ICANN Transcription
GNSO Temp Spec gTLD RD EPDP – Phase 2
Tuesday, 23 June 2020 at 14:00 UTC

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TERRI AGNEW: Good morning, good afternoon, good evening, and welcome to the GNSO EPDP phase two team call taking place on the 23rd of June 2020 at 14:00 UTC.

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

Hearing no one, we have listed apologies from Julf Helsingius of NCSG, and they have formally assigned Yawri Carr as their alternate for this meeting and any 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 access to the chat.

Alternates not replacing a member are required to rename their lines by adding three Zs to the beginning of their name, and at the

end in parentheses, their affiliation, dash, “alternate,” which means they are automatically pushed to the end of the queue.

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

As a reminder, the alternate assignment form must be formalized by way of the Google link. The link is available in all meeting invites towards the bottom.

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

Seeing or hearing no one, if you do need assistance, 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, and with this, I'll turn it back over to our chair, Janis Karklins. Please begin.

JANIS KARKLINS: Thank you, Terri, and hello everyone. Welcome to the 67th meeting of the team which is one of our last ones. We will

continue today, walk you through the outstanding issues that we need to address, but before that, as a housekeeping issue, I would like to tell you that the small team on evolutionary mechanism has concluded its work and today staff has published the proposed recommendation 19 that was developed in this small group. We received the second alternative proposal which was put forward by Amr, and it seems that that hit the target because everyone said in that small group that they could live with in principle. And after our last discussion, the text was slightly modified and a non-exhaustive list of issues that would determine scope of activities of this mechanism was added, and as such, published for review and hopefully agreement by the team as a whole.

So this is where we are with the recommendation 19, and I would like to see if there's any reaction at this moment. I recognize Hadia, your hand is up. Please go ahead.

HADIA ELMINIAWI: Thank you, Janis. So as you mentioned, in principle, the small team did agree to the alternative proposal. However—and the suggestion to add the non-exhaustive list of items that would be addressed by this mechanism are stated as well.

However, there is a problem with the proposal as is, because the proposal says—if we can scroll down a little bit—the scope, yeah, number one, it says identification of issues which the committee may address shall be determined using the following two methods. And the first any policy or implementation topic concerning SSAD operation may be raised.

So we did list the topics that the mechanism could address, one of which is automation. SLAs are included as well. However, the recommendation says that any member of the committee could forward a policy or implementation issue forward.

So if we take automation as an example and we want to add a new case to the implementation for automation, the committee could very well accept putting the issue on the table, but then the issue could be considered policy and not implementation, and thus, recorded in order to be addressed by a PDP later.

So there is nothing in this recommendation that makes a distinction between what is implementation and what is policy. And this is something we've been debating. We think, or a good number of the ALAC, SSAC, the BC, the IPC, we consider adding an automated case to the implementation phase as an implementation topic. However, some other groups see it as a policy issue.

And if we cannot form now say what's policy and what's implementation, we'll end up where we are. It's still without having a mechanism that addresses what we see as implementation issues. A solution to that could be that we can go back to, for example, the automation—

JANIS KARKLINS: Hadia, my apologies, it was not my intention to discuss this recommendation now.

HADIA ELMINIAWI: Okay. Sorry for that.

JANIS KARKLINS: Because it is too fresh and we need to read, assess and it will be time when we will discuss that recommendation as a team, but not now. Now just reactions to what I said. My apologies.

HADIA ELMINIAWI: Okay. Thank you so much. So initially, it's a good start. However, some distinction between what's implementation and policy needs to be added. Thank you so much.

JANIS KARKLINS: Thank you. Alan, please, followed by Volker.

ALAN GREENBERG: Thank you very much. Just to summarize very briefly, this proposal is not dead in our minds, but that's because it is silent on too many things. I posed a number of questions which unfortunately did not get to Amr until the meeting yesterday. I'll re-forward them to this group so this group also has some idea of what the issues are that concern us. Thank you very much.

JANIS KARKLINS: Thank you. Volker, please.

VOLKER GREIMANN: Yes. let me preface that by saying that lack of sleep makes me a "no" person, but I think we have significant issue with approving this at this time simply because of the fact that our representative on the small team who is [also on today and can] speak informs us that he doesn't recall that we concluded and accepted this, so we will probably have to read this as a team and come to an agreement whether this is something that we can live with.

He recalls that we were at an impasse but certainly did not conclude on this as the definite model that we were going to support going forward. So having said that, and taking into account the lack of sleep, we'll probably have to revisit that after ICANN week. And I would severely urge that we do not do this meeting on Thursday in the same time zone but rather move it to Kuala Lumpur time as well, because having two eight-hour workdays is basically out of the question.

JANIS KARKLINS: Thank you, Volker. Your understanding is correct, this is just coming from the small team, it does not mean that the team has agreed on that. But if small team wouldn't have agreed, then it's clear that big team would not agree either. But since small team agreed, there's a good chance that team may agree as well. So that's what I conclude.

VOLKER GREIMANN: Yes, except that the small team representative doesn't recall agreeing to this either. So this might be something caused by lack of sleep and the time, because we've been working an eight-hour

shift before that and didn't have much time to recover, but yes, this is [a potential issue.]

JANIS KARKLINS: Small team meetings were recorded and I understand transcribed, so everyone can visit and see whether anyone objects to conclusions of the work of the small team or not. And again, it is a sticky point, it is a crucial recommendation. If there is no evolution mechanism agreed, there's no consensual report, there is status quo, and one year of this team is basically wasted. So this is as simple as such. But we will come to discussion of this recommendation next week, because this week, this is the only meeting of the team. Next meeting is planned for Tuesday June 30, and next week, we will have three meetings and the aim is to finalize the report as much as we can because that also coincides with the end of my availability for the service to the team. So that's where we are. Brian, please go ahead.

BRIAN KING: Thanks, Janis. I wanted to agree with Hadia that we have a couple things to add in here, including clarity on automation and what things are within and without scope for the mechanism group. But we could do that substantively on that call. I just want to give thanks to Amr for taking the pen and drafting this. I think this does really show that folks are listening and that we are attempting to address each other's concerns about this. So I really appreciate Amr taking the pen on that, and just a couple substantive things to get to when we unpack this further. Thanks.

JANIS KARKLINS: Thank you, Brian. In absence of further requests for the floor, let us move to the substantive part of our conversation. Marika, what is the next topic we need to address?

MARIKA KONINGS: Thanks, Janis. It's actually Caitlin that's going to take the next set which relate to recommendation 9 which focuses on the SLAs.

JANIS KARKLINS: Okay. Caitlin, please.

CAITLIN TUBERGEN: Thank you, Janis. Starting with recommendation 9, I would recommend that we start at item 45 if there's no disagreement, partly because items 43 and 44 are overarching questions that can probably be better answered after we go through some of the other issues.

Starting with item 45, this was an item that was submitted by ICANN Org that support staff needed a little bit of help trying to answer. So the question was about the priority matrix which is that table that appears right there with the blue, and the question was, could the EPDP team clarify to what these percentages refer. So you'll note that in the proposed SLA in the rightmost column, there are percentages noted. And does that mean that a contracted party would meet the 24-hour target for responding to 85% of its

requests within the first six months of the policy taking effect while it would be acceptable for 15% to take much longer?

We pose that question to the EPDP team and we got feedback from the Registrar Stakeholder Group that ICANN Org's understanding is correct. But since we didn't get any feedback, wanted to pose that to the full group.

JANIS KARKLINS: Thank you, Caitlin. My recollection is that these are in first six months, 85%, in next six months, 90%, and then first part of the second year of operation, 95%. That's my recollection of these percentages, but of course, I stand to be corrected. Any has different memories from percentages, please? Chris, please.

CHRIS LEWIS-EVANS: Thank you, Janis. My understanding as well matches those percentages. However, just to take longer, not much longer. Thank you.

JANIS KARKLINS: Thank you. Volker.

VOLKER GREIMANN: Yes, I think the numbers are correct as I recall, just noting that the 24 hours should be a busines day. We said that should be changed, so hasn't yet, but I'd just seen Marika's note. [inaudible].

JANIS KARKLINS: Okay. Thank you. So I think that that clarifies, we can go to the next one. Daniel, please.

DANIEL HALLORAN: Thank you, Janis. I'm sorry, it's early and I'm a little short on sleep. Just flagging, I'm still not sure I understand or our tech team understands. You have this concept of the average response time, I think, and now you have this [inaudible] percentage and it's not clear to me at this hour—if it was earlier—how those two interact, the average response time and then this 85% thing. Thanks.

JANIS KARKLINS: No, Daniel, since we do not know how many requests there will be, so we discussed that we should put kind of a target, and these targets are in the first six months, registrars should try to meet SLAs in up to 85% of cases. So in the second six months, meaning from 7th to 12th month of operation of the SSAD, this percentage of meeting target should grow up to 90 without any penalties from Compliance. And in the next six months, we should strive to reach 95% of compliance with SLAs. So that's where the percentage comes in.

DANIEL HALLORAN: Thank you, Janis. I don't want to belabor it and it's probably just my misunderstanding, but for example let's say you have 100 requests in a month and 50 of them take 20 hours and 50 of them take 40 hours. It seems like your average response time is 30 hours. Now what do you do with the 95% or 85%? I just don't get

that. To what does that 85% apply if your average response time is 30 hours? Thank you.

JANIS KARKLINS: The thing is there will be always—and probably Volker can speak about it better because the average time came from conversation of Marc and Volker. So the percentage of response time should meet not the average but be within the SLAs. So that's why there is this target. But let me see what Marc has to say. Actually, both Marks, Marc Anderson and Mark SV.

MARC ANDERSON: Thanks, Dan. So in your example, if there are 100 requests, you would take the lowest 15, the 15%, throw them out, and then average the remaining 85, or 85th percentile, and that would get you your SLA number and that has to be within the SLA for that period.

DANIEL HALLORAN: Thank you, Marc.

MARC ANDERSON: That's the first six months, then 12 is 90, 18 is 95. Hopefully Mark can correct me if I got that wrong.

JANIS KARKLINS: Thank you, Marc. Mark SV, please.

MARK SVANCAREK: Thanks. Yeah, I think the confusion arises from when this was first proposed, I think that we were talking about using the mean average calculation for all three priority levels, one, two and three, whereas where we landed was for one and two, there were these percentage measurements and then for three, because those are the bulk of the things, those are the ones that have the more complex computation.

So I think the confusion arises that maybe it's not clear in the text that one and two are being calculated separately and in a different fashion than three. so hopefully everybody agrees with that. I'm pretty sure that's how it was intended to work. Thanks.

JANIS KARKLINS: Okay. So, is it now clear enough for implementation? Daniel, please.

DANIEL HALLORAN: Thanks. Yeah, Marc A's explanation helped clear it up, and I guess I'm a little unclear now about the third category, but I think we have a lot more to go on. Thank you for the explanation.

JANIS KARKLINS: Thank you, Daniel. So we can move to the next one. Caitlin, please.

CAITLIN TUBERGEN: Thanks, Janis. So moving on to question 47, this is about if the EPDP team is to confirm that it meant business days as defined in the contracted party's jurisdiction. And I'll note that registrars once again agree with that understanding but just need to confirm that that's what everyone else thought as well. And I'm specially talking about priority two. It's a max two business day response and I think the team meant that that's business days for the contracted party. But we need to clarify that.

JANIS KARKLINS: Okay. Thank you. Are we in agreement, one, two business days? No hands up, agreement. Mark SV, please.

MARK SVANCAREK: Sorry, slow hand, although I did write it in the chat. I do not recall ever agreeing to this. I don't think that there was ever a clean tie between non-LEA requests for priority and business days measurement of the priorities. The comments that are in the box are really what the issue is. Four-day weekends suddenly ... Especially if you're tying LEA in there. So now we're saying that an LEA request is subject to a four-day weekend somewhere. That's pretty crazy. There has to be some sort of a real timebound on this, it can't just be business days. And it can't be restricted to LEA. I don't recall those two things ever being connected, that it's one thing that you would trade off for the other thing. So maybe people can correct me on this. It just seems to me like somebody put something in a "cannot live with" and then suddenly the text got changed. So we still need to discuss this. Thank you.

JANIS KARKLINS: Thank you. I think Marika already addressed this issue in a pervious meeting, but let me see if I can call on Marika and she refreshes all of our memory.

MARIKA KONINGS: Thanks, Janis. As I put in the chat, I think this was originally always business days, but then we had a pretty lengthy conversation that some felt that that was t oo long and on the other hand, I think contracted parties expressed that without any limitations on who could submit urgent requests, it was not acceptable to change that to a 24-hour period. I think then it was left with staff to try and come up with a kind of compromise solution and the approach we took was to change to 24 hours but on the other hand, limit then urgent requests to LEA submissions.

But it quickly became clear that that was not acceptable, so basically, we reverted back to the original status was that urgent requests can be submitted by anyone who of course meets the criteria but in return the timeline was also one business day. So I don't think that can be seen as separate, because I think it was from the outset the business day and we changed that linking it to the requirement for LEA submissions. So hopefully that is clear. And just noting it wasn't a "cannot live with" item, I think the registrars just pointed out that we hadn't applied that change in a number of places which we recognized we should have done because as said, two things were tied together in the original staff proposal and as one didn't get support, the other one also had to be reverted back.

JANIS KARKLINS: Okay. Thank you. Brian.

BRIAN KING: Thanks, Janis. Just to kind of underscore the point here, ICANN for example closes down its offices at the end of December for two weeks. So if you submit a request on December 24th and ICANN is the responsible party—they wouldn't be, but just for example, what if a contracted party closed down December 23rd and you wouldn't get a business day until January 3rd? That's an extreme example, but it's a real-life example. Many companies do that.

So as a constructive suggestion then, might I suggest that we leave it as the 24 hours as we had originally agreed, but we could say that—I guess that's the first suggestion. The second one is that if we needed to somehow have it as a business day in order to reflect the reality of some contracted parties, what does the group think about the concept of a business day but in any event, no longer than one calendar day or something like that?

JANIS KARKLINS: Thank you. Mark SV, please.

MARK SVANCAREK: I wanted to go back to something that Marika said, because the claim was that if you can't control who can make the requests, then you have to bound them by business days. But then she also

said only people who are approved to make such requests can make such a request. So you already know who it is. It's not like it's just some random group of people off the street. They've already been preapproved for the ability to make these urgent requests and then having been put into that category, they're allowed to make them.

So again, I'm not following the logic of this. It doesn't seem like it's going to work for the reasons that Brian is saying. I'm thinking about golden week in Japan, but I'm sure there's other examples. Thanks.

JANIS KARKLINS: Thank you. Volker, please.

VOLKER GREIMANN: Yes. I don't think Brian's example is applicant, because normally, a business day—and this should be the case in this case as well—is not defined by when you decide to take a vacation as a company but rather the official days of your location. So if you have a public holiday, that's not a business day. If you don't have a public holiday and it's not a weekend, then it's obviously a business day.

Yes, golden week is a kind of special example in Japan because that has a lot of national holidays that follow each other, but still, I don't think that this rare example should break the model. I think business days are perfectly acceptable and it's something that we can work with. The 24 hours is simply not possible.

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

JAMES BLADEL: Hi. Good morning, good afternoon, good evening. So going back to some of the comments from Brian and Mark, Brian, I think we proposed this very early on. It might have even been all the way back in phase one. My attempt at a compromise was that we would recognize business days but have a cap on it like not to exceed five calendar days or something like that.

And that didn't go over very well, so now I'm kind of, I guess, trying to figure our where we're going from here, because we have to recognize that some of the contracted parties that will be responding to SSAD requests are not 24/7 operations, they are closer to insurance companies or banks, and as Volker recognized, they track their business day calendars to their public holiday calendars. So creating an obligation that essentially with a stroke of a pen changes their operating model to become a weekends and evenings and holidays organization I think is disproportionate to the need. And I think as Thomas noted in the chat, if something is that urgent, it shouldn't be too heavy of a lift to team up with someone who is able to make emergency requests and get something pushed through on a 24-hour basis.

But I'm perfectly fine going back to the original compromise which was X number of business days not to exceed, you know, five calendar days or something to really just catch those edge cases.

Because really, what we're talking about in most cases are two-day weekends with an occasional three-day weekend. Thanks.

JANIS KARKLINS: Thank you. So since both interested parties came to a similar conclusion, can we say one business day or two business days but not exceeding three calendar days? Throughout the document, if that is necessary. Alan Greenberg, please.

ALAN GREENBERG: Thank you very much. I'd like to call attention to what was going on in the chat, pointing out that many of these priority one cases will also be abuse cases, and registrars are currently required to provide 24-hour response on those. So even if an operation is not a 24-hour operation normally, they are currently required to staff their abuse contact for the 24-hour period. So we're saying that in many cases, they are going to be abuse anyway. They may not, but so be it. So the registrars are already geared up for it. We're saying a lot of them will fit into that category anyway. I don't understand what the reluctance is to simply accept it for the number of these requests.

And I'll point out that if anything is being shown by these virus problems, the bad guys are willing to work on weekends and when the rest of us aren't necessarily working. So I really don't see how we can ignore the edge cases which may be two weeks in some cases just because it's not going to happen very often. Thank you.

JANIS KARKLINS: Thank you, Alan. May I ask really to concentrate on the substance of the question, not just entertain general discussion? We need to progress with the solutions. And proposal on the table is, normally, it is measured in business days, but not exceeding three calendar days as a general rule. Mark SV, would that be okay?

MARK SVANCAREK: I'm inclined to accept that. I would like to hear from GAC to see what they say about that. But I was thinking of something along those lines myself. Thank you.

JANIS KARKLINS: Thank you. Volker, please.

VOLKER GREIMANN: Yes. Just a bit exasperated by Alan's comment because it's a comment that we've made again and again. There's clear and obvious difference between the law enforcement request type that is 24 hours and the SSAD urgent request type which is open for others, which is not directed at taking immediate action but rather getting some data that may or may not help you. So there are clear differences. We also expect there will be clear difference in volume that we will receive on one contact over the other. So it's not that we have built this already. This is probably someone who's on call if something comes in, and if that person now gets a call every day instead of once a month, that's a clear difference and we're not set up for that. Thank you.

JANIS KARKLINS: So you're not agreeing with that.

VOLKER GREIMANN: I'm agreeing with the proposal that we've made and not agreeing with moving away from what we have agreed there. So what we've proposed there—it's business days, but for the love of god, let's have some limitation in there, not exceeding certain number of calendar days. If that makes people happy, then that's a compromise we can work with.

JANIS KARKLINS: Okay. Thank you. Chris.

CHRIS LEWIS-EVANS: Thank you, Janis. Yeah, I think my recollection of this was for law enforcement there was a requirement to publish within the SSAD a contact for urgent requests as well, just to allow us to do that, which would cater for that need for 24 hours for law enforcement. So to Mark SV's question, I think realistically, with a limitation to a number of calendar days plus the publication of a contact number for law enforcement, that would meet our needs. And Marika's posted the text [there.] Thanks.

JANIS KARKLINS: Thank you. James.

JAMES BLADEL: Hi. Thanks. I'm just going to drop here, I think Chris mentioned it here, but just to be clear, we are talking about two different types of requests. So Alan, conflating the run off the mill requests with law enforcement requests, saying the bad guys don't sleep and don't take weekends off, we've already covered that use case. So it's disingenuous to now tie it to the 24-hour response that we're asking for here. So if we can call this—for clarity, if it helps avoid that confusion, let's call this the civilian request channel that we're discussing now, because we've already established the law enforcement channel. So I think it's important to not cross our terminology. Thanks.

JANIS KARKLINS: I really would like to stop here this conversation and move on proposing the compromise that we keep for urgent requests business day but not exceeding three calendar days, just to cover these edge cases. And please remember that SLAs will be subject of review by the mechanism. And if we're completely off the target now because we're talking in abstract without any operational experience, so they will be reviewed on a regular basis and will be adjusted as necessary. So, can we move on, agreeing that we would add [inaudible] one or two business days but not exceeding three calendar days? Good. Staff, take note, and we move on. Caitlin, please.

CAITLIN TUBERGEN: Thanks, Janis. We can move on to item 49 as 48 was a similar question. So item 49, there was new text inserted, but the Registries Stakeholder Group noted that it would seem to be

redundant with the new paragraph two in recommendation 9 and support staff is okay with deleting that text. We just wanted to make sure everyone else is okay with that. The underlined blue text.

JANIS KARKLINS: Okay. Any opposition for deletion? I see no hands up, deleted. Next one, please.

CAITLIN TUBERGEN: Moving on to item 50. This seems to be a disagreement with what Mark SV had said earlier, unless I'm misunderstanding. So the question form Org was, can the EPDP team please clarify that phase one and phase two only apply to priority three requests? And priority one and two requests will have the same SLAs as indicated in the table we just reviewed with the blue heading. So all of the compliance targets described underneath refer only to that large category, priority three requests, but it seems that registrars do not agree with that interpretation. So maybe Mark can speak to this.

JANIS KARKLINS: Yes. Thank you. Mark SV, please.

MARK SVANCAREK: Volker should fact check me as well. Since we have the 85-90-95 language in priority one and priority two, you don’t need to make a distinction between phase one and phase two for those categories

of requests. It's only on the more complex calculations in priority three that you need phase one and phase two. Thanks.

VOLKER GREIMANN: What Mark said checks out. Yeah. That's what we have there, it's basically intended as a ramp up and that works.

JANIS KARKLINS: Thank you. We have agreement for once. Good. Can we keep that spirit going ahead? So I think that clarifies what needs to be clarified, and we can move on.

CAITLIN TUBERGEN: Excellent, so moving on to item 51, the question is, could the team explain how the mean response time and response target value correspond to the priority max and the SLAs identified within the table? And I think, again, that we just got clarification on that in item 50 because the two are tied.

JANIS KARKLINS: Okay, so then we don't need to continue this.

CAITLIN TUBERGEN: Correct.

JANIS KARKLINS: Okay.

CAITLIN TUBERGEN: And of course, members are welcome to disagree. But moving on to item 52, this was as terminology change, and the BC ask, can the EPDP team please clarify what it means by sample? Does the team measure? I'm sorry, I think that may have been an ICANN Org question. And we went ahead and changed the word “sample” to “measure,” and BC flagged that for discussion, so I don't know, Mark, if you want to just speak to that again.

JANIS KARKLINS: Mark SV, please.

MARK SVANCAREK: Yeah, I think it’s just a simple terminology question. I'm thinking about this as a signal and this is signal processing to me. So sample is the word I used, but measure is probably the better, more commonplace word. Thank you.

JANIS KARKLINS: Okay. We can move on, probably.

CAITLIN TUBERGEN: Okay. So item 53, again, this was a terminology question, and I think ICANN Org noted that in one instance, the response target value was supposed to reference mean response time, so we asked the team to clarify that that was indeed the case and the registrars agreed that that reference to response target value should be mean response time.

So we'll go ahead and apply that change unless there's any disagreement.

JANIS KARKLINS: Thank you, Caitlin. I see no hands up, which means no disagreement.

CAITLIN TUBERGEN: Excellent, so moving on to question 54, this was a business day question. I don't know if our previous discussions has made this point moot, but the question was the contracted party must respond to ICANN's response target failure notice within five business days, and they're asking if that's five business days in the contracted party's jurisdiction or a different jurisdiction, and Registrar Stakeholder Group provided that that's in the contracted party's jurisdiction. So just checking to make sure that that was everyone else's interpretation before applying that clarification.

JANIS KARKLINS: Okay. Thank you. So, any issue with this, keeping five business days? I see no issue. No requests for the floor. We can move on.

CAITLIN TUBERGEN: So you'll note that question 55 deals with this text that Berry is scrolling through now where there's some questions in bold and some explanations of how priority is defined, how it can be shifted, etc. And the question was that we now have a new recommendation which appears below recommendation eight that

deals with the different priorities and what defines an urgent request, and rather than be duplicative here, we were wondering if that text should be relocated to their new recommendation, if there were any objections to doing that.

JANIS KARKLINS: Thank you. I think if we're not losing the meaning, that it would be moved where it better fits. Any issue? No issue.

CAITLIN TUBERGEN: And last but not least, for recommendation 9, we have a question that I believe we already addressed in the context of the new recommendation, which is that if the priority is improperly assigned in that someone submits an urgent request that the contracted party does not believe is an urgent request, it may be rejected, or it can be reclassified if the SSAD allows the request to be reclassified. So this was already discussed. I don't think we need to discuss it again.

JANIS KARKLINS: Yes, we did discuss it. Okay, so then I think we're done with the recommendation 9. Congratulations. So let's take the next one, terms and conditions, because I understand combined recommendation 10, 12 and 14, right?

CAITLIN TUBERGEN: Sorry, Janis, as I noted at the top of recommendation 9, there were two questions that were overarching that we need to revisit

quickly. Apologies. The first question, I believe it's item 43, and in essence, that question is about how there is this division between actual policy text and implementation guidance. And I believe IPC-BC noted that not all of this should be implementation guidance. However, we need further guidance from the team as to what they want moved into the actual text of the recommendation. And it kind of goes along with item 44, which is ICANN Org is asking a question about—sorry, in the green box, if the team can clarify who they intend to have the final say on the specifics of service level agreement, are they determined as a matter of policy in recommendation 9, or is this to be implemented and determined by IRT and ICANN Org, or is this to be negotiated in contractual negotiations? And then further, they're asking what "in accordance with implementation guidance" means. So we just need some further guidance from the team on what, if anything, needs to be moved into the recommendation text itself, and some further guidance on ICANN Org's questions before we can officially wrap this recommendation up.

JANIS KARKLINS: Okay. So from my perspective, what we discussed is that for the moment, we establish these SLAs and they will be included in the contract between ICANN and contracted parties. So then these SLAs will be reviewed as we go, as we learn, and through the mechanism described in recommendation 19, and then the recommendation, if unanimously or approved by consensus, then we'll go and we'll become part of the next round of negotiations of changes of those contracts. So that's without changing anything in existing way of negotiating these contracts, or in existing practice,

[inaudible]. So that's my understanding how it will work. Any objections? Brian.

BRIAN KING: Thanks, Janis. No objections. Just a clarifying point here, I think—and we're not finished with recommendation 19, but I think what we are deciding is that the mechanism can trigger a bilateral negotiation between ICANN and the contracted parties but that the mechanism for evolution could not unilaterally change the SLAs in order to respect the picket fence.

So I think what Org is saying here is right, but just to clarify in their proposed updated text there, after the last comma, should maybe be more accurately, "As updated from time to time per the process described in recommendation 19" and not—I think this kind of implies per the mechanism itself. So that might be worth clarifying there. Thanks.

JANIS KARKLINS: Okay. Thank you. So I think that we have a common understanding and staff can put necessary clarifications in the text, and based on this common understanding. So with this, Daniel.

DANIEL HALLORAN: Thank you, Janis. So if I understand right, the SLA matrix that we have here is basically a template that we're supposed to use to then go negotiate between ICANN Org and the contracted parties and try to implement that or something like it. We had a separate

question, which is, what does it mean to be in accordance with? Are we supposed to kind of exactly mirror this, or is this a starting point? And I think there is probably an issue that means this won't be binding, because of the policy, we'll have to go negotiate it, which means it's like a requirement to go and agree on something new. So there could be an issue there because it's possible we won't get agreement, although it's unlikely.

So then we also have the other question, what does it mean, "in accordance with," and how much flexibility do we have to negotiate? Thank you.

JANIS KARKLINS: No, look, today, we think that these numbers, days, percentages will be as they are. We do not know. it may happen that they may be too small or too big, because we don't know the volume of requests through SSAD. So as a result, if these policy recommendations are approved, you will negotiate the first contract on SSAD, how to implement SSAD with thee contracted parties based on these numbers.

So the mechanism will review those SLAs once in a while. And initially, we think the review will be done each three months in the first year of operation, and then fewer in the second. So if the mechanism will come to conclusion that SLAs need to be changed and we'll come in a consensual way to that conclusion, then you will get a recommendation from the mechanism that these SLAs should be changed. And then you will trigger existing process of negotiations between ICANN Org and contracted parties and will

change the SLAs. So this is how the process is planned. Daniel, please.

DANIEL HALLORAN: Thank you, Janis, for that clarification. Still not 100% sure I know what "in accordance with" means. This is a policy recommendation, ICANN and the contracted parties have to negotiate from this. It would be good, I think, if the report could have some clarity, like does this exact matrix have to be in the SLA, or could it be modified during the negotiation? And would that still be in accordance with it as long as it doesn't conflict, for example? Thank you.

JANIS KARKLINS: No, again, I'm trying to say that we do not know for the moment. We think that this is what it will be. If it will appear to be either excessive or not sufficient, so then through the mechanism, these numbers will be changed. And the mechanism will work on consensual basis and you will get the consensual recommendations where contracted parties also would be in agreement, and anyone else, that these should be changed because of the experience of running SSAD. So if you need to change or staff need to change "in accordance" to something else, please do. But the meaning is just common sense approach. We're talking about many unknowns for the moment.

I have two hands up, but again, this is not an essential issue. Please, Stephanie and Margie.

STEPHANIE PERRIN: Thanks very much. I expect some people are going to say that this is a red herring or utterly extraneous issue that doesn't belong here. However, I'm going to raise it anyway. We in the Noncommercial Stakeholder Group hold very dear the concept of the affordability of a domain name, and I'm not particularly comfortable with the way this service level agreement arrangement is being ported over into a strictly between the registrars and ICANN contractual level agreement where we will not have a say. Why am I uncomfortable? Because there is this big looming issue of the affordability of the SSAD.

Now, having participated in the SSAC open meeting last night to hear what they have to say about their recent report on EPDP's machinations, they are making a very strong case—in their view, it's strong. In my view, it isn't—that affordability and economic viability of the SSAD is not within the remit of the EPDP. Since it is central to our focus as the noncommercial group in terms of sustaining the availability of domain names for end users—for everybody, in short—and certain other parties don't actually care what the SSAD costs, they care if they have to pay for it, but they will not are if somebody else—namely the end user—has to pay for it.

JANIS KARKLINS: So, may I once again ask to stick to the question that we're discussing? Otherwise, we will never end this conversation. So financial sustainability is a separate topic. We have gone through it, and it will be also subject of review. One of the principles that is agreed that end user will not be paying for SSAD. So let me take Margie.

MARGIE MILAM: Sure. I think there's a misunderstanding regarding the picket fence and whether SLAs are within it. If you take a look at the RAA that has a specification that identifies what's in the picket fence, section 1.2.2 talks about functional and performance specification for the provision of registrar services. So this is clearly within the picket fence.

What that means is you don't need to have separate contract negotiations to change the SLA. Now, it's certainly true that ICANN could enter into separate negotiations with the registrars or registries regarding SLAs, but that doesn't mean that consensus policy can't also address those.

So I don't think that the approach we're suggesting is correct. I think once the SLAs are part of the policy, then it becomes part of the contract, and that's just the way the consensus policy process works and that's how the picket fence is defined. So I'll go ahead and share some of the language from the RAA, but it's clear that it's something that we can opine on and we don't need to have this be a two-part process where there would be separate negotiations for this.

JANIS KARKLINS: Thank you, Margie. What I was trying to say is that there's existing process within ICANN and changes are happening once in a while, and this existing process needs to be applied. Alan Greenberg.

ALAN GREENBERG: Thank you. Two very quick points. Number one, the definition of picket fence that Margie gave is in fact the one that's in the contracts, but that isn't the way that people tend to be using the picket fence right now. So the definition has changed and we have two different definitions. One is sort of things that are subject to contract and the other is things that are subject to PDPs, which was the original definition of picket fence.

To be clear, from time to time or periodically right now is a very far time away. We're currently working on, if I recall correctly, the 2013 RAA and we haven't started negotiating a new one. So if we're saying that this is going to go into negotiations, I think we do need some clarity as to whether this is the regular negotiations which happen every N years, and N is sometimes a very large number, or is this something that should be done in the short term once the evolution mechanism suggests that a change is needed? Because the two are very different. Thank you.

JANIS KARKLINS: Thank you. So my question is whether there is enough clarity now for ICANN Org to proceed with implementation. Daniel, please.

DANIEL HALLORAN: Thank you, Janis. I think it was clear based on what you said, and then our concern now is we're basically asking the question that Margie raised, which is, is it the team's agreement that these requirements are binding as a matter of policy? This team, I believe—and we won't do a whole legal debate here—could say registrars must respond within 24 hours, and I think that would be

a binding requirement if it was in the policy and it said that. But instead, I understand the team is saying we want the registrars to be able to respond in 24 hours, please, ICANN, go negotiate that as a part of their contract separately from this policy. But now Margie's raised the point that, why don't we just put it right here in the policy? So that's the clarity we're trying to get from the team, and I understood it's supposed to be not in a policy but negotiation to be held later, which is what will make the service level requirements binding. Thanks.

JANIS KARKLINS: No, what we're trying to say or what I was trying to explain, that the moment the SSAD will be approved—if ever—so then during the implementation phase, you will do whatever necessary changes in whatever agreement you have with the contracted parties, which for the moment do not contain anything about SSAD, including SLAs which are described in very precise terms here. So if in six months or 12 months it will appear that these SLAs are unrealistic, either too excessive or not sufficient, the mechanism will provide consensual guidance in form of recommendation, and then ICANN Org and contracted parties will do whatever is needed within existing processes to change those SLAs in relation to SSAD.

So again, I can only repeat what I said because I'm saying three times the same thing. Brian.

BRIAN KING: Thanks, Janis. I would echo some of the comments in the chat. I think our understanding and intent was actually different from what Dan recapped there. I think we intend for the policy to be the SLAs. The numbers here are the policy and those SLAs would be the SLAs as soon as this policy is adopted by the board, and future changes should be handled based on those negotiations that Dan was talking about. But in theory, those will not need to happen unless necessary and that we would have SLAs and they would be the SLAs that are outlined here, unless and until those negotiations were necessary and took place. Thanks.

JANIS KARKLINS: Thank you. Volker.

VOLKER GREIMANN: Personally, I don't see SLAs as policy but rather implementation, and this is clearly, in my view, implementation guidance. I think we shouldn't spend too much time focusing on how something is implemented. That's for the IRT to decide. If it needs contractual changes, then it needs contractual changes. If it can be implemented as part of the policy, then that is the case. I think we're wasting our time here. Let's relegate the how to the IRT and focus on the what. Thank you.

JANIS KARKLINS: Thank you, Volker. Daniel, would that be acceptable?

DANIEL HALLORAN: Thank you. I think the confusion—I understand now which is different form my understanding five minutes ago, so thank you for the clarification. I was responding to the text which says the EPDP team recommends that service level agreements are developed and enforced in accordance with the guidance below. So yeah, our question was, does that mean the original SLA requirements are going to be in the policy requirements, or do you want us to go negotiate them and there won't be any requirements until we have a negotiation later? It sounds now like everyone's saying this matrix should be part of the policy. It's in guidance right now, but in the final policy that is implemented, it'll have a matrix in it and those requirements will be binding as a matter of policy without any need for negotiation or changing the contracts. Thank you.

JANIS KARKLINS: Okay. Thank you. Mark SV, last word.

MARK SVANCAREK: Gosh. I'm not sure if this can be the last word, because I'm just having a little trouble following this and that's just due to sleep, I'm sorry. My understanding is—and I think I'm agreeing with Dan—is that we have a bunch of initial SLA values that are in the policy and they can't be changed in the implementation, and then we have a mechanism for changing them after a period of time. That's my understanding. And previous sections that we just talked about today say those things. I don't know if that clears up Dan's concern or not.

What I think I heard Volker say is different from that, so that's why I was concerned that perhaps this wouldn't be the last word. Apologies if ...

JANIS KARKLINS: I think Volker said exactly the same thing.

MARK SVANCAREK: Okay, good. Thanks.

JANIS KARKLINS: So, with this, I would like to move to the next topic because the issues are clarified. And if needed, please, staff, if some twist is needed in the text, you can still fine tune the text. So, what will we do next, Marika?

MARIKA KONINGS: Thanks, Janis. The next one is recommendation—the combined one, 10, 12 and 14, which I think is now recommendation 13, SSAD terms and conditions. I'm not even sure if this is the moment to discuss it, because this is a comment that was made by the BC. It's not one that was applied, I think it was made after we provided the updated initial report, which suggested that language should be added that the SSAD terms and conditions may need to be updated as GDPR is interpreted and other privacy laws apply that require compliance. And the suggestion was to add text that would note that the SSAD terms and conditions may be updated as appropriate through the mechanism to address

applicable laws and practices. And the Registries Stakeholder Group, as noted here, they're unsure if recommendation 19 is the right place for these changes, though the comment that they may need to change makes sense. Is there further discussion needed? Should ICANN Org or the entity operating the SSAD be able to make those updates?

Maybe the mechanism in recommendation 19 can make suggestions for updates to the operator. So I think maybe the question here for the group is, is there general agreement that those terms and conditions may change over time and whether that's the responsibility of the entity operating the SSAD or is there also a role for the mechanism here? And in that case, maybe that suggestion could be considered in that context.

JANIS KARKLINS: Thank you. So for the moment, in recommendation 19, this is not mentioned in very specific terms, but there is a more general proposal referring to operational enhancement of the system, which is a fifth item. But I think if we are in agreement, we could add this line also in the non-exhaustive list of scope of the mechanism, and it could be addressed, if needed, through the mechanism. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. So since this kind of originally came from the BC and then registries responded, maybe I'd like to ask the BC what they would think of the registries' question there. I do think it's entirely possible—and probably likely—that those terms and

conditions may need to change over time. Terms and conditions certainly do need to do that. But curious on the BC's take on that, if it's okay to leave this to ICANN Org were the entity operating the SSAD rather than the mechanism. I'm not sure having the mechanism dictate terms and conditions to the SSAD operator is the right approach, and it's maybe better for the SSAD operator to do that, but would really love to get the BC's take on that.

JANIS KARKLINS: Thank you. Mark SV.

MARK SVANCAREK: Thanks. I think Marc Anderson makes a good argument that this might be outside of the MFE and that the flexibility of the SSAD operator is separate from that. Thanks.

JANIS KARKLINS: Thank you. What is MFE?

MARK SVANCAREK: The mechanism for evolution.

JANIS KARKLINS: Okay. Margie, please.

MARGIE MILAM: I agree. I think that we don't want to give too many things to the mechanism, and this seems like something that would be reasonable to handle by the SSAD operator or ICANN.

JANIS KARKLINS: Okay. Any objections that the terms and conditions could be updated by ICANN? No objections. Next. Marika.

MARIKA KONINGS: Thanks, Janis. Next is recommendation 11, disclosure requirements. The first question here is from ICANN Org and it relates basically to the introductory sentence that says contracted parties and SSAD. And Org notes that recommendation 11 indicates that SSAD must comply with the requirements in C, D, E and F. Does the EPDP team mean that these requirements are expected of the central gateway manager? Can the EPDP team clarify which requirements apply to contracted parties and which to the central gateway manager, accreditation authority or the identity provider?

Berry is showing it now on the screen, and just as a reminder, and just as a reminder, I think this was originally a a category that had everything under the heading of contracted parties and SSAD and there was agreement from the group that some changes needed to be made to make clear what applied to whom. So it was organized this way. So I think the real question is here a clarification on what is meant by SSAD, is that the central gateway manager or all the other parties that are involved in that as well, or

does a further subdivision need to be made in relation to which of these requirements apply to which SSAD entities?

JANIS KARKLINS: Thank you. So, who would like to take the floor? Stephanie.

STEPHANIE PERRIN: This is a very interesting question, and one that speaks to something we've been raising all along, namely the agreements between the co-controllers, processors. And the question I have is, does this mean we are negotiating the terms and conditions of those co-controller agreements during this policy phase, or do we defer them to implementation? We brought it up in the past, it's my view that they're policy issues because of course it sets the terms of the liability and therefore the controllership of those different parties, and nothing is clear about that yet. So I'd love your response to that. Thank you. Because I think this question definitely goes straight into that territory.

JANIS KARKLINS: Thank you. I think we made a working assumption that ICANN Org and contracted parties would act as joint controllers in the context of SSAD, in operations of SSAD, and they would negotiate the joint controller agreement among themselves based on the policy and that we will approve. I see no further requests for the floor. And I must say that I'm operating on my mobile phone and have difficulties to switch between participants and the screen. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. I think there's kind of two things in this question. ICANN Org is asking if by SSAD we really mean the central gateway manager. I think that's the first question they're looking for clarification on. And then the other part, as I understand it, is they're looking for clarification on, do the parts of this recommendation that are listed as contracted parties in SSAD, do those really all apply to SSAD or do they apply just to contracted parties? And I think that's maybe in response to a recent round of staff edits that they broke this out between which apply to contracted parties and which apply to contracted parties and SSAD.

So I think maybe that's a question for ICANN Org, do I actually understand the question right?

JANIS KARKLINS: I think we need to be clear that SSAD consists of contracted parties, central gateway manager, and requestors or SSAD users. And for me, the disclosure requirements, most likely simple logic suggests that that would be for contracted parties and central gateway manager, not SSAD in general. But I stand to be corrected. Eleeza, please go ahead.

ELEEZA AGOPIAN: Thanks, Janis. And thanks, Marc A, for the question. Janis and Marc, I think you both got it right. I think what we were trying to understand is where it's referenced to SSAD. Some of these requirements seem like they might be a little bit strange applied to

for example the identity provider or if there was one, the accreditation authority. So I think just narrowing it down per each of the elements would be helpful since the SSAD is this large system with many parts that are doing different activities that all of these items may not apply to. So that was our question. Thanks.

JANIS KARKLINS: Thank you. Mark SV.

MARK SVANCAREK: I think we're converging on a solution here. Probably where it says SSAD, you should say contracted parties and the SSAD central gateway manager, there is that line, SSAD and/or the disclosing entities. So that would be redundant in that particular case, but in the other ones, it would work. Then there are, I think, two places where the contracted party is called out in isolation. And then having made those changes, we should look at this again to make sure that there are no missing obligations on identity providers and the like. But I suspect that there won't be. So if you take Georgios' suggestion in the chat, I think it should work. Again, there is that and/or disclosing entity that would be redundant in that case but other than that, I think it's okay. Thank you.

JANIS KARKLINS: Thank you. Again, since we're talking about recommendation on disclosure requirements, anything that relates to accreditation is not simply applicable by default here. It is just those who are involved in disclosure, and that is either contracted parties or central gateway manager. Marc Anderson.

MARC ANDERSON: Thanks, Janis. Mark SV said what I was going to say, so plus one to what he said.

JANIS KARKLINS: Thank you. Georgios.

GEORGIOS TSELENTIS: Yes. I made the suggestion in the chat. If we mean more than that, more than the central gateway manager, we should say so. SSAD as a system doesn't have responsibility per se. The actors that are controllers or processors in this SSAD system have responsibility, and we should name them in the beginning of the phrase as we say contracted parties and SSAD, A, B, C, etc.

So for clarity reasons here, I made the suggestion in the chat. I don't know if people agree. If we agree, we can take it from there. Thanks.

JANIS KARKLINS: And your proposal is to change SSAD to central gateway manager?

GEORGIOS TSELENTIS: Yes, for clarity. Thank you.

JANIS KARKLINS: Yes. Okay, any objections that we simply change SSAD to central gateway manager? No objections. Done. Next. Marika.

MARIKA KONINGS: Thanks, Janis. So we're on item 59, which is still in disclosure requirements, which relates to a paragraph that [inaudible] to a confidential request. And having reread this, staff may have applied the proposed change too hastily, initially assuming that it didn't change the substance of the sentence, but as the Registries Stakeholder Group has pointed out, the change does materially alter the meaning which has resulted now in a "cannot live with" text, and they've suggested to revert back to the previous text. In a quick summary, I think it kind of changes around how confidential requests are dealt with and how exceptions are provided. I do believe this was language that was developed through a small team that came up with wording that the group reviewed, so the BC and IPC had suggested making changes here, and as noted, the Registries Stakeholder Group, those changes have actually resulted in changing the meaning and as such is not found to be acceptable.

JANIS KARKLINS: Okay. Proposal is to revert back to original text, right, Marika?

MARIKA KONINGS: Yes, correct.

JANIS KARKLINS: Okay. Any objection? Mark SV, please.

MARK SVANCAREK: Thank you. The goal of this was to add normative language, so must/must not language. In the process of doing that, there's an inversion of the grammar which makes it a little different. At first reading, it seems like it completely flips it upside-down, but in fact, it just changes an aspect of it.

So we're not wedded to that specific proposed update language, we're just seeking some normative language be put in. So we don't want to revert it back to the original text, we would just like some normative language to be inserted in it somehow. We're flexible on the exact language that winds up in there, including the normative language. Yeah, Marika, if you can figure out how to do that, I'm sure that we can all accept it. Thanks.

JANIS KARKLINS: Do you have any specific proposal?

MARK SVANCAREK: I'm sorry. I'll come back and put something in the chat.

JANIS KARKLINS: Chris, please.

CHRIS LEWIS-EVANS: I actually prefer the language suggested by the IPC, BC, and be interested to hear from the registry group how they think it materially changes it. I might just be tired and not reading it correctly. Thank you.

JANIS KARKLINS: James, please.

JAMES BLADEL: Hi Janis. This is something that Chris and I worked out as part of small team and brought back. My concern is that this is a material change to what we agreed upon. If we can fix it, if it is just a grammar issue, then I'm open to reviewing some alternatives, but this ain't it. Thanks.

JANIS KARKLINS: Okay. Amr.

AMR ELSADR: Thanks Janis. I think I'm coming from the same place James is. The way I read it is that the proposed updated text creates a prohibition on contracted parties from acting in a certain way, which may also create a conflict, because if there's a conflict between the condition here, the provision of having to seek cooperation from the requesting entity and what the data subject's rights under applicable law are, then contracted parties are going to get stuck kind of between a rock and a hard place here.

But the original language, to my reading, is not prohibitive in that sense, it just creates an option for contracted parties so it provides more flexibility. So I don't see them as being the same thing, and it would be good to try to—once Mark Svancarek maybe provides some proposed language that we compare that to the original text as opposed to the proposed updated text, because that's the comparison we need to make. Thank you.

JANIS KARKLINS: Thank you. Marc Anderson.

MARC ANDERSON: Thanks Janis. Amr pretty much said what I was going to say. I was raising my hand to respond to Chris. The material change part is in the original version, contracted parties were required to disclose to data subjects, but must do so in cooperation with the requested entity, in accordance with rights under applicable law. But the change basically puts in the "must not" unless you accept "with cooperation by the requesting entity," which could potentially—all right, I see Chris seems to be getting the change now, so I'll not beat a dead horse. But I'll just say that I think based on Mark SV's explanation that he was not trying to change the meaning but just add normative language, then I think if we can get back to the original version but with normative language, that would be fine.

JANIS KARKLINS: So, "can" is part of the normative language? Mark SV put in the chat confidential request can be disclosed to data subject in

cooperation with the requesting entity but must not do so without cooperation from the requesting authority ... So, is this something we could accept? Brian.

BRIAN KING: Thanks Janis. I think just for background, the normative language are these capital “must” and “must not” and “may,” and those either explicitly prohibit or specifically enable someone to do something. So I think that’s what we’re looking for here. So I think we’re in general agreement about what we’re trying to do, but the “can” language wouldn’t do it.”

JANIS KARKLINS: Can we change to “may” with capital letters? And keep the original text, only instead of “can,” we put “may” in capital letters. Would that be simplest way? Brian?

BRIAN KING: The last of this sentence would need work.

JANIS KARKLINS: We would delete every change and just keep the original text, but instead of “can,” we would put “may.”

BRIAN KING: I see Chris’ hand is up and a queue forming. I'm not going to be the expert here. Janis, I'll bow out. Thanks.

JANIS KARKLINS: Okay. Chris.

CHRIS LEWIS-EVANS: Thank you. Yeah, I was going to suggest the exact same thing, which is replace “can” with “may.” In my mind—and to maybe speak to some of the concerns the IPC, BC had, really strictly, what that’s saying is confidential requests may be released in cooperation with the requesting entity. So the flipside of that is they may not be released without cooperation. So for me, I'm happy. It’s a risk that law enforcement have to take, and there's risk assessment behind that and some of the conversation was with James when we first threshed out this language. It’s a hard one anyway, and there's legislation in different countries. So it’s something we have to live with on a daily basis.

JANIS KARKLINS: Okay. Do we really want to listen another three interventions on this? May I ask to lower hands and then raise hand only if you disagree to change “can” to “may?” Okay, you cannot accept that, because you're keeping your hands up. Marc, please go ahead.

MARC ANDERSON: Sorry, Janis, I know you want to move on here, but this gets away from what we’re trying to accomplish with the language. So when this language was negotiated, Chris and James identified that there are cases where even though the law enforcement entity is requesting it to be anonymous, the data subjects’ rights trump

that. So under some applicable law, your right to know who has asked for that data trump law enforcement's request for anonymity.

What Chris asked or is, okay, he recognized that there are cases where the law gives the data subjects the right to know this. He asked that, okay, recognizing that, where you must disclose that this request has occurred, please let us know that this has occurred.

So this gets away from that and puts in a "may," may do so in cooperation with requesting entity. I think what we're trying to say is, okay, if you must let the data subject know, then also you must at least notify the requesting entity that that disclosure is going on so law enforcement isn't blindsided. Chris, I hope I've accurately represented what that compromise originally was.

JANIS KARKLINS: I am lost here. The suggestion was, what Chris also accepted, being one of the key negotiators of this text and representing one of the entities that probably will be using this provision, and he said that he can live with the suggested change in original text simply replace "can" with "may" in capital letters. And then to keep original text.

So if he's the one who says that he accepts that, including the risk, then we should follow that. Stephanie, please.

MARC ANDERSON: Yes, and I am sorry to slow you down, but there's a lot of language creeping in here that changes things. First of all, I objected to “must” at the end of the sentence and “may.” When we’re talking about a fundamental right of the data subject to obtain information, their own personal information, in fact, they have a right to obtain it, subject to certain local law enforcement rights that will trump relevant data protection law. So it has to be “must disclose,” subject to any other caveats.

Now, the next thing is I see—and I don't know when it snuck in, “Where required by applicable law.” Whatever happened to our agreement that this would be a universal policy? So what that means is if under your local law, e.g. the United States, you don’t have any data protection legislation at the national level, then you won't have a right to access your personal information in the SSAD? We didn't agree to that. We were going to have a policy that applied, subject of course to more restrictive local law that comes in. Bu the rights of the data subject would be universal, otherwise we are playing a mug’s game and we shouldn’t even try to comply with the GDPR.

So I'm concerned about both of these things, and I just want to put another marker in that there have been so many last-minute wording changes, we are going to have to go through it all very carefully again when it all is hanging together, and we will find things that are wrong. So get ready, and don’t tell me I'm too late. This is no way to do this kind of drafting. Thank you.

JANIS KARKLINS: Thank you. I think that that "must disclose" that you referred to is still there and has not changed. Where applicable law, maybe Marika can tell, but the text itself hasn't been changed, I understand. There was some shifts and moving text around. But let me see who is next in line. Amr.

AMR ELSADR: Thanks Janis. I actually have my hand raised to seek clarification rather than object. So let's say we do have "may" here or "can," whichever. I don't think it makes much of a difference, but "may" does provide more "normative" language. But I'm not clear on what this actually means. So if I could get input from everybody else, that'd be great.

So if contracted parties may disclose these confidential requests to data subjects with the cooperation of the requestor, that doesn't necessarily mean that they may not disclose it without the cooperation, does it? And I ask this because again, I can think of different scenarios where this may create a problem. What if the requestor doesn't cooperate with the contracted party? Or let's say they cooperate on the process but they don't agree, but the contracted party is faced with applicable law that requires it to respond to the data subject, [the] the registrant, and then provide the information that the registrant is requesting. I'm just wondering where the contracted party and the registrant would stand in that sort of scenario.

Another one, I'm also wondering what if the requestor simply doesn't cooperate? It doesn't seem like we have language baked in here that takes account of that. What if the requestor simply

doesn't respond to the contracted party when it's seeking cooperation in order to respond to a request from the registrant to disclose this information?

I just think if this recommendation means that the contracted party may not act without the cooperation of the requestor, then it may need a little more work. Thank you.

JANIS KARKLINS: The main proponent, Chris, said that he can live with the text which is now on the screen. Chris, can you confirm that?

CHRIS LEWIS-EVANS: Yeah, and just maybe if you'll grant me 30 seconds maybe to allay some of Amr's questions there. Yeah, certainly, at the end of the day it's a contracted party's data and they've had a request, it's down to them when and what they disclose in accordance to their own data policies. So just because they can't get hold of the requesting entity is not the contracted party's fault as long as they try. That's all we're asking, really, is to be notified. So in my mind, it's just to provide us with a little bit of protection around being able to put the right mechanisms in place to protect investigations if a request is to come in.

And to Stephanie's point, I think as we mentioned last time, most of these requests are under different legislations to the GDPR, so we've actually I think increased for certainly law enforcement some of the transparency within the system.

JANIS KARKLINS: So you're saying that what is now on the screen is fine for you from a law enforcement perspective. And is this “and/or” essential?

CHRIS LEWIS-EVANS: Sorry, which part of the screen? There's about four different lines on the screen.

JANIS KARKLINS: “Noting however that the nature of legal investigation or procedures may require SSAD and/or the disclosing entity to keep the nature or existence of a certain request confidential.” So SSAD and/or disclosing entity.

CHRIS LEWIS-EVANS: Yes because obviously in a situation where there is an automated response from the SSAD, then we need the SSAD to keep the request confidential, and if it’s one that goes to a contracted party, then it’s down to the disclosing entity, effectively, so whichever contracted party is the one that does that.

JANIS KARKLINS: Okay. So that’s why it is and/or. Okay. So with this, I would suggest that we accept the language as it is now displayed on the screen and move on. Amr, please, your hand is up. You're not in agreement with that.

AMR ELSADR: Thanks, Janis. Well, I'm in agreement with what Chris said. I think that sounds really reasonable and he answered my question, and I think Brian reinforced that in the chat as well. I'm just wondering how others feel about the language we're looking at, if that covers what Chris just described or whether we may require some additional text, possibly in the form of implementation guidance to clarify what the intent here is. But I think in essence, we're all thinking the same thing, so I'm happy about that. Thank you.

JANIS KARKLINS: Okay. So then we move on. Thank you. Marika, please, next.

MARIKA KONINGS: Thanks Janis. So next is item 60. This was a proposal from the IPC and BC to strike a footnote that reads "As implementation guidance, ICANN Org will develop the SSAD privacy policy for SSAD users, which it may publish for public comment to obtain input from potential SSAD users," as this has already been covered in another recommendation since it's basically duplicated here. The Registrar Stakeholder Group already provided input that they don't have any concern about deleting this footnote. So I think the question is, does anyone else have any concern about this?

JANIS KARKLINS: So, question is, can we delete the footnote? No reactions? We can. Deleted. Next one.

MARIKA KONINGS: Thanks, Janis. Next one relates to item E which reads “Where required by applicable law, must provide mechanism under which the data subject may exercise its right to erasure to object to automated processing of its personal information should this processing have legal or similarly significant effect and any other applicable rights.”

There's a question here from ALAC. This is not a “cannot live with” but a question of how this could be implemented.

JANIS KARKLINS: So we’re talking about “cannot live with” and if it’s not “cannot live with” then I would suggest that we do not spend time. And if no one else has any issue with that, then I would suggest we move on. Objections? No objections, we are moving on.

MARIKA KONINGS: Thanks, Janis. Next we go to recommendation 12 which is the query policy. This relates to a clarifying question from ICANN Org in relation to the section that reads, “In the event the central gateway manager makes a determination based on abuse to limit the number of requests from a requestor, further to point B, the requestor may seek redress via ICANN Org if it believes the determination is unjustified. And the question is for the EPDP team, to clarify what is expected in relation to redress. Is this similar to a reexamination so that the SSAD central gateway manager would be requested to reexamine whether the submission by the requestor are indeed abusive? And the input we got from the Registrar Stakeholder Group is that they agree

that it's similar to a reexamination, and I think we're just looking for confirmation that others feel the same was, and if not, that they can provide clarification of what was intended with redress.

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

MARC ANDERSON: Thanks Janis. I think there's a little bit of a difference between the two things being discussed here. This text is about what happens if a requesting entity is flagged as submitting abusive requests. And let's take abusive to make a simple example as having a whole bunch of requests in a short time period and overwhelming the system, just for example. And so a determination is made to throttle that user. So this language is intended to give that user recourse to say, "Hey, please stop throttling me, this wasn't really abuse of the system."

So I think that's good. I think there should be a recourse there for somebody, a requestor who maybe was not really being abusive but was flagged as being abusive. So I support having that recourse in there, but I don't think that's necessarily the same as what's described in recommendation 6, reexamination request, because that requires the requestor to submit new information to explain why a request that was rejected should not have been rejected.

So I think this is maybe an apples to oranges comparison, but I do think that there should be a mechanism for somebody that was

throttled by the SSAD system to be able to make a case to the SSAD operator why that was done erroneously.

JANIS KARKLINS: Okay. Thank you, Marc. Can we put a footnote under “redress” and provide explanation in the footnote along the lines of what Marc Anderson just suggested? Daniel.

DANIEL HALLORAN: Thank you, Janis. I think the question is what happens if you have a registrar flagging a particular requestor as abusive and there's disagreement about whether that’s abuse. Who gets to decide ultimately? Is that the registrar gets to decide, or ICANN Compliance [subject to] an arbitrator settling it ultimately if they can't dispute, or is this up to the discretion of the registrar in the first place, to decide what is and what isn't abusive? Thank you.

JANIS KARKLINS: I would argue, first of all, that there most likely will be very few cases where this determination should be made or has to be made. There will be most likely clear-cut cases of abuse and [within the gray zone, no.] But I would suggest that that is the central gateway manager who acts also as arbiter of operation of the whole system. But I have Marc Anderson and Volker in line, see whether they're in agreement with that type of judgment. Marc, please, go ahead.

MARC ANDERSON: Thanks Janis. I think I am agreeing. To answer Dan's, I think ultimately that's going to have to be a judgment call by the SSAD operator.

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

VOLKER GREIMANN: Well, currently the status quo is that if somebody makes what we consider abusive requests, we will treat them that way. And I think the contracts give us the leeway to do that. I also think that the SSAD provides an opportunity to make a more balanced call and a call based on evidence across multiple registrars, that one registrar simply cannot do. The SSAD can detect a pattern in the form of request that the registrar might not be able to detect. So it's something that I think a registrar should be able to flag a potentially abusive requestor that will then be investigated and penalized by the SSAD operator. So that's a function I definitely see in a cooperative spirit between registrars and the SSAD, with the SSAD making the final decision.

JANIS KARKLINS: Okay. So Daniel, is this sufficient guidance for you?

DANIEL HALLORAN: Yes. Thank you, Janis.

JANIS KARKLINS: Good. Let's move on to the next one. Marika.

MARIKA KONINGS: Thanks, Janis. This takes us to item 63. There's currently language that says the EPDP team recommends that contracted parties must not reject disclosure requests from SSAD on the basis of abusive behavior which has not been determined abusive by the central gateway manager as per A and B above. The BC, IPC and ALAC noted here that there should be a similar recommendation here that applies to contracted parties regarding the query policy, and their proposal is to add, "In addition, the contracted parties must not reject queries from the SSAD on the basis of abuse which have not been determined abusive by the central gateway manager." I think both here, the Registrar Stakeholder Group and the Registries Stakeholder Group have indicated that they cannot live or they're not okay with the proposed change and especially the Registries Stakeholder Group comment. I won't read it out, so maybe they can speak to their concern about this issue.

JANIS KARKLINS: Okay. Thank you. So this is again we will probably spend time talking about marginal cases. There's always bad apples in the pile, but usually, majority of apples are good. So if registries, registrars are not okay, can we not accept proposal of BC, IPC? I see no hands up. We do not accept proposal of BC, IPC. Stephanie, are you in agreement?

STEPHANIE PERRIN: No, I'm actually not. I think that until we see the terms and conditions in the co-controller agreement, we can hardly put language that is coercive in the text. We can't say the contracted party must not reject queries from the SSAD if the SSAD manager turns out to be a processor and has less liability than the contracted parties do. This is why we needed these things to go hand in hand.

JANIS KARKLINS: So the joint controllership agreement will be prepared during the implementation phase.

STEPHANIE PERRIN: Right.

JANIS KARKLINS: We will not do it.

STEPHANIE PERRIN: So basically, I'm strongly disagreeing with the proposed updated text.

JANIS KARKLINS: Yeah, we're keeping original, we do not update.

STEPHANIE PERRIN: Okay. Fine. Sorry.

JANIS KARKLINS: This is my proposal.

STEPHANIE PERRIN: Thank you.

JANIS KARKLINS: Good. So let's move one then, maybe we can still catch another clarification. Marika, please.

MARIKA KONINGS: Thanks, Janis. This is also some of the query policy and here's a paragraph that talks about saving the history of the different disclosure requests, and there's language in there that says appropriate access to such relevant records should be provided to the contracted parties as deemed necessary to ensure all relevant information relating to requests for disclosure available for consideration in such disclosure decisions. And the question here from ICANN Org is to clarify what appropriate access means, who deems what is necessary and relevant, are contracted parties entitled to see all historic requests from any and all requestors, whether their requests were approved or denied, including requests sent to other contracted parties.

JANIS KARKLINS: Okay. So, any attempt to explain to ICANN Org what we meant by appropriate access necessary relevance, apart form following common sense approach? So, no one? Mark SV, please.

MARK SVANCAREK: Thanks. When you said “aside from the common sense approach,” well, why do you have to explain the common sense approach? Okay, so the way I see this is that first of all, everybody should be able to see their won numbers. We have a lot of problems today where people say “I saw this” and somebody says “No you didn't,” and then we argue about it. So it’s good to have a common scorekeeper. But that means you need to see what your score is. So if you’re a requestor and you’ve made a ton of bad requests, you should be able to see, oh, jeez, I've made a ton of bad requests. If you're a discloser and you're constantly missing your targets, you should be able to see, “Wow, I'm always missing my targets, I better step up my game or I'll get scolded.”

I don’t see a reason for one requestor to see another requestor’s stats. I don’t see a reason for one discloser to see another discloser’s stats, except in an aggregate, which would be all the stats lumped together, the functioning of the SSAD as a whole. I think that that should be available to everybody in a real-time basis all the time. But that’s not really what the purpose of this is. This is you should be able to see—oh, Milton’s saying, “Why only aggregated?” I thought that that was just to respect—I thought that that was going to be required, actually. I have no problem with Microsoft’s statistics being public at all times, but I thought that there would be an objection to that by various other parties on both the disclosing side and the requesting side.

Yeah, personally I'm fine with everything being public all the time, but at the very least, you should be able to see your own statistics. Thanks.

JANIS KARKLINS: Okay. Thank you. I think Marika, this text appeared as in response to the public comments, no? It's not in the original text. We were talking about statistics that would be published from time to time describing the SSAD in order to follow these operations and would be reviewed by the mechanism. Maybe Dan, if you could speak first, and Marc Anderson after, and see where we can close this issue. Daniel, please.

DANIEL HALLORAN: The new sentence talks about the records of other requests being available to contracted parties. So it doesn't say statistics, it says records. So it wasn't clear to us if this was intended to open the door to, let's say, Volker saying, "Okay, I want to see all the requests ever submitted by Microsoft to any contracted party." Or could James say, "I want to see all the requests sent to Volker?" It's kind of unbounded what records are relevant and who can see what on the contracted party side, and doesn't say anything about the requestors being able to see any records. Thanks.

JANIS KARKLINS: Okay. Thank you for clarifying your question. Marc Anderson, please.

MARC ANDERSON: Thanks, Janis. [Thanks, Dan.] That's a good question. Generally, I think I agree with what Mark SV said, sort of the common sense is

you can see your own data but not other people's data. I think that's the gist of what Mark SV was saying.

I think the one question there is one that ICANN Org raised, is that, are contracted parties able to see all historical requests from any and all requestors? And the question here is, is that material in making a disclosure determination, or is that data that may help or hurt in making a disclosure determination? I'm not sure I have the answer to that one, but I think it's a really good question. We've talked a lot about how having over time the SSAD system will get smarter and understanding what the historical questions and patterns are will help make determinations.

So I think that maybe it's appropriate to consider this, but I think it's not an easy question to answer. So I think that's a real good question from ICANN Org. and I'm sorry, I don't have a quick answer to it.

JANIS KARKLINS: Okay. Volker.

VOLKER GREIMANN: When we originally envisioned this proposal of being able to see the data, it was, at least in my mind, something that referred to your own data. So the requestors could see data of the requestors, the contracted parties could see their response ratios and the [data by requestors] that came in for their accreditations. But I didn't envision it as us as registrars for example being able to see everything from Facebook or Microsoft. That's something that the SSAD would see, that the SSAD would also generate as

statistics internally that they could use for whatever purpose, find abuse, determine how much to bill each party or whatever, but not for the contracted party to see, “Oh, I wonder how much Microsoft is sending out this way.” I think that could even be abused and shouldn’t be in there.

So requestor should be able to see their response rates from the registrars that are making requests. Registrars and contracted parties should be able to see what their response rates are and what the data, according to their accreditation, is.

JANIS KARKLINS: Yeah. Be aware, we are three minutes over the time of the call. Brian, please, very quickly.

BRIAN KING: Thanks, Janis. Yes, I'll be brief. I agree with a lot of the points Volker made, and I think in general, we should put this on the agenda for the next call because it sounds like we have more to unpack here. And actually, I apologize, make that request for the last point as well. I think there's a lot to unpack there. I wasn’t ready for us to move on away from that. We can't get into it now, but we’re not okay to just park this. I think there's a lot of different options and things that we can talk about here, but I just want to flag that from the IPC’s perspective, we’re not okay just to scrap this conversation. Thanks.

JANIS KARKLINS: Okay. We will continue then with this ICANN Org question next time, and Marika will now take a half minute to give a homework assignment. Marika, please.

MARIKA KONINGS: Thanks, Janis. Indeed, it's a great segue in encouraging everyone to provide your input on the remaining items. We're getting close to the end of the list, so to facilitate a conversation, and as you know, there's no further calls this week, hopefully groups can find some time to put in their responses or suggestions for the items that are outstanding. There's quite a lot of input, for example, on the financial recommendations, so it would be really great if groups can collaborate and find constructive solutions for concerns flagged.

In addition, we got a lot of input on the revised recommendation number six. We would like to as well assign an action item here for groups that have provided inputs also look at the input provided by others, and again, come up with suggestions for how to reconcile some of the different positions or indicate if they can accept what other groups have suggested. Again, this will hopefully help us move forward in a more speedy manner in getting to the finish line, and this allows staff at least to kind of take off the table those items where agreement can be found in the Google docs and focus on those issues that are remaining. And of course, we'll also send out a reminder of this homework to the list after this call.

JANIS KARKLINS: Okay, thank you. Amr.

AMR ELSADR: Thanks, Janis. Just a quick point. If it's okay, I'd like to take some homework on item number 59. We all agreed to the intent of that issue, and I'd like to offer some additional language to clarify what we discussed today.

JANIS KARKLINS: Okay. Thank you, Amr. With this, I would like to thank all of you for active participation and wish you a good rest of the day, wherever you are. This meeting is adjourned.

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

[END OF TRANSCRIPTION]