**ICANN Transcription**

**GNSO Temp Spec gTLD RD EPDP - Phase 2**

**Wednesday, 22 July 2020 at 14:00 UTC**

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ANDREA GLANDON: Good morning, good afternoon, good evening. Welcome to the GNSO Temp Spec gTLD RD EPDP Phase 2 call taking place on Wednesday the 22nd of July 2020 at 14:00 UTC.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you are only on the telephone, could you please let yourselves be known now? Thank you.

Hearing no names, we do have apologies from Julf Helsingius from NCSG, and James Bladel from RrSG. They have formally assigned David Cake and Owen Smigelski as their alternates for this call and for the remaining days of absence. All members and alternates will be promoted to panelists for today's call.

Members and alternates replacing members, when using chat, please select "all panelists and attendees" in order for everyone to

see the chat. Attendees will not have chat access, only view chat access.

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

To rename in Zoom, hover over your name and click “rename.” Alternates are not allowed to engage in the chat apart from private chat, or use any of the other Zoom room functionalities, such as raising hands or agreeing and disagreeing.

As a reminder, the alternate assignment must be formalized by way of a Google assignment form. The link is available in all meeting invite e-mails. Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now.

If you need assistance updating your statements of interest, please e-mail the GNSO secretariat. All documentation and information can be found on the EPDP Wiki space. Please remember to state your name before speaking. Recordings will be posted on the public Wiki space shortly after the end of the call.

As a reminder, those who take part in ICANN multi-stakeholder process are to comply with the expected standards of behavior. Thank you. Over to our EPDP Phase 2 chair, Rafik Dammak. Please begin.

RAFIK DAMMAK: Thanks Andrea, and thanks to everyone for attending our second EPDP call this week, and we will continue the work today. So first, just we confirm the agenda so if there is any objection, okay, I see we have Alan and Marika in the queue, so Alan, please go ahead.

ALAN GREENBERG: Thank you very much. ALAC got their request for discussions in late and we'd like to have 36 on the list also.

RAFIK DAMMAK: Okay. Thanks, Alan. Marika, please go ahead.

MARIKA KONINGS: Yeah, thanks, Rafik. And just to note, I think 36 was also flagged by the Registrar Stakeholder Group and we overlooked that in adding it to the agenda. I also wanted to flag when we did another check of the agenda, we had inadvertently added item 20 which we already discussed yesterday, so we removed that, and item 21 and 22 where we'll be going first are actually about the same paragraph, so we've combined those for the agenda.

RAFIK DAMMAK: Okay. Thanks, Marika. So I think [inaudible] we have this item in our agenda under agenda number four. Okay, that's good. Thanks again, Alan, for flagging this. Okay, so I guess there is no objection with the agenda and it's confirmed. So we can move to the next agenda item, that's welcome and housekeeping issues. So I think it's just important to [set the scene.]

I understand that maybe not everyone felt that we made progress yesterday, but in fact we did significant one, and we resolved many outreach and engagement the “cannot live with” items that we were discussing yesterday. So I really hope that we continue that constructive and pragmatic approach today, and that’s a fact, we have several substantial items to get through. So I really count on you. So for that, I just want to remind everyone that we have that time limit. I understand the concern about kind of [no time boxes] and so on. I'm just asking to be efficient. One speaker by group, so please coordinate in terms of your intervention, and let’s focus on how we resolve the issue. So if you have a proposal that you think can get the other groups’ support, that’s how we should proceed.

So, that’s how we will proceed, but I want to also take the opportunity to express appreciation for those who completed their homework on the category two items. We know that it was challenging in terms of deadlines, but want to thank again for those who did it.

So what we will do, and as it was noted yesterday, if the time remains in today’s call, I will ask you to prioritize which category two items should be considered in the plenary setting. So to have that opportunity to focus on those items and to get that opportunity of having this call to go through.

So as a result, I've discussed with the staff support team and would like to propose additional online time for you to resolve category two items. I know, again, that it’s not ideal in terms of timing and everyone has other commitments, we have families, but category two items do not amount to “cannot live with” items,

so in such case, those should not impact the consensus designation or the finalization of other parts of the report as long as everyone is clear that further changes would only be applied if there is online agreement between the proposal and those that have expressed concern.

And I would have to say that the burden will be on those who have proposed the changes to engage in dialog with those having expressed concern to find agreement. And with that, the agreements need to be clearly flagged in the Google doc so others can also review and flag if the proposed changes will result in "cannot live with" items.

So I hope that is acceptable to you in order for us to continue dialog but not jeopardizing the overall timeline. Again, I know that we have those constraints, that we feel the pressure, but let's try and do our best to do so.

Anyway, at the end of the call, we will give more clarification about dateline and so on and how we will do for this online dialog. But for now, let's focus on our agenda and starting with the items that we started from yesterday and we will continue to go through, and then we will go to the category two if time permits.

Okay, so let's move to the next agenda item. Okay, so we'll start with—sorry. Marika, can you help me here which item we start with?

MARIKA KONINGS: Yes. Thanks, Rafik. So we're starting with recommendation number 9 where we have a couple of comments that were flagged

during yesterday's meeting as requiring further discussion. The first one we'll look at is item 21 and 22. As I noted before, both comments concern the same section in the automation recommendation, and namely, 9.4 which addresses the use cases that meet the legally permissible criteria based on the input that was received from Bird & Bird.

The first comment from the BC IPC notes that normative language is missing which should be reinstated, and we kind of noted that—we can confirm that as this language was originally in the policy language and then moved to the implementation section, the normative language was removed, but now that it's back in the policy section, it seems appropriate that the normative language of "must" is reinstated here.

The second comment comes from the Registries Stakeholder Group and as said, concerns this same section and has a number of proposed revisions to, in the registries' words, more accurately reflect the analysis provided by Bird & Bird on the automation use cases. And they provided as well a follow up comment and to indicate that the issue here is specifically with the misstatement of what the legal opinion states, the legal opinion is not a confirmation of legality but it's an indication of legality.

So as you think about these two, one potential approach for maybe coming these would be to kind of mix and match these two proposals by bringing back in the normative language of "must" but also maybe reflect the Registries Stakeholder Group concerns, so for example instead of saying "legally permissible" it could say, "For which legal permissibility has been indicated" to kind of address the concern. So maybe that's a potential

compromise between these two if necessary, some of the additional language that the registries provided could maybe also be captured in a footnote to provide some further context, but that could potentially be a way of bringing these two together and addressing both concerns. I think I'll stop here. I don't know if there are any comments or suggestions.

RAFIK DAMMAK: Thanks, Marika. I don't see anyone in the queue and no comment in the chat. I assume just people are maybe digesting and are thinking right now. Okay, so we have this proposal and there is no objection or concern, so we can update the language.

Okay, so I see Dan and then Mark. Dan, please go ahead.

DAN HALLORAN: Actually, Mark, do you want to go ahead? I'm still trying to figure out our take on this. Thanks.

MARK SVANCAREK: Sure. On number 22, the ICANN Org comment is important. As they note, the legally permissible term is a dependency of 9.4, so if it's removed here, we need to revise something in 9.4. I don't have a formulation for that yet, but you just notice 9.4 depends on that term. Thanks.

RAFIK DAMMAK: Thanks, Mark. Okay, so Dan, I guess you want to speak now.

DAN HALLORAN: Thank you. Yes, Rafik. I was just trying to catch up and make sure that—it wasn't clear how that comment we'd raised was being handled, if at all, but yeah, I just wanted to make sure that that comment was taken into account, that that formulation of what is legally permissible is used elsewhere. So just making sure that the team noticed that, and then trying to understand what the response would be. Thanks. And I see Marika's hand is up. Maybe she can help clarify things for me. Thanks.

RAFIK DAMMAK: Thanks, Dan. Marika, please go ahead.

MARIKA KONINGS: Thzanks, Rafik. I forgot to mention that there was also the ICANN Org comment, which we tried to factor into the compromise version which still has the legal permissibility reference but it doesn't talk anymore about confirmation but indication, and there would be a possible footnote that that could state that the EPDP team notes that the advice received was based on several specific underlying assumptions and any divagation from such conditions may affect the validity of the advice received. So again, it really tries to address all the comments that have been received on this in one version which hopefully is acceptable to all and again, addresses the different perspectives that were raised and flagged.

RAFIK DAMMAK: Thanks, Marika. Marc Anderson, please go ahead.

MARC ANDERSON: Thanks, Rafik. Apologies, I'm trying to chat with Matt and Alan in the background here to absorb what's been suggested and get our thoughts in order.

I think on the legal permissibility change, the Bird & Bird memo didn't talk about if something's legally permissible or not. It talked about the associated risk of liability. I think legally permissible, the language is better, but I think that this is not really getting to exactly what the Bird & Bird memo talked about, and I'm concerned it's potentially dangerous for the working group to make a statement about what is or is not legally permissible in this context. And so in my mind, that raises the questions, what if that proves to be not the case? And a contracted party making a decision based on a statement in the policy that something is legally permissible, does that carry liability? I'm not sure, but I think that that is a concern to me and something we need to be very careful about.

The other concern that I want to get to is this only takes into account the legal permissibility. It doesn't take into account technically or commercially feasible. So it's really only addressing one of the three pillars that we've discussed as far as automation goes. So I'm scrambling trying to make my comments on the fly here, but hopefully I've articulated our concerns on this one.

RAFIK DAMMAK: Thanks, Marc. Stephanie, please go ahead.

STEPHANIE PERRIN: Thanks very much. I just wanted to make sure—I'm losing track of where the footnotes and the paragraph goes. We're making sure that we have accounted for local law. Have we? And for transport [inaudible] data flow. Because it's a lot more than the legal permissibility under GDPR, it seems to me. And the legal permissibility under GDPR does not take account of, or at least is not explicit in taking account of any charter requirements. Thanks.

RAFIK DAMMAK: Thanks, Stephanie. Franck.

FRANCK JOURNOUD: I'm more than a little concerned about where we're going here per Marc's concerns, for two reasons. One is we seem to really think that it was useful to get legal guidance from Bird & Bird, we put a lot of work into it, etc. So at the end of the day, we neither rely on it, nor—we don't make decisions about what this policy does and doesn't allow, and if we leave to each contracted party—that's my sort of second concern—the decision of what is and isn't legal, then potentially there's nothing in this policy, because I'd say probably three quarters of this policy is based not just on policy decisions we've made but on what is and isn't legal.

Clearly, GDPR was a considerable frame for the policy that we have developed. So we've made innumerable judgments about what we thought was legal, was required, was allowed by law in this policy. I don't see why here we would set aside legal advice and our understanding of what the law requires or allows, and why

we wouldn't do this throughout the policy. I'm just a little confounded by where we're going with this.

RAFIK DAMMAK: Okay. Thanks, Franck. So first, we just got a queue here. Let's listen from everyone and try to come back with how we can proceed. So we'll close the queue with Hadia, and let's go with Volker, then Marc Anderson and Hadia. Volker, please go ahead.

VOLKER GREIMANN: Thank you, Rafik. And I hope I can unfound Franck a little bit. Ultimately, we are dealing with a worldwide policy, and Bird & Bird were asked for specifically GDPR advice. So what applies to the goose which is all countries under GDPR might not apply to the gander which is all other countries that might have their own jurisdictions.

Therefore, it is absolutely correct that Bird & Bird only provided an indication to inform our deliberations, and indicate what may or may not be legal. But us taking that advice and saying, "Under GDPR, this is legal, so this must be legal everywhere," might not be the case in every scenario. So we should be careful with making such an assumption.

I think moving forward, it is assumed that what Bird & Bird said is probably legally implementable. Might not be legal in every form of implementation or every scenario, and not for every contracted party. So therefore, I think we should support the change that—it is an indication and therefore your mileage may vary.

RAFIK DAMMAK: Marc Anderson, please go ahead.

MARC ANDERSON: Thanks, Rafik. Volker said some of what I was going to say, and I think Alan Woods also in chat got to the point I want to try and make in response to Franck. Our comments and my intervention was not meant to say we wouldn't rely on Bird & Bird advice. Contrary, I think it's very useful and informative.

But echoing what Alan said in the chat, having the policy state categorically what is or is not legal really seems—this raises red flags for me, especially since that's not what our Bird & Bird advice said. I went back and re-read the memo from Bird & Bird on automation, and it does not say that these types of disclosures are legal under GDPR. It talks about the associated risk of liability. It says there's a low risk of liability.

For us to take that legal advice saying there's a low risk of liability and turn that around and put into a consensus policy, a statement that this is legal under GDPR, really, I think that should raise red flags for all of us. That's not what our Bird & Bird advice said at all.

So I think our intervention is that we need to accurately reflect the legal advice that we did get.

RAFIK DAMMAK: Okay. Thanks, mark. So just to make it clear, I stopped the queue at Hadia. Sorry Marc and Franck. So Hadia, please go ahead.

HADIA ELMINIAWI: I raised my hand to respond to Stephanie's comment with regards to cross-border transfers. So actually articles 44 through 49 of the GDPR govern cross-border transfers of personal data. So we shouldn't worry here about that, because we're always seeking compliance with GDPR, so cross-border transfers are taken into consideration in GDPR.

As for Marc's comment with regards to the low risk comment of Bird & Bird, well, there's always going to be some kind of risk. It has nothing to do with automation. So even if you disclose, make the decision manually and disclose manually, there is a risk associated with that. And that's a low risk, certainly.

So again, there's no such thing as no risk regardless of how this is done. And according to Bird & Bird, they have identified some cases in which disclosure, decision to disclose, could happen in an automated fashion, and that will entail, as anything else, a low risk.

So again, we shouldn't be scared of this. They did tell us that this is possible, and that's why they pointed out some other cases and said that they are not possible. But we should not expect any legal advice to say there's no risk, because there's no such thing as no risk.

RAFIK DAMMAK: Okay. Thanks, Hadia. So I want first to thank everyone for the comment. It's important that you are stating your position and concerns. I think it's also important to remind everyone that here

we should focus on the compromise language and see if that responds to the concerns that help for resolving this issue.

So for now, I'm not sure that we are at that stage and that everyone has kind of reviewed the proposed language, and as far as that thinking, we can stop here, but we'll come back later and give the time for everyone to rethink and see if this compromise, or maybe if you have another idea that will help us to resolve this. So this is kind of my suggestion for now. I know that maybe it's not the most constructive right now, but at this stage, just to give you time to discuss and internally, and then when we come back later on, we'll try to go into the substance and try to fix this. Okay?

And sorry, Marc and Franck, as said, I stopped the queue before. But anyway, we have another chance later on to discuss. So with that, we take note of this and we try to come back later to discuss this topic.

So let's move to the next item, please.

MARIKA KONINGS: Thanks, Rafik. The next item is comment or item number 23. This concerns a proposed addition by the BC IPC that would be a new section or new provision in recommendation 9 that would read, "Per the legal guidance obtained, the EPDP team recommends that the following types of disclosure requests are legally permissible under GDPR for centralized disclosure, evaluation, intake as well as processing of disclosure decision at the central gateway manager when subject to manual processing and review from the start." And the two use cases are automated disclosure

decisions for clear cut domain matching trademark request, and automated disclosure decisions for clear cut cases of phishing. ICANN Org is the controller when processing this disclosure decision.

And the original proposal that staff had put forward, we noted that this appeared to be a substantive change which is referring to a centralized disclosure evaluation which is not currently described in the recommendation, so it's not clear what this would entail or how the central gateway manager would be expected to make an evaluation of clear cut requests and we also observe that as part of section 9.15, the standing committee has already been asked for further review of the use cases in the legal memo which included these and the EPDP team of course did extensively discuss which of the use cases were to be included in the recommendation which we discussed under the previous point.

But I think there was a concern about that proposal, so I think the question for the group is probably, is there support for adding this new paragraph to the report? And if there is, there's probably a need for some further guidance on how this is expected to be implemented at the central gateway level.

RAFIK DAMMAK: Okay. Thanks, Marika. So here [inaudible] if you are okay with this new addition, if you have any concern. Yes, Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. I'm not clear on what the IPC and BC are asking for here. I'm reading that it says that they want centralized disclosure evaluation by the central gateway manager. I'm not sure what that adds, but I just wanted to point out the two bullets, the two use cases that they're pointing out here. I don't have much in terms of input on clear cut cases of phishing. I'm not sure how that would be achieved.

But the other one, automated disclosure decision for clear cut domain matching trademark requests, I don't think this is a high enough bar for any kind of preferential treatment in terms of centralization of decisions or automation for example, because as far as I understand it, the domain names that match trademarks, even clear cut ones, isn't necessarily an issue. There has to be evidence of bad faith involved as well, and in cases like that, those were the UDRP—you can go to UDRPs and that's the process that needs to be followed.

So just because a domain name matches a trademark, even if it's an exact match, that in itself is not necessarily a clear-cut issue on anything. So again, I'm not sure why the IPC and BC are asking for this, what problem they're trying to solve. Thank you.

RAFIK DAMMAK: Okay. Thanks, Amr. So we have Owen, Margie, and then Marc. Owen, please go ahead.

OWEN SMIGELSKI: Thanks. I just want to agree with what Amr said as well too, and then also add, these are types of use cases that we have

discussed previously and have not been able to come to consensus on them, so they have not been included. Bringing them in now is just too late to try and get some sort of consensus. I know they may seem to be, quote unquote, “clear cut,” or easy, but these are things that do require a subjective review, that do need that domain name matching trademark requests.

In my former life as a trademark attorney, there's no such thing as a clear-cut trademark request. That’s why there are courts and UDRPs and other things that have to go through and weigh and do balancing. None of that is in here. There's no balance for that, no control on that. And same thing, clear cut cases of phishing, who’s going to certify that? How’s that going to be determined? Who’s going to make that determination outside of this central gateway? So I think it’s just wrong to try to bring this in now [inaudible] and I don’t think we’ll be able to get agreement on what is “clear-cut.” Thank you.

RAFIK DAMMAK: Thanks, Owen. Margie.

MARGIE MILAM: Hi. Yeah, I can address all of those issues. First of all, this is nothing new. We've been talking about this for a while. The reason we put it into our comments this time around was because of concerns we had regarding how the evolution would work and whether these things could be considered later.

What we did was track the Bird & Bird advice, and we asked specifically Bird & Bird about this issue as to whether or not it

could be automated. And one of the concerns, they said, was as long as there's some manual intervention in looking at the case, which is why we thought it would be appropriate for the gateway to do this, that those types of cases could be automated. In terms of clear cut, we already have lots of examples of that.

For example, the URS is something that has a standard. We have the DNS abuse framework that many of the signatories are on this call that talk about what phishing is. So it's actually something that could be done very easily, could be standardized, and ICANN or the central gateway manager could learn from that process and make it much more streamlined.

So this is something that is very important to our constituency. Saying that a UDRP is an option is not appropriate because that entails charging a fee for filing a complaint without even knowing who the actual registrant is, plus the filing fees. So that's in our view not the appropriate way of addressing this issue.

So what we're suggesting is that there would be a manual review to do the checks. You can follow the framework that the registrars and the registries asked for when you're working through the DNS abuse framework where you make the request, you provide proof such as an e-mail solicitation or a screenshot of the login page, but all of that can be streamlined at the central gateway manager. so that's what we're asking for here.

RAFIK DAMMAK: Thanks, Margie. As we said, one speaker by group, so sorry—well, [could be] Alan, so not Marc. Alan, please go ahead.

ALAN WOODS: Thank you. And I'm sorry, I [am obviously—I think it was Marc,] but I'll be very quick. I just needed to probably draw a line there with this comparison with the DNS abuse framework. They are completely apples and oranges. If you report abuse, that is through an entirely different process. You don't need to request disclosure of a person's data in order to do that, if you follow the process that is outlined in the DNS abuse framework because that is under the requirements of the registry and the registrar to do that. We will do that.

There's a huge difference between applying the DNS abuse framework to the request for information where you want to do your own review of that. There are processes in place. Again, we're talking about minimization, necessity. I think throwing the DNS abuse framework into this particular conversation at this point is a bit of a red herring and I don't really encourage it even being on the record at this particular point in time.

RAFIK DAMMAK: Okay. Thanks, Alan. I think that's the end of the queue, and we heard from different parties, their view about this additional language. So I think here, there is not enough support to add this language. I guess that means that we have to drop this one, unless there is another suggestion or proposed compromise.

Okay, so also trying to catch up in the chat, so sorry for the delay. So Owen, you are suggesting to remove the automation part as a compromise.

OWEN SMIGELSKI: No, actually, I don't agree with that. This seemed weird, that it was manual review but automation. It just didn't make sense because you can't have both of them in there. No, it's not something that [we'll] agree to because there still needs to be some type of option for review by the contracted party because we still need to confirm that it is something that can be done legally permissible under the jurisdiction of wherever the contracted party is located to it's commercially feasible, all those other things we discussed. So no, I don't support this. Thank you.

RAFIK DAMMAK: Okay. Sorry, I was just trying to understand the comment. So I will then first the queue here with Alan Greenberg. I see Marika in the queue, so please go ahead.

MARIKA KONINGS: Thanks, Rafik. Just to remind everyone, again, that even if these use cases do not get included here, they have been specifically called out as items to further review by the standing committee and look at potential additional safeguards that may make either further automation, either with a manual review or completely automated, possible. So it's not, if this is not included here, that it will not be considered. There is already a provision in the recommendation that requests the standing committee to further look at the memo and the use cases in there to see what options are possible.

RAFIK DAMMAK: Okay. Thanks, Marika, for the clarification. Margie, please go ahead.

MARGIE MILAM: Hi. Yeah. I think there was confusion regarding the word "automation." So I did agree with your proposal that this be something that's done at the central gateway as opposed to at the contracted party since it would be a very common use case and the gateway would be able to learn from it.

And I think the point that we also raised in the memo that I forgot to mention is that in that scenario, the controller would be ICANN in that world, in the situation where the phishing or the trademark cases is being disclosed at the request of ICANN and ICANN can allocate the liability in the joint controller agreements or joint processing agreements with the contracted parties in order to take responsibility for that decision. So that was part of the proposal on why we thought this might work, because it aligns with the Bird & Bird memo and could be addressed in that way.

RAFIK DAMMAK: Thanks, Margie. Alan Greenberg.

ALAN GREENBERG: Thank you. A number of points. In terms of the word "automation," we tried a number of times to use the word "centralization" for SSAD requests that are assisted by or done by a human being, and for better or worse, we ended up defining the term "automation" as potentially including manual steps. It's

semantically horrible, but that is what we ended up with, so we have to live with it today.

These are use cases that I personally support, but we're on limited time here, and when it becomes obvious that we are not going to reach consensus on something, I wish we wouldn't have 12 different people speaking saying the same thing. Thank you.

RAFIK DAMMAK: Thanks, Alan. So like I said, I closed the queue, and so I think it's clear that there is no support for the additional language. I think we heard the rationale and explanation behind the proposal, but not getting the support that you need to have it added. So with that, I think we'll drop this proposal and move to the next item. Marika, please go ahead.

MARIKA KONINGS: Thanks, Rafik. Next item is item 24. This is a request from the IPC BC to delete section 9.14 which currently states, "In the context of further consideration of potential use cases that are deemed legally permissible in the context of recommendation 18, legally permissible is expected to be determined in the absence of authoritative guidance. Example given, EDPB, European Court of Justice, ECJ, a new law by the parties bearing liability for the automated processing of disclosure decision.

Just as a reminder, the deletion of the section was also discussed during the one before last meeting, and at that point, there was no agreement to delete it. I think a number of people opposed removing this, and I think we also noted that this language is

consistent with I think what is foreseen in the standing committee on how those decisions would be evaluated. But I think this was flagged for discussion, so maybe groups have changed their views on this. So I guess the question is, is there agreement to delete this particular section from the automation recommendation? So 9.14, which Berry has also highlighted in the section on the left, and if I'm not mistaken, this is part of implementation guidance.

RAFIK DAMMAK: Thanks? Marika. So asking a question here, and that's if there's any support for deletion or not. Just giving one or two minutes for everyone to think and digest while trying also to keep moving forward and going through other items.

Okay, so I think the question was if there is any concern or support for the deletion, but in absence of a reaction or comment, it's really hard to make assessment. Let me check. Okay, so thanks, Matt, so the registrar object to the deletion. I think that's one reaction. [If there are others, please express] so I can make that evaluation or assessment. Margie, please go ahead.

MARGIE MILAM: Hi. I'm trying to understand, are we suggesting that the change is okay or isn't okay? I think that's where the confusion lies. We believe that we already have it addressed elsewhere, so we're still asking for the change in 24, but I don't understand where the rest of the group is on that particular point.

RAFIK DAMMAK: Thanks, Margie. So the proposal is for the deletion, and the question here is if there is support for that or if there is any objection. Maybe to make it simple, if there is any support to the deletion, to make it more simple and straight forward as question. Yes, Marc, please go ahead.

MARC ANDERSON: Thanks. I do not support the deletion. I think this text is necessary. I agree with the points staff made in the proposal. So I suggest leaving the text as is.

RAFIK DAMMAK: Sorry, Marc, I really had a hard time to hear you. Can you please repeat? And you need to speak louder.

MARC ANDERSON: Sorry. I'm not okay with deleting this section. I agree with the point staff makes, it should remain as is.

RAFIK DAMMAK: Okay, so you are not okay with the deletion. Thanks, Marc, for clarification. Stephanie, please go ahead.

STEPHANIE PERRIN: I think my point's been made. I'll save us time. Thanks.

RAFIK DAMMAK: Okay. Thanks. I don't see support for the deletion. Okay, so I think we gave enough time for the groups to express seeing no support or people not being okay with the deletion. I think we will then keep the language as is. So with that, we move to the next item.

MARIKA KONINGS: Thanks, Rafik. So we're now going back to a couple of items that we discussed during yesterday's meeting in relation to recommendation 8, contracted party authorization. Not sure if everyone has seen, but a small group got together earlier today to try and work through the input that was received on the document as well as the comments that were received during yesterday's meeting to try to come to a possible compromise proposal that hopefully addresses the different views that were expressed.

That proposal was shared on the list prior to this call and I'm hoping that one of the people that participated in the discussion—and that was Amr, Alan Woods and Chris Lewis-Evans—are willing to speak to this. So I'm waiting for one of them to raise their hands to introduce the proposed changes to recommendation 8 that were made in redline format. Thank you, Amr.

RAFIK DAMMAK: Thanks, Marika. It seems Amr drew the short straw to speak on behalf of the small team. Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. I didn't catch everything you just said. It sounded like you were trying to blame me for something, so whatever. But

okay, what we have here is something that a few of us, Chris, Alan Woods and myself got together with staff on a call just a few hours ago and tried to work out a fix for recommendation 8, contracted parties authorization.

If you recall during yesterday's discussion, there were a number of issues raised by the NCSG, the Registries Stakeholder Group as well as the registrars and that was—the concern was that the language we have in recommendation 8 mandates differentiation based on the geographic location of registrants, which is something none of the three groups wanted as an obligation on the part of contracted parties and we're looking more for a recommendation consistent with recommendation 16 in phase two which allowed contracted parties to differentiate based on geographic location but did not obligate them to.

And ICANN Org also submitted a comment on this recommendation pointing out the same inconsistency between recommendation 8 in phase two to recommendation 16 in phase one. The GAC also raised a concern in response to some of the fixes that the NCSG proposed which might have resulted in the recommendation reading like it required a balancing test to be conducted with every disclosure decision, which was certainly not the intent.

Clearly, there's more than one legal basis in article 6 of the GDPR, and only one of these legal bases requires a balancing test to be conducted. So that's kind of why the rep from NCSG, the Registries Stakeholder Group and the GAC got together to try to fix this. And we came up with the proposed changes that Marika circulated a few hours ago directly following our call.

So you'll see there's one addition in the body of the main section at the beginning of the recommendation which references that recommendation in phase one, recommendation 16, and the purpose of this addition was to create a distinction between contracted parties that opt to treat all registrants the same irrespective of the geographic location and those contracted parties that opt to differentiate. So the intent here is to make clear that those who do choose to differentiate between registrants based on their geographic location would not be subject to some of the sections later on in the recommendation, specifically I think sections 8.8 and 8.9.

And then a number of changes were made further down in the document. There was a reference to section 7.2 which was corrected to 8.7.2.3, and there's also a change in that actual section, 8.7.2.3. Instead of referencing applicable law, which was one of the concerns the NCSG had, it references the lawful basis identified by the contracted party in section 8.3. and the reason this change was important, at least to the NCSG, is that the combination of this section along with another one further down which I will point out in a minute seemed to suggest that if a contracted party was not required by law to provide a lawful basis, then it wouldn't be and the contracted party would be obliged to disclose requested data. This was clearly problematic because it depended on the geographic location of the registrars, the registries and the registrants, and this is not something we want done.

So here, instead of saying "required by appliable law," the reference is to the lawful basis identified in section 8.3 of the same

recommendation further up. This was complemented by the change further down that I mentioned in section 8.17 at the very bottom of the document. Again, there was a reference here, it says that a lawful basis may be based on the presence of a lawful basis under ICANN policy or applicable law.

And this reference was amended. The previous text said that if there was an absence of a prohibition to disclose the data under applicable law, which also suggested the laws governing the contracted parties and the registrants, then the disclosure must take place. And again, this provided an obligation for contracted parties to differentiate between registrants based on their geographic location.

So again, this, we believe, was inconsistent with recommendation 16 of phase one as well as what we believed was the intent of this recommendation, so made that change and made sure that the references made were referring to section 8.3 of this recommendation, again, and made sure that the lawful bases are either those identified in GDPR or any privacy law that is local and applicable to the contracted party involved in the disclosure decision.

I hope I covered everything. and if I haven't, I'm sorry. Like I said, we just worked on this a few hours ago. But Alan, Chris and Marika, please feel free to jump in and correct me or add to whatever I said. Thank you.

RAFIK DAMMAK: Thanks, Amr. And yeah, as you said, this proposal was shared a few hours ago since it was discussed today by the small team, and you went into detail. So I'm thinking here that this proposal is to have a five-minute break to allow the groups to discuss and to have a chance to go through the proposal, and so to be ready really for the discussion, so to be more effective. Are you okay with this?

So let's start the timer for five minutes, and then we'll resume the meeting to continue deliberation on this proposal. And Marc, the proposal was sent to the mailing list, but I think it's in Google doc, maybe it can be shared. Anyway, let's start the five-minute caucus or break, and the we'll resume. Thank you.

Okay, thanks everyone. So we are resuming our meeting and continuing discussion about the proposal for recommendation 8. But before I start with the queue and hearing the comments, we ask that the intervention to be focused on if those changes are resolving "cannot live with" items, and if so, do you have any suggestion on how to fix this while also addressing the concern expressed by others? So I really urge everyone just to focus on if there is a concern with the proposal, if yes, what you can counter propose while understanding other concerns. So that's what I'm asking everyone to do. Alan, please go ahead.

ALAN GREENBERG: Thank you. I can't support the sentence—or the ALAC can't support the sentence at the end of the first paragraph as written. Number one, it doesn't differentiate between natural and legal. It doesn't even attempt to, and we know at this point that we have

no requirement for differentiation within the EPDP rules. And so given that we have no requirement to differentiate, it doesn't differentiate, and it says the EPDP team does express a preference.

Well, I don't believe we should be expressing preferences in this report anyway, but that notwithstanding, we do not have full consensus on this and you can't say "The EPDP team." You can certainly say, "Some members of the EPDP team express a preference," but you can't attribute this to the whole team. Thank you.

RAFIK DAMMAK: Thanks, Alan. So I understand you have a concern about the last sentence.

ALAN GREENBERG: I have a concern about the whole thing because I don't believe we should be making a statement without differentiating between legal and natural, and in the second sentence, I don't believe we should be expressing a concern, [sic] and certainly not on behalf of all members of the team. Thank you.

RAFIK DAMMAK: Okay. So, what are you proposing as a counterproposal?

ALAN GREENBERG: I would propose, at the first level, to strike the whole thing. At the second level is to strike everything after “although,” and the third level to modify it to “some members of the EPDP team express ...”

RAFIK DAMMAK: Okay. Thanks, Alan. Nobody in the queue, so I assume they're still thinking. Okay, so Marika, you can make the change and see how it will look. Yes, Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. The last sentence in the first paragraph, I'm personally ... Although it does express the sentiment, at least from the NCSG, but I recognize Alan’s point in terms of not necessarily being representative of the entire EPDP team. Apologies for that, Alan, but we were under the impression that since we’re building a standardized system for access and disclosure, that it was a general given that there is a preference for the EPDP team to treat disclosure cases as uniformly as possible. So apologies if that was presumptuous on our part, and since we were incorrect in that assumption, then I think it’s fair to ask that that last part of the paragraph be stricken.

I'm more concerned with Alan’s request to include legal versus natural on this. As things currently stand, we still have outstanding work on that front. ICANN Org has provided a study that as per the phase one recommendation, the EPDP team was required to go through that study and consider its findings in preparation for coming up with a recommendation on legal versus natural. Clearly, we did not have the opportunity to do this in time. So legal

versus natural has to be dealt with elsewhere. So on one hand, I'm concerned with Alan's request to include legal versus natural here, because as far as I can tell, nothing has changed in that context and also, I don't understand the substantive nature of what Alan is proposing in terms of legal versus natural, so if Alan could clarify what he would like to see in terms of this recommendation, legal versus natural, that might be helpful. Thank you.

RAFIK DAMMAK: Thanks, Amr. Alan, then Laureen, then Mark.

ALAN GREENBERG: Thank you. I really resent people putting words in my mouth which I did not speak. I did not ask for legal versus natural to be discussed here or inserted. I said in light of the fact that there is no differentiation, I have problems with the sentence. I did not suggest that we go into the legal versus natural. I understand—although I don't agree—that this PDP has deferred it to the indefinite future. That's not the question on the table. We're not reopening that at this point.

I'm simply saying that the lack of differentiation makes the whole sentence somewhat problematic. I'm willing to live with the first half of the sentence, and striking the second half addresses my main concern at this point. Thank you.

RAFIK DAMMAK: Thanks for the clarification. Laureen, please go ahead.

LAUREEN KAPIN: Thanks. And maybe I'm contradicting Alan a bit, but as I understand it, the status quo in phase one is to allow registrars to distinguish in their treatment between the data of natural and legal entities. And the status of the legal versus natural work in our PDP, at least at this point, is clear. There isn't going to be any further work done. So the status quo actually is to allow this distinction to be made at the discretion of the registrar. So I actually think it should be included here, because that's what our phase one recommendation is and there's no currently planned work, although I certainly hope there will be, to deal with this important topic. But that road is very unclear at this point.

RAFIK DAMMAK: Thanks, Laureen. Mark.

MARK SVANCAREK: Thanks. So between the last two interventions, I think we're aligned with what I'm thinking. The first part of the sentence, up to the "although," does need to stay in. I like that. And I believe that the text after the comma where it's stricken after the "although," should be removed for the reasons that the previous interventions mentioned.

If that were done, I could accept this. Thank you. Also, to Owen's point, I am a little worried about trying to race through all of this with just five minutes. I apologize for not being fast enough on that. It's just a lot to absorb. Thank you.

RAFIK DAMMAK: Thanks, Marks. Yes, point taken, but as you know, we are trying to do our best here. Okay, let me see. So we have no one in the queue. Oh, Eleeza, please go ahead.

ELEEZA AGOPIAN: Thank you, Rafik. Sorry for the last-minute comment. Just to echo Owen and Mark, we are kind of just absorbing this this morning since it's so early for us here on the West Coast. One question we had for you had to do with 8.17. When we had previously reviewed recommendation 8, we understood the paragraph in 8.3 to define a lawful basis in reference to this implementation guidance in 8.17. And the change to this guidance was as little bit difficult for us to parse, and we're wondering if the team could help us understand what a lawful basis under ICANN policy would be.

We understand what it means for it to be under applicable law and that seemed to be a reference to the GDPR or provisions under other similar laws, and we understood the inclusion of language which has now been deleted about the absence of prohibition on processing that data, but we're not sure where it's defined what a lawful basis under ICANN policy would be and where that would be defined. I think if it could be defined either here or elsewhere, that would be very helpful for us when it came time to implementation. Thanks.

RAFIK DAMMAK: Thanks, Eleeza. Alan Woods, please go ahead.

ALAN WOODS: Thank you. I will try and go through 8.17, explain it in a way. The ICANN policy that we're referring to is, I suppose, clearly this one. And what we're saying is, again, noting the fact that there are jurisdictions around the world where registrants, if we applied what was written here, would not be caught with the protections that are afforded to other registrants. Therefore, what we're saying here is that under the terms of this particular policy, that the minimum level applied should be that which is applied to all registrants. And it would be a lawful basis as it is covered under this policy, therefore, under ICANN policy, not necessarily applicable law and that's why applicable law was put second, because again, this is only where ICANN policy is contradicted by a specific law would we then have to look to the applicable law.

But I think it's making the baseline being the ICANN policy trying to try treat all registrants equally as opposed to applicable law which unfortunately at this point in the world does not treat all registrants equally, and we need to be, I suppose, in a way, taking a stand for those people who do not have the protections under laws in their own countries.

RAFIK DAMMAK: Okay. Thanks, Alan. Alan Greenberg, please go ahead.

ALAN GREENBERG: Thank you. I'll repeat something I said yesterday. That's an admirable position to take. It's not within our charter and it's not something that we're supposed to be deciding on here. We can't

just add in things, we have been told regularly, just because we believe they're right or because they're good. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. So closing here the queue. And taking into account the comments in the chat—so, what we can do—and I notice that it was shared just a few hours ago and people were sleeping. I can understand that. I would be sleeping right now myself, because of the time here.

But anyway, what we can do is to share the Google doc after the call, but I would like to ask here the groups to focus on the specific change, and any "cannot live with" aspect, because as you know, we don't have anymore any time for further deliberation and discussion. So for that, we set the deadline for getting input by the end of the COB today, so I think that gives you enough time. We are trying to be flexible as much as possible, so please, review those changes and just focus on if this really creates any "cannot live with" aspect. Okay? So that will be posted after the call. So this is how we will proceed for now. We'll get the different input. I understand that people want to have more time for review.

So we will proceed with this, and with that—and this is our action item—we should move to the next item. Marika.

MARIKA KONINGS: Thanks, Rafik. This is another item in the same recommendation. This relates to section 8.7.1. It's a proposal by the BC and IPC to replace the first sentence or make a deletion in the first sentence of 8.7.1 as basically deleting from the sentence, "If following the

evaluation of the underlying data, the contracted party determines that disclosing the requested data elements would not result in a disclosure of personal data, etc., the proposal is to delete “the contracted party determines.”

So we actually asked a follow-up question to the BC and IPC that if it’s not the contracted party who’ll be doing the determination of whether or not the requested data elements would result in disclosure of personal data, who would be making this assessment. And the BC responded that this is an example where ICANN Compliance can evaluate whether the initial assessment by the contracted party is accurate.

I think from a staff perspective, this still leaves us a question on how that would work in practice. Would a contracted party send an assessment to ICANN Org for review, or would this be audited? Also, by removing “adhere,” it still leaves it vague who would do the assessment. So if the intent is to also have a role for ICANN Org here and there is agreement by the group that that’s appropriate, maybe it’s better to specify that instead of taking out who is responsible for the specific part, which I think we've tried for most of the recommendations to be as specific as possible who would do what.

So I think there are two questions here. I think on the one hand, is there support for removing this language and this notion that this would be something that ICANN Compliance could evaluate this initial assessment done by contracted parties and how it’s done, and if there's a disagreement, maybe consider formulating this in a different way so that the recommendation at least is still clear, who

is responsible for making that determination of whether or not it would result in the disclosure of personal data.

RAFIK DAMMAK: Thanks, Marika. Margie, please go ahead.

MARGIE MILAM: If I could clarify the request. Perhaps we weren't that clear. It's not a question of the contracted parties evaluating it, because obviously, they're going to be the one that receives it. The question is whether the determination can be subsequently raised by a requestor with ICANN Compliance in the event that the position is that the data does not include any data of a personal nature, PII. And that's what we're really talking about here.

We're not saying that ICANN Compliance needs to get in the middle of it. Every request, that's not feasible or possible. But it's a factual question as to whether or not the record includes personal information or information of a legal entity. And to that extent, if the determination by the contracted parties is wrong, factually, that's a yes or no, is it legal or is it personal, then at least that gives the ability for the requestors to be able to make a request through ICANN Compliance to have it reexamined.

And then what we imagine is that the contracted parties would show ICANN Compliance the actual data. So there's a check there to make sure that there's no inappropriate rejection of a request when there is no personal data. So that's the intent, and I'm happy to consider other changes that might reflect that, but that's the concept behind this comment.

RAFIK DAMMAK: Okay. Thanks, Margie. Volker, please go ahead.

VOLKER GREIMANN: Yes, I just wonder what that complaint or request would be based upon. If you don't have that data disclosed, you wouldn't know whether it's a natural or individual entity that is behind the registry data. But you would base the request to ICANN Compliance on what then? It doesn't really make sense. I think we are still of the opinion that the language as proposed is important and must stay.

RAFIK DAMMAK: Sorry, Volker, did you finish your intervention?

VOLKER GREIMANN: Yeah. I should learn to say thank you at the end of everything.

RAFIK DAMMAK: Okay. No problem. Thanks, Volker. Margie.

MARGIE MILAM: I think there's an oversimplification of where that information might be obtained. For example, the Org field might be posted already. That's one example. So if the Org field contains something that's obviously a legal entity's name, that would be an indicator that the information is likely to be that of a legal person as opposed to a natural person. And then that might prompt the requestor to

reasonably submit a request to ICANN Compliance to double check that. Or there might be another scenario where the information's already been disclosed in the past and it's already known to be that of a legal entity's, and that might also be something that ICANN Compliance might know about because of previous complaints.

So I think we can't rule out that there might be indicators, or the website itself might have some information that makes it seem as though it's a legal person and not a natural person behind the website. So I don't think we can rule out that there may be reasons why there would be an indication that it would be a legal person's entity. We're just trying to make sure that that information can be something that could be the subject of a compliance inquiry.

RAFIK DAMMAK: Okay. Thanks, Margie. Larueen.

LAUREEN KAPIN: Here, I'm going to support the comment because I'm looking at the comments in the chat too. Nevertheless, I think as Margie indicates, if you look at the entire WHOIS record, including to Alan Woods' point that the determination of the Org feels not determinative, but you could look at the entire WHOIS record to assess whether there's personal information in that record or not, and that typically is apparent on its face.

So this seems to me a very clear example of where a complaint can be taken to ICANN Compliance. And this is very different from

the balancing test which requires expression and perhaps nuance in certain cases. It's complicated. That's totally on the other end of the spectrum from what's being proposed here, which is typically an on its face assessment, and that seems to be very clearly a category that could go to ICANN Compliance for a second look without intruding into a sort of discretionary arena.

RAFIK DAMMAK: Okay. Thanks, Laureen. So, I have Marika in the queue, so I hope she's coming with some proposal here. Please go ahead.

MARIKA KONINGS: Yeah, thanks, Rafik. I'm actually probably just echoing what I think Matthew just put in the chat. I think deleting this doesn't seem to necessarily achieve what I think Margie has in mind. At least if you read this language, the contracted party determines if disclosing the requested data element would not result in disclosure of personal data.

By having that language there, what would prevent someone from filing a complaint and saying, "I have evidence that the disclosure would not have resulted in personal data, the contracted party made a determination and they said they didn't. Can you investigate? Because here I have proof that there was no personal data involved." Leaving aside what is personal data and what isn't.

so I'm not really sure or clear on what more the deletion of that wording achieves, apart from leaving unclear who, after the evaluation of underlying data, would make that assessment of not resulting in disclosure of personal data.

I hope I'm making myself clear, but at least I don't exactly see how deletion of that changes the ability of a requestor or anyone who wants to file a complaint to indicate that they think a contracted party made an incorrect determination and they have evidence to provide that would show that it's an incorrect determination.

RAFIK DAMMAK: Thanks, Marika, for the comment. Seems Margie wants to respond back. Yes, Margie.

MARGIE MILAM: Sure. As I mentioned, I'm not wedded to the language here, but if we add somewhere the concept that the question of whether PII in a contract field is something that can be reviewed by ICANN Compliance, I think that that addresses some of the concern, or you could—the reason why the language here was objectionable, because it made it seem as though it's something that's at the sole discretion of the contracted party when this is truly a factual determination. So maybe if it's something like the contracted party reasonably determines that ... So that it's not simply, "Oh, we determine there's nothing in here, therefore it's final and there's no ability to review it." So if you couple the word "reasonable" with an additional sentence that says that it's an issue that can be addressed by ICANN Compliance, then I think that would work for us.

RAFIK DAMMAK: So Margie, to kinda follow up with what you are saying, I think we can come up with a specific language or concrete suggestion that

will really help us here to move on. I think we are hearing different several argument as well, but at the end of the day, the proposed language will be really helpful to get support. So, can you make any suggestion in the chat?

Okay, thanks, [Margie.] So you're proposing to add the term, “Reasonably.” And I see that Marc is making a point that it should be covered in point 8.10.

Okay, so what first we have is that we already—okay, so thanks, Marc, for sharing those section just to remind how that’s covered. So the question here is if this edit to add “reasonably” is something that can be accepted. Is there any objection to that?

AMR ELSADR: I'm sorry, Rafik, what are you asking exactly?

RAFIK DAMMAK: Okay. So I asked Margie if she has any concrete suggestion or wording and my understanding, she's suggesting to add the word “reasonably,” so it would be, “the contracted party reasonably determines ...” So I was just asking if there is any objection to that.

Okay, thanks, Marika, for adding the full sentence to make it clear to everyone. Okay, no objection. Thanks. So that means that it’s getting support.

So I guess it seems we have support and we resolved this. Thanks, Marika, for capturing the change. With that, I guess we can move to the next item.

MARIKA KONINGS: Thanks, Rafik. The next item brings us back to recommendation 6, priority levels, item 8. We briefly touched upon this yesterday. There's a proposal from the GAC and the BC to change from "may" to "must." The ability for a contracted party to prioritize requests that have been flagged by requestors as being concerning, a consumer protection issue, phishing, malware or fraud.

And as we noted as well, as a reminder, the ability for requestors to indicate a consumer protection issue and allow the contracted party to prioritize it accordingly is included in this way as the EPDP team did not agree on a definition and criteria for consumer protection issues when the original priority levels were discussed, and it was the expectation that by allowing this ability for requestors to flag and the ability—but not requirement—for contracted parties to prioritize, that that might gain some experience that could help in subsequent discussions or conversations and for the evolution of possible priority designations which could be tied to certain requirements.

We noted in our comment or question as well that without specific criteria and specificity on what a contracted party is expected to do, it may be difficult to enforce a "must" agreement and we asked for some further clarity on that.

The GAC team responded noting that when contracted parties review requests, which they likely must do to assess whether or not to disclose. They would need to flag requests that relate to

consumer protection, and then prioritize these requests ahead of other priority three requests.

Another option would be to create another priority level for consumer protection requests, priority three, and let the remaining requests go to priority four.

So I think the first question here for the group is, is there a concern about this change from other groups? And a second related one is if there is support for making this change from "may" to "must," is there sufficient information for contracted parties to know what is expected of them as well as for ICANN Org to enforce this obligation?

RAFIK DAMMAK: Okay. Thanks, Marika. Volker, please go ahead.

VOLKER GREIMANN: Thank you, Rafik. Yes, I for one am very concerned with this. We originally agreed on the three categories for a reason, and now we're making a 2.1 or slightly less urgent category at the last minute. I am very concerned with that.

Second, the terminology of what constitutes consumer protection complaint is probably very broad, so every second complaint would probably fit into that category and therefore, it would lead to more overhead as we would have to scan through all the complaints that we get first, then determine which ones are in this serious consumer protection category, do them first and then do the others last.

We have limited time. We agreed to three categories, let's leave it at that. Thank you. And we continue to support "may" over "must," obviously. Thank you.

RAFIK DAMMAK: Thanks, Volker. Okay. That's the first question, if there is any concern about the change. So let's hear from ... let's see if there is any reaction. Yes, Laureen, please go ahead.

LAUREEN KAPIN: Thanks. Our observation here is that there's little benefit to having a "must" requirement to indicate that the request has a consumer protection issue which normally would indicate more urgency than just any other priority three requests and then not having a corresponding obligation there.

And I'd listened to what Volker had to say, but by simply flagging these requests just like we have the ZZZ persons go to the bottom of the line, I suspect that there's a simple way to have flagged requests go to the top of the line, and that would be all we're asking for.

So whether it's a separate priority level, that is really not important to us. What's important to us is that if these requests are flagged, that there's an obligation to deal with them first.

RAFIK DAMMAK: Okay. Thanks, Laureen. Alan Greenberg, please go ahead.

ALAN GREENBERG: Thank you very much. Volker said that most requests or many requests have to do with consumer protection. I was reading the proposal to mean not it has something to do with consumer protection, that is, I'm an aggrieved consumer and I want to do something about it, but that this request is coming from an organization deemed to be a consumer protection organization. If that's the case, that would be flagged in their accreditation record and the request would be annotated that this is from a consumer protection organization and would automatically be flagged as such. So as Laureen says, it's just a matter of making sure the list sorts properly, not actually looking at the request and seeing, is it somehow related to consumer protection?

So given that, it doesn't seem to be problematic to implement at all. Thank you. But maybe I misunderstood Laureen.

RAFIK DAMMAK: Thanks, Alan. Okay. Laureen, you want to—

LAUREEN KAPIN: Yeah, just briefly, Alan, you understood me perfectly. And to respond to Amr's question, no, the timing would remain the same within the priority three. it's just the priority levels. So they would jump to the top of the queue, but the deadlines would not change.

RAFIK DAMMAK: Okay. Alan Greenberg, please go ahead.

ALAN GREENBERG: Thank you. Given Laureen's clarification, I'd like to understand the objection from contracted parties. It sounds like a sorting issue in an automated system or a manual sort but nothing more complex than that. I'd like to understand why it's still problematic. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. Someone from contracted parties want to respond here? Okay, in the meantime, Marika, please go ahead.

MARIKA KONINGS: Thanks, Rafik. Just filling the time until a contracted party raises their hand. I'm wondering if a possible compromise, if "must" is not acceptable and "may" is not enough, could "should" here be a potential midway? That there's an expectation that contracted parties prioritize their request. And as noted, it is the expectation that the experience with this ability to flag these types of requests as well as the response time that the contracted parties have in response to these types of requests is something that is expected to be reviewed after implementation and experience gained, which could result in a specific category with a specific SLA. So I'm just wondering if that that may be a middle ground. And Berry, you're actually putting the wrong "should." I'm talking about the next one.

The first one talks about requestors must have the ability to indicate. They don't have to do it, but they must at least have the ability to do it, and then the next one says a contracted party may prioritize. Maybe that could be the contracted party should prioritize, and again, with this notion that the experience with this

after implementation may help inform the creation of a separate category with specific criteria as well as a dedicated SLA based on experience gained. Just a suggestion.

RAFIK DAMMAK: Thanks, Marika, for the proposal. Let's see if there is support for this compromise. Okay. [Matt] and Volker, you're giving me two contradictory responses. So if you can please coordinate. In the meantime, let's go with Laureen an then Amr, and I will close the queue here. Laureen, please go ahead.

LAUREEN KAPIN: So regrettably, the word "should" is unenforceable. It sounds good, but you can't take it to the bank. So I'm opposed to "should." And we seem to have some different views among the contracted parties, and I know that Volker still doesn't like it, but that's actually not—there's no actual reason attached to that when, as Alan says—and I agree wholeheartedly—this seems like a simple sorting issue. So I'm bewildered as to what the resistance is here. But I don't think Marika's compromise takes us to the Internal inconsistency here. Once it's designated as a consumer protection issue, the whole reason to do that is so that it can be taken ahead of the rest of the requests within that category. Thanks.

RAFIK DAMMAK: Okay. Thanks, Laureen. I hope we'll get a clear response from the registrar. [inaudible] the burden on you here. In terms of management of the queue, so I said that we close with Amr, but I don't recall that registry spoke on this and if, [Alan,] you'll give a

brief and concise intervention. But the queue is closed here so we're trying just to see if there is objection or not to what we have as proposal. Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. I don't want to agree or object to the proposal right now, and I'm going to ask you to indulge me in letting Laureen speak again, because I have a question for her in follow up of the discussion we had in the chat. Laureen, I think there is a concern with deadlines to respond to disclosure requests even if the priority category doesn't change.

If a contracted party receives disclosure requests at one point and then within the timeframe of the deadline to respond, it receives other requests from consumer protection agencies that need to be bumped up, the time that contracted parties are going to need to process and respond to these requests is going to take time away from other requests in the same category with deadlines coming up. And that might put them in noncompliance with some of their SLA requirements.

So as a question to you, I'm wondering if you have some kind of proposal to deal with that or not, because granted that there may actually be a necessity to deal with requests coming from consumer protection agencies that involve consumer protection in an urgent manner. But how are contracted parties meant to comply with this obligation that the GAC is proposing, and at the same time, comply with the other obligations that we've already established? So if you have a fix for that, I'd be interested in hearing it. Thank you.

RAFIK DAMMAK: Thanks, Amr. Okay, so we have Alan, and [inaudible] you will respond because Amr asked for clarification from you. So that's why I'm adding you here. Alan Woods, please go ahead.

ALAN WOODS: Thank you, Rafik. And yes, I will be very brief. To be honest, this is something that I fear will affect registrars more, but I think from a registry point of view, I'm still very uncomfortable with this concept. There is an attempt to almost micromanage the queues of registries and registrars here.

The SLA is for these level of requests, there is five days, and I feel like there's some sort of strange suggestion of pushing us back into a corner saying, well, some of these priority three are more important. It's still an SLA of five days, which we have all agreed to this point this falls into. And now at this point it's as if we're, as Volker said earlier, trying to create another priority level.

If the priority level is that important, then there are two other priority levels which they should go by. And Amr actually said exactly what my point was as well, and that is you are, at the expense of other requests, pushing them down the queue. And depending on where that definition—which clearly is changing—will perpetually push some down the queue and actually force us to make tough decisions in this.

I think at this particular point, we have agreed to three different priority levels and also, let's not forget that this is about the request of the disclosure of data. There is also an abuse priority

queue as well that's always going to be available to talk to the registries and the registrars on how to deal with abuse for those issues if there are those issues. And there's always a phone you can pick up and talk to those.

I just think micromanaging our queues is not really going to help us come to an agreement on this. And I think it's probably a little bit silly at this point.

RAFIK DAMMAK: Thanks, Alan. So we closed the queue with Laureen, so sorry, Franck. Laureen, please go ahead.

LAUREEN KAPIN: Briefly, to respond to Alan. Tut-tut, Alan, with your use of language. It is not strange to prioritize consumer protection requests above other requests. Those likely deal with issues that are harming the public, and that's embedded in this recommendation. So I will respectfully disagree with you.

And second, to Amr's point, which I think is a fair one, I think that there could be, during implementation, some sort of system created where you basically have some timelines within which to do this type of sorting to adopt the language that Mark SV used in the chat so that you are not paying Paul and robbing Peter here. So I think that that is something that would need to be dealt with, but it's also somewhat speculative to assume that you're sorting consumer protection requests above other requests or indeed going to create a problem or you're not going to be able to meet an SLA. Perhaps, perhaps not, but I think that could be handled

during implementation, especially with the input from the contracted parties about how they deal with this just in the general sense of when they have a whole bunch of requests that they need to fulfill, how do they make sure they meet the SLAs? I don't know that this is [that much different.] I think you'd have to probably put some timelines about what your batch is, so to speak, in terms of dealing with the consumer protection priority requests and the other requests you receive during the same time period.

RAFIK DAMMAK: Okay. Thanks, Laureen, and thanks, everyone, for the intervention and comments. I sense here that we have a disagreement about the first proposal. So we have then the compromise, and I see there is support, but there is maybe also a sense that it's not enough for some in the team.

So what we can propose is we'll go with that compromise. However, in terms of the consensus, those disagreements and concerns will be reflected in the consensus designation. So what I'm suggesting here is because we need really to move on, I think we heard all the concerns, the issue, and that's what we can have for the moment. So that's how we will go for this one and we can move to the next item.

MARIKA KONINGS: Thanks, Rafik.

RAFIK DAMMAK: So Marika, maybe just to clarify because I see a question from Amr, to avoid any people relitigating later on. What I was saying is that it seems that we can change with "should," but I also understand it's not enough for some, and that's what I was saying, it will be reflected in terms of the consensus designation, because I don't think we can do more than that for now, unless we have some new proposal that can change. But because of the time, I guess it's better to have that assessment and to move to the next item. Okay. Marika, please go ahead.

MARIKA KONINGS: Thanks, Rafik. Moving on to the next item which takes us to recommendation 7, requestor purposes. This covers item 10 and 11, which seems to be a bit of a conversation between the Registries Stakeholder Group and the BC. Some of you may recall that we've had this conversation previously in relation to the reference to obligations applicable to digital service providers, and at the time, I think we had the conversation and request for further information to be provided by the BC to kind of clarify why this category needed to be called out, and I think the Registries Stakeholder Group has stated here, naming one specific regulated entity while omitting all others creates confusion and implies that we're intending to favor the requirements of this regulation above all others, and there are numerous other regulated entities globally that may assert that they require data to fulfil regulatory obligations.

I won't read through the whole comment. Subsequently, the BC did provide a proposed footnote to further clarify where the reference to DSPs has come from, but the Registries Stakeholder

Group has noted that the BC addition does not address the concern that has been stated.

I would like to remind everyone that we are talking here about a recommendation that is a ”may” and the examples that are listed are “such as but not limited to.” Having said that, I know some groups feel strongly bout it, but it’s important, I think, to keep that in mind, removing anything here does not mean that some of the groups are not requested or either leaving it in does not create any requirement. This is a “may.” So with that, I think that the question is probably for both the Registries Stakeholder Group and the BC, whether it remains a “cannot live with” item, if either the language is retained or if this reference to DSPs is deleted.

RAFIK DAMMAK: Thanks, Marika. So we’re asking for input from the two groups here. Okay. Yes, Margie, please go ahead.

MARGIE MILAM: Sure. I just wanted to clarify that this has been a request of ours for quite some time, and we did provide the clarification on what the intent is. And because it is a European law that applies to certain types of entities, we think it’s important to continue referencing it, noting that it’s still a “may” and at this point, it’s better to include it in so there's no doubt that that’s one area where we recognize the importance of those particular regulations that intend to protect the Internet and providers that are providing those types of services. So we did our homework and provided

the quote from the particular law, and would like to see this continue in the policy.

RAFIK DAMMAK: Thanks, Margie, for the explanation. Matthew, please go ahead.

MATTHEW CROSSMAN: Yeah, hi. I think Margie's point there sort of highlights our concern. I think including this for the purpose of flagging that this is important and may be specifically applicable is precisely what we are concerned about, because there is a number of different regulations that create obligations for parties that may need to request data to fulfill those obligations. And so by including one and omitting all others, we are implying that those entities under that one specific statute are somehow differently situated in this policy. And I don't think that's the outcome that we intended.

I think it's important to recognize that perhaps we haven't done our homework here because while we have, again, noted this one particular regulated entity that may have these obligations, there are operators of essential services under the same regulation who have similar obligations but we have omitted those here.

I think our point is that we shouldn't have to enumerate every single regulated entity that might have a need for public data. And likewise, we shouldn't highlight one entity under one regulation at the exclusion of all others.

I also think it's important that we need to account for future regulations in this space. California could pass a law with network

security requirements for, say, digital operators. And I don't think we would intend that those entities are then supposed to be treated differently or are not important because they were not—and frankly could not be—listed in this recommendation for a law that didn't exist at the time.

We've taken a categorical approach here to the purposes as written, and so we should be able to be flexible and have purposes that encompass the sort of network security or [inaudible] obligations of all existing laws and any future laws that may come to pass.

And then just one last point. I think Marika said this well, but to be clear, nothing in the policy is preventing a requestor from asserting these obligations as a purpose. Our view is a requestor can and should provide that information to a contracted party to consider when we're evaluating those requests, but if we move away from this sort of categorical approach that we have in the existing language and start favoring one particular regulated entity under one regulation, I think it creates a lot of unintended consequences that we should try to avoid. Thanks.

RAFIK DAMMAK: Thanks, Matthew. So I see Margie in the queue, but before, taking the opportunity here also, hearing the comments from Matthew's questions and hope that Margie can respond, is whether you could live with removing this and recognizing that there's no change in the ability of DSPs to submit requests. So just asking here if we can, instead of exchanging arguments, if there's something you would object to. Margie, please go ahead.

MARGIE MILAM: Sure, and I just want to remind everyone, even though it does say "may," this is the purpose that applies to third-party submissions. So this has been a very important recommendation for us. It actually relates to the purpose two back from phase one. And this has been agreed to for quite some time. The only thing that was up for discussion was how it was defined, not whether it would be included. So in my view, this is a last-minute request by the contracted parties to take that out.

The specification of Internet security-type requests is important. We've seen that already this weekend as an example with some of the outages of fairly large Internet sites, that the ability to call it out as a separate category I think is in line with the ICANN mission and purpose to ensure the stability of the Internet, and it's very important for us to include this. So we'd like to continue to see this and object to taking it out at this point.

RAFIK DAMMAK: Okay. Thanks, Margie. Matthew, please go ahead.

MATTHEW CROSSMAN: Yeah, thanks, and just trying to understand the position here. I guess, Margie, what in the existing categories of purposes—setting aside digital service provider—are insufficient or do not cover the obligations that flow to a digital service provider under the NIS regulation? Because as I read it, I think we have covered the ability of requestors to make those types of requests using

network security are consumer protection or abuse prevention as a catchall category.

So I'm wondering if there are specific obligations under the NIS regulation that you think are not covered by those categories. I think maybe we try to identify what those categories are and add them back in. But again, we think it's the wrong approach to just single out the obligations related to a single entity at the exclusion of all others, rather than trying to have categories here that are intended to encompass all obligations that relevant entities might have for requesting this type of data.

RAFIK DAMMAK: Thanks, Matthew. Okay, so maybe suggestion here to move forward. I see this kind of dialog between the registries and BC, and so even acknowledging the time constraint here, if you can take that offline and try to come to agreement, just to give a chance to work on some compromise. You both heard the arguments and the concerns. If you cannot come up with an agreement, it will stay as is and we will note the Registries Stakeholder Group disagreement in the consensus designation.

So please, try to—[I'm urging you here just] to find an agreement so everyone will be, let's say, equally unhappy or equally happy. So, does that work for you guys? And I see Brian in the queue, so maybe Brian, you have a suggestion that will save the day.

BRIAN KING: Thanks, Rafik. Yes. Just a point of clarification without taking a side or anything. If I remember correctly, the term "obligation" was

an important one here because the rest of these points seemed to be all good reasons why a requestor might submit for their own purpose of something that they want to do. The obligations to a digital service provider appear to be a unique circumstance where there's a law in applicable jurisdiction that requires an entity to do this or to protect consumers or users of the service or things of that nature.

So this one, I'll just note, is specific to that scenario and it's unique and distinct from the others. So maybe that helps to answer Matt's question about why this isn't captured by those other points. I hope that perspective is helpful. Thanks.

RAFIK DAMMAK: Okay. Thanks, Brian. Okay, so just to be really mindful about the time, we have less than 50 minutes and still five more items of category one to go through. So [inaudible] just asking, Matthew and Margie can work on the agreement offline and come up ... Okay?

So if there's no objection, we will go with that and Marika and I will help you if you need. And maybe—I'm not sure if we should organize a call, but yeah, let's go with this and try to move to the next item.

MARIKA KONINGS: Thanks, Rafik. The next item is basically [process over] recommendations 5 and 8. It relates to the footnote that we already discussed yesterday and which were flagged in items 7 and 18. I don't think we have to restate the discussion, but I would

just like to point out the proposal that the ICANN Org liaisons have made in response to the conversation that took place yesterday. They suggest deleting the footnotes in question, so 22 and 29, to avoid confusion with the requirements in this report.

The footnotes were originally proposed by ICANN Org liaisons and they were intended to add clarity to these recommendations, but now they seem to contemplate new obligations or reinterpret existing obligations. So for clarity in implementation, ICANN Org would recommend deleting both of these footnotes, and that may potentially, or hopefully, address the different concerns that have been expressed about that footnote.

So I think the question is, is everyone able to live with that proposal of deleting those two footnotes and basically let the recommendations speak for themselves?

RAFIK DAMMAK: Thanks, Marika. So let's see if there's any objection towards this proposal here. Yes, Marc, please go ahead.

MARC ANDERSON: Thanks, Rafik. I'm sorry, I got lost. I'm not sure where we are right now. What line are we discussing and what section are we on?

MARIKA KONINGS: I can restate, Rafik. So this is items number 7 and 18. They appear in recommendations number 5 and 8. This footnote that Berry has highlighted on the left side that talks about what ICANN

Org would review from a compliance perspective in relation to the recommendations that the group has formulated. So as I said, the proposal is we discussed this quite at length on the call yesterday as well as on previous meetings.

It seems—and I'm paraphrasing here—that new obligations or expectations are trying to be written into this footnote while the original intent of the footnote was really about clarifying what the understanding from the ICANN Org perspective was on what the recommendations are setting out to do and what would be enforced from a compliance perspective.

So the suggestion has been from the ICANN Org liaisons to basically remove these footnotes and have the recommendations speak for themselves. The requirements in the recommendations are clear, so specific requirements are indicated by "must", so from that flows what requirements are enforced, can be enforced by ICANN Compliance. So that's the proposal here, and as I said, Berry has highlighted that footnote, and that footnote also applies in another place but it's basically the same footnote and same point that's [inaudible].

RAFIK DAMMAK: Thanks, Marika. So the question's if there is any objection to this. Mark, please go ahead.

MARK SVANCAREK: Thanks. Sorry if I'm confused again. Are we asking whether or not the—I mean, we're asking whether the proposal to delete the footnote is acceptable. Is that what the request is? Because there

is other content in this footnote which is useful, such as—well, a lot of it. So there's lists of things, “not refused solely for the lack of ...” etc., which should remain in the footnote. So I wouldn’t want to kill the entire footnote. I think that those lists only exist in footnotes.

RAFIK DAMMAK: Thanks, Mark. Marika, please go ahead.

MARIKA KONINGS: Thanks, Rafik. Just to respond to Mark’s question, that is actually not the only place where it appears, this is a restatement of requirements that are found in different recommendations. it was kind of a summary that ICANN Org liaisons provided of all the things that they found in the different recommendations that have been specifically called out as requirements. So removing that here of course doesn’t remove it in the relevant recommendations where these appear. So by removing this, nothing should get deleted or should change from a requirements perspective.

RAFIK DAMMAK: Okay. I think I'm seeing people agree that these exist somewhere else, so that would make me more comfortable. But I’d like to hear form some other people. Thank you.

RAFIK DAMMAK: Thanks, Mark. Brian.

BRIAN KING: Thanks, Rafik. I think that we could probably live with that, just for the reason Mark mentioned, would want to just make sure briefly or perhaps offline that this is covered elsewhere. I think it is, but we've been doing this a long time, so let's just be sure that we're not losing anything, that this is covered elsewhere, and then, yeah, we're probably okay to kill it. Thanks.

RAFIK DAMMAK: Thanks, Brian. I think Marika can confirm that. Okay, so based on what I heard and I'm seeing in the chat, there is no objection and everyone is okay with the proposed deletion. So I guess we are set for this one, so we will delete those footnotes. And with that, we move to the next item. Marika, please go ahead.

MARIKA KONINGS: Thanks, Rafik. This is item 25. We're coming back to a conversation we had yesterday in relation to SLAs. As you may recall, registrars had proposed to change the SLA for urgent requests from one business day not to exceed three calendar days to one business day to not exceed five calendar days. A number of groups expressed concern about that change, and there was a proposal put forward during the call that staff translate it into a language that hopefully everyone had a chance to review. And I'll just state it here for the record.

So it would basically be to add a footnote that would state, during the implementation phase, ICANN Org should consider an exemption process for smaller registrars for whom it may be difficult to meet the priority one SLA requirement. In considering

an exemption process, note that the contracted party may recategorize a request if it determines that the request does not meet the criteria for priority one urgent request. When the contracted party determines the criteria for an urgent request have not been met, it is not required to respond under the priority one SLA requirement.

So I think the question here is really for the Registrar Stakeholder Group, is this an acceptable compromise? And if not, does anyone have any good suggestions?

RAFIK DAMMAK: Thanks, Marika. So we have this proposal and we hope that it will respond to the concern. So let's check the reaction here. Alan, please go ahead.

ALAN GREENBERG: Thank you. I have a question with regards to that last phrase. That sounds like the contracted party has the unilateral ability to say, "It doesn't meet the criteria and I'm going to recategorize it," which is not subject to appeal or anything like that, it's just a decision. Am I reading that correct, or is there something I'm missing?

RAFIK DAMMAK: Maybe Marika can clarify.

MARIKA KONINGS: Thanks, Rafik. I would need to look at the exact provision, but yes, there is a provision that allows a contracted party to recategorize

the request. I do believe that the contracted party, if they do that, they need to inform the requestor of that and provide, I think, an indication of why it was recategorized. And we need to double check, I think there's also then an ability for the requestor to kind of complain if they believe that the contracted party is just doing this at will. So I think there's an ability to recategorize that is built in, but I think there are some safeguards in there also, making very clear to requestors that if they abuse the priority levels and their requests are not deemed to be of a certain priority, that that may affect, at some point, accreditation as well.

ALAN GREENBERG: Okay. Thank you.

RAFIK DAMMAK: Thanks, Marika. Thanks, Alan. We have Mark and Matt. Again, just one speaker, please, from each group. Mark SV, please go ahead.

MARK SVANCAREK: Thanks. I'm still concerned about moving this from three calendar days to five calendar days. We should be talking about a very small number of these requests. We have safeguards in place in case anyone abuses that privilege. These are requests that are related to very urgent attacks, life and limb, critical infrastructure, that sort of thing. And Five calendar days is quite long under those circumstances.

So really, that feels like that's not a good move. Three calendar days is a good compromise, and I think we should keep it one business day not to exceed three calendar days. I don't see how five calendar days is really going to achieve the goal of this category of urgent requests. Thank you.

RAFIK DAMMAK: Thanks, Mark. Volker.

VOLKER GREIMANN: Yeah, I don't think we can move on this. We are still basically at one business day. That is the default. It's just not five business days when there's national holidays that intercede. And if I just look at the winter holidays where we have first Christmas day, second Christmas day, add a weekend to that, you're already at five days. So even five days is cutting it short, it's cutting it long. And having people on that holiday working is something that is hard to do in certain jurisdictions where workers' rights are more privileged than other jurisdictions.

So I think our offer of five calendar days, and one business day in all other circumstances where there are no holidays to consider, I think is still generous and the best that we can do.

To add to that, nothing precludes any registrar that has the staffing ability or offers 24/7 support even through those holidays to volunteer for doing that and adding that on top. Many registrars, especially the larger ones—although I can think only of one that does that—has 24/7 support. But that would already take care of about 50% of the domain name registrations, right?

Anyway, five calendar days is probably the best that we can offer here. And yes, Brian, cyberattacks, but you want the cyberattack to stop, not the WHOIS data to look at. In that case, you can just make an urgent law enforcement request to have that cyberattack stopped, and that's a totally different thing.

RAFIK DAMMAK: Thanks, Volker. So first, I will close the queue here with Laureen, and maybe just also to remind that the proposal is not a change to five days but to leave at three and to have the footnote to accommodate the small registrars [inaudible] [waiver.]

Mark, please go ahead.

MARK SVANCAREK: Thank you. I appreciate the offer to leave this at three days. Thank you for that consideration. Some of the things that I wanted to say are in the chat. Certainly, our infrastructure comes under more attack during the holidays than during other times of year. So it is true that people have to work different hours, and that's just a critical thing that has to happen.

I am interested if there are any safeguards that we can put on this that would make Volker feel better. Certainly, if the local law says that we can't do this, then as we've considered elsewhere in the policy, we can't force anyone to break their own local law. But that doesn't mean we can't have a general policy for the majority of the cases.

Likewise, yesterday there was mention that certain small registrars might not be able to staff or they might be reliant on external specialists who would not be available during that period of time. And I think that there's probably ways to accommodate that exception for the smallest of registrars. We could probably find a way to do that. But as a general policy, five calendar days just seems very long, particularly since this is a small number of critical and urgent requests. For the other requests that are not urgent, the existing SLAs in the document seem acceptable. Long, but acceptable. Hopefulyl that helps. Thanks.

RAFIK DAMMAK: Thanks, Mark. Alan Greenberg, please go ahead.

ALAN GREENBERG: Thank you. This isn't a comment on the substance of the matter, but I'd like some clarity. My understanding was that if we cannot come to agreement here, that what we previous agreed to in the draft report stands, and that was your ruling on a previous item, which I think that's our methodology, is it not? I'd just like confirmation.

RAFIK DAMMAK: Yes, if we cannot reach an agreement here, we'll take note of the disagreement and that will impact consensus designation. And yes, we'll keep as is.

ALAN GREENBERG: Okay, thank you. Yeah, certainly, it will affect whether people agree to it or not. But yes. Thank you.

RAFIK DAMMAK: Yeah. [inaudible] getting late here, so trying to be awake as much as possible. Thanks, Alan, and happy that clarified. Laureen, please go ahead.

LAUREEN KAPIN: Thanks Rafik, and thanks for that clarification, because my understanding was also that the status quo, which in fact everyone had agreed to, was three days. Now there is a late request to make that five and in the absence of consensus, the three stands. So I just wanted to make sure there's clarity on that. And also to reinforce Marika's point, I understand the concerns about everyone wanting their holidays. I'm a fan of holidays too. But I'm very doubtful that this very narrow category of requests is actually going to create a problem, because it is so narrow and because the times where the three days will b ump into the holiday periods are so limited.

RAFIK DAMMAK: Okay. Thanks, Laureen. So [inaudible] before I closed the queue with Laureen, but [inaudible] link it to here, to registrar. So Volker, I'm asking you, are you going to make a suggestion, or just you kind of ...

VOLKER GREIMANN: No, I just wanted to come back to the comment that we had consensus. As far as I recall—and I wasn't on that call but I had it relayed to me, this was basically something that happened at the very end of a long call where not everyone was present because we had three calls that week, so it was basically shifted between members. And whatever was discussed at that time was not consensus among registrars. And we had an earful from our members that this is something that we should have never agreed to. This is actually a "cannot live with" moment for a lot of our members, and we are in a position that this was not considered, it was not discussed with our members, and this is something that we were not able to agree to at that time. So that agreement should be considered void.

RAFIK DAMMAK: Okay. Thanks, Volker. We take note that it's "cannot live with" item for the Registrar Stakeholder Group, and that will be reflected in the consensus designation. I think with that, we can move on to the next item. Marika.

MARIKA KONINGS: Thanks, Rafik. The next item relates to recommendation 14, financial sustainability, item 27. There was a proposed addition by the ALAC which was supported by the BC, IPC and SSAC that reads, "The prospective users of the SSAD as determined based on the implementation of the accreditation process and identity providers to be used must be fully involved in the discussions on setting usage fees for the SSAD. In particular, those potential

SSAD requestors who are not part of the ICANN community must be explicitly included.

Just wanted to flag that this was also one of the proposals that was included in the yellow items list that we reviewed previously and at the time, opposition was noted from the Registrar Stakeholder Group and ISPCP. Furthermore, the ICANN Org liaisons had also noted that the proposed new language seems to be phrased as implementation guidance. ICANN Org notes that fees are typically derived from a variety of sources, including financial analysis, projections and others. This could include consultation with potential users as described here, however, it may not be possible to arrive at a fee model that's supported by all potential stakeholders."

As I believe the groups have resubmitted it feel strongly about this addition, it may be worth asking those groups that previously objected to it whether they can live with this as an addition to the financial sustainability section. In order to potentially address the ICANN Org comment if the language is acceptable, it may also be worth considering adding something along the lines of, "However, involvement in the discussions does not mean that the final model must be supported by all before it can bed implemented" to make kind of clear that there's no expectation that there's an approval or kind of veto that would be in play. Again, just a suggestion here. So I think the question is, can groups that previously objected to this live with this addition? And if so, is an additional clarification helpful about the role of stakeholders?

RAFIK DAMMAK: Thanks, Marika. Yes, Alan Greenberg, please go ahead.

ALAN GREENBERG: Thank you. In response to Marika, I don't think anywhere in the proposed wording was saying that we give them a veto or they even had to agree. We simply said they had to participate in the discussion. The problem is this will be an IRT issue. The IRT is a work intensive job, it's going to go on for a long time, it's going to talk about a huge number of issues, the vast majority of which are not of interest to these future users of the SSAD.

So to say anyone can join the IRT is a meaningless statement. Yes, they could, but that's not their day job, that's not what their interest is in, and they're not going to be able to contribute to 99.9% of the discussions in the IRT.

All we're saying is they need to be consulted, to be brought in as implied in the staff report, but it needs to be mandatory. It's not something that the IRT can decide to do or not to do. When we're talking about pricing, they have to at least be able to give their input about saying whether a given proposal is viable or not. I'm not trying to guess what the actual discussion is going to be. That's all it's saying. Thank you.

RAFIK DAMMAK: Thanks, Alan. Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. Alan, I don't think that's all it's saying. It's not saying that the SSAD users need to be consulted or have the ability to provide input. It says they have to be fully involved in the discussion. I'm not clear on what fully involved would mean outside of participating in the IRT as well as possibly being fully involved in any discussion that takes place for example in the standing committee.

Something that may be reasonable from my perspective is that they indeed join the IRT, even if for the brief period of discussion on implementation of recommendations of financial sustainability or to provide public comment on the work of the standing committee. But beyond that, I'm not sure what kind of involvement you're seeking. And if you could help clarify that, that would be helpful. Thank you.

RAFIK DAMMAK: Thanks, Amr. And I see that Volker's making some proposal here in terms of wording. Alan, go ahead.

ALAN GREENBERG: If we have a rule saying people can join the IRT partway through and they will get a heads up that "Next Tuesday, we're going to be discussing pricing, and if you'd like to join, then formally join the IRT for a week," that's fine. I have no problem with that. The problem is it's going to come up at random times, people are not necessarily going to be notified, and when I say fully involved, I mean they're actually sitting in the room and have an opportunity

to comment as opposed to being sent a notice that it happened or, "This is what we decided," or something like that.

This was not meant to be a deep thing. It just said that these are people who are not likely to be participating in the IRT on a regular basis, it would be foolish for the IRT to come up with recommendations and pricing that ends up being not practical and not usable without giving the people who are going to be affected by it an opportunity to at least say that. They don't have a veto. All we're looking for is an informed discussion so that the pricing can be set reasonably. That's it.

RAFIK DAMMAK: Thanks, Alan. Thomas, and then Volker.

THOMAS RICKERT: Thanks very much. I pretty much like the proposal by Volker in the chat. I think regardless of what language we're using ultimately, I guess the idea should be that a third party should be given the opportunity to comment or provide input so that the IRT can make an informed decision.

RAFIK DAMMAK: Okay. Thanks, Thomas. So just to [reassure] here, because I was trying to catch up for the chat, it seems Amr is suggesting that we can reach compromise along what Alan was suggesting. So maybe if we have something written, also take into account proposal from Volker, I think that will be really helpful. Volker, please go ahead.

VOLKER GREIMANN: Thank you. Ultimately, this system has to pay for itself in some form or shape. The only definite form of income that we've currently identified is that the users pay. There might be other forms of income that we have not found yet, but I think the general principle that registrants should not directly or indirectly through the ICANN fees or any other fees pay for this system is probably accepted.

The costs ultimately are going to be what the costs are going to be. That's something that we probably don't have much influence on. the system's going to cost whatever it costs. So that money has to come from somewhere. So the ability to debate what the cost should be is probably very limited. That said, I think people that are going to bear those costs should at least be heard, so I think there should be some consultation process baked into any cost determinations that they might be able to provide comment on that would be part of our deliberations in the standing committee. So ultimately, the standing committee should not decide costs without having heard or consulted those that are going to pay for those fees. That's probably the best way that we can go forward here, yes. Thank you.

RAFIK DAMMAK: Thanks, Volker. I see that Marika shared the proposed language, so that's helpful and we can focus on that. If you want to add something or change, please do so. And being specific. We're trying to move forward.

Alan, and then Milton.

ALAN GREENBERG: Thank you very much. I'm generally fine. I think the word "comment" is a little bit weak in that I would prefer "comment and interact with the IRT" or something. I think we're all violently agreeing with each other. The issue here is not so much whether they will pay or not, but it's the method and the pricing.

For instance, we talked about a per use cost. We also talked about the possibility of an annual subscription, or the first 10,000 requests cost you something, the next 10,000 cost you ...

There's a lot of options, a lot of different ways to be done. Some are going to be a lot more acceptable and amendable for implementation by some of these people than others. That's the kind of discussion that I think needs to be had.

I think "comment" is a little weak because that says you submit a comment and then someone goes into a closed room and makes a decision based on it. So I think there needs to be a more iterative thing than just a comment. But I trust staff to take that into account and revise it slightly, as long as there's general agreement that there be consultation and involvement. And I don't think I want to specify it in more detail than that, nor should we. Thank you.

RAFIK DAMMAK: Thanks, Alan. I'll close the queue with Milton. Milton, please go ahead.

MILTON MUELLER: Thank you, Rafik. I'm a little bit confused about what we're debating here. The language that's proposed by Marika, is it an additional footnote? Is it replacing footnote 45 or 46? Or is it in any way interfering with section 14.2, line 1696 through 1703? Additional language. Okay, where does it go? Is it in the text or is it a footnote?

MARIKA KONINGS: I think Alan had suggested lines [1619 to 1766.] So it's a bit further up than what we're looking at. But I'm not really sure if Alan is particularly attached to the placement of it.

ALAN GREENBERG: I'm not.

MARIKA KONINGS: But we can make this a separate section or find where it's the best home for it.

MILTON MUELLER: So the 14.2 is still a "must not bear the cost for having data disclosed to third parties," and we have two footnotes which try to completely eradicate that principle. I suppose those are things that were added after. Yeah, I guess what people are saying here is that this is all going to be worked out in the implementation phase. But as long as 14.2 is not altered, then I guess we can go with that. Thank you.

RAFIK DAMMAK: Okay. Thanks, Milton. Now we have revised language from Marika. So the latest version here. The question is, are you fine and okay with this updated version? Okay, seeing no objection, just giving one minute. I see no objection, so I assume everyone is okay with that. That said, let's move on to the next item.

MARIKA KONINGS: Thanks, Rafik. Just noting that we're starting to run short on time. We still have two items remaining and hopefully people can stay on a bit longer, recognizing that this is already a really ridiculously long call. But we're hopefully getting there.

Next item is item 34 in relation to recommendation 18, the GNSO standing committee. There's a proposed addition by the ALAC and the BC to this section that reads recommendations concerning implementation guidance shall be sent to the GNSO council for consideration and adoption, after which it will send to ICANN for further implementation work recommendations which require changes being made to existing ICANN consensus policies shall be recorded and maintained to be used in the issue scoping phase of future policy development and/or review.

That is existing language, but the proposed addition is, "For avoidance of doubt, recommendations related to disclosure decisions to be made by the SSAD in accordance to section 9.3 are deemed to be implement and do not require policy development." A number of people already provided input. I think both Milton and Volker commented that there is already an explicit

recognition that some recommendations may require policy changes insofar as this request says that anything the standing committee recommends is not a policy change, it's a nonstarter.

Alan noted that the sentence does not say that anything recommended by the standing community are not policy, and [they discuss anything.]

We also noted that this addition seems to preempt the ability for the standing committee to determine what aspects are deemed operational or implementation, and potentially limit the ability for GNSO council to provide oversight over this distinction. So I think it's for the group to discuss whether there's support to add this language or whether there's no support and basically leave the language as is.

RAFIK DAMMAK: Okay. Thanks, Marika. Okay, so Amr, then Alan. Please go ahead.

AMR ELSADR: Thanks, Rafik. The point I was going to make is the last one Marika mentioned. I'm personally not very agreeable to the notion of this being added because as Marika said, it would preemptively determine or limit the scope of what the standing committee can and cannot do.

When I came up with the proposal for the standing committee, I wanted it to be as flexible as possible to allow the members, to the extent possible, to make determinations of their own, and I would

really like to see the standing committee maintain its ability to determine for itself, subject to the GNSO council's approval, what is policy and what isn't.

So I would not support this change. Thank you.

RAFIK DAMMAK: Thanks, Amr. Alan.

ALAN GREENBERG: Thank you very much. To be clear, this comment does not alter the fact that the standing committee can recommend policy issues and can recommend non-policy operational issues. And all this is saying is if a recommendation is with regards to an SSAD disclosure ability for certain use cases, that it is not policy, that it is something that is allowed by our automation recommendation, that, should it be decided that it is within the law and capable and financially viable, it meets all of those criteria, then it meets our existing policy and it's not new policy.

If this group cannot agree to that, I understand that, but we have had many discussions on this where some people have said any change to what the SSAD can decide on is policy, other people have said no, it's not policy. I was looking for clarity in making this proposal. If we cannot get clarity, I understand. Let's move on.

RAFIK DAMMAK: Thanks, Alan.

ALAN GREENBERG: Just for the record, [in terms of] consensus, this is an absolutely critical issue in terms of the ALAC supporting this proposal or the overall proposal or not. But I understand we may not. That's life. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. Just here to remind as we discuss, [inaudible] just one speaker by group, so, sorry Milton and Hadia.

HADIA ELMINIAWI: I'm sorry, Rafik, but I was going to make another comment, and in other circumstances you did allow people from different groups to speak.

RAFIK DAMMAK: Hadia, please. I think [just if it's] possible to coordinate. But first, I need to check those who are in the queue before. Amr, is it an old or new hand?

AMR ELSADR: Sorry, old hand.

RAFIK DAMMAK: Okay. Margie, please go ahead.

MARGIE MILAM: Hi. Yeah, I wanted to echo what Alan Greenberg was saying, an we've said before from a couple days ago, our view of the hybrid

model was such that we could move from decentralized decision making to centralized decision making without a policy change. And the problem we have without this clarity is that it essentially means that there could be clarifications in the law where certain things could be automated as an example, or centralized, and that would require a new PDP, which as we know would take three to four years, plus implementation.

So this is a very important one for our constituency. It's one of the reasons why we've been pushing so hard on the ability to evolve the hybrid model, and that's why we supported the ALAC on this particular recommendation and insisted that it be included in this policy.

RAFIK DAMMAK: Thanks, Margie. Okay. So first [is time check because we have just four minutes] left in the call, and I think we still have two items after this and still, we have another one we're supposed to come back. So first, I need to check if people can be ready for that we go over for like 20 or 30 minutes. I know it's not easy, it's already a long call. Otherwise, we need to figure out how we deal with this.

Okay, so Marc, I see there's some conflict here. Okay. Thanks. So we'll try to think quickly how we can maybe just ... [as we'll try to drop some] minutes anyway, and see what we need to do.

Okay, so I will first close the queue here. So Hadia, as I explained before, we want one speaker by group. So I will go first to Brian and Laureen, and then we'll come back if possible. Brian.

BRIAN KING: Thanks Rafik. I would just add the IPC's strong need for this clarification in order for us to be able to go along with this. As Margie mentioned, our ability to go along with the hybrid model was conditioned on the potential for this to evolve more automated and/or centralized over time, so this is very important. And I would note that this is merely a clarification of our understanding, and for that reason, I think it should not be objectionable. Thanks.

RAFIK DAMMAK: Thanks, Brian. Laureen.

LAUREEN KAPIN: Similar to what Brian said, this is also an issue that is critical to the GAC. And the absence of clarification actually makes us concerned that perhaps there is a view that this might be considered, i.e. more automated cases, that if that is going to be considered to obligate us to engage in a new PDP every time a new use cases is even considered, that would also critically impact our ability to achieve consensus here. So we want people to be aware of that.

RAFIK DAMMAK: Okay. Thanks, Laureen. So let me be clear. No, I closed the queue, we won't have anyone else to speak now. We're already over time. Okay, so the question here is not really about arguing about the changes, but it's really to see if ... So if the groups are willing to live with this change or not. So I'm hearing the objection,

so I get that. I'm not sure here how we can close this now. So sorry, let me give you just one minute to think.

Okay, so sorry, everyone, I'm just trying to [wrap] this. So here, my assessment is—just check if group are okay with this addition. I understand that there is ...

Okay, sorry. I see there's one disagreement with the current addition, so I will take note of that in terms of the consensus designation. I don't think we can move on in terms of wording or compromise, so I will take note of that.

And with that, we should move to the next item. Marika, please go ahead.

MARIKA KONINGS: Sorry, Rafik, I was actually on the previous one. At least from what I'm seeing in the chat, I think everyone is agreeing to the proposed change. Oh, I see that the Registrar Stakeholder Group objects, but at least it seemed that what people were stating in the chat was—and I think Milton formulated well—the standing committee can propose changes that are not policy, and that may include disclosure automation. I understand that is what the additional language also tried to state.

I see now that actually, Registries Stakeholder Group and NCUC object. I thought there was kind of convergence around this. I'm wondering if this is one where a little bit more time by those that care strongly about it and those that object may be helpful to understand both sides and if there's a way to come together, because again, it seems that this is just a restatement of a

position, this is not any kind of obligation that's created, or as I understand it, intended to override the rules for the standing committee. So I'm wondering if it's worth to allow some of the groups to work on this and see if it's something that can be worked out that is acceptable for all.

I know we're running out of time. I don't know if there's a possibility to add some additional time tomorrow. I know we're having already a pretty intense week and our encroaching on our timeline, but it seems that there are a couple of items where maybe allowing groups to offline engage on some of these items will get us closer and hopefully get us a report.

RAFIK DAMMAK: Okay. Thanks, Marika. Sorry, everyone.

ALAN GREENBERG: Rafik, could I have a point of order, please?

RAFIK DAMMAK: Yes, please go ahead.

ALAN GREENBERG: I've seen in the chat in the last couple minutes a lot of people saying they object. Are they objecting to the proposal, which says don't implement the recommended change, which means they want to implement the change? I don't know if they're objecting to what we suggested or the staff proposal which says don't

implement it. So I'd like some clarity as to what people are objecting to.

MILTON MUELLER: Well, if we could speak, [that would happen.]

RAFIK DAMMAK: Okay. So I think we can repeat the question here. So, the objection is to the proposed addition by the—I mean the initial, the first proposed addition. So if there is objection or not, to that. So we'll check. Okay, I think that's clarified. So it's an objection to the proposed addition and so it's agreeing with the staff about not adding the language.

Okay, so with that, I see the different objections, so it's clear that we cannot add this language. Knowing the position, I think we also take note about any disagreement.

Okay. Let's move to the next. Let's take maybe an extra [15] minutes. I'm sorry. I'm getting—as you could notice, it's become a little bit hard for me at the end, so I ask you for your indulgence and forgive me. So let's get 15 minutes to try to move from the next item. And we will check if we can have maybe—it's not going to be another three hours, I think it's not going to be possible, but if to have 90 minutes or two hours tomorrow.

I know we are asking a lot already, and there is also what's suggested about some offline work, but we are almost there. But for now, let's try another item and see if we can finish for today. Marika, please go ahead.

MARIKA KONINGS: Thanks, Rafik. The next item we have on the list is 36. This also still relates to the standing committee, recommendation 18. And there was a comment here from the ALAC, "Understanding was that the agreed upon outcome was that contracted parties must be part of the consensus for decisions related to SLAs, SSAD decision disclosures, but not other items within the standing committee's purview." And there's specific language that has been suggested that would replace, for "For recommendations to achieve a consensus designation, the support of the contracted parties will be required," with, "For recommendations directly related to contracted party obligations, such as SSAD decision use cases or SLAs to achieve a consensus designation, the support of the contracted parties will be required."

So I think the question here is, is there support for this change?

RAFIK DAMMAK: Thanks, Marika. Alan, please go ahead.

ALAN GREENBERG: Thank you. Just a little bit of history. I was one of the ones on the small group that was looking at what became the standing committee, and it was my proposal originally to give the contracted parties a veto on these kind of issues as one of the things to get their support on the overall thing. That is, they would not be forced into doing something that caused them to have additional obligations without their support. That was always the wording. Somehow, it didn't get into the final report. I don't

remember the exact—I don't think we ever discussed a lot in the formal meeting, but that was always the original intent, not to give them a veto on things where—they were simply implementation issues that would not affect contracted parties at all. So there was no attempt to change the weighting of the consensus decision process, except where they were going to be directly impacted by it. Thank you.

RAFIK DAMMAK: Thanks, Alan. I see nobody else in the queue, so I think here we have just to [sense a] reaction with regards to what's proposed. Marc, please go ahead.

MARC ANDERSON: Thanks, Rafik. I guess I don't object to the principle of what Alan G is describing. I just worry about how this will actually be implemented in practice. What happens if there isn't agreement on whether this is directly related to a contractual party obligation? Who makes this determination? Is there an escalation path?

The details of this change, how to implement it, sort of bother me. I'm not sure how this'll play out in actual practice. So this seems okay in principle, but I'm worried about this. I don't think we have discussed this previously. Alan seems to have been under the impression that this was the intention all along, but this is sort of new to me, and it seems to open up a number of follow-up questions that I'm not sure how this'll actually work in practice.

RAFIK DAMMAK: Thanks, Marc. Alan, please go ahead.

ALAN GREENBERG: Thank you very much. I can pull up e-mails where this was suggested, so it's not just my memory. That notwithstanding, the questions that Marc raises are all valid, but they have the same implication on all sorts of other questions. In any group like this under GNSO rules—if my memory is correct—there are chair rulings on these kinds of rulings and you can appeal chair rulings to the chair of the GNSO.

That's how everything works. If we don't like a ruling Rafik makes in this meeting, then we can ask him to reconsider it, and if we're not happy, we can appeal to the chair of the GNSO. That goes along with any ruling, and especially rulings regarding consensus. So it's a standard part of the GNSO procedures, and this is no different. Thank you.

RAFIK DAMMAK: Thanks, Alan. I'm not sure—[I heard appeal to something I'm supposed to do.] But I guess you mean just an explanation about what—

ALAN GREENBERG: I helped write the rules. I remember them.

RAFIK DAMMAK: Okay. Thanks. So let me check the queue. Amr, please go ahead.

AMR ELSADR: Thanks, Rafik. Alan, I helped you and others write the rules as well, and I remember them a little differently. Challenging a chair's decision is limited to a few specific cases. Like you mentioned, consensus calls is one of them, but it's mainly on the chair's decision how to designate a consensus call. The other circumstance where a working group member can challenge a chair by escalating a complaint to the GNSO council is if a working group member feels that he or she has been or their views had been consistently ignored by the chair. So it's not on just anything, such as a topic like this one. I don't think this one would fall within the bucket of what can be escalated to the GNSO council.

But I also wanted to remind you that the original proposal was for full consensus of standing committee members, meaning the groups represented on the standing committee. And the change in that consensus level requirement was a compromise, at least on part of the NCSG, and we still prefer the full consensus rule because now our consensus has been excluded from the standing committee's decision making in the event that for example we're the only group that doesn't agree with a recommendation the committee is providing to the council.

So now this is an additional compromise we're being asked to make, and I don't think it's a good one. And the reason for that is mainly that we take a little comfort in contracted parties being required to agree to recommendations because to us as their customers, they are accountable. But if we don't have full consensus of the group or our service providers are not required to be part of that consensus as well, that makes the consensus

level required by the standing committee on issues, and like Marc said earlier, we're not clear on what those mean. I think that would make us even more uncomfortable. Thank you.

RAFIK DAMMAK: Thanks, Amr. Okay, so I think nobody is in queue. I will close here. So for now, we just hear the reaction to what's proposed and to see if there is objection to it. So we'll ask everyone to express their position here so we can assess about the level of objection.

Okay, I'm just asking you, team members, if you can express, again, you are objecting. That will help me in terms of assessment. Okay. So I think the different groups expressed their opinions, so giving a few seconds for those who can do it now.

Okay, so I see [an] objection to add this language, and with that, I don't think we can add this new language. So that's the assessment of the position around this item.

Okay, so thanks, everyone. I think with this last item, we covered all category one if I'm not mistaken.

MARIKA KONINGS: Sorry, Rafik, to do this to you, but there's actually a bundle of items related to priority two items. But I think we can probably bundler them all in one conversation.

RAFIK DAMMAK: I was asking about category one, so you're saying category two.

MARIKA KONINGS: Yes. No. Those are as well category one items.

RAFIK DAMMAK: Ah, they're priority two. Okay. I misheard. [inaudible]. Okay, and I think we have one item that we said we'll come back. So with that, I think what we can do is we should—I know that it's not going to make everyone happy, but to have another, and hopefully final, call tomorrow. I just think in terms of time, maybe it should not be at 14:00 UTC but 14:30 UTC because there is the GNSO council meeting prior to that. So we'll confirm anyway. And so I will work with the staff and we'll prepare the agenda quickly regarding the rest of the items we have to go through. Also because I have to explain about the next steps and to explain how the consensus designation will happen.

I'm sorry that all this is happening quickly at the end of the call. We are over time. But we'll try to give all the clarification and we'll communicate. Okay, but before that, I'm getting pinged by Marika. Maybe she will introduce action items. Marika, please go ahead.

MARIKA KONINGS: Thanks, Rafik. I think for the priority two flagged items, we may need to assign an action item. Just to note here, there was a number of issues flagged here by different groups in relation to how priority two issues were reflected in the report, especially those issues that have not been addressed in the form of recommendations, so legal natural, accuracy and feasibility of unique contacts.

But from reviewing the comments, I think at least from a staff perspective, everyone has a very different perspective of what the status or perceived agreement or conclusions are. And as such, the proposal here has been to clarify in the report which topics are not addressed and clarify that the council is already discussing how to address these topics in addition to accuracy, but leave it at that and not provide any other further context because it seems that everyone disagrees on what the exact context is.

But having said that, if you can all agree on any kind of descriptive language that everyone feels comfortable with, of course, we have no concern or objections about adding that, so maybe the action item could be for those groups that would like to see a description here to work together and come prepared to tomorrow's call with a proposed language that you can all live with.

And yes, I know that several groups have proposed language, so maybe look at that and see if it's something you can live with. But as said, from our review, it reflects a very different perspectives on what has been discussed or hasn't been discussed, has been agreed or hasn't been agreed. So I think that's one action item we'll also be posting.

The recommendation 8 updated language with the updates that were discussed today, I think there's an action item in relation to the first item we discussed where we had proposed compromise language and do what we did yesterday for each of the items we've discussed today. We'll note in the Google doc where we understand the agreement to have [and adopt what] the proposed language is and of course, groups can review that and respond to that.

Also for tomorrow's meeting, we've noted that before, we may have some limited time to talk about category two items. Rafik already pointed out that we hope to give people additional online time to kind of work out where people feel strongly about certain changes, but objections have been raised to see if compromises can be reached. But if there are some that groups believe would benefit from plenary discussion, please flag those so we can talk about those. And then of course, for tomorrow's call, we still have an item, which was item 5A today on the agenda, the expected approach for consensus designation.

RAFIK DAMMAK: Thanks, Marika, for summarizing the action items. Okay, so we should wrap the call, but I see that we have Alan and Laureen in the queue, so we will let them intervene, and I'm closing the queue. We really need to close the call. Alan, please go ahead.

ALAN GREENBERG: Thank you very much. Just to be clear, I'm sure I would love for the report to say the ALAC perspective of how we discussed this and our conclusions, and I'm sure the Registries Stakeholder Group would like to see their version.

What I was objecting to on behalf of the ALAC is the silence in both the executive summary an in the conclusion section. This document has to stand on its own without someone having to read the draft version or the addendum to the draft version or some other working document that says we did a lot of discussion, we

didn't come to an agreement, there were a lot of different perceptions and it is now going back to the GNSO.

All we were looking for is clarity so that someone reading this report understands what happened, even if not in the detail because the perceptions are different, but that we don't [just introduce these] things, that there's an issue of legal versus natural and then have no conclusion whatsoever. We just have to say how it turned out so this document stands on its own and describes what we did. Thank you.

RAFIK DAMMAK: Okay. Thanks, Alan. Laureen, please go ahead.

LAUREEN KAPIN: First, I don't think we have a meeting invitation for tomorrow, which would be great so we all could keep our schedules in order.

RAFIK DAMMAK: Laureen, sorry, I have a really hard time to hear you. Speak maybe more close to the mic.

LAUREEN KAPIN: I'm asking for a meeting invitation so it appears in our calendars because right now, there is nothing scheduled, one, and two, I fear that a lot of important issues are being smushed into a very small amount of time to both consider, review and then deal with. We'll see how things turn out tomorrow, but I would like to leave open the possibility that if we need more time to come to closure

on some key issues that several stakeholder groups have described as critical, that there may be room for that.

So there's no need to decide now, but I'm setting down my marker there that it may be wiser to allow that breathing room.

RAFIK DAMMAK: Thanks, Laureen. We have a clear time constraint by when we need to send the report to the council, and also to have enough time for the other steps like when they make the consensus designation, we share that with the team and so you will need time to review it, and also about minority statements and so on. So there's not so much slack. That's why we're trying to push as much as possible to continue deliberating of some items, but there is some limit that we think we cannot go over.

But let's try for tomorrow and see how things will go, and based on that, we will decide what to do next. Okay, so I hope we keep this constructive approach and working together and finalize this recommendation.

Okay, so with that, thanks everyone, and see you tomorrow. And in fact, it will be today, really. Okay, see you, and thanks again. Bye.

JULIE BISLAND: Thank you, Rafik. Thanks, everyone, for joining. This concludes today's call. Enjoy the rest of your day.

**[END OF TRANSCRIPTION]**