
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP - Phase 2A

Thursday, 29 July 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 the 29th of July 2021 at 14:00 UTC. In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. If you're only the telephone, could you please identify yourselves now?

Hearing no one, we do have listed apologies from James Bladel, Matthew Shears, Brian Gutterman, Laureen Kapin, and Malina Stroungi. They have formally assigned Owen Smigelski, León Sanchez, and Amy Bivins 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 meeting. Members and alternates replacing members,

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when using chat, please select either Everyone or All Panelists and Attendees in order for everyone to see your chat. Attendees will not have chat access, only view to the chat.

Alternates not replacing a member are required to rename their lines by adding three Z's to the beginning of your name, and at the 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. Seeing or hearing no one, if you do need assistance, please e-mail the GNSO secretariat. All documentation and information can be found on the EPDP Wiki space.

Please remember to state your name before speaking. Recordings will be posted on the public Wiki space shortly after the end of the call. As a reminder, those who take part in ICANN 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, good evening, everyone. Welcome back to our EPDP Phase 2A plenary sessions. So I'm going to very quickly get through the introduction here, and I'm going to hand it over to Melissa Allgood for a quick update and sort of readout from the breakout sessions that we've had this week and then looking ahead to next week's breakout sessions.

But I just wanted to note that I really appreciate everybody's engagement and contributions to that process in our breakout sessions. Trying to replicate a bit of something that we might have been able to achieve more in a face-to-face environment of having a little bit more of an informal approach, an informal conversation as more of a hallway type dialogue to try to find a path towards consensus.

And really, just a reminder to everybody that at this phase of our work we really all need to be looking for opportunities and paths to consensus based on the public comments, based on the conversations that we're having in the breakout sessions. It's just really critical in terms of the limited time that we have left and where we are in terms of the six months of work that we've had—actually more than six months now of substantive work on this—to really try to figure out where we could come together as a group on whatever we can for consensus purposes and of delivery of a final report.

So really, what we're looking to do—really, this month starting today—starting now is to do a review of the public comments and

to identify opportunities for consensus and compromise and looking for that path to consensus on a final report. So I really encourage folks to focus on our discussions in that manner, in that way. Please don't continue to reiterate well-stated and well-understood positions. Obviously, we're going to review the comments. And that's an important factor here, but really reviewing the comments at this stage is designed to try to identify where there's possible compromise and possible consensus moving forward.

So with that I'm just going to stop there. I'm going to ask Melissa if she'd to speak to a quick read out and looking ahead about the breakout sessions. But I really thank everybody for the contributions and continued hard work over the next month to bring us in for a final report.

So, Melissa, if I could hand it to you.

MELISSA PETERS ALLGOOD: Thanks, Keith. And I echo his thanks for all of you that have taken the time out of your schedule to participate in these conversations. As Keith mentioned, we have three more coming up the next week which are specifically conversations around Council monitoring of future developments, holistic considerations, and then navigating the uncertainty that is the reality of the work that you are all engaged in right now. So I look forward to those.

I think at a really high level, you've all done an excellent job of starting to really understand some nuances of each other's points of view. We've certainly run into some different interpretations of

terminology, differences in the way that you're defining words that you're using which I think helps build greater understanding.

We certainly have seen an acknowledgement across various groups that maybe they haven't been the most effective in explaining positions. And I think that's really an area that we can consider leaning into moving forward, doing a better job of, really, the understanding of the “why”.

And hopefully we engage in some more specific conversations around various benefits that certain groups have articulated and then how to achieve those ends.

So I know the work is incremental. I wish it could be more straightforward and I wish I could help you with my magic wand, but I do really appreciate all of you engaging in such a full-throated way in these conversations. So that's all I have, Keith.

KEITH DRAZEK:

Thanks, Melissa. And thank you very much for the time and effort that you've put into this. It's clear to me in the conversations that we've had this week and looking ahead to next week that this is going to be helpful to us as we find that path forward. And I think the conversations that I've observed have been constructive and helpful. And I really do appreciate your engagement on this and helping us as a group to move forward. So thanks for that.

I'm going to ask if anybody has any questions, any comments at this point. Specifically, any questions around the breakout sessions. Happy to entertain those at this point, but we're going to move very quickly into the initial report public comment review. So

if anybody has questions or comments, jump in the queue right now.

And if not, I'm going to move us to agenda item #3 here which is Initial Report Public Comment Review. And I will quickly hand this over to our staff colleagues to help walk through the table. I want to note here that we're going to start with comments and input received in the table that was helpfully prepared by staff and focus on the things that were received by the deadline. I want to thank those groups who did contribute by the deadline.

And then if we have time, we'll focus on the comments and the input that were submitted after the deadline. We want to try to be as efficient as we can with our time here, so let's just jump right into it.

So without further ado, Marika, Caitlin, Berry, if I could hand it over to you to kick us off on the public comment review. Thank you.

MARIKA KONINGS:

Yeah. Thanks, Keith. Hi, everyone. So as Keith noted, we'll start with the discussion table that was prepared in relation to Preliminary Recommendation 1 and a related community question that was put forward by the group.

As a reminder, Preliminary Recommendation 1 states that no changes are recommended at this stage to the EPDP Phase 1 Recommendation on this topic, with that recommendation being that registrars and registry operators are permitted to differentiate between registrations of legal and natural persons but are not

obligated to do so. And you also see that language here on the left-hand side of your screen from the initial report.

As a reminder we asked all groups to review the discussion table and review the entries and flag if any of these needed further discussion. And then specifically focusing on, if you would indicate “yes”, what specifically should be further discussed by the group. That will assist the team moving forward with the deliberations on these recommendations focusing on what, if anything, needs to be changed or further considered in order to get to final language for inclusion in the final report.

And so what you see here on the screen is the comment that was flagged by the Registrar team. It's comment six. And again, what you see on the left-hand side is a summarized version that the staff team produced. You should all have by now reviewed the full comment so you, of course, see the whole context as well. But for the purposes of this table, we basically provided an abbreviated version to facilitate the conversation and also be able to group together any kind of related comments.

This is a comment that came from the ICANN Org colleagues that are also participating in this call that basically asked the question, “What, if any, policy language does the EPDP Team expect for implementation of this recommendation?” basically to get clarity from the group what expectations are in relation to how the recommendation is currently worded—of course, not taking away that further changes might occur.

And the Registrar team here flagged that they would like to discuss this further. I don't know if one of the Registrar team

members would like to speak to this. [As always, of course], people can as well review what they've stated at here in the table.

So I'm just going to pause here to see if anyone raises their hand. And I see that Sarah has, so I'll hand it over to Sarah.

SARAH WYLD: Thank you. Good morning. I think that it's fairly clear from our comments, but I did just want to verbalize it. Thank you to ICANN Org for providing a constructive question. We should indeed consider what policy language is expected. I think that the current policy—the recommendation being confirmed that no changes are needed—that's where it needs to go. So we do need to just make sure that whatever we settle on is clear to an implementation team. Thank you.

MARIKA KONINGS: Thanks, Sarah. Keith, do you want me to manage the queue or do you want to take it from here?

KEITH DRAZEK: Thanks, Marika. I'm happy to do it. So thank you, Sarah. And Alan, I'll turn to you and then to Chris Lewis-Evans.

ALAN WOODS: Thank you. I just wanted to agree with what Sarah was saying there. And I probably will just put another finer point to that just by saying that if the question for us was, is consensus likely a recommendation saying that no recommendation is to come out, it

does seem a little bit obtuse. So I think if there's any way we can keep the spirit of what is being said ... But perhaps the use of the word "recommendation" to state that might be some confusion. Therefore it's not something that needs to be implemented, just merely noted.

KEITH DRAZEK:

Okay. Thanks, Alan. And Marika, if you'd like to respond to anything along the way, please feel free to do so. And Alan, let's just take that and then let's hear from Chris and Hadia. And then we'll circle back with feedback.

So Chris, over to you.

CHRIS LEWIS-EVANS:

Thanks, Keith. Hi, everyone. So I think my comment is going to be broadly similar to Alan's. I think you heard from a number of the team just prior to the release of the initial report here that we had really strong problems with the wording as to how this worded and how it can be inferred that there's agreement that no changes should be made. I think we're still in this discussion.

I think it's one of the points that we're talking to Melissa around about whether a change is needed or not. And I think it's probably clear that we're not going to get to consensus on that. So having a recommendation to say that no changes are recommended is not reflective of the group's output, I would say so.

And I think I commented a bit late—and this goes back to points one and two, and I think that's also reflected on the public

comments as well—that, yeah, we haven't really got to consensus on whether changes should be made or not. So having a recommendation saying “no changes are needed” is not really in line with [inaudible]. Thank you.

KEITH DRAZEK:

Thanks, Chris. And thanks, Alan. Hadia, I'll get to you in a moment. I just want to note that I think the key here ... There's clearly some disagreement and concern about the language that was used, but I think at the end of the day, at the time of the publication of the initial report, there was not consensus. That a change was needed in terms of the EPDP Phase 1 Recommendation 17. That there was not consensus for a change to that consensus policy recommendation.

I completely understand, and I think we all recognize that there are groups within our EPDP Team and significant parts of our effort in our community who still believe and want the changes to that consensus policy. But I think at the end of the day, what we're talking about here is consensus and whether there's consensus of the group at that point to make changes to that previously established policy. At least at that point, that was an important signal to send to the community to seek feedback, to look for new or different information that might be helpful to the discussion.

But I see hands going up, and I'm going to now turn to Hadia who was in queue before my intervention, and then to Alan and Margie. So, Hadia, you're next.

HADIA ELMINIAWI:

Thank you, Keith. I do definitely agree with Chris and Alan Woods that there's definitely no consensus in relation to this recommendation in the sense that we do not agree that no changes are required. That's one thing we don't agree on.

And another thing also we don't agree on in relation to this recommendation is that no further work is required because some of us think that the public interest has not been considered while others do think that it has been considered. So it's not only in relation to the recommendation itself, but also in relation to what steps were taken to reach the recommendation. There is no consensus.

I would stop here and maybe ask ... And maybe it's too late to say that, but just suggest what if we say that registrars and registry operators are encouraged to differentiate between the registration data of legal and natural persons but are not obligated to do so? I know it's not the time to make any suggestions or introduce any kind of language, but I'm just putting it out there. Thank you.

KEITH DRAZEK:

Thank you very much, Hadia. And thanks for putting at least the concept for our thinking on the table there, the proposed language that we can all consider at this point.

I'm going to turn to Alan and then Margie. And then I'm going to turn back to Marika to keep us moving. But to Alan and then Margie. Thanks.

ALAN GREENBERG: Thank you very much. Keith, I'm responding to your comment that—and I may be paraphrasing slightly—at the end of the day, the result is the same. That's true. The wording in the initial report and a statement that, "There is no consensus, therefore we are not changing anything" has the same net result, but it sends a very different message about the thoughts of the working group. And to some of us anyway, that differences really important. So, yes, it's the same at the end of the day, but words are important. Thank you.

KEITH DRAZEK: Thanks very much, Alan. Well said. Margie, you're next and then Milton. And I note that Milton has proposed some language in chat as well, or an approach in chat. But Margie, you're next. Go ahead.

MARGIE MILAM: Sure. I actually see it a little different. I think it actually questions the consensus from the Phase 1 recommendation because if you look at the Phase 1 recommendation, it's a three-part recommendation. The first part being the part that we've talked about, which is the recommendation that they allowed to but are not obligated to distinguish.

But then you go down to two, and it talks about the study. And then you go down to three, and three says—I'm reading from Recommendation 17 part three—"The EPDP Team will determine and resolve the legal vs. natural issue in Phase 2." So clearly, the Phase 1 recommendation wasn't a final recommendation on this

point, but it's something that was left to the team to discuss in Phase 2 after the information was received.

So I believe that that, first of all, questions the consensus even for the first phase. But secondly, that the answer needs to be that the EPDP Team cannot resolve and determine the legal vs. natural issue based on the information that was received at this time. Because that actually explains what the team has done. So that's my suggestion. That we update the language to reflect what was required from the Phase 1 recommendation.

KEITH DRAZEK:

Thanks, Margie. I'm going to have to just take a note for myself to review and to probably work with staff and maybe hear from staff, perhaps offline after this conversation today, the impacts of the Phase 1 language that you've noted. So, I note your point. Thank you for bringing that up, but I have to note that ... I need to take some time to dig into that myself as I was not the chair of the Phase 1 or the Phase 2 work. So I need to circle back on that one. But thanks for bringing that up.

So I have Milton next, and then Berry's hand is up for Marc Anderson who is also in queue. So Milton, you're next.

MILTON MUELLER:

Yes. So I think this is dragging on unnecessarily. It's a well-known fact about ICANN from its very founding that if there's no consensus, there's no policy. We did reach an agreement. I remember very clearly—I was part of Phase 1—that the only thing we could come out of in Phase 1 regarding legal/natural was that

the contracted parties would be allowed but not required to differentiate. That was an acceptable recommendation from that phase, therefore it had whatever level of consensus was needed to go into the initial report.

And then it was agreed that we would have an additional phase that would try to find some better resolution of that. Admittedly, the sort of discretionary thing was not considered acceptable to everybody. But the fact of the matter is, we cannot reach a consensus on changing it in any particular direction. So let's just accept that fact and move on. I mean, I think I proposes some language that ...

I think the opponents of this have made a valid point about the wording. I tried to address that some time ago. I've now proposed a change to the wording that should be acceptable, so let's just do that and move on.

KEITH DRAZEK:

Okay. Thanks very much, Milton. And I just want to note that Milton did put into chat some proposed language to deal with this. And again, a reminder to everybody that what we're talking about here is comments on the initial report so we can try to amend/adjust/update language as needed if there's consensus and agreement to do so for the final report. So let's keep that in mind as we move forward.

So Milton, thank you for your concrete suggestion. And what you've said is, how about "The EPDP Team could not reach a consensus to change the recommendation, therefore no change

will be made"? So I just want to note that for everybody who may not be tracking chat.

And then to note also that Marika has put into chat language from the Council in terms of our scope and the reference to the first part of the recommendation being considered, whether any updates are required to one component of the topic that Margie referenced. So I know there's ongoing discussion there, but I want to make sure we're capturing what's happening and chat.

Okay, so Marc Anderson, you're next. Brian, I'll turn to you last. And then we're going to draw a line under this one and I'll turn it back to Marika. So Marc and then Brian, and then we'll move on.

MARC ANDERSON:

Thanks, Keith. What Marika put in chat was basically what I was going to raise my hand to say. I think the recommendation we're discussing right now is essentially the response to instruction [A] from GNSO Council—as Marika put in chat—whether any updates are required to the EPDP Phase 1 recommendation on this topic.

And I agree with the points raised earlier. It doesn't really make sense to have a recommendation that says “no recommendation.” So I think our task is, as has been suggested by others, just to respond to counsel and say, “We discussed this matter per our instructions. We discussed it and considered the legal and natural guidance provided by Bird & Bird, the study undertaken by ICANN, public comments—as per our instructions—and did not reach consensus that any changes to Recommendation 7 reach a consensus level from the group.”

So I think that's our instructions, and we owe Council a response to that instruction.

KEITH DRAZEK: Thanks, Marc. Brian, you're next. And then, Margie, I see your hand up. I'll turn to you and that will be the last word on this. We need to move on. Thank you.

Brian.

BRIAN KING: Thanks, Keith. I'm just noting that the language that you described, Keith, I think doesn't [inaudible].

KEITH DRAZEK: Brian, I'm sorry to interrupt. Your audio is a bit muffled. If you could speak a little bit more clearly or closer to the mic. Thanks.

BRIAN KING: Sorry about that. Is it better now?

KEITH DRAZEK: A little bit.

BRIAN KING: Okay. I'll speak loudly then. I don't think that's the whole picture, the language that you're proposing. Because we still don't know what to do with Phase 1 Recommendation 17. I'm just kind of

echoing the concerns raised by Margie that that doesn't capture the whole recommendation. So we need to take a look at what that means for that Phase 1 recommendation. Thanks.

KEITH DRAZEK: All right. Thank you, Brian. Margie, last word. And then I'll turn back to Marika.

MARGIE MILAM: Sure. I put this in chat, but the instructions from Council were not in a charter. We still are operating under a charter, so it's perfectly within our process to address what we were supposed to address in Recommendation 17—whether or not we can resolve the issue of legal vs. natural.

So however we want to do this, I think we have to include in the report a statement that said that the EPDP Team could not resolve the issue of legal vs. natural. And I'm making the request that be included as part of the recommendation on this. It can actually be ...

If you want to put it in the context of how it would be updated, you could update the recommendation to say, "The EPDP Team cannot resolve the issue of legal vs. natural at this time." And that would be an answer to the instructions if we want to be sticking to that question.

But I do believe that our scope and our ability to answer these questions is much broader than the instructions that the Council sent.

KEITH DRAZEK: Thanks, Margie. Comments noted. And I think we need to take under advisement and consideration the discussion that we've had here today. And you circled back to this point, but at the end of the day I think we're in clear agreement that there is not consensus among this group—the EPDP 2A effort at this time for changes to the EPDP Phase 1 Recommendation 17.

At least I think we agree that there is not consensus among this group at this time, and the question now is how do we accurately portray and present that fact with language in the final report. So let's take an action item to do that, to carry on that conversation. And if there's specific language that folks would like to present, please do so.

But I think we need to, at this stage, move on in light of the public comments and the process that we're trying to follow here and very limited time. So, not trying to short circuit the discussion in any way, but we are limited by time and bandwidth here.

So, Marika, if I could hand it back to you. Thanks everybody for that discussion. Let's move on to the next item.

MARIKA KONINGS: Thanks, Keith. We've taken note of some of the suggestions and comments that have been made, so I think what we'll do is try to capture those in the discussion table so we can come back to those when we basically start our review of our final report language. And from our side we can, of course, take any proposed edits or suggestions from these conversations.

I do note that for the discussion table on question 1, there were some items flagged after the deadline. I don't know if you want to go to those now or we first move to Table 2 and items that have been flagged there.

KEITH DRAZEK: Thanks, Marika. Do you have a preference? Do you have a recommendation for us in terms of next steps?

MARIKA KONINGS: It might be [worse]. I think there are two items that were flagged by the GAC. And I think it was Chris who put these in, so maybe he can speak to whether some of that may have already been captured in the conversations we just had. But [if it is] linked to this specific item and recommendation, it might make sense to try to capture and address those now before moving into the next topic.

KEITH DRAZEK: Yeah. Thanks, Marika. And thanks for flagging. Chris, I see your hand so yes, please, let's do that before we move on.

CHRIS LEWIS-EVANS: Yeah, thank you. The comment, I think we've just captured that, further 2 and 3. And then there was one other further down. I think it was number 7, I want to say. But [I got] that wrong. There we go, 10. So this one sort of fits in ...

And Keith, here I think maybe I have a question for you and Melissa. I think we're having ongoing small team discussions

around some of the benefits of differentiating, so I don't know whether you want some of that work to finish before we discuss this. Just, there's obviously a big overlap there, so [maybe a guidance] from you first.

KEITH DRAZEK:

Thanks, Chris. It's a good question, and obviously we're sort of operating on two parallel tracks. And hopefully those tracks converge at the end of our discussions this month with something related to consensus. So I do think that I want to allow and give room for the breakout sessions to deliver and to bring possible paths forward back to the group, but I think we do need to address the comments that were submitted during the public comment period by the deadline, etc, etc, so.

So let's all acknowledge that there could be outputs from the breakout sessions that help us on a number of issues. And I know Chris has referenced the discussion of possible benefits or a better articulation of the benefits of the differentiation. And perhaps there might be consideration in terms of those benefits, but we have had quite extensive conversations on this.

So I think we need to keep focused a bit right now, at least on addressing the public comments that were submitted, while acknowledging that there may be some additional room. So, Chris, I don't know. Is there anything specific that you'd like to touch on just to tee up the issue, noting that there may be some further inputs from our group conversations?

CHRIS LEWIS-EVANS: Thanks, Keith. I think I would rather wait until the small group finishes. I think we're actually making good progress here and what I don't want to do is flog it here. I see lots of chats around that front that some parts of the team think it's not worth talking about. So maybe it's better to discuss this in the small group first and see if we can get a way forward from there. Thank you.

KEITH DRAZEK: Thanks, Chris. That sounds good, so let's do that. Okay. And thanks everybody for the continued discussion. Marika, I'll turn it back to you.

MARIKA KONINGS: Thanks, Keith. I think if we completed addressing the comments that were made on Preliminary Recommendation 1 and question 1, we can move to Preliminary Recommendation 2 and the related question. As a reminder, this recommendation relates to the recommendation to the GNSO Council to monitor developments in relation to the adoption and implementation of relevant legislative changes.

And the question that the group asked, "Is this recommendation necessary for to Council in considering future policy work in this area? And if yes, in what ways does this monitoring assist the Council?"

So there are a number of comments that have been flagged in this table, and I believe the first one we have is number five that was flagged by the Registrar teams. So again, I would probably look to Sarah or someone else from the team to speak to why do you

think this should be further discussed and what, if anything, should change in the current language as in the initial report.

KEITH DRAZEK: Thanks, Marika. Thanks for teeing it up for us. And I see a hand from Sarah. Sarah, go ahead.

SARAH WYLD: I thank you. The Registrar team understands that ICANN Org already tracks this kind of information about legislative changes. They provide helpful information to the community. There was a webinar about NIS 2. I think it was earlier this week, or maybe it was last week. Time has no meaning. And so we do not consider that it is appropriate for the GNSO Council to have their purview expanded in this way. Instead, we think that those changes should be monitored by ICANN Org. And then relevant changes can be flagged to the community as needed. Thank you.

KEITH DRAZEK: Thank you, Sarah. Would anybody else like to get in queue on this point? Okay, Chris. Go right ahead.

CHRIS LEWIS-EVANS: Thanks. So on this one, reading through some of the public comments— and we've not had time to discuss this properly in the GAC, so this is a bit of my personal view to be honest—I think we need to consider whether this is an ICANN Org function that has already been carried out and whether this is a little bit going above

and beyond the remit of the GNSO Council—so whether this a valid recommendation or not.

So I think that just needs to be considered by us and whether we want to carry it forward, considering the public comments. Thank you.

KEITH DRAZEK:

Thanks, Chris. And I have Margie and Alan next in queue. But let me just suggest on this one that I think, from my perspective and my experience, my understanding is that, yes, clearly ICANN Org has a role in terms of tracking legislative and regulatory developments around the world. And I think this point became much clearer to all of us in the community with the advent of GDPR and the work that we've been doing over the last several years that early warning of regulatory developments that might impact our global policy development or policy development work as it relates to ICANN's remit, names and numbers—names in our particular case—ICANN Org clearly has a role in terms of tracking those potential impacts.

And so perhaps a possible adjustments to the language would be to recommend that the GNSO Council engage with ICANN Org in the monitoring of developments or to rely on or to check in with ICANN Org.

But I think the message here that's really important is that the discussions of this group indicate that there could be future developments, regulatory or otherwise, that could impact future consideration of the topics that we're discussing today. And I think

we need to find a way to communicate that. And so how we do that is obviously the subject of our discussion. It's the subject of the public comment feedback that we received.

But I think the key here is that there is clear recognition that future regulatory developments, or other developments—and I'll just throw out SSAD as one of those other possible developments—could impact future consideration of the things that we're talking about today. And I think we need to find a way to capture that.

So I have Margie. And thanks everybody for your patience with me there. So Margie, Alan, Stephanie, and Milton. Margie.

MARGIE MILAM:

Thank you, Keith. And thanks for your observations on that. When we looked at this from the BC perspective—we're looking at it from the bigger picture—the language in the NIS 2 Directive is very specific as it relates to our scope and mission here in this EPDP. And it, in fact, creates stronger legal bases for the work that we're trying to do in the policy world. So I do believe it is relevant.

I don't think this is the case where it's just some generic law that's going to be adopted that wouldn't impact, necessarily, the work of this team. This actually a very specific because it's related to the WHOIS issue. It's related to access and all of the things that we're talking about, including the legal/natural person distinction.

So I actually think the recommendation—we think the recommendation—should be even stronger than what we had here. As opposed to monitoring it, change it to have the EPDP be re-engaged when they NIS 2 directive is adopted. And so that's

the background from the position that we put in the public comment period. Thank you.

KEITH DRAZEK:

Thanks, Margie. Your points are well made and well taken. And I think the key here is ... And we've talked about this, I think, in different sessions and it may be the topic of further discussion in our breakout sessions, but if we're thinking about this issue, if there are potential developments—whether its regulatory or otherwise, or NIS 2 being one specific example—looking at, is there a trigger that we should be looking at as a team in terms of our recommendations to the GNSO Council and communicating to the broader community? Is there a particular trigger that we should be considering? Is there a date that we should be considering in terms of future review? And I think that's an important topic for discussion.

And I'll just say, look, speaking personally, I don't see any downside to communicating to the GNSO Council and to the community in our final report that the group acknowledges that there could be future impacts, regulatory or otherwise—and NIS 2 being one example—that we as a community will need to consider. It's not final. It has not been fully approved to stop and transpose.

There's more work to be done on NIS 2. We all know that. But I think that that for our group to acknowledge that there could be future developments, and there's one in particular here that's been called out as an example, I just don't see the downside in

communicating that the group acknowledges that there may be something that we need to consider at some point in the future.

And I think the real question in my mind is whether that should be focused as a trigger, an event such as NIS 2 being finalized and implemented with the acknowledgement that there's relevant language to our discussions in the proposal at this point; or a particular date that we should consider. Or maybe it's one and then the other/one or the other. But I think that's one of the key questions in my mind at this point. Others may have different views, but that's just sharing where my head is at on this.

Margie, I think that's an old hand so I'm going to go to Alan and then Stephanie and then Milton.

ALAN WOODS:

Thank you very much, Keith. So I think there was a lot of good points you had in there. And I think the crux of the issue—and pointing to the comment made by the Registries on this document—was looking at the ICANN Org submission in the sense of when we are creating a recommendation for a policy, we need to understand what that policy would look like ultimately.

And ICANN have, in their comments—and please feel free for them to add more color to this—they did say that they don't see this to be either implementable or enforceable because it's not really within the remit of policy to state this. So I agree with what you're saying. I don't see any harm in us giving a reminder, but that reminder or that information or that urging of the GNSO Council in a report does not necessarily mean a recommendation

is necessary for that. And we just heard there from Margie that the intention there is to keep the foot in the EPDP door to keep it open so that it can be convened at that time.

And I understand that. I understand there have always been difficulties with the speed of which the MSM might be working. But literally what you're describing and what Margie was describing there is that the GNSO should follow their process, full stop. And I don't think that is a good recommendation. I definitely think we can put into our report that we have misgivings and we would ask them to absolutely, and encourage them to look at NIS 2 when it eventually becomes solidified into the form that it will be. But that is not a recommendation. It is a recommendation for recommendation's sake. That is not implementable in its current form.

So I agree that there might be time limits we can put in there to make it more tangible. But at the same time, why are we doing this when all we're saying is, "Please, GNSO, follow your process, your policy, and follow the multistakeholder model policy development." I think we need to be very careful of what we're trying to achieve here. And if the answer is that we're just telling them to do what they always do, we need to shy away from that.

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

STEPHANIE PERRIN: Thanks very much. Content warning. Forgive me for being both blunt and Cassandra-like in what I'm about to say. The NCSG has

of course been warning for the past, I don't know, 18 years that ICANN ought to pay attention to data protection law. I would suggest—here's the blunt part— that the only reason these recommendations are showing up now is so that we can immediately implement any regulation that comes through that may possibly promise to curb the impact of the GDPR. That's no reason to start watching every law that emerges, and I would suggest—and here's the Cassandra part—you can't start introducing into the GNSO Council deliberations on only the laws that particular stakeholder groups like and ignore the ones we don't like.

And I would point out that there is a widening gulf—this is a pretty widely held belief in privacy circles—between countries that are trying to maintain human rights and a balance, particularly in the area of AI, and those who are grasping it as a tool for surveillance and civilian control. And those differences are going to become very stark. So which laws are you going to pay attention to and strive to implement? And how are you going to hold off the countries that want their surveillance law put in place?

I have fond memories of being pushed into a small group meeting at my very first ICANN meeting of the EWG. And the topic was facial recognition as an identification tool in order to register a domain. Fortunately, I wasn't the only one shocked at this idea, but it's rolling along splendidly, thank you very much.

And I think we're going to see much more of the kind of stalemate we see—or that we have witnessed today—if we're going to start debating all of these finer points because it'll be a frosty Friday before NCSG agrees to facial recognition systems to allow people

to get a domain name, let alone facial recognition systems that are tied to a vast analysis of who that person is. Thank you.

KEITH DRAZEK:

Thanks, Stephanie. Milton, you're next. Margie, you're next after Milton. And then we'll draw a line under this one and I'll hand it back to Marika. And I'll note that Marika has also put into chat a reference to the GNSO Operating Procedures and a suggestion for a possible path forward.

But, anyway, sorry. Milton then Margie.

MILTON MUELLER:

Yes, Keith. You said you didn't see the downside, and I think Alan's comments and mine will make it clear what the downside is. The downside is that you are prolonging this process unnecessarily and allowing the people who don't have the outcome they want to avoid accepting the fact that the process on a particular point has been concluded in a way that they don't like. And they are basically saying, "Keep this open until we can continue to lobby the European Commission to alter the outcome of an ICANN process."

I mean, let's be frank. That's what's happened. Okay? And maybe they will be successful in getting the European Commission to pressure ICANN to alter its process. And maybe they won't. But we don't know at this point, and we have resolved this issue in ways, using our own process. And if a new law comes along that requires a change in ICANN policy, then we—as Alan said—the

GNSO will start a new policy process and we will amend it as needed to bring the Domain Name System into compliance.

I also think we need to be very concerned about efforts to allow a particular jurisdictional authority to regulate what ICANN does in ways that are designed not to be applying their own specific law but to actually tilt the scales of the multistakeholder process. So there are enormous downsides, Keith, to allowing this game to be prolonged in ways ...

And I think it's just getting really tedious for people to just not accept the fact that they did not get what they wanted out of a policy process. If we're going to defend the nature of the ICANN process, we have to recognize that sometimes you don't get what you want out of it. And if your attitude is, "Anytime I don't get something I want out of the ICANN process, I'm going to shift to another process," I think you can understand how that undermines the very nature of the multistakeholder process. That's all.

KEITH DRAZEK:

Thanks, Milton. So I'd like to respond. And then I'll turn to Margie for the last word before we move on in our process here. So in my reading of this Preliminary Recommendation 2, it does not keep open the EPDP efforts or process, or certainly not the EPDP 2A work. It does not tell the GNSO Council that it must keep this group alive or essentially in a hiatus mode, in a standby mode.

It basically says, by my reading, that it recommends that the Council continue to monitor developments in relation to the adoption and implementation of relevant legislative changes. And

that if we move to the later part, the Council is expected to consider not only input on this question and new information from SGs and Cs, but SOs and ACs as well to inform a decision on if and when this question is expected to be reconsidered.

So it does not in my view, in my interpretation, say that we're going to keep the EPDP 2 in a standby mode. It does not require or tell the Council that it must do something in a particular process. It simply says that there could be future developments, in this particular case referring to legislative and regulatory developments that need to be considered. I agree that ICANN Org has a key role to play in that monitoring and in that effort, and I've suggested that maybe we include some language about the Council engaging at some point in the future with ICANN Org or on an ongoing basis to monitor those types of potential impacts to gTLD policy.

But I hear what you're saying. And I think that we are going to conclude this the EPDP 2A effort, and we're going to give whatever recommendations we can to the Council. But I think, based on the conversations that we've had over the last six or seven months, there are clearly, in my view, potential future impacts, regulatory impacts, to the discussions that we're having today. And I think an acknowledgement of that in our final report and a recommendation to the Council to continue to monitor that is not out of bounds.

But I also take Alan's point that that's part of the GNSO's role and that they should and may do that anyway. But, anyway, I'm just sharing what's in my head at this point in reaction to the conversation.

So Milton, thanks for that. Margie, you're next. And then I'll hand it back to

MARGIE MILAM:

Sure, Keith. And I appreciate that the recommendation we're looking at was a compromise from what we were asking for before the report was published. However, I did put in the chat—and this what you're seeing a lot of reaction to—a requested change to the recommendation that actually does ask for the EPDP to be reconvened when the NIS 2 directive is adopted.

And I think the NIS 2 Directive is a unique regulation. We're not just talking about any generic regulation, but it's actually one where ICANN Org and others have been actively communicating with the European Commission during their public comment periods and requests for information in order to address the concerns, frankly of this group, that the GDPR had been misapplied as it applies to the WHOIS policy. And that's the reason that there's so much effort underway to clarify the legal basis in a way that, frankly, we hope would give the contracted parties some comfort that they can perform the obligations under the updated WHOIS policy.

So I see the NIS 2 as an entirely different kind of regulation compared to just any other law that could be adopted because it is very specific to, and it's actually as a result of, the outcomes of this group. So that's why I propose and I'd to have conversation around whether we could get agreement on restarting the EPDP when it is adopted because the alternative, if you read what the

recommendation would basically suggest, is that we'd have to start from scratch.

And I can't imagine any of us want to go through this all over again from the very beginning—talking about a Temp Spec, another EPDP, and then another two years just to get to this point. Where we could simply restart it, get the group—or whoever each of the stakeholder groups appoint—to address what changes need to be made in light of the NIS 2. And that's the recommendation that I'm proposing in the chat.

KEITH DRAZEK:

Okay. Thanks, Margie. And thanks for bringing the focus to the concrete recommendation. So we'll note that.

I'll turn to Volker. We will move on. We can always circle back to this conversation, but in terms of trying to get through our agenda and the items that we need to get through, we're going to move on here. But, look, I think on this particular point, before I turn to Volker, there's clearly a difference of opinion on this particular recommendation even in its current form.

Margie is suggesting that perhaps we amend this recommendation to include a clear trigger for restarting the EPDP 2A work on this particular point. So we need to figure out how we move forward on this one. But, yeah, I'm taking it that there's quite a range of view on this and we are struggling at this point even to reach consensus on the current language.

So Volker, you're next. And then let's move on. Thanks.

VOLKER GREIMANN: Yes. Thank you, Keith. I wanted to just respond to what Margie was just saying. Saying that the GDPR has been misapplied again and again and again does not make it true. It seems to me like this is a mantra, just like Trump's mantra that he didn't lose the election. It's trying to get something from narrative ongoing that is simply not true. The GDPR has been applied just right to avoid liability.

If you have not heard that even the publication of legal person data has some liability because it may contain personal information, if you have not heard that line, I would suggest a visit to ... No, I'm not going to say that. Just let that suffice to say repeating it over and over again does not make it true. Thank you very much.

KEITH DRAZEK: Thank you, Volker. And let's now move on to the next item on our agenda. Marika, back to you.

MARIKA KONINGS: Thanks, Keith. Actually, the next comment, I think, is a nice segue to the topic we were just discussing because, of course, all these comments are related to the same recommendation. So this is a comment that was flagged by the Registrar Stakeholder Group as needing further discussion. It's a response to a comment that was put forward by INTA. And again, this is a summarized version here where I think they're basically suggesting that there could be or

there should be more specific triggering events in the recommendations.

And they have a specific suggestion that it could be done by using the GNSO liaison to the GAC to coordinate with the GAC; that the GAC would be able to flag if and when there would be specific regulatory or legal guidance that has become available wherever in the world that might benefit from further consideration or might trigger further policy development activities.

So that's, I think, the gist of the suggestion that the INTA has made and as said, the Registrar Stakeholder Group flagged that this might be worthy of further conversation and they might provide some further color to their input.

KEITH DRAZEK:

Thanks, Marika. I note that in chat, I think Sarah noted that we did speak to this. I think, Sarah, you were referring to this current topic—that we just covered much of the same points and not much more needs to be said. But I'm going to open the queue and see if anybody would like to weigh in from any groups at this point. So if anybody would like to speak to this one, please jump in the queue.

Okay, let's see. Chris Lewis-Evans. Chris, go ahead. Thank you.

CHRIS LEWIS-EVANS:

Yeah, thanks. And a little bit outside my [inaudible] wheelhouse—obviously PSWG/GAC, but mainly PSWG. [But the GAC and I] already have conversation with ICANN Org around changes to

legislation. I think the Temp Spec that fired off all of this with the implementation of GDPR raised this as an item that we do [know] more generally, so they obviously have numerous discussions inside and outside of ICANN meetings.

And also just to note that the GNSO liaison to the GAC has been a lot more involved in some of those discussions as well. So I think this probably something that is already being done. I can certainly raise that with GAC leadership, but I think that's more of a good business-as-usual proposal.

KEITH DRAZEK:

Thank you, Chris. Would anybody else like to get in queue on this one? Okay, I see there's some activity going on in chat as well. I don't see any new hands, so Marika I will hand this one back to you to keep us moving. Thanks.

MARIKA KONINGS:

Yeah. Thanks, Keith. I think the next one we probably already covered, or I think Sarah already referred to it in her intervention as well. This is a comment that was provided by ICANN Org basically to confirm that if this recommendation is adopted as is, this is not something that the Board would do anything with, as this is a recommendation to the GNSO Council. So there's no implementation or enforcement from a Board/Org perspective. And I think the Registrar Stakeholder Group is agreeing or saying, "Yes, this is indeed confirming" as at least they see it. And I think we touched upon that, so I don't know if there's further comments or input on this item or if everyone's clear on that point.

KEITH DRAZEK: Thanks, Marika. And, yeah, I think we've covered a bunch of this in the conversation that we had following the first comment review. I don't see any new hands, so let's keep on moving.

Oh, I see a hand now from Berry. Oh, is that for Marc Anderson again?

BERRY COBB: Marc, yes.

KEITH DRAZEK: Okay. Marc, go ahead.

MARC ANDERSON: Thanks, Berry. And I apologize for my lack of hand in Zoom here. So I guess I just have a process question on this one. If we proceed with this recommendation and the GNSO Council adopts it, does this mean it would not go to the Board and that the GNSO Council would adopt it? If it passes in the GNSO Council and they adopt it, would it just stay there? Or would the GNSO Council pass it to the ICANN Board or not?

I think here it says that the ICANN Board is saying if the Council does approve it and pass it to them, that they would not take action on it. But rather they would refer it to the GNSO Council which I think is in line with how they've handled other recommendations in other areas that are not really directly for the Board or Org.

But I guess this is just a process question. Does that mean that the action, if approved, would be for Council to adopt or not adopt and then it would end there?

KEITH DRAZEK:

Thanks, Marc. It's a good question. In reviewing this particular language where it says "The ICANN Board has previously passed through recommendations that are made to other ICANN structures." I wonder if that should be made "by other ICANN structures" in terms of passing through recommendations that come from various groups, whether it's GAC advice or recommendations from a review team, for example. There are clear examples under CCTRT recommendations where things have been passed through, if that's the terminology that we're using.

I see a hand from Marika, so I will turn to the expert. Marika, go ahead.

MARIKA KONINGS:

Thanks, Keith. I'm not sure if I'm the expert, but I can speak to, I think, past experience. And I think it depends a little bit on how the ICANN Board handles the recommendations, as well as the Council. I think past experience has at least been that the Council typically passes on the whole final report to the Board for review and adoption. And I think there have been instances as well when the Board would just basically adopt, as well, the whole set of recommendations. But of course only those recommendations that

it required for the implementation or are resulting in consensus policy would then trigger further consideration.

I think there would always be an understanding that anything indeed that is directed to the Council or of a different kind of nature, that those then don't have a kind of trickle-down effect or impact on what ICANN Org is expected to do. I think in more recent experience, you'll see that the Board may break out the recommendations through the scorecard approach and they could still kind of recognize, I guess, that recommendation but indeed note that it's not one that's directed to the Board and that their assumption is that this is directed to the Council, and the Council would deal with it. So I think there's a variety of ways in which this could go. But as said, I think that [inaudible] makes it clear that a recommendation of this nature would not result in any kind of further follow up or implementation or directions to ICANN Org as it's clearly understood to be a recommendation that is for the GNSO Council to take further.

KEITH DRAZEK:

Thanks, Marika. I think that's an important point that you've sort of reinforced there. I think if we look at this at a very high level, the Board could under bylaws and under operating procedures request an issues report—I'm just speaking generically here—to initiate a PDP. And that's certainly within the Board's remit and capabilities. But that's typically not how things are done, and if recommendations were made for the initiation of, or continuation of, policy development work—a formal PDP—that is the remit of the GNSO Council, primarily.

So while there is the possibility that the ICANN Board could take action, I think in this particular case under the current language proposed in preliminary Recommendation 2, that this is a recommendation to the Council to monitor developments and to be prepared to accept input from SGs and Cs and SOs and ACs to inform a future decision on when reconsideration of the question should be required. Right? I mean that's really what we're talking about here. So I think ICANN Org's comment here is an accurate one and that, if this is the language that is finalized and sent to the Council, it really is instruction to the Council rather than to the ICANN Board at this point. So that's my view.

Volker, you're next. And then I'll hand it back to Marika.

VOLKER GREIMANN: Yes, thank you. And that was something that I was wondering myself as well. Given the role of the GNSO Council within the ICANN community of basically safeguarding the policy making process and making sure it works properly, I do not really see monitoring international legal changes as A) part of their remit, and B) part of the qualifications of the Councilors that we elect to that Council. I don't see that role as a role of the Council. It should be something that is tasked to ICANN Legal or some other division of ICANN that is tasked with monitoring legal changes, but not of the GNSO Council. So I'm a bit worried that this recommendation, if it is passed, basically tasks the GNSO Council with a task that it's not equipped to handle or even authorized or empowered to handle within the bylaws. So that's maybe something we should also consider. Thank you.

KEITH DRAZEK:

Okay. Thanks, Volker. And I think the point that I made in our previous discussion is that perhaps we as a team should consider some additional language that indicates that we recommend that the GNSO Council monitor to monitor developments in coordination with ICANN Org or whatever structure or however we want to characterize that. I think I have acknowledged, and I acknowledge, that ICANN Org has a role and that there's a group within ICANN Org that is focused on this now, whereas there previously was not if we look back five years or so. And so I think a call out for continued engagement on the issue between the GNSO Council and ICANN Org is not necessarily a bad thing. So I'll stop there.

Marika, back to you.

MARIKA KONINGS:

Thanks, Keith. I think this provides a great segue to the next comment that's on the list which is comment 10 where the Registrar Stakeholder Group has provided a very specific suggestion with regards to, I think, what they think the recommendation should state in relation to the ICANN Org or role. ammunition to conducting a Standardized Regulatory Impact Assessment and whether or not that then indeed tag teams with the other Councils role of monitoring. I think that's something for the group to discuss, but maybe we can move to that one so the group can look at that and see if that's something that the group wants to further consider for inclusion in the report.

KEITH DRAZEK: Sounds good, Marika. Thank you. Go right ahead. Or I guess at this point I could ask if anybody would like to speak to the issue. So we're on number 10 here on the chart in front of us. And so if anybody would like to speak to this, please go ahead and jump in queue. It's a continuation of the discussion that we're having. Thanks.

Okay, I'll just give it a second here to see if anybody would like to speak to this one in particular. All right. I'm not seeing any hands on this one, so would anybody like to get in queue? I'm going to say going once ... going twice ... going twice. And I don't see any input on this. So Marika, let's go ahead and move on.

MARIKA KONINGS: Thanks. So the next one on the list, I think, is item 11. I think, Berry, you scrolled too ... Oh no. This one was flagged by the Registries Stakeholder Group as a yes for further discussion, and I think they are ... Well, Alan can speak to it, but I think it notes that their support for the comment that the GAC has made that existing processes allow already for acting on new developments. And I don't know if Alan or anyone else wants to contribute to the flagging of this item for further discussion.

ALAN WOODS: Thank you, Marika. I think I've already covered it in my past comments, so I'm happy to defer.

KEITH DRAZEK: Okay. Thanks, Alan. Thanks, Marika. Anybody else? Okay, let's move on.

MARIKA KONINGS: So the last item flagged was item 13 where it's noted by the ALAC that maybe this recommendation is not needed but, given the high work with the GNSO and importance of the issues, it may be prudent to formally require that the GNSO do this. And I think that the Registrar Stakeholder Group flagged this for a potentially further discussion, but noting also how adding more work to the GNSO Council's remit might not assist with reducing the already heavy workload. So I don't know if there's further discussion here required or the points have already been covered in previous comments.

KEITH DRAZEK: Thanks, Marika. And I see Alan Greenberg has his hand up. Alan, I'll turn to you in a moment, but I just want to note that in terms of ... I don't know that we as a PDP Working Group have the ability to formally require that the GNSO or the GNSO Council do anything. Right? We can make recommendations, and then it'll be up to the GNSO Council to determine whether those recommendations in whatever form are accepted. And so we just need to be cautious about our expectations in terms of what the Council or the GNSO can be required to do or formally required to do.

But Alan and then Margie.

ALAN GREENBERG: Thank you very much. I think we've discussed this to death and we should move on. However, having said that, I do appreciate the attempted humor in the registrar response. And of course my intent in the message was not to say that adding something to the GNSO Council's roster of work reduces the workload. The reference to workload was in that it's easy to ignore things that you know should be done but are not forced to. And this was simply an attempt to try and make sure it did get done. But we have discussed this to death. Let's move on.

KEITH DRAZEK: Thanks, Alan. I appreciate that. Margie, you're next and then we will move on.

MARGIE MILAM: Sure. I think just in terms of process, if the recommendation from us as a GNSO should do something and then the GNSO votes through consensus that it should do something, then I think that's where you get them to commit to it in the future. So I do think there's a way to do it, but I do agree we've talked about this one and probably should move on. Thanks.

KEITH DRAZEK: Thanks, Margie. And I agree that, obviously, if there's a recommendation that the Council accepts, then it becomes something that they've essentially agreed to on behalf of the GNSO. But I think in this particular case, yeah, I think we've talked to it.

All right. Let's move on. Marika, back to you. And just time check. We have 15 minutes left on the call, so we've probably got another 10 minutes on the substance and then we'll move to wrap things up. Marika.

MARIKA KONINGS:

Thanks, Keith. We actually worked our way through all the items that have been flagged in the discussion tables 1 and 2. So we just wanted to look ahead with the group at the next assignments which relate to 3, 4, 5 and the discussion table on the additional comments. I think you've now all got the gist of the approach and how we're trying to tackle this in an organized and constructive manner.

So we really want to ask all the groups—because we only got input from three groups this time and I think one group on one of the documents—to really do the homework that will help us also in our accountability towards those that made the effort to provide input to show that we have gone through the comments. We have considered them and we're able to indicate if/how those have been addressed or had an impact on and development of the final report. It would be helpful as well if we know it's, of course, substantial work.

There are four documents remaining that require review. That at least do for the next meeting you cover 3 and 4. And if possible, also already do 5 and 6, as that would allow us to get a better insight into how many items that need further discussion. That will also help inform our timeline planning and next steps. As you've

seen, we've now covered I think probably eight or nine items that have taken up most of the time on the call.

If, in the remaining documents, we get a lot of flags, it will likely mean that we need to start thinking about additional meetings to make sure we get through this by the timeline. Because, of course, we still need time as well to discuss. And now we've looked at the comments. Now how has that now changed the group's thinking also as a result of the small team conversations that we're having and how to finalize the report and come to agreement on the recommendations.

And as we already indicated, the most helpful thing here is for you to flag, if you want to further consider or discuss a certain comment, how you think that should impact the way the initial report has currently reflected or addressed that topic. If you have, and some of you provided today very specific language suggestions that you think address the comments or are able to capture what has been shared. If you have those suggestions, feel already free to put them in here.

Again, we're trying to see how we can make these conversations the most productive and constructive. So as said, our proposal is to assign items 3 and 4 for next week, but if you can please already work through the other items as well, as that will help us plan the timeline and upcoming meetings.

KEITH DRAZEK:

Thanks very much, Marika. And I think that's a really important point. And I appreciate you flagging the need for us to

demonstrate our work, to show our work, in the interest of transparency and going through methodically and responding to the comments that were submitted to the extent possible. So thank you for flagging that. And again, this just a reiteration of what Marika had said. Please, everybody, spend the time, do the homework, be prepared. And completing the tables that have been prepared by staff will help all of us in terms of mapping out the work over the next month. So thank you for that.

I have hands from Alan Greenberg and then a hand from Alan Woods for Marc Anderson. Alan Greenberg.

ALAN GREENBERG:

Thank you very much. A very brief question before I say what I may want to say. Are we now finished with Recommendation 1? Have we now duly considered the public comments in the minds of you and staff?

KEITH DRAZEK:

Great question, Alan. I think as a general statement, I'll say that I think we need to factor in the discussions or take on board the discussions that we've had and come back to the group as a leadership team and staff with maybe some proposed next forward [inaudible] saying "Yes or no, Keith." That's a good question.

I see a hand from Marika. I'm going to defer to Marika on this one at this point. And then I'll come back in.

MARIKA KONINGS: Thanks, Keith. I think the question is really for the group. The responsibility is on you to review all the comments that have been provided. We try, with this tool, facilitate that review. We asked you to go through it to make sure that we didn't leave anything out, to flag all the items that you thought needed further conversation. And that is where we are here now.

So if you as a group think it hasn't been sufficiently considered, for one; and, two, you'll need to discuss or think about what else needs to happen or how that can be done differently. But again, from a staff perspective, I think we took you through the approach similar to how we've done it in Phase 1 and Phase 2. So from our perspective, yes, this concludes the comment review on items 1 and 2 unless the group decides that's not the case. And then you'll need to consider what, if anything else, needs to be done to consider it complete.

KEITH DRAZEK: Thanks, Marika. And let me just, I guess, jump in there as well. I think what we're doing here is going through the public comment review, and I don't want to prematurely say that we've resolved any particular issue because we do have the parallel track of the facilitated discussions taking place on some specific points that are clearly related to exactly what we're talking about here. So I think the review of the public comments unless, as Marika said, anybody disagrees or wants to say we need to further discuss this in a future call, that we're going through this process methodically and we're going to continue to do so.

But I want to make sure that there's still room that if individuals or groups either in the facilitated sessions or in plenary or in other offline conversations that you may have with one another come up with some constructive language that could lead to consensus, then that is always on the table. Right? So I think if there are specific recommendations in terms of new or different language that can reach consensus or can help us towards consensus, then we're not going to avoid that in any case.

So let me stop there. I have Alan Woods for Marc Anderson and then Hadia and—

ALAN GREENBERG: Excuse me, Keith. I never got to actually say anything. I asked a preliminary question which may people have answered.

KEITH DRAZEK: Sorry, Alan. Go ahead.

ALAN GREENBERG: Thank you. I apologize if I sound a little bit belligerent here, but I'm afraid I'm going to. The ALAC and other groups spent a significant amount of time and effort crafting our responses to the public comment. A number of us said we do need further discussion on the public interest issue on how more access to information of legal entities would aid things like cyber security investigations. I have no illusion we are actually going to change the recommendation because of that.

But we spent a lot of time crafting these public comments. It would be nice if the least the words we used were mentioned in our discussion because as it stands right now, when we discussed Recommendation 1, none of that was even pointed out, highlighted, or commented on. And as I said, I have no illusion it's going to change things. But if we are saying we're diligently going through the public comments, then something that was raised by several of the groups really should at least be mentioned. Thank you.

KEITH DRAZEK:

Thanks, Alan. Look, I think the point here is that we are going through a review of the public comments, and the homework assignment for groups to basically provide input and to flag these issues and all of that. I mean, that's part of the homework assignment. Right? And so I'll just take this moment. This is a reminder for everybody to do the homework and to flag things that need and warrant further discussion.

Alan, if there's something specific that you'd like to go back to or refer to or come back to in our next call, then let's do that. But we need to flag these things and to note them in the homework assignments.

We only have five minutes left on the call today, so I don't think we have time to go back to it now, but if there's something that you'd to speak to or raise or flag during the next call, then we'll hold that out. I think the question of benefits of differentiation is one that's an ongoing discussion in one of our breakout groups. So I think there's still room for discussion of that. But again, we're trying to

follow a process here and a methodology where groups are asked to flag items for further discussion based on the public comments reviewed and all of that. And so just to encourage everybody to do that.

Okay. Alan Woods for Marc Anderson. Or Marc Anderson, go ahead. Hadia, Brian, and then we need to wrap things up.

MARC ANDERSON:

Thanks, Keith. I actually got into queue to ask a similar question to Alan. I understand the homework. We're going through public comments, reviewing the comments flagged for discussion tables 1 and 2. And again, thank you staff for the discussion tables. I thought it was useful in guiding to the discussion.

But I guess, I think similar to Alan, I'm not exactly sure how we're resolving these discussions. And I note that earlier Marika put into chat, "Of course, specific proposals that have come out of this consideration will be further considered in the context of the development of the Final Report." So I guess I don't really know what that means or how we're resolving these discussions. Does that mean staff will consider the discussion we had today and propose new language for the recommendations? Or what comes next? I guess I'm just sort of ... I understood the homework and I thought the discussion today was good. I'm just not sure how we're resolving the discussion we had today.

KEITH DRAZEK:

Thanks, Marc. And thanks to Alan. It's a good question. We need to be all on the same page in terms of process and what the steps

are. I see Marika has her hand up, but I think on several of these items there's been some discussion about some possible changes. But, look, everything that we talk about here has to be in the context of improving the landscape for consensus. Right?

If we're going to propose a change or consider a change to the existing language based on the public comments submitted and based on our ongoing parallel discussions, this all needs to be in the context of, is a proposed change likely to facilitate compromise or support compromise, improve the chances of consensus or not? And if the answer is no—if we're considering suggestions that either clearly don't have consensus or worsen the landscape—then that's obviously not going to get us to where we need to be.

So anyway, Marika, you can go ahead and respond to Alan and Marc's question. Thanks.

MARIKA KONINGS:

Thanks, Keith. At least from our perspective, and I think we're following a fairly similar approach as we've done in Phase 1 and Phase 2 as noted, we've taken note of the comments made and the specific proposals that have come forward. And we do know that those don't necessarily have agreement across the Board.

So I think where we're heading is kind of writing up those different proposals. And we then kind of, after reviewing public comments, go back to the initial reports. Then there's the question of, "Okay, so here were some specific proposals and potential agreements as well that came out of our review of comments. So how are now going to reflect that in the language that's in the final report?"

So that might be in the form of, well, we believe that there was maybe agreement or a specific approach that had broad support where we would make specific suggestions that the group then would consider. Or we put on the table, “These are the three things that people suggested that are not aligned with each other.” So there will need to be a decision or a conversation around which direction the group wants to go and how it’s ultimately reflected in the final report. So I think, at least from our perspective, that’s where we’re heading.

To Alan's point in the comment, we're not doubting, at least from the staff side, that everyone meant what they said. What the assignment really is here is to kind of take it a step further. The comment was made, “But what does this now mean for the team? What needs to be further considered? How does this impact the report? What changes should be made?”

And I think that's really what we're looking for because just reading out the comments and/or having restatements on what the comment already says is not what's going to help the work forward. The focus really needs to be on how has that comment changed perspective or what new has it added to the conversation that the group can consider in finalizing its report by either changing/updating language or agreeing that what is currently there is sufficient and doesn't require changes.

KEITH DRAZEK:

Thanks, Marika. And again, one of the calls during the public comment period was for new information. Right? And for new proposals, new concrete suggestions. What are we hearing from

the community in the public comment phase that we hadn't considered? Something that's different that helps us move forward to consensus, possibly, potentially. Rather than a restatement of well-established positions. So I think that's an important factor as well.

All right. So we have a queue. We're just about out of time, so I'll ask folks to be concise. We have Hadia, Brian, Margie. And then we will move to wrap things up today.

HADIA ELMINIAWI:

Okay. Thank you, Keith. Well, I raised my hand. I do agree with everything Marc Anderson said and Alan as well said. In all cases, I just want to say that, to my mind, because the main question was the community input #1. Do we consider community input #1 and input #2 totally revised by now? And to my mind, my answer would be no. And I think this also what Marika indicated. So their comments have been put on the sheet. However, we did have some discussions, and those discussions need to be reflected. And then after reflecting those discussions on the table again, we might have another discussion. So to my mind, each community input should at least be read twice. One, before the discussion, and another time after the discussion. And after that second reading, we can finalize our outlook on that community input or maybe decide to discuss it further. Thank you.

KEITH DRAZEK:

Thank you, Hadia. Brian and then Margie.

BRIAN KING: Thanks, Keith. We just need more time, is the short answer here. I think weren't notified soon enough and didn't have enough time to go through this for today. So I'm going to go through and put in ... We'll go through and fill out this Recommendations 1 and 2 and then the other ones also. But we just need time to do that. Thanks.

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

MARGIE MILAM: Same comment, thank you.

KEITH DRAZEK: Thanks to you both. In the interest of time, we will move to wrap things up. Just to note that our next EPDP Team meeting is next Thursday. The plenary is next Thursday the 5th of August, same time. We will continue our parallel track facilitated discussions, and we will look forward to continuing the conversation.

The leadership team and staff will take on board all of the comments and the discussions that we've had today, and we'll circle back probably via e-mail, and certainly during our next plenary call, to respond to the discussion and the feedback that we've received today.

So thanks, everybody. Apologies for going a little bit over. And let's go ahead and wrap things up for today. And thanks again to Melissa for her support in the facilitated conversations. Thanks all. We'll wrap things up.

TERRI AGNEW: Thank you. I will stop the recording and disconnect all remaining lines. The meeting has been adjourned. Thank you, everyone. Stay well.

[END OF TRANSCRIPT]