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ICANN Transcription

GNSO Temp Spec gTLD RD EPDP - Phase 2A

Tuesday, 10 August 2021 at 14:00 UTC

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ANDREA GLANDON: Good morning, good afternoon and good evening. Welcome to the EPDP P2A Team Call taking place on Tuesday the 10th of August 2021 at 14:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the telephone, could you please let yourselves be known now?

Thank you. We have apologies from Matthew Shears (ICANN Board), James Bladel (RrSG), Melina Stroungi from the GAC, Stephanie Perrin (NCSG), and Jan Janssen (IPC). They have formally assigned León Sanchez (ICANN Board) and Owen Smigelski (RrSG) as their alternates for this call and for the remaining days of absence.

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All members and alternates will be promoted to panelists for today's call. Members and alternates replacing members, when using chat, please select Everyone or All Panelists and Attendees in order for everyone to see your chat. Attendees will not have chat access, only View Chat access.

Alternates not replacing a member are required to rename their line by adding three Z's to the beginning of their name, and in parenthesis your affiliation "-Alternate" to the end. This will put you automatically to the end of the queue. To rename in Zoom, hover over your name and click Rename.

Alternates are not allowed to engage in the chat, apart from private chat, or use any other Zoom room functionalities such as raising hands or agreeing and disagreeing.

As a reminder, the alternate assignment must be formalized by the way of a Google Assignment form. The link is available in all meeting invite e-mails.

Statements of Interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. If you do need assistance updating your Statements of Interest, please e-mail the GNSO secretariat. All documentation and information can be found on the EPDP Wiki space.

Please remember to state your name before speaking. Recordings will be posted on the public Wiki space shortly after the end of the call. As a reminder, those who take part in ICANN multistakeholder process are to comply with the Expected Standards of Behavior.

Thank you. And over to our chair, Keith Drazek. Please begin.

KEITH DRAZEK:

Thank you, Andrea. Hi, everybody. Good morning, good afternoon, good evening. Welcome to our EPDP Phase 2A Meeting #34 of Tuesday the 10th of August 2021. We're going to jump almost immediately into the continuation of our review initial report public comments, but I did want to flag, just for everybody's awareness, that we did not receive—as of the end of last week—any requests for a Project Change Request extension.

We had requested last week that if anybody had a formal request, that they submit something in writing with a rationale and justification as to why and how the group would benefit from such an extension, substantively, in order to bring the group to consensus and make consensus recommendations in the final report. We did not receive any requests and, as such, we have not submitted a Project Change Request. So the dates that we have in agenda item #4 and on the screen in front of you in the timeline screen are the dates that we're working against.

So we have a final report delivery date of September 2nd. And I think, as everybody knows, we're here on a Tuesday. We are doubling up on our weekly calls for the next couple of weeks. And we're working towards finalizing the final report and submitting on September 2nd.

So I did want to flag that for everybody who may not have caught up on their e-mail yet. It was reflected in the project package that Berry sent out yesterday, so I just wanted to flag that for

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everybody. We have a deadline. We're working to it. And that is our plan.

So with that we are focusing today on the Initial Report Public Comment Review, specifically inputs on #4 and #5. And I am immediately going to hand it over to Marika and Caitlin and Berry to help us run through the continuation of our Public Comment Review. When we get to the later parts of our agenda—Owen, thanks—we've got a new template and a new document review tool to share.

But let me hand it over to Marika at this point. Marika, thanks so much.

MARIKA KONINGS: Yeah. Thank you, Keith. So indeed, before we go to how we're now going to move from having reviewed public comments to considering the specific proposals and suggestions that have come out of that in the context of the report and the recommendations.

We still have some comments to go through, so we're basically picking up where we left off during the last meeting, which is Preliminary Recommendation 4 and the questions related to that. As you may recall, Preliminary Recommendation 4 is the specific guidance that the group has developed and is suggesting putting forward to contracted parties who choose to differentiate.

There were four related questions that were asked in relation to the guidance for community input; the first one focusing on: does the guidance provide sufficient information and resources to

registrars and registry operators who wish to differentiate? And if not, what is missing?

A second question more specifically dove into: what are the additional elements that should be included and considered.

The third question focused on: are there legal and regulatory considerations not yet considered in this initial report that may inform registrars and registries in deciding whether or not to do differentiate. And if so, how?

And a fourth question focused on: if a registrar or registry operator decides to differentiate, should this guidance become a requirement that can be enforced if not followed? So basically, the "must/if" condition which I think is seen in the context of other recommendations as well.

So here we have a number of comments that were flagged by different groups, if I recall. While I think Margie gave a brief overview of some of the BC's main comments or issues that they want to see further considered. But others, of course, have flagged items here as well. So maybe we just start at the top. As a reminder, the first few comments we go through really focus on this question: is the guidance provided sufficient? Or if not, what is missing?

So the first one we have here is basically a grouping of a number of comments that basically indicated that, yes, in general it is sufficient. But there were a couple of specific suggestions here, and I think the main one that has been flagged here for further consideration is one that [inaudible] development of the guidance

that relates to the notion of: should this be referred to as best practice instead of guidance?

So I know that the GAC, the, BC, and the ALAC are the groups that specifically flagged this comment for further consideration. So I think we will probably have to turn the floor to them to kind of introduce and see what proposal they would like to put on the table for them to consider.

KEITH DRAZEK: Thanks very much, Marika, for the intro. And I will just turn then and ask for hands for any member of those groups who would like to speak to this. Margie, I see your hand. And I did see a hand earlier from Matthew Crossman. Matthew, if you'd like to get back in queue, you're welcome to do so even if it's on a separate question or separate topic. Sorry I missed you earlier.

But, Margie, go ahead on the subject.

MARGIE MILAM: Sure. Good morning, everyone. It's Margie Milam for the BC. Yes, we would like to see the language change from "guidance" to at least "best practices." One of the things, I think, that we want to remind folks is that the GNSO PDP Manual does not list guidance as an appropriate outcome from a PDP, and actually does list best practices as one of them.

And we understand that there is opposition to that from the contracted parties, but we'd really like to hear from them as to what the specific objection is because, as you can see from the

public comments, there is a fairly wide range of views supporting the notion that "best practices" would be better than guidance.

KEITH DRAZEK: Thanks, Margie. I see a hand from Owen. Owen, if that's a response, go right ahead.

OWEN SMIGELSKI: Yes, it is. Thanks. While I do appreciate the feedback and the fact that there is support, I do note that the support for "best practices" are participants in the EPDP as opposed to the general, broader public out there. And the real concern about "best practices" is that because in certain jurisdictions—and we've said this before— that wording has a very specific legal meaning, and failure to abide by a best practice can subject a party to liability for not following that best practice.

And so that's a real concern if there's a contracted party who decides not to follow these guidelines—if it's considered a best practice and they don't do that—that could subject them to the liability in certain jurisdictions. So that's the reason why we have concerns with that and would prefer to go the route of "guidance" rather than essentially backdooring it and making it mandatory and forcing companies to have to follow it. Thanks.

KEITH DRAZEK: Thanks, Owen. I have a hand from Alan Woods. And I'll just note that Marika has put into chat some clarification as well. So if folks could please look at that.

Alan, you're next. Go ahead.

ALAN WOODS: Thank you very much. Alan Woods for the registries. Notwithstanding what Owen has just said there, and I completely agree with him, I think the biggest issue with us is—and this is reflected by the comments from the registries and what we've said before—that the guidance that is currently written, we accept that on a voluntary nature, it can provide guidance. But we do believe that it is, at best, a restatement of what the law expects, what is stating.

There is some helpful input, of course, from Bird & Bird. However, it is still just a restatement of the law. I'm not quite sure what part of that makes it "best." It makes it a statement of the law which we all expected, and which we should know as companies and having to follow the law, but there's no real element there of what is best, or one would expect to be good in that particular instance.

So I think that there is a lot more work—a lot more buy-in, a lot more input—from the people who would actually need to do this job operationally/technically/legally speaking in order to come up with a best practice. And I think we said this at the very beginning. That if are ever to go down the route of having a "best practice," well then there is a route laid out within the GDPR and within data protection, generally speaking. That is, looking at a code of conduct or an Article 40 code of conduct. We would be expecting that there would be some amount of vetting. And then vetting would you have to go to the DPAs in order to establish what is considered to be "best."

Again, we do not believe that this "best." "Guidance" is acceptable because, again, that is what it is. But it's certainly not "best." Thank you.

KEITH DRAZEK: Thank you, Alan. Margie, you're next.

MARGIE MILAM: Sure. Thank you for that, Alan and Owen. A couple points. We actually, I think, agree with Alan Woods that the code of conduct should be pursued as part of the outcomes of this policy process. That's one thing that I think we've never really explored in the last, say, couple months. And if that provides the kind of clarity that the contracted parties need, that's certainly something that we should perhaps consider as part of the recommendations here.

The other point that I wanted to make is that this notion of guidance came along after the EPDP was started. And if you recall, the EPDP was started when the Board initiated this from a Temp Spec. So the Board instructions, if you will, in creating the EPDP was to create consensus policy not to create guidance. So I do believe that the group has taken a shift, not really fully taking into account what the Board instructions were when the EPDP was first commenced.

KEITH DRAZEK: Thanks, Margie. I see a hand from Milton, and I'll turn to you next, Milton. But I just wanted to note that if we're looking at the … And Margie, this is in response to your comment. I think if we're looking

at the EPDP in its entirety, the consensus policy was developed through Phase 1 and we have consensus policy recommendations coming from Phase 2 that are still pending with the Board.

And I think the Phase 2A work, in a large part, was intended to continue the conversations on legal and natural, but also to determine whether the previously established consensus policies needed to be amended. And I think that's where we are in the context of this particular effort, as well as trying to identify if there are other things that could be delivered from this team in the context of the Phase 1 recommendations if they are not to be changed. And I think that's where the concept of guidance came in.

I note that we're talking here about the terminology of "best practices" versus "guidance," but I think we also need to focus on the substance in terms of what the guidance or the recommendations are here before us.

I have a hand from Milton. Milton, you're next. And then in the interest of time, we have a lot to get through, we're going to need to move on.

Milton, go ahead.

MILTON MUELLER: Yeah. You said about half of what I was going to say about the understanding of the role of guidance in this proceeding. And I just simply wanted to point out that, again, I thought were going through public comments here and flagging any new information. And I have to admit that, as somebody who supported having

guidance and failed to get the support of my stakeholder group in the first round, I don't see any additional new information here about why we need guidance. I don't see any new commenters. I see us rehashing an issue that we debated months ago.

So I would suggest that we make a note—"nothing happening here"—and move on.

KEITH DRAZEK: Thanks, Milton. Alan, go ahead. And then we need to move on.

ALAN WOODS: Thank you very much, Keith. Pardon me. I've just lost my screen. There we go. It's a very quick one. It was just actually in relation to what Margie has said there specifically about whether or not the guidance was allowed for in the PDP Manual. And I think we do need to be very clear about that; that the PDP Manual does allow for best practices, but it's not in a restrictive list.

If you want to look at Section 10 of the actual Best Practices Manual, you'll see that it's not a restrictive list. It doesn't rule out the fact that guidance could be possible. I'm just showing the link there. And I would just like to thank [our team members], the person who provided this for us.

So I think we need to be very careful that the PDP Manual does not—not—contemplate guidance. It is not an exhaustive list, and we need to be very clear when we're making statements such as that. So I just wanted to make sure that the record reflected that. Thank you.

KEITH DRAZEK: Thanks, Alan. Margie, I see your hand. I'll give you the opportunity to respond, and then we do need to move on. Thanks.

MARGIE MILAM: Sure. the other thing that I'd like to point out to the group is that there actually is a guidance process which is not this. And it typically applies in things that aren't related to policy. And that essentially generated through all the work that the staff and the community did to define what would be guidance and what would be policy. So I see this as a divergence from that. But I understand that I'm not going to convince our colleagues, so thank you.

KEITH DRAZEK: Thanks, Margie. And, look, I think the question, the distinction between best practice and guidance is an interesting one. But for the purposes of delivering a final report, if we can't come to agreement on. Using the term "guidance" and working towards developing that guidance for contracted parties to choose to differentiate, then I'm not sure what we're doing here at this point. I think we need to focus on what we can reasonably achieve in terms of the guidance that's been discussed. It's been discussed now for weeks and months that we really need to be focused here on trying to identify the path forward.

So with that, let's move on to the next item and, per Milton's comment a moment ago, let's focus on … Is there new information? Is there something that needs further substantive

discussion that will help us move towards consensus as opposed to restating a well-understood and long-held positions? And if so, let's flag it for further discussion afterwards.

So let's really make sure that we get through this Initial Public Comment Review process by going through this. Let's speak concisely and briefly to the subject, but let's make sure that we're focusing on what needs further conversation in a following conversation or meeting.

Marika, back to you.

MARIKA KONINGS: Thanks, Keith. The next comment that was flagged is #3. And if I can paraphrase here—I'm sure my ICANN Org colleagues will correct me if I'm saying this wrong—it's a comment that ICANN Org has submitted that basically reminds the group that if there are any requirements within this guidance—for example, in the "must/if" scenario—that would need to be specifically called out, if it's not called out with a kind of "must" or very clearly, there is obviously nothing to enforce.

So I believe this is just a reminder for the group that, depending on where this discussion lands, the group will need to be very specific with regards to the use of "may" or "must" depending of course on what, at the end of the day, the intention is of the guidance. And this was flagged for further discussion by the ALAC and the BC.

KEITH DRAZEK: Thanks, Marika. So ALAC and/or BC colleagues, would you like to take this one? Margie, go right ahead.

MARGIE MILAM: Sure. I mean, rather than repeat what we said before, the one point that I think was raised in this and what we'd like to have on the table is the notion that this could become a requirement once the NIS 2 is adopted by the European Commission. So whatever you call it. Obviously we want to call it "best practices," but if it's guidance, it would become a requirement once the NIS 2 Directive becomes an enacted.

KEITH DRAZEK: Thank you, Margie. Anybody else like to get in queue? Any comments from our ALAC colleagues? Alright, I don't see any other hands. Margie, I think that's an old hand.

Amy from ICANN Org, welcome. Go right ahead. Amy, are you there? No problem. Mute button issue.

AMY BIVINS: Sorry, Keith. This is Amy from ICANN Org. I just wanted to expand on this comment a little bit just so the group understands what we were trying to get out here. I think the thinking was, when we're looking at the initial report from the ICANN Org perspective, one of the questions that we had is that …

You know, obviously the team right now is not considering recommending any sort of requirements—and simply guidance,

probably, but from the ICANN Org perspective, what we wanted to know was: if a registry or registrar chooses to follow the best practices, do they have to follow all of them are some of them? Or if they choose to distinguish, do they have to follow these at all? Because I think that's sort of the issue were trying to get at here with this comment.

KEITH DRAZEK: Thanks very much, Amy. Appreciate your input and further explanation here. All right, I don't see any other hands on this one, so let us just carry on and move on to the next one. Marika.

MARIKA KONINGS: Thanks, Keith. So the last comment in this section of questions is in response to a comment law was made by the SSAC which, again, I think the SSAC colleague will probably speak better to it. But as I understand it, it's basically talking about how there should be a requirement to classify registrants either as natural or legal. And until that time comes, that it can be done for all registrations and unspecified designation could be used. And the other opportunity [inaudible] registration life cycle at which a registrant could then be asked to indicate whether they would be considered a natural or a legal person. And this comment was flagged also by the BC and ALAC for further discussion.

KEITH DRAZEK: Thank you, Marika. Anybody from ALAC or BC like to speak to this topic? Okay, I'm not seeing any hands so let us continue on. Marika.

MARIKA KONINGS: I think someone just raised a hand, Keith.

KEITH DRAZEK: Okay, Hadia. Yes, I see it now, thanks. Hadia, go ahead. Thanks.

HADIA ELMINIAWI: Okay, thank you. So it does make sense that if we are going to differentiate, that this differentiation should happen during registration. If it actually happens after registration, it puts a burden on the contracted parties. It puts a burden on the registrants themselves. We cannot actually see the rationale behind having the classification done after a registration, especially that many of the contracted parties do not engage with the registrant again after registration happens. They could engage again, maybe, during the renewal of the domain. However, in most cases, even this engagement is an automatic thing, just informing the registrant that the domain is renewed. And they often use the credit card that they have on record. And that's about it.

So even during the renewal of the domain name, I'm not sure that there will be a chance actually to ask for more information. Thank you.

KEITH DRAZEK: Thanks, Hadia. I fully understand the desire to reduce any unknown category or undetermined category to the extent

possible, but I've noted in chat that there's some recognition that this has been well discussed. It's not new information.

But I have hands from Volker and Alan, and then we will move on. And Volker, if you're speaking we can't hear you.

VOLKER GREIMANN: Sorry. There was a mute button in my way. Sorry for that.

KEITH DRAZEK: No problem.

VOLKER GREIMANN: Yes. I mean, I've raised this before but can explain it again. This is problematic because if there's one thing that is helpful in the implementation path, it's having options. And there are processes in place where a registrant has to respond to a registrar during the course of the registration—be it the verification of the e-mail address, be at a transfer notice that can have a positive response at least for the losing registrar.

There are various opportunities for the registrar to reach out to the registrant. Whether the registrant reads it or not is a different question. But there's no need to necessitate any determination at the point of registration because there are other opportunities. And making those opportunities available, making this verification available at these opportunities increases the amount of options a registrar has to implement this and to best integrate this into their processes.

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If you require registration, then you limit the ability of the registrar to tailor-fit the process to what they have established for their customers. So it's problematic to determine in advance to make it at a certain time.

KEITH DRAZEK: Thanks, Volker. I'll turn to Alan and Margie next, but one of my … As I recall, we acknowledged the distinction between securing information at the time of registration versus at some later date in the context of the acknowledgement that there are existing registrations that would have to be … You know, if the distinction were to be collected, that it would need to be done after registration because [they're] existing registrations. So at the time of renewal, at the time of WHOIS contact information confirmation.

So I seem to recall that we had acknowledged that there were two separate instances—existing and new—and that that was an important distinction for the timing of the securing of the feedback from the registrant.

But anyway, let me stop. Alan, you're next. And then Margie.

ALAN WOODS: Thank you very much. Two very, very brief points, I think. The first one is to say that Hadia's actually pointed out one of the troubling issues for the registries, of course. She is right in the sense that we don't necessarily have a lot of contact with the registrants in these processes, and what is being asked of us is actually to increase that and sometimes double/triple—an awful lot more

effort and a lot more processing of data which, of course, increases the risk. So that's something we need to be mindful of.

And then the second thing of course is, this particular statement by the SSAC, I just want to make sure that we are understanding that registrants being classified as either legal or natural persons still ignores the concept that legal person registrants may contain personal data as well. And that's sort of one of those things that has fallen off the table, so we need to be very mindful that this does not address something that we have maintained very much since the start—that natural person data can still be contained in a legal registrant or a legal person registrant. Thank you.

KEITH DRAZEK: Thanks, Alan. Margie, you're next and then we'll move on.

MARGIE MILAM: Sure. I just wanted to comment on the SSAC comment here. It sounds like they're recommending that there be a classification regardless of whether it actually gets used by the registry or registrar for the redaction purposes. Is that correct?

And if that's correct, I think that makes a lot of sense to at least start the process, given that we know that there will be a high likelihood that the NIS 2 Directive will require some sort of a designation and that we can start at least developing processes and implementation around that.

So I just wanted to flag that I think what they're saying is: ask for the classification at the onset, and whether it actually gets used for

the purposes of redaction is a separate issue. And I guess I don't fully understand how the contracted parties would look at that.

KEITH DRAZEK: Thanks, Margie. Steve, I'm going to turn to you next, and then we'll make a call as to whether this is something that requires further discussion of the group or, really, is there any new information here?

And noting, Margie, I think at a minimum we're identifying some of the key questions if, at some point in the future, additional policy work is required in reaction or response to NIS 2 or any other regulatory developments. So I think the questions are good to be asked and highlighted, like I said, at a minimum for future policy work if that's where we end up going.

Steve, over to you. And then we'll move on.

STEVE CROCKER: Thank you very much, Keith. And thank you, Margie, for the question. Let me try to be clear about where the distinctions are that I see.

First of all, the idea of including the data elements in the data dictionary, I think, for me is an obvious and straightforward thing. But I should also add that I view the data dictionary as not something owned or specific to the GNSO or the contracted parties. It's a system-wide document, if you will, or a system-wide registry that kind of exists in practice and ought to be formalized; but in any case, is not something to be limited just within the

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contractual structure of the RAs and RAAs. So from that point of view, yes indeed, there ought to be a data element that defines this.

Separate question which is not the same is whether or not that ought to be required to be collected or even offered. And that, I think, is something that is still [not] settled, as best I can understand, within these discussions. And although some of my colleagues might fervently wish that it's a required element, I see greater complexity—in fact related, in part to, I think, Alan's comment—that even if you have an input as to whether or not—or Volker's comment perhaps—that even if you know whether or not it's a legal person or a natural person, that does not tell you enough about whether or not that data should be redacted or made available publicly.

So parsing this, there are at least three parts to it. One is, should it be in the dictionary? Yes. Should it be collected? That's an open question, or at least as it stands no policy seems to be forced yet.

And then third is, even if you know that, how does that govern whether or not that data is available to public inquiries? And that is a yet further and, so far as I could tell, not very well sorted out matter.

KEITH DRAZEK: Steve, thanks very much for that and for framing it in that way. I think you got that right, and so thanks for being concise and framing it for us. I think we do need to move on, on this one. And like I said, I think these are important questions to be captured as

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we consider potential future policy work in the event that it's required.

Marika, I'm going to hand it back to you at this point. Let's move on.

MARIKA KONINGS: Thanks, Keith. So now we move to the next category of questions I was asked that focused on: are there additional elements that should be included in the guidance? And the next one here flagged is #7 where there are a number of groups that made specific suggestions. And just to make clear, they didn't all make the same suggestion. They're actually quite different in regard to what they're putting forward.

So this comment was flagged by the IPC, the BC, and the ALAC. I think they're focusing on probably specific elements within the different suggestions that were made that they would like to see further discussed. So it's probably better to hand it to them so they can maybe talk to which specific items or aspects they think should be included or changed or updated in the guidance as it currently stands so the group can consider that.

KEITH DRAZEK: Thanks, Marika. I see a hand from Chris. Chris, go right ahead.

CHRIS LEWIS-EVANS: Yeah. Thanks, Keith. Hi, everyone. So obviously, the GAC have put a comment here, just stating that the guidance doesn't really

recognize the differentiation between legal/natural person data and the fact that the guidance doesn't really state that the GDPR doesn't apply to the data for natural persons—so, non-personal data. And really, reviewing the comments, I think adding this guidance would be really beneficial because there are a number of comments throughout, in this section, related to, "Well, if you're publishing it you need to consider different parts of GDPR."

But obviously, if all you are publishing is non-personal data, then we should really make it more clear that this is not covered under GDPR. Thank you.

KEITH DRAZEK: Thank you, Chris. And I'll invite anybody who would like to get in queue. I see a hand from Steve DelBianco. Steve, go ahead.

STEVE DELBIANCO: Thanks, Keith. I wanted to support Chris and the GAC on this because when we get to the discussion about what does ICANN do when NIS 2 is approved by the European Parliament. That discussion will focus on the notion of mandatory differentiation, publication, and accuracy. And I realize that until that's passed, it's not something that will focus this group on changing the language.

But it only makes sense to anticipate and see what's coming and make sure that our guidance not only states what the GDPR has always said—that it applies to natural and not legal—but it helps to set the table for what we're going to have to do sooner or later, which is to address NIS 2's requirements.

So I'm just reiterating what we have as a yes there, but particularly in light of what's coming later. Thank you.

KEITH DRAZEK: Thank you, Steve. Would anybody else like to get in queue on this one? And I think I saw something in chat earlier. Somebody asked if there's any text that would be available to review. I think that was—yeah, it was from Sarah. So if there's follow up on this one, maybe this is one that we flag for further discussion during today's work and then circle back to it.

Margie and then Chris. Go right ahead.

MARGIE MILAM: Sure. I just wanted to support what Chris had said. I think as guidance it would be useful to perhaps registrars that aren't actively involved in monitoring laws that may affect their business. And so having a statement like that, I think, would be very useful.

KEITH DRAZEK: Thanks, Margie. Chris, and then we'll move on. Thank you.

CHRIS LEWIS-EVANS: Yeah, [certainly]. So I think that probably falls upon us, since we suggested it, to come up with [the text]. However, I would be interested to hear reflection from the Registrars or Registries whether they agree that such text would be beneficial in a report. Thank you.

KEITH DRAZEK: Thanks, Chris. So I will turn it to our Registrar colleagues. I see a hand from Sarah. Thank you, Sarah. Go right ahead.

SARAH WYLD: Thank you. Hi. I understand Chris is asking whether text in the guidance specifically pointing out that legal person data is not protected would be useful. Specifically, myself, I wouldn't find that to be useful. What I would find, for myself as a registrar, useful is an explanation of what data is required to be protected and what the consequences of getting it wrong are because that will help to indicate the risks. But, you know, I'm always—as I think we've said on other occasions—happy to review suggested text. If it's not helpful to everybody, it might still be helpful to somebody, so it's entirely possible that it will be useful.

But it's really difficult to respond to this kind of suggestion without seeing actually what is being suggested. And I think the same goes for our other homework relating to listing out the benefits of having this optional data element. I've noticed that that homework has not … Those benefits have not been provided, which makes it really difficult to respond from the registrar perspective as to whether we share the same view about those benefits. Thank you.

KEITH DRAZEK: Thanks, Sarah. And thanks, Chris. So I think we have an action item here to circle back with some text. And I believe that Chris noted that that's something that GAC colleagues, perhaps working with others, might be able to put forward for further consideration.

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And Sarah, you're right. I think we do have an open item for the homework assignment on both the benefits and the risks—or the benefits and the burdens, I think we were calling it. And so thanks for that reminder. And Marika has put the link to that document in chat so please, everybody, take a look at that when the time is right. So I think we have an action item here and we will circle back to this one at a future call.

Marika, let's move on to the next one. Thank you.

MARIKA KONINGS: Yeah. Thanks, Keith. So now we're in the third question that was asked. Are there legal and regulatory considerations not yet considered in this initial report that may inform registries and registrars in deciding whether and how to differentiate?

So the comment that was flagged here is #9. This was a comment submitted by the Hunan Academy of Social Sciences and, if I understand correctly, I think it's pointing out that under a Chinese cybersecurity law, there is already a requirement for registrants to provide their real identity. And failure to comply with this obligation may result in the shutting down of the domain name registration service.

And I think the commenter indicates that, as a result of this, ICANN Org should not allow registrants to self-identify, but to require the registrants to provide their true identification, as otherwise there be compliance risk in China. And this was flagged for further discussion by BC and the Registries Stakeholder Group.

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KEITH DRAZEK: Thanks, Marika. Alan, Milton, and Margie I see in queue. Alan, go ahead.

ALAN WOODS: Thank you very much, Keith. Yes, I felt that there … Or should I say we felt that this was something that is definitely worthy of flagging just because it highlights exactly what we've been trying to explain all along. The setup, when it comes to the MIIT verification, is something that is mandated specifically by the Chinese government. It is a database that is run by the Chinese government and, in fact, many would say that it is [anathema] to the very concept of data protection itself.

This a very specific thing, and it is something that occurs without the necessary interventional ICANN policy. And those registries and registrars who believe that applies to them must apply it on their own basis. But while we're suggesting, it would appear from looking at the BC comment here, is that they're saying that this is somehow something that we can apply across the world at large.

But it is absolutely nowhere near it because, again, without the ability for an individual registry or registrar to be able to apply laws that it sees fit in a particular instance, then we would not be able to do what we're doing within the MIIT requirements. So this is actually the perfect example why one law that applies and may actually apply directly to the DNS should not be the subject of policy.

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It should not be actively enforced by ICANN. And it actually creates a much bigger problem because that makes ICANN then, in effect, an extension of the government trying to do that—just trying to force compliance and enforce compliance. Which, at the end of the day, is the responsibility of the government. The government that created that law not ICANN.

So I thought it was a really valid point, not because it says that we shouldn't be doing it, but because it highlights the absolute craziness and what is trying to be suggested by certain people.

KEITH DRAZEK: Thank you, Alan. Milton, you're next. Then Margie.

MILTON MUELLER: I'm just pointing out that, factually, this comment is incorrect. There is nothing in the Chinese real-name registration law—which is actually not part of the cyber security law, but a separate part— that requires differentiation of legal and natural. It requires your real name, so you can't come up with a cute—like, [forerunner] or some other kind of made-up name. You have to use your real name, which would mean your name in your official identity documents in China. There's nothing about that that requires saying whether you're legal or natural. So just a factual name.

KEITH DRAZEK: Thanks, Milton. That's helpful. And perhaps conflating a couple of different issues here in the same comment.

Margie, go right ahead. And then we will move on.

MARGIE MILAM: Sure. I just want to point out the only part were talking about with regard to this comment was the legal/natural person distinction. We're not talking about the other parts of the Chinese law, and thought that if the…

And this just another example of where the natural/legal person distinction comes into play. There are other places where that would be true as well, which is why we were advocating for making the legal/natural person distinction. We're not talking about the rest of that comment. Thank you.

KEITH DRAZEK: Thanks, Margie. And thanks for the clarification. Chris, you're next. And we will then move on. Thanks.

CHRIS LEWIS-EVANS: Yeah. Thanks, Keith. And just to add, I think we discussed this in Phase 1. We were trying to create a data protection policy around WHOIS because, as Stephanie has said many times for 20-odd years, it's been lacking. However, we also need to get it at the right level. And protecting personal information is [certainly] the right level. And differentiating between legal persons was deemed to be within the sort of high bar that's set by GDPR. And obviously that's what we've tried to be aiming at here, and I don't think anyone's advocating for the release of all personal information. Thank you.

KEITH DRAZEK: Thanks, Chris. Certainly not. And thanks for that clarification as well. Okay, Marika. Let's move on to the next item.

MARIKA KONINGS: Thanks, Keith. So the next one that is flagged here's is #12. It's a comment that was made by the INTA, and I'm paraphrasing here. I think they're suggesting that further attention should be given to contractual provisions that registries and registrars could introduce that would basically make clear to registrants that they're responsible and provide indemnification to registries and registrars in case something would go wrong. And this was flagged for further discussion by the BC.

KEITH DRAZEK: Okay. Thank you, Marika. Margie, go right ahead. Thanks.

MARGIE MILAM: Sure. I think what the INTA comment highlights is that we really haven't dug into what kinds of things contractually could reduce risk. And the comment does talk about various contractual releases and things that could actually help in the mitigation of risk so that it makes it easier for the contracted parties to disclose the information and I just wanted to highlight that this an area we could do additional work to increase the safeguards.

KEITH DRAZEK: Thanks, Margie. I see a hand from Alan Greenberg. Alan, go right ahead.

ALAN GREENBERG: Thank you very much. I just wanted to comment on the Registrar comment here saying that this is not the proper place to consider changes to Phase 1 recommendations that have been adopted by the Board. My understanding was that is exactly what were asked to consider. So I'm just a little bit confused if this not a proper place to consider recommendation to changes to policy for Phase 1 because even the letter from the GNSO, which is our guiding document, says exactly that. Thank you.

KEITH DRAZEK: Thanks, Alan. Yeah, so I think there's no question that one of the things we were tasked with as part of this EPDP Phase 2A effort was to review certain Phase 1 recommendations that are now consensus policy, as approved by the Board, to determine whether they needed to be amended/updated/changed, whatever.

And I won't put words in the mouths of the Registrars. I invite them to weigh in. But I think there has been some question and some discussion about scope and whether we are in fact, as a group, looking at the right parts of the existing consensus policy recommendations.

I noted in our last call that I think that we are within scope of what we are discussing here. Of course every group reserves the right to have concerns about the scope or express concerns about the

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scope as we finalize this document, but as a general statement I think we're within scope for the conversations that we're having.

But let me turn to the Registrars to see if anybody would like to speak to this one in response to Alan's question. And then we should probably move on.

Okay, I'm not seeing any hands. Anybody from the Registrars, please?

ALAN GREENBERG: Keith, to be clear I wasn't asking a question. I was just commenting on the curiousness of it.

KEITH DRAZEK: All right. Thanks, Alan. If anybody would like to circle back to this, we can. But in the interest of time, let's go ahead and move on. Marika.

MARIKA KONINGS: Thanks, Keith. So the next one flagged is comment 14 that was made by the BC that notes that NIS 2 legislation might provide further clarity about possible legal exposure for registries and registrars. And this comment was flagged also by the BC for further discussion.

KEITH DRAZEK: Margie, thanks. You're busy this morning. Over to you.

MARGIE MILAM:	Yeah. Well, I mean, I think we've already stated it. Right? That the NIS 2 is something that should be factored into as part of our recommendations. Thank you.
KEITH DRAZEK:	Yeah. Thanks, Margie. Any further discussion on this point? Okay, let's move on.
MARIKA KONINGS:	Thanks, Keith. The next one is item 16, a comment from the GAC. And I think it probably goes to the homework that Sarah helpfully flagged previously about the importance of stating the benefits of releasing data to the public. And I think the BC flagged this, noting that it should highlight the benefits for releasing the data in the public. I don't know if there's a further need to discuss here or just a reminder for groups to do their homework on that so we have a specific language that can be considered for inclusion to highlight what the benefits would be.
KEITH DRAZEK:	Thanks, Marika. Laureen, welcome. Go right ahead.
LAUREEN KAPIN:	Unless I misheard, I think Marika jumped from 16 to 17. And my comment is on 16 which really loops back to the prior issue that was discussed.

And here, I mean, the GDPR actually states this best in terms of proposed language. I think that, speaking from a GAC perspective, it would be perfectly acceptable to just quote Article 14 which talks about "the protection afforded by the GDPR covers natural persons," and in contrast—that's my commentary—it explicitly states that "the regulation does not cover the processing of personal data which concerns legal persons and, in particular, undertakings established as legal persons, including the name and the form of the legal person and the contact details of the legal person."

So we don't have to get really complicated with this. I think we could just actually include the language of recital 14.

KEITH DRAZEK: Thank you, Laureen. So we are on #16 here. I see a response from Alan in chat. So if anybody would like to respond from Registries or Registrars or anybody else like to get in queue on this one, please do. I see it a plus one from Hadia related to recital 14. So if anybody would like to comment on this one. Laureen has, I think, underscored a concrete recommendation here, or a concrete suggestion. Any further discussion on this today? Or should we circle back to it?

All right, I'm not seeing any hands at the moment, but let's note that this is one that we might want to circle back on or should circle back on as it relates to the suggestion. Okay. Thanks, Laureen.

Marika, back to you.

MARIKA KONINGS: Thanks, Keith. So the next one is # 17, a suggestion from the IPC noting that registries and registrars should consider the benefits of embracing a minimum voluntary binding through ICANN Compliance threshold for differentiation in the interest of eliminating the need for varying legislation across the various jurisdictions. And this was flagged by the BC as needing for discussion.

KEITH DRAZEK: Thanks, Marika. Over to our BC colleagues. Margie, go right ahead. Thanks.

MARGIE MILAM: Sure. I mean, I think we can we can do this by writing the benefits language that were talking about earlier, but I do think that it's important to highlight why it would be useful to adopt the guidance.

KEITH DRAZEK: Sounds good. I agree, Margie, that the benefits and the burdens discussion and documentation is an important next step here. Sorry if I cut you off, Margie. Did you have anything else you wanted to add? Okay. All right, very good.

And I see a question in chat. Let's see. There's some ongoing discussion in chat. Folks, if you'd like to get in queue, please do.

I see a question from Becky Burr, one of our ICANN Board liaisons and chair of our Legal Committee. "How do we reconcile ambiguity in recital 14 with the letter from DPAs to ICANN regarding personal data contained in legal person's registration data?" So I think that's an important question. Thank you, Becky, for flagging it. And again, if this something that we're going to consider and further discuss, we should carve out some time to do that. And Becky, I think, asks an important question here.

Margie, is that a new hand or an old hand? I apologize. And then I'll turn to Laureen. Okay. Laureen, go right ahead. Thanks.

[END OF TRANSCRIPT]