
ICANN Transcription

Registration Data Accuracy Scoping Team

Thursday, 11 August 2022 at 14:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the Registration Data Accuracy Scoping Team taking place on Thursday the 11th of August 2022 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 do have listed apologies from Beth Bacon and Brian Gutterman. We do have an alternate listed for today of Alan woods.

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.

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All members will be promoted to panelists for today's call. As a reminder, when using the chat feature, please change the drop down to Everyone in order for all to see the chat, also for it to be captured in the recording. Observers will have view only to the chat access.

Alternates not replacing a member are required to rename your lines by adding three Z's to the beginning of your name, and at the end, in parentheses the word "alternate" which means you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click Rename.

All documentation and information can be found on the Wiki space. Recordings will be posted on the public Wiki space shortly after the end of the call.

Please remember to state your name before speaking. 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 Michael Palage. Please begin.

MICHAEL PALAGE:

Thank you, Terri. Mason, I see your hand up. What I just want to do is introduce you to the rest of the group. You're obviously a well-known individual within the ICANN community, and you will be taking the place of Susan who stepped down a number of weeks ago. So I just wanted to give you that brief introduction, and you have the floor.

MASON COLE: Thanks, Michael. Yeah, I just wanted to note the same thing, that I'm taking for Susan on behalf of the BC. My Statement of Interest is updated, and I'm looking forward to participating. So thanks very much.

MICHAEL PALAGE: Thank you, Mason. In the interest of time, I think the agenda for today's meeting was previously circulated to the list. I also set forth a number of options on how, hopefully, we can wrap up our work here. I think it would be most prudent to jump into the top of the document and begin to walk through and see how much of the document we can get through and what points of consensus or diversion there may be.

As I have noted, if in fact we are not able to wrap this up, we will potentially extend. So if we could, Marika, open up the document. And I will let you drive and see where comments have been made.

MARIKA KONINGS: Yeah. Thanks, Michael. I'm just putting the link in the chat to this document so you can all follow along. As indicated in the agenda, from our perspective, there are a couple of areas where substantive suggestions have been made. But as Michael noted, I will just kind of slowly scroll through the document until we get there so you can also see some of the other updates that were made.

And as noted, at least from a staff perspective, these were minor updates for grammar and editorial items that were changed. But of course, if anyone has any concerns about those, feel free to flag.

So we made a brief update to the Executive Summary to make clear that this would be a section where the recommendations would appear in the copy/paste format once agreed and finalized. I think here in this section, there are just a couple of minor changes. And I appreciate Sarah's proofreading of this. She always manages to find some little things that we didn't pick up on. So, I appreciate that. And as said, again, from our perspective these are just typos and grammar changes. Of course, if anyone does have concerns about these, they should flag.

And I think, then, here we get to the substantive part of the input, which is the Measurement of Accuracy section. And first of all, we did make an update here. We had, originally, a placeholder referring to the details on the scenarios and outreach to EDPB when available.

So what we just did is basically updated here with the most recent status, noting that ICANN Board did consult with Scoping Team and linked to that information, as well linking to the letter that was sent to the European Commission. And then, again, I think from our perspective that's at least the latest status on that one. So again, this is just a status update and nothing substantive, at least from our perspective.

Again, some minor edits here, I think, in the language here. But then we get to the substantive part, which is basically the section that first focuses on proposals not requiring access to registration data. And no further edits or comments on Recommendation 1, but there are a number of comments that have been made in relation to Recommendation #2.

As you may recall, this was something that was discussed during, I think, our last meeting. And the group agreed that staff would take a stab at translating that conversation into a recommendation for the Board which is currently here in brackets. And a number of people have made comments on this—I think, specifically, Sarah and Brian and Alan—in response to do that. There were some proposed changes. And then there's also an alternative tax that has been proposed by the IPC.

So Michael, I'm assuming that you would like me to pause here because this is the first part where there's substantive input received.

MICHAEL PALAGE: Yes, this would be a good time to pause. So I think perhaps ... Now Brian is not on here. I do think some of his comments were important. So, there are two ways. Is there anyone else from ICANN Org that would like to read through it, or can we just read his comments? How would you like to do that? Or I could attempt to summarize it.

MARIKA KONINGS: I'm happy to read through it, if you like.

MICHAEL PALAGE: Yeah. Well, hopefully, everybody has read Brian's comments. And I think just summarizing it, I think it's really the quota apart there. I think, on the list previously, ICANN had raised concerns about

either itself or a contractor submitting false data. And I think he does that well there.

“As part of this further work, the Scoping Team will further explore with ICANN ...” Hold on. Sorry about that. My apologies here. So just to summarize, Brian was stating that ICANN Org either directly or indirectly did not feel comfortable submitting false or inaccurate data as part of any audit stress test or any type of testing. That is what I think he made clear. This was something that I think Becky had also voiced some concern about.

So I believe that’s what was said. Then in response, I think the best thing to do here is to turn it over to Lori. Lori, on behalf of ... Or Scott, if Scott is on. Okay, we have a couple of hands up. So, my apologies as I'm trying to multitask here. So [inaudible].

LORI SCHULMAN: Thank you. I want to preface the IPC—

MICHAEL PALAGE: Lori, real quick before you start. I did see some hands up from Sarah or Alan. [So unless I]—

LORI SCHULMAN: Oh, I’m sorry. Okay.

MICHAEL PALAGE: Yeah. As I'm multitasking here. My apologies as I'm looking at multiple screens. So before we dive in, Sarah, you have the floor first.

SARAH WYLD: Thank you, hi. Sorry, I guess, actually, I don't have a specific reason to need to discuss the initial text before the proposed changes, but I just had my hand up. Yeah, so thank you very much. I appreciate that. Okay.

So, three comments on Recommendation 2 that is highlighted. Number one, it is not clear to me from reading this text whether personal data is involved in this proposal or not. And the next comment down on the screen for me is asking that question. When I read the highlighted text, honestly, I am not sure. I think the intent is that there is no personal data involved here. I think that because it is in the "no personal data involved" section.

But if that is the case, perhaps we can make that a bit more clear by saying something other than that. Perhaps we can add wording in there or just affirm that this is, indeed, in the correct section with intent. That's number one.

Number two, I do support removing the phrase "stress testing" as suggested by our ICANN colleagues as well. And as I said in my higher up comment—and thank you, Marika, for putting that on screen—stress testing, as I understand, it means that you test something over and over and over to find the breaking point.

And that is not how I understood what we were trying to accomplish here. I was thinking of it like mystery shopping which

is maybe from my history working in retail during college. But that's what I expected. So if that's not what we're doing, maybe we can make that more clear.

And then, comment number three And Marika, if you could click back into Brian's comment that Alan had responded to. Thank you. So I do agree that, Alan, the word "audit" has specific meaning. Yes. I thought we were using that term on purpose. Thank you.

MICHAEL PALAGE:

Okay, so just to follow up on your point, I do think what we're going to call the testing ... I think there is consensus that "stress testing" is probably a bad choice. So I think everything that I've heard and read, there seems to be broad support to not use "stress testing." With regard to "audit," I also share your concerns that I think that has a specific connotation and is probably best not to muddy the waters.

My question to you then, Sarah, would be what would you propose calling white hat testing where you bring in people that tried to test to see whether your safeguards and protocols that are in place are working? I don't know, and I guess that would be my—

LORI SCHULMAN:

Mike.

MICHAEL PALAGE: Yes.

LORI SCHULMAN: I'm sorry. I should have raised my hand, but I'm going to intervene because the IPC has offered a term that, if everybody were comfortable with, it was part of the reason we submitted alternative text. I just want to note that even if you don't want to go over it now, we did come up with a term we thought might work for everybody.

MICHAEL PALAGE: Okay, and what is that term real quick?

LORI SCHULMAN: That term would be “the use of test data not involving PII to measure registry and registrar responses to their contractual obligations.” It's a mouthful, but I think it really explains what we're trying to do. We want to make sure that where there are compliance obligations there, [Matt], we want to make sure we're not violating privacy rights. And we want to make sure that there's an understanding that this is for a singular purpose, which is—

MICHAEL PALAGE: So ...

LORI SCHULMAN: Okay.

MICHAEL PALAGE: I'm sorry for interrupting.

LORI SCHULMAN: No, but that's what I wanted to say. It's a mouthful. It isn't a standard term. We came up with language that we thought was more precise in what we were trying to do to answer the questions that Sarah had put into. Because I agree. I think "stress testing" and "audit" may take us down paths we don't want to go.

So again, we use the term "use of test data not involving PII" which goes to the intent "to measure registry and registrar responses to their contractual obligations." And that's it.

And we address the white hat issue and this issue, generally, in Deep Dive Proposal F where we think it is properly put.

And Stephanie, "What is 'white hat' testing in this context?" It would be, essentially, pretexting. Creating profiles of registrants that are fictitious that are put into the system. And then we follow the information, see how it's audited, verified—however the contracted parties are internally. And we are all told by at least the ones participating here regularly that they have internal processes and that they're working. So by doing what we're doing in an anonymous way ...

And Sarah, I see your concern about not being clear that using fictitious data is permissible, and the IPC in its Deep Dive F has addressed that as well, that we would need some expert advice in

whether fictitious data is permissible for the purpose of compliance.

We all know that fictitious data is not permissible for maintaining any sort of fraud or abuse. No one here is suggesting that fraudulent data be put in the system with the idea that it would ever be used in the public—that a website would be launched or commerce would take place or anything like that.

MICHAEL PALAGE: Thank you, Lori, for that. Sarah, I'm going to go to Alan and then I will come back to you next. Alan, you have the floor.

ALAN GREENBERG: Thank you very much. I guess all of my comments center around what we've been talking about. And again, I'm not talking about the IPC proposal, but the original text that Marika proposed. If we could go to that, please. Thank you.

I agree the term “stress testing” is probably not the best word. I don't have a suggestion for a short-capsule name for it, but I will point out that that paragraph as it reads right now, if you have been listening to all of our meetings, you would understand that we're talking about submitting registrations with potentially false data to see whether the registrar processes will notice it or not. Essentially, that's what we're talking about.

But it doesn't say that anywhere. So even if we use a different term than “stress testing” which might be more accurate, unless we go to the full, long sentence that Lori did—and even hers I

don't think is fully adequate—I think we need to explain what we're talking about here.

That is, we're talking about submitting registrations with potentially false data in it—or inaccurate data, rather—to see whether the registrar processes catch it. So I think we need to be very explicit. I don't much care what the term is. If “stress testing” is going to be confusing, then maybe we need another term or something.

In terms of audit, the RAA talks about specific kinds of audits. And “audit” means you're going to go into the registrar or ask them for data documenting what they do or counting the number of somethings they did, or something like that. So generally, “audit” has that perception that it's going to go in and get information from the registrar, not actively tested like this. So that's why I thought “audit” might be misleading.

Lastly, on a substantive issue, there's a sentence there that says—I'm trying to fine it—where it says that we want to make sure that “such stress testing would not violate any agreements or laws.” I think we need to add to that “or make modifications to the RAA or grant specific exemptions to allow it.” Because I agree, the current RAA, strictly read, does not allow someone to submit data and certify that it's wrong. Clearly, people do it all of the time, but it's not something that we would really sanction.

But I believe there are innovative ways that we can get around that, either with specific exemptions for the purpose of this testing or maybe even language in the RAA. But I hope we can do it. We've got a lot of innovative lawyers around the table and in ICANN, and I think we can come up with a way of doing it. So I

agree with Brian that, currently, it is in violation. But I think we can figure out a way to do it if we have a will. Thank you.

MICHAEL PALAGE:

Thanks, Alan. A quick question to my contracted party colleagues on the call today. So I know in the Registry Agreement, there are provisions that allow ICANN to ping your system for response times for SLAs. And one could argue that that constitutes an unauthorized access of computer networks under a number of laws.

So ICANN actually is permitted under its Registry Agreement to do that SLA testing. I haven't read the 2013 in a while, so is there anything comparable in the Registrar Agreement where it permits ICANN to ping the registrar systems for response finds? Sarah or any other registrar? Okay.

I think that is a potential valid question that you've asked, Alan. And as I said, maybe that's something we could look into a little further.

Stephanie, you are [next].

ALAN GREENBERG:

Michael, to be clear, I wasn't asking a question to be looked into. I was suggesting the text be modified to say the analysis should include that kind of attempt to make sure that this is not violating things. Thank you.

MICHAEL PALAGE: Thank you for the clarification. Stephanie, you have the floor.

STEPHANIE PERRIN: Thanks very much. My usual caveat. I'm not the lawyer here. You've got plenty of lawyers around the table, and I'm thinking that probably the person to address this might be Thomas Rickert or Becky.

But are you not working on a new, revised Registration Agreement to update the 2013 so that this could be potentially done properly? It does seem to me that it would be legally possible. And I'm not up to date on the probing of the European data protection supervisor or the Commission, not that that's the same thing on feasibility of using registration data to verify compliance of the contracted parties.

But if ICANN, as part of its controllership role, took on the responsibility of hiring a contractor, whatever you're calling these guys—white hats, stress testers. I hate the word “stress test.” It's very misleading. They're really verification checks to see whether the contracted parties are doing the kind of compliance check that they are expected to do under the existing agreements.

Now what I'm suggesting in the drafting of the next agreement is you could put a clause in there that states very clearly that ICANN, as the controller, has the authority, is taking on the role of hiring independent contractors—hopefully on a rotating basis—to probe the system to see whether these checks are being done. That is a little different than an audit, I would suggest, and needs to be spelled out specifically.

But absent that, putting in these recommendations here, picking a different term, I think is essentially confusing and potentially meaningless. Thanks. Bye.

MICHAEL PALAGE: Thank you, Stephanie.

STEPHANIE PERRIN: Oh, and I have been listening. I have been listening to what's going on in our meetings, and I thought we had decided that we couldn't use bogus data. Thanks.

MICHAEL PALAGE: Okay. Sarah, you have the floor.

SARAH WYLD: Thank you, hi. I just wanted to mention in case anybody besides myself is looking at the Gap Analysis document to consider what was proposal F. I just want to point out Proposal F in the top section of the document is not the same thing as Deep Dive Proposal F. Those are different. So just don't get confused like I got confused. Number one.

All right, next. To Michael's question, I am not aware of anything in the RAA that permits ICANN or anybody to purchase domains with fake data or to be accepted from the Registration Agreement which requires real data in registrations there. That might be a possibility, but we talked about it a lot last meeting. Yeah.

So what I actually wanted to say is, I don't see how the suggestion of doing test registrations is different from Proposals B and C in our Gap Analysis which were proposals to do a third-party assessment. The original Recommendation 2 on screen is for ICANN Org to do a registrar audit. We need to think about that separately from the idea of a third party doing testing because those are two different things. Thank you.

MICHAEL PALAGE: Could you repeat the difference? Could you just repeat those last two sentences? I just want to make sure I heard you.

SARAH WYLD: Sure.

MICHAEL PALAGE: Please. Thank you.

SARAH WYLD: Absolutely, thank you. I don't see how this suggestion of doing test registrations is different from Proposals B and C in the Gap Analysis which were a third-party assessment. The original Recommendation 2 is that ICANN Org will do a registrar audit. We need to think about that separately from the idea of a third party doing testing. Those are two different things. Thank you.

MICHAEL PALAGE: Okay. So, Lori, you could ... Because I think what ... Well, Lori, I'll let you respond to that because I—

LORI SCHULMAN: Yeah. I'm sorry. I raised my hand to respond. I can't see where I am in the queue. Too many screens are open.

MICHAEL PALAGE: Put it this way. You have the floor.

LORI SCHULMAN: Okay. I don't think they're necessarily different things. I think ICANN can conduct any kind of audit or whatever you want to— well, an audit if that's how it's referred to in the RAA—and use a third party to do the work. I mean, there's nothing ... I don't see that as being fundamentally different. I don't see necessarily that it's a third party doing a ...

If a third party does a testing without the direction of ICANN, then I think you are going into the territory of providing false information in a way that is contrary to the agreements. This all has to be a community effort here, so I don't imagine some random third party, and the IPC certainly doesn't imagine some random third party just doing this without any sort of cooperation with ICANN and the community. That's what's envisioned by the proposal, generally. That this is something the community wants to do, that's in the community interest that is organized by Org and not just ...

And we read about them all of the time, the sort of good-guy hackers who go into systems to find vulnerabilities, point them out to the companies, and get rewards. That's not what we're talking about here. We're talking about something that is planned, and coordinated and cooperative.

MICHAEL PALAGE: Volker, you have the floor.

VOLKER GRIEMANN: Yes, thank you. First of all, there always have been people that have been violating the Registration Agreements and other agreements that registrars and ICANN have put up. For example, back in the days when WHOIS was still violating data privacy policies and data protection policies, i.e., the time before GDPR. People have been harvesting and creating secondary databases of WHOIS willy-nilly, even though it was prevented and prohibited by the terms of the WHOIS providers, i.e. the registrars in their terms of service for that WHOIS service.

But that's not actually the point I was raising. I think the main issue here is that we should not endorse violations of contracts, period. And while I appreciate the thought of changing the RAA, that is a process that is going to take at least three years from now if we started to think about this now, simply because of the way that this process has been baked into the current existing RAA.

The question here is, first, somebody would have to raise that issue and then it would have to be approved by the parties. We cannot use the currently existing amendment process because

that has already been scoped. And this would be outside of the scope, so we would have to have a new process that can only be triggered after a certain time after the current process has ended with the delivery of the new RAA.

Therefore, the waiting time here would probably be prohibitively long, and I don't think that would be a target that we could meet anytime soon. Thank you.

MICHAEL PALAGE: Thank you for that reality check, Volker. Scott, you have the floor.

SCOTT AUSTIN: Thank you, Michael. I think that we have discussed—Lori and I, on number of occasions—the issue of stress testing. And that appears to be a hot-button word, but I do think testing alone is not sufficient to address what we're trying to do. I think that in one of the prior calls, I tried to go into great lengths of expanding upon what the options were and what stress testing was really all about in the business world, at least from an economic standpoint.

And Sarah also had mentioned penetration testing that's done. And in many cases, the basis or the meaningfulness of those tests is because people are not given advance notice. And yet, as you've mentioned, there is the potential for laws to be broken, but for the fact that they're done on a consensual basis with the one who's being tested and the party or the vendor that's doing the testing. So I think that alleviates some of the issues with regard to fraudulent data or the use of fraudulent data as part of a legitimate and sanctioned test.

But more importantly, it just seems to me that we still, after many months, are trying to get at the heart of what is really scope because, fundamentally, this is a database. And it's a database that has to be managed, and it's the question of whether that management has resulted in something that is accurate. And while we seem to be very reluctant to reach a definition of accuracy ...

And as I've said several times, the current RAA has a section called Definitions. And in that section, there is no definition for verification or validation. There is no definition for authentication or authorization, as I recall. But there is a definition for illegal activity. And there are also supposed to be reports provided by registrars on legal activity.

So I think that's an area that perhaps has not been explored sufficiently to know how that relates to the registration data because, as I have said, the problem that I have is labeling something that is fraudulent—that registration data that is fraudulent—as accurate.

And I still believe that the way that we are doing the process right now, the meaningfulness—I'm sorry—the terms validation and verification which are frequently interchanged and should not be. And that's why I think there are still calls for a definition of those terms in the definition section of that agreement.

But we've also given examples of ways that we could follow with this. And perhaps in reviewing, for example, Denmark's approach, there may have been tests that were done by them in reaching the processes and procedures they now have in place that seem to

have reduced the amount of fraud in the domain names that are registered there. Thank you.

MICHAEL PALAGE: Thanks for that. So I want to try to sit there and constrain the ... I don't want to spend the remainder of the call just on Recommendation 2. So what I'd like to do is, Marc, I'm going to move you to the top of the queue since you have not spoken yet. But I still recognize that Lori and Sarah are next. So, Marc.

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

MICHAEL PALAGE: I hear you loud and clear.

MARC ANDERSON: All right, thanks. So I've been listening to the conversation and reading the comments and reading what's in there. And looking back through [your original charges] which is Measurement of Accuracy. Right? That's the million-dollar question we've been tasked with figuring out how to do. How do we measure accuracy? And so that's ultimately what we're trying to accomplish.

And listening to this conversation and in considering our goal of publishing an initial report to take to Council, it seems clear that we're still working on this Recommendation 2 idea. We haven't flushed it out all of the way, which leads me to think that the right answer at this point ...

I think we have either two choices: considerably delay our report to flush out Rec 2, or go back to a version of the original language which is saying the Scoping Team recommends that further work is undertaken by the Scoping Team in collaboration with ICANN Org to explore the options. Right?

The original language, I think, recognized that we're still talking about this and that we should talk about it more. And in hearing the way this conversation is going, I think that's the right answer. Right? I don't want to further delay this initial report, so I think the answer here is to just stick with this Recommendation 2 that says, essentially, that we'll work on this some more and we'll try and explore this.

I do get the points about stress testing being a loaded term, and maybe we can find a different word there. But essentially, where I think we are is that we need to recognize that we haven't agreed on exactly the details of what this will entail. So we just leave it as we agree to talk about it more.

MICHAEL PALAGE:

So let me ask you this question, Marc. And I appreciate the approach that you're trying to take here. And trust me, I don't want to delay the issuance of this report. I want to get it done as much as anyone.

Here's my proposal, though. Considering that any type of testing by a third party would involve money—and we had discussed this before—that would require the council to ask ICANN for those

funds. We as an Accuracy Scoping group don't have the power to say, "Spend X," We can't do that.

And maybe, Marika, if you can correct me. When the EPDP Phase 1, 2, and 2A engaged third-party lawyers and spent that money, that was done ... How were those funds allocated from ICANN's budget? Did that come in consultation with ... Was that council approval? Can you explain to me how that took place?

MARIKA KONINGS:

Thanks, Michael. If I recall well, that was actually part of the original scoping exercise as well for the group in which it basically outlined the funds or the resources it thought it would need to complete the work. And as part of that, it included a provision for external legal counsel support. So that went from, I think, the Council to the Board. And the Board and approved making funds available for that. It also involved, I think, support for face-to-face meeting, so it was an extensive budget commitment that needed to [be made].

But, yes, any such requests that cannot be completed within resources that already exist or are dedicated for those purposes would need to go through some kind of approval process—first of all Council and then, subsequently, the Board. If my understanding is correct.

MICHAEL PALAGE:

Thank you for that clarification, Marika. So Marc, back to you. Perhaps a way of trying to thread the needle here, would it be helpful in, say, a revised original Recommendation 2 wording to

perhaps incorporate that additional work? Do we perhaps ask the Council to consider these points about the RRA Amendment or the engagement of third-party white hat experts?

So what we do is, we say, "This is something we discussed. We would like the Council to provide guidance. And then Council could come back and say, "It's in scope." And then when it comes back, then we can engage in that discussion. Or the Council could say, "Thanks for raising this. No, we consider this out of scope. You're not allowed to go there."

So instead of us spending weeks or months, we succinctly take the elements that Lori was asking in her alternate wording. And perhaps we try to embed that as additional work in the original. Do you think ... You always talk about how we need to look at the charter? Don't you think asking those two questions specifically of the Council would be the best way to get that definitive response?

MARC ANDERSON: I lost the thread a little bit. What are the two questions, specifically?

MICHAEL PALAGE: So I'm just trying to ... As I'm looking at Lori's proposal here ... Right?

LORI SCHULMAN: It's the IPC proposal, just [saying].

MICHAEL PALAGE: I apologize, Lori. As we look at the IPC proposal, what I see here was the talk about the engagement of, what is it, the white hat experts. And then I thought what we just heard today, I thought Stephanie had talked about ... She seemed to be supportive of this about, is there a way of changing the RRA. Volker then explained how that's going to take time.

So those are two concrete proposals or recommendations that perhaps we tee them up to the Council and say, "Hey, this is something that was discussed. Is this in scope or out of scope? And we're bringing to you this regarding the white hat because that's going to involve external monies or allocations of fees that we've not anticipated. Can we even consider this?" So it gives ... Go ahead.

MARC ANDERSON: Okay, so two parts of that, I guess. So the first, I'll start with the third-party question. And in looking at Recommendation 2, the initial language, I would say I don't think that language precludes the option of considering third parties to do this work.

But when we had originally discussed this as part of that Gap Analysis, when we looked at a third party as ... We had the option of third-party assessment, no personal information; third-party assessment, personal information; and ICANN Org assessment. We had initially discounted the third parties doing that because of the additional cost, and we thought that ICANN Org would be situated to do that themselves.

So, I'm not convinced that getting a third party involved is the right option. I think personally I'd like to understand why ICANN Org couldn't do that once we have a concrete proposal. So that, I guess, is my first thought. I'm not sure that modifying this at this point to pull in a third party reference is necessary, and I'm not sure exactly what they ask to council there is.

The second part, you said a concrete proposal about modifying the RAA. I certainly did not hear a concrete proposal about modifying the RAA. I heard a few people mentioned that we should modify the RAA. That is not a concrete proposal, and that is not within the GNSO Council's purview. That's a two-party negotiation between the contracted party and ICANN Org. So again, that does not seem like a concrete proposal to me, and I'm not sure how that helps us move forward at all at this point.

MICHAEL PALAGE:

Fair enough. So then to your point there, do we go about documenting that we recognize that one way of engaging in this testing would be a modification, but we don't have that authority? Because I could see how some people reading this would be like, "Oh, well why don't you make that recommendation?" I think it's probably a good point to actually call that out and actually address it and say, "It's a bilateral contract and it's outside the scope of the policy development process." So let's just acknowledge that in this report.

We can make the recommendation and maybe the Registrars do it. I don't know. So I think you raise a very valid point, and we should document it that we can't go there. We could suggest

ICANN and the Registrars to perhaps discuss it, but it's outside the policy development process. So, I would probably agree with you on that second point.

But getting back to the white hat testing thought. And I'm just going to refer to as white hat testing. The fact that appears in the first section ... Because there are two buckets: Bucket A, no PII; Bucket B, PII. In Bucket A, I think what Lori had referenced was what I'm calling the use of synthetic data.

I think "synthetic data" is a lot better than "fraudulent data." So that, to me, is what is different than what was previously proposed in the testing. And that's how we're looking to try to avoid that.

Go ahead, Lori.

LORI SCHULMAN:

So I'm just thinking. I'm hearing the discussion and trying to compromise in a sense that perhaps we just replace some of this existing wording in Recommendation 2—the original one, not the proposed IPC alternative—and just say that we have identified a need or a desire. You can decide what word.

"We've identified a ..."—maybe "desire" is the right word—"... to identify testing and assessing accuracy mechanisms within the ambit of the RAA. Some of the suggestions put forth by the team may, in fact, necessitate modifying the RAA. For example, use of pretexting."

Something like that to say we've just explored possibilities. We see the limitations there. And then we just move on because it will

be up to wherever we go next for people to decide. Because I am convinced that there's enough questions here about how the RAA reads today that would cause pause for ICANN to say, "We're not going to enter false information."

But at the same time, I have to say I'm still firmly in the camp that believes that when you draft a contract that says "Thou shall not do ..." there's a specific purpose in mind. And that purpose was to avoid fraud and abuse. But when the purpose is for a good reason, then there are ways to go beyond what I would call the four corners of the document. And that's typically done in legal interpretation.

And that's certainly, I think, what Alan is alluding to in terms of, you know, if we decide this is a path that could work without compromising anybody, then we should keep it on the table just somewhere. So even if we didn't mention it in Recommendation 2 and we tried to keep to the original proposal as close as possible, at least we keep it in the appendices in Deep Dive Proposal F.

MICHAEL PALAGE: Thank you, Lori. Sarah, you have the floor.

SARAH WYLD: Thank you. My hand's been up for a little while, so I have a bunch of different things to say. Okay.

I have a lot of agreement for what Marc said earlier, and I think that we should finalize the report with the initial Recommendation 2 rather than the proposed alternative text. I do not believe that a

Scoping Team can suggest changes to the RAA. And also, I don't think that any such changes are necessary. I don't think this report should say anything about updating the RAA, especially not a recommendation to do so. If we decide as a team that testing should be done, I think there are ways to do so within the current balance of the agreements.

I do have a question that hopefully Marika can answer. Have we discussed Deep Dive Proposal F as a team? I see that the language was added to the Gap Analysis document on July 21st. And I was working that day, so I don't remember discussing it at that meeting. And then it was updated August 7. So, did I lose track? Do we do that? That's another.

Okay, next up. I'm so sorry. I know you told us twice, but I did not clearly follow Michael's questions and so I cannot currently support bringing them to the GNSO Council.

And then finally, to Lori's points. So okay, ICANN do testing or an audit, whatever we call it. If they are using a third party to do that work, that party is doing the work on ICANN's behalf and so they would have a contract for work that governs their behavior. So I would consider that to be essentially ICANN doing the testing.

For example, I understand that when ICANN does the standard registrar audit, they hire a third party to do the testing, so I'm not opposed to the concept. But it would be done as ICANN are under their authority, so we should not treat it as a third party doing that work.

And so, in that case, we have come back to considering if there is personal data being processed or not. If not, then the initial Recommendation 2 can remain. And we've now confirmed that this is an audit, which is not intended to involve personal data. So it's in the right section of the document, which is great. That's what I was asking for in my first comment today.

But I think it should be made more clear in the text of the recommendation that no personal data is to be used in that testing. And if there is personal data being processed, then this needs to move to a different section and we need to make sure that there is a legal basis for that work. So we're back into the conversation with the European Data Protection Board and whether ICANN has authority, has a legal basis to do that testing. Thank you.

MICHAEL PALAGE: So I would agree with ... Well, I would agree with ... I won't comment. Marika, you have the floor. Marika, you're on mute.

MARIKA KONINGS: Sorry. Yes, I'm here. My [inaudible] moved screens, and I couldn't find a mute button. So maybe first responding to as Sarah's question. I just saw as well that, indeed, additional text has been added, I believe, by Lori to Proposal F which, indeed, has not been reviewed or discussed. Only the, I think, original text that was there was considered on the call. And I think that is, as well, what basically formed the basis for this recommendation to further discuss this because I think it's clear that there are different

perspectives of, first of all, what this means, what it aims to do, what is possible, who should be involved.

So I think at least the idea behind this recommendation was to find a path to get the report to Council and then at least be able to start working on the other recommendation in relation to the registrar survey, but allow for states to continue this conversation and better understand what the different groups think should happen, what is possible, and who could or should be doing and that.

And to Michael's question as well about what is in the assignment or Council's expectation. If I recall well, it does specifically foresee that recommendations would first go to the Council before these would be implemented, and especially if there would be budget implications.

So I think in that regard, and that is what is also kind of written in here into this draft language, that based on these further conversations, and the potential detailed proposal, that really would outline that this is what needs to happen, this is what will be done by whom, and this is what the expected resource impact would be.

That would then be a proposal that the Council could consider and say, "Yes, we want to. We would like to move forward with that," and those would through [inaudible] [priority approval] steps for that, or "No, we don't think that's prudent at this time." And I'm not sure throwing options is going to help the Council and in that regard. I'm just flagging what has been discussed because that may not be sufficient for the Council to make a decision on.

So I just wanted to flag that, and I hope that answered a couple of the questions [that were asked].

MICHAEL PALAGE: Thank you, Marika. I'm going to move around. Laureen, you have the floor.

LAUREEN KAPIN: Thanks. This has been a very useful discussion, I think, and I'm just wanting to focus on the specific point about what existing parts of the RAA might provide some paths for assessing the adequacy of safeguards for accuracy. And of course, there we would [look to] 3.7.8 where there are specific obligations. And I think this follows on some of the comments that Scott was mentioning, if I recall correctly.

But the obligations do refer to verification at the time of registration of contact information and then periodic re- verification of such information. And it seems to me that if there is an obligation, then certainly there can be a way to assess compliance with that obligation under ICANN's existing processes. So I would just offer that as a focus for a path to perhaps performing the type of inquiry that really assesses these verification procedures.

MICHAEL PALAGE: Thank you, Laureen. Real quick, I want to try to move on to the next recommendation. If everyone could try to keep it to a minute, I would appreciate it. Scott, you have the floor.

SCOTT AUSTIN:

Thank you, Michael. I'll try to be quick. First of all, I appreciate what Laureen has said and I agree with that. But I also note, in the chat, Mason's comment and the distinction between talking about how we do the testing or whether we do the testing. I like what Sarah said. I'm in agreement with that. I believe that the testing can be done within the confines of an existing contract.

And as a practicing lawyer, I agree, I don't think we should be tampering with an executed agreement. I don't think that's really within our remit, and it's not really what I've been trying to do. Besides, as Laureen just pointed out, I think there are plenty of terms within the agreement that, if they are enforced, if they are looked at carefully—lawyered or analyzed are characterized by both the parties that are currently working under them and those responsible for overseeing them—I think this can be done.

I am concerned about the use of one term, and Sarah used the term of “personal identification information”— the privacy issue. We have come across this in other areas in INTA regarding the distinction between legal entities and natural persons, or legal persons and natural persons, I should say. The RAA speaks only to natural persons. So perhaps one of the issues or one of the ways of dealing with this would be to use legal entities which are accepted under both the GDPR and are not included within the RAA as data that would be problematic.

At any rate, I believe this will be up to the vendor to, and we shouldn't be trying to do their job to determine how the testing is done and the type of data that's used, etc. So I think we're getting

into problems with that that are unnecessary. But I believe the testing should be done, however we call it, and it will be under the oversight of ICANN and the vendor. Thank you.

MICHAEL PALAGE: Thank you, Scott. Alan, you have the floor.

ALAN GREENBERG: Thank you very much. A couple of points. I'll try to be very brief. Several people have said it's not within our mandate to make recommendations that essentially say "and the RAA should be changed." I beg to differ. Our job is to recommend potential policy or consider policy to the GNSO. The RAA can be amended by bilateral negotiations or by policy. And the policy path is indeed within our mandate to make recommendations and suggestions to the GNSO. So let's not forget that.

Now I'm not suggesting we do that. And I understand that timelines on both negotiation and policy are very long, so I'm not advocating a change to the RAA for what we're talking about here. But let's be clear about what our responsibilities are.

Number two, just to be clear, I am supporting keeping Recommendation 2 as it was drafted by staff—not the IPC alternative—but to clarify to make sure that it's clear to the reader who hasn't been following our discussions what it is we're talking about.

And lastly, the references to PII or not PII. In the existing language, my understanding is that's accessing PII or accessing

data within the existing registrations. And we're not talking about accessing existing registrations at all in what we're euphemistically calling "stress testing." So let's not confuse the two issues. Thank you.

MICHAEL PALAGE: Laureen, is that an old hand? I will assume that is an old hand. Sarah, you have the—

LAUREEN KAPIN: Sorry, old hand.

MICHAEL PALAGE: There we go.

LAUREEN KAPIN: I will lower.

MICHAEL PALAGE: Sarah, you have the last word.

SARAH WYLD: Thank you, hi. I really do not think that RAA updates are necessary here. I think we should put that conversation aside. I said it in the chat, but I just have to verbalize it. The Registration Agreement does apply to legal entities if they purchase domain names. Their data may not be protected in the same way as that

of natural persons, but if a business buys a domain, it still has to follow the Registration Agreement just like a person has to do.

I think we've tried to keep the recommendation fairly high level in terms of what testing would be done. And I understand that we had good reasons for doing so, but I do think that has contributed to some of the difficulties in this conversation now. So it sounds like we're in agreement that we want to test registrars doing something. Right?

Do we need to figure out in more detail what the testing would be in order to resolve this conversation? Or can we just leave the recommendation as how it was before today, before the input? And do we think that will be sufficient? Okay, thank you.

MICHAEL PALAGE: Okay, Alan, you will get the last word.

ALAN WOODS: Thank you very much, Michael. Yeah, apologies. I couldn't find my mute button. It's just something that has been said, and it was said by Alan Greenberg. I think it really needs to be put on record to say we are a Scoping Team. Our job here is to scope the issues to lead to an Issues Report in order to then deal with the solution. The solution comes from the PDP that arises from the Issues Report that arises from the Scoping Team.

And I really think somehow we blended all three stages today into this thing that, apparently, we're to assess the expectation as to the outcome. It's not our job. I think we might be able to cut a lot of

the in-depth discussion that we're having out of the equation if we just focused on what we're to do, and that is to scope the issues and let the PDP, and whatever comes beyond later, to have these wonderful discussions that we're having today. I just think they're just not something we should be doing and wasting our time on.

MICHAEL PALAGE:

Okay. So here is what I am going to propose. Based upon the totality of the discussions that I have heard today, I would ask if Sarah, Lori, and Alan could perhaps look ... If the three of you could get together on behalf of your respective stakeholders and what you have heard here today and see if there is a way to redline the original Recommendation 2 wording in a way that ...

Okay, Sarah is putting something into the chat. So, yeah, the problem with multitasking. So, yeah, let me finish my thought and then, Marika, I will read what's in the chat.

I would like to see if we could find a way of modifying the original wording of Recommendation 2 to address those concerns. If that is not possible, I think we, as I had mentioned before, would basically declare an impasse. The original Recommendation 2 wording would stay in. I would then provide all of those stakeholder groups that did not agree to submit a statement on the record that would be included in the appendix where you would be able to advocate or articulate the points that have been made here today. So that is what I am proposing.

And now back to ... So, Marika, do you want to talk—

LORI SCHULMAN: I'm sorry. Can I ask one question that might solve this? I know you want to move on, but maybe we can solve this without a separate meeting.

MICHAEL PALAGE: Okay, please.

LORI SCHULMAN: Maybe it's just a question of one sentence. I wrote in the chat, "The IPC ..." We definitely agree. We're here to ask questions. All that the IPC intention was what the alternative language was just that the question be asked about "choose your term"—or my term, too, I guess here. The so-called white hat testing. We just want that question asked. That's all.

We could put one line in that could say, I don't know, "To explore the option of conducting a registrar audit for whether the type of ... Maybe we could say what type of testing could be included. Maybe we just change "a" to "what." "What type of testing could be included" without presuming any particular kind of testing. Would that solve the issue for people?

MICHAEL PALAGE: Sarah. Marc.

SARAH WYLD: Thank you. I have suggested in the document to remove the word "stress." I also suggested to remove the specific reference to

specific deep dive proposals, as we have not reviewed all of those proposals by the team.

LORI SCHULMAN: That's fine.

SARAH WYLD: I am very happy to say “what type of testing” instead of “whether a type of testing.” Sure, yes. Let's explore what type of testing can be included. I don't think that we need to specify that ICANN will or will not work with a third party. If they want to contract somebody that do the work, I think that's fine. They can have a contract to do that work. Thank you.

LORI SCHULMAN: Right. To answer Marc's question—to whom am I asking the question—I'm asking the question ... To me it is a PDP question. “What type of testing” like we did in RPM review. We went through all of the different Right Protection Mechanisms to find out what's working, what's not working, what could be added, what could be subtracted.

So if we agree as a team to recommend to ask—you know, we agree that there needs to be some form of legal auditing, legal testing that complies with GDPR—what kind of testing is that? It leaves it completely open-ended for the policy development team, eventually, to answer that question, “What can we do?”

And then the how is the Implementation Team. Right now, Scoping, we're asking questions. Policy development team, developing policy recommendations. Implementation Team is the how. Right? Correct? And then we're staying within the scope of what we've been asked to do by the GNSO. And I'm going to not say one more word anymore.

MICHAEL PALAGE: So, Alan, based upon what ... Let me start ... Alan, you have the floor. And if you could, could you please comment on the edits that Lori had just proposed, whether you think that is acceptable?

ALAN GREENBERG: Okay. First of all, a point of order or clarification. When you say the original Recommendation 2, I presume you are referring to that full paragraph, as modified by Marika, coming into this meeting.

MICHAEL PALAGE: Correct. That is ...

ALAN GREENBERG: Which was not the original Recommendation 2, but is the one coming into this meeting. So, that's correct?

MICHAEL PALAGE: Correct. And I apologize for any confusion.

ALAN GREENBERG: Okay. I think I said it before. I believe we need to be clear on what we mean by this type of testing. That is, the submission of data to verify whether the registrar's processes catch data which should be caught. Whether we put that definition in the text or in a footnote, I don't care. But I believe we cannot presume that "stress testing" or whatever word we come up with will be intuitively obvious to the people.

When we came up with this concept a few weeks ago, or months ago now, it was a relatively new one. We hadn't talked about it before. And it's not obvious anyone else is going to think about it. So I think we need to be clear on what we are talking about. Number one.

Number two. I believe that the implementation part, the analysis part that we're talking about here, must not only verify that it doesn't violate laws. But is there a way that we can interpret the current RAA to allow this kind of testing? And we've heard a number of things here indicating that maybe it is possible. So I think we need to investigate that.

But that's, I think, where we need to go. Whether the changes that were made on the fly when I wasn't reading it were correct, I can't speak to. There's just too many things going on at this point. But I think we're very close to something that I would find acceptable and I think other people would find acceptable. But I can't speak to them, though.

MICHAEL PALAGE: So can I make a recommendation, Alan? Since we're close on this wording here and you had mentioned the use of a footnote to elaborate what you meant by testing, could you perhaps, after this call, focus in on some cycles on what that footnote to testing would look like? Is that possible?

ALAN GREENBERG: I'm not sure I want to limit it to the footnote. But, yes, I am willing to propose something that would satisfy me. Whether it will satisfy other people, I'm not sure. But I am willing to do that after this meeting.

MICHAEL PALAGE: Marika, you're on the floor.

MARIKA KONINGS: Thanks, Michael. I just wanted to flag that there is already a reference to the conversation of the Scoping Team that has been documenting on this. I'm kind of concerned or worried that if we try to agree here what testing means, it may be difficult because it seems that everyone is thinking it may be something different. And it's not clear, either, what is possible or not.

I think the whole idea about the line which is as phrased "what type of testing" is to actually have that conversation and to better understand what may or may not be possible, as well as what people are trying to test for and hoping to get out of that information.

And one other thing I wanted to flag as well because from the ICANN Org side, there was, indeed, the comment about the stress testing. So I think that the “stress” has been removed. So that’s already addressing at least one piece.

And there was also a suggestion for adding a footnote to really make very clear the point that has been made before about not being able to use fake data to do this. Of course, to further conversations, if there are ways that could change that, that is, of course, part of this conversation.

But from an Org’s side, I think we just want to get on the record that concern that we’re really making clear that people understand that that is not something that ICANN Org would be able to do. So if that is something that is acceptable, I would like to see if we can add that footnote.

MICHAEL PALAGE:

So, do we add that in the footnote or do we go to the paragraph above the Scoping Team recommendation? And do we sit there and include that in the dialogue. Do we talk about, “There was a proposal for white hat testing that could be used using synthetic data not involving PII.” And then say, “In response to this, ICANN Org ...” Then we can ...

So, do we add a paragraph before the recommendation that actually synthesizes the points that were originally made in the IPC alternate text, as well as the comments of Brian? Is that one way of getting that on the record? Both perspectives.

Marika, that’s to you.

MARIKA KONINGS: Oh, sorry. I actually still had my hand up. Are you asking if staff can take a stab at drafting that?

MICHAEL PALAGE: Well, I guess, yeah, because what I heard from you is that I think ICANN Org wanted that on the record. And right now it's just a comment of a footnote that potentially will get lost when it goes to a final document. So I think what we want to do is take ICANN's statement, get that documented in the actual report. And I feel that the best way of getting that documented in the report is to sit there and explain how that arose. Right?

The response from ICANN Org was in response to the proposal by ... I think it was the IPC or the GAC a couple of weeks ago that talked about this type of enhanced test testing which we're now calling "white hat" testing. Or at least that's what we're seeing here.

So I think to have that dialogue of the, if you will, the yin and the yang is ... It's not in the recommendation. It's actually in the text that leads up to what the proposed alternate language that Lori had just proposed there in Recommendation 2. So it makes sign off on Recommendation 2 potentially easier. And if that paragraph is written properly, we can perhaps address the concerns of Alan on that testing.

So, Alan, is—

MARIKA KONINGS: [inaudible] record. Sorry. The group would need to see where this fits, as it has already kind of an introductory paragraph to both of the recommendations.

And just noting, as well, Sarah pointed out in the chat, of course, if this is an essential paragraph, it will require a review. And it may not be something that is easily agreed. So there's obviously the timing question that would come into play of who would write it, I think, in the first place, and how to review and agree on that language.

Again, I think from an Org perspective, the most important thing is to get the point across, so whether it's a footnote here or if there's another paragraph. But just pointing out that it may ... Everything that has been discussed today, people may try to get into the paragraph, so it may become a very lengthy process just to try to agree on that. While I think most seem to agree that further conversation is necessary.

MICHAEL PALAGE: I am leaning towards perhaps ... I would defer to you or ICANN Org on where—on that initial draft, I feel, is probably the best—and where you feel where it fits in. And then we could have a discussion. Again, the reason I'm suggesting this is that you specifically want ... You raised the point of wanting to get the comments that Brian had made on the record, so out of the comment field into the actual final report.

So I guess I would defer to your best judgment on what that initial wording looks like and where it would best be positioned to

appear. And if it's a paragraph or multiple footnotes, really it's up for the group to decide. I have no opinion.

Alan, you have your hand up. You have the floor.

ALAN GREENBERG: To address your last point, I'm happy with multiple footnotes if that's the way to get the information in. I just wanted to make it clear that Brian's comment is the ICANN Org position based on their current reading of the RAA. What I and others have suggested is that a more detailed analysis of all of the terms of the RAA may change that position.

I don't want this to be presented as something which is inviolate and can never change because we are suggesting that a more careful reading and analysis of the RAA may, in fact, allow this. So I just want to make sure it's not presented as something which can never change. Thank you.

MICHAEL PALAGE: Moving on to Recommendation 3. So what we have here ... I guess I'll tee this up, and I guess, Lori, we'll go to you first to explain the proposed IPC alternative text. And Sarah, this, I think, actually addresses one of the comments that I think you had made in one of your last statements.

So right now, ICANN Org has written to the European Union asking for help in engaging the European Data Protection Board to seek clarification on the four proposals or four scenarios that they had previously shared with the group, although those four

proposals were I or four scenarios were not actually included in the said communication.

What I see this recommendation as saying is, "Let's pause until we get a response." The concern that I think Alan and others—what I have gleaned—is that they are concerned about having a hard pause in the work. And I am sympathetic to that because there is nothing in the response ...

So if they say, "Yes, we'll help," great. We could still continue to go forward with our work. If they say no, does that mean we can't go forward? And the fact that there already ... As is made clear in the new Recommendation 4, I think the IPC speaks to the point of how, under Article 6(1)(f), there is a way of perhaps doing this testing now using existing PII data.

So that is how I see this particular issue based upon the discussions that have taken place in the past, today, and what has been proposed. That's what I'm seeing. And what I'll do now is, Lori, do you want to speak to ...

I think what the IPC is proposing is that you want the triggering pause event not to be the communication, but instead the issuance or the publication of the Data Processing Agreement between ICANN and the contracting parties. So you have the floor to explain that proposal.

LORI SCHULMAN:

I wanted to make clear that this proposal is not here to upset the applecart. The thinking here is that, in terms of pausing until we get answers from the EDPB is certainly laudatory and good, and

my ... Not just my concern, but the concern of my constituency is that it could be an extremely long time until we can get answers. And in the past, some answers we have received have been quite vague.

So pausing for this reason, to us, could potentially indefinitely pause the work, which would not be a good thing. Or it could create more questions than it answers, which would then create delays. And perhaps we could find a reason. And what the EPDP and the European Commission ... How they act is really not within our control. So the idea is maybe we could put milestones in here that ICANN can control in terms of how we pause.

So the thinking was, in listening to the prior conversations—and to be frank about it, listening to NCUC, which we do and have—perhaps the greater need is to have a Data Processing Agreement in place which would create parameters on how data can be shared. We understand that this is a desire of the contracted parties as well, and that there could be consensus that this is what we would need to figure out how we could test, why we could test, how information could be exchanged.

So we suggested this recommendation as an alternative because we agree, we don't have enough information to move forward. We don't have very strong legal opinions about certain aspects of data that we're trying to look at. White hat testing is one of them that we just raised. But also the idea of how information can generally be exchanged in any audit now under GDPR.

Plus, we have heard in other venues as well that this absence of a Data Processing Agreement has really slowed down work for the

contracted parties as well. So we thought this might be a reason that's well within the community and ICANN Org's control and the negotiator's control rather than leaving it to a third-party body. So, that was the thinking.

So if the consensus is that the recommendation to wait until we have an opinion from an outside party, that's fine. We don't necessarily object, but we would really prefer to have something in there that's concrete that we can complete inside the ICANN bubble, so to speak.

Okay, Becky. Thank you. That the EC is responding. "No commitment re EDPB response." Thank you for that clarification. I had been under the impression we would wait for both responses.

With that being said, I would like this group to consider this and, again, at least combine it with Recommendation 3. Maybe there's two reasons. But if you think that this is going to be an unnecessary drag, I'm open to that as well. But I just didn't want this particular topic which has been discussed ...

And I don't believe we ever really got to a good conclusion in terms of the concerns of a lot of different parties that we should perhaps consider it here. Not dying on the hill, but offering it as an alternative.

MICHAEL PALAGE:

So, Becky, I'm just trying to read in the chat. Could you just speak to what you said in the chat? To have that on the record for someone that may just be listening verbally or to the audio recording.

BECKY BURR: Sure, no problem. In the Board/GAC interaction meeting at ICANN74, we did have a discussion about ICANN's request for assistance. And we had an exchange with one of the EU GAC reps who did indicate that the Commission would be responding to ICANN's request.

MICHAEL PALAGE: We don't know what that ... Do we have an estimate?

BECKY BURR: We have no idea what the response will be, obviously. And obviously, there's no commitment that even if they did reach out to the European Data Protection Board, they would necessarily respond. Merely that the Commission itself will be responding to ICANN request.

MICHAEL PALAGE: Thank you, Becky. And we are fast approaching, so, Sophie, I'm going to give you the floor.

SOPHIE HEY: Thanks for that, Michael. I just wanted to say very quickly, building on Lori's point about potentially combining the alternative proposal on the DPAs. Maybe it could work if we set up the Scoping Team recommendation three. So it's an either/or situation. So that either we get the proposals, the feedback from the European Commission, or we get the sufficiently clear—sorry, I'm messing

up my words here—or we get the DPAs in place with contracted parties. So I just wanted to give a bit of support to that, from Lori. Thanks.

MICHAEL PALAGE: Thank you. Sarah, you have the floor.

SARAH WYLD: Thank you. So, doing Data Protection Impact Assessments, also called Data Privacy Impact Assessments, is a huge part of my day job. So I would consider myself pretty expert at those. An essential part of a Data Protection Impact Assessment is understanding and documenting the legal basis for processing data.

So I'm not clear that we could possibly do a DPIA until after the conversation with the European Data Protection Board has been concluded because that conversation is where ICANN will get that clarity as to whether they have a legal basis for processing personal data or not.

I am definitely in favor of doing a DPIA before we proceed with any personal data processing, but I don't see how we can do that without knowing the legal basis. And so it seems to me that the original Recommendation 3 is the correct pause and resume point. Thank you.

BECKY BURR: Michael, can I just respond?

MICHAEL PALAGE: Sure.

BECKY BURR: Sarah, I just want to be clear that part of the exchange with the European Commission representative was them making the point, which ICANN acknowledged was true, that in order to go to the European Data Protection Board, we have to prepare a DPIA.

Now that that work is already underway, it may include an analysis of alternative legal bases. But I don't think that the ... It's certainly the view of the Commission, and I think consistent with other views that we've received, that in order to effectively ask the question, we have to have a DPIA prepared.

MICHAEL PALAGE: Thank you, Becky. Alan, you have the floor. Greenberg.

ALAN GREENBERG: Thank you very much. A couple of brief points. My understanding of going to the European Commission was that if we go to the Data Protection Board, they can basically ignore us. They don't have to answer. But if the EU goes to the Data Protection Board, then there is an obligation that they respond. That was my understanding of why we were involving the European Commission as the conduit for this request.

And I'll just note. You had made mention to the four scenarios. Those four scenarios, it was clarified, were not necessarily related

to the Data Protection Board. Several of them had no PII in them at all and didn't require anyone's permission to do.

In terms of the Impact Assessment and a Data Processing Agreement, anything we come up with right now is going to be conservative, based on our current understanding. And, yes, we can come up with a Data Processing Agreement and an Impact Assessment.

The response from the Data Protection Board may give us reason for modifying those and allowing things which otherwise might not have been modified. So let's not presume that the Data Processing Agreement is going to be the end all. It's likely to be very restrictive right now because we don't know what we can do.

So waiting for the Data Processing Agreement will likely tie our hands more than anything else. Ultimately, it would be optimally, rather, if we should get the response from the Data Protection Board for scenarios which we have to develop.

I think this group should be part of the group developing the scenarios to present to the Data Protection Board. And we also have discussions that could be done on Question 3 and 4 without waiting for the answers.

So my personal feeling is, I think we all need to pause. Some of us are very tired. But I don't think the restart should be triggered by these things. I think we should take a refreshing break and then come back and address some of our work, including the scenarios. Thank you.

MICHAEL PALAGE: Scott, you have the last word today.

SCOTT AUSTIN: Well, that's a big responsibility. I'll try to do the best I can in a very short amount of time. But I am going to refer again to Sarah because she had put something in the chat that I thought was useful. And my thought is that in identifying the testing, rather than trying to reach consensus on some summary term, identify it by its objective.

And in there, she had mentioned that audits focus on adherence to WHOIS accuracy requirements and then inserted some terms that I thought could be useful in identifying the testing by its objective. And “testing collection and verification processes to ensure that data is appropriately validated and verified” was what I came up with.

Of course, drafting on the fly is not the best, but just as a thought. And that's my final thought. I have spoken.

MICHAEL PALAGE: So, we are over time. I need to speak with all of the rest of the ICANN Org Team about ... We are going to need another call, I think, so I'm going to end this call right now. I will send something to the list as to when we meet again.

So, yes, before we break, what I'm going to do, Alan, is I will send an e-mail to the list with guidance on those statements—when they may need to be submitted and when we potentially have a next call. So, we are not done. We will be meeting again. I just

want to sit there, process everything that occurred over the last 90 minutes, and figure out what is the most prudent path forward to wrapping this up and getting this submitted to the Council. Okay?

And with that, we can stop the recording.

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

[END OF TRANSCRIPTION]