
ICANN Transcription
GNSO Council EPDP Phase 2 Final Report Webinar
Thursday, 03 September 2020 at 21:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the GNSO Council EPDP Phase 2 final report webinar, taking place on Thursday, the 3rd of September, 2020, at 21:00 UTC.

May I please remind everyone to state your name before speaking for recording purposes?

As a reminder to councilors, we are using the Zoom webinar room. Councilors have been promoted to panelists and can activate your microphones and participate in chat as per usual. Please remember to set your chat to All Panelists and Attendees for all to be able to read the exchanges. For councilors to ask a question, we ask that you click on Q&A box at the bottom toolbar and type in your question. All unanswered questions will be answered at the end of the webinar. You may also raise your hand during the Q&A portion. Recordings will be posted on the wiki

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agenda page and the GNSO calendar shortly after the end of the webinar.

A welcome to observers, who can now follow council meetings directly. Observers will not have to the microphones nor the chat option nor the Q&A option.

As a reminder, those who take part in the ICANN multi-stakeholder process are to comply with the expected standards of behavior.

With this, I'll turn it back over to our GNSO Chair, Keith Drazek. Please begin.

KEITH DRAZEK:

Hi, Terri. Thank you very much. Thanks for the introduction. Welcome, all, to the GNSO Council's EPDP Phase 2 final report webinar. I'm just going to say a few introductory remarks and then hand it over to Rafik, who, as we all know, has been our GNSO Council liaison to the EPDP through both Phase 1 and Phase 2 and was its final chair during the end of the Phase 2 period.

But I just wanted to take a moment to acknowledge and thank the members of the EPDP team who contributed over the course of, in some cases, a few years to this overall effort and to also acknowledge the Chair, Janis Karklins, who carried out most of the Phase 2 work as Chair and also, of course, to acknowledge Rafik, as I noted, as the council liaison and then Chair, who was really pulling double-duty at times. So I just wanted to acknowledge the hard work of everybody that went into developing this final report. But importantly, I really wanted to call

out the incredible work of our ICANN staff colleagues that contributed to supporting this effort over the course of several years, specifically Marika, Caitlin, and Berry. I know there were more and others, but I think it's worth noting that none of this would have come to fruition without the hard work and dedication and our ICANN staff colleagues.

With that, I'm going to hand this over to Rafik. I just want to note that this is our opportunity as the GNSO Council to get a briefing and ask questions about the Phase 2 final report as we anticipate a vote at one of our upcoming meetings. The next GNSO Council meeting is the 24th of September. So this is our opportunity for a so-called deep-dive on questions that councilors may have to prepare us for the time that we initiate the vote on the final report.

With that, Rafik, I will hand it over to you. Thank you very much.

RAFIK DAMMAK:

Thanks, Keith. Thanks, everyone, for making it to today's webinar.

Let's move to the first slide, please. Okay, I think the next one. Yeah. Okay, thanks. With this slide, we thought it will be helpful to begin with a visual depiction of the system for standardized access or disclosure or what we can call SSAD. You may have heard of this model referred to as the hybrid model. The reason that we are calling it the hybrid model is because the request will be reviewed in of two ways. Either the request is subject to a manual review, which means that the request will be manually reviewed by the contracted party, and the contracted party will ultimately decide whether to disclose the data or not, or the

request will be subject to automated disclosure, which means that the SSAD will be confirm that certain conditions have been met, and will direct the contracted party to automatically disclose the requested data without any intervention or review. We will get into more details about these two types of disclosure later in the webinar with more specifics.

As I said, we have this diagram. If we begin from the top left of the slide, you will see the icon for the requester. By “requester,” we mean an individual or an entity who is requesting the disclosure of non-public registration data. So a requester may, for example, be a law enforcement agency. The first step in the process is that the requester needs to become accredited in order to use the SSAD. The requester then may apply for accreditation for submitting an application to the accreditation authority, which is ICANN or a designee, who will verify the identity of the requester, as well as any possible so-called signed associate, which are other associations associated with the requester, such as, for example, the requester’s profession, trademark, or as the requester [inaudible]. Once accredited, the requester may begin submitting a request through the SSAD.

Now, moving to the middle portion of the diagram, we chose the steps beginning when the requester has submitted their request to disclose through the SSAD. The central gateway manager, which is a role performed or overseen by ICANN ... This CGM is responsible for managing and routing the request and will confirm if the request is filled out completely and determine if the request qualifies or doesn’t qualify for an automated disclosure decision. In the case that the request qualifies for automated disclosure, the

request will follow the top-right track of the diagram. The CGM will direct the responsible contracted party to disclosure data directly to the requester. In other words, the contracted party would not complete the substantive review of the request but would be directed to automatically disclose the data. In the other case, if the request does not meet the criteria for automated disclosure, the request will follow the bottom-right track of the diagram, and the CGM will direct the request to the responsible contracted party for its manual review of the request.

So here we just show a high-level summary of the different flow in the SSAD, but in the next slides, we'll have a closer look at each stage of those steps and provide more details around the content of the corresponding policy recommendation.

With that, I will hand it over to Caitlin to present the different recommendations. Caitlin?

CAITLIN TUBERGEN: Thank you very much, Rafik. Next slide, please.

TERRI AGNEW: Just as a side note, I am [turning to the next slide], but I think there is a delay with my Internet. So please be patient, everyone.

CAITLIN TUBERGEN: Thank you, Terri. And thank you, Rafik, for that overview of the SSAD.

The next portion of slides are going to take pieces of that large diagram and break them up by recommendation so that we can delve into the specific recommendations a little bit more. As Rafik had described, the top left of that slide begins the process of a requester submitting to the accreditation authority to become accredited so that it can use the SSAD. The accreditation authority is to be ICANN or ICANN's designee and is responsible for setting the accreditation policy. The policy recommendations outline the main principles of such policy, but ICANN would use those principles to then design a baseline accreditation policy and procedure for requesters. The SSAD is only able to accept disclosure requests from accredited organizations or individuals. So, if a requester would like to use the SSAD, it would need to be accredited. And the SSAD is available to legal persons and individuals irrespective of the reason they are looking for disclosure to non-public information and also irrespective of how many requests they may ultimately submit to the SSAD. The accreditation authority also has the ability to work with external or third-party identity providers that will help with identity verification and validation. I'll describe that in a little bit more detail on the next slide.

The next series of bullets details some of the requirements for the accreditation authority or ICANN, in this case. Those requirements include verifying and validating the identity of the requester, developing a code of conduct, privacy policy, baseline application procedure, dispute resolution and complaints procedure, and renewal procedure. The accreditation authority would also be required to be subject to regular auditing. And there are mandatory reporting requirements. So ICANN would have to

report publicly on application metrics such as how many requester applications were approved, received, rejected, etc. I'll note that, in the implementation notes to Recommendation 1, the EPDP team noted that ICANN can use its experience with registrar accreditation to put forward a proposal for identity verification during the implementation phase.

Next slide, please. Thank you, Terri. The next slide shows some of the requirements for identity providers. As I noted on the last slide, ICANN or ICANN's designee as the accreditation authority can choose to work with identity providers but is not obligated to. But, in the event that it does choose to work with identity providers, these providers would be responsible first for verifying the identity of a request and managing any credentials associated with that identity verification. Secondly, it would be responsible for verifying and managing signed assertions associated with the unique requester. Signed assertions are a defined term in the report. In short, signed assertions are data objects associated to a specific identity, such as a user having rights in a specific trademark or a user's identity as a professionally cybersecurity firm. For example, if a requester is accredited and has shown or demonstrated that it has rights in the Coca Cola trademark, that would be filed somehow. So, any time it submitted a request in relation to its Coca Cola trademark, it wouldn't have to keep filing that paperwork over and over again. I believe that's one of the ideas behind the signed assertions. Lastly, with respect to identity providers, the accreditation authority would be managing that relationship and therefore would be entitled to de-accredit an identity provider in the event of any sort of abuse of breach.

Next slide, please. Thank you. Government entities can also become accredited through SSAD, and Recommendation 2 lays out all of those requirements. However, eligible governmental entities would be accredited by their respective country or territory's governmental body or its authorized body, such as an IGO. The recommendation includes examples of entities that could apply for accreditation as a governmental entity. That includes, among others, the civil and criminal law enforcement authorities, data protection and regulatory authorities, judicial authorities, etc. But it's basically entities exercising public policy task. The eligibility for these types of organizations would be determined by that organization's respective country or territory's designated accreditation authority. That, again, could either be a governmental agency or ministry or a designated intergovernmental organization. Some of the requirements for accreditation are identical for both governmental bodies and non-governmental bodies. These are detailed further in the EPDP team's report but, for example, include the baseline accreditation policy, the renewal policy, logging requirements, auditing requirements, etc.

Next slide, please. If we go back to that first slide picture, this moves us into the middle of the diagram, where the requester has obtained accreditation and therefore can begin submitting disclosure requests through the SSAD. Recommendations 3, 6, and 7 details some of the requirements related to disclosure requests. First and foremost, the SSAD must allow for the standardized submission for disclosure requests, and the requests are going to include, at a minimum, domain name info on the identity of a requester, legal rights of a requester, the requested

data elements that the requester is looking for, and the request, [and] the priority level [:] if the request should be treated confidentiality or if it's urgent. We'll discuss a little bit later the different priority levels for requests. Once the SSAD received the request from the requester, it would immediately perform a completeness check, which involves ensuring that all of the required fields listed above are filled out. This isn't a substantive check. It's just a check for completeness, and this is envisioned to be done by a machine. Recommendation 7 provides a non-exhaustive list of specific purposes that requesters can submit disclosure requests for. For example, that could be for a law enforcement reason, for an intellectual property violation, etc. But I will note that a requester's assertion of any of these specific purposes listed in Recommendation 7 will not guarantee access or disclosure to data.

Next slide, please. Thank you, Terri. This slide details the various priority levels the SSAD is required to offer. As you can see, the SSAD must allow the requester to choose from these three priority levels. Priority 1 requests are for urgent requests. The EPDP team had very specific criteria for what constitutes an urgent request. Those are limited to circumstances that pose an imminent threat to life, serious bodily injury, critical infrastructure online and offline, or child exploitation. The Priority 1 request has an associated SLA of one business day, not to exceed three calendar days. I'd also note that the Priority 1 urgent request is not strictly limited to law enforcement. Non-law-enforcement entities can also submit urgent requests if they meet this criteria.

The second priority (Priority 2) is exclusive to ICANN administrative proceedings. That's for providers to verify a UDRP or URS request. I would note that this isn't a priority level for individuals that are seeking to possibly file a UDRP or a URS proceeding in the future. It's strictly limited to a provider that has already received, for example, a UDRP complaint and is then going to the SSAD to verify the domain name registrant or the respondent's contact information.

Lastly, Priority 3 is the catch-all for all other requests. So any other request that doesn't meet Priority 1 or Priority 2 would fall under Priority 3. I'll note that the language on the report provides that the SSAD must allow requesters to indicate that the disclosure request concerns a consumer protection issue. However, even though requesters can denote whether the request is for a consumer protection issue, contracted parties are not obligated to prioritize these requests accordingly. They may choose to prioritize them, but they don't have to in the final report.

With respect to these priority levels, contracted parties may reassign the priority level. So, if the requester inadvertently puts the wrong priority and/or the contracted party thinks that the priority is incorrect—for example, it does not meet the requirement for an urgent request—the contracted party may reassign the priority level. That reassignment needs to be communicated to the requester so that the requester knows what the associated service-level agreement would be.

Lastly, I'll note that it was important for the EPDP team to have language around abuse of urgent requests, so requesters that repeatedly submit Priority 1 urgent requests that do not meet that

criteria may be suspended from submitting urgent requests. That's because of that short SLA to make sure that it's not abused.

Next slide, please. The SSAD receipt of request are detailed in Recommendations 4 and 13. Once the central gateway or the SSAD receives the request from the requester, it needs to perform that completeness check that I mentioned and ensure that the request is filled out syntactically correct. Following that confirmation that all of the required fields are complete, the central gateway manager must send an acknowledgement of receipt to the requester and simultaneously relay the disclosure request to the responsible contracted party, which is the registrar of record in most cases.

A couple other things that these recommendations provide is that the central gateway manager is required to monitor the system and take appropriate action in case of any abusive use of the SSAD. That could be suspending access to the SSAD or terminating accreditation to the SSAD. The central gateway manager must also support the ability of a requester to submit multiple domain names in a single request. Also, the SSAD can only support requests for current data. So historical data about a domain name would not be released through the SSAD. Lastly, the central gateway manager is required to [sieve] the history of the different disclosure requests. That's so that there are metrics associated with the SSAD for future improvement.

Next slide, please. Thank you, Terri. We've reached the right-hand portion of the diagram, which Rafik had described earlier in the webinar, noting that, once the central gateway manager performs the completeness check, the request would be routed one of two

ways. The top track shows the automated disclose track. That would be implicated if the central gateway manager confirms that the request meets the criteria for automated disclosure, which is described in Recommendation 9. We'll provide that information a little bit later in the presentation. If that criteria is met, the central gateway manager will direct the responsible contracted party to automatically disclose the data to the requester. So here there would be no substantive review of that request by the contracted party. Most requests, however, would follow that bottom track, which is the manual track. So, if the request does not meet the criteria for automated disclosure as described in Recommendation 9, the contracted party will manually review the request further to the requirements in Recommendation 8, and the contracted party would be responsible for the decision to disclose or not disclose the requested data elements to the requester.

Next slide, please. The bottom track or the manual track is described in more detail in Recommendation 8. Again, I'll note that the majority of SSAD requests would follow this manual track. So once the SSAD confirms that the request is complete and doesn't meet the criteria for automated disclosure, it would route that request to the responsible contracted party to proceed with a manual review. Once the contracted party receives the request from the central gateway manager, the contracted party is responsible for conducting a prima facie review, which just means, does the request look valid on its face? Since the central gateway manager is only performing a check for completeness and not a substantive review, this allows the contracted party to review the request on its face before processing additional data to ensure that it's able to do so. If the request passes that prima facie

review, the contracted party must review the requested data elements to determine if there is personal data in those data elements. If there is no personal data, the contracted party must disclose the non-personal data directly to the requester. If there is personal data in those requested data elements, the contracted party would proceed to a substantive review of that complaint. The substantive review includes reviewing if there is a lawful basis for the request, if the requested data elements are necessary, and if further balancing or review is required. For example if the request falls under GDPR Article 61F, a balancing test would be required. So the contracted party would have to perform that balancing test before disclosing any data. Following that substantive review, the contracted party would be responsible for determining whether or not to disclose the data. I'll note that ICANN is not in a position to challenge the contracted party's decision in this instance whether or not to disclose. However, ICANN would be able to review that the contracted party did follow the steps noted in this slide and explained further in Recommendation 8.

Next slide, please. Thank you, Terri. Recommendation 9 provides the key points of automation. The language in the report notes that contracted parties must follow the automated disclose process in response to requests for which automation is determined to be technically and commercially feasible and legally permissible. The next series of bullet points are use cases that were determined to be legally permissible from the legal guidance of the EPDP team received. So those are the four examples that, on day one, can be automated. For example, a request for city field only to evaluate whether to pursue a claim or for statistical purposes would be an example of a request that could be replied

to automatically. I'll also note that the contracted parties may opt out of automated processing. They would do this by notifying the central gateway. However, this is for limited circumstances, and that's where a contracted party believes that automated processing is not legally permissible in their jurisdiction or carries with it a significant risk. This, of course, allows a situation where, even though a certain type of automated processing may be legally permissible in most parts of the world, a contracted party may be located in a jurisdiction where it's not. This allows them to notify the central gateway manager that it cannot proceed without automated processing. I should also note that contracted parties can opt into to automated processing. Some contracted parties may choose, for example, to automate all of their response to requests that are sent through the SSAD or certain classes of requests, whether it's based on a specific requester or a specific type of request.

Next slide, please. Recommendation 18 provides additional guidance on the GNSO standing committee. I'll note that, as the EPDP team was working through its recommendations, they recognized that there are many unknowns. Some of the unknowns included how many requesters would ultimately be using the SSAD, how many requests would flow through the SSAD, and how quickly could contracted parties deal with this potential influx of requests. Accordingly, they were looking to have some sort of evolutionary mechanism such that, if the operations or implementation of the SSAD needed to be tweaked based on a large amount of complaints or inability to respond under certain SLAs or changes to legal guidance that may allow additional automated use cases in the future, some sort of body could deal

with these evolutionary issues rather than going through a full policy development process.

So where Recommendation 18 or the EPDP team ultimately ended up is that there would be a GNSO standing committee established by the GNSO Council. The standing committee would be comprised of all groups represented in the EPDP team, including the advisory committees. The standing committee would work together and send its recommendations—recommendations that achieved consensus—to the GNSO Council for its consideration. I'll note that any recommendations related to policy changes would be flagged to the GNSO Council for its consideration of future policy work. However, of course, this is not meant to circumvent the policy development process. So any policy development recommendations could be sent to the council.

The recommendations are supposed to solely on operational issues, so they cannot result in new enforceable requirements for contracted parties. So the GNSO Council or the ICANN Board would not be under an obligation to adopt these recommendations, that's contrary to how PDP or GGP recommendations are required to be dealt with.

Lastly, I'll note that the recommendations that would ultimately be set to the GNSO Council would have to achieve consensus. The support of contracted parties is required to achieve consensus. This was noting that changes to the operations of SSAD may affect the businesses of contracted parties, so that's why the EPDP team specifically specified that the support of contracted

parties would be necessary to achieve consensus within this standing committee.

At this time, I will turn it back over to Rafik.

RAFIK DAMMAK:

Thanks, Caitlin. Let's go to the next slide, please. Here we're talking about the rest of the recommendations. In addition to what we just discussed about the SSAD, the Phase 2 EPDP team was also chartered to review both issues that were in the annex to the temporary specification and all the leftover or outstanding issues deferred from Phase 1, such as legal versus natural, redaction of city field, etc. I want to stress here that, for the remaining Priority 2 items that were not covered, they are now in a separate conversation about the next steps at the GNSO Council level to decide on how to address them. We have a proposal for that purpose.

With regard to the recommendations for the Priority 2 items, the Phase 2 final report includes four recommendations. For the display of information of affiliated privacy proxy providers that provides that for the domain names using privacy of proxy service, the data of the applicable privacy proxy service must be included in the response to the RDDS query so that the requester does not need to go through the SSAD to receive the privacy proxy service information but instead can directly contract the privacy proxy service to request disclosure of the underlying customer information.

For the redaction of city field, it recommends dating the Phase 1 recommendation to state that the redaction may be applied to the city field instead of must. For the data retention, it confirms the Phase 1 recommendation that the registrars must retain only those data elements deemed necessarily for the purposes of the TDRP for a period of 15 months following the life of registration plus three months to implement the deletion.

The last, for Purpose 2, recommendation recommends addition of the following purpose to the Phase 1 purposes: contribute to the maintenance of security, stability, and resiliency of the domain name system in accordance with the ICANN mission. So that was about the final recommendation for Priority 2 items.

We can now move to the next slide. Next slide, please. This slide shows table of consensus designation that you can find in the EPDP team final report in Annex D. Here we tried to provide additional context for the recommendation that did not read consensus. We tried to go through more details to explain. As you can see, we tried to categorize through the different levels: full consensus, consensus, strong support, significant opposition, and divergence.

Going through the specific recommendation, with respect to Recommendation #5, which is in regard to the response requirement, this recommendation did not receive support from the BC, GAC, or IPC. Just to highlight here that the GAC specifically noted the failure to deal with the data accuracy requirement. The GDRP calls into question whether this recommendation achieves its intended purposes.

Moving to Recommendation 8, with regard to contacted party authorization, this recommendation did not receive support from the BC, GAC, and IPC. Those groups noted that the recommendation does not allow ICANN Compliance to sufficiently enforce the disclosure of data. The GAC also specifically objections to Section 8.17 and the lack of requirement to revise the balancing test and factors in this section [that aren't addressed]: applicable law, interpreting GDPR, the guidelines issued by the EDPB, or division to GDPR or other applicable laws that may occur in the future.

For Recommendation #9—the automated processing—the ALAC and BC and IPC did not support this recommendation. These groups did not agree with the limited categories of use cases that qualify for automated disclosure.

With respect to Recommendation 10, regarding the SLAs, the BC, IPC, the Registry Stakeholder Group, and the SSAC do not support this recommendation. The Registrar Stakeholder Group does not support the SLA [associated] with urgent request. SSAC does not support the SLA for Priority 3 request.

Moving to Recommendation 12, regarding the disclosure requirement, the GAC and SSAC do not support this recommendation. The GAC noted that this recommendation does not adequately deal with accuracy requirement under the GDPR. The SSAC notes that the language in this recommendation allows the disclosing party to provide a data subject with the identity of the specific entity making the request for the RDS data. This should be prohibited unless the data requester goes through the appropriate legal process.

Moving to Recommendation 18, which is about the establishment of a GNSO standing committee, the ALAC, BC, GAC, and IPC do not support this recommendation. These groups note that the GNSO standing committee does not have the remit that many groups initially thought it may have based on their earlier discussion. Specifically this committee or group cannot add additional automation use cases without the support of the contracted parties.

Moving to Recommendation #6, which is about the priority levels, this recommendation did not receive the support of ALAC, BC, GAC, and the IPC. These groups do not support Section 6.2, as they believe a separate priority level should be included for a request related to consumer protection, and contracted parties should be required to prioritize those requests. The recommendation permits the contracted party to prioritize consumer protection requests but does not require it.

For Recommendation 14, regarding financial sustainability, this recommendation did not receive the support of ALAC, BC, GAC, IPC, and SSAC. This groups noted that the SSAD might not be worth the cost developments, since disclosure is unlikely to improve. And the requester may direct them to apply for an expensive accreditation if nothing additional is gained by becoming an accredited user of the SSAD.

So right here we need to summarize quickly the different positions and try to cut short that and highlight them before the council and to help to see the different level of consensus.

Saying that, we can move now to the next slide. This is the timeline with regard to the GNSO Council consideration. As you recall, the EPDP team groups had until the 24th of August to submit a minority statement for inclusion in the final report. Now all minority statements are included. The latest statements received were minority statements received were from the GAC, the SSAC, and the addendum from the ALAC.

The GNSO Council began discussion on the EPDP Phase 2 final report during its September. With regard to the vote at the GNSO Council level on the EPDP Phase 2 final report will be at an upcoming council meeting, either the 24th of September or the 21st of October. When the GNSO Council votes to approve the EPDP team Phase 2 final report, then the GNSO Council will submit the report to the ICANN Board for its consideration. But prior to the Board's consideration, typically there should be a public comment forum to be contacted to get input from the community.

With that, moving to the next slide, this is the timeline that I think you're pretty familiar with. It's just showing what was done before in terms of phases and just the next phases, which is, here, the council consideration of the final report, the public comment during the Board consideration, and then the Board consideration. For the rest, that's just all kinds of guessing and estimation, but that's to show the next steps at the council level and after the approval of the final report.

I think, with that, we went through all the slides. Then we can go to the Q&A part of the meeting. Let me see the questions here. We have a question from Amr, saying that, "When the council is considering the final report, we urge it to do it in its entirety,

particularly concerning the recommendation with consensus designation of divergence, and also hope that council considers how the ICANN Board will consider the report and whether might it adopt our recommendation without Recommendations 6 and 14. Adopting all recommendations without adopting 6 and 14 should be considered an undesirable outcome.

I might try to answer this question. Yes, Amr, I think the expectation is that the all the councilors will review the report and to consider it in its entirety, including the minority statement or the recommendation regardless of their designation.

For the second part of your question, I think that's suggested and it should be discussed by the council.

Sorry if I missed some questions in the Zoom chat, but I understand there was already some answers to them.

Let me see if there is anyone in the queue.

Okay. Michele, please go ahead.

MICHELE NEYLON:

Thanks, Rafik. I thought I'd put you out of your misery. Just one comment—well, two comments. One is that, as we are panelists, we can't actually use the Q&A pod. I think Maxim can't speak for some reason. So maybe one of us can read out Maxim's questions. That might help him.

Just a final comment. Just from a personal perspective, let's see if I understand this. There is divergence and lack of consensus

around some of the key issues of the SSAD from the groups that wanted the SSAD. Is that right?

RAFIK DAMMAK: I think yes.

MICHELE NEYLON: So, apart from ... How do I put this diplomatically? If the people who wanted the SSAD now say that they don't want the SSAD, why should we vote in favor of this in order for ICANN to then go off and spend an insane amount of money building a system that the people who wanted the system say they don't want? I'm just trying to understand the logic because there seems to be a logical flaw here that I might be missing. I'm just trying to understand it.

Now, as a councilor representing the Registrar Stakeholder Group, I will obviously vote as I am instructed. From a pure process perspective, we would vote in favor of the report on the basis that the process was followed. However, I personally find that intellectually offensive that we would agree to something that those of us in the contracted parties side never particularly wanted when those who asked for it don't like exactly what they got. It's like they wanted a toy for Christmas but it didn't have the right kind of batteries or didn't come in the right color for them or something and now they don't want the toy. I don't know, maybe I'm missing something. Maybe somebody can illuminate me, but I think there is a logical flaw here somewhere. While I will ultimately vote in favor of this on the basis of process, I do find it a little—well, more than a little—ridiculous that we've ended up in this scenario.

RAFIK DAMMAK:

Okay. Thanks, Michele, for the comment and the question. If I will respond here, it won't be as the Vice-Chair in the EPDP team because this is more regarding how the council should consider this final report. I think, as you'll recall, when we discussed many times like in the [SPIS] or any council meeting, we [inaudible] that our role is about, when we consider it, the process, as we are the process manager, but we don't go into the substance.

So, other than that, I'm not sure how to respond to your comment, but I think that's something to have in mind with regard to the outcome from the EPDP. I'm not sure if I can add more than that, but I think your comments are taken. This is something we need to have in mind at the council level when we will discuss the report in terms of approval or not.

Checking again the queue, but I see that we already have a question from Rubens. "Does the package require two-thirds of the Board to reject or only consensus level recommendation?"

I think, in terms of your procedure of process, if the GNSO Council approves the recommendation, the consensus level—I mean, the designation of the EPDP team level—does not matter in terms of the threshold of the Board to reject the recommendation. So that's just my understanding, but I stand to be corrected if that's not accurate. But that's my understanding: at the end, it's the vote of the council which matters. So, if we have supermajority, that's what matters in terms of the Board rejection or not of the recommendation.

KEITH DRAZEK: My hand is up.

RAFIK DAMMAK: Please go ahead, Keith. Sorry.

KEITH DRAZEK: Okay, thanks, Hi, everybody. I want to put a little historical context of where we are as a council with this particular set of recommendations. I think it's important that we all understand and recall/remember that, when we started this discussion about chartering the EPDP both for Phase 1 and Phase 2, it was in reaction to a temporary specification that had a limited amount of time within which we could deal with it. We had a twelve-month clock that we were on. Around that same time, the discussions began with ICANN around the possibility of establishing a unified access model (UAM). ICANN Org engaged with the European Commission and attempted to discern and to determine whether it would be possible to shift some of the liability and risk from contracted parties to ICANN as the organization in order to be able to establish a truly centralized and automated system to access and disclosure.

Over the course of the last year or 18 months, what we've found is that were unable under GDPR to establish the legal basis for being able to conduct a fully automated UAM (Unified Access Model) with ICANN taking on that liability and risk from contracted parties.

So I think what we need to recall is that what we have today in terms of these recommendation is what was possible under GDPR based on the legal advice that we got as a community and that ICANN received over the course of time over the last 18 months in asking that question: can we centralize, can we automate, can we compel the disclosure of personal data? I think what we have here is a situation where the user groups who participated in this process feel like these recommendations don't go far enough. They don't give enough of what they had hoped when this process again and we were talking about building a fully automated centralized unified access model.

I think the question before us today is, is this package, is this Phase 2 recommendation final report, better than the status quo? Is it an improvement on the status quo of the EPDP Phase 1 consensus policy that's now going through implementation? Does it establish a foundation on which we can continue to build and continue to improve and continue to evolve if we receive different legal guidance or new information or based on experience? Or does it not? I think that ultimately is the question: do we as a community think that this is better than the status quo, an improvement on the status quo, a good starting point for further and future evolution? Or is it not? I think that's what our communities and our constituencies and stakeholder groups need to consider.

We as the council, as Michele and as Rafik noted, are here as the process managers of the PDPs. The substantive work takes place in the PDP working group. We have a set of recommendations before us that have admittedly a range of consensus and a range

of levels of support. But, from a process perspective, I think the council's role is to certify that the process was or was not followed. I think in this case it was. We have to make a decision in an upcoming council meeting as to how we're going to vote on this package of recommendations.

So I just want to put that out there and provide a little bit of historical context. Remember, we also as a council gave implementation guidance during the Phase 1 final report. That's something that we might consider here as well in terms of further communication to the Board as the Board undertakes its consideration of whatever we send it.

I'll stop here. Happy to take any further questions or comments or anybody else. Rafik, I'll hand it back to you for the queue.

RAFIK DAMMAK:

Thanks, Keith. I'm trying here to read the questions from Maxim. The first question: "Do we have an understanding of why local law enforcement needs ICANN at all? It's already in the local laws." The second question: "How to downgrade automated requests to manual requests? Concerns of fake requests, for example."

Maybe I'll ask here, Caitlin, if you can respond to these questions.

CAITLIN TUBERGEN

I'm sorry, Rafik. I was responding to another question in the chat. Is this question about how to downgrade automated requests to manual requests?

RAFIK DAMMAK: Yeah. There are two questions. That's the second one, yeah. You can start with that one.

CAITLIN TUBERGEN: Sure. Maxim, for that question, I would refer you to Sections 9.5 to 9.9 of the report and note that, in the event a contracted party doesn't think it can automatically process those classes of request due to a risk or it doesn't think that it's legally permissible, it can notify the central gateway manager and opt out of automated processing.

RAFIK DAMMAK: Thanks, Caitlin. The first question was, "Do we have an understanding of why local law enforcement needs ICANN at all? It's already in the local laws." So I think, here, if we can just maybe refer if that was discussed in the EPDP team and if we have anything in the report in that regard.

Caitlin?

CAITLIN TUBERGEN: I'm sorry, Rafik. I didn't understand the question.

RAFIK DAMMAK: Okay. So can we try here. I'm not sure—

CAITLIN TUBERGEN: Oh. All right, I see it Rafik. Sorry to interrupt. So the question is, “Do we have an understanding question of why local law enforcement needs ICANN at all? It is already in the local laws.” In response to that question, Maxim, I’ll note that any requester can go right to the contracted party for disclosure. The SSAD just gives them a central mechanism with which to do that. So they don’t have to use the SSAD. If they do want to use the SSAD, they would go through the procedures in Recommendation 2 for governmental bodies. But, again, they don’t need to use the SSAD. They can always go directly to the contracted party.

RAFIK DAMMAK: Thanks, Caitlin, for the clarification. So we have a question from Kurt. “Have ICANN refined the \$9 million startup plus \$9 annual operating cost estimate? What’s the uncertainty of the estimate, and is there a likelihood it might cost less, or does the final report enable ICANN to tailor the scope and reduce the estimate?”

I think here it was, with regard to the estimation, etc., was something that probably ICANN Org can clarify.

But, with regard to the final report, I’m not sure I recall anything here regarding changing the scope in order to reduce the estimate. But I don’t recall anything in that order. But, Caitlin, if your memory is better than mine, please feel free to respond.

CAITLIN TUBERGEN: Thanks, Rafik. I don’t believe we have any additional information on the cost estimate additional to what was already provided to the EPDP team.

RAFIK DAMMAK: Thanks, Caitlin. I think this is really more a question to ICANN Org. Maybe it's something we ask council to have in mind.

Let me check the queue again. I see Michele in the queue. Michele, please go ahead.

MICHELE NEYLON: Thanks, Rafik. This is more of a comment rather than a direct question. The situation we have, if I understand it correctly, is that the groups and parties that were putting ICANN Org under a lot of pressure to fix this—"this" being the lack of public WHOIS and removal of this uncertainty, yadda, yadda, yadda—don't like the outcome of this EPDP. So I personally suspect that they're probably going to end up voting against this because it doesn't give them what they want.

Now, they can go into all sorts of reasons and rationales as to why they feel that they're not getting what they want and all that, and that's fine and that's dandy. But then we have the awkward situation where we as council could end up where we decide that, yes, the process has been followed and we vote in favor of the report.

So we end up passing a set of recommendations to the ICANN Board that will involve ICANN incurring a huge cost to build out a system that the people who asked for the system say they aren't going to use. So the ICANN Board then ends up in this rather awkward situation where, if they don't approve this and move forward with it, then they are essentially ignoring the bottom-up

multi-stakeholder process. Yet, if they approve it, they're also signing off on expenditure that has no logical rationale behind it. I don't know how on earth you can square that circle.

RAFIK DAMMAK:

Thanks, Michele. I understand that that was not a question or a comment.

I see nobody in the queue, no questions in the Q&A box, and no questions in the that. Okay, so we'll wait a little bit.

I see here, I guess, a question from Maxim: "What happens if ICANN does not [have the funds] to support the SSAD?"

I don't think this is something we can find here in the EPDP final report. So we have a recommendation regarding the [function and] sustainability. That's all that was discussed in those terms. But, here, in terms of funding and how that will be implemented and so on, I think that was not really for the EPDP team to respond to. I speak here as the Vice-Chair. I cannot have an answer to that, but I understand the concerns. So it's probably something, again, for the GNSO Council to have in mind in terms of when considering the final recommendation and the report.

I again don't see anyone in the queue, and no questions—oh, okay. I see a question from Stephanie: "Cost estimates [have to be] curative. How do we factor in potential [l]itigation expenses in the event the machine gets it wrong or is [bridged]?"

CAITLIN TUBERGEN: Rafik, I can respond to that.

RAFIK DAMMAK: Yes, Caitlin. Please go ahead.

CAITLIN TUBERGEN: I'll note that the answer to Stephanie's question is that liability was considered in the cost estimate. And I believe there was a legal fund considered. So that was part of the estimate provided to the EPDP team.

RAFIK DAMMAK: Thanks, Caitlin, for responding. I'm not seeing any other questions or anybody in the queue. I guess will just ask here if maybe we can [wrap up] this webinar unless there are further questions or comments? I see there are some discussions in the chat, but I don't see specific or directed questions here to respond to from the EPDP team standpoint.

Yes, Michele, please go ahead.

MICHELE NEYLON: Thanks, Rafik. Since I seem to be the only person who wants to talk to you—[inaudible]; sorry—as things stand at present—this is speaking to you, and Keith might need to chime in as well—as I understand it, we have a two-part vote that need to be crafted. Somebody will draft a motion, and that motion will either have two parts or it'll be two motions. I'm not sure exactly how that's going to work, but essentially that's my understanding: we'll be voting on

two separate things and that that vote will or should be taking place at the meeting later this month. Is that correct?

RAFIK DAMMAK: Sorry, Michele. Can you repeat the last part?

MICHELE NEYLON: Sorry. in very simple terms, we are expected to vote on this later this month at the upcoming council meeting, and the vote will be either on one motion with two parts or two motions. But nobody has rejected the proposal that was put to council at the previous meeting and has been open for discussion on the council mailing list for the last couple of weeks.

RAFIK DAMMAK: Thanks, Michele. To clarify, yeah, for now, the draft portion is with me. So it will be one motion with two clauses since we are suggesting to vote in two blocks. We did that split: for the recommendation: for the SSAD and those for the Priority 2. So the plan is the motion with those two clauses that will be submitted by the deadline for the document summation. So it will be for this month's GNSO Council meeting.

Saying that, there will be probably more discussion in the coming days to prepare for that meeting. Does this respond to your question?

MICHELE NEYLON: I think so, yes.

RAFIK DAMMAK: Okay. And thanks for speaking with me, Michele. That was nice. Thanks.

KEITH DRAZEK: Rafik, if I could jump in.

RAFIK DAMMAK: Yes, Keith. Please go ahead.

KEITH DRAZEK: Thank you very much. Adding to what Rafik correctly said, we're going to have one vote with two clauses—the first one on SSAD, the second on the other items that are not directly related to SSAD but that the Phase 2 work produced that would actually have some potential impact on the implementation of the Phase 1 recommendations that are currently approved consensus policy.

But there's also the third bucket of Priority 2 items that the Phase 2 work did not conclude and that the GNSO Council is currently considering a recommendation on how to proceed with those: essentially creating two tracks; one around the topic of legal versus and natural and a few other items, and the other on the question of data accuracy.

So I just wanted to just reinforce those that are listening and are councilors that those are other issues that we still have on our agenda for determining the appropriate path forward, that we have not set them aside, that we have not forgotten about them, but

that that is yet another set of work coming out of the EPDP that will continue. Thanks.

RAFIK DAMMAK:

Thanks, Keith, for the clarification. I'm sorry, Keith. I guess that was an old hand that I had missed.

Thanks, Caitlin, for the clarification regarding the vote. It's one motion but we'll vote separately in the resolved clauses, as we said, because we split the recommendation into two blocks. The [inaudible] Chair will submit the motion soon. So everyone will be aware about the content and what's proposed there.

Looking to see if there is any other questions or comments, I think at this stage I don't see any questions or anyone in the queue. Keith, I think maybe I can wrap up this webinar and hand it over to you.

KEITH DRAZEK:

Thank you, Rafik. Thanks for running us through this. And thanks to staff for all the support. I think we can now conclude this webinar. I would ask everybody to come prepared to the meeting on the 24th of September. As we've discussed, we have a proposal in front of us. Rafik will circulate the draft motion. I hope this conversation has been helpful and informative. If there's any further discussion that needs to take place, we can certainly conduct it on the GNSO Council mailing list, prior to the 24th of September.

With that, I will thank everybody very much for joining. Thank you, Rafik. For those who are listening in the recording, thank you for doing so. We will conclude the meeting now. Thank you. We can end the recording.

[END OF TRANSCRIPTION]