
ICANN Transcription

GNSO Temp Spec gTLD RD EPDP – Phase 2 F2F LA – Day 3 AM

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JANIS KARKLINS:

Good morning. Good morning, everyone. Hello? So, I hope you had a good dinner last night. So, today. The game plan for today is as follows. We will go through the remaining issues on the issue list. After that, based on results of this conversation, staff will complete the next draft of initial report. While staff will be working on that, we will look at those few outstanding issue that remain from yesterday afternoon and morning. And we'll address other outstanding issues in the report including financials. So, that would bring us maybe to 10:00, 10:30. By then, we will have the next version of the report ready.

So then we will make a break. We will have a chance to look at the updated draft report and we'll do the next reading on the issues that groups will want to discuss further.

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After the meeting, which will end at 2:00 sharp or [inaudible], we will circulate the final draft for consideration of the team, final initial draft for consideration of the team. And we will ask any feedback but only on issues that you cannot live with or are missing elements to be circulated by next Tuesday, end of business. And we would meet for the last look to the text on Thursday.

After that, if there will be still outstanding issues, then each group needs to be prepared to write until Friday dissenting opinion or opinion of validation. And that opinion will be attached to the initial report for the benefit of the community.

Then the document will be published on Friday. We are incorporating hopefully not so many, if at all, dissenting opinions.

So, that's the game plan. Anyone has a hard feeling about it? So, then we'll proceed accordingly.

The next agenda item, the issue that we need to look is 43, right? Okay, 43. And Marika, you can make introduction.

MARIKA KONINGS:

Yes. So, this refers to a section that's in the response requirements recommendations. Language has been added here at the recommendation of the BC. So this specific point speaks to a separated, accelerated timeline as per recommended for the response to urgent SSAD request. Those requests for which evidence is supplied to show an immediate need for disclosure and a criteria to determine what is concerns and urgent request are limited to a circumstance that pose an imminent threat to life,

serious bodily harm, critical infrastructure online and offline, or child exploitation.

The proposed addition here is a contracted party has the ability to determine whether the request meets the criteria, know that the use of this capability is not limited to LEA, and implementation should not put additional barriers to the use of this option by non-LEA requestors.

I think it was the Registry Stakeholder Group who noted a concern here.

JANIS KARKLINS:

Thank you, Marika. Isn't that in any way linked to yesterday's conversation on LSAs? The speed on the urgency. There was the question about urgency, who has [inaudible].

MARIKA KONINGS:

Yeah. I think in the other one there were specific SLAs associated with urgent requests which I think is ... I don't think there was any objection to this. This seems to be more about specifying that urgent requests are not limited to LEA but, as far as I can recall, I don't think there is such limitation present in the document. It's basically the criteria established but it doesn't necessarily say that you can only make an urgent request if you're an LEA. I think that's the ...

JANIS KARKLINS:

Okay. Mark SV and Marc Anderson.

MARK SVANCAREK: Yeah. The intent was just to clarify because there is no reaction on non-LEA but in the Phase 1 IRT I have seen confusion about this point. In fact, people stating, “Well, this is just for LEA.” Or that criteria must be interpreted by LEA which is tantamount to “it’s only LEA”. So, just for clarity, I had suggested this additional language. Thank you.

JANIS KARKLINS: Thank you. Marc Anderson?

MARC ANDERSON: Thanks, Janis. I think Alan is going to jump in, too. I think we had different questions. Mine was on this addition. It says, “The [CPE] has the ability to determine whether the request meets the criteria.” And my read of the draft is that that’s not true, that the criteria is a determination made by the gateway. That was my question. So, I don’t know how ... I think that’s just not a true statement, so we can’t accept that edit, at least as it’s written.

JANIS KARKLINS: Okay. Any solution for that? Mark?

MARK SVANCAREK: Strike the first line, please.

JANIS KARKLINS: You mean the first sentence?

MARK SVANCAREK: Yes, the first sentence, not the first line. Sorry. I agree with Marc A.

JANIS KARKLINS: If we strike the first sentence, would the rest be okay? Julf, your hand is up.

STEPHANIE PERRIN: Thank you. I'm not online. Julf was waving his hand. I think it might be useful here to put an explanatory note. A lot of the exemptions that permit a rapid and ... I'm talking about within data protection acts. They come in other statutes such as, for instance, in Canada, it's in the child abuse statute, whatever that is called, that [inaudible] ISPs and other tech folks, when they see something they can act on it and they can gather stuff they wouldn't be able to. And there's various other laws that permit that.

That's going to be very difficult for the system to know. And this is kind of a hot button for folks, that the private sector would be able to do normally what you would think law enforcement was doing. So, an explanatory note explaining that there are certainly circumstances where you guys have to act I think would help and avoid a lot of negative comment on this. But it is complex.

I, myself, it's not something we're going to die on, but I don't see how you're going to automate this because it's too complicated. Thanks.

JANIS KARKLINS:

I think we have established criteria that determines whether a request is urgent or not and that is in the sentence that urgent requests are limited to circumstances that cause an immediate threat to life, serious bodily injury, critical infrastructure offline and online, and child exploitation. That should be relevant both to law enforcement and non-law enforcement folks if they discovered something that falls within or meets that criteria, probably, right?

So, question is if we strike the first sentence and we add additional sentence as suggested by BC note that the use of this capability is not limited to LEA and implementation should not put additional barriers to use of this option by a non-LEA actor. Matt?

MATT SERLIN:

I hear Mark's concern. Can we just stop then with note that the use of this capability is not limited to LEA? Doesn't that solve the problem?

MARK SVANCAREK:

Based on what I saw in phase one, maybe or maybe not, but definitely the not limited to LEA is the more important part of that.

JANIS KARKLINS: Okay. So then maybe we'll settle for the moment. And again, please remember this is the initial report, so we will see how it will evolve and whether there will be any further refinements required. So, we leave only first part of the second sentence in. [inaudible], 44. Yes, please?

JULF HELSINGIUS: Just a question for our LEA friends and my IPC friends and PC friends.

UNIDENTIFIED FEMALE: We're all friends here, Julf.

JULF HELSINGIUS: We're all friends. I was addressing my LEA friends especially. Do we want to have some kind of penalty for abusing the urgent function? Because I think we should make that very clear that if others have access to that, it might be abused by people that send an urgent request that aren't urgent and thereby clog the function for you guys.

JANIS KARKLINS: I think we have a general abuse formulation in the text, but please ... Mark, Lauren is first. And then you. Lauren, please.

LAUREEN KAPIN: So, I would agree with that, and although we have general abuse provisions, I do think that perhaps the penalty might be tied to the

ability to use the urgent function. It might be more narrowly tailored, but it is a problem and we should ... Everyone using it should be mindful of only using it in appropriate circumstances because we don't want that lane to get clogged when it actually doesn't apply. That makes everyone's job harder. So, I would support that.

JANIS KARKLINS: But that implies also to LEA.

LAUREEN KAPIN: Sure. Oh, absolutely. I mean, law enforcement shouldn't be using it for a non-time-sensitive, non-urgent request, period.

JANIS KARKLINS: Okay. Chris, could you think about language?

[CHRIS LEWIS-EVAN]: Yeah.

JANIS KARKLINS: That will not hurt too much you or your folk.

UNIDENTIFIED MALE: Laureen had her hand up, but yeah.

UNIDENTIFIED FEMALE: If I can say something.

JANIS KARKLINS: Yes.

MARIKA KONINGS: I think this is something where staff maybe can look at as well because I think in the LSA section, it talks a bit more about how urgent is deterrent. So, maybe we can add something there to the notion that if it's indeed abused, penalties will be created. Because I think there's also ... There's already the revision in place that indeed if urgent requests are sent through to the central gateway to the contracted party and they don't believe that the request actually met the criteria, that they're able as well to go back and challenge that. So, I think there are already some things in place [inaudible] but we can see if we can even make it more specific if someone consistently abuses that notion, that there is restricting of use of the system or something like that.

JANIS KARKLINS: Okay. That is not ... I am not changing my invitation to Chris to maybe think about formulation and pass it on to staff. But I understand that there's a general agreement that that type of provision we could add to the recommendation, one of the recommendations.

Okay, 44.

MARIKA KONINGS:

Actually, 44 and 45 should probably be read together because they relate to the same section. This was language that was added in relation to the conversation of there should be a dedicated contact for an urgent request. So, we added some language. At least what staff took away from the conversation was that there should be a dedicated contact, but a dedicated contact should only be accessible to the central gateway. That shouldn't be information that publicly posted or available to requestors to write to. That would really be for the central gateway when they've established that they've received an urgent request, that they pass on that information.

And we thought as well that that was agreement on adding language that, as we're talking about the return in business days, that contracted parties would post information on their websites that would give an indication of their standard business hours and time zones, so a requestor would have an indication of when they could expect a response to the request.

So, I think there was, on the first one, I think the GAC noted that they had taken away that there would be information to display in the SSAD portal. As I said, we took away that there would be information for the central gateway not publicly posted. And I think the SSAC noted a concern about that one.

Then, in the second one, the registries do recollect the conversation around publishing the information about the business hours. So, I think it may be helpful maybe to look at both of those comments in conjunction.

JANIS KARKLINS: Okay. Volker, Chris, and James.

VOLKER GREIMANN: It's my recollection that the GAC is right here. This was supposed to be published within the SSAD portal. So, not in the public place. That was my recollection of the discussion.

MARIKA KONINGS: If I can just clarify. What we wrote, I don't think, is intended to be public. We're just saying that the central gateway has that contact and they can reach out to it. I'm not sure what you mean that it's posted in the portal. So, you mean that everyone should be able then—and just the portal has access to that urgent contact or is it only after the gateway has determined it concerns an urgent contact, the gateway relays it to that contact? Because that's what we ... The second is what we intended to write here.

UNIDENTIFIED MALE: Yeah, and the second paragraph is the publication on the websites. That's also something that we understood to be inside the portal.

MARIKA KONINGS: On the business hours, you mean. So, just to clarify, the first part is aligned with what we discussed, so that the content is not published in the portal, but the portal or the central gateway has that and uses that to relay requests. On the second one, that information is published in SSAD so that when requestors make

requests, they can find it there but not necessarily on the public website. Okay.

JANIS KARKLINS: So, with that understanding, then that may be reviewed. Chris, your hand is up. No? James?

JAMES BLADEL: Thank you. Good morning. So, that was part of our clarification of where this is going to be published. But I wanted to point out that we've now discussed time zone, hours of operation, abuse point of contact, and jurisdictions yesterday that match or that the registry considers appropriate. We're dancing around this idea I think needs to be fleshed out, a registrar profile that exists and can be updated and accessible within SSAD. I don't think we've explicitly defined that and I think we need to at least capture the idea that registrars—all registrars—need to have a means to publish these critical bits of information and have them accessible to SSAD users but not to the general public. I just think we need to put a marker down that the folks that actually build this need to put that on their shopping list.

JANIS KARKLINS: As implementation guidance? Would you attempt to draft that sentence for implementation?

MARIKA KONINGS: I think I have something.

JANIS KARKLINS: Okay. Marc Anderson?

MARC ANDERSON: I think what I heard Marika saying addresses my concern. So, you're saying the second half will be struck? Like all the information about the registrar publishing this information on their homepage.

MARIKA KONINGS: I think what we would strike is publishing on the homepage but we would say it would be available in the portal and make an implementation guidance note that as part of implementation, it should be considered that contracted parties would have a dedicated profile page where this information could be found in addition to other information that they may want to share.

So, it's available when an accredited user has logged into the portal and it's making a request. There they would be able to see what kind of the operating hours are, so they have a reasonable expectation as to when they would get their response after [finding]. I think that's what I heard.

MARC ANDERSON: Okay. I guess I'll have to see the final language, but I think that's what my expectation was initially. So, I think that addresses my concern.

JANIS KARKLINS: Thank you. Lauren?

LAUREEN KAPIN: Yeah. Not something that I want to die on the field on, but I don't know why you wouldn't want to have your business hours published on a website. Our goal here is just for the average person who isn't savvy about figuring out how to make these requests to know what hours they can make them within.

So, I'm just talking about the business hours part, not your secret contact information for urgent requests. Just if I want to reach human, when can I do so?

Again, not going to die on the hill for it, but I don't know why there's sensitivity about business hours being posted on a website.

JANIS KARKLINS: So, common sense would suggest from 9:00-6:00, depending on on the time zone.

VOLKER GREIMANN: I mean, most registrars do already publish their business hours on the website for consumer and for support hours, at least. But some don't because they have a different business setup there. For example, pure reseller players or pure corporate registrars or many registries also don't have public-facing customer support but rather have customer support that's only directed at a certain target group and they would not be usually publishing that

because they are almost creating an expectation for the parties other than their customers who would already have that information in their contracts in many cases. So, they wouldn't publish that on their website. So, it depends.

Our registrars usually do. Other registrars don't and [inaudible] valid reasons for that. So, I think we should not enforce publication in a public place unless there's a very good reason for it, and I think if we publish it in the SSAD portal where everybody has access to it who wants to make a request or can get access, I think that's good. Good enough.

JANIS KARKLINS:

Okay, so Volker decided for all of us, especially if you're not ready to die in the ditch for that. Good. So, 46.

MARIKA KONINGS:

This is language I think that was already there for a while and just know this was one where the original document had the wrong sentences stricken. So, this goes to the notion of if a requestor is of the view that its request was denied erroneously, a complaint may be filed with ICANN Compliance.

Originally, this had a sentence that said ICANN Compliance must either compel disclosure or confirm the denial was appropriate. ICANN Compliance should be prepared to investigate complaints regarding this disclosure request under its standard enforcement process. So, I believe it was [inaudible].

Registry Stakeholder Group has proposed the changes that you see. So, the change from “should” to “and may” and the proposal to delete the second sentence. I think this was flagged by the IPC and BC.

JANIS KARKLINS: So, instead of deleting third sentence, we’re deleting second sentence and leaving third sentence in, right?

MARIKA KONINGS: Yeah.

JANIS KARKLINS: So, everyone is in agreement? Volker, your hand is up. Stephanie?

STEPHANIE PERRIN: I’m a little concerned about ICANN Compliance taking over the decision-making of a controller. This is an ideal subject to be referred to the Privacy Oversight Committee because we don’t anticipate this happening every day. That’s the kind of thing where you could ask them to review. Just a suggestion.

JANIS KARKLINS: Thank you. Brian?

BRIAN KING: I think it's clearer for us now that we're talking about striking that second sentence. The concern, frankly, that we're worried about is the world we're living in now where many registrars just want to deny all requests without giving a thought. That remains a concern for us. I don't know that what we do with this language is going to alleviate that concern. I think we're pretty clear on what would happen in that case if it went to ICANN Compliance.

So long as we have some concept of how we can challenge the decision, the contracted parties determination, which I believe we do have elsewhere in the policy—and we've been at this for three days now. But I think we have some language around how that should work and we could probably live with this.

JANIS KARKLINS: Okay, thank you. So then we strike the second sentence and leave first and the third one. So, 54 now. I'm sorry, 47.

MARIKA KONINGS: So, 47 is language that edits have been suggested by the GAC. It now reads: an example of online critical infrastructure includes root servers. An example of online critical infrastructure includes utilities, transportation, and banking, etc. Just maybe a staff note here. I think staff had included some language here but this was actually one where we asked the group already for a while to provide specific examples of offline critical infrastructure. So, appreciate the GAC providing some examples but it seems that ... I think the registrars, SSAC, and ISPCP had some concern about this one.

JANIS KARKLINS: Okay, thank you. [inaudible] explain concern. Thomas?

THOMAS RICKERT: Since we're giving four examples already, we might be exhaustive and use the seven categories that are in the [inaudible] if I'm not mistaken, because then it's unambiguous what industries would be considered to be eligible critical infrastructure providers. And I'm happy to provide that additional language, if that's okay. So it's a minor thing. I'm not going to die in the ditch.

JANIS KARKLINS: Okay. Do you know [inaudible] categories [inaudible] or?

THOMAS RICKERT: I'll put them in the chat in a second. It's energy, insurance, nutrition, water, energy, transportation, and IT. Financial would include banking.

JANIS KARKLINS: Insurance is [inaudible].

THOMAS RICKERT: I put it in the chat.

JANIS KARKLINS: Okay. Ben?

BEN BUTLER: Pending the language from Thomas, this may be resolved. I was just flagging it because there are a few other categories of offline critical infrastructure not represented and I'm a little paranoid, admittedly, but saying banking, there's a lot of people who would consider, say, a phishing attack that includes their bank account number to be included in banking as critical infrastructure, when really it has to be more systemic. So, maybe if we have better language, my concern will be alleviated.

JANIS KARKLINS: Okay. So, once Thomas will put that on chat, if somebody has a concern, please let me know. We will come back to 47.

UNIDENTIFIED FEMALE: Does the definition also include examples of online critical infrastructure, to Ben's point, or is it just offline? It's both?

THOMAS RICKERT: If I may, Janis. You have a quite general explanation in the directive. And then it's up to the national legislatures in Europe to fill that with life. But the rule of thumb is that, within these seven industries, if you operate an infrastructure that serves at least half-a-million citizens, then it can be critical.

Now, for IT services or for content delivery networks, you talk about instances and servers and how many domain names are in the administration for registries and for DNS providers. It's yet

something different. So, these can be voluminous documents to spell out exactly what the requirements are.

But I think we should leave that level to implementation. I would just keep the rough headings here.

JANIS KARKLINS:

Yeah. But, look, this is implementation guidance that we're talking about. The way how it is formulated, the whole sentence, it refers to examples. Online critical infrastructure includes root servers. We can put amongst others and an example of offline critical infrastructure includes bridges. So, GAC is suggesting to put utilities, transportation, banking, amongst others. We could use those. And if you want, maybe we can put an asterisks more and then this document what you are talking about. Maybe that would be how we could agree, since if we are putting, let's say, exhaustive list on one side, then someone will argue we need to put exhaustive list on other side. Here we're talking about examples, just to give an idea of what we're talking about.

I would suggest to go with a not full list, attempt [a full] list. We could put a reference to the document for further reading. Nodding? Yeah. Okay. That's not critical, so we will then maintain what is now maybe adding "amongst others". And then we will, if Thomas, you could give us a reference document, we could put asterisk and refer to that.

Okay. Settled. 49?

MARIKA KONINGS: Just a note. 49 and 50 all relate to the SLAs. New language was circulated by Volker. That was I think developed together with Mark. I don't know if you want to go there now or first finish the table and then look at the SLAs. I'm not sure what you prefer, because otherwise, I'll need to pull up probably another document.

JANIS KARKLINS: Okay. We'll finish table and then we'll come back to ... Basically, we will take 49 and 50 together with a discussion about SLA. 54?

MARIKA KONINGS: So, next is 54. This is an addition that was proposed by the IPC when the request would be more specific and include specific third-party purposes that were developed earlier. So, the proposed language here is what you see in bold is basically adding those that we agreed under the purposes and basically as a clarification that notice of data subjects of the types of entities, third parties, which may [inaudible] their data such as ... It's giving an example and not making this limited to or that was at least the intent. And I think this was flagged by the Registry Stakeholder Group.

JANIS KARKLINS: Okay. Who has an issue with that, with the proposed change or addition? Since we agreed on those four categories and talking about purposes. Please, [inaudible].

UNIDENTIFIED MALE: So, the agreement of that list was in relation to another area. This s specifically about the privacy notice of a controller and they do not need to go into the privacy notice of a controller again. What are we trying to suggest in this? We are trying to import specificity into a controller's privacy notice which is not something that they should be doing. So, in the other area, we had no issue, but in this particular instance, it's not a valid inclusion.

JANIS KARKLINS: Okay. Margie and Brian.

MARGIE MILAM: I think we're talking about different things. This is, perhaps we need to be more clear and say that it goes in the registration agreement to the registrant. I think it's very important to keep that kind of transparency for the registrant when they register the domain name so that they know what the information may potentially be used for. I think that satisfies a lot of GDPR requirements regarding transparency and would, I think, object to not having that as part of the policy. I don't think it necessarily has to go in the privacy policy of the registries or whatever, but it certainly needs to go into the registration agreement.

JANIS KARKLINS: Brian, please.

BRIAN KING: [inaudible] you could.

ALAN WOODS:

Thank you. We discussed this at the thing as well yesterday, the screen. The fact of the matter is I am not in my—and it is the privacy policy. I'm sorry, Margie, I don't know where else one would do that. There's a privacy notice. That is where it is going to be presented to the registrant at any particular given time. We would not go into that level of specific detail with regards to this.

What we would say—and we discussed this as well. We would say that, "As a registrant, you are also ... There may be disclosure under the SSAD system." Then I said that we would then ... And I know Dan was like, "Would we have that privacy policy for the SSAD?" We would then notify them of the SSAD process at that point, much is the same way, in our privacy policy we currently say there may be rights protection mechanisms. There's disclosures for rights protection mechanisms. But I'm not going to say rights protection mechanisms under the URS or the UDRP. We just say the rights protection mechanisms and they can look that up. These are part and parcel of what you do when you're registering a domain.

What we're doing here is we're adding another layer and that is the concept of the SSAD and that is the level to which we as a controller would put in there and provide the necessary data for them to understand what the SSAD is. But this list is far too specific because we're not creating a new level of entities to whom we are going to disclose to. We're saying there are entities out there which may get disclosure under the SSAD and that's a very distinct difference in a privacy policy.

The IPC and the BC, I must say to you, we're not going to say that we are going to give it to people who are protecting their trademark. We're going to say that they are one of many very different possible entities under the SSAD who may get disclosure. But I'm not going to carve out and be made to carve out in my privacy policy specifically those because that's not, in my mind, appropriate.

JANIS KARKLINS:

Okay. I understand. Actually, I would suggest to BC/IPC folks maybe to consider withdraw that amendment. This describes the process of disclosure. There is the recommendation where you get assurances that a request from IPC community, BC community, will be examined. So it's not about [inaudible] you should not have any longer doubt that your request would be treated in the same way as any other, but here it is simply suggesting that the data subject should notify in general that the third parties may get access to their data within the framework of SSAD. That's all in my reading what it says here. It's not about ... I would simply ask is this really the question that you would be willing to die for? Brian?

BRIAN KING:

Yeah. Thanks, Janis. So, let me try to explain maybe more clearly the concern that I have. In the RAA and in the language here, the registrar is required to tell the registrant about the intended recipients or categories of recipients of the data, including registry operators and others who receive the data from them.

If we're doing that, if the registrars are doing that, telling the registrants about the intended recipients or categories of recipients, what are they telling them? Are they telling them that it's certain types of categories of recipients but not others? And how can we be sure that if they're telling them that, which they are because they're required to in the RAA, how can we be sure that that includes IP?

And the language here on the screen without the language that we've added has that same concept of the types of entities/third parties which may process their data. How can we be sure that that includes IP if the requirement to list the types of entities is there but there's no examples? We can't afford for the different contracted parties to make up their own examples and to have a decentralized situation where all the different registrars pick their favorite types of entities to tell their clients about and then later we have a problem because certain registrants have not been informed that IP was one of the purposes for processing their data.

I hope that's clear about what we're trying to address there is that if specificity is required, we want to make sure that we're on the list. Thanks.

JANIS KARKLINS:

Okay, thank you. Let me maybe take Matthew and then Chris and then Stephanie and then Margie.

[MATTHEW CROSSMAN]: Thanks. I just wanted to quickly respond to Brian's point. I think the point we're trying to make is, as controllers, we need that flexibility to determine what it is that we're going to do to fulfill the legal obligation that's reflected in the first part of that sentence because that really does capture what our obligation is under law as controllers to inform our customers.

So, I think why we don't want the specificity is we just need to be able to maintain that flexibility to ensure that we're able to craft the disclosures that we're making to our customers in a way that we think makes sense.

And I think to the point that if we don't put IP as a category in there that somehow that would cause problems down the road. I think that's our problem if we don't do that, because we would be the ones who are on the hook then for failing to provide appropriate disclosures to our customers.

So, that ... Again, all of this disclosure stuff is a risk that we have to take, an obligation that we had, and so that's we're asking for the flexibility rather than the specificity in exactly what has to be disclosed.

JANIS KARKLINS: Chris, Stephanie, then Margie.

CHRIS LEWIS-EVAN: Yeah. Thank you, Janis. So, maybe a suggestion as halfway. So, some of the reason for the need to be clear, and transparent, and

concise is to give the data subjects the ability to understand the impact of any processing may have on them.

So, really what I'm thinking here is obviously criminal law enforcement. It's a criminal case. Most people, when they see that, they understand the impact. So maybe a reword to include civil case resulting from intellectual property infringement or others. So, you have the understanding there that your data is being processed and the impact is criminal proceedings, civil proceedings, and something else. I think that hopefully gives you the broadness you're looking for. I'm seeing a shake of the head, Alan.

But that's what I'm thinking is that gives you a little bit broader but then it also covers I think some of the points of being clear and concise, [nothing] about the impact of the processing is having. Thank you.

JANIS KARKLINS: Okay, thank you. Stephanie?

STEPHANIE PERRIN: Thank you. I think this is good advice from an implementation standpoint. Excellent advice. I would advise my clients to include everything that's in this list. But the fact that it's here in a "must" constrains, in my view, we're not giving data protection advice to the data controllers throughout the document. If you're going to start that, I've got a few other spots where you need more advice.

And I would point out that this is already in the contract between the individual and the registrar. It's very specific. They have to cooperate in UDRPs. I don't know about the law enforcement. You guys must be in there somewhere.

So, it's in that way redundant. I wouldn't object to this if it was "should" or if it was advice because it's good advice. But I don't think it's appropriate to make it mandatory.

JANIS KARKLINS: Margie?

MARGIE MILAM: I think that's my concern is that leaving it vague hurts where there are contracted parties that don't understand the law and what needs to be required. So, I'm okay with guidance or "should". It doesn't need to be a "must" but I do think that what we're really talking about is providing more clarity under the provision in the RAA that talks about what information needs to be disclosed in the registration agreement, so that the registrant isn't surprised.

And I think it affects the entire SSAD if some players aren't properly providing notice and it puts into question the legal ability to ask for that data. So that's why I'm pushing hard on it. But again, it doesn't need to be a "must" guidance. "Shall" or "should" is fine, too. But I think it's important to keep it in and keep it in at the point of the registration agreement. It doesn't necessarily need to be in the privacy statement of the SSAD.

JANIS KARKLINS:

I think that “must” should stay because that is obligation of the data of registrars to inform a data subject that their data may be used by third parties, so this is “must”.

The question is—and maybe we can land on what Stephanie suggested that we put implementation guidance. And in implementation guidance, we suggest that the third parties whose data could be ... The third parties who may get access to non-public data may include—and then the list. Can we settle on that, those four categories that is written here as an implementation guidance?

ALAN WOODS:

I mean, I completely agree with what Stephanie’s saying as a guidance. I mean, any controller worth their weight will know how to interpret what the GDPR states which is what is there already. That is literally a copy and paste GDPR.

As an implementation guidance, yes. It’s in there. But again, can we just point out that any inclusion such as this is also going to be subtly changing the role of ICANN in this as well.

It’s pushing it from being passive to being expectant and you’re creating more links to having a much stronger controllership aspect on this by making statements such as that. Again, we need to parse the language in what we’re asking. This is simply a requirement under the law to be clear and concise in your privacy policy so that your registrants know the way in which their data may be processed.

To be perfectly honest, we get it. IP rights want to be mentioned somewhere in there. That is your goal. I get that. But can we stop trying to fit a square peg into a round hole here? You need to trust that the controllers who are going to be at the end liable for this are going to do so in a manner which is correct.

Again, we are looking at the rights of the registrant, not the rights of the parties at this table, specifically.

JANIS KARKLINS:

Again, I think somebody needs to let it go. Again, our arguments are on all sides. My personal preference would be to leave the text as is. So the next option would be to put guidance, but then of course we also need to mention ICANN, which is certainly a third party who will be asking access, and then probably somebody else. So, this is a bit of a challenge. Either we put exhaustive list or we say on the general level. I have plenty of hands up, starting with Mark SV, Brian, Alan G, Marc Anderson, Franck, and Stephanie. Brian?

BRIAN KING:

Thanks, Janis. I think this is helpful for registrars to have and kind of for the one reason that Alan mentioned. We've received legal advice that says that the language in the RAA that just says recipients or categories of recipients lacks the specificity that GDPR requires.

So, it is important to notify the data subjects that their data could be processed for these types of reasons. So, I think requiring that specificity regardless of which registrar you go to is going to be

important and we need that consistency across the DNS so there's no question about, in the SSAD, well, did this registrar have a provision that included IP or did it not?

So, we have a few really good reasons why we want to push for this, including notifying the registrant, clarity and consistency across the body of registrars around the world, many of which who aren't sophisticated enough to include all of these.

I think if we need a tie breaker, I would suggest that we break the tie in my favor. But I would suggest that we include this language in the initial report, perhaps with a question to the community about, "Is this enough?" because as I look at the language, I think you're right. I think ICANN is missing and perhaps the community feels strongly that this is too specific and that it wouldn't be appropriate to require this language in the registration agreement. I think most people would agree that more specificity is better for data subjects and for ensuring that all registrars are doing this consistently across the world. So, I would suggest that we break the tie that way if we have to. Thanks.

JANIS KARKLINS:

Look, I would suggest let's settle for listing in implementation guidance and we could then let community to express themselves, including registries, registrars, and see the feedback when we are talking about final report. We would include also in that list ICANN, amongst others. Something like that. This is clearly a non-exhaustive list. So, I would plea all to accept Stephanie's proposal as a middle ground. Brian?

BRIAN KING: If that's your decision, I won't object to it, but I would note that it's not a middle ground. Implementation guidance is worthless. It doesn't require registrars to do it. It's we're either going to require the specificity or we're not but I don't think that's a middle ground unless I'm missing something.

JANIS KARKLINS: I think you do. We heard very clear statement and this is a legal requirement registrars to inform registrants that their data will be or may be accessed by third party. So, that's a legal obligation, as I understand. That would be their task, and if they fail to do it, then you can sue them if need be. But again, I don't really see this as a major stumbling block here. The stumbling block was yesterday when we discussed about purposes and this is now clearly settled that your community is, unlike your perception today, are not treated equally with others. So, with this policy, it is clearly anchored that you will be treated in the same way as any other. So that was agreement of yesterday when we discussed about purposes. This is very ... In my understanding, a very different thing. Stephanie?

STEPHANIE PERRIN: Thank you. I apologize for being under-caffeinated. Alan raised an extremely important point that I had forgotten to mention and that is that every time you put a mandatory requirement in here, in the policy, you are adding another bean on the scale that tips towards

ICANN being the controller. And I think that removes this instrument as a processor, in my view.

So, I think you want to think that out very carefully and we haven't had the fulsome discussion on controllership and processors and co-controllers and all of that that we need. So, caution is in order.

Now, what Brian is driving at I have a great deal of sympathy for. However, that would go in the code of conduct that Thomas mentioned yesterday, I think. I don't know whether he agrees. But that's were eventually after you've got this in practice. You may decide that the only way to police bad actors in this ecosystem is to provide a code of conduct that they have to—that would be binding corporate rules. But they have to adhere to. Fine. But we're not there yet. Thanks.

JANIS KARKLINS:

Thank you, Stephanie. Alan G? My apologies that I overlooked your hand.

ALAN GREENBERG:

Thank you. First of all, I'll point out ICANN s not a third party, so let's stop that. We're sitting in this room making rules on how the data will be used. We're a controller of some sort or another. We're not going get into the debate of what kind. So, let's not call ICANN a third party. That really messes things up.

As several people pointed out, as far as I can tell, if the registrar does not disclose the information properly and their clients don't understand, they're on the hook.

What I'm hearing from the folks here is they want to make sure it's in the registration agreement or in the privacy statement because then the registrar cannot pretend they don't know that intellectual property is in the list. And that's going around the back way. We decided that intellectual property is a valid reason. We have to make sure it's crystal clear and there are strong penalties for pretending it isn't. But I don't think we should be using the privacy statement to the registrant as a way of informing the registrar. I think that's going around a back door. If they're going to ignore everything else, they're going to ignore their own documents, too. So, I just don't see this as a mandatory for the registrar to put it in the privacy statement, although we do have to make it crystal clear that it is a purpose and they can't pretend it isn't. Thank you.

JANIS KARKLINS:

Marc Anderson?

MARC ANDERSON:

Thanks, Janis. At this point, I think everybody's feelings are out on the table and I think we all know where we stand here, so I'm wondering what else I can say to do this to get us moving forward.

I don't like this proposal at all and I'd like it removed. You suggested the Stephanie compromise, move it to implementation guidance. I would not die on that hill. I don't like it, though. I'd rather have it removed altogether.

I thought putting H in, when we agreed to put H in here, that to me was a compromise. This is a legal obligation and creating policy to say the same thing as what your legal obligation is, to me is bad

practice. I didn't want to see H in at all. I thought that was a compromise to begin with. Then adding this level of specificity is something I've consistently pushed back on, all the way back to Phase 1.

We need the flexibility to draft our own privacy policies. We have differing requirements depending on what we're doing and what our jurisdictions are and what our customers are. I think Alan said it pretty nicely there. If we screw up, that's on us. We understand your concerns, but this is not the place to have this fight. I think Janis made a great point. We got your IPC purpose in yesterday. This is not the place to fight for this.

JANIS KARKLINS:

I have further hands up. My question is can we settle for implementation guidance, please? Okay. Franck?

FRANCK JOURNOUD:

I don't understand how we have legal assurance that it is an obligation for a contracted party to disclose in terms that are not too vague, not insufficient, not part of the list but not the whole list to the registrant so that there is sufficient fairness but also, from a legal perspective, actual transparency and disclosure so that that doesn't jeopardize that contracted party, that contracted party's participation in the SSAD or create legal grounds for registrants to, "I didn't know it. This wasn't disclosed to me, etc." Where is that legal certainty?

As requestors, you guys talk about flexibility. No. I'm not saying it needs to be in this type of font, etc. But we need to be certain that

the language will be there that is legally solid that doesn't undermine later and create legal grounds for a registrant challenging your decision and our receipt of registrant registration data. I just don't see it. I just don't see how we have that legal certainty that you guys will have to provide. We'll have to make that clear to the registrant.

JANIS KARLINS: Thomas?

THOMAS RICKERT: I think this discussion shows that we still have some systematic errors in our thinking. We're thinking silos. If only the registrars do things right, then that will be the cure for everything. Nothing could be further from the truth in this case.

As joint controllers, these guys—registries, registrars, and ICANN—need to ensure that they have a comprehensive privacy policy and fulfill all the information duties vis-à-vis the registrants. That includes a depiction of the recipients of data or the types of recipients. So, it has to be there.

And therefore it would be a natural choice—and I'll gladly offer that. Maybe we can spare us the discussions, have the general implementation note that the joint controllers need to ensure to have such comprehensive privacy policy and fulfill their information duties. And then we need to go through the report and actually allocate functional responsibilities for certain things. Informing the registrants is a natural thing for the registrar to do

because they have to contact to the registrars, while dealing with accrediting requestors would be a natural function for ICANN.

So, instead of trying to hammer this out at this place, can't we have a general remark for the entire report and then go through it and fill in the blanks where needed? And that can potentially even be done after we have published the initial report. So, I hope that this is maybe something that we can settle on.

JANIS KARKLINS:

Okay. Well, listening to you, would insertion after "provide notice to data subjects" [inaudible] comprehensive list of the types of entities, third parties which may be processing their data? Comprehensive list of ... Then that covers everything. Because what you're suggesting is not comprehensive. It is just "such as, amongst others". So, that would be in the in the interest of registrars to provide comprehensive list of third parties or types of third parties. So they cannot miss such I'm thing as intellectual property.

Again, I'm just thinking how to break this standoff. Again, time is ticking. Please keep that in mind. Please, Brian.

BRIAN KING:

Thanks, Janis. I appreciate the concept. I think if we can't ... Again, we're going to sound really pessimistic but we're trying to solve for the worst-case scenario here. If we can't trust that we can get specificity on intellectual property while we're in the room, why can we trust that we'll get specificity in a side conversation between ICANN Org and the contracted parties about the joint

controller agreement? If we're not there to advocate for it and we can't get it done here when we are here, that I think is a challenge.

So, I guess I don't know if I haven't been listening well or if I haven't made the point clearly enough, but I think Mark said it well in the chat that the problem that will happen is that if there's not this required specificity, some registrar will not include IP in their notice to the registrants. And when their data hopefully is ultimately processed through the SSAD for an IP purpose which we hope won't be precluded by the fact that it's not included in the agreement which is another risk, but if the data is then processed for an IP purpose, we're really concerned about the risk to everyone in this room, including ICANN and the contracted parties, that that data is being processed for a purpose that the registrant might argue is inconsistent with the purposes stated and the purpose for which it was collected. And that's going to be a big problem for everyone in this room if that happens. We can address that just by including a couple bullet points with specifics that includes IP, which is our favorite reason, of course, but others that are important.

I guess I haven't been listening well enough because I just really don't understand the issue with including the specificity here in a registration agreement or a privacy policy. It doesn't say that you can't include other things but this is one that we've got to have. Thanks.

JANIS KARKLINS:

Okay. Let's put this aside. I invite IPC, BC folks and registrars during the coffee break to find a solution. We have spent 25

minutes on this. I understand this is important. I made a number of suggestions. None of them is accepted by one or other parties, so I think further conversation, side conversation, is needed. So, 54 is not settled and we're moving to 55.

MARIKA KONINGS: So, 55 language that was added by the NCSG to make clear that retention requirements as part of GDPR would also need to be complied with by the requestor. And this one was actually flagged by the NCSG. So I'm not sure if they have an issue with their own proposed language or ...

STEFAN FILIPOVIC: I just think we pointed to grammar error, so we suggested rewording to say, "In accordance with applicable law and this policy, which will have to have a [retention policy compliant] with the GDPR."

JANIS KARKLINS: So, that was it. Anyone is in agreement? Thomas, your hand is up.

THOMAS RICKERT: Sorry, old hand. But since my hand was conveniently up, I have sent proposed language to the chat for the point we discussed now. I guess the benefit of that is that we make reference to the building block where we have listed the eligible requestors. So, you would know that IP holders are on that list. I have added

“where legally permissible” because that needs double checking because some of the potential recipients of data have not been uncontroversial. But I think that the IP folks are amongst the uncontroversial ones. So, with that link to the building block, I think you should be covered. Or I hope so.

JANIS KARKLINS: Okay. We’re now on 55. Let’s settle 55 and then we can come back on 54 if that may be a solution. I have Chris and James and Franck on 55. Yes, please.

CHRIS DISSPAIN: Thanks, Janis. We say this new addition is repetition of what’s already there. So, it says must confirm that they will store, protect, and dispose of the data in accordance with applicable law. So, retention policies captured under [store] is how we read it. So, we just think this new language is a repetition.

JANIS KARKLINS: It is indeed, specifically that the philosophy of our policy is that this would not be exclusively GDPR but a broader privacy policy. I would suggest that [inaudible] the proposal. James, your hand is up.

JAMES BLADEL: Yeah. What Chris said. Retention is under store and retain and all that other stuff and applicable law. We’re sitting in California, folks. GDPR is yesterday’s news. Thanks.

CHRIS DISSPAIN: Until you get a fine.

JANIS KARKLINS: So, NCSG?

STEPHANIE PERRIN: Yes. I think what prompted us to put this in here is we still [inaudible] clarity. We're harmonizing to the GDPR. Are we not? So we need a retention policy compliant with the GDPR and the system has to be compliant with GDPR in terms of retention. So, retention. Data retention of requests, disclosure, documentation of disclosure. All that has to be built into the system. So, that's what we were driving at. Maybe the words can be changed but a recommendation doesn't cover it. This is an instrument that has to be compliant.

JANIS KARKLINS: So, the whole policy must be compliant. This is attempt to follow also NCSG's proposals that the disclosure is done not only following GDPR but also any other applicable privacy laws all around the world. That's why every applicable law—GDPR is among every applicable law in this case. So the retention policy should [and retention, destruction] all should be covered by or should be compliant with GDPR and any other law. And if any other law is stronger than GDPR, then it will be covered automatically also GDPR.

STEPHANIE PERRIN: Yes. Yeah. We'll withdraw.

JANIS KARKLINS: Thank you. I understand that Thomas made a suggestion for how to settle 54. So this is now Thomas's proposal is on the screen and the question is ... I understand that this would replace addition of IPC, right? Thomas?

THOMAS RICKERT: There's a link to the intellectual property interest because that's in the—

JANIS KARKLINS: No, no, no. I'm talking exclusively about 54. We had language in the text that stops after types of entities, third parties, which may process their data, full stop. So that was ... IPC suggested a continued sentence with "such as" and then four points. So, your proposal is ...?

THOMAS RICKERT: To stop after the comma and then include—

JANIS KARKLINS: To stop after "process their data" and then include your sentence? That is ... Maybe you can delete ... So, that is now on the table as

a compromise proposal. So, I have ... Is there anyone who cannot live with this? Margie?

MARGIE MILAM: I have some suggested language changes. Concept seems to be okay. instead of joint controllers, just say controllers, because we haven't defined it yet. Once we define it, then I don't care if we go back and say that but I think it's making an assumption that we haven't reached yet. So, say controllers. And then instead of saying "serve as a basis for" say "will include at a minimum".

JANIS KARKLINS: So, I have seven hands up if I may ask to lower them at this point and then seek reaction of registrars/registries on the text which is now on the screen.

VOLKER GREIMANN: I don't think we're going to break a leg over this.

JANIS KARKLINS: Volker has spoken. I will give you a few additional seconds to ...

ALAN WOODS: I mean, I hate to call a spade a spade but that is exactly the same thing, just written differently. Again, I really want to invite ICANN at this one. This is adding another brick to that wall. It's making a mandatory inclusion here. You're telling us what to put into our privacy policy. I mean, that is [inaudible]. It's not my job to lead

you in any way but I just wanted to flag that for you. Again it seems almost parochial here that we're telling us what to do, that the poor controllers can't figure it out. And to be perfectly honest, this whole concept of it affecting the entire SSAD, that is a matter of the discussion for the controllership, and if there is a joint controllership, to ensure that it is specifically pointed out within the agreement between the joint controllers as to the primary controllership and the responsibility and matters like that. What we're trying to do is presuppose a conversation that we have not had with regards to where controllership lies.

I'm surprised at the level of voracity in this. I agree with Janis that it should be just the original language and be done with it because it doesn't actually change anything. It just gives comfort to people around this table [that is] already in the document.

JANIS KARKLINS:

Look, I'm just facilitating conversations. It's not up to me to decide. It's up to you ultimately to decide. And of course I can only facilitate this conversation, but what I see is regrettable sentiment of mistrust in the room. So, we're trying to find this middle ground. Let me take James.

JAMES BLADEL:

Slightly different subject. On the previous edit, we neutralized GDPR in favor of applicable law. Now we're quoting chapter and verse. I feel like this is inconsistent. Can we at least ... and I understand we want to go forward. Can we at least just put something like "for example" in front of it, so that we're not

handcuffing this to a specific law that may change or be irrelevant in your jurisdiction? Thanks.

THOMAS RICKERT: Marika, wasn't that amongst the passages that I had already sent a proposal to change for, so you know that this might be older than our discussions 48 hours ago. Because I think we have eliminated the references to other laws than GDPR, so this might actually be outdated. Is that possible?

MARIKA KONINGS: I think James is referring to the language that you added on Article 13 and 14. So what I've done is just fulfilled that information [inaudible] according to, for example, Article 13 and 14 GDPR as in certain cases. Other information requirements may apply to controllers. I think that's what James was trying to say.

JANIS KARKLINS: There may be also applicable California law with the same type of requirements.

MATT SERLIN: Can't it just say fulfill their information duties according to applicable law and take out the "for example"? Thanks.

JANIS KARKLINS: Again, that is in the line of conversation we had previously. The philosophy is that GDPR is an applicable law but there may be

other applicable laws which may be stricter or less, but then probably the applicable law will be the strictest available on the market.

THOMAS RICKERT: But then we have to say minimum. 13 and 14 GDPR minimum requirements. Because we decided 48 hours ago that we would be GDPR specific.

JANIS KARKLINS: Where that is absolutely necessary and here is where we're referring that this is ...

THOMAS RICKERT: Sorry. The difficulty that I have listening to the concerns from my colleagues to my left, is there is an applicable national law that wouldn't require disclosing recipients of the data, then you would lose exactly what you're asking for—where GDPR requires you to disclose either the category or specifically who the recipient of data might be. So, I think we need to say 13, 14 GDPR or as a minimum requirement notwithstanding other applicable laws. Something to that effect.

JANIS KARKLINS: We are not settled on 54. Please find the time during coffee break to find a way forward. So, we're done with 55. 56?

MARIKA KONINGS: So, 56, 57, and 58 all relate to the financial sustainability recommendation. I don't know if you want to take those together or I don't know if that's one. That is one that we've discussed a couple of times on our calls. There were a couple of action items of people to come to agreement on language. I think some of them tried but didn't succeed. So I'm not really sure whether you want to have a small group as well maybe look at that and come back to the table with proposed language. Can maybe mention those that expressed concerns and maybe those can get around the table on this. I don't know.

JANIS KARKLINS: No, let's leave part of financials to the [inaudible] while the whole document will be updated we will talk about financials. So we have now then 61, right?

MARIKA KONINGS: No, I think 59 is actually in the automation building block. It does relate, to a certain degree, to finance.

JANIS KARKLINS: 59.

MARIKA KONINGS: So, 59 is a suggestion that was added by the Registry Stakeholder Group to note that—because we have language in there that SSAD must be automated where technically feasible and legally permissible and that it should also add financially or

commercially reasonable as a requirement for automation. And this was flagged by the IPC, BC, and SSAC.

JANIS KARKLINS: Brian?

BRIAN KING: Thanks, Janis. I think this one might be easier than the last one and maybe some of the next ones. Two quick questions. At one point, [inaudible] I guess first is that it seems that automation is, in general, in my experience, the more financially reasonable thing to do versus not automating, if you do it right. So I think that raised a question for us. Then whenever I see language about reasonable—commercially reasonable, financially reasonable—in policy language, I think according to whom and who gets to decide what's reasonable?

So, I think we just wanted to have a conversation to help eliminate that ambiguity. Thanks.

JANIS KARKLINS: Okay. Anyone wants to respond? Alan?

ALAN WOODS: This is just following on from the conversation we had yesterday or the day before. Again, if we find out that automation of course is possible and that technically is there to support it and it turns out that it will cost \$25 million a year to automate that one thing, we just don't want to policy ourselves into a corner where we have to

implement it even though it costs \$25 million a year. I'm sure there's a compromise language there. We just need to have a reasonable escape valve that we're not going to commit ourselves to doing something that's just absolutely ridiculous.

JANIS KARKLINS: James?

JAMES BLADEL: I want to be absolutely clear. Automation saves money. Automation prevents hiring humans to review these which doesn't scale. So, we're in favor of automation. We are heavily incentivized to pursue automation wherever possible and legally sound. But as Alan said, we just can't be backed into a situation where we have to break open the piggy bank to build automation that we don't believe has a payoff.

So, I think, Brian, you put it very well. Who gets to decide? I think the answer is that we have to decide whether our risks of automating and letting potentially something get through that could result in a fine or some sort of regulatory or even ICANN Compliance action is offset by the benefits better realized by automating these things and not having humans review every submission.

So, I think that the incentive is there for contracted parties of all sizes to automate this or outsource this wherever possible, but again, [they do so] with the other side of the scale is the risk that they're willing to accept. Thanks.

JANIS KARKLINS: Stephanie, please?

STEPHANIE PERRIN: I just wanted to point out that automation saves money from a processing perspective, but it increases the financial risk from a legal liability perspective. So, it is a balance and this is a great role for the Oversight Committee that has representation to signal here. I'm sorry but we're going to be alert to costs being downloaded on registrants to cover this because this is an expensive machine we're looking at.

JANIS KARKLINS: Margie?

MARGIE MILAM: I think we're talking about automation at the SSAD level, not the registrar level. So, I don't agree that this is just a consideration for the contracted parties. I think it needs to be a broader discussion in the community. So, I do think we need to have some sort of language as to according to whom and maybe it's the advisory group that's providing the recommendations on what to automate in the first place, but I do think that we need to specify according to whom and have it be broader than just a contracted party discussion.

JANIS KARKLINS: Marika?

MARIKA KONINGS: If I can make one comment. At the moment, it's foreseen that the advisory group would only come to life after implementation, while I guess this conversation would actually happen during implementation. So, I don't know if it could be in consultation with the IRT. I guess that will be the group that's looking at how the system is developed, what features need to be put in place and what the costs are, because presumably, if automation is built in from the start for those specific cases that were listed and put into the other ones, there's no big expenditure that would need to be added after that to add further automation. Or maybe I'm missing something.

JANIS KARKLINS: Hadia followed by Mark SV and Alan Greenberg.

HADIA ELMINIAWI: Thank you. So, first I like Marika's proposal to tie the financial determination on the financial feasibility with the implementation phase and maybe that's when it could be decided if the financial feasibility could be determined.

Another point, to Stephanie's comment with regard to automation increasing the legal risk, I beg actually to differ because automation provides consistency and that it reduces the legal risk and does not increase it. Thank you.

JANIS KARKLINS: Thank you. Mark SV?

MARK SVANCAREK: I just wanted to ask my colleague a clarifying question. So, Margie, you said automation at the SSAD level but the SSAD encompasses both a gateway and the contracted parties. So I think you meant automation at the gateway level. Was that what you meant?

MARGIE MILAM: Yeah.

MARK SVANCAREK: Okay. She confirms that that was what she meant. Thank you.

JANIS KARKLINS: Thank you. Alan G?

ALAN GREENBERG: Thank you. I just wanted to note that in practical terms, at some point, we're going to have to have cost estimates and we're going to have to have an actual implementation plan and regardless of what we say in policy here, if we can't find a realistic way to pay for it, it's not going to happen. It's going to have to be reopened one way or another.

So, I think the natural course of events will ensure that we're not buying a \$25 million system which isn't worth it because we're just not going to find the resources to do that.

JANIS KARKLINS:

We are not building here a spacecraft. This will be a computer system with certain functionality. Again, probably it will go in millions, development of the system, but maybe in one-figure millions rather than two-digit millions. The operation of the system will add to the cost and that will be returned. So that is what we do not know. That will depend on the volume. But if volume is big, then automation is the only solution as we know.

Again, maybe since automation—this proposal covers exclusively the notion principle that we want to nail down, the system should be automated as far as it is technically feasible and then legally permissible. But then we may put maybe a sentence in the financial that it is expected that development of the system will have some kind of reasonable volume or reasonable amount or something like that.

Again, I understand the concern of proponents of the proposal but maybe financial is not ... This addition is not maybe in the right place. May I ask [inaudible] with understanding that we will try to formulate a sentence in the financial building block that we will be taking up as soon as we're done with the list. Brian?

BRIAN KING:

I don't think that we need to remove this language. I don't think we objected to putting it in. What we did need to understand is the

concept a bit more. Who's going to decide and how is this going to work? I think Marika put a really good suggestion in the chat about how we might address that concept.

So, I don't want to ask our friends to withdraw their language if that's must-have, can't live without language. We're happy to have it. We just need to I think flesh out that concept a little more. Thanks.

JANIS KARKLINS: Marika?

MARIKA KONINGS: So, a suggestion could be to just add a footnote to this language that says something like initial consideration of the financial feasibility will be undertaken by the IRT, and subsequently the advisory group as applicable. That may cover that you have a venue where that conversation will be held where the various parties are at the table and also allows for kind of future consideration should changes need to be made that would have a significant impact on the system. That may be a way to address it and move on.

JANIS KARKLINS: Could you repeat please the sentence?

MARIKA KONINGS: So, a footnote would be added after the financially or commercially reasonable that would read something like "initial

consideration of the financial feasibility of automation will be considered by the IRT, and subsequently the advisory group as applicable.”

JANIS KARKLINS: Any reactions? So, Hadia’s and Alan’s hands are old, right? So, no hands up. I take that this would be a way forward. Can we settle on financially reasonable, not commercially?

MARGIE MILAM: Sorry, I had a quick clarification. The footnote you mentioned, is that just to determine what’s financially or commercially reasonable or is it also for the technically and legally permissible?

JANIS KARKLINS: Financially.

MARGIE MILAM: So, who determines the technically and legally permissible?

JANIS KARKLINS: Technicians.

UNIDENTIFIED MALE: I just think in general we’re a little foggy on who is going to decide when and how things are feasible and permissible? It seems like a black hole that the steering group in the future will decide [inaudible] make recommendations, it will be a council decision, I

guess? We're scratching around trying to figure out how exactly these decisions will be made and who gets to decide. Thanks.

JANIS KARKLINS:

Again, just let's apply common sense. There will be policy recommendations and the implementation team will come together and we'll say, "So, can we build the system?" and technicians will say yes or no. So, it's not rocket science, especially when we're talking about adding that existing [inaudible] functioning. Technically, it is feasible.

Now, GDPR. There will be analysis what is legally permissible with GDPR, plus Bird & Bird advice and your legal take on things. So that will determine what is legally feasible or not and [risk].

Again, we cannot prescribe who exactly will take those decisions. There are some natural course of action that should be ... We're talking about principle. If legally not permissible, then automation will not take place, full stop. If technically we cannot build the system, the system cannot be built. Common sense. If it can be built, it will be built. I don't know how to answer those questions. [Dan], please.

[DANIEL HALLORAN]:

Thank you, Janis. Just clarification. We're not talking about I don't think the automation of the central gateway. I think that's going to be hopefully very automated. We'll take another look at that. I thought this was talking about additional categories, like requests that could be automated.

The wording here is actually confusing because we were very vague about what the SSAD was before. Now we're talking about full automation of the SSAD when ... Does that mean trickling down to full automation at the registrar level or the registry level of processing and responding to requests? We don't have to continue. I agree we'll figure it out later. But I'm pretty sure we can't agree now what's legally permissible or financially permissible except in a few little cases. And I don't think if we don't say who will decide that later, it sounds like it will just be a black hole of ... There's a nice concept that we might be able to automate things in the future. We just don't understand how it's going to happen. Thanks.

JANIS KARKLINS:

Again, that's the functionality and we will talk about it just a minute after what is the role of that advisory group. What is SSAD? SSAD is a Standardized System Access/Disclosure. SSAD means accreditation system, central gateway, disclosure at the level of contracting parties or by automated system and transportation of data. All that is SSAD.

How it operates, that will be determined in part by implementation team and in part by advisory committee that will see and then talk through the existing practices what could be improved in process terms, still being compliant to policy and will make suggestions for further actions. And if there will be something that would determine a need for policy decision or which may appear to be policy decision, then that would be GNSO Council who will take the [inaudible] to those questions.

This is, I understand, we agreed on the model and how it will continue in order to prevent repetitive policy development processes in the future.

So, then we settle financially reasonable with asterisk with the language that Marika suggested.

MARIKA KONINGS:

So, next on the list is ... Oh, my computer just decided to freeze. It's number 61, which relates to the recommendation on the advisory group. Based on the conversations earlier this week, staff kind of rewrote the original language of the steering committee to inter-reflect some of the discussions and proposals that were made. I think the Registry Stakeholder Group has suggested here to remove this and make it more of an open questions, noting as well maybe the preference of having the standing mechanisms in place. I'm just wondering because I think it probably will take us too far to kind of rehash that.

I'm wondering if maybe staff can take time to writing it more as the group has discussed, has not decided yet. This is a potential option, although there is a preference as well to use existing mechanisms. As part of the public comment period, we would encourage the community to provide further input on what mechanism may be best suited to do this but these are kind of the roles that we would foresee for this mechanism and why it's needed.

If people would be open to that, we can take a stab at that and you can have a look at it again. We don't really need to go into too much detail.

JANIS KARKLINS: Look, I think we should attempt to put at least initial reflection on the advisory group.

MARIKA KONINGS: [inaudible] what is in there, make it more ...

JANIS KARKLINS: I invited folks to come to the board and provide input on the functions of advisory group. Team members chose to ignore that invitation. No, you had different priorities.

Look, I would be really reluctant to take out recommendation 19. That would be, in my view, wrong approach. I would be happy to, let's say, go through or to talk through now if you wish so, based on what is proposed here, and staff would capture the elements of our conversation and would propose the language and still we could do the tweaking online on this until next week. But I would be really reluctant to take it out because this is important element of the paper, initial report.

MARIKA KONINGS: If I maybe can just clarify. At least my suggestion wasn't to take it out but maybe the heading should change and we make it ... Because I think in the beginning we were [recommending] a

mechanism for continuous evolution of SSAD. And then in there we say that a mechanism needs to be created. The group is considering an advisory group or another type of mechanism that would do these things.

I think some of the things will stay, maybe less specific on the advice part and note that there may also be a preference of using existing mechanism but that input is sought on this and that the group will work further on it so that there is a clear recommendation that this mechanism will be created. It's just that the details are not necessarily completely settled yet. But that was my suggestion in finding a middle ground and not removing it but maybe not setting it as much in stone yet as it may look now. I see nodding there, so I don't know if that's acceptable to the registries to go about.

As I said, we can draft some language and you can of course have a look at that again before signing it.

JANIS KARKLINS: So, I have Eleeza and Marc Anderson. Eleeza, old hand. Marc?

MARC ANDERSON: Thanks. We mostly think what Marika is saying makes sense. We were a little surprised with the language when we saw the new draft based on the conversation we had in here. I thought first we were going to exhaust existing mechanisms as much as possible and this seemed to sort of scrap that idea and rely totally on this advisory council. That was one of our hesitations. We really want to leverage existing mechanisms as much as possible. We do

think this is a principle, the evolving nature of the SSAD that we support and we know there needs to be a mechanism for that. So, we're not necessarily suggesting complete removal. I think it makes sense to have something on this in the initial report that the community has an opportunity to provide feedback on. I think Marika provides a good path forward, but when we do meet on this, I do ask for everybody else in the room that we do consider existing mechanisms to the extent possible.

This is a recommendation that will add ongoing costs to the entire ecosystem and this is not a recommendation that we should make lightly. So, that's I think ... With that plea, I think we would like ... I think what Marika is suggesting seems fairly common sense.

JANIS KARKLINS:

Look, whatever works. That's fine. Clearly, there should be some kind of mechanism that would look at the functioning and then provide input for further evolution. If there is something existing, fine. If not, the way how it is sort of proposed here would not add huge burden because, as you see, the group would meet virtually, so there would be some cost, of course. Every activity costs something. But that would not be big travel and certainly that is dedicated specifically to running the system.

But again, if Marika is ready to propose some further edits, fine. But if you would be ready to spend some five minutes talking about functionality of this, apart what is proposed here, SLA metrics review, categories of disclosure requests which should be automated, [other] implementation improvements such as [indication] of possible user categories and/or disclosure

rationales. Is there anything else that's simply to give Marika some further sense what would be the functionality of that advisory group? Volker?

VOLKER GREIMANN: One thing that would be helpful or probably even a prerequisite for such an advisory group is that it avoids the current situation of deadlocked group where the diametrically opposed positions are irreconcilable and urgently needed change can't be affected without massive horse trading or beating your head against the wall for a decade until it bleeds or the wall is gone.

What I mean is we, on the registrar side, have tried in various venues to have certain policies changed—for example, the WHOIS acceptance of local law policies—and basically run against walls because other parts of the community didn't feel any change was warranted, whereas we saw this as an inoperable process that didn't benefit anyone.

So, what we are saying is that when we designed this function—and I'm not trying to make a proposal of how this is going to look like because I don't know—we built in some ability to affect change even if it doesn't meet full consensus. If that change is from an objective outside position, logic [is] necessary. That's something that I think from our perspective is very important.

JANIS KARKLINS: Okay, thank you. Alan G?

ALAN GREENBERG: Thank you. ICANN is really, really good at building complex processes and making them more complex as we proceed. So, I'll vote for anything that says let's not add complexity. In this particular case, however, I don't know what existing mechanisms would be comparable and would address this issue, so I'd like to hear some examples before we put too much investment in using existing processes.

I would, however—and this comes down to the discussion we're going to have in a minute—want to be very careful that if we invent a new group, and I think we're going to have to, let's not make it part of a major hierarchy of first it goes somewhere else, then it goes to this group. This group then has to be approved by something else. We could make it really complex or we could make it simple and I'd like to forward and try to make it simple. Thank you.

JANIS KARKLINS: Thank you. Stephanie, please.

STEPHANIE PERRIN: Thanks. I, too, would like to make it simple and with a strong interest in not proliferating so many things that we can't staff them. However, the existing contract between the contracted parties and ICANN is the only thing that's ever been a policy dealing with WHOIS and registrant rights and that's just not acceptable. The policy needs to go through the regular policy process which is the GNSO.

So, I see this very clearly as a GNSO function, and if it needs to resemble a perpetual EPDP—and I am shivering as I say that—then maybe that’s what it looks like to start with. But we do need an oversight committee because this is complex and you cannot just slip it into a contract and then get into the kind of headbutting that goes on between the registrars and registries and the other, shall we say, important players at ICANN and leave out the non-commercials who represent the registrants. That will force us into a very unfortunate situation.

So, I think that this structure works. It would be reduced in size but the functions of an oversight committee would be keeping track of ongoing developments. I mean, you could staff up a whole branch of ICANN to look after that if you want but I don’t think that’s a great idea. We will know. Those of us who are on the ground will know what’s going on and we can report back. We need to see what actually works. We have talked about bad actors and people would try to get language in here to deal with bad actors. But that’s something that the oversight committee can say, “Yeah. We have a problem with bad actors. Let’s figure out what we need to do to rectify that.”

There is the migration that we hope we will see eventually to a more mature policy that looks more like a code of conduct. Jokes about [inaudible] aside. But this is evolutionary once we get this thing up and running because ICANN has zero experience in implementing data protection as far as I can see beyond cookie policies. Then this is a learning organization for the whole community. Thanks.

JANIS KARKLINS: Thank you. Also, those members who would like to provide any specific formulation for policies for staff's consideration—or functionalities of advisory group or whatever but existing or future—please do so. Alan G, please.

ALAN GREENBERG: Thank you. In response to what Stephanie said, number one, so far I haven't seen any policy decisions that this group would be doing. Maybe we'll come up with one in our next discussion. And I do not believe this should be a GNSO group. This group may refer things to the GNSO if policy is involved but it's an operational group, not unlike the Customer Standing Committee for IANA, although clearly a different set of customers and a different set of composition and rules. Thank you.

JANIS KARKLINS: No. This is what text suggested. Advisory group may also make recommendations to GNSO Council for any policy issues that may require further policy work. That is based on experience and analysis of implementation improvements and analysis of functionality of SSAD. Eleeza?

ELEEZA AGOPIAN: Sorry. My comment is on 63. I'm not sure if I've skipped ahead.

JANIS KARKLINS: No, we are not yet there.

ELEEZA AGOPIAN: Okay, sorry.

JANIS KARKLINS: Anyone else? Then, based on this conversation, Marika will [inaudible] in language and invite community to provide further input and we will take it from there. 63.

MARIKA KONINGS: Thanks, Janis. 63, this is a section that I think was originally suggested by Brian, and as such has appeared in brackets in the audits. The audits of the central gateway manager and contracted parties. I have already made an update here because of course we already decided that ICANN serves as the accreditation authority. So this deals with data breaches and the process for that.

So, the ALAC flagged this because indeed the “ifs” so I think that’s a change we can easily make. But I think then NCUC flagged this as well for further conversation. I think Eleeza had her hand up for that one as well.

JANIS KARKLINS: Eleeza, it’s your time of glory.

ELEEZA AGOPIAN: That’s a lot of pressure and I’ve only two coffees. So, our question on this one had to do with in the language it says, “Address any breaches of registration data held by ICANN and the SSAD.” Our understanding was that none of the data would pass through

ICANN. It would go directly from the contracted party to the requestor.

JANIS KARKLINS:

So, that is yet to be determined how information will flow from registrar to requestor. Probably that is one of the issues that we still need to spend some time. I see there are two options. One option is ... Again, it depends on the functionality and way how the central gateway or portal will be built. We can think of the direct communication between contracting party and requestor in case the recommendation is approved by a contracting party and no feedback is needed to central gateway in order to train the algorithm.

But if the algorithm needs to be trained or if there is discrepancy, then contracting party now needs to provide feedback. So it could also provide feedback and the data.

Then, further, we can think of how data in a secure way would be transferred to requestor. And here we can think of model that once data is coming to the central gateway to be forwarded to requestor, requestor received notification email and then goes to the system, logs in, and downloads that information in a secure way. So, these things all still need to be discussed further and maybe we will spend some time next two hours.

MARIKA KONINGS:

Thanks, Janis. If I can just respond, because I think actually what we've written into even some of the principles that we reviewed on day one is that data would not pass through the central gateway.

Even if it's automated, the central gateway would basically direct—and I think that can be automated. Direct the contracted party to release that information and send it to the requestor. I think that's also how Berry has developed the graphic. So, if that is different, that may require a conference. But I think we discussed previously that there may be issues with the central gateway having that data, the transfer of that data, [as such]. And I think there was also a point that was made in one of the meetings I think by the EU representative. There may be problems if that data would go [back].

So, I think at least as we've currently written it is that it would always go from the contracted parties to the requestor, but in certain cases, that would be directed. So there's no manual intervention of a contracted party. If the central gateway gives that order, it would kind of automatically bounce through, I say as a non-technical person.

JANIS KARKLINS: Okay. So, how shall we proceed then? Alan G, Brian, Chris, Hadia.

ALAN GREENBERG: Thank you very much. First of all, I think either there's a drafting error here or we're mixing different concepts because it says, "As ICANN serves as the accreditation authority ..." Now, I can understand there could be a breach of confidentiality about the people who are accredited. I don't see how that matches with the next half of the sentence of any breaches of registration data. So,

we seem to have a mixed metaphor here that is talking about two different things. So, that's point number one.

Point number two is we use the term accountability mechanisms in regard to ICANN and that tends to be taken as the accountability mechanisms associated with the empowered community. Therefore, I think it should say existing management and accountability mechanisms because, typically, you fix a problem through normal line of command before you go to the empowered community and have them fire the Board or something like that.

So, I think, number one, that there's a real problem that this first sentence just doesn't make a lot of sense. And assuming we can make sense out of it, I think we need to refer to management and accountability mechanisms. Thank you. I'm also not sure OCTO is the right group to handle IT problems. Maybe whatever the IT Officer is called. So, than you.

JANIS KARKLINS: Okay. Marika?

MARIKA KONINGS: Yeah. Thanks, Janis. I think [inaudible] the first one that should probably say that the central gateway manager, but I think we still have Eleeza's point. If everyone is in agreement that no registration data is passing through the central gateway, is this still relevant, as it specifically deals with breaches of registration data held by ICANN in the SSAD. If we're all saying that there's no data

held in the SSAD, is this whole provision still relevant or should it just be removed? I think Brian is actually the author of this section.

JANIS KARKLINS: I have people in line, and Brian, you appear to be the first.

BRIAN KING: How convenient. So, I apologize for this language. This was drafted to address a problem I didn't understand and was a very quick attempt to get something on paper that we could work from. So, you're welcome or I'm sorry, depending on how you want to interpret that. I think Alan is right about what it should be.

Then, as far as OCTO goes, I just put something down that we could start from. And the concept here, as I understood it, was that the contracted parties I think were right to want to have something that says that if they're dumping data into an SSAD and that's being breached, they get to stop dumping data into the SSAD.

So, that's what this was intended to address, and I think we're right that if we're not dumping data into the SSAD anymore if there's a centralized gateway and it's not getting the data, then we don't need this concept anymore at all probably. Maybe. Maybe this is easier [inaudible].

JANIS KARKLINS: So, the accreditation data still will be somehow processed and somewhere stored and collected and there may be breach of that

data. So, I think that the first sentence is, since we are talking about audits here, and probably the first sentence, as ICANN serves as accreditation [inaudible] existing accountability mechanisms are expected to address any breach of accreditation data held by ICANN. So, that would be one.

Then, another concept would be if there is a breach in SSAD, in general, so then somebody needs to fix it. So, that is the idea. And who that someone could be. That's the question and probably first look to ICANN Org what would be the appropriate entity or shall we just say technical services of ICANN Org should take immediate look or something like that?

[ELEEZA AGOPIAN]: You could just say ICANN Org. It would be whatever the appropriate department is.

JANIS KARKLINS: Okay. So, I have Chris, Hadia, and Stephanie.

CHRIS LEWIS-EVANS: So, I actually think accreditation authority might be the right word. But then the words after are wrong. So, I think maybe—and this is a question for Brian—if there's a breach of the accreditation details, the credentials, then obviously we don't want the contracted parties to release data because there is a problem with the accreditation system and then everything else makes sense after that.

So, either Alan is right and the accreditation authority is the wrong word and it should be central gateway, or the other way around, accreditation authority is right, but it's not registration data; it's credentials have been breached.

JANIS KARKLINS: Hadia, Stephanie, and Brian, and Alan G.

HADIA ELMINIAWI: Thank you. So, I [inaudible] if we all will take a look at the diagram that Berry sent today. It is very clear. There is no registration data in the central gateway. So, the central gateway, in case of automation, will execute the RDAP query which is a good thing. Then the data would be released from the contracted party's database. So, actually, the central gateway holds no registration data. So, if there is a breach through the accreditation data, not the registration data is the right wording I think here.

BERRY COBB: Just to be ... I'm definitely not a techie guy. The concept is correct that the query is somehow initiated or flagged or sent to the contracted party. Exactly how RDAP queries are working in the background and who is getting or how that works technically, I think we're going to have some help with ICANN Org technical staff to really understand that better. But, in principle, yes, the RDAP query is just sent to the contracted party system but the data still flows outside of the SSAD.

HADIA ELMINIAWI: Yes. So, the automation is initiated by the central gateway but the response comes from the contracted parties in case of automation.

JANIS KARKLINS: Look, let me take those who have hands up, Stephanie and Alan G, and then I will make a suggestion. Stephanie, please.

STEPHANIE PERRIN: Thanks very much. This seems to be the only area where we talk about breach. When we talk about breach, we have to talk about breach notification requirements which are in virtually every data protection law now, including the GDPR and they're very specific. A gateway through which the RDAP request flows is still processing personal data. The request for release of my data, alleging that I'm a child abuser or whatever, is arguably the most sensitive data that we've got in the system.

Now, calling it registration data, per se, summons up the concept of a WHOIS and all these sort of gestalts that we are locked in. But that request is personal data about me or whoever the perpetrator is alleged to be, and the decision-making process is not coming from the sky. It's being done by the gateway manager, so there's a processing actor in there making decisions, right? Even if it's a machine.

So, this is repository of personal data that requires some disambiguation in terms of controllership, joint controllership, processor, whatever. It doesn't matter whether it's encrypted or not, because as we know, most data breaches involve—or not

most, but many—involve somebody hacking the encryption. So keep the notion that this stuff is encrypted and it flows through the system. Forget it. That's not important.

So, I think this needs to be really thought out and fleshed out much better. Accreditation credentials themselves contain personal information. If someone is alleging that an accreditation authority needs to be revoked because they've got a criminal gang working in that organization or entity that's been accredited, which is a possibility, well that's personal information, right?

So, I don't think we're ready. I would suggest parking this until we sort out the relationship, so that we can be clear about what we're talking about here. I think it will sow a great deal of confusion if we send this out in the request for comment because we haven't determined these things.

JANIS KARKLINS:

But we are creating a better understanding of that. Indeed, it cannot go out in this way. That's for sure. That's why we're having this conversation. Alan G, please.

ALAN GREENBERG:

Thank you. I've got some disbelief over how this discussion is going. Brian said—and I think, to summarize—"I sent that in error. I made a mistake." But instead of just dropping it, we're now trying to figure out how we can mangle it into something that makes some sense since the paragraph obviously is epoxied into the document and we can't take it out. It was sent in error. Take it out.

Yes, the SSAD is going to have personal data. It's going to have accreditation data. It has God knows what else kind of data. ICANN and every organization represented around this table runs all sorts of computer systems with personal data in it. We all have responsibilities under GDPR or appropriate things. ICANN has personal data coming out of its ears in its various databases and will have to adhere to policy. I don't see why this one is unique. Thank you.

JANIS KARKLINS:

Alan, thank you. As I said, that you would be last on the list. This sentence should go. It is deleted. But based on the conversation that we had, I think that there are some common sense proposals that need to be put in and that will be done by staff in the next iteration of the document.

So, with the exception of 54, we have gone through the issues that people indicated as [cannot live with].

MARIKA KONINGS:

If I may flag one additional item, because going through the changes yesterday that needed to be made—and if I can ask people for clarification on item 25. I think this goes as well to a question that we discussed with our ICANN Org colleagues in relation to the expectations with the receipt of acknowledgement, the check of ... The completeness of the request as well as the subsequent recommendation.

This goes to the notion that the central gateway manager must confirm that all required information as per the preliminary

recommendation is provided. The BC has added here that a reply must be delivered in the meantime of TBD minutes but less than two hours.

So, just to confirm, is the expectation that this is a machine review, you didn't fill in the fields, it goes back, this is not a manual review to check did you really provide a good rationale? Your name is not Mickey Mouse?

And then the question is, well, what is the expectation then with the subsequent relay to the contracted party? Because a recommendation is supposed to be attached there. Is a manual review anticipated there? Is that something that's kind of gained over time, like requests are sent on to the registrar and there's a notification that goes to the central gateway to say, yes, we released data or, no, we didn't, that the central gateway kind of learns every time if this information is provided, the answer is yes. So, next time I get that same information, I'm going to recommend a yes.

So, I think we just want to have a little bit of clarity about what the expectations are with regard to human intervention in a central gateway, to also kind of understand is the less than two hours reasonable if any kind of manual review is anticipated there? That's just to ... And if people want to think about that one and come back later ... I see Mark—

JANIS KARKLINS: Yes, please.

MARK SVANCAREK: Okay. So, when I wrote this, I was assuming that this was an automated process basically implying that the gateway was not acting as a controller in this sense and that they were performing an automated process, looking at the validity of the request, handing out a non-binding recommendation.

I know yesterday I was criticized about putting in such specific SLAs, so I could withdraw that part. But just to be clear, I do think that this thing that we are all jointly building should have some performance targets and that was based on the idea that it was an automated process. If that assumption is incorrect, then those performance targets would of course be different. Thanks.

JANIS KARKLINS: I think that the thing ... If we're talking about a portal, probably request will not be—one cannot send request if all required fields are not filled. And that would preclude submission of incomplete requests.

The question, of course, one can argue that there might be Mickey Mouse instead of real name, but that's a different thing. But from that perspective, we need to probably [inaudible] on that, that you cannot submit request if insufficient information is filled. Am I right? Mark?

MARK SVANCAREK: Yeah, that's the right assumption but it wasn't really the point of this edit. So, assuming that all these things are true and all of that can be performed as an automated function, then there ought to

be some sort of a performance target since there are performance targets that were scattered through the previous draft.

So, I was just saying this is another place where we should add a performance target. If we remove all the performance targets from this document, then you don't need it here. So this is really more of a completeness thing.

JANIS KARKLINS: So, we will look at it for the next—

MARK SVANCAREK: Yeah. Just look at it. If it's inconsistent with the other targets, then please remove it.

JANIS KARKLINS: Okay, thank you. So, I would suggest that it's time for a coffee break and water break. Maybe 15 minutes. Once we will come back—or in the meantime, please talk about 54, that we can find a way forward on 54. Yeah, it will be on the screen.

So, equally, I will now call on specific team members, on Brian. I'm referring to financial building block. You promised to provide a footnote on [inaudible]. if you haven't done it, you have 15 minutes to do it.

BRIAN KING: Okay. I understood that with to be to collaborate with some of our colleagues, specifically the NCSG, on coming up with language that we agreed on there.

JANIS KARKLINS: Then, another homework, Brian, for you was with Amr, Stephanie, and Franck to clarify intent of statement—statement of intent, ongoing maintenance costs, [inaudible]. This is on the sentence and no circumstance that subject should be expected to foot the bill, having the data disclosure [inaudible] and so on. I think please use those 15 minutes to also look at financials that we can try to nail down, also this section of the initial report.

Then also we will look into swim ... Swim land, swim track, swim suit? Swim lanes. While staff will be compiling next version of the initial report. With this, we can stop recording for next 15 minutes.

Welcome back. So, let us now talk on swim lanes. These are the ones that should replace the chart in the draft initial report. Berry has worked on those and maybe I will ask now Berry to walk us through this chart. Then I will collect impressions and comments that you have after reviewing it. Berry?

BERRY COBB: Thank you, Janis. So, I guess a couple of disclaimers here. Obviously, this is a bigger difference than the three different types that we had in the preliminary draft report. One of the shortcoming was that the original models or the concept here was still carrying on from the hamburger concept. So, when you get into swim lane

definitions, you can't confuse systems and roles, otherwise things really get messy.

So, what I attempted with this one is to truly break out individual roles per swim lane, although it still kind of breaks a general rule in that the central gateway manager, as a role, is also kind of sort of the system as well. And even more hyperactive swim lane models, there would be a dedicated swim lane just to the system, but it really starts to get busy when you're processing through the roles and what they're doing and the activities they're doing and how they're interacting with the system.

So, I guess first and foremost, this is really trying to be more a conceptual business requirements type model. It's definitely not a technical model, especially when we get into the concepts or the true details of the SSAD model initiating an RDAP query out to the contracted parties' RDAP servers. It doesn't take notion really of client or server based. Again, it's really more conceptual to help provide a visual based on the outcomes or the recommendations of the SSAD, so we should stop there.

I think in terms of assuming that this particular model is agreed upon by the community and it's implemented, obviously there would have to be many more technical diagrams to support the business requirements behind that.

So, hopefully, it serves the purpose for the initial report and final report, but if nobody likes it, we can certainly try something different. And quite honestly, when Mark SV put his PowerPoints together trying to understand the Contracted Party House proposal, I was really almost wanting to go down that road as

opposed to swim lanes because there are ... A lot of people really just don't understand how swim lanes work either. But the one I guess downside to Mark's style of the model is that the roles aren't easily depicted, especially across all the different activities going on.

So, I'll just quickly try to run through the general process flow to this. So, give me about five minutes and then we'll just take questions after that and welcome any feedback or suggested changes or we throw it away and start over.

So, I'm going to start over in the top left, just as with any ... Oh, by the way, obviously it's very small on the screen. You're not going to be able to see it well. I do recommend ... I'm going to zoom in on certain parts of it. I'm getting there. I'm going to zoom in on certain parts of it. But I do welcome you to also look at the PDF on your own screen.

So, quickly, just the swim lanes itself. We've got the accreditation authority which is listed as ICANN. We have the requestor. We have identify providers. We have the central manager or central gateway manager which is also the SSAD, as I mentioned, and that is also being played by ICANN or obviously outsourced to appropriate contractors as necessary. We have the contracted parties, and then down on the bottom, which is still under discussion, the SSAD Advisory Group.

So, kind of the first general notion I think that this group has agreed that only accredited users have access to the SSAD. So you've got to get accredited first. So, starting here at the start, you basically submit the application for accreditation. It flows up to the

accreditation authority or ICANN or its vendors that would be supporting this. They'll process the application and they're going to confirm the requestor's identity which actually flows down to the identity providers and the identity providers, in a general notion, for example, could be WIPO I think is what has been discussed about.

UNIDENTIFIED MALE: I'm sorry. If questions come up, do you want the questions now or should I hold them for the end?

BERRY COBB: I was hoping for the end. Otherwise, we're going to be here for two hours discussing this, but if it's urgent, then please interrupt. If it's not ...

MARIKA KONINGS: Is it urgent per the definition that we agreed on?

BERRY COBB: Anyway, the identify provider, like I said, would be perhaps WIPO that would be providing the identity or confirming the identity of intellectual property law firm or whoever the case may be.

So, the identity provider will verify the requestor, their identity and their role, which I think what I'm trying to do is, where possible, pull language from the draft report that makes up the blue boxes. It's not a replacement of what's in the report, just a short ... Trying to be short and sweet summary of that particular activity. You get

to a decision. Is the identity confirmed or not? If it's not, then there needs to be some sort of interaction between the requestor and the identity providers so that they can work out what's wrong with their particular ... Why they aren't passing the identity part of the process.

But ultimately, they get confirmed and they would then let the accreditation authority know that their identity has been confirmed and then the accreditation authority will do a final review, and a final review of accreditation application and then either grant the accreditation or not.

So, there's really three gates coming out of this. The first is no. Let's just assume that, for whatever reason, the application is denied. There's likely supposed to be, as I understand, some sort of an attempt to be able to revise their application and/or file an appeal in that component. Some of the details I think we'll still be working on from the report. But there needs to be this relief valve, so to speak, to get to a point where they are fully accredited.

So, it will continue in this loop until there's an accreditation or if, after an appeal, that that was the final final, "No, you're not going to get accredited." Then basically that would take you all the way, the farthest to the right, which I think you're familiar with, that if you're not accredited, you don't get access to the system, so your only option is to go directly to the contracted party for a request for a disclosure, which in essence is rec 18 from the IRT.

So, assuming that the accreditation is approved, they get the appropriate credentials. Then they can come down. The requestor will then log into the SSAD system. And this is where some of this

techie stuff gets pretty techie. And again, this is really more conceptual. So, I don't ... How do I say this? I can't say for certain that it's exactly representative of what exactly goes on. But my understanding at this point, especially a concept that was mentioned from the TSG model is that the identity provider, or providers, also play a role in helping to confirm the credentials of the requestor when they're logging into the system. This is one part of why Francisco—he couldn't be here but he is providing input on this that would I think maybe help eliminate some of the confusion. But based on input that I've gotten this far is that the identity provider does help play a role in this. If it doesn't, we can make a change.

But as with any system, every now and then, you for whatever reason, even if you're allowed to log in, you can't log in, you need to be able to submit a support ticket to figure out what's going on so you can resolve being able to log into the system.

So, eventually, your credential is confirmed and then you've got the green light to submit your request. So, flowing back up into the requestor swim lane, they'll basically click on "create new form" or something along those lines and start filling it out. Their profile information would be populated in there. They're going to be putting in their purpose or legitimate interest for submitting the form. They'll be attaching a single domain name or a CSV file with multiple domain name for the request and all of those items that are necessary in the form. Again, it's not meant to go into great detail of what is in that form. That could be a whole swim lane in of its own if you really start to drill down into this.

So, assuming they fill out the form and press the “submit” button, it will flow to the central gateway manager/SSAD swim lane. There’s an automatic acknowledge of a receipt and then there’s a review of the request for completeness.

Now, the review of the request for completeness is going to be kind of a hybrid from my understanding. For those types of requests that can be automated, obviously there’s some sort of criteria component back there that will be able to detect that this is a candidate to be an automated completed request, then otherwise if it ... Based on other criteria, that that review of the request for completeness may be a manual type of review.

But ultimately you get to a decision here. Is the request coming in ... Is it one that is allowed to be automated? So, hypothetically assuming that WIPO as a rights protection provider for UDRPs, assuming that they were accredited and the requestor is submitting a disclosure—I’m sorry, that WIPO is submitting a request for disclosure for a specific filing of a UDRP, that would be a candidate for one of those automated ones. So, it flows out to the right to where the SSAD system would execute an RDAP query, basically typing in the field line example.com.

And again, this is not meant to be technical in terms of how the RDAP query goes. But assuming that this is an automated candidate, it submits the query to the appropriate contracted parties, and for sure there’s a lot of technical communications and handshakes going on behind the scenes with the SSAD and the RDAP instances at the appropriate contracted party.

So, I have heard that there's been confusion about having the multiple activity boxes kind of stacked here. That's meant to display or drive home the notion that there can be multiple requests. Or it's one request but it's sent to multiple contracted parties and not just one. So, that's the idea of the [one to] and that's what I loved about Mark's example way on the far right of his screen. He was able to show multiple RDAP instances across the RDAP parties and how they're talking receiving inbound and sending outbound type of responses.

So, again, assuming that this is still on the automated track is that the response would occur at the contracted party and flow outside of the SSAD system back up to the requestor swim lane by which the requestor would process the registration data based on their purpose and everything that they have identified. Once that data has been processed and its fulfilled its particular purpose, it's eventually destroyed and no longer used and that's the end of one transaction of an automated type request.

So, now let's go back to the point where the decision of whether it's an automated disclosure candidate or not. Let's assume that it's not. So, it flows south out of the automated disclosure decision box. This is where we start to get into the balance test framework.

So, the [arrow] will flow in and the activity itself is evaluate request and balance test if required. And I do need to back up just one point because Chris had noted this. There's a preliminary recommendation that if a request is found that it can't be automated and it's sent to the contracted party that there's a preliminary recommendation to disclose. And I think there's still some work about that but I wanted to highlight it in particular that

that's supposed to be part of the submission to the contracted party for these manual fulfill types of requests.

So, when we're flowing here to the evaluate request and balance test if required, you'll notice that this activity box, just like some of the others, is still spread across or has the potential to be spread across multiple contracted parties, but it's a different type of activity box, and if you were to refer to page one it's technically a sub-process. And that is what page three is about, which is the balance test framework that originally Alan put together and then I think Matthew refined. I'll briefly go through I really dislike Macs, I'm sorry. I love you, Mark, man. I love you, man.

So, the balance test framework, again, trying to more or less maintain this notion of a swim lane. And I probably need to update the roles here and I can probably kill the other two swim lanes. It's not really necessary. But everything that we understand to this point is that it's the contracted parties that would be performing the balance test framework.

I'm not going to go through in this in detail because there's language in the report about this and I've pretty much cut and pasted most of that language. I might need to update it. Maybe, Matthew, if you can take a look just to kind of reconcile what's in the report versus here just to make sure ... For instance, I see the 6.1(f). Maybe I need to shave that off since we're not trying to be GDPR specific.

But, ultimately, the core of this is there's a decision as to does this request contain personal information or not? If it doesn't, then it's directing and flowing out to the right to disclose the entire or the

scope of the minimum public data set that's available and flows out to the far right, which would take you back to page two.

But then if the request does contain personal information, then there's a series of decisions and additional activities in the review of that request to determine if that information can be disclosed.

So, assuming that the information can be disclosed, it takes you back up into page two, and flowing out of this, and then ultimately is this decision to disclose data. And there's really two options. Either it's accepted that they will disclose data or it's rejected.

And the rejected part real quick, assuming that the contracted party said that the balance test framework did not allow for the request to be completed, there is a small procedure up in the requestor swim lane that gets into appeals or submitting a complaint to ICANN Org.

So, the first would be some sort of appeal mechanism, and exactly what that looks like I don't think we've had much discussions about but I believe it is mentioned in the report. But ultimately—and this is where this concept of on page references are coming in. So, I know it's confusing but when you flow out of the decision to disclose decision box, you'll see a circle B with an [N]. Think of it as jumping into a hole and you find you B out, which is up in the requestor swim lane. You're basically flowing through a worm hole and you're showing up back on the requestor swim lane and there's a decision there. Does a requestor want to appeal the decision or submit a complaint?

So, if they want to submit an appeal, they'll jump back into the hole and then they come back over basically to the contracted party where the contracted party will, for a second time, evaluate the request and determine whether the appeal is valid or not. If they don't, they're going to reject it again, so you're kind of in this loop. And I guess we need to talk about how many times you can submit an appeal and those kinds of things. But that's the general concept.

Ultimately, though, let's say that the appeal doesn't work and then the requestor decides to submit a complaint to ICANN. They would flow to the right out of the requestor swim lane and you'll see another sub-process of submitting a complaint to ICANN. I didn't want to dive down into that rabbit hole of what that looks like, but in general, the requestor would go to ICANN.Org or maybe through SSAD and file a formal complaint with ICANN and then the whole contractual compliance process can figure out what's next, which is I think beyond our scope here.

Ultimately, though, this is going to be a consensus policy and there's going to be some sort of enforcement components to this. That's what I'm just trying to convey here.

So, jumping back real quick to the decision to disclose data. Let's assume that it is accepted that they're going to disclose the data. There is an RDAP query that's executed and a response will be generated that is then flowed up back to the requestor swim lane where they're going to process the data. They're eventually going to destroy the data and the process ends.

Then I'll finally conclude with the last swim lane, which is the SSAD Advisory Council. So, what's kind of listed in the draft working report that we have now, there were four components of what the SSAD Advisory Council may do. Obviously, this is up for further discussion. But from an operational perspective, they're for sure going to be looking at all of the statistics and transactions and flows and timeframes, those kinds of components, how that relates to any SLAs that have been established and what do those percentages look like, etc.? They're going to be doing things like ...

Mostly what this concept was about was looking at these different types of request transactions and looking for commonalities that ultimately may be candidates to automate for future disclosure. There could be other implementation improvements, etc., or ultimately there's some sort of policy outcome that needs to be deliberated by which it would be sent to the GNSO.

This last row is really, again, conceptual. It breaks rules of swim lane modeling because it doesn't have a start or an end, but it is a role that's being played in what we're defined here.

So, that's basically the high level. I'll try to answer questions and stuff now. Thanks.

JANIS KARKLINS:

Okay. Thank you, Berry. I have many hands up and I suspect that this is about the presentation. I have Alan, Mark, Volker, Franck, Hadia in that order. Alan? Sorry, old hand.

ALAN GREENBERG: If the hand is up, it's old.

JANIS KARKLINS: Franck, your hand is up.

FRANCK JOURNOUD: Yes. Thank you, Janis. It's a question. Two questions about the diagram. So, first, Mark SV made a comment in the chat that this is sort of about responsibilities like a business flow. It's not a technical diagram of "this computer will talk to that computer, etc." That's a bit of a subtle difference and one that we'll need to understand and remember as we look at this diagram. That's not obviously a question. That's more of a comment.

My question is what if this diagram, either today or at any point in the future, is in fact wrong and at odds with things that are explicit in the policy and we just didn't catch the discrepancy? Am I correct that—and if I am correct, then maybe we might want to say that explicitly in the report that basically the write-up in the policy trumps the diagram? Obviously, that's not to say "and therefore [inaudible] ignore it" because in fact I think it is tremendously helpful in clarifying, etc. But if there were ever a sort of discrepancy, write-up over diagram? We should correct that discrepancy if we catch it, but if we don't ...

BERRY COBB: I'll defer to Marika if I get this wrong. I think what you said is spot on. Diagrams don't define consensus policy. So, if it is wrong, we certainly have the ability to edit it up until we publish the final

report and it gets over into implementation. It's a useful tool but I don't think that ... I wouldn't consider it authoritative. It's really more instructional, illustration to help drive home the points. But the core of the consensus policy is in the text of the language.

Ultimately, really, this is your model. I'm just the drawer guy here. So, I'm happy to change it if it looks like it's misconception or if there is concern that it creates more confusion, then maybe we shouldn't include it.

FRANCK JOURNOUD: And to be clear, that's not my point. I actually think you're right. This is just a drawing, but however complicated this is and however small it may be for my and Volker's imperfect glasses, people prefer that over a write-up. So, I would expect that people will look at that. We'll have to make sure that this is right and I'm not seeing anything that can say you got that wrong or you got that wrong. But if there is ever a discrepancy, we should say explicitly in the report the write-up will trump the diagram.

JANIS KARKLINS: Okay, thank you. Hadia followed by Marc Anderson.

HADIA ELMINIAWI: Thank you. So, my first question is with regard to the acknowledgement of receipt and a review request block. Yes, this one. I always thought that there should be ... Or I thought we had agreed during policy that if the request is incomplete, the

requestor could be asked to complete it, right? To complete the missing elements or missing fields.

So, maybe I think that there should be a line coming out of this box, going to the requestor in case the request is not complete, so that the requestor can complete it again, right? And also the acknowledgement of receipt will also need to go to the requestor, right?

BERRY COBB: Correct. Again, this is where we get into where what is systems doing and that kind of stuff, but I can expand on that to include a decision. Is the request complete, yes or no? If no, then it gets sent back to the requestor so they can update it so there's this loop until it is complete.

HADIA ELMINIAWI: Just because I think we agreed on that. Then, going down to the balancing test, I was wondering because this balancing test is—it's the second page, right?

BERRY COBB: Page three for the details. And I would ask that if you're getting into some of the specifics on that—

HADIA ELMINIAWI: No, I'm not going to be specific at all. So, this is an assessment for the validity of a request for personal data, right? So, why don't we do from the very beginning, after the block in which we identify or

verify the request, why don't we, after that, look for personal data? Why do we need to go through the blocks that confirm the legitimate interest? And then after going through these blocks, we look at the data to see if it contains personal data or not. Then, if not, we can disclose. If yes, then we continue the process. Why doesn't this block move to the beginning after the verification? It should be the contracted parties who have the answer. Yeah.

UNIDENTIFIED MALE: Because we don't know that kind of information at that time. I mean, before it gets to the contracted party as a request, the central portal has no information whatsoever about the nature of information it's being asked about.

HADIA ELMINIAWI: Yes, true. So, after identifying [inaudible] verified, after you do that—that part—why don't you go and look at the data and see if it contains personal data before going through the legitimate interest passes?

BERRY COBB: Hadia, your question is more on page three, correct? Not page two.

HADIA ELMINIAWI: Yes. It's this page here, what you have on the board.

BERRY COBB: Yeah. I'll defer to them.

HADIA ELMINIAWI: I want to understand. I'm not saying it's wrong. I just want to understand the logic behind it. Thank you.

JANIS KARKLINS: Okay, let me take next one. Marc Anderson, Brian, then Stephanie.

MARC ANDERSON: Thanks. Since I'm next after that question, I'll try and tackle that. Firstly, this on the bottom represents the process that we've agreed to [inaudible] including the recommendation six I think which we tried not to reopen. So, I'll first say that.

Second, the optics of what you're suggesting are that you're asking us to automatically disclose data before we've determined if the request is valid. That's the optics of what you're suggesting to me. So, if I got that wrong, okay. But let me get to the other point I wanted to make.

HADIA ELMINIAWI: Certainly not.

MARC ANDERSON: So, Berry, first, thank you for this. Great job. I don't love swim lanes and I can only imagine how much fun you had putting this all

together. I do see in the upper left-hand corner, I can see there's some influence there in how the TSG report was drafted and, no doubt, you mentioned [Gustavo] is involved in that. But the way that TSG report describes that process is not exactly how we've talked about it, at least not how I understand it.

This describes going to the identity provider on every step, and I don't believe that that's what we've agreed to. You would go to the identity provider only on the initial validation, when you register as an SSAD user. Only then would you go to the identity provider to confirm that you're who you say you are.

We also have language in there—I think we're not specific. We have language in the report about how your identity needs to be confirmed every so often. But this is drafted as going to the identity provider every time. So, I think that's ... Maybe I'm wrong, but I don't think that's what we've described in our report. We've described that as sort of an initial verification step. But then on subsequent ... If you have subsequent requests, you would just log into the SSAD and that identification would be known based on your logging credentials with the SSAD. So, that was sort of the first thing that jumped out at me on this.

BERRY COBB:

So, in response to that, I guess maybe I can put a note up in here that if you're already accredited, maybe you start over here instead of over here because this sub-process of accreditation doesn't matter anymore if you're already accredited.

In terms of the identity providers, I struggled with this and I still struggle with this. Again, I think this is why we need some of the techies in the room exactly how this works. So, we originally were doing ... We basically nested the identity providers under the accreditation authority and we weren't really calling it out as a role, but we've since expanded that role out that they do have a specific aspect to play, and then exactly how that works technically from logging into the system, I'm happy to remove it—or we need to get clarity around that for sure.

MARC ANDERSON:

Thanks. Yeah, I see what you're trying to do. I mean, I wouldn't remove it but, as you said, they still have a role to do. But your decision box may be ... Maybe we can take this offline. But move the decision box and put in decision box: have you been accredited? Or maybe another one: do you need to be reaccredited? Then there would be a role for the identity provider. Otherwise, I think you proceed. Nobody seems to be tackling me or clamoring for the mic, but I think we're not expecting the identity provider to have a role every time, just in establishing, "Yes, you are who you say you are." I know that's a little bit different from how the TSG model is described because the TSG model relies on the identity provider to provide the authentication credentials in every case.

And what we've described I think as the SSAD has the credentials and just uses the identity provider as a confirmation that you're who you say you are. So, I think that's a slight tweak but I'd be happy to work with you offline.

I do have one other comment, though, that jumped out at me. And this is back on page three, bottom left-hand corner. You have a step in there to request additional information. Right there on the bottom left, second box from the bottom.

I have a little bit of heartburn on how this would actually be implemented. Creating sort of a two-way communication path between the contracted party who is doing this step and the requesting entity. I'm not sure how you would operationalize that and I don't know what that would mean if you have a request coming through and then you need to request additional information. How does that impact SLAs? Do you pause on how long the request is taking until you get a request? There's a lot of ... I have a lot of heartburn with the details on how that would actually be implemented. I don't know what the solution is, but that really jumped out at me as an issue of how it would actually be operationalized.

BERRY COBB:

And I think the action there is maybe back to Matthew just to confirm that. I can't remember if I read that in the text. I may have dreamed that one up myself just because of looking for some kind of relief mechanism that, if it's rejected, there's got to be some component. But, ultimately, this really flows back into page two, and if it's rejected, then there's this appeal process or the complaint. So maybe we just rip that part out. But I'll let Matthew come back and confirm that. Thank you.

JANIS KARKLINS: Okay, thank you. Brian, followed by Stephanie, and then Alan G.

BRIAN KING: Thanks, Janis. I'll reiterate what Hadia says in that the figure out if it's personal data needs to come over before a lot of that stuff. To Marc Anderson's point, that's a really good question about whether the identity provider needs to be involved every time. I think there's a couple of different technologies and methodologies, as I understand it, which is not very well. They operate differently. And some might be associated with the login to the SSAD. It might, at that point, trigger the check to see if you're still who you say you are or you still have the authorization that you did. That's probably a good idea, so that if you get fired from your job and are no longer authorized, that you can't just keep logging into the SSAD.

One thing I wanted to flag for conversation—and we don't have to do it here but I think we do still have it to talk about is that I think Org yesterday had some questions about authorization provider.

The way that Alex had written up the definitions and the concepts that we were talking about previously was that in order to log in and for this to work, we would look at an identity provider and an authorization provider and this helps to address the concept we don't want, which is user groups.

But if you are an IP attorney and you have an identity that says that's who you are, you don't get to access all data but you might have authorization provided by an authorization provider that says your client is company X or company Y, and that that could follow

you so long as that continued to be true, so that there were two attributes to who you were as a requestor.

I think it's fine to visually represent this as an identity provider in one swim lane because the concepts are related, but we think they're different and I think that's a valid conversation for us to have about how we represent that and how that needs to be included in the policy.

So, I just want to make sure that we haven't lost Org's question from yesterday on how that works. I don't think it's critical for the initial report but I don't want to lose it when we publish the initial report. Thanks.

JANIS KARKLINS:

Okay, that's noted. Stephanie, followed by Alan G.

STEPHANIE PERRIN:

Again, thanks, Berry. This is a great diagram. Very helpful. I think it would be ... I agree with what Franck was saying. I typed it in the chat. We need to explain that this is not a determinative diagram. It's an illustration to help understand the process.

I wonder if you have given any thought to the metrics in the quality management system. In other words, which points would be pulling off metrics and what kind of metrics. Not yet, right? Because we will need that.

The other thing, of course, is does this diagram work to map the data protection action points? Now, obviously, we need to know

who's the controller and who's the processor before we start doing that. And I'm afraid I can't read it clearly. I'll have to wait until I get home, print it, blow it up, and map it all out and see whether it works for me to follow the data protection sort of schemata that you overlay on top of it. But I think this will really be useful and might actually help any DPAs that folks are consulting understand the process. But it would be good to map those. Thanks.

Oh, one more question. And I know this is a gTLD process we're talking about. Our top-level domains but [inaudible] ccTLDs. Do they want to join this party? Would it make sense? Sorry. I see James.

UNIDENTIFIED MALE: ccTLDs do whatever the hell they want and always have. I mean, we're chuckling because we wish they would join the party once in a while.

STEPHANIE PERRIN: Okay. I just thought it might make sense, you know?

JANIS KARKLINS: Alan G, please.

ALAN GREENBERG: Thank you. If we make it attractive enough, they may want to join. Probably not. My question is related to what Marc was saying about when do you log on and when do you use the various

identity and perhaps authorization providers, and the discussion of do we need them and how do they work?

I wasn't aware that we had the concept of you are authorized with the SSAD itself. I didn't think the SSAD was maintaining a list of who is authorized and their passwords or whatever roadblocks [inaudible] putting in. I thought we were going back to the verify their identity and authorization are necessary each time.

So, maybe I missed the meeting where we decided that the SSAD itself had credentials of its own, but I don't remember that at all and that adds a level of complexity that I don't think we ever talked about.

JANIS KARKLINS: Marc?

MARC ANDERSON: Thank you. Sorry to jump the queue, whoever I'm jumping. Brian and Alan's comments make me think I did a poor job explaining my point. The way the diagram is written, a requestor would have to get accredited each time. So, I don't think we're expecting the accreditation step every time. Brian and Alan's points, I think you would ... Brian correctly pointed out that we would still need to go to the identity provider to verify you're still employed there, right? Your credential is still valid. It sounds like I misspoke a little bit there. I wasn't suggesting you wouldn't do that. I was trying to suggest that that accreditation step wouldn't happen every time and that that's what we maybe need to have as a decisional point up front. So, apologies if I was unclear there.

ALAN GREENBERG: To be clear, I haven't looked at this diagram yet and I certainly can't see it on the screen, so I didn't realize it was even saying accreditation each time. But certainly there is not accreditation each time but there must be ... You must make sure the person is who they say they are and has the rights to ask what they're asking for each time, and that presumably goes to outside parties to do that verification somehow or give you a token or something.

JANIS KARKLINS: Okay. I will take those who have not spoken yet. Margie. Mark, you did speak, right? Mark SV. We need to move on. Please, Margie.

MARGIE MILAM: Yeah. I guess that was my question as well. Are we applying to ICANN for the accreditation or are we applying to the identity provider? Then I also wanted to clarify what the identity provider does because I thought it was more than just identity but it would link the credential ... Like if it's, for example, trademark WIPO. There would be some sort of check on the validity of the trademark and you don't have to have that continue to be brought up every time you make a request. So, I think those are two things that I'm not sure of. Is that something with have talked about? I think the role for the identity provider is a little narrower in the chart than I think they might actually do.

And then the other thing I wanted to point out is I think we need to have some sort of information back to the SSAD when there's a

rejection. Remember, if there's a rejection, there needs to be provided a rationale. So, I think there's some information exchange that would be going from—not the actual data itself but explanation for the rationale why it was rejected. Thank you.

BERRY COBB: To be clear, I'm even confused about exactly the identity provider stuff. That's why Francisco is here. I'm glad he can help join us and maybe you can meet with him later on offline and we can have a new version drawn up. Again, this role wasn't really fleshed out individually until two days ago, and then in addition to again, from a technical perspective, what was included in the TSG report. So I definitely welcome input on how to make that clear.

JANIS KARKLINS: Mark SV, please.

MARK SVANCAREK: Yeah. Just quickly. When I looked at this, I didn't really think that we needed to include logging as a separate responsibility within here, but I notice that Georgios was asking about it. I interpreted Stephanie's question about instrumentation points and privacy controls as being related to that. So we might want to consider whether logging responsibilities should also be tracked in this document. Thank you.

BERRY COBB: I'll try but that may make this even more complex. I think it's assumed we're going to be logging the heck out of everything everywhere.

MARK SVANCAREK: That was my assumption, too, and apparently it's not clear to everyone and that confusion might carry through. So, I was just putting it out as a suggestion. If everyone agrees that the diagram is fine without that, I'm fine with it.

JANIS KARKLINS: Thank you very much. And Berry, thank you for putting this together. I think we need to come to the very first hour of hour meeting three days ago when we said that we should not strive for ideal but we should strive for good. Certainly, this note that it is a visual representation of the policy but not policy itself is an important element that needs to be in the document.

So, what I would like to ask, if you have any concrete proposals, ideas how we could improve the chart, please go straight to Berry and discuss these issues. If you see some obvious inconsistency, also do the same. Just flag it online that Berry can look at it and make necessary adjustments.

The understanding that this swim lane will be part of the initial report and will replace on the second page I think. It's a rather primitive chart that is currently in the text.

So, with this, I would like to see whether we could go to other outstanding issues that we have identified and close them down. So, on issue list 54. Can I get the text on the screen?

THOMAS RICKERT: Excuse me, Janis. I have just sent updated proposed language into the Zoom chat. During the break, I did this with Mark and Alan and the suggested language that you find there seems to be okay with both of them.

JANIS KARKLINS: Okay. We'll put that now on the screen. Then the text as we would see on the screen is: must in a concise, transparent, eligible, and easy accessible form using clear and plain language provide notice to data subjects and types of entities, third party, that may process their data. Notwithstanding obligations on the contracting parties and their applicable law, ICANN and the contracting parties as joint controllers will [draw] and agree upon privacy policy for the SSAD [inaudible] language related to this to inform data subjects according [article that's put in] GDPR or any relevant obligation to be presented to the data subject by registrars. It will contain information on potential recipients of non-public registration data including, but not limited to, recipients listed in building block [inaudible] recommendation 4. As legally permissible, information, duties according to applicable law may apply additionally but the information referenced must be contained as minimum.

THOMAS RICKERT: If I may, Janis, I'd like to offer a little bit of background. The reason why—and I don't want to speak on behalf of Alan—but what I understand the concern from the contracted parties was is that they wanted to maintain autonomy over the privacy policies of their companies and not have ICANN or anybody else dictate what they should include in their company's privacy policies.

So, what we did now is say, okay, they might have their own privacy policies—that's the first sentence—but for the SSAD, there's going to be standardized language that the registrars will then present to the data subjects and that will include the following [inaudible] of the recipients. And we've incorporated Margie's point about the minimum or the list is not exhaustive that we find in preliminary recommendation 4 and will also cover the point that James made about other legal requirements that might have different obligation duties.

So I hope that this is middle ground that everybody can accept or not die in the ditch over. And if you're still unhappy, then you need to suggest something concrete.

JANIS KARKLINS: So, thank you for translating it in human language. My question is now whether proposed language on the screen would meet no objection. So, if you could lower all old hands that are on the screen. Brian, you are next.

BRIAN KING: Thanks, Janis. I really appreciate my colleagues' work on this and I think we can agree with this concept. Thanks.

JANIS KARKLINS: I was not asking agreement. I was asking non-objection. So, I will now insist on my question, for the sake of time. Alan G?

ALAN GREENBERG: Thank you. I appreciate Thomas slipping in the fact that we're joint controllers, despite the fact no one has ever agreed to that formally. I think we have to cover ourselves as presumed joint controllers or something or other because nowhere else in our document do we declare we, ICANN and contracted parties, are joint controllers. Just a comment. I'm not disputing the fact that may be accurate, but we've never said it.

THOMAS RICKERT: Sorry for jumping, but I think that we've beat about the bush for far too long, so we need to—

ALAN GREENBERG: I agree but that's not the place.

THOMAS RICKERT: But that's the reason why I think the separation of what the controllers do for themselves, for their own operations, and what the information duties of the joint controllers would make sense. So, I think it fits perfectly here. Again, as Janis said, if there are any objections then they need to be made now.

JANIS KARKLINS: Stephanie?

STEPHANIE PERRIN: Thanks. I had a similar point but I'm applauding that we finally have a decision on joint controllership and I'm taking it as a decision. No? Yes, no?

UNIDENTIFIED MALE: Dan does have his hand up.

STEPHANIE PERRIN: Okay. But let's be clear here.

JANIS KARKLINS: Okay, Dan. Now it's your turn.

DAN HALLORAN: Thanks. Yeah, I propose to remove the words "as joint controllers" there. We had big battles about whether ICANN and the contracted parties were joint controllers in Phase 1 for the purpose registration data and collecting data and processing it. Just for Phase 1. Now we're in Phase 2. I think there's been zero analysis of the relationship between the parties.

I think it seems like it's looking like ICANN is not going to touch any registration data in this phase. Anyway, it seems like it's not necessary for this phrase here, if you just strike it. I think it's a matter of—

THOMAS RICKERT: And I object to that. I accept your comment. But why haven't you done the analysis if you think it's still missing? We're three quarters of a year down the line. So, everybody tells us that we're joint controllers but we're just not accepting it.

And I think that we need to clarify this once and for all. We've lost so much time as a group opening this up over and over again trying to find language that dilutes it and that doesn't get to the point and we would save ourselves so much trouble if we're just acknowledging it once and for all. So, my question is what are you waiting for? Or what is ICANN, not you personally, Dan. Sorry for that.

DAN HALLORAN: Excuse me, Thomas. I was still talking. You interrupted me and I don't know if the chair recognized you or there's a queue.

So, I think we haven't analyzed it because when you wanted to see who's a controller or a joint controller, you have to look at the facts of the processing and we're still deciding here what's going to be processed. Who's going to be handling data? How is it going to flow in the SSAD?

So, I don't know how anyone could have analyzed it when it's still being developed and imagined here. Once we have an idea of who's going to process and collect data and what data, then we can step back and look at it. Well, who determines the means and purposes of processing this data, which is in the central gateway? Is it mostly going to be like data about the requestor and stuff?

So, we might be joint controllers in the SSAD. It's not for registration data, though. It's for the data in the central gateway I think that we're talking about. So, I think it's a whole new question. What are the roles and responsibilities of the parties in the central gateway? Thanks.

JANIS KARKLINS:

So, what I would suggest, maybe we could ... Indeed, we do not have joint controllers anywhere in the text and suddenly here we have it. I'm not contesting because we never discussed it and there is no formal decision by the group, specifically, whether ICANN and contracted parties are joint controllers or not.

But we heard some question marks about use of joint controllers. We heard clear reluctance on ICANN Org side. Maybe we can go and if we cannot remove or agree to remove joint controllers, we put them in square brackets for the sake of initial report and it stays there, but it indicates that there is no, say, consensual agreement yet on this and we will ... I think that if we agree that this is the case, then we should state it not in a summary and then 38 pages of the initial report but probably on the second page of initial report. This is the central part of the whole system. So, that's my proposal. Maybe we could land on that. Thomas?

THOMAS RICKERT:

Sorry for being slightly formal here but this is a PDP working group and I think you've asked for objections by the constituent parts of the EPDP. I think we can note the concerns by ICANN's liaisons but I think an objection from one group doesn't prevent us

from having rough consensus on this, and then we can have a discussion about whether ICANN Org is actually part of the community taking these decisions.

So, Dan, I'd just like to find out whether within the EPDP group itself there's objection to specifying this. For transparency reasons, we can say that ICANN Org has reservations with respect to it. This is all fine. But I think as a group we need to make progress on this question.

To me, we're putting out the initial report and typically, if there is no community feedback suggesting otherwise, the idea from the initial report would go into the final report. And I think if our report is silent on this completely, we're doing a disservice to the community because they don't understand the concept language we're trying to do.

JANIS KARKLINS: Fair enough. Okay. I will ask formally whether anyone has objection to the text as presented on the screen without square brackets. Before I'm asking that question, Stephanie, it's a new hand or old hand?

STEPHANIE PERRIN: That's a new hand.

JANIS KARKLINS: Okay. So, I have Stephanie, James, Alan, and Chris Disspain.

STEPHANIE PERRIN: Thanks. I don't want to put on my social scientist hat and bore everyone with the recitals of the GDPR, but the allocation of controllership depends not on whatever process you come up with to administer. It comes from the assertion of power. It's high time ICANN figured out how much power it wishes to assert in this relationship.

Having GDD administer is an assertion of power. I mean, sooner or later, we have to have a decision here and then we decide the process. It is chicken and egg in some respects, but from the DPA's perspective, these are facts. So, I think we need to get on with it.

We don't object to the language from the NCSG. We did point out that we needed square brackets all the way through if there was no clarity on controllership and joint processors and all of this. I've said this enough.

But, for heaven's sake, I do worry if we go out with a document that has square brackets all the way through it what kind of response we're going to get from a less-informed public. I hate to harp on the response to our report, but it's pretty important if we're going to make progress once we try and process all those comments.

And it's a credibility issue for ICANN right now. It's high time they figured this out. I'm sorry to be blunt.

JANIS KARKLINS: So, we have two hours and 15 minutes to go. So, I would ask team members to factor that in in their interventions. James, Alan G.

JAMES BLADEL: I'll be brief because I don't understand some of these concepts but Dan's comment I think, while technically easy to follow the reasoning, it makes my head hurt a little bit because I think if contracted parties took the same view, we wouldn't be here. The fact that we collect data and participate in PDPs to develop SSADs under [inaudible] of losing our ICANN contracts means that somebody is controlling something somewhere, either with us or in our place. So, help me with that.

I'll drop it. I guess I'm coming down with Thomas's procedural question here is we can note their concerns, but I think as a community process, we need to make a decision and move on. So, thanks.

JANIS KARKLINS: Okay. Alan G?

ALAN GREENBERG: Thank you. I've expressed my angst over us not making a decision on this enough times that I won't do it again here. There's no doubt that ICANN is a controller. We're sitting here making rules. We may be joint controllers. We may be independent controllers. We may be the sole controller. But there's no question.

But slipping it in here I think is just sending the wrong message. I believe we need a paragraph, a section, early in the report pointing out that we haven't made the decision. It may well affect many things going forward. It has to be made soon. But making it clear right at the beginning where we stand on this. Thank you.

JANIS KARKLINS: Thank you. Chris?

CHRIS DISSPAIN: Thanks, Janis. My comment is actually, I think, similar to Alan's. I don't get into a discussion about who's controller and who's not at this point. But it seems to me that putting in in one reference in this part of the document to me doesn't make sense. If you make a decision that that's what you want to say, then I would encourage you to caveat that with anything that is said on the other side, on the Board and the Org side, as a possibility. But you're entitled to say whatever you want to say.

I just think, to take Alan's phrase, slipping it in, which I know wasn't the intention, but slipping it into this paragraph makes no sense. I think you need to deal with it head on. You need to deal with it in a section and you need to say there is still some debate and dispute. But just putting it in here when it isn't mentioned anywhere else in the document makes no sense to me.

JANIS KARKLINS: So, thank you. Daniel and then Brian.

DAN HALLORAN: Thank you. I want to agree with Thomas that we're not here, ICANN Org, nor are the Board here to set a policy. That's up to you guys. When you ask, "Can we live with this?" that was us raising our hands. I think I would echo what Chris was saying. Is this the right place? My initial comment was that I didn't think it's necessary for this sentence. The sentence still stands and works perfectly well what you're talking about. In this part of the paper, you don't need that there.

And I agree we could have a bigger later discussion about, once we've determined what are all the processing activities and who's determining the purposes and means and are two groups doing that together, then we can decide who's a controller and who's a joint controller.

So, I'm not avoiding that at all. I just think it's premature until we figure out what processing is going on. Then you go back and figure out the rules of the parties.

I try not to react every time Stephanie has an opinion about controllers. It's great you have your opinions. We haven't reached them yet. On this specific sets of activities. It's also interesting to me the way Alan points out ... Alan says we are deciding what gets done and Stephanie is saying you, as in ICANN—I don't know if it's me and Eleeza or Chris and Becky, the Board—has to decide things. We actually don't decide a whole lot. It's up to this team here to decide what ICANN is going to be doing. We're here to implement your work once the Board gives its blessing to your recommendations. We'll go implement.

So, we decide very little. It's our job to implement what you guys decide and I think this question about who's a controller or not is decided based on the facts of the processing, not based on a vote of this committee. It's not something for ICANN to decide or for this team to decide. It's based on the facts of the processing. It's a legal determination that will be made. So, thanks.

JANIS KARKLINS: Look, I have two further questions. Please, let's come to a conclusion here. Brian, then Margie.

BRIAN KING: Thanks, Janis. I, for several reasons, like James's comment in the chat there. I really support ... We like this language and I think what Thomas mentioned in the chat is fine. I'm persuaded by Chris's point. Let's address this head on and let's put in a section here that says this is something we're thinking about and how we're thinking about it. Let's get community comment on that. And at the end of the day, we don't decide who the controllers are. We kind of do. But the facts decide who the controllers are. We just decide what the facts are. So, I think it's better to do it that way and to talk about it in those terms. So, let's do it in its own section. Thanks.

JANIS KARKLINS: Margie?

MARGIE MILAM: Same thing as Brian.

JANIS KARKLINS: Thank you. Let me make the following proposal. The question of controllership was dependent on the model. Now we have a model and maybe if that is the wish of the group, we should put the very clear statement somewhere in the beginning of the document. And if you look to the draft report, there is section 4.3 entitled “SSAD underlying assumptions” and maybe we could now form a small group who would draft a language in relation to controllership for our consideration during Thursday’s meeting. In this specific proposal, we take out “as joint controllers” because it really stands out and takes ... Does not belong in the place. I am not contesting that they are joint controllers, but not here. Who wants to volunteer to work on language for section 4.3 on joint controllers? Yes?

MARIKA KONINGS: If I could just make one note. In the new version of the report, some additional language has already been added to the point that Stephanie and I think Alan made in relation to that, depending on the outcome of that conversation some of the “musts” and “may” could change. So, it’s probably in addition to that language. So, there is already something in there that people can look at that may help further work of whoever volunteers for that.

JANIS KARKLINS: Yeah. I assume that Thomas will be one volunteer to formulate the paragraph or phrase—paragraph—on joint controllers. Who else?

Alan? Brian? [inaudible]. So, I think ... Georgios, okay. So, we have Thomas, Georgios, both Alans, and Brian. Yes?

THOMAS RICKERT: Sorry. Since I've now been voluntold, which is perfectly fine, I just want to be abundantly clear that I take that there is no objection in the team to put in something to that effect. Just some thought that the place where we put it wasn't the right one. So, you want to remove it here, but we are in agreement that we're going to have a general section displaying that because I don't want to end up—

ALAN GREENBERG: I'd like clarity on what "that" is.

THOMAS RICKERT: Enough. I took the trouble of writing three or four pages or so for the first report and then in the very last minute, it was diluted so that it didn't make sense at all and I don't want to run into that same situation again. That's the [only problem].

JANIS KARKLINS: Look, this was my next question. Can we agree on that type of approach, that we accept what is now on the screen without "as joint controller"? We form a group of volunteers who will explicitly work on language on joint controller that would go in the section "underlying assumptions". Can we go with that, Alan?

ALAN GREENBERG: Sorry. I believe we need a section at the beginning of the document on the issue of controllers. I don't believe we are in a position to make a forgone conclusion that it will be a joint controller relationship. I don't think we've done that work at this point. Now, many of us may believe that, but I don't think we're in a position to say that is the outcome of the work.

I originally put up my hand just to note that with regard to the SSAD data, ICANN is probably the sole controller of the data within the SSAD. We're not talking about registration data. So, they may way well be two separate things. But I don't feel comfortable saying the outcome is a joint controller relationship. I think the work needs to be done. We need to make it really clear that the work is not done and the outcomes may affect some of the other things. But I'm not going to presuppose that we know what the outcome is. Thank you.

JANIS KARKLINS: So, look, nothing is agreed and everything is agreed.

THOMAS RICKERT: But in that case, I'm out. I will not ... I've done that half a year back. I've done exactly that and I think that keeping that question open is just lacking legal reality or denial of legal reality, that is. Those circumstances I'm happy to review language that others might suggest. But I've done that once. I'm not going to burn my fingers twice.

JANIS KARKLINS:

So, we will formally stop the clock, this meeting, at 2:00 which is in two hours from now. I know some members are not flying out this afternoon. One way would be those who would like to talk this important issue, use the opportunity of presence in LA and take another hour or so to talk through these things and see whether anything comes out and propose the language. And it will be certainly easier to work out these important issues in face to face, rather than online. Or we simply indicate in the report that there is still additional work needs to be done on legal issues and then work is ongoing. Laureen?

LAUREEN KAPIN:

Maybe I'm naïve but it seems to me we could take care of this with a very simple statement. It is a legal question about controllership issues, and clearly some of us believe this is clear and others don't. But if there is a consensus, couldn't we make a simple statement that gives us a little wiggle room in the assumptions something to the effect that says, "For purposes of this report, we believe that ICANN may be a joint controller for certain of the functions in the SSAD," and leave it at that. We don't have to say it definitively, because at the end of the day, the DPAs are going to say, "Based on the facts, we think this is what the relationship is." But we can say we believe for certain purposes, ICANN serves as a joint controller and we say we believe—not it is—and limit it to certain purposes to the extent it's not all consuming. That's my modest suggestion.

JANIS KARKLINS:

Thomas?

THOMAS RICKERT: The Belgian DPA letter was the last instance in which we've been told that they are not our legal advisors. They will not determine for us what it is. We need to put ink on paper and say what we believe it to be. And then follow through. And we're shying away from that one week after the other. We're doing that for two years now. And we're not going to get away with this, so we have to settle on something and not just procrastinate, procrastinate.

So, I appreciate the suggestion but nobody will volunteer from the public sector to do that work on behalf of us. We need to write it up on the basis of the assumption. I suggest that we have a joint controller situation present. And if we're proven wrong, the authorities will tell us. But GDPR is all about documentation. So, if we fail over and over again to document what we think it is, we will be punished big time. And I guess that Chris is going to be the spy in this room to report this to the authorities. [We get a supervisory proceeding] started.

CHRIS LEWIS-EVANS: As law enforcement, we do not report to the DPAs.

JANIS KARKLINS: Yeah. You're receiving reports from informants right?

CHRIS LEWIS-EVANS: It is a statutory function which we are not part of.

JANIS KARKLINS: My proposal stands that we adopt the proposed language without reference to joint controllers in this part. We form a group of volunteers who may want to stay on additional hours and try to work on some language that may go in the section “SSAD Underlying Assumptions” and Laureen proposed something that maybe sounds wishy-washy but certainly is something that is better than nothing. So, we proceed in that way. So, I have Alan and Chris.

ALAN GREENBERG: Sorry, I’d just like clarity. Is the group this afternoon going to try to come to closure on who are the controllers or on wording to say we don’t know who the controllers are?

JANIS KARKLINS: That would be up to that group to coin. Chris?

CHRIS LEWIS-EVANS: Thanks, Janis. I don’t know if this is sort of stating the obvious, but it’s not that long ago that this team coalesced around a model. So, it seems to me that there is work to do to get a group together who understand legal implications of it and to sit down and go through the model and say, “Who do we believe? Whose role do we believe each role is?”

Because I’ve heard a lot of talk over the last, goodness knows how long, about ICANN is a joint controller or we’re this, we’re that, which may be true, but what I want to see is some work of this EPDP that says, “Based on the model that we are putting to

you, to the community, to comment on, here is what we think the controller relationships are.” You don’t have to say they are as a fact. You can say “we believe” if you prefer. But they need to reference back to the model, it seems to me, and they need to say, “In respect to the SSAD, i.e. the data coming in from a requestor, we think this is the position. And in respect to the results—the data coming out—we think that is the position.” They may be the same, I have no idea. But it seems to me that that’s the sort of structure that we need in a document that can then go out to the community for them to understand what each status is.

And make no mistake, ICANN itself needs to go away and do a bunch of work on the SSAD side of it to figure out what its responsibility is, if it is indeed going to run this thing and what level of risk it has involved in it in respect to GDPR and the data itself. That’s going to need to be done and ICANN is going to need to undertake that process, once we see the draft report, presumably, as part of a public comment period. I hope that makes sense and is helpful. Thank you.

JANIS KARKLINS: Do you want to change your ticket and lead the small group?

CHRIS LEWIS-EVANS: No.

JANIS KARKLINS: I expected that you would answer that way. Can we then proceed as I suggested to form a small group of volunteers who would stay

on today and try to work on the language in the section of “underlying assumptions” [inaudible]?

UNIDENTIFIED MALE: I volunteer as tribute.

JANIS KARKLINS: Okay. I see that body language unwillingly agrees on that. So, thank you. So, then we have settled 54 and we may want to go now to SLAs. Yesterday, we formed or asked two folks to work on language. Yes, please, Stephanie.

STEPHANIE PERRIN: I just wanted to point out that we are acting in this discussion as if we landed here from Mars or another galaxy and we’re starting to work on data protection. ICANN has been a controller since 1999 or ’98. If we haven’t changed the model yet, it is still a controller. So, I just wanted to put that on the table. Thank you.

JANIS KARKLINS: So, thank you. On SLAs. May I ask then Mark SV or ... Mark, please.

MARK SVANCAREK: Would you like to do it Volker, or shall I?

VOLKER GREIMANN: [off mic].

MARK SVANCAREK: Okay, so I'll go and Volker will provide color commentary and corrections as needed. He'll be our hype man.

So, the idea is that we'll have two sets of targets and they will occur during two phases. So, we're calling this phase one and phase two. Phase one begins six months following the SSAD policy effective date. Phase two begins one year following the SSAD policy effective date.

In phase one, we've created targets for the SSAD Priority 3 requests. So, you remember in the table there were different roles. So, this is limited to the Priority 3 requests. And the response target is five business days. The targets are measured from using a mean response time. This is not a per-response basis. We know that some responses will take longer than others, so this is a mean response time calculated over some quantum. This says two months. We were actually considering whether it could be on a quarterly basis.

If the registrar fails this five-day business target, then the SSAD will alert the registrar and the registrar will be prompted to provide their rationale. So, there could be any variety of rationales. It could be that the compliance team died, they were all hit by trucks. It could be that there was a horrible outbreak of cybercrime and just all the requests piled up. We're not trying to anticipate exactly what the rationales are but we know there will be some. So, they have the opportunity to provide it. And failure to provide that rationale would be a compliance violation.

So, in this phase, this is all that's happening. You have a target. If you can't achieve it, you have to say why. In phase two, which kicks in after one year, the compliance targets are ... There is an additional target which is a compliance target. So, there was the response target and the compliance target.

In phase two, we add the compliance target. That's a ten business day target. Again, it's measured with a mean response time over a period of time. If their mean compliance time exceeds ten business days, then they will be subject to a compliance enforcement. I think there was some additional language that was proposed after this regarding the ability for the contracted party to ask for relief, if there are extenuating circumstances. That language is not in here.

The response targets and the compliance targets shall be reviewed at a minimum annually. We did not discuss what such a review mechanism would be. And we further recommend that the SSAD response time and the associated statistics be as transparent as legally permissible in order to improve the SSAD and keep the community informed.

So, with those side comments, it is as it is in the text. Volker, please go ahead.

VOLKER GREIMANN: Yeah. Just two notations, maybe. The policy effective date, I think we were pretty clear that we meant not the time that the policy goes in effect but rather the time that the SSAD goes into

operation, because if there's nothing to operate, that means there's nothing to test against. That's just for clarification.

Second one. As you already mentioned, extenuating circumstances for not making the ten business days should be on an individual basis and should be provided as soon as possible to ICANN so measures can be taken to assist the registrar that is not able to manage their request pile for whatever reason this may be before compliance action is taken.

JANIS KARKLINS: So, any reaction to what we heard as a concept?

UNIDENTIFIED MALE: As a concept, no. I'm just pointing out that two months is very, very close to three months which is a quarterly review of your performance. I would like to understand why two months was selected versus more natural calendar order.

VOLKER GREIMANN: This is just a number that we drew out of thin air. It's something that we felt as it would be a minimum target. I personally felt that one month would be too short, so I thought that two months would be better, but three months might be even better to have a good [average] time period because, obviously, some months like December or summertime are going to be a bit more thin on the execution and other months will be a bit faster.

MARK SVANCAREK: Just to build on that, I just want to point out that compiling this performance data and reporting it to ICANN and then having ICANN review the performance targets, calculate and review them, for potentially thousands of registrars –I mean, all of these things take resources. So, the difference between two months and three months in terms of benefits to me probably is marginal, whereas it could be significant resource drain.

VOLKER GREIMANN: The way that we discussed this and envisioned this, this would be data that would be actually collected by the SSAD system. So, essentially, by providing the data of what response you're giving and when you're giving the responses and provide that data to the [inaudible] data would be gathered automatically and could be potentially be output [to the] contracted party in real-time, could also provide advice to requestors that the current wait time for normal requests is currently X amount of days, whatever. So, that could also be used or further developed into informational resource.

JANIS KARKLINS: Mark SV, are you in agreement with three months?

MARK SVANCAREK: I'm in agreement with three months. I just wanted to say that I thought I had mentioned during my discussion that we were considering three months as well as two months and that I was open to that. I'm sorry if I was—

JANIS KARKLINS: Then we can [inaudible] three months. But in the third paragraph, five business days [inaudible] records. How shall I interpret that? Was there dispute about the text?

VOLKER GREIMANN: Dispute. This is just a number that we had put up for discussion as an example. We hadn't decided on a number yet, so that was just something that we put there to have a number there to give the group a feel of where this might be going. But this is something that can be developed over time. Obviously, what we looked at also was that the further development should be undertaken. So, if we, for example, see that 90% of all registrars fail to meet the ten business days for whatever reason, because the volume that the system puts through to them is higher than expected, then that would be something that would lead to an extension, whereas there might also be a shortening that is warranted as well. That's something that we envisioned happening but we don't know how yet.

JANIS KARKLINS: Thank you.

MARK SVANCAREK: During discussion, it seemed like five days was generally agreeable to everyone, particularly with the other things. You have the ability to ask for relief if extenuating circumstances. The concept that the targets will be reviewed on a recurring basis. So,

five days as a starting point seemed pretty reasonable to everyone I had discussed with.

JANIS KARKLINS: So, can I suggest that, instead of review mechanism is currently undecided, we put something that review mechanism will be proposed in the final report? That would be much, much clearer and commitment will be made.

VOLKER GREIMANN: We could even ask the community to provide feedback on what kind of review mechanism they might see as appropriate as part of the questions that we ask for in the initial report.

JANIS KARKLINS: Okay. So, Margie, your hand is up, followed by Chris Lewis-Evans and Daniel.

MARGIE MILAM: Thank you. I think this is a great start, but I don't think it goes all the way in terms of what we need for SLAs because I think this process times the actual process itself, whether there's a response within whatever the period is, but we need to actually track the percentage rate of what we call compliant ... Well, it's probably a different term for here. But actual disclosures.

So, this process could result, for example, in a scenario where the time period is met, but the answer is always no. That's I think a statistic that should be tracked and there should be separate

compliance rates for that, however we want to approach that. So, I think that this just needs more thinking.

And the other thing I want to point out, that I think it should also say that we aren't ... This isn't the compliance action that can be taken. For example, if a registrar doesn't respond at all or isn't responding to RDAP requests, those sorts of things. So, I think that the policy recommendation should say that this is the recommended compliance approach for the SLA on response times, but we also need to think about a compliance rate for when information is actually disclosed.

JANIS KARKLINS:

Mark, clarification.

MARK SVANCAREK:

Yes. we did discuss those topics during this deliberation and I think saying that this is a proposed SLA for response times probably clarifies it because the other metrics that were discussed could be captured within the gateway. Other items that are not related to SLA of response time should be carried within the policy recommendation. So, I think just simply by clarifying the title of this and expressing what it is limited to, I think that should be acceptable.

JANIS KARKLINS:

Please remember that this is initial report and then you need to think about brownies to score by putting additional elements that need to be considered for the final report. So, this might be

finetuning of the proposal for the final report. I have Chris and Daniel in line, then I hope that we will be able to nail this issue down. Chris, please.

CHRIS LEWIS-EVANS: Yeah, thanks. Just very quickly, to agree with Mark. I think those sort of stats would be captured in a gateway review, whereas I think this is for a response SLA. So, I think that's a good clarification to make on this.

Just to James's point about why two months, why three months. [Without] phase one being a six-month period and the whole idea of collecting some of these stats is to review it and make sure that we're running compliance properly, two months for phase one feels better because it gives you three reviews or three sets of stats to do reviews on. So, maybe a two month and then go to a three month in phase two. Other than that, [inaudible] approach. And obviously this would then need to be applied to the other priority requests or however we want to describe it. Thank you.

JANIS KARKLINS: Yes, Mark.

MARK SVANCAREK: Yes. This is also something that we discussed. Where I come from, we look at things on a monthly basis, but that's not going to be the case here.

The mention at the end recommends that the times and associated statistics be as transparent as legally possible to keep the community informed. So, just because the quantum is two months or three months and just because things phase in at six months or one year doesn't mean that statistics will not be available and viewable up until that time. So, these enforcements start to kick in after six months or twelve months. But hopefully the statistics will be viewable to everyone, so if we see that things are awesome or that we're headed off a cliff, we'll have some insight into that, even before the six month and twelve month triggers.

JANIS KARKLINS: Okay. Daniel?

DANIEL HALLORAN: Thank you. I haven't had time to process this. I don't know if this was something that was circulated. Can we see the whole thing on the screen? I don't fully understand it yet, so I'm concerned there are issues with it. Maybe we can take it off later. I don't know the difference between a response target and a compliance target and it's a little unclear to me what happens in the first six months. It looks like maybe the registrars could just ignore all the requests entirely for six months but I'm sure that wasn't the intent.

And then it seems like it's slowing down the first phase one. They get five days to respond. Phase two, they get ten days to respond. I'm sure there's more to it. I just don't fully understand it yet so I'm just flagging. Maybe we could look at it more later or give more explanation. Thanks.

VOLKER GREIMANN: Okay. It might be a bit misleading. The five days will continue to be in place into phase two. Think of it as a stoplight, traffic light, where when you're within five days with your response times, you're in the green zone. Between five and ten days, you're in the orange zone and you have to provide an explanation of why that is and what you're doing to [redress] that. And once you enter into the ten zones, you're entering into the red zone where the police can stop you and ask you why you ran the red light, and if there's maybe any extenuating reasons that happen. If not, then there might be compliance action.

UNIDENTIFIED MALE: I think, in general, there's lots of things in the RA that say registrar must do this within five days or must do this within 14 days and those things are clear and we have a well-developed compliance process where we say, "Hey, you're not doing this within five days. What's going on?" and you prove it.

I'm concerned that this is going to get confusing, unless there's some clear statement somewhere that registrars must respond to requests within X days. If we just have these SLAs—and it seems like it's kind of trying to micromanage the compliance enforcement process. Is this supposed to be policy text or implementation guidance? Thanks.

VOLKER GREIMANN: To be clear, there is no set response time for every individual request. This is, on average, over the period of time for all

requests. So, if you have one request that you answer after a day, you could have another one that you answer after nine days and you would still be good. So, this averages out. You collect the statistics, and after three months you see where they end up and then you can take action or advise the registrar that there's an issue. It's a more cooperative role for compliance to help registrars to get on track and also forces the registrars at an early stage, five to ten day stage, to provide an explanation. So, they are warned that something is going the wrong way, and if they end up with ten days at some point on an average, then they better have a very good explanation to why that is. Then if they don't, then compliance action can be taken.

UNIDENTIFIED MALE: Thanks. We won't beat it up here. Maybe our compliance team could look at it and we could look at it more carefully. I'm concerned about means, too, because that means if you respond to hundreds of queries within a few hours by rejecting them or approving them automatically, then you might have ten requests that sit out there for weeks or months and compliance would have no ability to raise questions.

VOLKER GREIMANN: Ultimately, this will have to be refined and drilled down, but on a general principle level, I think we are all agreed that this is probably the best way forward because it doesn't drill down on the individual requests. Sometimes, it just ... You have these after Christmas times where hundreds of requests came flooding in and there are only two people there manning the station because of

the holidays. So, by averaging this out, this is much more manageable.

MARK SVANCAREK: So, we're averaging it out and I think this does make it more manageable, but we're also generating statistics in real-time all the time which can be inspected and we can draw judgments from them without having to create a situation where people feel like they're forced to reject everything. We were worried about that unforeseen consequence. Actually, that easily foreseen consequence.

JANIS KARKLINS: Okay. Thank you for your effort and open-mindedness. It's really nice to see that communities are working together and throwing thumbs up each other on a topic that was divisive a day earlier. So, congratulations. So, we will remove brackets. Chris, maybe we could settle for three-month review, so it's aligned with other review periods and we would change the sentence on review, that there will be a statement that a review mechanism will be worked out for the final report. Yes, please.

CHRIS LEWIS-EVANS: Sorry. I don't think Volker or Mark answered the question about whether this would be put onto the other SSAD priority items or whether that's for the final report.

JANIS KARKLINS: Please say again. I didn't catch it.

CHRIS LEWIS-EVANS: Sorry. It wasn't answered whether this would be applied to the other SSAD priority items or whether that would be done in the final report, because [inaudible] priority one requests and priority two requests.

VOLKER GREIMANN: This is strictly priority three. This is strictly priority three. I think the others are very strict in their timelines that they already expected. I would suggest that they remain as they are. This is strictly for the non-urgent ones that come up.

CHRIS LEWIS-EVANS: So, you had an agreement to remain as they were in the original text.

VOLKER GREIMANN: Yeah, we didn't touch those.

JANIS KARKLINS: Okay. So, priority one remains law enforcement is covered. No issue. And essentially non-law enforcement also is covered. I think we discussed yesterday and my feeling was non-law enforcement urgent for two days, and as priority two, met consensus in the group. Okay. So, this will appear as in the refined version,

updated version, of the report. Now we can go to ... Ah, please, yeah.

DANIEL HALLORAN: One more thing—I'm sorry—on the priorities and the SLAs we were worried about last night is the statement that says that the gateway will determine the priority for each request. We were not sure this is order right now if you want to just flag it and we can talk about it later. Caitlin, do you have [inaudible]?

CAITLIN TUBERGEN: Thanks for raising that, Dan. As I was going over this new proposal from the small group, I went through that language and changed it based on the discussion of the model, and I believe that language, which we'll circulate, notes that the requestor will select a priority that is based on categories generated by the SSAD but then the contracted party can adjust that priority based on the review of the request. No, the gateway is just going to have a dropdown with the priority describing what they are.

UNIDENTIFIED FEMALE: I guess what I meant was the gateway isn't making that determination.

JANIS KARKLINS: So, can we get on the screen unsettled parts of financials? So, on financial issues, which is probably apart from controllership, the last big topic that we need to consider and agree on outstanding

issues. So, we had from the previous, the last discussion we had, we asked to do some homework and one was on footnote for cost causation. My question to Brian is have you done homework?

BRIAN KING: I had done it when you asked me to do it, actually, in my defense.

JANIS KARKLINS: Yeah. Could you present your homework?

BRIAN KING: Well, that's where it gets tricky. So, the concept here is that cost causation is a very loaded term and I think using it is only going to cause us problems. So, to address that, I suggest changing to this language that I think addresses the point of that sentence which is we recognize that fees associated with the SSAD may differ for users based on who's eating up the most bandwidth, who's making the most requests, who ... I won't say cost causation.

But the concept there is they will vary based on ... And I thought it would be good to give a couple of examples of what the cost differences could be based on. Thomas had a good point on top of my point there. So, the concept here that I think nobody had violent disagreement with was that they would vary based on volume or user type. Just understand that governments have some special rules around what they can pay for and how they might be able to pay for it just added among other potential factors. I think some of this detail can be left to implementation.

We just want to note that it doesn't have to be every user pays exactly the same type concept.

So, with that said, I'll go back to you. But Thomas has some insight on what he's thinking around the government part.

JANIS KARKLINS: So, okay. Your proposal is to replace cost causation with request volumes or user type with [inaudible] governments may be legally prohibited from paying and on other potential factors. So, can we [land on] that? Thomas?

THOMAS RICKERT: Sorry, I didn't put myself in line. What we might want to clarify on the government point is that in many jurisdictions governments that ask for data with ISPs actually pay a modest fee for the data sets and we could use that as a starting point and say, okay, where these regulations aren't in place, we will try to copy that for requesting data from the SSAD.

JANIS KARKLINS: So, would it be receivable to formulate additional sentence, take out the text in brackets and put it as a next sentence in relation to governments or public entities? Laureen?

LAUREEN KAPIN: So, what I would suggest, since I'm sure this differs depending on where you are is just instead of having this referenced [legal prohibitions] maybe just change it to a general reference regarding

restrictions and that leaves open the possibility, Thomas, that if there's an existing framework for paying a modest fee that can be adapted, fine and well. We're not opposed to—speaking for myself—a reasonable fee sounds appropriate. But I think the concept of restrictions would provide the necessary flexibility without barring payment. So, that's my suggestion.

JANIS KARKLINS:

Can we say that the SSAD differs for user based on requested volume or user type amongst other potential factors? And then we say that EPDP team also recognizes that governments may have restrictions in ... Okay. That governments may be subject of certain payment restrictions. So, that is captured. Can we [land up] on that formulation? I see no objections. Okay, then we are good on that.

Now, next is next paragraph which is contested. In current version it reads, "Under no circumstances data subject should be expected to foot the bill for having their data disclosed to third parties. Beneficiaries and users of SSAD should bear the cost of maintaining the system.

So, that is, I understand, contested phrase without ... And the proposal is to delete completely. So, can we delete? Milton? I see Milton's hand. Can we get Milton's ...

MILTON MUELLER:

Hello way out there in Los Angeles.

JANIS KARKLINS: We hear you. Please go ahead.

MILTON MUELLER: All right. You all sound fine. So, yes, I think that you can't have it both ways. If you don't like the notion of cost causation and you want us to agree to get rid of that, even though that is actually the scientific way to describe what we're trying to describe, you can't allow ... Nobody on our side of this debate is going to accept deleting this language because we're not allowing the cost causation thing to open the door to essentially charging data subjects for their own potential victimization, if you will.

As we said before, the last part of this statement—beneficiaries and users the SSAD should bear the cost to maintain—could be misinterpreted in ways that some stakeholders don't like, so we could be willing to sacrifice that part of the statement, but I think we have to just be very clear and principled about the fact that data subjects are not going to be paying for having their own data disclosed to third parties. It is the people who use the system who should be paying for its use and that the system has to be imposing costs on users, otherwise free use invites all kinds of abuses of the system.

So, I hope that we can view this as an exchange or a bargain, in which case we are assured that costs will be mainly allocated to people who are using the system and not to the data subjects. And we might then be able to dispense with the notion of cost causation. That's it. Thanks.

JANIS KARLINS: Thank you, Milton. I have James, Brian, Alan G, and Stephanie in line.

JAMES BLADEL: Thanks. So, not surprisingly, I and I believe registrars and perhaps all contracted parties are opposed to deleting this language. This has been an understood assumption and an agreement, I believed, in principle since we started this work, that the people whose data is being transacted would not be essentially sent a bill for their own execution. And that registrars and registries were on the hook for operational obligations, potentially financial consequences for not performing, and that was our ...

And then of course all the costs to integrate this system into our existing process and procedures and data handling systems. So, we had at one point, we had the word "direct" in front of beneficiaries, so direct beneficiaries are the users requesting data from the system and who are prompting us to do all of this work.

So, again, I'm very surprised that we are here with just a strikeout, let's discuss, because we have discussed and I think we've been more than clear. If we're back to this step where want to talk about potentially levying costs on registrants, levying costs on contracted parties over and above what it's going to cost us to build and run the damn thing, then I have to ask the question of what are doing here? Because it's all negative on this side of the table. Why are we collecting this data? Why are we making available at all? Help me get past that.

And again, it's the timeliness at this very late hour and it's also the 180-degree departure from where we were right up until the second of Montreal which is when we kind of flagged this as, hey, this is a big monster in the room that we haven't done battle with yet. We need to talk about the financials and now we're just now having these discussions.

So, very much opposed to deleting this. It is a fundamental tenant of our position for participating in SSAD, full stop.

JANIS KARKLINS:

Yeah, thank you. I recall that there was a conversation about beneficiaries and that may be one of the things that if we find or maybe if we omit mentioning beneficiaries, which might be misinterpreted. So, from one side, one can say that beneficiaries are the ones who keep their businesses up and running, but from other side, one can say that beneficiaries are all Internet users because this is meant to keep I up and running and then be stable and secure.

BRIAN KING:

Can I just point out we've had that conversation. I would point out that it's not up and running today and the Internet is working just fine. I just texted my daughter. Not an essential element.

JANIS KARKLINS:

Okay. So, you are more technically savvy than me, but every technical system has its [inaudible] and if not properly maintained, then at one point it breaks down. And if for 50 years WHOIS was

part of the successfully running system and if it's not functioning one day or one year or two, so then there is potential risk that the system will start breaking down if one essential element is going down.

Again, I'm not arguing and I am not taking sides. I'm just saying that I recall that the discussion about beneficiaries was contentious but I do not recall that the users of the system should not be responsible for maintaining the system up and running.

I heard from Milton suggesting to keep the first part of the sentence, maybe second could go. You wanted to keep all sentences, both sentences as is. I have now five hands up and see whether we can find kind of compromise by simply deleting words "beneficiaries and" leaving users of such bear cost of maintaining the system. Brian, Alan, Stephanie, and Franck.

BRIAN KING:

Sure. Thanks, Janis. And we can get into the theoretical conversations about who the beneficiaries are but it's not going to be helpful for now.

I don't know if I've been clear enough but we're expecting to pay and we're willing to do that, so that's not a question. And if that's your objection, then stop. We're expecting to pay for this and we're expecting to pay for access and for requests and that's not a problem.

The problem, from our perspective, is one policy language that says that we are the [only] beneficiaries of the data—because that's not true. And two, a concept that nobody is saying that the

data subject should be saying to have their data disclosed to third parties. That's really a misinterpretation of what we're saying here.

The concept that we cannot accept is a prohibition on ICANN ever paying for any of this. James mentioned that you're expecting an initial setup and ongoing maintenance and running of the system. That's what we're talking about. Why would we ever agree that ICANN or some centralized payer couldn't fund part of this? We think it's integral to the SSR [or the] DNS and I know that not everybody thinks as strongly about that as we do. But why would we agree that that could never happen? For the thing to run, there needs to be some guaranteed ongoing funding and we're happy to pay with requests and accreditation. But it's got to exist. So, that's really our only problem. Does that make it more palatable? Just don't prohibit a centralized nickel coming from ICANN going into it.

JANIS KARKLINS:

But the language what we are talking about is not mentioning ICANN.

BRIAN KING:

It does, though, because the concept here is that under no circumstances should data subjects be expected to foot the bill and the argument that follows is that data subjects pay the registrars, the registrars pay the registries, the registries pay ICANN and therefore the data subjects are paying for the ... That's a circumstance in which the data subjects pay ICANN. I'm not making this up. It's clear that that's what's intended.

JANIS KARKLINS: So, thank you for clarifying your understanding of the issue. Alan G?

ALAN GREENBERG: Thank you very much. I guess my position is quite similar. The phrase “under no circumstances”, currently without an SSAD, the contracted parties are providing the information, which by the way is not just to be kind. It is required by law to provide information under certain circumstances.

So, right now, the registrants are paying because that’s where the registrars get their money from. We still envision, in the SSAD, that the contracted parties will still have a part to play in this, perhaps a very large part if we can’t automate many of these things.

So, to say under no circumstances implies the registrars have to stop doing their work, or maybe they’re funding it out of some other part of their business not associated with registrants. I don’t think we could tell them how to do that, how to run their business.

In addition to that, we have issues of to what extent can ICANN put any money into this for development or ongoing some aspect of it. We’re still expecting the customers, the people asking [for] data to pay the bulk of it. But the term “under no circumstances” says no registrant money, no matter how it’s funneled, can ever go into this and I think that doesn’t reflect the reality of how the business runs today without the SSAD, nor how it’s going run in a continuing basis.

So, I think we need language which reflects what we're trying to say and not make categorical statements like that which are not implementable at all. Thank you.

JANIS KARKLINS: So, if we would remove "under no circumstances" and simply say the data subject should not expect to directly foot the bill or to pay for having their data disclosed to third parties?

ALAN GREENBERG: Certainly nobody is expecting us to send bills to the data subjects. "Someone asked for your data. Please send us \$10." I don't think that is ... But to imply that none of their money can ever be used for this, that I think just isn't the way the world is working.

JANIS KARKLINS: Stephanie, please.

STEPHANIE PERRIN: Thanks very much. One of the reasons that I have been on about the necessity for ICANN to start doing regulatory impact assessments basically since I got here is that a regulatory impact assessment looks at the allocation of the cost burden when you bring in a new system. This is a new system. The old system was free. Everybody got this data for free or they paid Domain Tools or Mark Monitor because they liked the way it was packaged.

Unless ICANN is going to go into the replacement of Domain Tools and Mark Monitor business, which might spark a bit of a war, there are going to be higher costs running a system like this.

So, I think it is disingenuous to suggest that the registrant is not going to pay. I think that the contracted parties are already absorbing a big cost burden in managing their end of this, as in my view, co-controllers. So, any further sort of tax that goes on them and then has to trickle down will result in the cost of a domain going up for the end user. We represent the non-commercial end users. We don't want to see this happen. You can see the kind of hysteria that ... I shouldn't be so blunt. I am in a leadership position. You can see the rhetoric that has gone on lately about the sale of DotOrg. Well, I do think that this kind of a structure could potentially, depending on the complexity level, make costs go up significantly. And just managing compliance with GDPR has already put a significant burden on contracted parties which they appear to be shouldering on their own because nobody else is willing to admit their controllership role. So, I think that's why we strongly support this language.

Now, in principle, were there a regulatory impact assessment done, the fair thing to do is a sliding scale for all of this. There are parties that should get a fee waiver including governments and one-time users and data protection commissioners. Don't make them mad. There are big users, like the cybercrime fighters, for shorthand, who should not be made to pay full price for every darn domain name they need to stop a malware attack.

This is kind of complex analysis that you need in doing a cost allocation, but we're not even there yet. So, until we get there with

the decent research that we need to figure out what costs have already rolled downhill, then the language stays as far as the NCSG is concerned. Correct me if I'm wrong there, Milton.

JANIS KARKLINS:

So, if I may ask Milton to jump the line. The question is can we modify the language and speak about direct cost, direct pay of data subjects that should not take place? In other words, data subjects should not be expected to pay directly for the data disclosed in third parties. And the users of SSAD should bear the cost of maintaining the system. No? Okay. Milton?

MILTON MUELLER:

Yes. I think you've taken a wrong turn here when you've gotten rid of cost causation, because insofar as the demand for disclosure of data through an SSAD increases costs, the cause of those costs should be the party primarily responsible for paying.

Of course there will be some basic infrastructural costs that are going to be shared across registrars and contracted parties—registrars and registries--but it's the additional cost. It's the costs that are based on the volume of usage and so on, and other kinds of requests based—costs of answering requests that have to be allocated to the people who cause them which is the users of the SSAD.

So, either you get rid of cost causation and you accept this constraint that data subjects are not to be charged for this or you accept cost causation and then find some softer way of describing the way data subjects fit into this. But you can't have it both ways.

So, I think the best solution is, yes, you could somehow, although I'm not ... I would wait to see what you actually propose as a wording but you want to say under no circumstances should data subjects be expected to directly be charged for having their data disclosed to third parties. That might be acceptable. You'd have to think more about the implications of that.

But I just can't agree with Alan Greenberg that this "under no circumstances" means that somehow we're going to find ourselves unable to pay for this thing. I just don't get that. It doesn't make any sense to me. It's clear that the purpose of this entire system as its name suggests, the Standardized System for Access and Disclosure is to benefit people who need disclosure. So, why are we resisting this term beneficiaries and users? What conclusion are we supposed to draw from that? Why are we resisting the notion of cost causation?

The only interpretation that we can have is that you're trying to open the door to making the data subjects pay for this in some measure or some way. So, I don't understand why this issue was reopened. I agree with James Bladel that we thought that we had pretty much come to an agreement on this and I don't see the dangers for the users of the SSAD that somehow something terrible is going to happen to them if these wordings are left in there. I just don't see that. That's all.

JANIS KARKLINS:

Okay, thank you. Following what you said, Milton, and what Brian said, can we go then in the direction of maintaining the first sentences "under no circumstances" with adding "expected to foot

the bill directly”? As you said, you could potentially live with that. And then we would delete “beneficiaries and” and just simply saying users of SSAD should bear the cost of maintaining the system. And then to alleviate concerns of Brian, we can add a sentence that ICANN may participate in covering—partially covering—the cost of operation of SSAD. Something like that.

Then we have safeguards that data subjects are not directly paying for the system, for the operation of SSAD. We are saying that users of SSAD should bear the cost of maintaining the system and we are saying that ICANN may decide to participate in the funding of the operation of SSAD. Something along those three elements. Then we put this out for consideration of the community. So, Franck, Marc Anderson, Volker, Alan G, in that order.

FRANCK JOURNOUD:

So, obviously, we’d have to see the language, but I think broadly speaking what you were sort of outlining, Janis, I think makes sense. Maybe we’d just ... I would suggest that instead of saying users, which I think is a little bit vague, that you would say requestors. But overall it’s three elements of your proposal seem like they’re going in the right direction.

JANIS KARKLINS:

So now the [textual] proposal is on the screen that you can see it. Marc is next on my list.

MARC ANDERSON: Thanks, Janis. I'll just note that the registries comments just above. We asked for the language to be direct or indirect. This is consistent with positions we've had earlier. We think this opens the door for indirect charges trickling down to registrants ultimately resulting in an additional tax on them, which we're not supportive of.

I've listened to this conversation. It's not a new conversation. And one of the things I want to ask to maybe change the conversation a little bit or maybe add a new element is if we can get ICANN to talk a little bit about what they've done. I know we got a letter from Eleeza. We had asked for some costing previously from ICANN. Something that may help our conversation. I think we all feel the way we feel, right? NCSG, contracted parties, we've been clear that we don't expect costs to be born by the registrants. We don't want this resulting in a tax on them. BC, IPC ... Sorry, I was looking at Brian and said BC. But IPC I think have been clear that they're willing to pay some fees but don't expect to foot the entire bill.

I don't know how we're going to proceed with this but maybe we can just shift and put ICANN Org on the spot a little bit. Have they given consideration to how they would pay for this, both the development and the ongoing costs, what kind of considerations they have there? What is the order of magnitude of money we're talking about both to develop and maintain the system from an ongoing perspective? So, can I put you guys on the spot over there a little bit please?

JANIS KARKLINS:

Look, I think we need to concentrate on the text that we could put forward. Eleeza's email [inaudible] questions was reaction to my request to provide a cost estimate, and of course since the model was not fully fleshed out, it was difficult. I suggested to base this cost estimate on cost estimate of [UIN] which is well defined by ICANN Org and I don't know whether that is done or not, but that would give us some idea what it is, but since we do not have this cost estimate of any system, I think we need to stay at the level of principles.

And then what we are talking here is how the cost ... I mean, we have agreement that there should be cost recovery. It's not a profit business for ICANN. But every user will pay and the data subjects should not be charged for running of this system, directly, because indirectly they pay for domain name registration and that funds also ICANN including. But that should not lead to increase of their charges as a result of implementation of that.

So, the element which is missing, indeed, what is the volume of funding we need to run the system? And we do not know and we probably will not know it until we will start really drilling down. Hence, we should stay at the level of principles and then work towards cost assessment that would help us in making decisions for final report. So, that would be my suggestion. Volker, you are next on the list.

VOLKER GREIMANN:

I think you're right, Janis, that we should stay on the matter of principles. I think we should define those principles very well, but ultimately, we have no idea how much this costs. This is also a

request to the ICANN side to start looking at what those costs could be of what they currently see in our proposals, what the cost of building and maintaining such a system would be and where they figure the money would come from, because that's ultimately the biggest elephant in the room that nobody has even laid a hand on yet. It's probably not going to be cheap to build the system. Where is this money going to come from? Auction funds? Some reserve funds that have been depleted in recent years? Some donation from an unknown billionaire that's coming along and has a very high interest WHOIS?

I mean, at some point, we'll have to figure this out. And if we cannot figure out where this money is coming from, then we have wasted a long time building a system that nobody is willing to pay for because that could also be the case and that would be horrible.

JANIS KARKLINS:

Next I will ask Dan to respond but let me tell you a story from yesterday's news in Latin newspaper. In one of the Eastern European countries, government was prepared to pay 16 million euros to develop electronic database or system. The local IT guys, IT community, became very angry, a waste of money, and they built that system in two weeks and free of charge so ... Dan?

DANIEL HALLORAN:

Thank you, Janis, and thanks, Volker. I want to be careful because Volker just said this is a request to ICANN to do

something. We can't respond [inaudible] request like that. We have a formal request from Janis.

UNIDENTIFIED MALE: [No, not now].

DANIEL HALLORAN: Okay. So, we have a request and it was kind of ... We sent in questions a week or two ago about the request trying to get some scope on it and understand the assumptions. I think that actually might need maybe a reset now that we focus now on this new model which I don't think was in any of the three models earlier. So, I think maybe it's time to reset that and go look and I think we could focus it just on the model that's on the table today, I think it would be more straightforward and [similar] from our point of view on one level. And we've kind of joked about it. I've heard people referring it, it's like a ticketing system, really. Requests are coming in here and we send the ticket out there and we process it. We already operate things like CZDS and there's no special fees for that. So, a lot of stuff is included.

We're conscious every day that registrants pay the price, registrants pay the price for this water right here. They pay the price for this meeting. James flew here. GoDaddy customers pay for that indirectly. So, we're always conscious of that, that registrants are paying for it all. But we can reset and do more work on the costs of what this model would look like. Thank you.

JANIS KARKLINS: So, if I may ask to concentrate on specific language proposals that would allow us to go forward and the proposal is on the screen. I'm not sure, Milton, is that a new hand or old hand? And Alan G, your hand is up.

ALAN GREENBERG: Thank you. The new version, which gets rid of the rather colloquial term "foot the bill" helps a lot. If I was going to foot the bill for dinner on Monday, that would mean I pay the whole thing. It's not a good term [where] it's gone now.

I think what we're aiming at is a statement to the effect of the target is that the SSAD be self-sufficient without causing additional registrant fees. The registrants are still going to be paying for it. As he said, your air fares are paid by the registrants. The water is paid by it. ICANN Legal counsel is paid by it. So, there's clearly costs that are born by the registrants. We're not going to change that. Hopefully, if we can automate enough things, we can lower that. But it's going to be there.

But our intent is that it be largely self-sufficient. When we start up, it's going to cost a lot more to run until the volume ramps up to pay for the costs. So, it's going to go up and down, but I think it's the target we're looking at that we're not looking to assess additional fees and force registration fees to go up because of the SSAD. Thank you.

JANIS KARKLINS: Thank you, Alan. Brian and then Lauren.

BRIAN KING: Thanks, Janis. I'll take your direction and speak to the language that's on the screen here. I think this is a very helpful clarification and I appreciate that. As one minor point I might suggest requests [through the] SSAD primarily bear the cost. I think that we're probably okay with doing that. I just don't want this to read as an absolute. I think that's the rest of this is good. Thanks.

JANIS KARKLINS: Okay. So, that's a helpful statement. Laureen? You're fine with the text on the screen, which is now on the screen?

LAUREEN KAPIN: Yes.

JANIS KARKLINS: Okay. Marc followed by James.

MARC ANDERSON: I was reacting ... I thought Alan made an interesting suggestion about self-sufficient. That made me stop and think a little bit. And taking the point that direct ... Bearing direct costs. A literal interpretation of that might be difficult. But what we're ultimately hoping to accomplish or what we're intending to accomplish here is that the price of a domain name registration doesn't go up because of this specifically. I thought that was an interesting suggestion that may help things.

I also do want to point out that in the previous section above this one, we've agreed that ICANN would bear the cost of the initial creation of the system. So, that's a fee for ICANN. And that contracted parties would bear their individual costs for the creation of whatever systems, integrations, and ongoing running of those systems.

But it's the ongoing costs of maintaining and running that SSAD system that we're specifically concerned about. Alan's self-sufficient language gave me pause. That may help a little bit there.

JANIS KARKLINS:

So, that is reflected in the last sentence that's now on the screen. The objective is that SSAD is financially self-sufficient without causing any additional fees for registrants. And we are putting it in perspective. It is objective. James?

JAMES BLADEL:

That last sentence helps a lot. I jumped in the queue quite a while ago but then somehow Zoom crashed, so I wasn't Not only was I not in the queue, I wasn't even in the room. But the last sentence helps a lot. I would say requestors of the SSAD data ... I don't know. I feel like requestors of SSAD just seems clumsy.

Then, I think we can capture ... at one point, we had made a distinction between the development and start-up costs and integration costs versus the ongoing maintenance cost. Is that still in there? Okay. All right. I wanted to make sure that we hadn't steamrolled over that.

I do have a little bit of an issue with directly charged Registrants—and this is going back to Dan’s statement— [registrants] are not directly charged now. Technically, they’re charged per. There’s a per domain name registration year. And I just want to make sure everyone is clear on where ICANN gets its money. 97% of ICANN’s revenue is coming from registry and registrar fees. There’s some other stuff and ccTLDs and other things contribute, but that’s a rounding error, basically, in their budget.

So, everything in some respect is an indirect registrant fee associated with registrants. So, I don’t think we’re putting necessary safeguards into place to say that people are not going to bear the costs for having their data listed and available in this system.

So, I feel like we should, instead of saying who bears the fees or who pays the fees, I think we should say who bears the cost [in] something like that first sentence of “under no circumstances should data subjects be expected to bear the costs of having their data in SSAD” or “disclosed in SSAD” or something like that. Because if we say something about fees—direct fees, indirect fees—everything is an indirect fee. Dan said my airplane ticket, the water on the table. The water in your refrigerator at home is all an indirect fee on registrants. Thanks.

JANIS KARKLINS:

Look, in a sense, this last sentence, the objective of SSAD is financially self-sufficient without causing any additional fees for registrants basically covered the concern of NCSG that the data

subject should not be paying. So, there is now a little bit redundancy and maybe the last sentence should go actually up and that should be the beginning of the statement in this building block.

So, then we repeat it once again that the data subjects under no circumstances should bear the cost of having their data disclosed, and we say that requestors of SSAD should primarily bear the cost and ICANN may contribute to covering the cost.

So, I think all elements are here. Maybe language is not ideal, is not neat, but I think that we have captured the concepts that we were talking about and struggling here.

We have four hands up and I simply wonder whether we could see if the text on the screen everyone can live with. Let's start with Alan G.

ALAN GREENBERG:

Sorry. My hand was up to address what James asked, to make sure that we still ... We were talking about here about ICANN may put money into the operational. I presume we still have somewhere that ICANN may foot the bill for developing the system and things like that.

JANIS KARKLINS:

Yes, that [inaudible].

ALAN GREENBERG: Okay. As long as that's still somewhere. I can't find it in the document but I'll believe you.

JANIS KARKLINS: The ultimate objective is to give everyone document at the point of departure from LA for review. Stephanie, Daniel, Franck, Brian.

STEPHANIE PERRIN: I'm sorry to slow us down. I still want "indirect" in there because, of course, ICANN spends money to support registrants. And call me a veteran of government budget cuts, but I want to make sure that there are no indirect cuts to support for registrants that are funding some of these exercises.

So, I think it's quite important that we put that in there, not just the fees. I do wonder where the money for this system is going to come from in ICANN, if not cost-cutting somewhere. But we can wait until later to see the answer to that question.

JANIS KARKLINS: So, with this addition that Marika is putting "directly", is it fine?

STEPHANIE PERRIN: No, I wanted "indirect".

JANIS KARKLINS: Oh, so then we take out—

STEPHANIE PERRIN: Hidden costs to support end users. Let the record show that I'm defending ALAC's budget. I'd hate to have them defunded for two years to pay for the construction of this system. There you go. We love you.

UNIDENTIFIED MALE: I'll volunteer to leave.

STEPHANIE PERRIN: Not before me.

JANIS KARKLINS: Daniel, please.

DANIEL HALLORAN: Thank you, Janis. I think what's confusing about this is the difference between the SSAD and the central gateway. It makes sense that ICANN would contribute to the cost of maintaining a central gateway but there's lots of other costs in the SSAD if you think about ... Let's say if WIPO participates what their costs would be or if a registrar is receiving a request and has to hire staff to evaluate and approve and reject requests. That's a cost the registrar is going to incur. Those costs have to be of course passed to the registrant because that's the registrar cost of doing their business. ICANN is not going to contribute to that. Registrants are going to contribute to that, directly or indirectly. I don't know. I'm not an economist.

I don't think that anyone is saying that ICANN is going to be giving money to WIPO or to registrars to evaluate these requests or to accredit people but when you talk about the costs of SSAD, you're mixing a lot of things—the accreditation costs, the costs that registrars and registries are going to have for evaluating things. And I think that's part of the confusion here.

So, I think you get into deep water talking about direct and indirect costs of the whole system is complicated. Thanks.

JANIS KARKLINS:

No, it is, because we're talking abstract and we do not know how much it will cost. But what we know, that if ... That there will be [inaudible] and there will be distribution of costs and some costs will be direct, some costs will be indirect of the system. And then there will be a mechanism which will calculate those costs and then somebody may be paying and somebody will be paid.

But for the moment, we're just talking about principles, that no one should do a profit out of the operating the system, that everyone should participate in the funding of the system. So, all these principles are captured in other parts of the financial building block.

So, for the moment, we're struggling just with this one formulation and that is to defend the users, that they are not paying additional costs for existence of the system. Then, the proposal on the table stands.

UNIDENTIFIED MALE: To put it in concrete terms, maybe I proposed changing the last word there from SSAD to gateway or central gateway.

JANIS KARKLINS: And again, please, this is not the final report. It's not the final language. We need to capture the main principles, elements, here and let it out and see what will be a reaction of your own groups and the brother constituency, brother community, who will be hopefully commenting in big numbers this initial report. Franck and Brian, two last hands. Please say yes.

FRANCK JOURNOUD: At the risk of disappointing you ... So, I think the second sentence ... If the second sentence is trying to say when a request is made about a specific domain, that that registrant and data subjects whose data may be under that registration, that they shouldn't get a bill, I completely agree.

However, when you start talking about indirect or whatever, the notion that registrants, contracted parties, and ICANN shouldn't participate in the overall costs of the system—and I don't mean just the [internal] costs because you have to hire attorneys or whatever. I mean the paying for the gateway, paying for the accreditation provider, the gateway provider. I mean, all of these are going to be either departments that ICANN is going to have to build and staff or a contract that it's going to put out to DeLoitte, all of the lawyers who are going to have to audit, etc. All this stuff. Yes, we as requestors are going to contribute to that and I imagine it's going to be part accreditation fee, part fee per request

or something like that, as Mark SV has said in the past there might be different arrangements, like your mobile data plan, etc. Yes, we are going to participate in that.

However, no, our position firmly is we shouldn't be the only ones, because yes, we do feel that that system—this SSAD—which is going to manage 95% or more of the WHOIS requests in the future is a system that is part and parcel of the entire lifecycle of domain name registration use, etc.

So, we think it is an inherent part of the domain name industry, domain name universe, and so we think it is not just requestors who should be paying for that system.

So, I think the “may” and the [beginning] part says “partial” in last sentence and the first sentence about the objective that pretty soon ICANN shouldn't be paying for this, I think those are problematic.

JANIS KARKLINS: Brian, you are next.

BRIAN KING: Our constituency just spoke. I don't think we should go twice in a row. Thanks.

JANIS KARKLINS: Okay. Marc?

MARC ANDERSON: Thanks. I raise my hand to respond to Franck. Just reminding you, registries and registrars, we're part of the SSAD system, and as Dan pointed out in his clarification, he doesn't want ICANN paying our costs. We've already agreed that ICANN should fund the initial setup of the SSAD system, which will probably not be a small number and that will ultimately be funded by the registrants. And we'll have our ongoing piece for contributing to this SSAD system. [inaudible] running our integration. We watched the swim lanes that Berry described and that includes a part to play for the contracted parties that we are eating that cost and that is ultimately paid for by the registrants. We're specifically concerned about the ongoing costs of the—Dan clarified the central gateway system. We're asking for that to be paid for by the requestors.

So, we don't see this as ... We see that as a compromise position. All the initial setup fee, that's born by the registrants, ultimately. And our ongoing cost of paying and running these systems in integration and making these disclosure decisions, we're paying that as part of our cost of doing business.

I don't know if that changes your position but we're trying to draw a line. We're trying to draw a particular line and that was why ... It's why sort of Alan's point about—what was it? Cost neutral ... Self-sufficient. It caused me to pause. That's a little bit better term than direct because it's not ... We're already conceding that there's going to be some indirect costs that the registrant will bear. I don't know if that helps at all but hopefully it does.

JANIS KARKLINS: So, we have 35 minutes formal end meeting and I would really like to plea to let this text on the screen go. It is not simple. Let's collect input ... Let's continue discussing that for final report. I think that, in principle, we have captured different concerns here. We understand the problem. We do not know what we're talking about in terms of money, whether talking about million. Probably we're talking about million or maybe even three. But whether we're talking about \$50 million or \$100 million. So then of course it completely changes the situation.

So, my proposal would be to put this text as we see on the screen in the initial report and then see what is the reaction of community, including your own groups, and we will continue the discussion further. Alan?

ALAN GREENBERG: Just one minor comment. I'm happy leaving it like that. The expression "under no circumstances" is unusual in this report. Normally, we would say "users must not pay" or whatever the right thing is. It just doesn't read as in a professional document. But I'm happy to leave it.

JANIS KARKLINS: Thank you for showing flexibility. Brian, you, too?

BRIAN KING: Yeah. Thanks, Janis. That was why my hand was still up here at the end. "Under no circumstances should they be expected" language, and even should they be expected. Like, expected by

whom? This is ex-girlfriend language. This is like you read this and you're like, "I'm done. I don't like any of this. I'm out."

UNIDENTIFIED MALE: Or ex-boyfriend, you know.

BRIAN KING: Or ex-boyfriend. Or both. I don't care.

UNIDENTIFIED MALE: Present company excluded.

BRIAN KING: But I do think that's important to go to the initial report with language that reads like a report language should. I can live with all the rest of the language there. I think if we can just clarify what we need there in policy sounding language, which I know Marika and team can do, I'd be a lot happier with this going to initial report. I don't think I'd object. Thanks.

JANIS KARKLINS: Okay.

MARIKA KONINGS: Can I make a suggestion?

JANIS KARKLINS: Yes, Marika?

MARIKA KONINGS: So, one suggestion. The way you can [rewrite] it and have the “under circumstances” is basically say data subjects must not bear the cost for having their data disclosed. I think the [inaudible] makes it that “in no circumstance” and that would be the way we’ve written the rest of the document.

JANIS KARKLINS: Stephanie?

STEPHANIE PERRIN: I like what Marika just suggested, except I would like to add “must ...” Run it by me again. “Must not bear the cost, directly or indirectly.”

JANIS KARKLINS: Okay. We can settle on “must not”. Must not bear the cost.

UNIDENTIFIED MALE: That probably says more about you than [inaudible].

JANIS KARKLINS: Stephanie, please.

STEPHANIE PERRIN: Can someone remind me why they don’t like directly or indirectly? Because we have a line in there may contribute to the costs of

building it. Well, where the heck is the rest of the money going to come from? And how long is it going to take to build it? Sorry.

JANIS KARKLINS: No, but look, this is the question or task of the Board to find the money and make a decision.

UNIDENTIFIED MALE: Or reject the policy.

JANIS KARKLINS: Or reject the policy, so ...

STEPHANIE PERRIN: Hence my insistence on directly or indirectly. Finding money. That's a real game.

JANIS KARKLINS: So, Alan G?

ALAN GREENBERG: We've already established that there are all sorts of costs associated with that are indirectly born by the registrants. Any of the costs born by the contracted parties for doing their parts of the work will be there. The development costs, if they're funded by ICANN, are funded indirectly by the registrants. If we put "indirectly" there, then we're tying our hands and guaranteeing that we'll never do this because it says we're going to have to

build the [inaudible]. The requestors are going to have to pay. And then we're going to have to give a portion of that money back to the contracted parties to offset the work they're doing.

Well, if we say under no conditions do they pay anything either indirectly, that's what we're saying. We're saying we're going to have to reimburse the contracted parties. We're putting ourselves in a untenable position.

JANIS KARKLINS: Margie and Chris.

MARGIE MILAM: Alan said what I was going to say. Indirectly goes too far because of all the reasons he and Dan mentioned. So, I would oppose that.

JANIS KARKLINS: So, I think that we should simply say that as it's now suggested on the screen that data subjects must not bear the costs for having their data disclosed to the third parties and put this for consideration of the community. Stephanie, please.

STEPHANIE PERRIN: How about must not bear any costs? Now, normally, I hate subtlety. I like clarity, as you might have noticed. But if you won't accept indirect, then "any" hides that.

JANIS KARKLINS:

So, I remember entering in the discussion at 11:00 in the evening whether Internet governance: consideration of the report of the [inaudible] working group on Internet governance or Internet governance; consideration of the report of the [inaudible] would make any difference. 45 minutes. Interpretation in six language without any meaning. So, I feel we are more or less in the same situation here because we do not know how much it will cost. We have clear understanding that—and this is displayed on the screen very clearly that without causing any additional fees for registrants ... This is exactly what you're talking about, that there is no increase of costs and this is what is written here.

And this is initial report. I am very tempted to make a ruling here and put this language what is now on the screen for the consideration of the community and invite those who cannot live with this make a written note and this written note will be attached to the initial report for knowledge of community because we are going in circles and I think we have reached the limit of possible on this topic.

Moreover, that we have another thing to settle and that is on use policy on this line 1021, which is in the section of implementation guidance on indemnification versus insurance.

So, yesterday on the indemnification question, I asked a few folks to work on possible language and that was Matthew, since he is nervously grabbing the mic. Matthew, could you help us out?

UNIDENTIFIED MALE:

Confidently grabbing the mic.

MATTHEW SERLIN: Sure. Let me just pull this up. We had a little bit of discussion this morning but I will caveat this with not everyone who wanted to participate in that discussion has fully weighed in yet, so I welcome any additional comments on what we've come up with. Can I send this to you so you can put it up on the screen? Or I'll put it in the chat.

Okay. So, we thought maybe what we could do—because I think we're getting hung up on the specifics. And we thought maybe to just get us past this initial report stage and get something in there that can go out for comment, we just sort of outlined what ... Like, be more specific about what exactly we're talking about when we're asking for indemnification from requestors.

So, it's not that we want indemnification for any damages. It's that we are specifically, as contracted parties, relying on the representations from the requestor in part in making the decision about whether we disclose data.

So, what we need is an indemnification from the requestor that if they do something like misstate or make misrepresentations in their accreditation or request process or misuse the requested data and that results in a third-party claim against us, that they would indemnify us.

So, this is not super broad. It's really specific to the fact that we are relying on their representations in making and fulfilling those requests.

I think the second point, though, because I think we were sticking on whether this needed to be a one-way or a two-way indemnification. I think our position is it's appropriate for this to be a one-way indemnification, the requestor indemnifying us and not the other way around because the requestor in this situation is in the best position to control their own risk, and indemnification is about spreading around the risk.

So, the requestor is in control of whether or not they send out the requests and the statements that they make as part of that request. We just have to rely on that, right?

And I actually think you don't want us to think about that risk in making decisions because that's going to lend more towards saying no. That's the avenue for us to control that risk. So, I think that's what we're trying to get at by this being a one way and not mutual.

But I think it's important that we call out that nothing about this is limiting the statutory or the rights of recovery that parties who are engaged in processing of data together have against one another. We're just talking about an indemnification right and not a limitation on what other avenues there might be if something went terribly wrong and we caused damage for you folks.

And then the last part is just I think something we all agreed on yesterday that the indemnification piece doesn't make sense necessarily for public authorities and so we would provide a carve-out for them from that indemnification. But again, that's not a disclaimer of all liability. They would still fall under point two that essentially here could be other avenues to pursue for recovery.

So, we're hoping this is enough as just sort of some principles to maybe better clarify this indemnification question and welcome any comments from the group. Thanks.

JANIS KARKLINS: But then this looks to me not as implementation guidance but this looks like some kind of policy principle already rather than ... Because currently this text is under terms of use recommendation with implementation guidance. So, this elaborate text seems to me is more relevant under recommendation itself rather than implementation guidance.

MATTHEW SERLIN: That may be right. I think what we were trying to do was solve for the fact that I think there was a lot of misunderstanding about exactly what we were asking for here and why this was a concern and why this might not be a two-way obligation and should be a one way. So really we're trying to clear up some of those misunderstandings. So, if it makes more sense in implementation guidance, that's fine, if it makes more sense as the policy principle.

JANIS KARKLINS: Okay. Marika, [inaudible] that this is still implementation guidance. Let's see whether we can live with this proposal for initial report.

ALAN GREENBERG: If Thomas and I re agreeing with each other, it must be okay.

THOMAS RICKERT: Let me double check whether I made a mistake then.

JANIS KARKLINS: Franck, your hand is up.

FRANCK JOURNOUD: Yes. Matthew, I appreciate the effort and I think it is getting us closer to the goal. I just have ... This is not a copout. Well, maybe it is. I'll just have to take this back to my lawyers because I do think ... There are things that are just beyond the instructions that I had gotten. You've tried to address what I was referring to as some imbalance and indemnification goes only one way. But that's still there. I don't want to create false hope at all. I just need to shove it down their throat. I do think some things may be problematic but let me take it back. So, basically no yes, no no at least from me and maybe from IPC.

JANIS KARKLINS: Okay. So, then, thank you for that. I then consider looking in the room and body language that that translates to that we could live with it for the moment. And it seems that this concludes our first read of initial report.

What I would say now is thank you. Probably it's not good. It is certainly not ideal. Probably there are some clarifications that need to be worked out further and corrected. So, staff now will put

everything in one document what we agreed and this document will be distributed to the team as soon as feasible.

I expect that smaller group after lunch will stay on and will try to work on the language on controller, controllership, and then that language will be added to the report in this heading of major assumptions about SSAD.

So, we will then meet ... So, that document, please, go back to your groups—larger groups—and look whether there is anything that would completely not be acceptable. Or if you have spotted some typos or editorial suggestions, please let staff know by Tuesday end of business.

MARIKA KONINGS: [off mic].

JANIS KARKLINS: I don't know when you're meeting. By Monday night? Monday end of business. Would that work for everyone? Tuesday end of business. I don't know when you're meeting in groups.

MARIKA KONINGS: At the latest by [inaudible].

JANIS KARKLINS: Okay. At the latest by Tuesday end of business, but preferably Monday by end of business.

UNIDENTIFIED MALE: Sorry, Janis. When do we have the reworked draft from staff?

JANIS KARKLINS: Today.

MARIKA KONINGS: Just a clarifying question on that one. Do people already want us to lift this back into the initial report so you have the whole document to review or do you prefer to have it as a separate chapter? If you want it as a full report, it will take us a bit later in the day to lift it in because I think we need to fix some other issues in as well [inaudible] model.

ALAN GREENBERG: Send out the chapter when you have it, and when you incorporate it, send that out.

MARIKA KONINGS: Well, the only issue there is because I think we're going to follow the line number approach and preferably use the same sheet as we've done here, so people are very specific about where they have an issue, what the concern is, and what the proposed change is because I think that may make the discussion next Thursday as well more focused. So if we have two different documents, that might complicate things, so ...

JANIS KARKLINS:

Then we will meet on Thursday and we will have precisely two hours to review those issues that team members will raise. Then the document will be published on Friday.

So, if we will not manage to get everyone on board during the meeting on Thursday, if there will appear some additional hurdles that we will not be able to overcome. Then I will ask those who will be objecting the text to prepare dissenting opinion views that will be attached to the initial report for knowledge of everyone.

Then report will go live on Friday, 7th of February. So that is the game plan, and of course this paragraph on controllership will be also added also for the consideration for Thursday. Marika?

MARIKA KONINGS:

If I can add a question to that as well or maybe an assumption. And I think we've mentioned it before. From a staff perspective, we're hoping to take the same approaches we did for the Phase 1 report where we do get input through a Google form that allows very specific questions on can you agree with this recommendation? If you can't agree, tell us why.

Of course, there's always space, as well, for are there any additional issues you want to flag? But that at least facilitates to a great extent the time that after public comment closes, gathering the comments and as well subsequent review. So, that's something that we would already start preparing as well, and of course we can share it with you in advance how we would structure it or how we phrase the question, so you have a chance

to provide input. But obviously, some work goes into that and we would need to start that now as well.

JANIS KARKLINS: So, anyone has objection on the proposed way forward? Margie?

MARGIE MILAM: What happened to the automation examples that we sent in earlier? We didn't talk about that.

JANIS KARKLINS: Yes, sorry. Thank you for reminding. We can add that to the bucket and ask groups to review the proposed, those ten examples that Mark put forward and send any comments you may wish to send by Tuesday end of the day and we will put that on the agenda of Thursday's call. Brian?

BRIAN KING: Yeah. Thanks, Janis. That's going to be really important for our group, so I just want to make sure that we don't lose sight of that and that we talk about that.

JANIS KARKLINS: Yeah, my apologies. It's a late hour and I am a bit tired.

MARIKA KONINGS: Yeah. Just to note on that specific item that we have already flagged in the report that the group will continue conversations if

we don't make it by Thursday and more time is needed. So I think we did put a flag there that additional automation scenarios may be added there, depending on further conversations.

But I think as well if people are still around, this is well a chance to talk to Mark and understand or express concerns, because again, if there are others that we can already add to the list for initial report, he better.

JANIS KARKLINS: Yes. Mark, then Brian.

MARK SVANCAREK: Just note. So, Alan has walked out of the room, but Alan and I did have a chance to talk about this this morning, so you could equally talk to Alan about it. I'm not sure that will give you exactly the same story but they should be pretty close. So, talk to either of us. Thanks.

JANIS KARKLINS: Thank you. Brian?

BRIAN KING: Yeah. Thanks, Janis. I don't want to understate how important this is. When we caucused with the IPC, there were some significant voices that indicated that automation in the beginning of as many use cases as possible, and especially the ones that are useful and important to us, might be the lynchpins. We might not be able to say yes or buy into consensus without those.

So, we're here in good faith entertaining a shift from a centralized model to a decentralized and slowly centralizing model, but that could be very important for us. So we just want to make that clear. Thanks.

JANIS KARKLINS: Thank you. Stephanie, your hand is up.

STEPHANIE PERRIN: Thank you very much. And I am way back at the indemnification paragraph. You may recall I had requested that we address the issue of registrants who were not covered by the GDPR who would not have access to a court that would prevent them to get damages. We've indemnified all the players here. We have not looked after damages for individuals who are harmed by failures in the system and I think it's an oversight. I think that we can't protect and cover the insurance costs for everybody in the system and not also cover the insurance costs for unprotected registrants.

JANIS KARKLINS: So, Stephanie, you always have a chance to put forward the language for consideration of the team.

So, once again, thank you very much for work accomplished so far. Still, we have a little bit of tweaking to do. Yes?

UNIDENTIFIED MALE: Sorry. I just wanted to take a moment to interrupt and thank you. We know we're a handful to deal with and this is not a fun topic but you've done an amazing job, so thank you.

[applause]

JANIS KARKLINS: Thank you and lunch is served. Safe travels and keep working. This meeting stands adjourned and recording is ending.

[END OF TRANSCRIPTION]