ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2 LA F2F Day 1-AM
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JANIS KARKLINS: I was hoping that there will be your traditional monologue. All those please raise your hands. Good morning, everyone. Welcome to our – second or third retreat? Second retreat. Before we start, we have a guest today, and our guest is Keith Drazek who is Chair of GNSO Council. Yesterday we discussed how should I introduce Keith and he said, "Please tell the team that I requested the meeting." So, Keith, yeah. I was quoting Keith. So, Keith, upon your request, welcome to our team meeting. You have the floor.

KEITH DRAZEK: Thank you very much, Janis. Good morning, everyone. Keith Drazek, current Chair of the GNSO, your friendly neighborhood GNSO Chair. I asked Janis for a few minutes this morning just to touch base with you all, just to provide some context around the work that you're doing in terms of timelines and deliverables and all of that. I'll just take a few minutes because I know you have a lot of work to do and I have to get to a 9:00 A.M. meeting back over in Marina del Rey with SO and AC leaders, a two-day meeting that's taking place this week.

Last week the GNSO Council met for three days for our 2020 Strategic Planning Session. The goal of that – and most of the time we spent among the GNSO Council – was discussing prioritization of work and the importance of ensuring that our PDPs, including this EPDP, are managed appropriately and conclude in a timely manner. We currently have two other PDPs – the RPM PDP and the Subsequent Procedures PDP that have been going on for four years, approximately, and as we're learning in the last several weeks, are looking like they're probably going to be extending their timelines another four to six months, which is pretty troubling to the Council and I think not good for ICANN and the multistakeholder model.

My reason for being here today is a couple of things. One, I want to thank you all very, very much for the time and effort and commitment and all the work that you've done up to this point. It's clear that if you didn't care about what we were doing with this PDP and trying to develop a standardized system for access and disclosure that you wouldn't be here and that your groups wouldn't be continuing to support the work that you do in the background. I recognize how much time, energy, and effort has gone into the work that you've done to date.

That said, I think we all understand that the original plan was for you to be producing a final report by April 30th and that we had initially or we had hoped to have an initial report coming out of the Montreal meeting. Now, understandably, and you have the full support of myself and the GNSO Council coming out of Montreal. It was clear that you weren't ready as a team to publish the initial report. There was some expectation and hope that there might be some additional input

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perhaps to be received from a Data Protection Authority or Data Protection Board. There were discussions that took place during the sort of EPDP sessions, related sessions that sort of raised some questions. So I think it was perfectly reasonable for you not to publish an initial report in November, but we are now essentially on the clock for publishing an initial report by February 7 and we're not going to miss that date. Whatever you all can produce in terms of a proposed model in terms of an initial report, something is going to be published on February 7.

So these three days that you have together are really, really important time to put your best foot forward. And that's not to say that everything in that initial report is final because it's not. I mean, it's really just the starting point for this next phase to be able to get input from the community, potentially from other DPAs or from the Belgian DPA or Data Protection Board. I'm just here to encourage you to do as best you can in terms of finding consensus this week, these three days, to put your best foot forward in terms of that initial report. Again, it's a starting point, it's not the end state. We have time to continue to adjust and to work towards consensus around a final model or a final proposal in the final report in terms of developing consensus policy language.

A couple of other observations – and I'll be brief and try to wrap up here, I know you all have a lot of work to do – there is no FY21 budget for the EPDP. The target date for publication of the final report is currently June 7. There's no money in the budget after that. Also, as I'm sure you all know, Janis is essentially not available after the end of June, so we can't go past June under the current leadership structure and all of that.

So, I think really, I'm just asking you to do everything that you can to make sure that we meet the timelines that are before you and to, as I said, put your best foot forward in terms of coming up with a model that you could all support at least at a conceptual level. The details will still be worked out. If at the end of your three days there are things that you or your group disagree about, make a note of that. We can capture that or you can capture that in the report and basically say, "Okay, we're going to go forward with this, but I (or this group or whatever) just want to put a marker down," and say, "We have concerns about this or we disagree with this, but we're going to put it out and get public comment and get feedback on that."

Finally, I'll just wrap up by saying you need to try to get as close as you can coming around a single model for public comment because if it changes substantially or significantly after the public comment period, there's going to have to be another public comment period, which extends the timeline hopefully unnecessarily.

So I just want to be here and say thank you for your work, encourage you to work together, find consensus, and recognize that that February 7 deadline is a hard and fast deadline, something is going to be published, and that will give you the opportunity to focus on some of the priority two items while the initial report is out for public comment. That's my message. Thank you for hearing me out and good luck this week over the next three days of your meetings. Janis?

JANIS KARKLINS:	Thank you, Keith. Actually, you said it well and maybe you want to take my seat.
KEITH DRAZEK:	No.
JANIS KARKLINS:	Thank you for being candid. This is a hot one. Jokes apart, we will be using during this meeting Zoom room simply to take everyone who wants to speak in order of raising hands. There's a one hand of Mark up. Mark Sv. So please, you have the floor. I believe it may be addressed to Keith.
MARK SVANCAREK:	Yes, don't run away, Keith. I'm a little confused by a couple of things, and hopefully you can clarify them. But first, a comment. I think if the optics of long PDPs is bad for us, I think saying we had to rush through this one and delivered incomplete because we screwed up the budget, I think that that will look equally bad, which is kind of what I said. We're out of money, whatever.
	I'm concerned about the details will be worked out somewhere else. Where is somewhere else?
KEITH DRAZEK:	If I said "somewhere else," that was a misstatement. What I meant was there's still an opportunity to adjust and fine-tune the details upon

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receipt of the public comments for the initial report. In other words, you have time after you receive the public comments to then do some adjusting based on those public comments. I mean, clearly, to the extent you can resolve or solve as much of the detail as possible now, that's great, but I'm just recognizing that perhaps there will be things where you still won't agree in full and that hopefully the public comments will provide some guidance to the group for the next phase of the next several months.

MARK SVANCAREK: Again, what's the next phase? Is that the IRT phase?

KEITH DRAZEK: You're putting out an initial report, there will be public comments, there will be a review of those public comments, and then essentially there's an opportunity for the group to continue to engage and discuss these things. You raised a good question, the difference between policy and implementation. So, if you start getting into the weeds of developing details, things that could cross into implementation, I would encourage you to focus on the policy framework that would allow the implementation details to be developed at the appropriate time. I am concerned that as you develop policy recommendations, to the extent they get into things that could be considered implementation, that could potentially delay your consideration in the work ahead.

MARK SVANCAREK: Yeah. My concern is for the opposite that anything that's not clearly laid out within the recommendations will then be interpreted by people who are not in this room and haven't been dealing with it, and sometimes those interpretations fold back into sort of policy realm and then at that point there's no one doing it. So that would be my concern. I understand the need to get as much detail into the report as possible but I am always concerned about the idea that the clock will run out and then we'll say, "Well, sorry, that's it. You ran out of time," because we didn't budget correctly. Thanks.

JANIS KARKLINS: Thank you. It's not just about budget, it's about also reasonable time to do the job. My observation, not from this process but other processes that I have led, is that normally groups take as much time as they are given to agree and they try not to agree if there is still time of doing so. It's a dynamic, it's nothing exceptional. Therefore, I think at the very beginning, we can discuss this and agree that we should try to put reasonable time limitation to this exercise and this is what we're trying to maintain an initial agreement.

I have another two hands up. Volker first and then Franck.

VOLKER GREIMANN: Yes. Thank you. I have two main concerns about the public comments, which is that we need to be very clear about what we want to have out of these public comments. I think we should be very clear in also directing the commenters what we want from them because, otherwise, we will get what we usually get in the public comments

which is either popularity contest with no concern for the agreements that we have here already and maybe the legal requirements that we have had to go a certain way or to certain crossroads. And the other one would be the regurgitation of arguments that we have here before again and again and again, which would also probably not be a very helpful comment if this has been discussed at length already. So we need to be clear of what we want all of these comments, and that's also a discussion that you might want to have here this week.

JANIS KARKLINS: Thank you, Volker. That is scheduled in the last day of the meeting, on Wednesday, on the way forward and how we will do. I understand that there has been a good precedent in the first phase where the public comments were asked to be focused and follow certain questions, not say a statement of overall opinion but rather specific related to each recommendation. Do you like it? Yes/no. If you do not like it, what concretely you do not like it? What would be your proposal? What would you like? Something like that. So that we have those comments very focused, very clear, and then if someone wants to write an essay at the end, one can do that. But of course, this we will discuss in the last day of our meeting.

Next is Franck.

FRANCK JOURNOUD: Thank you, Janis. I apologize for not being there in person just yet. I'm having a little bit of trouble finding the ICANN building. But anyway, I want to go back to something that Keith said a few minutes ago about

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the deadline for publication of the initial report. I apologize. I may very well have missed this part, but I thought it was a target. Certainly, let not anyone be fooled by the impression that – I'm a representative of the IPC – requestors certainly don't want to take a minute more than we absolutely need to [inaudible] PDP and to have a new system that we desperately need in place. But I don't want to also [be] operating artificial deadlines or ones that would make us act in haste and not do the work well.

So this – I think that's February 7 or something – date, is it a deadline? If so, who decided that it was a deadline and is that deadline an absolute deadline? Or can we take if we need to one more week, a couple more weeks, whatever, to make sure we get it right?

JANIS KARKLINS: Franck, this has been discussed a number of occasions. Last time it was in Montreal where we looked at all the options and timelines, so it's nothing new. It is self-imposed deadline that would allow us to present the final report at prior June meeting in Kuala Lumpur. So taking into account all the statutory periods that we need to observe for different parts of the process.

Of course, nothing is carved in stone, but as I mentioned, the group will consume as much time as is allocated and where comes a week or two, comes one month or two, and then comes one year and two, so then we're in eternity. So do we really want to do that? As much as I like all of you, I think that June is the good target for all of us to look at each other's eyes and say, "That's it."

Again, all this conversation is to mobilize and then create a very clear understanding that this is time really to compromise and to think about potential outcome, not to camp on the positions and say, "Maybe if we will continue discussing, we'll get a better solution." There is a proverb which I think goes that the perfect is enemy of the good. So let's try for good and that will be for initial report that will be good enough. Then we will still have a time to fine-tune the processes and policy recommendations based also on input from community.

I have next speaker, Stephanie, please.

FRANCK JOURNOUD: Oh, sorry, Janis. I'll just say thank you. I appreciate the clarification about the fact that it is self-imposed deadline. I think we should absolutely do our 100% best maximum to meet it. You're right. Let's not make perfect the enemy of the good, but I think good is what we need to achieve whether we meet the date or not.

Anyway, over to you, Stephanie. I apologize for following up.

STEPHANIE PERRIN: Not at all, Franck. Let us know if you need us to send out a search party to find you.

I just wanted to make a couple of points. I do agree that there's nothing like a deadline to focus the mind. We do have a default position now that appears to be legally compliant because we haven't had any registrars or registries being called before the Data Commissioners and we're well past the deadline for GDPR compliance. So we can bear that

in mind as we figure out what pieces cannot be resolved by this deadline I think, that the default position is working. I would just like to put that down as possible position to take.

As long as we're clear and do not attempt to – and I'm responding here to what Mark was saying – as long as we're clear and don't attempt to pretend that we have resolved issues, we're way are still at loggerheads. I think we can make progress and get quite a few things killed off. If anyone is asking us to concede points where we are adamant that it won't work in court then I'm sorry, we won't concede on that. So maybe we can all go home now. I don't know. I think we can defer for further deliberation.

I hate the idea of a permanent EPDP because I'm not sure where our next recruits are coming from. I'm looking back in my eyes at Stefan here but this has been a long haul and we're all tired. However, we have to distinguish between a never-ending PDP because people won't concede and won't come up with a policy that is reasonable. And an oversight committee of some kind – I hope Milton isn't listening and doesn't go nuts on me here – this will need to be fine-tuned on a regular basis and should, in my view, have oversight from the community from a multistakeholder perspective. It can't just be left to GDD and the contracted parties. So that is a separate piece, I think, and it is entirely possible that if we kill off the major pieces of the policy, those policy elements that we don't agree on could be punt to that oversight committee, and then to an implementation committee. But again, we can't punt the big policy bonds to the implementation committee. So I think I'm speaking for NCSG when I put that position on the table. Correct me if I'm wrong, folks. Thanks.

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JANIS KARKLINS: Thank you. We have the conversation about the model which will follow this introductory part and there we'll have opportunity to discuss different options, including whether any kind of oversight mechanism is needed in the years to come for implementation and running SSAD.

I now have Berry's hand up, and then Mark.

BERRY COBB: Just two quick points. One, this isn't a problem with the budget. In fact, we're trending below budget. The problem is that the funding from this is coming from ICANN's contingency bucket which shuts down on the 30th of June. That's why we won't have more funds available. And the Board was very clear that there wasn't going to be anymore funds available. If for any reason this group were to go beyond June 30 and you felt like you needed more legal advice or those kinds of things, we'd have to restart that whole process of getting approval for additional funds, which I can't speak for the Board but there's probably not a whole lot of appetite for it. Not to mention the resources required to get that part taken care of.

Secondly, just in terms of resourcing and probably to build up what Keith said, when we talked about changing the timeline in Montreal, I did a very first quick version helping you understand the competing resources that were going on outside of just this particular topic, this particular group. Since then, that model has been enhanced and it's called the super scary spreadsheet now. Somebody came up with the death sheet last night I think or something. It is really troubling and the

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problem is that there are other high priority topics. So what you're feeling now is this concept of prioritization which is a larger topic across the community that's going on. And so the point that Keith was really trying to make is that we have a couple of things that are running over which we're going to try to mitigate that but we do have several things in the pipeline of other important issues that require those resources. Thank you.

JANIS KARKLINS: Thank you, Berry. And also, clearly, remember our first meeting where many, not all groups, stated that this issue is urgent. I mean, the policy development is urgent because the current system is broken so that we need to find a workable solution, and here we are. So we need to find this workable solution. We need to make this effort and try to agree on initial policy recommendations by end of this meeting. Again, this is the time to compromise and to engage and talk with each other rather talk at each other. That sometimes happens. Mark?

MARK SVANCAREK: Thanks, Janis. I am enthusiastic about the model. There's a big chunk of the agenda marked out to talk about the model. But there's a topic which we haven't covered which is SLA. Everyone knows how I feel about discussing SLAs. We could talk about the model and every good model that we like but have something that delivers very slowly and is generally unenforceable to some extent, right? So that would not be an issue of the model at all. That would be a specific set of policy details that we really can't allow the clock to run out on. What I heard Keith

saying is, "Hurry up or the clock will run out and it will be your fault and whatever." I think it's very important then that we talk about that issue while we're here. Otherwise, it sounds like we're just going to fail regardless of which model we settle on. So I would just like to put out that point as we get started. Thank you.

JANIS KARKLINS: Thank you, Mark, and thank you for making … sort of bridged to the next sub item and that is agenda of this meeting. With the staff, we were thinking how to structure the conversation of these three days and we came up with a proposal that was sent out to all of you last night before the reception. I hope that you had the chance to look it through, but if maybe, Marika, if you want to very briefly walk us through this proposed agenda and see whether that is agreeable as a basis for work.

MARIKA KONINGS: Sure. Thanks, Janis. Good morning, everyone. I think it would be [inaudible] for one when you said that you want time to discuss not necessarily wordsmith but also have time to caucus with your group on possible agreements and recommendations, so we really tried to take that to heart in building the agenda, though at some point, obviously, the group will need to start looking at actual language that goes into the initial report.

So the proposal, it's basically a bit of a continuation from Thursday's discussion to further focus on the Chameleon model and really make sure that everyone is on the same page on what that means and what

that looks like and how that should look for inclusion in the initial report. So the proposal is to start out with a short overview of some of the high-level principles that staff basically drew from the proposal we shared with you last week. We would quickly run through that and then basically ask all of you to caucus with your group and basically come back to the table with an indication of whether your group can sign up to those principles. Again, we're focusing really here the kind of high level concepts. It's not about wordsmithing those because I don't think the principles will necessarily go into the report in any shape or form, but they will basically underpin how we then subsequently modify the recommendations in the report to align with those principles.

There's a little break foreseen as well and then we would have a little brainstorm on the mechanism for SSAD evolution. Quite a few of you already threw some ideas on last week's call. We had originally put in the proposal that met some resistance. We haven't written up anything new yet but we would like to hear from the group and have a discussion around what could that look like, what kind of safeguards would need to be put in place to make sure that it doesn't conflict or go against the PDP and contractual obligations or requirements when it comes to imposing the requirements on contracted parties. Again, this is more intended as a kind of brainstorm discussion around that and we hope to be able to take away some agreements from that that staff then can use to write up new language for that specific aspect of the proposal.

Then we hope to hear from the GAC on their proposed principles of accreditation for governmental bodies. I see Chris is already very excited about that topic. So I'm hoping that everyone did have a chance to look at that, but the opposite – Chris can basically walk people through it and

get some reactions. Again, the objective here is to get that into a form that everyone feels comfortable including in the initial report for publication.

I think we already get to lunch and then we'll start running through the issues list. The document was also included in the e-mail list sent out yesterday. It's basically a compilation of the comments that were received on basically the last draft of the initial report, all those that did not relate to the model discussion because we're at least assuming that that's being addressed through the conversations on the Chameleon model, whatever still a number of other items that were flagged. What staff did together with leadership, we ran through those and for each of those put forward a possible way of addressing them, which either resulted in specific language changes or in a recommendation not to make any changes at this stage because either it's already addressed somewhere else or it's a topic that was previously discussed and basically closed and no new information has been provided to justify reopening it.

So the idea would be there again that we run through those quickly from staff side, and then ask groups to go away, look at that list, and come back, flagging which of those items you cannot live with for inclusion in the initial report. So that time is really focused on those topics that rise to that level where you cannot support or agree with the proposed change that has been made or where the suggestion has been made not to make any changes as a result.

We've broken that down as well in a bit in the different building blocks, basically, because we received comments on a number of elements. So

we tried to group those together in specific categories that would then basically continue throughout the afternoon. And then by 5:15, we hope we can wrap up and confirm the agenda and plan for Day 2. Because one of at least staff objectives is, our hope is that based on what is discussed here today, we're able to incorporate that already in the proposal and make updates so that those that can be reviewed already on Day 2 and you can actually see what that looks like. Of course, you've already seen the language that we included in the draft that we shared last week.

Then tonight at 7, there's a team dinner. I think they have details on that later on.

That's basically what's on the table. I don't know if you already want to link it as well to Day 2 or 3 or just leave it here for now.

JANIS KARKLINS: Thank you, Marika. Of course, there is also outline of program for Day 2 and Day 3. I maybe encourage you to look through and see whether there are any missing elements that you would like to address. Also, we need to understand that this is just a suggestion and we will see how swiftly we will progress and go through this agenda. This should be taken as indication and we will take especially on those systemic issues as much time as necessary, but also as much time as reasonable for this conversation.

Would this proposal be acceptable? Mark, is your hand old? I thought so. So then we will follow that proposed sequence of issues. Margie?

MARGIE MILAM: I see on the agenda that the discussion on purposes isn't until Tuesday afternoon. That's a very important issue we need to get resolved. We encourage discussion of that earlier than Tuesday afternoon, if that's at all possible. Thank you.

JANIS KARKLINS: Everything is in our hands, so I will take that into account. Thank you.

Good. So if that is decided then we can proceed with the discussion about model. Before giving the floor to Marika for again walking us through, I would like simply [inaudible] came from. So we had the conversation about the model, and I had the feeling that we have agreed on many elements in that model specifically on accreditation in SSAD that the filing of request, channeling this request through the central gateway, and then remaining issue that needs to be discussed was who makes this determination disclosure decision.

We had two options on the table. One is centralized option automated where disclosure decision is made at the central gateway via central decision-maker and the hybrid model where disclosure decisions are made at the contracting party level. So Contracting Party House put forward very elaborate and detailed proposal how the model would look like. This proposal was discussed in previous few meetings and we came to conclusion that could be used as a basis for future work, but that was not gather full consensus because there were groups who felt that hybrid model should over time with experience gain in operating SSAD should turn into more automated and centralized model.

We set up a small group that met three or four times, four-hour each. This evolutionary Chameleon model came out during discussions of that small group. Staff elaborated this Chameleon model further, which in essence is evolutionary model where we would start with a certain level of decision-making at contracting party level and gradually over a period of time would see what patterns emerge and what could be more to automated decision-making, and then the question is how. Proposal was to establish Steering Committee. That proposal did not meet consensus. It was rejected. A few other ideas were put forward and we will discuss them during this morning session.

We're going to start with presentation of principles which the Chameleon model is based on. For that, I would like to invite Marika to walk us through.

MARIKA KONINGS: Thanks, Janis. I just posted the document in the chat as well, so you all have it handy. It's the same one that was attached to the e-mail that went out yesterday with the agenda. As noted before, none of it in here should come as a major surprise because it's basically derived from the document that we shared and discussed last week with some minor changes. So this is a document that's called high level principles of the Chameleon model.

As said, we'll quickly run through these ideas then for you to talk to your respective groups and confirm after coming back whether or not you can sign up to these principles as basic underlying concepts for the Chameleon model. So at least we're all on the same page. If there are

concerns, we would like to hear what those are and what could be done to address those. Again, of course, taking into account the discussions we've had until date and the path we're on and coming to a common understanding and common agreement on what everyone is able to live with at this stage.

The first one we noted is – and I think several have said that already on numerous occasions – full automation of the SSAD is likely not possible, but the EPDP team recommends that the SSAD must be automated, we're technically feasible and legally permissible. I think that was one of the preliminary agreements we actually reached at the last L.A. face-to-face meeting and has been there for quite some time. That also came together with the concept of that. Additionally, in areas where automation is not both technically feasible and legally permissible, standardization is the baseline objective.

At the same time, and that's principle B, experience gained over time with SSAD disclosure request and responses must inform further streamlining and standardization of responses.

Then under C says this concept of evolution to deal with the expected evolving nature of SSAD from a hybrid to a partly centralized model and avoid having to conduct a PDP every time a change needs to be made, a mechanism that does not contradict the PDP and contractual requirements and which solely focus on implementation of SSAD would need to be put in place to oversee and guide the continuous improvements of the SSAD. As said, we'll discuss later what that could or should look like. This is more about the underlying idea of there should be something that would allow for that continuous evolution and

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be able to factor in experience gained as well as potential future legal guidance on some of the topics.

Then we put in here, as said also, aligned with what we had in the original proposal the different roles and responsibilities, so that is also clear to whom those are assigned. So there's a central gateway manager, which would be a role performed by or overseen by ICANN org, would be responsible for managing intake and routing of SSAD request to responsible contracted parties in case where no automation is foreseen, and also responsible for managing and authorizing automated responses following the criteria that are established and agreed to. We still have here that the Steering Committee idea but just read that as the mechanism for continuous evolution.

The Accreditation Authority – this is the language that we've had in the report since I think we closed the accreditation building blocks. I won't read that out. Similar for the identity provider.

You know as well this notion the contracted parties responsible responding and authorizing disclosure request that do not meet the criteria for an automated response. And then we have this mechanism to allow for the continuing evolution of SSAD. For now we have TBD as we need to further discuss or describe what that would look like or what kind of criteria that would need to meet.

I thing to point out Mark made earlier, meaningful SLAs need to be put in place. These may need to be of an evolutionary nature to recognize that there will be a learning curve and some unknowns in relation to the number of requests received, how easy or how complex is that review.

Again, I think we've already wrote something to that end in the proposal we shared last week.

Then another one noting that response to disclosure request regardless of whether reviews conducted manually or an automated response that's triggered are returned from the development contracted party to the requestor but appropriate logging mechanisms must be in place for SSAD to be able to confirm that SLAs are met and responses are being processed according to the policy.

So I think that's in a nutshell what we took away from the discussions and where we need some guidance, whether this is indeed what the group is agreeing on. Of course, if there's something missing as well, we would like to hear that as well. But again, we really hope that you look at this. This is not about wordsmithing. This is really about agreeing the concepts that should underpin the model that goes into the initial report for public comment. I think with that, I shouldn't say more.

JANIS KARKLINS: Thank you, Marika. As Marika said, many of those elements specifically on the front end of the model had been already agreed during discussions of building blocks. So I hope that these will be simply confirmed. The bigger question is about disclosure decision-making, what is the optimal workable model which will also be scalable because for the moment we're talking in abstract how many requests there would be per day, and what I hear they may vary from few to tens of thousands of requests coming from different groups or different actors involved in running SSAD.

With this, I would propose that now we break and each group – or you self-organize how you want to do that – discuss and come up with basically a yes, or if not yes, then what instead. Please think in terms of is there anything that you can absolutely cannot live with? I think that this would be the mindset you should adopt in looking to those principles. But if you think that something is not workable and is not totally acceptable, please do not state only that but with the statement, "It is not acceptable," please propose what is acceptable, but not what is acceptable to you but you think will be acceptable for everyone, because we know that there is a divergence of opinion on certain issues among groups and this proposal is trying to bridge those differences. Everyone needs to give up something but that giving up should be more or less equally spread across all actors. If one gives up too much then of course it's not a good solution. So please, with that mindset, I would not suggest that we break. I think, Brian, you want to ask something? Your body language suggests that you're impatiently waiting to call on you.

BRIAN KING: I'm the most impatient person in this room, Janis. Thanks. You cleared it up. I just wanted to be clear on what the standard of review was for this. It's either agree or constructive proposal alternative. Got it. Thanks.

JANIS KARKLINS: So if I would say 15-20 minutes for this conversation in groups and once you're ready, please come back to the room where you can stay in the room just using different corners. I think we have eight corners here.

MARIKA KONINGS: Also to know that we have of course the café here on the ground floor and the one upstairs, so if people want to huddle there, you can find your space. We're doing that various times during the day so you may want to find a set place for your group, so everyone knows where to go.

JANIS KARKLINS: So if I may suggest that we come back at 9:35?

[BREAK]

JANIS KARKLINS: Shall we restart? I hope you had enough time to discuss the principles underlying the Chameleon model, and now it would be time to say what you came up with, hopefully, in support of the model. Who will begin or kick-start the debate? Brian, please.

BRIAN KING: Thanks, Janis. The point of order – should we go A and then B and then on down?

JANIS KARKLINS: As we said, I don't think that we should discuss in great details if we agree. And as I said, the ideal would be that we cannot live with, for instance, I don't know, D bullet point two and we suggest instead, "We

cannot agree for that reason and we suggest instead the following thing." That would be ideal. But we can of course do point by point and then do rounds and then see if we can find agreements on point by point basis. So let's take point A. Anyone disagrees with point A? Please, Thomas.

THOMAS RICKERT: Sorry, I need to go back into the Zoom room, which is why I raised my hand here. We're okay with A but there's one question with respect to what automation means. So I think we can't say yes to whatever type of automation is employed ultimately. So I think if we can maybe qualify that the term "automation" needs to be further defined then that's okay. I can explain more about this but I'm not sure whether this is the right point during the discussion to do that.

JANIS KARKLINS: No, please explain that we understand.

THOMAS RICKERT: It may well be that we are trying to deploy some sort of machine-learning type decision-making, which I think would be dangerous but if you had, for example, trademark-related disclosure request, you know the use case that I presented a couple of months back? I think it is possible to check whether the requestor is the trademark owner as displayed in the publicly available trademark database as you can check whether the domain name for which non-public registration data is requested either matches the trademark or is a prefix, suffix, or infix of

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the trademark. And I that case, if you can answer those two things in the affirmative, and if then the requestor declares only to use as we have in our safeguards to use that data for pursuing civil claims against the domain owner, that is a case that can be decided upon very binary by checking public databases, and I think that's a typical example of where automation can work. But for other cases like law enforcement disclosure request where you would need to check what jurisdiction the requesting law enforcement is in, that's not so easy. So I would say yes to automation but it depends on what the type of automation would be.

JANIS KARKLINS: Okay. Thank you. Stephanie? We're on A now.

STEPHANIE PERRIN: Yes. We just wanted to add – and I brought this up multiple times – that we should also consider human rights law, in particular the charter which underpins the GDPR, so that there may be sensitive organizations that are subject to persecution. We need to automate a flag so that those do not routinely go out. So I would just suggest adding at the end, "Add flags for HR sensitive registrations." Because that is not necessarily a legally permissible and technically feasible question, it is more a human rights law question.

JANIS KARKLINS: Yeah, but we have in the building block on disclosure or decision-making that specific point on sensitive registrations. So that will be part of the

decision-making. So here we're speaking about principle that – how system would work.

STEPHANIE PERRIN: Being in the weeds kind of girl, I would like it in there but I take your point. As long as it's connected well, I guess I'm comfortable.

JANIS KARKLINS: Thank you. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I'm putting text in Zoom here that sort of summarizes what I want to raise my hand for. The text generally we're okay with but we feel like it's important at this point to make sure where the CPH understanding of what is legally permissible is. This entire draft, the Chameleon draft, is predicated on the assumption that there's some big block of decisions that the SSAD can automate and that over time we're going to get good at it and be able to automate more.

We feel it's important that we make it clear that our understanding from the Bird & Bird advice that we've gotten here – and this I stole from the e-mail Matt wrote to the list earlier last week – he said that, "Relevant SSAD most decisions short of the ultimate decision whether or not to disclose the data can be fully automated, but that most decisions involving disclosing registrant data of a natural person will require a meaningful human review." So we think it's very important. In general, we agree with this principle. We think it's important that in this stage, everybody in the room understands where the CPH is and

understanding what is legally permissible to automate as far as disclosure decisions go.

JANIS KARKLINS: Okay, thank you. I think we can note that position of CPH as a footnote or as explanatory note to term legally feasible. Again, at this point, what I would also encourage to think also in terms that if you agree in general but you have some maybe nuance that you want to convey to the community, this is feasible by putting at a footnote or note of explanation that that particular group in principle agreed with the statement but felt that, then whatever nuanced approach you want to convey.

Thank you. Now, Alan G?

ALAN GREENBERG: Thank you very much. I really think by going through this point by point, we're going down the weeds, and I really wish we had stayed with the original intent of statements from each group of what they thought about the overall principle. But since we're not, fine.

Number one, on Stephanie's point, she said there should be a flag. I'm not sure where that flag is. I think she's talking about adding a new data element to WHOIS. In which case, this is the wrong place to have done that. Otherwise, I'm not sure where you put that flag.

I think what Mark just said on the contracted parties' position is the core issue we have to address and how do we get around that. Because without that, contracted parties are never going to agree to allow this

to happen unless we can address the specific issues and demonstrate that there are cases that can be automated but they will feel comfortable allowing to automate. If we don't do that, I think we're lost. Thank you. I really wish we could look at not each section by section but the overall position of each group because I think we may find some certain similarities or differences. Thank you.

JANIS KARKLINS: Again, I would encourage groups to state if they cannot live with rather than something else. Since we started, let's see how far we can get through this method. Laureen, please.

LAUREEN KAPIN: This is Laureen Kapin for the GAC. Generally, we are supportive of statement A but much like Thomas, we think that the concept of automation just isn't sufficiently defined to figure out who is responsible for what activities. And depending upon the activity, authentication versus authorization, the devil is in the details. I think I'm echoing a little bit of what my NCSG colleagues have also spoken about. So we have that as a caveat that that to me is where the real work is going to need to be done. But as a general principle, we're comfortable with that but we're noting that we have to flesh it out.

JANIS KARKLINS: I wanted to clarify again. With automation here we understand the decision on disclosing of non-public data. Not about authorization, not about accreditation, but about disclosure. So how I see it, how I

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understand is that after request is filed through a portal with all the data elements that must be submitted are filed in that interface. So then it goes down through the algorithm, and algorithm assuming that that is automated then algorithm suggests disclosure should be done and follows further the procedure.

So this is not about automation of accreditation. Automation may be also applied and in full in verification of credentials and verification of passwords and all these things that allow to submit the request. But specifically here it speaks about automated response of disclosure on the request.

LAUREEN KAPIN: That's a very helpful clarification. In that regard then what we're really talking about needing further information on is how we develop those algorithms, which I also think is going to be the key issue for my contracted party colleagues so that there's a line between what falls into this we can create an algorithm for it or we have to actually make an individualized determination. So again, we agree in concept but we would want more information about how it's going to work.

JANIS KARKLINS: If you remember, we had a presentation of what was the barbeque group, Steve Crocker and company, at the very beginning the spreadsheet. That's matched request responses and so on and so forth. I think that that could be considered as a working tool to write those algorithms. Again, but that is implementation issue.

So for the moment, we need really to agree whether everything in this SSAD will be manually processed or we would rely to extend possible to a machine. So if that is manually processed then that will go against your own group's wish on scalability, speed, and so on. We need always balanced what is our wish and then whether that is feasible or not. And we're trying to say here that as far as it is technically possible, legally feasible, advisable, we gauge and trust machine. Where it's not possible, we ask human. That's basically what this point says on disclosure decision.

Please, Laureen.

LAUREEN KAPIN: Again, conceptually we are comfortable with that but if our goal is going to be to provide something that eventually Data Protection Authority is going to look at and say, "Yes, this works, this is compliant," I still think we're going to need to flesh it out a bit more. But in terms of our position, we're comfortable with the general concept of automate what you can to the extent you can as you learn more, automate more, and when you have to make tough decisions, do it on an individual basis. And when I say do it on an individual basis, I mean our contracted parties.

JANIS KARKLINS: Okay. Mark Sv, please.

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MARK SVANCAREK: We are generally supportive of this language. We have similar concerns to Thomas and Laureen that since automation is not well-defined here, it's not clear whether this means that that certain scenarios which we think can be automated from day one will actually be automated on day one. I know it says "must be automated," I just don't know if in the room people are interpreting the same way. There are a couple of scenarios that seem like they could be automated immediately. Rather than going to those details, you could talk to me offline or ask me. But just need some clarity that that is not just – I mean that the principle goes as far as to say the things that we know are automatable will in fact be automatable on day one.

Also I acknowledge Stephanie's comment. I was thinking that anything that has .ngo certainly falls in the special category in the kind of decision you can automate. Oh, it's a .ngo, we know it's an NGO because that's a vetted TLD. We can't just get one. So automation would tell you. That's going to steer it along a certain path. Does that make sense? Also, I think I know where your flags are going to be too.

STEPHANIE PERRIN: I wish it were that easy but I don't think it is. Some of these organizations are going to come under country codes because they're restricted to using country codes in their jurisdiction. There are also businesses under .ngo.

MARK SVANCAREK: I'm just saying that if you're a .ngo, there's a higher bar than if you're under something else.

STEPHANIE PERRIN: Maybe.

JANIS KARKLINS: Can I ask maybe to focus more on the model itself.

MARK SVANCAREK: Generally accept the principles. Just a concern about what standardization means and when it kicks it. Thanks.

JANIS KARKLINS: So we have spent 20 minutes now just discussing on the principle that everyone basically agrees. There were a few things that were requested for clarification like definition of automation, definition of what Mark said, interpretation of the term. If we will follow with the same speed, we will finish on Friday. Thomas, please.

THOMAS RICKERT: I apologize. Zoom crashes for me all the time. I will try to get that fixed. That's why I raised my hand.

                           This is probably a good moment to discuss how we're going to operate this. When I raised my hand to ask for the clarification or at least caution what my understanding of automation would be, I did this because I don't want anyone to think that if I raised it later that they say, "But you've agreed to this and therefore you are now making your comments in bad faith." If we accept that, folks might come back with

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further need for clarification or concerns, then we can expedite things. I've really done this so that everybody is clear that, yes, I'm okay with the principle but not for whatever that means ultimately. If it's just a language for the principle and if we agree that it's okay to come up with concerns later when we go into the detailed discussions, I think we're done with this much faster. It's a matter of how we want to establish trust here because there have been allegations of bad faith earlier in this group and therefore, maybe it would be good for you as Chair to clarify what your expectations are.

JANIS KARKLINS: Look, we're talking about a document of whatever, 50 pages of substance, and then additional 50 pages of background information. So we cannot go line by line. We need to trust and see whether we can agree on the principle that we could put forward.

Of course, there will be implementation and since we discussed your concern yesterday, so many things that you're talking about, Thomas, probably belongs to implementation phase. Writing that algorithm based on real-life cases and then so on. So if we will start describing probably around 500 real-life situations that would constitute 90% of all cases that will go through SSAD, we will never finish. So that's why we need to focus on principles and the principles that could be then implemented. I do not hear experience in community but I'm really arguing to apply common sense, and we know what automation means. We need not to question the term automation. It is a decision made by a machine full stop. Then how this automation will be made. That will be to engineers to figure out based on the principles, elements that will

be in the recommendation. So we have elaborate recommendations on decision-making. Look to this building block we spent weeks discussing that disclosure procedure, what we'll take into account, and all is done. There was agreement, at least. This is my understanding, looking to the documentation that we developed along the way.

I'm not sure that this method is working but we are now applying. But let me take next in line and that is James.

JAMES BLADEL: Thank you. Things have really moved on since I put my hand up. I'll try to be succinct and brief because I can tell that we're eating up a lot of time.

Building on Mark's comments, I think registrars generally agree with principle A. However, as Mark noted, we have legal advice that essentially says that automation of decisions that that one function cannot be automated and should be subject to human review, which basically – one second please. Essentially, so that would fail the second test of technically feasible and legally permissible. We believe it falls into that second hole, the decision-making.

Secondly, there's a missing element here which is anything about commercially reasonable, cost-prohibitive whatever, it's technically feasible to put human beings on the moon, and as far as I know, it's not illegal to do so, but I know you don't want to write into a contract that we have to put human beings on the moon. It could be cost-prohibitive to pursue some of this automation. I think Laureen makes a very good point. We need to identify which functions can be automated with the

caveat that Mark laid out earlier that we believe that one of them falls into the second hole, which is the decision-making process. That still leaves a lot on the table – accreditation, intake, verification, distribution, tracking, reporting. All of those things maybe can be collected into a benefit statement which is maybe principle G that is left off here, why we should rally around the Chameleon model.

So I think that captures all of the conversations that we've had thus far, but I think it's really important that when we say things like automation that we understand that there are portions of this that can be automated to everyone's satisfaction. There are portions that at least we've established that cannot be automated under the existing legal guidance that we've received. So let's just start working in the middle there and start filling in the rest of those gaps.

JANIS KARKLINS: Isn't your statement confirmation of what is written, "If that is not legally permissible, it cannot be automated"?

JAMES BLADEL: Yes. That's what Mark was saying earlier. That one function to automate decision-making falls into the second hole, and we're saying that there's also a missing piece here which is we haven't captured the benefits of automation in other areas.

JANIS KARKLINS: So I will take those who have not spoken yet. That is Volker, Hadia, and Franck.

VOLKER GREIMANN: I will be very brief because James has eaten most of my lunch but that's okay. Just one caveat from our side that the onus for proving the legal visibility or permissibility should be on the operator of the platform, not on the contracted parties or data controllers to prove the negative. As has been the practice in ICANN for a long time, this should not be the case for this. It should be clear and demonstrable that this is legally permissible and then we can implement it that way. This has to be a switch from current existing practices.

And we're also very happy to grant the option of automating more, so if a data controller feels that because of certain requirements not applying to him on his customers or certain information that he has, he feels that he can automate more than what is permissible, what is required under the general principles, they can make certain settings in the platform, for example, that they set more to automation than is required. That is something that we have discussed and feel that is also missing.

JANIS KARKLINS: Again, coming to the practical things, you may face situation that you will receive hundreds or thousands of request of similar nature from similar requestors. The response will be identical. So you may come to conclusion that there is a pattern and that it could be entrusted to machine to make the return of requested information. Even if that will not be explicitly allowed but to do the monkey job a thousand times, tick the box or click on yes button somewhere, you know that there is

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no other answer but yes. Again, this is the balancing. We're talking in abstract, hence – yes, please.

VOLKER GREIMANN: I just would like to come back on that. I mean, yes, this is very attractive and very compelling to do that. However, we need to be able to defend ourselves against the one wolf hiding amongst the hundred sheep. So if somebody sends a hundred requests but only has this one request in there that he really wants and that's not the same as the others but looks the same then there we have a problem if suddenly automate those. So we need to be able to protect against that.

JANIS KARKLINS: So then you're setting up against scalability. So then it may happen that this is not workable solution in any case.

Hadia, please.

HADIA ELMINIAWI: To Laureen's point, in order to see GDPR compliance, we need to fully describe what we mean by an automated or partly automated system for access and disclosure. Even if we're not there yet, we need to have this description now.

To James point, I'm glad that they do agree on point A because we all agree that disclosure can only happen if it's legally and technically permissible. But what's worrying me that they think that decision-making cannot be at all automated. Under no circumstances, it could be

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automated because this is their understanding of the legal advice. And if so, I think that it is necessary and urgent to get a legal advice that is absolutely clear on this point because if the contracted parties think that automating decision-making is not possible at all then that would change a lot of what we are talking about.

So, Thomas, for example, presented us with a case that looks like it could be easily automated. However, according to what the contracted parties are saying, even such a case won't be able to be automated because of their understanding of the legal advice. Thank you.

JANIS KARKLINS: In the meantime, I pulled up the building block that we agreed on called automation. We have worked through this on and that is already almost agreed except should/must/may is not agreed yet. The rest is in green. So, please look back and look down the text what is in the recommendations already, what has been agreed, and do not question or do not raise issues that basically is already fully fleshed out in the previous meetings.

UNIDENTIFIED MALE: I'm sorry. Could you put that on the screen then? Because I don't know if I did a good thing or a bad thing. My memory from Montreal of that automation building block – if we're going to reference that previous work –

JANIS KARKLINS: That is in the initial draft but I don't know whether we can put it on screen. Let's do it this way, now according to schedule we have 15 minutes coffee break. What I would advise everyone, please skim through the initial draft report all recommendations. Refresh your memory. What is in there and what needs to be still done, because we should not repeat discussions we already had then and then the agreements coined.

Stephanie, please.

STEPHANIE PERRIN: I'm sorry to be old school but boy, would it be helpful if ICANN were to print that report so we could scribble it up as we go along and refer back and forth, because I think it will help us throughout the week.

JANIS KARKLINS: We have prepared printouts on outstanding issues that need to be reviewed and agreed but not printout of draft initial report, which we were thinking to edit as we go and add every agreement that we reach in the next situation. But I will ask Marika to correct me.

MARIKA KONINGS: I'm not correcting at all, but it is something that you should have all reviewed last week because all those recommendations were in the Chameleon proposal that we shared. I can put it again here in the chat as well so we made updates already, so it's better to look at that language because it tries to bring it already in line. But all the building

blocks are in that document, including the automation one and the latest language on that.

JANIS KARKLINS: Laureen and then – could you put microphone on please?

LAUREEN KAPIN: Practical question for Marika. I just want to make sure the Chameleon model – what I just heard you say is that's incorporating the building blocks and pertinent recommendations from the initial report. Because I'm old school like Stephanie so I have printed out and marked it out, and what I'm really trying to figure out is do I need to print out and mark up something else or is it all incorporated here?

MARIKA KONINGS: Just to confirm, all the building blocks, everything that was is initial report labeled as recommendations is in the Chameleon proposal. What we did though is already make edits to bring it in line with the Chameleon proposal. So what we're trying to do here now is basically, through this principle, make sure that everyone is on the same page that either then use what is already in there as the basis for further review or make some tweaks or adjustments based on your feedback on those principles. But basically, that's at least from our understanding the basis where we hope to continue from assuming there's support for the principles and that being the model going forward. Then indeed as said, based on this discussion, the brainstorm we hope to have, we

hope to further update that proposal and turn the back tomorrow for further review and discussion.

LAUREEN KAPIN: Okay. Then to me, the relevant follow-up question that at least the GAC has – and this is for the contracted parties – is to what extent you think there is room for certain categories of disclosure determinations to be automated. That to me is the key question. Because we understand that there's a comfort level from the contracted parties on the stuff building up to disclosure request decisions. So that's not the hot area. The hot area is what about the disclosure request? Is there room for parts of that to be automated, and if so, how can we explore that further?

JANIS KARKLINS: Yes please.

ALAN WOODS: Thank you. I appreciate absolutely what you're asking for there but at the same time, this seems to be a very much a one-way street that it's always also to justify why we can't. Can we actually ask you as well to provide the instances, justify the areas where you think you can? I know that Mark said it earlier, he was like, "I can think of these few areas," and then he went, "We can have that as an offline conversation." That's not going to wash. We have a very short amount of time here. If you've got data that you want to share with us, please, let's share it and not just expect us to give you a defense every time. It would be nice to have a conversation on it.

LAUREEN KAPIN: Right. To be clear, I'm not trying to attack. Yes, I'm putting you on the spot, but the two types of cases that come to mind are law enforcement request within the same jurisdiction, because I understand that outside jurisdiction raises certain complexities, and also we have certain trademark scenarios that our IP colleagues and Business Constituency have brought up. So if we started from those two, back to me, that at least gives us some specific concrete examples to work with. And we could flesh those out further as you might need, but generally speaking, that's what I'm talking about.

JANIS KARKLINS: We agreed to use the Zoom room but since now we're raising hands – wait, I will make a break now simply to finish this conversation. Volker, you wanted to react?

VOLKER GREIMANN: Yes to A. Law enforcement of same jurisdiction should be automated. Well, for most of us, I think that's a common agreement here. Trademark is a bit more iffy because trademark is an all-encompassing right. There may be matches of trademarks that are registered as domain. It's not infringing and the question of whether there's no [freedom] or not. Therefore, legitimate interest or not is very much in question in some cases. So that may not be automatable. But we may move on on that but that's the current position that we're holding.

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JANIS KARKLINS: Please raise your hands, how many need a printout of Chameleon model in a paper form? One, two, three. One per group. If I may ask Terri to print out eight Chameleon models document. I think it's 15 pages or something. We're now breaking for 15 minutes. In the meantime, please read. Grab your coffee and read Chameleon proposal, skim it through entirely that you know what is in it to informed discussion because otherwise, we will get nowhere. So 15 minutes break but please read Chameleon model in details.

[BREAK]

JANIS KARKLINS: During the break we distributed the printout of the Chameleon model and I hope that you had the chance at least to skim through and see what is in it that we can maybe proceed swifter than we did before.

It seems that the free-floating conversation is consuming too much of our time. So therefore, my suggestion would be the following. On each subsequent point, I would ask to speak only if you have a serious objection and if you cannot live with this point. And if you want to submit your nuanced comments, please feel free to do it either through chat room or directly to Marika or to staff, that they can be incorporated in the report or next iteration of the document.

If I may also ask to think who would be spokesperson of the group. And since we devoted time for group to decide how the group position would be on the proposed model, so then one speaker per group, if at

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all. So I think that the principle described in A is acceptable or everyone can live with it but there would be few descriptions of understanding of certain terms in that statement.

Alan, I apologize. I did not give you the possibility to speak. If you want to speak, that would be opportunity now.

ALAN GREENBERG: Thank you very much. Again, I'll say talking to these points doesn't necessarily address some of the issues that we discussed in our groups. So if you'll allow me, I'll make a couple of general comments.

First of all, I believe the central gateway description there has a significant problem. It has two sentences which don't agree with each other. It says, "Request will be routed to contracted parties." Then it says, "It also will make decisions on which request not to route to contracted parties." I think that description has to be very clear that the central gateway is going to make a decision to either route it to its own – I think what we were calling authorization provider internally or to a contracted party and not say everything goes to contracted parties. So it's got to really lay down the basis that the decisions may be made one of two different ways and it has to be really clear because that's where we're defining that this model is going to be flexible going forward.

To date, we have heard no algorithm from ICANN org as to how they will make this magic decision, whether it's for some or all. I personally don't believe such an algorithm can exist for a whole bunch of reasons but that's my position. I'd like to hear it. If we don't have an algorithm

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then let's not pretend it exists and the implementation group will suddenly magically make it appear out of thin air.

Contracted parties have said multiple times now they do not believe what the exception of law enforcement from the same jurisdiction that it is possible in even one case. Let's accept that they're saying that. I believe that we need to establish that automation is possible. I believe it's possible. I think the onus is on people who are requesting data to give us cases. Not generic use cases – hard, specific requests that we can show the contracted parties. And if everyone in that row says, "Yeah, that's one that I could accept," then we now have a model that we could plug in into the table. We've established a principle that it is possible that we have one case. Fine. It's in everyone's interest both the requestors and contracted parties to increase the number of cases like that because it lessens the contracted parties' work and it gets better response time to the requestor. So I think we have to really go to specific cases.

Contracted parties will always have an escape hatch. The release of data is going to be by the contracted party according to the last item in that list. Therefore, if you now that Mark Sv has gone to the dark side then his request may fit the model but we know we can't give him anything. Fine, you have that escape hatch. It's an escape hatch which can be used maliciously by people who aren't doing properly, but that's life.

So I think we're in a direction we can but we really need real cases to demonstrate that it can be done. If we can't find one, then we have a problem and we have to live with that problem if that is not automatable. I believe the Steering group – and if we don't want to call

it that, fine – I don't think there's anything in that group that was related to policy. Can we find new entries to put into the table as we learn? Fine. That's [implementation] and it's not policy. If the service levels have to change and we change 15 to a 10 or to 25, that's not policy. That's an implementation once we establish the details. Yes, this group will have to if it finds a policy that needs to change. It's going to have to refer to the GNSO and the GNSO has ways of addressing it.

So I think what we're talking about is viable but it all hinges on demonstrating to the contracted parties that indeed there are things that we can automate, even if it's an edge case right now. I think that's the path forward. I don't see how we're going to make any progress without it. Thank you. Sorry for being so long.

JANIS KARKLINS: No, no. You addressed all points in a row. I think Marika wanted to respond on the central gateway.

MARIKA KONINGS: Thanks, Janis. Just to respond and I think that's what we tried to describe in more detail in the proposal as well. The idea is that the central gateway wouldn't necessarily service the authorizer but they would basically check if the criteria that are set for an automatic response are met. And if they are met, then the automatic disclosure request is responded to. For example, the law enforcement what we said that if there's a token that confirms that the law enforcement is in that jurisdiction, the registrar is in the same jurisdiction, then it automatically gets pushed for a response from the contracted party to

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that law enforcement. That's a bit how we kind of envisioned it. Then indeed over time that the Steering Committee – let's call it Steering Committee mechanism, whatever it is – would over time confirm what are new criteria for specific cases for which that automatic yes and it can also be a no or it's always a no that that can be fed into the system. So when the request comes in, the central gateway confirms, "Are those flags met for the automated request?" If yes, it gets automatically pushed through. That's a bit at least how we were thinking about it to also take away this kind of concern over how is the central gateway able to make a determination on what conditions or what criteria. Those are set through that mechanism and are already confirmed in the policy for those kind of cases where everyone is agreeing.

I think the law enforcement, one is a clear cut. I think Berry also mentioned in the chat that the UDRP provide us, for example, that's already something that's somewhat partly automates. Those may be ones that we can already specifically call out as those that need to be automated from the start and others based on experience or very specific use cases as you said where everyone says, "Yes, no-brainer. Let's put it in."

ALAN GREENBERG: There was no question about whether we understood what it is. I'm just saying the words in that particular principle do not reflect what we say later on and they need to be adjusted.

JANIS KARKLINS: As a side request, I may ask team members to think and submit either in chat or directly to staff the clear-cut cases that can be automated, where responses can be automated from day one. So we heard law enforcement from the same jurisdiction. We heard UDRP, which is already automated processes and that could be used. So what else? Please think and then we will make the compilation of those specific cases that will be submitted and see whether we can agree that these could be automated from day one in terms of responses.

Okay, I take that the rest of text ALAC can live with. So anyone else? Now we're going through all list of principles. Anyone who cannot live with the Chameleon model as described? Margie?

MARGIE MILAM: A couple of other principles to consider in the Chameleon model, one being some sort of appeals mechanism and I think that that's for denials. I think that's something we should put on the table.

The second one is something I think we discussed last night where things won't be automated where there's perhaps edge cases that the gateway could make a recommendation to the contracted parties. I think that that should be something we should consider as an additional principle to be included in the model.

JANIS KARKLINS: Appeal mechanism is already in recommendations. So if you would look, you will find that the appeal mechanism exists.

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When it comes to yesterday's idea, look, I'm happy to talk about it during the lunchtime. I do not want to put something on the table which may again spoil and then divert us from the work we are doing now already for a while. So therefore, I am not insisting on that idea, but I'm happy to explain it during the lunchtime.

Alan?

ALAN WOODS: I just wanted to point something that Matt put into the chat. It's very important to understand as well that the SSAD will not have data. So I think one of the clear delineation factors under the Chameleon model that we need to consider is that if it is a 61F type decision, it doesn't have the data, therefore, it will never make that decision properly because it doesn't have the data to consider in the first place. That's a huge conceptual issue there. So even we're not going into even that new idea, we have to think of that specific. It doesn't have the data, it can't make that recommendation because it doesn't have the data in the first place. So we must remember that in the Chameleon model, it does not hold that data, therefore, it's hard to make decisions. So when we're looking for automation and the automated decisions, it has to be regardless of what that data even is as well. That's another checkbox that needs to be there.

JANIS KARKLINS: So you're doing the manual disclosure already, right? You shared with us your experience earlier. So you're receiving a request describing the purpose, what type of data needs to be disclosed. What's your thought

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process? When you receive this request, with all the necessary information, are you immediately looking in the database and retrieving data of a customer, of a person, or you initially evaluate what has been received and whether that is receivable or not, whether that you think is justifiable or not, without looking at the telephone number of the customer or e-mail address of the customer.

So when the non-public data comes into play in your decision-making process, immediately when request is received or at the later stage. I would say common sense would suggest that at the later stage because knowledge of that private data will not change your decision-making process, evaluation of the request itself. So as a result, automation based on algorithm could be done exclusively based on information contained in the request. Please tell me that I'm wrong and where I'm wrong.

ALAN WOODS: Apologies. Unfortunately, it is a two-step process. Yes, based on what is provided to you can say, "This has the hallmark of something that potentially could go through." But then depending on that data, and the data you then process at that point, it might change everything because again you're looking at who that person is, what they represent. Are there human rights issues? I can't go through all of them. There is data within the personal data that could change that decision because that's the whole point of the balancing test. You need to look at the individual registrant and say, "In this instance, is it going to change the decision?" So maybe it's just a difference of term but we recommend disclosures like it's past stage 1 maybe, but stage 2 is still up to the controller.

JANIS KARKLINS: That was my point. Initially you evaluate the request and then you look to the other elements and then you make a final determination. When you receive request, you're not looking immediately in the database and what's the telephone number or what's the name. You initially evaluate the request itself, and then as a second step you look up other information. No? You do differently.

ALAN WOODS: Not necessarily. If I can just delve into the process here a little bit. I mean, when we look at requests, sometimes it saves time to know certain things about the domain name in advance. If I get a request, I look at our domain database for the domain name and if I see that it's registered by an organization, for example, that has a well-formed organization field and has no personal data in it, I can forego the entirety of the review process there, because I can disclose that data because there's no personal information in there. Request is given. In some cases, it helps having that information, first and foremost, before I do anything else. That's speeds up the process enormously.

JANIS KARKLINS: Okay. Anyone else? Brian, please.

BRIAN KING: Thanks, Janis. I do have some thoughts. I want to make sure that we're in the right place, though. Can you point me to where we should be focusing for right now?

JANIS KARKLINS:	Now, I opened everything. Every comment you want to make on the model, please, now is the time to say that.

| BRIAN KING: | This is Brian from IPC. I think in general, we support all of these as good principles. I think we have some work to do to flesh out some things perhaps on some of them. But I appreciate what staff has done to put these together and I think that these are all good.

The one thing that I would know on the top of the last conversation that I did put in the chat is that contracted parties may or may not, I guess, but I would encourage us all to think about whether they want to be doing that kind of analysis or whether we would all prefer that ICANN as a co-controller or joint controller is able to get access to the data to make that decision in a way that's consistent and reviewed and analyzed the same way every time and then delete it right away, but at least consistently managed and handled through a centralized place. Thanks. |
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JANIS KARKLINS:	Okay. Thank you. Anyone else? Sorry. Alan, you spoke already. Thomas spoke. Stephanie?

STEPHANIE PERRIN:	Just force of habit, I muted myself. I like this sound of that booming voice though. First point is, with all due respect to everybody who likes

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cute names here, I certainly hope we're not going out for public comment with Chameleon on this thing. Because to me, I guess I spent too many years in the data protection racket, it just looks like, "It means whatever it means depending on who's looking at it." Not a good message to send. Let's dump it quickly before everybody starts naming it that.

The second thing that I wanted to say was with respect to this whole control issue. I'm very sorry if we keep slowing down the train here but it's a fundamental issue. If ICANN is going to be reaching into the data of the contracted parties – that's why I giggled – boy, that's a big reach from a controllership perspective and it's not a fact right now unless somebody's been holding out on me for the past seven years. They might be able to reach into the escrow files. I've always been curious about that one. These are just not decisions that a Policy Committee can make on the fly. Controllership rests on facts. We've said that again and again and again. If ever anything loony comes up, I'm going to have to respond and slow us down and say, "Hold on, folks." The fact that the points that some of us have made in the Non-Commercial Stakeholder group, I have a few favorites, including authentication of commercial entities that never make it into agreed policy does not mean that they're not based on solid fact and that they wouldn't be good ideas. It just means nobody's listening. So we're going to keep saying it. I'm really sorry but that's just who we are. Thank you.

JANIS KARKLINS: Sorry. Stephanie, could you be more specific? Which point of those principles you cannot support?

STEPHANIE PERRIN: Let's just leave it at the name.

JANIS KARKLINS: Okay. Ultimately, it will be SSAD model. If we will manage to agree on one model, it will be SSAD model, it will not be Chameleon.

Marc Anderson?

MARC ANDERSON: Thanks, Janis. I almost unmuted myself in Zoom as well. Are we commenting on the entirety of the principles or the entirety of the Chameleon model?

JANIS KARKLINS: Entirety of principles. We're now talking about the text.

MARC ANDERSON: Thank you. I guess I want to raise one other thing. The Chameleon model as drafted is based on the underlying premise that there's going to be a large body of requests that are automated, that the decision to disclose is automated at the central gateway system. And that over time, we'll learn from that and do even more automation at the central gateway level. It's most encompassed in point C up there. To deal with the expected evolving nature of SSAD, it assumes that we're going to start with partly centralized and change to a mechanism where more decisions are made centralized.

You heard me say earlier ... possible exception or same jurisdiction law enforcement, which is not a 61F. We don't see how any 61F decisions can be fully automated by the SSAD as we designed it. I think sort of the underlying assumption, and the assumption that we're seeing in C is really problematic because it really underpins the drafting of the SSAD and the way C is drafted. It presupposes an outcome.

We're willing to talk about how things may evolve. We're not saying we can't move to a system that has more automation happening but I think we have to accept that advice may come that we cannot move to a system that is more automated. Or we may get advice saying that we're doing too much automation. I'm not saying we will, but as a principle, this is written presupposing an outcome. I think that's problematic for me as I read it.

JANIS KARKLINS: First of all, you were part of the conversation of the small group where folks said that hybrid model is a good way to start but that is not acceptable, let's say, for eternity. That's the one element.

Second element is from the very beginning, there are many groups including the GAC who is asking for scalability, workability of the model. Since we do not know how many requests will come, but imagine that there will be hundred thousand requests per month, 2,000 contracting parties, 2,000 plus, 500 basically per month. If each process will take – how many minutes? 10 minutes? How much time it takes to process it manually? What if you have 10,000 very similar requests coming from trusted similar source and so on that you want to automate?

All they're saying here in this principle – and this is the essence of the model – is that we start with the disclosure of decision-making at the contracting party level. We are aiming at, as we go as we learn, to automate what is technically feasible and legally permissible. If it turns out that we cannot automate, we're not in breach of the policy. This is what we're saying. We're starting with the premise that contracting parties provide manual response, except for those cases that we can indicate. One, we just indicated law enforcement in the same jurisdiction, where registrant is. Then maybe UDRP, which is already automated, and maybe something else that will come out from the information that I requested to submit. As we go, we create a mechanism that reviews and sees whether something else could be automated. As a result, faster response provided, and so on.

This is the policy principle that we're talking about. If it turns out that nothing is feasible, then nothing is feasible. But as a policy principle, if you are not in agreement with that, then we have a problem because then I cannot reconcile opinion of considerable part of the team that thinks the automation may be helpful, and what is possible now and maybe in the future, we will learn.

MARC ANDERSON: A couple issues with what you just said. First I want to say the high hybrid model that the Contracted Party House proposed initially has a lot of advantages, including the ability of contracted parties to automate the disclosure decision at the Contracted Party House level. We did not say we will manually review every single case. As you said, that's not feasible. There's a lot of advantages and we've been talking

about those for a while now, and it was included in our report. That's actually what I think our principles are missing from this is advantages of a hybrid, decentralized decision-making, centralized portal over the status quo. I think that's actually a principle that's missing here and I would like to see us include that here. But we did not propose that contracted parties would be manually making that determination for every single request that comes their way.

In fact, contracted parties – Volker gave an example, as somebody that has access to the data, he can make a determination by looking at the data, in some cases, to automate those disclosure decisions that can't be done by a centralized gateway that does not have access to the data itself. So there are opportunities to automate in a hybrid model, and those are some of the advantages of the hybrid model that we're trying to espouse in our proposal.

What you described, you described some ifs. Principle C isn't an if. It says, "We're going to start here and we're going to move here." You said, "No, that isn't what it says. It says if technically feasible and legally permissible." That's A. That's not what C says. C presupposes an outcome. That's my concern with C.

JANIS KARKLINS: Okay. Now let me ask a few questions on exactly what you're saying. We're talking about cost efficiency of the model. I know that you're coming from a large organization, so your organization probably will invest some money to do automation. But then you have [200 to 5000] minus your organization who will do exactly the same thing and will

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invest money in automated processes. All we're saying is maybe the investment in automation should be lifted up and offered to use by everyone. As we know that in the real space, we have distance in real world. Then in digital world, we basically do not have distance and it doesn't matter where computer sits. Either it sits in your organization or wherever, it can be considered as centralized decision-making place or it can serve everyone if you develop it.

All I'm trying to say, you are not denying the fact that there will be automation. Now the question is where we replaced that automation from systemic point of view, do we ask 2,500 contracting parties to do automation themselves or we elevate that task and we do it somewhere for the benefit of everyone? I don't know whether you understand my point.

MARC ANDERSON: I think I do. I hope we contracted parties have been clear on this from the get-go that we're open to considering automation where it's legally permissible. Automation makes our lives easier. We're not opposed to automation. We're also not opposed to centralized decision-making. I think we've made that case, we've made that statement, I think, from the get-go of this PDP. What we said was based on the advice we've received so far, we don't see how that can be done in the centralized system that we've designed so far. I think we've also been clear on this, we're not closing the door on reconsidering this if we receive additional advice or new information is made known to us.

I hope that clears up what you're asking. We're open to it. As you said, doing something 2,000 different times by all the contracted parties isn't very efficient, isn't great. But those are also contracted partners that reside in different jurisdictions, have different obligations that they have to account for. Now, if we have a way to do these things centrally and automate them, we're open to it. If we receive new information down the road, we're open to that as well. Our proposal was based on the reality as we understood it with the data that we've received to date. I hope that helps clear up your questions.

JANIS KARKLINS: Then basically the landing territory would be that we start with a disclosure decision-making at the contracting party level. We automate already from day one what we can, and then we strive to increase the percentage of automated decisions as we go, as we learn, making system more efficient. Something like that. Would that be something that others could sign up for? Because in essence, this is the way how we're talking. We start with a hybrid model and we go with more automation. Automation could be then done either at contracting party level or elevate it in – I don't remember who showed – maybe that's even in the contracting party model when there is a sort of joint decision-making body created by contracting parties who makes automated decisions on behalf of contracting parties. I think that wasn't the model. Basically, that is this centralized decision-making, automated decision-making body that you're suggesting yourself sometime in the future. Would that be something that we could try to clarify in the text?

ALAN GREENBERG: Thank you very much. I just want to go back to the initial, what I call seeding of the tables to facilitate automated requests. I mean, one of the problems we have right now is it's fine to say there's an algorithm which will look at certain characteristics and make a decision. We don't know what those certain characteristics are. Unless we start having examples, we don't even know what the columns in the table are that we might want to look at. I think it's important that we start looking at that because when we come to the accreditation process, we may well have flags that have to be added to each person's accreditation to allow us to facilitate that kind of automated requests. But we have established law enforcement. We should be able to do under certain circumstances.

[Background noise] Thank you for that.

Berry had said UDRP. I believe if a request comes from a UDRP provider saying, "I have an open case," you have to respond. That's one that we perhaps can automate. I'm not trying to make decision. I'm saying these are good examples. There's one we haven't talked about at all here. It's not really a third party request and that's ICANN. ICANN Compliance currently deals directly with contracted parties to get information. If we're going to build this complex system, shouldn't we have ICANN going through it? I mean, they're not your typical third party user, but

don't we want to automate their requests? Those are ones from ICANN Compliance.

There's all sorts of ones that I think we can do. I have one question however, and I've asked question before and no one's ever answered it. In the kind of model we're talking about, how does any request ever get to a registry? Every domain name has a registrar. We have a couple of registries here talking to us saying how important that is to them but no requests will ever, ever get to them unless we have a way. Some of you may like that. Maybe we need a request in there in the request field saying, "I want the answer to come from the registry and not a registrar."

But until we start getting real examples, we have no information on how to build the decision process that we're talking about. Again, I think we need to stop talking about generalities for a while and talk about specifics and see if we have any specifics that actually work. Thank you.

JANIS KARKLINS: Thank you, Alan. Thomas?

THOMAS RICKERT: I guess we're having our sobering moment, which I hope is the only sobering moment during this two-and-a-half day meeting. You might remember at the outset when I presented the first use case, and I said, "Well, these should just inform the policy making." I thought that our policy would have sufficient detail to describe what the SSAD is doing. But now we're having a policy that describes how accreditation is done,

what response time should be and all that, but it is totally silent about under what circumstances data can be disclosed. It basically only says you can disclose when it's legal.

I guess that Alan is suffering from the fact that he doesn't know the parameters. The contracted parties are hesitant because they don't know even who's responsible for what. I think now that we have time pressure, we can't really do more than just outline that automation as something that the parties aspire to or some other very general notion.

If we want to be more concrete, we need to either illustrate this by concretely saying, "You're going to process this data in that way under these circumstances," as I tried to explain with the trademark related disclosure scenario earlier. If we don't go to that level of detail and if we don't say who is actually doing it and who's going to take responsibility for that, we're not going to get any further. I think the detail needs to be somewhere, either in use cases or in the policy. You will have seen that the Bird and DPA said, "Well, we can't even say what's legally possible if you don't give us information about what you're trying to do here." And we haven't done that homework so far. I'm not trying to blame anyone but we don't have the information in our report.

I think that for these two and a half days, we should probably try to find language that is sufficiently superficial to outline the idea, but we should know that there's more work to be done. I think that looking at the scenario that we've described in D, what I'm missing is some sort of body that oversees what decisions are being made and that takes care of consistency of the decision-making, regardless of whether the decisions are taken. I mentioned during one of our last calls that one big

question mark is how we deal with objections. If one objection is successful with one, let's say, disclosure requested by one contracted party, how will that impact the other contracted party's decision-making? If they don't get any information about what the facts were based on which a balancing test was done, this is going to be difficult. I think that we need to install something somewhere and that this body or panel or whatever you might call it, not on reviews the decisions but also keeps an eye on evolving decisions by courts, that the need to be issued as guidelines for whoever takes the decisions, hoping that we can move the decision-making to the centralized body gradually. I think we need to talk more about details but I think for the time being, if we add this consistency providing decision oversight panel somewhere, maybe it's already meant to be in the TBD mechanism to allow for the evolution. I think we should spell that out. If we say in A, that the parties are trying to come up with ways to automize decision-making within the SSAD, whatever that might be, that will hopefully be that language that everybody can agree to.

JANIS KARKLINS: Thomas, I would like to refer to the building block, which is called authorization provider, which describes the disclosure decision-making process and principles that need to be followed by the decision maker. This was written with understanding that that may be either central decision-making provider or decentralized decision-making provider. We spent hours discussing this. This is already in principle. You cannot say that we were in the dark, we do not know how decision-making will be done. No. We know, we described it and we agreed on that. There are a few elements that need to be still fine-tuned but in principle, that

is agreed. I really don't understand why we're denying the job that we have done before, maybe because we have forgotten already what we have done and what we have achieved.

THOMAS RICKERT: If I may. We have described a very abstract methodology, that a balancing test must be done but we have not filled with life what this means in certain scenarios. I guess that's the difficulty that we're facing now. We have come up with it a strawman, which is fine. But ultimately, at the end of every scenario, it says where somebody needs to take a decision where you need to find a legal basis according to Article 6 and you need to do what's required under Article 6.

This is what I hear Alan asked for. I see a lot of nodding from the GAC part of the table. I saw Alan nodding. I think that's the detail that we're missing before. Folks can actually buy into saying, "Okay, let's do automation here. Let's put the decision-making there." Maybe I'm missing something but I think we're lacking some detail here.

JANIS KARKLINS: Look, we need to be clear. We're talking about decision-making per se or we're talking about automation? That's maybe I missed in your intervention. If we are talking about automation, I asked to give ideas which type of requests may be automated. I gave examples that we discussed here in the morning or which were given this morning, law enforcement in the same jurisdiction, UDRP providers requesting information about the domain name. Something else, please submit

ideas, what else that might be. Then we will put that on the table and see whether we agree or not.

Second element, we will never do exhaustive list. There always will be something else and that's something else is the subject of concentration by that mechanism that we need to determine as we go because it will take some time and some sort of bump on the forehead before we will learn something. Maybe SSAC can give us some examples you think requests could be automated from your existing experience and then the knowledge how these things work or should work. When it comes to the process of manual decision-making, we have authorization provider, and that describes how things should be treated.

I have Laureen next on the list.

LAUREEN KAPIN: Thanks. Just as a starting point, I want to distinguish between the concept of centralized decisions which would be by the centralized authority and automated decisions which can be made by the 2,500 contracted parties, which currently exist. What I'm hearing very clearly in this model is that, although there may be an aspiration towards automization, what I'm not hearing is part of the crux of what the GAC has been concerned about which is standardization. Because what I'm hearing is that you're saying – I'm saying this to the contracted parties to make sure that I'm understanding correctly – what I'm hearing is that you're saying, "At the end of the day, we're still individually going to be making decisions and its decisions may be automated but not necessarily is one registrar's decision-making process going to be

standard with respect to another registrar's decision-making process. You may be in different jurisdictions and have different concerns." What I'm hearing people are comfortable with from the contracted parties are it neither gives us centralization nor standardization, but it may give us an aspiration towards automation.

One is the question: am I understanding that correctly? Then two, if I am, I'm thinking that it doesn't meet one of the central concerns of the GAC which is that we have this system that's a bit fragmented and doesn't give us certainty. I'm not necessarily getting a lot of comfort that we're actually solving that issue. I wanted to put that on the table. Then just as another point in terms of these principles, we think that they need to more clearly reflect – although I have read very carefully the new SSAD model, which I will not call by its reptilian name – we want to make sure that it clarifies the need for maintaining confidentiality of law enforcement requests and that logging isn't just to be able to provide information about the mechanisms here about SLAs but also to ensure that certain safeguards are being complied with. Those are more minor points. I think it's hinted at here but it needs to be more explicit. But my first point is the primary one.

JANIS KARKLINS: Thank you. On the standardization, I think with the standardization, you need to understand that all contracting parties will use the same methodology, standardized methodology. But of course, the decision-making will be, of course, may be different even by using because judgment will be different. That is, of course, disadvantage of decentralized decision-making model but we do not have anything

better than that. At least we will have that everyone will apply the same methodology in that sense, it will be standardized. Of course, we cannot guarantee that on the similar requests sent to one contracting party and sent to another contracting party we would get similar response, even in similar circumstances. That, of course, is a judgment that each individual contracting party level will make.

LAUREEN KAPIN: Right. Understood. I don't mean to say that we don't recognize all the advantages of having the rest of the stuff centralized and even the advantages of having certain aspirations towards automation. I'm just still identifying a concern.

JANIS KARKLINS: Marika, do you want to comment on the second one?

MARIKA KONINGS: Just a quick follow-up question on the confidentiality point. As you may recall, I think it was Chris and James that I think worked on some language that is … We need to double-check in the response requirements building block. Probably the deals with confidentiality. It would be great. I think we didn't make a note saying this might need to change depending on where the request goes and who deals with it. So it would be really helpful if that needs to be further clarified if maybe the two of you or whoever can look at that and make suggestions for what clarification is needed to kind of address the comments you've made.

JANIS KARKLINS: Next on my list is Mark Sv.

MARK SVANCAREK: Hi. I don't know, I thought I was muted. I want to make two comments. One, just in practical terms, when do you want us to start giving the examples of things that we think can be automated? I mean, I could do this this afternoon or –

JANIS KARKLINS: It would be better to send on the list. We would compile those and would send around. If you want to put in the chat that everyone sees.

MARK SVANCARKE: I don't want to put in the chat. I'd rather create a document. I think it'd be better organized in that way.

JANIS KARKLINS: No. We will compile everything together and we'll send to the list for everyone's consideration,

MARK SVANCAREK: Then the second thing, there's nothing in any of these models … Because remember, the models are future proofed. There is nothing in any of these models that prevents a contracted party from engaging in a joint controller agreement with the gateway, where perhaps there

could be an allocation of responsibilities to the gateway. There's nothing that stops them from contracting the gateway as a processor where they would maintain their own liability for the decision but operationally, outsource that to the gateway. In those cases, the gateway might have data. There are other examples of that too. We don't have to definitively say the gateway will never have data because there are mechanisms that are allowed by the model that could allow that if a contracted party want to go in that direction. You don't need to count that out.

JANIS KARKLINS: Thank you, Mark. Volker, followed by James and then Margie.

VOLKER GREIMANN: One point, Laureen said something that is kind of pushing into what I was aiming for. I think standardization is important. Standardization of responses creates a certain value in the system that also ensures that it will be used by the requestor as well. I think that's something that we as contracted parties should also aim for. Of course, there will be differences between where we are situated but overall, I think that is something that it should be aim for.

To that end, I was mulling an idea over my head with regard to the mechanism which will allow for the evolution of the SSAD. The model that was originally proposed and the model in the [lizard] model was not really something that we see ourselves supporting but how about this idea? An advisory panel that is made up of all the constituencies of ICANN that can propose changes and that have to be validated by

contracted parties in the same way that we currently have mechanisms in our contracts to approve changes to the contract. That would allow proposals to be submitted that we could accept.

And in that advisory panel, we could also discuss issues that we faced where similar requests have been greeted with a different response. Find out the underlying reasons for that and if these reasons can be eliminated, then how to move to a more standardized process as well. I think an advisory panel or maybe even two advisory panels, one of the entire community and one of contracted parties only, may be very helpful in forming a body that can advise on how to change the system, how to add more automization and how to standardize the processes.

JANIS KARKLINS: That we will discuss next, this potential mechanism where these things could be fleshed out.

I have still James, Margie, and Stephanie in line, and then maybe we can we can draw the line on this part of conversation.

JAMES BLADEL: Somebody had a live mic somewhere. I'm not trying to bump the microphone again. Actually, just very briefly, just had my hand up for original reason, long lost to history at this point. But just noting that we can probably address Marc Anderson's concerns by deleting something where it's said – the phrase is not on the screen anymore – but when it said, "From a hybrid model to a partially centralized model." I think partially centralized is hybrid. So we're saying from hybrid to hybrid, and

it's just this assumption that things are going to move in a particular direction. When I think what we're all saying is just that it has the ability to grow, evolve, adapt, and improve over time. I think that's something that everyone supports.

I also do want to reiterate the idea that we can capture somewhere on this list, if it's its own principle G, that this has benefits and that we should enumerate those benefits because I think we put this out for public comment, folks are going to zero in on the things they hate and we're going to get a lot of comments on all the things that contracted and non-contracted folks don't like in this model. I think we need to kind of plant the flag out first and say, "This is benefits over the status quo ABC," and then allow the critics to weigh in. Thank you.

JANIS KARKLINS: Look, I think and I feel that we're converging on this model that we're discussing is something feasible. As a result, in initial report, the wording will be used that this is the SSAD model and they will not be hybrid or centralized or the disclosure decision will be made at the contracting party level and then gradually will be automated. We will work on the language the best … but these hybrids and centralized, decentralized will be taken out since we will be aiming at putting one model and there we will replace all generic terms that we used with the concrete terms, including ICANN org as a central gateway manager, ICANN org as the accreditation authority or accreditation supervisor, so that we there will not be any more generic terms in initial report since we're working towards one model to propose for consideration.

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Margie, please.

MARGIE MILAM: This is Margie. I wanted to follow up on the standardization concept and I think it marries with what I was talking about earlier about the ICANN recommendation. What I see as a model that could work is one where there's guidance given to the contracted parties, and that's why I thought when it was discussed last night, it was actually a useful concept. Not all contracted parties have on staff people that are specializing in privacy laws. The concept is by operating the centralized gateway that ICANN will start developing an understanding of what's allowed and what's not allowed to a level that the contracted parties won't have.

So I don't want to give up on this idea that there would be some sort of recommendation coming from the gateway to the contracted parties that they can take into consideration as part of the decision. Because otherwise, we end up in a situation which is similar to today where there's simply no guidance, the contracted parties have no idea what to do if they don't have that kind of expertise, and we're really not taking advantage of the learnings here. I just want to encourage us to think about standardization being more than just format stuff, but actually recommendations in certain use cases as to what should be possible.

JANIS KARKLINS: Stephanie, you're next.

STEPHANIE PERRIN: Thank you. One comment on standardization. I would just like to remind people that ICANN is going from zero to 150 kilometers an hour with very little learning Driver's Ed. I remind you that the WHOIS conflicts with Law Committee on which I gleefully served may still exist. It still existed at the time that GDPR came in. There was no harmonization of registrar's approaches to compliance with data protection law so we can't really ... while we all want harmonized – I like that word better than standardized – approaches to how we interpret data protection law globally, we're not going to get there right off the bat. I commend the word harmonize to you with a goal towards further standardization. But the question that a data commissioner is going to ask when they come into investigate a decision for disclosure is going to be on the basis of what data did you decide it was okay to release this. That's where the controllership issue and the previous comment about reaching into the contracted parties data [inaudible] becomes extremely relevant. They have the best data.

Actually, outsourcing that decision to a higher level has to be on very firm use case grounds. On that point, I did not mention earlier that we've got a whole lot of language we're going to send to you on A, B, D, C, D, E, F. On B, experience gained over time with us at disclosure, blah, blah, blah, must inform further streamlining and standardization of responses. But it cannot be determinative because ... Let me give you an example. ICANN got away with not complying with data protection law for 20 years, nobody hauled them into court. We don't want a situation where the oversight committee is told in five years' time, "Well, nobody ever objected to this practice and so on so over here has been doing it, and we like it. So let's make that a standard." I just want to put that

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caveat in and it's a pretty important one. The history here is non-compliance with law. Let's not forget that. Thank you.

JANIS KARKLINS:

I have a feeling that we can settle on this evolutionary SSAD model. We will try to sort of fine-tune the language of the model for tomorrow based on this conversation that we have. What Margie started to talk came out as idea yesterday and I will simply share it before, and I will not entertain discussion rather just to share this idea for reflection maybe during lunchtime informal conversations about it. The idea was that after receiving request through the portal, central gateway, ICANN does assessment of that request and formulates recommendation for contracting party and sends it together with the request to contracting party for validation. Contracting party can validate or not validate based on their internal assessment of the information received request and the information in the possession of contracting party.

Where is the point? The point is that probably initially those recommendations will not be validated in entirety. The percentage of validation may be 50%, it's may be even lower. But as we go, ICANN would do analysis of non-validated recommendations and would train the algorithm to improve recommendations based on real experience. Then in 6-12 months, this validation rate may go up to maybe 70, 80%, and in three years, it may go maybe up to 90%. We would have the contracting parties making disclosure decision. This recommendation would come as a cheat sheet. Let's put it that way. But that would help automate the decision-making process to the extent possible and train that decision-making process, automate the decision-making process

based on real experience. The disclosure decision will still remain at the level of contracting parties and I cannot exclude the contracting party would put another machine to validate those recommendations coming from central gateway. That would be further in the future. Volker?

VOLKER GREIMANN: Maybe just one point. I think that's a good idea that there's a recommendation system in there that's optional to follow or not. That's a good idea and that should be followed. However, there's one thing that I would like to see in addition to that and that is basic feedback form or feedback loop where a contracted party or disclosing party, whatever, may provide feedback to that recommendation, saying for example, "While we acted in what might be seen as compliance for these recommendations or reasons for that were different or we followed this recommendation because we felt it was accurate." As an example, there's a recommendation to disclose based on certain facts. "Those facts are completely irrelevant to the decision that we made. We disclosed because it was an organization, there was no personal data in there." We can say that and say the recommendation was on point or the recommendation was off. Thereby, we could also help train that system as well.

JANIS KARKLINS: Okay. So you're buying this idea in the first glance?

VOLKER GREIMANN: Yeah, first time [inaudible] on that.

JANIS KARKLINS: Okay. Alan Woods?

ALAN WOODS: Mine kind of predates this conversation. So if you want to continue on, I don't mind, or else I can go and make my point, which is what was being said by Laureen and by Stephanie earlier.

Just when we're talking about … we started early and you prefaced yourself by talking about perfect being the enemy of the good. Think about it. I just want to make sure when we're talking about this concept of harmonization, which I agree is the perfect word for what we're talking about here, we really need to consider the hybrid model is not considered to be perfect. It's not going to give everybody everything that they wanted. However, it's going to do those things that were originally actually asked for and that was somewhat more predictability and a much more open way of applying for this disclosure, a way of seeing where … There are those procedural elements that are much more object. That's not the right word, but clear, in this instance.

If we're talking about harmonization, I think, we need to not look further than the actual GDPR itself. That is the very basis of European law, is the concept of harmonization across all member states. Even in those, they have this concept of subsidiarity, which is it's not always going to be applied the same. As long as the basic level is maintained, there will be changes on an individual country level. That's what we're talking about here in the hybrid model is that yes, we can say that there is a basic level of which we would expect but we can't take into account

the fact that individual controllers may have additional things that they have to put in place. I don't think we're going to fix it. If that can't be fixed to the European level perfectly, we're certainly not going to do it at an ICANN table. We just need to be careful of what we're expecting from this model. I think, Janis, just to say, I mean, if we are going towards thinking that this is the model that we should be choosing, I think we should wholeheartedly embrace that now and say, "Let's draw in these three and move down that path," because again, time is ticking. We are more focused on this one. I think we're getting some really good decisions and discussions on it. I think we need to keep doing that as opposed to having these bailout plans in the back of our minds. I think I said it in the chat earlier, we need to commit already. I think if we're going down that road, maybe we should. I just want to put that out as, let's move this forward. Thank you.

JANIS KARKLINS: You see that this discussion was important and, honestly, I did not hear the opposition. Because for once, it is a common sense model, it tries to sort of take into account wishes and concerns of everyone – those who want to be cautious, those who want fast return and the scalability of the model. Let me see whether we can talk a little bit about this recommendation at the central gateway. Then if the reaction from contracting parties was, let's say, cautiously reasonable or favorable. Is there anyone else who has some sort of concerns about recommendation which could be formulated and automated at the gateway at the moment of reception of request, analysis of request, and together with the request itself, recommendation would be sent to contracting party and contracting party would review the request and

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would validate or not validate the recommendation and provide necessary information in case of positive decision and not provide information in case of negative decision and would feedback to the central gateway reason in case of non-validation in order to train the algorithm at the central gateway, which would provide or develop those recommendations from day one on every case.

Here we are potentially then getting away from need to have this Steering Committee, we can think of overall kind of evaluation or let's say group, which is sort of talk through periodically how system works and then analyzes something simply to improve and then to keep communication going. But then, if we have that idea of recommendation of the central gateway, then in reality, we do not need any Steering Committee because this is the way how model works. The decision-making always stays with the contracting party but the recommendation is giving in automated way and facilitates decision-making by the contracting party.

Brian?

BRIAN KING: I don't think that we will agree that the decision-making always stays with the contracted party, but I do like the concept of making the recommendation to the contracted party in those cases where the centralized gateway couldn't make the decision itself.

JANIS KARKLINS: Okay, thank you. Volker?

VOLKER GREIMANN: I would just like to add one thing to your proposal. I like it very much so far. I just would like to add one little module there, which is basically that contracted parties can decide on certain factors whether to modify or automate certain types of requests or requests from a certain requestor. If we have, on our end, a certain good working relationship with foreign law enforcement that we trust implicitly, then we can say this request is approved for automating. That if the system has this ability built in that we can say this certain requestor has ultimate access to our data, which is on our risk, this is something that we would be willing to take on, but we feel comfortable with, then that is something that the system should support that.

JANIS KARKLINS: That is where you voluntarily give up your decision-making power to the central gateway, in a sense?

BRIAN KING: Just as in a way, it's actually the decision is made by the controller in that instance. You're not giving up anything. It is always going to be your decision. It's just going to be done in an automated way. It's a subtle difference in the way I heard that. I just want to make sure.

VOLKER GREIMANN: It remains our decision. It's ours to take away again, but we say this request was good. This type of request is good, whatever, we grant that. That's something that the system should allow. I think that's also

something that a lot of the people in the IPC and BC would like to see that we have that ability to give that, if we wanted to.

JANIS KARKLINS: I think that that is captured. Look, let us then stop here and please think about this recommendation model that we could then have, if everyone will agree immediately after lunchtime.

Now, I would suggest then, let's go to the GAC proposal on accreditation of public ... I thought it's at 1:00. I mixed up. Okay. I have good news for you. Lunch is served. Somehow I thought that this is at 1:00 but it's at 12:00. So in that case, please talk about this recommendation during lunchtime. We will think with the staff whether we need to talk about transitional mechanism, if we agree on this recommendation model of the gateway or that mechanism should be in form of simply group that thinks about harmonization of the work of the system and provide some implementation advice or something like that. Then we'll get to the GAC after lunch.

Lunchtime. Thank you.

[END OF TRANSCRIPTION]