ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Thursday, 05 March 2020 at 14:00 UTC
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TERRI AGNEW:　　　　　Good morning, good afternoon, and good evening. Welcome to the GNSO EPDP Phase 2 team call, taking place on the 5th of March, 2020, at 14:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone—Stephanie, we have you down as telephone only for right now. Anybody else in addition to Stephanie on the telephone only, please identify yourselves now.

Hearing no one further, we have listed apologies from Mark Svancarek of BC and Matt Serlin of RrSG. They have formerly assigned Steve DelBianco and Sarah Wyld as their alternate for this call and any remaining days of absence. Alternates not replacing a member are required to rename their line by adding three Z's to the beginning of their name, and at the end in parentheses, your affiliation—alternate, which means you are automatically pushed to the end of the queue. To rename in Zoom, hover over your name and click Rename Alternates are not allowed to engage in chat, apart from private chat, or use any

other Zoom room functionalities, such as raising hands, agreeing, or disagreeing. As a reminder, the alternate assignment form must be formalized by way of the Google link. The link is available in all meeting invites toward the bottom.

Statements of interest must be kept up to date. If anyone has anything to update, please share now or raise your hand.

Seeing or hearing no one, if you do need assistance, please e-mail the GNSO Secretariat. All documentation and information can be found on the EPDP Wiki space.

Please remember to state your name before speaking. Recordings will be posted on the public Wiki space shortly after the end of the call.

Thank you. With this, I'll turn it back over to our EPDP Chair, Janis Karklins. Please begin.

JANIS KARKLINS: Thank you, Terri. Hello, all. Welcome to the 45th meeting of the EPDP. As usual, the first question is on the agenda that has been circulated to the mailing list. Is it the one we want to follow during today's meeting?

I see Marc's hand up. Marc, please go ahead.

MARC ANDERSON: Hey, Janis. Can you hear me okay?

JANIS KARKLINS: Yes.

MARC ANDERSON: Great. Apologies. I sent this out late yesterday. I sent an e-mail about the financial sustainability of the, I guess now, building block recommendation. I was looking through that and I'm concerned that there's a lot of work to be done on that one and it's somewhat time sensitive. So I ask that that get pulled up.

I'll also note that Brian had a suggestion on that one, too, that I think is worth considering. I'd like us to consider pulling that into today's meeting, if there's a possibility of that.

JANIS KARKLINS: Okay. Thank you. Then I would suggest that we add this as Sub-Point C on housekeeping issues. Any other suggestions?

Then we will follow in that order. So thank you. The first issue is the meeting schedule. You'll see on the screen on the agenda the suggested four meetings of ICANN67. Actually, I consider this meeting wouldn't have been taking place if we would have a face-to-face meeting because this would be a travel day and also as a part of virtual ICANN67.

My question is are we comfortable following this proposed meeting schedule for the ICANN67 virtual meeting?

I see no hands up, so we will then proceed accordingly. On Tuesday, the Legal Committee met. I would like now to invite Becky to inform the results of the meeting.

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BECKY BURR: Thank you. We had a very, very productive meeting. I believe two documents were circulated. We went through the remaining questions with significant modifications just to tighten them up and narrow them. So we have a couple of questions to bring to the plenary. The plan was—or the agreement was—that if the Legal Committee, which was representative, reached consensus on the questions, then we would go directly to Bird & Bird on these questions. NCSG objected to the questions in principle, so we will bring those to the plenary for discussion.

JANIS KARKLINS: Thank you very much, Becky. Any questions to Becky in relation to proceedings of the Legal Committee?

I see no requests for the floor. So thank you, Becky.

Now, financial feasibility. Indeed, if you recall, we had discussions about the financial sustainability building block. That was in late November last year. We came to the conclusion that it would be good to know the scale that we're talking about in terms of possible costs of the SSAD.

In this respect, I asked ICANN Org via my e-mail to the CEO to provide us with an estimate of how much that would cost. Of course, at that time, we were still working on elements of the SSAD. I suggested that maybe ICANN Org could provide us with an estimate of UAM that would give us an idea of the scale of funding which would be required.

Instead, we received a list of questions—a rather detailed list of questions—and, so far, we have not made an attempt to answer those questions.

With that in mind, the Secretariat or support staff has attempted to provide an initial cut of the answers to the ICANN Org questions that myself and Rafik are reviewing as we speak. I hope that tomorrow we will be able to share those initial answers to the mailing list.

So the question now is how we should proceed. We have basically two options: either to put the document for consideration for the next meeting, which is set for the 10th of March, or we establish a small group of volunteers who review the document prior to the meeting on the 10th and then provide a recommendation on the 10th of March. So these are two options that we have, I think, that we should consider.

With this, I would like to open the floor for any comments/considerations on the topic. The floor is open.

Marc?

MARC ANDERSON: Hi, Janis. I liked Brian's recommendation or a suggestion via e-mail yesterday to form a small team for this. I think he's right that this is pretty involved and isn't necessarily an efficient and good use of plenary time. Having not seen the proposal that staff put together and you and Rafik are reviewing, I think, with that caveat, the idea of having a small team to look at this rather than trying to do it in plenary is a good one.

I guess the only other thing I'd add to that is I think it'd be absolutely essential to have ICANN Org representation on that small team. I think, because the responses to and for ICANN Org, it would be essential to have them involved and be able to provide direction. If the responses are clear and provide the information, they need to be able to give us a response on this. Thank you.

JANIS KARKLINS: Thank you, Marc. Volker?

VOLKER GREIMANN: Sorry. I had to unmute myself. It's rare, but I disagree with Marc here on this because I think, if we just form a small team, we might not get the input that we need to fully encompass all the purposes that ICANN might have for personal data I think it should be a discussion on the list. So I agree with you there that it probably should not take away too much time for more meetings, but it should be something that can be discussed very easily on the list. That way, we have the ability to A) discuss and B) through out ideas and discuss them in a public forum that is also archived. So I think that would probably be the best way forward.

I also agree that ICANN should have someone looking into that, but I assume that they're looking into our discussions on this anyway. Thank you.

JANIS KARKLINS: Thank you. So no more further requests for the floor? Then I would like to see hands raised by those who would like to

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volunteer to be on the small team who would take the first look and cut online on those answers.

I see Becky's hand is up. Amr's hand is up. Volker's hand is up. I don't see further hands. Oh, now I see Franck [inaudible] still managing my list. Marc Anderson. Steve DelBianco. Okay, so that's already something. Thank you. You can lower your hands.

The document will be posted to the mailing list, and we will also put it in the Google Doc form. I take that volunteers committed themselves to review the document. But of course everyone else also is welcome to do so if they wish. Probably we need also to establish some kind of deadline. Why don't we say until 9th of March, end of business, in Los Angeles, where potentially we could review the outcome or very briefly touch upon the outcome in our next team meeting—not review the document but simply discuss whether where in a position to send it off to ICANN Org. I take also that ICANN Org representatives will be on the small team and will actively engage in the work.

So thank you. I now have two hands up: Becky and Amr, in that order. Becky?

BECKY BURR: Sorry. That was old.

JANIS KARKLINS: Old. Amr?

AMR ELSADR:	Thanks, Janis. I just want to say that I thought Volker's concern with a small team doing this sounded like a reasonable concern to me. On the other hand, there's so much to unpack in what we need to do regarding the questions that we received from ICANN Org on this issue.

I'm wondering if we could possibly do a hybrid between the Brian/Volker suggestion. And the time allowed to us or the time that we're going to be use to answer these question I'm wondering if we could split between putting some time aside for the small team to work on this and some time for an e-mail discussion to take place. I think that might be helpful. It'll take some time for most people to catch up to what the small team may be doing on this, considering the volume of work involved. If that could be worked out, I think it would be a better scenario. Thank you.

JANIS KARKLINS: I understand. What I suggested is that volunteers would commit themselves to drive the work, but everyone else is invited to join in and then provide their comments because the document will be published as a Google Doc and everyone can provide input as they go.

AMR ELSADR: Practically speaking, we're not talking about additional small team calls then?

JANIS KARKLINS: No. It'll be only online.

AMR ELSADR: Okay. All right. Great. Thanks.

JANIS KARKLINS: With the smaller team of volunteers, we're assuring that there are people committed to drive the work forward. Others do not have that commitment, but they are welcome to join in as they wish and once they have time.

AMR ELSADR: Okay. Thanks, Janis. That's helpful.

JANIS KARKLINS: Okay. Thanks. Then we can move to the next agenda item, which is feasibility of unique contact. [I—nice car]. I understand that the Legal Committee reviewed the topic and provided a recommendation. I also understand that Matthew was the penholder for this work in the Legal Committee. Maybe, Matthew, if you are on the call, you can briefly introduce the topic.

MATTHEW CROSSMAN: Hi. I was not the penholder for this one. I was the penholder for [inaudible].

JANIS KARKLINS: Oh, sorry. I mixed up the feasibility.

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MATTHEW CROSSMAN: No problem.

JANIS KARKLINS: Sorry. My apologies. So [uni-contact]. Then let me ask if Becky as a moderator of the Legal Committee would like to put forward the recommendation of the Legal Committee, which is actually on the screen now.

BECKY BURR: Yes. Thank you. The advice from Byrd & Byrd was quite clear. Whether it's a single-use pseudonymized e-mail or a consistent pseudonymized e-mail, it is personal data under GDPR. So the 6F balancing test would be required in each case, and the Legal Committee's conclusion based on this advice, which was quite clear from Byrd & Byrd, was that wide publication of masked e-mail addresses, whether it's a single-use or a consistent pseudonymous e-mail is not advisable, is not possible, under GDPR.

Byrd & Byrd did note, of course, that the fact that masking in each case is an important source of mitigation. The fact that the information is masked would be relevant in determining the effects on the privacy rights of the data subject.

JANIS KARKLINS: Thank you. Then the recommendation would be that the EPDP received legal guidance, noting that publication of uniform masked e-mail addresses is also a publication of personal data. Therefore, wide publication of masked e-mail addresses is not currently

feasible under GDPR. Disclosure would in certain instances would require meaningful human review [and] a balancing test under GDPR Article 61F. That would be a recommendation would go into an initial report on Priority 2 items, provided that the team will agree with that Legal Committee recommendation. So that is on the table.

In absence of hands, I will take it that this is our conclusion, but I will let first people raise hands if they wish so.

I have a first hand from Alan G. Alan, please go ahead.

ALAN GREENBERG: Thank you. This legal opinion confused me because of the use of the word "masked." When I think of a masked e-mail address, I think of the fact that some of the address is hidden, is redacted or replaced by something else, but some of it is in clear text. I didn't think we were talking about masking like that. I thought we were talking about some sort of processing which completely hides and obscures the original e-mail address and replaces it with something else. So maybe someone else can explain why the word "masked" is the appropriate one here because I agree that, if we're obliterating everything after the @ sign or every second character in the e-mail address, it still constitutes a display of some personal information. But I didn't think that's what we were talking about here.

BECKY BURR: Can I respond to that and Volker?

JANIS KARKLINS: Yes. Thank you. Becky, please go ahead.

BECKY BURR: The use of the term "masked" in this paragraph is mine. The fact is that, in either case, technically what those e-mails would be in either applying technology is pseudonymized. They are still personal information even if every single character is not the same, Alan. It's not the display of information that, on itself, would be personally identifiable, but under any definition, a pseudonymized e-mail where you replace every character with something else. But it still is intended and has the effect of enabling you to contact the individual directly. It's still personal information.

We hadn't really been talking about "pseudonymized." I hadn't noticed that we were talking about it these conversations. I wanted to make clear that it's not an anonymous. It's just simply not anonymous, applying either of these technologies. So I tried to find a more readily available term than "pseudonymized." But technically the information is pseudonymized personal information.

JANIS KARKLINS: Thank you.

ALAN GREENBERG: Can I ask a follow-on?

JANIS KARKLINS: Yes, please.

ALAN GREENBERG: Okay. If a registrar in our case provided a web link to say, "I will pass on this information, but not providing any visible address," that has the same net effect. Is it not still therefore implicitly providing personal information, even though you don't provide anything? Because you're still allowing contact.

BECKY BURR: Well, I'm going to defer to other people on this call who have expertise on GDPR as well. I don't want to hold myself out as the only person who understands this. I think it's fundamentally different if you're getting an e-mail that puts you in touch with somebody who then relays the information on. You're not directly contacting the individual. So that e-mail that you're receiving there is for that intermediary, not for the registrant.

JANIS KARKLINS: Volker, your hand was up.

VOLKER GREIMANN: Yes. Becky is essentially correct here. If you provide uniform address in WHOIS or RDAP or whatever the case may be, that's identifiable to the registrant and therefore would be considered information, whereas, if you just provide a link to a webform or site that tells you how to contract the registrant but does not provide a

unique identifier for that registrant, that is not personal information. Therefore, you have contactibility, yes, but it's not a contactibility through providing some form of personal information, which the unified address could be.

JANIS KARKLINS: Thank you, Volker. Laureen?

LAUREEN KAPIN: This is just directed to Alan. The issue is not whether you can contact the person directly. The issue is whether that address, whether it's the actual e-mail or whether it's a total substitute, that is pseudonymized … The latter would still allow you to identify or relate back to that individual. So it's not being able to contact. It's the fact that you can use the information to go back and identify a specific individual that's the key here.

JANIS KARKLINS: Thank you, Laureen. With this exchange, where are we? Can we agree on the recommendation of the Legal Committee?

So no one is objecting? No one is holding hands? So then we agree with the recommendation. This recommendation will appear in the initial report of the Priority 2 items, of course with background information and what is necessary. So thank you very much.

We can now move to the next item, and that is on the city field redaction. Here I'm calling to Matthew to introduce the proposal. Please, Matthew.

MATTHEW CROSSMAN: Sure. Thanks, Janis. Essentially, the proposal was just an effort to take the legal advice that we had already received in Phase 1 about the permissibility of the publication of the city field and public RDDS and just figure out exactly what Byrd & Byrd had said and what their call to action was from that memo.

In essence, B&B's analysis was that the city field is personal data, so universal publication is subject to the 61F balancing test. So their conclusion, which comes at the very end of the memo but which we've pulled up in this document as the key takeaway for the EPDP team, is that, in order to perform that balancing, the EPDP team would need to develop additional information about what the benefits of universal publication would to be third parties. Are they sufficiently meaningful to justify universal publication, or are they only applicable to limited use cases?

Moreover, the team would need to develop additional facts about the potential impact of universal publication on the rights and interests of data subjects. Once the team has that data, they would be able to conduct a detailed assessment that B&B has laid our in that memo to determine whether those third-party interests outweigh those of the data subject.

So essentially the takeaway is, if we want to reconsider the Phase 1 recommendation on the publication of the city field, we on the

EPDP team would need to engage on the work of developing those facts and then performing that assessment as a group. That's basically the takeaway in a nutshell. I welcome any thoughts or questions.

JANIS KARKLINS: Thank you, Matthew. The floor is open.

I have two hands up. Amr, followed by Alan G.

AMR ELSADR: Thanks. And, thanks, Matthew, for the overview. I found some of the analysis on this to be a little confusing because it sounds to me like what Byrd and Byrd are saying would be necessary to publish the city field in registration data is that you'd need to somehow perform one balancing test that takes into consideration all potential third-party interests and weigh those against all potential rights of all the registrants. This is not consistent with my understanding of a balancing test. I thought balancing tests were supposed to be specific to individual cases. So if Matthew or anyone else could provide me with clarity or maybe correct my own assumption on this, I would be grateful. Thank you.

JANIS KARKLINS: Thank you, Amr. Let me take Alan G and see whether Matthew can answer.

ALAN GREENBERG: Thank you very much. My question is essentially the same. I'll word it slightly differently though. This is the first time I've ever seen a reference to a generic balancing test. Now, if indeed generic balancing tests like this are allowed—that is, we cannot look at the particulars of this data subject but what we believe to be the issues related to data subjects and harm to them in the generic case—that changes an awful lot of things that we've done. I really would like to understand. If indeed a generic balancing test is allowed where we don't have to look at the specifics of this data subject, then I think we may need to rethink a lot of what we're talking about here.

So I don't much care about the city field, but raises an issue that I think is crucial to how we have proceeded to date and how we move forward. Thank you.

JANIS KARKLINS: Thank you. Before going to Margie, Matthew, would you like to answer?

MATTHEW CROSSMAN: Yeah, sure. I think we talked about this a bit in the Legal Committee: really, the scope of this memo—you're right—is not the case-by-case balancing for specific data subjects that we've seen previously. But I wouldn't classify it as a generic balancing test necessarily. I think it's a specific but very challenging balancing test where we can't consider just a generic data subject but we really do need to consider the rights of all those who would be impacted by universal publication. I think that's what makes

this potentially a very challenging exercise: I'm not sure we can actually do this in the abstract. I think, looking at some of the example that Byrd & Byrd has in their analysis about the specific considerations for both interests and then risks to data subjects that need to be considered, I think this is actually a significant and big ask. There will be a lot of facts that need to be developed because, again, I don't know that we cannot operate at that abstract and generic level that I think Alan's flagging.

So that's my takeaway: I agree. I think this is a complicated exercise that's being asked for if we do want to have universal publication. But I'm happy to take any thoughts from others, especially those on the Legal Committee that were part of those discussions.

JANIS KARKLINS: Thank you, Matthew. Margie, followed by Hadia.

MARGIE MILAM: I just wanted to take this conversation in a different direction as well. It relates to what to do about the city field not for universal publication. I think that the legal analysis was clear on that front. But, in terms of automated disclosures for specific use cases— because, as we had talked about in the past, there are specific use cases where the city field is appropriate for jurisdictional purposes, for example, for a legal claim—I just want to at least point this team to the fact that this memo was focused on the universal publication and that the balancing test might actually not be as difficult as you relate to automated disclosures in specific

use cases. That's one of the things that the BC has proposed in some of the automation use cases that Mark Sv had shared with the list.

So I just wanted to flag that. I think we should have additional conversation about that when we talk about the automated use case possibilities.

JANIS KARKLINS: Thanks, Margie. Hadia, followed by Milton.

HADIA ELMINIAWI: Thank you, Janis. I would add to what Margie said. Actually, what we're looking for, if we are actually talking about automation … If there is substantial public interest based on specific cases, in such cases the city field would be allowed for publication. So that's briefly what I wanted to add. Thank you.

JANIS KARKLINS: Thank you, Hadia. Milton, please, followed by Alan G.

MILTON MUELLER: I interpreted the Byrd advice a little differently. Yes, they did suggest that, in the course of setting our policy on this, we conduct some kind of general assessment of the balance of equities, if you will. But they also said, if this is a use case that only applied to a small number of people, it's pretty clear that this publication of this doesn't make any sense. I think I heard the same thing from even Margie and Hadia: this is not making a case

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for universal publication. At best, they're making a case in some instances [that] a requester might ask for automated release of disclosure of the city field.

So can we just nail that down? Can we say that we agreed that we're not going to publish the city field in WHOIS—it's going to remain redacted—and then we can refer the automation question to whatever small team or branch of this gigantic tree is dealing with automated cases?

JANIS KARKLINS: Thank you, Milton. Alan G?

ALAN GREENBERG: Thank you very much. I'm happy on a personal basis—I haven't verified either by colleague or by constituency—that we keep the city field redacted in the general case and may apply a slightly more liberal rule to its availability under specific requests.

But I'd like to make a request that we come back to the general discussion, not the city field discussion, in light of this Byrd & Byrd advice. An example of why we should relates back to the previous discussion on anonymized e-mail addresses. We know that there are some contracted parties that not only anonymize e-mail addresses but change them regularly. So every day or every hour, you come back and it's different anonymized e-mail address. So listing that address, for instance, and putting it in a spam list is useless because it's not going to work a little while later. That may change the decision of when you're now looking in the generic case of the impact on registrants. We might make a different

decision on that if we can look at the generic case instead of the specifics.

So I do request that we come back in light of this Byrd & Byrd advice and look at in a more general case. Having that discussion today, we both don't have the time for it and it clouds the issue of the city field in question. Thank you.

JANIS KARKLINS: Thank you, Alan. When you're saying "general discussion," general discussion on what?

ALAN GREENBERT: The ability to do what is essentially a one-time generic 61F balancing test, which is what they're talking about in this case, in the first sentence of the key takeaway.

JANIS KARKLINS: Okay. I think Hadia's and Milton's hands are old ones. No new ones. Volker, your hand is new.

VOLKER GREIMANN: I think the easiest way to solve this is to move back to the original compromised position that we proposed a couple of months ago: it should be a balancing test, an evaluation of risk, that the contracted parties can make so that we would be in a position to say that we recommend that the city field may be disclosed in the public WHOIS but may also be redacted, depending on what the contracted party that holds that data feels is doable under their

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own risk management. I think that way we allow the publication of more. We don't say "must be redacted," which clearly is something that is not a position that we can reach. But I think, if we say that it may be redacted/may be disclosed on a general basis for automated requests, then we have a position there that can have consensus.

JANIS KARKLINS: By how then, Volker, does it go together with our attempt to standardize contracted party approaches in responding to queries? If ever contracted party will define by itself, then you can it is a standard but this is not really a helpful standard.

VOLKER GREIMANN: I think it is because it allows contracted parties that feel confident in releasing that data to do so. The standard is that there may be data in that field or may be not data in that field. You would not have to go to the level of a request at that point because that would be part of the public data if it was disclosed/if it's not disclosed. That is clear as well.

I think standardization doesn't always mean that the same result is present, just that, when there's options, these options are defined. So the standard can go into various options that allow choice. I think choice is important here and will create some wiggle room for parties to make the best of what the policy is.

JANIS KARKLINS: Okay. So then I understand that the first phase recommendation is that the city field must be redacted. Volker, you are suggesting that we change or propose to change that recommendation that the city field may be redacted based on policy established by each contracted party.

VOLKER GREIMANN: Correct.

JANIS KARKLINS: Then Margie suggested that, in some cases where disclosure would be automated, their city field should be open, not redacted. So these are, for the moment, proposals on the table.

                      Amr, Brian, and Milton again, please.

AMR ELSADR: Thanks, Janis. I'm sorry. I don't agree with the notion of making this a choice for contracted parties, actually, because, to me, it seems pretty clear that the city field is part of the physical address of the registrant. Byrd & Byrd did also mention examples of situations where this could be extremely sensitive to a registrant or a data subject. I think they gave examples on being part of possibly a persecuted religious minority in a certain city or maybe possibly also political dissidents living in an oppressive regime. There are real-life examples of why this data could be very sensitive. It indeed is part of the personal data of the registrant. It's part of their physical address and pinpoints the data subject down to a specific city.

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So I'm not really clear on the argument for making this optional to redact. We could make redaction of all registration data optional and have contracted parties individual determine whether or not they want to take the risk in publishing the data, but we have been consistently—I'm using "consistently" in a different sense here—having a consistent approach in how to deal with this personal information for registrants, and I think it should apply for this field as well. Thank you.

JANIS KARKLINS: Thank you. Brian?

BRIAN KING: Thanks, Janis. Can you hear me now? I think I was double-muted.

JANIS KARKLINS: Yes.

BRIAN KING: Great. Thank you. I'd like to think about Amr's last intervention. I raised my hand to agree with Volker. I think that, if registrars in this case are comfortable with not redacting the city field, they could have that option. But I need to give that some thought.

I do think that I would like to have this considered as part of the automation cases that we're thinking about. It seems that Byrd & Byrd is telling us—and it seems in my mind—that, for some use cases and some for some request types we might be able to automate disclosure of the city field in some cases. So I would just

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JANIS KARKLINS: Thank you. On that, Brian, I wanted, since Margie raised that issue, to suggest that maybe Margie could try to formulate the text that we could consider on what she was proposing, and you, Brian, just reconfirmed. We will come back to this conversation on city field according to our schedule one week from now. By then, we could potentially look at that text, unless it will be already discussed prior on the mailing list.

Milton, your hand is up. Please go ahead.

MILTON MUELLER: I just wanted to say that I think I understand what Volker is driving at but I think there's a logical contradiction in what he's saying. I think, once the contracted parties understand this, they will realize that that's not the right position. If indeed the city field is redacted and somebody requests it, the contracted party will be in a position to decide whether they are putting themselves at legal risk. So there's no need for this idea that, in general, the contracted parties can publish this data if they want to. If it's a legal privacy right, we can't have the contracted parties deciding whether registrants have it or not.

But, if the contracted parties are concerned that releasing the city field data is somehow risking them, they will be doing the balancing test under our disclosure policy. So that would be something they would be in control of anyway.

So, as a general rule, it makes the most sense to say we're going to redact it. People can request it. A balancing test would be conducted. And the contracted party will decide, on the basis of that balancing, whether they'll release the data or not. I don't understand this business of allowing any registrar in the world to just decide whether they're going to redact this or not. It just doesn't make any sense to me.

To respond to Brian in terms of ["]Obviously I'm not a big fan of automated disclosure, but there are cases in which this would a legitimate case could be made["](I think Brian mentioned some district in Pennsylvania around Philadelphia where what city you're in determines what federal jurisdiction you're in), if those kinds of cases could be clearly marked and you could get the city field automatically to decide whether to move on, that would be a fairly good case for some kind of automation.

I'm not committing myself to anything, but, again, I think that whole discussion should be deferred to the use cases for automation and that we should move ahead with deciding that the city field would be redacted and that any request for disclosure, except for these automated ones, would be subjected to a balancing test. Thank you.

JANIS KARKLINS: Thank you, Milton. Brian, your hand was up and then it disappeared.

BRIAN KING: That's okay, Janis. Thanks.

JANIS KARKLINS: I do not have any further requests for the floor. So we have a suggestion from Volker, which was contested by some group members here. We have a suggestion from Margie, which was not contested for the moment. So I think that, at this moment, that is the landing ground. Margie, if I may ask you to try to put something on paper so that we could fix this potential agreement.

Then I also understand that the question of disclosure of the city field we will examine together when we will discuss the use cases for potential automated disclosure from Day 1. We have not scheduled the next meeting of the smaller team, but we will look at all possibilities and will suggest dates.

Any further interventions? In one week, we will have a second reading of this. I hope that, by then, we will get some proposal in written form on the paper for our consideration.

With that, maybe we can move to the next agenda item on potential OCTO purpose. Here we have received e-mail from Eleeza. It was sent to the team mailing list on February 26th. If I may ask Eleeza, if you are on the call, to maybe walk us through this response and kickstart the conversation.

ELEEZA AGOPIAN: Hi, Janis. Yeah, I'm here. Thank you. Sure. We sent this e-mail to all of you about this two weeks ago now, primarily to reinforce or revisit the points about whether OCTO needs access to any of the non-public registration to the data, as you can tell from the e-mail. We checked again with our colleagues, and they still haven't

identified any purposes or additional use for the non-public registration data.

We also asked around about some other possible uses, and we haven't really found anything where we thought it would be necessary for ICANN Org to have access to non-public data. In the e-mail, there's a paragraph that references the public data that we do access for things like the [BRTA] and the [CCGS]. We can get into more details about that. I can ask perhaps some of my colleagues work on the services to answer questions about that, if it would be helpful for the team. But they don't use the non-public registration data.

I think I'll stop there—obviously, the e-mail has more details—and do my best to answer any questions. If I can't answer them, I can certainly take them back to my colleagues. Thank you.

JANIS KARKLINS: Thank you, Eleeza. Any questions to Eleeza on the introduction?

Brian, a question or already a comment?

BRIAN KING: It's a comment, Janis, so, if there are questions, I'll wait. Thanks.

JANIS KARKLINS: Okay. No questions, so you have, Brian, your turn.

BRIAN KING:	Thanks, Janis. I wanted to note here—I don't see a reference to this in the information that's on the screen or in the document; I have the Google Doc on my other window—that there's a letter from Goran to Keith Drazek recently about ARS. So the GNSO Council asked org about its ARS work, and org admitted that it was not able to do that work based on the public WHOIS. So I think it's important to note that ICANN Org does need non-public registration data for some of the work that it does.
	I just want to note, before we move on here and get too crazy with this, that ICANN Org is a controller, and the controller needs to be able to access the data that it needs to do its work. Just to keep us grounded in reality here, it's a little wild to think that ICANN might not be able to get the non-public registration data that it needs because it has to ask a contracted party. I think you have the fox guarding the henhouse there. Thanks.
JANIS KARKLINS:	Thank you, Brian. Margie?
MARGIE MILAM:	Thank you. Thank you, Eleeza. I think this response actually is not complete. I would ask that ICANN Org revisit this response.
	I'll give you a couple examples. One, there's a difference between what ICANN Org is doing now versus what they did before May 28th. I sent an e-mail to the list. This discussion is actually similar to the discussion that we're having on Purpose 2. But there's examples in my e-mail about situations where ICANN Org was accessing the entire WHOIS database. I'll give you examples:

implementing and testing escrow deposits with the third-party escrow providers, conducting testing of new registrars and registries to ensure that WHOIS systems work in the manner required, publishing the ARS report, coordinating cyberattack responses, such as Conficker and other cyberattacks, conducting research, and then implementing new policies and contract provisions, like RDAP when they're doing the RDAP pilot and testing[,] Trademark Clearinghouse—those sorts of things.

So I think the answer is not sufficient. I think ICANN Org hasn't really though through all of the access to WHOIS that … This is obviously beyond just OCTO, but I do think that, to fully answer this question, we need answer to those questions. I would suggest that org take a look at the points that I raised—I'm sure mine or not the only examples—to really explain whether or not access to personal information was done prior to May 2018. That I think would inform our work.

The other thing, too, I would also ask ICANN Org is why haven't they asked for the public data? Under the temp spec, there's certainly a purpose for the data, even for the ARS. So my question is, why didn't ICANN actually enforce its rights under the temp spec in order to get the access for the accuracy reporting system report?

So those are areas where I think we need further follow-up. Thank you.

JANIS KARKLINS: Thank you, Margie. Volker?

VOLKER GREIMANN: I'm not on the same level as Margie here. It sounds a bit like you're saying that ICANN Org does not know what it's doing and, therefore, "Please come again with the answers until we like it." I don't think that's the right approach for us.

I think testing compliance of registrars and registries is something that ICANN can't continue to do, simply because the things that registries and registrars have to be compliant to have changed under the GDPR and have changed under the temp spec and will change under the SSAD regimes. So what is needed to be tested has obviously to evolve as well.

Finally, GDPR changed the landscape of what can be done with personal data of the data subject. Some things that used to be very common in some areas in the past are simply no longer possible. [Ours] may be one of those. In the past, ICANN could do that because the data was just there, but nobody asked the question of if they should do that or even if they were legally allowed to do that. Now we know it's not something that can be done as easily or at all. So that's a consideration: "Just because it has been done in the past, it should be possible in the future" is not something we should posit as a worthwhile pursuit of our time.

I thank ICANN staff for their review here. I think we should move on.

JANIS KARKLINS: Thank you, Volker. Alan Woods.

ALAN WOODS:	Thank you so much. I agree completely with what Volker just said there. I just want to say –this is actually going to an e-mail which unfortunately I sent as the meeting started; apologies, it's a bit of long one – I think we need to be really, really clear that what we're doing here is very much a point-in-time. We've asked ICANN several times if they believe that they have a need for this data and if they can take that data and we will then work with those answers and we will work with what they're telling us. They're telling us quite clearly at this particular moment in time that they don't need it. Referring to my e-mail, this does not mean, at some point in the future—as Margie pointed out several times, they are controller; yes they are—if ICANN believes that they have a purpose for that data and wishes to float the use of that, then they can do that. There's nothing stopping them.

Also, slipping into that "for security/stability reasons," they can create that purpose in the future. We do not have to create the all-seeing eye here. I'm going to go back to another Lord of Rings reference. This is not the Eye of Sauron we're going after here. We just are looking at the situation as it is at the moment, and we've now asked ICANN three times and they've come back very, very patiently with us and said, "No. At this point, we do need it." Just because it is written, they have assessed it.

Again, I want to call out Sarah Wyld and what she said in the Zoom group chat about that ICANN has now undergone a data minimization test and said, "Do we actually need this? No we don't." Regardless of whether they have the power to get it or not, they should be able to make that decision as a controller. I

applaud them for doing that. That does not mean that they can't change their mind some time in the future. But we need to work with what we have right now. Thank you.

JANIS KARKLINS: Thank you, Alan. Alan G, followed by Amr.

ALAN GREENBERG: Thank you very much. Three quick points. This question, as I understood it, asked about OCTO. OCTO is not ICANN. OCTO is a very small part. It's not a legal entity. It's a very small part of ICANN. Many of the things that Margie mentioned are ICANN but not OCTO. So, if we're asking about OCTO, we're going to get an answer about OCTO. We haven't asked about ICANN in general. That's number one.

Number two, regarding ARS, one of the purposes—I can't remember which one—allows ICANN to do audits, and ARS is an accuracy audit. It's not one of the audits that's in the RAA, but it is an audit. It's reviewing data and seeing whether there is a problem with it. That is allowed under the current purpose. Why ICANN has chosen not to do it I have no idea. But that's not an issue.

Lastly, as Alan Woods said, ICANN does, as a controller, have a right to do all these things. But, since it doesn't actually have the data, it would need to get them from a contracted party. Unless we have it in our policy to make sure the contracted parties don't simply say no, they can't get the data.

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So we do need to cover it here, to make sure that, if it ends up being a legal requirement, the contracted parties must provide the data, if ICANN indeed it decides it needs the data to fulfill some of its obligations as a controller. I understand that we don't need to specify those in detail, but we need to make sure there's a mechanism that contracted parties cannot refuse to accept. Thank you.

JANIS KARKLINS: Thank you, Alan. Amr, you're the last on the list.

AMR ELSADR: Thanks, Janis. I think I'm going to add to what Alan just said. Yes, I completely agree: OCTO and ICANN Org are, in the context of our discussion here, two distinct entities, and we've been asking about OCTO.

I don't understand the concern being raised about ICANN not being able to process data as a controller. I agree very much with what Volker and Alan said earlier. We did, as an EPDP team, identify a number of purposes for which ICANN can process personal information and registration data as part of Phase 1 of this EPDP. The response I'm seeing here is that ICANN hasn't identified any additional purposes that we haven't already covered. So we asked a question. This was our answer.

On OCTO, I have the recollection that our question on OCTO was specifically on the domain name abuse activity reporting. I thought that's what we were asking about. The response we kept getting back from ICANN Org on DAAR over and over again is that, no,

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personal information has never been used for DAAR and they don't need to use it for DAAR, so ICANN Org does not need a purpose to process personal information for the purpose of DAAR.

So I agree with what Thomas said earlier in the chat as well. I think we should just put this to bed and move on. Thank you.

JANIS KARKLINS: Thank you. After listening to this conversation, can we land on the position that staff would put on paper in terms of recommendations for the initial report that, based on the consideration and further inputs from ICANN Org, OCTO at this point in time does not need any more access than they have already? Something along those lines.

Margie?

MARGIE MILAM: I'm sorry. That approach doesn't work. I think we need to ask them—this is what I mentioned earlier—whether they used it before and what their reasoning is for stopping using it now. I think that's an important distinction that we're overlooking. I understand that the contracted parties don't agree with us, but at the same time I don't think it's appropriate to hamstring what OCTO is doing because of the change in the WHOIS access. This is the opportunity now to clarify that.

So I think that we should address this issue in the context of the Purpose 2 discussion that we're going to have on the list because I think, at the end of the day, if the Purpose 2 language is broad

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enough to cover that, then we probably don't need a separate OCTO purpose.

So my proposal is that we get answers to the questions regarding the full ICANN Org purpose, just as Alan Greenberg suggested and supported, and that we revisit this when we look at Purpose 2.

JANIS KARKLINS: Okay. But, in principle, you agree with, let's say, arguments that have been raised here in relation to OCTO. I understand that we still need to resolve the Purpose 2 conversation, but here we have a very specific question in relation to OCTO.

Margie your hand is up.

MARGIE MILAM: I'm sorry. No, I'm saying is that I don't agree with the position. I think that we should ask OCTO whether they use personal information before the temp spec was implemented and the reasoning for not providing that data and not using that data since then because I think that, if, for example, they say they were using it, which I believe they were based on their own report in the past, and that they shifted their activities, then they did that because they simply didn't have access to the data. But we have the opportunity right now to adjust that so they can have access to the data for those important purposes.

So that's what I why I don't want to close this issue. I think we should ask OCTO how they used it before May 2018. That would help inform the discussion.

JANIS KARKLINS: I think we need to separate here two things. One thing is the question you are raising. Again, just to be precise and do not misinterpret your interest and your question, would you be willing to formulate your question that we could then give to OCTO for an answer? That's one issue.

But the second issue is a very specific request that comes from Phase 1 that we need to answer. Of course, I was not part of the conversation of the first phase, but somehow I feel that what I heard today is that these are slightly different questions.

Amr?

JANIS KARKLINS: Thanks, Janis. I don't think it's a good use of our time to really argue what we did and what we didn't ask. Some of us are saying we asked all these questions before. We asked them about DAAR. We asked them about what purposes they used personal information for pre-temp-spec and how they were affected by this post-temp-spec.

Why don't we just give staff an action item to again collect all these things and provide them to us? If anybody thinks there are any holes that need to be plugged in any of the old questions we asked over and over again, then maybe we could come up with new questions. But I don't see why we should keep arguing about this on a call. Thank you.

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JANIS KARKLINS: Thank you. Brian?

BRIAN KING: Thanks, Janis. I think maybe Caitlin just answered my question. It seems that, if we did ask the question—well, one, I completely support Margie's point that we need to ask them what they were doing and take a look at that. If Caitlin just answered that in the chat, then I withdraw my suggestion here. But I think that's important.

I would just note that, just because ICANN Org is not doing something now while we're all scared about how much uncertainty there is about GDPR, it doesn't mean that they don't have rights as a controller or shouldn't resume doing some data processing in the future. I don't want to handcuff them to what they're doing now and the kneejerk response to GDPR. Thanks.

JANIS KARKLINS: Thank you, Brian. You see, usually people tend to ask for more than they need. Here we are consistently hearing the answer from OCTO that they do not need anything more than they have already. Therefore, I tend to follow that opinion. If they say that they don't need any more than they have now, then let's follow that answer that they gave us. It seems like that is the predominant view in the group.

But of course, again, I do not know what has been asked and what has not. Maybe I will ask staff to review once again what has been asked and what has been answered and, if need be, to compile that communication and provide it to the team. But I have

a feeling that we need to simply put in a recommendation that OCTO does need anything more than they have already now.

But I'm not closing this question. We will come back with a concrete proposal formulated by staff based on all information from previous conversations. I think that is scheduled for the 12th, if I'm not mistaken.

Would that be okay?

Good. You know what? It's 3:15 UTC, and we have exhausted our agenda. It cannot be!

The next meeting is on Tuesday, the 10th of March, at 2:00 UTC. The provisional agenda can be found already in the list of current [inaudible] activities. But of course, we will finetune it in light of what we need to what we need to consider and one additional topic apart from the indicated items and specifically one on purpose two. We will also have, if need be, a review and signing off the answers to the questions of ICANN Org on funding or costs.

With this, I would like to thank everyone for active participation. I wish you a very good rest of your day. This meeting stands adjourned.

[END OF TRANSCRIPTION]