
ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Tuesday, 08 October 2019 at 14:00 UTC

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TERRI AGNEW:

Good morning, good afternoon, and good evening. Welcome to the GNSO [EPDP Phase] 2 meeting taking place on the 8th of October 2019 at 14:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourselves now? Hearing no one, we have listed apologies from Alex Deacon (IPC), Julf Helsingius (NCSG), Greg Aaron (SSAC), and Thomas Rickert (ISPCP). They formally assigned Jen Gore, Stefan Filipovic, and Tara Whalen as their alternate for this call and any remaining days of absence.

Alternates not replacing a member are required to rename their line by adding three Zs to the beginning of their name, and at the end in parentheses, their affiliation, dash, "alternate," which means they are automatically pushed to the end of the queue.

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chats or use any other Zoom room functionality such as raising hand, agreeing or disagreeing.

As a reminder, the alternate assignment form must be formalized by way of the Google assignment 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 or speak up now. Seeing or hearing no one, if you need assistance updating 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 and posted on the public wiki space shortly after the end of the call. With this, I turn it back over to our Chair, Janis Karklins. Please begin.

JANIS KARKLINS:

Thank you, Terri. Good morning, good day, good evening, everyone. Welcome to the 23rd PDP Team call. I will start by asking whether the agenda as circulated yesterday is acceptable for today's meeting. I see no objections, so we will proceed accordingly.

Let me start by housekeeping issues and first subitem is – I was informed that we have changed from staff liaison. Trang has left, as I understand ICANN, and Ms. Eleeza Agopian was asked to follow the work of the team and help us out as needed. So, Eleeza

is the first time on the call. I wonder whether she would like to take the floor briefly and introduce herself. Eleeza?

ELEEZA AGOPIAN: Hi, Janis. Yes, thank you. Thanks for having me on the call. I am the Strategic Initiatives Director with the MSSSI function at ICANN. That's the Multistakeholder Strategy and Strategic Initiatives function. We're working on a shorter title. I have been working on various data protection privacy-related issues for the organization for the last two years and I've been following the work of the EPDP closely, so I'm excited to work with you. By way of background, I'm also part of the Strawberry Team, so I'm of course very involved in that side from the org side, so I'm looking forward to helping out in these discussions in any way I can. Thank you.

JANIS KARKLINS: Okay. Thank you very much, and welcome. Let us move to the next item, accreditation building block homework. I assume that that is Marika who wants to kick-start the subitem. Marika?

MARIKA KONINGS: Yes, thanks, Janis. Terri, if you can let me share my screen for a second. This is basically just to flag that we shared yesterday with the group the homework that staff had in relation to the [inaudible]. We've attempted to bring all the different inputs that were received and of course all the work that Milton and Alex did on this topic under the discussions that the group had together in this document, that hopefully at least saw coming in. I know that you

may not have had a chance to have the detail added yet. But we hope everyone will be able to review this in advance of Thursday's meeting where we expect this to be the main topic of discussion.

I just want to flag here that the high-level approach we've taken, we've tried to separate out but on the one hand are the more policy principles recommendations in relation to accreditation. Then on the other hand, the more implementation-related guidance that has been discussed, because we think it's important to separate out the two things. Of course, implementation part is very important but is not necessarily something that EPDP Team itself will be tasked with. That is really what happens in the IRT phase. But of course, any guidance to the group can provide will be very helpful in that regard. Then of course, the core of what the EPDP Team is responsible for is the more policy-related aspects and principles.

The implementation guidance as well, you could see we've tried to break it out in a number of categories. Again, I think most or all of this has been taken from input that has been provided through the different submissions from the different groups. We noted as well, I know that Alex and Milton spent quite a bit of time on devising a framework – I think you may recall the graphic – and if that is a model, it potentially needs to be revised to align with what we've done here. That may be something the group is willing to include as well.

Then we also added the list of definitions because I think it's important that everyone – this comes from the same departure point when talking about the framework and the concepts are being used. For these for now we've just basically copied and

pasted, I think what Alex has developed in his document. Obviously that may be something that needs further consideration as well.

Just below we'll have as well the information from the SSAD worksheet and where we refer to some of the overall objective and information that has been used in developing this topic.

At the top as well, I think they're two overarching questions. One relates to one of the charter questions that the group may need to consider at one point and determine indeed how it fits in with this building block. Then we noted as well that there have been some conversations stemming from the L.A. face-to-face meeting that a potentially different kind of approach or framework may need to apply for law enforcements. I think the question there is, is it something that can be fit in into what we currently have there or would that be a completely standalone kind of approach?

Again, I don't think it's the objective to go into any kind of details today. We just want to flag that that was a circulated yesterday and encourage everyone to review it and come prepared to discuss this on Thursday's meeting.

JANIS KARKLINS:

Thank you, Marika. Without getting into detailed discussion of the topic, my question to the team is, is there anyone who would like to volunteer to think about those two questions outlined in yellow now on the screen? I see Marc's hand up. Are you volunteering, Marc?

MARC ANDERSON: No, I'm not. I just have quick question. Thanks, Marika, for sending this out and the explanation. My question is just sort of on procedure. Are you looking for feedback ahead of our Thursday discussion, or should we have the discussion on Thursday during the call and then provide feedback following the call? I'm just not really sure on the process there.

JANIS KARKLINS: Thank you, Marc, for the question. Marika?

MARIKA KONINGS: Thanks, Janis. My suggestion here would be I think, first of all, we probably need to get some input on whether the kind of approach we've taken is the right direction. Then of course, second of all, if the answer is yes, the overall approach is the right one then of course a lot of details in there that the group may want to discuss. So I'm guessing for Thursday's meeting, we'll first need an answer on that first question, is this the right approach and the way we've broken things out and the more general concepts or approach we've taken? I think that's the first question. I think the second one is the more into the details of the principles we've outlined here, the implementation guidance. I'm assuming that there may also be common suggestions, questions.

So again, I think anything that groups can provide in advance of the meeting will help start up that conversation, so personally I'm looking at Janis here as well as he'll of course be leading the call. So I think any input groups can provide on the [broader] question in advance of the call I think will give some indication on whether

we can immediately start deep-diving in the different aspects or whether we need to take a step back and first review the overall approach.

I would suggest, for those that have the time, to go into the document and leave any comments in the form of comments in the document. So we can also of course share that and see where there are potentially very controversial items or where there are parts that may require less conversation. There's no concerns raised there. That is my suggestion. Turning back to Janis to see if he agrees with that approach.

JANIS KARKLINS:

Yes. Thank you, Marika. I would say looking to you as you are looking to me now. I would say if there is anyone who conceptually do not agree what is proposed as a structure, please let your views known by Thursday. Because then of course, we need to address structural issue or systemic issue of the proposal. But if in principle the document that was drafted based on our inputs is acceptable as a basis for further work, so then I would suggest that we take section by section and work immediately on details without going into general debate on the structure of the accreditation mechanism in general. Would that be acceptable to all?

I see no objections, so let's then proceed this way. If you have fundamental disagreement with approach, please flag it before Thursday. If no opposition will be flagged then we will proceed with reading section by section to iron out the details. Then of

course, I can also encourage to read carefully all document prior to the meeting that would certainly facilitate our conversation.

So, thank you very much for this. We can move to subsection C which is status of building blocks. As I promised last time, we would systematically show the list of building blocks indicating where we are. And I can tell you that yesterday during the leadership call, I got the warning that for the first time in the whole process, we're slipping not only in yellow but in red. So I would like to say that this is certainly my fault that last Thursday we couldn't finalize the agenda and we're lagging behind. I will try to handle conversation in the most efficient way that we can reach consensus. But of course, that does not mean that I will cut anyone short or impose any opinion that would not gather consensus in the team.

With this, Marika, would you like to say something in addition to what I said?

MARIKA KONINGS:

Thanks, Janis. No, just to emphasize that there are a lot of building blocks, all the Google Docs are up there. So, anyone that wants to work in advance and start looking at those, trying to make up time because, again, anything we can do off list and discuss on the mailing list. Again, just flagging as well additional discussion is happening on retention and destruction of data. I think some really good suggestions are being made on the mailing list. So I think from staff side, what we'll try and see if we can bring this all together into hopefully maybe final version. Again, if we can encourage everyone to start their review on these different

areas and work as much as possible towards consensus positions on issue that will also facilitate conversations on the call.

JANIS KARKLINS:

Thank you, Marika. Any reaction? In absence then we can go to the first substantive item of the call, and that is finalization of questions to ICANN Org or ICANN Board.

We received the draft letter, which was circulated to the list. Everyone had the chance to read it. I would like now to see whether text as drafted whether that would be seen as a team's letter to the Board and ICANN Org. I see James's hand is up. James?

JAMES BLADEL:

Thank you, Janis. To everyone here, just a little bit of background. This is the culmination of our discussion that began in Los Angeles and the contracted parties were really just myself and Marc, and Sarah. We took upon ourselves to craft a letter to the board. What it does is if you hadn't had the chance to read it, I would encourage you to please do so and fairly quickly. It puts a point on their question of ICANN Org's involvement in the operation and development of any kind of SSAD system.

We really need an answer to this now. I think the concern that is growing within the contracted parties in particular is that we're building a design that has some baked-in assumptions about ICANN's role. I think the good news is that I think everyone in this group is relatively aligned that ICANN should have some role in this. I think the worry is just like some of the Phase 1 questions

that were shot down that we would get this wrapped up. We'd reach consensus, send it to a Council, everything is good. Then it gets to the Board and they pull the rug out from underneath us because of the associated risks involved in taking on this new role.

We're trying to put a point out on that question right now. Say, "Hey, we're at a fork in the road. Our work is at an important juncture. We really need an answer – yes or no?" Understanding there's still a lot of details up in the air but we can't go left and then sometime in January hear back from the Board that we should've gone right. That's what we're trying to achieve here. So I welcome everyone's comments or concerns. Definitely we want everyone to please take a read at this, but we're very, very concerned that we need an answer on this in a timely manner or our work between now and the end is at risk. Thank you.

JANIS KARKLINS:

Thank you, James. I read this letter and I think that the questions or issues you are outlining in the draft, they're very similar to those points that we discussed during the last Thursday's call. My comment, if I may kick-start this, I think we should consider changing the last sentence, not in substance but in form. Input would help us to make more informed policymaking proposals. Without input, we would not be acting on the basis of full available information or needed information. So, if I may suggest, I can offer the wording – putting it not in form of threatening like forced to focus but rather more positive saying that in absence of input we may develop policy recommendations not possessing all necessary information or something like that.

The floor is open for any other comments.

Chris Lewis-Evans, followed by Brian. Chris?

CHRIS LEWIS-EVANS: Thanks, Janis. Yeah, we had a quick look at this yesterday and we really liked the way that it sort of sets out, more [current] thinking around what we need and why we need it, which realistically the questions I think that Marc put up last week didn't really have ... Maybe a good way forward would be to attach those questions to this document as we send it because I think that would add a more pointed on where we want answers. So that would be my suggestion. Thank you.

JANIS KARKLINS: Thank you. You're saying attachment. In other words, please, these are the same list of issues but worded in a different way. Brian, please.

BRIAN KING: Thanks, Janis. Thanks, James, and all the folks that put this together. I really appreciate that effort and this looks great in general. I think it does a good job of outlining what some of our deliberations are and what our primary concern is.

I also would just comment on the last sentence. I think that perhaps what we would really do is that absent input from the Board we may come up with policy recommendations that are not palatable to the Board, and that's what we're really trying to avoid

here. Perhaps with a slight tweak in the sentence that reflects that, this might be more perfect but I think it's a really good thing. Thanks. And thanks again for everybody that [did it].

JANIS KARKLINS: Thank you, Brian. I see this is the privilege of being a native English speaker. This is more or less exactly what I wanted to say. James.

JAMES BLADEL: Thanks, everyone. Not disagreeing what Brian or Janis, I think that's a good improvement to flag that last sentence. We don't want to lose here. Maybe this is what we were intending in the last sentence that maybe we stumbled on the wording a little bit. But I think the intention here is to note that really what we're talking about here is, as I mentioned, that the risk is that, as Brian said, that we put together a set of recommendations that's unacceptable to the Board and then we are effectively the last year of work becomes a sunk cost and we're just kind of stuck where we are right now. I don't know how to say that. I welcome edits that would capture that. I think the thing that we don't want to do is let them off the hook – and I don't mean that to be disrespectful to our Board colleagues but we need a clear answer on the appetite for accepting a new role for ICANN and the associated risks. If the answer is yes, we have a plan, and if the answer is no, we have a plan. But what we can't continue to operate under is this sort of yes or no type of ambiguity. This clouded ambiguity I think is confusing our work. We just need to get them off the fence. But again, I think it's good to flag that last

sentence. We don't want to come across as adversarial. We definitely want to keep this constructive but we also don't want to allow the ambiguity to continue. Thanks.

JANIS KARKLINS: Thank you, James. Chris Disspain?

CHRIS DISSPAIN: Hi, Janis. Hi, James. Hi, everybody. I hope you can hear me. I'm still on a train at the moment.

JANIS KARKLINS: Yes.

CHRIS DISSPAIN: I think clarity is good. I suggest that the wording that you suggested, Janis, and this developed by Brian I think is good wording but I will encourage you to perhaps provide some samples of what [inaudible]. And James's current wording absent that input we may be forced to with a little bit of – and that could be an [inaudible] slightly more broad phrase. I have some sympathy for James's view that we don't want to enable ... You want a clear response and we'd like to provide a clear response to [clear] your communication as with us the clearer we can be with you.

JANIS KARKLINS: Okay. Thank you, Chris. Hadia?

HADIA ELMINIAWI: Thank you, James, for this letter which I do support. However, I would like to respond to the point in which you said that we could go in a direction that could be totally unacceptable by the Board. I assume that our Board colleagues would actually ensure and help us not to go with this direction, not to develop a policy that would be totally unacceptable by ICANN.

Another quick thing, the letter is good but maybe it needs some more clarification or concrete situations. I saw Ashley putting in the chat, talking about what ICANN is willing to do rather than the responsibilities and liabilities is also important. I know that responsibility – users responsible for what is very important as well. But to state really what ICANN is willing to adopt or what role it's willing to take is also very useful. Thank you.

JANIS KARKLINS: Thank you. Let me maybe propose the following. James, based on this conversation, maybe you can think of the last sentence as rephrasing the last sentence. If you can do that, we would put the letter for 24 hours silent procedure. But now we could agree maybe that after the signature, "Thank you, EPDP Phase 2 Working Group members," we would put postscript on and would write that independently from developing this letter. Team also worked on set of questions that are comparable with letter and we're adding them for information. Then we list those five questions that we agreed during the last call simply as a point of further clarification. James, would that be acceptable to you?

JAMES BLADEL: Yes. Thanks, Janis. I was going to volunteer to take on the assignment that you just proposed and also perhaps ask if I can get one of our Board liaisons – either Chris or Becky – to assist me in that effort and we'll turn this around here fairly quickly.

JANIS KARKLINS: Okay. Thank you. And then we would put the alternate version for silent procedure, meaning no objection, no answer, no reaction from team members 24 hours after publication on the mailing list would mean acceptance. Then this letter would go to the Board. So, with this understanding, we can now move to the next item unless there is anyone who wants to say something. No? There is agreement. Thank you.

Let us move to next agenda item, which is acceptable use policy (building blocks D and H). Can I have those building blocks, the text on the screen? This is the second reading of the document. The edits that has been introduced by staff is based on inputs received in our previous conversations – first reading conversation. That is the attempt of capturing every aspect, trying to accommodate every concern that has been expressed. I would suggest that we now go section by section or subpoint by subpoint to see whether provided edits are acceptable and meet our expectations.

Let me start with [inaudible]. The EPDP Team recommends that the following requirements are applicable to the requestor and must be confirmed by [to be confirmed] and subject to an

enforcement mechanism. For the avoidance of doubt, every request does not have to go through an enforcement procedure; the enforcement mechanism may, however, be triggered in the event of apparent misuse.

I understand that this must be confirmed. It depends on further decisions on how the system will work and who will be doing what. Maybe I can ask Marika to maybe talk what would be the options of this TBC from staff perspective.

MARIKA KONINGS:

Thanks, Janis. I think, I actually came in this better position to speak about the updates that were made here in this document. But I think this is partly the elephant in the room question: who's going to be operating SSAD because at least my understanding is that whoever is responsible for receiving requests will also be the one who would be enforcing acceptable use policies. I think that's why there is a TBC at this stage. At least that is my understanding.

JANIS KARKLINS:

Okay, thank you. So you confirm is also my understanding. Any comments on the [inaudible]? I see no requests.

Subpoint A, the requestor must only request data from the current RDS data set – and in the records, no historic data. Any objections? I see none.

Subpoint B. The requestor must, for each and every unique request for RDS data, provide representations of the

corresponding purpose and lawful basis for the processing, which will be subject to auditing. Brian?

BRIAN KING:

Thanks, Janis. My experience with audits – these are CPH type audits with ICANN – is that we should be clear about what can be audited and how, otherwise contractual compliance – not to pick on Jamie or anybody, but they tend to ask all kinds of interesting questions. I think any kind of bookends or parameters we can put around how this audit might work or what this might look like will be helpful, just because it seems a little open but I don't think we have objections to the concept of an audit here. Interested in what the team thinks about what might be some reasonable additional clarity here. Thanks.

JANIS KARKLINS:

Thank you, Brian. I think that from the previous discussions, we discussed that the provided clarification or corresponding purpose and lawful basis would be subject of not constant auditing but time to time of periodic auditing. That is I recall we discussed. Margie?

MARGIE MILAM:

I have the same concern that Brian mentioned. What I would suggest on the auditing language would be a reference to another building block. I assume we're going to have more details auditing principles that I think would provide the clarity that Brian mentioned. I know that, for example, when we did the BC accreditation model, we made a proposal for what the auditing could look like. So if we reference auditing here, I would just say

per building block, whatever number that might be that refers to it. So we'll flesh it out in that capacity.

JANIS KARKLINS: Thank you, Margie. I understand, you're suggesting that we would simply put, which will be subject to auditing and then we can make a reference to the auditing building block.

MARGIE MILAM: Yes, correct.

JANIS KARKLINS: Okay. So then instead of striking in brackets, now block access, we will put a reference to auditing building block. That is noted by staff. Would that be acceptable to everyone? In that auditing building block, we would clarify clearly what type of actions need to be audited or what type of actions. Hadia?

HADIA ELMINIAWI: To add to the auditing requirements and also to facilitate item number D, I would suggest also requiring the requestor to keep a record of data processing. Because we say here, "Must handle the data subject's personal data in compliance," so let him also keep a record of this process. Thank you.

JANIS KARKLINS: Thank you. That is ... you're already on D, we're still on B. But thank you for your proposal. I see some comments in the chat that confirms that we're fine with Margie's proposal.

Then let us move to the subpoint C. The requestor must provide representation regarding the intended use of the requested data and representation that the requestor will use the data for purposes consistent with the purpose for which the data was requested. These representations will be subject to auditing.

Again, if need be, we can reference auditing building block. Marc Anderson? Marc?

MARC ANDERSON: Thanks, Janis. Marc Anderson. I think you're spot-on about your comment about auditing, and Brian and Margie's comments on the previous section were well made. The concept of auditing within this building block is pretty nebulous. Just to tack on to what everybody else is saying, we should be clear as to what our intentions are when we say audits. Part of my intervention is to agree with the comments on auditing and agree that it applies here to C as well.

I also raised my hand because I think C is one of the more important points on this particular building block and it was heavily reworded here. I think the rewording gets really to the heart of what's important here. The requestor should state how they're going to use the data and then agree to only use the data consistent with your stated purpose. I think that's really the heart

of this building block. I think the reworded language in C captures that. That's my intervention.

JANIS KARKLINS: Thank you for that. Again, isn't that auditing will be subject to audit? Sure, it will be. But if we put some periodic auditing or selective auditing or something like that, again, this is just a proposal. Because the way how it is phrased may be perceived as kind of a permanent auditing. Amr, your hand is up.

AMR ELSADR: Thanks, Janis. I've said this before, and I am very uncomfortable with policy recommendation that allows processing of personal data to take place. That is "consistent" with the purpose for which the data was requested. I think that data processing should only take place for specific purposes. "The purpose for which the data was requested" and not other purposes that may be consistent with it. I think this is a problem in the language here. I've said it before, but I just wanted to raise the issue again. I'm not sure where NCSG is going to land on this in the future but I would certainly prefer not to have that language in there and be more specific on the purposes where processing is allowed. Thank you.

JANIS KARKLINS: Thank you. Let me see what Brian has to say. Brian?

BRIAN KING: Thanks, Amr. I'm glad you raised your hand and spoke because I didn't understand in the chat. That's helpful. I think we'd be okay or perfectly fine, really, with a word that's a little less nebulous than consistent. I didn't understand the potential for that to be a bit wishy-washy until you spoke up, so thank you for that. I don't want to wordsmith on the fly here but I'd be happy to work with you or to drop a thought in the Google Doc here about a word that sounds more like we'll only use the data for the purpose for which the data was requested. Maybe I just did wordsmith on the fly. Sorry. Sounds good, Amr. Thanks.

JANIS KARKLINS: Thank you, Brian. The proposal of Brian is to delete "consistent with the purpose." Then the text would read, "The requestor will only use the data for purposes for which the data was requested." Would that be acceptable to Marc Anderson? Well, he's thinking. Margie's hand is up. Margie?

MARGIE MILAM: The reason we had a problem with that in the past – we talked about this on the last call – was that in any particular instance, you could have multiple purposes that could be stated. As an example, in a phishing attack, a phishing attack involves the trademark. What we typically do from the enforcement perspective is we send a request out and say, "There is misuse of involving a trademark." Now, it may be that that's also a phishing attack, so I don't want this to be so narrowly construed that it limits our ability to use it for cybersecurity purposes, when they're both consistent.

The reason why we had this changed from last week was because I think the language we were trying to get closer to is what is in GDPR, Article 5 (1)(b), where it says that it will not be processed in a manner that is incompatible with those purposes. I think that that's probably the better language to use, but I would object to keeping it so narrow that it says only because that's not what GDPR requires. I think not using with purposes incompatible with those purposes, I think that might get us to where it would be acceptable.

JANIS KARKLINS: Thank you, Margie. There is now [counter] proposal referring to the language used in GDPR. Of course, I do not have GDPR in front of me, but I trust that Margie quoted Article 5 (1)(b). Proposal is to replace "consistent" with "compatible." Alan?

ALAN WOODS: Thank you. You can hear me okay, hopefully.

JANIS KARKLINS: Yes.

ALAN WOODS: Thank you. Just [inaudible] will continue none of it, I've been kind of noodling over. Actually, Becky beat me with the words "incompatible with." It just occurred to me there that perhaps we're probably pushing it even too far. I think Amr's point actually is deserving of a bit more thought as well, because if a person who

requests the data, disclosure of the data, gets that data, they are controlling their own right. The concept of secondary purposes is falling squarely under what they need to do.

I think we need to be careful that we're not straying in this concept of the code of conduct, that we're becoming a pseudo Data Protection Authority. We can't actually police what secondary purposes they use that data for. I think in our code of conduct, I think we really need to limit ourselves to the purpose for which it was collected. Any other use outside of our remit and consideration, and I think we really need to be careful that we're pushing too far into a different data protection regime there, to be perfectly honest. I'm kind of with Amr, to be honest, on this one.

JANIS KARKLINS: Thank you. Volker is last on this subpoint. Volker, please.

VOLKER GREIMANN: Yes. Thank you, Janis. I kind of agree with what Alan just said, I just want to throw one word of caution in there, which is that, yes, they become a controller in their own right and they're responsible for their treatment. However, we as contracted parties or the disclosing party, at least, has to ensure that the new controller that gains access to the data is processing it in a fashion that's compliant with the interpretation of the disclosure. Putting it in there as a requirement that they agree to the processes in a compliant fashion gives us a bit of protection. Again, it's their own responsibility. However, we have some responsibility to make sure that the people that we give the data to are actively complying with

that regulation. I think it makes sense to leave it in there in some form or shape. Thank you.

JANIS KARKLINS:

Thank you. Let me suggest the following. Put subsection C in square brackets, and ask Amr, Margie and ... who else? Okay, Amr and Margie to start with, to try to find the solution and propose the solution online for consideration of the group. Would that be okay, Amr and Margie? Thank you. If you could get turnaround by end of the week, that would be highly appreciated.

Let me now go to subsection D. The requestor must handle the data subject's personal data in compliance with applicable law. This is a formulation I think we agreed to use throughout the document. No objections to subsection D?

Certainly on subsection E, which was [inaudible] shouldn't be any objections. No, good. With the subsection C, we'll see whether we can get through by using online working method. Let us now move to building block H. That equally has been already subject to the first reading and the proposed edits by staff is the result of best attempt to capture everything that has been said and concerns that have been raised during the first reading of the document.

I think we will take questions in yellow once we will get the subsection D. Let me start with the [inaudible] which is fairly similar to one we did not have any comments in the building block D. Can we agree on proposed formulation with understanding that TBC will be filled as soon as we can? Good.

Subsection A, the entity disclosing the data must only disclose the necessary data requested by the requestor. Any issue with that?
No issue.

Subsection B, the entity disclosing the data must return current data or subsidiary thereof in response to a requester. No historic data. I understand that a subset thereof was subject of some concern. If my notes are correct, there was Thomas who said that he will think further for possible alternative suggestion. I don't hear Thomas. Is Thomas on the call? Sorry, I do not see the whole list. Thomas, are you –

TERRI AGNEW: Janis, this is Terri. Thomas sent in his apologies for today's meeting.

JANIS KARKLINS: Okay. Thank you. Then probably we need to wait until Thomas will provide his alternative suggestion that has not been submitted yet. If I may ask staff to pursue the resolution of this or at least solicit input from Thomas.

Please bracket B and we will see what type of suggestion will come from Thomas. If Thomas will not produce anything, may I take that without text in brackets, we could agree that the entity disclosing the data must return current data in response to request in brackets clarification, no historic data.

No request for the floor. Then let me say that in principle, we have agreement on this sub-bullet and we will see what kind of

suggestion Thomas will bring. In absence, we would simply delete “or subset thereof” and we’ll take that as a solution.

So let me move to subsection C. The entity disclosing data must process data in compliance with applicable law. No issue with that.

Now, D. Must log requests. Here is a staff comment, if we could get the yellow text on the screen. If you could scroll up, please. If we could talk a little bit and then gather some ideas on logging a request, what information must be logged, who would be able to access the log and so on. That would be time to throw out ideas. Chris Lewis-Evans first, followed by Marc Anderson.

CHRIS LEWIS-EVANS: Thanks, Janis. For me, this feels very much like the auditing conversation we had on the last building block. Maybe the best way forward here would just be to reference a building block that deals with login of requests, rather than getting into the weeds in this building block and clean it out. That would be my suggestion. Thank you.

JANIS KARKLINS: Good. Thank you. Marc Anderson?

MARC ANDERSON: Thanks, Janis. I think Chris makes a good suggestion on the previous building block. I think it was Hadia who had suggested we also have a requirement for logging requests. Considering that

there's activities that need to be logged in multiple building blocks, maybe having something that focuses specifically on that is a good idea. I think staff's comment here is spot-on, there needs to be more information and more specificity on what information needs to be logged and what are the circumstances by which the information log can be disclosed into who and also how long that log data has to be retained for. I think those are all good questions that we need to get into. Chris has a good suggestion to just deal with that as a specific building block.

JANIS KARKLINS:

Okay. Now, question is, please think while Margie is speaking, is there any volunteer who would like to take a pen and put down ideas for the logging concept as such, which would then constitute [return] in a building block? Margie?

MARGIE MILAM:

Again, in the BC Accreditation Model proposal, we had some specifics regarding logging, like what would be logged and all of that. I mean, I'm happy to collect from that and share with whoever wants to take a look at that. We did get some thought to that.

JANIS KARKLINS:

Thank you. Does it mean that you volunteer, Margie? With the help of staff, of course.

MARGIE MILAM:

Okay.

JANIS KARKLINS:

Good. Thank you. Please, staff, you have a volunteer and task. Thank you.

Maybe we will simply capture in subsection D, “must log requests” and then in the brackets refer to log building block. Would that be okay? Good.

Subsection E. The entity disclosing the data where required by applicable law, must perform a balancing test before processing the data. Mark Sv.

MARK SVANCAREK:

Hi. This should say ... Well, I guess it is covered. I wanted to point out that even though most of these will be 6 (1)(f) requiring a balancing test, some will not. So I guess the “where required by applicable law” captures that nuance. Is that correct? Do you agree with that? Because that would be my concern is that potentially, not all disclosures are subject to a balancing test. Thank you.

JANIS KARKLINS:

Your understanding is correct. Brian?

BRIAN KING:

Thanks, Janis. I was going to actually say something similar to Mark and then also that if we wanted to clean this up a bit, this concept might be captured in C. That, to me, is processing data and compliance with applicable law. If we want the specificity, we

could combine those two or we could just get rid of E. I'd probably be happy either way. Thanks.

JANIS KARKLINS: Thank you. Hadia?

HADIA ELMINIAWI: I actually find E redundant because we do say in C, "Must process data in compliance with applicable law." So if the law requires a balancing test, it would be carried. If it requires any other kind of test, like a necessity or a purpose test, it would be carried as well. I don't know why we need here to point out one test that leave out the others. We point here the balancing test, what about the necessity test? What about the purpose test? It's redundant and missing many information because if we are to include one part, we need to include the others as well. But I'm fine with leaving it if everyone else would like to have it, but C covers that. Thank you.

JANIS KARKLINS: Okay, thank you. Let me take further reactions. Of course, there is, I think, possibility to merge C and E. But let me take first Amr, and then Alan Greenberg.

AMR ELSADR: Thanks, Janis. Yeah, I don't think this point is redundant. I think it is helpful, in a sense. Yes, alright, we agree that this is included within the context of applicable law. But the reason why it isn't redundant is because, I believe, that it is up to us now to provide

as much implementation guidance as we deem helpful when this policy moves on to GDD and an Implementation Review Team.

I would imagine that if we agree on this now, that the balancing test is within the scope of applicable law, that we will spare the Implementation Review Team the need to come up with this on their own. I think any guidance we provide at this point now would be helpful to them, and to the process overall. So, I would think it would be a good idea to leave it in there. Thank.

JANIS KARKLINS: Okay. Thank you, Amr. Alan Greenberg?

ALAN GREENBERG: Thank you very much. I actually find this as a useful addition. We have spent so much time and effort talking about the difficulty of the balancing test, and as Alan Woods' analysis of his existing ... His historic case log showed that the balancing test is not necessarily going to be something that's done all the time. I believe he said he had never had to perform a balancing test, even though he has released data in many cases.

So, I think it's important to qualify the balancing test with "if it is required by law," because it's not always required. The message we got earlier in the process was, "It's going to be the critical issue," and clearly, it's not. So, I find it useful to keep it. Thank you.

JANIS KARKLINS:

Okay. Thank you, Alan. Look, I did not hear anyone objecting to subpoint E, although I heard that it may be redundant. But redundancy does not necessarily mean that that goes against what we have said somewhere else. I remember when I went to school, I was always said that repetition is the mother of knowledge. So, maybe we can say the same thing twice. If that is helpful, and would meet concerns of some, and others could live with that, that would be away forward. So, I would suggest that we take off square brackets, and we retain the proposed text in subpoint E, as no one has objected the text.

So, thank you. Let us move to f. “The entity disclosing the data, where required by applicable law, must provide mechanism under which the data subject may exercise its right to object, with proper substantiation, to the disclosing entity’s assessment of the balancing test/disclosure.” So, that is attempt to capture the result of a rather [labored] discussion we had in the first reading. Brian?

BRIAN KING:

Thanks, Janis. This is Brian. One concern about the language here is that I think in a ... Maybe I’m misunderstanding, but a common sense question of how would the data subject exercise its right to object to the disclosing entity’s assessment of the balancing test, after the balancing test had been done, and the data was disclosed? It seems like at that point, then the data subject’s rights would need to be enforced with the requestor of the data, because the discloser would have already done the disclosing. How would that work here? Thanks.

JANIS KARKLINS: Thank you for the question. If someone has an answer, please be prepared to voice it. Margie?

MARGIE MILAM: I just don't understand this section, and where it's supported under GDPR. My suggestion would be to ... If it comes from GDPR, then track it. Track that language. But I don't believe that GDPR talks about the data subject challenging the balancing test. So, yeah, this whole section's confusing to me, and I think needs to be clarified.

JANIS KARKLINS: Okay. Thank you. Is there anyone on the team who can clarify how that would work in practice? So, if that is unworkable, can we maybe delete it? Amr?

AMR ELSADR: Thanks, Janis. I wouldn't delete it yet. I hope we can maybe do some more work on this. But it's a fair question that Brian asked. I think Margie's last comment was probably correct as well. At least to my knowledge, I don't think the GDPR explicitly says that a data subject may challenge the outcome of a balancing test, or what kind of assessment resulted from conducting one. But the GDPR does make allowances for data subjects to object to certain processing of their data under certain conditions.

So, maybe we might need to think about what exactly is within the right of a data subject in GDPR, to maybe tweak this subpoint a little, and also think about some of the practicalities involved. I

don't think we would want to recommend something to the GNSO Council, where there is no practical implementation we can think of. But if it's okay, I think it would be a good idea to just hold onto this for a little while, and maybe give it a little more thought. Thank you.

JANIS KARKLINS:

Yeah, thank you. Maybe we can do it slightly differently, Amr. Maybe we can delete it here, but taken out, and maybe provisionally open a new building block, saying "the rights of a data subject," or something, provisionally. And then, put this f, as it stands now in records, in that building block. And then, somebody maybe can think—and I'm thinking specifically to those team members who are experts in data protection issues—and come up with something workable, how the data subject could interact with SSAD.

I think that there might be situations where a data subject needs to be informed that his personal data is enclosed, and then there might be cases where the data subject will never be informed that his data is disclosed. And then, based on those two options, how the data subject could potentially interact with the system. And I see you are in agreement with me, that we could take it out here and put it in a provisional building block called "rights of data subjects." And then, see ... And I invite data protection experts to think about and come up with some kind of a first draft. I see Brian's hand is up. Brian?

BRIAN KING:

Yeah. Thanks, Janis. Alan Woods beat me to it in the chat, that this really would depend on who the data controller is—so, the data subject’s rights under GDPR to challenge processing that’s already happening, or to challenge the processing of the data that’s in existence at any point in time. So, they would take that up either with the registrar, presumably, who has the data, or the data controller that has it, or the data requestor, who ends up getting it. That’s where the data subject would exercise their rights.

I think, if we’re all in agreement, that this doesn’t belong here, but might belong in a different section of improvements that we need to make to information that’s provided to registrants, or some other place. I think that would be good. Thanks.

JANIS KARKLINS:

Okay. Thanks. So then, we’re deleting this from this section, and we’re moving it to a new building block, provisionally called “data subject rights.” And we will come up, hopefully with the help of somebody, how that could be implemented in the system, or how that would be designed in the system. Thank you.

Let us move now to subsection G. “The entity disclosing the data must disclose to the registered name holder—data subject—on reasonable request, confirmation of the processing of personal data relating to them, per applicable law.” Brian?

BRIAN KING:

Thanks, Janis. I think the one concept that we talked about, that is missing from g is that ... Nope, it’s in j, what I was going to say. Just kidding. Thanks.

JANIS KARKLINS: Thank you. Please keep kidding. So, any ... Marc Anderson?

MARC ANDERSON: Thanks, Janis. I was going to say something similar to Brian. G and j, I think, are closely tied. The registered name holder should be able to request notification of who's requesting their data, but there needs to be a carve-out for law enforcement in cases where confidentiality is necessary. I think these two need to be more closely tied, either as part of the same subsection, or at least next to each other.

I'm also wondering ... This may also be closely tied to the one we just talked about—the ability to object to processing your data. The one sort of logically flows from the other. You need to know what processing of your data is occurring before you can, from a practical standpoint, object to any processing of that. So, there may be a relationship there as well.

JANIS KARKLINS: Okay. So, you're suggesting that we either merge or put one after other. But though, as I see, h also is linked to the same issue—the rights of data subject. "The entity disclosing the data, where required by applicable law, must provide a mechanism under which the data subject may exercise its right to erasure." Alan Greenberg? Alan Greenberg, your hand is up.

ALAN GREENBERG: Sorry. I was muted two different ways. Sorry. I'm a little confused. I thought that there was a mandatory requirement in GDPR to notify someone when their data is released to a third party. Is that the case, or is it only that notification must be given when a request is made, as described in the current item we're looking at?

JANIS KARKLINS: Any authoritative to Alan's question? Becky?

BECKY BURR: My understanding is that you'd have to disclose ... During the registration process, registries and registrars would disclose that this information may be disclosed to a third party, and the circumstances under which that would be done. But once there is a clear disclosure of that, there's no ... You wouldn't have to do it every time.

JANIS KARKLINS: Okay. Thank you, Becky. Alan, you are now ready to continue?

ALAN GREENBERG: Yeah, just briefly. There have been a number of things we've done in the past, which implied that—and people were talking about procedures where—on disclosure, we would have to notify the subject. If that's not the case, then I think we may want to go back and make sure that we didn't inadvertently put that in somewhere where it didn't belong. I thought we had discussed that before. Just a note to staff, as we're going through it, to make sure that we

don't have a reference to the disclosure on a per-disclosure basis.
Thank you.

JANIS KARKLINS: Yeah, I understand, Alan. Thank you very much. May I ask staff simply to verify that, in the chapters or points we have closed, there is consistency with this particular aspect of GDPR? Alan Woods, please. Alan Woods?

ALAN WOODS: Sorry. I had the double mute as well. Sorry. So, I'm going to ask [a question] just to give Alan [a little more support there]. [inaudible] that they can request at any time during [inaudible]. I think [part of this] is that if you [inaudible]. It's kind of like [inaudible].

JANIS KARKLINS: Alan, sorry. I do not hear you very well. You're breaking up. Could you try to speak closer to microphone?

ALAN WOODS: Sure. Is that better?

JANIS KARKLINS: Not really, but try.

ALAN WOODS: I'm going to have to disconnect. I think that I'm having issues with my phone. I'll [put the text] into the chat.

JANIS KARKLINS: While Alan is trying to change his mode of communication, let me see whether the j, as such, the way how it is now reworded and crafted, is acceptable. “Any system designed for disclosing of non-public data to law enforcement authorities must include a mechanism for implementing the need for the confidentiality of disclosure requests associated with ongoing investigations. For example, a law enforcement agency may exercise its right to compel the entity disclosing the data to keep the disclosure request confidential while the investigation ongoing, and the system must allow for this.” Any objections to this type of provision? I see none.

JAMES BLADEL: Janis?

JANIS KARKLINS: James?

JAMES BLADEL: Yes. I’m sorry. Just a question here, because I can’t really follow the edits, so I apologize. I also stepped away for the first part of this conversation, so I’m throwing myself on the mercy of the group if I’ve lost the thread here. Is this ... “system includes a mechanism for ...” So, my question here is, if there is law enforcement request for non-public data, and that request includes withholding notification to the data subject that they are being investigated by law enforcement, then I feel like that needs

to come out of SSAD and go through whatever due process the jurisdiction provides for.

In the US, there's some Fourth Amendment stuff. Whether we go into the EU and other jurisdictions, it just feels like there's ... It feels like we're punching a hole in due process. I apologize if I've completely missed the boat here, but this SSAD system that we're developing is meant to sit on top of the legal superpowers that law enforcement has. I think this is one of those instances where they should actually use their authority to get a warrant—their authority to get all other types of court-ordered or authorized searches—and not come through SSAD. That's just my opinion. Thanks.

JANIS KARKLINS:

Okay. Thank you. Let me now see ... Chris? Maybe you can clarify, Chris.

CHRIS LEWIS-EVANS:

Yeah. Thank you. I have a slight problem with this, and I can see where James is getting hung up a little bit, and frankly, agree. We obviously have those due processes. But realistically, where we are looking to use this data is at a very early stage. For example, if I needed to use those abilities to compel GoDaddy, I would have to get an MLAT, which would take a number of months for that to come through. Really, what we're trying to do here is to put a hold on that.

This is where the example, then, I think maybe doesn't help with that. What we would ask for is the right to ask for a company not to disclose the data, because we are undergoing an investigation.

There are lots of times when we go to a contracted party, we may get told no. We have to ... It's certainly within the Dutch law where, if they're asked, they cannot hold that back. This is made known to us, so we can factor that into investigative strategy.

So, really, we want to have that ability, and to start the conversation along those lines---having the ability to be able to do that. And if a contracted party is willing to offer that to law enforcement, I think that should be provided, just to cover off that delay in passing due process over international boundaries. Thank you.

JANIS KARKLINS:

Thank you Chris, for clarification. James, followed by Mark SV.

JAMES BLADEL:

Yeah, thanks. James speaking. I appreciate that, Chris. I don't want to be insensitive to law enforcement doing these other things—getting a court order, getting a warrant. These things—enforcing an MLAT—they take time. They take resources. They're slower, but they're there for a reason, and if our objective is to balance the rights ... We can't have this effort be 100% focused on the ease and convenience of access to the data. If the situation requires that the data subject not be notified, then it feels like it doesn't belong in this system.

That is a more important—perhaps urgent ... I really can't speak to that, but it feels like that is a clear-cut case where we need a warrant or a court order. I agree that in those cases where this is an informal investigation or preliminary investigation, then we

should have a speedy mechanism like this SSAD system to get that information to law enforcement. But it should also be part and parcel with notifying the data subject that they were subject to that inquiry. I just don't see those as separable within this system, because then that feels like we're stepping all over their rights.

Again, I don't want to sound insensitive. I don't doubt for a second that it would be useful and convenient for law enforcement to not have to go through those due process requirements, but they're there for a reason, and I don't think it's our remit to create a bypass. I'll drop it, though. Thanks.

JANIS KARKLINS:

Okay. Thank you, James. Mark SV?

MARK SVANCAREK:

Unfortunately, I think I disagree with James on everything he just said. It's always been my position that, within the SSAD, that we have an ability to designate things as confidential, and designate things as urgent, as opposed to nonurgent. My opinion doesn't change on that. Regarding Brian's statement about logging, I think even law enforcement needs to be logged. We could figure out how you do that in a secure fashion, but everything needs to be logged. Otherwise you can't audit it.

My real question is just a practical one, which is if we're not doing law enforcement through the SSAD, where are we doing it? Is that a different PDP? That doesn't sound very practical to me. I think that there has to be one SSAD, and law enforcement is part of it, and we just find a way to denote when things are being treated

slightly differently than other things. We have people attesting to who they are, and that being verified in credentials. We have people asserting their legal bases. It's not that much more complicated to say, "Oh, by the way, this is part of an ongoing investigation. Use the other logging mechanism."

On the issue of notifying the data subject, I would go back to what Becky said, which is the same understanding as mine, is that we are disclosing at the time of collection to people that certain types of processing are likely or possible to occur, and that there are certain types of people to whom data may be disclosed. We disclose that in a fulsome manner at the time of collection, and this whole issue becomes much more manageable. So, I have to say, I have great concerns about what James is proposing. Thank you.

JANIS KARKLINS: Okay. Thank you. I will take two, and then I will make a proposal. Alan Greenberg and Chris Lewis-Evans. Alan?

ALAN GREENBERG: Thank you very much. I've said a number of times that I think everything should go in through the SSAD, but I don't believe that every decision is going to be made by the SSAD. There are going to be some decisions that have to drop down to a local authority, either because the registrar has data that no one else has, or in the case of law enforcement. If the SSAD can have tables built in where it understands the jurisdictional relationships, and the MLAT arrangements, and the all those kind of things, that it knows

that a request from the US to the UK is something that should be handled automatically because there is an arrangement, it may be done by the SSAD.

But more likely, it's going to be one that's going to have to drop down to the contracted party to make a decision on, "Do we honor this kind of request from this particular organization or not?" So, James may be right that in many cases, it may well drop down to the registrar. On the other hand, we may be able to build some sophistication to handle common type requests—certainly ones from the same jurisdiction as the contracted party—that may be handled completely automatically.

In terms of logging, I think there's no question it has to be logged, but the log entry's going to have to be flagged, saying, "If the data subject makes queries to the controller saying, 'Who has accessed my data?' then clearly, the law enforcement one would be omitted, and it wouldn't be reported because it was flagged as confidential." Thank you.

JANIS KARKLINS: Thank you, Alan. Chris, you're the last one.

CHRIS LEWIS-EVANS: Yeah. Thank you, Janis. I just want to clarify one point. I know James didn't ... Don't think he was going down this path, but we're really not trying to bypass due process here. With all the requests, due process has been properly followed to make the request, and all the necessity and [proportionality] checks have been done our side. To Ayden's point, we're not trying to fix

MLATs. MLATs is recognized process and, yes, they are slow. But we're not really trying to fix that here.

What we're trying to do is produce a system where we can access the data correctly and come up with a disclosure for the logs that we're keeping on those requests. Having a system where certain logs have a higher bar to being released, I don't think is any different than having a bar where certain data has a higher bar to being released to certain people. So, yeah. I just think if we can frame our discussions in that point, it would be really helpful. Thank you.

JANIS KARLINS:

Thank you. Look, let me ask one question. James, are you not still convinced with the explanations that Chris provided, that j is something you could live with?

JAMES BLADEL:

No, I'm still very uncomfortable with the direction this is going.

JANIS KARLINS:

If I may ask you, James and Chris, if you could find the time simply to have a conversation, and see what would be the way forward on j specifically. May I ask you to engage?

JAMES BLADEL:

Yes, I'm willing to help. Sure thing.

JANIS KARKLINS: Okay. Please, James and Chris, talk through. Try to find the solution. We will, for the moment, put j in brackets, and we'll wait for your outcome of your conversation and possible solution. I really want to ... Because we're a bit slow today again, I want to move forward. But Amr, your hand is up.

AMR ELSADR: Thanks, Janis. I'll make this quick. I just wanted to ask if I could also be included with the small team working on j.

JANIS KARKLINS: Yes, for sure. In that case, I will ask staff to facilitate with a possible conference call, if three of you, or if somebody else wants to join, talking through j issues.

AMR ELSADR: Sure. Thanks. Just wanted to also go on the record to say that I share some of James' concerns, especially in the scenario where you have a registrant/data subject requesting data on how its personal data is being processed—whether it would actually be legally compliant for the entity performing the disclosure to withhold information concerning law enforcement.

I think disclosing the information without notifying the registrant is one thing, but withholding information about the disclosure at a later date when the data subject requests the data ... I don't think those are exactly the same things. I think this is something we do need to work out a little. Thank you.

JANIS KARKLINS: Yeah. Okay, good. If I may ask staff to organize this j conversation by end of the week, that would be great. Ashley, you want to join in? Ashley?

ASHLEY HEINEMAN: Yeah, I'm sorry. I won't drag this conversation on any further. I would just think ... I would be surprised if there wasn't some standard practice for how this is handled in other circumstances, so perhaps there's something that we can look at there. Anyway, happy to continue the conversation.

JANIS KARKLINS: Thank you. Staff will announce this specific call on this specific topic, and everyone who wants to join will be able to join. But James and Chris will take the lead. Thank you. Let us move to k. Volker?

VOLKER GREIMANN: Yes. Just a brief note that I would like to enter into this. Notification is fine and good, and there may be legal requirements in this case. However, when I look at comparable cases, I don't always see a legal [justification] to notify. For example, if an ISP is asked who has been using a certain IP address, they certainly do not inform their customer that they have provided the information law enforcement or a third party. There may be cases where this is required, but there may also be cases where it is not required. We shouldn't try to create obligations that do not exist in law.

JANIS KARKLINS: Okay. Thank you. Let us move quickly to k. K suggests that “the entity disclosing the data, where not prohibited by the law, must disclose non-public data for data subjects that are legal persons.” Brian?

BRIAN KING: Hey, Janis. Thanks. This came to me in a dream last night, so I’m sorry I didn’t update the Google Doc in time. It occurred to me that we’re still redacting privacy proxy data for unaffiliated privacy proxy providers—so, if a registrant transfers a domain, and his old registrar is privacy proxy data is still there. That’s probably captured with “legal persons.” Most privacy proxy services are legal persons. But it’ll be good to be explicit here, and just call out ... We can tie it to accredited privacy proxy data, I suppose, but it’s probably better just to say privacy proxy data would also fall into this category where the data has to be disclosed. Thanks.

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

MARC ANDERSON: Brian may recall in Phase One, one of our recommendations is that affiliated privacy proxy data would not be redacted. So, I think that’s not applicable here. It’s already covered by our Phase One recommendations.

JANIS KARKLINS: Sorry, Marc. I didn't understand, but maybe others did. Somehow, you suddenly disappeared. Marika's commenting, there is a item that was deferred to priority two. Okay, Volker?

VOLKER GREIMANN: Yes. Thank you. Not going to open the entire legal versus natural person debate here. However, even the bracketed clause here is probably not appropriate. If we address this at all, we should focus on data that can be clearly identified as not containing data of a natural person. Even the legal person's data can contain a natural persons' data. So, I think by reframing that, we can avoid some part of the discussion here. Basically, just focus on the data, not the data subject itself. Thank you.

JANIS KARKLINS: Okay. Thank you. Amr?

AMR ELSADR: Thanks. Yeah, I totally agree with what Volker just said. Similar to some of the discussions we had in Phase One, the focus should be on the data itself, because that's what's protected under data protection laws. It's the personal data of natural persons, not natural persons and legal persons. So, if there is personal data of a natural person in the registration data of a legal entity, then that should still be protected.

I also wanted to draw attention to one thing here—the use of the word “must.” I think we have previously discussed some concerns where there are some legal entities that may require or be

warranted protections, such as religious institutions, or battered women's shelters—those sorts of things. Having a policy recommendation here that does not distinguish between different types of legal persons I think is problematic, in terms of having a clear-cut and non-negotiable requirement to disclose this data.

In certain cases where ... And the conditions that I'm describing, these wouldn't be issues necessarily pertaining to trademark violations, or anything relating to SSR, but they're different sorts of situations. I would like to see some leeway in this subpoint, where it's not a very definitive requirement, where the disclosure must take place, and would be happy to follow this up at some point, as well. Thanks.

JANIS KARKLINS: Okay. Thank you. I will take Alan as the last speaker on this point. Alan? Alan Greenberg?

ALAN GREENBERG: Thank you. Regarding AMR's points, on the issue of personal data associated with a legal person's registration, I think we have a question we are suggesting asking our legal counsel, as to whether it is the responsibility of the registrant to take responsibility, if they put private personal data in a legal person's registration, or if it's the contracted party's. That's up for grabs at this point, and it's not clear. We know there are some European entities that take the former position—that it's up to the registrant to decide whether they have clearance or not for personal data.

On the issue of carve-outs for legal persons that require some level of protection, I think we've already said—or I've suggested, anyway—that we should look at existing laws in various jurisdictions and see if we can come up with some language to cover those. Thank you.

JANIS KARKLINS:

So, thank you. We have 20 minutes remaining, and I really want to get to the next point. Volker suggested in the chat something that seems getting some traction. I would like to ask staff to see whether that is something, could be replaced and used in k. In any case, in this building block, we have a few items which are pending and will be square bracketed. I would suggest that we square bracket all those where we need further work, we clean up the rest, we publish that data, and we take conversation offline. I see Volker's hand is still up. Volker?

VOLKER GREIMANN:

Sorry, very old. Sorry. Ignore.

JANIS KARKLINS:

Okay. Thanks. So, I would suggest ... We have in this paragraph d, then j and k, that needs further input. But I understand that we are comfortable with the rest, and that Secretariat will clean up all track changes, and will post next version on every point that has been agreed. The remainings will be revisited online until we will be able to come to closure, and we'll then close building block completely.

With this, I would like to go to next agenda item, which is the criteria and content of requests, the second reading, and see whether we can close this building block. Can I get the building block a on the screen? We had first reading. We had comments. Comments have been incorporated in the text, and now building block reads, “The EPDP Team recommends that, consistent with the EPDP Phase One recommendations, each SSAD request must include, at a minimum, the following information.”

Then comes the list of following information that needs to be included. “A, domain name pertaining to the request for access/disclosure.” Any issue? No issues. “B, identification of and information about requestor, including the nature/type of business entity or individual, power of attorney statements, where applicable and relevant.” Margie?

MARGIE MILAM:

Hi. Sorry, you moved too fast. I want to make sure that item a doesn't preclude reverse lookups, since we're still having those discussions, and haven't concluded that issue. If we could somehow address that in some way ...

JANIS KARKLINS:

Okay. Any comments on Margie's request? Okay, let me note this. Any issue with b? No issue with b. With c? “Information about the legal rights of the requestor and specific rationale and/or justification of the request—what is the basis or reason for the request? Why it is necessary for the requestor to ask for data?” Marika?

MARIKA KONINGS: Yeah. Thanks, Janis. Sorry I was a bit slow on the hand-raising. I just wanted to flag that on b, Brian left a comment there to also add, “including the requestor’s accreditation status, if applicable.” Just wanted to make sure that everyone had seen that. If there are no concerns about that, we’ll go ahead and add that.

JANIS KARKLINS: Yeah. Thank you, Marika, and thank you, Brian. I think that’s very logical, because if we have an accredited entity requesting data, then of course the accreditation data will be already pre-submitted or known. I understand that there’s no objection, no concerns. Okay. Thank you.

Let me see. With, c, everything is fine. It’s all kind of common sense. With d, “Affirmation that the request is being made in good faith.” There was a comment that this maybe is unenforceable, and how will we know that? But I think that that good faith concept is well-grounded in legal systems and in international relations, or in business relations as well. Any issue with subpoint D? Brian?

BRIAN KING: Hey. Thanks, Janis. This is Brian. Just to address Ayden’s point there, I think what we can require here in the SSAD is a representation or affirmation that the request is made in good faith. And then, in the agreement, like the AUP or whatever the requestor has to agree to, I think, is where we could probably get Ayden a little more comfortable there. Thanks.

JANIS KARKLINS: Thank you. So, you suggest that we take a mental footnote, saying that there might be some explanation given in implementation guidelines, how that good faith would be interpreted. And I see that there is some comments suggesting that good faith ... Or consider [type] the language closer to GDPR requirements—a list of data elements required by the requestor, and why the data is strictly necessary, and are no broader than required.

Actually, we're getting now to subpoint F. No, actually it will be e, but now on the screen, it is listed as f. "A list of data elements requested by requestor, and why the data elements requested are adequate, relevant, and limited to what is necessary." I can answer on reverse lookups. I will come back to it. For the moment, we are on current f on the screen. Is this something we can accept? No objections? Then, for some reason, it is mentioned as subpoint A on the screen. It should be f in the sequence. Anyway, but the text is "agreement to process lawfully any data received in response to that request." Volker?

VOLKER GREIMANN: First of all, I agree with what is going to be f. I just thought back to number c, and I think we should be requiring that the information that's provided should be specific to the domain name that the information's being requested for, simply because of the fact that the way that we currently see the complaints that are coming in, sometimes we get these pick and choose type requests, where the complainant comes to us and says, "Look, we have a dozen

trademarks. Here's the list of trademarks, and one of those trademarks is being violated by the domain name. You choose."

That's not sufficient. They have to be specific complaints to the specific domain name, and they have to tell us which one, how, and why—not, "You figure it out." That's simply not being enough. It has to be specific information that's sufficient for the discloser to make an educated decision, and perform the balancing test in a good way, so we don't have to think for complainant what the complaint might actually be.

JANIS KARKLINS: Isn't that "each request should be unique and specifically formulated," and that is something that we have agreed already at the beginning of this meeting?

VOLKER GREIMANN: I think we should point to the specificity and the clarity of the request as well. I'm not sure that the language that we agreed upon covers that sufficiently.

JANIS KARKLINS: Yeah, okay. May I ask, in light of Volker's comment, staff to look up and maybe see whether this particular subpoint C could be tightened up with the language that we have already agreed on specificity? Then, I would suggest that we put that specific suggestion for silent procedure, and try to agree. I see Volker's in agreement. I hope that others also would be in agreement. Thank you very much.

And then, “the objective of this recommendation is to allow for standardized submission of requested data elements, including any supporting documentation.” I think that that is simply explanatory sentence, explaining why this building block is suggested.

With the exception of what was subpoint C on the screen, which will be tightened up by Secretariat, in light of our previous conversation, that will be put for silent procedure for 24 hours. And if silent procedure will not be broken, I consider then that this building block would be provisionally closed—provisionally. We will see what edits need to be done, if any, depending on further developments.

On to reverse lookup. There was a discussion, and then we have one procedural point raised by Thomas that that is not in the charter, and this is not a charter question. Probably, we can spend hours going back and forth discussing this issue. Let me suggest the following on reverse lookups. Indeed, that is not specified in charter. That is not a feature of the WHOIS, but that is introduced as a service—as a facility. But we have diverse opinions whether SSAD should contain a reverse lookup, or any reference to reverse lookup, or policy recommendations or not. I understand that.

Nevertheless, since some group members are wishing to take this issue up, and at least discuss and see whether we can come to any kind of conclusion, can't we spend some time and try to see whether any reasonable operational consideration could be given to reverse lookup from one side? And put that question explicitly to community when initial report will be published, suggesting that

reverse lookup issues in SSAD are subject to comments by community, whether that is needed or not. Then, depending on the reaction of community, we can see what the policy recommendations could or could not be. So, that would be my proposal. Amr, your hand is up.

AMR ELSADR:

Thank, Janis. As I said, in the chat, I spoke to this a few calls ago. My answer to your question would be no. I tried to explain this previously. We're conducting an expedited policy development process right now, which means there was issue scoping phase to this process. The GNSO Operating Procedures, the PDP manual, so forth—the ones relevant to EPDPs—specifically prohibit any EPDP—not just this one—any EPDP to address issues that have not previously been scoped in a GNSO process.

Reverse lookups, Boolean searches, and a few other of these features were included in the Registry Agreement under Specification Four, if I'm not mistaken. I think that was the right specification. But these were never the result of any GNSO policy development process. The issues have never been scoped before, and so these need to be addressed in a proper policy development process, where the issue is scoped properly, and where the community has the opportunity to provide input on the scoping of the issue.

Addressing this in an EPDP should be something that not just this EPDP Team cannot do. It should be something that the GNSO Council should not be able to ask us to do. So, I really think this is something we shouldn't go anywhere near right now, and I think

this is a discussion that the GNSO Council needs to take over. We should really stick to what we've been formally scoped to achieve. Thank you.

JANIS KARKLINS:

Okay. Thank you. Is there any way that you can change your opinion? We are simply trying to find the way forward without having any definite answer, but indicating that certain issues may go beyond the scope of the exercise. But since there is a certain operational justification for those, we have been addressing it. Now it's up to community to yea or nay. I see Volker's hand is up. Volker?

VOLKER GREIMANN:

Yes. Thank you. Maybe a compromise position on this is that we do not prohibit it, as in we do not require it. We mention that it is a possibility that a registry operator can offer, if not prohibited under applicable law, and be done with it. That leaves the door open for registry operators to offer it. That leaves the door open to make an implementation for it, that a registry operator can opt into, and anyone who doesn't want to do that just doesn't implement it on their side. That would work for at least ... I haven't discussed it with my other colleagues, but I think that would work for us.

JANIS KARKLINS:

Yeah. Okay, thank you for your suggestion. Suggestion is by Volker. Look, we are now exactly at the top of the hour. We need to close the conversation. But let me leave you with the suggestion of Volker, that we explicitly do not forbid, and then let

every registry/registrar to implement the way how they deem appropriate.

We will revisit this issue during next call, and see whether Volker's suggestion ... I'll ask Secretariat to put that reminder in the agenda of next meeting. So, please think about that suggestion, and we will revisit it at the beginning of the next call. But we will not spend too much time in discussing if there will be [inaudible].

Thank you, and I thank everyone for active participation. The action items will be published. We don't have any more time to read them out. But thank you very much, and we will meet again on Thursday. So, thank you very much, and have a good rest of the day. This meeting stands adjourned.

VOLKER GREIMANN: Thank you!

TERRI AGNEW: Thank you, everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines, and have a wonderful rest of your day.

[END OF TRANSCRIPTION]

