving to Dan probably want to add clarification from ICANN Org's side, so maybe one way to respond to the concern is, should we remove "procedural requirement?" If that's kind of the concern. So giving time to think about that, and then we'll go to Dan. Dan, please go ahead.

DAN HALLORAN: Thank you, Rafik, and thank you, Margie. Yes, I think we'd be fine with that. We weren't opposed or concerned with the part that was striking the procedural requirements. It's the rest of the edits that we proposed and conflicted with edits that we had [on the end.]

And just to be clear, I think we'd actually be safer if this didn't—we don't really have to go into what ICANN will and will not enforce and can and cannot enforce. Bottom line is ICANN will enforce anything that's a must, that registries or registrars must do, we will enforce that. And what we were saying in this footnote, which really is just a footnote and kind of clarification so that people's expectations are calibrated, is we can only enforce what they must do and we didn't see anything in there that led us question—there's wording in here about unreasonable denials or unjustified denials, and it made it sound like we're supposed to second guess the decision making or be in a court of appeals if people don't like the decisions the contracted parties make, and we are making clear we can't do that.

But we will enforce any requirement in the policy, so it's okay to strike the wording about procedural requirements. If it's a requirement in the policy, we will enforce it. Thanks.

RAFIK DAMMAK: Okay. Thanks, Dan. So [I say again, the proposal here, if we—to] remove that "procedural requirement." We have four minutes left, so we'll see if we can resolve this. Franck.

FRANCK JOURNOUD: I wanted to make at least one point, which is that I think we're overlooking part of the edit that we the IPC proposed under item 7, which is for us to add that the decision to disclose or not disclose was not unreasonable. So I think that kind of gets to, but it's kind of a lower threshold of systemic abuse or [economical health.] It is put in the footnote that—so it does go to sort of the decision made by the contracted party. It's not just procedural requirements by which the contracted party gets to its decision.

But as we have said, we are concerned that, yes, it cannot be just an enforcement of the procedural aspects of the requirements, and whether you think that—like ICANN Org, that that'll be the case because all that's required is just procedural and all that's substantive about the decision is just implementation guidance, or for other reasons, we feel that that needs to be corrected in the policy either in this footnote and/or elsewhere in the policy.

RAFIK DAMMAK: Okay. Thanks, Franck, for the explanation. So for this topic, I think what can be suggested as an action item to help us to resolve this is to review that item and see if the proposed edit by ICANN Org can be accepted. So that will give you time to review and see if you can live with that.

And so I think it's a good time to wrap up, and then we'll ask Marika just to remind everyone about how we'll proceed tomorrow for our call in terms of the order of the topics and kind of what we're expecting from you. I know that we're asking for a lot lately, but we are in the last mile. So it's to remind you about what you should prepare after the call. Marita.

MARIKA KONINGS: Thanks, Rafik. So as Rafik said, we basically have three hours left to resolve outstanding issues, and you've all flagged quite a number of issues that you want further conversation on, so it would be really helpful if indeed you spent some time in the Google doc to see if you can come up with a proposal that you think will work for everyone and addresses concerns that have been flagged previously. The homework is also to look at the category two items and flag if there's anything in there that you can't live with. And if time remains, we'll also try to cover those, but again, nothing prevents you from engaging in a dialog with those that may have flagged concerns or objections to try and clarify and see if there's a path that results in changes that everyone can live with.

I think that's it. As said, we'll put together an agenda based on the items. I do note that I think, of the listed items, there are some duplicates in there where items are basically linked. As said, this

footnote also comes back somewhere else. So hopefully, we can reduce it to a certain degree. We'll of course discuss with Rafik, but we may need to use a similar kind of approach as we've done today to go with a clock and move at least through all the items and get a sense of where groups stand, which I think as we noted in the chat will ultimately also help inform the process that Rafik will go through for the consensus designation for the different recommendations. So I think that's it.

RAFIK DAMMAK: Okay. Thanks, Marika, and I think we're at the top of the hour, and I think all those in the queue are old hands. So I think that I want to thank you all for being patient and attending this three hours long call. I know it's not easy. There's a lot of pressure, and we are still trying to discuss several items. But at the end of the day, what we're trying to do is to resolve as much as possible. We might not be able to do for all, but at least we should do our best and keep trying.

So, thanks, everyone, and see you tomorrow. Or it's already today here. Bye.

ANDREA GLANDON: This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

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