ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Thursday, 06 February 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 meeting, taking place on the 6th of February, 2020, at 14:00 UTC.

In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. We do have Laureen Kapin on telephone only. She will be able to join for about the first hour, then drop off and then rejoin us. Chris Disspain will be able to join for the first two hours only, and then he'll need to drop off as well. Is there anyone else on telephone only at this time?

Hearing no one, we have no listed apologies. 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 functionality 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 towards the bottom.

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

Seeing or hearing no one, if you do need assistance with your statements of interest, 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 circulated on the mailing list and posted on the public wiki space shortly after the end of the call.

James, I see your note as well that you'll drop 30 minutes before the end of the three-hour duration as well.

Thank you. With this, will turn it back over to Janis Karklins. Please begin.

JANIS KARKLINS: Thank you, Terri. Hello, everyone. Welcome to the 42nd online meeting of the team. The agenda that the leadership team is proposing is on the screen now. The question is, can we follow that proposed agenda?

I see Alan's hand up. Alan Greenberg, please go ahead.

ALAN GREENBERG: Thank you. Can you tell us, was there a Legal Committee meeting this Tuesday? And has there been any changes?

JANIS KARKLINS: To my knowledge, the Legal Committee didn't meet this Tuesday, but, Caitlin, could you tell us about the Legal Committee plans?

CAITLIN TUBERGEN: Thank you, Janis. Thank you for the question, Alan. The Legal Committee did not meet this week. As promised, everyone will have next week off for meetings. So the next planned meeting of the Legal Committee will be February 18th, Tuesday. During that meeting, we will be discussing the comments that were received in the plenary meeting when the questions were presented, if the questions should be updated per those comments, and how to proceed. Thank you.

ALAN GREENBERG: Thank you very much.

JANIS KARKLINS: Thank you. With this clarification, can we follow the proposed agenda?

So that is so decided. When we were planning the meeting, we did not know what would be the reaction and the commentaries to the initial report. Therefore, for the sake of prudency, we suggested that maybe we need to announce that the meeting will be up to three hours. That does not mean that we need to use

those three hours. If we will finish in 90 minutes, so be it. Therefore, we will work swiftly and as thoroughly as usual. If we will manage to end up our meeting before the announced three hours, then we will do so. But certainly we will not go beyond three hours. So that's one point. If, by any chance, we will need to go for three hours, then, after two hours, I will devote a five- or seven-minute pause. That will not be recorded and we would simply reconvene in five or seven minutes afterwards. So that is one of the housekeeping issues that I wanted to suggest.

The second one is examining the fourth agenda item. That is cannot-live-with indicated topics of the initial report. Our proposal is to follow the methodology we used on Los Angeles when we will be talking exclusively about those issues that have been flagged and contested by one or another group. Those issues that have been flagged and not contested will be included in the initial report with edits suggested by the respective groups.

As far as I understand, so far we have four items that need to be discussed that have been requested to be discussed. Our of those four, two, namely 1 and 19, basically are similar and we could take them together.

So the question now is – maybe, Caitlin, is there anybody else who indicated other topics outside those that have been indicated in red in the last circulation?

CAITLIN TUBERGEN: Hi, Janis. Then support team did not receive any other flagged items, so this represents what we received by the deadline.

JANIS KARKLINS: Okay. Thank you. It means that we will discuss Item 1 in conjunction with Item 19, Item 3, and Item 14 as indicated in the compilation of the comments received. Others will be edited as proposed by the respective groups.

Are we in agreement with that methodology?

Marc Anderson, please?

MARC ANDERSON: I'm sorry. I seem to have missed a step here. I thought we were discussing the 20 can't-live-with items. I missed the step where we were supposed to … It sounds like we were supposed to respond with any of those that we wanted to discuss. I think there are others that I would like to discuss besides the ones you just noted.

JANIS KARKLINS: Okay. If you say so, then we will do as you request. Marc, if I may ask you, do you really want to discuss all 20? Or you have some specific items that you want to discuss? With the 20, I'm not sure that we will have enough time for that to the exhausted agenda.

MARC ANDERSON: Janis, no. I'm not looking to discuss all 20, but there are a couple – I'm scrambling to get the exact numbers right now – other besides the ones that are marked in orange.

JANIS KARKLINS: Okay. So once you will be prepared to us what are those issue, then please let me or Caitlin know. Or you can maybe put the numbers in the chat. Then we can mentally prepare for those. Okay?

MARC ANDERSON: Sure thing. I'll drop them in.

JANIS KARKLINS: Thanks. With this, let me then turn to Agenda Item 4, and that is going through cannot-live-with topics. We have identified 20. As I suggested, let us take #1 and #19 together, since they are very similar.

Caitlin, if I may ask you to launch the conversation.

CAITLIN TUBERGEN: Hi, Janis. Certainly. Issue 1 is related to a high-level principle around automation. Issue 19 is in Recommendation 16 that deals with automaton. Both of these were flagged by the NCSG and requested to be discussed by the IPC.

The language in Issue 1 notes that the SSAD must be automated where technically feasible and legally permissible. The NCSG notes it cannot live with this language because "The "must" language makes automation of disclosure a policy goal that is required whenever possible. This was not the agreement. Automated disclosure should be a narrowly scoped exception to the general practice of manual disclosure review. Automation

must have a compelling rationale that makes the specific use case justified."

Then you'll note the proposed change in the rightmost column for the high-level principle: The EPDP team recommends that the receipt authentication and transmission of the SSAD requests be fully automated insofar as it is technically feasible. The EPDP team recommends that the disclosure decision should be automated only where technically and commercially feasible, legally permissible, and where there's a compelling security, stability, and resiliency rationale for doing so. In areas where automation does not meet these criteria, standardization of disclosure decisions is the baseline objective.

I'll note that, when the text comes up again in Issue 19, which is Recommendation 16, where that text appears in the recommendation, the NCSG is calling for that same language change that I just read aloud that appears in the rightmost column.

JANIS KARKLINS: Thank you, Caitlin. The floor is open for conversation.

Alan G, you're the first.

ALAN GREENBERG: Thank you. I would have significant problem with that. It essentially becomes a make-work activity. We have to do a manual review, even though we know with high level of [confidence] that it's not needed. That's a make-work activity with I can't support. This is not a "let's find more lawyers to review

documents/to review requests" exercise. It's an exercise is how can we release data that is legally permissible.

Now, I would be comfortable with a definition of "legally permissible" saying that the controller with liability has a high degree of comfort that this is not an illegal and therefore an action which could give them liabilities. So "legally permissible" is something you could probably only determine after the fact with any high degree of certainty when it's reviewed.

So, if we want to define "legally permissible," that's fine. But to simply say we must review things just because we want to review them, even though there's no compelling need to review them? That I cannot support.

JANIS KARKLINS: Thank you, Alan. Milton, followed by Franck.

MILTON MUELLER: Good morning, everybody. Good afternoon to those who are in Europe. This is a very important and critical decision here. I think we were very surprised to see this language because I think it represents a major deviation from the whole approach that we have been taking.

When we talk about automation of the request and the disclosure, you need to understand what we are actually talking about. There's an assumption, when some people talk about this, that we know what is in the request and we know it's okay to disclose. But the point with automation is that nobody sees the actual

substance of the request or can check it. What you have are basically a bunch of unchecked assertions of whoever is making the request. That means, when Alan says we have to review just to review, this is clearly nonsense. We are not saying you need to review just for the sake of it. We're saying that you don't know whether a request or balancing test is valid unless it is reviewed. In those cases where you can be 100% sure that you want to disclose, those cases can be automated. But that is an exception. That's all we're saying: those cases have to be conceived of as exceptions.

What disturbs me about this the most is that we have already learned, after 15 years or 20 years, that the old WHOIS was illegal because it essentially gave people indiscriminate access to data that was private or personal. If you're automating as much as possible, if that's your goal, what we're telling the world and the world's data protection authorities is that our goal is to get back to that old WHOIS. The only difference between an automated SSAD and the old WHOIS is accreditation. We've already stated as a principle that anybody should be accredited. We're just authenticating their identity. We're not doing any checks about whether they could actually have a legitimate reason to have access to the information.

So, with our proposed changes, we're not saying that nothing should be automated. We're not closing the door. We're simply saying that that is not the ultimate policy goal. That is the exception. That is the special case. We think that the special cases need to meet a criteria of stability, security, or resiliency – for example, a law enforcement agency that really needs to get

that information to be enforcing critical laws. We have no problem with certain forms of automation in those cases. But we cannot erect as a policy principle that full automation must happen wherever it's technically feasible and legally permissible. We don't see how you can determine whether something is legally permissible without any reviews. Thank you.

JANIS KARKLINS: Thank you, Milton. Franck is next, followed by Amr and Margie.

FRANCK JOURNOUD: Thank you, Janis. [inaudible]. I want to thank—

JANIS KARKLINS: Franck, we do not hear you well.

FRANCK JOURNOUD: Oh, sorry. Is this better?

JANIS KARKLINS: It is slightly louder, but it is not clear. But please go ahead.

FRANCK JOURNOUD: Okay. I want to thank Milton for expressing what I'm thinking [inaudible]. Our view is that this is something that will be [inaudible]. It was not something that was [inaudible]—

JANIS KARKLINS: Franck, sorry to interrupt you. I do not understand what you're saying. Could you look at the technical issues? I will give you the floor once they're resolved. Sorry for that.

FRANCK JOURNOUD: Sure. Sorry.

JANIS KARKLINS: Because we simply do not understand what you're saying. At least I don't.

Amr, please?

AMR ELSADR: Thanks, Janis. Just to add to what Milton said, we foresee that, in the majority of cases where disclosure is going to be requested, the legal basis for these is going to be 61F, in which case a balancing test will be required, pending any news to the contrary from the legal guidance that we receive. We haven't done much work on the balancing test, but I did note that the swim lane document that was circulated recently had a pretty helpful flowchart on providing guidance on how the balancing test may be done.

But, again, if we're not going to separate between automation of disclosure requests and automation of decisions to disclose for all these cases where 61F is the legal basis, taking into account the guidelines on the balancing test on the third page of the swim lane document, how do we practically foresee a means to automate

this process? There's a lot of decisions that need to be made in the balancing test, and they require human manual review and decision-making. So, in the draft recommendations we have now, we're basically giving the EPDP team or ICANN or possibly the advisory group for the SSAD some kind of mandate to pursue full automation based on the availability of certain conditions.

But we've never discussed a practical means to actually do this. From where we stand, this cannot be done unless it is not compliant with law. So it would be helpful to understand what people are thinking in terms of achieving this full automation, especially in disclosure decisions where 61F is the legal basis. Thank you.

JANIS KARKLINS: Thank you, Amr. I think we discussed this extensively when we were working on the automation building block. Honestly, I remember myself reporting using exactly this [phraseology] that SSAD must be automated where technically feasible and legally permissible. And, where it's impossible, standardization should be our objective [inaudible] already in the September meeting, when I first presented the initial results of our work.

Therefore, at the last meeting on Thursday – the face-to-face meeting – it took my by surprise that this formulation was contested. We discussed it again in Los Angeles, and I think we explained how the decision-making process could be improved by having feedback on the recommendations that would be made in an automated way from Day 1. This is simply to train the system and train the algorithm. When it's ready, then this oversight

committee or advisory committee could discuss the results and see whether next steps could be implemented.

But all this, of course, is background. I have now Margie, Mark Sv, then Marc Anderson. I hope Franck by then will be able to clearly voice his opinion. Margie, please?

MARGIE MILAM: It looks like Franck is back, if you want to get him back in the queue.

JANIS KARKLINS: After you.

MARGIE MILAM: Okay. Thank you. I just wanted to say that the BC supports what the IPC has said here. In particular, the language proposed related to security and stability – a compelling reason – just doesn't work for us. We all recall what happened in the last ICANN meeting, where there was a big disagreement among the community as to what relates to things like security and stability. So I think that's a red herring. It's also quite a departure from the agreement that we had reached on this principle. I just want to remind everyone that, when we started Phase 1, this was the very first principle we agreed to. I recall Ashley proposing it after discussion in this group, and we all agreed to it.

So our proposal is to leave it the way it was and to not include the additional language because I think that drastically changes the entire report and is really objectionable.

JANIS KARKLINS: Thank you, Margie. Franck, followed by Mark. Franck, please?

FRANCK JOURNOUD: Can you hear me?

JANIS KARKLINS: Yes. Very good now.

FRANCK JOURNOUD: Sorry. I don't know how articulate I'll be, but hopefully the audio connection will be good. This is something – this goal of automation – as Margie just stated, that we had agreed on a long time ago. [inaudible] the introduction of the SSR language is extremely limiting. That is not something in fact that had ever been discussed in this context. So we're quite concerned with Issue #1, and we think that we should stick with the language that had been agreed to literally for months.

JANIS KARKLINS: Thank you, Franck. Mark Sv, followed by Marc Anderson and Alan Greenberg.

MARK SVACAREK: I was going to say that SSR is not an agreed-upon thing. It's usually interpreted very narrowly because it's not agreed upon. I think can think of several scenarios that I think would be justified by automation, specifically things that have automatically been disclosed or things that are known to be legal persons. There are ways, we believe, over time, that these can be known and automated. So that would be of a concern.

What I'm hearing is that it's the "must" language that is the blocker. I can't remember how long this has been settled. I don't remember how long that language has been in place. I think it was pretty stable language for a while. But if it was "should" language, perhaps that would carry the day. I don't know. Thanks.

JANIS KARKLINS: Thank you. Marc Anderson?

MARC ANDERSON: Thanks, Janis. I think, generally, there's some good points being made. I liked the points Janis made. I think the NCSG [inaudible]. I think I like the points that Milton made [inaudible]. I think these edits better-capture the spirit of what we're going for. I was frustrated to see that the "commercially feasible" language we had asked for and discussed in L.A. did not show up here. I think Margie and Mark Sv both made the point about "commercially feasible" not being something we previously talked about, so I pasted text in chat that keeps the NCSG language but removes the security, stability, and resiliency rationale from that. I hope maybe that could be seen as a compromise between the two.

But, generally, I think I like the language. I understand the concerns about security, stability, and resiliency. So, if that was pulled out, maybe that would make this language more acceptable. I think this language makes it clear that we're automating everything up to the decision to disclose. There we're doing it where technically/commercially feasible and legally permissible. I think, with those caveats, this is pretty good language that is a fair representation of what we discussed in the group. Thank you.

JANIS KARKLINS: Thank you, Marc. We have a proposal. Please, those who oppose the new version of the language, think of whether deletion of … And there is a compelling security, stability, and resiliency rationale for doing so. So if that would go, would the new language be something you could live with?

I have now Alan G, Hadia, Chris, Milton, and James.

ALAN GREENBERG: Thank you very much. I think some of the arguments made by Milton and Amr just don't hold water. Milton says this an attempt to go back to an open DNS. Well, that's not the case. We're only looking at cases where we're saying it's legal and – perhaps words to the effect that I gave last time – that this is a level of comfort for the controller that there's no liability. Clearly, that is not a full, open WHOIS. So let's not pretend this is going back.

Similarly, Amr said he doesn't believe there is any 61F that can be done without a manual review. Well, if he's right, then none of

them will meet this test because nobody who has real money on the line is going to say, "I'm willing to risk it. It sounds good to me." So, yes, every 61F does need a manual review. Then we're back where we started and this will not apply to them.

So I really don't understand what they're [afraid of]. Thank you.

JANIS KARKLINS: Thank you, Alan. Hadia, followed by Chris.

HADIA ELMINIAWI: Thank you, Janis. Alan said almost everything I wanted to say. It is quite surprising that the Non-Commercial Stakeholder Group is bringing this up now because this principle has been there for about four months now. So it would be impossible for the ALAC to agree on the system working in an efficient way and thus not meeting its purpose for no justified reason. There's no good reason here that we heard of. So, to what Amr said of his fears that it wouldn't legally meet the requirements, we say, technically and legally, [it's] permissible.

[They added] "commercially," and I think that could be possible, too. However, what we definitely cannot say is that [inaudible] security, stability, or resiliency rationale for doing so. How would you be able to determine this for each and every case? That is hindering the system and making a clear statement that this would never be automated. Thank you.

JANIS KARKLINS: Thank you, Hadia. Chris?

CHRIS LEWIS-EVANS: Thanks, Janis. I was having a look at this, and I actually quite like Mar[k]'s intervention here because, for me, it split where we were before and the proposal from the NCSG.

The other thing I think it really does for us is it allowed to concentrate the public comments because it separates the different processing activities as we go along. So it would make it very clear what people object to rather than just the input stage [efforts] or the output stage.

So I would like to support Mar[k]'s language. Thank you very much.

JANIS KARKLINS: Thank you. Milton?

MILTON MUELLER: Hello. I would just like to say that I think we really need to dispense with the idea that we've all agreed on this. We have seen not just NCSG but also Alan Woods on the list objecting to this. We have consulted with the contracted parties, and Mar[k] has offered an amendment that issues support for this position.

I really am completely baffled by people who say that this has been sitting there for four months because we have been concerned about the level of automation for a year. We have been

keeping a hawk-like eye on that question and we have been challenging anything that suggests that things could be automated by default.

Now, let me again stress, in response to Alan, that we are not objecting to automation. We recognize and respect the fact that there is this "legally permissible" thing in there, but we're afraid that that's going to become lip service and that you're going to set up systems of automation which, by default, [admit] all kinds of things that are not legally permissible but put expensive requirements to audit and impose lawsuits on people who want to maintain that it's not legally permissible. We think that ICANN's WHOIS system should be legally compliant by default and not testing the boundaries and daring people to dig up and challenge things that are not legally possible.

So, basically, all we're asking for is a stronger indication that automation is the exception and not the required rule by policy. The current language literally says or said that we must do this – "we must automate" – and that means that the policy goal that we're setting is to automate. We don't think that's the case. We think that the policy goal is to automate only in cases where it is unquestionably legally committed and there is an efficiency gained in doing it.

Now, I would say we're not wedded to this SSR language. So, if I could say Mar[k]'s amendment, I might support it. But the point of that was, again, to say that we're not automating because that's our goal because we want everything to be automated. We want there to be a bar for automation, that there must be some reason

other than just making it easier for the requester to automate. That's what we were getting at.

That's enough from me.

JANIS KARKLINS: Yes, Milton. For your information, you were not present, but in Los Angeles we spent almost a full day discussing the outline of the model, where we trying to reconcile the positions of different groups when it comes to specifically disclosure of non-public data. We came up, after lengthy discussions, with the model that is now captured in the document. Certainly everyone participated in this conversation and [it was agreed to].

We are now tweaking a little bit the language. What Mar[k] proposed is to delete from your proposal the part in the last part: "and there is compelling security, stability, or resiliency rationale for doing so." It's to terminate the sentence: "The EPDP team recommends that the disclosure decision should be automated only where technically and commercially feasible and legally permissible," full stop. "In areas where automation does not meet this criteria, then the standardization of the disclosure decision is the baseline objective." So that is basically the same that we were capturing in this first version. The difference is that, instead of "must," now it's "should be."

I'm seeking the opinion of the team on whether it would be possible to land on the proposal that Mar[k] made that I just now repeated.

I have James and Franck, in that order. James, please?

JAMES BLADEL: Thanks, Janis. I'll be brief because I support the blue text that's on the screen. I believe it was proposed by Marc Anderson. I think our key here is that we wanted to account for the "commercially feasible," not just "technically feasible."

I want to naively perhaps offer some reassurances to everyone here that providers are going to automate everything that fits these criteria and are not going to automate the things that don't meet the criteria. They're not going to automate anything that creates a significant legal uncertainty or discomfort. There definitely is a commercial incentive for providers to automate those things that are bogging down their systems and their customer support that do not require a human review for whatever reason.

So the incentive is there, I think, to automate that which can be automated. The disincentive is there to manually review all of those items that create legal discomfort. So I feel like the blue language captures all of the equities there. A small provider is definitely not going to invest millions of dollars for a system that receives one or two requests a month, whereas a larger provider has a very distinct benefit to be realized if they can come up with something like that. So I'm good with the blue language. Thank you.

JANIS KARKLINS: Thank you. Franck, can you agree with the blue language?

FRANCK JOURNOUD: Can you hear me?

JANIS KARKLINS: Yes.

FRANCK JOURNOUD: Okay. Sorry. I apologize for my continuing technical problems. I want to thank Mar[k], I think, for making a very useful contribution/proposal that I think gets us maybe where we need to be.

I just have a question. Why do we have the "commercially feasible" language that isn't in the proceeding paragraph? To be clear, obviously we should have the "legally permissible," which is not in the first sentence, about the front end. But why do we have "technically feasible" and "commercially feasible" for the disclosure decision? Maybe – sorry – if Mar[k] or someone else from the CPH could answer that, then I could respond to that response.

JANIS KARKLINS: I think James already explained that, for small registrars who would receive maybe a very limited number of request, they would not be willing to invest thousands or millions of dollars in automation. But, for big registrars, that would be a good incentive because that could save their customer service capacity for other topics. So that was explained by James.

Alan G and Margie. I think we need look towards closure. Alan G, please? Can you live with the blue language?

ALAN GREENBERG: Thank you very much. I was just going to point out that "technically feasible" is replicated in two different sentences. You don't really need both of them.

But I now see James' comment. I may be missing something, but I don't see any legal risk in automating the collection of requests. And this paragraph only seems to be referring to the collection, not the response, of requests. So we may have lost something else here.

JANIS KARKLINS: Thank you. Margie?

MARGIE MILAM: I just wanted to clarify because I think we're misunderstanding what we're talking about here. Or maybe I'm misunderstanding. The automation is at the SSAD level. At least that was what I thought this policy recommendation was related to because the contracted parties are responding to RDAP queries. So, when we're talking "commercially feasible," I think it's talking about it in the context of the SSAD.

Is my understanding correct? I just want to make sure I understand that and that the responses are really RDAP. So the example of a small registrar having to automate I don't think would apply in this case.

JANIS KARKLINS: Is there anyone from the registrars who could answer that?

Marc? James?

MARC ANDERSON: I think I'm reading that differently than Margie is. I think that my read of this is that, within the SSAD system, we are fully automating everything. I think the first sentence makes it clear, in my mind at least, that the EPDP team recommends receipt, authentication, and transmission of SSAD request be fully automated insofar as it's technically feasible. I think that's the only caveat we're putting there. So I think my understanding, at least, is that there's general agreement that the operationalizing of the SSAD portion of the system itself can generally be automated and how that's desirable.

I think the question is [on] the disclosure decision. I think that's what the second sentence is referring to. So that's where it's automated only where technically, commercially, and legally … where those caveats apply.

So I guess that's my understand. Does that help, Margie?

MARGIE MILAM: I guess so.

JANIS KARKLINS: Thank you. James, your hand is up.

JAMES BLADEL: Thanks. Maybe I missed something here. Was Margie's question also referencing disclosure via RDAP specifically? Or where did I hear that? I think my concern here is that we haven't really discussed the mechanism or the protocol to respond and disclose this data. I think that, if the SSAD isn't going to touch the data and we are required under certain privacy laws to make that a secure, auditable channel, then I think that rules out e-mail. So I think we haven't really discussed what the mechanism is.

Anyway, I'll drop here, but I'm concerned that we need to put some more work on that.

JANIS KARKLINS: We discussed how disclosure should be done, and there is a building block on the disclosure decision-making. Again, we spent hours and hours talking about it, and now it's documented.

Let me ask now, straightforward: with the language that is on the screen – Mar[k]'s proposal – can everyone at this stage live with it? It would appear in the initial report? This captures in maybe more nuances our agreement that we had for a long time already. The front end of the SSAD system of standardized access and disclosure would be automated if that is technically feasible. And it is technically feasible. We know that. So the disclosure decisions will be automated where it is technically and commercially feasible and legally permissible. Where it is not, we would strive for standardization of the disclosure decision methodology. That is described in the building block recommendation on disclosure decisions. So can we land on this and then move on?

Franck, your hand is up. I'm not sure whether it is an old hand or new hand.

FRANCK JOURNOUD: I think it's an old hand that I'm going to certainly use to say that we're going to support the blue language that I think originated from Mar[k].

JANIS KARKLINS: Okay. So then let me ask, in general, is there anyone who cannot support the language which is on the screen that Mar[k] proposed?

Which means that it will appear in the initial report as proposed by Mar[k] under Items 1 and 19. Thank you.

Let us move to the next item. In the meantime, we have requests from Mar[k] to look also at the items. We will take them one by one. Let us start with Item 3.

Franck, if you could lower your hand. It makes me nervous that you're always asking.

Thank you. So Item 3. Caitlin?

CAITLIN TUBERGEN: Thank you, Janis. Item 3, once again, is a high-level principle. Specifically this high-level principle corresponds with Preliminary Recommendation 19 about the "mechanism." The text that is disagreed to is Lines 227 to 232: "In recognition of the evolving

nature of SSAD and in an effort to avoid having to conduct a PDP every time a change needs to be made, a feedback mechanism which focuses solely on the implementation of the SSAD and does not contradict ICANN bylaws, GNSO PDP procedures and guidelines, and/or contractual requirements would need to be put in place to oversee and guide the continuous improvements of the SSAD." This was flagged by the NCSG and requested to be discussed by the IPC.

I would note, in the second column, the reasons that the NCSG finds this to be unacceptable, specifically noting that the goals should not be to "avoid PDPs," because that could invite abuse of process and delegitimizes the multi-stakeholder model.

I would also note that in the rightmost column is the suggested tweak to the language, which is, "In recognition of the need for experience-based adjustments in the functioning of the SSAD and recommended improvements that could be made, improvements recommended through this process must not contradict the data subject's privacy rights, the policies established by the EPDP, data protection laws, ICANN bylaws, or GNSO procedures and guidelines."

Thanks, Janis.

JANIS KARKLINS: Thank you. Again, this was a result of our day-long conversation about the modalities of the model. Now I open the floor for comments. I have first a hand up that's Alan G, followed by Milton.

ALAN GREENBERG: Thank you very much. I support the new language. We did agree to the last one, but I don't think we thought it through very carefully. What we have done is designed a model which, because of the ability to make the incremental changes, we do not a PDP for. So it's really that we're flipping around the cause and effect. We carefully are looking at how do we increase automation for different cases we haven't explicitly considered during this PDP without having to change the policies allowing it. So I think removing the "[avoiding] PDP" is the right move. Thank you.

JANIS KARKLINS: Thank you, Alan. Milton, followed by Amr and then Mar[k].

MILTON MUELLER: I'm just concerned, in the language that Caitlin has read, that there's a bit of a grammatical glitch there. In our language, we proposed the GNSO mechanism to monitor the implementation that could recommend improvements. She pointed out, I think, in some document that the group in L.A. had come up with a different formulation of that that was not in a standing committee. I think she took out my language about a GNSO mechanism but didn't replace it with anything. So the language that's in there now doesn't work. There should be [inaudible] recommended improvements. That's missing language. So that's a pretty minor point I'm raising there, but, yeah, you're jumping from … What is the subject of that sentence? Who is recommending improvements or what is recommending improvements?

Do you understand what I'm pointing to here?

JANIS KARKLINS: Okay. While this adjustment is made, let me take the next speaker – Amr – followed by Mark and Alan G.

AMR ELSADR: Thanks, Janis. Just to try to drive the point home on what our input on this has been, we don't really object to the objectives of the steering group. Those seem fine.

What we're really trying to get at here is that, with whatever comes of the output of the SSAD steering group or advisory group – I don't recall which one it's called – the point is that whatever comes out of this group needs to go through the GNSO. So, if they come up with ideas based on observing the way that the SSAD has been used and how it works collecting data on this over time, the advisory group may come up with alternative means of implementation, for example, that might make it easier for all parties involved to use the system. But the determination that this is implementation and not policy should not be made by that group. So whatever come of it should go through the GNSO. I would assume that the GNSO Council would make a determination of its own on whether the recommendations coming out of the group are implementation and not the development of new policy. The GNSO has its own policies and may want to solicit further input on this.

So, in terms of the objective of avoiding a PDP when it isn't necessary, that's fine. But the decision to avoid this PDP should not be the decision of this group. Thank you.

JANIS KARKLINS: Thank you. Next I have Marc, followed by Alan G and Margie.

MARC ANDERSON: Thanks, Janis. I think, generally, NCSG makes a good point here. I think these are good clarifications. I'm noting that that the actual language needs to be cleaned a little bit. Mark Sv in chat pointed out that the fourth sentence is a fragment. Milton and Amr, I think, are pointing out that there's a little bit of cleanup that needs to be done with the language. But I think, in general, the concept is good and I'm supportive of the point and the need to fix the language. Particularly it's a great point.

We really need to avoid the perception and the reality that we're trying to do an [end around] of the PDP process. I do not think that would play well. So I think, generally, Milton makes a good point, with the caveat that there needs to be a little cleanup on the final sentence. I'm supportive.

JANIS KARKLINS: Thank you. Alan G and Margie.

ALAN GREENBERG: Thank you very much. I object strongly to saying it's a GNSO mechanism. There are several large groups of customers of this SSAD that are not present on the GNSO, particularly law enforcement and consumer protection organizations and cybersecurity people. So you can't have this as the GNSO. This

has to be something equivalent to the Customer Standing Committee for IANA. That is a general, ICANN-wide group.

Now, I would not want to see its decisions approved by the GNSO, but I think it's reasonable to have the GNSO have a level of oversight – that is, the GNSO can exercise an objection. That's very close to what the Board does and the rules of procedures for certain groups within ICANN: it doesn't have to improve them but it has the opportunity to question them. Thank you.

JANIS KARKLINS: Thank you. Margie?

MARGIE MILAM: Hi. I want to agree with Alan Greenberg said. [We need] to take a look at the composition of the [EPDP]. I think you're probably getting closer to what representation should be because of the different interests involved.

The point I wanted to raise was that I didn't understand why the language was deleted that related to having a contractual framework to support this mechanism. I don't see why that's objectionable. I think that should be reinstated into the language.

JANIS KARKLINS: Thank you, Margie. Caitlin, your hand was up.

CAITLIN TUBERGEN: Thanks, Janis. In case folks didn't see, there was an oversight by support staff which led to the confusion and the fragment in the first sentence. So the first language you now see in blue is what NCSG has proposed. It's also in the chat. I just wanted to flag that in case folks didn't see it. Thank you.

JANIS KARKLINS: Thank you. Let me take James, Volker, and Hadia.

JAMES BLADEL: Hi. Very quickly here, I think, Alan, your intervention is not incompatible with what we're talking about here. We need to make a distinction between the participation and composition of the group that's providing oversight and making recommendations versus the GNSO, which is flagging what is an implementation recommendation or improvement versus what is something that strays into the realm of new policy. Only the GNSO can make that determination because that is the only legitimate channel by which our contracts can be modified.

So, while I completely agree that other stakeholders and consumers of SSAD need to have representation on the group that's making recommendations, I think the GNSO has to call the balls and strikes here and say, "This is (or is not) fodder for a new PDP." And I think the language says that. Thanks.

JANIS KARKLINS: Thank you, James. Next is Hadia, followed by Mark Sv.

HADIA ELMINIAWI: Thanks, James, for this explanation. However, the language only says, “GNSO mechanism.” It does not say what you just explained. So I guess we need to, if we are going to keep this language – “GNSO mechanism” – we need to define what kind of GNSO mechanism we are talking about. Just put in words what you have just said. Thank you.

JANIS KARKLINS: Okay. Mark Sv?

MARK SVANCAREK: My intervention is the same as Hadia’s. I like what James is saying. I don’t think this language captures it yet. Thank you.

JANIS KARKLINS: Okay. James, could you have a look at the text on the screen and propose something to add in line with what you said?

While you’re thinking, James, Amr?

AMR ELSADR: Thanks, Janis. I just wanted to clarify. Like James said – apologies if we haven’t worded this as well as we should have – we need to separate or make a distinction between the role of the actual advisory group as well as its composition and what we are proposing the GNSO does. So I completely agree with James on this. Those are two completely different roles and functions here.

The determination of whether something is policy or implementation should ideally reside with the GNSO.

Also to address a point that Hadia made about identifying the mechanisms or the procedures the GNSO might use to answer questions like these, my impression is that this is typically at the discretion of the GNSO Council. So the council would, in different circumstances, depending on what they are and what's involved and who's involved, possibly make this determination using multiple mechanisms or processes.

Also, with GNSO operating procedures [and] working group guidelines and all the PDP manual and the different manuals for processes that pop up – for example, the EPDP didn't exist five or six year ago – it's just that these change. They evolve over time. So I wouldn't worry too much now about identifying what mechanism the GNSO would use to answer a question of whether something is policy or implementation. The GNSO did attempt to nail that down a few years ago, and one of the outputs of that effort was the creation of the EPDP process.

But, in general, I think what we really need to do here is just make clear that the decision of whether something is policy or implementation resides with the GNSO. The GNSO would need to use whatever mechanisms or processes that are at its disposal and its discretion to reach that determination. Thank you.

JANIS KARKLINS: Thank you. Time is ticking. In the documents, we're using the term "GNSO mechanism." Can't we, for the moment, use this term of

"GNSO mechanism" for the continuous evolution of SSAD? We would receive input from the community and we would continue discussions. In the final report, we would clarify what that GNSO mechanism would be: whether that would be GNSO Council or that would be a committee or panel or whatever. So we indicate that there is an advisory group which looks at and analyzes operational aspects and makes a recommendation. Then the GNSO mechanism, whatever that would be, would approve or disapprove.

Can we put this on the screen – the text in recognition of the need for experienced-based adjustments in the functioning of SSAD? There should be a GNSO mechanism for the continuous evolution of SSAD to monitor the implementation of SSAD and recommend improvements that could be made. Improvements [inaudible] – that is on the screen – without a committee or panel compromised of SSAD stakeholders.

Can we end up on that?

I have Mark, Alan, and Franck. Mark Sv?

MARK SVANCAREK: Sorry. Old hand.

JANIS KARKLINS: Alan G?

ALAN GREENBERG: [inaudible] [been erased] that were in the first square brackets. I think at this point we need to say there is going to be a mechanism. By the way, having spent three years in the Auction Proceeds CCWG, where we chose to call a group a mechanism, I shiver when we use the term here. So I support saying there must be a group that does this. It must have oversight by the GNSO to make sure that there's no policy being violated. But I do not believe we should say it's a GNSO mechanism. I understand that the people in the GNSO feel comfortable with that, but some of us who are not sitting in the GNSO have been watching when the GNSO makes decisions as to who can participate and at what level. That does not give me a high level of comfort.

JANIS KARKLINS: Thank you.

CAITLIN TUBERGEN: Janis?

JANIS KARKLINS: Yes?

ALAN GREENBERG: By the way, we're using "continuous evolution" and then "monitor the implementation." I think those phrases are redundant. So maybe the second one needs to go. That's just grammar, though.

JANIS KARKLINS: Yes, Caitlin, please go ahead. I am not monitoring the chat because I'm on my mobile phone. So I cannot do it on two screens. Sorry.

CAITLIN TUBERGEN: Thank you, Janis. I just wanted to note for the sake of clarification that, in terms of Issue 3, this deals with a high-level principle that is referencing the mechanism that's described and fleshed out further in Recommendation 19. The reason I bring that up is because I believe that the term we used there does not refer specifically to a GNSO mechanism but rather a mechanism for the continuous evolution.

I would note that whatever language that is agreed to here isn't in the recommendation itself. That would need to be synchronized with the actual text in Recommendation 19. Thank you.

JANIS KARKLINS: Thank you. Franck?

FRANCK JOURNOUD: Thank you, Janis. I'll just point out that [inaudible] from the issue of what we call this mechanism that we still have the language data subject's privacy rights in there that Margie from the BC and we from the IPC object to.

JANIS KARKLINS: Milton?

MILTON MUELLER: Thank you, Franck, for making it clear that you don't want this mechanism to be constrained by the data subject's privacy rights. That's precisely why we proposed—

FRANCK JOURNOUD: I'm sorry, Milton. That's—

MILTON MUELLER: Are you recognized by the Chair? I was just recognized by the Chair.

JANIS KARKLINS: I would suggest that we speak one by one, not over each other. Milton, please go ahead.

MILTON MUELLER: Okay. So that's why we put this in. We deliberately eliminated the language about continuous evolution of SSAD because we think that's inviting the group, whatever it is, to make policy changes. We do think that the GNSO is the proper home for this because we're talking gTLD policy. We're talking about what goes into the contracts of the contracted parties. I don't know. We needed to show some respect and recognition of the way ICANN is organized and the actual policy domains. I have no problems with this mechanism centered in the GNSO to have representatives from GAC or ALAC or other advisory committees, although I think that, again, it is fundamentally a gTLD policy issue. Therefore, any

determinations regarding what is policy and what is a minor tweak in implementation really does have to go through the GNSO. I think there's no way to do that without violating ICANN's bylaws and it's procedures and guidelines. So I just don't quite understand the … We can flexible to what the mechanism is, but it really does have to be related to a GNSO check and balance.

I agree with Caitlin that, with whatever we do here, the later recommendation has to be made consistent with it. Thank you.

JANIS KARKLINS: Thank you. Thomas?

THOMAS RICKERT: Thanks very much, Janis. Hi, everybody. I think we may need to have two different discussions on two different types of challenges for the evolution of the SSAD. When it comes to policy questions, that is certainly a matter for the GNSO to deal with.

But, Janis, you're not monitoring the chat. I had suggested that we add language about a group of whatever shape or form – I like the term "oversight committee" – that monitors the decision-making within the SSAD and also the objections by data subjects to provide for consistency of the decision-making and ensure us that the SSAD evolves in a way that we don't have contradictory decisions by whoever takes decisions and therefore makes the SSAD less vulnerable against legal attacks.

So if I may suggest that we can maybe separate the two and have one on the GNSO's turf. Then other I think is a more operational

thing, where maybe the composition is warranted by legal expertise.

JANIS KARKLINS: Thank you, Thomas. I recall that our discussion in Los Angeles suggested that we would have this advisory committee, which would look at the operational side of it. Then there would be some kind of oversight, and it's needed from GNSO.

The time is really ticking, and probably we can land on the formulation suggested by Milton. What we need to resolve now is the objection of the IPC that is in reference to data subjects' privacy rights. Here we can probably discuss it for hours and hours. So maybe we could think of referring to GDPR rather than data subjects' privacy rights because all the policy is about the implementation of GDPR in the WHOIS database. That's just my suggestion. Otherwise, I'm really afraid that we will not be able to finalize the document before putting it out and we will need to reconvene the meeting either later today or tomorrow.

Brian, please?

BRIAN KING: Thanks, Janis. I think that your suggestion is a good one. I think that we can work with that. I would just note that the continuous evolution is what's going to get IPC on board with this concept. I think that we're here and talking in good faith about a hybrid decentralized model, which is not what we want. The continuous evolution is the assurance that, as we get legal certainty, and experience drives the types of decisions that can happen as

quickly as we need them to and as reliability as need them to, that is what's going to get us to agreement here. So we do need that concept. I think we could do this in a cross-community working group, if that makes it better representative. There are folks who are smarter than I am about how GNSO operating procedures work. I'll defer to those folks on the actual particulars, but I wanted to make that point. Thanks.

JANIS KARKLINS: Thank you. Let me ask if, with the text which is now on the screen – "In recognition of the need for experience-based adjustments to the functioning of SSAD, there should be a mechanism for the continuous evolution of SSAD to monitor the implementation of SSAD and recommend improvements that could be made. Improvements recommending through this process must not contradict the policies established by the EPDP, data protection laws, ICANN bylaws, or GNSO procedures and guidelines" – we can land on this formulation for the initial report. All of you will have a chance to make a comment. I think that captures, in essence, what we're talking about but also takes into account some sensibilities that have been expressed.

Mark Sv and Milton, can you live with that?

MARK SVANCAREK: Yeah, I can live with that. I guess I've been overtaken by events, but I was just going to say that, with the language about the data subjects' rights, my only concern about it was that it didn't seem like it was standard GDPR-like language. I would just like if it had

been replaced with something that was more GDPR-like. It seemed like it was a phrase that we had made up and it was jarring. That's all.

JANIS KARKLINS: Thank you for the flexibility. My question is whether we would leave the text as it is now displayed on the screen. Milton, can you—

MILTON MUELLER: I still think that the words "continuous evolution" is a red flag that makes this unacceptable. Evolution involves major changes in the species. You're going from one thing to another thing. That sounds to me like a policy change. In terms of substance, you don't need that language. You can say there should be a mechanism to monitor the implementation of the SSAD.

We already mentioned continuous experience-based adjustments. So we have the notion of improvements in there. We have the notion of recommending improvements. But continuous evolution is a big, scary red flag for anybody who thinks that this oversight mechanism is going to be used to fundamentally change the policy. We don't think it's necessary. So I think people need to give on this and get rid of that particular language.

JANIS KARKLINS: I understand, but we need to leave something for your group to comment on in the comment period. If everything will be

absolutely perfect from your point of view, then we will not be able to comment.

My question is, even if that is a red flag, can you live with this for the inclusion in the initial report? Because, again, this is a part of the conversation that we had in Los Angeles as part of the painful compromise that we made in developing this evolutionary model, which was called the Chameleon model. So that tries to encompass different interests. Of course, it will be experienced-based adjustments, but this will be an evolutionary process. Also, today we heard that the contracted parties will automate everything they can if that is legally permissible and the risk level will be sufficient that they can do it simply because the manual work may be—

MILTON MUELLER: Janis, I get your point.

JANIS KARKLINS: Thank you.

MILTON MUELLER: But the choice of the word “chameleon” is very unfortunate from a symbolic standpoint. Chameleons are all about deception, about looking like one thing surrounding their environment in order to survive and then turning into something else. That’s exactly what we’re concerned about here.

You certainly recall the explosion of frustration and anger when you first proposed this committee and proposed a mechanism that completely excluded us. We have never been happy with this. To say I'm asking for everything? There are so many things in here that we don't like that we are trying to simply minimize the potential for damage here. So, in striking the words "continuous evolution," you still have a mechanism. You still have the ability to make adjustments in the SSAD.

We've compromised on the question of it being GNSO open. We said it could be open to other groups, although it has to be a policy check. So we've moved a lot. Again, the words "continuous evolution" and "chameleon" are not good things, and we'd like to get rid of them.

JANIS KARKLINS: Okay. If "chameleon" is not in the game any longer, if we take out "continuous," if [we] should be a mechanism for the evolution of SSAD, would that be something that somehow you could live with, Milton? [Without "continuous."] Just evolution.

MILTON MUELLER: How about continuous oversight? And get rid of "evolution." Again, the chameleon could turn into Godzilla, as far as we're concerned.

JANIS KARKLINS: Let me think. I will make a proposal in about 10 or 15 minutes.

I would suggest that we would go to the next item and try to finalize the reading of the document. The next item is—

ALAN GREENBERG: Janis, I do have a proposal on this one, if we could go to the next [hand].

JANIS KARKLINS: Okay. Please, what is your proposal, Alan?

ALAN GREENBERG: I believe "continuous evolution" is the right word. However, in the end of it, it doesn't really say we can't change policy. It says we can't contradict EPDP policy. If we change that phrase to say "can't violate established gTLD policy," then it gives the failsafe statement that Milton is looking for. Right now it doesn't say you can't violate policy. It says you can't change EPDP policy, which is not the same thing. If we put "can't violate established gTLD policy," no matter what the words are before, it can't do anything like that.

I'll note James did suggest we change the name to "iguana" from "chameleon."

JANIS KARKLINS: Okay. If I may ask not to make jokes now. I am a little bit stressed because I really want to get through this. So, if you could continue this conversation on chat. If I may ask staff to follow that and see whether there is any commonality that we could agree to.

Otherwise, I will try to make some kind of suggestion after 10 or 15 minutes.

In the meantime, let us go to the next item, which is Item 6. This was put on the table by Marc Anderson. Caitlin?

CAITLIN TUBERGEN: Thank you, Janis. Item 6 deals with Recommendation 3. In particular, Recommendation 3 states that the EPDP team recommends that each SSAD request must include at a minimum the following information. This was flagged by the BC and IPC, noting that “at a minimum” should be stricken because there’s a concern that contracted parties may deny or reject a disclosure request simply because they have additional information that’s required that is outside what is, at a minimum, required by this recommendation.

JANIS KARKLINS: Thank you. Brian? Oh, no, let me take Marc first and then Brian. Marc?

MARC ANDERSON: Thanks, Janis. Actually, I’d like to maybe hear Brian’s rationale for this first. That might [inaudible].

JANIS KARKLINS: Okay. Brian, please go ahead.

BRIAN KING: Thanks, Marc. I thought you might. And thanks, Janis. We have a constructive suggestion here. I can tell you what our concern is as we looked at this language. It's a very specific concern and I think it could be addressed probably very easily.

The concept here that we are concerned about is that, if requesters fill out everything that the SSAD requires and makes a full and complete request, if the SSAD isn't making a decision – so the contracted party is making the decision – then a contracted party could look at this language and say, "Well, I require at a minimum 12 other things (or even 1 other thing)." That means that the requests aren't actually automated.

So that's the concern that we wanted to address. We completely understand that contracted parties will be well within their rights if they're doing a 61F balancing test to request more information after the fact. But I'm concerned that the way that this is worded leaves the door open for every contracted party to say, "Thanks for your request, but we actually have a different format (or a different template)."

So that's what we're trying to address here: that "at a minimum" should not be a gotcha used to have everybody do this differently when the requests gets through the SSAD to them. I hope that was clear about what our concern is. I hope that we are clear about that.

If I could just be clear about the constructive suggestion, our concern is that the request would be denied if the contracted party needed something else. What we'd like is for that to be a request

for more information or a follow-up question. It's not a denial. Thanks.

JANIS KARKLINS: Thank you, Brian. Marc Anderson?

MARC ANDERSON: Thanks, Janis, and thanks, Brian, for the explanation. When I read "[strike] "at a minimum,"" I went back and read … This section is about criteria and contents of the request. I actually think removing "at a minimum" hurts the overall system. I get the concern you're raising here, but I think this sets the recommendation for what is the criteria and contents for the request. In this recommendation, we should be providing a recommendation for the minimum of what the SSAD should support.

So I think removing "at a minimum" actually hurts this recommendation and that your point about contracted parties not … I get your concern, but I don't think this is the place to address that. I think the place to do that is in maybe authorization for automated disclosures (7) or response requirements (8). I think this Recommendation 3 is about what is in the request itself. We really want that to establish the minimum.

So I get the concern you're raising, but I guess I'd ask you to reconsider where you're trying to address that because I think your suggestion of just removing "at a minimum" here weakens the recommendations for the criteria [inaudible].

JANIS KARKLINS: Thank you, Marc. Mark Sv, are you in agreement?

MARK SVANCAREK: No. Sorry. The reason that "at a minimum" is not acceptable to me is that it's an ambiguous, open-ended thing. My concern is much more systemic than Brian's. Brian is worried about individual disclosers having different thresholds. I'm worried that, when we get into IRT, this is an open door allowing the IRT to create new policy. If it's at a minimum, you could say, "Well, we're implementing now. This was left to us. We can implement it however we like." It is my perception that this has already happened in the Phase 1 IRT: additional restrictions have been put on things where they were left open or ambiguous or where there was an implication of "at a minimum."

So I don't think "at a minimum" should live anywhere in our recommendations. It's just too open-ended and prone to misunderstanding during the IRT. So, if there is some clarification that Marc Anderson is suggesting, I think a specific clarification would be useful. But I don't think "at a minimum" should be anywhere in this document. Thank you.

JANIS KARKLINS: Thank you. Alan G, please?

ALAN GREENBERG: I really don't have a strong opinion on whether "at a minimum" is correct or not. It dawns on me, however, reading this: are we allowing any evolution of the process? If, down the way, we realize that some kinds of requests must have another three elements to allow automation or to allow even manual consideration, how are we going to evolve it if we're trying the exact elements into policy? That might require a PDP if we're not careful. So I'd just add that caution. I'm not quite sure how to fix then problem here. I'm just waving a flag. Thank you.

JANIS KARKLINS: Thank you. Volker?

VOLKER GREIMANN: Thank you. Alan, that's exactly right. This is an evolving model, and we should also bear in mind that rules that apply for some contracted parties may be slightly different from other contracted parties, depending on the privacy jurisdiction that they have to follow in their own jurisdiction where they're situated. So having an "at a minimum" request [pool], I think, is even a requirement.

Also, requesters may put in more information. I think one of the ways that we could fix that is that we could, instead of having two options for the contracted party to respond – i.e., disclose or deny – also have a request for further information or broaden this by saying that further jurisdictions may require additional information.

So I think "at a minimum" is a good way to phrase that because that details the minimum requirement of the requester. Then we add some language to the effect of "may not be rejected for the

pure fact that certain additional information is missing, but that information must then be requested by the contracted party so the requester can then provide that additional information to effectively gain that disclosure in case that they still feel that the disclosure is warranted." It's just a question of additional information being missing. Thank you.

JANIS KARKLINS: Thank you. Now when I'm looking to this recommendation, maybe a fix would be adding in the chapeau sentence: "The EDPD recommends that each SSAD request must include," and then comes "at the minimum."

Can't we say that the EPDP team recommends that each SSAD request must include all necessary information to make the disclosure decision? "At the minimum, the following information." These are really the absolute minimum. What is needed is the domain name, information about accreditation, what is the legal reason why you're asking that, confirmation that you're acting in good faith, and then what data elements you are requesting. But that may not be sufficient to make a disclosure decision. Therefore, I would suggest that a fix would be, "all information necessary to make a disclosure decision, but, at the minimum, these five elements," because there may be something else needed.

Brian, please?

BRIAN KING: Thanks, Janis. I appreciate that, and I appreciate Volker's suggestion, too. I think that sounds good.

I tried to propose some language there in the chat that will do it. Again, I just want to be mindful that, by doing this, we're not defeating the entire purpose of a standardized system that lets everybody do their own thing afterwards.

Let's try and language that. It looks like it's coming up on the screen here. Or the language that I put in the chat or Volker put in the chat. I'm happy to live with maybe a less-than-perfect idea so that we can get this report out and get off this call. Thanks.

JANIS KARKLINS: The language on the screen suggests that the EPDP team recommends that each SSAD request must include all information necessary for a disclosure decision, including … Then we can get rid of "at the minimum," because these five elements – domain name, the accreditation, the credentials, the information about why it's requested, and then data elements – are really the minimum.

Can we live with this?

Brian, your hand is old, probably. Mark Sv?

MARK SVANCAREK: I can live with the blue language. Thank you.

JANIS KARKLINS: Thank you. Alan?

ALAN WOODS: Thank you. I can live with the blue language as well. I just [inaudible] I can't live with [inaudible].

JANIS KARKLINS: Good. Thank you. So are we done with #4? Can everyone live with this?

Super. Thank you very much. So we're past – sorry. This was #6. Let me go lower. With the 7, it will be amended as suggested.

9. Caitlin, #9.

CAITLIN TUBERGEN: Thank you, Janis. This was an issue that was flagged by the ICANN org liaisons and deals with central gateway approval. It notes that the sections contemplate that contracted parties may request that the central gateway automate approval of additional categories of requests and retract or revise automation.

The question is, is the intention of this to require the gateway operator to comply with such requests? Or does the gateway operator have discretion to determine what additional categories, if any, it will automate upon request? What if a registrar requests automated approval of all requests? Is this an acceptable result to the EPDP team and under the GDPR?

I will just note, for the sake of everyone's memory, that this was an issue that we specifically discussed during the face-to-face. I believe that one of the registrars may have brought up that certain registrars may decide in their rights as a controller that they want to automate everything. They would flag that to the central gateway manager. The central gateway manager would then note that the requests were automated with the caveat that a contracted party could choose at any time to retract that category of automaton.

So I believe the answer to that question, at least as we understood it, is that a contracted party in its position as a controller could choose to automate everything. But, of course, I stand corrected by any member of the EPDP team if that is not what was meant by the team.

JANIS KARKLINS: But there is no suggestions. If I may ask ICANN org liaisons to [come in]. So where is the issue? You have not provided any suggestion or what you're seeking here to receive.

ELEEZA AGOPIAN: Hi, Janis.

JANIS KARKLINS: Yes, please.

ELEEZA AGOPIAN: Sorry. Thank you. No, we didn't offer any suggestions. You're right. But we wanted to flag this as an issue of potential concern. It wasn't clear to us how exactly this would work. As we noted, it seemed that it may contradict some of the policy recommendations further down. So that's why we wanted to raise this as a question for discussion with the team.

JANIS KARKLINS: Okay. Volker, Mar[c], and Amr.

VOLKER GREIMANN: Maybe just for clarification, it has been my understanding, confirming the question that ICANN org raised here, that, indeed, certain contracted parties may be able or are in a position to choose to automate everything if that is legally viable for them. For example, if you have a contracted party that is situated somewhere in the jurisdiction where there is no privacy legislation that prohibits that kind of disclosure, and all their customers are also in that jurisdiction, then they would be free to fully automate all of the responses that are coming into that system. That at least has been my understanding so far. Thank you.

JANIS KARKLINS: Thank you. Marc Anderson?

MARC ANDERSON: Thanks, Janis. I thought that was an interesting question raised by ICANN org. We've talked about bad actors that are just rejecting

all disclosure requests without considering them on their merits. I suppose the reverse is also something we should consider: what happens with bad actors that are just approving all disclosure requests without considering them on their merits? So this is maybe something we should consider, but I don't see how this is a topic that we can reasonably cover before getting the report out for public comment.

So my suggestion would be to just flag this as something for us to consider after the report goes out for public comment and not put this on the critical path for items to cover to get a report out for public comment.

JANIS KARKLINS: Thank you. In light of time, may I suggest that we take a mental note and add to the to-do list for the comment period to discuss further and continue going through the list? Can we do that?

I still have two hands up. Amr and Milton. Amr?

AMR ELSADR: Janis, I'm happy to defer this in the manner that Marc described, as long as ICANN staff liaising on behalf of the work are as well because they're the ones who flagged this as an issue that needs to be handled now. But, if we can defer this [inaudible].

JANIS KARKLINS: Thank you.

AMR ELSADR: Thanks.

JANIS KARKLINS: Thank you. Milton, are you in agreement?

MILTON MUELLER: We had a simple suggestion which is actually the next one, which I think overlaps with this. We don't understand why the language says "irrespective of the ultimate policy requirements." If you delete that language, than this request for automation becomes a lot less problematic.

I agree that the issue that the ICANN liaisons raised is a little more complicated, but I think, if we can agree to the propose change in #10 right away, then we can indeed defer #9.

JANIS KARKLINS: I think that 10 was not contested by anyone, so it is automatically changed. So your proposal was granted/approved.

Okay. Then we will Item 9 as is and we will come back to further conversation at the later stage as Marc Anderson suggested.

Let us move to 14.

CAITLIN TUBERGEN: Thank you, Janis. Issue 14 deals with Recommendation 9, which is the text related to service-level agreements or SLAs. Similar to the last issue that we just dealt with, this was another clarifying

question from ICANN org. Essentially, they're noting that the language here could result in disagreements in implementation over whether the response times are mandatory or "best-effort targets."

Additionally, the SLAs as outlined seem contradictory and may be difficult to implement as written. For example, is the recommendation to measure response times based on mean response times or compliance target percentages as indicated in the table?

In addition, Phase 3 for Priority 3 seems to be missing from the bullets. Who and how should SLAs be measured? Are these measurements self-reported or measured based on responses to requests via the central gateway? Would the team consider leaving some of these details to implementation?

JANIS KARKLINS: I think we had a lengthy conversation. So Priority 1 and 2 are the urgent requests – both of them – and percentages simply to indicate that there will be an attempt to improve the response time on urgent requests. For all the rest, we have a very clearly detailed proposal on how it should be done, which was coined by interested parties. This also took considerable time to come up with this language.

Let me see. I have a few requests. Mark Sv, Marc Anderson, Eleeza, and Chris, in that order. Mark Sv, please?

MARK SVANCAREK: Hi. I think Volker and I would be happy to meet with staff and clarify this. I thought the language was actually pretty straightforward, but apparently not. So probably it would make sense for us to meet with staff offline in the next day and make sure that this is clear. But, if this were to be turned into best-effort targets or, God forbid, left to implementation, that would be a dealbreaker for me. Thanks.

JANIS KARKLINS: Thank you. Marc Anderson?

MARC ANDERSON: Thanks, Janis. I guess I have a similar suggestion as the last one. I'm not sure there's a whole lot in the staff's concern that we're going to be able to tackle between now and when this goes out for public comment.

I do want to note the suggested edit (#17), jointly from Volker and Mark Sv, that says, "For the avoidance of doubt, below a matrix, the accompanying text represents a starting proposal to gather community feedback." My understanding of the SLA text in general is that this is a proposed principle or starting point. We're looking to get community feedback on it. After that community feedback occurs, we're going to have to have more discussions about SLAs to nail down what their final form is. At that point, I think we can address any remaining issues that staff has with the clarity of this recommendation.

So I don't think we can tackle this now, but I'm noting that we really are going to have to pick up SLAs in more detail [after] public comments.

JANIS KARKLINS: Thank you. Maybe we can think of implementation guidelines, ultimately, in the final report.

Eleeza, are you in agreement?

ELEEZA AGOPIAN: Hi, Janis. Yes, I think that would be fine. I should also note that the language that's noted in 17 also helps us to note that this is an issue we'll come back to.

I just wanted to point out that, after the face-to-face, we went back and talked to some of our technical folks and got their input on it. That's where a lot of these questions came from. So certainly we continue to talk to the team about it. No problem. Thank you.

JANIS KARKLINS: Thank you. Chris, can you live with that?

CHRIS LEWIS-EVANS: Thanks. I was just going to suggest, as long as we put the item in 17, it clears up some problems we had with it as a GAC as an other item on this point as well. Thank you.

JANIS KARKLINS: 17 was uncontested. It is going as proposed in edit.

Okay. So then we will come back to 14 in a sense of further explanation. Maybe we can consider writing implementation guidance if needed after receiving community input.

16, requested by Marc Anderson. Hopefully this will be straightforward. The GAC is suggesting to delete standard enforcement practices in resolving investigating complaints regarding disclosure requests. Marc is willing to discuss that. Marc, please go ahead.

MARC ANDERSON: Thanks, Janis. I don't have concerns with deleting "standard" from here. Actually, my concern was actually above that, where it says a complaint should be filed with ICANN Compliance. We've raised this in L.A. and previously: that text should be changed to "a complaint may be filed with ICANN." I don't like the use of the word "should" there. I think that amounts to providing guidance or advice to what a requester should do. I don't think that's something we should do. Heh – "should" again. So my point in flagging this was actually that the "should" should be a "may." I thought that was a point that we had already agreed on multiple times.

JANIS KARKLINS: Yeah. Isn't that something, Caitlin, that would follow in the staff omission thing? Because I think it makes full sense – what Marc is arguing on.

CAITLIN TUBERGEN: Thank you, Janis, and thank you, Marc. Yes, that's correct. I believe the group did agree to change "should" to "may" in that context. So apologies for inadvertently omitting that change.

JANIS KARKLINS: Thank you. Chris, you're in agreement, right?

CHRIS LEWIS-EVANS: 100%.

JANIS KARKLINS: Good. So then we're done with 16. "Standard" will go. "Should" will be replaced by "may."

18. GAC is arguing that the response targets and compliance targets should be reviewed, at the minimum, annually. And the GAC is arguing that that should be quarterly.

Where's the issue, Marc? Go ahead, please.

MARC ANDERSON: Thanks, Janis. My recollection isn't that we agreed to review the response targets quarterly. I think we agreed to calculate them quarterly. I recall that the original proposal from Mark Sv and Volker was that they'd be calculated two months and then—

JANIS KARKLINS: Two months. Right.

Marc? I lost you.

MARC ANDERSON: [inaudible]. I think that's different than how often the response and compliance targets would be reviewed. Actually, a quarterly review of response and compliance targets is actually onerous. Honestly, I'm not sure. If we had to add a minimum review response and compliance targets every quarter, I think that would be a little rough on the people that are doing the reviewing.

So my recollection was a little bit different. I think annually is fine for how long to review them, but we were going to calculate them quarterly.

JANIS KARKLINS: Okay. May I ask whether indeed a cannot-live-with issue for the GAC? Can we keep "annually" and see what will be the community input since we are explicitly asking for community input on this topic?

I understand that the GAC can live with it because no one is seeking the floor?

Good. So then we keep it as is was proposed – annually – and then we will see what input will be provided by the community. We will review it consequently.

So 19 we have dealt with and we have agreement on now.

20. What is the issue in 20? The logging. Caitlin, could you launch this conversation?

CAITLIN TUBERGEN: Sure. Thanks, Janis. Again, this is with respect to Recommendation 17 and logging. I believe the BC and IPC is proposing to add an additional bullet to Recommendation 17. That bullet provides that periodic reports of logged should be published in aggregate and without PII to enable an assessment of disclosure request responses on a per contract party basis. And they note that it might also need to be included in the auditing recommendation, which I think is Recommendation 18.

LAUREEN KAPIN: Hi, folks. This is Laureen. I'm not sure you can hear me. I'm only on the phone.

JANIS KARKLINS: Yeah, Laureen, we can hear you, but we do not see your hand up. But, please, [inaudible].

LAUREEN KAPIN: Right. Because I'm only the phone, so there's no hand for me.

JANIS KARKLINS: Yeah. Please go ahead.

LAUREEN KAPIN: I'm sorry because of my technical challenges here. I wanted to go back to the last point briefly. I heard Marc's concern about quarterly being too onerous. The GAC's concern is that, if we wait a year for this, too much time will have gone by to actually make assessments and constructive reactions to it.

So my proposed compromise, instead of waiting for community comment: can people live with "every six months"? Because I do think waiting a year to even take a look and make an assessment is too long, which is what generated our comment in the first instance.

Sorry for not being a little more timely in making my intervention.

JANIS KARKLINS: Thank you. Let me then go back and see whether Marc can accept the proposal: instead of quarterly, put "every six months." Marc?

MARC ANDERSON: Thanks, Janis. I'd point out that the language here is for when they shall be reviewed at a minimum. So this doesn't set a maximum timeline for when they can be reviewed. This sets a minimum for when they must be reviewed. So there's nothing in this recommendation that says they can't be reviewed sooner if there's a need to review them sooner.

I'm concerned about mandating quarterly or even twice a year [inaudible] precludes reviewing response targets and compliance targets sooner if there's a need. I'm concerned about putting in an

overly burdensome process of reviewing SLAs on too regular a basis.

JANIS KARKLINS: Thank you. Can we maybe – yes?

LAUREEN KAPIN: My concern is that we won't even know that there's a problem if we don't have a required time to take a look at it, which is why I'm offering to meet you in the middle, Marc. But a year is a long time to wait to be able to even detect whether there's a problem. I think six months is a reasonable compromise. A year is something that we would have a very tough time living with.

JANIS KARKLINS: Can I suggest, Laureen, that we would add an additional sentence which would suggest that, in the first few years of operation, this review may need to be conducted every six months? Just putting also that, at the beginning, that may be more frequently than at the end in the operation. Would that—

LAUREEN KAPIN: That is a step in the right direction. I'm just wondering, practically speaking, how we'd even know whether it was necessary, which is what's generating my concern in the first place. How do we know there's a problem if we don't have this mandated look to see the information? I don't want a year to go by to realize we have a big

problem. Unless I'm missing something, in which case I'm happy to be educated.

JANIS KARKLINS: The second sentence gives you that assurance that there will be a further discussion mechanism. This mechanism also will certainly point to in what cases this review will be triggered. So, again—

LAUREEN KAPIN: Can you read it out to me? Because I'm only the phone, so I'm just [inaudible] how I can hear it.

JANIS KARKLINS: Yeah. The first sentence says, "Response targets and compliance targets shall be reviewed, at the minimum, annually." The second sentence suggests, "A review mechanism will be further developed by the EPDP team, but community input in response to the public comment period will be helpful."

LAUREEN KAPIN: That sounds very mushy to me. That doesn't give us the assurance we want that a year isn't going to go by before we can detect whether there's a problem. So I can live with six months, but the whole point of these SLAs is to make sure that they're met. I don't want to wait a year to see that there's a problem with a failure to meet them. That's where we're coming from.

JANIS KARKLINS: Can we add the following? "At the minimum, every six months in the first year." Then, "At the minimum, annually thereafter." Laureen? The response targets and compliance targets—

LAUREEN KAPIN: I would add, "And depending on the outcome of the first review, a year after." If we see there's a big problem at the six-month mark, I want it to continue to be every six months until that problem is resolved. I want this to be a meaningful six months, not a "You pass Go whether there's a problem or not."

JANIS KARKLINS: Okay. Can we then settle on this? Again, this is just the initial report. We're trying to accommodate your concern. I do not want to mix up the conversation.

I think James and Mark Sv were on Item 20, if I'm not mistaken, so I will give you the floor on Item 20.

Alan G, are you on this one, on 18?

ALAN GREENBERG: I'm on this one. I think the issue is not how often the group reviews them. The issue is how often we have automated creation and publication of the statistics. I think that should be regular, on a month-by-month basis. Then the group can decide to review periodically, either because the year or whatever time has passed, or because there seems to be an anomaly that needs to be looked

at. It's really a matter of automation. Then the group reviews as necessary.

JANIS KARKLINS: Thank you. Amr, your hand is up on this one or on 20?

AMR ELSADR: My comment is probably applicable to both. I think, if I understood you correctly, Janis, my view is probably consistent with yours. We're talking about what we can and can't live with in the initial report. So I'm fine with Laureen's suggestion of making this six months for the purpose of the initial report, with the understanding that we will all be commenting on this and revisiting it when we're reviewing the public comments submitted. Thank you.

JANIS KARKLINS: Let me test and see whether my proposal – at the minimum, six months in the first year, and, at the minimum, annually after – would meet the consensus.

Marc Anderson?

MARC ANDERSON: I can support that, Janis. That seems a good compromise for the initial report.

JANIS KARKLINS: Okay. Laureen, can you live with that?

LAUREEN KAPIN: I'll live with it.

JANIS KARKLINS: Thank you. Then, Berry, it is captured, right? Can you confirm that?

Okay. It is captured. So we will then pursue that.

Now 20. I have here two requests. James if first and then Mark Sv.

JAMES BLADEL: Hi. Just trying to reset here after that discussion on 19. I'm concerned about the inclusion of this bullet point, particularly the last big here: on a per-contracted-party basis. This comes up quite a bit in policy discussions about folks wanting to name and shame good-guys registries and registrars and bad-guy registries and registrars. I just want to point out that that introduces some competition issues, where you can't un-ring that bell if ICANN or a working group indicates that some registrars are good about conducting privacy and some registrars are bad. Even if that changes over time, those sentiments in the marketplace takes years or decades to recover.

So I would recommend we strike this per-contracted-party basis because I think that doesn't really give any of the benefits but possibly creates some unintended side effects here. I really don't have any issue with the rest of the bullet point. It's that bit about

disclosing and publishing performance on a per-contracted-party basis.

If anyone is asking for opportunities to compromise, then perhaps if you could anonymize that and say Contracted Party A, Contracted Party B, Contracted C … But, again, it's very easy for folks to sometimes track those over time. We should bear in mind that there are some folks who do that sort of thing just for fun.

Thanks. That's my [inaudible].

JANIS KARKLINS: Thank you. Mark Sv, Marc Anderson, and Margie.

MARK SVANCAREK: This transparency requirement is very important. In the previous one, we were arguing about when should we review SLA targets. As long as there is a transparent dashboard or something that we can look at, we can tell when we need to have a review. We can tell when we need to revise things. We don't have to necessarily wait six months or a year or something like that. So, in advance of the quarterly review, we can see what the rolling average is and whether we're going off the rails or not. So I just wanted to stress that point: the whole thing falls down if you don't have this level of transparency.

To James' point, I think it's okay to anonymize on the per-contracted-party basis. I think we are going to want to look at a histogram and see how is this playing out across the various contracted parties. But the naming and shaming doesn't have to

happen in some public way. ICANN will have a view into that, but it doesn't have to be on the public dashboard. I think we'd be fine with that. Thanks.

JANIS KARKLINS: Okay. So you're fine with deleting "on a per-contracted party basis."

MARK SVANCAREK: I am fine with it, yes. Thank you.

JANIS KARKLINS: Thank you. Marc Anderson?

MARC ANDERSON: Thanks, Janis. When I was looking at this suggested edit, I went and looked through the report for other recommendations for reporting. I wasn't able to find any. I thought we had talked about things that should be reported on. Maybe I missed it, but I was quite surprised I could not find any recommendations on recording. So this seems to create a standalone recommendation on reporting in the middle of the logging recommendation. Maybe staff can help point me in the right direction, but I think we should have a recommendation on reporting. I don't necessarily think it should be limited to just this one item.

So my suggestion is maybe to put a pin in this one, maybe even a placeholder, and say that, following the public comment period, the working group will consider what reports should be mandated

or what reports we want to require. I think there are some reports that we're going to want to mandate, and we don't seem to have covered that in our recommendations.

So that was my thoughts on reading this. I think we should have some recommendations on reporting. I think maybe putting this in the middle of logging might not be the right place. So maybe I think we should have a standalone recommendation on what reports we the working group are expecting as a part of this SSAD recommendation.

JANIS KARKLINS: Thank you. If I may ask the IPC/BC to contemplate Marc's suggestion to recall this proposal for the time being, with the understanding that, until the end of the meeting, we would formulate one placeholder for the initial report, suggesting that the EPDP team will consider reporting or transparency measures on the functioning of SSAD or operations of SSAD for the final report, or something along those lines.

I have Stephanie, Milton, and Franck.

STEPHANIE PERRIN: Thank you. I just wanted to point out that we are way down in the weeds on reporting requirements and timing. In my view, I'm all for metrics, but this is an implementation detail. If it's supposed to be a system that learns, obviously we will be measuring whether the responses are correct. That would include compliance with applicable law, which includes every national law where there is

data protection law in place, including obviously in the GDPR-impacted states.

So I think we're getting the cart in front of the horse. I've pointed this out in L.A. We have to measure compliance with law, and that has to be qualitative analysis. It's not a metric because we don't know. We will not get enough complaints unless our illustrious group generates a civil society mass complaint across a number of jurisdictions. We will not have the data on whether we're complying with law to measure that. That has to be qualitative. The other stuff is quantitative but without the qualitative input.

So, please, folks. This is one of the jobs that the oversight committee has to look at on an analytical basis. Yes, random sampling audited by Compliance – frankly, I don't have faith in Compliance. I'm sorry, GDD. I don't have faith in them understanding whether the request is compliant with data protection law and whether the disclosure is as well. So that's a job for the oversight committee, where there's at least some expertise in some quarters by now.

So I'm sorry you're missing the chat. There's been a fulsome discussion here. But I think that the sooner we get rid of these potentially burdensome requirements, bearing in mind that all burdens get passed on down to the registrant, which is the only source of income in the ICANN ecosystem, then the further we'll move forward. Obviously, we all want to know whether this is working, so there should be transparency and there should be metrics. But SLA-mandatory reporting is, as far as I'm concerned, a dealbreaker for NCSG. Thanks.

JANIS KARKLINS: Thank you. Milton?

MITLON MUELLER: Can you hear me?

JANIS KARKLINS: Yes.

MILTON MUELLER: Okay. I agree with Stephanie that this is an implementation detail, and I think we should pass over it very quickly. However, since James brought it up, I just wanted to say that the concept of identifying particular contracted parties, I think, is a good idea in terms of their disclosure record. Obviously, you're going to have IPC and BC interpreting high ratios of disclosures as a good thing, and you're going to have possibly registrants and the privacy advocates interpreting things in the opposite way. But I think it's possibly a good idea for there to be a benchmark set of facts that these evaluations are based on. In particular, I think the whole idea of competing registrars is that consumers should know what kind of provider they're selecting.

But let's defer this. That's something that can be brought up in further implementation details and in public comments. Thanks.

JANIS KARKLINS: Thank you, Milton. I have two further requests – I really would like to finish this conversation here – and that is Franck, followed by Mark Sv.

FRANCK JOURNOUD: Sorry. Actually, I put my hand down. Sorry.

JANIS KARKLINS: Okay. Mark Sv, please?

MARK SVANCAREK: Just a quick clarification. When we're talking about the SLAs, we are not talking about the rates of disclosing yes or disclosing no. It's the rate of getting a valid response – making sure that something is taken in, reviewed, and then either disclosed or denied. That's what the SLA is about. It's not about how many times did you say yes or how many times you said no. So I just wanted to clear that up.

JANIS KARKLINS: Thank you. Then, on Item 20, may I suggest that, for the moment, we do not accept the proposed edit by IPC/BC, with the understanding that we will put a placeholder in the initial report, suggesting that the EPDP team will consider necessary transparency measures in order to demonstrate the functioning of SSAD for the final report, or something like that? Because we also need to think of how much that will cost and what burden this

reporting will put on the system as such. So the understanding is that we will consider reporting mechanisms for the final report.

Can we land on that?

Okay. So this is what is now on the screen": "Following the review of public comments, the EPDP team will further review the [inaudible] [transparency] measures and [inaudible] necessary to support [this]." Okay. So then we can end up here. Thank you.

That brings us to the end of the examination of cannot-live-with points. The rest we did not discuss will appear in the initial report as suggested by those who filed those edits. Then we will a chance to read the comments. Good.

May I take it that we have finished the examination of Agenda Item 4?

No requests for the floor. It is so decided.

Then let us go to Agenda Item 5. I hope that we will be able to finish the call before three hours. The uses cases. We have a rather considerable exchange of views on that topic. Let me ask Mark Sv to kickstart this conversation and see whether you can also formulate the proposal for how we could take this work further. Mark?

MARK SVANCAREK: Thanks, Janis. This is a list of use cases that could conceivably be automated by a discloser. It has elements of automation that could occur at the gateway and elements of automation that could occur

at the contracted party. Based on the feedback on the list, we should make the assumption that this is a system of recommendations being made by the gateway which are then evaluated by the contracted party. They could take it or leave it. Then they send feedback back with their response, saying, “This was a good recommendation. I took it,” or, “This is a bad recommendation. I did not take it.” It might even be detailed as, “It seems like a good recommendation, but I haven’t automated that yet.”

So there’s a list of assumptions. These are all basically things that exist elsewhere in our report. So all the requesters have been accredited by the authority, and all the requesters are individually authenticated by the gateway. All the requesters syntactically correct and complete the authorization provider. Let’s just simplify this and say that the authorization provider is going to be the CP. We don’t need to discuss the cases where it’s the gateway right now. So the authorization provider has access to all the data that is required to make the decision. We should consider that the public RDS is easily available and that we could be generating flags during implementation that would enable just some insight into the decision. They could be related to prior disclosure or other things.

#4 is a new thing. We haven’t really discussed it. You can selectively assert whether or not the data that is being specifically disclosed in this request will be used in a way that has legal or similarly significant effects on the data subjects. So, if you’re doing a trademark case and you are doing it to contact someone and say, “Please assist,” that would not have legal actions. If you were

doing a trademark case and you were planning to bring a suit, that would have legal implications. You can tag those so that it makes the review easier. Of course, that assertion is just as enforceable as any other assertions. If you lie about it, you can get de-accredited.

If the gateway does not authorize automated disclosure … The word "authorize" there maybe does not strongly recommend automated disclosure. It may have enough information to make an informed suggestion to the contracted party regarding their processing. If the contracted party has enough confidence in the gateway, they may choose to automate based on that recommendation.

The contracted party shall provide feedback about the quality of the past recommendation in order to improve the quality of future recommendations.

Finally, not all requests can be automated. For the cases where we determine that it can't make the decision based on the contents of the request alone, it may require the unredacted RDS data to make that decision. Now, this is where the gateway becomes a controller and is inspecting the data. We should probably set that aside based on the feedback on the list. So let's just set aside that assumption for now.

Finally, as we learn more things, we can add more use cases.

The first use case seemed to be pretty uncontroversial: law enforcement agency is the same jurisdiction as the contracted party. There were two examples. One was the simple case: law

enforcement agency in Jurisdiction A request the registrant RDS data from a registrar also in Jurisdiction A. The second one was incorporated in this. It was previously separate. That's: a competent DPA requests the data in response to a data subject complaint that their data is being misused. So "competent" has the usual implications.

There was a discussion on whether 1B was actually correct or not. For the gateway to make a good recommendation, access to the city field may be required. If these things are happening at a federal level, then maybe that's not the case. It really depends on the granularity of the law. So we're just sitting that out there as a thing to consider. I'm not sure if it is going to be proven to be factually correct or not.

The second case is a request for the city field only. As you know, there are some places in the world – the United States and Germany are the ones that I'm aware of – where certain states have multiple jurisdictions within each state. So the granularity of the state is not sufficient for certain purposes. In this case, the requester submits a request for just the city field in order to ascertain the specific jurisdiction, or the requester submits a request for the city field for the purpose of statistical research or some similar non-legal … I'm seeing in the chat that we shouldn't be talking about this. So I'll continue going until I'm told to stop, but I recognize the chat.

JANIS KARKLINS: Yeah. I thought that it maybe takes too long. What would be your suggestion on how to proceed on that, Mark?

MARK SVANCAREK: Well …

JANIS KARKLINS: We have some references in the initial report on automation. Then, in Los Angeles, we had this conversation and an understanding that we may indicate maybe one or two clear-cut cases, like in law enforcement, for instance, and then put a placeholder suggesting that other potential cases will be examined based on feedback and will be presented in the final report and then use the intercessional period in order to work through all the cases and see what is feasible and what is not.

MARK SVANCAREK: I'd like to be able to consider #1, #2, #3, and – what's the number of the URS? I think it's probably the last one. In the document right now—

JANIS KARKLINS: URS is 9.

MARK SVACAREK: Yeah. 1 and 9 are already in the report. I would like people to please consider 1, 2, 3, and 9. Thank you.

JANIS KARKLINS: Thank you. Volker, please?

VOLKER GREIMANN: Sorry. I had to unmute myself. I don't necessarily agree with the use case as such. I just think that it's premature to introduce them into our report. I think there are points to be made and discussions to be had about these. But we want to move forward on the report as soon as possible. If we are starting to discuss these now, this will probably take too much time.

I think introducing them as part of your public comment would be a good idea. That would allow us to have the discussion in preparation for the final report. That way, they can also be heard by the community as they read through the public report summary.

I agree that at least #1 has been discussed at length and should probably be included in the report in some form or shape. But the others would probably warrant some more discussion. Thank you.

JANIS KARKLINS: Thank you. Milton?

MILTON MUELLER: I'm not sure that we should put any use cases in the public comment. I think, at this stage in the game, we are setting out basic principles for how the SSAD works. For these decisions about use cases to be made, ones that should be automated involve very complex implementation questions and policy questions as well. I don't think any of these cases are ready for primetime in the sense of being put forward. I'm afraid that, if we do put them in the public report, we are de facto expressing some

kind of support or recommendation when everybody agrees that that's not actually what we're doing yet.

So it's best to have a general comment that says, "What kind of use cases do you think could be automated?" and see what kind of public comment get. And, while we're waiting for public comment, we can continue to work on these use cases. But it's really premature to be putting these into the report that we're sending out for public comment. They're just not ready. There's a ton of questions. We've got this document from Mar[k] – the final version – what, two days ago? And you're proposing to put that into a public comment? I really think almost, prima facie, that's not a good idea, particularly when these things are so complicated and so consequential.

So let's just agree to have a section that says, "What kind of use cases do you think could be automated, and why?" and leave it at that. Thank you.

JANIS KARKLINS: Thank you. Alan Woods, followed by Margie.

ALAN WOODS: Thank you very much. As much as I appreciate the effort that went into this – I did sit down with Mark on this one -- as I said in my e-mail, I do have a few issues, even in things like #1, saying that the competent DPAs should use the SSAD to get DPA. The DPA aren't going to use the SSAD. They'll just come knocking on the front door. There are certain elements that we really need to have

further discussion on. I just don't think that they're yet ready to go into this.

I agree completely with Volker. Milton's suggestion there I might slightly disagree with, even on soliciting those comments, because these are all things that, in my mind, would have to go through a very, very clear DPIA (Data Protection Impact Assessment) process. Again, we just don't have the time. I don't think they're suitable to go in. I think that we have to have these discussions. I'm not sure that even getting people to suggest them … We all know there's a huge understanding needed for this. We've all gone through the pain of trying to get our heads around this. I just think that now is not the time. I don't even think that we should be literally soliciting that. We need to put proper, actual thought into these things. Thank you.

And thank you, Mark, as well. I just want to say thank you. [inaudible]. I just don't think it's the right time.

JANIS KARKLINS: Thank you. Margie?

MARGIE MILAM: Hi. I appreciate the comments about the work that needs to get done here. I think where I'm looking at is the way Caitlin suggested it: since the work has been done and it may actually help the public commenters, if it's attached as a link to the wiki with no suggestion that it's supported by anyone other than, I guess, the BC or IPC or whoever wants to say they support it. Then at least it gives them a flavor for the kinds of things we're

talking about. So I would suggest we go along with Caitlin's proposal.

JANIS KARKLINS: Thank you, Margie. Caitlin's proposal is in the chat, for those who have not seen it and suggest that this would be included in the [key] page where the Mark Sv document will be posted [inaudible] that these use cases are under discussion with a footnote [inaudible] the EPDP team is considering. "Please see" and then a link to this wiki page. So that's the proposal.

I have a number of hands up – five actually. If you are in favor of Caitlin's proposal, then maybe you could lower your hands.

Now it's Hadia.

Hadia, I do not hear you, unless you have lowered your hand.

HADIA ELMINIAWI: I'm sorry. I was muted. Thank you, Janis. I think it's very important to give the public examples of what we have in mind for use cases that could be actually automated. We do not have to include many cases. One or two would be good. But not everyone was following the EPDP calls. They don't know what we've been discussing. We don't know what we have in mind for or what we mean by automated use cases. It is very important to include some of them in the report.

However, what Caitlin suggested is good as well because it gives an overview to the public of what we have in mind for the use cases. Thank you.

JANIS KARKLINS: I refer to Line 970, which suggests that the EPDP will further consider – sorry. An implementation guidance – Line 965. The EPDP team expects that the following type of disclosure can be fully automated: a request from law enforcement in local or otherwise applicable jurisdictions, responses to UDPR and URS providers for registrant information verification. The EPDP team will further consider whether other types of disclosure requests can be fully automated. [inaudible] over time, based on experience gained and/or further legal guidance, the SSAD Advisory Group is expected to provide further guidance on which types of disclosure requests can be fully automated. So that is the proposal, which is in the report.

Alan Greenberg, Marc Anderson, Chris Lewis-Evans, Milton, and Franck. That would be all on this item.

ALAN GREENBERG: Thank you. What you just read – is that still in the report, or what was in before Caitlin?

JANIS KARKLINS: That is in the report.

ALAN GREENBERG: Okay. And you're suggesting in addition to that Caitlin's suggestion of pointing to the whole document?

JANIS KARKLINS: Yes.

ALAN GREENBERG: Okay.

JANIS KARKLINS: With a footnote and a pointer to the wiki page. We will continue—

ALAN GREENBERG: Sorry. As long as we're giving some explicit examples without going into the details of them – law enforcement, URS, UDRP providers; I would add in ICANN Compliance of ones that are essentially no-brainers – then I'm happy with it. If we published without any examples, then I think it brings into question our credibility of saying we're going to automate something but we don't have a clue what yet. So, if it lists some specific ones and then points to Mark's document, then I can live with that.

JANIS KARKLINS: Thank you. Marc Anderson?

MARC ANDERSON: Thanks, Janis. I was under the impression that we had already agreed to this, basically. Line Item 11 in the can't-live-with report

has the suggestion from staff to add the footnote and include a link to the wiki page. I don't think anybody objected to this. It wasn't one of the items that we suggested. So I thought this was already a suggestion that was made and nobody objected to it. So we'll have that update with a footnote and a link to the wiki page.

JANIS KARKLINS: Yeah. My fault. Sorry. Thank you, Marc, for pointing this out.

So the question is, can we do as is suggested in Point 11: we keep what it is in the text now and add a footnote with a link to the wiki page with this document? And we continue discussing these use cases and see where we land in terms of consensus in between the release of the initial report and publication of the final report? Please consider that.

Chris?

CHRIS LEWIS-EVANS: Thank you. Issue #11 I can agree with, obviously highlighting the fact that we're still discussing and considering.

The only thing I'd like to point out on Mark's document, if we are going to include it or reference it, is to be careful not to conflate some of the user cases. In #1, which is the LE one, we do conflate DPAs and LEAs. Really, they should be separate user cases. So, if we are going to include it, I think we just need to be careful of the legal advice that we've already had and make sure they're separate user cases. Thank you.

JANIS KARKLINS: Thank you. Milton?

MILTON MUELLER: I'm still a bit puzzled by this idea that this #11 thing that Caitlin proposed, which I cannot find anywhere and nobody objected to – when was it—

JANIS KARKLINS: It's in the document that we were looking at when we examined Item 4 of the agenda.

MILTON MUELLER: It's in this compiled issues list?

JANIS KARKLINS: Yes.

MILTON MUELLER: So that was proposed yesterday? When was that sent to the list? Was that yesterday?

JANIS KARKLINS: No. A few days ago.

MILTON MUELLER: Ugh. Well, between that time, there have been several comments on the list that we should not be trying to deal with use cases on this call, which were obviously ignored. We've now spent most of the last half-hour talking about—

JANIS KARKLINS: My fault, Milton. I'm trying to close this.

MILTON MUELLER: I know. A good quick way to close it would be to not dealing with use cases, which is where I thought we were headed. I still don't think it's a good idea to take a document prepared, admittedly with some feedback but raising major issues … I don't see what is gained. You have language in there already that says, "Here's what we're thinking about."

When Hadia says this larger list that one particular stakeholder group prepared says [it's] an indication of what we are thinking about, I have to object. That "we" does not include me, and it doesn't include any kind of implied consent that this is the parameters of the discussion.

I even heard Alan Woods questioning the one about law enforcement. I presume he means that not all of that will be automated. Sometimes law enforcement has to go through due process to get certain kinds of information.

So there are a lot of issues here. I just don't see what we gain. Essentially we are privileging this document by saying, "This is what we're thinking about," when much of it is going to heavily

contested. It's perfectly fine to have the language that's currently in there saying in very general terms, "This is what we're thinking about," but to go further and to privilege this particular set of use cases that really two-thirds of one stakeholder group has put forward is really bad procedure. It's not like I don't appreciate the work that Mark Sv has done. I think he's done a good job. But I just think it's premature. We can continue that work without having to make it part of the initial public report. There's nothing really gained except to, again, privilege and bias the discussion going forward by putting that into the public report, even if it's just a link.

JANIS KARKLINS: This was part of the compromise that we reached in Los Angeles, discussing automation. What is suggested in 11 is a reflection of that compromise. So it is my hope that I raise this issue or put it for further consideration. So I would suggest that we let the community provide input on these issues and we continue working on use cases during the comment period and see where we land. There is a general description in the report of two obvious cases. We will take it from there. And I'd really beg your pardon and suggest that we move on with that understanding.

Can we?

I have three hands. We're really running out of time, guys. Franck?

FRANCK JOURNOUD: Sorry. In the interest of sticking to our targets for publication, etc., I would make the point that, yes, there were no objections to how

we disposed of Issue 11 this morning. So I don't think we should start to reopen that really long list of what we did and did not object to.

I think it's very clear that putting it in a wiki rather than in the text of the document makes it clear that it is something is on the table that is not something that has either unanimity or consensus. There's no majority of whatever. It's a contribution.

Further, I think, in the interest of transparency for [inaudible] those outside of the [inaudible] table that otherwise don't know because surely they don't follow all of the e-mails that we'll get and have to follow. So not providing them something that is [inaudible] in fact on the table I think is [inaudible] transparency and their ability to publicly comment on our work.

JANIS KARKLINS: Thank you, Franck. Thomas?

THOMAS RICKERT: Thanks very much, Janis. I rose a suggestion in the chat that we should add that these cases have been proposed something along the lines for further study or feasibility and legal compliance. I think, given the early stage of these use cases, we need to be very cautious with our language because I think that, if we suggest that they have been agreed to, which we don't … But if we even suggest that these could work without having properly assessed them, we might cause reactions or trigger reactions that we don't want to see.

So I think making reference to them as proposed for further legal and feasibility inspection would be something that I could live with.

JANIS KARKLINS: Thank you. Alan Greenberg?

ALAN GREENBERG: Exactly what Franck and Thomas just said. Thank you.

JANIS KARKLINS: Okay. So staff captures that, and that clarification will appear in a footnote.

Amr, are you in agreement?

AMR ELSADR: Thanks, Janis. I just wanted to say one thing in response to Franck. Normally, right now, what we'd be seeking is to publish something that the entire EPDP team has worked on, not something that one or two groups are proposing. So we're actually not necessarily doing a disservice by excluding this from the initial reports because the EPDP team hasn't done its homework in considering this fully before seeking or soliciting input on it.

Having said that, I think it's okay to, at this point, want to get this done to just proceed as Caitlin has proposed. I think that she worked out a few little bits of language with Milton to clarify the position of the team on this right now. So let's just move on. Thank you.

JANIS KARKLINS: Exactly. Thank you for concluding this conversation. With that understanding, we will include a footnote as a suggested by Caitlin. It will be fine-tuned in light of Thomas' comments and what we heard from staff.

I would suggest that we move on to Agenda Item 6 on the public comment forum. If I may ask Caitlin to kickstart.

CATILIN TUBERGEN: Thank you, Janis. Berry, do you mind putting the agenda back up on the screen, please?

In the interest of keeping this short, since we only have 15 minutes left on the call and we do have some staff support colleagues that do have a hard stop at the top of the hour, I just wanted to note that, currently, the dates that we're proposing is to open the public comment forum on the initial report tomorrow, with the deadline for receipt of public comments to be March 23rd. That's a 45-day comment period, which is over the minimum requirement, but noting that there'll be no extensions possible on that date if we're going to meet our deliverable target for the final report.

To answer Amr's question that came through before the call, no, we have not yet circulated the Google Sheet template. But, again, in the interest of time, what I would suggest is that we would circulate that following the call and give everyone until 13:00 UTC tomorrow to provide any comments. In short, it will be similar to the format from Phase 1 with the exception that every

recommendation will be linked to separately to avoid having the really lengthy textual recommendations which make the Google form very long and laborious for readers or users who are trying to complete it.

In essence, the recommendation would include the title of the recommendation, and then we'd have a link to a separate recommendation so that the user can click and go directly to that to see the text. Or, if they don't want to do that, they can just follow along in their initial report.

Every recommendation will have two questions, essentially a sliding scale of whether you agree, disagree, agree with a proposed textual agree, agree that it should be deleted entirely, or if you are neutral to the recommendation. The follow-up question is a freeform text field where users can provide any proposed edits and their rationale for proposing those edits. So there'll be 19 recommendations with the two questions, and then there will be a freeform question asking if there should be any additional recommendations that the team has not considered, and then finally an open form where people can put in any miscellaneous comments on the initial report that they would like.

Again, just shortly, the reason that we proposed doing this is that, when it comes time to review the comments, it makes the categorization of the comments much easier to sift though and organize and also allows the EPDP team as well the support staff to understand what exactly the commenter is commenting on so that we can tag that to the specific recommendation.

If no one has an objection, we'll go ahead and send out a Word template that will then be imported into Google Forms so everyone can see it. If there are objections, you are welcome to send those to the list by 13:00 UTC tomorrow.

Thanks, Janis. Back over to you.

JANIS KARKLINS: Thank you, Caitlin. I hope that this methodology, which was used already in the first phase, would be acceptable to the team. I understand that that also facilitates the collection of the inputs.

As you can also read in the chat, staff was suggesting that maybe groups would consider and provide one input per group. But, of course, we cannot impose that. Simply it should be seen as an invitation. Again, that would simply facilitate our own work in going through the public comments on each recommendation.

The question is, can we agree to proceed with that methodology?

I see no hands up. I take it that that is our common understanding and we will proceed accordingly. Thank you very much.

Now Item 7. That is the workplan between the publishing of the initial report and the end of the public comments. Here I would like to suggest the following. That would be time to look at Priority 2 issues and look at the list of cases for automation that we briefly started to discuss in Los Angeles and need to follow and then see whether there is any specific topic that needs to be addressed awaiting the end of the comment period.

My idea was that, during the next week, we would put forward the proposed timetable of activities for the next 45 days, including the one in the face-to-face meeting in Cancun. We would ask for your approval for that proposal or indication of any other issues that you think the team needs to address awaiting the end of the public comment period.

Would that way forward be something we could live with?

I see no hands up. I take it that that is acceptable.

Then we can move to the conclusion of this meeting. First, let me thank all of you for this enormous effort that you made in allowing us to reach the point of publication of the initial report. I really praise you all for this hard work. Thank you very much [inaudible].

We will now take a little pause. The next meeting of the team will be on Thursday, the 20th of February. As we heard at the beginning of the call, the legal team will meet on Tuesday, the 18th of February, to finalize discussion on the legal questions. Since the legal team is representative, I think that that will be final discussion of those questions prior to sending them out. I would encourage those members who are on the legal team to, prior to the meeting, consult their respective groups. Then we can finalize those legal questions and send them off or put them in recycling bin, if that is the common wish.

Any other things to discuss under this agenda item? Caitlin, from your perspective? Berry, from your perspective?

CAITLIN TUBERGEN: Nothing from me, Janis. Thank you.

JANIS KARKLINS: Okay. I see Amr's hand is up. Amr?

AMR ELSADR: Thanks, Janis. I just wanted to ask if we could have a little more time than 13:00 UTC tomorrow to be able to look over the template for the public comment forum and discuss among ourselves and give feedback if we have any. So maybe some work to do over the weekend. Maybe an extra 24 hours for that. So, let's say, Saturday at 13:00 UTC. Would that be okay?

JANIS KARKLINS: Let me ask staff if the publication of the form is linked with the publication of the initial report.

CAITLIN TUBERGEN: Unfortunately, it is, Janis. When we publish, we provide a link so that people can start providing comments on the opening day of the public comment forum. So we wouldn't be able to give a 24-hour turnaround.

But essentially what it's going to look like is exactly what I described. If there's any issues with that, you'll welcome to flag them now, Amr, not on the call – sorry – but in writing over the list, with just having the recommendations themselves and then two questions, one a sliding scale of agree/strongly disagree and then an input box for a rationale as to why you agree/disagree and

proposed edits for each recommendations and then, again, two freeform questions, one asking if there is any additional recommendations that the commenter is recommending for the group and one just allowing any miscellaneous comments or an overall comment that isn't recommendation-specific. That's what the forum will be, very similar to Phase 1.

AMR ELSADR: [inaudible]. Thanks, Caitlin. I think you've settled some of my concerns. So thank you.

JANIS KARKLINS: Thank you, Amr. Then we have agreement. So thank you very much.

In absence of any further requests for the floor, I would like to thank all of you for active participation in this meeting and would like to bring this meeting to the end. Thank you very much, and have a good rest of the day. The initial report will be published tomorrow. Thank you. This meeting stands adjourned.

[END OF TRANSCRIPTION]