
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP – Phase 2A

Tuesday, 31 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 31st of August 2021 at 14:00 UTC.

In the interest of time 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 Malina Stroungi, James Bladel, Owen Smigelski, Jan Janssen, Matthew Shears, and Chris Lewis-Evans. They have formally assigned to Matt Serlin and Ryan Carrol as their alternates for this call and any remaining days of absence. Also joining a little later in the call will be Becky Burr.

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All members and alternates will be promoted to a panelists for today's call. Members and alternates replacing members, when using chat, please select Panelists and Attendees for everyone to see your chat. Attendees will be able to view 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 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 way of the Google link. The link is available 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. Not seeing or hearing anyone, 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, as always. Much appreciated. Welcome, everybody, to the EPDP Phase 2A Meeting #40 of Tuesday the 31st of August. This is potentially our last team call, our last plenary meeting, for the Phase 2A work.

And we'll get to the timeline for getting to conclusion here shortly, but we do have a placeholder for Thursday, if needed. But we would only intend to use that or a portion of that allocated time if it's absolutely necessary. So this could be the last call. Or it certainly is the penultimate call. And so thank you all very much for the work that you've put into the work in these final stages as we work on the final report, as well as over the last eight or nine months.

So there are four substantive items for us to get to today as we get into the substance of the agenda, but I do want to go through just a real quick overview of our timeline right now. So today is our last meeting to finalize the outstanding substantive issues in the final report, as I noted that there are four issues that we need to deal with that are on the "can't live with" list. So we'll get to those very shortly. I think and hope that we have identified paths forward on each of the outstanding four items, but certainly look forward to receiving input and feedback from everybody on the team.

So tomorrow will be the deadline for flagging any minor edits and objections to consensus designations. So I should note that following today's meeting, depending on how the conversation goes, I will circulate the draft consensus designation—and designations, I should say—and the chair statement for

everybody's review. And tomorrow will be the deadline for flagging any minor edits or objections to consensus designations.

September 2nd is the placeholder for our potentially finally EPDP team meeting, if needed, to allow for resolution any remaining issues or objections to the consensus designations. The 2nd of September is the deadline for submission of minority statements to be included prior to the finalization of the report and for inclusion in the final report that would be submitted to the Council. We've moved that day from the 2nd of September to the 3rd of September. And then the 10th of September is still the final deadline for minority statements that would be added to the final report after the delivery to the Council.

So let me pause there and see if anybody has any questions about the timeline or the proposed agenda today. And if not, we'll move directly into the review of the substantive items. All right. I don't see any hands, so let's just jump right in then to the substance of our meeting today, which are on the screen before you and in the table that was circulated by staff yesterday that include some proposed text for the remaining four "can't live with" items.

So Marika, if I could hand it over to you to help us work through this. And everybody, please get ready for your input on these four items so we can try to bring this report to a position that will receive sufficient consensus and be able to be a solitary document, subject to further minority statements.

So Marika, over to you, please. Thank you.

MARIKA KONINGS:

Thanks, Keith. What you see on the screen here on the right-hand side is the document that was circulated yesterday after all the input came in from the different groups in response to the four tasks that we had identified following last week's meeting. As you may recall, we we're not able to get through all of the items or not able to resolve all of the items. So what the staff support team did was to translate those items into very specific questions that we asked everyone to respond to. And we really appreciate the feedback that was received.

So in the document, we tried to basically group together responses that were received in relation to the same ask, and based on the feedback that was provided we consulted with the leadership team on what could be a potential path forward on that specific issue.

So the first one you see here on the screen is Ask #1. And you may recall that we did discuss this during the last meeting. There's a section in the report that basically outlines that one group things this, another group is this view. And there are also a number of footnotes that also express specific viewpoints of groups. In some other parts, we've actually already removed that and discussed that it's probably better to reflect those views in the minority statements.

There is of course, in then the beginning of this section already, a reference as well to the initial report as containing more of the background to the conversation. But based on your feedback and, at least the suggestion we made here—or it was a suggestion, I

think, that came up on the call last week as well—that another approach could be to have this chair statement on the consensus designation also reflect some of your disagreements that occurred throughout the conversations and to give an accurate reflection of what these recommendations represent.

So based on the feedback that has been provided here, there does appear to be general support for removing the current statement and the related footnotes as long as this chair statement accurately reflected the conversations and differences of opinion so that, again, readers really understand how the recommendations have ended up here; and it's not necessarily what everyone would have liked to see.

The proposal is that Keith, after this call—assuming that we'll make our way through all of the open items—would circulate his proposed statement as well as the consensus designations with the group so that you also, of course, have an opportunity to review and make sure that this aligns with your expectation on how the disagreements are reflected in the report.

The ask here to the group is, is that an acceptable way forward in relation to this item and the relevant sections in the report.

KEITH DRAZEK:

Thanks very much, Marika. I just want to add a note while folks consider getting in the queue and providing some direct input. Look, my hope with this report, this final report, is that as far as the consensus designations and the recommendations and what we provide to the community and to the Council that we can focus

on the text of the report and determine consensus on what is in the report while also acknowledging that the recommendations did not go as far as some would have liked or wanted at the outset of the work.

But I think there's an important distinction here between what we are including that was able to reach consensus, or where we were able to agree, while also acknowledging in the chair statement and through the minority statements that will be submitted—as I understand by many, if not all of the groups—that there was a difference of opinion.

But my hope here is that we'll be able to demonstrate where we were able to reach consensus and, in the final report, focus on that as opposed to focusing on what we were not able to achieve. Like I said, I think I, in the chair statement, can make very clear where there were differences of opinion and where we were unable to reach consensus while keeping the report focused on where we were—or where we are.

That's my hope. I know that there will be a minority statements. And as I said, as noted by me and by Marika, I'll circulate the draft chair statement after today's call, subject to the discussions that we have here. So that's my thinking going into this.

And, of course, we need to have some conversation about the consensus designations. Again, to the point I just made, I'm hoping that we will be able to reach broad consensus on what we do include in the report while acknowledging where we were not able to reach consensus in my statement as well as the minority statements.

And I understand that folks may not feel so strongly or feel so good about the final report that we would go to a full consensus designation, but I'm hoping that we can at least demonstrate that we were able to reach consensus on the report as submitted while, of course, as I said, noting that there were differences of opinion along the way and that perhaps it didn't get as far as some would have liked.

So let me stop there and see if anybody would like to get in queue on this particular point. Looking for input from the team, timely, so we can try to get through the four outstanding items today.

Laureen, thank you.

LAUREEN KAPIN:

Thanks, Keith. And I appreciate your good intent to make sure that the report accurately reflects the views of the different stakeholder groups.

Candidly, it's hard for me to really make a final call on this in the absence of seeing your statement. And I think what I want to do is just put a placeholder that I would be uncomfortable—and here I'm speaking on behalf of the GAC—to make a final call on this issue prior to actually being able to see your statement and review it. It may be that that gives us all the reassurance we need. But of course, “perhaps not” is a possibility as well.

So my comment is just to seek assurance that this issue will not be closed until we've had a chance to see your statement. My concern here is that, in the real world, I know many folks will look at the primary report and may not bother to look at the minority

statements. So for any stakeholder groups, I think I speak on behalf of many to say that we want to make sure that the report, in its four corners, conveys the disagreements on certain key issues without having to look at the minority statements as well.

Hopefully everyone will look at everything but, as I said, in the real world I know that's not the case.

KEITH DRAZEK:

Thanks, Lauren. All excellent points, and completely agree. And the recommendation here is that we capture the dynamics and capture the full extent of those dynamics in the chair statement. We had discussed whether it would make sense to produce the chair statement in draft prior to this call or immediately after, but noting that there were still four items to discuss substantively—this being one of them—I thought it was a bit premature or presumptive to take that step.

But you have my full commitment and guarantee that that chair statement will be circulated after this call. Everybody will have a chance to review, provide me feedback. But it will capture the nature of the discussion to outline where the various groups had disagreement or differences of opinion.

So completely understood. I see Margie and Brian also have put into chat support for your point. And I completely understand.

Stephanie and then Alan.

STEPHANIE PERRIN: Thanks very much. I very much appreciate this noble effort to write this document. I think it's a very difficult document to write analytically from a neutral perspective. I would caution against making the arguments that will be made in the minority statements because, of course, we will all say you didn't make our argument strongly enough.

On the other hand, I think it is theoretically possible to write a dry analytical note that says “there was significant dissension among the members on this point, some believing X, others believing Y” without going into the detail. But I think we would feel exactly the same as our colleagues in the GAC and business community in terms of wanting to see it first. Thanks.

And I'm very sorry to say that because we're all tired and exhausted, but this would be a pivotal statement—the one that everybody reads—so it's important.

KEITH DRAZEK: Thanks very much, Stephanie. Completely agree. Yeah, and I wouldn't presume to try to speak for any particular group contributing to this effort, but rather to note that there were significant differences of opinion and noting that the minority statements will be submitted and will be important for folks to get a full understanding of the differences of opinion and the group dynamics over the course of the last nine months.

Alan, over to you. Alan Greenberg.

ALAN GREENBERG: Thank you. I agree with both of the previous two speakers. But I do want to point out where, to some extent, having this discussion—to use an old expression—the cart before the horse. When we went into the last meeting on Thursday, I thought we had very close agreement on the fields. And therefore we were just arguing about where we disagree, how is that disagreement going to be expressed.

When we came out of the meeting, I'm not sure we have agreement on the fields right now. And how that discussion—the Ask 2 discussion—unfolds, I think is going to fall back on to this one. And how important it is for us to be able to make our own statement and make sure it's really crystal clear is going to vary depending on what the outcome of the next discussion is. So we may want to roll back to this one at some point, when and if we finished the next discussion. Thank you.

KEITH DRAZEK: Thanks, Alan. Great point. And that's exactly why I didn't want to jump the gun on circulating a draft statement because of the substantive issues that we still needed to talk about today.

So with that I don't see any other hands in the queue. You have my commitment to circulate the draft chair statement after this call, and we'll take it from there.

But, yes, let's move on now to Ask #2. And Marika, I'll hand it back to you. Thank you.

MARIKA KONINGS: Yeah. Thanks, Keith. Alan already referenced in the discussion this specific item which relates [reorganization of] Recommendation 1 which focuses on the field or fields to be created. Based on the conversation during the last meeting, the staff support team already made some updates that aim to address, I think, maybe partly some of the confusion and some of the, I think, talking past each other on some of these items.

And the question was, to the group, whether those qualifications helped and resolved some of these issue issues. Based on the feedback, it seems that there's still a level of discomfort. Although, again, we do believe or it does seem that everyone is saying the same thing and is was agreeing on the underlying principle that a field must be created—and with “created” as kind of the “technically made possible”—but that the field is optional for use by contracted parties.

So if that is indeed a common understanding, and factoring in some of the other suggestions that were made, we've suggested some additional updates to again help clarify that.

So basically, in the first paragraph a footnote would be added that, again, clarifies that this creation means that there will be specific standards that basically define how and where this field or fields can be used within EPP and the RDAP protocol. So that's something that ICANN Org, with assistance of the technical community, would do.

And then there were some suggestions, I think from contracted parties, that “allowing for” is not the right term here. But a better

word would be “facilitate.” So we've made that change, again, to make sure that it accurately reflects what this means.

And then we added some updates to a second footnote that we had added. I think there were some, as well ... There was no clarity on what the intent was behind that. And if there are questions on that, I will definitely defer to Berry who's more of an expert in this. But this is really to indicate that if a contract party chooses to differentiate and they choose to publish the field in RDDS, then they would have to follow the requirements that go with the relevant specifications when it comes to publication all of that information.

And other update that was made based on feedback received—and, again, making it more consistent with how this is written—that instead of saying that contracted parties are not required to include this in an RDDS response, it would be written into form as the other party; that they “may” include it in a field which, of course, in effect is the same impact.

So I think the question is, here, does this address some of the concerns of have been raised? Does this sufficiently clarify that there is agreement that this field is created from a technical perspective? But it is still optional for contracted parties to use this field, and if they use it, whether or not that would be published.

So I think that's, in a nutshell, what at least we've tried to do based on the feedback that has been received. And we hope this brings the different viewpoints closer together. But, of course, happy to hear from the group if that's indeed the case or not.

KEITH DRAZEK: Thanks very much, Marika. And yes, I think fundamentally the recommendation here is that a field must be created to allow for the differentiation between legal and natural person registration data, and that the use of that field will be optional. And I think, fundamentally, that is the recommendation. And we're, I think, around the edges of it, wordsmithing. But I think that's fundamentally the question. And I think we have consensus at least on that fundamental point.

Hadia and then Marc Anderson.

HADIA ELMINIAWI: Thank you, Keith. And thank you, staff, for developing this report. My question is in relation to the footnote created. Where it says “Created’ in this context means that ICANN Org, with the assistance of the technical community, will develop a standard that defines how and where ...”

So my ask here is, can you give us examples of how ... I’m not sure what you mean by “how the field or fields can be used within EPP and the RDAP.” So if we could have an example of a “how” and then another example of a “where.” I’m not sure what you mean by “how” because there might be different interpretations to that. And also an example to “where.”

KEITH DRAZEK: Thanks, Hadia, for the clarifying question. I have Marc and Steve and Alan Greenberg in queue. Marc Anderson, go ahead. And if you can respond to Hadia's question, go ahead. I know you had your hand up otherwise. And if not we'll circle back to Hadia's question. Thanks, Marc.

MARC ANDERSON: Thanks, Keith. I don't think I can respond to Hadia's question. I'm not sure that was for me, but I don't feel like I can answer her questions there.

I raised my hand. I have two points to make. I guess the first is on the change from "allow for" to "facilitate." And I was one of the people that submitted that as a suggestion. But after submitting that, I received feedback from my stakeholder group that it would be preferred to use "facilitate optional differentiation between legal and natural person registration data" which, to your point, should be acceptable as, I think, there's general agreement that this an optional field. So that's my first intervention. And apologies for the late change there.

My second point was on that second footnote. This is causing a lot of discomfort with me and the rest of my registry colleagues. We did not discuss, to my recollection, this specific language. And I'm not exactly sure where it came from, what the intent is, or how this would be implemented ultimately.

But to clarify the registry position, we see value in having a standardized field that we know for contracted parties that choose differentiate. In the small group, when we met to discuss this field,

we were not supportive of it including the field in the public RDDS response. I think we've been pretty clear on that all along. We don't see value in including it in the public RDDS response.

In the small group, however, there was an ask that, "Okay, we get that you don't support it. But at least can the recommendation not exclude or prevent it?" And I agreed that, as a compromised position, we agreed that the recommendation would not in any way exclude including the response in the public RDDS even though we're not supportive of that from our stakeholder group.

So with that background, reading this footnote, this seems to go a little bit further than we're willing to compromise on. Creating this field and including it the Registry Agreement and the WHOIS advisory really, I think, goes beyond what we're prepared to compromise on. So that's a big concern to me, and I'm not exactly sure where that language came from.

KEITH DRAZEK:

Thanks, Marc. I saw that Berry's hand went up. So Steve and Alan, if you would give me a bit of latitude here, I'm going to turn to Berry. I think he may want to respond to the question. And then Steve and Alan, I'll come back to you. And there's also some activity going on in chat that I'll call your attention to.

Berry, over to you.

BERRY COBB:

Thank you, Keith. I'm going to try to address three points. This was staff's attempt to try to find middle ground and to make this

more clear—the precision that is required between a “must” for these data elements to be created and the “mays” or not “mays” about how contracted parties may use it. And it's definitely not a coercive attempt at trying to make this a bigger requirement.

So starting with Hadia's question and Footnote 1, “created.” And quite frankly and honestly, none of the policy staff are experts in IETF land, but my general understanding is that if this were an adopted recommendation, the Technical Services Team or some group within ICANN Org will be tapped on the shoulder to start the process for making or submitting an Internet draft to the IETF that would allow for these fields to be created and usable within EPP and within the RDAP protocol.

Specifically how that goes down, I don't have that information. If we need to track down the very specifics, I suppose we can. But if a contracted party were to choose to use these fields, I think it's a pretty safe bet that they would need to process the ability to collect this data through their EPP systems.

And if they chose to process the data via RDAP, whether they chose to publish it on an open directory such as RDDS and a query result or they chose to provide the data value through a restricted system like an SSAD, all of those technical requirements need to be laid out in that area outside of ICANN before contracted parties can even try to use these fields. And so that's the intent there.

And pointing to Steve Crocker or to Marc, those that are much more technical oriented and understand those processes, we would certainly like your help to make that crystal clear exactly

about how that will go down if it's necessary for the purposes of this recommendation.

To Marc's concern, I won't opine about the term “facilitate.” It seems to me “allow for” does that without having to add “optional.” But I won't really opine on that.

But in regard to Footnote 2. I think what is important here is, especially the last sentence that is being proposed, that contracted parties may include these fields in the RDDS response. So I want to reflect back to the small team's original instruction when we met to discuss the context and development of these fields. And at that particular time before we got started, it seemed clear that there was known broad support for a requirement for these fields to be published in the public RDDS; and that perhaps there would be support for it to be disclosed through some restricted sort of system.

But, as Martin noted in our discussions, there was the aspect about certain parties not wanting to restrict certain contracted parties if they chose to publish or make available these fields in the RDDS. And you'll recall from Phase 1 that is now in the IRT—which is, I believe, Section 10 of the draft policy document for IRT—it outlines what the future requirement is going to be for an RDDS query format.

And it's not done. There are still things that need to be considered as to how RDAP's going to be implemented, what is the impact on the Consistent Labeling and Display, as well as the aspects of the WHOIS advisory which is not a consensus policy.

But the reason we tried to include Footnote 2 here, and the intent here is that if a registrar specifically—because I don't see registries doing it—but whether the data were to be passed for a registry, is IF—capital IF—IF a registry or registrar did choose to publish both of these fields or one of these fields in the public query, the intent of CL&D and the WHOIS advisory is that these fields would be appended at the end of that query format.

This is exactly in line with, I believe, the additional data element that we created in Phase 1. If certain specialized TLDs wanted to collect separate information outside of the normal requirements—like a .doctor TLD if they wanted to get the medical license number and it be published—all of those fields would be appended to the end of that queried format. And that's what we're trying to get to here. And specifically in the WHOIS advisory, I believe Section 11 of it speaks to this; that these additional data elements would be appended.

So I don't believe staff is ... We don't take pride of ownership for the text here, but that's the intent; that if a registry or registrar chooses to publish this, there are existing requirements where they would need to append the data element at the end of the query format and not in the middle of what will, in the future, be requirements from the Phase 1 PDP.

So I hope that makes sense. If not, I'll try to answer the questions. And thank you for letting me jump the queue, Keith.

KEITH DRAZEK:

Yeah. Thank you, Berry. And thanks for the very helpful and informative explanation and context. And I think it's important to remind everybody that we're not operating in a vacuum here, that there are other policies and there would be implementation potentially required, and that this provides at least a starting point for those considerations; and to acknowledge that what we are recommending could have some interplay or inter-relation with some other existing policies related to the RDDS and WHOIS.

So thanks, Berry, for that. If anybody has follow-up questions, feel free. But I think that was really helpful.

Steve and Alan, thank you for your patience. Steve over to you.

STEVE CROCKER:

Thank you very much, Keith. And thank you for reordering things because I think that what we just heard was very, very helpful. I raised my hand at first in response, Keith, to the way that you presented this because I found the text to be basically spot on. But when you covered it, you mentioned the legal vs. natural and not the personal. Or you kind of placed it secondary.

From my point of view, we should treat each of those as coequal and distinct from each other. They obviously are interrelated in the sense that if it's a natural person, then almost certainly, but not 100% certainly, it does have personal data. And if it's legal, then whether it does doesn't have personal information is an important additional descriptor.

But I would like for people to think of these as coequal and not place one in priority over the other even though that's the way it

has entered our dialogue and principally because of the way the GDPR is structured.

As I said, the language that I see here is fine. With respect to the treatment is through the IETF, how do I say this? I plan to be helpful in that and I've been working with a group that we are planning to also participate in the IETF process for this. I think we have exactly common cause, and it will be mutually supportive, not contrary at all.

The essential point which I think has now become very clear for everyone is that by doing it in that space, it applies not just to contracted parties but to the entire Internet community, and that the ownership of the definition of those fields becomes a community process which is, I think, extremely healthy. So I think that's good.

With respect to this last very detailed discussion about whether or not the status of legal vs. natural or equivalently or equally does or doesn't contain personally identifying information is to be disclosed. I think everything that's been said is right. Let me try to express it in slightly more compact terms.

There's a policy at the level that we're talking about, and then there will be the practice or, if I can reuse the same word, the policy of each of the parties—principally the registrars. The policy at the level we're talking about is, as I understand our consensus, is permissive in two respects. It's permissive with respect to whether or not those fields are collected. It's permissive, actually, in more than two respect. It's permissive with respect to whether it's collected, it's permissive with respect to how that field is used,

and it's permissive with respect to whether or not that field is published or not published. Which I always like to say since we don't publish anything in the usual sense of what that word means, it really means "is returned as part of a request for publicly available information."

I think all of that is spot on. And then individual registrars will have, as I say, their own policies which may differ from each other so that one registrar may say, "We insist on collecting this. We insist on publishing it." Another registrar may say, "We ignore it." Another registrar may say, "We insist on collecting it, we may use it for various things, and we may consider that to be more private and not release it to public queries but available under other circumstances."

All of those are permitted, I think, under the agreements that we've reached in this group. And as I say, from my point of view, I think that's exactly the right thing. Thank you.

KEITH DRAZEK:

And thank you, Steve. And I was imprecise in my interest, so thanks for the reminder about the two fields and the view that they would be a coequal in the implementation.

So I have quite a few building, but we are going to need to drive towards some consensus or agreement on the text. So if folks could try to focus your input on suggestions for getting us to closure on this one, that would be really welcome.

Alan, then Mark SV, then Marc Anderson. Go ahead.

ALAN GREENBERG: Thank you. The footnote that's on the screen right now but EPP and RDAP comes a little bit closer to what I was worried about. The original statement simply saying "the fields are created" with absolutely no reference to where they're created, what they're created for, or anything. It simply says I can write them on a scrap of paper and the fields are created. Okay, done. It benefits no one, but it's there.

So I would like to see a reference to the two specifications in the RAA and the Registry Agreement that talk about what we used to call WHOIS elements. In Phase 1 we went into great detail in multiple recommendations on detailing how each element can be used. We've decided to bypass that here, and I presume leave it to implementation. Whether that's valid or not, I won't comment. But we are omitting all of that, and therefore the whole context of where these elements exist in the world and where they may exist is lost.

APP is a protocol used for a lot of things, not just transferring RDDS elements. RDAP is a little closer. But I really would feel more comfortable knowing that we're talking about things, again, that used to be called WHOIS. Whether it's public or not public, that's where these fields may reside.

And related to that, there's a reference in the document right now which says "additionally, the field or fields is not required to be included in an RDDS response. A negative statement like that is not the way we normally word things. We word things saying "a field may be" which doesn't make it required. But it says that is

where it may reside in some cases, or may be used. So we shouldn't be using negative statements and we should be stating them in the way we normally do. Thank you very much.

KEITH DRAZEK: Thanks, Alan. And I think the proposed text before us does flip that from a negative to a positive or permissive, as Steve would say. The new proposed text is “additionally, contracted parties may include the fields in an RDDS response.” So I think that’s—

ALAN GREENBERG: Thank you. I hadn't seen that.

KEITH DRAZEK: Yeah. But good point. And that, hopefully, is addressed by the proposed text that I hope will be acceptable to all. Mark SV, Marc Anderson, then Laureen.

MARK SVANCAREK: Thank you. Regarding the objection to Footnote 2, I'm confused, so help me to understand. As Berry said, the process would be that somebody goes to IETF. They draft something. It gets accepted. It goes to the RDAP Working Group. They create a profile. It gets implemented by people who wants to do the optional thing. And then when that's done, it's going to wind up on some sort of a page like the one that is linked there. So the one from 2015, there's going to be an update to that page. It's already being updated with the Phase 1 stuff. It'll be updated there.

So that's the reality. If it goes through that whole process, it doesn't make it not optional, but that is what's going to happen. And so I don't understand why there's an objection to the footnote because if you're saying that these things WILL not happen, then you're saying that it actually can't be done [optionally]. It can't be done at all because that's where the standard is published, more or less.

So I'm not sure what I'm missing here regarding this footnote. So if somebody could help me to understand, that would help me a lot. Thanks.

KEITH DRAZEK: Thanks, Mark. Marc Anderson, you're next. Then Lauren.

MARC ANDERSON: Thanks, Keith. And thank you, everyone, for all of the interventions; and Berry for the explanation there.

On the footnote here, from a Contracted Party House perspective, we do not need or want the footnote. It is not necessary in order for us to display these optional fields in our public RDDS. We have a clearly defined, understood, and already well-used process for adding additional fields to our RDDS output.

Something that Berry said during his intervention made me scratch my head a little bit and go back to the Phase 1 recommendations. He said we added an additional fields in Phase 1, and just want to clarify. We did not. We added a column in the tables that says "additional data elements as identified by a

registry operator in its registration policy such as ...” and it goes on to list examples. This is to account for the fact that registry operators, and in fact registrars as well, can include additional elements in their RDDS output.

And we have mechanisms to do. That’s an already well-defined and understood process. So for us looking at Footnote 2, we look at that as completely unnecessary, and it really confuses and complicates this to us.

In Alan's intervention he said it's not defined what this field is and how it would be used. Again, I disagree. To us it's very clear. It says it recommends that this field must be created—right now it says—“to facilitate differentiation between legal and natural person registration data and/or if that registration data contains personal or non-personal data.” From our perspective it's very clear. And then it goes on to list what the different values are and what the options for that would be.

Now as far as how it would be implemented, we also have a line in here, “the EPDP expects that the technical community, for example the RDAP Working Group, will develop any necessary standards associated with such a field.” I provided the example from previous phases how the technical community actually accomplishes that.

So I hope that helps explain why, from a Contracted Party House perspective, not only do we not think that footnote is necessary, we think it’s problematic and potentially confusing when we get to implementation.

KEITH DRAZEK: Thanks, Marc. So I guess the question for the contracted parties here is, is there a way to update the language in Footnote 2 to alleviate the concern that you've raised? For example, rather than the word "will" ... So, let's see. I lost my place here. Well, let me just stop.

The question is, is there anything that can be done here to acknowledge that there could be other impacted policies and/or processes as we moved to implementation. I think the goal here was to acknowledge that we needed to have a starting point for the Implementation Team or implementation consideration.

I see Marc's noting in the chat, "Delete the footnote. It's not necessary."

So let me keep moving through the queue here. We have next Laureen, Hadia, Stephanie, and Volker. And then I need to draw a line under this one. So folks, please be thinking about how we can move this forward so we can keep moving on to the rest of the asks.

Laureen, thank you for your patience.

LAUREEN KAPIN: Thank you. And thanks for everyone's prior interventions. And my caveat here is that I am not a technical person, so I can't offer very specific, nitty gritty changes. But I do want to underscore what the GAC's concern is here.

We view this as necessary infrastructure to create a foundation to provide information to differentiate between legal and natural and, as Steve points out, the presence of personal information. There is no lack of understanding that this is not mandatory to use even though GAC and others might wish otherwise, or lack of understanding that it is not mandatory to publish.

But our concern is that if these fields are created—and we think this recommendation is very explicit about what needs to happen—that if it's infrastructure, it needs to work within the entire system. And if all we're doing is saying, "Contracted parties, here are the fields to create. Create it where you like. Create it how you like. And don't worry about whether it works with the system that is going to be in place to respond to requests for information or publish information. We're not concerned about that" would be a problem.

For us the whole utility of these fields is that they have the capacity to work within the entire system which would include disclosure and publication in the event that those happen. And so our discomfort is that the present configuration, at least prior to these footnotes, lacked that sort of specificity and assurance that this actually going to work within the system of disclosure and publication if that is happening either in a future where it's required or in the present where it's elective.

So I just want to underscore that that's our concern. And if there are suggestions to remove any of the clarity that would guarantee that this works well within the system, then that would be objectionable to the GAC, and I suspect other stakeholder groups as well.

KEITH DRAZEK: Thank you, Laureen. Hadia, you're next. Then Stephanie.

HADIA ELMINIAWI: Thank you. So my concern is a little bit similar to Laureen's concern. So generally speaking, I would have thought that Footnote 2 is not necessary at all. So reading the recommendation, I would have thought, you know, we don't really need Footnote 2. But listening to what Marc has just said, and he's saying that this footnote is not necessary and it's confusing and might have negative impacts on implementation, I'm not sure why he's saying that.

And then coupling this with actually what Berry just said in relation to how and where the field or fields can be used within EPP and the RDAP protocol, I get the sense and impression that the technical community can may say, "We don't need to create this field in RDAP." And actually if the technical community says so and RDAP Protocol is actually the protocol used by RDDS, then this does not become an implementation issue. It becomes a policy issue. And for that, I do think we do need Footnote 2.

And also, so we need some clarity on whether it would be included in RDAP or not because, though this seems like an implementation issue, it impacts policy. Thank you. It impacts policy decisions.

KEITH DRAZEK:

Thank you, Hadia. Stephanie, you're next. Then Volker. Then I'm going to ask that if anybody has some suggestions for us to move forward, I put into chat a suggestion about changing the term "will be appended" to "may be appended" and leaving it as a footnote. I'm sensing there's quite some divergence here as it relates to Footnote 2, and I'm hoping to find a way to move us forward to consensus on this one. So please be thinking about options to do that.

Stephanie and then Volker.

STEPHANIE PERRIN:

Thank you very much. I apologize for my lack of brevity if I can't manage to squeeze this into a very tight statement. We've said repeatedly that we were asking the wrong question when we embarked on this whole differentiation between legal and natural persons. I have been accused, I believe, of ascribing motive to the fundamental question when I said really, all we're trying to do is get out from under GDPR.

Unfortunately, a determination that a registrant is a legal person is not an easy question. And I thank Berry for his explanation. There are some situations where it is unambiguous that it is a legal entity that is registering for a domain, and that it would be relatively simple for a contracted party to determine that whoever was the human being registering the thing, you could identify that they had the authority to proclaim that there was no personal data.

The proper question here, has always been, is there personal information in the registration or not? And that is not the question

that is being discussed in the footnotes or, indeed, in any discussion of this field as we hand it off to the IETF.

And it's not every day that I salute Larry Lessig, "Code is law." But once it goes to the IETF, frankly I don't want to go there and make sure that human rights groups are represented. To represent the interests of small business—which the NCSG does not represent—and sole operators and gig operators who will be forgotten as the arguments to make business declarations more clear by providing field data.

I hope that's clear, what I'm trying to say. We should finish the work we're doing here in terms of a policy. And the policy recommends that this be optional. We cannot—through footnotes, through explanatory discussion—direct the IETF into creating fields that will obscure the fundamental legal risk. And I'm not a lawyer. I'm expecting some lawyers to join me in protesting this. But don't obscure the legal risk in smacking down a determination between legal persons or natural persons. Thank you.

KEITH DRAZEK:

Thanks, Stephanie. And I see that Steve has put some reaction in chat. He's now in queue. Volker, I'm going to come to you next. Then Steve. And I'll note that Brian has also suggested some alternate text in the chat. Thank you, Brian, for that. So folks, please take a look there to see if that might be a path forward.

But Volker, you're next. Thanks for your patience.

VOLKER GREIMANN: Yes, thank you. I think the main issue here with the second footnote, in my book, is not what we've discussed before. I'd like to try to look at this from another angle. This is basically suggesting that something is added to contractual language between registries and registrars in ICANN. And we have this little thing called the picket fence which basically prohibits this kind of action.

I don't think we should make any reference to any existing contracts here. I think it's out of place, and it's a dangerous step to even suggest that the community has the power to amend the contract. We should remove all reference to that. Thank you.

KEITH DRAZEK: Thanks, Volker. I think, in fairness, the EPDP process does envision and is essentially created to allow for updates to registry and registrar agreements. The picket fence carves out certain things that are in scope or out of scope for PDP. And if that's the argument, then let's be explicit about that. But I think it's important to note that, of course, a PDP is the mechanism through which registry and registrar agreements may be updated.

And I see Becky has her hand up. Becky, would you like to respond specifically to that point? And if so, go ahead.

BECKY BURR: Yeah.

KEITH DRAZEK: Then Steve, I'll come back to you.

BECKY BURR: Yeah. I'm sorry, Keith. I'm sorry to jump in here, but I think it's really, really important to be precise about our words here. The Policy Development Process in fact modifies contracted parties' obligations, but it doesn't amend the contract because the contract says that you are obligated to comply with consensus policies.

So I think there's some precision here that's really critical, but Volker is correct. It is not a process of amending the contract itself. But it does modify. It has the effect of modifying a contracted party's obligations under the agreement. But I do think that Volker's point regarding references to amending the contract is absolutely right.

KEITH DRAZEK: Thanks very much, Becky. That's a very helpful nuance and specificity. So thanks, Volker. And thanks to Becky for bringing that to the table.

Steve, you're next. And then I see a hand from Margie. And then we're going to need to move forward on this one, folks. And we need to figure out how we can get there because I'm going to speak frankly here. If we can't come to agreement on this, it puts the recommendation related to a new data field at risk.

Steve, you're next.

STEVE CROCKER: Thank you, Keith. I wanted to respond to Stephanie's intervention. My understanding, Stephanie, is that the additional field of identifying personal versus non-personal data is precisely the one that you're concerned with. I mean, that it implements exactly the criterion that you're concerned with. And that by having that as distinct and separate from the legal vs. natural, it preserves the distinction that you're focused on.

So my hope is that that is a very, very strong positive response to the concerns that you've been consistent in raising and which I think are quite valid. So I'm not 100% sure of what concern you're now raising with respect to this because I would hope that you'd have confidence that by having that as a distinct and separate field, that it will make it through the process without getting mangled. Thank you.

KEITH DRAZEK: Thank you very much, Steve. Margie, your hand is up. And then I'm going to put myself in queue. Thank you.

MARGIE MILAM: Sure. I just wanted to disagree with Becky and Volker and point out that—and I've said it in the chat—that the PDP manual allows for one of the outcomes to be agreement terms and conditions. It's on page six. And furthermore, it's been done before. It happened with the WHOIS PDP years ago when they changed the actual language that goes into the purposes for the use of WHOIS. If you recall, there used to be language related to being able to use it for marketing purposes, and the actual PDP changed that language.

So it's not as cut and dry as it was stated. And I just wanted to clarify that.

KEITH DRAZEK:

Okay. Thanks very much, Margie. So look, to bring us back to the actual text of the report, which is really important at this phase of our work, I'm going to turn back to the suggestion that Brian made in chat. I'm going to scroll back up here—give me a sec—and suggest that the possible path forward here is to include Brian's suggested text that “ICANN must coordinate with the technical community, for example the RDAP Working Group to develop any necessary standards associated with such fields” within the body of the recommendation. And then delete Footnote 2.

That's a suggestion from me on the table. I'm hoping that will get us to where we need to be on this particular point. Part of the reason, if not the reason, we started down this path of the footnote and including some guidance or some explanatory context was to give ICANN Org the trigger that it needed, and to acknowledge that there are other factors in play. That we're not operating in a vacuum.

But I think for the purposes of this report, it might be better to be brief, concise, and direct. And I think Brian's language actually helps us get there because, of course, the expectation here is that ICANN Org would coordinate with those other parts of the technical community to move forward the development of a standardized data element.

So I'm going to ask if anybody has an objection at this point to taking Brian's language, incorporating it in the body of the report, and removing Footnote 2.

Alan Greenberg, go right ahead.

ALAN GREENBERG: Thank you. I don't have an objection, but I would like some clarity from ICANN Org as to whether, the wording we are proposing, they believe this gives them the authority to add these fields to the specifications in the contracts as optional fields, but nevertheless as fields. Because ultimately, the two specifications—Spec 4 in the Registry Agreement and the RDDS specification in the RAA—are what define what must and can be done.

So if they believe this gives them the appropriate authority by the reference to RDAP, then that's fine. But I don't want to hear later during the implementation that, "Oh, well we didn't include the right words, therefore there's no way we can do that." Thank you.

KEITH DRAZEK: Thanks, Alan. I don't have an immediate response for you. I don't know if anybody else would like to get in queue to address Alan's point. But while folks are thinking, and I don't know if ...

I see Volker has his hand up. Volker, thank you. Go ahead.

VOLKER GREIMANN: Yeah. I don't think we actually need to amend the contract or the specification at all. I mean, we can have supplementary

consensus policy that adds certain fields as requirements to WHOIS output that would not in any way diminish the language of the contract. Therefore, if we have recommendations in our policy proposals that ultimately lead to the requirement to have those fields, or to at least make them optional, then that is sufficient. It does not need to be in the contract.

There's so much policy out there that affects certain terms and clauses in the contract that changes how certain things [that are] in the contract are [made out] without changing the contract itself. So the language of the contract should be considered sacrosanct, and that includes the specifications.

There's a certain process to amend the contract. It's listed in Section 6 of the RAA. And I don't know what section of the RAA, but if it's not in there, then the contract cannot be amended.

KEITH DRAZEK:

Thanks, Volker. I have a hand from Amy from ICANN Org. Amy, thank you so much. And then Alan, I'll come to you next and we'll draw a line under this.

And again, my ask right now is does anybody object to the recommendation to use Brian's suggested text which is now on the screen incorporated in the document—so folks, please look at the screen—and use that to replace former Footnote 2? That's the ask, at this point, of everybody. Any objections to that approach?

Amy, you're next. And then Alan.

AMY BIVINS: This is Amy Bivins from ICANN Org. I'll try to keep it brief. The points that Volker raised around the procedure, I think, are accurate. Generally, when a consensus policy recommendation comes out of a PDP and is approved by the Council and goes to the Board, it goes to the IRT. And the IRT generally comes up and works with ICANN Org to develop consensus policy language. They generally don't go directly to the agreements and modify those agreements. But there are lots of consensus policies that have the effect of changing or superseding certain requirements or creating new requirements. So I think the effect would be the same, even if the IRT isn't going in and editing the text of the agreements [to require this] or to accommodate these fields.

KEITH DRAZEK: Thanks, Amy. Thanks very much for that. Alan, you're next. Go ahead.

ALAN GREENBERG: Thank you very much. Let me be clear in response to Volker. I know there are many mechanisms to modify contracts, but they are very specific mechanisms. For instance, the RAA can be modified through RSEP procedure, but I don't expect every registry to go and do that to be able to use these fields should we be in a position where we want to use these fields. There are similar but more convoluted processes for the RAA.

So I understand we can make changes. My question is, if these fields are to be created then I would think that if there's a value to having those two specifications in the contract, then these fields

should be included. Otherwise, why did we include all the other fields there if the whole thing is rather moot and isn't really needed? So I just have some level of confusion.

And thank you, Amy, for that clarification. But I always thought the whole concept of a consensus policy is the changes of the terms under which the contracted parties could work. That's the definition of consensus policy in the agreements, so I don't see why there's this fear of making changes which a consensus policy has approved. Thank you.

KEITH DRAZEK:

Thanks, Alan. And I'll just note, going back to Becky's intervention, that I think what we're talking about here is that there's a distinction between changing the base agreement or changing the agreements themselves versus creating new obligations, consensus policy requirements, under the terms of those agreements. So I think there's a distinction there.

But Alan, I saw your hand go back if you want to respond. And then I'll come back to Marc.

ALAN GREENBERG:

Yeah, just very quickly. I don't really want to get into semantics on whether the contract [can be] turned/changed, or the consensus policy changes the effect of the contract. WHOIS is within the picket fence—there's absolutely no question about that—and therefore is subject to consensus policy. So I guess I'm more confused than anything else at this point. Thank you.

KEITH DRAZEK: Thanks, Alan. Marc, I'm going to turn to you. And then we are going to move on. Go ahead, Marc. Thanks.

MARC ANDERSON: Thanks, Keith. I think the proposed redlines ... I'm caucusing with my colleagues, and I think the proposed redlines are sufficient that we won't object. I know that's not a ringing endorsement, but I think that language is acceptable.

Real quick to Alan. I'm telling you and I've told you multiple times. We think that this language is sufficient to accomplish what you want. It creates an optional field that contracted parties can use if they so desire to do it. We feel that this languages is sufficient. Our contracts require us to abide by the terms of consensus policy. We have to comply with consensus policy.

And the process of modifying existing contracts or policies drags things out. It's a long and difficult process. It drags things out and it's unnecessary. This language is sufficient to accomplish what you want to accomplish, and we're telling you we're not going to object to it. We should draw a line under this and move on.

KEITH DRAZEK: Thanks, Marc. And I think at this point, I have not seen or heard any objection to the proposed text. Brian, thank you very much for suggesting the approach. Much appreciated. So at this point, going into the next phase of our work, which is the final phase,

we'll incorporate Brian's suggested text, remove Footnote 2. And then let's move on.

Marika, I'm going to hand it back to you for moving on to the next line item on our agenda. Thank you.

MARIKA KONINGS:

Thanks, Keith. So we're at Ask #3, and I think we're probably looking here at the Registries Stakeholder Group again for some feedback. As you may recall, we discussed this during the last call. There is a currently in, I believe the guidance part, a reference to "should." I think the registries indicated that they would prefer to see "may."

We got some input from ICANN Org during the call yesterday that at least from an implementation perspective, "should" or "may" doesn't make a difference because this guidance and not any kind of requirement. So we asked groups if they could live with leaving this at "should." I think all those that provided input indicated that they could live with the word "should," apart from the Registries Stakeholder Group.

So I think the question here is, is the Registry Stakeholder Group willing to reconsider that position or do they want to record their formal objection to the word "should" here?

KEITH DRAZEK:

Thanks very much, Marika. And thanks to ICANN Org for their input in terms of the differentiation, at least from a contractual and

an implementation/compliance question that the difference between “should” and “may” is negligible.

But Marc, let me hand it over to you. Thanks.

MARC ANDERSON:

Thanks, Keith. I’ll try and speak to this. I think I’ve gotten direction from my stakeholder group that we’re not comfortable with the “should” and think that “may” is appropriate and more accurately reflects the optional nature of the guidance. However, what Alan, Matt, and I are going to do is we’re going to propose for a stakeholder groups that we voice our concern over the “should” versus “may” in our minority statement. And hopefully that will be enough to get nonobjection from our stakeholder group.

I can’t necessarily commit to that right now, but Alan, Matt, and I will take that back and see if that’s sufficient. I think that’s probably the best I can do right now, Keith.

KEITH DRAZEK:

Thanks, Marc. And thanks for your and the Registry Team’s flexibility on this one and willingness to sort of go to bat to compromise a bit here, while noting your concerns in the minority statement. I expect that we will have quite a bit of that, and I fully support groups and different interests or different perspectives voicing those types of concerns and differences of opinion in the minority statements. And like I said at the outset, I’ll capture much of that at a high level in my chair statement. But thank you for that input.

Does anybody else have any input or thoughts on this particular point, but noting that the Registries have indicated that they're willing to try to move forward on this one? Alright, not seeing any other hands. Thank you, Marc, for that.

Marika, back to you.

MARIKA KONINGS:

Thanks, Keith. Then we're on the last ask which is Ask #4 which deals with the new recommendation that references a possible work on a code of conduct. Here there was some concern about where this work would take place or how, as well as who would be participating in this. And so I think we asked a question here. Yeah, we made some updates and then basically asked if some of those updates ...

There were some suggested updates, but it wasn't very clear on what that was intended to mean or that would reflect the involvement of others. From the staff side, we took another look at the GDPR and requirements there in relation to the Code of Conduct. So what you see on the screen here are proposed edits that hopefully address the different points raised, also from ICANN Org perspective.

There would be an addition of possible future work to kind of reflect that. At the moment there is no work planned, or at least not as a result of Phase 1 or Phase 2 recommendations. Within ICANN, I think it's to reflect that that conversation would potentially be facilitated by ICANN if that work is indeed planned

for at some point in the future with relevant controllers and processors, again reflecting the language in the GDPR.

And I'm also adding a reference to GDPR recital 99 which basically spells out that "When drawing up a code of conduct, or when amending or extending such a code, association to all the other bodies representing categories of controllers or processes should consult relevant stakeholders, including data subjects where feasible and have regard to submissions received and views expressed in response to such consultations."

So we hope that this accurately reflects what the expectation is, if or when the work on such a code of conduct would take place. And again, of course, this to kind of reflect that if or when that work takes place, it also factors in the guidance that has been developed on differentiation. So I think that's what we're hoping the group is willing to live with.

Turning it back to you, Keith.

KEITH DRAZEK:

Thank you, Marika. And, yeah, thanks for that. Look, my take from our previous discussion on this was that the contracted parties were concerned about the reference to the Code of Conduct processing and really wanted to make clear that there's a distinction and a difference between the code of conduct that might be submitted by ICANN or the ICANN community, but essentially coordinated by ICANN, versus a code of conduct that might be submitted by an individual contracted party. Right? And I

think this language now makes that clear and shows that there's a distinction there.

So anyway, I'm going to open the queue. Does anybody have concerns with/objections to the proposed text coming out of the most recent discussions on the Code of Conduct language? I'm encouraged and I feel good about the references to the Article 40 language in GDPR that really sort of outlines the expectations around such a code of conduct submission to Data Protection Authorities. So I hope that helps others feel better about this, but let me open the queue to see if anybody has any feedback.

Volker, go right ahead. Thank you.

VOLKER GREIMANN: Yes. Part of our consideration and our present apprehension about this language here—and this could very easily be cleared away by just using a different terminology—is that the words “Code of Conduct” are a technical term in our agreement and have the fact of becoming binding under 3.7.1 The term is defined, and obviously it's defined in a way that meets a certain process which doesn't need to come into effect.

But still, it will lead to all kinds of confusion if we suddenly use the same terminology “Code of Conduct” for two different things within the ICANN realm. And it will lead to certain assumptions with regard to the new Code of Conduct that it might actually be enforceable against registrars under 3.7 by people that just don't know that this not actually referring to that.

So either we make it absolutely clear that this Code of Conduct does not refer to the Code of Conduct under 3.7.1 under the RAA and whatever the equivalent is, or we just changed the language to something less offensive. Thank you.

KEITH DRAZEK:

Thanks, Volker. And on the screen in front of us, there is a footnote included that says “Not to be confused with the Code of Conduct that is referenced in the RAA and/or registry agreements.”

If there's some adjustment to that language, including the specific references or the specific sections in those respective agreements, so be it.

And I think Marc has suggested something in chat as well. I'll just read it here in the interest of time. “For the avoidance of doubt, this Code of Conduct is separate and distinct from the code of conduct referenced in the RAA and/or Registry Agreements.” I think that gets us to the point.

I see that others have supported that from the contracted parties' side in chat, so let me turn back to the queue. Alan Greenberg and then Margie.

ALAN GREENBERG:

Yeah, thank you. I'll just note in Marc's title, the second “Code of Conduct” isn't capitalized. I believe it is in the RAA, but I'm not 100% sure.

The overall issue is relevant and, unfortunately, ICANN has many times in its history used words in different meanings without any opportunity to describe why. We use the word “consensus” multiple ways and to the ultimate confusion of everyone. But I think in this particular case, since we're talking about contracts and “Code of Conduct” is capitalized and is a term of art in both our contracts and in the GDPR, I think we need the kind of statements in the footnote.

I'd prefer to see it actually in the text for avoidance of doubt because not everyone goes down and reads the footnotes. And I think it's a really important issue that we are talking about two different things with different meanings in different impact with the identical names. That's life. Thank you.

KEITH DRAZEK:

Thank you very much, Alan. I agree completely that clarity is important here for the avoidance of doubt or confusion. And some are suggesting, in the chat as well, that perhaps this be moved up into the text for clarity.

Margie, you're next. Go ahead.

MARGIE MILAM:

Sure. And I apologize because I wasn't here last week, so I don't know how this language evolved. But one of the things, as I read it, it has no requirement to even do any work for a code of conduct, at least on the part of ICANN. And my question is, is it possible to update this to ask ICANN to commence a code of conduct in line with Article 40 of GDPR? As opposed to just talking

about this possible future work, but there's no commitment to do any future work in this regard.

KEITH DRAZEK:

Yeah. Thanks, Margie. It's a great question, and we did touch on that during either the last call or the prior call—I don't recall which—where we acknowledged, at least from the EPDP Phase 2A work, that we were focusing on a very, very narrow area of a possible code of conduct submission, and that what we're talking about would likely be part of a broader code of conduct submission; and that we were acknowledging the references to Article 40 because there could be implications, but that our expectation was that this would be a part of a future code of conduct submission if one is developed.

That's my take on your question, so I think we're probably not at a point now where we will reach consensus on recommending or saying that the group expects ICANN to do something. But we have acknowledged that if that's something that does take place more broadly, that this issue be included in that submission. So I hope that's helpful.

And if anybody would like to get in queue, the queue is open. We have five minutes left in our scheduled call, so I want to ask, I guess as a final question, is there anybody opposed to the inclusion of the language now in the body of the text where it makes clear that this is separate from the Codes of Conduct referenced in the RAA and/or Registry Agreement?

I am seeing no hands, so we will take that as agreement, at least at this stage. So thank you very much for that. I see Sarah has suggested, “Put the bracketed section at the end of the sentence. But, yes, all good.” Thank you very much, Sarah.

Okay, so with that I think, Marika, do we have any other substantive items here? I think we may ...

Go right ahead. Thank you.

MARIKA KONINGS:

Thanks, Keith. There's one more item and it's more a check from our side. Berry, if you can scroll down and the table. In the minor edits that were submitted, there was one suggestion from the GAC Team to add “pseudonymized” to the recommendation there for the two definitions. And I think we just want to double check.

From our perspective it just appears to be a clarifying edit, but if this raises any concerns, of course, we would like groups to speak up now and discuss this item. If this indeed an acceptable clarifying edit, we can of course go ahead and apply it.

KEITH DRAZEK:

Thanks, Marika. And I see Matthew has his hand up. But I recall in the early parts of our discussion around this particular item, that I think we sort of recognized that “anonymized” is probably a nonstarter and that we started using the term “pseudonymized”. But that's just my recollection from several months ago now.

Matthew, go ahead. Thanks for your hand.

MATTHEW CROSSMAN: Yeah. Thanks, everyone. I think, maybe two things to raise on this. I think we intentionally used the term “masked” throughout the guidance, so I’m wondering if the GAC would be okay, instead of using “pseudonymized,” saying “masked” because I do think that clarification is useful. But I would want it to be consistent with the rest of the language in the recommendation or in the guidance.

And I’ll say, I think we use “masked” intentionally in drafting this rather than pseudonymous because it may be less of a loaded term, legally speaking. I know the opinion that we received about the publication of these e-mail addresses did call into question whether this would in fact meet even the definition of pseudonymization under GDPR. So I’m wondering if, instead of saying “pseudonymized,” to make it consistent with the rest of the guidance so that it’s clear, we use “masked” instead.

KEITH DRAZEK: Thanks very much, Matthew. So a concrete question and suggestion for alternate text here is to replace “pseudonymized,” as suggested by the GAC colleagues with “masked.” And so if anybody has an objection to that, go ahead and put up your hand at this point. We’re going to go a little bit over time here, folks. So just bear with us.

Alan, you’re next. Go ahead.

ALAN GREENBERG: Thank you very much. “Masked” has the connotation of specific letters are being blocked or hidden or something like that. And it had that connotation in the Bird & Bird memo, implying that some parts of it may be left, and therefore it may be traceable because of it. So I think unless we define “masked” to be something more than just covering letters, I’m not willing to accept the term.

KEITH DRAZEK: Thank you, Alan. Mark SV and then Chris Lewis-Evans. And I think, obviously, we’re talking about terminology and semantics, and it seems to me that “pseudonymized” would be a subset perhaps of a broader term of “masked.” But that’s just my layperson’s interpretation there. And I understand that there’s some question about needing a definition for “masked” as a term, but let’s get back to the queue.

So Mark SV and then Chris Lewis-Evans.

MARK SVANCAREK: Thanks. Yeah, my interpretation of “masked” is a form of redaction or covering. Alan gave a good example—it’s not the only example—whereas pseudonymization is a transformation. So I think that those are two totally different things, but if we were to define them in some way, we might be able to live with it. Thanks.

KEITH DRAZEK: Thanks, Mark. Chris Lewis-Evans, you’re next.

CHRIS LEWIS-EVANS: Yeah, thanks. Yeah, I struggled with “masted” as well, just for everything else. I wonder, maybe ... And I [don't want to edit on the fly]. [I had a] head full of other things [for a] minute. But maybe we can say “anonymizing technique” or something like that. So, “published a registrant-based e-mail utilizing anonymization techniques” or something along those lines. But, yeah, I don't have a direct suggestion at the moment, I'm afraid.

KEITH DRAZEK: Okay. Thanks, Chris. Laureen, go right ahead. Thank you.

LAUREEN KAPIN: Thanks. And just responding to Matt's comment in the chat regarding the fact that they're already defined terms. This an issue that goes back even to the initial report where we're defining terms in a specified way but it's not an intuitive use of those words. And my goal here, the GACs goal is to make sure there's absolute clarity that no one is suggesting that actual personal information be published; that this really refers to ... And I think the most precise word, candidly, is “pseudonymized”. And that's why I made the suggestion in the first place.

So I'm hoping that that could be acceptable because it is actually the most precise word, I think.

KEITH DRAZEK: Thank you, Laureen. And Matthew, you're next. And we probably need to draw a line under this one. I think where we are today is that the GAC has suggested to include the word

“pseudonymized.” The registries have suggested an alternative use of “masked.” If we can’t come to agreement in fairly short order on the inclusion of a new term, whether it’s “pseudonymized” or “masked,” we probably just need to acknowledge that we go with the original text. I don’t believe this was marked as a “can’t live with” item, but let’s see if we can find some common ground here in the next 60 seconds.

Matthew, go ahead.

MATTHEW CROSSMAN: Yeah, thanks. So I still disagree that “pseudonymized” is the clearest term. I think for the reasons that I stayed, there’s some question in the legal memos as to whether e-mails used in this manner are actually pseudonymous. So I think we should avoid using that term. I don’t think it clarifies.

But what we did in the definition of registrant-based e-mail, because I think we had the same debate in the Legal Committee, I think we landed on “intended to be pseudonymous.” And so I’m wondering if, with that qualification, we might be able to both provide a bit more clarity but also make clear that this is not necessarily strictly pseudonymous, but perhaps intended to be pseudonymous.

KEITH DRAZEK: Thanks, Matthew, for the concrete suggestion. And I see a hand from Mark SV. Thank you, Mark. Go ahead.

MARK SVANCAREK: Thanks. I'm not sure I'm interpreting the memos the same way you are, Matt. I mean, pseudonyms are always reversible if you have both of the pieces of information. That's the intention of pseudonyms as opposed to anonymized things which are not reversible. So maybe we should look at the memo again because I'm not interpreting that guidance in the same way at all. Thanks.

KEITH DRAZEK: Thanks, Mark SV. Would anybody else like to get in queue on this one? Any concrete suggestions to move forward?

Laureen, go right ahead.

LAUREEN KAPIN: Contingent upon looking at the memo—because Mark raises an issue about that and I have not looked at the memo through that lens, so I'd want to consult with it—I could live with “intended to be pseudonymized.” I do think that's accurate. Again, contingent upon look at the memo to make sure that qualification is needed.

I agree with Mark that not at least my recollection of the pseudonymized is, yes, it can be reversed, but vis-à-vis third parties. It wouldn't be able to be reversed in the normal course.

KEITH DRAZEK: Thanks, Laureen. So we've got a concrete suggestion here for everybody's consideration to use the term “with publishing an intended to be pseudonymized registrant-based or registration-based e-mail address,” etc. So I think that's the possible path

forward for us here in the late stages of our work. If folks can agree to that, then I think we can incorporate the term “pseudonymized,” qualified. And if we can't agree to that, then I think we'll just leave the text as it was originally.

So let's just take that. We're going to take that offline at this point if folks want to continue to contribute. This was not a "can't live with" item, so I think for the purposes of time, let's just take this one to the list. And we're going to incorporate, temporarily at least, the “intended to be pseudonymized registrant-based,” etc.

Okay. With that, Marika, is there anything else substantively that we need to cover today? I think that gets us through the four high-level items.

MARIKA KONINGS:

Thanks, Keith. I think the other items that we had flagged in this list have been covered and discussed. There were two other items that we at least flagged as green. But of course, if anyone feels differently, they can still raise that.

We'll incorporate the changes that have been agreed here in the next version which is, from our perspective, at least the final version minus, indeed, maybe the last item we discussed; and of course, any minor edits people may have. We did publish already an integrated version that people can already use to review to report and flag any minor edits or grammar issues that you may spot. And I think with that, we've covered everything.

KEITH DRAZEK:

Great. Thanks, Marika. And thanks to everybody for all of the input today. I know this was a compressed and condensed session, but it's the result of many weeks and months of work. So thanks, everybody, for the input.

Look, I'm going to circulate the draft consensus designations and chair statement shortly, but I want to just note. My take on this, based on the work that we just did, is that we have general consensus—even if it's, at times, grudging consensus—on the text in the report. I feel like we've resolved the "can't live with" items and that we got as far as we could when considering all of the different perspectives and all of the different inputs from the various groups with very, very different starting positions and perspectives.

So I feel like this, as it stands today, is as good as we could do under the circumstances and under the time constraints, and that I'm going to move towards designating these with consensus. Perhaps not going as far as saying "full consensus" because of the number of minority statements that we expect to have included and the text that I will include in my chair statement.

But my feeling on this, and I feel good about where we stand right now, is that we did as best we could and came to consensus on what we could. And I hope that others feel the same way. So I just wanted to sort of preview where my consensus designations and chair statement will likely lead, while acknowledging that there were some very serious and significant differences among the group. But we did ultimately come together on what we could.

So if anybody has an initial reaction to that feel, free to get in queue. Otherwise, we will move to wrap up the call today. And I just encourage everybody to watch for what I send out later on today.

Any final questions or comments? Oh, and I should also note before we wrap up, I am going to keep our Thursday call on. I think we should actually schedule it rather than it being a placeholder. So let's plan on having the call on Thursday. If it turns out we don't need it, we can cancel it. But I think based on the consensus designations and the chair statement that you all haven't seen yet, we should probably keep the meeting or have the meeting on Thursday. And like I said, if we can or if we don't need it, then we can cancel.

And yes, Sarah, to answer your question. No calls after Thursday. Thursday would be the last if we need it. But I think we should plan for it at this stage to make sure folks have the opportunity to give me feedback and to provide feedback. But of course, if everybody wants to do it by e-mail or indicate their support for my statement and the consensus designations, then we still have the ability to cancel that call on Thursday.

So with that, any final comments or questions? And if not, we can conclude the call today. All right. Not seeing any hands. Thank you all very much for all your work. If we don't have the call on Thursday, thank you all so much for the work that you've put into this. But let's plan on gathering on Thursday, at least for a period. Thanks, everybody. Have a good afternoon, morning, evening, whatever it may be.

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

[END OF TRANSCRIPT]