
ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2A
Thursday, 20 May 2021 at 14:00 UTC

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ANDREA GLANDON: Good morning, good afternoon, and good evening. Welcome to the EPDP Phase 2A Team call taking place on Thursday, the 20th of May 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're only on the telephone, could you please let yourselves be known now? Thank you. Hearing no names, we have apologies today from James Bladel (RrSG), Matthew Shears (ICANN Board), Brian Beckham (Co-Chair), Keith Drazek (Chair), Margie Milam (BC), and Volker Greimann (RrSG). They have formally assigned Owen Smigelski (RrSG), León Sanchez (ICANN Board), Philippe Fouquart (GNSO Council Liaison), Steve Del Bianco (BC), Matt Serlin (RrSG), and Theo Geurts (RrSG) as their alternates for this call and for the remaining days of absence.

All members and alternates will be promoted to panelist for today's call. Members and alternates replacing members, when using chat, please select "all panelists and attendees" in order for everyone to see the chat. Attendees will not have chat access,

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only view chat access. Alternates not replacing a member are required to rename their line by adding three Zs to the beginning of their name and in parentheses add your affiliation—alternate. This will automatically push you to the end of the queue.

To rename in Zoom, hover over your name and click Rename. Alternates are not allowed to engage in chat, apart from private chats, or use any other Zoom room functionality such as raising hands or agreeing and disagreeing. As a reminder, the alternate assignment must be formalized by the way of the 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 Statement 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 Philippe Fouquart. Please begin.

PHILIPPE FOUQUART: Thank you, Andrea. Good morning, good afternoon, and good evening, everyone. As Andrea mentioned, in the absence of Keith and Brian, I'll be chairing this meeting. Before we go to the two substantive items that we have on the screen in the agenda, I

would just like to reiterate and set the scene for these items. Just refer back to [Keith's] e-mail on some of the responses that Keith provided.

Maybe I should start with Caitlin's e-mail just yesterday and the pointer to the draft version of the initial report. You will see that there are placeholders for the recommendations/guidance that this group would come up with, not to defer from the substantive work, but if you have a moment to have a look at that, I think that would be helpful. And it's also a call to just being pragmatic moving forward to work on the text at this point. That leads me to the timeline and the delivery date for this report, which is on the 31st of May. That's a hard deadline.

I think there was a question about any remaining items where consensus might not have been reached. Those will be put as questions in the report, if any. There is no plan for a project change report at this point.

There was a question on the duration of the public comment period of 40 days normally, as you would know. There is some leeway up to a point. As Keith mentioned, we have five-day flexibility with this. But we should stick to schedule and that's exactly, that's all together, 45 days to accommodate the 71 meeting.

Regarding the minority statements, I think that was a question. What I refer to as remaining items, those minority statements will be kept for the final report and not for the initial report planned for May 31st.

Fourth point that I'd like to mention would be to refer to Org's e-mail on May the 17th. I think that will be necessary for our discussion on item four. And notably, on what guidelines means with regard to Registry Agreement or Registrar Accreditation Agreement mean or not, for that matter, and that's a discussion that we will have in terms of incentives, etc.

I will conclude this introduction by saying that there will be an update to, tonight my time, Council call by Keith and myself, and obviously Council is looking forward to do that. With this, I'll turn to Caitlin for the item three unless there are any questions on this. Okay. So moving on. Caitlin for item three on the feasibility of unique contacts.

CAITLIN TUBERGEN:

Thank you very much, Philippe. Earlier this week, the support team distributed a message in response to this question that was included on the agenda circulated on Monday that we didn't get to on Tuesday. But in short, on the feasibility write-up, both Alan Greenberg and, I believe, Mark Sv had provided comments about their needing to be more information regarding web forms because the way that Recommendation 13 from Phase 1 was worded doesn't provide enough information regarding web forms. And web forms as working today, at least some members have noted that, they're not working as intended and may need some updates.

We asked for specific proposals about what can be included in the initial report text. With regard to specific details or any draft text that could be included in the guidance around web forms that

might be given to the Phase 1 IRT, but to date, we haven't received any specific proposals. So at this point, what we could do is the support team could draft some text noting that there were concerns with web forms and their functionality. Though some members disagree that this is not in scope and there aren't any issues with the functionality and put it out as a question for the public comment for folks to come forward with specific proposals about web form text or what may be missing or what could address the concerns of the EPDP team members who have noted concerns with web forms.

So unless anyone has any specific proposals they'd like to share today or any additional questions or concerns about this topic, our proposal would be to include this issue as a short write-up that there have been some concerns noted and asked for feedback in the public comment forum. Philippe, I'll hand it back over to you to manage the queue.

PHILIPPE FOUQUART: Thanks, Caitlin. Alan? I think you're first.

ALAN GREENBERG: Thank you. I saw the staff's comment last night but the deadline was for tomorrow and it was already rather late last night, so I decided I would wait until after this meeting. I am prepared to draft something and I'll work with Mark to make sure that we're not presenting two different views, assuming he's interested in presenting something. So we will try to have something drafted by the deadline tomorrow.

PHILIPPE FOUQUART: Thank you, Alan. Indeed, we need new text. Thanks for this. Alan number two, I'm sorry.

ALAN WOODS: That's quite all right. It happens all the time. I suppose I just want to start off by saying I'm still rather uncomfortable by the fact that we are including this into the report at all and that we're asking for such. This is not in the scope as we've been asked to consider by the GNSO Council. I'm kind of surprised that we would even think about putting this out to a public comment. I'm just repeating what actually Sarah Wyld said in the chat about how we should be hesitant to even put it to public comment, considering it is not in scope. And I do think we need to impress upon the leadership team to consider what exactly is in scope here.

We've heard some reasoning in the past that because we have not agreed to change the recommendation and that has somehow opened the door to us considering [web comments]. We're also hearing comments that I think Caitlin was just mentioning there about that is not working as intended. Again, I don't know where that is coming from, this concept of working as intended. The recommendation is pretty clear that there needs to be a web form. And again, we have said many times that if the web form is not working, that this needs to be raised. Complaints need to be raised. Have some form of response to that. It is not on the table for discussion at this point. I think we need to be very strong. We are working towards a very tight timeline these days and adding

things to the scope such as this is really pushing us, and I do not think we should support it.

PHILIPPE FOUQUART: Thanks, Alan. To this point, I think the reasoning so far is that indeed the leadership was leaning towards not including that sort of aspect but I'll be deferring to the person in charge for this. But just to be pragmatic, I'm sure that by tomorrow we can have some text. As I said, any diverging view may be put as questions in the initial report, but I think that was the preferred approach. But point well taken. I see that there's a queue forming. So next is Chris.

CHRIS LEWIS-EVANS: Alan was before me.

PHILIPPE FOUQUART: Oh yes. I'm sorry. I was confused between the—yes, Alan?

ALAN GREENBERG: Thank you. Just a very brief comment. I believe this is in scope. In scope are any changes necessary to Phase 1 recommendations. And this is a change to Phase 1 recommendations where Phase 1 allowed web forms but was not specific enough, and this will add specificity to the Phase 1 recommendation so I believe it is within the scope. Thank you.

PHILIPPE FOUQUART: Thank you, Alan. Next is Chris.

CHRIS LEWIS-EVANS: Thank you, Philippe. I'm afraid I've not had a chance to go through the initial write-up on the section and I will ensure I get some suggestions in there. I think the view from the GAC small group currently is that, focusing on the requirements here, whether or not unique contact is feasible, and if it is, should it be a requirement. So I think we've seen from the Bird & Bird that it is feasible and I think we would like to get that view reflected in the write-up.

We understand the risks around different aspects of whether it's pseudonymized, whether it's across registration, whether it's across a single domain name. I think where we can go to the guidance side is, if that anonymized e-mail address is used to point towards a form of contactability that protects the users from spam and such like, then maybe there needs to be some guidance around how that is utilized and still provides the level of contactability required that benefits the whole of the Internet and the users. So I think our view is that we've answered the question, I think it is feasible and it is there, but I don't believe that we've done enough work on the impact to the users and how we balance that with the utility that this function can provide. Thank you.

PHILIPPE FOUQUART: Thank you. Thanks, Chris. Now. Mark?

MARK SVANCAREK: Marc A or Mark Sv?

PHILIPPE FOUQUART: I'm sorry. It's the wrong queue. My apologies. Next is Brian. Same mistake. Apologies for the hiccup.

BRIAN KING: It's all good, Philippe. Welcome and thanks for being with us today. Just to add the perspective on the web forms, I don't think we need to have web forms as an area that we're soliciting public comments. But just to be clear the question now Woods helpfully put the question and I think where it came from this phase into the chat, the question is about whether pseudonymized or anonymized or whatever e-mail addresses are necessary, and to be very clear, part of the reason why we're saying that some sort of e-mail contactability is necessary is because unexpectedly current implementations of web forms do not facilitate e-mail communication with registrants, and the Phase 1 recommendations require a web form to facilitate e-mail communication with the relevant contact but they don't do that today. So that's part of the reasoning why we need perhaps a pseudonymized e-mail contact available is because that's not currently possible today. So just to be clear, that's where that's coming from. Thanks.

PHILIPPE FOUQUART: Thanks for the rationale. Marc? To this point, I suppose it's going to be easier for people to grasp that, what the intent is by reading the text that might be suggested for the initial report. Point taken. So, Marc again, Marc with a C.

MARC ANDERSON: Thanks, Philippe. Can you hear me okay?

PHILIPPE FOUQUART: Yes, we can. Thanks.

MARC ANDERSON: Great. I raised my hand to make a comment responding on the scope, and Caitlin actually usually put in chat already. The scope is specific. The scope is not open-ended to revisit everything in Phase 1. The scope was specific to review if changes are warranted for Rec 17. So I'll just maybe direct everybody to Caitlin's comments in the chat and I'll stop talking.

PHILIPPE FOUQUART: Thank you. Thanks, Marc. I'm wondering whether you do hear me okay? It seems that I'm slightly weak. Is that better now? Thank you. Thanks. My apologies. My headset wasn't fixed properly.

Mark, is that an old hand or is it a new one? You're next in the queue. Mark Sv?

MARK SVANCAREK: Sorry. I changed my view and suddenly I couldn't unmute myself. Sorry. I was along with Alan G on this, if this is actually limited to only a different recommendation. I apologize. I do think that there is going to be public feedback on this topic since it was a motivating factor in keeping the issue alive in the space. So

whether or not we solicit feedback, as Brian said, maybe that's not the most productive thing to do. But I do expect that you will receive feedback on the topic since it was a motivating factor. And I suppose what I'm hearing in this call is that public feedback will be ignored, which will probably seem a little tone deaf, so we might want to consider that. Thanks.

PHILIPPE FOUQUART: Thanks, Mark. And, yes, while the public comment is always the right occasion for people to provide answers to questions that were asked, but then so be it and it will be up to the group to figure out whether that can be included. But yes, this has to be decided whether that can be included in the initial report. Thanks for pointing that out. Steve, hi. You're next.

STEVE CROCKER: Thank you. I want to feedback what I'm listening to with respect to this business about web forms versus e-mail and pseudonymized or anonymous e-mail versus some other form. I think it's important to distinguish and be clear about what the issues are. And here's what I think I've heard, that web forms are not working very well because you can't be sure that the e-mail is going to get forwarded there. Full stop. That e-mail, if you just have sort of address to the registrant via the registrar, so like a registrant of example.com@godaddy.com as a constructed e-mail address, it's just going to lead to a lot of spam. That's the feedback that I've heard on that. That is the easiest and most straightforward way to implement direct e-mail to reach somebody. Alan is also

commenting that the web form has other issues about the content is severely limited but that's an additional issue.

Then the pseudonymous e-mail is actually, as best I can understand, trying to achieve not only a way of reaching the registrant but also across correlating registrations. That is a separate and distinct objective and needs to be analyzed separately because on two grounds, first of all, does it preserve enough privacy, and second of all, does it actually accomplish the correlation that you want? And I think it's weak in both of those, frankly.

I've said all of this in the past and I think it's important to be clear about what we're doing. Otherwise, we're going to wind up with a very fuzzy indistinct set of motivations and a incomplete and ineffective implementation of whatever it is we're trying to do.

PHILIPPE FOUQUART:

Thanks. Thanks, Steve. There's been repeated references to whether that's in scope or out of scope. Maybe one option would be to flag that issue as one that should be pointed to Council to determine whether a future work might be undertaken, just as a side note because I think there are recurring diverging views on this. And maybe that's a way out of this. But beyond that, certainly text to the initial report reflecting the diverging views might also be a way to trigger inputs from the community. That being said, I think, Chris, you're last in the queue and I'll turn it to Caitlin for future steps on this. Chris?

CHRIS LEWIS-EVANS: Thanks, Philippe. A clarifying question maybe and it seems very late in the day to be asking this. Caitlin mentioned that this Phase 2A is just limited to Recommendation 17 from the Phase 1, but my understanding was the natural versus legal or legal versus natural side was limited to Recommendation 17 because that's what that deals with, and then the second ask of 2A was the feasibility of a anonymized e-mail address. So I just wonder if I can get some clarity on that. Thank you.

PHILIPPE FOUQUART: Thank you. Thanks, Chris. Caitlin, can you help us with this as to the exact remit?

CAITLIN TUBERGEN: Thank you, Philippe, and thank you, Chris. I think what I meant to say was in terms of Phase 1 recommendations that the Phase 2A team is looking to see if updates are needed, that is limited to Recommendation 17, which as you notice, the legal versus natural. In addition, the group is being asked to relook at the feasibility of unique contacts, and that was an item that was included in the Annex for further consideration in the Temp Spec.

In terms of the other Phase 1 recommendations that are referenced here, the support team put in some Phase 1 recommendations that might be relevant to the history of this group and might be relevant for the group's consideration of the issue, which is why Recommendation 13 was included because it deals with e-mail communication and if the group needed to consider whether a unique contact was needed.

So I hope that answers your question, Chris. I think that what you said is correct, that there are two issues before this group. One is legal versus natural and one is feasibility of unique contacts, but I just wanted to correct the record that this group is not being asked to look at every recommendation from Phase 1 and see if updates are needed. That is definitely out of scope for this group's work. Thank you.

PHILIPPE FOUQUART: Thanks. Thanks, Caitlin. Chris, a follow up to this?

CHRIS LEWIS-EVANS: Yes. Thank you. Thank you very much, Caitlin. I think that answers my question. So legal most natural is very much limited to Recommendation 17, and then we've been asked whether there needs to be a new recommendation around feasibility of that contact or whether 13 and 14 both mentioned e-mail addresses need updating. Thank you.

PHILIPPE FOUQUART: Thanks, Chris. Alan?

ALAN GREENBERG: Thank you. What we're trying to do here is fix two problems which were not fully addressed in Phase 1. And yes, Recommendation 13 was not explicitly called out in the GNSO spec for this Phase 2A, but we were asked to reconsider issues which were not fully considered. If those have an impact on one of the

recommendations that was made in Phase 1, there's no other way we can address it. So, yes, Council may not have had the prescience to understand that a change to a recommendation might be needed, but if that's the way you have to fix the mistakes or lack of clarity in Phase 1, then I don't see any other way around it. I would far prefer to use e-mail addresses, as others have recommended. But if ultimately this group is not recommending using anonymized or pseudonymized e-mail addresses, then we must make the web form usable for communication, and that is what the Recommendation 13 said. Thank you.

PHILIPPE FOUQUART:

Thanks, Alan. To this point, I think there are two things. First, if the group would agree that some of the recommendations from Phase 1 need to be revisited, then it's certainly to you to raise this with Council moving forward. And the second point is more on the form of this discussion. And before we wrap up, going back to the question of web form and what is included in the initial report, I think it will be much more efficient or somewhat more efficient if we work on text, and appreciating the note from Alan earlier, and regardless of what will end up in the initial report, I think at this point, we need to work on language that possibly along the lines of what Steve highlighted earlier. And if the group do not quite agree, then phrase it as a question in the initial report. But we do need to work on text at this point.

So coming back to the agenda, I'll turn to Caitlin. We're just about to finish the allotted time for this and see whether there's anything else you would like to cover. Caitlin?

CAITLIN TUBERGEN: Thanks, Philippe. No, there's nothing else that we need to cover here. There, of course, is a deadline tomorrow so I think Alan and Mark, we're going to work on a proposal that the group can consider. But otherwise, I don't think we need to continue with this discussion. Thank you.

PHILIPPE FOUQUART: Thank you. Thanks, Caitlin. I would encourage anyone, Alan, below this as well to suggest text to the initial report. So with this, I suggest we move on to the next topic, legal versus natural. Berry, would you like to help us go through this?

BERRY COBB: Yes. Thank you, Philippe. I'm going to paste the link of the draft right up into the chat. And specifically, this agenda item is not about reviewing the whole write-up here. As Caitlin just noted, part of the homework that is due tomorrow is to consider the next version of this draft, but what is new is the aspects around this proposed new data element that could be considered as part of the minimum public dataset. I will zoom in here so it's somewhat legible but I do recommend you follow along in the Google Doc as well, starting on page two.

So you'll recall from Tuesday's call, I tried to refer the team back to what the Phase 1 team did in regards to the data element workbooks, how we defined, at the time, what were called ICANN purposes, one of which was Purpose 3 about contact with the registered name holder and essentially how using the workbooks

analyze the processing activities for that purpose that ultimately formed what the group would refer to as the minimum public dataset.

In that exercise, there's two things about those data element workbooks that basically keep me from crying myself to sleep each night. The first is that in the throes of the deliberations and the pace by which the policy was going, there was an agreement by the full team that this was the right approach. And then the second aspect is later reviewing the EWG report in detail, they also took a similar type of approach of looking at each of the data elements in registration data or RDDS and essentially used ones and zeros to try to determine what is required and what is optional.

So while the approach of analyzing the processing activities and the lawful basis for the processing was sound, where we fell short was the use of this required versus optional, and it ultimately didn't produce the clarity that we require and, as I noted also on Tuesday, it's still something that the IRT is trying to recover from. This is certainly a case where hindsight is 20/20, maybe even 40/20 in this case, but we've since learned within the IRT that we should have been looking more to better clarity around the use of terms of MUST, MUST IF, and MAY, as it relates to the requirements, if any, around the processing of these data elements. So, ultimately, we kind of owe a big thanks to the Amandas from the GDS team because they spent a lot of time of kind of recreating a second version of all of those data element tables that are being used to help facilitate the draft policy

language for the registration data policy. All of that work is still work in progress.

At any rate, what we've attempted here in this draft is to try to replicate the same approach that we did in Phase 1. We talked about is the data element collected or not, should it be transferred or not, what are the implications for the processing of the data element in regards to escrow, and what does the publication of this data element look like? We'll step through those in detail. But what you'll find that is different from what we did in Phase 1 is that we're using these more specific terms of MUST, MUST IF, or MAY.

The last point that I'll make is, also on Tuesday, Alan's example when he referred back to the tech contacts, the three fields that are remaining from the tech contact dataset are pretty much mirroring at least what we're trying to accomplish in this initial draft that is presented to you here today. So the first is pointing that to Recommendation 5 that there's a new data element titled Registrant Legal Person, and there is essentially going to be three values or options that may make up that particular data element— Yes, No, or Unspecified. Specifically, the collection logic here is titled MAY. The MAY is again very much like the technical contact in that the registrar will get to choose whether they want to allow their customers or the registered name holder to self identify as a legal person. But what is also being discussed here is that while that is optional to offer, that if it is offered, there should be a consistent approach in how that data is processed and this is a possible solution to get there. So the intent here is that at the time of registration or shortly after registration that there's some sort of

mechanism that allows the registrant or registered name holder to self identify as a legal person, then here's the collection logic that may happen. And then the idea is if that data element is processed, we need to consider the processing down the stream.

So then we move to reference back to Recommendation 7 is if the registrant legal person is still the same data element, should it be transferred from the registrar to the registry. We know that there is still some consideration going on between the ICANN Board and the GNSO Council. We don't exactly know how that's going to come to sort of final outcome or solution, and so we did a footnote here that this is still basically in progress or in flight. But the approach here for now is to replicate the minimum public dataset aspects, and noted that in that minimum public data set, there are certain data elements that would be transferred from the registrar to the registry, and of course this is subject to change from external forces outside of the working group.

Recommendation 8 was about whether this data element should be escrowed from the registrars and the registries. Like many of the other data elements that if it's collected initially, it's processed, then there are downstream requirements. So the aspect of this particular data element being transferred to an escrow provider as part of the minimum public dataset is listed here as "MUST, IF collected" for registrars and registries. And I suppose that even for the registries, the same footnote applies until we get Rec 7 completely sorted out. We don't understand the final conclusion of that but we tried to mimic what was outlined in the Phase 1 report.

Then, finally, where most of our scope of what we're discussing here is Recommendation 10, which as I noted is connected back

to Purpose 3 and, more specifically, the publication of this minimum public dataset and an understanding of what data elements should or should not be redacted. For the purposes of moving this forward or for the purposes of offering this as a first draft that the data element would not be redacted, but that's something that the group should discuss here, but the disclosure logic, which is probably a bad term but really this is the publication logic, is just like the tech contact—the name, e-mail, and phone number. Those data elements are using legacy WHOIS “the key” would still be visible, but if there's a blank value then essentially the value would be left blank.

I don't want us to get into a discussion about how blank values or no values are processed from a protocol perspective. We know that there's some capability under the WHOIS protocol, there's different types of capabilities under the RDAP protocol, but this is strictly the policy discussion of whether this field should be visible or not, and we are essentially still repeating from Phase 1 that we're being technology agnostic.

But, in general, the way recommendation to the draft Recommendation 10 is presented here is that similar to the other data elements such as name, address, or organization, the key, the data element itself would be displayed, and then there's the options of whether that the value of that key should be redacted or not. Essentially, it's a must in terms of that this particular data element would be visible, it's just a question of what the value and how it would be presented in the minimum public dataset.

So I hope that that makes sense. As noted, this as part of the homework tomorrow. I should note that a lot of this work, we made

note here about references back to the consensus labeling and display policy, also which is connected to the aspects or changes from the registration data policy that is, in turn, also connected to the RDDS specifications and the Registrar and Registry Agreement. So there's a very large footprint of impacts that are kind of in flight and being worked on in terms of the implementation of the Phase 1 policy. But we at least hope that you're agreeable with the approach of how we tried to outline this, and then hopefully through continued deliberations, we get at least some preliminary agreement to inform the public comment and perhaps we start to produce some specific are targeted questions as a result of the public comments so that we can get very targeted and specific feedback to this component. I'll stop there and turn it back to you, Philippe, to manage the queue. Thank you.

PHILIPPE FOUQUART: Thank you. Thanks, Berry. Any questions, both on the approach, the outline that Berry just introduced, but also on the publication project that is outlined in the document? Bearing in mind, if you would, that this is intended to end up in the initial report that we're working on, on concrete language here. Alan, you're first.

ALAN GREENBERG: Thank you. I'd like to give a big thanks to Berry and the rest of the staff involved in this. This is exactly what I was asking for when I mentioned a number of times that we needed to echo the recommendations out of Phase 1 if we're talking about a new RDDS field, and he's done a superb job of it. With regard to the

redaction or not—and I noticed there’s already comments in the chat saying contracted parties had said no—should the decision from this group—I hope the decision is that this is not redacted—but should the decision be redacted, there was the suggestion mentioned that even if it is redacted from the public dataset displayed, that should the SSAD ever be implemented, that it should be a field that is sent to the SSAD, so a new category of redacted, not redacted or not redacted for the SSAD but redacted for the public, to allow the SSAD, should we ever come to that, make automatic decisions based on that field. That’s not a question for this group to resolve but unless the field is available to the SSAD, we could never even consider that option. So I would ask that that be considered as we move forward. Thank you.

PHILIPPE FOUQUART: Thank you, Alan. Duly noted, a possible new value for that field moving forward. Mark, you’re next.

MARK SVANCAREK: Thanks. Thank you, Berry and staff, for this. This is great, very helpful, very clear. I would comment that I agree with Alan G, that I think these fields must be shared with the SSAD, and I also prefer and hope that they won’t be redacted.

My comment is based on the text “IF collected.” I don’t think we’re on track to specify any sort of standard for this. This is all very loose and fuzzy guidance. So when you say “IF collected,” what is it exactly that’s being collected? If everyone does it differently,

then I think we're going to get into some confusion in IRT about what "IF collected" means. So I think you could probably get around this if you were to say "IF collected or derived."

Now, I know that there has been an issue with the concept of driving the status from other registrant input so we would have to put bounds on that. But if there were clearly a decision being made and clearly a message being delivered by the registrant that indicates their status regardless of how that's implemented, that should somehow be considered in this "IF collected," even though it might be a derivation rather than a specific field being collected. I hope that that makes sense. I could just see this foundering on the rocks in IRT because if everybody is collecting a different thing, what is it exactly that's being collected? Thanks.

PHILIPPE FOUQUART: Thank you, Mark. My loose understanding of what you're suggesting is that there should be a common ground, a common understanding of what the semantic is associated with it, with that field, and that it might be inferred from other piece of information. Maybe we could work out on some language for this, Berry, maybe to this point and possibly clarify or rephrase, if only for myself, what Mark has suggested on this, just to make sure that everyone understands what is suggested here.

BERRY COBB: Thanks, Philippe. Obviously, still work in progress but I think, as I noted in the chat on Tuesday, essentially there's three options to this flag, maybe four, I'm not really sure. But if the registered

name holder does check the box, not trying to presuppose any kind of specific implementation requirement for the registrars, but hypothetically stating or speaking, it was a check of the box that they are indeed a legal person, then that would flip the flag to Yes. If the box is not checked or maybe as Steve Crocker is putting in the chat that if there's an option for the natural person and that one's checked, then the flag would be flipped to No. If the registered name holder chose not to answer either question, then it would default to Unspecified. And then I guess something that the group may want to consider is if the registrar does not offer this, should there be the option for a no value or a blank value? That way, if the field showed up in the minimum public dataset and there was no value there whatsoever, that would probably be the indicator that the registrar is not offering this, again, kind of referring back to the three remaining tech contact fields from Phase 1.

MARK SVANCAREK: Philippe, this is Mark. May I clarify?

PHILIPPE FOUQUART: Sure. Please jump the queue. I think that it's a conversation we need to have to figure out the language. To be honest, from a distance, I think this needs to be spelled out in natural language under that. There should be no ambiguity on this. That's why I'm sort of insisting. My apologies.

MARK SVANCAREK: If I may explain the ambiguity. Normally, when we say collected, we are talking about literal collections. If I put in my name is Mark, we have collected the string Mark. If I say this is my address, you've collected an actual address string. In these particular cases, we're talking about flags—Yes, No, Unspecified, or Legal, Natural, Unknown, or Unanswered. These are the flag values. But unless the registrant is literally entering the text Yes, No, or Unanswered, then you're not actually collecting it, you're deriving it. So if there's a checkbox and then you process that checkbox to mean Yes or No, then that's a derivation, not a collection. It would be completely different from the way that we use the term collection anywhere else and that's what needs to be clarified.

PHILIPPE FOUQUART: Thanks, Mark. Derivation, collection are two different things. Thanks for clarifying. So next is Brian. Thanks.

BRIAN KING: Thanks, Philippe. Thanks, staff, for doing a great job of framing this up. Thank you very much for that. A couple of suggestions, one being that we call this perhaps legal entity and not legal person. I think that the term person is going to be confusing. So that's one point.

To the policy matter here, I think what we're going for is—because there's an unspecified option here, we're looking for this to be mandatory for registrars to do and to make available to registrants on a go forward basis from the implementation date and then probably on a catch-up basis to be included in the annual WHOIS

accuracy reminder e-mails. We would look for this to be mandatory. And certainly, all existing registrations would begin as unspecified until either the contracted party, if they're required to by law, or the registrant would make that assessment or that determination. With that, I think that's a great start. I really appreciate staff's work on it. Thanks.

PHILIPPE FOUQUART: Thanks, Brian. Noting that you're referring to requirement and noting Sarah's post. That is something that we probably need to discuss in broader context, given the feedback that we've had from Org on the approach on guidance. But with that in mind, Marc, you're next in the queue?

MARC ANDERSON: Thanks, Philippe. I have to say having just looked at this now, I'm quite a bit disappointed. It seems as though all the comments that Registries had submitted on this topic were ignored. We will take a look at this in detail and provide our feedback, although I suspect it'll involve a lot of recycling the feedback we already provided, which seems unfortunate. I'll make a couple of additional comments.

Looking at this, there's been some discussion about the first item. The registrant legal person, it seems to me that this is the wrong question. As we've discussed all along, the main question, the dispositive question is whether the registration data contains information related to a natural entity. It seems as though this is asking the wrong question. Is the registrant a legal person? That

does not seem to be the right question. The question is it does the registration data contain information related to a natural person or not? That seems to be asking the wrong question so I'll point that out.

The other thing I want to say is the next part making it mandatory, making it must, if collected, for the registrar to transfer this to the registry has the effect of making this no longer optional for the registry to support. I'm quite aware that many people want this to be mandatory but that is not something that group has agreed to at all. And this language, as it's written, makes it no longer optional for registry. While the Registries have not discussed this, I feel confident that that will not be supported in the Registry comments. Thank you.

PHILIPPE FOUQUART: Thanks, Marc. On the first question on approaching natural as opposed to legal here, Berry, do you have a follow up on Marc's observation?

BERRY COBB: Thanks, Philippe. Not at this time, other than to say we welcome the input on the document to assist staff to get to the next version.

PHILIPPE FOUQUART: Thanks, Berry. Again, on the must in the transfer, I think that's a discussion we need to have. Alan, your next and last in the queue.

ALAN GREENBERG: Thank you very much. With regards to whether this is the right field or not, there have been suggestions that we have a field for every data field saying is this personal information or not. That's something we could do but that will be in addition to this. This is a field that many of us believe because of the way GDPR and other privacy legislation is worded, that this is an important field. It may not be the definitive field to answer every possible question. Some of you will recall that we've also had discussions that if someone declares themselves to be a legal person, they are also certifying at the same time that there is no personal data involved or that they have permission for it. I'll recall that we already have a phase recommendation, where a registrant can say, "Please, publish all of my data." Period. They don't want to specify if it's public or if it's personal or not, they are giving permission to publish. This is perhaps akin to that with a different flavor to it.

In terms of the registry, Marc's comment on the registry having to implement this, really all that's adding is a database element in a table. We're not saying that they have to do anything with it. Although I understand that, yes, that may be a requirement, it's not a particularly onerous requirement, given that to implement Phase 1, we're already making a whole host of changes in the RDDS fields. So let's try to be practical here. Thank you.

PHILIPPE FOUQUART: Thanks, Alan. To this point, I guess, Marc on the burden or whether that's a complex thing to implement. Marc?

MARC ANDERSON: Thanks, Philippe. I do want to respond to Alan a little bit there. Alan, reading this, we're not being asked just to support the field. If you keep reading, we're being asked to further process it by sending it to the escrow agent. And we're being told that, at least as of this current draft, we're saying the disclosure logic is must. Meaning, per this draft, we're not being told just to collect the data, we're also giving additional processing activities for which we don't have a defined purpose. It's not necessary for the performance of the contract to do any of these things. So we're taking on additional liability being told to do additional processing activities.

I disagree with your characterization. That's not what this draft says. I guess I'll just stop there and say I disagree with your characterization. That's not at all what I'm reading in this and I don't think Registries will be comfortable with this in any way when we review it fully.

PHILIPPE FOUQUART: Thanks, Marc. Speaking under the various control, I think that's the benefit and the intent of describing what happens end to end as it were taken into account, escrow and all of this, to sort of be as precise as possible in terms of potential impacts. Maybe that's not the musts that we have in there. Possibly not the appropriate—what we want to have eventually. But I think the intent was exactly that, it was to illustrate end to end what happens if the data or the piece of information is collected. That's what this group needs to spell out, really.

Anything else on this? I'll turn back to Berry. Again, please provide your inputs on the proposed text moving forward. Berry?

BERRY COBB: Nothing additional for me other than, again, we welcome your input into the document by tomorrow to advance to the next iteration for the group's review early next week.

PHILIPPE FOUQUART: Thanks, Berry. On the notion of guidance in the agenda, we had an item to possibly review or discuss the feedback from Org on the notion of guidance. I just want to make sure that we have the opportunity to discuss that. Maybe, Berry, whether you want to elaborate on the e-mail that Brian sent to the group. I think it's important for people to understand what that entails or not for that matter with regard to the Registry Agreement or the Registrars Accreditation Agreement. Berry, do you want to say a word to that?

BERRY COBB: I'll give it a go. If I misstate anything, then our ICANN Org liaisons can chime in and correct me if I'm wrong. But in essence, we're attempting to finalize the draft recommendations for public comment or provided this response to help inform that as we move to public comment. These types of specific implementation processes for best practice or guidance, there's a dependency on the specifics of the best practice or guidance. They provide an example here. I think in fact that they're even referring to what we just discussed in terms of a new field, that it could require some

technical implementation work. I think parts of this, the way the current guidance is drafted, that it is likely some of this will be routed to the Phase 1 IRT team. But of course, if much of this is not in direct scope of what is being accomplished there in Phase 1, that may alter how this gets implemented. But ultimately, that this is at the contracted parties' own discretion to implement. These aren't contractual obligations. From a Contractual Compliance perspective, I think everybody is already aware that unless there are true contractual requirements here, there is very little for Contractual Compliance to actually enforce other than to maybe promote the communication of the guidance or best practices as particular types of complaints that they see may come through.

The distribution of legal notices and advisory doesn't seem to be appropriate in this particular situation. But this guidance would be posted somewhere that can be consumed by the contracted parties. Then there's a note here about the technical capabilities, again, referring to this flag. I think it was difficult or a challenge to provide specific details about this until there's further clarity about what the actual recommendation may look like.

That's kind of all I have. If Brian Gutterman has any other comments, I welcome him to raise his hand. Otherwise, I'll turn it back to you, Philippe.

PHILIPPE FOUQUART: Thanks, Berry. Brian, would you elaborate on this?

BRIAN GUTTERMAN: Hi. Thanks, Philippe. I think Berry covered it. Amy and I, we welcome everybody to ask for the questions. We can always go back to our internal sort of org SMEs as well to get more answers if anybody needs them. But I think Berry covered it. Thanks.

PHILIPPE FOUQUART: Thanks, Brian. Any questions for Brian or Berry? Or any questions that should be returned back to staff on what guidance would mean and enforcement in general, the leverage or lack thereof there might be? Okay. Seeing no hands, I suggest we move on with our agenda.

As I said, we have just about 10 days for the completion of the initial report. By then, your inputs are requested on those two items by tomorrow evening. On the first part, including on web form and possible text being included. You will have the same opportunity on the second item. Caitlin, would you help us with the next milestones?

CAITLIN TUBERGEN: Thanks, Philippe. I just wanted to confirm before we continue with the homework that on agenda item 4d, that the team had nothing further on any of the three questions and didn't want to further discuss terminology or incentives questions 2 and 3.

PHILIPPE FOUQUART: Thanks, Caitlin. Thanks for asking again. That's my conclusion of seeing no hand following the introduction from Berry and Brian. But maybe that's worthwhile asking the question again. Any

questions that would like to ask Org on either the enforcement of a “guidance,” the incentives that can be applied to those? Anything you’d like to raise as a follow up to the elements that Berry and Brian introduced? Alan G?

ALAN GREENBERG:

Thank you very much. Not questions, but I’ll give you my take. I don’t think there are a lot of other options. Guidance is guidance. Registrar, Registry is free to completely ignore it, to implement it, to change it or whatever, so there’s no enforceability things. I dearly like to have some reporting requirements to know if it is being followed or not but this group has not chosen to go in that direction.

In terms of incentives, I don’t see that within the mandate of an EPDP that’s negotiations between ICANN and the contracted parties that you may find some way to convince people they want to implement the guidance, but I don’t think that’s within the scope of this group. The only enforcement part is if we recommend the new data element, that’s policy. If not policy that Registrars/Registries have to do an awful lot about, they do have to make sure that they are supported to the extent that they’re required to support it. But that’s it.

I don’t think these are major controversial questions in our mind. The issue of whether it’s guidance or best practices, we have discussed. I don’t see we’re coming to closure on that. My guess is it’s going to end up being guidance, but so be it.

PHILIPPE FOUQUART: Thanks, Alan. That seems to be the consensus of the group. I think your characterization of what guidance means seemed to be aligned with what Berry and Brian just described. Indeed, I think you both said that it was at the discretion of the contracted parties. But nonetheless, if there's any leverage that can be discussed outside of the contracts, I think we need to have that discussion. But I think what you just said on this is accurate. Anything else? Questions in particular that we'd like to go back to ICANN Org for? Okay. I'm seeing no hand.

A reminder that you have until tomorrow evening for your inputs on the text, on the consensus question for legal versus natural, as well as edits on the feasibility of unique contacts for the initial report. Just to give you some time to do it, I see that we are slightly early. I will just say that our next call is on Tuesday. That's 14:00 UTC. I think the homework by now is pretty clear. I appreciate that. It's also a public holiday in some countries. We all appreciate that it's an aggressive agenda for everyone.

With this, just turning back to the group and ask whether there's anything that anyone would like to add at this point. With this, I would leave you with the homework. Okay. Seeing no hand, thanks, everyone, and thanks for your patience. We'll speak to you soon and have a pleasant rest of your day. Thank you. Bye all.

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

[END OF TRANSCRIPT]