
ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Thursday, 05 September 2019 at 14:00 UTC

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TERRI AGNEW: Good morning, good afternoon, good evening, and welcome to the EPDP phase two team meeting taking place on the 5th of September 2019 at 14:00 UTC.

In the interest of time, there'll be no roll call. Attendance will be taken by the Zoom room. If you're only on the telephone, could you please identify yourselves now?

Hearing no one, we have listed apologies from Mark Svancarek, James Bladel and Ashley Heineman. They formally assigned Steve DelBianco, Sarah Wlyd and Laureen Kapin 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 behind their name in parentheses, add their affiliation, dash, alternate, which means you're automatically pushed to the end of the queue.

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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 the way of the Google assignment form. The link is available in all meeting invite e-mails.

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

FARZANEH BADIEI:

Yes. Thank you, Terri. I just wanted to update the group about my statements of interest and change of employer. I have left Internet Governance Project at Georgia Tech and moved to Yale Law School as a research scholar and a Director of Social Media Governance Initiative.

I am not representing my current employer by any means, and everything I say is in my personal capacity and representing NCSG unless otherwise stated. Thank you very much.

TERRI AGNEW:

Thank you, Farzaneh. And if you do need assistance updating your statements of interest, please e-mail the GNSO secretariat and we'd be happy to assist. 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. With this, I'd now like to turn it over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS:

Thank you very much, Terri, and hello, everyone. Welcome to the 17th call, and last before our face-to-face meeting in Los Angeles.

I now see on the screen the suggested agenda of the meeting, and I want to see whether there are any suggestions from any of the team members in relation to agenda.

Actually, I have one, and if you don't mind, we would take item six, preparation for face-to-face meeting after housekeeping item three. I see no objections. Then we will follow this proposed agenda. Thank you.

Let me now move to housekeeping issues. First is legal committee update. I know legal committee met on Tuesday, and if I may ask León if you could give us an update on progress in the discussions.

LEÓN SANCHEZ:

Thank you very much, Janis. Hello everyone. The legal committee met again this week, and we discussed the different questions that we have on the queue, and we basically submitted the first batch of questions to Bird & Bird. They in turn returned to us with a couple of clarifying questions. We have sent the clarifications to Bird & Bird and we will be, of course, waiting for them to get back to us with answers later this week so that we can take advantage of their advice while we hold our face-to-face meeting in L.A.

We have also continued to discuss the emergent questions. We discussed the question posed by Farzaneh in terms of the balancing test. There has been legal advice already provided by Bird & Bird to this end. What we agreed to do in the legal committee was to have a look at this previous advice, how to perform the balancing test, and if we agree that that advice could answer the general question of how to perform a balancing test, then we will of course come back to the plenary and provide that information and the interpretation from the legal committee.

If we find out that that information is not enough to inform our discussions, then we will of course try to draft a question that helps clarify the question raised by Farzaneh.

We have also other questions that have been further analyzed and discussed. We have some team members engaged in doing some homework to refining for example questions 11, 12 and 13 and so on, so we will be providing you with updates after the L.A. meeting, but we will be standing ready to assist anyone in our discussions during our face-to-face meeting. So that would be the update, Janis.

JANIS KARKLINS:

Thank you, León. Any questions from the team on the update? I see no hands up, so looking forward to receive Bird & Bird's input and answers to those questions that have been sent out. Thank you for that.

The second housekeeping issue is letter to CEO of ICANN about a few questions that the team put together, so I thank those team

members who contributed to that reflection and formulation of questions.

I must say it was a technical glitch that I did not put team on CROSS-COMMUNITY when I sent the e-mail to Göran. It was simply omission, and then I rectified that by forwarding e-mail I sent to him to the team. So my apologies for not putting immediately the team on CC.

So I received answer from Göran, which was not the one I expected. It was much shorter than I expected, basically saying that he's busy with the preparation of the board retreat, which is taking place either now or starting tomorrow, and therefore, he is not able to provide answers by the time I solicited, and that is by today. And he's looking forward to conversation with the team during the face-to-face meeting. And in that respect, I think I forwarded his answer also to the team list.

So that's the situation with the questions. So we will have a meeting with Göran during the face-to-face meeting, so we will ask the same questions and then we'll engage in conversation with him.

Any comments, reaction on this subpoint? I see none. So then let me now move to item three, and that is face-to-face meeting. Staff circulated questions to the team members asking them to prioritize issues related to zero or outline in zero draft as well as ask to see whether any of team members would be willing to contribute to initial writeup of some issues where initial input is still needed.

And if I may ask, Marika, if you could walk us through a little bit the results of the survey that we can feel the sense of the team. Marika.

MARIKA KONINGS:

Thanks, Janis. I just posted in the chat the survey results, and I'm also happy to share my screen if Andrea stops sharing hers. So you can also follow along.

Up front, I want to say thanks all for bearing with us. We are using a new survey tool, and I know that basically looks slightly different from what you may have been used to, and I know there were some issues in not getting a confirmation screen at the end of the survey, which I think confused some of you or worried you that the results were not received, but fortunately, I think all the input is captured here, and I think it's probably more user error that you didn't get a confirmation page, and staff will look further into how we can make the survey experience with Clicktools a better one.

But here you can see – and it may be easier for you to scroll along in the document I shared with you in the chat room that aggregate results of the responses we received. [inaudible] This is version three, because by the deadline, I think we only had two responses and several trickled in after that. So we received input from the GAC, the registrars, registries, NCSG, IPC, BC and SSAC who provided their input on the survey.

I know, again, this is maybe not too helpful to look at all the colors here and the percentages here. I think what you should look at is basically in the last column, the mean results and focused on the

lowest number there which is basically the policy principle that was flagged as having the highest priority in face-to-face discussion.

I think as you can see here, it's a bit of a mixed bag. Most of the scoring is quite close together, which would probably mean that there's not a real priority, or maybe some bucket of items that are deemed more important versus others, while I think comparatively, if you look at the building blocks, there's a clear indication of preference if you look at the scoring.

So again, leadership team had a brief call prior to this call to quickly look at that and this information will of course be used to build the schedule and focus our conversations. For example, I think you can see here very clearly, and I think that was also maybe already clear from the previous call, that there's clearly a priority to discuss authentication, authorization and accreditation, but also other topics that scored highly in that regard.

Of course, we'll be looking as well to the comments that were submitted. I think looking at topics we missed, I don't think there was anything specifically called out, but again, focus on open questions that were not discussed in that regard and may want to call out as well that the list we circulated looking for volunteers to put forward or start a draft on some of these topics can be further considered.

So I think that's it in a nutshell. The survey results – and again, these are really intended to kind of help inform developing a schedule for the face-to-face meeting.

JANIS KARKLINS: Thank you, Marika. So, any questions at this stage? Brian King, please.

BRIAN KING: Sure. Thanks, Janis. I guess, dumb question, what does it mean? How are we going to prioritize, and how are we going to spend our time? Thanks.

JANIS KARKLINS: Brian, I think we need to address all of them. Prioritization is needed simply to indicate which is seen by the group as maybe which are either more important or less developed, or need more time to be worked on. So ultimately, we will visit all the blocks because we need to agree on all of them.

as a result, my current thinking is – and I cannot exclude that this may slightly change as, let's say, work on the program progresses, but we would start with a kind of general overview and then seeing whether we as a team see conceptually the SSID in the same way. I would start with a brief presentation now, and we have already names of the building blocks and how they fit together and what is the correlation between them.

So then we would see whether we can agree on that conceptual framework of the SSID, then we would start addressing building blocks that are seen as highest priority. Whether that will be purposes, legal purposes, or that will be accreditation. So again, [one of the most likely.]

Then we will go to the meeting with the CEO and Strawberry team, because that is essentially for our further conceptualizing of SSID and threshing out several options, because remember, when we started working on SSID, we kind of agreed that though we know that it will be consisting from certain number of building blocks, but what will be the shape of interaction, whether that will be centralized, decentralized, compulsory, voluntary, all these things, that we agreed that we would discuss at a later stage. And for me, conversation with the CEO will be important contribution to that reflection, what shape SSID may take.

Then we will continue working throughout first and second day through building blocks and policy principles. Again, maybe today is a bit premature to give you exact schedule, but most likely, if that would be agreeable, I would put initial proposal out maybe Saturday that you can look at it, and again, we will be able to modify it in every way, and probably, I will ask you to react if you have violent disagreement on anything that would be proposed, that you tell, because – in writing, that you tell us, because we will be working the whole Sunday fine tuning the program of the face-to-face meeting.

So that is more or less my idea at this stage, and it evolves as we speak even. I see Milton's hand is up. Milton, please go ahead.

MILTON MUELLER:

Yes. Hello, everybody. Just in terms of planning this program, I think it would be better to define objectives, things that need to be resolved, in sequence, and not so much saying "We're going to spend an hour on this or two hours on that." I really think that the

arbitrarily set time blocks have proved to be a bit of an obstacle. And I know that at some point we have to limit how much time we spend on things in order to make room for other things, but on the other hand, I think in terms of setting the agenda, the priority should be and the guiding structure should be based on objectives rather than time slots. Just a suggestion for you.

JANIS KARKLINS:

I'm buying it, Milton. Thank you very much for the suggestion. We will certainly follow your advice. Any other comments, questions, suggestions? I see none.

Then as we agreed, I will try to offer you outline of the program sometime on Saturday, European time, and then please feel free to send in reactions prior Sunday, L.A. time, when we will be working on the agenda and sequence of bringing items up so that we can factor in whatever hard feelings you may have on the initial proposal.

So if that is agreeable, then we can move to the next agenda item if I can see it on the screen, and that is the second reading of the use case, investigation of criminal activity against victim in the jurisdiction of the investigating EU law enforcement agency requesting data from a local data controller. So that's it.

I understand that there hasn't been further reactions or comments on this case. Who was holding the pen on that? If you could indicate yourself. Sorry that I'm asking this. Last time, I wasn't present in the meeting. Chris. Chris, maybe you can tell a little bit about the progress on this case.

CHRIS LEWIS-EVANS: Yes. Thanks, Janis. I think as we covered last time, this is obviously very similar to the other LEA user case, and I think it's just there to help discussions around different jurisdictional bases.

I should mention there's no comments, so I am at a bit of a loss what to say about this other than what was said last time. So I don't know if we want to go through section by section and see if there's any massive problems with this or whether we can just move on. Thank you.

JANIS KARKLINS: Okay, Chris. Thank you. Let us then quickly do that. On subsection A. Subsection B. Any points on subsection B? Subsection C? No requests? D? No requests? E? F? G? H? I feel like at school repeating the alphabet. I? So no requests? J? No requests? K? L? Brian.

BRIAN KING: Thanks, Janis. Sorry, you were doing such a great job with the alphabet. Sorry to interrupt. If we can go back up to I, I had a question.

JANIS KARKLINS: Let's go back to I.

BRIAN KING: I wonder. Oh, no, maybe it was J. It was accreditation.

JANIS KARKLINS: Accreditation, J.

BRIAN KING: Yeah, I had a question about “No method of accreditation exists which adequately includes all the lawful bodies.” Should we, or could we, make a note here that it might be possible to start with a national authority in some case and then have a government either through their GAC rep or through some way kind of say yes or no that this law enforcement body is or is not a real law enforcement body in any given jurisdiction?

I wouldn't want to bail on that concept entirely, not making a firm policy position here, but I don't want to disagree with the author of the use case, but I think that such a thing might be conceivable. Thanks.

JANIS KARKLINS: Thank you, Brian. Amr?

AMR ELSADR: Thanks, Janis. Would it be okay if we scroll real quick back up to section E?

JANIS KARKLINS: Of course.

AMR ELSADR: There's a reference in that section to article 2.2(d) of the GDPR. I'm not an expert, of course, but the reference here is kind of contrary to my understanding of this article. My understanding of the article, of 2.2(d) specifically, is when a public authority is conducting the processing itself. So in that case, the public authority would be the controller and/or the processor. But the reference here seems to suggest that the public authority as a third-party would still have this article as an applicable one in this use case. I'm not confident that that is correct, but I would be happy to be corrected if I am mistaken. Thanks.

JANIS KARKLINS: Thank you, Amr, for question. Chris, you have two now.

CHRIS LEWIS-EVANS: Thank you. I'll [inaudible] with Brian's first. Yes, if it is just badged law enforcement officers and national agencies such as the FBI or whoever could act to authenticate others, but realistically, that process doesn't exist at the moment, and wouldn't necessarily include people like, I suppose keeping into the States, IRS and whether they could authenticate all of those. So I'm just saying at the moment that process doesn't exist, but it doesn't mean we couldn't set one up. And then to probably echo what Allan said, yeah, getting the GAC to do the accrediting itself I don't think is probably possible.

And then to go to Amr's thing on section E, this section was for the lawful bases that the requestor is processing the data. So because the requestor in this case is within the same jurisdiction

as the controller, they would be a known competent authority and their processing is for an investigative purpose, therefore it does comply with GDPR 2.2(d).

So it is just for the processing that the law enforcement agency in this case is carrying out, and because they are in the same jurisdiction and can be known to be a competent authority, then this would certainly be the case. I hope that answers the question.

JANIS KARKLINS: Thank you, Chris, for answer. Alex Deacon is next.

ALEX DEACON: Thanks, Janis. Just one question, perhaps an inconsistency. I notice in D you list 6.1(c) and 6.1(f) as the legal basis, but then in section G, safeguards applicable to the entity disclosing the nonpublic registration data, the sixth bullet down, "Must define and perform before the processing of balancing test."

As far as I understand it, that balancing test is only required for 6.1(f) and wouldn't be required if the legal basis is 6.1(c), or may not be required. And again, I know we have kind of the requesting legal basis and the legal basis of the disclosure. I'm wondering if there needs to be clarification there. Thanks.

JANIS KARKLINS: Thank you, Alex. Chris, what's your reaction?

CHRIS LEWIS-EVANS: Thanks, Alex. That's a good catch. Maybe it shouldn't be a "must," it should be ... If the legal basis is 6.1(f), then must define. So I shall have a note as a change to that.

JANIS KARKLINS: Thank you, Chris. Any other questions, reactions? So if not, then with these small amendments that Chris indicated he would make, can I conclude that we are satisfied with the use case and we could move to the next one? I see Sarah's hand up. Sarah, please.

SARAH WYLD: Yes. Thank you. Hello. We didn't go all the way through the alphabet, I think.

JANIS KARKLINS: No.

SARAH WYLD: If you could scroll down, I had a comment for section O. Thank you.

JANIS KARKLINS: Of course. So we got to J.

SARAH WYLD: I can wait until we get to O then.

JANIS KARKLINS: Yeah. May I ask to scroll down the text? So we got to J. No, we got to L. Okay, now M. With the L, we're done. M? And now, Sarah, it's your turn. We're on O.

SARAH WYLD: Thank you. Yeah. So I do just want to flag that in a situation like this where we may need to contact external counsel to resolve a complex request, it might take more than two business days. So I do appreciate that this use case has been updated to indicate it could have an agreed time scale other than two business days, I just wanted to flag that for the team as a possible concern. Thank you.

JANIS KARKLINS: Thank you, Sarah. I think it's already taken into account, "Or agreed time scale," so if need be, more time can be spent on that. Milton?

MILTON MUELLER: Yes. Just curious, do we have an accepted and well-understood definition of what we mean by automation of substantive response?

JANIS KARKLINS: I think we have intuitive understanding of that, but let me ask Chris.

CHRIS LEWIS-EVANS: No, I don't think we have had that discussion yet. There's obviously different understanding of automation. We still haven't had the discussion on how you do, or if it is possible to do, an automated balancing test. So that's why the two are in there. If there is an ability to do automation, then obviously, we would expect a response in line with any other sort of computer system checks within seconds. And then if it's not possible, then we're down to the manual side and time scales as [inaudible] for the manual.

JANIS KARKLINS: Thank you, Chris. You have Milton's [advice.] I think one of the tasks would be to strive to automation if we're looking in the scalability of the system. But whether that is feasible or not, of course, that remains to be seen.

So, any other comments now on P? No hands up. So then Chris, if you could modify those few things that you said you would, and I would then suggest that we put this case aside as one we have examined and found acceptable, and move to the next one.

The next case is to identify owner of abusive domains and other related domains involved in civil, legal claims related to phishing, malware, botnets and other fraudulent activities.

Who will be introducing the case?

MARGIE MILAM: Hi, Janis. I will introduce that on behalf of the BC.

JANIS KARKLINS: Okay, Margie. Please go ahead.

MARGIE MILAM: Thank you. And I think as part of the agenda, I think some of the questions are, how does this differ from the SSAC use case we covered last time, SSAC 3, I believe it is? So the actual purpose relates to the investigation, detection, prevention and bringing civil claims for abusive domain names.

And where I see a difference between the SSAC use case and this one is that the SSAC use case deals primarily with the investigation and the mitigation side of it, in other words the technical aspect of it. But this use case also includes bringing civil claims for abusive domain names. As happens in the case of attacks, you'll oftentimes be successful in taking down abusive content, but the domain name may still exist and that bad actor may still be out there doing other nefarious things.

So the user groups that are identified in this use case are law enforcement, operational security practitioners, and anti-abuse authorities. That's where I see a little bit of difference.

I also see that SSAC use case is dealing mostly with criminal-related investigations, and this one is pulling in the civil side. Fraud can be both a crime and a civil claim where you may want to pursue penalties, damages against the bad actors. So the use cases are that.

Should I pause after each thing, or do you want me just to kind of walk through what I see as the differences and then open for comments?

Maybe it makes sense to indicate the most significant differences from SSAC case. As you suggested, they are similar, and I believe that there might be significant differences. And then we'll go subsection by subsection.

MARGIE MILAM:

Okay. And then I think in B, this is probably common in both use cases, that the nonpublic fields, even if they're inaccurate, often give us leads to be able to identify the miscreants and the network of operators that are operating these abusive domain names. So I think that's probably similar.

The data elements under C that would be disclosed are the registrant name, e-mail address, phone. It's basically all of the data, because the concept here is you're using the data to correlate, to identify other malicious domain names that might be linked to a particular network or bad actors.

The lawful basis for disclosure, I think it's very similar to what we talked about in the past, and I believe that we're still waiting for legal analysis related to the applicability of some of these.

The one thing that I think I highlighted here that we haven't discussed before is that the establishment, exercise and [defense] of legal claims are actually recognized under GDPR as an exception for certain types of categories of processing.

So if you take a look at Article 17, Article 18(c), even the right to object, Article 21, they all reference the fact that when you're trying to establish, exercise or actually defend against a legal claim, that that's recognized as an exception for some of this processing.

And then in E, one of the concepts we've introduced here which I don't think we've talked about was the use case with SSAC is that if we're talking about being able to have access or this ability to do this correlation, you need to have some sort of trust [inaudible] accreditation that's been verified. This is not something that's open to anyone, and it actually needs to be carefully monitored, because it is talking about access at a greater scale because of the ability to correlate.

In F, some of the safeguards I think are very similar to ones you've talked about before. They must process the data in compliance with the data protection laws, must only request current data, must direct the request to the entity that is determined to be responsible, and must provide representations about the use of the data and be audited. So that's basically the same, I think similar to SSAC's use case.

Down in G, if we could scroll down, please. The entity disclosing the data would only supply the data if they have [returned] current data. There was a monitoring requirement, and the concept here is that the requests are more than just one-off lookups. There could be data for multiple domain names as it may be related to the network that's being investigated.

And then in H, the safeguards, I think this is similar to what we've talked about in the prior use cases. It's basically tracking the language in GDPR as to the rights of the data subject. So if you could keep scrolling down past H.

I, similar to what we have already talked about. Only current data, contracted parties are responsible for disclosing the nonpublic data for the domain names under their management.

Under J, we've given some thought to what could be involved in the accreditation. We believe that the individuals and entities seeking accreditation should agree that use of the data is only for legitimate and lawful purposes. We would need some terms of service in which the lawful use of the data is described. We would need to have terms that relate to preventing abuse of the data, including the accreditation if there's abuse.

One of the concepts I think we'd like to really perhaps talk about in Los Angeles is that because this is a unique use case where you would have fairly substantial access to a higher volume of domain names because of the investigative needs, you'll need to have some sort of financial requirements, so proof of financial worthiness to justify the access such as a bond or a letter of credit, insurance, maybe enhanced accreditation fees.

So there would be some reason, some way to hold the party that has access like this accountable, and you know you're dealing with someone who seems financially worthy to be able to take on those responsibilities.

And then I think the rest is pretty much similar to the SSAC one. You'd be providing all the information, all the registration data and the domain names that are responsive to the request, automation is desirable and possible. Information under P would only be kept for no longer than necessary for the purposes for which it was processed. And I think that's the overview.

JANIS KARKLINS:

Okay. Thank you, Margie. Let me ask team members, do you have any question of systemic nature in relation to this use case? Before we're going subchapter by subchapter. I see no hands up. No, there is one. Amr.

AMR ELSADR:

Thanks, Janis. I'm not sure if this is a systemic comment or if it's one that is specific to the purpose of this use case. I also have to admit I didn't catch everything Margie said towards the beginning, so I'll try to listen to the recording or read the transcripts at some point before commenting on this use case in the Google doc.

But it seems to me overall that this use case is still one that can kind of be divided between the first SSAC use case that Greg presented and the law enforcement use case. I'm not sure I'm seeing ... If we're thinking about this purely from a use case perspective, a third party that is seeking disclosure of data, and I believe it would fall into one of these two categories, we can kind of split that into them, I'm not sure I'm seeing anything additionally unique to this use case that isn't applicable to the other two.

But again, I think I do need to relisten to what Margie said earlier, and probably revisit this at some point. Thank you.

JANIS KARKLINS: Thank you, Amr. Thomas?

THOMAS RICKERT: Thanks very much, Janis. Maybe this is a systematic question, but as I mentioned in the chat, I do think that this use case deserves a discussion while we're together in L.A., because it seems to take a different spin on the concept of such model as such, because this doesn't seem to be, at least for me, an accreditation base. There seems to be monetary compensation in place, and I thought that we would strictly look at who has a legal basis for requesting data and that those would then get access or be disclosed data on a need-to-know basis and not on a "can afford to pay for it" basis.

So I think I do have issues with this one conceptually as well as with the SSAC one, because it will be so difficult to make a demarcation between those who actually deserve accreditation for what they're doing and those who just claim to be in that group, such as a security practitioner or not.

So I've been racking my brain to find ways to come up with potential bodies that could help with the accreditation of those groups of requestors, and maybe team members could think about that as well, so hopefully we can have a meaningful discussion about this in Los Angeles. But at the moment, this use case – and I'm sorry to say that – creates more questions for me than it provides answers.

JANIS KARKLINS:

Thank you, Thomas. But actually, that is the reason why we're using use case method, to understand what are those difficult questions that we need to get our head around and find the answers. And you're right, so this case, apart from everything else, points to need to see whether for the purpose of facility, we would use any kind of categorization of requestors, or we wouldn't. And if we decide to propose that there should be some categorization, then what those categories would be so that we can try to identify what would be those categories and then what type of accreditation would theoretically be possible for each of the category and how that would look in practical terms. So that's the whole range of questions that, for me at least, this case indicates.

So Margie, please. Your turn.

MARGIE MILAM:

Investigations. If you look at the tasks, one of the things that [Greg Aaron] had put in is that there's a referral to law enforcement, and what this use case is really talking about is where companies are trying to protect their own networks and taking action to protect their users and their customers. So it's more of a civil investigation and process versus a criminal one.

And in terms of describing security practitioners, Thomas and I have had discussions about this at the legal subcommittee. There are certainly ways where you actually can identify them. There's

laws in Europe that do a decent job of defining some of these categories.

For example, the NIS directive talks about what might be covered as a digital service provider or operator of [digital] services. You could look to the EU Copyright Directive. There are also definitions there of an online content sharing service provider. And even GDPR itself in Recital 49 talks about the kinds of activities and the kind of companies that would need to do these kinds of activities.

So there are ways we could get to defining it, and I do agree it's something that we really haven't had a chance to fully flesh out and discuss as a team, and I think it's one that would be ripe for discussion in Los Angeles.

JANIS KARKLINS: Thank you, Margie. Milton's hand is up. Milton, you're next.

MILTON MUELLER: Yes. I just wanted to ask Margie, the more I hear her talk about this use case, the more it seems to me that she's proposing essentially an access fee for large players which would effectively give them the same kinds of access to WHOIS data that they had in the old WHOIS, that because of the automated business here, we're looking at immediate and automated responses, we're looking at a reverse lookup.

I just see this use case as sort of presenting a recreating of the old WHOIS, and I'm sure she's going to tell me that's not the case, but

what exactly is the difference if we're talking about automated, immediate and reverse lookup, and all of these things?

JANIS KARKLINS: Margie, please.

MARGIE MILAM: Sure, if I may reply. There is a difference, Milton. In the past, you could do a search based on – without linking it to – you could have basically the entire zone file, right? What this is, this is tied to specific activity. So if for example you have a domain name that you know is already ... You have to start with an event that's involving an abusive domain name, and then you're branching off of that. So the vectors of search are limited to something that is tied to the actual event that you're investigating. So you're not getting access to the entire database and searching it randomly for any domain name that was registered, which was something that could have been done in the past. You're searching and your queries are specific to fields that relate to a known abusive domain name. So that's where I see it being different.

JANIS KARKLINS: Thank you, Margie, for your clarification. Greg Aaron.

GREG AARON: Thank you. Just as a note, one of our jobs as a working group is to understand our options that are within the law. Understanding

law and figuring out what's possible or allowable and what's not, so forth.

Figuring out legal options that are within the law is not the same thing as the old WHOIS or completely open WHOIS. Thanks.

JANIS KARKLINS: Thank you, Greg. Volker is next.

VOLKER GREIMANN: [inaudible] absolutely brand new WHOIS service that never had been part of the regular WHOIS service provided by contracted parties before, which is searchable WHOIS in search for certain vectors, certain elements of WHOIS, then getting an output of other domain names. I don't think we should be, as part of this group that's trying to first fix what we have, start looking at adding functionality to old WHOIS, but rather, see what we had and how much of it we could bring back.

I think adding new functionalities is something that we could look at, another working group down the road once we have a working system. Going into this now I think is just serving to derail is and it's costing us time that we could be using to recreate as much as we can.

JANIS KARKLINS: Thank you, Volker, for the comment. Margie?

MARGIE MILAM:

Sure. If I could reply to Volker, we're not asking for new functionality. This is functionality that's actually possible in the new gTLD program. So that's one of the things that can be included in the specification on WHOIS.

So this is something that – and we can certainly ask staff to the extent that any of the existing new gTLDs included that in their base contract. I don't have familiarity into whether that was done. But it was certainly a possibility in the new gTLD program.

So this is nothing new. It is something that was done in the industry, and a lot of the investigative work that is done by security practitioners was based on this reverse functionality. So I don't think that it should be off the table. I think it's something that we should at least understand the legality of it as Greg Aaron indicated, and then we see how the policy could accommodate this type of access.

JANIS KARKLINS:

Okay. Thank you, Margie. So I see that there is an active exchange in the chat room, so probably, Margie, you need to use that when you're thinking about editing the case, but now I would suggest that we go maybe quickly subsection by subsection and see those elements that we know may cause some concerns. So, shall we go up now?

So to A, I think that is more or less straight forward. B, any particular comments, concerns on B? On C? Are we in agreement that if disclosure's granted, it should be basically everything? Sarah?

SARAH WYLD: Yes, thank you. I note that for the technical contact – sorry, are we on section C? Yeah, so for the tech contact, the postal address would not be used for a tech contact anymore, so that should probably be removed. Thank you.

JANIS KARKLINS: Thank you, Sarah. Marc?

MARC ANDERSON: Thanks, Janis. I just want to point out the third bullet point under C, other domain names linked to the registrant's data contact fields. This gets into reverse WHOIS lookup, which is problematic, and I think that's something we've previously said is out of scope for this phase, and putting it in here I think would be a problem.

JANIS KARKLINS: Thank you, Marc. Hadia?

HADAI ELMINIAWI: It's a quick comment with regard to A, with regard to the groups. We say here anti-abuse authorities. And maybe because then you're saying that this case is very much similar to the SSAC case number two, maybe detailing the anti-abuse authorities – and maybe the difference lies in here between this case and the other cases. So I just wanted to note that. Thank you.

JANIS KARKLINS: Thank you, Hadia, for the comment. Brian King?

BRIAN KING: Thanks, Janis. I would disagree with my colleagues with concerns about the third bullet point. I don't think that I'm going to be able to persuade them, so maybe we ask for legal advice. I think it's legally sound to think that if you obtain contact information for a domain name that's doing something bad, the ability to identify other domain names that are associated with that identical contact information would be perfectly fine. And I know there are plenty of concerns about that here, which I think are probably reasonable too. So maybe that's RIPE for legal advice. Thanks.

JANIS KARKLINS: Thank you, Brian. León is not on the call anymore, but maybe Caitlin can sort of capture that element and bring that to attention of legal committee.

Matt.

MATT SERLIN: Thanks, Janis. I just want to respond to Brian real quick. I think the point is it's not a question of whether or not it's legal or not, so I don't know that we want to get outside legal advice on it. I think the point is – this is what Marc said, and we've stated previously – that this is not an existing ICANN policy.

Reverse WHOIS wasn't something that went through the ICANN policy development process. It's not a consensus policy. So I think

the point that we're trying to make is that it's out of scope of our work here. As Volker said, it very easily could be something that becomes a policy development process in the future, but I don't think it warrants getting outside legal advice, because it isn't something that is currently existing in the ICANN policy process. Thanks.

JANIS KARKLINS: Thank you, Matt, for clarification. Let me take Brian first, and then Margie. Brian?

BRIAN KING: Yeah, thanks, Janis. I don't think any of this is an existing policy, and what we're trying to do is replace the old WHOIS, which we understand was not legal, but did allow for the types of activity that we're talking about here to exist in a way that was effective. I think we're trying to replace that with something that is legal that retains as much of that effectiveness as possible.

So this is all new, and I don't want to rule that out. Just because it wasn't done before in an official ICANN capacity doesn't mean that it couldn't be done now. Thanks.

JANIS KARKLINS: Thank you, Brian. Margie?

MARGIE MILAM: Yes, Brian covered a lot of what I was going to say, but we certainly do not agree that it's outside of the scope of this. This is

part of the safeguards, part of the parameters of building the system, and to the extent that [there becomes] someone like ICANN or someone under contract with ICANN to provide the SSID, it's something that they would develop, not the contracted parties.

So I think that's something we have to keep in mind, that it's completely within scope, it's within our charter. We understand that there's issues others have raised, but I think that we shouldn't be afraid to ask the question of the legality under GDPR, because I think if the answer to that question is, "No, you can't do it," then that takes the issue off the table. But I think it's short sighted to not at least ask the question so that we could address the issues that are in the use case and the ones presented by the SSAC in the prior one.

JANIS KARKLINS:

Okay. Thank you, Margie. Brian, I think that's your old hand; right? Yes. So I do not see any further requests, so we then can leave C for the moment and go to D, lawful basis. Allan Woods.

ALLAN WOODS:

Thank you. Obviously – I know Margie said that we're pending multitudes of legal advice on this one, however, I think in the strongest possible manner, everything except 6.1(f) here is likely to fall foul of any interpretation of the law. So just to get that on the record. I won't waste more time.

JANIS KARKLINS: Thank you, Allan. Any reaction from business community? Margie?

MARGIE MILAM: Yeah, I obviously disagree with Allan, but I'm eager to hear the Bird & Bird opinion on the other bases that we identify here. And I think we haven't, as a group, talked about the establishment, exercise or defense of legal claims raised in this part of the section. So that's something that I think would be great to get Bird & Bird advice on.

JANIS KARKLINS: Thank you. Any further reactions on D? None. E? F? Safeguards, F. G? Brian.

BRIAN KING: Actually, I had a question about F. I think I have a bit of pause about the last bullet there about representations of the use of the data, which I can only see the last – there we go. I think we would support this if it's representations that you'll use the data in compliance with GDPR or data protection principles. As we mentioned before, we wouldn't support an interpretation of this bullet that means you have to represent that you're going to take legal action or that you did, or anything like that. So I would just note that for clarification. Thanks.

JANIS KARKLINS: Thank you, Brian. Okay, no further requests. G, safeguards. Brian again, please.

BRIAN KING: Sorry, old hand.

JANIS KARKLINS: Okay. Sorry. Volker?

VOLKER GREIMANN: Yeah, so I was a bit slow raising my hand. I still wanted to respond to what Brian said earlier with regards to last bullet point on F. I think that is kind of the question here, and that's part of the core of what we should be deliberating maybe, because if you are representing that you are requesting the data for a certain use, which may be initiating or investigating legal action, if [you're not intent on] taking that action, that might be an indicator that you have [inaudible]

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

VOLKER GREIMANN: Sorry. Is this better?

JANIS KARKLINS: Now it's better, and please don't move and talk.

VOLKER GREIMANN: Yeah, my mobile is going on strike, maybe. I was just saying the last bullet point is basically part of the question that we should be asking ourselves. I don't necessarily disagree with Brian, but I have some concerns here which are that if you're representing that you're using the data for a certain purpose, which may be initiating a lawsuit or doing investigation, and then not following through with that, that might be an indicator for abuse as you would be accessing the data for a different purpose than what you had said you would be accessing it for.

So I think that is certainly something that should be monitored and therefore be part of the safeguards.

JANIS KARKLINS: Okay. Thank you, Volker. Brian, new hand?

BRIAN KING: Yes, new hand. Thanks, Janis. And I agree with Volker to the extent that it could be an indicator of abuse, but I think it's not a very good one and it would be nearly impossible to monitor in all jurisdictions whether any lawsuit was filed pertaining to the domain name, and the potential for prejudice to the requestor in such a case is really high. Again, we mention this during the in-person meeting, so I won't repeat all the rationale, but hugely prejudicial to the entity that's processing the data to show that they had the data and have to show that they did something with it or did not. It's just way out of the realm of reasonableness. Thanks.

JANIS KARKLINS: Thank you, Brian. Chris Lewis-Evans.

CHRIS LEWIS-EVANS: Thanks, Janis. Just to respond to Volker a little bit there, I agree with what he's saying, and I think maybe a way of getting around this is you can't have data for a different purpose and then continue processing it. Within the safeguard, if we include a section about deleting the data once the outcome has been accomplished or if you no longer need it for the purpose dictated, I think that would help. So I think as Brian said before in the face-to-face, if they decide not to take court action for whatever reason, they are then required to delete it rather than keeping it or using it for another purpose.

So I think that would be a good safeguard to add. Thanks.

JANIS KARKLINS: Thank you, Chris. Brian again.

BRIAN KING: Yes. Thanks, Janis. The way that this is done in the real world is that you represent in your data processing agreement that you'll only use it for the stated purpose, and if it ever comes to light that that's not the case, then remedial action is taken. So that's really the best way to get this done. That's how it works in the real world. Thanks.

JANIS KARKLINS: Okay. Thanks, Brian. So we're still on safeguards. On F, I think we're done. On G, there are no comments for the moment. On H, there was a question what the highlighted area means, Margie, if you could clarify.

MARGIE MILAM: Sure. I believe the original language came from the very first use case we addressed, and I believe Georgios had included some language, and I just copied that and made some clarifications using the language in GDPR. So that's what this is related to.

JANIS KARKLINS: Okay. [Claro.] Questions on H? Comments? No hands up? Okay, let's move down. Safeguards on disclosure side, subsection I. Accreditation. So there were already comments at the very beginning of this subsection. So no specific requests for the moment on L. M. N, automation. O, P. So no comments for the moment.

Then I think we have reached the end of this first reading of the case. As was the case with the previous use cases, please provide your inputs if you wish so in writing, preferably by tomorrow, and Margie then will edit the case also outlining those comments that have been made during this call as well as indicating maybe areas of divergence of opinions expressed by the team, let's see that we can thresh them out at a later stage.

So we will certainly come up, if not to the case itself in Los Angeles, then to elements that we discovered in this case certainly will be discussed in Los Angeles. So with this, I would

see if there's anyone who wants to take the floor at this stage. So Any Other Business?

Chris Lewis-Evans.

CHRIS LEWIS-EVANS: Yeah, thanks. Just a quick question about Montréal, really. Do we have an idea of when we'll be having EPDP meetings when we're there, Just to get some planning done around [whether] we need to be there before or after. Thank you.

JANIS KARKLINS: Yes, Chris, we have some idea. We're meeting all Saturday, but maybe Marika or Caitlin can answer better than I. I don't remember exactly. But let me take Sarah first. Sarah, your question.

SARAH WYLD: Thank you. Hi. I have two questions. One is for the staff team for the face-to-face meeting. Just what are the start and end times for each day? I understand that a schedule is coming on Saturday, but if we could get the start and end times, that would be very helpful just for planning.

And my second question is for Margie. Just related to what we have talked about in the chat for the reverse search in the new gTLD agreements, we are looking at some – and I think specifically the base ICANN new gTLD registry agreement, and I'm just not finding the reverse search in there, so I was hoping

you could provide a more specific [statement,] please. Thanks very much.

JANIS KARKLINS:

Yeah. Thank you, Sarah. Let me tell you that we are working with the initial sort of start and end dates in mind that were circulated already, I don't know, a month, two months ago for the Los Angeles meeting. We would start every day at 8:30, and we will end about midnight. I'm joking. Officially, by 5:36.

And then we will have on Monday a social dinner, and then on Tuesday, it's individual planning, but as you know, that face-to-face work and conversation never ends prior to midnight.

And we are aiming at closing the meeting on Wednesday at 2:00 PM that people who want to catch the plane can plan to it, but not before 5:00. And at 2:00 PM on Wednesday, a [late lunch] will be served until 3:00, and then 3:00, the face-to-face meeting on Wednesday will be over. So that's the bigger planning elements for the face-to-face meeting.

When it comes to Montréal, I will ask Marika to give us some indications. Marika.

MARIKA KONINGS:

Thanks, Janis. I actually just posted it in the chat, the link to the draft GNSO schedule which outlines as well the EPDP team meetings that are currently planned for – you're correct in noting that we're currently planning a full-day meeting on Saturday, but there are also a couple of other additional slots that we've

requested throughout the week. I believe there's one Sunday afternoon. I think there's one on Monday, but we're still waiting there to see when the opening ceremony will be, whether it's in the morning or in the afternoon. And depending on that, our slot would move.

And I think then we have an additional one on Thursday as a kind of wrap up. Probably also important to flag that there is a high-interest topic session, or I think they're now called plenary session, that focuses on the EPDP. I think there are some conversations going on between the GAC and GNSO leadership as to proposals of that session to discuss how that should be organized and what the focus should be.

So the link should give you good indication. I do know that it's still work in progress as of course we're still waiting confirmations on some aspects as I mentioned at the opening ceremony for example, but I think at least the [Sunday] meeting is definitely set in stone.

JANIS KARKLINS: Thank you, Marika. Hadia, your hand is up.

HADIA ELMINIAWI: Yes. Thank you. I just wanted to ask if we could have an extension for the comments on the zero draft report. It should close today, so I was wondering if we could keep it open until tomorrow.

JANIS KARKLINS: We are ending 40 minutes ahead of schedule, so you have now 40 minutes dedicated time to file the comments on zero draft.

Now, of course, look, since we are volunteers, we need to try to adhere to sort of agreed deadlines, but of course, we will take into account every opinion that will be submitted at one point. So they may not be incorporated immediately because there's also a technological time for production of next version, and as we discussed that based on inputs that will be provided by team members, we would bring to Los Angeles 0.1 version of the draft, and we will aim at getting out of Los Angeles 1.0 version of the draft.

So therefore, please try to do what you can within agreed deadline, but if you cannot, then of course, we will consider your input at a later stage in Los Angeles. So Sarah, your hand is still up.

SARAH WYLD: Sorry.

JANIS KARKLINS: No worries. So then Any Other Business is covered. As you see on the screen, we are then meeting on Sunday with a glass of wine during the welcoming reception. So that will be also a chance to exchange views on proposed schedule and timetable.

I've mentioned we will send out an initial proposal Saturday. Please comment if you wish so that we can factor your comments into further development of the schedule during Sunday activities.

And then on Sunday, we will see all of you in the reception at the hotel, DoubleTree.

So with this, maybe we'll ask Caitlin to recap the action items for our benefit.

CAITLIN TUBERGEN: Thank you, Janis. I've captured the following action items. First, EPDP leadership is to provide an initial draft agenda by Saturday morning European time.

Following that, EPDP team members may provide feedback on the initial proposal of the agenda by 15:00 UTC on Sunday, September 8th, and that's so that any feedback can be factored in when the EPDP leadership team is further refining the agenda on the Sunday before the meeting.

Third, Chris Lewis-Evans is to modify the agreed upon changes to LEA 2 use case, and following these updates, the use case will be parked.

And lastly, EPDP team members to provide input in writing to Margie's use case by tomorrow, September 6th, and Margie is to edit the use case accordingly in advance of the face-to-face meeting as we will likely be discussing this use case in Los Angeles.

Thank you, Janis. Back over to you.

JANIS KARKLINS: Thank you very much. With this, I will join all those safe travel suggestions or wishes, and so see you all in Los Angeles on Sunday. This meeting stands adjourned. Thank you very much all for active participation, and staff for making this call happen. Thanks a lot.

ANDREA GLANDON: Thank you. This concludes today's conference. Please remember to disconnect all lines and have a wonderful rest of your day.

[END OF TRANSCRIPTION]