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**ICANN Transcription**  
**GNSO Temp Spec gTLD RD EPDP – P2A**  
**Tuesday, 24 August 2021 at 14:00 UTC**

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TERRI AGNEW: Good morning, good afternoon, and good evening. And welcome to the EPDP P2A Team Call taking place on Thursday the 24<sup>th</sup> of August 2021 at 14:00 UTC.

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

Hearing no one, we have listed apologies from Melina Stroungi, James Bladel, Margie Milam, and Chris Lewis-Evans. They have formally assigned Owen Smigelski, Steve DelBianco, Ryan Carroll as their alternates for this call and any 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 either Panelists and Attendees or Everyone in order for everyone to see your chat. Attendees will be able to view chat only.

Alternates not replacing a member are required to rename their lines by adding three Z's to the beginning of your name, and at the

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end in parenthesis your affiliation “-Alternate” which means you are automatically pushed 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 chat, or use any other Zoom room functionalities such as raising hands, agreeing, or disagreeing.

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

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 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.

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

KEITH DRAZEK:

Thank you very much, Terri. Good morning, good afternoon, and good evening, everyone. Welcome to the EPDP Phase 2A Meeting #38, Tuesday the 24<sup>th</sup> of August. We will jump right into

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the substance of work and final review of the text for the final report.

Just to remind everybody, this the final week of our work, and the last two plenary sessions are scheduled for today and Thursday. And these two days are the days for us to bring this text to closure and to finalize it so we can be prepared to submit the final report on the deadline of September 2<sup>nd</sup>.

I did want to take an opportunity today to mention the minority statements that may be submitted, and timelines for that. I received a request—and the leadership team and staff discussed yesterday during our prep call—timelines for any minority statements. And what we've decided is to follow the precedent that we used in Phase 2 and essentially keep to the schedule of finalizing our report and submitting the document by the 2<sup>nd</sup> of September but allow minority statements to be submitted.

And we will augment the report up to September 10<sup>th</sup>. So we're going to give some additional time, particularly for those groups who need some additional time to engage with their community groups to ensure that there's agreement and support for the minority statements.

But we also need to make sure that the final final report—if I can use that term—is submitted to the GNSO Council before the document deadline for the upcoming GNSO Council meeting. So the date that we've settled on is September 10<sup>th</sup>. I hope that provides folks a little bit of extra breathing room and gives you the opportunity to work with your constituencies and stakeholder groups to finalize those documents.

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Obviously, any minority statement would be incorporated into the final report, as has been done in the past. But we also want to make sure that we are finalizing the report itself and getting that submitted on the deadline of the 2<sup>nd</sup>. So I hope that works for everybody.

And with that, we will just jump right into the review of the sections and updates of the final report. The first item is looking at the Council questions and recommendations, and specifically the first one is the status of Recommendation 3.

And I'm going to hand this one over to Berry here in just a moment, but I want to take a second to thank Berry and the small team that gathered over the course of Friday and yesterday. So, a pretty quick turn in terms of a couple of standalone separate breakout sessions that I think we're very constructive and very productive.

So, Berry if I could hand this one over to you at this point to give an update. And then we'll invite members of the small team to provide any additional context or input that they'd like to do. So, Berry, over to you.

BERRY COBB:

Thank you, Keith. Just to repeat what Keith said. Definitely a big thank you to the small team for the participation, the constructive dialogue, and getting to general agreements for the output. In some ways we work so well together that [inaudible] together to solve for world peace and maybe climate change, too. But in all

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seriousness, yeah, I really appreciate how they came together and tried to get to a final outcome.

So just to recap what we did. The assignment that was sent out last week basically had five tasks for the small team. The first was to determine if the “kind” RDAP data element was fit for purpose for some of the policy discussions that we’d had to date. We essentially concluded that it was not mostly from a technical perspective. And Marc from the Registries Stakeholder Group provided a good context as to why it's not more to do with it about being a vCard and, most importantly, that it looks like some of that is subject to change in the near term through the IETF process.

Our second assignment was if the "kind" RDAP data element wasn't fit for purpose, what data element or elements needed to be created. And we'll get into this in a second, but essentially we concluded on two data elements mostly for the fact about maintaining flexibility and simplicity for the data value options that would be used.

It was it was a pretty close call, but in the end trying to load up a single data element with all of the different variations or possibilities for the data values did increase the complexity and did reduce the flexibility for how contracted parties may use this data element. And so, a big thanks to Steve Crocker for helping us guide that discussion and get something on paper for us to work with.

Then the third assignment was for us to review the value types or options for the data elements and kind of refine or get to a small

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definition of what they mean. In essence, each one has four possible options. And we'll go through that in a second.

The fourth assignment, of course, was to get to a conclusion on a recommendation text for the third recommendation, which is in the Google Doc shared on the screen. Starting on page 12 is where we'll be reviewing this.

And then finally, we needed to get clarity especially just from a staff perspective of how these data elements would be implemented and who would do it. And basically the discussion around that started off with a recent example which is for the implementation of Phase 1; and really, the implementation of the Temp Spec and understanding that RDAP is out there in the environment today. There wasn't a clean ability to redact personal data elements.

So through the RDAP Working Group, there were volunteers that put together an Internet draft to create a new object around the redaction of those data elements. And in essence, what we concluded here is that that same process will kind of be repeated. But in essence, Org will coordinate with the technical community, create some sort of Internet draft and traverse the IETF process to get these data elements created.

So I'm just going to quickly review through the proposed recommendation text. I'm not going to read it word for word, but call out the key aspects.

The first part which is basically "the EPDP recommends that a field or fields must be created ...". And that is trigger, as I noted

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about empowering Org to go get this implemented and the coordination with the technical community. But the second part is that they “may” be used by contracted parties that choose to differentiate between legal and natural persons.

So if they choose to make this distinction or if they also want to use the secondary field about making a delineation between whether registration data contains personal data or not, these fields are to be used for that purpose.

And specifically, we're getting into the two different field types. The first one is the legal status. And as noted earlier, it basically will have four options. One, that the legal status distinction was not made.

The second one is “unspecified indicating that the registered name holder or the registrar didn't specify.” And we thought that this was important because it would include flexibility for the registrar to either offer to their customers or the registered name holder that wished to signal themselves whether their registration data contains personal data or not; or that perhaps some registrars may choose to come up with some automated solution that could perhaps provide that kind of indication that registration data may or may not have an indication of the legal status.

The third and fourth is that the registered name holder is a natural person or the registered name holder is a legal person.

The secondary data element is strictly about whether the registration data contains personal data. The presence of personal data was not determined. Unspecified essentially kind of the same

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type of value under legal status providing that flexibility for the registered name holder or the registrar to use this indication. Or the registration data contains personal information or does not contain personal information.

And then finally, the statement that we've talked about, about how this would get implemented.

The final thing I'll say here is that we also had ICANN Org involvement in this. Brian Gutterman—that's one of the ICANN Org liaisons—also worked with one of our colleagues on the GDS Team and Technical Services to help guide the process as well.

So in the end, this the output. Again, I commend the group for coming together for the constructive dialogue. And I will turn it over back to you, Keith, to manage the queue. So thank you very much.

KEITH DRAZEK:

Yeah. And thank you very much, Berry, for your work helping to coordinate that work and for getting the group kicked off. So thanks for that. And thanks to everybody on the team for the work that went into this.

I know that this the first time most of us, or most of you, are seeing this, so now's an opportunity to ask any questions. And I certainly look to any members of the small team who would like to speak.

Steve, go ahead. And then Laureen, you'll be next. Thanks.



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STEVE CROCKER:

Thank you very much, Keith. And Berry, thank you very much, first for the shoutout and second for a very clean, straightforward presentation. As you said, I participated a lot in helping formulate this, and so I'm quite pleased with all of this. I wanted to add just two or three small details for the benefit of the everyone else.

Berry used the term “secondary” a couple of times in distinguishing between a field that would distinguish the legal status—legal vs. natural person, for example—versus whether personal data in there. I think that, having listened to the dialogue over several weeks, and particularly the issues with respect to GDPR and privacy and so forth, that the direct statement of whether personal data is included is probably not secondary for a lot of people, but it is either primary or the only field of interest.

So it doesn't change anything that's written here, but I just want to suggest that rather than characterizing that field as secondary, I would give it at least equal status with the legal vs. natural. That's one comment.

The second—you didn't mention it here, but it came up in other discussions and will come up again—is the option that registrants should have to say, “Even though there is personal data here, it is okay to publish this or to make it publicly available.”

And I just wanted to anticipate that. And people who are then looking for, how do you say that or [it is], but that would require a separate specification, a separate field, or a separate interaction with the registrar.

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And then finally, there's a technical issue about how these data values are communicated. And most of you may want to close your ears for this. The correct structure is that there are three base values—unspecified and legal or natural for the first one, and unspecified and personal or non-personal for the second one. And then there is the combination of those various combinations. And the first option that's listed there of “legal status distinction not made” or “the presence of personal data was undetermined” is really equivalent to saying it could be unspecified, it could be legal, or it could be natural.

And so, that's a set of all of the other possibilities. From a technical implementation point of view, it will be important to be able to pass through the systems, as a legal data value, any combination of those things. So it's a small, tiny, tiny piece of step theory, but for those of you who are tuned to this, using a separate bit for each of those three values and then any combination of those needs to be an acceptable data value.

And the bit string that would correspond to the “no distinction made” is really all ones, which means it could be any of them. Thank you very much.

KEITH DRAZEK:

Steve, thank you very much for that, and for the input that you provided to the team. It was very helpful, and I'm sure folks may have some questions for you in a moment. But let's move on to the queue. So I have Laureen, Marc Anderson, Alan Greenberg. Laureen.

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LAUREEN KAPIN: Thanks. This is Laureen Kapin on behalf of the GAC. And I'm also very appreciative for the work that was done. This very thoughtful and very detailed and specific, and I think definitely moves the ball forward.

I do have a question. Could be scroll up to the language in the beginning? Great. So what I'm reading is that these fields must be created or extended in RDAP, and that it may be used by the contracting parties that differentiate.

My question is, do these fields need to be populated irrespective of whether the contracted party chooses to differentiate? That's unclear to me because it strikes me that if this is infrastructure that could be used in the future—for example, if the legal environment changes and makes requirements to do this that aren't in existence now—if those fields are created but not populated, they would be of limited utility.

So I'm hoping someone can answer that question for me because the language, as it reads now, I can't tell that it has to be populated but contracted parties don't need to use it unless they differentiate, or contracted parties have a choice whether to even populate these fields. Thanks so much.

KEITH DRAZEK: Thanks, Laureen. I'll respond, and I'm sure if I get this wrong, I'll be corrected. And I am happy to be corrected at any point.

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There is not anticipated requirement at this time based on the recommendation from this EPDP for contracted parties to be obligated to populate the data in any case. The “must be created,” I think, as Berry noted, is the trigger for ICANN Org to be able to go and work with the technical community to do the work in the background to be able to develop the field, to develop the data element so it can be used through RDAP and whether that would be working through the RDAP Working Group and other places.

That's the trigger and that's the “must” term. Everything else is a “may.” Everything else is optional in the sense that the data element would be there for contracted parties that choose to differentiate—or “differentiate” is the current language. And that would be optional.

So if I got any of that wrong, I'm sure somebody will correct me. But that's my understanding of the current discussion.

Marc Anderson, you're next. Then Alan, then Mark SV, then Sarah.

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

KEITH DRAZEK: Yes, Marc. We can hear you.

MARC ANDERSON: Excellent, thanks. So I agree with your characterization. I also think Laureen makes a good point. It's not overly clear here, so

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maybe adding an implementation note here to make it clear exactly what's intended here would be helpful.

Certainly, many of us have experience in IRTs after this, and I think Laureen's points make it clear that we could get to IRT and have debates on what was intended here. So it might save us all some headache and heartache down the road if we had an implementation note that clarified that point that was just made.

I did want to speak a little bit just in general as a participant on the small group. I also appreciate everybody who was on the small team and our excellent support from staff, as always. I thought was a good collaborative effort. For my perspective, making sure it was optional for contracted parties was important, and not using the "kind" element was important. I thought that was not fit for purpose at all, so I appreciate that that was agreed to.

On the fact that we ended up with two separate values in our recommendations—legal status and personal data. Berry talked about that a little bit, and that was pretty well debated item. There are pros and cons to this approach. Having the two fields is maybe a little messier and a little less straightforward, not quite as clean—I think was the term we used on the call—but it does have the advantage of flexibility.

And in particular I thought it was important that we've heard from a number of contracted parties that are interested in using a flag to indicate if a registration contains personal data or not, but are not interested in making a distinction between natural person or legal person registration. In fact, as has been noted and is included in our guidance, the natural and legal distinction is not necessarily

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dispositive and that the key information for many contracted parties is, does it contain personal information or not. So this approach, while maybe not as clean, does give additional flexibility and sort of supports that particular use case.

And then I know I've been talking for a while here, but I want to make one other point. If you could scroll up to the top, Berry. Sarah raised this in chat. She mentions that "the language must be created or extended in RDAP." The original language here just said "must be created." The "or extended in RDAP" was a late edit from Gustavo. I think very highly of Gustavo. He's not a member of the EPDP and hasn't been part of our conversations, and I suspect Gustavo is thinking purely in terms of implementing this in RDAP.

But I don't believe that's what we were thinking or intended at all. I believe there are contracted parties that may make this differentiation and may use these values, but would not include that in an RDAP response. And so I think as this written, it kind of implies that these fields would be created or extended in RDAP only. And I don't think that's what we intended. I think we want these fields to be created and that they may be used by contracted parties, and they may also be used in RDAP. And I think the distinction somehow got lost in that last set of edits.

So I think Sarah raises a good point and we need to maybe revisit that to make sure it's clear that there's a difference between having these fields and having these fields for RDAP.

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KEITH DRAZEK: Thanks very much, Marc, for all of that. In response to your last intervention, Sarah has typed in some suggested text into chat. Thank you, Sarah, for that. Sarah, I'm going to give you an opportunity to speak now on this topic since you raised it in chat. Marc spoke to it and you are in queue. So if Alan Greenberg and Mark SV will be patient. Sarah, if you'd like to jump in at this point, please do. And thanks for providing the suggested text in the chat.

SARAH WYLD: Absolutely. Thank you, Keith. Hi. And thank you, Marc, for bringing that point up as well.

So as I've put in the chat, the text does—if you read it as a fresh reader, I think with fresh eyes—it does say “the element must be created or extended in RDAP.” I think those words all go together. It doesn't read to me as though it's got that separation of ideas, so I would propose ...

And then also, there's a comment that shouldn't be there after the word “that” in the second line.

So I would propose that we should just reword it. “a field or fields must be created or may be extended in RDAP that may be used by those contracted parties.” So that way, I think we have the option for the RDAP field, but it doesn't become a required part of the recommendation.

And on a more general note, I do agree that it is crucial that the use of this data element—or these multiple elements, perhaps—must remain optional for each contracted party to determine on their own.

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And so I think this change to the text would help us get there.  
Thank you very much.

KEITH DRAZEK: Thanks very much, Sarah. Appreciate that. So I'm going to turn back to the queue. Alan Greenberg, then Mark SV good.

ALAN GREENBERG: Thank you very much. A number of things just on a small point. Steve mentioned the publication of data even if it's public. That is an existing field, per Phase 1. So let's not forget that and not reinvent the wheel again. I'm sorry, it's not an existing field. It's an existing option, a requirement that all registrars allow a registrant to specify that their data be published. Period.

In terms of the recent discussion on RDAP, I agree strongly. And if those words were there or close to them in the meeting yesterday, then I missed it. I thought we were defining a new RDDS field. We spent excessive time in Phase 1 defining RDDS fields, and I don't think we should change to a different nomenclature here. RDAP may well be an implementation of how to access those fields or how to distribute them, but we're talking about an RDDS field, I think. And I think we should use the same terminology that we did in the rest of the report and not introduce new terminology here which, as has been pointed out, is likely to be confusing and, at best misunderstood, and at worst not implemented the way we intend.

And lastly, I would like to second Berry's comment on the cooperation. We saw a level of cooperation and actually listening



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to what people were saying and not reading other things into it that, unfortunately, we haven't necessarily seen through much of the rest of this process, and it was it was very satisfying. Thank you.

KEITH DRAZEK:

Thanks, Alan. I'd just like to reinforce the point that you just made. I think it was a very constructive conversation that took place over, essentially, three hours and a little bit of work—or maybe more than a little bit of work on the list or in on the e-mail. And I think, look, we've been we've been challenged as a group by the lack of face-to-face engagement.

I think we noted that it was one of the reasons we wanted to try to ... Well, we invited Melissa to participate in some of the facilitated conversations to try to facilitate exactly, I think, what we came to in this small team discussion, which was informal, frank, direct but constructive conversation that was leading towards a goal. And I think were able to achieve that, and I'm very pleased about that. So thanks to everybody that contributed.

And thanks, Alan, for your comment there and for your contributions to that small team effort. It was very important.

Mark SV, you're next.

MARK SVANCAREK:

Thank you. I agree that the phrase “must be created or extended in RDAP” is a little confusing, but I disagree with Sarah's approach because the fields may be published in RDDS. And RDAP is the

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only way to publish things in RDDS right now. I mean, the WHO is protocol is going away.

So if it's not extended in RDAP, you won't be able to do that. So the language that we land on, I don't know, it should be ... I really think that "must be created or extended in RDAP" probably is the clause that must remain. This is, I think, probably an issue of commas more than of words. But again, if it's not created or extended in RDAP—whichever verbs you want to use—then you'll never be able to publish it.

And that's separate from how SSAD works. Right? We haven't decided how to securely transmit personal data in SSAD. But for things that are public, it has to be in RDAP. Thanks.

KEITH DRAZEK:

Thanks, Mark SV. I'll turn to Marc Anderson in a moment. But I think we're approaching the question of policy versus implementation rather quickly. It's always a gray area or a fine line that we need to be careful with, but I take your comments.

And let's hear from Marc Anderson and Hadia. Marc.

MARC ANDERSON:

Thanks, Keith. So I think probably some more wordsmithing needs to be done here, but I think that the distinction in here—and I tried to raise this in my comments earlier—is that from a Contracted Party House perspective, there are some contracted parties that will or are interested in making the distinction and using a standardized data element, but are not willing or interested in

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publishing that standard data element in their RDDS responses. So there's a desire to have a standardized data element but not include that in the RDDS response.

And I'm not arguing that ... I'm not saying it should be excluded from RDDS. If a contracted party makes the determination or makes the decision to make the distinction and publish that value in RDDS, I think that's ultimately their decision and they can do that if they want to. But I think that publishing it in RDDS is not the only value or only use for that field. I hope that helps respond to Mark's and Lauren's questions.

I think the issue right now is that the way it reads—it says “the field or fields must be created or extended in RDAP”—sort of implies that it's only an RDAP field. And first, as Alan rightly pointed out, we shouldn't say RDAP. We should say RDDS. So we should use the technology agnostic term there.

But also, the original language was that it “must be created” to take into account that the discussion was about having a standardized data element and not presupposing that the only use of that standardized data element was in an RDDS query response.

So I hope that helps, and I think that's an important distinction for contracted parties at least.

KEITH DRAZEK:

Thanks, Marc. I'm going to turn to Hadia and then Mark SV. And then, Berry, I'm going to turn it back to you. But I think, probably, a good next step would be for the small team to take any input here

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in very short order and come up with some suggested text that will work for everyone, unless somebody has some concrete recommendation now.

But in the interest of time, we should probably take this one offline and then revisit it on Thursday just to make sure that everybody's on Board. But I think we're real close here. Directionally and substantively, I think we've made a lot of progress on this point, and at this stage I think we're doing a bit of wordsmithing. It's important wordsmithing, but I think we're just making some fine-tuning adjustments at this point. And I'd like to think that the small team and Berry might be able to help get us to the end on this one.

So with that, Hadia. Then Mark SV. And Berry, I'll turn it back to you for next steps on this point.

HADIA ELMINIAWI:

Thank you. So, creating or extending the data element in RDAP does not necessarily mean that contracted parties need to include it in RDAP response. At least this my understanding of how it works. However, there are benefits, definitely, from including the element in RDAP in order to be able to actually include it in the RDDS responses, if required.

So I'm not sure. Why are we not happy with that? I do agree, though, that general terms like "the RDDS" should be used. However, from an implementation point of view, RDAP is in fact what replaced WHOIS protocol. And therefore we might as well mention it here.

KEITH DRAZEK: Okay. Thank you, Hadia. Mark SV, you're next.

MARK SVANCAREK: Thank you. Two things. I guess my guidance to the small group, as you're adjusting this again and when we have our conversation again next meeting, is that it's okay, probably, to make this technology agnostic, but it needs to be clear that the field may be used in the public RDDS. I think that is an important thing to make very, very clear in the recommendation language; that there is an intention that this field may be used by contracted parties who desire to use it in that way. I think that needs to be clear. I think it will confuse the IRT if it is not clear.

And then secondly, I was just wondering. Are we going to talk about Footnote 8 today or not?

KEITH DRAZEK: Thanks, Mark. I'm sorry. What was your last question? [inaudible].

MARK SVANCAREK: Yeah, Footnote 8.

KEITH DRAZEK: Okay, let's see. It's here, so let's go ahead and talk about it. So thanks, Mark, for flagging that. I'm looking at it right now. And I see a hand for Marika. Marika, go right ahead. Thanks for jumping in and bailing me out.

MARIKA KONINGS: Yeah. Thanks, Keith. I think this footnote is still linked to the language that's on the left-hand side, so the initial report language is not something, as far as I'm aware, that's new text or that is being proposed. It's still appearing there because we have the original text in there, but in a cleaned-up version that we hope to be able to produce after this call, old text should no longer be visible, including any footnotes that are associated with it.

KEITH DRAZEK: Great. Thanks, Marika. And thanks, Mark SV, for flagging that as a perfectly reasonable question. And yeah, just to reiterate what Marika said. And I should have noted this at the top of the call. The plan is for staff and leadership, at the end of today's call, to circulate a draft final report with essentially the proposed text, stripping out the tables, stripping out the previous text and basically having a clean or a clean-ish version for everybody to review based on the work that's taken place over the last couple of weeks—well, in the last eight months, but especially the last couple of weeks.

So with that, Berry, I'm going to turn it back to you if you have anything that you'd like to say or suggested in terms of next steps for the small team. And then we will move on to the rest of our agenda. Thank you.

BERRY COBB: Thank you, Keith. I think staff's preference is that we can just try to resolve this through e-mail and not necessitate another call. It

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seems that there is support or kind of general agreement about replacing “or extend in RDAP” with “RDDS.” And I think that the points made on that are valid. All of our prior recommendations were technology agnostic.

To Mark SV's point about making clear that this data element could be made available in the public directory, I think that's already a given, given how RDDS is defined in the current agreements today because it classifies RDAP or WHOIS from a technology perspective. But at any rate, at the conclusion of the call, we'll send out the text to the small team, probably in a separate Google Doc, to get to a final conclusion over this.

And the final thing I'll say is that we did record our small team calls, and so I'll make sure the links to those recordings are included in the meeting notes for today's call, in case anybody's interested in hearing any of the specific dialogue. Thank you.

KEITH DRAZEK:

And thank you, Berry. Sounds like a good plan. So let us then move on. So if we could turn to the next item on the agenda. I don't have the agenda in front of me at the moment. Marika, I'm going to hand this over to you to take us through the next step.

MARIKA KONINGS:

Thanks, Keith. So next on the list is Recommendation 4, and we already discussed this one as well, I believe, during the last meeting. There are basically two outstanding items here. The first one is, if you see on the end here of the paragraph of Recommendation 4, it says “placeholder for language.”

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Oh, I think Berry's going too fast. Just above 1 it says “placeholder for language to reflect that legal person data is not protected but that natural person data contained within legal personal data is protected.”

And I think I already noted this. Last time around, we did get three different versions here of proposed language to be included that you can find in the table. And we really need some guidance here from the group on which of those three versions is preferred. I think one was submitted by Chris. I think the second one came from Volker. And I think the third one was from Alan Woods.

Berry, I don't know if you want to go to those there in the table below. So I think that the first item here is to get some guidance from the group on which version you would like to see included in the text for final review. And then we can go to updates that we made it to the new recommendation [inaudible].

KEITH DRAZEK:

Thank you, Marika. So if anybody would like to get in queue on this point, please do. And just to reiterate. We're looking for input from the team to determine which of the three options we should include in the draft final report for review that will be sent out later today. So if anybody has strong feelings or a preference or an argument to make as to which of the three choices we have, please get in queue at this point.

Laureen, thank you so much. Go right ahead.



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LAUREEN KAPIN:

This is Laureen, on behalf of the GAC. Not surprisingly, I would support Chris's version. And just to explain my reasoning, I think Chris's is the most balanced and pithy of the three proposals. I mean, this is a little bit like goldilocks. Volker's is a little too brief because it doesn't include the premise that the [GDPR] only protects natural data.

Chris's starts with that, but then—and I think this in response to Becky's intervention and others—it also then clarifies that you can't just stop at identifying the entity as a legal person. You also have to look at the legal person's data and ensure that personal data isn't in place.

And I anticipate, of course, that Alan will support his proposal which also is useful, but I also think is very, very long. And if we wanted to put a footnote that references the European Data Protection Board letter which it seems to draw from, I certainly wouldn't object to that. But I just think that is very, very long and detailed.

And what we really need is just a broad level message that, as a general matter, here's what the GDPR protects. If you're going to then be looking at the data of a legal entity, it's not enough to just characterize it that way. You do also have to make sure it doesn't contain personal data.

KEITH DRAZEK:

Thank you, Laureen. So Laureen's preference is for the language proposed by Chris Lewis-Evans with that acknowledgement that

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the references to the letter included in Alan Woods' proposed text could be referenced as a footnote.

Alan, go right ahead. And then Alan Greenberg.

ALAN WOODS:

Thank you very much, Keith. And apologies. I'm trying to come out of my post-being on leave haze. So I've been quiet, which is uncharacteristic, know.

But in relation to this, [inaudible] I'm listening to what Laureen is saying there. And of course I get the concept and brevity, but I must say I must kind of laugh a little bit because what we're trying to come up here is guidance. And isn't the very point of guidance to guide? Yes, I can see why putting it in a footnote is okay. I just don't understand why we wouldn't put that into the guidance.

What Chris has written absolutely is a restatement of the law, and the law is what is there. But of course what these contracted parties, and specifically the registries, have been trying to push for is for us to think outside of that box of, "Well, what does the law state?" Because we all can read the law, but what is missing from our guidance?

And this is unfortunately something that we've be trying to push. Well, is there a practical effort? What is the practicality that can help us to implement? Not just stating [literally] what should be implemented. It's how to get there, not what is it.

So I thought it was the natural extension of we know what the law says, but we look to those who have given clarity on how that

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would be perceived by those who are going to enforce it. That is the DPAs, and they put that helpfully in a letter which is somewhat uncalled for—not uncalled for; unheard of—that they went so far.

And I think it would be madness for us not to have in some form there. Whether or not that's a footnote or in the body itself, I don't know if that makes a huge difference because, let's be honest, it should be read equally if we're doing guidance. This is guidance we're talking about, not policy. Therefore we need to make sure that we put all our chips on the table so that those want to follow it have the information that they need to.

So, I mean, footnote or not, I would say keep it in, obviously. That's my thought. If it ultimately ends in a footnote, I don't see why that makes a difference. Thank you.

KEITH DRAZEK:

Thank you, Alan. Alan Greenberg, you're next. Then Marc Anderson.

ALAN GREENBERG:

Thank you very much. I basically agree with what Laureen was saying and Chris's note. And I appreciate Alan's willingness to put it in a footnote or somewhere else that is not [that may seem] ...

My rationale is that the statement that Chris makes is very clear and it does include the caveats of legal is not sufficient, there needs to be personal data. We spent a lot of time over the last several years looking at things from the perspective of small registrars who might not have legal counsel.

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And we really need a clear statement. Yes, it's important to give all the “ifs”, “buts”, and “ands”—the information we got in the letter—but I think we need to lead off with a really clear statement that summarizes where we are. There have clearly been misunderstandings over the years as to what GDPR protects and what it doesn't protect. It's not likely by the people around this table, but by others. And I think the balance of Chris's statement and including all of the gory details that Alan Woods provides somewhere, but not leading off with it, is an appropriate balance. Thank you.

KEITH DRAZEK: Thank you very much, Alan Greenberg. Marc Anderson, you're next.

MARC ANDERSON: Thanks, Keith. I'm trying to absorb everything that's been said so far. I guess when I look at the existing Section 7 that says “Distinguishing between legal and natural person registrants alone may not be dispositive of how the information should be treated,” we already have that in there. We all understand that and it's included as part of our guidance. But with that, considering that we already have that, if we strip it down, I think we already have the brief language that describes that legal and natural differentiation alone might not be dispositive.

So I think I like Alan's point—Alan Woods, that is—that we need to provide additional information, actual guidance, that may be helpful for those contracted parties that choose to make this

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differentiation. If we strip it down and leave out the points that Alan Woods made, I don't see that we've added anything more than just what's in Section 7 already. It just seems redundant with that.

So I guess I'm supportive of the language Alan Woods has provided, and I think if we strip it down any more than that, then it's just redundant with the existing language in the report.

KEITH DRAZEK:

Thanks, Marc. So, look, I think the path forward on this one ... It seems to me that there's a general support for including a reference to the letter, whether it's in the text or in a footnote. So I think that brevity is obviously good. It's something I've said previously. If we can be concise in our recommendation language and guidance text, that would be good. So perhaps there's a way to include some of what Alan Woods has put here in terms of the substance of reference, but then use a footnote to get into a little bit more of the detail.

So I guess what I'm suggesting is that maybe we use the language suggested by Chris augmented with some of the text that Alan has proposed, and then include a reference, a footnote to the letter and any additional detail.

So that's my thinking at this point based on the conversation so far, but it sounds like there's at least general agreement that there's no harm in referencing or including the points related to the letter which, of course, is certainly relevant.

So I guess maybe the next step here is to take a stab at developing some compromise language that incorporates the

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points laid out by Chris, some of the points made by Alan as an introduction—or at least as a more clear acknowledgement in the final report text—but then also include the footnote as well.

Alan, go right ahead.

ALAN WOODS:

Thank you. And just very quick because it's occurring to me as you're speaking, I have no issue with that. I'm not going to stand in the way. But perhaps, what is guidance in the team's mind? Because at the moment I'm kind of thinking that's not guidance. That's just a reprint of the law. And what we're trying to do is explain how. So maybe it's good to take [inaudible] for a second.

Why are we actually talking about guidance? I know it's very late in the day to ask that question, but I'm kind of left scratching my head as to what is being expected here. Because as I see it, it's giving practical information on how to understand the requirements on us and it's a way forward in how to apply those requirements, as opposed to just stating what the requirements are.

I'm just a teensy bit confused, so apologies. I didn't mean to be blunt on that.

KEITH DRAZEK:

Alan, no need to apologize. And it's a completely legitimate and fair question. And of course, the guidance is going to be, depending on your perspective and where you sit, it's potentially going to have a different meaning or have a different weight. But

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certainly from a contracted party perspective, those who would be looking to guidance to implement their approach, I understand what you're saying.

So would anybody else like to get in queue on this one? I'm not seeing any hands, so I think the next step is to try to find a way to combine, if you will, some of the language that we have here. And we don't have time to actually wordsmith this one on the call right now, but I think we need to try to find a way to incorporate some of the points that Alan Woods laid out, and certainly include the reference to the letter to try to find a way to bridge the gap here. And if anybody would like to volunteer to help with that, I know staff is certainly ready to support that.

So Marika. let me hand this one back to you. Do you have any thoughts in terms of next steps?

MARIKA KONINGS:

Thanks, Keith. I think from a staff perspective, we can maybe take a first stab at, to a certain degree, combining the two aspects and see if we can come up with some language that everyone can hopefully feel comfortable with and include that in an iteration of the report that will we are planning to send around after this call.

KEITH DRAZEK:

Okay. Thanks very much, Marika. Does anybody else have any final thoughts on this one before we move on to the next? All right. Marika, back over to you. Thank you.

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MARIKA KONINGS:

Yeah. We're actually not moving on to the next step yet. We're still staying with the same one, but as you may recall, there was some discussion the last call in relation to a new recommendation that we added to complement the recommendation the guidance that references work to be undertaken in further discussions on the Code of Conduct. So, Berry, if you scroll a little bit up.

Based on the conversation, there was some feedback that this should not be a standalone effort on a Code of Conduct. But this should be part of the broader conversation that is, as we understood, expected to happen after Phase 1 is implemented and the DPA has been agreed and finalized; that would move into a Code of Conduct conversation.

So what the staff support team did in consultation with leadership was to reword this language to make that clear. So it now would read “The EPDP Team recommends, in line with GDPR Article 40 requirements for Codes of Conduct, that the above developed guidance concerning legal/natural differentiation should be considered by any future work by the relevant controllers and processors in relation to the development of a GDPR Code of Conduct.”

“This future work is expected to be carried out in done in an open and transparent manner, allowing for observers to follow the discussions and with the opportunity for the community to provide input before the Code of Conduct is finalized.”

And we added a footnote here as well that this reference to Code of Conduct should not be confused with the Code of Conduct that's referenced in the RAA and/or Registry Agreements.



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So again, this is aiming to reflect the input and discussions that we had on the last call. So I think we're hoping to hear from the group whether this in line with what was discussed and what everyone can live with—how this has been approached in this updated version.

KEITH DRAZEK:

Thanks, Marika. That's an excellent setup. And just to recap that we had some lively discussion on this particular point during our last plenary call. And I think we identified that there was some confusion in the pre-existing text about the Code of Conduct and whether there would be a Code of Conduct specifically on the issue of legal and natural versus the submission of a much broader Code of Conduct for review by the Data Protection Board. And so I think we've resolved that.

I think what we've identified is that the recommendations coming from our group are specific to the legal and natural distinction, but that it would be incorporated in any future work related to a Code of Conduct. And concurrently, as Marika noted, the Code of Conduct that we're talking about here and that we're anticipating our recommendations becoming a part of are separate from the Codes of Conduct in the existing Registry and Registrar Agreements.

So I think the text here to me, based on the last conversation, definitely moves the ball forward for us. So let's open the queue to see if anybody has any questions, feedback, or any other input. I'm not seeing any hands at this point.

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Okay, Alan Woods, go right ahead. Thanks.

ALAN WOODS:

Apologies again. It's because I wasn't here last week and I didn't have a chance to discuss this. I'm not going to go over [inaudible] that has been discussed on this, but I think we just need to be realistic, as the ultimate arbiter in whether a Code of Conduct is good or not is not the community. It is the European Data Protection Board and how that applies to the controllers.

So I just would like to warn us away from embedding into any wording that we have here an expectation, realistic or not, that the community will be able to guide what the European Data Protection Board agrees to or not. It will be a conversation between those who are considered to be controllers on the European Data Protection Board. I'm all for transparency and I'm all for comments, but I think we should temper the expectations on this that, ultimately, it is about those who are legally liable and those who are the enforcers.

We can have all the transparency in the world, but that won't change the arrangement of who ultimately will have to agree it. So I just want to temper expectations there. It is a difficult process and it is ultimately about legal liability and responsibility. And that's not something which traditionally the community has a very strong hand in, unfortunately. So I think, just tempering that expectation.

KEITH DRAZEK:

Yeah. Thanks, Alan. And I think it's a good point, an important point, as far as the process and setting expectations. I think the

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intention here, though, is that as the Code of Conduct is developed for submission, in advance of submission, that there would be an expectation for interested parties to be able to provide input to those conversations, not so much an expectation that there would be follow-on and influence or expectations of that. I hope that's clear, but thanks for the intervention.

Brian King, you're next.

BRIAN KING:

Thanks, Keith. It's Brian for the transcript. Just noting that requesters of WHOIS data that go on to process that data for their own purposes will be controllers and processors. And this doesn't say one way or the other, so I don't know if that's a bug or a feature if we're trying to make this ambiguous to get consensus. But it would be better if this was clear that requesters or groups representing requesters—and therefore controllers and processors for their own purposes of WHOIS data or RDDS data—are going to be a part of this.

Just noting that that sentence—the second sentence or the last sentence there—doesn't capture that and isn't a requirement. That “is expected” language is way too soft and squishy to give comfort that data requesters will be a part of this Code of Conduct and that this won't just be ICANN and the contracted parties. Especially noting that we have no clue, because we're not part of the discussions between ICANN and the contracted parties, about who's going to be a controller or a processor for which purposes.

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So leaving that as wide open as it is, is not going to fly. So if we can tighten up that language to include clarity that data requesters, I would say, need to be a part of that, that would be helpful. Thanks.

KEITH DRAZEK:

Thanks, Brian. And I think, following our previous discussion, that's how we ended up with the text “with the opportunity for the community to provide input.” And I hope that, ultimately, that provides the opportunity for potentially impacted parties, which is some of the previous texts that we used. And the focus on controllers and processors certainly is an important one.

Alan Woods, go ahead.

ALAN WOODS:

Thank you very much, Keith. And I don't want to belabor the point, but I think to Brian's point, we do need to be very clear in this. A Code of Conduct discussion for requesters is absolutely something that could happen., but that is a matter for a grouping of requesters. So people like the IPC banding together and saying, “We have a Code of Conduct of how we would request such data.” And that will give us comfort in our consideration of that, absolutely, if there was a [way and means] which has been greenlit by the European Data Protection Board.

But I think we need to be very clear. And it's been a while since I've been able to refer to this particular line, but what Brian just said there was the textbook conflation of the purposes of the

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contracted parties and the [compounded] purposes of the third parties.

We are not processing data in the same way. We process data for our purposes. They processed data for their purposes. The Code of Conduct will be how the contracted parties process data, and that will include how we would propose to process disclosure requests. But that does not intersect, and I think this just needs to be a clear statement of fact. That data processing regime does not intersect with the purposes of the third parties and why they might need it.

Again, they can come up with their own separate Code of Conducts, and the two Codes of Conduct might interact quite lonely. And I would encourage them to do that. I would encourage them to think about doing that on a parallel track to save time down the road. But I think we need to be really clear that they are two separate sets of purposes and we should not be completing the two because that puts us back two years,

KEITH DRAZEK: Thank you, Alan. Brian King, go ahead.

BRIAN KING: Thanks, Keith. I would, I guess, partially agree with Alan in that if the contracted parties want to go to the Data Protection Board and do their own Code of Conduct outside of the ICANN system, then they certainly are welcome to do that. The point we're making here is that if this is going to be a sort of ICANN-coordinated effort to work with the Data Protection Board on a Code of Conduct, that

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requesters purposes absolutely need to be a part of that conversation if it's going to be an ICANN-coordinated effort.

We're very clear about all the different purposes for processing data and who they belong to. And if ICANN's going to coordinate this, it simply needs to include the groups that are going to be processing the data. Thanks.

KEITH DRAZEK:

Thanks, Brian. And I guess that does get us back to the open question of controllership/joint controllership and the role of ICANN Org vis-à-vis or versus contracted parties in that type of a relationship. And I don't think we have any clear guidance on that one at this point. I don't know if there's a question that we might need to pose to our ICANN Org colleagues on this or not, but I think the key here is to make sure that this proposed text provides the opportunity for input, certainly in the event that it's an ICANN Org-coordinated process.

And so I think the current language captures that. It basically says that there's an opportunity for input. And if anybody has specific proposals to the text, then by all means put them on the table. But this the text that we're working with right now. And I'm looking right now, in the interest of time, for concrete, textual recommend recommendations.

Steve, I see your hand. Go ahead.

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STEVE CROCKER: Thank you. I'm not sure I have specific textual [things], but the points that Brian and Alan have been raising, I think, are very important. End of the day, all the parties are going to have to satisfy the legal requirements, which means being in good standing with the data protection authorities.

A key thing that I want to say here is that this is not a one-shot process. You could imagine getting the requesters together, having them all sit down and say, "Here's what we need" and agree to something. But you can't do it all at once. There will be new requesters. There will be new requirements. There will be changes and so forth.

So you have to look at this as if there's going to be a process in which there is going to be an evolving set of requirements, a revolving set up requesters, an evolving set of agreements and standards applied to this. And so there's a little more structure. And there has to be a little more of an ongoing process that's included in all of this, as opposed to everybody sat down the table, came up with their decisions, and we're done. That isn't going to hold still very long for doing that.

So I just wanted to add that as some perspective on what I'm listening to. Thank you.

KEITH DRAZEK: Yeah. Thanks, Steve. Very helpful. And I think, in the interest of moving us forward here, the language on the screen, the language that we're considering at this point, does reference future work by the relevant controllers and processors in relation

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to the development of a GDPR Code of Conduct. And I think that is sufficiently broad at this point without being overly prescriptive to give us the flexibility that we probably need. And I'm not sure that there's much more that we could do or say in terms of being more explicit or specific on the point.

Brian, I see your hand. Go ahead.

BRIAN KING:

Thanks, Keith. And in short, sure there is more that we could do to clarify that. We just need to add a sentence that the envisioned requesters of RDDS data are to be included as controllers and processors, or however you wanted to say it. But just one short additional sentence would get it done. Thanks.

KEITH DRAZEK:

So I see a hand from Alan Woods. Without pre-supposing what he might say, when I say there's not much more that we could do, I mean in terms of bringing this to closure and consensus. So if others would agree with Brian's comment or suggested edition, that's great.

But anyway, let's turn to Alan. Go ahead.

ALAN WOODS:

Sorry, Keith. I'm a nightmare today. No, because simply they're not controllers. They are controllers in their own right. They're not controllers in our sphere. And I think that is a very dangerous path



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for us to be going down at this point. So perhaps we should take it to the list because that just was not right. Thank you.

KEITH DRAZEK: Thanks, Alan. And thanks, Brian. All right, let's move on from this one. Marika, back over to you.

MARIKA KONINGS: Thanks, Keith. So now we can move on to the next recommendation, which is Recommendation 5. I think here we're probably at a second and probably hopefully final reading on this one. As you may recall, we also discussed this during the last meeting. This the recommendation in relation to feasibility of unique contacts. Proposed updated language was suggested here by the Registries Stakeholder Group, and we considered that during the last meeting.

There were no objections to including that. There were no further comments or concerns flagged, so I think at this stage, this seems to be the language that we have here and would propose including in the updated version that will circulate after this call.

So I think we're just having maybe a last call here to see if there's anything here that needs conversation or discussion, or whether the group is happy to see the language included as it stands at the moment.

KEITH DRAZEK: Thank you, Marika. Would anybody like to get in queue? As Marika noted, this is one that we've spoken to several times now

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so it's really a question of, are there any final questions or comments or concerns about this particular text? I am not seeing any hands, so I'll give folks another opportunity.

Chris, go right ahead. Thank you.

CHRIS LEWIS-EVANS: Yeah, and sorry. With the small team and some time off, I'm playing a little bit catch up on this one. So maybe we just add, within that first bullet point, "Both registrant-based and registration-based email addresses of natural persons are likely to be personal data" just because, obviously, we do talk a lot about natural and legal in this document, and what we don't want to do is to get people concerned. I know they're two separate issues, but just to make that point would be good.

Other than that, I'm very happy at the moment. Thank you.

KEITH DRAZEK: Thank you, Chris. Any other comments? Marika, go right ahead.

MARIKA KONINGS: Yeah, thanks. I didn't completely catch what Chris was suggesting. So maybe, Chris, if you can just put it in the chat we can make that update unless there are other concerns about what you suggested.

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KEITH DRAZEK: Thanks, Marika. So yeah, Chris, if you could just insert into chat your point, that would be helpful. And we'll go to Laureen next. Laureen.

LAUREEN KAPIN: The other point I think we discussed is basically a more effective means to communicate directly with the registrant. That doesn't seem to be reflected here, but it is something that was this topic of considerable discussion.

KEITH DRAZEK: Okay. Thank you, Laureen. So I don't see any other hands at this point. I guess the question is, Laureen, is there a concrete or a specific suggestion that you have as far as the text is concerned? Feel free to speak to it. Or if you want to put something in chat as well, that's fine.

And let's see here. So I see Chris is putting some stuff into chat. "Both registrant-based email addresses of natural persons are likely personal."

And Laureen, is that a new hand or an old hand? I'm sorry. Old hand.

Okay. Marika, I'm going to turn this one back to you. And just a time check here, folks. We have 15 minutes left on our call today. It think we have some more to get through, so Marika, back over to you.

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MARIKA KONINGS: Thanks, Keith. And just a note, of course. As said, our plan is after this call to produce that clean version giving everyone, then, an opportunity to look at our “cannot live with” items. But if [there are, indeed,] kind of minor edits that clarify the language or grammatical issues, those of course can always be suggested.

So then we basically go back up to Recommendations 1 and 2. Those are the remaining ones that we have on the list. Recommendation 1, as you may recall, we had also a conversation about this on the last call. A leadership team there had proposed to go back to basically a very minimalistic version or response, basically noting that there was no consensus achieved, and basically provide that as the response to the Council.

And I think there were some concerns expressed by some in the team that that didn't provide the complete picture of what the group considered, and especially that Recommendation 17 contained several parts.

Amr volunteered to provide some draft language that would provide that broader picture, and has inserted that here in the table. I know that there were already some edits, I believe, that the ALAC Team has made.

But maybe before looking at those, maybe it's worth the question—assuming that people had a chance to look at that —is there support for going to that more elaborate version that basically outlines the consideration of 17.1, the materials that were discussed as part of 17.2, the study. And then noting that 17.3, I think, basically is kind of wrapping up that conversation and consideration of 1 and 2.

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So I don't know if the easiest way of approaching this is that there is support from the group to take Amr's version and then look at any potential updates or changes to that. Or is there a preference to go with the more minimalistic version that the leadership team had proposed originally?

KEITH DRAZEK:

Thanks, Marika. So we'll open the queue on this one. I acknowledge that some folks may not have had a chance to read Amr's input in full.

So I guess the question here is, do we want to use the text that was initially or previously proposed by the leadership team and staff? Do we want to use Amr's input here as the baseline? And then of course, we can continue to do any tweaking that's necessary. But that's essentially the question before us as we bring this report to a finalization.

I have hands from Hadia and then Marc Anderson. Thank you.

HADIA ELMINIAWI:

Thank you, Keith. So first I would like to thank Amr for this [writable]. And actually, I don't have a preference whether we put it in details or not as long as we are clear that we are talking about 17.1.

But the comments I had in relation to what Amr put forward is that Amr's text basically suggests that the only thing that we had to do is actually to revise the study or look at the study that ICANN Org had conducted; and that the only reason for us going to Phase 2A

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is that the study was not available in time. However, if we look at what we actually have done, the study was actually only a small portion of what we actually did. And the reason that we did go to Phase 2A was not only because of the study, but it was also because of a legal memo that was received. We also looked again through the public comments. We put forward some legal questions to Bird & Bird.

So my only point here, if we are to put the details in there, it is unfair to say that the only thing we had to do is actually to evaluate the study. And if we had already evaluated the study and have not reached conclusion, then therefore this is resolved because what needed to be done has already been done. So that's it. So that's my only point.

KEITH DRAZEK:

Thank you, Hadia. So just a couple of points. One is that the first step of what we're trying to achieve here is to determine whether we should be using Amr's language as a starting point or whether we should be using the previous text as a starting point. And then we can get into possible wordsmithing and/or substantive edits.

And I think the point about the study that was conducted by ICANN Org, that was one of the reason—if not the reason—the legal and natural discussion was deferred to Phase 2A because it was not completed in time or on the timeline for the conclusion of the Phase 2 work on SSAD. And so, yes, of course we've done more than simply review the study in the context of the Phase 2A work. But I think the key here is that that was at least the impetus for the Phase 2A having to be set up.

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So let me stop there. I guess the question is, does anybody want to get in queue with strong feelings one way or the other about including are using Amr's language as the starting point. I think we had quite some extensive discussions on Section 17 and the reference to Section 17 and whether we should reference 17.1.2.3 or all of it in its entirety.

And so I guess the question here is, does Amr's input providing additional data detail and context, is that help helpful to the group on this point, or is it creating more concerns than we can reasonably resolve this week?

So with that, Marc, let me turn it to you.

MARC ANDERSON:

Thanks, Keith. So a couple of points. I think to your first question, in principle I preferred the staff's brief up or streamlined version. but the streamlined version from staff raised a lot of questions and discussion on a previous call. In particular, there's a lot of discussion over whether our work resolved the natural vs. legal question as directed by the Phase 1 recommendation, specifically 17.3.

So while I maybe have a preference for the staff's shorter version, I think Amr's version does an excellent job explaining or providing background to [inaudible] 17.1,2, and 3, and lays out how we got to where we are and what we did to resolve the question. And I think it's important that we draw a line under this discussion and make it clear that this resolved so we can all move on. So while maybe, in principle, I like staff's shorter version, based on our

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previous conversation I think Amr's version maybe is the way to go.

I do want to respond real quick to Hadia. Hadia, I seem concerned that in addition to the study, the legal guidance and public comments were also part of our assignment from the GNSO Council and part of our deliberations. I will note that Amr did include that in his text. Whoever's driving the screen, it's at the bottom of page five. Amr's text does say that in addition to the study, the EPDP Team considered the Bird & Bird advice as well as the public comment input, to add substantive input.

So by my read, those things those things are taking into account. If it's not clear, I suppose it can be clarified. But I think Amr's version was intended to account for those three things. We were to consider the ICANN study, as called for in section 17.2, but that the GNSO Council also attack tasked us to consider the Bird & Bird legal advice as well as public comment input.

KEITH DRAZEK:

Thanks very much, Marc. So, look, I think the question here remains whether we should be using on Amr's language or the previous staff and leadership-proposed text. And I guess, ultimately, the question is maybe to the BC. Margie was one of the folks who had concerns with the previous text or the staff and leadership-proposed text. So I guess maybe the question is to the BC. Does Amr's proposed text help resolve the concerns around the staff and leadership-proposed text or not? Does that move us forward?



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And I guess if no one has a strong preference, maybe it's just better to stick with the simple version. Obviously adding text and adding a lot of detail is going to open the door for differences of opinion or confusion or further deliberations needed where we have very limited time.

Brian, I see your hand. Go right ahead. Thank you.

BRIAN KING:

Thanks, Keith. I can't speak for Margie, but I'll tell you what I think she was thinking when she made that proposal which the IPC supported. There's a difference in the Phase 1 recommendation between 17.1 and 17.3, and that 17.1 was the "permitted but not required to" subject that is being resolved in a later phase. The point I think it's important to make is that 17.3 was to resolve the legal vs. natural issue. And, yeah, it's that "determine and resolve" language that you have on the screen there.

But that we're not convinced, I guess, that this was resolved. So that's the point, I think the primary one, in that comment in the Google Doc. I don't know if we have that captured or not. I'm trying to study the language on the screen. I won't make everyone suffer through my reading and thinking, but that's where that was coming from. Thanks.

KEITH DRAZEK:

Thanks, Brian. I appreciate the input and I certainly understand the context of Margie's intervention and concern about the previous language. I do not want us to go back down the discussion of what the meaning of "resolved" is at this point.

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My question, and this is for everybody, is does Amr's proposed text help move us forward from the concern that Margie had flagged, or does it not? And are we better off sticking with the original text? And that's really the question that I'm trying to get us to here so we can produce a clean copy of the draft final report for everybody's review. And if we need to do any wordsmithing, that we have some stable text on which to do that.

I'm seeing in chat, Mark SV says, "I still prefer the original, I think. But Margie isn't here, and I'd like to confirm."

Sure, of course. Look, I think at this point I'm going to suggest that we go with the original text unless we hear back that the proposed text from Amr is better or moves us forward. If nobody objects, then we'll consider that. But I think at this point, we should stick with the clean text. Sorry, the simpler texts originally proposed by the leadership and staff. And we'll hold until we can hear back from Margie whether that moves the ball forward or not.

We're at the bottom of the hour, I'm just noting. So Marika, if I could turn back to you for next steps on that point. And then we'll probably need to move to wrap up the call today.

MARIKA KONINGS:

Thanks, Keith. Yes, we can definitely refer this back. And I think our plan is basically to create now a kind of clean version with line numbers that we use as an attachment. But of course we'll leave the Google Doc up as well. So if anyone wants to go back and see indeed some of the proposals and edits, that will remain available.

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And I know we're running out of time. I think for the last one that we had on the agenda, we are also basically in a kind of final reading of that. There was updated language that we reviewed and discussed during the last meeting. No further changes were made. I don't think there was any further input provided either, so we're also assuming that at least that is good to go in the draft version that we'll be circulating.

As Keith noted, we're now moving basically into a final review phase. What we'll do, similar to how we've done this in the other phases, is we'll clean this up, produce line numbers so it becomes easier to reference, [and then basically] create a Google Doc where each group can flag any "cannot live with" items including rationale as well as what would need to happen to make it an item that you can live with.

I know there are still some minor edits that were suggested in the chat. I did note agreement on the suggestion that Chris made in relation to Recommendation 5 that we will apply. I think there's not necessarily agreement on the edits that Laureen has suggested. So maybe there we can suggest that there's maybe a conversation between Laureen and the Registries Stakeholder Group on whether there is a way to accommodate Laureen's point in the language. And again, the Google Doc can then be used for that as well.

So I think that's where we're currently at. Of course there is still maybe some work on Recommendation 3, although I think there seems to be agreement as well that maybe changing "RDAP" to "RDDS" fixes the issue there. So I think that's something that will

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be confirmed with the small team. And we'll make that update as well, accordingly.

So that does leave us, as you know, we are on the tight timeline here. We'll be pushing out this version for final review sometime later today with a Google Doc that each group can use to flag "cannot live with" items. You're expected to do that by the end of tomorrow so that we still have Thursday's meeting to resolve and work through any kind of "cannot live with" items that have been identified. And then us to, basically, Friday where we will be able to publish the draft final report in its entirety.

As you know we already published, a couple of weeks ago, the rest of the final report for everyone to review. That's, of course, more administrative updates that have been made there, but if there's anything in there that is missing or needs changing, please flag that as well. But as said, by Friday our ideas to incorporate it all into one package so everyone can review this and get it basically into a final state sometime early next week.

So that's the proposed plan for next steps.

KEITH DRAZEK:

Thank you very much, Marika. So we have our next call on Thursday at 14:00 UTC. Key questions for everybody is to look at the proposed text that comes out, the clean version of the draft final report, and look for any "can't live with" items and be prepared to speak to those during our next call. And then, of course, if there are any edits/wordsmithing that we need to do, we

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can tackle that as well. But the key question for us on Thursday is going to be any “can’t live with” items.

And again we’re trying to bring this to a consensus and to have consensus support, so if anybody has a reason why that won’t be possible, then we’ll need to hear that on Thursday. And if you have something you want to input before Thursday, feel free to do so on the list. But that’s essentially the timeline.

So with that, we’re about five minutes over. Apologies for going long. Thanks everybody for your input. Thanks to Berry and the small team for their continued work. And we’ll talk again on Thursday. So thanks, everybody.

TERRI AGNEW:

Thank you, all. Once again, the meeting has been adjourned. I will stop the recording and disconnect all remaining lines. Stay well.

**[END OF TRANSCRIPT]**