
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP – Phase 2A

Thursday, 12 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 Thursday the 12th 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.

We have apologies today from Melina Stroungi from GAC, James Bladel (RrSG), Alan Woods (RySG), and Amy Bivens from ICANN Org. They have formally assigned Owen Smigelski (RrSG) and Amr Elsadr (RySG) as their alternates for this call and any call for the remaining days of absence.

All members and alternates will be promoted to panelists for today's call. Members and alternates replacing members, when using chat, please select Everyone or All Panelists and Attendees

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in order for everyone to see your chat. Attendees will not have access to chat, only View Only.

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 "Affiliation-Alternate" at the end. This will put you automatically at 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 chats, or use any other Zoom room functionalities such as raising hands or agreeing and disagreeing.

As a reminder, the Alternate Assignment Form must be formalized by way of Google Assignment. The link is available in all meeting invites.

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 with 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 for recording. The 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 very much, Andrea. And hi, everybody. Good morning, good afternoon, good evening. I will go ahead and jump right in. So welcome to our EPDP plenary call Thursday this week. It is the second of our plenary calls this week. I just want to note a thank you to everybody that has provided the input, and that we've started the review of the documents before us.

So we're going to jump right in here quickly, but let me just note. As on the previous call, our focus for today's call is on the tables that have been provided by staff that have been included to facilitate review of the recommendation language. We know that further updates might be needed to other parts of the document, and those other updates could be dependent on where the actual recommendation language ends up. If anybody sees anything that you have a concern with, feel free to flag it. But we really do want to try to keep focused on the tables and on the recommendation language.

So we'll move here in a moment to Recommendation #1. I'll hand it over to Marika here in a moment to help us get through that. But I do want to note that we're referring to these as recommendations still, but we note that there could be proposals to change the terminology as it relates to recommendations or something else. And we certainly have that to work through as we get through this.

But without further ado, Marika, I'm going to hand it over to you as we move to the review of the recommendations. And I think we'll move directly to Recommendation 1 unless there's anything else that you'd like to comment on here before we kick off.

MARIKA KONINGS: Thanks, Keith. Actually, jumping a little bit ahead because we have a leftover from our last meeting, there are still a couple of comments we're expected to review in relation to Preliminary Recommendation #5. So if alright with you, maybe we can start there. Hopefully, that [won't take too long and we can] dive right into the table. [inaudible].

KEITH DRAZEK: Sounds good, Marika. Yeah, thank you. And apologies for jumping ahead there. I'd lost the agenda on the screen in front of me. So go right ahead. Thank you.

MARIKA KONINGS: No worries. Thanks, Keith. So the last recommendation that we're reviewing here is input provided on Preliminary Recommendation #5. And as you may recall, that relates to the publication of a registrant- or registration-based e-mail address and the guidance that the group has provided on that, specifically referring to the legal guidance that was received on this topic.

The question that the group asked the community here is, does this guidance as written provide sufficient information and resources to registrars and registry operators who wish to publish a registrant- or registration-based e-mail address. And if not, what is missing and why?

There have been two comments flagged by the BC for further discussion in this context. The first comment is one that was provided by ICANN Org, I think, which basically flags that should the EPDP Team decide to change its recommendation from what

currently is guidance to a requirement, there might be challenges to enforce such a requirement without full access to non-public registration data. And I think the BC has noted that this should be further discussed, noting that regardless of whether this a requirement or not, ICANN Org should have access to any data it needs for compliance purposes.

KEITH DRAZEK: Good. Thank you, Marika. Would anybody like to speak to this issue? Margie, go right ahead. Thank you.

MARGIE MILAM: Thank you, Marika, for summarizing the comment. I actually I have a question for ICANN Org because I believe we, in the phase one report, actually made it so that ICANN can have access to that information. Is that correct? If someone who's more familiar with the Phase 1 report—I haven't looked at it in a while—could confirm that we actually gave them a specific purpose for that, then this comment probably doesn't really make much sense. But if that's not the case, then I just think it's something that we as a group should talk about and if we all agreed to include that into the report.

KEITH DRAZEK: Thanks, Margie. I see a hand from Sarah. Sarah, if you'd like to respond, go right ahead. And if our staff colleagues would like to jump in as well, please do so. But Sarah, go ahead.

SARAH WYLD: Hi. Thank you. I hope you can hear me. Yes, Margie, you are completely correct. Recommendation 1 from Phase 1 #5 talks about Compliance requirements. And so I think that is appropriately covered. I don't think that we need new language at this stage to let Compliance do their job. Thank you.

KEITH DRAZEK: Thank you, Sarah. And thanks, Margie, for the question. So based on that, it seems that we could probably set aside the comment and then move right along. So thanks, Margie, for flagging that; and Sarah for confirming.

Marika, back to you.

MARIKA KONINGS: Thanks, Keith. The next comment that was flagged is comment #4 which is input that was received from the SSAC. And as I understand it, they're providing some further suggestions for registrars who would deploy these kinds of methods, what they might consider, and how to do that. The BC noted here as well that SSAC's recommended research and safeguard should be further explored.

KEITH DRAZEK: Thanks, Marika. Would anybody like to speak to this issue? Margie, go ahead. Thanks.

MARGIE MILAM: Sure. I just was hoping that someone from SSAC could provide a little more information on what they were thinking there. Obviously anything that has additional safeguards is something we should all think about and try to incorporate in the recommendation.

KEITH DRAZEK: Thanks, Margie. So I guess that's a question for Steve or Tara, if they have any follow up or feedback on this one. And I know we're probably putting you on the spot here on this, and if we need to circle back to it as you think about it, that's perfectly fine as well.

STEVE CROCKER: I can speak a little bit, if you wish.

KEITH DRAZEK: Thank you, Steve. Go right ahead.

STEVE CROCKER: Yeah. My thinking is basically that the use of this not yet flushed out completely. There's just more work to do to sort out the details. I don't know how to make this short and sweet. As we've said before, the business of e-mail contacts seems to have a conflation of two separate and quite distinct objectives, one of which is to provide a way of contacting. The other way is doing correlation across registrations. So I think those need to be disentangled and work through quite separately.

KEITH DRAZEK: Okay. Thanks, Steve. I think you're absolutely right that we have, in the early stages of our EPDP 2A work, discussed both of those aspects— contactability and correlation. And I think the focus here at this stage is around contactability. And I know that there have been references to the web form. I note that Sarah has put some text into chat as well. And I see Chris has his hand up. So I'll get to you all in a second. But, look, I think at this stage, the question of web forms is related to contactability. And that's probably the appropriate area for us to focus on at this stage of our work as we look to wrap up this final report. But let me stop there and turn to Chris. Chris, go right ahead. Thank you.

CHRIS LEWIS-EVANS: Yeah, thanks. And reading through this, I found the SSAC comment here to overlap slightly with the GAC comment that, realistically, there are a lot of registrars that are already doing this. Those that provide privacy proxy services already publish a registrant-based e-mail contact, and obviously do so knowing that they're effectively safeguarding their registrants.

So what amuses me a little bit is why this can't just be accepted as being published? This something that a lot of registrars are already doing, so I think following what's been learned from the privacy proxy services should be quite easy to then implement from a registrar basis. Thank you.

KEITH DRAZEK: Thank you, Chris. Would anybody else like to get in queue? Okay, going once. Going twice. I see there's some support for Chris's

point from Margie. And Sarah has a question whether this is in scope for this phase anyway. And I see a hand from Marc. Marc, go right ahead.

MARC ANDERSON: Thanks, Keith. Chris, I didn't quite follow your point. And I think maybe it might be just too early in the morning for me or something, but could you say that again? I guess I didn't quite follow what you were saying or what the point of your comment was. So I guess I'm asking for a clarification.

KEITH DRAZEK: Thanks, Marc. Go ahead, Chris.

CHRIS LEWIS-EVANS: Yeah, thanks. Sorry, probably not clear. Probably too late in the afternoon here. So there are a number of privacy proxy services which are backed by registrars that already publish an anonymized registrant-based e-mail address. Therefore, they're doing that in compliance with GDPR because, obviously, no one would do anything that breaks the law. So there are a number of registrar that are doing this already. So as that being the lowest-level hanging fruit and the lowest risk, as was highlighted in Bird & Bird, I can't see why this can't be recommended as an absolute minimum to do. I hope that was bit clearer. Thank you.

KEITH DRAZEK: Thanks very much, Chris. Sarah, you're next. Go ahead.

SARAH WYLD: Thank you, yes. I also just need to ask for some clarification from Chris. When you say you can't see why this shouldn't be recommended, what exactly do you mean by "this"? This my question.

So the rec that I see on the page here, #5, "Contracted parties who choose to publish ... should ensure appropriate safeguards ..." Yeah. I am fine with that. My concern is that any suggestions that the e-mail address is the only way to do it and web forms are not allowed, I would be concerned about that because I don't think that is a good security choice, and I don't think that kind of recommendation would be in scope.

So that's where I would be very hesitant to get into it. But I do agree that if our recommendation is as it shows on the screen, it seems okay. And I'm not hearing new input as to how it should be changed. Thank you.

KEITH DRAZEK: Thanks, Sarah. Thanks, Chris. I see hands going up again. Chris and then Margie, and then I'll put myself in queue. Thanks.

CHRIS LEWIS-EVANS: Yeah. Thanks, Keith. Looking at the public comments, I would say that there is a consideration we need to maybe think about, which is changing this from a "should" to a "must," making it a recommendation. There are a number of registrars that are obviously happy that this fits in within the law and whether we

want to change that to not exclude web forms. I'd be quite willing to talk that through, but I think this is obviously legally compliant to do so. So we should consider that. Thank you.

KEITH DRAZEK: Thanks, Chris. Margie, you're next.

MARGIE MILAM: Thank you, Chris. I think the question also, and the discussion raises the question of whether it must be public. If you are providing this anonymized e-mail, must be public? And I think that's something we haven't heard any objection to that I'm aware of, and something that we might think of that as part of the recommendation.

KEITH DRAZEK: Thanks, Margie. Thanks, Chris. So I see there are some clarifying questions in the chat. And I guess Sarah's asked Chris, so the proposed textual change would be a "must ensure appropriate safeguards." I just want to make sure that we're all speaking on the same point here. I think, going back to the conversations and looking back to the Phase 1 recommendations, that registrars are required to provide contactability either through an e-mail or through a web form. And I don't think there's consensus on changing that this point, so I think the question is, are we asking for the change of the term "should ensure" to "must ensure"? Or is it something else? I just want to make sure that we're all being clear about what we're proposing here. And there's some additional chat going on.

Alan, I saw your hand go up. Alan Woods, do you want to speak?

ALAN WOODS:

Thank you. It was actually in relation to that point. Where the “must” was going is important. If it was “must ensure safeguards,” that's something I can talk about elsewhere.

I suppose I will raise my point there. Of course, we need to be very careful that we're not assuming that if somebody is doing it, that it must therefore be lawful. Just because somebody has assumed and looked at it and believe that they are not at risk, does not mean that is possible for all other registrars or registries to also do so likewise and be in the same situation with different jurisdictions and everything. It is a huge assumption to make that somebody is doing it, therefore it is lawful because they might still be doing it unlawfully and just haven't been enforced against at this point. So we need to be mindful of that in policy.

KEITH DRAZEK:

Thank you, Alan. Would anybody else like to speak to this issue? I see that Sarah has put some further text into chat. Sarah, would you like to speak at this point? And then I'm going to turn it back to Marika to help move us forward.

SARAH WYLD:

Yeah. Thank you very much. So I just want to make sure that I am understanding all of the suggestions here because I want to. So what Margie was suggesting is that the pseudonymized e-mail needs to be public. Yes, that makes sense. Either they're going to

provide a web form or a pseudonymized e-mail. One of the other must be present in the RDDS. I think that's already a requirement, so if there are changes being proposed similar to what I just said with Chris, I just would like to see them written down so I can fully understand and make sure that I'm responding to what is actually being proposed. Thank you.

KEITH DRAZEK:

Thanks, Sarah. That's a good point. And let's ask for some proposed text so we can actually circle back on this one.

Marika, I'm going to hand this one over to you now to help move us forward. If we need to circle back to it, we can. But let's, maybe on the list, make sure that we have the proposed text so folks can look at it, consider it, and respond accordingly.

MARIKA KONINGS:

Yeah. Thanks, Keith. This actually completes the review of comments that are flagged in relation to this recommendation. So what we'll do is, similar to what we've done for the other recommendations, include the table format in the draft final report so that those that have specific language changes can include them there and others can review and consider those. And of course we would then discuss those at an upcoming meeting.

There was also a section with additional comments. So basically, as part of the questions that were put forward to the community, the group also didn't know if there any other comments or issues you would like to raise pertaining to the EPDP Phase 2A Initial Report. But we didn't actually have any comments that were

flagged here that the group believed required further consideration or discussion, which I think clears the way to move on to reviewing the draft final report.

KEITH DRAZEK: Sounds good. Thanks, Marika. Let's go ahead and jump right to it then.

MARIKA KONINGS: Thanks. So as Keith already noted, we really appreciate those of you that already had a chance to look at this document and start your review of the language that has been included as well as some of the proposals that came out of the discussion of the public comments. So I think we can probably move straight to Recommendation #1.

As Keith also noted, course there are some other sections here in the report that will require updating depending on where comments land. But for now we're hoping that we can focus on the tables that are included, and specifically focus on the recommendation language, and then basically look at some of the other parts at a later stage.

So now we're at the table. The way we've structure these tables is that on the left-hand side you see the initial report language. Underneath it, the suggestions that came out of the review of public comment as well as the mediated conversations in combination with leadership assessment of those suggestions and how these are proposed to be applied or why these have not been applied. Because in certain cases, that might not be sufficient

support detected for taking these further. Or they may have already been covered elsewhere or in another way.

First, we may actually want to look. There were some minor edits that have been suggested to the actual text that has been proposed to the updated language. So that is what you see on the right-hand side of the screen. From a staff perspective, these seem minor and basically, I think, focused on clarifying and enhancing language.

There's one suggestion from the Registries Stakeholder Group that you "could" should be changed to "did," and the GAC has suggested that it might be helpful including a specific reference to the number of the Phase 1 recommendation instead of only quoting the recommendation.

As said, these, from our perspective, seem like minor edits that clarify this section. So unless there are any objections to do these changes, maybe we can just go ahead and accept those. We'll just pause here and see if there are any hands. Of course, this is not final language yet. We're just here focusing on these two items. There are some further comments that we'll be discussing now, but I just wanted to make sure that this didn't raise any concerns from anyone.

I see Chris has his hand up.

KEITH DRAZEK:

Thanks, Marika. Go ahead, Chris.

CHRIS LEWIS-EVANS: Sorry. I don't know what's going on, on my end. Zoom is just not working properly.

KEITH DRAZEK: So was that an accidental hand then, Chris?

CHRIS LEWIS-EVANS: Yeah. It's doing all sorts of weird stuff.

KEITH DRAZEK: Okay. All right. Not a problem. I did see it going up and down several times, so either you were waving at us frantically or having some system issues. So thank you.

Marika, so back to you. Actually, let me just ask. Would anybody else like to speak to this particular issue and these suggested relatively minor edits? If so, please put your hand up. Go ahead and get in queue. If not, I think we can move on.

MARIKA KONINGS: Thanks, Keith. I'm not seeing any hands. I'll continue here. So now we're basically moving on to some of the input that was provided in the table that are more substantive comments.

One thing I did note was that the first comment that the BC provided and the one that the Registries Stakeholder Group provided both seem to refer to the actual preceding section to this recommendation in which some of the positions that are outlined

on this topic. I would like to suggest that we actually park that discussion for now and focus on the language in the table instead.

I would, however, like to maybe put forward a suggestion, and we can maybe start that at a future meeting. But the positions, I think, that we outlined in the report showing the different perspectives on the issues were mainly intended to help inform those providing comments on the deliberations that the group has had and the different positions that existed on the topic.

And, of course, we're now moving towards a final report. So the question is, is it still relevant to have that here together with the recommendations? Or would it potentially make more sense to just remove the narrative part outlining the different positions, only focus on either the response or recommendation language? And instead, have minority statements reflect the different views that the groups have.

As said, I don't propose that we start discussion on that now. It's just something that we wanted to put on the table for you to start thinking about. And think would that be a way to move forward, and we may not have to rewrite some of the sections where it's expressing people's positions. And, instead, you can express the way you like it in the minority statements that would be annexed to the report as it has been done in the previous ones.

So I think—

KEITH DRAZEK:

Marika.

MARIKA KONINGS: Sorry. Let me stop there. I did see some hands go up, so let me turn to Hadia, Margie, and the Marc. I think, as you just said at the end there, perhaps some of this language could be incorporated into an annex, whether it's through a minority statement.

And my thought was, perhaps, the language that we're talking about here could be included in an annex. But in my position as chair, I'd like to keep the report itself and the recommendations as streamlined as possible. So that's just sort of a general state statement from me.

But let's turn to Hadia, Margie, and Marc. Hadia.

HADIA ELMINIAMI: Okay. Thank you, Keith. So I was wondering if it's actually useful to go through the possible suggestions for further consideration and see if, actually, the group supports any of them. We would like to explore the possibility of changing the recommendation to say that registries and registrars are encouraged to differentiate but are not obligated to do so. And the reason, actually, I think this is worth exploring ...

So let me first say that the output does not really differ. Right? So registries and registers who wish to differentiate would do that; and who would not like to differentiate will also do that. So the output is actually the same, but the benefit actually of having the wording "encouraged" points out that this a good thing to do.

And some might say, “Oh, no. It’s not a good thing to do,” but the reason I think it should be considered as a good thing to do—with the appropriate safeguards, of course—is that the regulation actually makes this distinction. Of course the regulation makes this distinction and requires safeguards as well, and also that’s all that we’re saying.

So to just ignore differentiation and leave it as it is ... I think the words do matter and, though the output would be the same, I think it’s better to have such wording. Thank you.

KEITH DRAZEK:

Hadia, thank you for that. We did note that this has been flagged, and Marika has put this in chat also. This has been flagged for further discussion, so I’m going to park that for a moment and then we will circle back to your point. But in terms of the question of, I think, whether the texts that we’re referring to here should be included in the final report or how it should be incorporated—whether it should be deferred to minority statements or what—I think is what we’re trying to get through at this point.

So Margie, I’m going to turn to you and then to Marc. And then we can certainly circle back to the more substantive question. Thanks.

MARGIE MILAM:

Thank you, Keith. I agree with you and the recommendation from the leadership about just taking out the background commentary and keeping the report clean on the actual recommendations. Obviously, each group can put their own spin on the language in

their minority statement, but I think that it confuses it and includes the problematic wording when it's part of the actual report.

KEITH DRAZEK: Yeah. Thanks very much, Margie. And per Marika's intro there, I think it was worth including and helpful and valuable and necessary to include, as we were seeking community input because it helped frame the discussion and help provide insight to potential commenters as to the different dynamics and different perspectives of the group. But as we look to the final report, I think, as I said, to keeping it streamlined and keeping it focused on either recommendations or other input to the Council and to the community. I think streamlined is better. So thanks for that.

Marc, you're next. Go ahead.

MARC ANDERSON: Thanks, Keith. I don't think I have anything else to add at this point. I agree with what you, Margie, and Marika have all said on this point. It doesn't really belong here, and leaving it for minority statements is a much better path forward for everybody, I think. So, I agree.

KEITH DRAZEK: Thanks, Marc. And thanks, Margie. If anybody has any other views, feel free to voice them. Otherwise, I think, Marika, I'm going to hand it back to you.

MARIKA KONINGS: Thanks Keith. Great to hear everyone agreeing. That's nice. Hopefully we can get more of that.

So moving now on to a specific proposal that was put forward by the BC in the context of this recommendation. Namely, their suggestion is to delete the sentence that reads "therefore no changes are recommended, which means that the EPDP Phase 1 recommendation will remain as is."

Following up on the Recommendation 17.3 of the EPDP's Phase 1 Final Report, the EPDP Team was unable to resolve the legal vs. natural issue in Phase 2. I think, in that assessment, you've seen that leadership has already made its position clear on this notion, or its view on that. So I guess it's probably now for the group to hear whether there's support for applying that change or other suggestions for how this issue could be addressed.

KEITH DRAZEK: Thanks, Marika. Would anybody like to speak to this issue? The BC has proposed some texts that ...

Oh, I see a hand Marc. Go right ahead. Thank you.

MARC ANDERSON: Thanks, Keith. I guess I'd like to hear more from the BBC on why they think this necessary. It seems pretty clear to me from reading Recommendation 17 that the issue we were asked to resolve is based on the fact that the ICANN Org study wasn't available yet. And it wasn't available to us again during the timeframe of Phase 2, which is why we have this Phase 2A.

And the issue we were asked to resolve specifically was in our instructions from Council as to whether any updates are required to the EPDP Phase 1 recommendation. And our answer is no, we did not reach consensus that any changes were required. So in my view, I guess, I think we did resolve it and it has been very clearly resolved. But I'd love to hear from the BC any on why they think this change is needed.

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

MARGIE MILAM: Sure. I mean, this the issue we raised when the initial report was being published. It's a question of consensus. Right? The only reason there was support for the 17, at least from the BC perspective—the 17.1—was because it was essentially deferred/kicked out to Phase 2, if you will, after we got the information from the surveys and the work that ICANN Org did.

So what we're really saying is that the way it reads without it is that it implies there's consensus to that recommendation when there simply wasn't. It was merely, "This is where we are right now. We'll revisit in Phase 2, and we'll resolve the issue." It doesn't say, "We'll confirm the Phase 1 report."

So the way that the report reads makes it sound like it was a given that the 17.1, which is the optional nature of the legal/natural person distinction was the default. That's not the way that recommendation is written. And so I think the report would be incomplete if we don't at least include the last part of ...

And now, obviously, the Council will do what it wants once it sees the report, but it needs to understand that there's no consensus for the for fact that there should be no change. And there are many, many groups in this EPDP that believe there should be a change to that. So that's why the report would be incomplete without at least addressing the 17.3 element.

KEITH DRAZEK:

Thanks, Margie. I see hands from Alan Greenberg and then Marc Anderson. And then I'll put myself in queue. So Alan, go right ahead.

ALAN GREENBERG:

Yeah, thank you. This may seem like nitpicking, but we really have a paradox. The recommendation for Phase 1 said, "This will be resolved in Phase 2." Phase 2 punted it to Phase 2A. If we say the recommendation is stands as written, then we are predicting the future that didn't happen. And that's essentially a paradoxical statement.

So I think we have to simply be clear to say, "Phase 1 charged Phase 2 and then 2A with resolving the issue. The issue was not resolved." Now that leaves us in the situation where, as Margie said, if went back to vote on the Phase 1 recommendation, we would get a different level of consensus than we got it at the beginning. We can't do that. We can't change it.

But we simply don't want to make a statement that's patently false in saying "the recommendation stands" which we made a prediction which turned out to be false and has to be clarified in

some way. There's no change in the final outcome. We understand that, but we have to set the historical record correctly. Thank you.

KEITH DRAZEK: Thanks, Alan. Mac, I'll turn to you next. Go ahead.

MARC ANDERSON: Thanks, Keith. And thanks, Margie and Alan. I'm not sure I agree with you, but I appreciate your perspective. I guess I'm struggling to understand what, in your view, would make this resolved. Do you think, since we didn't come to any agreement, that Recommendation 17 should be dissolved? I guess I don't really understand what the implications of this are.

KEITH DRAZEK: Thank, Marc. Alan, I saw your hand go back up. And since that was a follow-up question to you, I'll turn to you directly. And then Volker, I'll come back to you.

ALAN GREENBERG: Yeah, thank you. I would be delighted if we could reverse history and go back and change that and see how the world ... [I'm told] in science fiction there are ultimate alternate dimensions where we could play it out and see how it did. We're not living in those. We can't change Recommendation 1.

All I'm asking is that our statement in the Phase 2A report be clear that Phase 1 recommendation said it would be resolved. It wasn't.

It's an unfortunate situation and doesn't lead to a lot of satisfaction on my part, certainly. But all I'm asking is for the record to state what really happened and not state that a recommendation which falsely predict the future stands. That's all I'm saying.

So to answer Marc, I'm not expecting any different outcome. I just want the record to show exactly what happened, and the fact that we erred in Phase 1. We said it would be resolved. We made a mistake. We were rather optimistic, but it didn't happen. That's all. I'm not asking for any substantive change in how this is going to be treated. Just to have the historical record be correct. Thank you.

KEITH DRAZEK:

Thanks, Alan. Volker, I'm going to turn to you next. And then, Marc, I'll come back to you. And then I'm going to put myself in queue.

VOLKER GREIMANN:

Yes. Thank you, Keith. Just one tiny nit to pick at. I don't think we ever said that anything would be resolved. We said that it would be addressed, and we have addressed it over and over and over and over and over again. So basically, I'm a bit confused why we are assuming that the historical record now is supposed to show that we had, at any point as a working group, agreed to resolve something when all we agreed was to address it. And that we did.

KEITH DRAZEK: Thanks, Volker. Marc Anderson, you're next. And then Mark SV. And then I will put myself in queue. I keep saying that and not doing it, but after Mark SV I'll make some comments. So go ahead, Marc Anderson.

MARC ANDERSON: Thanks, Keith. Yeah, I guess I'm just going to say the same thing Sarah's saying in chat. I'm opposed to the proposed language. I think it has been resolved and we have to ... I get that it isn't resolved in the manner that everybody wanted it to be resolved in, but trying to say that to hasn't been resolved, I think, is doing us and the GNSO policy process a disservice. We've discussed it and it is resolved. And trying to say it is not resolved, I cannot support that and disagree with it.

KEITH DRAZEK: Thanks, Marc. Mark SV, you're next.

MARK SVANCAREK: Thanks. What we're discussing here is sort of a pedantic logic problem, which is meaningful to some people and not to others. I think it's meaningful. And it really comes down to, as Volker said, what did we say in Phase 1? Did we say "addressed" or did we say "resolved"?

So in Phase 1 it was apparently not addressed. Right? It was certainly not resolved. And so if you say in Phase 2A "there is no change," there is no change to "not addressed," no change to "not resolved." Right?

So if the wording was resolved, well clearly it wasn't resolved then and it continues to be unresolved now because there's "no change." No change to "not resolved." Just, not resolved.

Now if the wording was "addressed," then you could certainly say that it has been addressed in Phase 2A, and then this would be moot. So that's the distinction that's being made. Hopefully, the logic of that follows. I don't have that wording memorized. I guess what we'd do is look at what, as Volker said—is it addressed or is it resolved—and go from there. But if it was to be resolved, well, clearly no change to "not resolved" is not resolved. And that's that.

KEITH DRAZEK:

Yeah. Thanks, Mark. And you basically went down the path that I was going to, in that we're hung up and a bit wrapped around the axle on the word "resolved," and that there are different interpretations of what "resolved" means from different perspectives. And understandably so.

And so I think that maybe we can get some additional input from staff in terms of the language, the specific language, while we're wrapping up this conversation. And then perhaps we should take this to the list for further wordsmithing as a possible path forward.

I think the key question here is around the term "resolved" and what that means to various folks. Is there a way to acknowledge what has happened in the past, per Alan Greenberg's comments, while also indicating—I think quite clearly—that this group has not reached consensus to change what was in the prior recommendation? So I just want to try to find a path forward there.

I have Margie, Brian King, and then Alan Greenberg. And Mark SV, I think that's an old hand.

So, Margie, you're next.

MARGIE MILAM:

Sure, thank you. I did put in the chat the actual language to the 17.3. It does not talk about "addressed." It talks about "determined and resolved." So let's not use incorrect language here, now that we have the language in front of us. I do think that this no different than we were in Phase 2. If you think about what happened in Phase 2A, I guess, of Phase 2 where we had a number of recommendations and some of them had consensus and some of them didn't.

So I think that's all I'm asking for, is to have the recommendation not be written in a way that assumes there's consensus to that statement. There is no consensus to that statement. That doesn't mean it's going to change anything. The Council will do what it did, as it adopted the last report, even in areas where there was no consensus. But it's an indication of support. And that's important for the community to know. It's important for the Board to know.

And so that's all we're asking for, is just to be very clear about the consensus levels that relate to resolving the issue of whether or not the natural/legal person distinction should be made.

KEITH DRAZEK:

Thanks, Margie. And thanks for providing us with the actual text. That's very helpful. Brian, you're next. Then Alan Greenberg.

BRIAN KING:

Thanks, Keith. I'm looking at the Phase 1 Recommendation 17 and just noting that Recommendation 17 had three part. One part was that registrars and registry operators are permitted but not obligated. And another part is that the team will determine and resolve the issue. So noting that that's a separate part of the recommendation means that permissive differentiation is not the end state. If it was we wouldn't need that separate and distinct point. So you don't just have the first point. And the third one doesn't go away if it's not determined and resolved. The EPDP team will determine and resolve. That's separate from the permissive differentiation.

So how we write it? I'm inclined to agree with Margie that it makes sense to say that it wasn't determined and resolved. And I don't think it just means that the third part of that Phase 1 recommendation goes away because it's separate. It's separate and distinct from the permissive part of the recommendation—the first part. Thanks.

KEITH DRAZEK:

Thanks, Brian. And again, I think the point here to underscore is that this term “resolved” means different things to different people in this context, and that that's sort of where we're having this challenge.

I have Alan, Marika, Marc, Alan Woods. And then we need to probably wrap up on this one. Alan.

ALAN GREENBERG: Thank you very much. By the way, in a comment I used the wrong wording for Recommendation 17. I was looking at a slightly earlier version and it did change significantly in the very final version.

I think the last comment covers it. Yes, we have not determined it. In Recommendation 17.3 we said we would. We can't say that stands. That's all I'm suggesting, is that we make the historical record clear that we failed to do it in Phase 2 and Phase 2A.

Some people care about these things and will actually go back and read the report and will not listen to all of our transcripts. Amazing as that may seem, someone may not want to listen to all of our transcripts to find out what we thought. We just have to make sure the report is clean and states what it did because it does imply ... The level of consensus presumed certain things.

As I just mentioned, the penultimate version of this report did not say "determine and resolve." It said "discuss." There was a lot of discussion that went on during the end of the Phase 1 process which changed the words to "determine and resolve." And that didn't happen. We need to make that really clear. That's all.

KEITH DRAZEK: Thank you, Alan. Marika, Marc Anderson, Alan Woods. And then we'll move on.

MARIKA KONINGS: Thanks, Keith. I thought it was just worth—as several of you have pointed to the fact that this was a three-part recommendation—to also highlight that the second part of that recommendation was

the request [inaudible] to undertake a study on this topic and investigate a number of specific questions.

Now our read, or at least from a staff perspective in the way this recommendation is really structured as 1) is where we currently stand, 2) is expected to help inform further considerations to determine whether or not changes are needed to the recommendation that was developed in Phase 1; which basically is 3) where the group is at, having reviewed this study, having had further discussions, and having intended to address the question if or not further changes are needed as the Council asked.

And whether or not that is resolved is not something I think staff should opine on. But I just wanted to bring the perspective of the three steps that make up this recommendation and, at least from a staff perspective, how that ordering—at least we thought—worked.

KEITH DRAZEK:

Thanks, Marika. Helpful, as always. Marc Anderson, Alan Woods, and then we will move on to the next item.

MARC ANDERSON:

Thanks, Keith. I was going to say something similar to Marika. Recommendation 17 is a three-parter. It gives the initial recommendation we all know so well. It tasks ICANN Org to undertake the study. And then this last part, three, says “determine and resolve the legal vs. natural issue in Phase 2.”

The language there doesn't clearly say what the issue is. As I recall, the issue was that legal/natural study was not available. And as I mentioned earlier, it was not available in time to be considered in Phase 2. Thus Phase 2A. But I think we have very clear instruction from the GNSO Council on what that issue is and what the issue is where we're expected to discuss. I put a link to it, but everybody should be familiar with it because it's what we've been working against for all of Phase 2A.

And it's included in the language here in the staff draft for Section 3 up on the top. Council instructs us to consider whether any updates are required to the Phase 1 recommendation on "Registrars and Registry Operators are permitted to differentiate between registrations of legal and natural persons, but are not obligated to do so." And here in this recommendation, staff has language in here that clearly indicates that we did not reach consensus on recommended changes. That is a resolution. And again, I get that it's not the resolution everybody wants. But that is a resolution. I think it's misleading and doing us all a disservice to try and claim that it's not resolved.

KEITH DRAZEK: Thanks, Marc. Alan Woods, over to you.

ALAN WOODS: Thank you very much. I'll be very brief because I don't want to repeat what Marc said there. But I completely agree. I think the first thing we need to look at is—and I think Marc actually asked the question—what is the issue to be resolved? And I think the

way that #3 is being read as if it isn't a standalone and independent concept. It does not do justice to what the recommendation is. It is placed at 3 because it refers to the preceding. And the preceding is specifically saying 1) a recommendation is made, 2) there is an outstanding elements that we need to review, and 3) because it's not put there for the good of our health, based on that element that needs to be considered, then can we resolve it.

And from where I'm standing, there was a pretty good resolution in Phase 1 because it was approved by us, it was approved by the GNSO Council, and it was approved by the Board. That was the resolution. And now, following the GNSO process, the question is ...

There is a recommendation. There is a policy there that needs to be implemented. But there is a recommendation. Now the question is, do we need to change that? And I think it exactly reflects what the GNSO Council has asked us to do in this particular instance. So let's pretty much ask the question at this point. Is this just another way of asking can we have a Phase 3 so that we can ask this question again? Because as I see it, this is resolved.

And I think I will ask Margie. If that is the intention that you want—to again ask the question—well then, please, just say that and then we can have that discussion. But my answer to that would be if there is a reason why we need to go back in a recommendation that was made in Phase 1, well then put out those reasons. Let's not just string this particular one ad infinitum. There are issues reports. There's a process in the GNSO, and I would ask you to

follow that process as opposed to breathing more life into something that we've already resolved once and which we are now [attempting] to resolve again for the second time.

KEITH DRAZEK: Thanks, Alan. Margie, I'll turn to you. Alan asked you a question. And then, Alan Greenberg, I see your hand. But we really do need to move on, folks, so let's try to keep it brief. Thanks.

MARGIE MILAM: Sure. Just to answer the question, I'm not advocating for a Phase 3. No. Nobody wants to do this. We understand everyone's perspectives. But that doesn't mean that the report shouldn't accurately describe what happened, and that's all we're asking for. And the Board and the Council approved Recommendation 17 with all three parts, so they all also agreed that it was to be resolved in this phase.

So all we're saying is make sure that the report is accurate that we were unable to resolve the issue. Then the Council will do whatever it wants and the Board will do whatever it wants. But no, I am not advocating for a new phase. We've essentially done this work and it's now time to put it into the report.

KEITH DRAZEK: Thanks, Margie. And thanks to Alan Woods for that question. Alan Greenberg, you're next and last. And then we will move on.

ALAN GREENBERG: Thank you. Margie said what I wanted. Right? I somewhat take offense to the implication that we're asking for a Phase 3. All we're saying—all I'm saying, anyway, and I think Margie's saying—is that we are reaffirming Recommendation 17.1, or part one. We are not doing all of Recommendation 17, so we should simply say that and note that 17.3 did not get resolved as it was intended. Thank you.

KEITH DRAZEK: Thanks, Alan. And I think your point about looking at Recommendation 17 in the multiple sections is a possible path forward. But I think we need to take this one to the list or offline conversations to try to find some text that would I think clearly recognize that the group has not reached consensus to change Recommendation 17.1. Right? But also to include some acknowledgement or language related to this issue of resolving the issue. And some of that may need to be taken to minority statements, but I'd like the group to think about how we might accomplish both of those items. I mean, the key point here from a recommendation point and a communication from this group to the Council and to the community is that there was not consensus to change Recommendation 17.1. And different groups are going to have different perspectives about what the term "resolved" means in this context, as I noted. But I think we need to take this one offline and do some wordsmithing and develop some additional proposed text because nobody is clearly happy with either one of the choices that we have before us.

Stephanie, I see your hand. You haven't spoken yet. I'll turn to you briefly, please. And then we need to move on in the interest of time. Thanks.

STEPHANIE PERRIN: I typed it in chat, Keith, and I'm happy to take it to the list. I do think that fiddling around with the word "resolved" is not helpful. I think making a very clear statement that there was disagreement, depending on the perspective that the parties were arguing from—as a user of the data, as someone liable for the data, as a controller, and someone representing the individuals whose data might be caught up in this—is useful color to bring to this disagreement. Thanks.

KEITH DRAZEK: Thanks very much, Stephanie. All right. So we're going to take this one to the list. Hopefully we can develop some language that brings us closer together and acknowledges the current state as well as perhaps some historical context. So with that, Marika, I'm going to hand it back to you. Let's move on. And we have just 30 minutes left on our call today.

MARIKA KONINGS: Yeah. Thanks, Keith. And maybe instead of the list, if people can collaborate in the Google Doc and use the table to provide their suggested language—the orange table. As people start thinking about that, one suggestion—at least from the staff side—could be just to remove the last part of that sentence so it would only say, "Therefore, no changes are recommended." And then, of course,

everyone in their statements can opine [inaudible] [resolvedness] of this or not.

There were no further specific suggestions made in advance of the call. I do note that ALAC, I think, put in a comment. I think that was during the call, but I believe that basically was part of the previous conversation that we just had.

So I think that takes us to the issue that Hadia raised as one of the proposals that we flagged, or suggestions that we flagged, as requiring some further input from the group to assess whether or not there will be support for considering that further. And as said, it's one of the suggestions that came up in the context of the public comment review that, I think, took a bit of a different focus on the issues and actually looking at the Phase 1 recommendation and to consider, instead of saying "may differentiate," whether it would be possible, recommendable, or advisable to maybe change this to "would be encouraged to differentiate."

And I think Hadia already explained are introduced why, at least from an ALAC perspective, they think that would be important and helpful. So I think the question here now is: is there support for considering that further and for looking at potential changes to Phase 1 that would focus on kind of encouraging differentiation instead of only saying "may differentiate."

KEITH DRAZEK:

Thanks, Marika. Brian, I see a hand from you. Go ahead.

BRIAN KING: Thanks, Keith. I just wanted to comment. I was afraid I might have heard Marika say that we should just say that “no changes are recommended,” and our heads exploded when that went into the initial report. So I just wanted to flag that that language is not going to be acceptable, but I think enough has been said here already about how we could explain what happened here. Thanks.

KEITH DRAZEK: Thanks, Brian. So that was a reference to the previous discussion. Noted. And we'll take that up. And as Marika noted on the previous discussion, let's do it in the Google Doc rather than on the list, to try to keep everything together.

So, switching back to this topic, would anybody like to speak to this? Hadia mentioned or brought up the topic earlier, and so I'd like to open the queue at this point. Okay, would anybody like to get in queue?

All right. So is anybody opposed to or supportive of the inclusion and incorporation of the terminology “encouraged to”? Anybody have views on that? Alan Woods, go right ahead. Thank you.

ALAN WOODS: Thank you, Keith. Just purely for the record to say no, obviously, we do not support that. We believe that would be an opinion and it has no place in a recommendation and should be in a minority report if they still see fit to do so. Thank you.

KEITH DRAZEK: Thank you. Would anybody else like to get in queue? Alan Greenberg, go ahead.

ALAN GREENBERG: Yeah. I'll simply say that we have different opinions of what should be in a report and what shouldn't. There has been significant pushback on using the term "best practices" which is an implication that we encourage. The statement has been made that there are jurisdictions where best practices could end up resulting in penalties. We have asked for where those jurisdictions are and haven't had an answer on that. It would be really useful to understand that.

So, yes, I support that we say "encouraged." It's not as strong as a best practice, but it avoids the word "best practice" which, clearly, some people find offensive. So I would think it's a reasonable middle ground.

KEITH DRAZEK: Thank you, Alan. Would anybody else like to get in queue? So I'm not seeing agreement to include the term "encourage," and there's not a whole lot of activity in the queue. A little bit in chat. But it doesn't appear that there's likely to be consensus on including the word "encourage" at this point. Would anybody else like to speak to this issue?

All right, Marika. I'll hand it back to you. Thank you.

MARIKA KONINGS:

[inaudible]. As we move on to Recommendation 2, I just wanted to mention [inaudible] in response to Brian's comment that, yes, we are aware that there were concerns to that language in the initial report. But at least we had understood that it was mainly a concern because it was labeled a recommendation. As you will have hopefully noted, we've changed the heading here to basically make it a response to the Council's instructions. So this would not be labeled a recommendation that would be sent to the Board or anything like that. This would purely be in the report as a response to the Council's instruction on this specific question.

Although, for convenience, we'll probably still keep on referring to this as Recommendation 1. But we just wanted to make sure that that's clear. And I think that probably also helps [fully introduce] what we've done for what was a preliminary recommendation now, it's now also labeled or, of course, open to changing that proposal to the GNSO Council because, as you may recall, there were some concerns as well that labeling this a recommendation might create an impression that it would create new responsibilities for the Council which was not the intent. So again, even though we may refer to this as Recommendation 2, it's not going to be labeled ... Or the proposal is that it [will] be labeled as such, but it really will be a suggestion and would be a proposal that would be provided to the Council.

So here, also, we've made some updates based on the different suggestions that were made in the review of public comments, as well as the mediated conversations. This was also a topic that was specifically considered and discussed, so there is some language that has been proposed here. Again, what you see here on is, on

the left-hand side the original language; on the right-hand side, in bold, new language that has been suggested; and in strike-through, language that would be deleted.

And so here we also have a couple of comments that have been provided by different groups. The first comment here is from the BC. And I'm not sure if I understand it correctly because, on the one hand it seems to suggest support for the updated language which basically recommends that the Council would form a scoping team once NIS 2 is adopted and implemented, or once implementation is clear, so it's able to assess whether or not further policy development is warranted.

While, on the other hand, the comment is also referring to restarting the EPDP. So I just want to make clear that the language as written, or the proposed language, does not make any assumptions about what the Council would do after the scoping team completes its work. It's not prevented from initiating a new EPDP, but there are no assumptions here about whether that happens or not. That's really dependent on the review of NIS 2 and the impact on existing requirements or the need for a potential harmonization or avoiding a fragmentation.

And so the second comment is related. So it may make sense to maybe introduce that one as well so the group can discuss those jointly because the Registries Stakeholder Group is proposing to actually delete the second paragraph and not recommend to the Council that it forms a scoping team at the appropriate time. But instead, they're suggesting removing the second paragraph but adding a sentence that says, "... and consider, following adoption

and confirmation of EU member state implementation, whether policy is required to address NIS 2.”

And as I have noted before, at this point it would be a suggestion ... Or you can still call it a recommendation, but it would basically be a suggestion to the GNSO Council that even if the Council adopts this, it doesn't create an obligation the Council, similar to how consensus policy works. And the current language clearly says “encourages.” So, again, this is a suggestion that the EPDP team would be making. But at the end of the day, the decision on whether to follow the advice and whether or not to form a scoping team or initiate an EPDP remains firmly with the GNSO Council, of course following the procedures that are in place.

So that's all the input we received in advance. So, of course, happy to hear what the group thinks.

KEITH DRAZEK:

Thanks very much, Marika. And happy to open the queue at this point. And I think one of the discussion points that we had previously on this subject was the acknowledgement that ICANN Org does have a role to play in the monitoring of regulatory developments as it relates to the impact of domain name policy, gTLD policy, in the context of the GNSO. So I think that having that reference and the acknowledgement that ICANN Org and that there ought to be coordination between the GNSO Council and ICANN Org on that particular point would be helpful. So I just want to note that from my perspective.

But let me open the queue on this. So we've got input from the BC and from the Registries Stakeholder Group. So if either of you would like to take the lead, go for it.

I see, actually, a hand from Stephanie first. So Stephanie, go ahead. Then Matthew Crossman. Thanks.

STEPHANIE PERRIN: I'd just like to point out that although I posted the comments of the European Data Protection Supervisor on the draft reg, in our discussions we have not addressed any of his views on this matter. And I expect that when the regulation is finalized, there will be comments from the DPAs. Now I understand that ICANN has a long history of ignoring the DPAs and their views on what goes on with its WHOIS registry.

However, since we're trying to comply with the GDPR and we can expect cases to arise after this regulation is passed, I think we should at least reflect that perspective in any comments we include here on reopening this issue once that regulation passes because our examination of it has been totally one sided from the viewpoint that this regulation is going to give us back the old WHOIS. I'm speaking in rough terms. Thanks.

KEITH DRAZEK: Thanks, Stephanie. Matthew, you're next. Go ahead.

MATTHEW CROSSMAN: Yeah. Hi, everyone. I guess just to add a little bit of context for our proposed edit. First, we really appreciate the staff's rewording here. I think this nicely captures a compromise that we had on the table coming out of our mediated discussion, to have this as language in the report but not as a recommendation. So, I appreciate the work in drafting this up.

And we are willing to support flagging this to the GNSO Council as something to monitor. But we made our suggested edit because we think there's an important distinction here between flagging an issue versus telling the GNSO what they need to do with it. And for the latter, our view—as we've said—is that we should trust and rely on the existing GNSO processes to work as intended, as it does for all other policy work; and that it's not our job to get ahead of that process.

So we're hopeful that this kind of strikes a nice balance between giving some of the groups ... Some of the things we heard in the mediated discussion was that groups were just looking for assurances that this was something that the GNSO would be aware of and considering. So I'm hopeful that this strike a balance between providing those assurances and putting the GNSO Council on notice that this group has done our due diligence.

We recognize that this may be an issue and the future but still respects the established GNSO process of considering these issues and considering whether further policy work is needed. Thanks.

KEITH DRAZEK:

Thank you very much, Matthew. And, look, on this one it feels to me like we're starting to come together on this particular point, which I think is a really positive thing. And grateful to Melissa and the conversations that we had—the facilitated discussions—for maybe helping us move forward on this one. I think the explicit callout and reference to NIS 2 as a potential future impact worthy of monitoring and potential consideration or reconsideration down the road is, I think, a positive step. It's something that I've been, I think, acknowledging from the early stages of this process. Directionally, what we see in the proposed directive is meaningful and potentially impactful to the work of ICANN and the GNSO. And I think that what we have here, proposed, helps us move in that direction. So I hope others can get behind this and move to include some reference along these lines in the final report.

Would anybody like to speak to this issue? Anybody else like to get in queue? We have 15 minutes left on our call today.

Marika, go right ahead.

MARIKA KONINGS:

Yeah. Thanks, Keith. I think we have to realize that, of course, for some, some of the suggestions they may not have seen yet. So I would like to encourage everyone to look at the Registries Stakeholder Group proposed changes and provide your feedback in the table. I'm guessing we may need to come back to this so people can digest what is here as well as what is being recommended before we make further updates here.

KEITH DRAZEK: Yeah. Thanks, Marika. Very well said. And absolutely, we're not putting a pin in this one yet. But I think that the proposed text and the ongoing conversation has been helpful.

So with that, I don't see any new hands. So Marika, let's go ahead and move on.

MARIKA KONINGS: Thanks, Keith. I think with that we can move on to Recommendation 3. And as some of you have noted, this table does not include any proposed updated language yet. This is not because we think that the initial report language should remain as is, but it's mainly because we need some further input from the group on the different suggestions that have been made in order to be able to develop a proposed updated language for review.

I do note that, in the comments provided, the BC has put forward a specific proposal here in relation to the RDAP “kind” elements that came up during the review of public comments. And similarly, the Registries Stakeholder Group has indicated that it's open to discuss alternatives. So I think we would like to hear more from the group, especially if that path is followed—the RDAP “kind” element—what would this need to look like in the form of a recommendation? Who would need to be directed to do what? Because I think that's, at least from our perspective, still not exactly clear.

So any kind of input the group has on that. Also, if you believe that this a path you think is worth pursuing or are there still other paths that the group haven't considered yet, I think we would like to hear

them. An again, based on that we hope to be able to provide some more specific language for the group to look at.

KEITH DRAZEK: Thanks very much, Marika. Alan Greenberg, Mark SV, and Marc Anderson. Alan.

ALAN GREENBERG: Thank you very much. As I noted in my comment, I really think we're not going to make any progress if we can't separate out the various sections. My current assessment is that we might come to consensus on the existence of an element. We are not likely to come to consensus on the various uses of the element, and certainly not on some of the more onerous ones.

But by linking them all together, I agree with the Registry comment saying we can't support it as written. But I think we may be able to support it if we talk about the elements separately. If we consider it as a package, then we're going back to the same discussion we had last time, ad infinitum, that by saying we support the existence of the element, we're really implying that we want it used in certain ways and will mandate it requiring contractual changes. And that's not ...

I think we need to separate it out, and we may come to closure on it. If we don't separate it out, we're going to be going in circles forever. Thank you.

KEITH DRAZEK:

Alan, thank you very much for that. And I agree with you. And I think we also need to be cognizant of the distinction between policy recommendations and implementation work. But I support what you've said. I think we need to focus on what we can achieve, where we can reach consensus, and acknowledge, I think as early as possible, where further detailed discussion about obligations or uses or contractual changes is going to potentially prolong the discussion without much benefit at the end. So thanks for that.

Mark SV then Marc Anderson.

MARK SVANCAREK:

Thank you. Marc Anderson probably should have gone ahead of me. So if we're specifying who would do this, there is an existing technical RDAP Working Group, and they work on various things that are put forward in the policy. That's who would do this, you know. They would specify how an existing field could be used or standardized, so long as they're given the appropriate guidance by the policy.

My question to Marc Anderson is, do you agree that's the right group? But also, do you think ... What level of recommendation is required in order to unblock them? Because they're not going to be making any policy. If we give them guidance that, "Here's an optional element. If the option is taken, here's how it should be used," is there sufficient language here to allow them to take action on that or not? Because whatever the minimum language to unblock them is, that's what I'd like to see here. So I defer to Marc on how that works. Thanks.

KEITH DRAZEK:

Okay. Thanks, Mark SV. Marc, I know your hand went up and I note that the Registry comment here says “flagged for further discussion ... can't support as written, but would like to discuss alternatives.” So if there are alternatives to discuss, then it would be great to hear about those. But also, I think Mark SV asked a directed question to you about the RDAP Working Group and what policy language we would need to consider that would allow that group to take on next steps.

So, Marc, over to you.

MARC ANDERSON:

Thanks, Keith. So a couple things there for me to unwrap. I'll start with Marcus V. You know, Mark, I agree. The RDAP Working Group would be a great place to send this for implementation. As far as direction to that group, I guess the short answer to your question is, no, I don't think we yet have language that's clear enough for them to be able to implement something. Specifically the Recommendation 3 language. In Recommendation 4, there's also a recommendation that overlaps slightly with Recommendation 3. But in Recommendation 4 best practices, there's a recommendation for a standardized RDAP element.

And I think that is closer to being something that could be directional for the implementation of this, which sort of dovetails me a little bit into the reason why I raised my hand. And that's responding to the RySG comment. I apologize. Just making the deadline for today's call, we had some discussions about this but

weren't able to finalize a proposal for new language. But we are still working on that and will supply that to the group as soon as we have something that there's agreement on. So we're still working on that. And I guess I'll give that as a teaser.

One last point I do want to make, and that's on the "kind" element. We have homework due Friday on the mediated conversations. And as part of that homework, I've included input on the "kind" element. I guess there's a little bit of a spoiler alert that I don't see the "kind" element as being a good fit for what we're trying to do here. I really see that as a square peg/round hole kind of thing.

I've drafted responses on why it's not a good fit. There are certainly other ways this could be done, and the implementation of that is much better left to an implementation group not a policy working group. But that will be included in the homework responses due on Friday.

KEITH DRAZEK:

Great. Thanks very much, Marc. And certainly look forward to the Registries Stakeholder Group's input on the alternatives that you noted are under development. So ideally, if we could see that prior to the next call, that would be idea. So thank you.

And, look, I acknowledge to everybody that we're on a tight deadline here and there wasn't much time between Tuesday and Thursday, obviously, to be able to do all the homework. So I really appreciate the time and effort that folks are putting into this,

Marika, I see your hand. And then we have about five minutes left on the call.

MARIKA KONINGS: Thanks, Keith. Also, thanks to Marc for volunteering to put [inaudible] with this one. I was actually just jumping on the homework and mention from Marc because we had some questions from some groups. And I've also seen some comments in the homework document in relation to the benefits and operational concerns where people kind of are saying, "Well, we don't know how to describe the benefits if we don't know what we're recommending," but I think maybe it's helpful to kind of explain because that, at this point, is not relevant.

What I think we would like groups to do, if you're advocating for differentiation—whether it's because of you want a requirement, you want to standardize a data element—I think we would like you to explain how that would help you.

So you can basically explain, if there is a standardized data element that would do X, Y and Z, this is how it would benefit me, the community, these groups. If we would require differentiation, this what the benefit would be. So I don't think it's about kind of linking it very specifically to what is being discussed, but you can basically translate what the benefit would be in relation to whatever proposal you think should be considered.

So I just wanted to clarify that because I think some groups struggled with that. And you see here, I think it's the SSAC comments that said, "Well, we don't know what the data element would do, so it's difficult to describe the benefit." But I think it's basically the other way around. You need to advocate for what the

benefits would be if there would be a standardized data element, and it would behave in a certain way.

So again, I think for others it would be then easier to understand why something is so important and maybe hopefully would convince some as well that it is worth kind of pursuing some of the directions that are being considered.

And if I may take the advantage as well, as I think we're close to wrapping up. From the homework perspective, we know we had little time to look at the tables we put in for the three recommendations, so please keep on looking at those and provide your input. Factoring in, please, the conversation that we had today here. I think we had a couple of minor language edits that were agreed, so we will apply those changes. For the rest, I think we'll wait for further input. But again, we're really hope that by working through the Google Doc, you're all able to kind of come together and find common areas of agreement. And then the basis of that, we can, of course, make further updates.

We have worked as well on the table for Recommendation 4 that we discussed earlier this week. I have seen, as well, that there have been some language suggestions on the list, so we will actually incorporate those and then post that as well in the Google Doc so, again, the groups can continue working there.

We'll also include the comment table for Recommendation 5. I don't think, from a staff perspective, we have any specific suggestions based on what we heard today. But again, I think some groups indicated that they will be working on language. So please use the Google Doc and, of course, feel free to post on the

list if you have included specific proposals there or to get the conversation going.

So again, as Keith noted, we do have limited time, so we will really rely on all of you to review language that's being proposed and work collaboratively together so that we hopefully can come to a final, agreed language that would go into the final report.

KEITH DRAZEK:

Thank you very much, Marika. And thanks, everybody. We've got two minutes left. I just want to, again, sort of reiterate. As we get into this final stage of finalizing the report, please resist the urge to get into nuanced detail that might be implementation questions or things where we likely won't reach consensus or where it could further create division. Let's try to remain focused on the relatively high-level policy recommendations rather than perhaps the "how" things might be implemented. I think that's an important consideration for us as we look to finalize this particular document at this particular time.

And so let's look for where we can agree on general policy recommendations or acknowledgement of our discussions. But doing this homework would be really helpful.

Alan Greenberg, I see your hand. If anybody would like to get in queue, please do. Otherwise, we'll move to wrap up.

Alan

ALAN GREENBERG: Yeah, thank you. Just a very brief comment. We've had several times today where people have not commented on what we were saying, but on what our motives were for saying it. And I really prefer people not to try to look into my mind and understand why I'm doing something, but commented on what I'm saying. And [obviously] for everyone else, also. Thank you very much.

KEITH DRAZEK: Yeah. Thanks, Alan. That's a fair point. And so just a request to everybody. Let's keep focused on the substance and the facts rather than perhaps impugning motives.

Okay. We're at the bottom of the hour, so with that we will wrap up. Our next call is on Tuesday at 14:00 UTC. Thank you all in advance for all the continued work you're going to do in terms of homework and finishing off the assignment so we can keep moving forward. So with that we'll wrap up today's call. Thanks, everybody.

ANDREA GLANDON: Thank you. This concludes today's conference. I will not disconnect all lines. Have a wonderful rest of your day.

[END OF TRANSCRIPT]