ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Thursday, 21 May 2020 at 14:00 UTC
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TERRI AGNEW:　　　　　Good morning, good afternoon, and good evening. Welcome to the GNSO ePDP Phase 2 team call taking place on the 21st of May 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're only on the telephone, could you please identify yourself now?

Hearing no one, we have listed apologies from Matthew Crossman, RySG, James Bladel, RrSG, and Matt Serlin, RrSG. They have formally assigned Beth Bacon, Sarah Wyld, and Owen Smigelski as their alternate for this call and any remaining days of absence.

All members and alternates are promoted to panelist for today's meeting. Members and alternates replacing members, when using chat, please select "all panels and attendees" in order for everyone to see the chat.

Attendees will not have chat access, only view to the chat. Alternates not replacing a member are required to rename their line by adding three Zs at the beginning of their name and at the end, in

parentheses, your affiliation, dash, alternate, which means you are automatically pushed to the end of the queue.

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

As a reminder, the alternative assignment form must be [formalized the way the] Google link. The link is available on all meeting invites toward the bottom.

Statements of interest must be kept up to date. If anyone has any updates to share, please raise your hand or speak up now. Seeing or hearing no one. If you do need assistance, please e-mail the GNSO secretariat.

All documentation 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 meeting.

As a reminder, those who take part in ICANN multistakeholder process are to comply with the expected standards of behavior. Thank you. With this, I'll turn it back over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS: Thank you very much. Hi, everyone. Welcome to the 59th meeting of the team. The first question, as usual, is whether the agenda suggested for this call is acceptable. I see no hands up. I take it that

that is the case. Let me move to the first item, which is housekeeping issues. On here, two things.

One thing is today I am taking a call from outside the office and I am using my phone only. That means I cannot follow, really, what is happening in the chatroom. You may hear some wind because I am outside. So, that's the one thing. The other thing that I want to say is, on the screen, you see what topics are planning for coming meetings.

There is one topic missing, and that is mechanism/Recommendation 19, which, depending on how we will advance today, we may take up either together with the financial sustainability on the 26th or on the 28th of May. So, please look through the Recommendation 19 and provide your input and not wait until the last minute. So, thank you. Anyone would like to raise issues at this point? I see Hadia's hand up. Hadia, please go ahead.

HADIA ELMINIAWI: Thank you, Janis. It's just a brief note with regard to our last meeting and our discussion of automation, and automated cases, and whether the decision is made at the center gateway or at the contracted party's side.

Some of us were under the impression that, with regard to the very few automated cases that we are currently looking at and going forward, the center gateway, in case of an automated case, takes the decision and then instructs the contracted party to disclose the data.

Others—and I think that's how the recommendation is actually written—think that the center gateway manager would confirm that the use case meets the criteria for automatic disclosure, and then passes the request to the contracted party, who accordingly takes the decision to disclose the data to the requestor.

I think it's very important to clearly define or have a common understanding of which way it is because many things will depend on that. One of those things, for example, is the human intervention. So, if the center gateway never takes a decision and only sees if the use case meets the criteria then it wouldn't make any sense to have a human intervention at the center gateway but it would have more sense to have it at the contracted party side.

So, it's very important to have a common understanding of the logic though the result in both ways, I would think, is the same. So, that's just one thing I wanted to point out for us all to think about. Thank you.

JANIS KARKLINS: Thank you, Hadia. May I ask Berry to put on the screen what is now in the recommendation? Berry is already commenting something in the chatroom. So, in those cases, there is no decision at the central gateway, but predefined criteria is met for the automatic disclosure, whereby the [flag] is sent to the contracted party for the data to be disclosed to the requestor. So, that is what is currently in the draft recommendation after discussions and taking into account everything that has been said so far.

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So, as you see, we will go through, another time, the final, final reading of the report. There, of course, all the outstanding issues can be raised again. But for the moment, as staff has captured the essence of our conversation, central gateway will not make disclosure decisions but will simply flag to contracted parties that all criteria for automated decisions have been met. That is where we are now.

So, no further requests for the floor. Shall we move, then, to the agenda item Recommendation 14? Recommendation 14, retention and destruction of data. So, if I may ask Caitlin to kick-start the conversation?

CAITLIN TUBERGEN: Thank you, Janis. So, for Recommendation 14, we had two takeaways. The first is that, similar to our previous discussions, there are a couple of instances where it might be efficient to combine some recommendations. We noted some commenters had noted that Recommendation 13, terms of use, has some similar provisions as recommendation 14.

And then, also, a comment that seemed to be agreed upon by the commenters is that we should clarify that requestors must retain data for as long as necessary to achieve the purpose. And then, with added bold text. So, "Unless otherwise required to retain such data for a longer period under applicable law."

We only had one question with respect to Recommendation 14, and that is that agreement was expressed with the comment that said,

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"Abuse of this must be grounds for termination. Audit of this must be available to the contracted parties."

We wanted to note that, under the audit recommendation as it's currently written, appropriate mechanisms are foreseen to ensure accredited entities' and individuals' compliance with the policy requirements as defined in the accreditation preliminary recommendation.

We wanted to see if that language was sufficient to cover this comment or if there is more information needed or guidance concerning how this requirement would be audited and to whom it should be available.

And lastly, just wanted to be clear that, with respect to the comment about "abuse of this must be grounds for termination," support staff is under the assumption that "this" means requirements related to the storing, protecting, and disposing of gTLD registration data in accordance with applicable law. But if that's not what this is supposed to mean, we'd like ePDP members to please speak up.

JANIS KARKLINS: Yeah. Thank you, Caitlin. But this "abuse of this must be grounds for termination" is not in Recommendation 14. That is in Recommendation 13, right?

CAITLIN TUBERGEN: Question 1b … Sorry, "abuse of this." That was a comment made in response to Recommendation 14, a public comment that ePDP members agreed with. But we're just trying to make clear what this

means and, also, if the language that's in italics is okay to cover that or if we need additional language.

JANIS KARKLINS: Yeah, okay. So, thank you, Caitlin. I have one hand up and that's from Alan. Alan, please go ahead.

ALAN GREENBERG: Thank you very much. Just looking at that, I'm wondering: do we need to, or is that a job for implementation to define abuse? I mean, looking at it, I'm not sure whether it means a one-time occurrence or systemic, regular abuse, regularly not following it. I'm just wondering, at what point will we be interpreting that? Because, clearly, there may be different penalties that one should impose for a one-time error as opposed to regularly doing something wrong.

JANIS KARKLINS: Yeah. Thank you, Alan. I think we have extensively discussed what would constitute abuse in Los Angeles, and I think we reached a kind of clear understanding. It is captured somewhere and I'll look in which recommendation that is captured.

ALAN GREENBERG: I'll take your word for it. Let's go on, then.

JANIS KARKLINS: Yeah, thank you. Margie, please.

MARGIE MILAM: Yeah. I had the same concern that Alan had. I think that we already have dealt with abuse. The concept of abuse and termination is, I think, a concept that applies across the board. And so, I just want to make sure that there are graduated penalties and all that sort of thing that apply to any other obligation under this policy and not have something specific relating to this.

JANIS KARKLINS: Yeah. No, what constitutes abuse is captured in Recommendation 12, so it may be that could be displayed on the screen. So, let me see whether we are in agreement, first of all, with the proposed addition to the draft recommendation, which would now have, at the end of the second sentence, put "unless otherwise required to retain such data for longer periods under applicable law." And so, whether that is acceptable, and if it is then we can maybe move onto the next topic. Brian, please.

BRIAN KING: Hi, Janis. I had a point on the question that's on the screen, not on the bolded text. If I'm premature here, I'll wait. Thanks.

JANIS KARKLINS: On the screen? You mean …?

BRIAN KING: Thanks, Janis.

JANIS KARKLINS: Yeah. Please, go ahead.

BRIAN KING: Thanks. The portion that, I think, berry has highlighted now. I apologize, I see that the only input from the registries and registrars. We missed this homework assignment. I apologize for that.

We have some concern about this and, I guess, some questions but what would be audited. Maybe if we did miss a homework assignment I had to apologize that we should have caught up, there. Berry, could we go up just a bit, there? Yeah. So, our question is, "Audit of what must be available to the contracted parties?" That's the question that I have. Thanks.

JANIS KARKLINS: So, please, again? Audit of …?

BRIAN KING: Sure, Janis. Thanks. The language says, "Audit of this must be available to the contracted parties," but I don't know what "this" is.

JANIS KARKLINS: Well, this is not about Recommendation 14. I understand that this is from Recommendation, rather, 13. Because if you look to the text of Recommendation 14 as it is formulated in the initial report, it is just two sentences.

First sentence: "EPDP team recommends that requestor must confirm that they will store, protect, and dispose new gTLD registration data in accordance with applicable law." And the second sentence suggests requestors must retain only the gTLD registration data for as long as necessary to achieve the purpose stated in the disclosure request.

Now, that's text in the initial report. Now, we are talking about adding to the data to this recommendation at the very end: "Unless otherwise required to retain such data for a longer period under applicable law." So, my question is whether this addition is acceptable to all because only two groups have made [their] homework. We need to make sure that this is something we could accept as [a session].

So, then comes the question—and I think that we still need to ask some clarification from Caitlin—where this is expressed because this is not in Recommendation 14. I think it is Recommendation 13. So, before that, I have the hands of Sarah and Mark SV. But please, if you have an issue with this proposed addition to the initial recommendation, let me know. Sarah, please.

SARAH WYLD: Thank you. Hi. To the specific new text in red on the screen, I'm fine with that, probably to no one's surprise. To Brian's comment and the other comment, I just wonder if we can look briefly at the audit recommendation and see what the requestor or the SSAD user is audited on. Because this Recommendation is about retaining data, right? And the comment is about the handling of that data and how that's audited for compliance. So, if we can see in the audit

recommendation that that's included, that would be helpful. And any other—

JANIS KARKLINS: Caitlin will clarify that.

SARAH WYLD: Super. Just one other quick thing. It's that the other part of the comment, here, is suggesting that the contracted party should be able to audit requestors to confirm their appropriate handling of the data, which seems to me like a good idea but probably impractical.

So, maybe if the audit requirement includes it then the contracted party themselves doesn't have to do it but that confirmation does still get done by the appropriate auditing body. Thank you.

JANIS KARKLINS: So, thank you. So, Mark SV.

MARK SVANCAREK: Thanks. I'm going to lower my hand, now. If we come back to that text that Brian was—

JANIS KARKLINS: Mark, we don't hear you well.

MARK SVANCAREK: Sorry, sorry.

JANIS KARKLINS: You are very far away from the microphone.

MARK SVANCAREK: Now, it's right on my face. Maybe my settings are wrong. Anyway, come back to me. Sorry.

JANIS KARKLINS: Okay. So, Caitlin.

CAITLIN TUBERGEN: Thank you, Janis. Thank you to Berry for highlighting Recommendation 18 with the audits. I just wanted to try to clarify Brian's question, and that is on the discussion table you'll note that we pasted the comments that we received on this recommendation.

In concern C is the concern that we're talking about right now, which was specifically in reference to Recommendation 14. So, unless the commenter was confused about what they were commenting on, this is a reference to Recommendation 14 on retention.

Our assumption is that "abuse of this" is any sort of abuse of the retention requirements in Rec 14. So, I know Rec 14 isn't a long recommendation but, essentially, if the requestor is abusing the storage, protection, and disposal of gTLD registration data in accordance with the law, then that would be what this comment is referring to.

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JANIS KARKLINS: Thank you, Caitlin. In that case the question is, do we need any additional language, in your opinion, in case there is abuse of retention and destruction of data? Or is the current language good enough? Brian, your hand is up.

BRIAN KING: Thanks, Janis. I think the language that's in bold there, on the screen … And Caitlin's explanation was really helpful. We don't have any objections to the bold language being added. Certainly, this suggestion that Berry put in the question one, there, on the screen, is helpful clarity, as well, in addition to Caitlin's explanation.

I agree with Sarah, as well, that the contracted parties auditing the requestor for retention of the data is probably unworkable in practice and, in theory, not something that we could agree to because it doesn't seem like it will be appropriate for contracted parties to be auditing law enforcement or other requestors to make sure that they have deleted data.

It would be difficult or impossible to prove the negative, that you don't have the data anymore, in that context, anyway. So, that's not something that we would be able to agree to but we like the language on the screen. That's fine. Thanks.

JANIS KARKLINS: Thank you. So, I think that the logic also would suggest that if a requestor who has received the data is not handling it according to GDPR, or any existing other private data protection laws, that person becomes liable in case of litigation. So, probably, we should not engineer our recommendation. If I may suggest that we add the

suggested text in Recommendation 14 and leave it there? Amr, are you not in agreement with that?

AMR ELSADR: Thanks, Jan. No, I am not in disagreement. I just had a question that I posted in the chat, but you mentioned earlier that you can't keep track of it because you're using a phone.

I was just wondering—I apologize if I missed this—what the context for adding this language is. Have any applicable laws which may require longer retention periods been identified? I think it would have been helpful for me to understand why we're adding this. But like I said, I don't have an objection to this right now. Thank you.

JANIS KARKLINS: Okay. Thank you. So, Alan, could you explain, or Marc Anderson? Who is next in line? Alan, please.

UNIDENTIFIED MALE: Actually, I'm going to use my point first, if that's okay. My point was, just in something you said there, Janis, about saying the interpretation that if a person has data released, that they then become the liable party. They also become the liable party. The disclosing party would still be liable if they're not sufficiently in control of who they're releasing that data to.

So again, this goes back to something that Brian just said there, that he would be against any inference that the contracted parties may audit the disclosee. Unfortunately, as we are continuing to be

the controller, here, I don't need permission from the SSAD to audit the people to whom I'm disclosing that data. That's currently what the terms and conditions of my direct would be.

So, it would be incumbent, probably, on the SSAD or whoever the central gateway manager—whoever discloses that data—that that is one of those elements that need to be audited. So, again, I think Sarah put it very well when she said, "If this is already covered by the actual audit requirements then I don't think that this needs to be necessarily included," but we need to be sure that this is one of those auditable elements, as well. So, thank you.

JANIS KARKLINS: Good. Thank you. In that case, I will ask staff to verify whether this particular element is in the list of audited questions. If not, then please add it for the final reading. Marc Anderson, please.

MARC ANDERSON: Thanks, Jan. I know we have heard a lot on this topic. I'm trying to circle back to the question on "abuse must be grounds for termination." And so, I know we're bouncing a little bit on this one but, on that one, I was looking back at Recommendation 2 where we have accredited user revocation and abuse. That's covered in Section 0.

On that one, it says, "Accreditation authority can revoke the accredited user's status as an accredited user of the SSAD," and it gives a non-exhaustive list of examples. I think we could address this particular question by just including data retention violation in

that non-exhaustive list. I think that would address that particular question.

JANIS KARKLINS: Okay. Thank you, Marc. That's good advice. Good suggestion. Mark SV, are you in agreement?

MARK SVANCAREK: Actually, I've got my hand up for things that are in the chat and Alan Woods' previous comments. Just remaining very concerned about the idea that we'll be approving terms of use that require contracted parties to audit the people that they disclose data to. I think we're going to have to make sure that our agreements really bound that in some reasonable way. It's not very practical and it'll be a big problem. So, when we get to that language we're going to have to talk about that more. Thanks.

JANIS KARKLINS: Okay. Thank you. So, may I take that we are ready to move to Recommendation 13? Beth, are we?

BETH BACON: I'm sorry. I snuck in right under the wire, there. I think that I just want to clarify one thing. If I'm speaking for Alan, he can yell at me later. I think the point was that the GDPR gives that ability to the registry or registrar operator, the control over the data to audit whomever you release to as it makes them a controller. It's not necessarily the SSAD. So, if this were not in there we would still have that ability.

I'm not saying this should or should not be in there. I'm agnostic. But I think that was the distinction we were trying to draw, there. Thanks.

JANIS KARKLINS: Okay. Thank you. So, this understanding: can we move on? Yes. So, we retain the initial recommendation and we add the text in bold. In Recommendation 2, we will add this one line to the non-exhaustive list of revocation that the violation of data retention would constitute, or abuse of data retention would constitute the grounds for taking away a chance to use the system.

So, with this, let us move to the next item, which is acceptable use, Recommendation 10. If I may ask Caitlin to walk us through, in general, and then take just question by question, one by one, not all five at the same time?

CAITLIN TUBERGEN: Thank you, Janis. Certainly. So, for the overview, I just wanted to note that only input had been received from the Registries Stakeholder Group by the deadline. So, we included some questions just to confirm that the registry's understanding matches the rest of the team's.

But as an overview we'll note that, similar to other recommendations, the group has already agreed that there will be one central gateway manager, not more than one gateway manager designated for each top-level domain.

And just as I mentioned with respect to Recommendation 14, we'll likely combine Rec 10, 13, and 14 to avoid any sort of duplication and to make sure that it's organized and sensical.

Historic data. This group has already agreed that that's out of scope. And lastly, the acceptable use policy is a legal document that binds a requestor to certain standards. The noted standards were an attempt at minimum standards, abuse, and conduct. The requestor must agree to these prior to access.

So, the first question is related to the opening paragraph of the recommendation, and it's a two-part question. This was a clarification question in public comments about, who is to trigger the enforcement mechanism referenced? Is it meant to be triggered by ICANN Compliance? If so, would ICANN Compliance be willing to take on this responsibility as this responsibility would go beyond contracted parties? So, that's the first question, and it's a two-part question. Thanks, Janis.

JANIS KARKLINS: Okay. Thank you very much. So, any reaction on the question? Anyone? Sarah?

SARAH WYLD: Thank you. Hi. The contracted party should be able to trigger enforcement if they find that the acceptable use policy has been violated.

JANIS KARKLINS: Thank you, Sarah. Any differences in opinion? Margie.

MARGIE MILAM: I think it should be triggered through ICANN Compliance – I mean, whoever brings up the enforcement concern. So, I think ICANN Compliance is probably the right place to do it and, certainly, that would be the place where all those sorts of enforcement requests go through, depending upon what the issue happens to be.

JANIS KARKLINS: Thank you. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I'm responding to a slightly different topic than Sarah and Margie. Just a comment for staff. I know they're looking at combining ten, 13, and 14. Well, ten applies to SSAD users, as does 14. 13, terms of use, covers three different areas. It's a privacy policy for SSAD users, how the SSAD itself will use the private data of SSAD users, which is not quite the same as what was talked about in ten and 14.

Terms of use for SSAD users, on the other hand, does overlap, there. "Disclosure agreements for SSAD users" overlaps a little bit, as well. So, I just want to note that, for staff when they're doing the rewrite, there are a couple of intertwined concepts, there, but they're still different and distinct items with different and distinct purposes. So, I just want to note that for staff when they're redrafting this.

JANIS KARKLINS: Okay. Thank you, Marc. So, Alan Woods, please.

ALAN WOODS: Thank you, Janis. I want to pose a question. It's more for clarity for me and, I suppose, to help us all move forward, as well, in this, just about ICANN Compliance and their role in the enforcement of this.

Again, I have no issue with that as a concept. It's just, as we were reading through these recommendations, as we were doing the response to that, I did keep noticing that we are relying on ICANN Compliance to do an awful lot of this.

And of course, ICANN Compliance are used to enforcing compliance against the contracted parties, but what we're envisaging here is a completely separate enforcement procedure against a whole different set of people.

I'm conscious of the fact that we seem to be trailblazing forward in this and I just want to make sure that ICANN has the opportunity to say, "This is something that ICANN Compliance can certainly expand to."

I just feel uncomfortable that we are creating, basically, an entire second stream for them without giving them the opportunity to say, "No, that's absolutely fine." I just think it might give us clarity for these questions if we could get more of an insight into that.

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JANIS KARKLINS: Okay. Thank you, Alan. So, who is on the call from ICANN Org liaisons? Eleeza, could you?

ELEEZA AGOPIAN: Hey, Janis. Yeah. Sorry about that. I think there is a lot [depending] on this question and I think if we probably need to talk to our colleagues in compliance about it to get back to you with a good answer.

JANIS KARKLINS: So, you cannot answer right now?

ELEEZA AGOPIAN: No. A written question would be helpful. We can get back to the team as soon as possible.

JANIS KARKLINS: Okay. Thank you. Hadia, please.

HADIA ELMINIAWI: Yes. Thank you, Janis. So, I'm a little bit confused, here. This recommendation speaks about acceptable use of the standardized system for access/disclosure. So, it does make sense that whoever is responsible for that system is the one looking for compliance, here. So, to me, the central gateway for ICANN would be the one enforcing compliance here because we are talking about the acceptable use of the system, not of the data.

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JANIS KARKLINS: Actually, you are right, Hadia. I think that we need to look at the recommendation in entirety and see what it is all about. Basically, the question here is, if the requestor systematically violates the terms of contract and is not complying with the requirements set out in this recommendation [ask historic data does what is not, ask the] data to be disclosed for one reason but, in reality, pursuing different reason, and so on.

So then, the question is who can trigger this mechanism which would ban that requestor from the use of this and whether that is ICANN Compliance, or ICANN Org itself, or central gateway itself. So, that is a question. Amr.

AMR ELSADR: Thanks, Janis. I think I agree with Hadia and the sentiments she has described. I don't want to pass personal judgment on this issue, now. I think it's something we all need to think about a little and it would be helpful to get input from ICANN Org on it.

But a thought that I have is an SSAD user signing an acceptable use policy doesn't make it a contracted party. But in terms of the role of ICANN Compliance in this, it might just be on use of the SSAD itself.

So, for example, if the penalty for violating the AUP is, for example, de-accreditation, then that's kind of … And I think this is where Hadia was coming from, if I'm not mistaken. This is sort of ICANN's role, as a data controller, to limit use of the system that it has put in

place, which is also subject to the policies developed through ICANN's processes.

So, like I said, this is just a thought. I'm not sure if it represents an expansion of ICANN Compliance's role or not. One of the things that may be helpful for ICANN Org to look at and check back with us on is how they do something like this, for example, with the TMCH and Deloitte. So, what processes are in place to make sure that Deloitte/TMCH is implementing the ICANN policies the way they're meant to. Thank you.

JANIS KARKLINS: Thank you, Amr. Chris Disspain, please.

CHRIS DISSPAIN: Hi, Janis. Hi, everyone. Look, Eleeza says, to get some input from Org, it would be good to have a written question and I agree. But I wanted to say that, speaking personally but, obviously, from experience of being on the board, I am becoming increasingly uncomfortable with the stretching of ICANN's mandate in various different guises in an attempt to cobble this together.

It is really important to remember that, in the same way, people have been very clear about principles, and rights, and whether ICANN should be doing stuff, etc., and staying within its mission, that applies just as much to all sorts of other things.

Whilst it might be convenient and it might seem to solve the problem to say, "We'll let ICANN do it," I don't think anyone should assume that ICANN will and I think they should be very careful to ensure

that you don't make decisions based on the principle that ICANN will.

You may not even get an "ICANN will" answer to a direct question. What you may get is an "ICANN may" or an "ICANN won't." But an "ICANN will" is probably much more likely to come only once ICANN sees the full picture and the full effect of what is likely to be occurring. I hope that's helpful.

JANIS KARKLINS: Thank you, Chris. It is helpful, actually. Again, maybe we need to spend a few minutes thinking who will decide on any audits and who will decide to trigger all kinds of safeguard mechanisms that we have built in the system. So, what would be the right mechanism? Thomas, what do you think?

THOMAS RICKERT: Hi, everybody. Thanks, Janis. Now, I think, for me, the question is relatively easy to answer. If we think that the SSAD is something that's within ICANN's remit then ensuring that everyone who is using the SSAD or is a part thereof plays by the rules is, by nature, also within ICANN's remit.

That's not to say that ICANN staff themselves have to do that. So, when it comes to auditing whether infringements were present or something like that, I think it's highly likely that ICANN will engage a subcontractor to do that work on their behalf. It can pretty well be outsourced.

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But I think that it's an astonishing statement to be made that Chris seems to be implying that, yes, we want the SSAD. Actually, ICANN Org was the main driver of the SSAD being put forward as a concept, and then to say we're not willing to take responsibility when it comes to enforcing that everyone is playing by the rules.

JANIS KARKLINS: Thank you, Thomas. Chris, any reaction?

CHRIS DISSPAIN: Let me just say, again, it's all about whether it's in mission or not. It's all about whether or not what ICANN is doing is doable under the terms of its mission. That's all I'm saying. I'm just suggesting to people that we should all be careful not to just assume that it will happen.

You can interpret that any way you choose, and if you want to interpret it as me saying that I don't think it will, that's a matter for you, but that's not what I'm saying. I'm simply saying that I think we just need to be a little bit careful that we don't just create a large bucketful of "ICANN will do this stuff" without being crystal-clear that, actually, ICANN can do it within the terms of its mission and bylaws.

JANIS KARKLINS: So, in that case, I would argue that the presence of ICANN Org liaisons and ICANN Board liaisons in the group is exactly for that reason, to make sure that we have enough confidence that whatever we're putting together would fall in the remit of ICANN's

mandate and ICANN's activities. Otherwise, it would be hard to say, if we are thinking completely in the wrong direction that liaisons wouldn't warn us, that this may not be possible.

CHRIS DISSPAIN: Well, let me be very clear. First of all, I appreciate Milton's rhetoric in the chat but I said at the start that I was speaking personally but with my experience as a board member.

Secondly, all I'm saying is I just think we need to be clear and careful about the assumptions that are being made. You're quite right that it's the reason why the liaisons are here, and that's one of the reasons why I'm speaking. You're also quite right that it's the reason why Org is here and it's why I started my comments by saying that I agreed with Eleeza that it was necessary for there to be a written question and that we may respond to that written question.

Perhaps in the circumstances, given the response, it would be better for us to simply confine our thoughts and comments to be in writing since it appears that other sorts of comments are just going to be taken out of context. Thanks.

JANIS KARKLINS: Okay. Thank you. So, in that case, I would suggest that, if you would agree, I would formulate a question to ICANN Org on … And very concrete wherever we think that ICANN Org has to be involved. We will send it to ICANN Org for the answer. So, it would kneel on whether ICANN Org would perform a function of central gateway, whether ICANN Org would perform the function of accrediting

authority, whether ICANN Org would perform the function of triggering audits, and so on, and implementation, and all things that are in our draft recommendations.

CHRIS DISSPAIN: Exactly. Thank you.

JANIS KARKLINS: Yeah. Though it's a bit late in the process because, if the answer will be no, then we are back in January … No, in March 2019, because we always work with the assumption that ICANN Org would do that. But anyway, I will ask, and certainly, I will get an answer. Thank you, Chris. Thomas, your hand is up.

THOMAS RICKERT: Yes. Yes, I have raised it again because I—

JANIS KARKLINS: No, please.

THOMAS RICKERT: I feel compelled to ask Chris another question. Chris, when we asked Eleeza whether that task could be taken on, with her responding that she needs to circle back with her colleagues, I thought that was a matter of, are they willing to take on an additional task, and would they be willing to do that?

You sort of framed it far more broadly on, maybe, whether it is within or without ICANN's mission according to its bylaws to take on that task. The issue with that is that … And Chris, we've spent countless hours preparing for the IANA Stewardship Transition to ensure that ICANN's board can't act without its mission, and ICANN also can't do that.

But the point is that if we're about to propose policy recommendations, including that function, then it doesn't really matter who, in practice, performs that function. Then, the inclusion of that function in our policy recommendation itself would be a violation of ICANN's bylaws.

So, let me just be crystal-clear and ask you whether you or the board see issues with our policy recommendations as such. Because I think what we don't want to end up with is presenting this, passing at the GNSO Council level, only to find out that the board has issues with the policy recommendations being out of scope.

JANIS KARKLINS: Thank you, Thomas. I hope that this will not be the case.

CHRIS DISSPAIN: Well, Janis, that's a much bigger question. I mean, I'm talking very, very specifically. Now, maybe I misunderstood, but what I thought we were talking about was a specific event where ICANN would be enforcing compliance, for want of a better word, putting it against parties with which it currently has no contractual relationship.

If that's the case then one would need … It's not as simple as saying, "Yes, ICANN can do that." It is much more complicated than that because one needs to find a basis on which one can do it and one needs to be clear that one can do it within the mission, and the bylaws, and so on and so forth.

So, all I'm saying is I just want to make sure that everybody is clear that we need to be very careful. The question you just put to me, Thomas, is a much bigger question which has to do with the full gamut of this ePDP and nothing to do, specifically, with what I was talking about. I'm certainly not going to get into a discussion on the bigger picture on this call, although I'd be perfectly happy to have a discussion offline with you if you want me to do so.

JANIS KARKLINS: Thank you, Chris. Actually, we are working on a lot of assumptions that ICANN will do many things, as I said. Of course, I will write and ask this explicitly, and I hope that the answer will be, "Yes, we will do that," because, otherwise, we need to put a white flag in and say we failed at whatever we worked for one year [cross talk].

CHRIS DISSPAIN: Yes, Janis, and I appreciate that, Janis, and I'm not suggesting that that's the case, and nor should you take anything that I've said to mean that that's the case. I'm simply saying—and I'll say it again so that we're clear—that I want to make sure that we test every assumption that ICANN will do something against the fact that it sits within our mission and our values.

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Now, Thomas has just said in the chat, "We are talking about ICANN enforcing its own policy," and that may very well be true. If it's as simple as ICANN saying, "You can no longer have access to this because you have breached the policy," that's fine.

But then, the question becomes, "Well, is it subject to all sorts of reconsideration mechanisms? How is it dealt with within the context of ICANN's accountability mechanisms?" and so on, and so on. And all of that has to be dealt with in the context of the bylaws. It's not as simple as saying, "ICANN will do that." That's my point.

JANIS KARKLINS: Okay. Thank you. I have a few other hands up. Hadia and Stephanie, in that order.

HADIA ELMINIAWI: Thank you, Janis. Thank you, Chris. It's just a quick comment on Chris saying ICANN enforcing a policy with someone it has no contract with. And then, my understanding is that users of the Standardized System for Access/Disclosure are all accredited users and, based on that accreditation, they agree to use the system within certain terms and conditions. So, whoever is responsible for that accreditation and for that system should be able to enforce compliance with it.

So, if it's ICANN then it's ICANN enforcing its own policy, as Thomas is. If it's some other entity then that other entity should be able to enforce that. Our understanding, so far, is that ICANN would be responsible for that. Thank you.

JANIS KARKLINS: Thank you, Hadia. Stephanie, please.

STEPHANIE PERRIN: Thank you very much. As I have said in a tiresome manner, had we sorted out the controllership arrangements and the joint controller agreements, the responsibilities that accrue to ICANN as a controller would be clear.

Now, let's be clear about one thing: the accreditation entity. The organization outsourced, presumably, could be several organizations who accredit those who wish to access. Those are going to be in a processing arrangement. They're processors and they are performing a function that, had we done a privacy impact assessment, would be a lot clearer in terms of who is in charge.

But I'm assuming that ICANN is the main controller for that. So, Hadia is correct: subject to the processor agreement, which trumps ICANN's bylaws in the matter of ambit and scope. If you're going to set up this processing arrangement then it has to be compliant with the GDPR and there are obligations.

One of those obligations is to not continue to accredit people who are violating the rules. The persistent belief that users of the SSAD have some kind of rights that must be set out in ICANN's bylaws mystifies me. I think we should, indeed, put it in writing and get an answer to that question because it keeps emerging.

Thank you. I realize that it was in all of the terms of ICANN's arrangement as an entity when it started back in '98 but there has

been quite a bit of water going under the data protection bridge since then. Thank you.

JANIS KARKLINS: Okay. Thank you. So, I think we have come to the conclusion that additional questions, very straightforward questions, need to be asked to ICANN Org. I will do so, maybe today or, at the latest, tomorrow. I will not attempt to ask for your input but I will share my e-mail to ICANN Org with the team. It may not be perfect but it will be fast.

In the meantime, we would assume that whatever functions we have so far entrusted to ICANN—namely accreditation, and management of the central gateway, and all sorts of issues—would be performed by ICANN Org, unless we will get a different answer. Then, we will try to sort it out. I would suggest that we move to the next question, which is more or less related to our previous conversation. Caitlin.

CAITLIN TUBERGEN: Thank you, Janis. As you noted, this question may have to wait until we receive further guidance on the first question, as it's asking about everyone's understanding that everyone is able to file a complaint but the decision to trigger the enforcement mechanism is made by the central gateway manager, or its designee, after considering the complaint. So, perhaps we can move to question three while we await feedback.

JANIS KARKLINS: Yes, please.

CAITLIN TUBERGEN: Okay. So, question three is noting, "To ensure that everyone has the same understanding that the acceptable use policy is a living document rather than a checkbox exercise. It is accepted that every requestor shall agree to accept the terms of use as a condition to access the system, rather than individual elements being ticked in the manner suggested by one of the commenters."

JANIS KARKLINS: So, thank you. So, are we in agreement that all users need to agree on terms of use? No hands up. I take that this is … Oh, there are a few. Marc Anderson, please. [inaudible]

MARC ANDERSON: Thanks, Janis. I don't want to just roll past this one. I mean, I don't disagree with this statement but I wanted to point out I think that the acceptable use and terms of use are referring to two different things. I think one is for how users will use the SSAD system, and I think the other deals with how requestors will use data once it's disclosed to them. At least, that's my understanding. So, I wanted to make sure that I have that right and that that's what's intended by that part of the question.

JANIS KARKLINS: Okay. Thank you. Caitlin, please think about the answer. Amr, please.

AMR ELSADR: Thanks, Janis. I kind of had the same impression Marc does. Full disclosure, I'm kind of shooting from the hip on this, but I'm wondering if, to drive the calling-home of what the acceptable use policy is and what the terms of use might also include, it would or might be helpful to call this something else, like "terms and conditions of use of the SSAD." It might drive the point home of what the purpose of this document would be. Thank you.

JANIS KARKLINS: Now, look. We are speaking about a very clearly defined initial recommendation and there is no ambiguity in that. So, we're talking about what a requestor needs to do or needs not to do. Probably, again, it would be more useful if we would see, on the top of the document, the whole initial recommendation. Not parts of it because, then, we're talking a little bit out of context. Caitlin, there was Marc's question. What would be your answer?

CAITLIN TUBERGEN: Thank you, Janis. I think that support staff would have a look at the recommendations that we've been talking about, Recommendation 10, 12, 13, and 14 together, and try to make the different elements more clear. I'm not able to answer that question right now without seeing all of them together because, as noted, there is a lot of overlap.

JANIS KARKLINS: Okay. So then, let us move to the fourth item. Caitlin.

CAITLIN TUBERGEN: Thank you, Janis. So, I think that this is a fairly straightforward question. Just in terms of the acceptable use policy, does the team anticipate that the central gateway manager does more than an automatic check that the requestor has accepted the acceptable use policy? And if that's not the understanding, what more is envisioned for the central gateway manager to do?

JANIS KARKLINS: Okay. Specifically that it is the submission … The auth-request is more or less automated through the web interface. Brian.

BRIAN KING: Thanks, Janis. I think that they should just do the check that the requestor has accepted the terms and move on. That's all that required: "Did you agree to the terms? Yes or no?" Thanks.

JANIS KARKLINS: Okay. Thank you. Any other opinion? Marc Anderson.

MARC ANDERSON: Thanks, Janis. I more or less agree with Brian. I'm not sure what else the central gateway manager could do here but I think, in this case, my expectation is that you wouldn't be accredited by that if you didn't agree to the acceptable use policy. So, maybe that helps clarify it. But I think, in general, I agree with this.

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JANIS KARKLINS: Yeah. No, that's my understanding, as well. So, if you do not agree with the use policy, you cannot use the system. It's as simple as that. Okay. We are in agreement on that? We are. So, let us move to the next item, five. Caitlin, please?

CAITLIN TUBERGEN: Thank you, Janis. The last question was just that there was some additional language proposed as an edit to the recommendation. It's in bold in five. We just want to make sure that everyone is okay with that addition. So, maybe everyone should read it and then note if they are not.

JANIS KARKLINS: So, can we get this text in the full recommendation as it stands, now, that we see, also, the context? So, now we see this is original. Can we get those edits in the text so that one can see it clearly? Or "proposed edits," rather.

[BERRY COBB:] Janis, at this point, I don't think there is proposed text for Rec 10 yet, other than what we have in the initial report which, of course, I just closed.

[TERRI AGNEW:] Thank you, Berry.

UNIDENTIFIED MALE: Janis, you may be on mute.

JANIS KARKLINS: Indeed. My apologies for that. Look, where is the difference? The text which is in bold is suggested to add in the initial recommendation. So, what you see in question five as a normal font is original text. The small roman ii is suggested to add. So, the question is whether this acceptable to the team and whether we should proceed with that or not. Margie, please.

MARGIE MILAM: Hi. I don't understand the new text and would have to give it some thought. I do think that, if you put yourself in the position of a requestor, you need to know what the requirements are. And so, if there are requirements, that needs to be available to the requestor so that they can spell it out. Otherwise, it's this black hole that you submit a request and you have no idea whether it is proper or not.

And so, I think that's the reason why this language seems troubling to me, that it's far too broad and enables rejection of requests for no real, clear reason. And sol I'd like to hear from those that proposed it to understand what they're trying to target and see if there is some better way to address it.

JANIS KARKLINS: Okay. Thank you. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I was actually just trying to figure out who proposed it. It might be good to get clarification on them on where that comes

from and what problem this is trying to address. I think registry-submitted comments supporting this edit because it seems like it's caveated with "if required by law," which seems in-line with things we've done elsewhere in the recommendations.

So, I think, as I recall, we supported this suggested edit and I stand by that. But I do agree with Margie that it would be good to hear a little bit more about this, sort of what problem this is trying to address.

JANIS KARKLINS: Okay. Thank you. Before giving the floor to Sarah, may I ask staff to identify who made the suggestion, from which group? Sarah, please go ahead.

SARAH WYLD: Hi, thank you. Yeah, it's the comment from the Council of Europe Data Protection Unit. So, I actually thought we, the registrar group, had also submitted comments on this one. I'm not sure what happened, there. I agree with Margie in that I am also not super-clear on what the new text means. Is it representations of how they will safeguard the data or is it representations of what their lawful basis is? I'm not clear.

But it does seem to me like the addition is already covered under items B and E in this recommendation. So, I don't object to the additions but I don't think they're necessary. Thank you.

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JANIS KARKLINS: Okay. Thank you. Brian, please.

BRIAN KING: Thanks, Janis. I think what's tripping us up here is that one thing – is the word "representation" there? "Representation of procedural rule of law and data protection safeguards" in the accompanying document.

The accompanying documentation will either have those things, if they're required, or it won't. This is odd, here, to be in the AUP. I don't understand what question or what problem it's trying to solve.

And so, I would suggest that we not include it. Not because it's a bad idea, that these things aren't necessary, but we have covered the hell out of these things elsewhere and I don't want to overcomplicate this AUP, especially when thinking about what it even is and how to combine it with some of the other legalese around the SSAD. So, I would say that we note that we've covered this elsewhere and move on. Thanks.

JANIS KARKLINS: Okay. Thank you, Brian. "The representation" is a term which we're using throughout this recommendation. But yeah, it seems to me that it is maybe a little bit over-engineering or putting the same safeguards that are already described even in the same recommendation. So, my suggestion would be to leave this addition out, and to stick to the initial text of the recommendation, and move on.

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Objections? No? Good. So then, it seems we have covered all grounds identified by staff in Recommendation 10 and we can move onto the next agenda item, which is 12, query policy. So, Caitlin, if you would please walk us through the assumptions part and the first question that needs to be discussed?

CAITLIN TUBERGEN: Thank you very much, Janis. So, the first assumption is based on paragraph B. I just wanted to note that, in terms of the abuse of use discussion and what that entails, members will likely remember that there was extensive discussion and deliberation about what "abuse of use" means and compromise from both sides.

And so, I noted that there were several comments about reopening these definitions. But because we've already discussed them at length, unless there was either unanimous agreement that this was a new item that needed to be discussed or unanimous agreement that the proposed changes or concerns should result in a change, they are not brought up in this document.

I'll note that there were a couple of terms, namely appropriate action in paragraph A and high volume in paragraph B, where commenters noted that additional description or definition would be helpful. But the ePDP team members that commented on this noted that these are issues for implementation rather than the ePDP team.

Another commenter noted that abusive behavior should involve some sort of graduated penalty scheme, but the commenters noted that this should be considered in implementation. However, I believe one group noted that there may be certain instances with

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particularly egregious abuse, such as counterfeiting or stealing credentials, where termination could be immediate and there wouldn't be some sort of graduated penalty. But again, that will be discussed further in implementation.

There was a question about how requestors are able to include more than one domain name in a single request. That is discussed in an additional recommendation, so we won't go into it here. But also, the specifics of that are, really, another implementation matter.

There was agreement that the central gateway manager must be able to save a history of the different requests in order to keep traceability, noting that there need to be appropriate safeguards in place. This will be talked more about in the logging recommendation.

And then, I'll also note that, in terms of the bullet following paragraph C, there were a couple of comments that noted that it would be helpful if that could be further delineated by which parties in the SSAD are responsible for what. So, support staff will take a look at that when redrafting the recommendation.

So, moving onto the questions that were unclear. The first was a question from ICANN Org and it's recreated on the screen. It's unclear whose responsibility it would be to assess policy violations and abusive behavior.

ICANN Org is assuming that this process will begin with the central gateway manager and would be handed off to the accreditation authority if it is determined to be an abuse of the accreditation, but it is still unclear which entity would receive requests in this context.

It's also unclear how and why ICANN Org would be involved in mediating disputes between a requestor and the entity limiting the requestor's access. Specifically, if ICANN Org is the entity limiting the requestor's access, how does the ePDP team envision such action would be mediated?

JANIS KARKLINS: Okay. Thank you, Caitlin. So, I have one hand up. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. A number of the … Sorry, I should say my comments are about the assumptions and takeaways and not about the question. In the assumptions and takeaways, there are a number of items that came up, there. Not all of them, but a number of them that you indicated will be addressed in implementation.

I don't have issue with that. I'm not objecting to that at all. I just want to ask, where we expect things to be addressed in implementation, we state that in the recommendation, or maybe in implementation notes following the recommendation.

So, for example, I think the first one was defining abusive behavior. Just add implementation notes saying that the working group expects that, during the implementation phase, what abusive behavior means will be defined. I think that, based on my experience with IRTs, that clarification would be helpful and appreciated in the implementation phase.

JANIS KARKLINS:	Thank you, Marc. Actually, I'm looking to the initial recommendation, which now I recall we negotiated I don't know how many hours in Los Angeles. That contains the non-inclusive list of what may constitute abusive use of SSAD: "High volume automated submissions of malformed or incomplete requests; high volume automated duplicate requests that are frivolous or vexatious; use of false, stolen or counterfeited credentials to access the system; storing or delaying and sending high-volume requests causing the SSAD or other parties to fail SLA performance. When investigating abuse based on this specific behavior, the concept of proportionality should be considered."

So, this is the highly elaborate, in my view, list of examples of abusive use of SSAD. What else can we say? I think implementation should be, in any case, guided by common sense and how the system would function in the best possible way.

But when we're thinking about the question … Again, I maybe ran ahead of the train but I kind of think that, when and if policy is accepted, ICANN Org will start implementation. So, based on every functionality that ICANN should perform, most likely ICANN will create SSAD with a division, department, or unit that would deal with different aspects of SSAD.

Part of that unit may be, also, kind of an ombuds-type of office or person who acts as a mediator in case of non-abusive but emotional exchanges and those things. I would say, for me, it is also a common-sense implementation question, how I can organize the work around/of SSAD. But this is not really my business, it's it more your business, team members. So, what is your take on the question?

UNIDENTIFIED MALE: Was that to me, Janis?

JANIS KARKLINS: If you volunteer, but it's an open-ended question.

UNIDENTIFIED MALE: Okay. I could jump in. I'm not seeing any other hands. I think, perhaps, I used a bad example. The bold point, how the requestor is able to include more than one domain name in a single request is an issue for implementation, might be a better example. Just say, "The working group expects this to be worked out in implementation." I think your point that we worked out what abusive behavior means already is well-taken and I think we can stick with that list and move on. Otherwise, I think I agree with the points you made.

JANIS KARKLINS: Okay. Any other reaction? So, in the absence of reactions, I take that that is ICANN Org who needs to figure it out in implementation, how all these pieces together will be stuck together and who will do what when the policy is accepted. Okay. If no comments, let's move to question two. Caitlin, please.

CAITLIN TUBERGEN: Thanks, Janis. Question two, again, concerns a proposed edit. That edit is included in bolded text. I'll note that the groups that responded to the discussion table agreed on this edit in principle

but asked to discuss it further in plenary. So, that's why it's included, here.

JANIS KARKLINS: Okay. Thank you. So, it's time to discuss if there is a need. I understand from Caitlin that there were no objections to include this text of clarification in the recommendation and I hope that that does not contradict the definition of historic data that we discussed a few meetings ago. Amr?

AMR ELSADR: Thanks, Janis. I thought the whole idea of not addressing historic data is that it was out of scope of what we're doing but then this text in bold is, again, addressing it. I'm not sure why we need to include it, here. I think the presumption is probably accurate but I don't think that this is something that the ePDP team needs to report on in our recommendations. Thank you.

JANIS KARKLINS: Okay, thank you. There is objection, now. Alan?

ALAN WOODS: Thank you, Janis. Yeah. So, I was one of the people who kind of agreed that this is fine but we should talk about it in principle. I think the reason why I want to talk about it in principle is very much for the exact same reason as Amr has just pointed out. I think the main thing here is that the contracted parties can do that as controllers,

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but whether or not that should be outside of the SSAD is completely not really taken into account, here.

In my mind, it was one of those things of the SSAD should allow just the data that is accessible, not historic data. But then, if, outside of the SSAD, the contracted party wishes to make a service for that, then that's up to them.

So, yeah. I mean, I can leave it or take it but if we are going to keep it then I think Amr's point is well-made and we probably should say that this is nothing to do with the SSAD at all.

JANIS KARKLINS: Yeah. No, with that clarification I think this text is actually confusing. That contradicts the main principle that we accepted at a very early stage of our work, that the SSAD would provide only current data. And then, we clarified a few meetings ago that, if the change is made in between, the request is made, and the answer is as formulated, what do we do then?

But normally, that is a very specific situation. But in principle, I think that what we agreed at the very beginning, that we would provide only current data. So, my suggestion would be not to add anything to the initial recommendation. Brian, are you in agreement?

BRIAN KING: Thanks, Janis. I am in agreement with you. I think when we start to go in different directions, you might lose the IPC. We got to, I think, a fair compromise with the way that we had this, so we'd like to keep it that way. Thanks.

JANIS KARKLINS: Thank you. Mark SV?

MARK SVANCAREK: Thank you. Hopefully, you can hear me today.

JANIS KARKLINS: Yes. Yes.

MARK SVANCAREK: Okay, great. I think the issue arises from a point that James made in a previous meeting, that when we talk about the SSAD it's a system in process that is operated under, and enforced by, consensus policy contracts with the contracted parties. It doesn't necessarily mean the central gateway function, or a specific API, or anything like that.

So, for this to say, "Shall not be available via this mechanism," I think that's fine if you understand that the SSAD is the thing that we're defining in policy. If you're trying to preclude a contracted party from using the same APIs, logging, blah, blah, blah, like that, then that's probably a problem. So, as long as everybody agrees what SSAD means in this context, this language seems fine.

JANIS KARKLINS: So, you do not object not to take this into account?

MARK SVANCAREK: I do not object.

JANIS KARKLINS: Okay, good. Is there anyone who objects? So then, we are not taking that into account and stick with the initial version of the recommendation. Point three. Caitlin, please.

CAITLIN TUBERGEN: Thank you, Janis. Point three is another ICANN Org question. So, "The central gateway manager confirms that all required information is provided under preliminary recommendation five. However, the central gateway manager does not perform any further evaluation of the request. So, can the ePDP team clarify within this recommendation what it means for the central gateway manager to 'examine each request on its own merits?'"

JANIS KARKLINS: Okay. Thank you. I think that this was put for a completely different context, that there wouldn't be grouped evaluation but there would be individual evaluation of each request, if I recall. Alan Woods, and then Brian.

ALAN WOODS: Actually, I took down my hand because I misunderstood which one we're talking about, so please move on.

JANIS KARKLINS: Okay. Brain, please.

BRIAN KING: Thanks, Janis. I might have to take my hand down, too. I might have also misunderstood if this is talking about individual request versus bulk requests. Let me catch up. I'll stop now.

JANIS KARKLINS: No, I recall that this formulation was put in the recommendation when we discussed that if there are, let's say, 1,000 requests, are they examined as one—and they're all similar—or each need to be examined? That's why we said that each request should be examined on its own merit. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I agree with your recollection. I know you can't see chat but you're getting some plus-ones in chat, as well.

JANIS KARKLINS: You're fading out, Marc.

MARC ANDERSON: I agree, and other people do, in chat.

JANIS KARKLINS: Okay. I don't see the chat, but anyway, okay. So, would this explanation be sufficient to ICANN Org?

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DANIEL HALLORAN: Janis, can you hear me?

JANIS KARKLINS: Yes.

DANIEL HALLORAN: Yeah, I think it's fine. It's a little bit difficult to check. I think these comments were written maybe six months ago, if I'm not confused. And yeah, I agree. "Consider on its own merits," I think, was meant to refer to the contracted party, I guess, now, who is going to do that authorization.

I think this text predates when that decision was made because it talks about the SSAD generally doing these things and it wasn't clear which was the gateway manager and what was the contracted party that was going to be doing the authorizing. So, I think it's clear now that …

JANIS KARKLINS: Okay. Thank you, Dan.

DANIEL HALLORAN: So, this text does need that pass-through to clarify who is doing what, whether we're talking about the gateway manager or the contracted party, now. Thanks.

JANIS KARKLINS: Okay. Thank you. Brian, your hand is up.

BRIAN KING: Thanks, Janis. I actually have more concern now thinking that Dan thinks that we are just talking about the contracted party evaluating the request on its merits. As we've discussed, that's not our preference. I guess the question is whether this language, here, in the question that it looks like was proposed by staff, or summarized by staff and proposed by Org, what does that pertain to? Does that pertain to just Rec 5, which is the check to make sure that you have data in all the fields, or does this pertain to the deciding of the disclosure decision? That's my question. Thanks.

JANIS KARKLINS: So, I think we are in the weeds again, here. But anyway, Margie, please.

MARGIE MILAM: I think I have the same Brian had so I'm going to defer to the answer.

JANIS KARKLINS: Okay. Caitlin's hand is up, so maybe she will clarify.

CAITLIN TUBERGEN: Thank you, Berry. The ICANN Org liaisons are welcome to jump in if I'm misinterpreting. But Berry, if you don't mind scrolling down in the document? Under paragraph C, it says, "The ePDP team recommends the SSAD, in whatever form it eventually takes, must," and then the fourth bullet says, "consider each request on its merits.

I think the concern that Dan just mentioned is that ICANN Org's understanding is they do a completeness check but that the contracted party is the entity considering the request on its merits when it does all the steps in Recommendation 6, and that ICANN Org will not be doing that.

But anyway, I just wanted to make sure we're zeroing in on the correct bullet as I think ICANN Org may have just mentioned that that one might need to be removed because it may have been holdover language that wasn't removed after the model was reconsidered, but I could be mistaken. Thank you.

JANIS KARKLINS: Okay. Thank you, Caitlin. Brian, please.

BRIAN KING: Yeah. Thanks, Janis, and thank you, Caitlin, for the clarification, and Dan. In that case, I think we do have a problem because we're not in agreement that the SSAD or the central gateway will not be reviewing any requests on the merits. We know that for many requests, and for some requests, those will be sent to the contracted parties but we're not willing to agree to that. That's what I'd consider less of a minor clarification than a very important policy principle for us. Thanks.

JANIS KARKLINS: Thank you, Brian. Not sure that I understood but, anyway, let me take Mark, and then Dan.

MARK SVANCAREK: Thank you. My concern is that, if the gateway evaluates things on its merits, it can never perform any recommendations. So, recommendations may be non-binding but they're still valuable and we need to make sure that the gateway is allowed to do that. Thank you.

JANIS KARKLINS: Okay. Can we, again, talk a little bit about how the request will be submitted? Most likely, the request will be submitted through the interface with a number of data files to fill.

So, based on those, the information will be processed by, most likely, an automated system which will also, based on the information available, produce recommendations, again, based on algorithm, and would send it for further consideration for disclosure to the contracted party.

So, that is how I imagine central gateway will work. And I said I think that this recommendation formulation was put forward at the time when we discussed bulk requests and all these things. So, Volker, your hand is up. Let me take Dan first, and then Volker.

DANIEL HALLORAN: Thanks. Yeah. I had my hand up. I don't know why it went down but thanks for taking me. So, I agree, Janis, with the way you laid out … I share that understanding of how the system is supposed to work. I think it would be much easier if we were looking at a flow

chart of how the system is supposed to work but what we're dealing with is these layer upon layers of words, here.

So, I think Caitlin was right that we probably were, in our comment, referring to item C above and not to that bullet point below C. That wording, "Review on its own merits," I think appears multiple times in the document and it's a little confusing to me.

So yeah, I'm now confused about what … If you describe what you just said about what the central gateway is going to do in terms of handling, receiving, processing, relaying requests, mostly in an automated fashion, maybe doing some kind of recommendation engine? I don't know what that means, to examine each request on its own merits, for the gateway itself. Thanks.

JANIS KARKLINS: So, again, I would argue that if you have 1,000 identical requests related to 1,000 different domain names from the same requestor you would not give 1,000 similar answers just in one click. You would need to go 1,000 times and think whether that request is receivable or not and whether data is disclosable or not. So, that means each request should be examined by its own merits. Volker, do you agree with me?

VOLKER GREIMANN: I agree with you, with that interpretation. I think, even though we are currently looking at mostly decentralized versions of disclosure, ultimately if we ever have a more centralized version of disclosure, as well, then that may come into play. Perhaps it should be

referenced for that scenario where a more centralized version of the SSAD comes into being at a later stage.

JANIS KARKLINS: Okay. Brian.

BRIAN KING: Yeah. Thanks, Janis. I agree with Volker. Thanks, Dan, for clarifying, there, and for reminding us of a pain point that we've had for some time, that this "must examine each request on its own merits," I think, is in here several times and probably in places where it doesn't need to be.

So, if Berry can maybe scroll up just slightly on the right-hand screen, which section is this? What are we talking about anymore? The query policy? So, that's about what happens when a query comes in.

If we're not talking about deciding the outcome of a decision, here, then maybe it doesn't make sense to have that language, there. But I have to note very clearly that, if this is meant to mean that the central gateway manager is not able to make a decision about disclosure at some time in the future when we have the legal guidance that says that they can take the responsibility for that, then we can't agree with that.

So, if that's not what the intended effect is of removing this, here, then that's okay, but I just want to be clear that we're not intending this to have that effect. Thanks.

JANIS KARKLINS: Okay. Thank you. So, why don't we ask staff to review all the places in all recommendations where "examine each request on its own merit" is used and see whether they are consistent with each other and with the use of those.

But again, here, I think this idea was that, in case of many similar requests, each request should be examined individually. By a computer, but still individually. So, can we settle on that? Staff will review and we will, then, examine it in the final, final reading. Amr, your hand was up.

AMR ELSADR: Yeah. Sorry, Janis. I just didn't understand what you were proposing, but then I got the gist of what you meant so I took my hand down. Thank you.

JANIS KARKLINS: Good. Thank you. So then, that means that we have looked at every identified question for Recommendation 13, terms of use. Now, we have two recommendations: Recommendation 17 and Recommendation 18.

[BERRY COBB:]   Janis? No, we just completed query policy. Now, we need to go to terms of use.

JANIS KARKLINS:	Oh, sorry. Indeed. Yeah. My apologies. My mistake. So, let us move to Recommendation 13 and, hopefully, none of us are superstitious.
[BERRY COBB:]	I would note that we only have 14 minutes left and this is a pretty big one. So, perhaps Caitlin just provides an overview and we can, maybe, take one question.
JANIS KARKLINS:	Yeah, okay. Let's start, then. We have another, what, 15 minutes to go? Please, Caitlin, kick-start, and then let's talk about the first question.
CAITLIN TUBERGEN:	Sounds good. Thank you, Janis. So, the assumptions and takeaways for the terms of use is, again, similar to the last recommendations we were discussing. We're going to be reviewing Recommendation 13 in the context of the other recommendations that include policies—query policy, data retention, acceptable use policy—as well as the code of conduct in Recommendation 1 to avoid any sort of duplication and ensure consistency.
	Secondly, principles and disclosure is listed under "The policy for SSAD users should be mirrored and made clear to registrants in their registration agreements."
	The privacy policy for SSAD users says the types of third parties with whom personal data is shared. Groups noted that this should include the fact that data subjects will be provided with contact

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information for the parties that requested and received their data according to applicable law when that is required.

And then, based on Tuesday's discussion, there was a question within Recommendation 13 about data subjects. Based on that discussion, we assume that data subjects are not intended to be accredited users of the SSAD and, instead, they would go to the registrar directly to confirm their data, rather than confirming it through the SSAD.

So, moving on, I think the first question is pretty straight-forward. There are a couple of references to "SSAD users" within this recommendation. There is some confusion as to what that means, but staff's interpretation was that "SSAD users" was intended to mean "requestors." If that's correct, we would correct the terminology to ensure that it's consistent.

JANIS KARKLINS: Okay. Thank you very much. I would ask, are we in agreement to change, throughout the text, "SSAD users" to "requestors"? So, no hands up. Decided? Thank you. Number two?

CAITLIN TUBERGEN: Okay. Moving onto number two. This is similar to a discussion that we had, I believe, in reference to Recommendation 1 on accreditation. But the first paragraph notes that agreements are expected to be developed and negotiated by parties involved in the SSAD. There was confusion by groups about what that actually means. Is it just to be ICANN, the accreditation authority, identity providers, contracted parties, users, and requestors?

I note that some commenters expressed concerns with including requestors and data subjects in these negotiations as that could prove to be very difficult. But I also wanted to note that, in reference to recommendation 11, the updated version, we have implementation guidance that says, "ICANN Org will develop the SSAD privacy policy for SSAD users," we'll change that to "requestors," "which it may publish for public comment to obtain input from potential requestors," noting if that language is sufficient or if it needs to be expanded or changed.

JANIS KARKLINS: Thank you, Caitlin. Any thoughts? Margie?

MARGIE MILAM: Yeah. I think that the concept we're trying to address here is that there should be input from users and requestors, or whatever we want to call it, before the negotiations and before the contracts get posted for public comment. And so, we could follow the model.

At least, the proposal would be to follow the model that was done for the RAA in 2013 where staff solicited information from the community before the negotiations, and then staff negotiated with the contracted parties.

And so, those were the only parties at the table but they had the input from the community before they negotiated. And then, afterward, it was posted for public comment. So, that's the concept, I think, that would make sense here.

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JANIS KARKLINS: Thank you, Margie, for your proposal. Anyone in disagreement? Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. So, in terms of the SSAD privacy policy, what Margie is suggesting makes sense. I raised my hand to comment on … When Caitlin read that out and suggested changing "SSAD users" to "requestors," I'm not sure that's an improvement because saying ICANN Org will develop the SSAD privacy policy for requestors … I think they're actually developing it for SSAD users.

I think that's a more accurate description of what they're doing and who that applies to. I see "requestors" as a somewhat broader term and this is a privacy policy that applies to any SSAD user. So, I'm not sure … I don't know. Maybe we have to see this but I'm not sure just doing a global replace of "SSAD users" for "requestors" is an improvement. Thanks.

JANIS KARKLINS: Okay. Let's think. Who will be involved in the managing or in the running of SSAD? So, there will be data controllers in contracted parties, ICANN, and central gateway manager, ICANN accrediting authority, maybe subcontractors. But nevertheless, ICANN will be, ultimately, the one who will be understood running this function. And then, those who will submit requests. They will be entities or they will be individuals, but all of them will be accredited. So, these are users. No one else will use that. Volker, please.

VOLKER GREIMANN: Thank you. I think in this context we think that users should include the contracted parties as well, as they are using the SSAD as a tool to disclose data to the requestors. And I think it also makes sense to have them as part of the negotiating team of these terms of use because, basically, these terms of use will dictate how this data will be disclosed and they are still responsible for that disclosure, ultimately. So, I would say that we should have a word, or at least a part of the say, as well, in what should constitute a part of these terms of use and what shouldn't. Thank you.

JANIS KARKLINS: Thank you, Volker. Stephanie?

STEPHANIE PERRIN: Thank you. I'm just a little concerned about dropping the word "requestor" because I think that, when one climbs through this long and complex document, one gets the impression that there are accredited users who are habitual users and that everybody else is not accredited.

Now, there could be single-use requestors who would be eligible. Anybody is eligible if they have a reasonable purpose, of course. But are you calling them an accredited user? They're not a habitual user. I hope you see my distinction. I understand that, in other areas, we have talked about one-off requests, but I'm concerned about the language implying something different. Thank you.

JANIS KARKLINS: Thank you, Stephanie. I think that our accreditation policy, which is already agreed, suggests that a one-time user, also, will go through the accreditation procedure, which will be much lighter. I recall myself, giving an example, applying for a Canadian Visa, the electronic Visa.

It took 15 minutes and seven Canadian dollars to get it, and that was kind of my view of a light accreditation where, simply, you submit what is requested, and then you get screened and given permission to use the system once. Alan G, please. Alan, your hand is up and we do not hear you.

ALAN GREENBERG: Sorry. Just to confirm, my understanding was we only responded to requests from accredited users. And yes, we may well have a fast-pass. A fast-pass accreditation is clearly not going to end up with some sort of automated response because we don't know who the person is or any details about it, but I thought that was what we came into. So, I don't think we use the term "habitual user" anywhere and I wouldn't want to introduce a new term right now. Thank you.

JANIS KARKLINS: Okay. Thank you. So, where are we, then? Probably, based on the conversations, we need, still, to make a re-reading of the text in entirety—and then, I think the staff can do that—and think where it would be logical to replace "users of SSAD" by "requestors," where this would be specifically addressed explicitly to requestors, and leave "SSAD users" where it would also imply not only requestors

but also other parties involved in the operation of the system. So, that would be, maybe, answer to the first question, and then see where changes could be done.

And then, the answer to the second question is, most likely, that all involved parties should be part of, at least, preliminary discussions on the terms of contract before they are negotiated [in camera].

So, that would be my conclusion. I would like to see if that is the common understanding. I see no hands up. We have reached the 4:00 PM UTC, which means that our meeting has come to an end. So, thank you very much. I think we did good progress. And though we did not examine all agenda items, nevertheless, I thank you for active participation. So, I also would like to encourage groups to do homework because, on Recommendation 17/18, only one group has submitted, so far, their views.

Next Tuesday, we will continue examining Recommendation 13, starting with question three, and then we'll go on 17/18. And for the next week, Thursday, financial sustainability and evolutionary mechanism, please look at those recommendations ahead of time and submit your comments. Hadia, please.

HADIA ELMINIAWI: Thank you, Janis. Sorry for just bringing this up now but, with regard to recommendation number 12 and the ICANN-related question, we were silent on that. But I think part of our silence, or maybe my silence, is that the question in itself is also related to the questions that you are going to pose to ICANN Org.

That's what I think, at least. And therefore, it was very difficult to answer the question and we don't know, yet, the answers that you are going to get in response to the recommendation with regard to the use of the system. Thank you.

JANIS KARKLINS: Yeah. No, let's await answers, and then we will see. Look, thank you very much. I wish all of you a good rest of the day and I will send a copy of my e-mail to ICANN Org as soon as it is done. Thank you again, and this meeting stands adjourned.

TERRI AGNEW: Thank you, everyone. Once again, the meeting has been adjourned. Please remember to disconnect all remaining lines.

[END OF TRANSCRIPTION]