
ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2A
Thursday, 04 March 2021 at 14:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the ePDP P2A team call taking place on the 4th of March, 2021, at 14:00 UTC. In the interest of time, there will be no rollcall. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourselves now?

Hearing no one, we have listed apologies from James Bladel, RrSG, and Matthew Crossman of the RySG. We have formally assigned Owen Smigelski and Beth Bacon as our alternate for this call and any remaining days of absence. All members and alternates will be promoted to panelists for today's meeting.

Members and alternates replacing members, when using chat, please select "all panelists and attendees" in order for everyone to see your chat. Attendees will not have chat access, only view to the chat. Alternates not replacing a member are required to rename their lines by adding three Z's at the beginning of their name and, in parentheses, at the end, your affiliation, dash, alternate, which means you are automatically pushed to the end of the queue.

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To rename in Zoom, hover over your name and click “rename.” Alternates are not allowed to engage in chat, apart from private chat, or use any other Zoom room functionalities such as raising hands, agreeing, or disagreeing. As a reminder, the alternate assignment form must be formalized by the way of the Google link. The link is available in all meeting invites toward the bottom.

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing or hearing no one, if you do need assistance, 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. With this, I’ll turn it back over to our chair, Keith Drazek. Please begin.

KEITH DRAZEK:

Thank you very much, Terri. Good morning, good afternoon, good evening, everyone, for joining the ePDP Phase 2A meeting number nine of the plenary, Thursday, 4th of March. This is our first plenary in three weeks. We missed the last two because we repurposed those plenary sessions for the Legal Committee’s use and I think the Legal Committee has put that time to good use.

We’ll get an update from Becky in a little bit. Let me just run through the agenda real quick, and then we’ll jump right into it. So, under the “welcome and chair updates,” we’ll have a note related to the update and the report to the GNSO Council that’s expected on the

24th of March. I'll note that Philippe Foucart is with us as our council liaison as well as happening to be the GNSO Chair.

We will then note that there has been a response received from ICANN Org related to certain questions that we submitted, one on the status of implementation of the Recommendations 6 and 13, and then the ICANN Org liability in the context of distinguishing between legal versus natural, so we'll touch on that briefly.

Then, we'll get into a substantive discussion of legal versus natural and I'll note, on the agenda for everybody's review, you can see the language from the charter that speaks to the issue of legal versus natural and specifically noting that we are currently focusing on "ii" in terms of what guidance could be provided to registrars and registries to differentiate.

Then, we'll receive an update from the legal committee as to the questions that are going to be referred, and we'll turn to Becky for that. Then, we'll move to a substantive discussion of the work in Jamboard and in the Zoom documents related to proposal 1A, which appears to be the most fleshed-out and most advanced proposal. I'll note that some of the other items that were incorporated or introduced into our documents for consideration seem to be less fleshed-out, so I think it probably behooves us to focus most of our time on proposal 1A at this point.

And then, we will move to an introduction of a scenario. I hope everybody had a chance to see the e-mail that came to the list from Berry Cobb last night introducing and teeing up what will become a topic of discussion for our next plenary meeting next week. But

today is an opportunity to introduce the brainstorming effort/the brainstorming exercise to try to identify what options are before us.

And then, we'll go ahead and wrap up the meeting and note the administrative items for later. So, that is our agenda. If anybody has anything else that they would like to suggest, add, or question, now is the time to do it. I'll pause for a sec. Seeing no hands. Very good. Thank you so much. With that, let's go ahead and move to the actual agenda and get right into it.

Item number 2A is just, again, to reinforce and to reiterate the e-mail that I sent out to the list last week, which is to note that I, as the chair of our ePDP Phase 2A, have an obligation to report back to the GNSO Council on the status of our progress and whether there is likelihood of the group advancing toward consensus. This was outlined in the charter. This is an expectation and an obligation that I think we have all been aware of from day one. But it is something that, essentially, three weeks from now, I will have to provide a report to the council.

Really, what this means is that the work of this group over the next two to three weeks is going to be critical in terms of being able to make the case to the GNSO Council that the work of the group is ongoing, that progress is being made, that there is a path to consensus, even if it's on some of the best-practice discussions that we're focused on right now, let alone whether it's focused on changes to the existing Phase 1 recommendation consensus policy.

So, I just want to reinforce that this is a critical moment for all of us in terms of the path forward for this group and I'm just calling on

everybody to, again, do the homework, do the homework, do the homework. I note that there was new information submitted to the homework assignments over the last 24-36 hours, so thank you to those who did contribute and who have been providing information.

We do have to pick up the pace here and really make sure that we're focusing. With that, I'm going to turn the microphone over to Philippe for any thoughts that he's like to share. The GNSO Council did meet recently for its regularly scheduled meeting and there was, as I understand it, some discussion around the topic of the work of this group. So, Philippe, if I could hand it over to you now? Thank you.

PHILIPPE FOUQUART: Thank you, Keith. Can you hear me?

KEITH DRAZEK: Yes, I can. Thank you.

PHILIPPE FOUQUART: Thanks, Keith. I do not want to take too much of your precious time, really, but, in my capacity as liaison to council, maybe just a reminder on the milestones that we have ahead of us, very much to reiterate what you, Keith, mentioned in your e-mail in February.

So, a council meeting is scheduled for ICANN70 on March the 24th, I think. So, that's just about three weeks from now, and a progress report is planned during our council call. And the question that will be posed to council is, are we likely to come up with consensus

recommendations on those two items, given that, ahead of us, we have got, originally, the initial recommendation planned for April and the final report in May of public comment, off the top of my head?

So, the overall context being that Phase 2A was tightly focused and, as you know, council being the manager of the PDP, [our role is mostly that] we don't waste your energy on anything that's not likely to reach that consensus.

And as you said, Keith, we cannot dismiss the informal, at this stage, concerns being expressed at our recent council calls on the possible need to terminate the ePDP, depending on progress, or not grant a project change request if a timeline adjustment is necessary.

We should not overestimate those comments, either, but the point really is that, for this work to proceed, council will have their say. So, to cut it short, this intervention should not be misconstrued as [look out, guys we're] being watched, but quite the contrary. I think we're all aware of the importance of what we're doing here.

But just as, Keith, you said in your e-mail, we wouldn't like people to be taken by surprise in March and we need to capitalize on the progress we have seen in recent days. Thanks to those who put so much energy in this. That said, I'm being optimistic. I think we're making good progress. I hope this is useful clarification; forewarned is forearmed, as we say. So, we've got a bit more than three weeks to the council call, now. So, back to you, Keith. Thank you.

KEITH DRAZEK: Thank you very much, Philippe. I appreciate those comments and context. So, just to draw a line under this one, I'm going to need the ammunition to be able to go to council and make the case. I'm going to need everybody on the ePDP team to contribute to that so we have the case to be made. Margie, I see your hand. Go right ahead.

MARGIE MILAM: Hi, Keith. Thanks for the introduction. I do have a couple of questions because, in my view, the timeline doesn't make any sense, given that we haven't even submitted our questions from the legal committee to Bird & Bird. Becky can talk about it shortly but, given that timeline, we're not likely to get answers back on the questions for another couple of weeks.

So, at this juncture, what, we'll have one call to discuss whether we can agree on the new advice? I don't see that as possible. So, I think we need to be a little more realistic and make a report to ... Or, I suggest that the report to the council be that we're evaluating legal advice and it's premature to determine whether we can reach consensus because, otherwise, it just doesn't make any sense.

KEITH DRAZEK: Thanks, Margie. Look, I think if having submitted questions to Bird & Bird from the Legal Committee is something that has been accomplished, I think that's an important milestone and I think that's an important point to be made. But frankly, we're not there yet. They haven't.

This is just a reinforcement that everybody needs to do the homework in advance of meetings, both in the legal committee and

in the plenary, to make sure that we're moving forward. So, this is a call to action over the next three weeks so we can make the strongest case possible.

And to Milton's question, the case to be made is that the group should be able to continue into the current plan, which is basically delivering a final report by May, that the update to the council is to demonstrate that we have made substantial progress and that there is a path toward being able to deliver the final report by May and to, basically, lay out the case as to why that's possible. Volker, go ahead, and then Hadia.

VOLKER GREIMANN:

Yeah. I have to partially agree with Margie, here. I think we have to be realistic and being realistic, and looking at the initial timeline that we had, and the extension that we now have, and looking at the questions and our charter, I come to realize that none of the questions are really in the critical path for answering the charter questions.

So, I would suggest that we plow ahead with our work, answer the charter question to our best ability with the knowledge that we have yet. If legal advice comes in during that time, we are probably welcoming it into our deliberations and we will incorporate it.

And if not, then we will take that advice and plug that into the evolutionary process of the SSAD, where it will be probably well-received and will be very helpful, as well. But we have to be realistic about the time that we have and the tasks that we have at hand

and, therefore, we should not delay our work any longer and finally get started on working to answer the charter questions. Thank you.

KEITH DRAZEK: Thank you, Volker. Hadia, and then Marc.

HADIA ELMINIAWI: Thank you, Keith. Actually, the way I understood your answer to Margie in relation to the submission of the questions is very different than Volker's take. So, my understanding is that, if we actually go ahead and submit the questions before the deadline for the council's report, then that report could actually say that we submitted questions to the Legal Committee. We are still working on our deliberations. We are not sure yet if we are going to reach consensus or not because we are still waiting for the legal response. So, I don't know if this is what you meant?

KEITH DRAZEK: Thanks, Hadia. I'll try to clarify. Look, we have an obligation to provide an update to the council at the end of March. We have a project plan that has been submitted to council that lays out a path to a final report by the end of May. We need to be able to provide the council an indication that we are on track to delivering a final report by the end of May.

Clearly, the submission of legal questions to Bird & Bird and the timeline that they will need to be able to respond and for us to consider, I think, is an important data point. But I think we also need to be able to demonstrate that we have make progress on some of

these questions, some of the proposals, and that we can make the case to the council that, yes, we are on track for delivery of a final report by the end of May and that there is the possibility of the group reaching consensus, or at least the potential.

And so, right now, we're on a timeline for May. This is a checkpoint at the end of March and the council is going to be looking at this with a critical eye because they are managing multiple processes and community resources to be able to make sure that we're spending our community time wisely.

So, I hope that answers the question. I think that having submitted the legal questions and demonstrating progress within this group by the end of March will help us in terms of being able to continue on the path toward May. If we make no progress, and if questions are really significant, then perhaps the council will decide otherwise. I can't presuppose what's going to happen there.

BERRY COBB: Just real quick, as a correction, it's an initial report by May, not the final report.

KEITH DRAZEK: Okay. Thanks, Berry. I appreciate that clarification. And I had Marc in queue, and then Alan. Marc, your hand went down. Would you like to get in queue?

MARC ANDERSON: Thanks, Keith. I was actually going to ask a clarifying question about the date but Berry just answered that. So, I was looking ... The timeline up on the screen shows the final report is ... I guess that's 28th June and the initial report at the end of May. I was just raising my hand to clarify that but Berry beat me to it.

KEITH DRAZEK: Yeah. Thanks, Marc, for the question, and thanks, Berry, for the clarification. I clearly had that wrong. So, Alan, and then Melina, and then we probably should move on. Thanks.

ALAN GREENBERG: Thank you very much. Just a brief comment. I hope what council will look at ... I understand the words on the documents today but I hope what council will look at is, are we making progress or are we wasting our time? Not necessarily whether we will make a specific date.

It would seem rather foolish that the answer, "No, we're not going to make the May day, it's going to be June," says, "Oh, well, we'll cancel you, then." So, I hope the question is, are we making progress to developing a policy and are we likely to finalize that policy, and not will we make some specific date that was a point in the sand written when we really didn't understand what we were getting into. Thank you.

KEITH DRAZEK: Yeah. Thanks, Alan. Look, I don't think this is a clearly binary question. The council will consider all aspects, I'm sure. But at the

end of the day, I think the question is, as you said, is the group making progress? Is there potential to reach our goals or is there not? I think we have work to do to demonstrate that we're on that track. Melina, over to you, and then we'll draw a line under this and move on to item 2B.

MELINA STROUNGI: Yes, thank you. Thank you also, Berry, for clarifying in the chat. Maybe I'm a bit confused. Initially, I remember we were discussing the possibility of extending discussions until May. I don't know if this is still a consideration and if, in that scenario, that would mean that the initial report would be further pushed in the timeline. Thanks.

KEITH DRAZEK: Thanks, Melina. I'll turn this to Berry for a moment in terms of the timelines and the project package but, yeah, Berry's hand is up. Go right ahead, Berry. Thanks.

BERRY COBB: Thank you, Keith. Back in the end of January, per PDP 3.0 guidelines, any working group, or ePDP in this case, has to commit to a plan after it has done a cursory review of its charter to come up with a reasonable expectation by which it can deliver on its key milestones.

Because the group started slower than anticipated, the leadership team made the decision to commit to delivery of an initial report by the end of May because, at the end of March when the three-month

requirement to provide an update to the council ... It wouldn't have squared. We would, basically ... It wouldn't have happened.

So, from a project plan perspective, we extended the timeline out by two months. That could be reasonable to achieve the milestone of delivering an initial report for public comment and to enter into the public comment period. Mostly, this is an analysis based on the amount of work that's in front of us. In addition, if we didn't commit to a longer date then we would have to do a project change request to the GNSO Council for missing a date that was originally thought to be achievable.

But that still doesn't replace the fact that the council has made a part of its adoption to launch this work that an update to the council must occur. We'll see what discussions happen at the next council meeting. Thank you.

KEITH DRAZEK:

Thanks very much, Berry, and thanks, Melina, for the question. Thanks, everybody, for that. Just to underscore, the message here is that we need to buckle down and continue to make the case, as noted, so the council has some information that it can work with come the end of March. So, let's move, now, to the item 2B on the agenda, which is the ICANN Org response to the two ePDP team questions that were submitted. Let's see. It's going to be on the screen, here, momentarily. I'm going to hand this to Caitlin or Berry for introduction and to go over what we have received. Caitlin, please. Thank you.

CAITLIN TUBERGEN: Thanks, Keith. I just wanted to note that, as a reminder, a couple of weeks ago, the team had asked for the first question that Berry had highlighted. I believe it was originally directed at registrars by the registrars had said, “Perhaps the ePDP team would agree to send the question to the ePDP Phase 1 Implementation Project Team, so that the answer would be more neutral. So, the question was asking for an update on Recommendation 6 and Recommendation 13 from the ePDP Phase 1 report. I won’t go through the answer, I just wanted to note that the answer has been provided both via e-mail and it has now been posted to the Wiki.

Additionally, there was a question—if Berry could scroll down a little bit—question two, which was regarding how ICANN Org sees its liability to enforce mandatory differentiation of legal versus natural persons. Again, ICANN Org sent that answer last week. The answer is posted on the Wiki. I’d just note, if there are follow-up questions, please provide those in writing. We can go ahead and send those to ICANN Org. Thanks.

KEITH DRAZEK: Thank you very much, Caitlin. Would anybody have any comments at this point, any questions about this? All right. I encourage everybody to review the responses received if you haven’t already and to make sure that, if anybody has questions moving forward, or feedback, or further thoughts on this, that we flag them for our next call. But do please make sure that you have read these and have taken these on board so we can incorporate it into further discussion. All right.

Let's move onto agenda three, which is the discussion of legal versus natural. We carved out 75 minutes for this, again reflecting on the charter language. We are currently in "ii" focusing on what guidance, if any, can be provided to registrars and/or registries who differentiate between registrations of legal and natural persons. And then, Becky, I'm going to hand this over to you—thank you very much—for an update on the Legal Committee work in relation to questions referred and where we are in submitting questions to Bird & Bird. Thank you.

BECKY BURR: Thank you. I am happy to report that we have made significant progress in the last couple of weeks. Thanks to the group for its patience in letting the legal team do this work. We now have in circulation all of the [inaudible], both on legal and natural, and—

KEITH DRAZEK: Becky, I'm sorry to interrupt. We're losing you.

BECKY BURR: And the feasibility of unique contact, a final call on ... Yes? Okay, let me move to a better [inaudible].

KEITH DRAZEK: Yeah. Sorry. No problem. You're fading in and out. Thanks. Sorry about that.

BECKY BURR: Yeah. I was just expecting this at the end of the 75 minutes, not the beginning. Sorry. So, we have in circulation all of the questions now in a revised format. Many of them have been consolidated. The [inaudible] bulk of the legal versus natural questions [inaudible].

KEITH DRAZEK: Becky, I'm sorry to interrupt again. We're losing you again. Can we get you a call-out? Becky, I'm sorry.

BECKY BURR: Close of business on Friday. Material objections, we will forward. Yes.

KEITH DRAZEK: We're going to need to dial you out or have you dial in by phone.

BECKY BURR: Why don't you guys ...

KEITH DRAZEK: Terri, could you call out to Becky? Thank you very much. All right. Thanks, everybody, for the patience. Unavoidable technical issues. They happen. So maybe, while we're waiting for Becky to rejoin, I've listened into all of the Legal Committee meetings and I just want to note, thanks to those who have participated in, essentially, double duty, participating and contributing to the Legal Committee's work. I think, as I noted earlier, the—

BECKY BURR: I'm back.

KEITH DRAZEK: Ah, excellent.

BECKY BURR: Can you hear me better?

KEITH DRAZEK: Absolutely, Becky. That's great.

BECKY BURR: That's great. Sorry about that. Okay. I'll make it shorter. We now have in circulation ... We have discussed all of the questions on both topics. We have in circulation revised versions of all of the questions. The bulk of the legal versus natural questions are out for a final call by close of business tomorrow.

So, unless we hear strong material objections on those questions, we will forward them to Bird & Bird. We have a final, brief conversation on the remainder of the legal versus natural questions and I'm hopeful that we can actually complete that offline. So, my very fondest aim is to finish up our work on Tuesday.

We have extended that Tuesday session from an hour to an hour-and-a-half. And if everybody does their homework, reviews all of the questions, engages online between now and then, I think we

should be in a position to wind up our work on Tuesday. That's an aggressive and ambitious timeline and it really does require people committing to do the homework, getting the conversation going in-between now and then, and not relitigating questions on Tuesday.

KEITH DRAZEK:

Great. Thank you very much, Becky. And again, thank you for your commitment to this effort and to leading the Legal Committee in its work. So, thanks so much, and thanks to all who have contributed. But again, as Becky just noted, over the next several days it's a critical time to make sure that we advance this forward and be able to wrap things up on Tuesday so those questions can be delivered to Bird & Bird in a timely manner. So, thanks for that.

Any questions or comments on Becky's update? Okay, very good. Let's then move to the next item, which is 3B, which is a follow-up to the Jamboard brainstorming and the input to the Google Doc related to proposal 1A.

I know this will be put on the screen and I will hand this over to Caitlin and to Berry for helping to run us through what has been received, what has been submitted, and where we stand at this point, specifically as it relates to proposal 1A, which, as I noted earlier, is the one that is the most fully-formed at this point and may be where we need to really focus our energies moving forward. Caitlin?

CAITLIN TUBERGEN:

Thank you, Keith. Just to give another quick overview of what Berry is showing on the screen, what staff did was we took the Jamboard

proposal for 1A, which is Laureen's proposal. The first page is our attempt at making a flowchart based on those steps so that the team would have a visual to look at to see what steps are provided or proposed in what order. And then, we took a look at the sticky notes from the Jamboard exercise and we had some follow-up questions. So, you'll see the proposal also on this Google Doc. If you can scroll down a little bit, Berry?

So, what you see here is on the left-hand column were the sticky notes that groups provided. You can see in parentheses which group provided that feedback. And in the middle column, leadership had some follow-up questions or a response if we thought, perhaps, that suggestion had already been dealt with in a different phase, may have been out of scope, or may have been something the group overlooked.

And in the right-hand column was a homework assignment which we had circulated several weeks ago to ask groups to either address the question that leadership asked or come forward with, perhaps, a different proposal. I'll note that we did, I believe yesterday, receive feedback from the BC and the IPC.

So, perhaps we can turn it over to those groups to present their answers to questions or suggestions on where we needed some clarification. I will note that we did have some follow-up questions for the Registrar Stakeholder Group and the Registries Stakeholder Group.

I don't believe those follow-up questions were addressed but, generally speaking, the questions were there were some concerns from contracted parties that the proposal seemed, maybe, overly

complicated, or certain steps would not work for different types of registrar business models.

So, we asked the groups to come forward with any sort of mitigation, or if there were alternative proposals, or if there was a way to make certain steps work. And so, we'd like the contracted parties to keep that in mind as we go forward. But Keith, I don't know if you want to briefly ask the BC/IPC present their feedback on our questions?

KEITH DRAZEK:

Yep. Thanks, Caitlin. Yes, I think that would be helpful in terms of getting into the substance and moving this forward. So yes, Mark, I see your hand. Go right ahead.

MARK SVANCAREK:

Thanks. The first question we were asked is, does the flowchart accurately represent the point we were trying to make? And it was sort of a yes and no response from us. We said yes, it does, it really explains the decision process more clearly than the words. However, if we're talking about combining steps in a user experience, you have to go from this to some sort of a ... what we call a wireframe webpage. So you can actually see what the words or input boxes or radio buttons or what other web elements there are in order to really determine whether or not this saves a step in the user experience. So if we're interested in going down this path, I propose that that would be our next step.

And similar response for the second question. We do agree that this was addressed in previous recommendations, but since now we're

trying to get into guidance about how you would actually design a webpage, you have to mention it again for completeness. And then the last comment from us regarding how does a flag work, where does the flag live, I envisage it that there's a flag within the registrar's system, implemented however they like, but they are the entity that sets the flag, clears the flag, stores the flag. And it could be derived depending on how we proceed on the issues above. It could either be derived from the information collected at the registration time or updated later, and as you've noted in the row above, one of the cases where it could be updated was already discussed in phase two.

I note Sarah's comment in the chat, and I recognize that this is really more of an implementation detail than a policy development detail, but as I've said many times, it's really hard to decide what you want to do if you can't understand how you're going to implement it. It's a chicken and egg problem and I think it's a real challenge in an EPDP that we have this hard separation between the one thing and the other thing.-And I think it behooves us to consider some of the implementation details when we're developing our policy. That's all. Thanks.

KEITH DRAZEK:

Thanks, Mark, and thanks for covering the input and also for your observation there. I think Sarah and you both make very legitimate points and that in order to be able to accurately form potential policy guidance, it would be helpful to understand what the implementation limitations might be or framework might be. I see Milton's hand, but I just want to note that, again, I think what we're trying to find here is if registrars and/or registries today are

differentiating or might choose to differentiate, what are the possibilities for achieving that differentiation that could become recommendations or best practices for other registrars and registries to consider? And so with that, Milton, let me hand it to you.

MILTON MUELLER:

Yeah. Again, I think this is kind of an, “is this trip necessary” kind of question about this. Yes, if you're going to differentiate, which of course many of us are against and this was never accepted as a consensus matter and probably never will be accepted as a consensus matter, then this diagram is probably a pretty good representation of what would be required, and you see how complicated it is, how it would involve reengineering all kinds of processes within the registration, registrar process and possibly also registries. And it would raise all kinds of uncertainties from the end users' end.

This has been designed by lawyers to meet certain legal and policy criteria, and it has almost no relationship to the end user experience of what they need to know and what they need to do when they need to register a domain name, and it doesn't really, in my opinion, have any benefit in terms of the actual protection of both the public and the private interest in a domain name registration. It's just this bizarre Rube Goldberg machine designed to somehow find a way for the people who don't like the WHOIS data to be shielded to have as much of it as possible unshielded.

So if this is a demonstration of what we need to agree upon to achieve consensus, then it's, to my mind, a very conclusive

demonstration that we will never achieve consensus on something like this. And if you say, oh, we can just have this be a best practice, I would say if we agree with the original recommendation that this is up to the registrars whether they want to differentiate or not, delving into the specific process by which they do so is clearly a losing proposition and something we should not be doing. If it's up to them, it's up to them.

And if the way they do it creates liability of them, then they will have legal liability under GDPR, and that's their problem. That's not our problem. So I really hope that we can sort of move beyond these kinds of picking over details and ask ourselves a bigger question, which is, are we ever going to agree on some kind of a differentiation? And if not, let's not get involved in stuff like this.

KEITH DRAZEK:

Thanks, Milton. I think the big questions are important, but as far as the charter is concerned, one of those questions was what type of best practices could be developed in terms of four registrars or registries who want to differentiate or may find that they need to differentiate under certain jurisdictions, how could it possibly be achieved? And I think that's what we're trying to better understand here is, what is the process, what is the implementation, what are the limitations that we as a group should be considering? But I fully take onboard that your higher-level question is a very important one that we can't ignore.

I have quite a queue building, so Hadia, Mark SV, Laureen, Volker, and Sarah. Hadia?

HADIA ELMINIAWI:

Hi. So first up, I don't see us delving into too many details. The charts, I do actually support having a chart, however, I do support having more like a program flowchart, because the chart as is does tell you who does what, but actually does not describe the process exactly as it should flow or how it should flow. And I would say that a program flowchart has the advantage of making us think clearly. And I looked at the [data] that was sent yesterday, the thought experiment, and the flowchart allows us actually to think in that manner, like—so you have two paths. So either the registrant will indicate that he's a legal person or the registration concerns the data of a legal person, or it does not concern the data of a legal person. Then if you have the data of—so if it's the data of a legal person, then you have two other options. Either it contains personal data or it does not. And then if it contains personal data, there's a path for that, and if it doesn't contain personal data, there's another path for that.

So I think flowcharts are good, because they help us think about all the possible options that maybe we can miss if we cannot actually visualize the process as it should happen.

And in relation to what Milton was just saying, the flowchart as it is right now, the first step in relation to the registrars is that [notifies registrants of the] option to identify as either natural persons or legal entities. So as it is put now, it is an option, and I think Milton was saying otherwise.

So to conclude, I think having a flowchart is good and important, but maybe a flowchart that actually shows the actual process as it should happen. Thank you.

KEITH DRAZEK:

Thank you, Hadia. I have mark SV next, but I'll note that Brian King has also typed into chat. Let me read that real quick and then I'll get to Mark. So Brian said, to be clear again, we're here to develop consensus policy, not just best practices, showing that it can be done in practice and how it can be done is intended to be a helpful step in that direction.

So just wanted to flag that. Mark Sv, over to you.

MARK SVANCAREK:

Thanks. Brian has sort of beat me to the punch. I was under the impression that we were here to develop consensus policy. So while I do believe that discussing best practices and possible implementations is a good way to focus our efforts. I'm not looking at this as best practices is the deliverable here. It's just one step on the journey.

And I do hear Milton saying that he remains opposed to this and will try to veto it, which means getting a consensus policy is going to be difficult, but so long as the Contracted Party House is engaged, I think we should proceed ahead, try to get to a consensus policy. Thank you.

KEITH DRAZEK:

Thanks, Mark. And let me just note here that we have consensus policy, right? We have consensus policy from phase one. We have consensus policy from phase two that at least has been approved by council pending with the Board. And so there is existing consensus policy, and I think one of the questions for this group is, does that consensus policy need to be adjusted or updated based on the work that this group is doing on these specific points?

So the best practices, I think, was our initial foray into trying to identify what is possible, what could be possible, what's implementable operationally, what's commercially reasonable, what doesn't introduce excessive complication to the registrants or the registration process.

So I think that's what we're really trying to get to with this exercise. And at the end of the process is to ask ourselves the question, based on what we've done with respect to this question of best practices or operational and financial feasibility, are there updates to the existing consensus policies from phase one and phase two that could be adjusted or should be updated? I think just to provide the context in my understanding, I think that's the question we're looking at. Laureen, over to you, then Volker, then Sarah.

LAUREEN KAPIN:

Thanks, Keith. I wanted to follow up on some of the points our wildly optimistic Milton Mueller made. I think he actually raises a very pragmatic point about this being a process designed by lawyers and separate from the registrant experience. And for that matter—and I'm going to pick up on a thread that Sarah raised—separate from the registrar experience.

And to those points, I really want to emphasize that several of us are really trying to engage in one-on-one conversations with stakeholder representatives to get a more realistic perspective of what challenges they face when folks from the outside who have a policy objective—and I'll say good reasons for it but don't have the perspective of what the real-world business consequences are.

And what I want to underscore is that speaking for myself, but I think for others as well, we are open to listening and figuring out how to meet your concerns. We're aware of the need to preserve your customer relationships and not make things overly complicated in a way that makes you lose business. We're aware that the reseller model for registrars is very different from those registrars that deal directly with their customers. And we're aware that we can say just flag this and that that actually may create logistical and resource challenges to make a change to probably a system that has been delicately designed and executed.

So what I want to put out there is a [help us out.] We're not hiding the ball here as to what our objective is and we have no intent to make this overly complicated or expensive or not feasible. And we want to work with you. So I just want to put that out there because I think a lot of hard thinking has already been done, we have some legal advice and guidance, we'll likely be getting more. I think there's a path forward here, and I want to emphasize that we want to work together to create this path.

KEITH DRAZEK: Thank you, Laureen. Volker, you're next.

VOLKER GREIMANN: Yes. before I get to my point regarding the charter, I would just like to point out that Brian and Mark are obviously wrong. I mean, look at the charter questions. It's clearly that we're here to make recommendations of how differentiation can be made and not to make binding policy how they should or must be made. That would be something for the evolutionary process.

Looking at the chart, I see that—my personal opinion is that it provides a way of how to make that differentiation possible, but it makes a certain number of assumptions. It assumes that if that differentiation has been made, a certain result—i.e. publish or nonpublication of information—would happen. That is not yet a given.

It also is not probably the best way for all registrars. Some registrars might want to do it this way, some registrars with a different business model might do it another way. Personally, when I look at my registrars, we might do it within the same registrar in various different ways just because of how the registration workflow works in the different platforms that we operate.

I would personally suggest and urge that we move away from roadmaps, flowcharts, guidelines that detail how to do something and rather, try to arrive at a result that shows us what to do and why to do it. So, what is the goal? What do we want to achieve? That should be the questions that we ask. What is the end goal? What is the target that we're aiming for?

And the how can then be determined by each and every registrar. We can give certain recommendations of what processes would be problematic, what we suggest or advise to do, but the more descriptive we get, the more problematic it's going to be on the implementation end.

KEITH DRAZEK:

Thank you, Volker. And just chair's prerogative here, I think as it relates to the charter of this group, clearly, we have begun or started our work focused on best practices, possible recommendations to be provided to contracted parties who choose to or find that they need to differentiate, and so part of this is an information gathering exercise and exchange of information to help identify what those possible best practices or recommendations might be, recognizing that there's quite a difference of implementation and operational structures among different registrars and registries.

But the second part of this group's work under the charter is to consider whether adjustments or amendments need to be made to the phase one recommendations, and that is a consensus policy question. So yes, we've begun with the consideration of best practices and recommendations, but under the charter, the question really is, do the phase one recommendations that are now consensus policy need to be adjusted?

So that is within scope of this group. But that's not to presuppose or indicate that consensus will be achieved. But it is certainly within scope, and I think the expectation is that once we get through this discussion of voluntary recommendations and best practices, that we would then move to the question of based on that information,

is there the possibility of changing the phase one recommendations to update the consensus policy. So just wanted to make that point, and then I have Sarah and Melina in queue. Sarah.

SARAH WLYD:

Thank you. Good morning. You'll have to forgive me because I have some thoughts that are a bit similar to what Volker just said. We did not coordinate. Hopefully, I'm building on those ideas. So guidance should not be specific to a given business model or implementation, because any one-size-fits-all model really fits only one. If it's so specific, it cannot be mandatory for all providers.

I'd like to suggest as a starting point that guidance should focus not on how to differentiate between registrant types but instead, starting with each of the GDPR principles or maybe as a Canadian, I would suggest the PIPEDA principles for data protection, and how to achieve each of those principles if you do differentiate.

Also, I think that the existing consensus policy is appropriate, it allows that differentiation, it allows that individual participant or contracted party implementation. Guidance could be very helpful for how those providers can achieve that if they choose to do so. but it needs to allow for that flexibility of different providers who have different risk levels and risk assumptions. And thank you, Laureen, for acknowledging that.

But I don't think that any such guidance means that we need to change the policy. Thank you.

KEITH DRAZEK: Thanks very much, Sarah. Melina, and then Volker, then Brian, then Mark Sv.

MELINA STROUNGI: Thank you. A lot of interesting points were raised, and I completely understand the point made by Sarah and Volker that one solution doesn't fit all. And as Laureen said, we are here to really understand how the model works from the contracted parties' side and from our side, any concerns raised so far, we did our best to address them in the proposal.

So for instance, one concern raised was to take into account not only the distinction between natural and legal entities but also the nature of data of legal persons. So we address this in the revised proposal.

Another concern of contracted parties was indeed there are different models, reseller models that could not take some steps before registration but only after. We again address this in the proposal. So really, it's not our goal to dictate an exact model, but rather, as also Milton said, to take a step back. We should of course first agree that we all agree that the differentiation is important. And it is important because I think we all agree that no one wants to block WHOIS. We want available publicly as much nonpersonal data as possible. Of course, to also reply to Stephanie, with the utmost safeguards in place to protect the privacy of individuals and to comply with data protection law.

So if you ask me what is the goal of what we try to do, is to have as much nonpersonal data of legal entities available publicly as

possible while at the same time protecting the privacy of the individuals. So if we all agree that this is like the desirable goal, which is in public interest, then I think we can really work together and find ways on how to translate this into policy with input from everyone, and we're here really to listen in carefully everyone's side and concerns, and really hope that we can go towards that direction. Thank you.

KEITH DRAZEK:

Thank you very much, Melina. Very well said. I think from Milton's comment in chat, maybe we shouldn't get hung up on the terminology of best practices, but possible practice, I think that's a fair point. And then we have Volker and then Mark Sv in queue. Thank you.

VOLKER GREIMANN:

Thank you, Keith. Just two points. One to the charter question one, which you're absolutely right, requires us to at least consider whether changes to existing policy are necessary, although that would be one of the first policies that would be changed before it's implemented.

However, it contains the word "required" and "necessary." So we haven't even discussed whether a change is required or necessary, and I think that would be the first step to go before we go into the question of what steps those would be. First we need to see why is that what we have decided upon in phase one and phase two not sufficient, why is a change to that necessary, and agree on that,

and after we've agreed on that, then we can look at the steps that could be taken to change those because it is necessary or not.

Second point, I think we already have a couple of very good recommendations that are also encapsulated in the flowchart here, which is that one recommendation that we should probably agree upon—and I think we almost have consensus on that—is that the differentiation between legal and natural person is not sufficient. We also need to confirm whether personal data is present or not.

I think that is one recommendation that, clothed into proper policy language, should be part of the outcome of this group, and I think we have consensus on that already.

KEITH DRAZEK:

Thank you, Volker. And I'd just like to commend you for the constructive observation and input on that point. I think you're right that frankly, I think the group is coming around to acknowledge that a distinction of legal versus natural is perhaps insufficient and doesn't go far enough because of the potential of personal data being included in registration records of legal persons and that that's an additional layer of risk of exposure both to the registrant and impacting privacy and to the contracted parties, registries and registrars in terms of that perhaps inadvertent disclosure. So I think that is an important point and I think that's been discussed quite extensively in the legal committee as well.

So I do want to note that I think you've made a good point there, and as we look towards the outcomes of this group, yes, you're absolutely right, eventually the question is going to be, do we need

to make adjustments to the existing phase one recommendations and are there implications for the phase two recommendations around the SSAD? And ultimately, that will be a fundamental question that we need to answer.

We approached this as a group starting with the question of what could be possible, what are the potential best practices, what would be ways that this could be achieved, but you're right, at some point we're going to have to move to the question of what's necessary and what would be helpful to clarify existing consensus policy language.

With that, Mark Sv, Brian King.

MARK SVANCAREK:

Thank you. I want to build on what Keith just said, because I feel like we're going in circles. So we came here to discuss whether or not existing consensus policy could or should be changed in regard to the differentiation of natural persons, and part of that discussion was, in my mind, a further discussion of how it could be implemented, because if there's no way to implement it, then the topic is moot.

And so we proceeded down that path and now we're being told that rather than look at ways that it could be possible, we have to go back to another question, which is, should we do it at all? But I thought that the reasons that we were examining the ways that it could be possible was to decide whether or not it could or should be done at all.

So it seems like this is a circle. We have to decide on what our path is. So if Volker really feels like we need to have this conversation about how are we going to do it up front before we discuss whether or not it's feasible, then we're blocked and we have to do that. If that's not the case, then we can continue down the path that we're on now, which is let's examine ways to make it possible and then determine if any of them are successful or not.

What I'm hearing so far this morning is that there's one hard no in NCSG right now, and Sarah and Volker both sounded like they were already predisposed to no. So I'm kind of not sure what we're doing here. It doesn't sound like this is rly a PDP, it sounds like that opinions have already been locked. And basically what I'm hearing is there's no chance for consensus. And if that's the case, please tell me if that's true. If that's not the case, then we can keep going. So please clarify for me, is there actually a chance of this moving forward or not? Because if you know that there's not, you should just tell us, and whether or not we can proceed down this path of examining what is possible, what is a good practice, and deciding whether or not that could convince anyone to change existing policy.

So, pardon me for possibly being confused. I hope that was a constructive comment. Please [inaudible].

KEITH DRAZEK:

Yeah. Thanks, Mark. Look, I think you've put a point on the question that we are going to have to answer as a group. I think there has been good discussion and good work going on, both in the legal committee and in the plenary. I think there is no work to be done

before we make a determination as to whether a consensus around adjustments to consensus policy are going to be worthwhile, needed, required, beneficial, etc. But I do think that your point is well made, and I think it should help focus us all on that key question, is, at the end of this process, is there a path towards consensus on developing consensus policy recommendations that would alter the existing consensus policy recommendations from phase one and/or potentially impact the consensus policy recommendations in phase two around the SSAD? So I think you've crystalized it very well. Thank you for that. And I don't think that we can answer that question today on this call, but I think it's something that we need to be focused on together, and especially as we approach the end of March with the update to the council. Brian, you're next. Thanks for your patience.

BRIAN KING:

Thanks, Keith. I raised my hand to perhaps share some of the concerns that Mark expressed, but I think more importantly to reiterate Laureen's call for collaboration and constructive work together. I'm encouraged to see Volker in the chat saying that he thinks a path exists. And so I'm excited about that.

I wanted to raise my hand too to get started, if we're still in the part of the agenda where the BC and the IPC folks that did the homework that was in the Google doc are meant to speak to that. I think I was next, if you wanted to go on. Or I don't know what we're doing, but [inaudible] do it now.

KEITH DRAZEK:

Yeah. Thanks, Brian. Thanks for that, bringing us back to a bit of the agenda and the actual substance here in front of us. Thank you all for the conversation that we just had. I think it is important in terms of level setting, making sure that we're looking at this in the same way, I think it'll help us moving forward over the next several weeks, if not longer. So Brian, over to you, back to the table.

BRIAN KING:

Sure. So Keith, I thought it might be helpful if we collapsed steps two and three so that we don't get into what I think has concerned our registrar friends about a messy collection process that these things can be ascertained at the same time. We can ask the registrant whether the data or whether the registrant is a legal person and whether the registration data contains any personal data.

Those seem like two things that can be asked in the same sentence and kind of flagged together. So the chart on the screen looks complicated, but it need not be so complicated, was the point that I was making there.

The next point that I made would be to add a binary flag. And I think that's captured. And where that's useful is it helps—not intended to be the end all be all perhaps necessarily, but that binary flag can be helpful in making a distinction. Even if contracted parties just want to have it be optional, at least knowing whether the registrant is a legal or natural person, because we've seen cases like the RIPE NCC and like the .eu regulation which allows for the e-mail address to be published even if the data pertains to a natural person, so it's just good to have that flag captured to enable policy choices.

I've rambled for a while, and I think I can clarify that one. Let me see if there's any questions, maybe Keith, or if anybody has anything to add about the points I just made.

KEITH DRAZEK: Sure, Brian. I see Milton has his hand up. Milton, go ahead.

MILTON MUELLER: Yeah, I don't understand this flag business. So it's like you saying, okay, we're going to flag this as legal or flag as natural, but we're not going to require a differentiation because we know that can't get consensus. How do you flag without committing yourself to all of these verification processes or question answering processes?

So the problem with flagging is the problem that we're dealing with. The people who are concerned about this don't see any way to ask a registrant at the point of registration, particularly natural persons, whether they're a legal or a natural person, number one, that's an incredibly confusing question to many people in the world, particularly when you get into language differences, and people may not understand the distinction.

So the whole problem is when people register, we don't know whether they're legal or natural, we don't know whether they're actually legal or are lying, we don't know whether they're natural but they're confused and say they're legal because they don't want to be illegal. There's all kinds of problems in just making that distinction, which we're trying to get out of the registration process.

If some registrar can come up with some safe way of doing that and they want to do that, then the existing consensus recommendation says they can do it. But we can't kind of assume that, oh, first we can flag people and then we can decide what to do, because flagging them is the whole problem that we're confronting. Unless I misunderstood what you said, Brian. But to me, I just don't get it.

KEITH DRAZEK: Thanks, Milton. If you'd like to respond, feel free to jump in. Otherwise, we've got a queue building. Let me know.

BRIAN KING: Sure. Love to respond. Confusing the registrant has already been covered. We have safeguards in place here. That's one of the things proposed by the GAC in this proposal, that we provide clear instructions on what the indication means and what the results of choosing one of those things is. And to be clear, this is about adding a binary flag just to capture and categorize the registrant as either legal or natural. And that comes with benefits that enable policy choices. So there's nowhere here that says that that's dispositive or in any sense would be problematic. It's just considered to be a useful distinction as part of a broader proposal. So that's really all it is. Thanks.

KEITH DRAZEK: Thanks, Brian. And I'm just going to note that we have just 20 minutes left, actually less now, in the call today. I've got a queue that's built. I'm going to draw a line under this. Melina, you will have the last word on this particular topic and then we'll move to the next

agenda item, which is the introduction of the brainstorming exercise. So Sarah, you're next, then Volker, Alan, Stephanie, then Melina, and then we'll move on. Thank you.

SARAH WLYD:

Thank you very much. I work a lot at my company with our user experience designers, and they do a huge amount of work around ensuring that choices presented to users are clear and also that things are accessible to users in different circumstances.

So regarding this flag idea, which I am hearing as optional—so I like that, I think that gives the necessary flexibility, I just want to quickly reiterate what I put in chat, which is if the purpose of the flag is to determine whether data are published are not, then that's how it should be labeled, not as a legal flag or a natural status flag. No, it should be if you flag this, then your data is published. And that's already a requirement. Thank you.

KEITH DRAZEK:

Thank you very much, Sarah. Volker, you're next.

VOLKER GREIMANN:

Yes. Flag or not, I think regardless of how we do it, the registrars should have or the registries should have a method of identifying which data has been identified as ready for publication or ready for treatment in a certain way and which one hasn't. How they do that is probably up to them. But that's not the point I was trying to make. I'm still thinking that we're overdesigning this a bit. Ultimately, we're looking at a registrant making a declaration that can be a

declaration that he does not have any personal data included in this data and therefore, publication would be okay, it could very well be the almost same declaration for a registrant that is a person that wants his data published, thereby consenting to that.

So the differentiation of whether a registrant is legal or natural is, in my view, totally irrelevant to the question of whether the registrant consents to publication or declares that no personal data is included in his registration data. That is the question, and when you look at it from that angle, then suddenly the question of whether it's legal or natural is a completely irrelevant question that we're asking, which is, can we publish this data or can we have this data flagged for automatic release in the SSAD, which is still my preferred way of going at it, or not?

So we do not even need to ask legal versus natural question, because the question itself doesn't decide anything. The ultimate question that is deciding everything is, can this data be published or not? And we have two ways to that end which is, one, consent, and two, no personal data.

KEITH DRAZEK:

Thank you, Volker. Much appreciated. Alan, you're next, then Stephanie and Melina.

ALAN GREENBERG:

Thank you. Two points. Number one, my recollection is in phase one, we already have a recommendation saying registrars must make available an option to publish information at the request of the registrant. I don't remember which recommendation number it was,

but I'm pretty sure we did that. So there is implicitly a flag of saying, can we publish or can we not publish? So we shouldn't be debating that one again.

The benefit of formally defining a flag is it's standardized, it can go into escrow if we wanted to, and there's some uniformity in it. So the question then is, do we also want to flag for legal-natural? And I would maintain, since virtually every privacy legislation in the world makes the distinction, we want a flag which may not be set—it may be set to legal, it may be set to natural, or it may be unset, but we want a standardized flag so that it's usable if appropriate. That allows things to be transferred from one registrar to another, and we don't lose information.

So how we set it or if we ever set it is a different question than the existence of such a flag. And as I said, I'm pretty sure we already have a recommendation on the publish flag. We didn't standardize a field but we have the concept. Thank you.

KEITH DRAZEK:

Thanks, Alan. Really constructive, and thanks for harkening back to the work that's already been done. I think that's something important for us all to keep in mind. So next up, Stephanie, then Melina, and I did cut off the queue. If folks can be brief, we'll try to get a couple more in, but we do need to move on. So Stephanie, you're next.

STEPHANIE PERRIN:

Thank you. Just to respond to Alan's latest, yes, we have a flag, but we have been having quite a debate in the legal subteam over

whether a consent from a natural person is substantively different than an agreement to publish from a legal person.

And we have discussed the use of the word “attestation,” and that is why I raised my hand. We have to remember that any contracted party is relying on the attestation of whoever is filing for the domain that they have the authority to consent to publish.

Now, in the case of an individual, that would mean that that individual has the consent to publish. If it’s a parent acting for their child—say I’m registering my grandchildren’s names as a name—then that is quite a complicated question, and when it comes to a company, then you have to be assured that the individual filing for those names has sought the consent or has the right to consent on behalf of their employees.

So really, this is a very difficult question and it’s important that we make sure that we’re asking for something reasonable. The large companies represented here may be able to assure themselves in most cases. Other small companies, particularly in other global jurisdictions, may not have a clue whether they have that and may not realize that it’s important. I typed something to this effect in the chat a while ago, but I think it’s really important that we understand that this is an attestation on which the company is resting its legal risk in matters of data protection. Thanks.

KEITH DRAZEK:

Thank you very much, Stephanie. Melina, you're next.

MELINA STROUNGI: Thank you. And thank you, Stephanie, because this is a very good point, and it leads me to also the point that I wanted to make. I don't know if it's a confusion or I'm confused, but there are two different issues. Consent relates to personal data, like if we take down this road, we assume that we will publish both nonpersonal and personal data and we would use consent model, while the differentiation would lead to the publication of only nonpersonal data. So those are two different, let's say, roads.

I saw in the comment on the GAC proposal some comments arguing that the question of legal versus natural persons is a difficult one, there are language barriers, educational barriers and we should rely on consent instead. And I want to ask how this is even possible, because under the GDPR, the bar for consent is much higher, exactly because personal data are at stake.

In previous guidance of the Article 29 work party, it has been frequently stated that consent should be the last resort out of the legal bases to process personal data because exactly, the bar to prove that you have valid consent is very high. You have to prove that you have informed consent, which means that you have to use plain and clear language.

So if someone believes that the language is not simple enough for someone to understand if they are natural or legal, how can it be clear enough for someone to provide valid consent? I think there is a problem there.

So I would say that the question of whether an entity is a legal or a personal entity is a very relevant one. It follows the distinction in a lot of data protection legislation, and the purpose of this distinction

would be, okay, are you natural? If yes, then we publish no data. Are you legal? Then we can discuss how we can do that. Also contracted parties can give some ideas. But one solution would be to further distinguish even between data that's personal and data that's not personal.

And to come back on what also Milton said earlier, maybe a way to do this, since we are also running out of time, would be if contracted parties would want to propose instead some ways that they could differentiate. Maybe that would be also an idea. If they need to further tailor our proposal, of course, this is more than welcome, but if they also would like to make a proposal themselves, maybe this could also be useful. Thanks.

KEITH DRAZEK: Thank you, Melina. Mark Sv, you're last on this, and then we'll move on. Go ahead. Thank you.

MARK SVANCAREK: I'll put my hand down. Sorry, I thought I'd already done it, in the interest of time. Thanks.

KEITH DRAZEK: Okay. Thanks very much, Mark. I appreciate it. All right. Thanks, everybody, for this conversation. I think it's actually been very helpful. Clearly, this is a complicated and challenging issue, complex, and there's more work to be done and more discussion to be had here, but I want to thank everybody for what I took to be pretty constructive input here.

With that, let's move very briefly to an introduction of what we'll tackle next week, which is a brainstorming exercise. I'm going to hand this to Berry real quick, but just to introduce this, it's like let's consider the potential, the hypothetical, the possibility that at some point in the future, there's legislation passed, a law implemented that requires the differentiation and/or that there are, in different jurisdictions, new obligations imposed, that we're going to try this as a thought experiment, a brainstorming exercise, and there's a bunch of questions that Berry has circulated to the list. I know you may not have had a chance to look at it in significant detail, but Berry, let me hand this over to you for your introduction on this, and thank you for the work that you've put into this already.

BERRY COBB:

Thank you, Keith. I'll have to be quick here, so I'm not going to repeat what Keith said about the approach to this thought experiment, but I believe it tries to encapsulate a lot of what we talked about before today's meeting and even during today's meeting. So I guess in some respects, it might be a little bit repetitive. But I think what is important about this is that in this thought experiment, nothing is going to happen as a requirement tomorrow, and it may—and it's not definite—a couple years down the road become a requirement, whether it's a new law in a particular jurisdiction and those kinds of things.

But the main point here is let's first take a look at or approach this thought experiment by what is already in the pipeline to be implemented. So I think it's very important when this team here goes to review this document, is that we phrase it in the work that has already occurred in phases one and two. I'm just going to briefly

touch on these to try to help set the stage, and at the next call, we can actually start to dive into a lot of these questions especially that were concerns raised around risk and liability, a combination for different types of models.

But starting over here from phase one recommendation 6, we touched on this, it's basically about registrars providing an ability for the registered name holder to "consent" to have their information published. Some contracted parties have already implemented this, others will wait until it becomes a requirement from phase one. It indirectly is connected to this topic of legal versus natural or the publication of a natural person from a legal person and the risk associated there. But why it's important is because how are contracted parties actually going to implement this? How are they going to obtain this consent so that it does get published?

And a typical type of example is a domain investor may wish to have his or her information published. What does that look like? Let's set the policy discussion aside for a moment and talk about what that implementation would look like from a tactical perspective.

Recommendation 12, which is probably the most contentious recommendation that the EPDP has had to work through, but there's two components to this which is all about the organization field. The first half, whenever this becomes an effective date from the IRT that's currently looking to this, is how to clean up existing registrations. And we're not going to go into the details of that, but I think what's more important here is the second half of this, which is for new registrations beginning with a date certain. At that point, that date certain, it will be a requirement that registrars present the opportunity for the registered name holder to publish the

organization field and to obtain their agreement and/or consent. There's flexibility how that's implemented. But how does that impact the registration process? And let's dig in under the hood to better understand how that requirement will be implemented and what are some of the risk and liability concerns in doing that. But let's have a frank conversation about what will be happening at some point in time.

Thirdly is recommendation 17, which has to do—we've talked about this, the ability for contracted parties to differentiate should they choose to—they're not obligated to. Let's ask the question, are some contracted parties going to do this? What about brand protection models? Are they going to be proactive and actually do this differentiation? If so, how are they going to go about doing it? What are some of the things that they can consider in doing that? And we can dive into that.

And then lastly, from phase two, recognizing that only the council has adopted the recommendations and it's sitting with the Board to further consider, but there was a lot of discussion in phase two about the liability risk to contracted parties and the improper disclosure of this data, and in particular, we talked about the financial sustainability of the model which is part of a topic that's being discussed as it relates to ODP and for what the Board to consider and so on and so forth. But it is an adopted recommendation as part of the financial sustainability from the GNSO council that there's some sort of operational or legal risk fund. Can this group build on that particular concept? Because it's been a very prevalent discussion here. While there are risk and liability associated with improper disclosures or publication of

personal data, can we leverage this aspect and build on that in terms of the context of distinguishing either between legal or natural as a thought experiment or at least as a further publication, accidental publication of personal data even from a legal person context?

So it takes us all the way back up, and there are a series of questions here that we should have pretty much frank conversation about each one of these and try to accommodate both sides of the positions, if for anything else, that we're adequately documenting all of the aspects to what we're attempting to build. I'll stop there. Thank you, Keith, look forward to other conversations.

KEITH DRAZEK:

Thanks very much, Berry. And again, thank you for all the work that you've put into this. Thanks for the excellent introduction and quick summary there. But I think it's really important, as you've noted, that so much of what we're talking about here ties back to the existing consensus policy as approved and currently being implemented, and also the pending consensus policy recommendations with the Board on SSAD.

So I think this is really important. I really ask everybody to focus on this in the intervening week before our next plenary session, because we'll spend a significant amount of time next week talking about this. Milton, go ahead.

MILTON MUELLER:

Yeah, I was just a little bit disturbed that in Berry's recitation of this so-called thought experiment, he was in fact making a case for a

particular policy position, which I think is outside of scope for staff to be doing, unless he's a stakeholder representative of some [form.]

But he said, oh, we want to have a distinction between legal and natural because some law in the future might require it. And I think that we cannot be making consensus policy based on some possibility that some government somewhere might be requiring it. And in fact, we spent 20 years when we knew that our WHOIS system was not compliant with law and it took the prospect of fines to actually make it conformant with law.

Now if we try to decide, oh, somebody might pass a law somewhere that requires a flag, I don't know how we can ever come to a decision about anything. So I would throw that out as a consideration. I really think that we actually are very close to agreement if we simply accept reality that the issue here is, do we want to publish the data or not, and are we giving people a clear path to publish it if they have no objection to it being published?

And the legal natural thing is kind of a distraction. It's kind of taking us one step away from that fundamental question. And we already have a consensus policy that says that we're not going to require people to do that, to make that distinction. So I think we need to be focusing on the possibility of supplementing that original consensus with guidance regarding how to allow natural and legal persons who want their data to be published a clear path to do so. I think that's what everybody can agree that we want, but if we start throwing flags in there to make a status distinction, I think you're kind of undermining the trust among the group that we are actually trying

to relitigate the recommendation from phase one. Sorry to go on so long.

KEITH DRAZEK:

No, Milton, thanks, and I know I've got a couple other folks in chat, and we are just a bit over time, but if everybody could bear with us for another five minutes, I'd appreciate it.

Milton, I hear what you're saying. I understand that there's a focus, that perhaps there is a clearer path and a more direct path to answering the questions that you've asked, but up to this point, leadership team, myself working with staff, has sort of felt like we needed to bring people out of the corners and to try to find a way to have these conversations.

And I want to make it very clear that Berry is not acting in any way independently as staff, that this was completely coordinated with me and that this is not in any way a staff initiative. So I just want to make sure that that was clear.

But I hear what you're saying in terms of like what's the most direct path if it's not a legal versus natural distinction? Is it a publish versus non-publish based on the existence of personal data question? Like I get all that, but I think this thought experiment—and it does not assume or predict that there will be new national law, but it's a hypothetical, and I think it's actually a hypothetical worth exploring.

So with that, Brian, you're next, then Alan, then we will wrap the call. Thanks.

BRIAN KING: Thanks, Keith. A couple reactions. It's frankly ridiculous that the NCSG would take that position that the law is pending now when, for 20 years, as Milton said, they were concerned about the impact of data protection law and had completely the opposite argument. So let's toss that out.

And then if I sound a bit frustrated, I apologize, but I think we're all very clear that Milton and/or the NCSG wants to just leave this at a consent-based discretion. And that's not what we're here to do. We're precisely here to relitigate the legal versus natural conversations that we had in phase one. Those are unresolved and the can was kicked down the road and we've arrived at the can, and now is the time to decide what we're going to do. So that's precisely what we're here to do.

And I hear Milton. We all hear you. So we're clear on what you want, and please just don't waste our time by making us listen to it over and over while we're trying to get the work done. Thank you.

KEITH DRAZEK: Alan, you're next, then Stephanie, then we have to wrap.

ALAN GREENBERG: Thank you. I really don't know what we're doing here. Milton made an impassioned plea for something that's already consensus policy. Why are we wasting our time having discussions like that? I really don't understand what we're doing if we're going to spend a lot of time deciding on whether consensus policy we agreed to almost two years ago is something that we should have or not.

So just to express my frustration and my confusion. Thank you.

KEITH DRAZEK:

Thanks, everybody. And I'd ask everybody to try to keep this from becoming personal. I understand there's a lot of history here, but let's keep this focused on the substance here rather than personal interventions.

We have a consensus policy. The question before us is, is there a need to update or to amend that consensus policy? That's what we're discussing here, and we're hoping that this thought experiment will help us find a path forward on that question. And if it doesn't, then we'll focus our energies elsewhere. Stephanie, last word, and then we'll wrap.

STEPHANIE PERRIN.

Thanks. I just wanted to respond to Brian. The whole time that NCSG has been arguing for the past 20 years or so, there has been law. There's been law since the early '90s. And so the directive was tabled in '91. There was already plenty of data protection law. I won't repeat the entire litany here, but that's quite different than us warning about law coming. That's point number one.

Point number two is I think that Volker said it very well a while ago. The fundamental question that we need to ask here is, are you consenting to the release of personal information here, slash, can you consent to the release of personal information here? I'm all for Milton's simplicity, but we have to remember that we need to establish that whoever the contracted party is relying on actually has the authority. And this is of particular concern to NCSG

because we—I apologize for my dog whining, he's as tired of this as I am—is that for noncommercial parties, these things can be very complex. We're not in commercial business, so plenty of NGOs, their corporate structure is odd and it's difficult to rely on it with a simple yes/no question, "Do you want to publish?" That's not enough. Thank you.

KEITH DRAZEK: Thanks, Stephanie. Hadia, we really need to wrap up, if you could—and Melina, I'm sorry, we're over time here. If you can each say what you need to say in 20 or 30 seconds, please. Thank you.

HADIA ELMINIAWI: Thank you so much. No more than that. It's just a quick observation that we already have the European NIS2 proposal out there which speaks directly about the importance of the registration data, and we are speaking about possible laws that could come up with things that we know nothing about right now. So I don't understand this logic. If anything, we should consider NIS2. Thank you.

KEITH DRAZEK: Melina, last word.

MELINA STROUNGI: Yes. Thank you. Just to comment that let's assume that we follow Milton's proposal on consent for a moment. Taking aside the risk of achieving the high bar of consent, I don't see how we would save

ourselves from having to distinguish, again, between data, because again, consent relates to personal data.

So for instance, if you have a registrant providing both personal and non-personal information, and then you ask, do you want to publish, do you consent to publish, and then they say no, what do you do then? You don't publish anything, not even information that is not personal? Don't you have to distinguish even in that scenario? I think the distinction is inevitable and it really serves a purpose that we want to achieve, and I really agree with Brian's comment to focus our time and effort working on that solution. Thank you.

KEITH DRAZEK:

Thank you, Melina, and thanks, everybody. We've gone over ten minutes. I appreciate everybody's time and patience. The next legal committee call is on Tuesday. Hopefully, they'll be able to wrap up their work on Tuesday. The next plenary session is next Thursday. We'll circulate an agenda in advance, but please do be prepared to come and discuss this thought experiment—that's all it is—and we look forward to syncing up on the list. Thanks, everybody. With that, we'll conclude the call.

TERRI AGNEW:

Thanks all. Once again, the meeting has been adjourned. I'll stop recordings and disconnect all remaining lines. Stay well.

[END OF TRANSCRIPT]