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## ICANN Transcription

### Registration Data Accuracy Scoping Team

**Thursday, 25 August 2022 at 15:15 UTC**

Note: Although the transcription is largely accurate, in some cases it is incomplete or inaccurate due to inaudible passages or transcription errors. It is posted as an aid to understanding the proceedings at the meeting, but should not be treated as an authoritative record. Attendance and recordings of the call are posted on agenda wiki page: <https://community.icann.org/x/uYKLD>

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TERRI AGNEW:

Good morning. Good afternoon and good evening and welcome to the Registration Data Accuracy Scoping Team taking place on Thursday the 25<sup>th</sup> of August 2022 at 15:15 UTC.

In the interest of time, there'll 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 Owen Smigelski and Olga Cavalli. Leaving a bit early from the meeting today will be Mason Cole and Lori Schulman.

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 chat feature, please select the drop-down arrow and change to Everyone in order for all to see the chat and so it's also captured on 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 parenthesis 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.

Alternates should not engage in chat apart from private chat or use any other Zoom room functionality such as raising hands, agreeing, or disagree.

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 or to comply with the Expected Standards of Behavior .

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

MICHAEL PALAGE:

Thank you, Terri. Good morning. Good morning, good afternoon, good evening, everyone. As I think we've stated, I don't want to jinx this but hopefully this is our last substantive call before we

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could release Assignments 1 and 2 to the Council. Our goal today here, really, I want to start off by jumping into Recommendation 3 and trying to work through that. I'm particularly mindful, as Terri said, that a number of us need to leave shortly.

Before I do that, are there any particular questions or concerns before we start jumping in with that process? Lori.

LORI SCHULMAN:

Yeah. I have one procedural question before we get to substantive discussion of Recommendation 3. Seeing how the wording has been revised, if that wording stands and this is what we agree will be in the final report, that does mean, however, that the suggestions that we put in the Gap Analysis remain since they came from each constituency. That's not something we all have to agree on. The idea of certain types of surveys, audits, and testing that are in the Gap Analysis stay there so that at least it's on the record. I just want to confirm that's so.

MICHAEL PALAGE:

I don't know the answer to that question. Marika ... I knew you would.

MARIKA KONINGS:

Yeah. Thanks, Michael. The Gap Analysis is currently referenced through a link as a possible starting point to look at. And so, at least from a staff perspective, we would leave that as is. I think it clearly shows as well that certain comments have been added. There are still redlines in there. So hopefully for the reader it's

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clear that that is not necessarily a small team product or final product. But it reflects the conversations that have taken place that will continue assuming, that the Council is agreeable to moving forward with that specific recommendation.

LORI SCHULMAN: Okay. So I think that's kind of a yes. Again, it would make a difference in terms of how we think about Recommendation 3. So I appreciate that. Thank you.

MICHAEL PALAGE: Okay. So with that, I think the best thing to do here is go to the documents that we have. Let's pull up. Okay, Volker, hold on here. So Marika, do you want to lead us through this proposed text here on Recommendation 3? Well, they alternate 3 and 4 text. I know there were some last-minute changes that were made. And there, I think, appears to be some agreement, so hopefully this is something that we can reach consensus on.

MARIKA KONINGS: Sure, Michael. So this alternative text proposal is something that the Staff Support Team worked on together with leadership in an attempt to bring together the original Recommendation 3, the alternative 3, that was suggested by the IPC and a new proposal of Recommendation 4. Again, trying to maintain, I think, the general aspects where the group has at least discussed and seems to agree, but maybe taking out some of the words that caused confusion or could be seen as too directive.

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So what we tried to do here is, in the first paragraph, basically recognize that there are external dependencies that will likely impact the work of the group when it comes to proposals that require access to registration data. Because, as a reminder, this is in the section that pertains to proposals that require access to registration data.

And there was a question on that as well. We've taken out this reference to a pause which was in the original Recommendation 3, which I think some had understood to mean that all work would be paused. But again, this was very specific to the consideration of proposals that require registration data. So we hope that the rewording of the first paragraph still conveys that that is clearly a dependency. It takes out this reference to pause which may be misunderstood as meaning pausing all of the work in conversation on the topic in general.

And then the second part aims to reflect, I think, some of the points that have been made that there is indeed this dependency. But there's also a sense of urgency to that where the Council could maybe convey that to ICANN Org and make sure, as well, that regular updates are provided on that work, again, as that is a dependency. To make clear that that is something that the group would be waiting for and a kind of trigger for continuing this conversation on proposals that require access to registration data.

And then, that last sentence ... And I think that's where it seems a number of comments have been made and where the group may need to discuss what it is willing to agree on. It's also noting the

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importance of finalizing the Data Processing Agreement between ICANN and the Contracted Party that was, I think, the concept or the alternative 3 recommendation language.

And then, as well, highlighting the potential importance of focusing on the scenario that would focus on a subset of registration data. For example, those that are obtained through the monthly DAAR report as a potential scenario that needs to be tested with the EDPB.

So again, I think that's what ... We tried to bring it all together with the idea of coming up with an approach that, hopefully, everyone would be able to live with, kind of reflecting the different points and conversations that have been made. But as said, I think there are some specific suggestions, in particular on the last sentence here. And I note as well that there was, I think, one specific suggestion or request here on the regular updates to be provided to Council.

So I think I'll just pause there. And I see, already, hands up, so I'm sure that [we'll cover the] comments.

MICHAEL PALAGE:

All right. Thank you, Marika. And I think we have a clear path on how we're going to eat this bite-size to wrap up this recommendation.

Alan, you have the floor.

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ALAN GREENBERG: Thank you very much. I just wanted to expand on the two comment to what I think are the important comments I made. Number one is the issue of regular updates on the outreach to the European Data Protection Board in conjunction with the European community. This is a group which is supposed to be scoping things which might lead to policy.

And as such, I think we have a very dangerous situation if the outreach to the European Data Protection Board and similar authorities is done purely by staff with no involvement of the multistakeholder community. We end up with them potentially asking a question or getting an answer which is not particularly relevant to our work and which doesn't help us. So since we're waiting, we believe this is an important part of the process. I think we need to be involved to make sure that the questions we're asking, the scenarios that we are proposing ...

Remember, we had a document which is titled Scenarios, but it wasn't really scenarios associated with the outreach. They were other scenarios. So I think it's really important that we be involved in vetting the scenarios that are going to be proposed to make sure that they're really addressing the issues that we believe have to be addressed. It can't be purely led and carried out by staff without any multistakeholder involvement. So we need more than updates. We need involvement in that process of building the scenarios.

And number two, the data impact analysis and Data Processing Agreement are important components, but recognize ... I think we need to clearly recognize, for those who have not participated in this discussion actively, that both of those might be impacted by

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the results of this consultation. We might be told that, yes, it is fine for ICANN to get access to certain data. And that would impact both the data access agreement and potentially the impact analysis. Thank you.

MICHAEL PALAGE: Brian, you have the floor.

BRIAN GUTTERMAN: Hi, everybody. I just wanted to acknowledge. I appreciate the comment, Alan, on this about continuing what I think has been good collaboration. I know we haven't talked about the scenarios work in depth in this group since probably when we sent our formal correspondence, which was posted to the European Commission asking for their assistance.

I think I just want to reiterate that or really will continue to work in good faith and collaborate. This work has been ongoing in the background— the DPIAs and the scenarios—which have built off what we did put together in this group initially. So I think it's there and we will continue to listen, as the recommendations say.

As we continue this work moving forward, I think everybody understands that the Org will ultimately hold the pen, but we certainly intend to give this group, and the broader community for that matter, a chance to comment and give input before that's ultimately submitted formally for consideration of data protection authorities.



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So I hope that helps, and I just wanted to reiterate that from the Org perspective, speaking on behalf of my colleagues that are leading that initiative internally.

MICHAEL PALAGE:

So if I can ask you. One thing that you said there, Brian, that caught my attention is “the greater public.” I think it was this group and the public at large. Do you envision, potentially, ICANN making use of a public forum? The last time I think ICANN/Elena shared with this group the comments, we had a consultation. If in fact this group goes into a hiatus or a lower-frequency meeting, do you foresee that, ICANN consulting the broader community? Because these are important issues. How do you see that engagement with that broader community working?

BRIAN GUTTERMAN:

Thanks for the question. Yeah, I guess I wasn't implying that we would do some sort of formal, broader public consultation. But I'm kind of assuming that this topic more broadly will be discussed, for example, in Kuala Lumpur. And it won't just be this smaller group of folks who will have a chance to take the microphone and to have their opinions heard on these broader topics about the engagement work.

And in terms of bringing in Elena or others who are working more directly on it to consult with this group, I think that's something that we can certainly do when the time is right. So I hope that helps. But, no, I didn't mean to say that were planning on some kind of formal, public consultation. I just wanted to reiterate the good faith

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effort of collaborating on this because everybody's interests are involved here.

MICHAEL PALAGE: Okay, thank you. Beth, you have the floor.

BETH BACON: Thanks. Hi, everybody. Oh, I'm sorry. I saw Alan's hand go up. Alan, do you want to respond and close that loop on your conversation? I can wait.

ALAN GREENBERG: Thank you very much, Beth. I just wanted to comment that I wasn't presuming that ICANN Org would not interact with us. I just felt it was really important that the document that we're publishing make that really clear, that there would be interaction. Thank you. And Beth, thanks for giving me a chance.

BETH BACON: Oh, sure. No problem.

MICHAEL PALAGE: Thanks. Beth, for being so polite, you now have the floor.

BETH BACON: Thanks. I always feel like it's easier for us to close a thought and move on. Alan, to comment a little bit on what you were saying, I

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think what Brian explained seems super reasonable. And I appreciate their dedication to consulting with us.

I did feel like we spent one or two dedicated meetings on scoping those scenarios and provided input. So I felt pretty good about that. And I do still support, and I think I said it in those meetings, I do support that this is ICANN's work. They're reaching out as ICANN to the European Data Protection Board or European Commission to do an [inaudible] about their data flow.

So while I super support us getting the scoping that we did—and then I also really appreciate ICANN's willingness to come back and keep us updated and involved—I do feel like that is an ICANN task and I think that's appropriate. And certainly, it might influence our work, but I think it's an ICANN task. So I think that I'm fine with that.

I did still have some concern. I saw on the chat that some folks are supportive of taking out that DAAR language, and I think that's great. I think it gives us more flexibility, actually, as we go forward and do that work. But I am a little concerned with “finalizing the Data Processing Agreement between ICANN contract parties”—having that language in there simply because it's already a recommendation out of Phase 1. So it's a Board-supported recommendation. That work is underway.

And while it might impact some of the data processing in general, once you have a Data Processing Agreement in place, which is generally pretty standard, I think that ... I mean, it should be well crafted enough that it would cover the scenarios no matter what

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happens with this work. So I don't know that I'm dedicated to having that in there.

And I'll just close with the fact that I appreciate all of the work that has been done on this and the suggestions. I think the main concern that was voiced and the reason we started with some changes was that folks were concerned that this would pause the work. And I think at this point, it's very clear that we're not pausing. We have things that we can work on, important stuff to do. And I feel like the language in this report is clear that we don't recommend a full pause, just a pause on certain things that are dependent upon other work.

So I think as long as we are clear that there's not a pause and that concern is covered, then I feel like this some of the previous language that we had previously agreed is sufficient to say, "We're not pausing. We recognize that there's still work to do, and this is kind of the work we're going to do." But I'm supportive of being very clear and clean and not muddying up what we're doing with other work. But I appreciate the time.

MICHAEL PALAGE: Lori, you have the floor.

LORI SCHULMAN: Thank you. With regard to the language in that last sentence that was highlighted by the RySG, we agree with the RySG and the IPC that leaving out the DAAR reference ... We're fine with that because, I do agree, if we start looking too instructive in the high-

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level part of the report, it could be constraining. So that we would agree.

However, we disagree with omitting references to the DPA and the DPIA simply because this has been a recurring theme in the conversations with this group in the last year. And I think it's really important to have the consistent messaging come across, even if it's been recommended and agreed upon in another report, because my understanding is that things are not moving as well as we would like as a community. This is what we're consistently hearing. And I think it's important to support the process by reminding the community of the importance. So I am strongly in favor of keeping the language in.

To Alan's point, I had also made a suggestion—and Brian's point—I made a suggestion in the chat. While agreeing that this is ICANN's work, perhaps we can say, when it goes to the top of the ... I forget where the wording is about giving status reports, and maybe perhaps provide the words “in consultation.” I'm not sure about how that consultation would work, but I think more than a status report is necessary. And in that regard, I agree with Alan.

So what I have suggested is “consultation.” Just as were consulted on the scenarios, we may be very helpful and be part of the consultation for when we get the answers back about how we may adapt scenarios if those answers are not fully supportive of the scenarios. Thank you.

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MICHAEL PALAGE: Thank you, Lori. So Beth, Lori, I think heard you and agreed to some changes. Do you agree or do you still feel that those other references should be omitted? I'm not putting you on the spot. If either any registry or registrar could speak to that. But you have your hand up, so you have the floor, Beth.

BETH BACON: Yeah, Lori. I really appreciate that. Yeah, I'm not going to die on this hill. I think that's fine. I think consultation is perfectly reasonable, and I think that's in line with what Brian explained. So that's kind of where my head was at.

Oh, I'm seeing Sarah has a suggestion. "So maybe we can put the urgency, the consultation, and the DPA into the original Rec 3." And I think that's a really good solution. Kind of a balance there. So we have the mention and we have the urgency, but we have the previous language that we had agreed.

And I'm glad you want me to live. I also want to live so that I can hang out with you guys in Kuala Lumpur. But, yeah, I think that's a nice compromise solution. So Lori, what do you think about Sarah's solution as well? Maybe we need to put eyeballs on that.

LORI SCHULMAN: Yeah, I was going to say it sounds reasonable. I just wanted to read it in the whole ... Yep. And then can we put in the ... If we take out the DAAR reference, can we put in the last sentence that refers to the DPA and DPIA? That I feel would be ... You know, hearing what NCSG has supported our thinking to keep the references in to the DPA and the DPIA. We could do that. Keep

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the top three, put in the urgency language. I think that's very good, and I appreciate the suggestion.

Yeah, I think that as a whole is a good compromise. I could work with that. I mean, not I. The IPC. We'll put the "I" in IPC. Sorry, guys.

MICHAEL PALAGE: It's good that you still have a sense of humor after one year.

LORI SCHULMAN: I know, sorry. Yeah, I think that works. We could live with that because it gets to the heart of some of the real concerns.

MICHAEL PALAGE: Sarah, you have the floor. And then Volker, you're next in the queue.

SARAH WYLD: Thank you. Oh, can you hear me?

BETH BACON: Yes.

LORI SCHULMAN: Yes, we can.

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SARAH WYLD: It's not lighting up. Okay, thank you. So, I kind of apologize for typing in the document because I think I wasn't supposed to. But I have a hard time thinking about these text changes without seeing it. Right?

So what I've tried to do as Lori was talking is... As you'll see, I brought up the "proceed with this outreach as a matter of urgency." I really liked that phrasing. I put the consultation after "the updates."

And then that final sentence in there. So, finalizing the DPA with ICANN and the contracted parties. Yes, that is very important. And I changed it from a data privacy impact assessment to a Data Protection Impact Assessment. I think both of those are phrases that people use, but I'm more familiar with the second way of referring to it.

And then I took out a little bit at the end of that sentence because it seems like there should be a DPIA for any and all scenarios where processing of registrant data takes place. And maybe this is a registration data rather than registrant. So I took out "in relation to a subset of domains" because it should be for any domains where that is happening.

I would appreciate feedback as to whether that should be "registration data." I think it should. Thank you.

MICHAEL PALAGE: Thank you, Sarah. And as the registrant of palage.com, I appreciate that rewording. Volker, you have the floor.



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**VOLKER GREIMANN:** Yes, thank you. I'm not quite convinced yet that the Scoping Team for Data Accuracy has such a role to play to call out what happens between contracted parties and ICANN with regard to data processing. I think data processing and the DPIA are very important topics that need to be discussed between ICANN and the parties involved and that need to be handled at some point. I just don't think that it is our role as the Scoping Team for Data Accuracy to make that call, especially not really having discussed this matter in the past to that depth. I think that is beyond our scope, and I think we should refrain from making such a recommendation in our recommendations.

I think we should stick to what our scope is, which is essentially making sure that ICANN has the tools available or recommending that ICANN have the tools available to make those determinations that we wanted to make. But how it's going to do that and what processes it's going to employ for that, I think that should be left to ICANN and the contracted parties, and we shouldn't be making that recommendation here. So I would still favor striking the entire green section here.

**MICHAEL PALAGE:** Sorry, it took me a second to get off of mute. Thank you, Volker. So my question to you, is ... As I said to Sarah, I'm the registrant of palage.com. ICANN, my registrar; Verisign, the registry—they're all processing my data. So where would a registrant have the ability to have their voices raised or concern in how their personal data is being processed, if this is just a bilateral negotiation

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between ICANN and the contracting parties? I guess that's my question to you, Volker. And then—

VOLKER GREIMANN: That's very easy to answer. The registrant has the ability to select their registrar based on the agreements that the registrar offers to them. And certain registrants also have the ability to negotiate part of their agreements with the registrars in case they have certain market power or the registrar really wants their business. And in a lot of cases, registrars have special registration agreements for special registrants.

That's the place where they can basically make that call. I don't think the place is within then the Scoping Team for Data Accuracy. Thank you.

MICHAEL PALAGE: Sarah, you have the floor.

SARAH WYLD: Thank you. I think I was a little distracted. I think I agree with Volker, but I have a little bit of a different perspective as to how that question could be answered. So the question I understood from Michael is where does the domain owner have the opportunity to raise concerns about data processing happening in this context that we're discussing to figure out about accuracy. And that's a really important question because, of course, we should be considering the data subject's right to privacy. Absolutely.

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So I think it actually comes back to the DPIA. A Data Protection Impact Assessment is for, as I think of it, three purposes. It lets us document what data processing is happening. It lets us identify the risks to the data and find mitigations for those risks. And it lets us determine if disclosures are needed and how those can be done. So here, the data controller is ...

Well, sorry. And so then a separate thought is that a data controller is limited to the initial purposes for processing data that they have disclosed. And if they want to process data for other purposes, they might need to do further disclosure to getting more consent.

So I think the Data Protection Impact Assessment would help to answer that question as to what further needs are there for protecting the domain owner data subject. And I'm not sure if that's really a thing that we need to deal with further in this group. Right? Like, we're recommending that we don't do anything else about processing personal data until we know if we have a viable path to do so. And then at that point, the group that is appropriate to do that work can do it. Thank you.

MICHAEL PALAGE: Marc.

MARC ANDERSON: Whew, a lot going on. I maybe want to take a step back for a second and maybe ask, Michael, you to level set with all of us sort of what happens next. I know we're trying to finish this up so we

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can get the initial report out to Council, which I fully support. I'm very excited to see that go.

But I'm also cognizant of the fact that we've devolved into a group edit exercise, which I think is a little bit dangerous. So I maybe want to touch base with you, Michael, and see what your thoughts are on how we go from here, how we're going to wrap this up.

And then also, I have a couple quick comments about the text in green. These are kind of pet peeves of mine that I want to mention without commenting on whether I support the text or not. But a pet peeve, I don't like saying "The Scoping Team would recommend ..." What do you mean we "would" recommend? Either we're recommending it or we're not. So that's a little bit of a pet peeve of mine. If we're going to make a recommendation, we should mean it.

And then the other pet peeve of mine. That's quite the sentence and it's really two different points, and I don't like conflating two different points. We have the first point about finalizing the Data Processing Agreements, and then we have the second point about the Data Protection Impact Assessment, the DPIA. Those are two very different things, and I don't like conflating them in the same sentence. So if going to recommend those things, I think we should call them out separately as their own separate points.

So again, sorry, that's just like my pet peeve there speaking. Thank you.

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MICHAEL PALAGE: Put it this way. I appreciate your grammatical edits, and I think Marika has already made that as well. And I do think it's important—and perhaps Stephanie would speak to this as well—but, yes, the Data Processing Agreement and the DPIA are two distinct documents. And I will let Stephanie speak to how distinct they are in the importance that she has been advocating regarding the DPIA over the last decades.

Stephanie, you have the floor.

STEPHANIE PERRIN: Thanks very much. I don't want to go off on a tangent here, but I do think that we should note here concerns that I've also raised before. And that is the famous picket fence, the contours of the famous picket fence. I always quibbled about whether the data protection stuff was being properly aligned on the public side of that picket fence, as opposed to only between ICANN and the contracted parties. And I do harbor the same possibly paranoid concerns about accuracy.

I agree it's a difficult line to draw. You guys have a contract. It means real money. But now that we are attempting to implement data protection into these agreements, it does seem rather important that that Data Protection Impact Assessment be a public process. The Data Protection Agreement may be a private process between you and ICANN—and I realize these things are going on now—but aligned with a more public process on the Data Protection Agreement.

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And in answer to Becky's question in the chat about which side of the picket fence data protection falls into, that's a policy issue that was discussed. It's been the subject of PDPs.

Now the accuracy question? Clearly, we haven't quite resolved that. At least it seems clear to me that we haven't quite resolved it, as to which side of the picket fence it falls on. And accuracy is really one of the big concerns of any data subject. If I have to do a retinal scan with ICANN, it's not just the question of the intrusion of that retinal scan. It raises all kinds of security concerns.

Just like I never leave my credit card on file with a merchant, although I probably think they keep it anyway. But I always tick the No box because there have been so many data breaches. I can't keep up with how many people have offered me Equifax coverage because of their data breaches.

So, similarly, how data processing arrangements are carried out by ICANN remains a concern of registrants, on whose behalf we fight to secure their rights. So it becomes a policy issue that I think is of concern to the multistakeholder community.

Anyway, I hope I'm making myself clear there, and not totally obscuring what I'm trying to talk about. I'm just raising a flag here that these things are of interest to the rest of the community. Thanks.

MICHAEL PALAGE:

Thank you, Stephanie. Just a quick time check here, everyone. We're going to be losing Mason and Lori at the top of the hour. So Beth and Alan, if you can keep your comments really brief

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because I would like to get back to both of them to see where they are in the proposed wording, I think that would be important.

Beth, you have the floor.

BETH BACON:

Yeah. Thank you very much. So I think I can I agree with Volker. I ended up putting this a little bit in the chat. I can agree that this stuff highlighted now, I guess, in yellow. I don't know what color you guys see it in. Google Docs, it's a gift.

It's not necessarily accuracy, but I think what we're saying here is just that we have to be aware of it. I don't think that it's trying to bring the DPA, the work of the other groups into this group. It's just being aware. So, I'm okay with that.

While I do agree with Volker, yeah, in an ideal world, I don't think that we ... Like, we could do a super clean line and get this out of there, but I don't think that this is trying ... And I think I see Lori in the chat agreeing. I don't think it's trying to bring that work and make it part of our scope. I think it's just saying that this might influence the things that are in scope, or in 4.

So I think I'm okay with that. If other registries and registrars want to send me bags of poop or something in the mail, that's fine. I get it. But that's where I am on this.

MICHAEL PALAGE:

Alan, you have the floor.

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ALAN GREENBERG: Thank you very much. I'll be quick. In terms of the DPIA, my understanding was that this is a prerequisite of going to the European Data Protection Board. So presumably that is inaction, and it's covered by the references to the consultation.

The DPA also is not a part of our scope, but we have mentioned a number of times that the lack of a DPA makes our work that much harder. And I see absolutely no reason that we can't mention that. You know, we're not saying we want to be involved in building it. But simply putting out the notice saying it's important to us, I cannot see why we would not want to do that.

In terms of the Stephanie's reference to the picket fence, I'm afraid I don't understand it either. The picket fence is, very [quick], simply defined as delineating what is eligible for PDP policy work within the Registrar and Registry Agreements. It says that there's a list in the RAA, and I think a similar list in the Registration Agreement, of what is eligible for policy. And things that are in the contract that are not within that list are not within the picket fence. And we cannot make policy which the Board can put. So I really don't understand Stephanie's reference at all.

In any case, I would like, going forward, if you're going to ask us how do we stand on a position, I would like clarity on what it is we're approving right now. I think it's the original Recommendation 3 as modified plus what has been added at the bottom as the alternative text. But I'm not quite sure because the reference to, for instance, consultation on the outreach is only in the second part, not in the first part. Thank you.

Okay, sorry. I hadn't seen the word "consultation" there.



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MICHAEL PALAGE: There you go. Marika on the fly providing a necessary highlight. So what I think is ... Stephanie, is that an old hand or a new hand?

STEPHANIE PERRIN: Old, old hand. Sorry.

MICHAEL PALAGE: Okay. So what happens is, and hopefully ... Is that an old hand as well, Beth? Yes, it is.

So what happens here is ... I always say consensus is when people stop talking. And I don't mean to jinx this, but can this group live with what is currently highlighted as Recommendation 3? Okay, so I am going to say silence is acceptance right now. Okay.

Sarah.

SARAH WYLD: Thank you, yes. I was just trying to make the last part to be two sentences—because, you know, it is more clear—which then made me wonder who are we expecting to do the Data Protection Impact Assessment?

MICHAEL PALAGE: I think the answer that we've heard is that that's going to be staff. That was my understanding. I think they already said staff was

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beginning to frame that out. Brian, could you speak to that? I believe ICANN has already started working on that. Is that correct?

BRIAN GUTTERMAN: Yeah, that's correct. That's well underway, led by a Legal Team.

MICHAEL PALAGE: Okay. And as Brian had just said, as part of the openness, transparency, and those other commitments, that hopefully will be shared with the community through KL and future engagements with this group and the broader ICANN community as well.

So, does that answer your question, Sarah?

SARAH WYLD: I think so. Thank you. Now it just feels like we've got a lot of stuff in this recommendation. Maybe it should be a bunch of different ones. There's four different things. I'm sorry.

MICHAEL PALAGE: But what happens is, we've ... We'll call it the compound recommendation. Marika, you have the floor.

MARIKA KONINGS: Yeah. Thanks, Michael. I think the second paragraph and the last paragraph are both directed to ICANN Org. So that's why I originally suggested combining those or maybe putting those

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together because, again, from my perspective, it would be ... If the Council agrees with the recommendation, it would then be translated in a specific request that is sent to ICANN Org and ask them to proceed with the matter as a matter of urgency, as well as proceeding with the Data Protection Impact Assessment in connection, [etc]. So those are two requests that are for ICANN Org.

The last one, calling out that probably would also be done in that same communication, which would then also, of course, be referenced, I think, to contracted parties because, again, it's something that happens between ICANN and the contracted parties. And that may be a way of logically organizing it, as it's basically requesting the Council to say something to ICANN Org on those three aspects.

And of course, that last aspect of the DPA is also one that's directed to contracted parties who could be copied or cc'd in that outreach or have a separate note or whatever from that. Thanks.

MICHAEL PALAGE:

So what I am going to do is call to an end of discussion and editing to Recommendation 3. Seeing no objections. I think we now need to go back to our agenda, which is next steps. Which I think, Marc, this is one of the things that you were talking about.

So now that I think we have reached agreement per the agenda, Marika will now take this document and will work with the rest of ICANN Org in producing a final clean version that will be available tomorrow. I don't believe, based upon the group reaching

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consensus on Recommendation 3, that there should be the need for, what is it, any ...

Volker? You have the floor, Volker.

VOLKER GREIMANN: Before you call consensus on this, I still feel that while it's important to call these points out and that it certainly will be helpful for our future work, it should not rise to the level of a recommendation.

Therefore the word "recommends" should rather be replaced with soft language that we "recognize the helpfulness" or "recognize that for further continuation" of our work, this would be important, or something like that. Simply because I feel that our recommendations should focus on our actual task and our actual scope and not delve into things that actually would be part of a different discussion. Thank you very much.

MICHAEL PALAGE: Okay. So I guess my ... How would I say this? So you object to the word "recommendation" in those two sentences, although the verb or the call to action actually appears in a subsection entitled Recommendation #3. So, again, I don't want to get into semantics and wordsmithing here, but if you have an alternate word that you would like to appear other than "recommends" in those last two paragraphs, pull out a thesaurus. And I'm open to see what the rest of the group says.

Marika.

MARIKA KONINGS: Yeah. Thanks, Michael. I just want to note, because the recommendation is to Council to make a request to ICANN Org. It's not about recommending specifically to the DPIA or the importance of that. It's basically recommending that the Council calls that out in its communication. So I don't know if that helps.

And as said, this is in a recommendation section. If the group is recommending the Council to do something, it will need to be in the form of it "recommends that ..." But if it's about the language of how the Council is expected to convey that, maybe there are other words that could be used. But as said, I think unless the group agrees that there shouldn't be a recommendation to the Council to do something or to state something, "recommend" seems appropriate in this context here.

MICHAEL PALAGE: Okay. So Volker, does ... I think Marika articulated very well that this is going to the Council. So if in fact we have gotten something egregiously wrong, there is the ability for them to take the appropriate steps before, in fact, passing that on to ICANN Org. So in light of that, do you withdraw your recommendation or do you have alternate an alternate text or word to use? Do you still have your hand up? Are you on mute?

VOLKER GREIMANN: Yeah. I don't have the perfect text right now because, obviously, this is editing on the fly. I just feel that, as Marika said, the

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recommendation that we are raising is the top part—the pausing of the work and that the outreach continue. And I think for the ...

Then at that point, we should note that further work on the Data Protection Impact Assessment and the DPA are also important. But I would not raise that to the level of a recommendation here.

So, “recognizes that ICANN Org proceeding with the Data Protection Impact Assessment in connection with a scenario would be helpful for our work and recognizes the importance of finalizing the Data Processing Agreement between ICANN and the contracted parties.” So I would not use the word “recommend” but rather “recognize” and therefore use lighter text, lighter words. Because “recommendation” in the ICANN context has a certain meaning, a call to action. And I think that is beyond our scope for this, at least for these two points.

MICHAEL PALAGE: Stephanie, you have the floor.

STEPHANIE PERRIN: Perhaps you could reword it in the following way. “The Scoping Team recognizes that in order to proceed with the above recommendation, namely that ICANN Org proceed with their outreach to the EDPB, it is necessary to do X and Y”—the DPIA and the DPA. Because that's going to be the first question. The DPAs are going to ask, “Who's accountable and where's your DPIA?” Thanks.

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MICHAEL PALAGE:           Yep. So here's what I'm going to do. Stephanie, I don't disagree with what you just said. My concern, however, is that would constitute a potentially more substantive rewriting of the text that may give issues. Volker, as I said, the fact that the text appears in a subsection entitled Recommendation, I am going to ... Okay, I'm inclined to leave "recommends" in just so that we could wrap this up. It would really suck if ... I'm sorry, but it would really stink if we cannot sit there or we would be held from wrapping up just on the word "recommends" in these two paragraphs.

You have the floor.

VOLKER GREIMANN:       Yeah. Before today, it wasn't in the section. It was somewhere down the line. So putting it in this section and then using the word "recommends" I think elevates it to a full recommendation. And I feel that is simply out of scope, and therefore it's inappropriate. I would use softer language.

I have no issue with keeping it in there because I see that there's a connection to be made between the actual Recommendation 3 that we are making. But using the word "recommend" as well as putting it in that section just elevates it to a status that it shouldn't have. Thank you.

MICHAEL PALAGE:       Marika.

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MARIKA KONINGS: Thanks, Michael. Just to note that this language was actually in a new recommendation that was suggested. So it was never, I think, put forward as just context. But it was always framed as a recommendation. It was one that was suggested, I think, more recently. So it is, indeed, new text as such.

I did just also observe that, actually, in this second recommendation what seems to be missing is ... The Scoping Team is not recommending to ICANN Org. It needs to recommend to the GNSO Council. So I think this needs to be replicated basically in that second part, "The Scoping Team recommends the GNSO Council request that ICANN Org proceed." So to be consistent ...

And it's the same, of course, in the last sentence that it's, again, recommendation to the Council to do something. And that makes it consistent because, again, the Scoping Team is recommending to Council, then for the Council to make a decision on whether or not to follow that recommendation. And of course, it's within the Council's scope to decide to do differently or come back to the Scoping Team if it doesn't agree with what is being suggested.

MICHAEL PALAGE: Thank you. And I think that consistency is important and is in line with everything that we just said regarding the limited scope of what, in fact, we are asking the Council to look at.

Alan, you have the floor.



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ALAN GREENBERG: Marika covered pretty much what I was going to say. And that was, regardless of whether the recommendation has the words “we recommend the GNSO Council requests” this is a report to the GNSO Council. It decides what to act on and what not to act on, and we have no communication path directly to ICANN Org. So regardless of whether we are explicit with those words or leave them inferred, they're there. This is a report to the GNSO Council, and the GNSO Council is free to reject everything which they feel is not in their scope to address. So, I'm happy with the words. I don't think we have any conflict here. Or I don't think there should be any conflict here. Thank you.

MICHAEL PALAGE: So what I'm going to do, Volker, is I want to go ... Marika, if you could go back to the agenda real quick for next steps.

If in fact, Volker, you and the Registrars feel strongly about the inclusion of the word “recommends” as it currently appears, you have the ability to submit your statement by September 1<sup>st</sup>, so on Monday. Excuse me, Thursday is September 1<sup>st</sup>. So you would have one week to submit your statement. Again, just in the interest of time and where we're at, I don't feel any further discussion on Rec 3 today would be productive. So that is what ...

So as far as next steps, ICANN Org is going to produce a clean version of the report tomorrow. Statements will be able to, as I said, be submitted September 1<sup>st</sup>. And it is the intention of myself as outgoing chair to submit this report to GNSO Council on September 2<sup>nd</sup>. That is the proposed timeline.

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Is there any objection/concern regarding the next eight days of work that I have outlined here? Excellent. So what we will now do is begin to look at next steps after that. And after September 2<sup>nd</sup>, as I said, as soon as this is submitted to Council, I will be stepping down as chair. So perhaps, Marika, it would be best for you to talk about Item 4—confirm next steps about what you see happening at ICANN75 and what you see happening there.

And just one other quick note to the group. Olga, who has been also part of the leadership team as a designee of the GNSO Council, her term within the GNSO Council is concluding and she will actually be taking a new position on the ccNSO. So there will be, I guess, the need for some additional leadership to be happening.

So did Lori drop? I just saw her ... All right. Marika, you have the floor.

MARIKA KONINGS:

Yeah. Thanks, Michael. In relation to next steps, as we have communicated previously, we did request a session at ICANN75. I think it's the first slot on Saturday morning, at the moment. That originally fit in the timeline where Council would review the write-up at its July or August session and at least, hopefully, give the green light to continue conversations. So that will be kind of a continuation.

And of course now we're in a situation where there Council has not yet had the ability to review the write-up and the recommendations. So the proposal is that with the submission to

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Council, Michael would indicate that a meeting had already been planned which would allow the group to informally continue work on the registrar survey and the registrar audit conversation, but with a very clear understanding that if further work is to continue on that, that will need to be confirmed by the GNSO Council following its review of the writeup.

And of course, if Council does have objection to that conversation taking place, they should indicate that. I think from a staff perspective, we hope that—we have an hour—kind of getting together and maybe throwing out some initial ideas and thoughts on these two items will then help prepare further conversations. Again, assuming that the Council is supportive of those efforts and moving forward. And it might be a wasted opportunity not being able to do that face to face for those that are in attendance. But, of course, no formal decisions or steps will be taken as a result of that meeting.

And of course, I think as well, as Michael indicated, as part of that submission it would also confirm his stepping down. So there will also ... A process will need to be started to find a replacement, so Council will need to discuss how to go about that. I think last time around, it was a call for volunteers in the selection process that took place. So that obviously may take some time as well.

And similarly, Olga is also stepping down as the liaison. So also, a new liaison will need to come in. So I think we need to see a little bit on how that maps out to see how quickly work can be started, which is of course also dependent on the review by Council of the write-up which may already start during the Council session in Kuala Lumpur, presumably also the meeting after that.

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That's, at least from our perspective, the suggestions on next steps and, again, taking advantage of the Kuala Lumpur meeting to continue conversations on these topics. But of course, if there are any concerns from the group in doing so or, indeed, if Council indicates that it doesn't think it's a good idea to do that, we may need to adjust plans. But this is what we would like to suggest at this point.

MICHAEL PALAGE: Alan, you have the floor.

ALAN GREENBERG: Thank you. For clarity, I think one of the results of all of this is that these meetings are suspended until further notice. Is that correct?

MARIKA KONINGS: Yeah. I think at least the weekly meetings will be suspended for now. As said, we'll at least have the ICANN75 meeting, and I think that we'll basically need to wait a bit on Council direction both on moving forward with the recommendations and also making sure that there's leadership in place to lead those meetings. So there's a dependency there.

ALAN GREENBERG: Yeah. Thank you. That's what I meant. Thank you for the clarity.

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MICHAEL PALAGE: And just to also clarify, the list will remain open. Correct, Marika? So if anyone has anything to say the asynchronous means of communication via the list will be available.

MARIKA KONINGS: Yes, definitely.

MICHAEL PALAGE: So unless there are any further questions ... Marika.

MARIKA KONINGS: Michael, just one point. And I know that Lori had to drop. And I think there's also something that she sent to the list with a request for more time for statements. So I just wanted to flag that, as I know she had to drop. And I would like to indicate there, of course, just because something is not part of the report doesn't prevent anyone to submit statements or as part of the Council conversation on this topic to provide inputs. And of course, adding 30 days will push this out quite substantively, especially as well from perspective of Council consideration of the write-up and taking next steps.

But as said, for the group to decide how to proceed with that and maybe also to think about what objective do these statements have because, as I shared with Michael previously, from a staff perspective we're not aware of these kinds of reports having come with statements. It's usually reserved for PDP Final Reports to reflect minority statements where there's disagreement with either consensus designations or recommendations that are being put

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forward. There's not such a concept that I'm aware of in the context of a Scoping Team.

But as said, of course everyone is free to share whatever input they want with the Council, either directly or as part of conversation. So with the group, we need to just take into account the request that was made and see how to deal with that.

MICHAEL PALAGE: That is noted, and hold on ... If I could ... Is Kenneth still on the call or do we lose him? Kenneth, I think the ... Did the GAC also ask for additional time? I know the IPC and the BC did. Did the GAC request additional time as well?

KENNETH MERRILL: Yeah, we certainly support the ask for additional time. I'm not sure if there was a formal request from the GAC, but we would support that.

MICHAEL PALAGE: Okay, thanks. And with that, I'm going to propose concluding the meeting for the day unless there are any objections. Seeing none, Terri, could you stop the recording? And I look forward to seeing a number of you in KL in a couple of weeks. Stay safe, and safe travels.

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TERRI AGNEW: Thanks, everyone. As Michael had indicated, the meeting has been adjourned. I will indeed stop the recording and disconnect all remaining lines. Stay well.

**[END OF TRANSCRIPTION]**