
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP - Phase 2

Thursday, 18 March 2020 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 18th of March 2021 at 14:00 UTC.

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

Hearing no one, we have listed apologies from James Bladel (RrSG) and Melina Stroungi of GAC. They have formally assigned Owen Smigelski and Velimira Grau as their alternates for this call and any remaining days of absence.

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

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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 will be placed in all meeting invites towards the bottom.

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. Much appreciated. Good morning, good afternoon, good evening, everyone. Welcome to the EPDP Phase 2A meeting #11 on the 18th of March.

So, I'm going to run through the agenda real quick, but if I could ask everybody to select "All Panelists and Attendees" in the chat, as Terri as noted, that would be much appreciated. It's important for being able to capture the discussion and engagement in the recording. So, thank you in advance for doing that.

So, I'll go through a quick review of the agenda here, and then we'll come back to the welcome and chair updates. So, today's call is dedicated almost entirely to the legal vs. natural topic. We have some information available from ICANN Org as far as the supplemental information on the legal and natural study that we reviewed earlier a couple of months ago.

We are joined by ICANN Org liaisons. I think Jared's with us today to help provide a brief overview of the supplemental information and to be able to take any questions or take on any comments from the EPDP team. So, we'll move to that as soon as we wrap up introductions.

And then we're going to move to a discussion of the guidance development. And this is, again ... One of the instructions that we have from the Council in our charter is to look at the development of guidance for registrars who choose to or elect to differentiate between legal and natural. So, we're going to talk a little bit more about the guidance development.

We'll talk about the thought experiment. We'll get into the discussion. Thank you very much for those who have contributed to the homework and contributed to the engagement on this thought experiment. And we'll move to that. And if anybody would like to take the lead on that as far as introducing input, feel free to put up your hand when we get to that section.

Then we'll move to review of the input provided on the Registrar Stakeholder Group proposal that we've received over the course of the last meeting and just prior to the last meeting. It was acknowledged during the last meeting that we needed some additional time to consider and to develop feedback and input and raise any questions. So, we'll move to a discussion of the registrar's proposal as submitted by Sarah prior to the last meeting.

And then we're going to move to a discussion on the development of guidance proposals. This is a bit more of a tactical approach in terms of identifying next steps on How we could develop a written proposal, a consensus proposal, ideally, for inclusion in the interim report that we're working towards. And we've got some questions here: if and how should it be broadly supported, the different aspects of the proposals, should it be one proposal or several, high level versus detailed, and how do we allow for sufficient flexibility to accommodate different business models.

And then looking for volunteers to take a first cut at coming together with a joint or a consensus guidance proposal. Or should staff take the lead on developing something for the group's feedback? So, that'll be the question.

And then we're going to move to a wrap up, but importantly here I'm going to keep at least 10 minutes at the end of the call today for an update and a group discussion on the report that I have to give to the GNSO Council next Wednesday, the 24th of March, which is basically the update as to our status as to the possible paths forward on consensus related to the two items in our charter. That's the development of guidance and then the possibility of having a consensus policy recommendations impacting Phase 1 and Phase 2 recommendations.

So, I want to make sure that we've got some time as a group to discuss that, for me to explain my current thinking and the work that I've done with staff and the leadership team to help prepare for that update to Council. And then before the meeting next week, I'll make sure that we circulate the final slide deck that would be used in providing that brief update.

So, that's the agenda for today. Does anybody have any thoughts, anything they'd like to add to the agenda before we move on?

Okay, seeing no hands. Thank you. Let's then move on. And, again, I think I've covered the intro, but we're sort of in a crunch period here. I think we have good progress from the legal committee, and we'll turn to Becky here in a moment for an update on the further work that has gone on this week.

But I think the indication that we've received from Bird & Bird is that they hope to have responses to the questions that have already been submitted by the week after next. So, next week, as we all know, is ICANN70. The following week is the target for Bird & Bird to provide feedback to us on the legal questions that have already been submitted, noting that there's possibly one additional question that's under development that we'll turn to Becky here in a moment to cover.

Laureen, I see your hand. Go right ahead.

LAUREEN KAPIN: Yes. I thought I heard you say we were going to devote 10 minutes to the discussion of what your report would be to the Council. I'm wondering, perhaps, if we might need more time for that, considering its importance.

KEITH DRAZEK: Yeah. Thanks, Lauren. Let's see how we get through the substantive discussion on the topics, and I'm happy to allocate more time. But I do want to make sure that we have the opportunity to talk about the actual substantive work that we're doing as a group. But, yeah, let's ... Maybe we can carve out 15 before the end of the call to make sure that there's an opportunity there to discuss.

But, essentially, I'll give you the teaser here. My intention, and in working with the leadership team and staff, is to acknowledge that the legal committee has done good work, that it has submitted questions to Bird & Bird for feedback. We are awaiting feedback from Bird & Bird. And that that response will be instructive and important for the EPDP team to consider as we figure out how far this group will be able to go and on what timeline.

I also plan to acknowledge that I think there is good work and potential consensus on the topic of guidance for those registrars who are choosing to or electing to differentiate between legal vs. natural and/or maybe, more specifically, what I think we've identified as the need to make sure that disclosure of nonpersonal information versus disclosure of personal information. But that I think that there's some commonality between the registrar proposal and the 1A proposal that we've been discussing that Lauren originally submitted.

And that I think that there's a real good opportunity for this group to come to consensus on some level of guidance that could be instructive to the EPDP Phase 1 Implementation work and that can be very helpful in terms of working towards some better common understanding of what that treatment might be for those who choose to differentiate.

As it stands right now, I am not clear that there's a path to consensus on developing consensus policy recommendations, either amendments or changes to the EPDP Phase 1 or Phase 2 recommendations or something new; but that it's premature, I think, to make that determination because we haven't heard back from Bird & Bird at this point.

So, that that's the teaser. I don't want to get derailed here because we have substantive work, but that's the direction that the update to Council will take. And my goal here is to provide a factual update in terms of where we are, what the chair's assessment is. And the recommendation will be to allow the group to continue its work pending the feedback from Bird & Bird and the good work that's being done around the guidelines discussion. And that we will provide a further update to Council.

And really, by the time that we are intending to publish an initial report at the end of May, it will be clear whether we have consensus at that point or not. And if we don't have consensus as a group on, at a minimum, the guidelines, then we will know one way or the other whether the group should continue in terms of developing a final report.

So, I hope that's clear. I hope that at least gets people thinking in terms of the conversation that we'll have at the end of the call. But, again, I want us to focus on the actual agenda before us, and we'll come back to this in a moment or in about 45 minutes, or thereabouts.

Okay. So, let's then move on. Becky, if I could turn to you for an update on the legal committee questions. I know that two multi-part questions have been submitted to Bird & Bird, and there's one additional, if I understand correctly, from this week's discussion on next steps. So, Becky, over to you.

BECKY BURR: Yes. Thank you. So, you're correct that two, actually, three questions—two of which are multi-part—have been submitted to Bird & Bird. Bird & Bird has received those, and

they have reported that they expect to get responses back to us not next week, but the following week, hopefully towards the beginning of the week. And we will check in on that going forward.

There is one additional question which ... It's really an additional part to the second question which is a multi-part question on mitigation steps for legal vs. natural. Laureen and Melina have revised that based on our conversations on Tuesday, and I believe it will be circulated very shortly, probably during this call, with a request for comments by close of business tomorrow. And our goal would be to decide whether or not to submit that question. And if so, to submit it promptly following the end of the comments call.

As I said, it is a sort of an additional question with respect to an existing multi-part question, so I do not believe that it would slow down Bird & Bird's response time. So, I think we're looking at completing all of the work of the legal team prior to receipt of the answers. And then by close of business tomorrow, by the end of this week, submission to Bird & Bird and an answer shortly thereafter.

KEITH DRAZEK: Thanks very much, Becky. And again, as always, thank you for the work that you and the legal committee are doing in this regard. And I think the feedback that we've received from Bird & Bird through staff, as I noted ... If we can expect responses to the questions within a couple of weeks' time give or take, that's really helpful and I think will keep us moving.

Getting a little bit of background noise. If everybody could mute your lines, please. Thank you.

Any questions for Becky? Okay. Very good. Becky, thank you very much.

So, let us then move to our substantive discussion of legal and natural, and we're going to move directly to the update from ICANN Org and our colleagues on the supplemental information on the legal and natural study that we've previously reviewed. And I'm going to turn this over to Jared Erwin for an update, and Jared will be happy to take any questions, comments, or feedback from the group at this point. So, Jared, over to you.

JARED ERWIN: Thank you, Keith. And good morning, everyone. Karen is also here today, so thank you for having us to provide some additional information to you on this topic. Next slide, please.

So, as Keith alluded to, we were here a couple months ago to present our study to you on differentiation between legal and natural person and Domain Name Registration Data Directory Services. During that presentation, and before, we received some questions from the Phase 2A team that we answered during the call.

But also, we committed to providing some additional information on one question in particular which came from the SSAC. And you can see the question there on the slide, but the SSEC was asking about some information regarding how different types of registrars handle differentiation or [handle] legal and natural person data such as trademark registries or company registries. And also, the SSAC is asking about additional information regarding how EU ccTLD operators handle publishing of legal vs. natural person data.

So, we committed to investigating those questions further to see if we could provide any additional information on those topics, and we did provide a response on the 3rd of March that covers both of those topics. So, that's what we're providing a little overview of here today. Next slide.

And the response is a short response a few pages long, and it's divided into two parts to tackle those two topics. The first part is in regards to the EU ccTLD operators; how they handle differentiation or if they do differentiate. We looked at 33 ccTLD operators. Even though the question from the SSAC was specific to the EU, for completeness and additional reference we also looked at additional ccTLD operators.

We looked at the European Union's .eu, Iceland's .is, Lichtenstein's .li, Norway's .no. Those latter three are part of the European Economic Area, and the GDPR also applies to them. But we also

looked at Switzerland's .ch and the UK's .uk. So, that was kind of the scope of what we were looking at there.

And so, basically, what we did is we tried to review the websites of all 33 of those ccTLD registry operators to gather information regarding how they handle differentiation of legal/natural person data or how they handle publication of personal data generally. So, we would look at WHOIS policies, GDPR policies, data privacy protection policies, any kind of FAQs, general terms and conditions, agreements, guidelines things like that to gather that information.

Based on that review, we found that 21 of those ccTLD operators appear to utilize a form of differentiation. And for those that don't differentiate, we found generally that there are kind of two forms of that. 1) They either treat the registration data in the same fashion and publish [without] differentiating between legal and natural persons, or 2) they don't publish anything at all.

And all of this data or information is contained in the Appendix A of the response that we provided on the 3rd of March. It's a rather large table with a lot of different detail about which ccTLD operator publishes what kind of information.

We have some examples here on the next slide, so we can go to the next slide. I won't go through these in too much detail. I wanted to more provide an example of the kind of data that is presented and the table that we provided, the PDF document, the Appendix A.

So, here we're looking at Austria .at; providing whether or not it's in the EU, whether or not we think it appears to differentiate. Then we break out the types of data that are published—legal person data that is published with the natural person data that is published. And, again, we gather this information from looking at the various policy info that we could find on the website regarding the publication of personal data.

So, in the table that we provide in Appendix A, we provide the kind of full context of the policy that we pulled the information regarding what is published from. And we also provide the source link for that information and, in some cases, we did find additional information that we thought might

be useful to the team and provided that in the Additional Resources column there. We can go to the next slide.

So, here's another example of information we found regarding Czechia, Czech Republic's policies regarding legal and natural person data publication. And then next slide.

And here is an example of where we didn't seem to find a differentiation scheme or method. That came from .gr for Greece. And again, you can see the kind of information we're providing there. So, again, I don't want to go into too much detail, just provide an example of the kinds of information you can find in the Appendix A.

So, switching gears a little bit to the company trademark registers. So this is, again, part of SSAC's questions. Sorry. I'm looking at the chat as well. Maybe we can address those questions in just a second. I'm almost done here with the slides.

So, with regard to company trademark registers, we took a similar approach to try and look at policies related to how these registers handle personal data. Specifically, we looked at the United States Patent Trademark Office and the European Union Intellectual Property Office and their policies for handling personal data.

And we also looked at the Hamilton memo from 2017 on gTLD Registration Directory Services and the GDPR which covers this topic specifically. So, we found that trademark and company registers are guided by legal obligations to make the data public. So, "The USPTO and EUIPO must publish certain personal data as such data is considered to be in the public interest."

For example, the European Union Intellectual Property Office states that data is "made available to the public due to the office's legal obligation to maintain a public register."

In a similar way, according to the Hamilton memo which goes into much more detail on this than is in our response ... But our response provides a basic summary of what is contained in the Hamilton memo, how the Court of Justice of the EU has also stated that "the publication of personal or natural person data in the company registers is also in the public's interest."

In light of this, ICANN Org believes that such registers are not completely analogous to the publication of legal and natural person domain name registration data.

That is the last slide. The rest of the slides in the deck are from our presentation from January, just for your reference, regarding the report. They're just for your awareness regarding the study that we completed.

So with that, I think we can probably turn to questions and comments.

KEITH DRAZEK: Thanks, Jared. I'll go ahead and jump in here and help run the queue. Thank you very much for the presentation and for the additional information. Very helpful, but noting Becky's comment in the chat, it would be helpful to understand further which of the ccTLDs that you've cited in the study or in the follow up have laws and regulations on the books similar to the one applicable to .eu that provide the public interest basis for processing. And her note was that, otherwise, it's very hard to make sense of this for the purposes of the group's work.

And so, I'll just ask if anybody would like to get in queue at this point for any further input or questions for Jared or Karen or ICANN or colleagues. And then let's go ahead and open the queue.

Jared, if you'd like to respond to Becky's note here. If that's additional context or additional details or data that might be available or could be compiled and circulated to the group, that might be helpful.

I see Philippe has his hand up. So, Philippe, let's go to you. And then I'll come back to you Jared to respond to Becky's point. Thanks. Philippe.

PHILIPPE FOUQUART: Thanks, Keith. Very quickly, and it's just an idea. Maybe that would be interesting to reach out to those cc's through the ccNSO. They've got contacts, obviously. And there's generally, for those I'm familiar with, a person who's very familiar with that sort of distinction within the cc. So, that would help address the questions such as Becky's, for instance. Just a thought. I appreciate that [they will come to this on the whole sample] but maybe a sample of a sample or something. Thank you.

KEITH DRAZEK: Okay. Thank you, Philippe. Anybody else like to get in queue? Okay. Jared, if I could hand—

Oh, I see Alan has his hand up. Thank you, Alan. Go ahead.

ALAN WOODS: Thank you very much. I just, again, wanted to take the opportunity to thank ICANN for this. I think it's very important to see the lay of the land. And I suppose one question that occurs to me in trying to apply ... There are a lot of questions about trying to do a like for like here. What they don't know is if it's always going to work [nicely].

But I would ask one question of, are we thinking that there was a degree of uniformity across all the ones that you looked, such that there is one rule that binds them all? Because that's literally what we're trying to do here. We're trying to figure out best practices that will, in effect, tick all the boxes across a multitude of players.

Is that kind of what you're seeing from your review? Or are you seeing that there is sort of an element of self-determination which is very important? I think, as clearly as would be supporting by us, is that there is an element of self-determination which is very important to be, from a jurisdictional point of view. And did you see that reflected in the data that you are seeing?

KEITH DRAZEK: Thanks for that, Alan. Jared, can I hand it back over to you for any response to either Alan's comments or question, Becky's feedback? And then I see Steve has his hand up in queue as well. But Jared, I'll hand it back to you for the moment.

JARED ERWIN: Thanks, Keith. And thank you for the questions. So, in response to Becky and. I think, Alan's question. So, some of that information is referred to in that policy info column in the table, but I think we can try to break that out to make it a little bit clearer. We can potentially add a separate column with regard to public interest basis if any of the ccTLDs have a public interest basis for publishing certain types of info. So, we can definitely try to break that out for the team.

And in terms of the other question regarding whether or not there's a general line across all the ccTLD operators, it really seemed to vary from our review. There didn't seem to be necessarily one particular solution that stuck out. A lot of the operators did seem to use kind of this legal ...

When you're filling out ... When you're registering a domain, it might ask for an organization. [They] had used this organization field to delineate different directions that the publication might change, but I wouldn't say that it's anything definitive that we saw across all the ccTLDs operators. It really seemed to vary.

KEITH DRAZEK: Okay. Thanks, Jared. Steve, your hand. Go ahead.

STEVE CROCKER: Thank you. How much uniformity is necessary in this whole system? Obviously, if there's a single answer that fits everybody, that's great. But from our point of view, for the work that we have to do and for the work that ICANN has to do, it strikes me that it's

possible to permit a certain amount of variation across the registries and the registrars. So, have we formulated a posture with respect to the degree of uniformity that we're seeking?

KEITH DRAZEK: Okay. Thanks, Steve. Would anybody like to respond to that?

STEVE CROCKER: I didn't mean to stop everything.

KEITH DRAZEK: Milton, go ahead. Thank you.

MILTON MUELLER: Like I said in the chat, I think it's a good question. What you see in Europe in these ccTLDs is an incredible variety of policies towards this issue. And the question under the Phase 1 recommendations, as I understand it, since we're giving contracted parties discretion to handle this. That tells me that this un-uniform approach is not incompatible with what's going on already at Europe.

It also tells me that if we're looking for any kind of policy guidance here, we're not going to get it because there's such variation in policy. Some of them don't publish anything. Some of them require differentiation but don't publish. Some of them require differentiation and publish. It's like all this seems to work, so I don't think we ...

I've been on about how this committee tends to sideline the actual issues that pass to resolve by talking about all kinds of other things. And, again, if we want to resolve the policy of whether we're going to differentiate legal and natural and how we do it, those are primarily policy questions not legal questions. And we're not going to get the answer by looking at ccTLDs.

Although I agree. These are very valuable kinds of background information. Thank you.

KEITH DRAZEK: Okay. Thanks, Milton. And thanks, Steve, for the question. Volker, over to you. And then I'm going to put myself in queue with the question that I've posed in chat if folks want to take a look at that. Volker.

VOLKER GREIMANN: Yeah. This strikes me a bit as a problem of asking three lawyers and getting four different answers. Essentially, what we're seeing here is that there's a patchwork situation where each ccTLD makes their own assessment; some based on legal requirements, some based on their own risk assessments, some based on what they feel they can get away with. And that's probably a lead that we should not follow on the gTLD level. It works for each individual ccTLD, but it does not probably work internationally for a gTLD that is designed for multiple markets at once.

To come back to Steve's question, I think we should aim for some form of uniformity with regards to how output is being handled. So, if we look at if differentiation is made, how should that be reflected? What should be the results of that differentiation? How would the differentiation be communicated between registries and registrars? How would it be transferable, if at all. What would the output in the RDS look like? These are things that can be handled in a similar fashion, that can be defined very easily.

The problem that we have is on the input side. So, how is that differentiation being made? How is the information being gathered? And that is something that probably will not be very easy to create one size fits all solutions, but rather have a potpourri of different solutions that a registrar or a registry can choose from and then apply to the data that they get from the registrant. I think that's the only workable solution, and I rest my case. Thank you.

KEITH DRAZEK: Yeah. Thanks very much, Volker. Stephanie, I'll come to you next and then put myself in queue after. Volker, thanks for the focus that you've applied in terms of the operational and technical implications and possible implementation. I think that is something that's worth further discussion in terms of ...

And maybe that's something we can turn to in our brainstorming exercise about, operationally and technically, what would need to be done to be able to accommodate setting aside the question of inputs for a minute.

But anyway, thanks, Volker. Stephanie, over to you. And then I'll put myself in queue.

STEPHANIE PERRIN: Thanks very much. Volker has said much of what I wanted much what I wanted to say, so I won't repeat it. I just would add that the ccTLDs aren't really good comparators because they are so differently constituted, and they are lower risk in terms of legal compliance action. So, a) we don't know whether they're compliant with law, but b) they're much lower risk for getting a compliance action from a DPA than the contracted parties would be facing if they were to emulate their practices.

Second point I wanted to make was, and Volker also made it very briefly, comparing this to land office registries is just a total red herring because they're not the same. There's not the same public interest. There's not the same regulatory framework behind it. It's a bit of a waste of time. Thank you.

KEITH DRAZEK: Thanks, Stephanie. I'm noting that Steve has noted that Volker's comment about inputs, a common data dictionary would pretty much solve the problem. So thanks, Steve, for that input.

I'm going to ask my question. And this gets back to the question of consent. I'm looking at the slide in front of us about the example of differentiation. And down here it says Natural Person Data Published. It says, "nic.at does not publish data of natural persons-no matter if domain holder or technical contact person of a domain."

And I'm just wondering whether a further understanding or investigation of the questions of consent would make sense in the context of the ccTLD practices. And clearly, to Volker's point and to other comments here—and Stephanie's point, I think—.ccTLDs and gTLDs are not an apples-to-apples comparison. Right? They are not identical. There are very different factors. But they are all domain name registries and the registrar's that serve them. So, I think this can be instructive, but I think it's clear that they're not exactly the same and shouldn't be assumed to be the same.

But I am curious about this question of consent because one of the suggestions that we've heard from a number of different folks on the team is that if we're going to be differentiating between the publication of registrant data, whether it's natural or legal, that the distinction should be made based on the consent of the registrant rather than a strict interpretation of legal and natural, noting that there can be natural person data included in the registration data of a legal person's domain name.

And so, I'm just wondering out loud and happy to take any feedback on this one, whether this question of consent is something that should be investigated further at this point in this context. And it really is just an open question. I'm looking for thoughts.

And if anybody would like to get in queue, please do so. I've got Stephanie, I think. Is that a new hand or an old hand, Stephanie?

STEPHANIE PERRIN: Sorry. That's an old hand.

KEITH DRAZEK: Okay. No problem. Brian, you're next. Go ahead.

BRIAN KING: Hey. Thanks, Keith. I think that consent is an interesting concept. I think we've probably, for EPDP purposes, at least from where I sit, probably covered it sufficiently in the previous phases. It does, I think, enable the process requirements for contracted parties to facilitate differentiation based on that consent. So that's, I think, probably covered.

And there's a lot of good stuff on the agenda today that I'd also love to get to. So, if there's not a lot of hands, might I suggest that we cruise along? Thanks.

KEITH DRAZEK: Yep. Thanks, Brian. Good point. Well taken. Alan, we'll go to you next. And then we will move on to the next part of our agenda.

ALAN GREENBERG: Yeah. Thank you very much. I think, ultimately, the question of consent is an absolutely critical one. When we're looking forward and assuming... I'm not making a prediction, but assuming something like NIS 2 gets approved and we end up with a requirement to publish information about legal entities and we are caught in the position of, "But it might have natural person information in it. How can we be sure?" contracted parties will then be between a rock and a hard place.

They have an obligation, presumably with penalties to publish, but they can't be sure if they should publish or not because there's a risk of penalties if they do publish. So, ultimately somehow there's got to be a way to resolve that conundrum, and I don't see anything other than consent as the way to address it.

So, we may not be in a position to address it today, but ultimately I think it's one of the key questions that's going to have to be addressed in how do we resolve this in the long term. Thank you.

KEITH DRAZEK: Yeah. Thanks very much, Alan. Much appreciated. And Volker, I see your hand back up. And Alan, is that? Okay. Hand down. Okay. Volker, over to you, last word. And then we'll move on.

VOLKER GREIMANN: Yeah. Just to respond to Alan. I think the NIS 2 isn't all that it's made up to be. I mean in a lot of ways, the NIS 2 Directive can be read to support the SSAD in its currently planned stage fully. Where it says “publish data that does not contain personal data,” it never says “publish legal entity data.” It always refers to whether it contains personal information or not. And that's basically the differentiation that we make.

It says “published,” but it doesn't mean published in an openly accessible database. It says “publish.” That could take various different outputs, one of which is published in the SSAD. One of which could be—a very remote example, but still—published in a book that gets released annually.

It is not very clear what it means. There are a lot of various different interpretations, and the most likely one is the one in support of the SSAD. Therefore, the conundrum that Alan refers to doesn't really exist in my mind because the NIS 2 Directive, when it comes, will not change that much to what we have currently planned in Phase 2. Thank you.

KEITH DRAZEK: Okay. Thank you, Volker. And thanks, everybody, for the good conversation on this. Certainly, we can carry this forward, but I think at this stage we need to

move on in terms of the agenda. So, I'd like to thank Jared and Karen for joining us and for the work that they've done. And if the EPDP team has any questions and follow up for ICANN colleagues, we'll be sure to circle back with you on this. But thanks very much for joining us today and for the work that you provided.

JARED ERWIN: Thanks very much. Thank you.

KEITH DRAZEK: All right. Very good. So, let's go ahead and move on now to the next item under guidance developments. And that is to review input provided on legal vs. natural, the thought experiment that we've teed up.

And again, just for context, this is a brainstorming exercise. If we assume that at some point there is a law, a regulation, or some mandate to differentiate beyond what's currently in GDPR and what may ...

Whether it's something along the lines of NIS 2 down the road which is intended to augment GDPR not replace, that there could be something in the years to come that might place a requirement on us beyond what we have today ...

And the hope here is that we get out of the corners and think a little bit in a brainstorming and creative exercise to identify what could be done, what questions would need to be answered, and what are the opportunities to address something like that in the hypothetical scenario of a couple of years down the road [if] we have new requirements.

So with that, we have on the screen in front of us some of the feedback received on the thought experiment. We can either go just down the list, or I can ask if anybody would like to sort of take the lead in teeing up their thinking on this. But maybe ...

Berry, I'm going to put you on the spot here briefly. If you'd like to help us with maybe a five-minute intro from your perspective. I know that we've talked about the importance of actually being able to identify whether it's a legal risk fund or various components of structures that might be put in place. I just want to give you five minutes here to sort of tee this up from your perspective.

BERRY COBB: Thank you, Keith. I don't think I'm going to need the full five minutes. First and foremost, again, thank you everyone for providing the input that you did. There's still a couple of groups that didn't choose to provide input, but my general reaction to this is that the positions, or what was documented here, still match the two sides of the issue as it relates to distinguishing between legal and natural. There are some instances that do revert back to the notion that the distinction between the two is less important, and the higher importance is about the ability of understanding or determining whether natural or personal data is published even within a legal persons type of data. And that's where the true risk lies.

And so, perhaps it is worth exploring other mechanisms on how that improper disclosure of personal data can be rectified somehow. Do we create an algorithm that searches for Bobs and Nancys and those kinds of things that do a flag. That's kind of a joke, but some sort of change in procedure, process, or through automation that can help identify where there may be improper disclosures of personal information. So, that's kind of what I got a takeaway from.

And really, the very last section of the document where I was hopeful that we would get a little bit more traction around was the ... It's really improperly labeled Financial Sustainability. And, again, granted that Phase 2 is still being considered by the Board there there's very little visibility as to how the legal risk fund or insurance policy could be implemented as it relates to SSAD.

But it seems to me that, or I guess I was kind of anticipating that there might be a little bit more traction around this concept; that in these cases, when we set the policies or the laws to a side for one moment and we get into the tactical or practical implementation of this ...

Let's fast forward two plus years from now when all of this is implemented and, based on the mechanisms by which it would be communicated to the registered name holder that the input of a value in the organization field that still allowed for the disclosure of/or the publication of that information, that somehow still improperly disclosed personal information; that still, somehow, there's a complaint or some determination of a violation against the privacy laws for that particular jurisdiction.

That, if in fact, it actually became an investigative event [and] that it was determined that, indeed, there was an improper disclosure, and getting even further down the line is, let's even assume that through that investigation that some sort of fine is levied against that improper disclosure, could there be this kind of legal risk fund or this ability to lessen the impact of the overall risk?

And that's kind of where this was going. And I'm definitely not an expert to this. I see Laureen's question about what is the source of the legal risk fund. I have no idea. I just know that this is a concept as part of the implementation advice for the financial sustainability of SSAD. And I think that the details of how that would be implemented in relation to SSAD are yet to be determined.

I think that's part of the conversation that needs to happen with the Board and the GNSO Council. As well as, if this does make it to implementation, that the Implementation Review Team as well as Org, in the implementation, would have to figure out how that works. Definitely, no doubts, a lot of uncertainty about it.

But the inclusion of that in the Phase 2 report was a concept that, if I recall correctly, was put forward by the contracted parties to help compensate for any adverse impacts of wrongful disclosure because, without a doubt, most of the conversations have ultimately led to the point where the contracted parties are the one that are ultimately on the hook here. So, how do we mitigate/minimize that kind of aspect?

Anyway, the takeaway here is [that] we didn't get a lot of traction on this part. I'm not saying that it's viable. I believe Sarah put a comment up above that it's probably not as viable. I would suspect that Thomas, even, might have some concerns with this because the whole point about trying to

develop a solution is that we prevent improper disclosures to begin with because, ultimately, we're trying to protect the registered name holders through the privacy aspects or privacy by design. And if an improper disclosure occurred, well it already happened, so we failed in terms of that grander scheme of the game.

So, I hope that was helpful. I guess I did take my full five minutes. And I would encourage a representative from each group to talk about their reactions, about their inputs that they put in here. Specifically call out any fresh ideas that we perhaps haven't accounted for in our deliberations or the proposal 1A or the registrar's proposal as well.

KEITH DRAZEK: Thanks, Berry. Yeah. Berry, thanks very much for that. And apologies for putting you on the spot, but I think you covered it really well as far as an intro, and specifically on that as an example.

So, look, I have a queue building. Do you want to just summarize a bit? From my perspective, the work that we're doing here on legal and natural specifically does build on work that's been done in Phase 1 and Phase 2. Right? I mean, what we're trying to do is to further augment or clarify the existing recommendations. And this is an opportunity for us to think outside the box as to how we might deal with things like risk.

We've identified, I think, in just the conversations of this group that publishing the data of legal persons in the registration does carry some risk because of the potential for the inclusion of personal data in those registration records. And I think the question here is, if we're thinking outside the box and thinking creatively, are there methods or are there ways to address that risk or to mitigate that risk? Either there's no publication; there's some publication. And what steps can we creatively come up with to help mitigate that.

And I think what Berry has identified here is that in Phase 2 there was already the discussion of a possible legal risk fund. And is there an opportunity here to use that concept or construct, either

directly or indirectly, to help mitigate some of the risk that's been identified here? That's the kind of thinking that we're trying to generate.

So with that, I'll hand it to Brian and then to Volker.

BRIAN KING: Thanks, Keith. I put one thought in the chat about the legal risk fund, and I'd really like to move on away from that. I think that's taken us down a rabbit hole which we don't need to be down.

So, one thought that we had. And the IPC did our homework early on this, so just as a general note, please don't take the lack of our addressing any other thoughts or good ideas to mean that we don't agree with them. We certainly do, with many of these.

So, as a general point here on whether the differentiation would occur immediately at registration, we were thinking that it would be a good idea if it did for a couple reasons. One is the expediency for the contracted parties, and specifically the registrar. The thought is that within the registration workflow, let's make that easy. Right?

Registrars don't want to complicate the registration flow or make it any more challenging than it already is to get the required information and complete a domain registration. So, we're thinking that if everything happens early and upfront, that's probably the easiest way.

And the other thing that I was thinking, anyway, is that if the differentiation is done immediately at registration, then in that case you don't have to deal with the 60-day lock that that happens when a domain name is registered. Right? You can't update it for the first 60 days or transfer it. So, the thought there is that any differentiation that was done after registration, if it was done within the first 15 days or something that the WHOIS Accuracy Spec requires, then you would be potentially 60 days waiting for the actual, accurate RDDS data to be in the RDDS.

So, the thought is that if you have it right at the beginning, then you don't bump into that challenge. And, of course, existing registrations are the X factor, and I think we should be reasonable about the amount of time that it takes to bring those into compliance. And, ideally, any law would allow for that as well. So, those are kind of the guiding thoughts that we had at the outset. Thanks, Keith.

KEITH DRAZEK: Thanks very much, Brian. Really helpful, focused, and constructive in terms of a recommendation or a suggestion. So, thank you for that. Volker, you're next. And if anybody else would like to get in queue, please do.

VOLKER GREIMANN: Yes. Thank you, Keith. A couple of points. I think easy is not always the best. I think what Brian mentioned with the locks that are in place, I don't think that applies here because self-identification or self-designation does not necessarily imply that there's a change to the data. It's just a flag that's gets added that this either contains personal information or not. That's the only thing that changes. But the data itself should remain unchanged and, therefore, none of the locks should apply.

Another thought with regard to the financial stability—or sustainability, rather—is that the elephant in the room is that we have designed a system that some parts of the community feel they don't want to use because it costs money. And by taking things out of the SSAD, such as publication of certain data sets in the public WHOIS again, we are incentivizing that thought.

We are basically creating a self-fulfilling prophecy there by building a system that only is usable or requires to be used in edge cases, and that will drive down usage even more. Whereas, if everything is neatly contained in that SSAD, then usage would naturally rise as well. So, that's a consideration as well.

And finally, with regards to the legal risk fund, I think many have already stated that in the chat, but it bears out to say that aloud again. I think creation of such a fund would definitely drive up risk rather than reduce it, and increase the amount in fines that we would face because if we already set up a risk fund that can very easily be interpreted as us taking additional risks believing that we are covered by this risk fund, we are basically intentionally entering into a situation where we accept a certain level of risk and, therefore, accept a certain level of unlawful disclosures.

And that could be interpreted very negatively by data protection officials. And that would also increase the amount of fines because if it's paid out of a legal risk fund instead of by the infringing party itself, then where is the incentive to be compliant? If we are not the ones paying the fines, then obviously we have no incentive to follow the law and, therefore, the fines will be substantially higher. At least that's what I fear as a likely outcome of such a fund. Thank you.

KEITH DRAZEK: Thanks, Volker. And I want to be careful. As Brian noted, I don't want us to get down a rabbit hole on the risk fund, necessarily. I think this is a good conversation, but let's not focus only on that. I did see some additional hands go up. Also, Stephanie has typed into chat, I think, an interesting question about the role of ICANN and whether something like that would help.

But let's go back to the queue. Hadia, I think you were next. Volker, I think that's an old hand.

HADIA ELMINIAWI: Thank you, Keith. So, I basically wanted to comment on the part of when does differentiation happen. Does it need to happen at registration stage or after? And, again here, by "differentiation," I would like to say that differentiation does not necessarily mean acting upon this differentiation. It's just flagging the data and knowing if it belongs to a legal person or a natural person.

So, looking from that perspective, if this is actually just a box that the registrant ticks while filling in all the other data and all the other necessary information for the application already existing, this will help us to just put a tag on the registration data that this belongs to a legal or a natural person. But that does not mean that we will act upon this or even publish it.

But then afterwards, when the registrar has all the data, has actually collected the data of the registrant, maybe looking through this data and maybe through other processes and safeguards, the registrar might ultimately say, “Yes. This designation is correct,” or “It’s not correct.” And based on that affirmation, we could think about publishing or not publishing the data.

So, again, to me it does make sense to have this box ticked at the very beginning. Again, that does not mean that the data will be published based on this. But the registrar will be able to have the full collection of data to look at it and decide if it happens from the very beginning. Thank you.

KEITH DRAZEK: Okay. Thank you, Hadia. I think there's been some input in chat, too. Sarah has made a few comments. Sarah, if you'd like to jump in, I will invite you to do so now. If not, that's fine. The queue is empty at this point, so if there are groups who have not yet provided any input or contributed to the conversation here on our thought exercise, I'd welcome you to do so at this point.

Okay, Milton. Go ahead.

MILTON MUELLER: Well, I'm unsure what ... Are we talking only about Berry's thought experiment in relation to NIS 2, or are we talking more generally about the issue of legal/natural differentiation and the proposals that were made?

KEITH DRAZEK: Milton, thanks. At this point we were hoping to have the thought exercise/brainstorming, not specific to the risk fund or anything like that but just generally. And then, as soon as we wrap that up, we'll move to a discussion of the actual proposals that have been put on the table. But if you've got something that crosses all of those, feel free to weigh in.

MILTON MUELLER: Well ... So, we hear conflicting signals about this designation. According to Hadia, it's just a checkbox. And in effect, we have already agreed that registrants should be able to designate whether they want their data published or not. And so, if we want to call that a checkbox that is the same as making a legal natural designation and if that is entirely self-designation and there is no burdensome overhead related to verification and identity checks super-imposed on the registration process, then I think I could accept that.

I don't know about the rest of NCSG, but our point is to put the registrant in control. And if they can self-designate as a natural person and not have the data published—even if they are, in some legal sense, a legal entity that's like a one-home office or something—I don't see a problem with that. And I do think we need to get to some kind of middle ground rather than digging our trenches deeper and not moving.

So, I just want to get that out there, that I think we're repeating the same arguments over and over again. But if, indeed, people are willing to accept some kind of a legal/natural designation that is totally in the control of the registrant and does not involve a heavy-handed verification process, then think we could make progress on this. Thank you.

KEITH DRAZEK: Thank you, Milton. And I think the way that you framed it is very helpful in terms of figuring out what progress we might be able to make here over the next couple of months. I think you've distilled it down to the question of how do we approach this distinction, and what

are the responsibilities of the various parties, whether it's registrant, registrar, registry, etc. So, thanks for that input.

I've got Lauren, and then Volker, and then Brian. Thanks.

LAUREEN KAPIN: I just wanted to say that I'm very encouraged by the way Milton is framing the issues, and I certainly think that there is ample room to discuss how this goal could be met of allowing a registrant to designate its status and also be in control of whether it's data that is personal is published.

And in terms of verification, that is something that we have included in our proposal because it was part of the Bird & Bird legal advice. But, at least speaking for myself, that is not something that I feel is crucial or required. I think the primary elements of whatever process is followed—which, in parentheses, should be something that reflects the realities of registrars' existing business practices or something that would be feasible for them.

The reality should reflect that the registrant needs to make this designation. The registrant needs to be informed as the consequences of that designation. And if we agree on those two core elements, I really think that there's room to come to agreement here.

KEITH DRAZEK: Thanks very much, Lauren. I have quite a queue building, and then I'm going to draw a line under the queue after Stephanie. And then we'll move to the discussion on the actual 1A proposal and the registrar feedback or input that was received just before last week's meeting.

So, Volker, Brian, Sarah, Stephanie. And then we'll move on. Volker.

VOLKER GREIMANN: Thank you, Keith. I really appreciated Milton's comment there. I think voluntary self-identification of registrants is the direction where compromise is hidden somewhere. I think we still have to fashion the diamond out of the rough stone, but that is the way that probably we can find a solution and a way forward for this group.

Anything that is too heavy-handed with regards to enforcement either on the registrant or on the registrar is probably a no-go. But if we allow for ways for registrants to self-identify with them knowing the consequences of that action, then that is the direction that we are probably very willing to explore and that we can find consensus in. It might not be the maximum demand of all sides, but, hey, we're compromising, too. Thank you.

KEITH DRAZEK: Yeah. Thanks very much, Volker. I've got Brian, Sarah, Stephanie. And then I see Mark SV his hand up. And we haven't heard much from Mark, so I will include you in the queue. And then we'll move on. So, Brian.

BRIAN KING: Thanks, Keith. I, for one, am encouraged by this conversation. Thanks, Alan, for correcting my misstatement on the 60-day lock. That does occur, you're right, not at the initial registration but only when the registrant changes or transferred to a different registrar.

The thought that was really helpful from Volker, that I found helpful, was that I think he corrected another misunderstanding of mine that we're talking about here a 60-day ... Or what I was thinking about was a 60-day period during which the flag might not be changed.

But, yeah, if the data is collected and only the update is made to the distinction, or the categorization of that data, then that concern really goes out the window. So, of course that flexibility should be there. And perhaps that flag setting or that differentiation doesn't need to occur immediately at registration. Although I still think, for expediency, most contracted parties would want to do it that way. So, that was another thought there.

And I'm curious to hear what Sarah has to add about the flags. I'm really interested. I'm just thinking from my perspective working at a few different registrars over the years. There are often indicators tied to a domain name, either for billing purposes or for some other purposes, that would indicate if the domain name is using a privacy proxy service, for example, so that that can be billed at the time of renewal. Or another flag that would indicate whether the domain was using a registrar's local present service in a jurisdiction that requires the registrant to be local, but also allows for registrars to offer that by proxy for registrants whether the domain name is using the registrar-owned DNS or hosting, for example.

Those are kind of binary flags that exist all over registrar services in my experience, so I'm curious to know more about if we think that could apply here to legal vs. natural versus not yet determined registrant, or why that might be different. So, thanks.

KEITH DRAZEK: Thanks, Brian. Really helpful in terms of the specifics and the details, operationally. And I'm sure that Sarah will provide some feedback.

Sarah, before I hand it off to you, I do want to note that Berry has provided some additional context in the chat related to Milton and Volker's comments about self-identification and the pre-existing consensus policy recommendations from the past work. So, I just wanted to flag that for everybody's benefit.

Sarah, Stephanie, and then mark.

SARAH WYLD: Hi, everyone. I do just want to take a moment to talk about this idea of putting flags. And so, I know that policy should not be limited by current functionality, but I do think it's important that we at least appreciate the complexity of what we are suggesting or considering here.

So, the idea is to put a status flag on each domain name indicating if the owner is a legal person or a natural person. Right? But actually, since that flag indicates a person type, it more correctly belongs on the contact set and not on the domain name itself. So, that's just a first thought.

And then I'm going to pause there and emphasize that what I've just said is very dependent on the given registrar's setup. Right? Some registrars use contact sets. Some don't. But we can't make assumption that it's a one size fits all solution. So, okay, the flag belongs. It affects the person. It indicates [that] the person tied to it belongs on the contact set.

What is a contact set? It's a group of fields that are associated together— name, organization, address, e-mail, phone. So, one person of either type could provide their information differently on different domain names, resulting in being identified as different people. And that's not a sign of malicious intent.

Just for example, I could provide my address as 123 Sesame Street, and whether I write out the word "Street" or I put "St." that's going to be—if we're looking at this in an automated way to create a flag on a contact set—that's going to be seen as two different contacts and, thus, it is two different people. So that person, that domain owner would need to set their person type on each different contact set that they have, which becomes a very confusing or annoying customer experience.

It's really unclear to me how that correspondence between the contact set and the domain name would be made visible to the domain owner. And then, of course, that status flag won't carry over to another registrar when a domain gets transferred anyways because the data doesn't go to the new registrar. So, the domain owner needs to provide it every time. Again, annoying. No benefit to the owner.

We've talked a little bit about backfill also, so I will just emphasize [that] it's extremely difficult to get people to backfill data on their domains, especially when that's a new requirement and it has no observable benefit to them. So, some portion of domains won't be updated. We must, of course, default to a "privacy by default," an assumption that personal data exists.

And so, [what we] end up with here is an unhappy customer base who's required to take action for no perceivable benefit. We've got an overall landscape of registration data that is still often redacted or protected with the privacy or proxy service. So, we're going to be using the SSAD or the Phase 1 recommendation [18] process. We've got a small portion of registrants who indicated that they're a legal person and their data is published, and they could have done that anyway just by consenting to publication which are already requiring.

So, this flag thing is a really complicated idea. I don't see any benefit. Thank you.

KEITH DRAZEK: Thanks, Sarah. And thanks for highlighting and bringing to the table the complexity of how registrar's, registries, and the registration process works. I think it's important for everybody to understand that complexity as we make any sort of recommendations or suggestions. So, that's a really helpful context.

I did type into chat, and this is for my own clarification. As we talk about the location of a flag, are we talking about a designation between legal and natural, or are we talking about a designation between consent to publish or not consent? And then are we really talking about a person type, or is it really more about a consent status? And I'm just throwing those out there for my own edification because I want to make sure I'm following the discussion clearly.

So, I've got Stephanie and Mark SV. And then we do need to move on. Volker, I'll give you just a few seconds at the end and then we'll move on. Thanks.

STEPHANIE PERRIN: Thanks. And in response to your question, Keith, we did ponder that in the legal sub-committee. And it's an important one in terms of the liability of the contracted parties, in my view, because there's a pretty high bar for accepting a consent from an individual that they are agreeing to the publication of their data, personal or not.

Now, my question was a far more basic one. We've spent all this time, this entire 2A exercise, looking at legal vs. natural and I don't understand why, beyond the fact that many, many of our stakeholders mourn the loss and will continue to mourn the loss of the free and open WHOIS where it was an obligation to publish. I get that. Fine. Everybody wants it back.

But what are we missing here? There's still data being published. We are trying to build a system that expedites the further release of the protected data where there's a justification. Why are we debating running this risk? Both legal risk for the registrars ...

And let's face it, the only people who are going to be hurt by a wrong designation of legal vs. natural will be individuals, either employees of companies where they were entitled to not have their data published or not be contacted, or persons who were entitled to protection. Why are we doing this? What itch are we scratching? What do you not get from a speedy response from the registrars that we're trying to build? And why do you want published data back again even though there's legal risk? Please explain. Thanks.

KEITH DRAZEK: Thanks, Stephanie. Mark and then Volker. And then we'll move on. We're starting to run out of time, and we wanted to talk about the report to Council as well. Mark SV.

MARK SVANCAREK: Thanks. Sarah, thanks for the explanation of implementation complexity. That was that was very interesting.

What I'm still hearing, though, is that Tucows plans to not make any performance enhancing modifications to their system even for returning data to queries that you already know has no personal data in it. That no matter how many times it's requested, you're not going to streamline your system. And that's just frustrating for me to hear. We could talk more about the implementation details specific to you just as an aside, but that's just because I'm interested in it.

Let's see. I had three points. Oh, yeah. Identifying somebody as a person, putting a flag on them, that's not personal data and so I don't see how that applies to any privacy principles. That's just a notifier: here's an indication of some attributes of this record or this contact data. That's not personal information. It wouldn't be ... You're not restricted in collecting that information.

And lastly, I don't think that's the correct definition of privacy by default. I agree [that] it is a good data processing practice, but I just don't think that is the definition of privacy by default. And I think that when we when use the definitions differently from each other, it makes it harder for us to work together. Thanks.

KEITH DRAZEK: Okay. Thanks, Mark. Volker, last word. And then we're going to move to wrapping up in a discussion of the report to the Council.

VOLKER GREIMANN: Thanks, Keith, for the honor. Just briefly, when I mention the flag, that is basically just an internal indicator in some form or shape that designates a contact as having no personal data. So, it wouldn't make the differentiation between legal vs. natural. It would just be an indicator, internal or external, for the registrar or the registry to notify itself that a certain data set has been confirmed as containing personal data or not.

That would be the only differentiation that the flag would do. And whether the flag is portable or not, or whether it's just internal with the registrar, that's something that would have to be decided down the road. But, essentially, a marker for "has personal data" or "has no personal data." Thank you.

KEITH DRAZEK: Thanks very much, Volker. And thanks to everybody for this conversation. I actually feel that this has been very constructive. I think I have a glimmer of light and a glimmer

of hope that we are on a path to reaching some level of consensus. And this, I think, plays directly into the conversation that we were supposed to have in Section 3D, and that was a review of the proposal on 1A and the registrar's proposal and input that were submitted.

So, we're not going to get to that today, so we're actually assigning homework at this point for the registrars, I think, in particular, to identify any differences or conflicts between the registrar's input and the Proposal 1A submitted originally by Laureen that we've been talking about for some time now.

And I think one of the clear questions is the need for some level of flexibility depending on the registrar's business model and approach, to make sure that the recommendations are not overly prescriptive to allow for that flexibility.

But I think the key question here is ... And this isn't just for the registrars. It's for everybody. Where do you see differences or conflicts between the Proposal 1A and the input that the registrars have provided? I think answering that question or those questions is the clearest path for us being able to determine whether we have a consensus path on the guidance for those who choose to differentiate.

Sarah, I saw your hand go up. Let me turn to you, then, since you were the contributor of the registrar input.

SARAH WYLD: Thank you so much, yes. I didn't have a chance to just think about this because I saw it on the agenda in terms of if these two proposals can be combined. The 1A proposal is really a step-by-step implementation which can, perhaps with modifications, be done in accordance with the GDPR principles. And so, those GDPR principles is what the registrar proposal is based around.

But I would say that 1A is quite prescriptive, and so it should not be a process that everyone is expected to follow. And so, the idea would be that the register proposal is something that any

registrar could incorporate into whatever step-by-step process they follow; which step-by-step process might look like 1A but might not.

And so, I don't particularly think that they can be combined. I think step 1A one would be an implementation rather than a guidance. Thank you.

KEITH DRAZEK: Yeah. Thanks very much, Sarah. I think that's a really helpful and important point that you've made in that we need to make sure that the policy recommendations that this group might recommend—whether it's for guidance and for consideration in implementation work that may be ongoing or whether it's a consensus policy recommendation—that we understand that the policy needs to be at a high enough level that it allows for flexibility of implementation. But I think Sarah's point is a good one.

But let's take the homework assignment and let's take it upon ourselves to look at these two and try to figure out if combined or supplementing one another, that there's an opportunity to move forward on some guidance for registrars that choose to differentiate.

So with that, thanks to everybody for the great conversation so far. I'm going to turn right now, again, to recap the thinking and the plan for giving an update to Council next week on the progress of this group. And then I'll open it up for feedback.

So, just essentially to recap what I said earlier to make sure we're all on the same page. I have an obligation to present a report on the progress and the status of the group and whether there's a path towards consensus. My recommendation will be to allow the work to continue, in light of the fact that the legal committee has submitted its questions to Bird & Bird. We have not yet received a response. We expect a response within the next couple of weeks. And that will help inform the work of the plenary.

That I see a possible path forward to consensus on the question of guidance for those registrars who choose to differentiate, and that it's premature at this point to make a determination, pending

the feedback from Bird & Bird on the legal questions, as to whether there might be a consensus around making consensus policy recommendations to augment or alter or amend the Phase 1 and/or Phase 2 recommendations.

And so, essentially, my recommendation to the Council will be to give this group until, as it stands right now, the end of May which is our target for publication of the initial report. And that at the end of May, we will have a clear indication as to whether we have consensus or we do not on either of the two components. And if we do not even have consensus at the time of initial report publication, that's a strong indication as to where the group is. And we will report back to Council on that status.

So, let me stop there and see if anybody has any questions, feedback, further thought. Am I off base? This is your chance to tell me one way or the other.

And then after the leadership team works with staff over the next several days, where we will circulate to this group the slides that we plan to use with the Council early next week. So, I'll open the queue. We have five minutes left on today's call. I'm seeing no hands. Anyone at all?

Mark. Thank you.

MARC ANDERSON: That was actually a mistake in hand. But I guess I'll ask. I think you're not seeing any hands because I'm not sure we quite comprehend what you said? What is your suggested update to Council?

KEITH DRAZEK: Mark, are you asking me to repeat what I just said?

MARC ANDERSON: I guess I am. Thank you.

KEITH DRAZEK: All right. So, I'll try to summarize. The plan is to indicate to the Council that this group is awaiting response on the legal questions submitted from Bird & Bird, and that we expect that response sometime in the next two weeks. That there's a possible path forward to consensus on guidance as it relates for those registrars who choose to differentiate. And it's premature at this point to make a determination as to whether there might be consensus on consensus policy recommendations augmenting Phase 1 or Phase 2 because we haven't heard back from Bird & Bird on the legal questions at this point.

And that the goal of this group is to continue its work. And that we will have an indication at the end of May, based on our consensus call for the initial report, as to whether there is consensus and whether the group has the opportunity or needs the opportunity to produce a final report.

I hope that was more clear. Okay? Thanks, Mark. And Sarah says, "Thanks for repeating it." So, if saying something a few times is helpful, I'm happy to do that. And it's probably my own delivery. So, thanks for the opportunity.

Laureen, over to you.

LAUREEN KAPIN: I just wanted to say that I appreciate the recognition that's going to be included in your report that there are paths forward, and I'm hoping we can build on that. And just for clarity, I'm hearing that our next crossroads or milestone is going to be at the end of May. Is that correct?

KEITH DRAZEK: Thanks, Laureen. Yeah. I think the next crossroads ... We may have an indication before the end of May that we are clearly on a path to consensus or not on a path to

consensus. I think it's going to have to be something that we evaluate on an ongoing basis moving forward.

But I think the end of May is a clear inflection point because that is the target date for the publication of the initial report if we can reach one. And there will be a consensus call on the content of the initial report. And if we don't have consensus on the initial report, then it's pretty clear that we don't have consensus at all. And I think that will be instructive to the consideration of the GNSO Council at that point. So, I hope that's helpful.

And I don't see any other hands. We've got one minute left, so I'm just going to take this opportunity to say that as it has been for the last several months, it's critical for people to do their homework and to contribute intersessionally in between our plenaries. I expect in the next two weeks we'll have good feedback from Bird & Bird.

But right now, thanks for everybody contributing to the brainstorming of the thought exercise very briefly today. I think it was helpful. I think we have action items in terms of the registrar input and the 1A proposal, to try to identify it. That gives us a path forward on guidance. And then if we do have a path forward on guidance, then that may be instructive for any possible consensus policy recommendations, but clearly not necessarily tied directly.

So, with that, reaching the end of the call, we have our next a EPDP Team Meeting next Thursday, 14:00 UTC the same time. We'll confirm action items on the list. And as I said earlier, after working with leadership team and staff, we will circulate slides that we intend to use with the GNSO Council next Wednesday at its meeting on the 24th.

Any last words? All right. Thanks, everybody. I appreciate your time, energy, and focus. Please do your homework, and we will circle back again next Thursday. Thanks, all.

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

[END OF TRANSCRIPT]